

Why we need a thorough consultation process on how to effectively address coercive controlling violence

by Liz Snell, Women's Legal Service NSW
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Women's Legal Service NSW welcomes the increased attention on coercive controlling violence.

We particularly commend the NSW multi political party focus on coercive controlling violence. The Greens and Labor Bills to criminalise coercive control are facilitating a conversation we desperately need to have. The Government's intention to hold a public consultation is what we need.

Coercive control is a key high-risk factor for sexual, domestic and family violence. It is the most common risk factor present prior to a domestic violence homicide. In 77 of the 78 domestic violence homicides reviewed in NSW in 2015-17, the relationship between the domestic violence victim and the domestic violence abuser (all male) was characterised by the abuser's use of coercive and controlling behaviours towards the victim.

Coercive controlling violence is a pattern of behaviour which may include verbal abuse, economic abuse, psychological abuse, sexual violence and/or physical violence. It is gendered - most often perpetrated by men against women and children. Coercive control includes the gradual isolation of a woman from her friends and family and other supports; degrading put downs, humiliation and threats; constant surveillance of the woman; micro managing every aspect of her life through the application of strict rules by her male partner which are frequently changed such as when she can cook, eat, sleep, leave the house, or if separated, it can involve the father frequently seeking to change the agreement about spending time with children – changing the day, the time, the place so as to continue to exert control and dominance over the woman and children. As Evan Stark notes coercive control strips women and children of their freedom and autonomy.

It is vital that:

- the community as a whole
- first responders, including police, paramedics, hospital staff
- the legal systems, including police, prosecutors, judicial officers and in the case of care and protection and family law matters – care and protection workers, court clinicians, family consultants and lawyers, including direct representatives, independent legal representatives and independent children's lawyers

get better at recognising, understanding and responding to coercive and controlling violence.

Women's and children's lives depend on it.



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In the 2015-17 NSW Domestic Violence Death Review Team report, the NSW Coroner identified a key theme: the *"importance of viewing domestic violence holistically, as episodes in a broader pattern of behaviour rather than as incidents in isolation of one another"*. Noting the vital role of police, the report recommended police review their systems, policies and procedures to focus on context, rather than incidents in isolation.

It keeps coming back to the need to focus on patterns of violence, including non-physical violence, and this requires a focus on and consideration of the history of violence. An incident in isolation may seem insignificant, but its significance emerges when viewed in a context of a pattern of ongoing violence. A focus on context and identifying the person most in need of protection are key to ensuring the primary/predominant victim is not misidentified as the primary/predominant aggressor.

There is a lot of discussion at the moment about criminalising coercive control.

There are differing views.

Some are strongly in favour of criminalising, believing a further offence will help shift culture and systems which currently focus on discrete incidents of violence instead of patterns of violence and on physical violence alone rather than all forms of violence. Such systems and cultural change cannot happen through legislation alone. The support of those who advocate for criminalisation is contingent on a range of things accompanying legislative reform, including:

- extensive training on coercive and controlling violence and working with victim-survivors and perpetrators including how to avoid colluding with the perpetrator, including for police and other first responders, everyone in all our legal systems (not just the criminal justice system), and social support services
- increasing awareness of coercive controlling violence through community education campaigns
- necessary tools such as ongoing reviews and updates of: risk assessment tools, Standard Operating Procedures, Prosecutorial Guidelines, Benchbooks

Other aspects that are vital include oversight mechanisms such as the publishing of the results of regular audits of policing of sexual, domestic and family violence and prosecution and conviction rates. It is imperative that the community has trust in the police and criminal justice response. Regular audits can increase that trust because they signal that police and prosecutors take seriously their responsibilities and are interested to reflect and improve practices where it is required.

Ensuring victim-survivors can safely participate in criminal and domestic violence protection order proceedings is also key – through safety planning before, during and after court; a ban on direct cross-examination and other protections.

Some are against criminalising coercive control as there are questions about how such action increases a victim-survivor's safety, recovery and wellbeing. They may fear possible unintended consequences – including if victim-survivors are prosecuted in circumstances where they are the primary/predominant victim or where the higher standard of proof for criminal prosecutions may mean that successful prosecutions are low and the dangerous message this may send to both

perpetrators and victim-survivors about community standards and views on coercive and controlling violence.

Some, such as Women's Legal Service NSW, are continuing to work through the complex questions and issues. We have identified a range of both positive and negative consequences of criminalising coercive and controlling violence and we are taking the time to carefully consider all of these consequences in coming to a position.

Our caution in coming to a position lies in decades of experience of working with women who have experienced coercive control and have tried to navigate their way through a range of legal systems – the criminal justice system, the domestic violence system, the victims support scheme, the family law system and the care and protection system, often with a poor response. It also comes from decades of experience of working with criminalised women whose criminalisation stems from being misidentified as the predominant aggressor. Women who have often been silenced and whose extensive histories of victimisation become invisible the moment they are deemed to have committed an offence.

We want to better understand the use of existing laws in NSW focused on patterns of behaviour, such as stalking and intimidation offences; the current blocks to police focusing more on context than on discrete incidents in isolation; and the Scottish experience – the Scottish law has been in effect for a little over 12 months.

Scotland's approach to criminalising coercive control has been described as the "gold standard". This descriptor is just as relevant for the extensive consultation process they undertook prior to the introduction of the new laws, as it is for the legislation introduced and their implementation plan.

We desperately need a criminal justice system which properly recognises and responds to gendered violence, including coercive controlling violence; properly responds to the needs of victim-survivors; and holds perpetrators accountable.

A thorough consultation on how to most effectively respond to coercive controlling violence, including considering criminalising such behaviour and reviewing the criminal justice response to gendered violence, is an essential step in this journey.