

Discussion paper: Criminalising coercive control in South Australia for Aboriginal women and communities

Introduction

You have been invited to attend this session to share your expertise and your views about the implications of legislating against coercive control for Aboriginal and Torres Strait Islander women, children and communities more broadly. This paper provides a brief summary of the key issues raised through previous consultations with South Australian stakeholders about the proposed legislation in 2021 and earlier in 2022. It also contains an overview of research that highlights the benefits as well as the possible unintended consequences of criminalising coercive control.

Seeking your input

The South Australian Government is seeking your expertise – as leaders and representatives from the sector - to ensure that when legislation is introduced it is effective and has the intended effect of helping to prevent violence against Aboriginal women and children across South Australia. A set of questions is included in this discussion paper for you to consider in your thinking and views on this topic.

Terminology statement

The term Aboriginal has been used throughout this document to reference all Aboriginal and Torres Strait Islander peoples. DHS acknowledges and respects this preference of the South Australian Aboriginal community in written and spoken language.

Please be aware that the content in this document may be distressing or raise issues of concern for some readers. There are a range of services available if you require support after reading this paper. Lifeline provide 24/7 crisis support and can be contacted on 131 114. Beyond Blue also provide support services and can be contacted on 1300 224 636. Confidential information, counselling and support services can also be accessed through 1800RESPECT.

Aboriginal Family Violence

On average, in Australia a woman is killed by an intimate partner every 10 days. Data from the [Australian Institute of Health and Welfare](#) tells us that rates of violence are even higher for certain groups, such as Aboriginal women.

The [National Plan to End Violence against Women and Children \(2022-2032\)](#) acknowledges that the national response to preventing and ending family violence against Aboriginal women and children must be led by Aboriginal peoples. Alongside the National Plan a standalone **First Nations National Plan**, to set out actions to address the unacceptably high rates of violence that Aboriginal women and children experience.

[The National Plan](#) highlights that family violence is the term Aboriginal peoples prefer because of the ways violence can occur across extended family networks. The National Plan outlines that family violence can include emotional, physical, sexual, social, financial and spiritual abuse, occurring within families, intimate relationships, kinship networks and communities.

In 2020, the [National Agreement on Closing the Gap](#) set **Target 13: by 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero**. South Australia is working alongside all Australian governments to progress and measure this target, ultimately to ensure Aboriginal women, families and households are safe.

We know through a wide [body of research](#) that Aboriginal family violence is complex, with multiple and intersecting causes. The historical and ongoing impacts of colonisation and racism including dispossession, dislocation, marginalisation, disempowerment, and perpetration by non-Aboriginal partners and their families are contributing factors to the violence experienced by Aboriginal women and children. We also know that [family violence is not part of Australian culture, or Aboriginal culture](#). Culture and family is a central and key protective factor that supports communities to be free of violence. And many Aboriginal women experience violence at the hands of non-Aboriginal men.

[Coercive and controlling behaviours are complex](#) and can look vastly different across Aboriginal communities. As indicated through [various platforms](#), for many Aboriginal women, there can be unintended consequences created by the introduction of new legislative offences and there is concern regarding how the law could be used by perpetrators to retaliate against victim survivors who report their abuse. Aboriginal women's experiences can also be compounded by [structural and institutional racism](#) within the criminal justice system, this has led to their overrepresentation within the system through practices such as over policing and harsher sentencing.

What is coercive control?

Coercive control, as a broad definition refers to an ongoing pattern of controlling and coercive behaviours that may include physical, sexual, psychological, financial and emotional abuse and intimidation. It is not a single act of violence, but a broader pattern of abusive behaviours used to dominate and control a person over time. Anybody can be a victim of family and domestic violence, and anyone can be a perpetrator. However, the vast

majority of victims are women, and the vast majority of perpetrators are men. This is particularly so in relation to coercive control. Perpetrators use tactics such as isolating the woman from her friends and family, tracking her movements, controlling her access to money, where she goes and what she wears, who she speaks to and whether she works.

The [Women Safety and Justice Taskforce](#) in Queensland investigated different patterns of coercive control and found that Australian women in abusive intimate relationships identified the following behavioural themes in those relationships:

- **Jealousy or suspicion of friends and family:** This was the most common reported form of controlling behaviour.
- **Monitoring of movement:** Two in three women reported their movements were monitored and two in five women identified stalking behaviours either online or in person.
- **Financial abuse:** One in two women reported their partners using the woman's own or shared money without their consent, and two in five women reported their property being damaged, destroyed or stolen.
- **Social isolation:** One in two women reported partners interfered in family relationships. Two in five women reported communication or movement restrictions.
- **Emotionally abusive and threatening behaviours:** Two in three women reported behaviours used by their partner which belittled, humiliated or intimidated them.
- **Co-occurrence of coercive control and physical and sexual abuse:** Most women who experienced coercive control in the three months prior to the survey also experienced physical or sexual abuse.
- **Help seeking behaviour:** Most women who experienced coercive control were seeking help from police, government, or non-government services, and formal or informal services. Help seeking increased considerably where there was a co-occurrence of physical and/or sexual violence.

Fundamentally, coercive control is about power, and the motivator is for a perpetrator to gain power, control and exert dominance over a victim-survivor. Coercive control can have a devastating impact on a victim's identity, their physical health and social and emotional wellbeing, and their connection with friends, family and culture.

Questions

1. How do we define coercive control in Aboriginal cultural contexts for Aboriginal women and children?
 - a. What can it look like?
 - b. How might coercive control present itself differently in Aboriginal communities across South Australia, including in a regional and remote context?
 - c. How is coercive control understood by Aboriginal peoples and their communities?
 - d. How is this type of violence described and discussed, if at all?

Why is South Australia legislating to criminalise coercive control?

Currently, coercive control is not a specific criminal offence in South Australia. There are strong reasons to criminalise coercive control.

Firstly, it is important to note that **coercive control can predict future intimate partner homicide**. According to research by [the NSW Domestic Violence Death Review Team](#), coercive controlling behaviours were a feature in 99% of domestic homicides in Australia between June 2008 and July 2016 – meaning out of 112 incidents of intimate partner homicide, coercive control was a feature of every relationship except one. A number of these cases did not have any evident history of physical violence. According to [Our Watch](#), in Australia on average one woman per week is murdered by her current or former partner. Homicide can often be the first act of physical violence in this type of abusive relationship, which is why it is so important that everyone recognises coercive control for what it is – a particularly insidious, highly dangerous form of domestic violence.

Secondly, and very much related to the point above, as highlighted by [Women's Safety NSW](#) it is important to recognise the gravity of this behaviour in the eyes of the law. **Legislating against coercive control in South Australia is a way to improve the legal system's response to all forms of family violence**. The South Australian Government wants the law to accurately reflect the experiences of victim-survivors and hold perpetrators accountable for the abuse they inflict on their partners. This includes a commitment to inclusive, culturally safe and responsive implementation to protect women who come forward. Legislation will assist the justice system to meet community expectations in this respect and assist in the prosecution of perpetrators.

Third, legislation will send a clear message to the community that this type of violence is just as serious as physical violence, is unacceptable and that it will not be tolerated. As also highlighted by [Women's Safety NSW](#), progressing coercive control legislation in the UK has significantly increased public awareness of the importance of reporting family and domestic violence. Legislating coercive control may serve an educational function in so far as it would help victim-survivors, their families, the broader service system and the wider community make greater sense of the harm they have experienced. It is for these reasons that the South Australian Government plans to legislate to criminalise coercive control.

Reforms to domestic violence law have been underway overseas for several years, with new offences of coercive control being introduced [in Scotland, England and Wales](#). While some Australian states and territories recognise coercive control under civil law, Tasmania is the only Australian jurisdiction that has introduced specific criminal offences covering elements of it.¹ In October 2022, New South Wales (NSW) introduced the Crimes Legislation Amendment (Coercive Control) Bill 2022. Parliament passed legislation on 16 November

¹ In 2004, the Tasmanian Government passed the Family Violence Act 2004 (Tas) introducing two new criminal offences – economic abuse (section 8) and emotional abuse (section 9). The Act was implemented alongside the Safe at Home Policy – a whole of government approach to coordinating criminal justice responses to DFV, with victim/survivor safety as the overarching goal. Low prosecution rates have been recorded in Tasmania following the implementation of coercive control offences. Factors contributing to low prosecution rates include resistance from the legal profession, lack of community awareness, poor resources for police and difficulty in obtaining evidence.

2022, delivering on the NSW Government's commitments in December 2021 to develop, publicly consult on and introduce a standalone offence of coercive control.

As stated in the [Women's Safety and Justice Taskforce Discussion Paper](#), 'it is important that our laws, systems and processes are responsive to the range of abusive behaviours we are aware of, and it is also important that there is a full and accurate understanding of domestic violence in the community so we can all play a part in best preventing and responding to it'.

Question

2. How will legislating against coercive control improve the safety of Aboriginal women and children in South Australia?

What has previous consultation told us about criminalising coercive control in the context of Aboriginal communities in South Australia?

Consultation on a proposed South Australian offence of coercive control was conducted during September and October 2021. There were 173 respondents to a public survey which was conducted by the Attorney-General's Department, with more detailed submissions received from 31 individuals and organisations.

Most people who responded to the surveys thought that criminalisation was a good way to address the issue of coercive control. They also noted the importance of the implementation process; including training for enforcement agencies to identify, charge and prosecute coercive control; a public awareness campaign, wrap-around support services for victim-survivors and counselling and treatment services for perpetrators.

Respondents also advocated for a focus on regional and remote victim-survivors, Aboriginal women, and women from diverse multicultural backgrounds.

What does the research tell us?

The following section provides an overview of themes from current research that focuses on family violence within a context that is specific to Aboriginal women, children and communities. We ask you to consider how these findings and apply to the clients and communities you work with whom you work.

Family violence is experienced at higher rates by Aboriginal peoples and can present in vastly different ways

Research undertaken by the [Australian Institute of Family Studies](#) (2022) found that Aboriginal women are five times more likely to experience coercive control than non-Aboriginal women. The [Australian Institute of Health and Welfare](#) outline that Aboriginal women and girls experience higher rates and more severe forms of violence, higher rates of hospitalisation as a result of family violence and greater barriers to disclosure, accessing support services and securing safety.

Coercive control can look different within different cultural and community contexts

Coercive and controlling behaviours are complex and can look vastly different across different communities. This can include lateral and intergenerational violence within Aboriginal communities. The [Australian Human Rights Commission](#) explain lateral violence as a behaviour that results from disadvantage, oppression and discrimination. [Lateral violence](#) can include jealousy, gossiping, shaming, social exclusion, organisational conflict

and feuding between families; and can refer to an individual's behaviour and the threatening or intimidating behaviour of more than one person towards another individual, family or group.

A recent [study](#) also highlights differences in Aboriginal women's experiences of financial abuse, outlining that this form of abuse is not only experienced within intimate partner relationships but also across wider family relationships. This financial abuse can be referred to as 'humberging', where individuals are pressured to share money or economic assistance to a point where it becomes restrictive or an emotional and/or financial burden.

Unintended consequences of coercive control legislation can be compounded for Aboriginal women

[Research](#) highlights that the introduction of coercive control legislation has the potential to significantly and disproportionately impact Aboriginal women for a range of reasons including misidentifying victims as perpetrators and as a consequence of this, over-representation [at all levels of the criminal justice system](#). Aboriginal women face other barriers in reporting violence, including misidentification of the primary aggressor, fear of the follow-on effects that can be triggered for their families within government systems such as child protection and seeking support with an overburdened service system or within small regional and remote communities where anonymity is hard. These are explored below as distinct but interrelated themes.

Questions

3. Are you aware of any fears or concerns Aboriginal people have in relation to introducing this legislation?
4. What is the critical information police and government service providers need to know to effectively protect Aboriginal women and children?

Misidentifying the victim

Australia's National Research Organisation for Women's Safety ([ANROWS](#)) report that misidentification of the primary aggressor presents a significant risk to the health and safety of Aboriginal women, including criminalisation, loss of employment and housing, and can lead to significant repercussions for parenting including undeserved child protection responses. The [Queensland Domestic and Family Violence Death Review and Advisory Board](#) identified that almost half of Aboriginal women killed by an intimate partner (for the period 2015-2017) were considered the primary aggressor by police.

[Factors](#) contributing to the misidentification are often complex, interrelated and heightened by systemic racism experienced by Aboriginal peoples. ANROWS outline that systemic racism and colonisation negatively impact on Aboriginal interactions with non-Indigenous systems and authority, and that [entrenched racism](#) in our systems, including laws, regulations and social systems, can result in the inability to view Aboriginal people as victims.

Misidentification occurs when a victim-survivor's account of an incident has not been properly heard, understood, or believed. The [Attorney General's Department](#) highlight this is of particular concern in small communities where there is significant bias relating to race and gender, and a general misunderstanding of broader patterns of family violence. Family

violence policing often contributes to the criminalisation of Aboriginal women, with a recent [study](#) finding that police identified victim-survivors as the perpetrator in almost a third of the family violence cases responded to.

With these factors in mind, consider the following:

Question

5. Are you aware of any concerns Aboriginal women have about being misidentified as an aggressor?

Reporting violence can be problematic for Aboriginal women and may be exacerbated by the criminalisation of coercive control

The significant risk to health and safety for Aboriginal women associated with the misidentification of victims can lead to a reluctance in reporting family violence. A recent [ANROWS](#) led national report found that although there were many factors impacting women's reluctance to report family violence, a key factor was their fear of child protection authorities removing their children. [ANROWS](#) report that an estimated 90% of violence against Aboriginal women is not reported to police, explaining that underreporting can result from distrust and a loss of confidence in police, justice systems and other government agencies. [Research](#) also suggests that women can be deterred from reporting violence or seeking help due to feelings of shame, fear of community sanctions or being told to be silent.

[AWAVA](#) highlight that the criminalisation of any activity has been shown to negatively impact on marginalised populations, particularly when police and courts are granted further powers **without adequate understanding**. Criminalising coercive control, without adequate training and systemic reforms, may have an adverse impact on victim/survivors and [increase misidentification](#) of the primary aggressor, further impacting Aboriginal women.

Question

6. How can we encourage greater reporting of family violence, including non-physical abuse, when this legislation comes into effect?

Aboriginal women are significantly over-represented in the criminal justice system

As outlined in the [Victorian Aboriginal Justice Agreement](#), underlying causes of Aboriginal over-representation in the criminal justice system stem from “dispossession of land, disruption of culture and kinship systems, removal of children, racism, social exclusion, institutionalisation and entrenched poverty for Aboriginal people”.

Imprisonment rates of Aboriginal women have skyrocketed in recent times. A recent [study](#) outlines that between 2000 and 2010, imprisonment rates for Aboriginal women increased by 59%, with Aboriginal women 20 times more likely to be in prison than non-Aboriginal women. [Women's Safety NSW](#) outline that the vast majority of Aboriginal women in prison have experienced violence themselves.

Over-representation in the criminal justice system has the potential to further continue social and economic exclusion for Aboriginal women in Australia. Criminalising conduct such as coercive control may have a disproportionate impact generally on communities that are already overpoliced.

Aboriginal women face additional and different barriers in accessing services and supports to keep them safe

[ANROWS](#) also found that Aboriginal women face a range of barriers in seeking support, including limited culturally appropriate services, poor access to information and support from culturally competent services and inadequate interpreter services in Indigenous languages.

Although [research](#) is not clear on the experiences of coercive control within regional and remote settings, it does demonstrate higher rates of family violence within these areas. The Australian Bureau of Statistics [Personal Safety Survey \(2016\)](#) data shows that 30% of women living in non-urban environments experience emotional abuse, compared to 22% of women living in metropolitan areas. Regional and remote living presents not only a greater risk of family violence for Aboriginal women but also [additional challenges](#) in accessing and receiving support to deal with experiences of violence, including risk of homelessness, isolation and lack of anonymity.

Questions

7. What do you view as the barriers for women to come forward and seek help when they're experiencing family violence?
8. How can we best improve awareness of this type of family violence for Aboriginal peoples and communities?
9. What are the best ways to get information to Aboriginal women who may be isolated and have little interaction with services or the community?
10. How can this legislation be safely implemented for different communities?

Your contribution

What we know is that in order for legislation to be effective, targeted information and education campaigns must be undertaken to reach specific groups, such as Aboriginal women. This process must also involve extensive education and training for first responders, police and the justice system, to understand the nuanced issues experienced by Aboriginal peoples and their communities. We must ensure that responses to coercive control is equitable, appropriate and effective. Your input into this process is highly valued and greatly appreciated.

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