



2021

MDAA Response to the NSW Government's *Coercive Control Discussion Paper* - October 2020

Multicultural Disability Advocacy Association of NSW Inc.

Contact for this Submission:

Sera Yilmaz

Systemic Advocate and Policy Officer

1/21/2021

About this submission

This submission is produced by the Multicultural Disability Advocacy Association of NSW Inc. (MDAA) in response to the NSW Government's *Coercive Control Discussion Paper- October 2020*. By way of participation in this submission, consultations were held with MDAA consumers from Culturally and Linguistically Diverse (CALD) and non-English speaking backgrounds (NESB). The submission talks to the existing situation of Domestic and Family Violence (DFV) in NSW, and the need for the implementation of specific Coercive Control laws in NSW based on the lived experiences of participants.

About MDAA NSW

MDAA is a state-wide advocacy service for all people with disability, their families, and carers, with a specific focus on people from Culturally and Linguistically Diverse (CALD) and non-English speaking backgrounds (NESB). MDAA aims to promote, protect, and secure the rights and interests of people with disability, their families, and carers in NSW with the view to empowering communities through systemic and individual advocacy, advocacy development, capacity building and networking, as well as industry development and training.

** To maintain anonymity, pseudonyms have been used when referring to individual participants.

MDAA Submission to the NSW Government's *Coercive Control Discussion*, October 2020

The current context in NSW

MCAA is proud to have the opportunity to contribute to the NSW Government's Coercive Control Discussion Paper.

As per the discussion paper, it is imperative to note that there is no existing definition in NSW legislation defining DFV and that the current Criminal Code 'punishes acts rather than patterns of behaviour'. Specific coercive and controlling acts are not explicitly described within NSW legislation. Similarly, various criminal offences for non-physical violence, which include stalking or intimidation, are often prosecuted in a DFV context, keeping in mind that domestic abuse can take several other of violence separate to physical violence including patterns of behaviour that is committed over time, to manipulate or dominate the other person in the relationship. Due such behaviours, many victims feel as if they are trapped, and confined to a state of dependence on the perpetrator. Based on consultative feedback by participants with lived experiences of DFV, this paper looks to broaden the definition of Coercive Control to go beyond definitions that include physical, sexual, psychological, financial, emotional abuse and intimidation, used as tactics by perpetrators to gain power, control and dominance over the victim-survivor.

Section 11 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) defines a domestic violence offence as an offence committed against a person with whom the perpetrator has had a domestic relationship. Domestic violence offences include:

- a personal violence offence¹
- an offence, other than a personal violence offence, that arises from substantially the same circumstances as those from which a personal violence offence has arisen,²

or

- an offence, other than a personal violence offence, the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful or both.³

Section 13 recognises 'stalking or intimidation with intent to cause fear of physical or mental harm' as an offence.⁴ However, there is no other behaviours considered to be coercive and controlling that is included in the legislation, thus leaving a large gap in the law when it comes to protecting women and punishing perpetrators for various other controlling, intimidating and extremely dangerous behaviours.

In the 2017-19 NSW Domestic Violence Death Review⁵ it was found that out of a total of 112 homicides, 111 cases involved elements of coercive and controlling behaviours by the perpetrators toward their victims before their death.

¹ Crimes (Domestic and Personal Violence) Act 2007 (NSW) s 11(1)(a).

² Ibid s 11(1)(b).

³ Ibid s 11(1)(c).

⁴ Ibid s 13.

⁵ NSW Domestic Violence Review Team. (2020). *NSW Domestic Violence Death Review Team Report 2017-2019*. (No. 6). Australia: NSW Government.

The NSW Governments 'Criminalise Coercive Control' campaign launched shortly after the Labor Party introduced the *Crimes (Domestic and Personal Violence) Amendment (Coercive Control—Preethi's Law) Bill 2020* to Parliament, to create an offence of engaging in conduct that constitutes coercive control in a domestic relationship.

As such, MDAA's response calls for the introduction of additional laws and protections to criminalise Coercive Control and presents its findings via consultations relating directly to the participant's lived experiences of DFV which include elements of Coercive Control.

Consultation with MDAA

Two consultations were facilitated by MDAA staff in relation to the Coercive Control discussion paper. The consultation involved 10 participants including women with lived experience of DFV, from CALD/ NESB backgrounds and women with disability. The following questions were considered during the consultation as per below:

- What would be an appropriate definition of coercive control?
- How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?
- Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?
- Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?
- Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?
- Does the law currently allow evidence of coercive control to be adequately considered in sentence proceedings?
 - If the answer is no to questions 5 or 6, how could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?
- What are the advantages and/or disadvantages of creating an offence of coercive control?
- How might the challenges of creating an offence of coercive control be overcome?
- If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be considered?
- Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?
- Should the common law with respect to context and relationship evidence be codified within the CPA (or other relevant NSW legislation) to specifically govern its admissibility in criminal proceedings concerning domestic and family violence offences? If yes, how should this be framed?
- Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?

- Should provisions with respect to sentencing regimes be amended? If so, how?
- Are there any other potential avenues for reform that are not outlined or included in the questions above?
- What non-legislative activities are needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly?

Throughout the discussions, key themes appeared that will be discussed in this paper for the purposes of calling for reform in the Criminal Code, to include a separate category for Coercive Control that is punishable by law:

Key themes:

- **The need for the definition and recognition of Coercive Control behaviours to be implemented in the Criminal Code**
- **Broadening the scope for the definition of Coercive Control**
- **Cultural competence within the court system and law enforcement**
- **Non-legislative avenues for reform**
- **Further improvements**

1. *The need for the definition and recognition of Coercive Control behaviours to be implemented in the Criminal Code*

Broadening the scope for the definition of Coercive Control

The participants expressed that negative behaviours usually occur over a long and gradual period and are not apparent to the victim at first, giving reason to the importance of ensuring that these patterns of behaviour are treated as punishable offences like physical acts. However, the question arises whether the justice system should respond to DFV by recognising the breadth of behaviours which are used to coerce and control a victim and the full context in which they occur. The panel have expressed their need to specifically define Coercive Control in the Criminal Code and broaden the definition to include several acts of manipulative and intimidating behaviour including:

- Stalking (including third parties stalking on behalf of the perpetrator), unwarranted ongoing contact, menacing (uninvited) behaviours, defamatory behaviour including belittling the victim to their friends, family and the workplace, reproductive control (i.e. forcing the victim to have children/ to not have children), financial control, gaslighting the victim, interfering with the daily functions of the victims life, controlling aspects of the victims life, isolation, threats, various forms of emotional abuse, defamation.

Case Study 1 & 2: unwanted and ongoing contact

Participant A has separated from her abusive boyfriend approximately 3 years ago and is in her late 30s. She recalls blocking her ex-partner from contacting her via telephone and social media. She states that her ex-partner creates new accounts under different names to contact her on Facebook, including via her Hotmail account. Participant A has stated that this has been ongoing for almost 3 years even though she has formed a new partnership. Participant A recalls going to the Police to report it and that the police asked her questions like: *“is he threatening you?”*

Given the ex-partner did not write any threatening words, even though he is menacingly contacting her each day via different aliases, nothing has been done by law enforcement to stop the behaviour other than the advice “just block him” which participant A ongoingly does. She feels that given her ex-partner keeps trying to still contact her after years that he may appear suddenly out of nowhere and do something to harm her. As a result, she lives in fear and constantly watches her surroundings when she leaves the house.

Participant B has 3 children and is going through divorce proceedings from her abusive ex-husband. Before their separation, Participant B used to share her mobile phone with her ex-husband at his request. For approximately two years Participant B has had all her phone calls, Facebook account, messages and other information on her phone monitored via spyware. Due to the ex-husbands ongoing abuse, Participant B commenced divorce proceedings and reported the incidences to police. Participant B states that her ex-husband constantly threatens to share her information from her messages, her intimate photos, and any other information on the phone to her friends and family. When Participant B reported this to police, they informed her that there was nothing she could do given the SIM card in the phone is under the ex-husbands name. To this day, she lives in fear that his threats will eventuate.

Many of the behaviours reported by participants may not be seen by law enforcement to be ‘directly threatening’ or ‘criminal’ in nature, however, are extremely intimidating and lead to ongoing abuse and potential behaviours that are life threatening. Participants have strongly felt that their lives have been limited due to these behaviours and that reporting such behaviours to law enforcement has sadly, not resulted in the unwarranted behaviours to stop. To this day, the participant is still receiving unwarranted contact by the individual who is known to be abusive both physically and mentally.

➤ **Cultural competence within the court system and law enforcement**

Participants felt that they were victimised throughout the court process and not understood given their CALD/ NESB backgrounds, feeling as though the police did not believe them when they reported issues of ongoing Coercive Control. During custody cases, it was reported that the court favoured men and looked at the women in a ‘different way’ portraying them as ‘trouble-makers’. There was ongoing consensus in the consultation that the court system was ‘unfair,’ and that Legal Aid could not offer much help.

It was also reported that in situations of coming from a CALD/ NESB background with a disability: *“if they see you are disabled, they see you as degraded and you are not respected, but I do not want that... I know my rights, when you show that you are disabled then they try to put you down, but you explain to them don’t underestimate me, I know my rights and I know I am disabled, I had to put my foot down and tell him to leave.”*

One of the participants had a child who was abused by her father. The child wanted to go to court to report the crimes as soon as she turned 16. However, after the police recorded her statement and the JIRT team was involved she was informed that she could go to court when she turns 18. The daughter is now 18 and wants to live her life and put these atrocities behind her, thus no longer wanting to continue with the reporting. When she did initially report the atrocities, she was traumatised and did not want to relive the situation again. Participants felt strongly that Coercive Control statute should not force victims into having to come face to face with perpetrators and that they should be given the assistance to report on the matters as soon as they occur rather than wait until they reach a certain age.

Case Study 2: women missing out in the system.

Participant C is a mother of 4 who was going through a divorce proceeding. Her husband who had an ongoing history of DFV with Participant B had assets both in Australia and Lebanon. Participant C felt that it was the biggest mistake to register her children with dual Citizenship (Lebanese and Australian): *“he transferred all the money, transferred all the properties, to the Supreme Court he was married in Lebanon, he told them he wanted to put in divorce papers and I don’t know what they said, then the court told me in this condition you cannot have your children back, he is a rich man, and I was homeless... they used to take child support but they gave me no right to see my children, they told me if he hits them then I can see them, he took all my children from me the youngest 3 years old and eldest 16 years and brainwashed them, told them I am unfit, in the beginning they blamed me that it was my fault, they let him go back to Lebanon to marry the wife – there were no Reciprocal Orders then and the children stayed in Lebanon and never came back. He took the children to Lebanon, waited until the court case was finished and then he came back, he put restrictions on so I could not see my children – the court was unfair. My kids have not spoken to me or seen me since then. Participant C was alone, did not speak fluent English and felt that the system had failed her.*

Case Study 3: Using migration status to threaten/ intimidate.

Participant D was on a bridging Visa in Australia and had no family members to assist her. She relied heavily on her husband. Her husband would continuously control her, isolate her from the rest of society, not allow her to walk out of the house without his permission. She states that her husband would control the finances and not give her any money and tell her that she could not seek any welfare to assist with her children given she is on a bridging Visa. If she tried to oppose him with anything, he would tell her she would be deported, including if she ever was to seek help or go to the police. Participant D stated that she dealt with the coercive control and abuse until she was given her permanent residence. Participant D stated that when she initially spoke about her situation, it was not considered to be criminal behaviour given he did 'not threaten her life in any way.'

There was strong consensus by the participants that culturally, men had the upper hand within their community circles due to their status, financial strength, and position in society. For this reason, the participants felt that the system did not recognise this including the vulnerability of the participant depending on the partner given that they have no other family members in Australia to assist them. The children were able to live in another country away from the mother due to the dual citizenship, and the participants felt that due to their limited English, they were unable to convey the situation to the court as they would have liked to. They felt that the system had let them down and did not recognise any of the coercive and controlling behaviours leading up to these unfortunate outcomes.

➤ ***Non-legislative avenues for reform***

Participants have voiced their opinions in relation to several non-legislative reforms to provide awareness relating to behaviours of Coercive Control:

- Providing a platform for women to speak out relating to patterns of Coercive Control behaviours
- Advertisement campaign relating to Coercive Control behaviours and what they look like including support numbers: advertisements need to include actions and reactions of Coercive Control to provide the community with various examples of what it looks like so that they can easily identify the warning signs
- Training among cultural groups relating to Coercive Control and what it involves
- Introduce a curriculum within schools focusing on Coercive Control as a separate form of DFV
- More availability of resources for women available in multiple languages so that victims know that they can seek help and how to do so i.e., flyers and information kits in community groups, church's, women's groups, allowing women's group leaders to go

to speak to women and support them on their– this will allow the gathering of evidence if needed in the future for women in abusive relationships

- Build awareness for stay-at home mothers and women who are not employed with ongoing opportunities for workshops

➤ **Further improvements**

Participants provided input relating to various improvements needed with the existing framework relating to DFV:

- Currently the legal context surrounding abusive behaviours is too narrow, and does not include enough for women around Coercive Control
- More avenues need to be available for women to ensure that the system does not favour men
- More rights for women and changes to the child support system: women feel that they have no money from Centrelink for several weeks on end to support their children when they are alone and unemployed, particularly when their former partners tend to travel overseas, hide their assets, and have several family supports compared to them
- Education and awareness about the behavioural warning signs of DFV and specifically, Coercive Control
- Programs/ workshops for CALD/ NESB women like the 500 hours of learning English, but focused on rights and coercive control and awareness
- Faster responses to Coercive Control, i.e., faster police action

General Comments

The findings from the various consultations acknowledge that there is a real need to Criminalise Coercive Control by way of amending the Criminal Code to include Coercive Control as a form of criminal behaviour punishable by law. This would include broadening the definition to include actions that constitute abusive behaviours such as intimidation, stalking and isolation as outlined by the participants.

The new laws will provide for a step in the right direction in reducing and preventing violence against women that could potentially lead to homicide and identify coercive and controlling behaviours as not minor incidences, but extremely dangerous behaviours that could lead to fatal outcomes for women and their children. With the appropriate legal reform, availability of resources, the appropriate training of staff and community members as well as guidelines for law enforcement, we can achieve meaningful reform, safer communities, and the ability to save many lives.