

Submission to the Inquiry into Criminalising Coercive Control

2 February 2021

Acknowledgement of Country

The St Vincent de Paul Society acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land on which we live and work, with deep respect. May Elders, past and present, be blessed and honoured. May we join together and build a future based on compassion, justice, hope, faith, and reconciliation.

About the St Vincent de Paul Society

The St Vincent de Paul Society (the Society) seeks to shape a more just and compassionate society by working to address the causes of poverty and injustice.

The Society is a significant provider of services to people experiencing disadvantage. We provide supported accommodation and case management services to people experiencing domestic or family violence, homelessness or the risk of homelessness; food supply services; services to people with complex mental health diagnoses and/or complex behavioural support needs, people experiencing problematic alcohol or other drug use, people with disability, and young people at risk of exclusion.

Our services include 12 specialised domestic and family violence case management, supported and transitional accommodation services across across Sydney and in Southern and South Western NSW. Our services support women, women with children, men and people living in lesbian, gay, bisexual, transgender, gender diverse, intersex, queer, asexual and questioning (LGBTIQ+) relationships. As a Society, we work from a person-centred framework that is supportive of the choices that individuals make, whether they decide to stay in the relationship or not.

In addition to our domestic and family violence services, St Vincent de Paul Society NSW also provides support to victim-survivors of domestic and family violence in our otherspecialist homelessness services, through our Vinnies shops, and through a range of other programs. In 2019-20 we supported 2,400 people dealing with domestic and family violence. Our extensive network of member volunteers also provide immediate care and assistance in the form of financial and material support: food parcels or vouchers, assistance paying energy and other bills, no-interest loans, and clothing and household items including furniture.

Introduction

The Society appreciates this opportunity to respond to the NSW Government's Coercive Control Discussion Paper, and to provide input into whether and how coercive control should be criminalised, and how this might benefit individuals or families who have experienced domestic or family violence.

As a provider of a range of domestic violence services, we regularly work with clients who have experienced aspects of coercive control in their abusive relationships. This control is not always obvious but can be subtle and cumulative over time. The types of behaviours reported by clients in our domestic violence services include threats, intimidation, gaslighting, financial control, humiliation and limited access to external supports. The reality of intergenerational domestic and family violence is also commonly seen within our services.

Our submission has been informed by consultation with the St Vincent de Paul Society NSW Domestic and Family Violence Network, and casework staff, whose experience is that the current legal framework for responding to domestic and family violence does not sufficiently respond to the cumulative, pervasive and ongoing nature of abuse. Coercive control is often the most distressing and damaging element of domestic abuse to victim-survivors, and the most difficult to prove in court.

We therefore believe that our legal system's capacity to recognise and respond to coercive control should be strengthened. Criminalising coercive control would mean our legal system could more effectively respond to the nature of abuse that occurs within intimate and family relationships.

To ensure any legislative reform results in tangible change for victim-survivors of coercive control, however, we raise several issues relating to the operationalisation of the law and its practical implementation. These include but are not limited to:

- a clear definition of coercive control
- the need for indicators of coercive control and tools to measure its presence in relationships
- broader systemic reform
- training and resources for those working in the human services and criminal justice sectors and the broader community
- improved processes
- greater cross-sector collaboration.

Further, our submission identifies areas where additional investment is required to improve outcomes for victim-survivors of domestic and family violence.

Recommendations:

1. The NSW Government should expand the legal definition of domestic violence in the *Crimes (Domestic and Personal Violence) Act 2007 No. 80 (NSW)* to include coercive control.
2. The NSW Government should resource further work to understand and document the range of behaviours that constitute coercive control and identify relevant indicators. This work should be conducted in close consultation with victim-survivors including specific vulnerable groups and the services that support them. Legal responses should then be revised to reflect the wide variety of ways in which perpetrators exert power and control over victim-survivors.

3. To create a domestic and family violence system that can better identify and respond to patterns of behaviour that constitute coercive control, the NSW Government should:
 - a. ensure training is provided to the police force and other government agencies from which victim-survivors receive support
 - b. resource efforts to raise awareness and understanding within the broader community, with a particular focus on industries that could act as soft entry points to support for victim-survivors
 - c. invest in the recruitment of more domestic and family violence specialist police officers who are trained to understand the nuanced and cumulative nature of coercive control
 - d. provide funding to ensure that victim-survivors have 24/7 access to domestic violence liaison officers when reporting an incident to police
 - e. ensure that victim-survivors are offered a female police officer, if preferred
 - f. consider the appointment of a specialist domestic abuse prosecutor (as seen in Scotland)
 - g. ensure that police produce an event number for all reported events that may indicate the presence of coercive control
 - h. identify and implement measures to support improved coordination and referral pathways between police and domestic violence services in NSW.
4. The NSW Police Force should progress efforts to better capture, record and display domestic violence-related data.
5. The NSW Government should increase the supply of social housing by at least 5,000 homes every year for the next ten years.
6. The NSW Government should increase investment in specialist homelessness services to ensure they are able to meet the needs of all people, including victim-survivors, who are at risk of or experiencing homelessness.
7. The NSW Government should take a person-centred approach to reviewing the services and supports available to victim-survivors of domestic and family violence in the community, with a view to ensuring all victim-survivors can access the types of services and supports they need, and for the length of time needed.

Response to the Inquiries' exploration of how to best address harmful coercive control behaviour

Defining coercive control and indicators

The NSW Government's discussion paper describes coercive control as a 'pattern of domination and control that is created through a collection of behaviours'.¹ These behaviours, which can include physical, sexual, psychological, financial and emotional abuse, use fear and intimidation to gain control and dominance and can be remarkably powerful in abusive relationships.

The prevalence and impact of coercive control in abusive relationships is undeniable. A 2020 survey reported that 100% of all domestic violence victim-survivors surveyed had experienced emotional and psychological abuse, and that 83.6% had experienced financial abuse.² Following review of the domestic violence victim homicides in 2015-2017, seventy-seven out of seventy-eight victims experienced a relationship that was characterised by the abuser's use of coercive controlling behaviours.³

A St Vincent de Paul Society NSW caseworker described the power of coercive control, explaining that 'it reinforces the fear in the client, they are constantly anticipating when it might escalate' – victim-survivors are always waiting for threats of harm from their partner to become a reality.

The St Vincent de Paul Society NSW therefore supports expanding the legal definition of domestic and family violence in the *Crimes (Domestic and Personal Violence) Act 2007 No. 80 (NSW)* to include coercive and controlling behaviour.

As well as being an important step towards ensuring our legal system can better identify and respond to the broad range of behaviours that are present in abusive relationships, a clear legal definition of coercive control would help validate the lived experience of violence and abuse perpetrated against victim-survivors. In addition, it would hold discursive and institutional influence over how domestic abuse and family violence is recognised, and by extension, to how it is responded.

Recommendation:

1. The NSW Government should expand the legal definition of domestic violence in the *Crimes (Domestic and Personal Violence) Act 2007 No. 80 (NSW)*, to include coercive control.

Meaningful consultation

Despite growing awareness of the prevalence and impact of coercive control, there is currently no clear and agreed approach to identifying and measuring coercive and controlling behaviours.^{4,5} Further work is needed to build shared understanding of the wide variety of ways in which perpetrators can exert control, to develop indicators that can be used to identify coercive control, and tools that can be used to measure its presence in relationships. This work must be informed by an understanding of the

¹ NSW Government (2020) Coercive Control: Discussion Paper, *October 2020*, p 5

² Women's Safety NSW (2020) Criminalising coercive control position paper, *11 September 2020*

³ Snell, L (2020) Why we need a thorough consultation process on how to effectively address coercive controlling violence, Women's Legal Service NSW, *23 September 2020*

⁴ Dutton, M.A; Goodman, L & Schmidt, R.J (2005) Development and validation of a coercive control measure for intimate partner violence, *Field Technical Report*

⁵ Hardesty, J.L et. al (2015) Toward a Standard Approach to Operationalizing Coercive Control and Classifying Violence Types, *Journal of Marriage and Family*, August 2015, 77 (4): 833-843

intersecting issues that may increase an individual or family's exposure to, and experience of, coercive control.

We note the following issues relating to client groups supported by our services:

- We receive regular referrals for temporary visa holders who have experienced domestic violence. An individual's temporary visa status can make them more vulnerable to tactics such as threats of deportation, and more fearful of leaving abusive relationships due to consequences related to their visa. Temporary visa holders also often experience greater social isolation due to limited social supports, language barriers and limited understanding of Australian systems and processes. All these factors can be utilised by perpetrators to exercise coercive control over a victim-survivor, as can be seen in the case of Ms N (see box text).⁶
- People with disability are more likely to experience intimate partner violence, with the Australian Bureau of Statistics (2016) reporting that 21% of individuals with disability have experienced intimate partner violence compared with 13% of individuals without disability.⁷ They are also more vulnerable to tactics such as gaslighting, verbal abuse and threats – particularly so where a perpetrator is also a victim-survivor's carer. For this group it can be hard to find opportunities to connect with services, while the lack of accessible refuges and longer-term accommodation options (especially in the private rental market) can make it difficult for someone to leave a relationship. Overall, there is a lack of holistic support services for individuals with disability who have experienced domestic and family violence, and a lack of confidence experienced by those domestic and family violence workers who may have limited disability-related knowledge.⁸
- There are strong correlations between the experience of domestic and family violence as a victim-survivor and contact with the criminal justice system. Approximately 60-90% of women in custody have experienced domestic, family and sexual violence: This can increase the risk and effects of imprisonment, and vice versa.⁹ On leaving custody, a lack of access to affordable housing often means women have no choice but to return to a violent relationship,¹⁰ while conditions imposed by the criminal justice system can leave women on bail or parole more vulnerable to coercive control.

“Ms N was sponsored and brought to Australia by her husband on a partner visa. With no access to external supports or government subsidies, her husband was able to exert extreme control in many ways. Ms N experienced many forms of emotional, financial and verbal abuse, including death threats and threats of deportation. If Ms N did not do what her husband instructed, her husband would use demeaning forms of punishment including forcing her to stand and face a wall for long periods of time while he insulted her and verbally put her down. Ms N was socially isolated, not allowed to make friends, and her lack of English made it difficult for her to understand the systems and supports available to her.”

While this is not a comprehensive list, these examples illustrate the need to consult with victim-survivors from a wide range of backgrounds – and with the organisations that support them – to ensure legislation and related policy frameworks are comprehensive, minimise the risk of unintended consequences and result in better outcomes for all groups. We acknowledge that there are also other groups whose perspectives and experiences must be specifically considered in work to better understand, document and identify coercive control including Aboriginal and Torres Strait Islander

⁶ Seagrave, M (2017) Temporary migration and family violence: an analysis of victimisation, vulnerability and support, Melbourne: School of Social Sciences, Monash University

⁷ Australian Bureau of Statistics (2016) Personal Safety Survey

⁸ ANROWS (2020) Violence prevention and early intervention for mothers and children with disability: Building promising practice, *Research Report: Issue 16*, June 2020

⁹ ANROWS (2020) Women's imprisonment and domestic, family and sexual violence, *Research Synthesis*

¹⁰ ANROWS (2020) Women's imprisonment and domestic, family and sexual violence, *Research Synthesis*

women, women from culturally and linguistically diverse backgrounds, people who identify as lesbian, gay, bisexual, transgender, gender diverse, intersex, queer, asexual and questioning (LGBTIQA+), women with mental health conditions, and women experiencing problematic alcohol or other drug use.

We also note that there are important lessons to be learned from Scotland, where the concept of coercive control was integrated into an ‘engaging in course of abusive behaviour’ offence within the *Domestic Abuse (Scotland) Act 2018*. Scotland has been commended for its approach to criminalising coercive control, particularly with regards to the extensive consultation process that took place prior to the introduction of the new laws.¹¹ This extensive consultation is said to have positively impacted the quality of legislation and its implementation in the country.

Recommendation:

2. The Department of Communities and Justice should resource further work to understand and document the range of behaviours that constitute coercive control and identify relevant indicators. This work should be conducted in close consultation with victim-survivors, including specific vulnerable cohorts, and the services that support them. Legal responses should then be revised to better capture the wide variety of ways in which perpetrators exert power and control over victim-survivors.

Systemic reform

While we support expanding the legal system’s ability to respond to coercive control, for any change to be effective it must be supported by broader reforms. Across a range of systems and structures there is a need to reconceptualise how domestic and family violence and the experience of coercive control is understood. We need to move from approaches that view domestic and family violence as one or more series of events, to approaches that can better consider patterns of behaviour over time.

Strategies that should be employed to achieve this include:

- training within the criminal justice system and other relevant agencies
- improved access to domestic and family violence specialists within the police force and criminal justice system
- changes to processes within the criminal justice system
- improved coordination between police, government, and non-government agencies.

Training within the criminal justice system and other relevant agencies

Complementary to new coercive control offences, training should be made available to agencies that respond to or provide support to victim-survivors, including the police force, as well as agencies such as NSW Department of Customer Service, Department of Communities and Justice, NSW Ministry of Health, Centrelink and Service NSW that come into contact with victim-survivors. This will improve the system’s ability to detect and respond to coercive control and help ensure victim-survivors are safely and effectively supported throughout the criminal justice process. It may also help reduce the risk of systems abuse and potential underutilisation of the new legislation. We note that the need for training has been emphasised by numerous stakeholders, including Women’s Safety NSW, who state ‘it is vitally

¹¹ Snell (2020), p 3

important that system reforms are accompanied by appropriate guidelines, training and specialisation'.¹²

'Systems abuse' – perpetrators using legislative instruments and the adversarial court system to control, threaten, or harass a partner – is already a significant issue.¹³ Staff working in our services report that a growing number of women accessing our services have experienced some form of systems abuse.

Systems abuse includes incidents whereby women are misidentified as the primary aggressor – a situation Women's Legal Service Victoria found occurred in about 10% of police-initiated applications for intervention orders.¹⁴ When incidents are viewed in isolation rather than as part of an ongoing pattern of behaviour, this increases the likelihood that the primary aggressor may be misidentified. If an expanded definition of coercive control is supported by training that encourages responders to consider the broader context and history of the relationship this is likely to reduce the risk of this form of systems abuse rather than increase it.

Improved knowledge and understanding of coercive control across government departments and agencies could also support earlier identification of victim-survivors experiencing coercive control. For example, we have supported several women who report that their partners claimed the Family Tax Benefit on their behalf. A greater awareness of potential indicators of coercive control – such as when one partner consistently communicates on behalf of the other – would likely lead to more opportunities to offer relevant information and support.

We note that broader efforts to raise awareness and understanding within the community are also needed. A focus on service providers that could act as soft entry points to support for victim-survivors, such as general practitioners and other frontline health workers, educators, hairdressers and others in the beauty industry, and frontline workers in the finance and banking industries, may also assist in identifying and responding to victim-survivors of coercive control.

Improved access to domestic and violence specialists within the police force and criminal justice system

Improving access to specialists within the criminal justice system, who can understand the nuanced and cumulative nature of coercive control, would also help improve the systems' capacity to identify and respond to victim-survivors and ensure their safety and respect. To this end, we recommend further investment in the recruitment of domestic and family violence specialist police officers. In addition, victim-survivors would ideally have 24-hour access to domestic violence liaison officers when reporting an incident, and all victim-survivors should have the option of speaking with a female police officer, if preferred.

As seen in Scotland, the appointment of a specialist domestic abuse prosecutor should also be considered.

Changes to processes within the criminal justice system and improved coordination

Overall, the criminal justice system in NSW relies on an incident-based model.¹⁵ Yet incident-based approaches to domestic violence are insufficient when trying to identify the repeated patterns of behaviours that constitute coercive control.

Several St Vincent de Paul Society NSW clients have reported that police have not taken a statement following a domestic violence incident, primarily due to there being insufficient evidence. Ensuring that police produce an event number for each reported incident even when they do not believe that it will be

¹² Women's Safety NSW (2020) Criminalising coercive control position paper, 11 September 2020, p 14

¹³ Jillard, A & Mansour, J 2014, 'Women Victims of Violence Defending Intervention Orders: The Latest Developments in Practice and Policy in NSW', *Alternative Law Journal*, vol. 39, no. 4, pp. 235-240.

¹⁴ Women's Legal Service Victoria & Monash University (2018) "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria, *Policy Paper 1*, July 2018

¹⁵ Domestic Violence Death Review Team (2017) Domestic Violence Death Review Team Report 2015-2017, Sydney

possible to meet the 'standard of proof' in relation to the incident, may assist police to better understand the history of cases when responding to a domestic incident, and identify prior patterns of behaviour.

A lack of coordination between human services agencies and the criminal justice system is another factor that allows many victim-survivors of domestic and family violence to slip through gaps between systems. Cases where there are indicators of coercive control and other forms of abuse should at minimum be referred by police to a domestic and family violence support service for follow up. In addition, referral of these cases to a Safety Action Meeting led by the NSW Police may assist in ensuring victim-survivors receive the support they require and the justice they deserve.

When responding to coercive control-related cases, a clear understanding of case history relies on timely and accurate access to information. Our case workers raised concerns about the inconsistent ways in which domestic violence incidents are captured by police officers. This has been at least in part attributed to the complicated and time-consuming systems and processes associated with police responses to domestic violence incidents. A careful balance must be struck to ensure processes are not overly complicated or time consuming, yet offer appropriate protections to victim-survivors, and ensure the collection of evidence needed to identify patterns of coercive control over time.

There is also a need to review and improve systems to ensure responding police officers have timely access to accurate case information so that they can better identify and respond to coercive control-related matters. This need has been identified in previous policy processes, including recommendation 2.1 of the 2015-2017 NSW Domestic Violence Death Review Team (DVDRT) report: *'that the NSW Police Force reviews how it captures, records and displays data on domestic violence events with a view to making appropriate changes that would support operational police to view the incident holistically and in the context of the history of the parties and relationship. This will assist police to make informed decisions as to what action to take in the context of the incident they are dealing with'*.¹⁶ We acknowledge Attorney General Mark Speakman and the NSW Government's support of this recommendation on 24 July 2020, as well as the NSW Police Forces' intentions to implement a new Integrated Policing Operating System (IPOS)¹⁷. We look forward to seeing this progress.

¹⁶ NSW Government (2017) Death Review Team Report 2015 – 2017, NSW Domestic Violence, p xviii

¹⁷ NSW Police Force (2019) NSW Police Force 2018-2019 Annual Report, Office of the Commissioner, p 10

Recommendations:

3. To support the evolution of a domestic and family violence system that is better identify and respond to better consider patterns of behaviour that constitute coercive control, the NSW Government should:
 - ensure training is provided to the police force and other government agencies from which victim-survivors receive support
 - resource efforts to raise awareness and understanding within the broader community, with a particular focus on industries that could act as soft entry points to support for victim-survivors
 - invest in the recruitment of more domestic and family violence specialist police officers who are trained to understand the nuanced and cumulative nature of coercive control,
 - provide funding to ensure that victim-survivors have 24/7 access to domestic violence liaison officers when reporting an incident to police,
 - ensure that victim-survivors are offered a female police officer, if preferred,
 - consider the appointment of a specialist domestic abuse prosecutor (as seen in Scotland),
 - ensure that police produce an event number for all reported events that may indicate the presence of coercive control,
 - identify and implement measures to support improved coordination and referral pathways between police and domestic violence services in NSW.
4. The NSW Police Force should progress efforts to better capture, record and display domestic violence-related data.

Non-legislative responses

Many of the current failings in achieving justice for victim-survivors relate to implementation problems, and are indicative of broader institutional, social and cultural issues, rather than being legislative issues. While we support legislative reform, the success of any changes will be contingent on essential and complementary non-legislative responses, and broader social, cultural and institutional change.

Housing stress and homelessness

It is estimated that the cost of relationship violence is \$13.6 billion annually, with poverty and lack of financial independence being primary causes of homelessness for women and children experiencing domestic and family violence.¹⁸ Through our provision of both domestic violence and specialist homelessness services we see many women and children facing homelessness as a direct result of housing stress and domestic and family violence. In 2016/2017, 30% of people in NSW cited domestic and family violence as their primary reason for seeking assistance from Specialist Homelessness Services.¹⁹

¹⁸ Homelessness NSW (n.d) Domestic violence and homelessness

¹⁹ NSW Government (2020) Domestic and Family Violence; Department of Communities and Justice Housing Policy Statement, June 2020

Lack of access to secure, affordable and appropriate housing can make it harder both to make the decision to leave a violent relationship, and to recover financially and emotionally following a relationship breakdown. The St Vincent de Paul Society is particularly concerned about the inadequate supply of social housing across the State: the NSW Government's recently updated Expected Waiting Times indicate that there are still over 51,000 applicants—or well over 100,000 adults and children²⁰—waiting for social housing in NSW.²¹ In parts of the state the wait time remains in excess of 10 years.²²

While we acknowledge existing social housing initiatives such as Communities Plus and the Social and Affordable Housing Fund, these will not produce the number of dwellings needed to significantly reduce the waitlist for social housing, and to prevent women and children escaping violence from continuing to become homeless. To address the chronic shortage of social housing and reduce homelessness and housing stress across NSW, the Society urges the NSW Government to increase the supply of social housing by at least 5,000 homes every year for the next ten years.

Improved access to domestic and family violence, and counselling services

Even prior to COVID-19, resourcing for specialist homelessness services and domestic violence was not adequate to meet the level of need in the community.²³ There are strong indications that the pandemic has contributed to an increased prevalence of domestic and family violence; described by the United Nations as the 'Shadow pandemic growing amidst the COVID-19 crisis'.²⁴ In July 2020, the Australian Institute of Criminology conducted a survey of 15, 000 Australian women and found that one in 10 Australian women had experienced at least one form of emotionally abusive, harassing or controlling behaviour in the initial stages of the COVID pandemic.²⁵

While we acknowledge both the NSW and Federal Governments' additional investment in domestic violence services during the pandemic, we are concerned that this remains insufficient to meet ongoing needs, and note that the domestic and family violence fallout from the pandemic will likely persist for a significant period of time.

We also note that many victim-survivors who access services are not able to access the amount and length of support they need to rebuild their lives. Access to long-term counselling services with no gap fee is a particular issue. This kind of support can be vital for victim-survivors, many of whom experience post-traumatic stress symptoms and other severe psychological injuries. The Federal Government's recent decision to temporarily increase the number of Medicare-subsidised mental health sessions from 10 to 20 will have a positive impact for many people, yet some will still struggle to afford the gap, and barriers to accessing referrals remain. Further, access to other types of mental health services and supports in the community remains a significant challenge.

We therefore recommend that the NSW Government take a person-centred approach to reviewing the services and supports available to victim-survivors of domestic and family violence in the community, with a view to ensuring all victim-survivors can access the types of services and supports they need, and for the length of time needed.

²⁰ Evidence given by the Department of Communities & Justice in Budget Estimates 2019-2020 advised that multiplying the number of applicants by 2.2 gives the approximate number of people waiting for social housing.

²¹ NSW Department of Family & Community Services (2016) [Expected Waiting Times](#)

²² Ibid

²³ Report on Government Services 2021, 19 Homelessness services, 19 Homelessness data tables, Table 19A.7, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/housing-and-homelessness/homelessness-services>

²⁴ UN Women (2020) The Shadow Pandemic: violence against women during COVID-19, *United Nations*, <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>

²⁵ Boxall, H; Brown, R & Morgan, A (2020) The prevalence of domestic violence among women during the COVID-19 pandemic, *Australian Institute of Criminology*, Statistical Bulletin 28, 13 July 2020

Recommendations:

5. The NSW Government should increase the supply of social housing by at least 5, 000 homes every year for the next ten years
6. The NSW Government should increase investment in specialist homelessness services to ensure they are able to the needs of all people, including victim-survivors, who are at risk of or experiencing homelessness.
7. The NSW Government should take a person-centred approach to reviewing the services and supports available to victim-survivors of domestic and family violence in the community, with a view to ensuring all victim-survivors can access the types of services and supports they need, and for the length of time needed.

Conclusion

St Vincent de Paul Society NSW supports the criminalisation of coercive control with full consideration of the above recommendations. The Society believes that a legislative response alone will not sufficiently meet the needs of victim-survivors and hopes the NSW Parliamentary Joint Select Committee gives due consideration to the above recommendations. Should you have any questions about this submission, please contact Rhiannon Cook, Manager, Policy and Advocacy, at Rhiannon.cook@vinnies.org.au.