

Response to Coercive Control Discussion Paper

Seniors Rights Service

Attention: Parliamentary Joint Select Committee on Coercive Control

Parliament of New South Wales

Thank you for providing an opportunity for our organisation to highlight the experiences of service users in relation to coercive control and to add to the discussion regarding its potential criminalisation. This submission addresses those questions in the *Discussion Paper* that are most relevant to the experience of our service and our client group.

Seniors Rights Service is a community legal centre that regularly advises and assists older people experiencing abuse through our legal, advocacy and social work services. Our organisation is also a member of the NSW Women's Alliance which allows us to promote and lobby for the rights of older women experiencing abuse.

The intersectional factor of being older can significantly increase a person's vulnerability to abuse and exploitation, and older women represent over 70% of all older victims of abuse in Australia (AIHW 2019). Helpline data found that over 65% of elder abuse is perpetrated by a son or daughter of that person (Nari and SRV 2015).

Older women have lived through an era with few supports and avenues to leave an abusive relationship in the past. Abuse may have become an entrenched part of their life. The impact of this abuse on an older woman's health, including mental health and subsequently their life span is significant. Whilst women may experience less intimate partner violence as they age, abuse and control can continue into their later years by adult children or grandchildren (NARI and SRV 2015).

There are significant barriers for older people to disclose abuse by an adult child or grandchild and they require considerable psychological and practical support to do so and to take steps. They may be reliant on the abusive family member for housing and for care and they may fear consequences for themselves and the perpetrator. They may not have knowledge of or access to money, mobile phones, ATMs or OPAL cards. Cultural norms and arrangements can be additional barriers for older women from diverse backgrounds (Nari and SRV 2015).

Clients disclose patterns of psychological and emotional abuse by a family member, usually one upon whom they rely for care. This is frequently accompanied by financial abuse.

These abusive and controlling behaviours by family members can include:

- Isolating the older person from family, friends and services by:
 - denying access to medical care or home care services;
 - denying access to telephones or monitoring calls;
 - denying access to their money;
 - characterising them to friends or family as having severe cognitive decline and thus being unable to speak, receive visits or read letters.

- Intimidation and harassment such as:
 - ongoing verbal abuse,
 - standing over an older person,
 - staying in the older person's home without contributing financially and refusing to leave when asked,
 - threatening to place the older person in an aged care facility,
 - emotional blackmail such as threats of self-harm,
 - "Gaslighting" with comments such as "You are losing it" (playing upon the older person's fears of cognitive decline) and make them reluctant to call the abuser to account for failure to meet an obligation ("But I did do that, don't you remember? Your memory is so bad nowadays.") or challenge their behaviour ("That never happened. You're just imagining things. Old people get like that.").
- Neglect and withdrawal of care, including:
 - not helping with bathing, dressing or other personal care,
 - withholding access to glasses, hearing aids or walking aids,
 - withholding suitable clothing, leaving only nightclothes,
 - withholding food, drink or medications.

Question 1: What would be an appropriate definition of coercive control?

We refer to the *Discussion Paper's* description of the conduct, and the examples provided in the Scottish offence, that can amount to coercive control. We would support a definition of coercive control that covered this conduct as this is the sort of behaviour that we see impacting our older clients.

The Scottish offence limits the relationships between the perpetrator and the victim to partners and ex-partners. A greater range of relationships should be included as we see older people being subjected to coercive control by their adult children, grandchildren and other relatives or live in carers, as well as by intimate partners. We make further comments in relation to this point in Question 9.

We refer to the Scottish offence which adopts the objective reasonable person standard in assessing whether the conduct has caused one of the above defined effects.

The Scottish offence and its reasonable person test more effectively captures the coercive conduct we see exhibited towards older persons.

We prefer this test to the English/Welsh test, as described in the *Discussion Paper* – which requires that there be established some evidence of distress or alarm to the older person affecting the older person's day to day activities. The reasons for this are set out below.

When considering an appropriate definition, we refer to the issue of an older person living with dementia or cognitive impairment who may be a victim/survivor of coercive control by an abusive carer or family member. This group of older people is particularly vulnerable however may not present with fear or with outward signs of distress, due to their cognitive disability.

In addition, an older person may be dependent on the perpetrator for services or dependent on outside services and it is difficult to establish that the conduct has caused serious distress or alarm affecting the older person's day to day activities, as the older person may have no other day to day activities other than being at home.

The reasonable person test under the Scottish offence allows for an objective assessment as to the conduct having the effects set out in the Scottish offence (such as isolation from friends and relatives, creation of dependency etc).

Question 9: If an offence of Coercive Control was introduced in NSW, how should the scope of the offence be defined, what behaviours should it include, and what other factors should be taken into account?

We refer to our response in Question 1.

We consider that the offence should cover coercive control occurring in the context of a range of relationships beyond intimate partner relationships. We suggest that the following types of "domestic relationship" as defined in s5 of the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* should be included:

(1) For the purposes of this Act, a person has a **domestic relationship** with another person if the person—

- (a) is or has been married to the other person, or
- (b) is or has been a de facto partner of that other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household as the other person, or
- (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person (subject to section 5A), or
- (g) is or has been a relative of the other person, or
- (h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

We have omitted the relationship defined in subsection (1)(e) of this Act. This subsection is as follows:

(e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*),

We note that this subsection would cover residents of aged care facilities. Whilst we support this definition of domestic relationship for the purposes of the *Crimes (Domestic*

and Personal Violence) Act, we do not think it is necessary for the protection of aged care residents from coercive control. We consider it unlikely that a resident of an aged care facility would suffer coercive control at the hands of another resident who was not covered by another subsection of the definition.

We also note that for the purposes of the *Crimes (Domestic and Personal Violence) Act 2007*, two people have a domestic relationship with each other if they have both had a domestic relationship of a kind set out in subsection (1)(a), (b) or (c) with the same person. Thus, a woman's partner and ex-partner would have a domestic relationship for the purposes of that Act, even if they had never met. We consider it unnecessary to extend the definition of "domestic relationship" in this way for the purposes of coercive control legislation.

We consider that the legislation should include provisions similar to s5A of the *Crimes (Domestic and Personal Violence) Act 2007*. These essentially set up a 'one way' domestic relationship between a person (a *dependant*) who is dependent upon the ongoing paid care of another person (a *paid carer*), whereby the relationship is said to exist for the purposes of any offence committed by the paid carer, but not for the purposes of an offence committed by the dependant against the carer.

Where the paid carer is also a relative or other person who would be categorised as in a domestic relationship under s5, this other relationship takes priority.

Question 7: What are the advantages and/or disadvantages of creating an offence of coercive control?

Advantages:

Criminalising coercive control would raise community awareness to patterns of behaviour and emotional and psychological abuse that could be domestic and family violence (DFV).

If a broader definition of a domestic relationship could be included, older victim/survivors would have a legal avenue available to them against elder abuse by other family members.

There is also the advantage of sending a clear message to the community that this form of abuse will not be tolerated.

Criminalising coercive and controlling behaviours could send a strong warning to family member perpetrators – a carrot and stick approach - thereby protecting older people from abuse.

Disadvantages:

There are already significant barriers for older women to report abuse, including language, cultural and age related vulnerabilities. We envisage the disadvantages of criminalising coercive control would only come about if the legislation and the supports around it were poorly implemented and resourced. The DFV system would be undermined and set up to fail if, for example, services and supports were not adequately funded or trained to respond.

Question 15: 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?

- Additional funding for DFV services to better respond to domestic and family abuse across the life span.
- Additional training to ensure first responders and health providers can identify and respond to abuse, including abuse and coercive control of older people.
- Substantial investment in primary prevention, for example:
 - Currently there is no formal screening for DFV for older women in health and community settings where they may be safe to disclose. Introduction of screening services for them at certain points in their lives as they age could assist in identifying and responding to DFV, including controlling and coercive behaviours. Suitable screening points may be during an Aged Care Assessment Team (ACAT) assessment or a visit to a geriatrician.
- Training and supporting Police Aged Crime Prevention Officers (ACPO) to identify and respond to coercive control of an older person by family members. We consider it especially important that such training recognises that a medical diagnosis of a cognitive impairment, such as dementia, does not automatically preclude a witness from being competent to give evidence.
- Funding the increased roll out of more Police ACPOs into each Police Area Command in NSW. (At time of writing, only 12 of these liaison roles are in place)
- Community awareness campaigns about coercive control that include abuse of older women.
- Expanding funding for evidence based best practice responses for older victim/survivors of abuse, such as health justice partnerships and Seniors Rights Service legal/social work program.
- Expand DFV emergency refuge options for older women. It is our understanding that there is currently only one women's refuge for older women in NSW.
- Targeted DFV services are needed for older victim/survivors who require health, legal and social supports, as well as short and long-term housing options.

SENIORS RIGHTS SERVICE

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References

Australian Institute of Health and Welfare 2019. Family, domestic and sexual violence in Australia: continuing the national story 2019. Cat. no. FDV 3. Canberra: AIHW.

Hill, T. and Katz, I., 2019. Insights into abuse of older people - analysis of Australian Bureau of Statistics datasets. Sydney: UNSW Social Policy Research Centre; Sydney.

NARI and SRV 2015. op. cit.; Ceallaigh Spike (2015) The EAPU Helpline: Results of an investigation of five years of call data, Elder Abuse Prevention Unit,

Queensland; NSW Elder Abuse Helpline and Resource Unit (2016) Annual Report 2015–2016, NSW EAHRU.