Women's Legal Service NSW

Review of NSW Coercive Control Reforms

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Acknowledgements

Women’s Legal honours the strength and leadership of First Nations women, whose knowledge and activism continue to shape community, culture, and the safety and wellbeing of women in this country.

We acknowledge the Wongal and Burramattagal peoples as the Traditional Custodians of the land where we are based. We recognise that sovereignty was never ceded, and we pay deep respect to Elders past and present, and to all First Nations women who continue to lead their communities with courage and dignity.

Women’s Legal acknowledges the many women who have been subjected to gender-based violence who we work with, whose voices and experiences inform our advocacy for change.

Contributors

Liz Snell, Sarah Croskery-Hewitt, Emily Jol, Gail Thorne, Tanya Fox, Pip Davis, and Gabrielle Craig contributed to the research and/or drafting of this submission.

About Women’s Legal Service NSW

Women's Legal Service NSW (**Women’s Legal**) advocates for an end to gender-based violence and for gender equality in Australia. As a state-wide specialist women's legal service, we assist women and non-binary people across NSW to obtain legal advice and representation through our trauma-informed, holistic legal practice to address women's safety and economic security.

We use the knowledge and experience gained from supporting more than one hundred thousand women, together with our expertise in the feminist analysis of social issues and the law, to identify where we can make the most meaningful and lasting impact. We invest in specialist legal, policy and advocacy expertise to drive structural and systemic change through law reform, strategic policy development, systemic advocacy, and education and training. By ensuring women's experiences inform legislation, public policy, legal practice and community understanding, we work to improve women's safety, economic security and equity.

Our solicitors advise and represent women in a range of practice areas including family law, domestic, family and sexual violence, compensation and victims support for victims of crime discrimination, sexual harassment and employment.

We have three legal programs:

- The **First Nations Women’s Legal Program**, led by First Nations staff and a First Nations Women's Strategic and Cultural Advisory Committee, provides culturally safe support to Aboriginal and Torres Strait Islander women, and advocates for change across all areas of law.

- The **Women's Rights Program** provides legal services to women on a range of legal issues including domestic and family violence, sexual assault and family law.
- The **Working Women's Centre NSW** provides legal services to women on legal issues in the workplace with a focus on the gendered impacts for women at work – sexual harassment and gendered discrimination.

Language

Victim-survivor

We acknowledge that there are different ways to describe a person who has been subjected to gender-based violence. In this submission we use the term 'victim-survivor'.

Gendered language

We say 'women' and 'girls' to include all people who have experienced oppression as women, including cisgender, transgender, non-binary and gender diverse people.

Gender-based violence

Women's Legal specialises in working with victim-survivors of gender-based violence. We use this term for any form of abuse that is perpetrated against women and girls because of their gender. It includes acts such as physical, emotional, sexual, domestic and family violence.

We understand gender-based violence to be inclusive of all people impacted by patriarchal and gendered power structures. We acknowledge the need to address the high rates of abuse against LGBTQIA+ people and the same gendered drivers of such violence.

Criminal legal system

Many advocates have argued that the 'criminal justice system' in Australia is not a 'just' system. Instead, we use the language 'criminal legal system'.

Opening comments

1. Since the beginning of consultations to criminalise coercive control in NSW, Women's Legal has repeatedly raised that legislation of itself is not a panacea to respond to gender-based violence. The criminalisation of coercive control must be accompanied by significant cultural and systems reform, including to address:

    - systemic discrimination;
    - systemic misidentification of the person most in need of protection and predominant aggressor;
    - supporting sexual, domestic and family violence workforce development; and
    - transforming the criminal legal system response to be more trauma-informed, gender-based violence informed and culturally safe.

2. The vital importance of focusing on systems and cultural reform is informed by the lived experience of the women with whom we work and walk alongside. We regularly advise clients who have reported behaviour that constitutes coercive control to Police (including clients who have specifically used the language of 'coercive control' in their interactions with Police). However, and despite the large numbers of women we speak to who disclose coercive control, including their reports to police, we have not assisted any clients whose reports have been investigated or charged as coercive control. Nor have we observed the reforms to have had a meaningful educative impact on policing more broadly, with an incident-based approach to domestic violence persisting.

3. The NSW Government's failure to properly engage in cultural and systems reform is resulting in missed opportunities to shift practice from incident-based policing to 'seeing the whole picture', considering underlying dynamics of men's power and control and looking at behaviour in the context of the whole relationship. This is resulting in an under-recognition of coercive control and widespread misidentification of the predominant aggressor and person most in need of protection (**PMINOP**) in relation to domestic violence offences and apprehended domestic violence order (**ADVO**) applications.

4. Women who are the PMINOP are increasingly faced with policing responses that treat them as perpetrators of domestic violence. There has been a six-fold increase in both partners in an intimate-partner relationship being charged with assault offences over a 10-year period and a six-fold increase over a 7-year period in the proportion of cross-ADVOs.[1] These responses can have the perverse effect of emboldening perpetrators of coercive control to continue with their systems abuse and increasing risk to victim-survivors.

[1] Adam Teperski and Ilya Klauzner, *Examining Gender Bias in the Policing of Intimate Partner Violence* (Crime and Justice Bulletin, NSW Bureau of Crime Statistics and Research, 2025) 3.

5. A failure to look at domestic and family violence within the context of the relationship as a whole, rather than discrete incidents, appears to also be contributing to the significant under recognition of coercive control. Only 578 coercive control matters were recorded by police from July 2024 – March 2026 (a period during which, for comparison, approximately 70,000 domestic violence related assaults were recorded).[2] Of these 578 reported matters, just 33 coercive control charges had been laid as at March 2026. With coercive control so rarely identified, and very infrequently charged, it is arguable whether its criminality is being recognised.

6. Our submission urges that, for the coercive control and supporting laws and reforms to truly live up to the expectations set by the NSW Government in criminalising coercive control, cultural and systems reforms must be embedded in the NSW Government's Plans, Strategies, Policies and related documents supporting the Implementation of the *National Plans*.[3]

7. In addition to the pressing need for cultural and systems reform, our submission calls for:

   7.1 further legislative mechanisms to challenge the persistence of incident-based policing responses to domestic violence;

   7.2 increased visibility and stronger action to respond to sexual coercion through the coercive control legislation; and

   7.3 improving the processes for future reviews, so that the results of legislated transcript reviews and relevant commissioned research are published prior to the making of submissions.

[2] NSW Bureau of Crime Statistics and Research, *NSW Recorded Crime Statistics quarterly update March 2026* (June 2026) 9.

[3] *National Plan to End Violence against Women and Children 2022-2032* and *Our Ways - Strong Ways - Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026-2036.*

Recommendations

We make the following recommendations, which are ordered following the structure of the Consultation Paper.

Recommendation 1
Embed cultural and systems reform into NSW Plans, Strategies and other documents that will implement the *National Plan to Reduce Violence Against Women and Children 2022-2032* and *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026-2036*. This cultural and systems reform must:
a) include specific, measurable and time-bound targets, outcomes frameworks and public reporting;
b) effectively address structural, systemic and intersecting inequities;
c) effectively address misidentification of the person most in need of protection; and
d) apply a social and systemic entrapment framework.

Recommendation 2
Embed a social and systemic entrapment framework in legislation, Standard Operating Procedures, Codes of Practice, policy, Prosecutorial Guidelines, Bench Books and the Bugmy Bar Book.

Recommendation 3
Further consider ways to ensure that more Local Court decisions that relate to coercive control are published.

Recommendation 4
Make the findings of the coercive control transcript review publicly available and, once published, provide an opportunity to make further submissions.

Recommendation 5
Further consider how data about ADVOs, including Order 11 and consideration of non-physical forms of coercive control, as well as breaches of ADVOs relating to non-physical forms of coercive control, can be collected and published.

Recommendation 6
Replace the term 'incidents' with the term 'reports' in BOCSAR Coercive Control Monitoring reports.

Recommendation 7
Amend the *Victims Support Act 2013* to enable victim-survivors of non-physical forms of coercive control to access all parts of the Victims Support Scheme.

Recommendation 8
Test the language that best resonates with victim-survivors to describe their experiences of domestic and family violence and abuse.

Recommendation 9
Provide further opportunity to make submissions to this review following the publishing of research about victim-survivors' current experience of the NSW justice system.

Recommendation 10
Embed the cultural and systems reform outlined in Recommendation 1 prior to expanding the offence to include recklessness and relationships beyond intimate partners.

Recommendation 11
Consider whether increasing the maximum penalty would help facilitate the inclusion of sexual coercion in coercive control prosecutions.

Recommendation 12
Commission further research to understand if legislation that includes a focus on 'relevant effects' or 'controlling impact' is helping to shift policing and the criminal legal response away from incident-based policing of domestic and family violence.

Recommendation 13
Explicitly name sexual violence, sexual abuse and sexual coercion as abusive behaviours in section 54F of the *Crimes Act 1900*.

Recommendation 14
Take additional legislative measures to ensure that sexually coercive behaviour can be effectively relied upon as part of a coercive control prosecution, notwithstanding that the conduct may also constitute a standalone sexual offence. This may include, for example, increasing the maximum penalty for coercive control and/or modifying the application of the common law in relation to double jeopardy.

Recommendation 15
Specifically focus on sexual coercion in the agency training undertaken for the next review period (per ss 54J(3)(b) and 583(6) of the *Crimes Act 1900*).

Recommendation 16
Specifically focus on sexual coercion in public education campaigns over the next review period.

Recommendation 17
Amend s 6A of the *Crimes (Domestic and Personal Violence) Act 2007* to:
a) Include a definition that domestic and family violence and abuse means:
*violent, threatening or other behaviour by a person (**first person**) that coerces, controls or causes another person (**second person**) to be fearful or causes the second person to fear for the safety of others. Person 1 and 2 are in a domestic relationship.*
b) Include consideration of behaviours in the context of the whole relationship.

Recommendation 18
Amend the *Crimes (Domestic and Personal Violence) Act 2007* to:
a) Enable ADVOs to be made on the basis of domestic abuse occurring or likely to occur;
b) Give standing to the person most in need of protection to be heard;
c) Include guidance to help police and the courts to accurately identify the person most in need of protection;
d) Include mandatory consideration of 'misidentification of the predominant aggressor' factors by police and the courts prior to the making of provisional orders, interim orders or final orders, and discretion to consider misidentification factors at the making of consent orders; and
e) Limit the making of cross or dual applications to exceptional circumstances.

Recommendation 19
Amend guidelines to require Police and the NSW ODPP to document their consideration of the public interest test in prosecutions in which there is a risk of misidentification.

Recommendation 20
Amend the *Crimes (Domestic and Personal Violence) Act 2007* and the *Crimes (Domestic and Personal Violence) Regulation 2025* to better recognise non-physical forms of coercive control.

Relying on previous submissions

8. We rely on the following:

    - Women's Legal Submission to the NSW Joint Select Committee, Inquiry into coercive control in domestic relationships, 19 February 2021;
    - Women's Legal Submission in response to the public consultation on the *Crimes Legislation Amendment (Coercive Control) Bill 2022*, 31 August 2022;
    - Women's Legal Submission in response to further consultation on *Crimes Legislation Amendment (Coercive Control) Bill 2022*, 26 September 2022;
    - Joint letter to MPs in response to *Crimes Legislation Amendment (Coercive Control Bill) 2022*, 4 November 2022;
    - Joint submission to NSW Standing Committee on Social Issues Inquiry into the *Crimes Legislation Amendment (Coercive Control) Bill 2022;* and
    - Women's Legal Submissions in response to the statutory review of the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021*, 17 December 2025 and 31 July 2026; and
    - Input provided through the First Nations, Domestic and Family Violence Services and Legal Sector Coercive Control Reference Groups.[4]

[4] See for example, *NSW Government, Crimes Legislation Amendment (Coercive Control) Act 2022 Statutory Report*, 1 June 2024, Appendix 4 and 5, <https://dcj.nsw.gov.au/documents/children-and-families/family-

Cultural and systems reform

9. We commend multi-party support and Government efforts to better recognise non-physical forms of coercive control and patterns and underlying dynamics of power and/or control and/or causing fear.

10. We also commend the efforts of the Coercive Control Implementation and Evaluation Taskforce, Coercive Control Reference Group Members, the Coercive Control Secretariat and the bringing together of these groups to inform the ongoing implementation and evaluation of the coercive control reforms.

11. However, we remain deeply disappointed at the lack of progress towards achieving cultural and systems reform that must accompany these coercive control reforms and the extremely limited educative role of the definition of domestic abuse in the *Crimes (Domestic and Personal Violence) Act 2007*.

Legislative reform is ineffective without cultural and systems reform

12. We have consistently advocated over the past five years that legislation alone is not a panacea to responding to gender-based violence. A multi-faceted response is required which must be accompanied by significant cultural and systems reform.

13. We support expansion of this offence as outlined in Question 4 and 5 below. However, our support for expansion is contingent on first embedding cultural and systems reform as outlined below.

14. Cultural and systems reform includes:

    - Legislative, policy and practice reforms to effectively respond to structural, systemic and intersecting inequities, including systemic racism, sexism, ableism, ageism and discrimination against LGBTQIA+ people. These reforms must be accompanied by robust accountability frameworks with specific, measurable and time-bound targets, outcomes frameworks and public reporting;
    - Legislative, policy and practice reforms to effectively respond to misidentification of victim-survivors as the predominant aggressor. Again, these reforms must be accompanied by robust accountability frameworks with specific, measurable and time-bound targets, outcomes frameworks and public reporting.
    - Proper resourcing of the implementation of the NSW Domestic and Family Violence Workforce Strategy and the development and proper resourcing of the implementation of a NSW Sexual Violence Workforce Strategy.

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domestic-and-sexual-violence/police-legal-help-and-the-law/crimes-legislation-amendment-coercive-control-act-2022-statutor-.report.pdf>.

- Proper resourcing of the implementation of the Common Risk Assessment Framework.
- Assessing the effectiveness of police training through regular independent reviews of police sexual, domestic and family violence files.[5]
- Transforming the criminal legal system response so that it is more trauma-informed, gender-based violence informed and culturally safe.
- A NSW centralised independent implementation and delivery oversight mechanism that works closely with the Office of the National Domestic, Family and Sexual Violence Commissioner.

15. For the many women with whom we support, cultural and systems reform is fundamentally and inextricably part of successful law reform. It is not something to be arbitrarily excluded.

16. The Hon. Penny Sharpe MLC during the Second Reading Debate on Coercive Control laws in the Legislative Council commented:

> *Another issue raised by stakeholders called for broader cultural and systems reform to be a priority as we undertake this change in law. This is described as reforms to address systemic racism, sexism and ongoing failures to understand the nature of domestic and family violence. This is obviously essential in supporting this reform, but I would like to make the point that these kinds of broader cultural and systems reforms should be a priority across all of the criminal law*.[6]

Failing to understand coercive control facilitates misidentification

17. A core objective of the reforms was to encourage police to understand domestic abuse as a pattern of behaviour and to move away from incident-based policing. When the context of the relationship as a whole is not seen, victim-survivors who respond to protect themselves or others or resist abuse can be misidentified as perpetrators of domestic violence. Unfortunately, the reforms do not appear to have achieved this educative function.

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[5] Such a review can highlight police work in identifying and evidencing domestic and family violence as well as identify missed opportunities and areas for further police training and education as well as cultural and systems reform. Such a review occurred in England in relation to the operation of their coercive control offence and identified the need to shift away from policing discrete incidents to a contextual understanding of domestic and family violence. See: Charlotte Barlow, Kelly Johnson, Sandra Walklate & Les Humphreys, 'Putting Coercive Control into Practice: Problems and Possibilities' (2020) 60(1) *British Journal of Criminology* 160; Andy Myhill, Kelly Johnson, Abigail McNeill, Emily Critchfield and Nicole Westmarland, '"A Genuine One Usually Sticks Out a Mile": Policing Coercive Control in England and Wales' (2023) 33(4) *Policing & Society* 398; Charlotte Barlow & Sandra Walklate,'Who is the victim? Exploring the complexities of misidentification', *Criminology and Criminal Justice*, (July 2025) <https://journals.sagepub.com/doi/10.1177/17488958251355378>; The Expert Panel undertaking the Australian Rapid Review of Prevention Approaches also recommended independent oversight and accountability of police responses to domestic and family violence. See Recommendation 13e: Rapid Review Expert Panel, *Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence* (Report of the Rapid Review of Prevention Approaches, 2024).

[6] Crimes Legislation Amendment (Coercive Control) Bill 2022, Second Reading Debate, *Legislative Council Hansard*, 10 November 2022, 116 (the Hon. Penny Sharpe).

18. Since the commencement of the reforms, the proportion of ADVO defendants that are female has continued to rise (with 28% being female),[7] as has the proportion of alleged domestic violence-related assault offenders that are female (32%).[8] The consequences of misidentification are significant and include criminalisation, child removal, loss of employment, homelessness, economic insecurity and systems abuse. For many women, misidentification is a pathway into prison.

19. Misidentification disproportionately impacts First Nations women, refugee and migrant women, women with disabilities, young people and LGBTQIA+ communities. As of March 2026, First Nations women make up 45% of the population of women in prison.[9] 83% of First Nations women in custody are victims of domestic violence.[10]

20. The *National Plan to End Violence Against Women and Children 2022-2032* identifies the need to '*address misidentification of perpetrators*' and recognises that '*[t]oo often, Aboriginal and Torres Strait Islander women are being misidentified as perpetrators when they seek assistance*'.[11] The Plan identifies the need to:

> *Build capacity in mainstream frontline services responding to gender-based violence, such as health and policing, including the ability to accurately identify the 'person most in need of protection' and prevent misidentification of the victim-survivor as the perpetrator.*[12]

21. Focus must shift in policing and the criminal legal system away from considering incidents in isolation, and towards considering the underlying dynamics and pattern of behaviour in the context of the whole relationship. Further legislative reform is required but to achieve this, significant cultural and systems change is also required.

Case Study: Nusrat*

Nusrat* was referred to Women's Legal as a defendant in an ADVO application initiated by Police. Nusrat was a recent migrant who had moved to Australia to be with her Australian citizen husband. Nusrat's husband was severely controlling and abusive towards her. His abuse included psychological abuse, economic abuse, physical violence and sexual violence.

Nusrat's husband was adept at weaponising systems to further his abuse of Nusrat. He would regularly exploit her insecure immigration status and threaten that "I can return you back to Bangladesh" and "I can send you to jail". Upon her arrival in Australia, Nusrat's husband had told her that she could not open a bank account and her wages should be directed to his

[7] NSW Bureau of Crime Statistics and Research, *Apprehended Domestic Violence Orders in NSW: Data to December 2025* (June 2026) 3 <https://bocsar.nsw.gov.au/documents/topic-areas/advo/ADVO_Infographic_-_December_2025.pdf>.
[8] NSW Bureau of Crime Statistics and Research, *NSW Recorded Crime Statistics April 2025 to March 2026*.
[9] BOCSAR (2025) *New South Wales Custody Statistics*, NSW Prison Statistics, (Total Female and Aboriginal Female rows).
[10] Corrective Services NSW, *NSW Women's Strategy* (June 2026) 13.
[11] *National Plan to End Violence against Women and Children 2022–2032* (Commonwealth of Australia, 2022) 42.
[12] Ibid 126.

account. This meant that she had no access to funds. He also took all of the valuables that had been given to Nusrat for her marriage.

An ADVO had been made against Nusrat's husband following a physical assault against her. Police subsequently attended the property after another physical assault by Nusrat's husband. Nusrat's husband denied assaulting her and claimed that Nusrat's injuries were due to her hitting herself. He claimed to Police that it was in fact Nusrat who had repeatedly hit him. Nusrat's husband was charged with breaching the ADVO and with assault. However, Police also arrested Nusrat and sought a cross-ADVO against her to protect her husband.

Nusrat told Police that her husband had fabricated his claim to have been hit by her. She also told Police more about her husband's controlling behaviour, such as demanding her wages be paid to him, locking her out of her digital devices, and changing the locks to their home to render her homeless. She subsequently also reported her husband's sexual violence to Police.

Police nonetheless continued in their ADVO application against Nusrat. Nusrat was very concerned about the impacts that an ADVO could have on her employment and visa options. It took several months of advocacy by Women's Legal to persuade Police to withdraw the application against her. Police discontinued the charges against Nusrat's husband.

** This case study has been de-identified, including by not using their real names.*

Embedding a 'social and systemic entrapment' understanding of gendered violence

22. The *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026-2036* describes misidentification as '*a systemic failure reflecting racism toward women who often find themselves entrapped by systems'*.[13] The 'social and systemic entrapment' framework adopted in the Plan is an integral tool for understanding domestic abuse and addressing misidentification.

23. An 'entrapment' understanding of gendered violence requires an appreciation of not just '*the restrictions placed on a victim-survivor's autonomy and agency by their partner's abusive and controlling behaviors'*, but also the '*broader systemic patterns of harm*' that limit the safety responses that are realistically available to them.[14] This requires careful attention to the inadequacy of institutional responses to violence, and how these responses are mediated by the victim-survivor's social context (such as her

[13] *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026-2036*, 25 citing H Douglas, H McGlade, S Tarrant, and J Tomie, 'Facts seen and unseen: improving justice responses by using a social entrapment lens for cases involving abused women (as offenders or victims)', *Current Issues in Criminal Justice*: 2020, 32(4); S Tarrant, H McGlade and C Bahemia, Promoting Aboriginal women's human rights – understanding when not to prosecute Aboriginal women, *International Journal for Crime, Justice and Social Democracy*, 2024, 13(4):28-43.
[14] Julia Tolmie, Rachel Smith and Denise Wilson, 'Understanding Intimate Partner Violence: Why Coercive Control Requires a Social and Systemic Entrapment Framework' (2024) 30(1) *Violence against women* 54, 55.

Indigeneity, race, class, (dis)ability, gender identity, sexual orientation, age and geographic isolation).

24. Framing gender-based violence, and particularly intimate partner violence, as social and systemic entrapment requires an understanding of and making visible:

    - The social isolation, fear and coercion his behaviour creates for the victim-survivor which entraps her.
    - The limitations of the systemic safety responses to gender-based violence which entrap her.
    - How structural inequities associated with gender, race, disability and other intersectionalities exacerbate these other two dimensions of entrapment.[15]

25. Tolmie and colleagues discuss the particular importance of an entrapment framework in understanding Indigenous women's experiences of violence:

> *Although … entrapment is a concept that is useful for all victims of IPV, there are particularly harmful consequences in responding to [intimate partner violence] solely as an issue of coercive control for Indigenous peoples and marginalized groups targeted for oppression. A narrative of [intimate partner violence] that focuses on individuals renders invisible the state violence, institutional abuse, and the violence of social exclusion that many victim-survivors, their families, and communities experience. These latter forms of violence drive the overrepresentation of people subjected to intersecting forms of oppression in family violence statistics and greatly impede their safety, healing, and ability to be self-determining.*

26. We strongly believe that adopting the social and systemic entrapment framework in legislation, Standard Operating Procedures, Codes of Practice, policy, Prosecutorial Guidelines, Bench Books and the Bugmy Bar Book will significantly assist in accurately identifying the person most in need of protection and limiting misidentification of the predominant aggressor.

27. We further support additional accountability mechanisms to respond to systemic sexism, ableism, ageism and discriminatory attitudes towards LGBTQIA+ people.

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[15] Ibid; See, for example, Family Violence Death Review Committee *Fourth Annual Report: January 2013 to December 2013* (Health Quality and Safety Commission, Wellington, 2014); and Family Violence Death Review Committee *Fifth Report: January 2014 to December 2015* (Health Quality and Safety Commission, Wellington, 2016); Family Violence Death Review Committee, (2017) Fifth Report Data: January 2009 to December 2015, Wellington, <https://www.hqsc.govt.nz/resources/resource-library/summary-of-family-violence-death-review-committee-fvdrc-reports/>; Julie Tolmie, Rachel Smith, Jackie Short, Denise Wilson and Julie Sach, 'Social Entrapment: A Realistic Understanding of the Criminal Offending of Primary Victims of Intimate Partner Violence' 2018(2) *New Zealand Law Review* 181, 185 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4950453>; Julie Tomlie, Rachel Smith & Denise Wilson, 'Understanding Intimate Partner Violence: Why Coercive Control Requires a Social and Systemic Entrapment Framework', *Violence Against Women 2024*, Vol. 30(1) 54–74, <https://pubmed.ncbi.nlm.nih.gov/37807727/ >.

Embedding cultural and systems reform into the NSW policy framework

28. To ensure needed change, we recommend that cultural and systems reform is embedded into NSW Plans, Strategies and other documents that will implement the *National Plan to Reduce Violence Against Women and Children 2022-2032* and *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026-2036*.

29. Concrete steps include:

    - The NSW Government commit to the proper implementation of the Australian Human Rights Commission's National Anti-Racism Frameworks in NSW[16] including requiring proper implementation of these frameworks as a pre-requisite in government funding contracts.
    - The NSW Government introduce a positive duty to eliminate all forms of unlawful discrimination and apply this to all duty holders under NSW anti-discrimination laws.[17]
    - Introduce a Human Rights Act in NSW.
    - Build anti-racism and cultural safety into NSW work, health and safety laws.[18]

30. We also refer to our response to Question 10 which further considers ways to effectively address misidentification of the predominant aggressor.

Recommendation 1

Embed cultural and systems reform into NSW Plans, Strategies and other documents that will implement the *National Plan to Reduce Violence Against Women and Children 2022-2032* and *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026-2036*.

This cultural and systems reform must:

a) include specific, measurable and time-bound targets, outcomes frameworks and public reporting;

b) effectively address structural, systemic and intersecting inequities;

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[16] AHRC & First Nations Co, *An Anti-Racism Framework: Voices of First Nations Peoples First Nations Consultations for the Australian Human Rights Commission, 2024* <https://humanrights.gov.au/__data/assets/file/0019/47314/National_anti-racism_framework_first_nations_consultations.pdf>; Australian Human Rights Commission, *The National Anti-Racism Framework: A roadmap to eliminating racism in Australia*, 2024 <https://humanrights.gov.au/__data/assets/file/0021/47334/NARF_Full_Report_FINAL_DIGITAL_ACCESSIBLE.pdf>.

[17] Recommendation included, for example, in: *The National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia, 12*; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Executive Summary, Our vision for an inclusive Australia and Recommendations,* 64. While these are national reports the recommendations are equally relevant to state/territory anti-discrimination laws.

[18] Recommendation included, for example, in *An Anti-Racism Framework: Voices of First Nations Peoples – First Nations Consultations for the Australian Human Rights Commission,* 2024, 54.

c) effectively address misidentification of the person most in need of protection; and

d) apply a social and systemic entrapment framework.

Recommendation 2

Embed a social and systemic entrapment framework in legislation, Standard Operating Procedures, Codes of Practice, policy, Prosecutorial Guidelines, Bench Books and the Bugmy Bar Book.

Policy Objectives

Q1: At this point in the reform, are the policy objectives of the reform still valid?

31. The following policy objectives are outlined in the Discussion Paper:

    - *strengthen the criminal justice response to non-physical forms of domestic abuse and recognise that domestic abuse is commonly experienced as connected patterns of both physical and nonphysical behaviour, and to protect victim-survivors from that abuse and hold perpetrators to account*
    - *ensure the offence captures only conduct of the very serious standard that deserves criminal sanction and avoids overreach – particularly for First Nations communities and CALD communities*
    - *prevent the misidentification of victim-survivors as perpetrators of coercive control*
    - *raise public awareness of what coercive control is and what it looks like.*

32. Additional policy objectives outlined in the Second Reading Speech include:

    - *shift[ing] the lens of the criminal law from individual acts of offending to a course of continuous or repeated behaviour.*[19]
    - *mak[ing] sure we are not placing the people we seek to help at risk of further harm or disproportionately impact vulnerable community members.'*[20]
    - *making it easier for victims to get help and access legal protections.*[21]
    - *Improving the enforcement and prosecution of domestic abuse.*[22]

[19] NSW Parliamentary Debates, Legislative Assembly, Second Reading Speech, *Hansard*, 12 October 2022, 9046 (The Hon Mark Speakman, Attorney General) (**Second Reading Speech**) <https://www.parliament.nsw.gov.au/parliamentary-business/hansard/hansard-full-details?id=HANSARD-1323879322-127842&section=HANSARD-1323879322-127845>.
[20] Ibid.
[21] The then Attorney General citing the Joint Select Committee on Coercive Control, Ibid; See also Statement of Public Interest, 8 November 2022, 3 <https://files.parliament.nsw.gov.au/fileapi/ParlFiles/GetArtifact?serverRelativeUrl=%2Fbill%2Ffiles%2F4024%2FSPI%E2%80%94Crimes%20Legislation%20Amendment%20(Coercive%20Control)%20Bill%202022.pdf>.
[22] Second Reading Speech, 9046.

- *[K]eep[ing] the focus on the perpetrator's actions and accountability for their behaviour.*[23]
- *Provide further protections to victim-survivors of domestic and family violence.*[24]

33. We believe the policy objectives are still valid but are not being achieved to the full extent they could and should be.

Better recognition of non-physical forms of domestic abuse

34. We acknowledge the new coercive control offence empowers police, the NSW Office of the Director of Public Prosecutions (**ODPP**) and the courts to better recognise and respond to non-physical forms of coercive control and patterns of coercive control. However, the latest available BOCSAR data, further statistics within the Discussion Paper, as well as what we are seeing in our practice, suggests there is a considerable way to go in successfully implementing this policy aim.

35. According to BOCSAR reports from 1 July 2024 to 31 December 2025, there have been:

- 473 recorded incidents of coercive control, on average each '*incident*' includes '*four distinct controlling behaviours*' with the five most common behaviours reported being non-physical forms of abuse:
    i. Harassment, monitoring or tracking (263)
    ii. Threats and intimidation (252)
    iii. Financial abuse (248)
    iv. Shaming, degrading or humiliating, (217) or
    v. Social isolation or cultural abuse (210).
- Low number of reporting coercive control behaviours in some Police Area Commands and Police Districts.

36. While non-physical forms of coercive control are among the most common behaviours reported, we consider these to be low numbers that are not reflective of the prevalence of these forms of domestic abuse.

37. The Discussion Paper provides more information about the types of behaviour captured in court documents which include non-physical forms of coercive control. Behaviour captured in early prosecutions included: isolation; threats; economic and financial abuse; sexual abuse and sexual coercion; behaviours that shame, degrade and humiliate; and harassment and monitoring.

38. The Discussion Paper provides further data of 41 charges proceeding as of 17 June 2026, with four matters proceeding by way of a guilty plea, three in the Local Court and one in the District Court. Further, the first trials have been listed in the District Court in June 2026 but have not been finalised at the time of publishing the Discussion Paper.

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[23] Ibid 9049.
[24] Ibid 9055.

39. The lack of access to decisions, analysis of transcript reviews and data about the inclusion of non-physical forms of coercive control in ADVOs, such as Order 11 or reliance on the mandatory Order 1, and extent to which breach of ADVOs is prosecuted on the basis of non-physical forms of coercive control constrains an assessment of effectiveness.

40. We have very recently been made aware of the publishing of a Local Court sentencing decision on coercive control: *R v Fairleigh* [2026] NSWLC 2.

41. We warmly welcome the publishing of this decision and strongly recommend further consideration of ways to ensure Local Court decisions relating to coercive control are published. We understand the Department of Communities and Justice is undertaking a review of coercive control transcripts and recommend the findings of this transcript review be publicly available, with a further opportunity to provide submissions once the review is available.

Recommendation 3

Further consider ways to ensure more Local Court decisions that relate to coercive control are published.

Recommendation 4

Make the findings of the coercive control transcript review publicly available and, once published, provide an opportunity to make further submissions.

42. We welcome BOCSAR developing further reports on apprehended domestic violence orders.[25] These reports are informative but do not provide information on the content of Order 11 or the extent to which breach of ADVOs are being prosecuted in response to the continuation of non-physical forms of coercive control. We continue to recommend further consideration of how this data can be collected and published.

Recommendation 5

Further consider how data about ADVOs, including Order 11 and consideration of non-physical forms of coercive control, as well as breaches of ADVOs relating to non-physical forms of coercive control, can be collected and published.

43. We recognise and commend the awareness raising campaigns that have been developed in consultation with Coercive Control Reference Groups and have largely focused on non-physical forms of coercive control.

[25] See, for example, NSW Bureau of Crime Statistics and Research, Apprehended Violence Orders <https://bocsar.nsw.gov.au/topic-areas/apprehended-violence-orders.html>.

44. We note the publishing of the *Coercive Control Campaign Report* in February 2025.

45. The report states that '*2 in 5 respondents **claimed** to know what coercive control meant*' prior to the advertising campaign with only 1 in 5 correctly identifying at least one aspect of coercive control (emphasis added).[26]

46. Following the awareness raising campaign '*1 in 2 people now **claim** to have heard of coercive control and understand what it means*' (emphasis added). The report further states:

> *this increased level of understanding is validated by an increase in the number of the target audience who can also identify at least one possible aspect of coercive control… increasing from 21% pre campaign to 33% post campaign.*[27]

47. It is important to go beyond what people 'claim' to know in order to ensure an understanding of coercive control.

Domestic abuse as connected patterns of both physical and non-physical behaviour

48. Without access to court transcripts, court decisions or further information about the prosecution of the new offence, we are limited in our comments in relation to the coercive control offence.

49. We are deeply disappointed that the introduction of the definition of 'domestic abuse' into the *Crimes (Domestic and Personal Violence) Act* does very little work and so its educative role is very limited. We discuss this further at Question 10.

50. We commend BOCSAR providing regular updates in relation to coercive control. However, we are concerned about the use of the word 'incident' in the BOCSAR Coercive Control Monitoring reports. This language risks reinforcing an incident-based approach to policing domestic and family violence which these reforms seek to change. We recommend a different term be adopted, such as 'reports'.

Recommendation 6

Replace the term 'incidents' with the term 'reports' in BOCSAR Coercive Control Monitoring reports.

Prevent the misidentification of victim-survivors as perpetrators of coercive control

51. While it is early in the prosecution of the coercive control offence, based on the limited data available and the narrow application of the offence, it is likely that prosecution of victim-survivors of coercive control as offenders is minimal.

[26] Department of Communities and Justice, *Coercive Control Campaign Report* (February 2025) 4.
[27] Ibid 8-9.

52. However, it is an arbitrary distinction that there is a policy aim to prevent misidentification of victim-survivors as perpetrators of the coercive control offence which does not extend to all domestic violence offences and ADVO applications. The problem of misidentification and the efficacy of the coercive control reforms are inextricably linked. A central purpose of recognising coercive control in law was to educate police and the criminal legal system to identify domestic abuse as a pattern of behaviour, rather than a series of isolated incidents. Persistent misidentification represents a failure to achieve this reform objective.[28]

Making it easier for victim-survivors to get help

53. We recognise the coercive control offence requires Police to undertake resource intensive investigations, which in turn means it takes time before a charge for the stand-alone course of conduct of abusive behaviour is laid. We acknowledge that the four matters mentioned in the Discussion Paper that have been finalised to date have proceeded with guilty pleas and the benefit to victim-survivor in not being exposed to potentially days long cross-examination. It would be useful to better understand these matters through the sharing of redacted agreed facts and sentencing remarks. We commend the publishing of *R v Fairleigh* [2026] NSWLC 2.

54. We are concerned that the average 188-day timeframe from reporting to the laying of a coercive control charge and resource intensity of prosecuting these offences has resulted in few prosecutions, leaving many victim-survivors without the help they may need.

55. We are also concerned that, while the criminal law is seeking to better recognise and respond to non-physical forms of coercive control, this is not accompanied by better recognition of non-physical forms of coercive control within the Victims Support Scheme.

56. Given the awareness raising campaigns have largely focused on non-physical forms of coercive control there is a community expectation that people subjected to non-physical forms of coercive control will get the help they need, including access to all components of Victims Support.

57. We are deeply concerned by the practice at Victims Services that, following a determination that does not find in favour of the applicant for an Immediate Needs Support Package, their counselling is also withdrawn. We do not consider this to be trauma-informed practice. We reiterate earlier recommendations to amend the *Victims Support Act 2013* to enable victim-survivors of non-physical forms of coercive control to access all parts of the Victims Support Scheme.

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[28] We note 12,439(24%) of ADVO applications in 2025 were withdrawn or dismissed before hearing; 21% of ADVO defendants in 2025 identified as First Nations, with almost one quarter (24.8%) of women defendants identifying as First Nations; adult female defendants are up 10% per year as a 10 year trend compared to 4% for an adult male defendant; 16.8% of adult women listed as a protected person identify as First Nations: NSW Bureau of Crime Statistics and Research, *Apprehended Domestic Violence Orders in NSW (*June 2026) <https://bocsar.nsw.gov.au/documents/topic-areas/advo/ADVO_Infographic_-_December_2025.pdf>.

Recommendation 7

Amend the *Victims Support Act 2013* to enable victim-survivors of non-physical forms of coercive control to access all parts of the Victims Support Scheme.

Impact on First Nations People, CALD People and LGBTQIA+ People

Q2: Are there any adverse impacts from the criminalisation of coercive control on First Nations people, CALD Communities and LGBTQIA+ people

58. First Nations colleagues consistently raise that the language of 'coercive control' and 'domestic abuse' does not resonate with them or our First Nations clients. They prefer the terms 'domestic and family violence'.

Recommendation 8

Test the language that best resonates with victim-survivors to describe their experiences of domestic and family violence and abuse.

59. The Discussion Paper acknowledges feedback from Coercive Control Reference Groups, including the First Nations Coercive Control Reference Group, has highlighted gaps in the awareness raising campaigns and the need for further work to engage more effectively with First Nations communities.

60. The Discussion Paper also acknowledges that Aboriginal victimisation is lower for coercive control than other DFV offences, with 8% for coercive control compared to 18% for other domestic and family violence offences. The reasons for this are not clear.

    - Is the population of First Nations women lower in the Police Area Commands (**PACs)** and Police Districts (**PDs**) where charges for the coercive control offences have been laid?
    - Is it victim-survivors or the police or both victim-survivors and the police who are identifying coercive control?
    - Are there Aboriginal Liaison Officers working in the PACS and PDs where coercive control offences have been laid?
    - Is a police focus on '*extreme cases*' as '*exemplars of coercive control*' helping to explain why officers may be missing or failing to record much of the coercive control they encounter (as occurred in England)?[29]

[29] Andy Myhill, Kelly Johnson, Abigail McNeill, Emily Critchfield and Nicole Westmarland, "A genuine one usually sticks out a mile': policing coercive control in England and Wales', *Policing and Society*, Vol 33(4), 2023, 405 <https://www.tandfonline.com/doi/full/10.1080/10439463.2022.2134370>.

- To what extent does bias, judgment, racism, sexism and other intersecting structural inequities factor into stereotypes about victimhood and decisions about which matters to prosecute?[30]

61. This is an area to watch closely and further monitor.

62. We commend the research commissioned by the Office of the Women's Safety Commissioner: *Understanding Domestic and Family Violence Victim-Survivors' Current Experience of the NSW Justice System*. This research considers victim-survivors' experiences since the introduction of the coercive control reforms from 1 July 2024 and, importantly, is not limited to intimate partner violence.

63. We recommend providing a further opportunity to make submissions to this review following the publishing of this research.

Recommendation 9

Provide further opportunity to make submissions to this review following the publishing of research about victim-survivors' current experience of the NSW criminal legal system.

Mental element and extending to other relationships

Q4: Should the mental element of the coercive control offence be extended to include recklessness?

Q5: Should the criminal offence of coercive control apply to other relationships beyond current and former intimate partners?

64. We support the expansion of the offence to include recklessness and to extend beyond intimate partners to include family members, kin and relationships of dependence (to capture coercive control to which people with disability and older women are subjected).

65. However, our support for expansion is contingent on first embedding cultural and systems reform measures and milestones with clear timeframes and agencies and bodies who hold responsibility for implementation into NSW Plans, Strategies and other documents, as well as regular monitoring and reporting obligations.

Recommendation 10

Embed the cultural and systems reform outlined in Recommendation 1 prior to expanding the offence to include recklessness and relationships beyond intimate partners.

[30] Ibid.

Penalty

Q6: Are the penalty settings under the coercive control offence suited to the behaviours captured? If no, what should the maximum penalty be?

66. At paragraphs 78-98 we address our concerns about the under-recognition of sexual coercion as a common feature of coercive control. We urge consideration of how the coercive control offence can better capture patterns of sexual coercion.

67. The Discussion Paper notes that early coercive control prosecutions included 'sexual abuse and sexual coercion'. Beyond this, the extent to which sexual coercion is being included in coercive control charges and investigations is unclear. It is also unclear the extent to which, in sexual assault prosecutions, the new provision s 61HJ(1)(f) of the *Crimes Act* (concerning non-consent where a person participates due to coercion) is being utilised.

68. The interplay between the coercive control offence and s 61HJ(1)(f) warrants consideration. If the substantial difference in maximum penalty between coercive control and sexual assault (7 years versus 14 years) may contribute to a reluctance to include sexual coercion in coercive control prosecutions, this should inform consideration of whether the maximum penalty should be increased.

69. The nature of intimate partner sexual violence (**IPSV**) means that, in some circumstances, a coercive control charge may provide a more appropriate mechanism for capturing sexually coercive behaviour than requiring the prosecution to particularise a series of individual sexual assaults. Sexual coercion within intimate relationships may form part of a pattern of abuse occurring over an extended period, in which the victim-survivor's autonomy and capacity to refuse sexual activity are progressively eroded. Victim-survivors may also have difficulty recalling or particularising individual incidents and dates. The coercive control offence provides an important mechanism for capturing this pattern of conduct, particularly given the low rate at which intimate partner sexual violence results in standalone sexual offence charges.

Recommendation 11

Consider whether increasing the maximum penalty would help facilitate the inclusion of sexual coercion in coercive control prosecutions.

Non-exhaustive list of behaviours

Q 7: Should the non-exhaustive lists of behaviours under section 54F(2) of the Crimes Act and section 6A(2) of the CPDVA be aligned?

Q 8: Are any of the additional behaviours at 5.4.1 supported, or are there any further suggestions for behaviours to be recognised in the non-exhaustive list under section 54F?

70. Given the nature of coercive control is such that it is specifically individualised and targeted, it is not possible to list every example of coercive control. This raises the question of whether it is better to focus on a framework of 'relevant effects' as in Scotland,[31] or 'controlling impact' as in South Australia,[32] rather than a non-exhaustive list of examples. Our earlier submissions discuss this.

71. The benefit of a focus on 'effects' or 'impact' is that it may support broader consideration of how these effects or impacts may present for a particular individual.

72. The disadvantage of a non-exhaustive list is that, despite saying the list is not limited, it may have the effect of narrowing consideration of what can be included. Further, the more behaviours that are added to the list, the more it may be thought other behaviours not included have been deliberately excluded. This may result in the non-exhaustive list inadvertently becoming a checklist.

73. This needs further consideration.

74. If a non-exhaustive list of examples is retained, there must be greater alignment between the non-exhaustive list of behaviours included at section 54F(2) of the *Crimes Act 1900* and section 6A(2) of the *Crimes (Domestic and Personal Violence) Act 2007*.

75. We also recognise the important educative objective in including examples that reflect the lived experience of marginalised cohorts.

76. If additional examples are not explicitly included in the non-exhaustive list of examples, we recommend their inclusion in guidance materials.

Recommendation 12

Commission further research to understand if legislation that includes a focus on 'relevant effects' or 'controlling impact' is helping to shift policing and the criminal legal response away from incident-based policing of domestic and family violence.

[31] *Domestic Abuse (Scotland) Act 2018*, section 2(3), <https://www.legislation.gov.uk/asp/2018/5/section/2>.
[32] *Criminal Law Consolidation (Coercive Control) Amendment Act 2025,* Inserting s20B(2) into Division 7AAB of the *Criminal Law Consolidation Act 1935 SA*

Sexual violence, sexual abuse and sexual coercion

77. Sexually coercive behaviours are a core tactic of coercive control.[33] In a recent Australian survey, 68% of respondents who had experienced intimate partner violence had also been subjected to sexual violence (including sexual coercion) by this partner.[34] Internationally, research with women who have been physically assaulted by their partner has similarly observed sexual victimisation rates between 30% and 75%.[35]

78. These high prevalence rates accord with our experience working with women subjected to coercive control. However, the last BOCSAR coercive control monitoring report showed that sexual violence was only identified in 17% of recorded coercive control matters (and sexual offences were only charged in 3% of reported matters).[36] We anticipate that, if sexual coercion was being accurately identified, this figure would be significantly higher.

79. As discussed at paragraph 65, the nature of IPSV means that in some circumstances a coercive control charge may be the most appropriate mechanism for addressing sexually coercive behaviour. However, we are concerned that sexual coercion is presently being under-recognised and that there may be barriers to prosecuting it as a part of a 'course of conduct' of coercive control.

80. Prosecuting sexual violence as coercive control can provide a much-needed response to the shortcomings of incident-based standalone sexual offences in addressing IPSV. Of course, investigating and prosecuting sexual violence as coercive control necessitates a different approach. It is important investigations are undertaken by detectives with specialist sexual violence expertise and to adopt the same victim-led approach as sexual offence investigations. However, a very different conceptual lens to incident-based sexual offences is required.

81. Standalone sexual offence prosecutions focus on whether consent was present in relation to each individual act, leading to intense scrutiny of the minutiae of every incident and of the complainant's behaviour. Traditionally, this has led to undue emphasis on matters such as forensic evidence, 'immediate complaint', resistance and injuries. A coercive control prosecution provides an opportunity to move beyond this incident-by-incident approach. Rather than requiring each sexual encounter to be dissected, the focus should be on the cumulative impact of the accused's conduct on the victim-survivor's autonomy and capacity to make free and voluntary choices over time.

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[33] For an overview of common forms of IPSV, see: Laura Tarzia et al, 'Development and Validation of the Intimate Partner Sexual Violence Scale (IPSVS): A Multi-Dimensional Scale to Measure Sexual Violence in Intimate Relationships' (2025) 40(17–18) *Journal of Interpersonal Violence* 4082.
[34] Ibid 4091.
[35] Peta Cox, *Sexual Assault and Domestic Violence in the Context of Co-Occurrence and Re-Victimisation: State of Knowledge Paper* (ANROWS Landscapes No Issue 13, October 2015) 27.
[36] NSW Bureau of Crime Statistics and Research, *Coercive Control Monitoring Report: December 2025* (Statistical Report, BOCSAR, March 2026).

Recognising sexual coercion within the coercive control offence

82. It is vital that sexual coercion is named and explicitly made visible in the coercive control offence. this means there must be reference to sexual violence in s 54F(2) of the *Crimes Act 1900*.

83. Our preference is to adopt the language of 'sexual violence, sexual abuse or sexual coercion'. This is not to imply any gradation of the seriousness of these behaviours, nor to imply that 'sexual abuse' and 'sexual coercion' are not forms of 'sexual violence'. Rather, it is to recognise that different language resonates with different groups.

84. The inclusion of all three terms may also support a shift away from incident-based understandings of IPSV. While 'sexual violence' may be understood by some as referring to discrete acts of violence, 'sexual abuse' and 'sexual coercion' may more readily convey the pattern-based, ongoing and controlling conduct that the coercive control offence is intended to address. This also aligns with the definition of 'domestic abuse' within the *Crimes (Domestic and Personal Violence) Act 2007*, which includes 'behaviour that is sexually abusive, coercive or violent' (s 6A(2)(b)).

85. We reiterate that naming sexual violence, sexual abuse and sexual coercion as forms of abusive behaviour makes the harm visible, may encourage police to ask about sexual violence and helps to reduce stigma and normalise talking about sexual violence.

86. We also note that other jurisdictions that have criminalised coercive control have included explicit reference to sexual violence. For example:

    - In Queensland, for the purposes of the coercive control offence, 'domestic violence' includes behaviour that is 'sexually abusive', including 'coercing a person to engage in sexual activity or attempting to do so' (*Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld), s 334B).
    - In South Australia, the definition of behaviour that has a 'controlling impact' includes behaviour that 'restricts ... the other person's ability to make choices with respect to their body (including, but not limited to, choices in relation to their reproductive options ... or sexual activity)' (*Criminal Law Consolidation (Coercive Control) Amendment Act 2025 (SA)*, s 20B(2)(d)).
    - In Canada, under soon-to-commence amendments to the *Criminal Code*, 'coercive or controlling conduct' includes 'coercing or attempting to coerce the intimate partner to engage in sexual activity' (s 264.01(2)(b)).
    - In the United Kingdom, the *Controlling or Coercive Behaviour: Statutory Guidance Framework*, which defines controlling or coercive behaviour, includes 'sexual assault, coercion or abuse, and threats of sexual assault' (at [32]).
    - In Scotland, 'abusive behaviour' for the purposes of the coercive control offence includes 'sexual violence' (*Domestic Abuse (Scotland) Act 2018*, s 2(4)).

Recommendation 13

Explicitly name sexual violence, sexual abuse and sexual coercion as abusive behaviours in section 54F of the *Crimes Act 1900*.

Other necessary legislative measures

87. Explicit recognition of sexual coercion as a common tool of coercive control, must not result in a routine 'downgrading' of sexual violence within intimate partner relationships to a lesser offence than other forms of sexual violence. We refer to our earlier comments (at paragraphs 67-70) that aligning the maximum penalties for coercive control and sexual assault warrant consideration.

88. As per the ODPP *Prosecution Guidelines*, charges must be selected that '*adequately and appropriately*' address the criminality alleged. There may therefore be a reluctance to utilise a coercive control charge in response to sexual violence that could potentially support a sexual assault charge. Explicitly naming sexual coercion as an abusive behaviour and aligning the maximum penalties for coercive control and sexual assault, may increase willingness to utilise a coercive control charge in appropriate cases.

89. This alignment of penalties may also help address any concerns regarding the application of the *De Simoni* principle (pursuant to which a sentencing judge cannot take into account circumstances of aggravation which would have warranted a conviction for a more serious offence).[37]

90. Another mechanism for making sexual coercion visible as a part of the 'course of conduct' for a coercive control prosecution, whilst also allowing it to be recognised a standalone offence, would be adopting similar provisions to South Australia. Section 20C(5) of *Criminal Law Consolidation (Coercive Control) Amendment Act 2025* (SA) provides that:

> (5) *If—*
>
> *(a) a person engages in behaviour that makes up part of a course of conduct alleged in proceedings for an offence against this section; and*
>
> *(b) the behaviour also constitutes the elements of a different offence,*
>
> *the person may—*
>
> *(c) be charged with an offence against this section and the other offence (whether in the same information or separately); and*
>
> *(d) be convicted of, and sentenced for, an offence against this section and the other offence (provided that a court sentencing a person for an offence in these circumstances must take into account any other sentence that has been imposed on the person in respect of the same behaviour).*

[37] *The Queen v De Simoni* (1981) 147 CLR 383 at 389.

91. This may be contrasted against the current NSW position, whereby a person cannot be subsequently convicted of a standalone offence if it formed part of a course of conduct for a coercive control prosecution (s 54H specifically notes that '*This Division does not affect the common law in relation to double jeopardy*'). We acknowledge that these are complex issues and urge that they would benefit from dedicated stakeholder discussions, including at the upcoming statutory review Forum on 25 September.

Recommendation 14

Take additional legislative measures to ensure that sexually coercive behaviour can be effectively relied upon as part of a coercive control prosecution, notwithstanding that the conduct may also constitute a standalone sexual offence. This may include, for example, increasing the maximum penalty for coercive control and/or modifying the application of the common law in relation to double jeopardy.

Public education and agency training on sexual coercion is required

92. In addition to legislative measures to improve recognition of sexual coercion, we urge that sexual coercion must be a central focus of both agency training and public education for the next review period (this training and education will also be relevant for the purposes of the recent consent reforms, given the contents of s 61HJ(1)(f)) of the *Crimes Act 1900*.

93. Despite decades of progressive 'rape myth-busting' reforms, the criminal response to sexual violence has remained stubbornly focused on features such as physical force, resistance, and 'immediate complaint'. These features may be particularly unlikely to be present in situations involving IPSV, which '*often involves verbal or emotional coercion, threats or blackmail rather than the use of "force"*'.[38] Victim-survivors of IPSV continue to face heightened barriers to justice, with IPSV commonly viewed as '*both less serious and more justifiable than sexual assault by a stranger or acquaintance*'.[39] Indeed, '*the greater the familiarity between the victim/survivor and perpetrator, the greater likelihood that reports will be considered a lie or misinterpretation*'.[40]

94. To effectively identify, investigate and prosecute IPSV, criminal legal system professionals require a sound understanding of the dynamics of sexual coercion. We urge that this should be a focus of the agency training that is undertaken during the next review period.

Recommendation 15

Specifically focus on sexual coercion in the agency training undertaken for the next review period (per ss 54J(3)(b) and 583(6) of the *Crimes Act 1900*).

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[38] Laura Tarzia and Kelsey Hegarty, '"He'd Tell Me I Was Frigid and Ugly and Force Me to Have Sex with Him Anyway": Women's Experiences of Co-Occurring Sexual Violence and Psychological Abuse in Heterosexual Relationships' (2023) 38(1–2) *Journal of Interpersonal Violence* 1299.
[39] ANROWS (n 33) 3.
[40] Ibid.

95. Low recorded rates of intimate partner sexual violence are also heavily influenced by victim-survivors' perceptions of the criminality (or lack thereof) of sexual coercion. ANROWS has observed that: '*Women tend to only report severe IPSV to the police, with studies finding a zero percent report rate for sexual coercion (which is unsurprising given that most women do not believe that sexual coercion is a crime).*'[41]

96. We commend the NSW Government's public education campaigns that accompanied the coercive control and affirmative consent reforms. These campaigns recognised that legislative reform alone is insufficient to change community understanding and reporting behaviours. For the next review period, we urge that sexual coercion must be a central focus of public education efforts. This education must include clear messaging that sexual coercion within intimate relationships is a form of sexual violence and a criminal offence.

Recommendation 16

Specifically focus on sexual coercion in public education campaigns over the next review period.

97. We refer to our submissions to the Statutory Review of the *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021*, dated 17 December 2025 and 31 July 2026, which proposed further legislative mechanisms (such as jury directions and amendments to sexual experience evidence restrictions) to address sexual coercion within intimate partner relationships in sexual offence proceedings.

Training, Education and Awareness-raising: Seeing the Whole Picture

Q10: Do you have any feedback or views about the application of the definition of domestic abuse under section 6A of the *Crimes (Domestic and Personal Violence) Act 2007*?

98. In the Second Reading Speech then Attorney General the Hon Mark Speakman SC MP referred to findings of the Select Committee that:

> *NSW was an outlier among Australian jurisdictions because it did not have a statutory definition of domestic abuse in its civil regime'.... [which] creates uncertainty and the risk of confusion as to what constitutes domestic abuse under the law. The committee heard about*

[41] ANROWS, *Research Synthesis: Intimate Partner Sexual Violence* (Report, 2019) 4.

> *benefits of introducing such a definition, including that it would enable a common baseline for health, education, child protection, policing, corrections and legal processes.*[42]

99. Based on the experience of the women we support and anecdotal feedback, the introduction of a definition of domestic abuse in the *Crimes (Domestic and Personal Violence) Act 2007* has had little educative impact.

100. The definition does little work. It does not of itself ground an apprehended violence order. It is only recently that the definition has been incorporated into the *Residential Tenancies Act* in relation to domestic violence and renting reforms.

101. We do not support a definition of domestic abuse in which '*a single act*' of '*violent or threatening behaviour*' is '*domestic abuse*'. Such a definition is devoid of context and encourages continued focus on incidents. If such a definition becomes the basis for an apprehended violence order it will allow and inadvertently continue to foster continued misidentification of the person most in need of protection.

Amendment to the definition of domestic abuse and grounding an ADVO

102. We believe the definition will play a significant educative role if it is amended to provide a contextual understanding of domestic abuse – that is, considering the underlying dynamics of power, control and/or causing fear, and considers behaviours in the context of the whole relationship.

103. The Australian Law Reform Commission and NSW Law Reform Commission recommended:

> State and territory family violence legislation should provide that family violence is violent or threatening behaviour, or any other form of behaviour, *that coerces or controls a family member or causes that family member to be fearful.*[43]

104. The Commissions quoted from organisations submissions who supported this contextual approach, drawing on the reasoning for support, including:

- *it is essential that the definition used is consistent with understanding the coercive control elements of family violence and shifts beyond the limited incident based approach commonly used in legal settings;*
- *understanding the dynamics of the use of power and control is critical to understanding family violence; and such a definition would perform an educative role;*
- *it allows new forms of behaviour to be included, provided that they meet this definition;*
- *having a definition based on the dynamics and impact of family violence avoids the technicalities of definitions becoming an obstacle to protection, especially given that a*

[42] Ibid 9051.
[43] Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence- A National Legal Response*, (2010) Recommendation 5-1 <https://lawreform.nsw.gov.au/documents/Publications/Reports/Report-128.pdf >.

> *common form of family violence is the use of strategies of intimidation and symbolic actions which have specific meaning for the victim but appear relatively harmless to others.*[44]

105. The Commissions made this recommendation, drawing on recommendations of the Victorian Law Reform Commission's (**VLRC**) *Review of Family Violence Law Report*. In that report the VLRC said:

> *Family violence involves the use of different forms of abuse to control, coerce and dominate another person…. An effective response to family violence must recognise the power imbalances which exist in our community, including the power imbalances which affect women in their relations with men, Indigenous women, women from CALD backgrounds and people with disabilities.*[45]

106. The VRLC recommended that in making decisions, '*courts should treat the safely of victims of family violence as paramount*' and should have regard to a number of matters, including:

> *The particular characteristics and dynamics of family violence, including that family violence is predominantly perpetrated by men against women and children*.[46]

107. This contextual framing makes visible the predominant aggressor by '*focus[ing]on the perpetrator's actions and accountability for their behaviour*'.

108. Section 4AB of the *Family Law Act 1975* provides a contextual definition:

> *family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family, or causes the family member to be fearful.*

109. We recommend the NSW definition of domestic abuse adopt the same contextual definition as the *Family Law Act.*

Recommendation 17

Amend s 6A of the *Crimes (Domestic and Personal Violence) Act 2007* to:

a) Include a definition that domestic and family violence and abuse means:

violent, threatening or other behaviour by a person (**first person**) that coerces, controls or causes another person (**second person**) to be fearful or causes the second person to fear for the safety of others. Person 1 and 2 are in a domestic relationship.

b) Include consideration of behaviours in the context of the whole relationship.

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[44] Ibid paragraph 5.71.
[45] VLRC, *Review of Family Violence Law Report,* (2006) paragraph 2.96, <https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/ReviewofFamilyViolenceLawsReport.pdf>. We would also add young women and older women, women in regional, rural, remote and very remote areas and LGBTQIA+ communities.
[46] Ibid Recommendation 4.

110. We also recommend a shift away from grounding an ADVO application on the basis of fear of commission of a domestic violence offence.

111. We are concerned grounding an ADVO on the basis of fear of commission of a domestic violence offence contributes to a focus on incident-based policing of domestic abuse. This contributes to the increasing rates of women being prosecuted for domestic violence offences and defending ADVOs in circumstances when they are the person most in need of protection as discussed earlier.

112. We recommend an ADVO be made on the basis of domestic abuse occurring or likely to occur.

113. We further recommend the person most in need of protection has standing to be heard as occurs in Victoria.[47]

Accurate identification of the person most in need of protection and limiting cross applications

114. We further recommend legislative guidance to help police and the courts to accurately identify the person most in need of protection[48] and limit the making of cross or dual ADVOs to exceptional circumstances.[49]

115. We commend the approach in Victoria to commence in November 2026 which mandates police and/or the courts consider misidentification factors at each step of the protection order application process – before police issue a Family Safety Notice, before the making of an interim and final order and discretion for the court to consider misidentification factors prior to the making of a consent order.[50]

Recommendation 18
Amend the *Crimes (Domestic and Personal Violence) Act 2007* to:

a) Enable ADVOs to be made on the basis of domestic abuse occurring or likely to occur;

b) Give standing to the person most in need of protection;

c) Include guidance to help police and the courts to accurately identify the person most in need of protection;

d) Include mandatory consideration of misidentification of the predominant aggressor factors by police and the courts prior to the making of provisional orders, interim orders or final orders and discretion to consider misidentification factors at the making of consent orders; and

e) Limit the making of cross or dual applications to exceptional circumstances.

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[47] *Family Violence Protection Act 2008 Vic*, section 23.
[48] See for example, the *Domestic and Family Violence Protection Act 2012 Qld* which includes reference to person most in need of protection in s4(2)(e) of the Principles and s22A.
[49] *Domestic and Family Violence Protection Act 2012 Qld,* Part 3, Division 1A, s41G.
[50] *Justice Legislation Amendment (Family Violence, Stalking and Other Matters) Act 2026 Vic,* Division 3 Subdivision 3 <https://www.legislation.vic.gov.au/as-made/acts/justice-legislation-amendment-family-violence-stalking-and-other-matters-act-2026>.

116. We also recommend guidelines that require Police and the NSW ODPP to document their consideration of the public interest test in prosecutions in which there is a risk of misidentification.

Recommendation 19

Amend guidelines to require Police and the NSW ODPP to document their consideration of the public interest test in prosecutions in which there is a risk of misidentification.

Recognition of non-physical forms of domestic abuse in ADVOs

117. Since the commencement of the coercive control offence on 1 July 2024, we are aware of the making of only a few Order 11 specifically focused on non-physical forms of coercive control.

118. We are surprised by this given BOCSAR data highlights the five most common coercive controlling behaviours are non-physical forms.

119. Given the low number of AVOs which include a specifically drafted Order 11, it is possible there is reliance on the mandatory order 1 to capture non-physical forms of coercive control. This order outlines the defendant must not:

    (a) assault or threaten them,

    (b) stalk, harass or intimidate them,

    (c) intentionally or recklessly destroy or damage any property or harm an animal that belongs to them or is in their possession.

120. It would be useful to understand the extent to which there are charges laid in relation to a breach of Order 1 for non-physical forms of violence.

121. Given we propose that an ADVO is grounded on the basis of domestic abuse this would also be a good opportunity to update the ADVO application form to better recognise and include non-physical forms of coercive control.

122. Updating the ADVO application in this way has an educative benefit and supports a consistent approach by the police and courts to recognition of non-physical forms of coercive control.

Recommendation 20

Amend the *Crimes (Domestic and Personal Violence) Act 2007* and the *Crimes (Domestic and Personal Violence) Regulation 2025* to better recognise non-physical forms of coercive control.