

# ANROWS

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

## Legislative Services

Attorney-General's Department

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Adelaide SA 5001

By email: [LLPSubmissions@sa.gov.au](mailto:LLPSubmissions@sa.gov.au)

## Re: Criminalising coercive control

Dear Attorney-General Maher

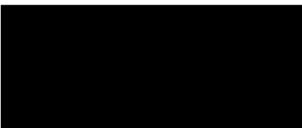
ANROWS thanks the South Australian Attorney-General's Department (the Department) for the opportunity to respond to the draft Criminal Law Consolidation (Coercive Control) Amendment Bill 2023 (SA; "the Draft Bill").

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 build the evidence base that supports ending violence against women and children in Australia. ANROWS is embedded in the National Plan architecture and will continue to deliver and develop this function across the next decade under the *National Plan to End Violence against Women and Children 2022–2032*. 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).

ANROWS is pleased to make a submission that emphasises the need for any progress towards criminalising coercive control to include consideration and mitigation of the potential unintended consequences. This submission draws on evidence from rigorous peer-reviewed research, including relevant ANROWS research, to highlight the need for training, resourcing, and monitoring and evaluation. We would be very pleased to assist the Department further as required.

Yours sincerely



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24 October 2023

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## Overall comments

ANROWS commends the South Australian Attorney-General's Department (the Department) for recognising the need to respond to coercive control. ANROWS has previously made submissions on coercive control legislative and policy reform in Queensland (ANROWS, 2022b, 2022d), New South Wales (ANROWS, 2021a, 2022a) and the Commonwealth (ANROWS, 2022c).

ANROWS is pleased to make a submission to this consultation. We emphasise the need for any progress towards criminalising coercive control to include consideration and mitigation of the potential unintended consequences, with a particular focus on training, resourcing, and monitoring and evaluation. The following ANROWS evidence may assist the Department in keeping these potential unintended consequences in view in the development of the Draft Bill and subsequent plans for implementation.

ANROWS notes that the Draft Bill only covers coercive control against spouses, domestic partners or intimate partners (current and former), informed by the Department's view that this is the area of highest risk. A breadth of evidence highlights that coercive control can be used in other relationships, such as by extended family members and community groups (see Langton et al., 2020; Vaughan et al., 2016) and by parents against children, to cause significant harm (Katz et al., 2020). This harm is no less significant than that experienced by the victims and survivors who are covered by the Draft Bill. ANROWS would be pleased to provide further advice on potential amendments to the Draft Bill on request.

## Recommendations

**Recommendation 1:** Ensure the introduction of a coercive control offence is accompanied with training and resourcing to support police and legal actors to understand the principles of coercive control and administer the legislation in a manner that reduces the risk of misidentification and systems abuse. This training must be underpinned by clear policies, efficient procedures, and an authorising environment supporting organisational culture change.

**Recommendation 2:** Develop and implement a monitoring, evaluation and learning framework to guide ongoing monitoring and evaluation of the implementation, impact and effectiveness of the new coercive control offence and associated supports such as training. This should include input from people with lived expertise and should consider the potential for unintended consequences of the legislation's application.

**Recommendation 3:** Consider the potential for alternative and additional responses to coercive control beyond the introduction of a coercive control offence, including responses outside of the legal system and the revision of existing legislation to better support victims and survivors of domestic, family and sexual violence.

## Respond to the potential unintended consequences of the coercive control offence

### **Recognise the potential for victims and survivors to be misidentified as perpetrators**

ANROWS cautions that legislative reform must be conducted with awareness that laws can be inappropriately and harmfully applied against victims and survivors. ANROWS evidence highlights that victims and survivors can be misidentified as the perpetrator by police and legal system responses. For

example, domestic violence laws can be misapplied to victims and survivors who use violence in self-defence (see Bevis et al., 2020; Day et al., 2018; Nancarrow et al., 2020), and legislative provisions that are intended to protect victims and survivors can be counterintuitively used against them (Sleep, 2019; Wangmann et al., 2020). Outdated understandings of intimate partner violence within the legal system can also mean that, despite attempts to reform self-defence laws, the use of self-defence by women who kill abusive partners is rendered “unreasonable” (Tarrant et al., 2019). Misidentification can be driven by incident-based police responses to DFV, which focus on responding to one incident of violent behaviour and overlook the continuing context of coercive control (Nancarrow et al., 2020), and by misconceptions about the “ideal victim” presenting as submissive and powerless (Nancarrow et al., 2020).

Misidentification of victims and survivors as perpetrators can have significant and lifelong impacts. Misidentification contributes to women’s imprisonment (Bevis et al., 2020; Nancarrow et al., 2020), undermines their trust in the legal system, denies them access to appropriate support, and reduces the likelihood of them reporting family violence in future (Nancarrow et al., 2020). The fear of misidentification can also influence women’s behaviour in the legal system. For example, ANROWS evidence suggests that women and some professionals are wary of raising allegations of child abuse in the family court system for the legitimate fear of the mother being seen as the “alienating” parent who is trying to punish the other parent through restricting access to children (see Death et al., 2019; Kaspiew et al., 2017). The significant consequences of misidentification mean that it must be considered and mitigated in legislative reform.

Misidentification can be influenced by intersecting forms of systemic and structural inequality. As gendered stereotypes intersect with systemic racism, Aboriginal and Torres Strait Islander women are particularly vulnerable to misidentification based on stereotypes about how the ideal victim should look (Nancarrow et al., 2020). For example, Aboriginal and Torres Strait Islander women may be uncooperative with police due to prior experiences of the inappropriate application of legal sanctions, intimidation, racism, and general distrust of the police in the context of colonisation and systems violence (Nancarrow et al., 2020). As such, it is important to consider how women who experience intersecting forms of systemic and structural inequality may be impacted when designing legislation to criminalise coercive control.

It is also important to recognise that not all use of violence in the home is indicative of coercive control. For example, recent ANROWS research on adolescents’ use of violence in the home (AVITH) highlighted that this violence was “reactive” and driven by adolescents’ challenges with regulating their emotions and/or actions (Sutherland et al., 2022) or was “retaliatory” (Fitz-Gibbon et al., 2022, p. 12). This use of violence is therefore not characterised by the control and denial of autonomy and personhood inherent in coercive control (Sutherland et al., 2022; Fitz-Gibbon et al., 2022). These findings underscore the importance of considering how a coercive control offence may be applied against different groups and in different contexts.

## **Recognise the potential for systems abuse**

ANROWS suggests that the Department consider that the criminalisation of coercive control may lead to increased opportunities for systems abuse by perpetrators. Systems abuse is the “abuse or manipulation of legal systems and processes by perpetrators to exert power and control over the victim/survivor” (Douglas & Chapple, 2019, as cited in Nancarrow et al., 2020, p. 8). A breadth of evidence demonstrates that perpetrators already engage in systems abuse through the legal system, such as through making retaliatory applications for protection orders (Nancarrow et al., 2020) to intimidate victims or survivors to withdraw their own applications or to deplete their financial and emotional resources (Carson et al., 2022; Douglas & Chapple, 2019; Kaspiew et al., 2017, 2022; Miller & Smolter, 2011; Reeves, 2019; Wangmann et al.,



2020). Coercive control perpetrated against migrant and refugee women can also include perpetrators making threats of visa cancellation, deportation, withdrawal of visa sponsorship or financial support, and withholding immigration documents (see inTouch, 2020, as cited in Koleth et al., 2020; Vaughan et al., 2016). Emerging evidence from Scotland, where a standalone offence for coercive control was introduced in 2018 (*Domestic Abuse [Scotland] Act 2018 [UK]*), indicates the potential for systems abuse, with an initial evaluation revealing that some women felt that the legal system empowered their perpetrators even where they were convicted (Lombard et al., 2022). Consideration must be paid to how the introduction of a coercive control offence in South Australia could be manipulated by perpetrators.

ANROWS notes that the Draft Bill states that a course of conduct must be intended to have a controlling impact or cause fear, and that this was added in response to roundtable and lived expertise feedback. ANROWS recognises the importance of this inclusion and its purpose but cautions that it may be weaponised by the perpetrator. Perpetrators may draw on gendered stereotypes of “manipulative”, “nagging” or mentally unwell women to construct the victim and survivor as the perpetrator. This may be particularly effective where victims and survivors have experienced complex trauma and may not present as an “ideal victim.” ANROWS cautions that these stereotypes and beliefs persist at concerning levels (see Coumarelos et al., 2023). For example, the 2021 National Community Attitudes towards Violence against Women Survey (NCAS) found that 37 per cent of respondents agreed that women going through custody battles often make up or exaggerate claims of domestic violence to improve their case (Coumarelos et al., 2023, p. 139). The potential for the Draft Bill to create pathways for perpetrators to actively encourage misidentification must be considered in its construction.

It is also important to acknowledge that victims and survivors can be directly harmed by systems without active manipulation by perpetrators. This can occur through misidentification and harmfully inappropriate system responses, as identified earlier, as well as other factors such as the emotional stress, trauma and uncertainty involved in engaging in litigation (see Carson et al., 2022).

## **Respond to the risk of misidentification and systems abuse by underpinning legislative reform with training and resourcing**

Training and resourcing for reformed police and legal practices are necessary to ensure that laws are implemented as intended. ANROWS has consistently called for coercive control offences to be underpinned by increased understanding of coercive control among police and legal actors *and* the ability to apply this understanding in practice (2022a, 2022b, 2022c, 2021a, 2021b; see also Nancarrow et al., 2020). In the case of coercive control, the introduction of a coercive control offence requires a shift to pattern-based policing where police identify the potential presence of coercive control, investigate a series of events, and correctly identify where a response is required (Walklate et al., 2018). Pattern-based policing requires an understanding of coercive control and is also a more labour-intensive approach that necessitates increased time and resourcing commitments (ANROWS, 2021b). Nancarrow et al. (2020) emphasise that police must be supported with clear policies and efficient procedures that aid in the identification of the person most in need of protection. Policies and procedures must be underpinned by changes to the organisational culture in policing, which can be risk-averse and revert to an incident-based approach (Nancarrow et al., 2020). This is evidenced by a recent review of domestic violence and legal system reform in Queensland which found that processes themselves were not the key issue in police responses but that police were not following, or being supported to follow, these existing processes (Women’s Safety and Justice Taskforce, 2021). Without resourcing and reform in relation to policing and legal practice, the introduction of a coercive control offence is unlikely to achieve the desired impacts and may have unintended consequences.

ANROWS notes that the definition of coercive control in the Draft Bill has been constructed and refined to support the implementation of the offence by police and legal system, while also providing examples of potential controlling behaviours. While the examples provided may have the intended outcome of supporting the investigation and enforcement of the new offence, they may also prove limiting and constrain police if they cannot quickly identify the relevant example. It is therefore essential that training for police and legal actors centres around the principles of coercive control, rather than solely on examples, and should include opportunities to work through complex scenarios. ANROWS suggests that the Department could refer to the National Principles to Address Coercive Control in Family and Domestic Violence (the National Principles; Attorney-General's Department, 2023) to inform this training.

ANROWS also acknowledges that the *Criminalising Coercive Control Community Guide* states that training for police and other front-line workers to assist them to understand and enforce the offence will be considered after the Bill passes Parliament (Government of South Australia, 2023). ANROWS emphasises that both training, adequate resourcing, and an authorising environment for organisational culture change are critical to the effective implementation of this legislation and the mitigation of unintended consequences (on organisational culture change, see Healey et al., 2018). The Department must not lose sight of this when the Bill passes Parliament. This would be a minimal required standard for effective implementation, with further and more sophisticated training focused on other topics, such as systems abuse itself, to follow.

**Recommendation 1:** Ensure the introduction of a coercive control offence is accompanied with training and resourcing to support police and legal actors to understand the principles of coercive control and administer the legislation in a manner that reduces the risk of misidentification and systems abuse. This training must be underpinned by clear policies, efficient procedures, and an authorising environment supporting organisational culture change.

## **Support community understanding**

ANROWS suggests that the effective implementation of a coercive control offence must also be accompanied with increased community understanding of coercive control and of the offence itself. The Tasmanian Government introduced the criminal offences of economic abuse and emotional abuse in 2004, which are regarded as some of the first offences addressing the use of coercive control in Australia (see ANROWS, 2021a). However, there have been difficulties with implementing and criminalising the behaviours described in these offences, and consequently prosecutions are rare (see ANROWS, 2021a). Findings from the 2021 National Community Attitudes towards Violence against Women Survey (NCAS) highlight that Australians are less likely to recognise non-physical abuse as constituting domestic violence compared to physical forms of abuse (Coumarelos et al., 2023). Furthermore, a concerning minority of respondents expressed views that reflected a lack of understanding of the removal of autonomy and resulting entrapment experienced by victims and survivors of coercive control. For example, 25 per cent of respondents believe that a female victim who does not leave an abusive partner is partly responsible for the abuse continuing (Coumarelos et al., 2023, p. 162). This lack of understanding extends to victims and survivors themselves, with a study by Reeves et al. (2021) identifying that only 38 per cent of adults who had experienced coercive control recognised this as domestic and family violence while they were experiencing it (p. 2). Increased community understanding and ability to identify coercive control is evidently central to effectively implementing any coercive control offence.

## **Monitor and evaluate legislative reform for effectiveness and unintended consequences**

ANROWS emphasises that any legislative responses that aim to address coercive control should be underpinned by evidence and undergo ongoing monitoring and evaluation to identify their implementation, impact and effectiveness. ANROWS is pleased to note that the Draft Bill states that a review of the operation of this Division must be prepared and submitted to the Minister after the third, but before the fourth, anniversary of its commencement. ANROWS suggests that the Department should develop a monitoring, evaluation and learning framework to inform ongoing review, underpinned by a theory of change and outlining clear progress indicators. This should cover the operation of the legislation itself, as well as related supports such as training and resourcing for police and legal actors. Monitoring and evaluation should include input from people with lived expertise that is gathered in a trauma and domestic, family and sexual violence-informed and safe manner. It is critical that this includes the lived expertise of victims and survivors from different population groups, including but not limited to women with disability, people with diverse genders and sexualities, women from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander women. Monitoring and evaluation will support the Department to identify unintended consequences and to demonstrate continuous improvement in legislative responses to support the safety of victims and survivors.

**Recommendation 2:** Develop and implement a monitoring, evaluation and learning framework to guide ongoing monitoring and evaluation of the implementation, impact, and effectiveness of the new coercive control offence and associated supports such as training. This should include input from people with lived expertise and should consider the potential for unintended consequences of the legislation's application.

## **Conduct future and further work beyond the coercive control offence**

### **Recognise that legal responses to coercive control can also have negative impacts**

Victims and survivors may face barriers to accessing legal responses and can experience negative impacts from engaging with the legal system. Evidence indicates that women from diverse groups and women who face systemic barriers to accessing and navigating the legal system would benefit from alternative approaches (ANROWS, 2021b). For example, 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., 2020; Nancarrow et al., 2020). Furthermore, the court experience can be re-traumatising for victims and survivors and can invalidate their experiences where the offence is not prosecuted or a conviction is not reached due to the criminal standard of proof (Salter et al., 2020). When the legal system disempowers victims and survivors it also creates a substantial barrier to future help-seeking (Salter et al., 2020). As Walklate and Fitz-Gibbon (2019) have noted, “the creation of a new offence does not deal with any of the well-documented concerns women have for not engaging with the criminal justice process” (p. 102). The presence of these barriers and potential for unintended consequences means that the introduction of a new offence must not be the only response to coercive control; it must be part of a suite of legal and nonlegal responses.



## **Consider how existing legislation could be reviewed**

ANROWS suggests that the Department consider the potential for the application of, and improvements to, existing legislation and legal mechanisms that are not explicitly focused on responding to coercive control, but which could benefit victims and survivors of domestic, family and sexual violence. ANROWS notes that legislation currently exists across myriad sectors including health and housing that could be reviewed and applied to support responses to victims and survivors of coercive control. Furthermore, existing legislation intended to respond to domestic, family and sexual violence more broadly could be reviewed and updated. ANROWS provided this recommendation in response to the draft National Principles (ANROWS, 2022c) and is pleased to see it has been reflected in the final National Principles (Attorney-General's Department, 2023). Considering reform to existing legislation in South Australia would therefore be in alignment with the National Principles.

**Recommendation 3:** Consider the potential for alternative and additional responses to coercive control beyond the introduction of a coercive control offence, including responses outside of the legal system and the revision of existing legislation to better support victims and survivors of domestic, family and sexual violence.

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