



issues backgrounder

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Criminalising coercive control in the context of domestic and family violence: key sources

Domestic and family violence is a [major social issue](#) in Australia and a key priority for governments. The current national policy is the [National Plan to Reduce Violence against Women and their Children 2010 – 2022](#). In August 2019, the Council of Australian Governments endorsed the [Fourth Action Plan](#) of this Plan. It explains that while there is no single central definition of domestic violence:

...the central element of domestic violence is behaviour motivated by gendered drivers of violence that can involve controlling a partner through fear, coercion and intimidation — for example by using behaviour that is violent and threatening. In most cases, the violent behaviour is part of a range of tactics to exercise power and control over women and their children, and can be both criminal and non-criminal.

The justice system responds to domestic and family violence in two ways. First, through the making of civil protection orders and their enforcement (knowingly breaching an order is a criminal offence). Second, through the prosecution of persons for other criminal offences. There is no discrete offence of domestic and family violence. Instead, perpetrators can be charged with a range of general criminal offences (e.g. assault). In most States and Territories there are no offences relating to emotional or psychological abuse except for the offence of stalking and intimidation. In Tasmania, the *Family Violence Act* contains offences of economic abuse, and emotional abuse and intimidation (enacted in 2004).

New offences in other countries: Three countries have recently introduced new offences to criminalise a course of behaviour involving non-physical abuse or a combination of physical and non-physical abuse. In 2015, a new offence of controlling or coercive behaviour was enacted in England (it also applies in Wales); this was followed in Ireland (2018) with the offence of coercive control; and Scotland (2018) with the offence of abusive behaviour. In the Scottish offence, examples of abusive behaviour are those that aim to: isolate the person from friends and relatives or other sources of support; control, regulate or monitor the person's day-to-day activities; or frighten, humiliate, degrade or punish the person.

Debate in Australia: These overseas developments have led to debate about enacting a similar offence in Australia. Some academics and stakeholders support the introduction of a new offence (e.g. McGorery and McMahon), while others have expressed concerns (e.g. Walklate and Fitz-Gibbon). Some major Australian inquiries into domestic and family violence have not recommended the creation of a

new offence: Victorian Royal Commission (2015); Queensland Special Taskforce (2015); and Australian and NSW Law Reform Commissions (2010).

Recent NSW developments: The NSW Domestic Violence Death Review Team’s [March 2020 report](#) recommended that the Department of Communities and Justice examine the extent to which existing NSW laws respond adequately to non-physical forms of domestic and family violence and to patterns, rather than incidents, of violence (Rec 9). The [NSW Government’s July 2020 response](#) stated that the Department had commenced a review to examine reform options.

On 24 September 2020, Anna Watson MP introduced into the NSW Legislative Assembly a Private Members Bill to criminalise coercive control: [Crimes \(Domestic and Personal Violence\) Amendment \(Coercive Control—Preethi’s Law\) Bill 2020](#). The Bill would create an offence of coercive control in a domestic relationship, with a maximum penalty of five years imprisonment. There is also an aggravated offence where children are involved, with a maximum penalty of 10 years imprisonment.

On 13 October 2020, the NSW Attorney-General, Mark Speakman, [announced](#) that the NSW Government would move this week to establish a Parliamentary Joint Select Committee inquiry to examine coercive control. The Department of Communities and Justice also released a [discussion paper](#), which “details key issues, which the Inquiry can use as a guide”.

Aim of this paper: This issues backgrounder provides a list of key sources that discuss the issue of criminalising coercive control as well as some selected publications by the NSW Bureau of Crime Statistics and Research that provide useful background material. Hyperlinks are provided to the full text (for copyright reasons, some articles are restricted to Members and parliamentary staff). The sources in each section are arranged in reverse date order except for the academic commentary which is organised alphabetically by author.

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1. NEW SOUTH WALES

Legislation

[Crimes \(Domestic and Personal Violence\) Act 2007](#). See in particular section 11 (Meaning of “domestic violence offence”) and section 13 (Stalking or intimidation with intent to cause fear of physical or mental harm).

Parliament

[Crimes \(Domestic and Personal Violence\) Amendment \(Coercive Control—Preethi’s Law\) Bill 2020](#), [website].

Domestic Violence, [Hansard \(Legislative Assembly\)](#), 30 July 2020.

Domestic Violence, [Hansard \(Legislative Assembly\)](#), 18 June 2020.

Government

NSW Department of Communities and Justice, [Coercive control reform](#), Media release, 13 October 2020.

NSW Department of Communities and Justice, [Coercive control discussion paper](#), October 2020.

NSW Government, [NSW Government Response to DVDRT 2017-2019 Report Recommendations](#), July 2020.

NSW Department of Justice, [Statutory Review of the Crimes \(Domestic and Personal Violence\) Act 2007 \(NSW\)](#), 2015.

Statutory bodies

NSW Domestic Violence Death Review Team, [NSW Domestic Violence Death Review Team Report 2017-2019](#), 2020, p 68-72. See also [previous reports](#).

NSW Bureau of Crime Statistics and Research (BOCSAR), [Domestic violence statistics for NSW](#), [website].

Trimboli L, [Outcome evaluation of NSW’s Safer Pathway Program: Victims’ Experiences](#), BOCSAR, Crime and Justice Bulletin No. 202, March 2017.

Stavrou E, Poynton S, Weatherburn D, [Intimate partner violence against women in Australia: related factors and help-seeking behaviours](#), BOCSAR, Crime and Justice Bulletin No. 200, November 2016.

Birdsey E, [Temporal trends and characteristics of intimidation](#), BOCSAR, Bureau Brief No. 83, January 2013.

Stakeholders

Women's Legal Service NSW, [Why we need a thorough consultation process on how to effectively address coercive controlling violence](#), 23 September 2020.

Women's Safety NSW, [New Coalition calls for immediate action on criminalising coercive control](#), Media release, 12 October 2020.

Women's Safety NSW, [Criminalising coercive control: position paper](#), 11 September 2020.

2. AUSTRALIAN MEDIA ARTICLES

Chung L, [Hopes for legal reform as government announces inquiry into coercive control](#), *Sydney Morning Herald*, 13 October 2020.

McGorrery P et al, [Coercive control is a form of intimate terrorism and must be criminalised](#), *The Guardian*, 6 October 2020.

Moore H, [Big issue that could see new law backfire: Latham](#), *The Daily Telegraph*, 24 September 2020.

Patrick A, [NSW considers crackdown on 'dominating' husbands](#), *Australian Financial Review*, 22 September 2020.

Baird J, [The most dangerous form of domestic abuse is not a crime in NSW, but momentum is building for change](#), *Sydney Morning Herald*, 19 September 2020.

Boltje S, [NSW Labor proposal could see domestic violence perpetrators jailed for up to 10 years for coercive control](#), *The Drum*, 15 September 2020.

Dale A, [Family violence: Criminalising coercion](#), *Law Society of NSW Journal*, September 2020, 70, p 28-33.

Hill J, [Coercive control laws in NSW](#), *The Saturday Paper*, 21 March 2020.

Berkovic N, [State seeks law to ban coercive domestic abuse](#), *The Australian*, 16 March 2020.

Gearing A, [Coercive control and domestic abuse: what might have saved Hannah Clarke and her children?](#), *The Guardian*, 29 February 2020.

Lynch L, [Pattern of emotional abuse would be a crime under LNP government](#), *Sydney Morning Herald*, 26 February 2020.

Elks S, Bashan Y, ['Coercive control' laws could address family violence](#), *The Australian*, 25 February 2020.

Gleeson H, [Coercive control: The 'worst part' of domestic abuse is not a crime in Australia. But should it be?](#), *ABC News*, 19 November 2019.

3. MAJOR AUSTRALIAN REPORTS

Royal Commission into Family Violence in Victoria, [*Report and recommendations*](#), 2016, Vol III, Chapter 17, p 211ff.

Special Taskforce on Domestic and Family Violence in Queensland, [*Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*](#), 2015, Chapter 8.3.3.

Australian Law Reform Commission and NSW Law Reform Commission, [*Family Violence - A National Legal Response*](#), 2010, Chapter 13.

4. ACADEMIC COMMENTARY

Books

Carline A, Easteal P, *Shades of grey - Domestic and Sexual Violence against Women: Law Reform and Society*, 2016, Routledge.

McMahon M, McGorrery P (Eds), *Criminalising Coercive Control: Family Violence and the Criminal Law*, 2020, Springer.

Nancarrow H, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities*, 2019, Palgrave MacMillan.

Stark E, *Coercive Control: How Men Entrap Women in Personal Life*, 2007, Oxford University Press.

Journal articles

Barlow C, Johnson K, Walklate S, Humphreys L, [Putting Coercive Control into Practice: Problems and Possibilities](#), *British Journal of Criminology*, 2020, 60(1), p 160-179.

Bettinson V, [Criminalising coercive control in domestic violence cases: should Scotland follow the path of England and Wales?](#) *The Criminal Law Review*, 2016, 3, p 165-180.

Bettinson V, Bishop C, [Is the creation of a discrete offence of coercive control necessary to combat domestic violence?](#), *Northern Ireland Legal Quarterly*, 2015, 66(2), p 179-197

Bishop C, Bettinson V, [Evidencing domestic violence, including behaviour that falls under the new offence of 'controlling and coercive behaviour'](#), *International Journal of Evidence & Proof*, 2018, 22(1), p 3-29.

Burman M, Brooks-Hay O, [Aligning policy and law? The creation of a domestic abuse offence incorporating coercive control](#), *Criminology & Criminal Justice*, 2018, 18(1), p 67-83.

Douglas H, [Do we need an offence of coercive control?](#) *Precedent*, 2018, 144, p 18-21.

Douglas H, [Do we need a specific domestic violence offence?](#), *Melbourne University Law Review*, 2015, 39(2), p 434-471.

Johnson H, Eriksson L, Mazerolle P, Wortley R, [Intimate Femicide: The Role of Coercive Control](#), *Feminist Criminology*, 2019, 14(1), p 3-23.

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McGorrery P, McMahon M, [Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence](#), 2019, *Criminology & Criminal Justice*, [published online].

McMahon M, McGorrery, P, [Criminalising emotional abuse, intimidation and economic abuse in the context of family violence: the Tasmanian experience](#), *University of Tasmania Law Review*, 2016, 35(2), p 1-22.

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Tolmie J, [Coercive control: To Criminalize or not to criminalize?](#) *Criminology & Criminal Justice*, 2018, 18(1), p 55-66.

Walklate S and Fitz-Gibbon K, [The criminalisation of coercive control: The power of law?](#) *International Journal for Crime, Justice and Social Democracy*, 2019, 8(4), p 94-108.

Walklate S, Fitz-Gibbon K, McCulloch J, [Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories](#). *Criminology & Criminal Justice*, 2018, 18(1), p 115–131.

Wiener C, [Seeing What is "Invisible in Plain Sight": Policing Coercive Control](#), *The Howard Journal of Crime and Justice*, December 2017, 56(4), p 500-515.

Research papers

Fitz-Gibbon K, Walklate S, Meyer S, [The criminalisation of coercive control](#), Monash Gender and Family Violence Prevention Centre, Research Brief, September 2020.

Gill C, Aspinall M, [Understanding coercive control in the context of intimate partner violence in Canada: How to address the issue through the criminal justice system?](#), Office of the Federal Ombudsman for Victims of Crime, Department of Justice Canada, Research Paper, April 2020.

Other articles

Bishop C, [Why it's so hard to prosecute cases of coercive or controlling behaviour](#), *The Conversation*, 31 October 2016.

Fitz-Gibbon K, McCulloch J, Walklate S, [Australia should be cautious about introducing laws on coercive control to stem domestic violence](#), *The Conversation*, 27 November 2017.

McGorrery P, McMahon M, [Coercive control is a key part of domestic violence. So why isn't it a crime across Australia?](#), *The Conversation*, 27 February 2020.

5. COERCIVE CONTROL OFFENCES IN AUSTRALIA

Tasmania

[Family Violence Act 2004](#), section 8 – offence of economic abuse; and section 9 – offence of emotional abuse and intimidation. The Tasmanian Parliament's website has a [Bill page](#) relating to this Act.

Sentencing Advisory Council, [Sentencing of Adult Family Violence Offenders](#), Final Report No. 5, October 2015, p 14, 26.

South Australia

[Criminal Law Consolidation \(Domestic Abuse\) Amendment Bill 2020](#). This is a Private Member's Bill introduced by independent MLC John Darley on 20 February 2020. The Bill proposes to create an offence of controlling or coercive behaviour in a relationship. It is currently at the first reading stage.

6. COERCIVE CONTROL OFFENCES IN UK AND IRELAND

England and Wales

Section 76(1) of the [Serious Crime Act 2015](#) – offence of controlling or coercive behaviour in an intimate or family relationship. The UK Parliament's website has a [Bill page](#) relating to this Act.

Office for National Statistics, [Domestic abuse prevalence and trends, England and Wales: year ending March 2019](#), November 2019.

Crown Prosecution Service, [Controlling or Coercive Behaviour in an Intimate or Family Relationship](#), Prosecution Guidance, 30 June 2017.

Home Office, [Statutory guidance framework: controlling or coercive behaviour in an intimate or family relationship](#), 5 December 2015.

Home Office, [Strengthening the Law on Domestic Abuse Consultation – Summary of Responses](#), December 2014.

Home Office, [Strengthening the Law on Domestic Abuse - A Consultation](#), August 2014.

Scotland

Section 1(1) of the [Domestic Abuse \(Scotland\) Act 2018](#) - offence of engaging in abusive behaviour towards a partner or ex-partner. The Scottish Parliament's website has a [Bill page](#) relating to this Act.

Crown Office and Procurator Fiscal Service, [Domestic abuse and stalking charges in Scotland 2019-2020](#), 8 September 2020.

Scottish Parliament, [Official Report](#), 11 December 2019. Refers to number of prosecutions of the new offence.

Scottish Government, [Equally Safe – Reforming the Law to Address Domestic Abuse and Sexual Offences - Analysis of Consultation Responses](#), 22 October 2015.

Scottish Government, [Equally Safe – Reforming the criminal law to address domestic abuse and sexual offences: Scottish Government consultation paper](#), 25 March 2015.

Ireland

Section 39(1) of the [Domestic Violence Act 2018](#) – offence of coercive control. The Houses of the Oireachtas' website has a [Bill page](#) relating to this Act.

Northern Ireland

Northern Ireland Assembly, [Domestic Abuse and Family Proceedings Bill 2020](#), [website] – proposed offence of domestic abuse.

Northern Ireland Assembly Research and Information Service, [The criminalisation of coercive control](#), 28 June 2019.

Department of Justice, [Domestic Abuse Offence and Domestic Violence Disclosure Scheme – A Consultation – Summary of responses](#), 2016.

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