

## Discussion paper: Criminalising coercive control in South Australia

### Introduction

You have been invited to attend this session to share your expertise and your views about the implications of legislating against coercive control in South Australia for women with lived experience of violence. This paper provides a brief overview of the research and the key issues raised through previous consultation with South Australian stakeholders about the proposed legislation in 2021 and 2022. It also contains questions that can be used to guide the discussion.

### Seeking your input

***The South Australian government is seeking your expertise to ensure that when legislation is introduced it is meaningful and has the intended effect of protecting women from violence. A set of questions is included in this discussion paper for you to consider in your thinking and views on this topic.***

*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.*

### 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. 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 elements 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 you define coercive control?
2. Are there other elements – in addition to those described above – that you believe constitute coercive control?
3. How do you think coercive control understood and discussed by the broad community?

## Why is South Australia legislating 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.<sup>1</sup> In October 2022 New South Wales (NSW) introduced the Crimes Legislation Amendment (Coercive Control) Bill 2022. Parliament passed legislation on 16 November 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'.

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](#), on average one woman per week in Australia 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 and domestic 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. It will also give police the ability to

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<sup>1</sup> 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.

intervene and stop offenders using criminal charges, without needing to wait for abuse to escalate into physical violence.

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 serves an educational function through assisting 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.

### **Consultation 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 the migrant community. Feedback also highlighted concerns that a coercive control offence may result in harmful unintended consequences for victims particularly those belonging to groups disproportionately represented in the criminal justice system, such as Aboriginal women and their communities, women with disabilities, LGBTIQ+ people, culturally and linguistically diverse communities (including migrant and refugee women).

### **What does the research tell us?**

#### **Additional barriers for victim-survivors seeking justice**

[There are concerns](#) that the criminalisation of coercive control could increase barriers for women who are already disadvantaged in accessing and navigating justice systems. The burden of proof required in court proceedings requires substantial involvement – both financial and emotional– from a victim-survivor. However, criminalisation will also inform the understanding of what constitutes FDV and validate the experiences of victim-survivors.

4. What training and education do you see as being most important for service providers?
5. What would have improved your experience with service providers and/or police?

### **Appropriate services are important in reducing the barriers for support**

In addition to a lack of understanding about available services, women can also encounter a number of barriers to obtaining support, particularly if they are Aboriginal, LGBTIQ+, have a disability, or are a recent migrant or from a non-English speaking background. These barriers can include language barriers, cultural barriers, fear or mistrust of police, or previous negative experiences with services. It is important that the first point of contact for a woman experiencing coercive control and FDV is positive.

#### **Questions**

6. What do service providers need to know about the factors that may prevent women from accessing services?
7. What are effective communication channels to provide information about services?
8. What improvements can services make to ensure better responses for women and girls who are victims of coercive control?

### **Belief that non-physical violence is not abuse**

The [Queensland Women's Safety Justice Taskforce](#) discussion paper notes that many women do not recognise non-physical forms of domestic violence as abuse.

It is important to remember that while coercive and controlling behaviours can sometimes be subtle, they [are extremely destructive](#) and can chip away at a person; destroying their sense of self, their wellbeing, their safety, and ultimately, it can destroy their lives.

Coercive, controlling behaviours can indicate risk for other behaviours such as stalking and homicide.

### **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 women from multicultural communities. This process must also involve extensive education and training for first responders, police and the justice system, to understand the nuanced issues experienced by 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.

## References

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