

Coercive control

Discussion paper

October 2020

Foreword

On average, one woman every nine days, and one man every 29 days, in Australia is killed by a current or former partner. An estimated one in six women (1.6 million) aged 18 years and over have experienced violence by a current or former partner since the age of 15, according to findings from the Australian Bureau of Statistics' 2016 Personal Safety Survey.

A lesser-known statistic is this: between 10 March 2008 and 30 June 2016 there were 150 intimate partner homicides in NSW. Of these 150 homicides, 135 (90%) were classified by the Domestic Violence Death Review Team as having occurred in a domestic violence context, with 112 cases included in this dataset for in-depth review. 111 of the primary domestic violence perpetrators were men. One was a woman who was classified as both a victim and a perpetrator. But here's the clincher: in 111 of the 112 cases, the relationship between the domestic violence victim and the domestic violence perpetrator was characterised by the use of coercive and controlling behaviours.

Coercive control is a form of domestic abuse involving repeated patterns of abusive behaviour – which can include physical, sexual, psychological, emotional or financial abuse – the cumulative effect of which is to rob victim-survivors of their autonomy and independence. The impact of this abuse is abhorrent, but the appropriate response to this behaviour remains an ongoing challenge for law enforcement and legal minds alike.

The NSW Government will move this week to establish a Parliamentary Joint Select Committee that will hold a public inquiry to examine coercive control in detail.

This Discussion Paper details key issues, which the Inquiry can use as a guide to help inform consideration of this complex topic. Any legislative reform must be approached with great caution and care. This paper is a starting point, not a finishing point, creating the opportunity to raise public awareness, and to inform the overall policy approach.

There are strong and divergent views on this issue. I implore all stakeholders, including those within the criminal justice system, the non-government frontline agencies who work with it, and victim-survivors, to make sure the Committee hears their voices.

Domestic and family violence is an appalling crime that can have enduring and devastating consequences for victim-survivors. We must do all that we can to improve how the justice system addresses it.

I look forward to the report of the Committee.



Mark Speakman
Attorney General
Minister for the Prevention of Domestic Violence



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1. Purpose of the paper

- 1.1 Considerable research, policy and legislative reform has been undertaken in the last 50 years to understand and improve responses to domestic and family violence (DFV) in legal, public health and sociological work.¹
- 1.2 DFV is complex and often characterised by repeated patterns of behaviour that can be physical or non-physical in nature. There is currently no definition of DFV in NSW legislation. Instead, the law states that existing criminal offences, when committed in the context of a domestic relationship, constitute domestic violence offences.²
- 1.3 Physically violent behaviour that occurs in a domestic relationship, just like in other contexts, is criminal in NSW and would be classified as a domestic violence offence. Other criminal offences for non-physical violence, such as stalking or intimidation, are often prosecuted in a DFV context.
- 1.4 However, domestic abuse can take forms other than physical violence, stalking or intimidation. It can include patterns of behaviour that are calculated to manipulate or dominate the other person in the relationship, stripping them of their autonomy and often basic freedoms and choices.
- 1.5 Coercive control does not describe any single form of abuse or behaviour, but rather it describes the pattern of domination and control that is created through a collection of behaviours. These behaviours may include physical, sexual, psychological, financial and emotional abuse and intimidation, used as tactics by a perpetrator to gain power, control and dominance over the victim-survivor. Coercive control is typically an interwoven course of conduct carried out over time. Individual acts may appear trivial, whilst forming part of a broader matrix of abusive behaviours that serve to reinforce and strengthen the control and dominance of one person over another.³
- 1.6 As a general proposition, the criminal law seeks to deter, and where required punish, anti-social acts, as opposed to patterns of behaviour which, when considered in isolation, may fall below the level of criminality, but when considered together are harmful. However, the question arises whether the justice system should respond to DFV by recognising the breadth of behaviours which are used to coerce and control a victim and the full context in which they occur.
- 1.7 This discussion paper is a first step in facilitating discussion between legal, DFV and government stakeholders, and the community, in relation to how to best address harmful coercive control behaviour.
- 1.8 Consideration should be given to the suitability of the existing legal framework in NSW, including how evidence law and sentencing can better recognise the impact of coercive control; considering whether a specific criminal offence should be created, as has occurred in other jurisdictions; and identifying the broader social and policy efforts required to enhance community awareness and understanding of coercive control.

¹ Paul McGorrery and Marilyn McMahon 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 3, 3-4

² *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s11. 'Domestic relationship' is defined in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s5. See further 3.2 below.

³ Evan Stark *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007); Heather Douglas 'Legal Systems Abuse and Coercive Control' (2018) 18(1) *Criminology & Criminal Justice* 84, 85

Context

1.9 In recent years, there has been greater emphasis placed on understanding how well the justice system identifies and responds to DFV and what improvements are necessary. A number of jurisdictions including England and Wales, Scotland, Ireland and Tasmania have introduced specific criminal offences which seek to respond to coercive and controlling behaviours. Other jurisdictions have expanded their legal definitions of DFV to recognise a broader range of non-physical forms of abuse in their DFV legislation.

1.10 In March 2020, the NSW Attorney General, Mark Speakman, indicated that the NSW Government would consult on laws to address coercive and controlling behaviour.

1.11 The NSW Domestic Violence Death Review Team (**DVDRT**) in its 2017-2019 report highlighted that, in a number of cases it had reviewed and in previous reports, there was not necessarily evidence of physical abuse occurring prior to a homicide but there was evidence of sometimes long histories of other forms of coercive and controlling behaviours. It noted the complexities that can arise in such cases with perpetrators going to extreme lengths to control their victim and avoid detection and the varying ability of a victim or those close to them to identify what was being experienced as domestic and family violence.⁴

1.12 The DVDRT's recommendation 9 was as follows:

That the Department of Communities and Justice examine the extent to which existing NSW laws (criminal and civil protection orders) respond adequately to non-physical forms of domestic and family violence and to patterns, rather than incidents, of violence. This examination should include:

- 1. a qualitative review conducted with NSW police about what forms of behaviour are being targeted under the offence of 'stalking or intimidation', whether such charges are laid on their own or in combination with other offences, and the relationship context of such offences; and*
- 2. monitoring the progress and implementation of offences of coercive control and domestic abuse in other jurisdictions.⁵*

1.13 The NSW Government supports this recommendation.

1.14 The NSW Bureau of Crime Statistics and Research (**BOCSAR**) is currently undertaking research about the utilisation of stalking and intimidation offences. The BOCSAR project will include an examination of NSW police and court data to determine what forms of behaviour are currently being charged under the offence of stalking and intimidation and whether such charges are laid on their own or in combination with other offences. The outcomes of this work will assist in informing what, if any, improvements to the operation of existing NSW offences can be made to better address coercive and controlling behaviours.

1.15 In addition, this work will be informed by the findings of a review to be undertaken by the DVDRT following a recommendation made in the 2020 inquest into the death of Renee Marsden, which considered the issue of 'catfishing' – the practice of creating a fake identity to take advantage of another person.⁶

⁴ Domestic Violence Death Review Team, *Report 2017-2019* (2020), 68-69

<https://www.coroners.nsw.gov.au/documents/reports/2017-2019_DVDRT_Report.pdf> (accessed 25 September 2020)

⁵ *Ibid*, 72

⁶ In the inquest into the death of Renee Marsden, Deputy State Coroner Truscott recommended: "That the Domestic Violence Death Review Team undertake an in-depth review and provide that review to the Department of Community and Justice to inform any action taken to progress Recommendation 9 of the DVRT 2017/19 Report."

<https://coroners.nsw.gov.au/documents/findings/2020/Marsden_findings_20_May_20.pdf> (accessed 21 September 2020)

2. What is coercive control?

- 2.1 Coercive control in DFV contexts describes patterns of abusive behaviour designed to exercise domination and control over the other party to a relationship. It is often a process that happens slowly over time and can be nuanced in nature, making it difficult to identify. It can include a range of abusive behaviours – physical, psychological, emotional or financial – the cumulative effect of which over time robs victim-survivors of their autonomy and independence as an individual.⁷
- 2.2 The work of Evan Stark, who originated the concept of coercive control, provides a general typology of this behaviour, identifying four key aspects: violence, intimidation (including threats, surveillance, degradation, withholding money), isolation and control (principally through the micro-regulation of everyday behaviours, and the institution of rules).⁸ This can extend to a wide range of behaviours, including but not limited to the following:
- Deprivation of liberty and autonomy, such as preventing one person from leaving the house at all or requiring them to get permission for any movement beyond the household.
 - Isolating an individual from friends, family and wider society. This could be done through deprivation of liberty, manipulation by suggesting that friends and family are not in fact supportive, or the use of the victim's social media to drive away family and friends.
 - Withholding or controlling access to resources, including money. This can extend from direct demands that all income of the victim be provided to the perpetrator, as well as denying the victim a say in the management of joint property, or using their property without their consent. This can also include the imposition of restrictions on the victim's access to education, employment and training opportunities.
 - Psychological control and manipulation, including by making the other person question their memory of events and agreements (i.e. gaslighting), or threatening self-harm or suicide.
 - Stalking and intimidation, including through technological means such as installing tracking software or apps.
 - Physical assault or threats of physical assault. Beyond physical assault of the victim, this can also include things such as the destruction of property or harming animals to set an example or to inspire fear for one's individual safety. Threats can also be made against friends or family.
 - Sexual assault, including non-consensual intercourse or sexual touching. This may also involve the use of image-based abuse, such as threats to share intimate images against the victim's wishes.
 - Reproductive coercion, such as forcing the victim to become pregnant or denying birth control, or demanding an abortion.
 - Threatening to take the victim's children away, to send them to state care or to institute court proceedings to deny the victim access to the children.
- 2.3 Cases in Australia and internationally illustrate this mixture of abusive behaviours that are deployed specifically to undermine an individual and to keep them under control. In Queensland, the murder of Hannah Clarke and her children by Rowan Baxter in February 2020

⁷ Paul McGorrey and Marilyn McMahon 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrey (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 3

⁸ Evan Stark *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007)

reportedly revealed a significant pattern of control and coercion, in which the perpetrator used recording devices to monitor Hannah's conversations, controlled what she wore (for example by preventing her from wearing shorts or a bikini off the beach), and isolated her from her family. Reporting also noted that this was coupled with sexual violence, in which Baxter forced Hannah to have sex with him every night, and made threats if she did not comply. Even when they separated, Baxter continued to track and monitor Hannah's actions and movements, and sought to control her through their children, including kidnapping one of them, which he claimed was punishment for her leaving him.

- 2.4 One of the challenges in defining coercive control is that the relevant behaviours are deeply contextual. The triggers of fear and intimidation that enable control may be so frequent and subtle they are not evident from the outside of the relationship.⁹
- 2.5 Additionally, the demarcation between coercive and controlling behaviours on the one hand and voluntary choices in a relationship on the other hand may be difficult to determine. For example, one indicator of coercive control may be that one individual controls the finances of the household. In some relationships, this could be indicative of a pattern of oppression or exploitation, whereas in others it could indicate a consensual position between the individuals.
- 2.6 In terms of its impacts, coercive control has been referred to as 'intimate terrorism'.¹⁰ It has been reported that many victim-survivors describe it as the 'worst part' of DFV — more impactful and traumatic than physical violence, and more difficult to recover from.¹¹ Coercive control may also be described as a condition of entrapment that renders its victim hostage-like in the harms it inflicts on their dignity, liberty, autonomy and personhood as well as to their physical and psychological integrity.¹²
- 2.7 Coercive control is a significant predictor of intimate partner homicide. As noted above, the DVDRT has identified evidence of sometimes long histories of other forms of coercive and controlling behaviours in the majority of cases it has reviewed. The DVDRT noted that in 111 of the 112 (99%) intimate partner domestic violence homicides that occurred in NSW between 10 March 2008 and 30 June 2016 that it had reviewed, the relationship was characterised by the abuser's use of coercive and controlling behaviours towards the victim.¹³ It noted the complexities that can arise in such cases with perpetrators going to extreme lengths to control their victim and avoid detection and the varying ability of a victim or those close to them to identify what was being experienced as DFV.¹⁴
- 2.8 The findings of the DVDRT are further supported by the academic research, where empirical studies have linked the presence of coercive control with the eventual intimate partner

⁹ Charlotte Bishop and Vanessa Bettinson 'Evidencing domestic violence, including behaviour that falls under the new offence of "controlling or coercive behaviour."' (2018) 22 *International Journal of Evidence & Proof*, 3; Paul McGorrery and Marilyn McMahon. 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 3

¹⁰ Sophie Elmhirst "'Intimate terrorism': how an abusive relationship led a young woman to kill her partner", *The Guardian*, (Online, 31 October 2019), <<https://www.theguardian.com/society/2019/oct/31/intimate-terrorism-domestic-abuse-coercive-control-farieissia-martin>> (accessed 22 May 2020)

¹¹ Hayley Gleeson "Coercive control: The 'worst part' of domestic abuse is not a crime in Australia. But should it be?", *ABC News* (Online, 19 November 2019). <<https://www.abc.net.au/news/2019-11-19/coercive-control-domestic-abuse-australia-criminalise/11703442>> (accessed 22 May 2020); Paul McGorrery, and Marilyn McMahon "It's time 'coercive control' was made illegal in Australia", *The Conversation*, (30 April 2019). <<https://theconversation.com/its-time-coercive-control-was-made-illegal-in-australia-114817>> (accessed 22 May 2020)

¹² Evan Stark *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007) p. 15.

¹³ Domestic Violence Death Review Team, *Report 2017-2019* (2020), 154

<https://www.coroners.nsw.gov.au/documents/reports/2017-2019_DVDRT_Report.pdf> (accessed 25 September 2020)

¹⁴ Ibid 68-69

homicide.¹⁵ This broadly aligns with wider research on predictive factors for intimate partner homicide, which includes the realisation by a perpetrator that they have lost control over the relationship or over their partner.¹⁶

- 2.9 It is also important to acknowledge the evidence that coercive control or intimate terrorism, much like DFV more generally, is predominantly experienced by women and perpetrated by men.¹⁷ This is not to imply that victims and perpetrators do not encompass all gender identities and relationship types. However, sociological research points to clear trends in coercive control, particularly in intimate partner relationships, as being mapped to the definition and regulation of individuals in line with gendered power dynamics¹⁸

Discussion questions

1. What would be an appropriate definition of coercive control?
2. How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?

¹⁵ Domestic Violence Resource Centre Victoria. *Out of Character? Legal Responses in Intimate Partner Homicides by Men in Victoria 2005-2014, Discussion Paper 10*. (2016). <https://www.dvrcv.org.au/sites/default/files/out_of_character_dvrcv.pdf> (accessed 21 September 2020)

¹⁶ Holly Johnson et al 'Intimate femicide: The role of coercive control' (2019) 14(1) *Feminist Criminology*, 14(1), 3; Marcus Juodis. 'A comparison of domestic and non-domestic homicides: Further evidence for distinct dynamics and heterogeneity of domestic homicide perpetrators. (2014) 29(3) *Journal of Family Violence*, 299

¹⁷ Michael P Johnson *A typology of domestic violence: Intimate terrorism, violent resistance, and situational couple violence* (Northeastern University Press, 2008), Evan Stark *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007),

¹⁸ Ibid

3. How is coercive control currently addressed in NSW?

- 3.1 The NSW Government agreed on a shared definition of DFV in 2014, as part of the development of *It Stops Here: Standing together to end domestic and family violence in NSW*. This definition sits at the core of NSW government prevention programs, response and recovery services for victims, and perpetrator programs. The definition covers any behaviour in an intimate, family or household relationship, which is violent, threatening, coercive or controlling, causing a person to live in fear and is usually manifested as part of a pattern of controlling or coercive behaviour.¹⁹
- 3.2 This shared definition recognises the inherent complexities of DFV, and acknowledges that these behaviours are violations of human rights and in certain cases amount to crimes under NSW law. The *Crimes (Domestic and Personal Violence) Act 2007 (NSW) (CDPV Act)* creates the legislative framework for responding to DFV in criminal and civil law. The CDPV Act provides a regime of offences and civil protection orders to respond to violence between people who have a domestic relationship with each other. A domestic relationship is defined in s 5 to be where two people:
- are married or have previously been married;
 - are or have previously been in a de facto relationship with each other;
 - are in or have previously been in an intimate personal relationship with each other, regardless of whether this is sexual or not;
 - are living or had previously lived in the same household as each other;
 - are living or had previously lived as a long term resident in the same residential facility as each other at the same time;
 - have or had a relationship involving one person's dependence on the ongoing paid or unpaid care of the other person;
 - are relatives; or
 - in the case of Aboriginal persons or Torres Strait Islanders, are or have been part of the extended family or kin according to the Indigenous kinship system of the person's culture.
- 3.3 The legal concept of a domestic relationship also links two people who have been married, in a de facto relationship or an intimate personal relationship with the same person. This means that, for example, a woman's current partner and her ex-partner would have a domestic relationship with each other, even if they had never met.
- 3.4 In enacting the CDPV Act, the NSW Parliament recognised that DFV 'extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years'.²⁰ However, there are no specific criminal offences in NSW for coercive and controlling behaviour. Nevertheless, there are existing offences that are able to address some elements of coercive control and there may be scope to leverage these existing frameworks to better address coercive and controlling behaviours.

¹⁹ The full shared policy definition is available at https://www.women.nsw.gov.au/_data/assets/file/0003/289461/It_stops_Here_final_Feb2014.pdf (accessed 10 July 2020).

²⁰ *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*, s 9(3)(d).

Offence of intimidation/stalking

- 3.5 Section 13 of the CDPV Act criminalises stalking or intimidation with an intention to cause fear of physical or mental harm. Stalking is defined in section 8 to include following a person about, watching or frequenting a vicinity of places which the victim typically visits or contacting or otherwise approaching the victim through the internet or technological means. Intimidation is defined in section 7 as any conduct (including cyber bullying) amounting to harassment of a person, any approach to the person, including approaches made by phone or through the internet that causes the victim to fear for their safety, or any conduct that causes a reasonable apprehension of injury or violence to a person or damage to property. Importantly, the definitions in sections 7 and 8 note that the court may have regard to any pattern of violence, especially violence that constitutes a domestic violence offence, in determining whether or not conduct is stalking or intimidation.
- 3.6 In addition to the conduct element of this offence, the offender must intend to cause the victim to fear physical or mental harm. Intent is also deemed to include circumstances where the offender knew that their conduct was likely to cause the victim to fear physical or mental harm. Importantly, this offence does not require proof that the harm is in fact suffered, merely that the offender has the relevant state of mind. The offence has a maximum penalty of 5 years imprisonment, 50 penalty units, or both.
- 3.7 In effect, the offence of stalking or intimidation prohibits some (but not all) forms of coercive control. For example, an individual act which, when looked at in isolation, appears innocuous (or at least not serious enough to reach the threshold of criminality), may constitute an offence of stalking when it forms part of a broader pattern of similar conduct. Offences under s 13 of the CDPV Act may therefore capture a collection of behaviours over time.

See **Appendix A** for the full provision of s 13.

Classification of other criminal offences as domestic violence

- 3.8 Under s 12 of the CDPV Act, any criminal offence can be recorded as a domestic violence offence on a person's criminal record.
- 3.9 Section 11 of the CDPV Act defines a domestic violence offence as an offence that is committed against a person with whom the perpetrator has or had a domestic relationship, and:
- (a) is a personal violence offence;
 - (b) is not a personal violence offence but arises from substantially the same circumstances as those from which a personal violence offence arise; or
 - (c) is not a personal violence offence but is committed with the intention of coercing or controlling the person against whom it is committed, or causing that person to be intimidated or fearful.
- 3.10 This means that any conduct, if it already amounts to an offence under an existing law, can be treated as a domestic violence offence if it involves coercive or controlling behaviour. Recording an offence as a domestic violence offence can have a number of legal and administrative consequences, and can be taken into account, for example, in future bail hearings.

See **Appendix A** for the full provision of s 11.

Civil law: Apprehended Domestic Violence Orders

- 3.11 An apprehended domestic violence order (**ADVO**) is a type of apprehended violence order (**AVO**) made on behalf of a person in need of protection (**PINOP**) from a defendant with whom they have or have had a domestic relationship.²¹ 'An AVO is a civil order which aims to protect a PINOP from further or future harm.
- 3.12 ADVOs may be made following a successful application brought either by the PINOP or by police on the PINOP's behalf. Provisional orders can also be made by senior police officers, or other authorised officers, if a police officer investigating an incident suspects or believes that a domestic violence offence or an offence against s 13 of the CDPV Act has recently been or is being committed, or is likely to be committed, against the person for whose protection an order would be made.²²
- 3.13 ADVOs may also be made as a consequence of a conviction for a domestic violence offence (as discussed above). A conviction for a domestic violence offence, regardless of whether the offence involved physical violence or not, triggers an obligation on a court to make an ADVO.²³
- 3.14 A court can make an ADVO if it is satisfied on the balance of probabilities that a PINOP has reasonable grounds to fear, or in fact fears, the commission of further offences, intimidation or stalking by the defendant. Section 36 of the CDPV Act provides that every ADVO must include the following mandatory prohibitions:
- (a) assaulting or threatening the protected person or a person with whom the protected person has a domestic relationship, and
 - (b) stalking, harassing or intimidating the protected person or a person with whom the protected person has a domestic relationship, and
 - (c) intentionally or recklessly destroying or damaging any property that belongs to, or is in the possession of, the protected person or a person with whom the protected person has a domestic relationship.
- 3.15 Courts may also specify further additional conditions in an ADVO as are necessary or desirable, in particular if they are necessary to ensure the safety and protection of the PINOP or any children.²⁴ Behaviours that may amount to coercive control can be managed through conditions of ADVOs. Additionally, there are a range of optional conditions outlined in section 35 of the CDPV Act that (without limiting the court's ability to set such prohibitions as it considers necessary) may also directly address coercive controlling behaviours. This includes prohibitions on the defendant contacting or attempting to locate the PINOP, going to designated places, or preventing the defendant from living in the same household or area as the PINOP.
- 3.16 A person who contravenes a condition in an ADVO commits a criminal offence, punishable by up to 2 years imprisonment.²⁵ Notwithstanding the relatively low maximum penalty, there is a statutory presumption that, unless the Court orders otherwise, an offender who contravenes a condition in an ADVO must be sentenced to a term of imprisonment if the contravention involves an act of physical violence.²⁶
- 3.17 There may be ways that these existing provisions against coercive and controlling behaviours could be better utilised. This could include, for example, targeted training and support for police

²¹ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 15(1)

²² *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 27(1)(a)(i)

²³ *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 39

²⁴ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 35(1)

²⁵ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 14(1)

²⁶ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 14(4)

officers and DFV services to improve the implementation of existing frameworks such as those outlined above.

Discussion questions

- 3. Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?**
- 4. Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?**

4. Coercive control offences in other jurisdictions

- 4.1 There are limited examples of criminal offences in other jurisdictions that specifically criminalise coercive control, or specific behaviours which can amount to coercive control. The majority of these offences are relatively recent developments. This section outlines the scope of such criminal offences and includes information relating to their development and their operation to date.
- 4.2 Relevant provisions are provided at **Appendices A – D**.

Scotland

- 4.3 In 2015, the Scottish Government undertook initial consultation on whether a specific offence of domestic abuse would improve justice system responses. Of the 73 responses to this consultation (covering advocacy and support groups, local authority, health and MAP representatives, legal stakeholders, academics and community), 96% felt that a specific offence would be an improvement to Scottish law at the time. Following consultation, the Scottish Government committed to the development of a public draft of a specific offence for domestic abuse. The Bill was drafted in close consultation with the policy experts in Scottish Women's Aid, who also tested the language of the Bill with victim-survivors, service users and frontline staff. Focus groups were also held to inform the drafting of the Bill. It was released for public consultation in December 2015. The Bill was introduced in March 2017, passed unanimously in February 2018 and came into force on 1 April 2019.
- 4.4 The *Domestic Abuse (Scotland) Act 2018* provides a discrete offence of domestic abuse (relevant provisions at **Appendix B**). It criminalises conduct in which one person engages in a course of conduct which is abusive to their partner or ex-partner. The course of conduct is abusive if a reasonable person would consider it to be likely to cause the victim to suffer physical or psychological harm. The offender must also intend to cause, or be reckless towards causing, the victim to suffer physical or psychological harm (including, but not limited to fear, alarm and distress).
- 4.5 Specific examples of what constitutes abusive behaviour are also listed in the legislation, including behaviour directed towards the victim which is violent, threatening or intimidating, or which has as its purpose the effects of:
 - making the victim dependent on or subordinate to the offender
 - isolating the victim from their friends, relatives or other sources of support
 - controlling, regulating or monitoring the victim's day to day activities
 - depriving or restricting the victim's freedom of action
 - frightening, humiliating, degrading or punishing the victim.
- 4.6 The offence also includes behaviour which a reasonable person would consider to have one of the effects outlined above, regardless of whether the offender intended to cause a specific effect (noting the offender must still intend to cause psychological or physical harm).
- 4.7 The construction of the Scottish offence adopts an objective "reasonable person" standard in assessing the effects of the conduct. This removes the need for evidence of actual harm suffered by the victim. While the legislation explicitly provides that the commission of the offence does not require any harm to be suffered by the victim, it also notes that this does not prevent evidence being led showing that harm was in fact suffered, or the specific effects outlined above. The offence still requires requisite subjective intent or recklessness on the part of the offender.

- 4.8 The maximum penalty for the offence is 12 months imprisonment on summary conviction, or 14 years imprisonment on indictment. The seriousness of the offence is aggravated if the behaviour in question is directed at a child, involves or makes use of a child, or if a child sees, hears or is present during an incident of the course of behaviour. This aggravating factor must be recorded on the conviction and be factored into the sentencing of the offender.
- 4.9 The Scottish offence is expressly limited to abuse of a partner or ex-partner. This is consistent with existing definitions of ‘domestic violence’ in Scotland, and has been adopted by the Scottish Government on the basis that abuse of partners and ex-partners has a distinct dynamic that differs from other forms of abuse within families.²⁷
- 4.10 It is a defence under the Scottish legislation to show that the course of behaviour was reasonable in the particular circumstances. An accused person bears an evidentiary burden only, requiring them only to adduce evidence raising the issue of reasonableness, after which the prosecution bears the onus of proving beyond a reasonable doubt that the behaviour was not reasonable in the particular circumstances.
- 4.11 To support the commencement of the legislation, funding was provided by the Scottish government to deliver enhanced training to 14,000 police officers and staff to support the implementation of the domestic violence offence.²⁸ A self-completion e-learning package was also made available to all staff.²⁹ Funding was also provided to Scottish Women’s Aid for dedicated training for frontline staff to prepare service providers ahead of commencement. The commencement of the legislation was also supported by a public awareness campaign to increase understanding of the scope of domestic abuse and encourage victims to come forward.
- 4.12 Given the Scottish legislation commenced relatively recently, statistics in relation to prosecution are not readily available. However, at May 2020, 1681 crimes under the legislation were recorded by Scottish police.³⁰ This represents a comparatively high uptake of the offence even in the early stages.

England and Wales

- 4.13 The development of a coercive control offence in England and Wales began with consultation from the Home Office in 2014 on “whether we should create a specific offence that captures patterns of coercive and controlling behaviour in intimate relationships, in line with the Government’s non-statutory definition of domestic abuse”.³¹ The results of the consultation showed that 85% of respondents felt that the existing criminal law was not sufficient to tackle coercive control.³² The consultation led to the development of s 76 of the *Serious Crime Act 2015 (UK)*, which commenced on 29 December 2015.

²⁷ Cynthia Thomas ‘First national study of elder abuse and neglect: Contrast with results from other studies’ (2000) 12(1) *Journal of Elder Abuse and Neglect* 1

²⁸ Scottish Government ‘Police prepare for new domestic abuse crime’ (Online, 28 December 2017) <https://news.gov.scot/news/police-prepare-for-new-domestic-abuse-crime?sm_au=iVVVrV6nq4rQZNMpNKcFNk3tRVRF> (accessed 18 September 2020)

²⁹ Scottish Government ‘Domestic Abuse Bill/Act Training Funding’ (FOI release, Online, 15 May 2019) <<https://www.gov.scot/publications/foi-201900001049/>> (accessed 18 September 2020)

³⁰ BBC News ‘Police record almost 1,700 domestic abuse crimes under new act’, *BBC* (Online, 25 May 2020) <<https://www.bbc.com/news/uk-scotland-52799283>> (accessed 18 September 2020)

³¹ Home Office *Strengthening the law on domestic abuse—A consultation*. (2014a), 5 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344674/Strengthening_the_law_on_Domestic_Abuse_-_A_Consultation_WEB.PDF> (accessed 21 September 2020)

³² Home Office. *Strengthening the law on domestic abuse consultation—Summary of responses* (2014b) 5 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389002/StrengtheningLawDomesticAbuseResponses.pdf> (accessed 21 September 2020)

- 4.14 Section 76 creates an offence of ‘controlling or coercive behaviour in an intimate or family relationship’ (relevant provisions at **Appendix C**). There are a number of circumstances which are required for the offence to apply:
- The controlling or coercive behaviour must occur repeatedly or continuously.
 - The behaviour must have a ‘serious effect’ on the victim, which is prescribed as either causing the victim to fear on at least two occasions that violence will be used against them, or that it causes the victim serious alarm or distress which has a substantial adverse effect on their usual day-to-day activities.
 - The offender must have known or ought to have known that the behaviour would have a serious effect on the victim. The ‘ought to know’ component is explicitly noted to be a standard of what a reasonable person in possession of the same information as the offender.
- 4.15 These requirements demonstrate similarities and divergences from the Scottish offence. The concept of repeated or continuous behaviour enables the offence to capture a course of conduct over time. However, this formulation imports a temporal or frequency requirement of “repeatedly or continuously”, which may give it more limited scope than other jurisdictions.
- 4.16 The England and Wales offence requires actual harm or impact on the victim to be proven, in contrast to the objective “reasonable person” standard applied in Scotland.
- 4.17 The England and Wales offence does not require a specific intention to coerce or control, but instead requires that the offender knew or ought to have known the impacts of their behaviour. In this way, the England and Wales offence applies a more objective standard to the mental state of the offender, unlike Scotland which requires an intention to be proven.
- 4.18 Additionally, the England and Wales offence takes a more expansive approach to the types of relationships that it covers, unlike other jurisdictions which restrict the offence to intimate partner relationships. The England and Wales offence applies whenever the offender and the victim are personally connected, which is defined to include people currently or formerly connected by an intimate personal relation, marriage or engagement, civil partnership or a civil partnership arrangement, familial relation, two people who are both parents of the same child or two people who have or had parental responsibility for the same child. This definition of personal connection therefore applies the offence not only to intimate partner violence, but also to family violence such as child to parent to sibling to sibling violence.
- 4.19 The maximum penalty for the offence is 12 months on summary conviction, or five years on conviction on indictment.
- 4.20 It is a defence under the legislation if an accused believes that they are acting in the best interests of the other party, and the behaviour is in all the circumstances reasonable. Note here that the defence requires a combination of subjective factors (the intention and belief of the accused), and an objective standard of reasonableness. Similarly to Scotland, the accused need only adduce evidence sufficient to raise the defence, at which point the prosecution bears the onus of proving beyond a reasonable doubt that defence does not apply.
- 4.21 The offence is supported by the *Statutory Guidance Framework on Controlling or Coercive Behaviour in an Intimate or Family Relationship*.³³ This document provides guidance on the investigation of offences of controlling and coercive behaviour. This document provides additional context and guidance to police and criminal justice agencies in the investigation and

³³ Home Office *Controlling or Coercive Behaviour in an Intimate or Family Relationship Statutory Guidance Framework* (2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf> (accessed 18 September 2020)

prosecution of the offence. It includes definitions of coercive and controlling behaviour, which emphasise that they are patterns of behaviour rather than discrete incidents. It includes a non-exhaustive list of examples of potential coercive or controlling behaviours.³⁴

- 4.22 UK Crown Prosecution Service data has shown that the uptake of the offence was initially slow, but has increased over time. From April 2015 to March 2017, only 314 coercive control offences reached a first hearing at a magistrates' court. However, in the period of April 2018 to March 2019 alone, 1177 coercive control offences reached a first hearing at a magistrates' court.³⁵ The significant number of prosecutions is also reflected in police activity – for example 9,053 offences of coercive control were recorded by the police in the year ending March 2018.³⁶
- 4.23 Data from the UK Department of Justice also shows that in the year ending December 2018, there were 10 cautions, 516 proceedings and 308 convictions. Of offenders convicted, 202 (65.6%) received a custodial sentence, and a further 100 (32.5%) received either a suspended sentence or a community sentence. The remaining 6 (1.9%) received either a fine, a conditional discharge, or were otherwise dealt with. The average custodial sentence length was 20.2 months.³⁷

Ireland

- 4.24 Under section 39 of the *Domestic Violence Act 2018*, Ireland has also criminalised coercive and controlling behaviour (relevant provisions at **Appendix D**). The model used by Ireland is similar to the offence in England and Wales, but with a number of key differences. The offence criminalises behaviour that:
- is coercive or controlling,
 - has a serious effect on the victim, being defined as causing the victim to fear that violence will be used against them, or serious alarm or distress that has a substantial adverse impact on their day to day activities; and
 - would be considered by a reasonable person to have a serious effect on a person in the circumstances.
- 4.25 Additionally, the offender must knowingly and persistently engage in the behaviour.
- 4.26 Unlike the other offences discussed above, the Irish offence requires proof of both actual harm to the victim (like in England and Wales), whilst also applying an objective “reasonable person” test to that harm. The Irish offence is restricted to individuals who are spouses or partners, or in an intimate personal relationship. The maximum penalty for the offence is 12 months on summary conviction, or five years on conviction on indictment.
- 4.27 The offence was introduced into the legislative regime through an amendment to a bill before the Seanad at the committee stage. The offence commenced on 1 January 2019. At present no data is readily available from Ireland in relation to prosecutions and convictions.³⁸ There are also ongoing issues with the quality of crime statistics from the Central Statistics Office, which

³⁴ Ibid, 4

³⁵ Office of National Statistics, *Domestic abuse and the criminal justice system – Appendix tables* (2019) Table 15 <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseandthecriminaljusticesystem/appendixtables>> (accessed 18 September 2020)

³⁶ Office for National Statistics. *Domestic abuse in England and Wales: year ending March 2018* (2018) <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2018#domestic-abuse-related-offences-specific-crime-types>> (accessed 21 September 2020)

³⁷ Ibid, Table 16

³⁸ Francesca Soliman 'The criminalisation of coercive control' (2019) *Northern Ireland Assembly: Research Paper* <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2019/justice/0319.pdf?sm_au=iVVVrV6nq4rQZNMPNKCfNKt3tRVRE> (accessed 18 September 2020), 26

has suspended official crime statistics and only publishes such data under reservation.³⁹

Australian jurisdictions

Tasmania

- 4.28 Tasmania is the only Australian jurisdiction with specific offences that address coercive and controlling behaviours. The *Family Violence Act 2004* (Tas), includes two relevant offences
- 4.29 The offence of economic abuse (s 8) criminalises a course of conduct made up of one or more of the following behaviours:
- coercing one's spouse or partner to relinquish control over assets or income
 - disposing of property owned by the person's spouse or partner, owned jointly, or owned by an affected child without their consent
 - preventing one's spouse or partner from participating in decisions over household expenditure
 - preventing one's spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses
 - withholding or threatening to withhold reasonable financial support.
- 4.30 The offence also requires that the course of behaviour is pursued with the intent to unreasonably control or intimidate one's spouse or partner, or with the intent to cause mental harm, apprehension or fear in one's spouse or partner. There is no requirement that the victim suffer any harm or detriment merely, that the relevant behaviours constituting the course of conduct were done with the intention to unreasonably control or intimidate. It carries a maximum penalty of 40 penalty units or a term of imprisonment of two years.
- 4.31 The offence of emotional abuse or intimidation (s 9) criminalises a course of conduct that an accused person knows or ought to know is likely to have the effect of unreasonably controlling, intimidating or causing mental harm, apprehension or fear in their spouse or partner. No behaviours are prescribed in the legislation, however it is noted that an example of the offence includes limiting the freedom of movement of one's spouse or partner by means of threats or intimidation.
- 4.32 There is no requirement that the victim suffer any detriment merely, that the offender knew or ought to have known that their course of conduct would be likely to have the relevant effects.⁴⁰ Importantly, the course of conduct does not in and of itself need to be directed to the spouse or partner. For example, the wording of the provision could include threats or actual harm to animals if such conduct was likely to cause the spouse or partner fear or mental harm or to control or intimidate them. It carries a maximum penalty of 40 penalty units or a term of imprisonment of two years.
- 4.33 Notably, these offences are limited to spouses and partners only. There is also a limitation period for the offences (s 9A) requiring a complaint be made within 12 months of the day on which the last act making up the course of conduct occurred. Prior to 2015, the limitation period was six months, meaning that even if a course of conduct extended for several years, only behaviour within the six month period could be used to support a charge under either offence.
- 4.34 Both offences target a course of conduct. The intention was to address cases where the abusive behaviours, taken as individual incidents, would not have been considered sufficiently

³⁹ <https://www.cso.ie/en/methods/crime/statisticsunderreservationfaqs/> (accessed 18 September 2020)

⁴⁰ Likelihood has been interpreted by the court to mean a substantial or real chance, as distinct from a mere possibility. *McLean v Rundle* [2011] TASMC (unreported, 4 November 2011), citing *Simpson v R* [1996] TASSC 137)

serious to constitute a crime, but when taken together could reach a sufficient level of criminality due to the fear or intimidation in the relationship.⁴¹ It is also worth noting that the reference to ‘unreasonably’ controlling or intimidating behaviour may imply that some behaviours may ‘reasonably’ control a spouse or partner.

4.35 The experience in Tasmania shows slow uptake of the offence – within the first three years of the offence, no charges were laid. By the end of 2017, 73 charges had been finalised across the two offences, with 34 guilty pleas, six convictions after hearing, two dismissals after hearing and the remainder withdrawn as part of plea negotiations or because police were unable to proceed.⁴² Of this number:

- Five prosecutions were for economic abuse. It was noted that difficulties in the prosecution of such offences has been the availability of corroborating evidence, particularly in cases where the perpetrator’s course of conduct may be obscured by the fact that the victim seemingly had their own income and bank account, but was having their money misused by the perpetrator. Successful prosecutions relied on inference drawn from bank records and other documentary evidence about suspicious or irregular financial activity including both withdrawals and spending patterns, and testimony from family and third parties.⁴³
- 68 prosecutions were for emotional abuse. The successful prosecutions for this offence have also shown that the interpretation of a ‘course of conduct’ can be quite broad. In some cases, a course of conduct was applied to a series of actions which all occurred in the same incident,⁴⁴ although the majority of cases dealt with behaviour over a longer period of time and where the behaviour was sustained and/or occurred on more than one occasion. It has been noted that the majority of prosecutions dealt with extreme cases “where if the facts were established then it was obvious that the offender knew his conduct was likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear.”⁴⁵

4.36 The number of prosecutions is comparatively low – for example in 2015-2016, there were eight prosecutions combined for the two offences, but 3,714 incidents of family violence recorded by police that resulted in charges being laid.⁴⁶ Although the offences formed part of the Tasmanian Government’s *Safe at Home* reforms program, which provided an integrated criminal justice response to family violence through both legislative changes as well as operational and policy changes implemented by Tasmanian police, there was not dedicated training in relation to these two offences. It has been suggested by researchers that the issue of training and support for investigations, coupled with the pre-2015 limitation period, have been major contributing factors to the low rate of prosecutions.⁴⁷

⁴¹ Department of Justice (Tas) *Safe at Home: A Criminal Justice Framework for Responding to Family Violence in Tasmania*, Options Paper (2003), 24. <https://www.safeathome.tas.gov.au/data/assets/pdf_file/0008/567440/Options_Paper.pdf> (accessed 18 September 2020)

⁴² Kerryne Barwick, Paul McGorrey and Marilyn McMahon ‘Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia’ in Marilyn McMahon and Paul McGorrey (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 135, 155

⁴³ *Ibid*, 144-145

⁴⁴ *McLean v Rundle* [2011] TASM (unreported, 4 November 2011), *Thomas v Stewart* [2017] TASM (unreported, 4 September 2017)

⁴⁵ Kerryne Barwick, Paul McGorrey and Marilyn McMahon ‘Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia’ in Marilyn McMahon and Paul McGorrey (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law*, (Springer, 2020), 135, 148

⁴⁶ *Ibid*, 149

⁴⁷ *Ibid*, 151

Other Australian states

4.37 All other Australian jurisdictions adopt a definition of DFV (or an equivalent term) in relevant legislation governing DFV. The definitions in each of these states generally includes recognition of behaviour that is emotionally or psychologically abusive, economically abusive, or coercive or which controls and dominates the victim in a way that causes them to fear for their safety or wellbeing or for the safety or wellbeing of another person. Although these definitions of DFV cover coercive and controlling behaviour, there is no discrete offence in these jurisdictions.

A comparison of relevant provisions is provided at **Appendix A**.

5. Evidence of coercive control in NSW proceedings currently

- 5.1 Under NSW law currently, evidence of coercive control, whilst not reflected in a substantive criminal offence, can be adduced in a number of ways, both in civil and criminal proceedings.

Civil proceedings: Apprehended Domestic Violence Orders

- 5.2 As discussed above, ADVOs are orders that can be made for the protection of a PINOP or people with whom PINOP has a domestic relationship. They are civil orders and the applications – which can be brought by a PINOP or by police on behalf of a PINOP – need to be proven on the balance of probabilities.
- 5.3 Before making an ADVO, the court must be satisfied that the PINOP has reasonable grounds to fear, and does fear, that they will be subjected to a domestic violence offence by the defendant, or that they or someone they are in a domestic relationship with will be subject to stalking or intimidation by the defendant. The court must also be satisfied that the conduct is sufficient to warrant the order.⁴⁸
- 5.4 In determining an application for an ADVO, evidence of patterns of abusive behaviour may be highly relevant. Evidence that a person has been subject to a history of protracted domestic abuse, including patterns of controlling and manipulative behaviour, may be relevant to whether the person relevantly fears the defendant, and whether those fears are well founded. A pattern of coercive control may, in appropriate cases, be sufficient to establish the need for an ADVO.

Criminal trials

- 5.5 Although there is currently no offence of coercive control in NSW, evidence of this conduct can often still be adduced in criminal trials for existing domestic violence offences.
- 5.6 Evidence that is relevant to an issue in proceedings is, subject to other rules of evidence, generally admissible.⁴⁹ Evidence of coercive control may be relevant to a range of issues in criminal proceedings.
- 5.7 Under certain circumstances, evidence of a person's wrongdoing, even if it has not been charged as an offence, can be admissible to prove a person's guilt. Tendency evidence, for example, is evidence that a person has had tendency to act in a particular way in the past, which makes it more likely that they acted the same way at the time of the offence.⁵⁰ This could include evidence that a person has a tendency to act towards their domestic partner in a way that is abusive, controlling, demeaning or which otherwise fits the description of coercive control. This evidence could be relied on by the prosecution to prove that a person who has behaved in this way towards their partner in the past is more likely to have committed similar acts with which they have been charged.
- 5.8 Evidence of coercive control may also be relevant to a person's character. If a defendant that is charged with domestic violence offences puts evidence before the Court that they are a person of good character, the prosecution may be able to lead evidence of their coercive control to prove that they are in fact not generally a person of good character.⁵¹

⁴⁸ *Crimes (Domestic and Personal Violence) Act 2007* (NSW), s 13

⁴⁹ *Evidence Act 1995* (NSW), s 55

⁵⁰ *Evidence Act 1995* (NSW), s 97

⁵¹ *Evidence Act 1995* (NSW), s 110

- 5.9 Evidence of a defendant's past misconduct that is not admissible under the *Evidence Act 1995 (Evidence Act)* may still be relevant to prove the background or context in which the alleged offences occurred. The prosecution can seek to lead evidence of these incidents or details in trial proceedings under the rules of common law. Often, this evidence will be referred to as "uncharged acts". This evidence may be necessary in order to place an event in its proper context, or to explain what might otherwise appear to be an unlikely or improbable event without a proper understanding of a person's conduct in the period leading up to, or after, the alleged offence.⁵²
- 5.10 Evidence of coercive control may be particularly relevant in prosecutions for domestic violence offences. Evidence that a defendant has a history of abusive, controlling or demeaning conduct towards their partner may help to explain why a victim-survivor did not immediately disclose an assault, or did not leave an abusive relationship earlier.⁵³ Such evidence, including evidence of coercive control, may be necessary for a jury to properly understand the evidence of a victim-survivor, where the things they have described could otherwise appear inexplicable or may appear to have occurred "out of the blue".⁵⁴
- 5.11 This evidence will ordinarily be highly relevant in domestic violence proceedings, however there are some restrictions.⁵⁵ Like all evidence, it must be relevant to a fact in issue.⁵⁶ In prosecutions for domestic violence offences, a victim's credibility will usually be in issue. Evidence, for example, of financial control may be relevant to show why a complainant was unable to leave an abusive relationship, or evidence of systemic emotional and escalating physical abuse may be relevant to show that an assault did not occur "out of the blue". However, if there is no such specific issue that needs to be put in its proper context, evidence of coercive control may not be admissible.
- 5.12 Relevant evidence may also be excluded if its probative value is outweighed by the risk of unfair prejudice to a defendant.⁵⁷ Because evidence of coercive control will often involve evidence of discreditable acts which may tend to suggest that a defendant is generally a person of bad character, even relevant and probative evidence of this nature may be excluded.
- 5.13 The admissibility of context and relationship evidence is ultimately a matter for the court, and will turn on the circumstances and facts in issue in a particular matter.

Sentencing

- 5.14 There is no legislative provision in NSW that explicitly permits or requires a court to consider, in sentencing an offender for domestic violence offences, that the offences were committed in the context of a relationship characterised by coercive control. However, it will often be a highly relevant consideration for courts assessing the seriousness of a domestic violence offence.
- 5.15 The High Court has said that, in sentencing for domestic violence offences, it is the duty of the courts to vindicate the human dignity of victim-survivors.⁵⁸ It has been recognised that an act of violence against a person's intimate partner is a serious breach of trust, which significantly heightens the seriousness of an offence and which will ordinarily lead to higher sentences.⁵⁹
- 5.16 The courts have implicitly recognised that coercive control is an important feature of sentencing for domestic violence offences. For example, there is precedent which confirms that domestic violence involves the exercise of power, dominance and control.⁶⁰ Perpetrators are often in a

⁵² *HML v The Queen* (2008) 235 CLR 334, [6]

⁵³ *R v MM* [2014] NSWCCA 144, [29]

⁵⁴ *Roach v The Queen* (2011) 242 CLR 610, [45]-[46]

⁵⁵ *HML v The Queen* (2008) 235 CLR 334, [431]; *KJS v R* [2014] NSWCCA 27, [38]; *R v MM* [2014] 144, [28]

⁵⁶ *Evidence Act 1995* (NSW), s 55

⁵⁷ *Evidence Act 1995* (NSW), ss 135 and 137

position of power and control over their victim-survivors, either financially or otherwise, and are able to use this control to maintain dominance in the relationship and prevent a victim-survivor from leaving.⁶¹

- 5.17 These findings can ultimately have a bearing on the objective seriousness the court ascribes to a criminal offence, which will impact on the nature and length of any sentence imposed.

Discussion questions

5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?

6. Does the law currently allow evidence of coercive control to be adequately taken into account in sentence proceedings?

If the answer is no to either of the above questions, how could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?

⁵⁸ *Munda v Western Australia* (2013) 249 CLR 600, [55]

⁵⁹ *The Queen v Kilic* (2016) 259 CLR 256, [28] – In this matter the High Court found that an offence in which the respondent set alight his former partner was significantly aggravated because it occurred in the course of a domestic relationship, and therefore involved a serious abuse of trust.

⁶⁰ *R v Burton* [2008] NSWCCA 128, [97]

⁶¹ *Patsan v R* [2018] NSWCCA 129, [39]-[40]; *Diaz v R* [2018] NSWCCA 33, [5]; *R v Edigarov* (2001) 125 A Crim R 551,[41]

6. Criminalising coercive control – potential benefits and practical challenges

- 6.1 Since the introduction of an offence for coercive control in England and Wales, there has been significant discussion around the criminalisation of coercive control. Preliminary analysis and consultation on this issue have revealed significant arguments in support of a new offence of coercive and controlling behaviour. However, there are also significant practical and operational risks, and consideration needs to be given to whether the criminal law is the most appropriate vehicle for addressing this conduct.

Potential benefits of a specific offence

- 6.2 The creation of a coercive control offence may allow the State to address a destructive aspect of DFV that is currently outside the scope of the criminal law.⁶² This may enable earlier intervention, potentially preventing intimate partner homicides.
- 6.3 Ascribing separate criminal liability to coercive control would provide recognition to the distinct and harmful impact these behaviours can have on an individual. It would ensure that evidence specifically relating to coercive control is more likely to be admissible in criminal proceedings than what may occur under existing legislation. This is because it will be relevant to a charged offence, rather than used to explain the context of other offending behaviour.
- 6.4 The offence would also carry with it its own penalty. This would allow for courts to specifically punish an offender for such behaviour, which would appear on an offender's criminal history. This may enable perpetrators to be held to account for the full extent of coercive and controlling behaviour rather than for single incidents, regardless of whether these behaviours are physical or non-physical.⁶³ This may also assist with tailoring rehabilitative programs in order to curb recidivism, as it better recognises the type of behaviours being exhibited by an offender which need to be addressed.
- 6.5 Creating a specific offence would send a clear and direct message to the community that coercive and controlling behaviour is unacceptable and will not be tolerated. This may improve a victim's ability to identify their own experiences as DFV and encourage them to report it or seek out support services.
- 6.6 Legislative recognition of coercive control may also complement educative and awareness-raising exercises undertaken by governments and others about the nature and impact of DFV on victims and families.

Potential challenges of a specific offence

When should behaviour be considered criminal?

- 6.7 The broad scope of behaviours that may be considered as coercive control includes conduct which, in the appropriate context, should be the subject of criminal sanction, as well as conduct that arguably should not. Defining the scope of the conduct covered, and the interplay between the conduct and the context in which it occurs, will be a significant challenge.
- 6.8 There is a risk that legislation could inadvertently criminalise relationship behaviours that are

⁶² Julia R. Tolmie 'Coercive control: To criminalize or not to criminalize?' (2018) 18(1) *Criminology and Criminal Justice* 50, 50

⁶³ Julia R. Tolmie 'Coercive control: To criminalize or not to criminalize?' (2018) 18(1) *Criminology and Criminal Justice* 50, 53; Cassandra Weiner 'From Social Construct to Legal Innovation: The Offence of Controlling or Coercive Behaviour in England and Wales' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 159, 160

generally socially accepted, or behaviours which may be acceptable in the context of one relationship but not in the context of another. Coercive and controlling behaviours are often nuanced, complex, and their form and nature, while capable of being generalised, may not apply equally to all relationships. For example, the role of managing finances may vary from family to family, and in some circumstances when viewed through an outsider's lens may appear controlling but be acceptable and inoffensive within the dynamics of the particular relationship.

- 6.9 There is also a risk that the over-criminalisation of unhealthy relationship behaviours may unfairly impact on vulnerable cohorts by exacerbating underlying social issues.
- 6.10 Any potential criminal offence would need to be complemented by comprehensive social-services support and adequate front-line training.

How can coercive control be proved?

- 6.11 The new “course of conduct” model of offending that coercive control represents would pose novel challenges to evidence gathering and prosecution. This is because it diverges significantly from the form of conduct traditionally dealt with under the criminal law. Criminal offences ordinarily address particular instances of offending conduct, or individual acts, rather than protracted and cumulative behaviour, the impact of which is only experienced incrementally over time. For example, offences of violence ordinarily attach to a particular physical act, while offence of sexual assault would attach to a particular act, for example, of touching or sexual intercourse.
- 6.12 A course of conduct offence, on the other hand, is not made out by any one particular act. Rather, it is a series of acts or events over time, which only become harmful, or criminal, when taken together as a whole. The closest the criminal law currently comes to this model would be the offence of stalking, which can involve a series of related events, but that is still fundamentally incident based. An offence of coercive control, on the other, involves a far more dispersed series of events, potentially spread over a much longer period of time.
- 6.13 The nuanced and complex behaviours that constitutive coercive control will present significant investigative challenges for police. Whilst victim-survivors may be able to provide police with a history of how the behaviour has affected them over time, reducing this into the form of evidence that is necessary to found a criminal prosecution will present conceptual and practical difficulties. Any criminal offence, whether it criminalises individual acts of a course of conduct, requires evidence that meets a certain standard of specificity.
- 6.14 Prosecutions for course of conduct offences may also place significant strain on victim-survivors as witnesses. It may require them to give detailed and protracted evidence that covers, in some cases, many years of diverse conduct. The need to prove not only the individual acts, but the cohesive course of conduct, beyond a reasonable doubt, may risk significant re-victimisation through the process of giving evidence. In these circumstances, it would be necessary to carefully consider the balance between appropriate protections for victim-survivors and the need to ensure procedural fairness to defendants.
- 6.15 The extent to which police will need to identify specific instances of coercive conduct, rather than more generalised conduct, would depend on the drafting of any potential offence. However, it may be appropriate, regardless of the level of detail required, for police and prosecutors to focus their attention on the consequences of the behaviour, rather than just the pattern of behaviour itself. This approach may need to be embedded both at the investigative and prosecutorial level and may require police to have significant additional specialist expertise and to develop new methods of identifying offences and gathering evidence, particularly with

respect to witness interviewing.⁶⁴

Primary aggressor misidentification, and legal systems abuse

- 6.16 The relationship dynamics of domestic and family violence make investigations particularly susceptible to interference and manipulation by perpetrators. Perpetrators of DFV (including those who use coercive and controlling behaviours) may seek to justify or rationalise their abuse by claiming provocation, or by asserting that they were the primary victim of emotional abuse perpetrated by the victim-survivor. A 2018 study by No to Violence found that there were significant problems with primary aggressor identification by law enforcement, meaning victim-survivors were at risk of being mistakenly arrested and charged.⁶⁵ Some key drivers relate to unconscious biases in relation to what makes a perfect or typical victim, or perpetrator stereotypes, particularly in relation to gender norms. It has been argued that if police have difficulty identifying the primary aggressor in DFV incidents, these difficulties are likely to be compounded in relation to an offence of coercive control — particularly if the offence is gender-neutral.⁶⁶
- 6.17 In addition, there has been some suggestion that the complexity or ambiguity around primary aggressor identification can give rise to risks of legal systems abuse, in which legal and other formalised systems are used as tactics of harassment and intimidation by perpetrators.⁶⁷ An offence of coercive control could also be misused as a justification by perpetrators for their abuse – for example, claims that even though they are the primary aggressor, their actions were in response to instances of controlling behaviour. This would then need to be disproven and could risk re-traumatisation of the victim.
- 6.18 However, initial analysis of the English and Welsh offence has found that it has been appropriately operationalised by recognising the gendered nature of this type offending.⁶⁸ This highlights the need for any potential offence to be complemented by comprehensive training of police and other frontline services.

Discussion questions

- 7. What are the advantages and/or disadvantages of creating an offence of coercive control?**
- 8. How might the challenges of creating an offence of coercive control be overcome?**

⁶⁴ Amanda L. Robinson, Andy Myhill and Julia Wire 'Practitioner (mis)understandings of coercive control in England and Wales' (2018) 18(1) *Criminology and Criminal Justice* 29 33, 39

⁶⁵ No to Violence *Discussion paper: Predominant Aggressor Identification and Victim Misidentification*, (2019) <<https://ntv.org.au/wp-content/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf>> (accessed 18 September 2020). See also Victoria's Royal Commission into Family Violence *Report* (2016) <http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf?sm_byp=iVVZMDPLHbJLrKr> (accessed 12 May 2020), 17: Evidence suggests that police often find it difficult to identify the 'primary aggressor' in intimate partner violence incidents.

⁶⁶ Sandra Walklate, Kate Fitz-Gibbon and Jude McCulloch 'Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories' (2018) 18(1) *Criminology and Criminal Justice* 115

⁶⁷ Heather Douglas 'Legal Systems Abuse and Coercive Control' (2018) 18(1) *Criminology & Criminal Justice* 84; Julia R. Tolmie 'Coercive control: To criminalize or not to criminalize?' (2018) 18(1) *Criminology and Criminal Justice* 50

⁶⁸ Paul McGorrey and Marilyn McMahon 'Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence' (2019) *Criminology and Criminal Justice* 1; Paul McGorrey and Marilyn McMahon 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrey (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020), 3, 20-21

7. Constructing an offence of coercive control

- 7.1 As noted above, in NSW there is no specific offence prohibiting coercive and controlling behaviour in a DFV context.
- 7.2 The previous section outlined some of the potential benefits of a specific offence of coercive control, and some of the challenges. Any potential offence would need to be carefully structured to ensure that it captures the relevant conduct sought to be criminalised, whilst not capturing other conduct that is not properly the subject of a criminal offence. Careful consideration would also need to be given to the types of relationships to which it would apply and to ensure there is sufficient clarity to ensure the offence can be effectively operationalised, whilst avoiding adverse or perverse consequences. This section considers some of the elements of what such an offence may look like, having regard to the challenges outlined above and the models of other jurisdictions where coercive control has been criminalised.
- 7.3 Law reform plays a key role in driving social change but its effectiveness can be dependent on a range of factors. This includes but is not limited to how the offence is structured in terms of its scope and application, overcoming any evidentiary challenges and support provided to effectively operationalise it through complementary systems and practice changes.
- 7.4 This section does not propose a form of a coercive control offence, but merely identifies areas that require further consideration, should an offence be considered appropriate.
- 7.5 This section draws on the models used by different jurisdictions where coercive control has been criminalised. Consideration might also be given to whether the legislation should take into account the psychological harm to third parties caused by abusive behaviour, especially to children and young people, as has been the approach in Scotland.
- 7.6 As noted above, the introduction of an offence of coercive control would represent a move away from the traditional incident or event-based model of criminal law, towards a “course of conduct” type offence. The nature of DFV and in particular, coercive control is that it involves a series of events over time, many of which may, when looked at in isolation, appear trivial or innocuous (or at least not serious enough to reach the threshold of criminality). Understanding the broader context of the relationship is therefore critical to understanding the impact of such abuses on a victim over time.⁶⁹

Types of behaviour to be covered

- 7.7 In constructing an offence of coercive control then, an important consideration is the way in which the criminal behaviour is framed. One way would be to prescribe a closed list of behaviours. This is the approach taken by Tasmania in relation to economic abuse, in which only the behaviours listed in the statute are taken to be criminal. This approach may be able to mitigate against the risk of unintended capture of other behaviours that ought not to be considered criminal. However, it also risks an offence being rendered too narrow and unable to respond appropriately to the nuances of patterns of coercion and control.
- 7.8 An alternative approach, taken by England and Wales, Scotland, Ireland and Tasmania’s emotional abuse offence, would be to leave open the category of behaviour which is criminalised. The offence would only specify a course of conduct which is coercive and controlling, whilst relying on thresholds of intention and impact (discussed further below) to limit the capture of the offence. This approach has the reverse implications of a closed list, with the

⁶⁹ Julia R. Tolmie ‘Coercive control: To criminalize or not to criminalize?’ (2018) 18(1) *Criminology and Criminal Justice* 50, 51-52

benefit of being flexible and more likely to be able to respond to different circumstances and cases, but with a greater risk of overreach or unintentional capture.

- 7.9 Even with an open ended construction, guidance could still be provided to draw attention to specific behaviours, such as the *Statutory Guidance Framework on Controlling or Coercive Behaviour in an Intimate or Family Relationship*.⁷⁰

Scope of domestic relationships to be covered

- 7.10 The concept of coercive control was originally defined in the academic literature, and specifically focussed on, instances of intimate partner violence.
- 7.11 However, jurisdictions have taken varying approaches to the scope of relationships covered as noted above. Scotland, Ireland and Tasmania have limited their criminal offences to intimate partner violence, while England and Wales have extended the scope of offences to family members. None of these offences extend to the wide range of 'domestic relationships' as defined in NSW under the CDPV Act.
- 7.12 Whether a potential coercive control offence applied to a broad category of familial and domestic relationships, or instead to a narrow category of intimate partner relationships, would have a significant impact on the scope and operation of the offence.

Impact on the victim

- 7.13 There are obvious challenges involved in investigating and proving coercive control. In the construction of a coercive control offence, whether or not the offence requires the victim to have suffered a particular impact is a central part of addressing that challenge. Scotland and Tasmania, as noted above, do not require evidence of harm to the victim merely, that, from an objective standard of reasonableness, the conduct is likely to have a relevant effect. These effects are specified in the legislation, and directly reference the impacts of coercive control, such as causing mental harm, apprehension or fear, or isolating the victim from their family or friends.
- 7.14 By imposing an objective standard of harm, the reasonable person test may resolve some of the investigative and evidentiary challenges. Further, whilst it would not remove the need for victim-survivors to give evidence, by eliminating the need to prove specific harm, victim-survivors may avoid the need to relive the actual effects the abuse had on them, and the risk of re-victimisation may be reduced.⁷¹ However, doubt has been cast on the ability of the 'reasonable person' test to achieve this goal. The credibility of a victim-survivor will often be an issue in proceedings, and it is possible that evidence of specific harm will often still be required, if not formally, then indirectly.⁷²
- 7.15 There is also a risk that the 'reasonable person' test will set the threshold for criminal conduct too low. As noted above, coercive control is a nuanced concept, and what may amount to abusive conduct in one relationship may be innocuous in another (or at least not serious enough to reach the threshold of criminality). If there is no positive requirement that the prosecution prove actual harm to a complainant, it is conceivable that prosecutions may occur where there is no harm, and the allegedly abusive conduct is in fact not abusive at all. In some circumstances, a cautious approach to investigation and prosecution may result in significant

⁷⁰ Home Office *Controlling or Coercive Behaviour in an Intimate or Family Relationship Statutory Guidance Framework* (2015) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/482528/Controlling_or_coercive_behaviour_-_statutory_guidance.pdf> (accessed 18 September 2020)

⁷¹ Michele Burman and Oona Brooks-Hay 'Aligning policy and law? The creation of a domestic abuse offence incorporating coercive control' (2018) 18(1) *Criminology and Criminal Justice* 67, 74

⁷² Ibid

injustice. This may present a particular hazard for already vulnerable cohorts who may be over-represented in their dealings with police, or whose cultural practices and inter-personal relationships may not be well understood.

- 7.16 In contrast, the approach in England and Wales and Ireland has been to require evidence that the victim suffered a significant impact. This is a subjective test as to whether or not the victim felt fear as a result of the behaviour, or suffered such alarm and distress affecting their day to day activities. While such an approach may mitigate the risks of overly expansive capture, it does again raise the risk that the evidentiary burden may be too high, and that successful conviction will rely on conventional indicators of DFV, or on very extreme cases which may not address more common forms of coercive control, or coercive control at an earlier stage which may still warrant criminal sanction. This has been seen in England and Wales, where analysis of early prosecutions of the offence identified that the majority were either extreme cases or cases where there was physical violence present.⁷³

State of mind of the offender

- 7.17 The requisite intention of the offender is also an important consideration for the construction of an offence. Some jurisdictions have opted to take an approach that requires actual intention or recklessness to cause a specific harm or to control the victim. Such an approach would be more focussed in scope and ensure that criminality attaches only to behaviour that is clearly egregious. However, the high threshold of specific intent may create a barrier to successful prosecutions.
- 7.18 Other jurisdictions have elected to require that the offender knew or ought to have known that their behaviour would have been abusive. This approach includes an objective standard of reasonableness through the requirement that an offender 'ought to have known' their behaviour was abusive. Such an approach again invites the risk that the threshold for criminal conduct may be set too low, noting that it may overcome difficulties in proving specific intent.

Penalties and aggravation

- 7.19 The examples from other jurisdictions provide for a varied approach to penalties. Tasmania's offences carry maximum penalties of two years; England and Wales, and Ireland, five years on indictment; and Scotland, 14 years on indictment.
- 7.20 Consideration would therefore need to be given to benchmarking any penalties against comparative offences, such as the current offences for stalking and intimidation in the CDPV Act, which carry a maximum penalty of five years imprisonment.
- 7.21 Additionally, the Scottish legislation explicitly recognises the significant impacts this type of behaviour can have on children and makes the exposure of children to the abuse an aggravating factor, to be taken into account for the sentencing of their offence. It is possible that other aggravating factors may be required to be taken into consideration in any definition of coercive and controlling behaviours, and consideration will be required in relation to the specific scope of a new offence.

Defences

- 7.22 Scotland and England and Wales both provide specified defences for their offences, and consideration should be given to the inclusion of such elements. In particular:

⁷³ Paul McGorriery and Marilyn McMahon 'Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence' (2019) *Criminology and Criminal Justice* 1

- The Scottish defence applies where the conduct is reasonable in the circumstances.
- England and Wales provide a defence where the behaviour was reasonable in the circumstances, and the offender believed they were acting in the best interests of the victim.

7.23 In both cases, accused persons bear an evidentiary burden only. This means that they are only required to adduce evidence which raises the issue of the defence, at which point the burden of disproving the defence beyond a reasonable doubt shifts to the prosecution.

7.24 Consideration of any defence would need to be careful to strike the right balance. On the one hand, a defence would need to be expansive enough to protect against unintended capture of innocuous behaviour or behaviour which should not reach the threshold of criminality. On the other hand, any defence would also need to be appropriately limited to mitigate against the risk that it could be used to re-traumatise the victim by suggesting that the behaviour was 'reasonable' or that the accused was acting in good faith when the victim may have in fact been suffering significant abuse over a long period of time.

Activities supporting a new offence

7.25 The introduction of a specific offence could be considered ineffective if it serves only a 'symbolic effect'. This is reflected in the findings of several previous Australian inquiries.⁷⁴

7.26 Moving away from a primarily incident-based, physical violence approach to the policing and prosecution of DFV offences would require a significant change in response across the criminal justice sector. In addition, raising public awareness and understanding of a new offence would be required to ensure that the community understands the scope of behaviours that are criminal and to encourage them to report or seek help under the new laws as appropriate.

7.27 Experiences in other jurisdictions indicate this takes time and considerable effort. For example, following the introduction of coercive control laws in England and Wales, police were found to display a lack of understanding of coercive control — maintaining a greater focus on physical violence consistent with standard, incident-based police responses to DFV, rather than taking into account the cumulative and often complex nature of coercive and controlling behaviours.⁷⁵ In contrast, Scotland adopted a long lead time prior to commencement of its offence; it invested heavily in the training of frontline police officers and other relevant staff (undertaken in partnership with DFV specialists), and in educating the general public. As noted above at [5.19] and [5.28], the relevant uptake of the Scottish offence has been much swifter than in England and Wales.

7.28 These factors are relevant for consideration in a NSW context and would likely have resourcing implications which would need to be carefully considered.

⁷⁴ Australian Law Reform Commission, *Family Violence — a National Legal Response* (2010) <https://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC114_WholeReport.pdf> (accessed 12 May 2020); Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an end to domestic and family violence in Queensland* (2015) <<https://www.csyw.qld.gov.au/resources/campaign/end-violence/about/dfv-report-vol-one.pdf>> (accessed 12 May 2020); Victoria's Royal Commission into Family Violence *Report* (2016) <http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf?sm_byp=iVV LZMDPLHbJLrKt> (accessed 12 May 2020)

⁷⁵ Iain R. Brennan et al 'Service Provider Difficulties in Operationalizing Coercive Control' (2019) 26(6) *Violence Against Women* 635, 641; Amanda L. Robinson, Andy Myhill and Julia Wire 'Practitioner (mis)understandings of coercive control in England and Wales' (2018) 18(1) *Criminology and Criminal Justice* 29

Discussion questions

- 9. If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?**

8. Other avenues for legislative reform

- 8.1 The introduction of a specific offence of coercive control may not be the only way to improve the justice system response to DFV. There may also be scope for reform in this area through other avenues, such as better utilisation and enforcement of ADVOs or introducing explicit provisions to allow the use of coercive control evidence in criminal proceedings.

Apprehended domestic violence orders

- 8.2 One example of potential reform would be to allow courts to make an ADVO where a PINOP has reasonable grounds to fear that they will be subject to coercive and controlling behaviours (under s 19(1) of the CDPV Act). This would expand the grounds of the civil protection order scheme to explicitly recognise the wide range of behaviours that constitute coercive control.
- 8.3 Alternatively, the courts may be required, under s 20 of the CDPV Act, to take into account any evidence of coercive and controlling behaviours when deciding whether to make an ADVO on existing grounds. Other jurisdictions have adopted a similar approach – for example in New Zealand, courts considering protection orders are required by s 82 of the *Family Violence Act 2018* (NZ) to consider whether minor or trivial behaviour when viewed in isolation nevertheless forms part of a pattern of behaviour from which the victim requires protection.
- 8.4 This may have some advantages for police and victim-survivors who, in the absence of any physical violence, may otherwise be dissuaded from proceeding with an ADVO application that may have substantial merit.
- 8.5 Additionally, changes could be made to ADVO conditions to better recognise and protect against behaviours constituting coercive control. At present, the court may include any prohibition or restriction it deems necessary to ensure the safety and protection of the PINOP, which as noted above provides flexible coverage under an ADVO. However, there could be merit to amending either the examples of conditions or the mandatory conditions that can be imposed under sections 35 and 35 of the CDPV Act respectively to acknowledge coercive control more explicitly. These changes could also be reflected in supporting documentation, such as the application forms prescribed under the *Crimes (Domestic and Personal Violence) Regulation 2019* (NSW).
- 8.6 However, conditions in ADVOs, while able to assist would also need to be carefully drafted to ensure that it is clear to the defendant and the PINOP what behaviours specifically are prohibited. If conditions are unclear, the ADVO may have the opposite effect by creating ambiguity as to whether an individual is complying or not, compounding the issues in relation to properly identifying and responding to coercive control.
- 8.7 This course may have the advantage of addressing the social harm caused by coercive control without the risk of adverse consequences resulting from over-criminalisation, noting again that a breach of an ADVO condition is a criminal offence.

Trial proceedings – domestic and family violence

Admissibility of context and relationship evidence

- 8.8 As described above, evidence of coercive control may be admissible in prosecutions for existing domestic violence offences as context and relationship evidence, under the common law.
- 8.9 Consideration could be given to codifying these principles within the *Criminal Procedure Act 1985* (NSW) (**CPA**), specifically for criminal proceedings concerning domestic violence

offences. This may extend to whether there should be a legislative provision to ensure relevant evidence of coercive control is put before courts.

Jury directions

- 8.10 Currently, evidence that has been admitted as context or relationship evidence may need to be accompanied by suitable judicial directions to a jury, for example by limiting the use of the evidence to the assessment of the complainant's credibility.
- 8.11 Consideration may be given to whether a suitable jury direction could be introduced, for example into the CPA that would properly inform juries of the relevance and significance of coercive control evidence, in line with the current common law authorities.
- 8.12 In Victoria, ss 58, 59 and 60 of the *Jury Directions Act 2015 (JDA)* contains directions specifically relating to family violence, however these are only available at the request of the accused in a criminal proceeding in which self-defence or duress in the context of family violence is in issue.
- 8.13 Should the accused seek a direction with respect to the nature of family violence under s 58 of the JDA, s 60 gives a judge wide discretion to direct a jury as to the different reaction of victims in such circumstances. Specifically, that:
- (i) *people may react differently to family violence and there is no typical, proper or normal response to family violence;*
 - (ii) *it is not uncommon for a person who has been subjected to family violence—*
 - (A) *to stay with an abusive partner after the onset of family violence, or to leave and then return to the partner;*
 - (B) *not to report family violence to police or seek assistance to stop family violence;*
 - (iii) *decisions made by a person subjected to family violence about how to address, respond to or avoid family violence may be influenced by—*
 - (A) *family violence itself;*
 - (B) *cultural, social, economic and personal factors;*
 - (C) *that, as a matter of law, evidence that the accused assaulted the victim on a previous occasion does not mean that the accused could not have been acting in self-defence or under duress (as the case requires) in relation to the offence charged.*

Sentencing reforms

- 8.14 As discussed above, the presence of coercive control behaviour will often be relevant to a court's assessment of the objective seriousness of domestic violence offences. However, there is presently no legislative provision that requires this behaviour to be taken into account. Consideration may be given to whether such a provision is necessary, and if so how it should be structured. In particular, consideration may be given to whether the presence of coercive control behaviour should be included as a specific aggravating factor under s 21A of the *Crimes (Sentencing Procedure) Act 1995 (NSW) (CSP Act)*.
- 8.15 Consideration may also be given to whether the existing legislative regime governing victim impact statements (**VIS**) (in particular s 28 of the CSP Act) is sufficient to encompass harm caused by coercive control behaviour that does not form part of an offence.
- 8.16 Currently, a court can only have regard to the consequences of an offence that were intended or could reasonably have been foreseen.⁷⁶

⁷⁶ *Josefski v R* (2010) 217 A Crim R 183 at [3]-[4], [38]-[39]

- 8.17 VIS must also detail particulars of harm or emotional suffering incurred by the primary victim or by members of the primary victim's immediate family, as a *direct result of offence*.⁷⁷ It may be difficult to delineate between the harm caused by the charged offence, and the harm caused by a relationship with an offender which consisted of different forms of violence and abuse.
- 8.18 If this regime is not sufficient, consideration may be given to ways in which these provisions could be amended to allow this material to be appropriately put before sentencing courts.

Discussion questions

- 10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?**
- 11. Should the common law with respect to context and relationship evidence be codified within the CPA (or other relevant NSW legislation) to specifically govern its admissibility in criminal proceedings concerning domestic and family violence offences? If yes, how should this be framed?**
- 12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?**
- 13. Should provisions with respect to sentencing regimes be amended? If so, how?**
- 14. Are there any other potential avenues for reform that are not outlined or included in the questions above?**

⁷⁷ *Crimes (Sentencing Procedure) Act 1995*, ss 26, 28(1).

9. Non-legislative issues

- 9.1 As noted throughout this paper, coercive control is a complex phenomenon which requires engagement from not only the criminal justice system, but the wider DFV and social service systems, and the broader community, in order to address it.
- 9.2 There is an opportunity to consider a range of non-legislative activities which could improve policy and service responses and community awareness about coercive control. These activities are relevant regardless of whether legislative reform is pursued. If legislative reform was considered appropriate, consideration could be given to how these activities are designed to complement and support its implementation.

Whole of government approaches to DFV

NSW context

- 9.3 Effectively responding to DFV often involves a broad range of coordinated service responses across a range of sectors. Victim-survivors of DFV should receive flexible, person-centred services to support them through immediate crises and as they deal with the longer-term effects of their trauma.
- 9.4 The NSW Government takes a whole of government approach to responding to and preventing DFV, as articulated in the Blueprint.⁷⁸ It reflects a broader policy definition of DFV (see 3.1), taking into account coercive and controlling behaviours. One of the six pillars of the Blueprint is prevention, with efforts focused on changing the attitudes, social norms and structures that underpin DFV, including gender inequality. Other pillars include early intervention, support for victims, and enhanced perpetrator accountability.
- 9.5 The NSW Government also provides or funds a wide range of support programs, services and initiatives that seek to target prevention. Many of these services are available to victims-survivors, regardless of whether the abuse they have experienced meets a civil or criminal standard. Under the Blueprint, more than \$431 million is being invested over four years to tackle DFV by supporting victims and survivors and holding perpetrators to account. The dedicated funding and suite of programs established under the Blueprint is in addition to the funding provided to agencies to combat sexual violence and DFV through mainstream services in justice, police, health, child protection, social housing, and homelessness services.
- 9.6 The NSW Government also works closely with private sector, non-government and community organisations to develop and enhance DFV services across each of these areas. This includes partnerships through the Innovation Fund, which supports innovative projects addressing prevention, early intervention and crisis response to DFV through \$20 million for 20 projects across two rounds.
- 9.7 The Blueprint is due to expire in 2021. Planning for a future strategy is under way. As part of its development, there is an opportunity to consider whether an increased focus on prevention and other strategic initiatives (e.g. community, victim and workforce awareness; education and intervention at primary, secondary and tertiary levels) addressing coercive control should be incorporated and developed. Identifying where specific policy or service delivery improvements are needed and feasible to implement may also be a component of this work.

⁷⁸ The full Blueprint is available at: http://domesticviolence.nsw.gov.au/_data/assets/pdf_file/0004/379849/dfv-blueprint-forreform.pdf (accessed 18 September 2020).

National context

- 9.8 The Commonwealth and all states and territories are working together to address DFV. This commitment is reflected through the *National Plan to Reduce Violence against Women and their Children*.⁷⁹ The Plan notes there is no single definition of DFV but recognises that it includes behaviours which are intended to coerce and control a victim-survivor.
- 9.9 The Plan has been supported by four three-year action plans. Currently, the Fourth Action Plan is being implemented and includes a range of commitments which seek to prevent DFV, including through teaching children and young people about respectful relationships and better equipping the service system and community to respond to complex forms of violence. The Fourth Action Plan and National Plan will expire in 2022.

Specialist education, training and guidance for key staff

- 9.10 Many government and other frontline staff involved in responding to DFV in NSW receive or have access to training to assist them in their roles. This includes police, judiciary, legal professionals, court staff, DFV support service staff and other professionals interacting with victim-survivors such as those in the health, education and child protection sectors. Training is important in ensuring those who are most likely to engage first with victims of DFV are equipped to identify coercive control, provide support services earlier and tailor their service delivery to the specific circumstances and risk profile of individuals subject to coercive control.
- 9.11 Development of tailored training and resources for recognising and responding to coercive control is particularly relevant because of longstanding approaches to combatting DFV, which have tended to focus on individual incidents of violence or physical violence, as noted above in relation to the criminal justice system. Coercive control behaviours may not always be recognised as elements of coercive control, especially if the victim does not themselves appreciate the abuse that they are being subjected to. An academic study into practitioner awareness and capability in England and Wales noted that “domestic abuse that manifests as a ‘low-level’ incident could be excluded from the process because frontline officers do not recognize this behaviour as a possible expression of coercive control” and that “coercive control will be missed, and the level of risk therefore underestimated, when practitioners are attending incidents devoid of other high risk markers to ‘prime’ them to identify the coercive control”.⁸⁰ This reflects that the conventional approach to identifying DFV may result in interventions at a later point where the abusive behaviour has begun to escalate.
- 9.12 There may be opportunities to consider how existing training could be augmented to increase its focus on identifying and responding to DFV, including coercive and controlling behaviours to facilitate earlier intervention. Such training could also ensure there is a common understanding of the dynamics of DFV and coercive control across the different services and capacity to respond appropriately. This could include enhancements to practice guidance provided to staff to support them in their day-to-day roles, and training and education to increase awareness and knowledge of how to respond safely. In turn, this could support the use of the existing protections in NSW that cover coercive control, such as the use of ADVOs or the offence of stalking and intimidation.

⁷⁹ The National Plan is available at: https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf (accessed 18 September 2020).

⁸⁰ Amanda L. Robinson, Andy Myhill and Julia Wire ‘Practitioner (mis)understandings of coercive control in England and Wales’ (2018) 18(1) *Criminology and Criminal Justice* 29, 38-41

Education and awareness-raising with the community

- 9.13 Coercive control is a complex concept, and it challenges many pre-existing beliefs and attitudes in relation to DFV, such as the view that DFV only consists of physical violence. These normative beliefs need to be transformed in order to raise awareness and shift understandings about the kind of behaviour that is coercive or controlling and therefore unacceptable. Education and awareness raising activities are critical to this effort, and are necessary to embed any change in relation to coercive control. Prevention activities are expansive and can involve both whole of population approaches (such as community awareness campaigns) and targeted approaches (such as primary, secondary and tertiary level education or developing specific messaging and resources for at risk individuals and communities).
- 9.14 In addition to shifting broader social attitudes in the community and in target cohorts as a form of primary prevention, awareness raising and education is also critical to equip individuals to seek help. Enabling individuals to understand the concepts behind coercive control and how to identify such behaviours will better equip both victims and perpetrators to reflect on their relationship(s), identify unhealthy relationship behaviours and make choices to protect or remove themselves, including reporting or seeking help at an earlier point before escalation. Further consideration could be given to ensuring a greater focus on the complex nature of DFV including coercive and controlling behaviours as part of primary prevention going forward, regardless of whether coercive control is a specific criminal offence.
- 9.15 There are a range of existing or previous activities which provide examples of approaches to DFV prevention by engaging with underlying drivers of behaviour:
- Prevention strategies – such as the National *Stop it at the Start* campaign⁸¹ which aims to reset young people’s attitudes by motivating their parents, family, teachers and other role models to play a role in having conversations about respectful relationships and attitudes about gender equality.
 - Communications and awareness raising campaigns – including the NSW Government’s 2020 *Speak Out* campaign which encourages victim-survivors to reach out for help by calling the NSW DV Line; and the Our Watch *No Excuse for Abuse* campaign (launched in 2018 and updated in 2020) which highlights the range of behaviours which can be considered abusive and that these are unacceptable
 - Active bystander campaigns – including the NSW Police Force’s 2016 campaign which encourages friends, family and neighbours to report DFV where they suspect it is occurring.

Discussion questions

- 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?**

⁸¹ Information about the *Stop it at the Start* campaign can be accessed here: <https://www.respect.gov.au/the-campaign/> (accessed 18 September 2020)

10. Summary of questions in this discussion paper

1. What would be an appropriate definition of coercive control?
2. How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?
3. Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?
4. Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?
5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?
6. Does the law currently allow evidence of coercive control to be adequately taken into account in sentence proceedings?

If the answer is no to questions 5 or 6, how could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?

7. What are the advantages and/or disadvantages of creating an offence of coercive control?
8. How might the challenges of creating an offence of coercive control be overcome?
9. If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?
10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?
11. Should the common law with respect to context and relationship evidence be codified within the CPA (or other relevant NSW legislation) to specifically govern its admissibility in criminal proceedings concerning domestic and family violence offences? If yes, how should this be framed?
12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?
13. Should provisions with respect to sentencing regimes be amended? If so, how?
14. Are there any other potential avenues for reform that are not outlined or included in the questions above?
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?

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Appendix A: Selected provisions – Australian jurisdictions

JURISDICTION	PROVISION
NSW	<p><i>Crimes (Domestic and Personal Violence) Act 2007 (NSW)</i></p> <p>4 Meaning of “personal violence offence”</p> <p>In this Act, <i>personal violence offence</i> means—</p> <p>(a) an offence under, or mentioned in, section 19A, 24, 25, 26, 27, 28, 29, 30, 31, 33, 33A, 35, 35A, 37, 38, 39, 41, 43, 43A, 44, 45, 45A, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61JA, 61K, 61KC, 61KD, 61KE, 61KF, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66DA, 66DB, 66DC, 66DD, 66DE, 66DF, 66EA, 73, 73A, 78A, 80A, 80D, 86, 87, 91P, 91Q, 91R, 93G, 93GA, 110, 195, 196, 198, 199, 200, 562I (as in force before its substitution by the <i>Crimes Amendment (Apprehended Violence) Act 2006</i>) or 562ZG of the <i>Crimes Act 1900</i>, or</p> <p>(b) an offence under section 13 or 14 of this Act, or</p> <p>(b1) an offence under section 109, 111, 112, 113, 114, 115 or 308C of the <i>Crimes Act 1900</i>, but only if the serious indictable offence or indictable offence referred to in those sections is an offence referred to in paragraph (a) or (b), or</p> <p>(c) an offence of attempting to commit an offence referred to in paragraph (a), (b) or (b1).</p> <p>5 Meaning of “domestic relationship”</p> <p>(1) For the purposes of this Act, a person has a <i>domestic relationship</i> with another person if the person—</p> <p>(a) is or has been married to the other person, or</p> <p>(b) is or has been a de facto partner of that other person, or</p> <p>(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</p> <p>(d) is living or has lived in the same household as the other person, or</p> <p>(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 <i>Crimes (Administration of Sentences) Act 1999</i> or a detention centre within the meaning of the <i>Children (Detention Centres) Act 1987</i>), or</p>

JURISDICTION	PROVISION
	<p>(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</p> <p>(g) is or has been a relative of the other person, or</p> <p>(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.</p> <p>Note— “De facto partner” is defined in section 21C of the <i>Interpretation Act 1987</i>.</p> <p>(2) Two persons also have a <i>domestic relationship</i> with each other for the purposes of this Act if they have both had a domestic relationship of a kind set out in subsection (1)(a), (b) or (c) with the same person.</p> <p>Note— A woman's ex-partner and current partner would therefore have a domestic relationship with each other for the purposes of this Act even if they had never met.</p> <p>7 Meaning of “intimidation”</p> <p>(1) For the purposes of this Act, <i>intimidation</i> of a person means—</p> <p>(a) conduct (including cyberbullying) amounting to harassment or molestation of the person, or</p> <p>Note— An example of cyberbullying may be the bullying of a person by publication or transmission of offensive material over social media or via email.</p> <p>(b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, or</p> <p>(c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.</p> <p>(2) For the purpose of determining whether a person's conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.</p> <p>8 Meaning of “stalking”</p> <p>(1) In this Act, <i>stalking</i> includes the following—</p>

JURISDICTION	PROVISION
	<p>(a) the following of a person about,</p> <p>(b) the watching or frequenting of the vicinity of, or an approach to, a person’s place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity,</p> <p>(c) contacting or otherwise approaching a person using the internet or any other technologically assisted means.</p> <p>(2) For the purpose of determining whether a person’s conduct amounts to stalking, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person’s behaviour.</p> <p>11 Meaning of “domestic violence offence”</p> <p>(1) In this Act, <i>domestic violence offence</i> means an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being—</p> <p>(a) a personal violence offence, or</p> <p>(b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or</p> <p>(c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).</p> <p>(2) In this section, <i>offence</i> includes an offence under the <i>Criminal Code Act 1995</i> of the Commonwealth.</p> <p>13 Stalking or intimidation with intent to cause fear of physical or mental harm</p> <p>(1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence.</p> <p>Maximum penalty—Imprisonment for 5 years or 50 penalty units, or both.</p> <p>(2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship.</p> <p>(3) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.</p>

JURISDICTION	PROVISION
	<p>(4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm.</p> <p>(5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.</p> <p>Crimes Act 1900 (NSW)</p> <p>Examples of personal violence offences considered domestic violence as listed in the Crimes Act 1900 (NSW) include:</p> <ul style="list-style-type: none"> • Homicide • Conspiracy to murder • Attempts to murder • Documents containing threats (to kill) • Acts causing danger to life or bodily harm • Assaults • Common assaults • Sexual offences against adults and children (including sexual assault and assault with intent to have sexual intercourse, sexual touching, sexual act) • Kidnapping • Recording and distributing intimate images (including threats) • Explosives and firearms offences • Housebreaking • Crimes against property generally • Computer offences (e.g. Unauthorised access, modification or impairment with intent to commit serious indictable offence).
QLD	<p>Domestic and Family Violence Protection Act 2012 (Qld)</p> <p>8 Meaning of <i>domestic violence</i></p> <p>(1) <i>Domestic violence</i> means behaviour by a person (the <i>first person</i>) towards another person (the <i>second person</i>) with whom the first person is in a relevant relationship that—</p> <p>(a) is physically or sexually abusive; or</p>

JURISDICTION	PROVISION
	<p>(b) is emotionally or psychologically abusive; or</p> <p>(c) is economically abusive; or</p> <p>(d) is threatening; or</p> <p>(e) is coercive; or</p> <p>(f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.</p> <p>(2) Without limiting subsection (1), domestic violence includes the following behaviour—</p> <p>(a) causing personal injury to a person or threatening to do so;</p> <p>(b) coercing a person to engage in sexual activity or attempting to do so;</p> <p>(c) damaging a person's property or threatening to do so;</p> <p>(d) depriving a person of the person's liberty or threatening to do so;</p> <p>(e) threatening a person with the death or injury of the person, a child of the person, or someone else;</p> <p>(f) threatening to commit suicide or self-harm so as to torment, intimidate or frighten the person to whom the behaviour is directed;</p> <p>(g) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the person to whom the behaviour is directed, so as to control, dominate or coerce the person;</p> <p>(h) unauthorised surveillance of a person;</p> <p>(i) unlawfully stalking a person.</p> <p>(3) A person who counsels or procures someone else to engage in behaviour that, if engaged in by the person, would be domestic violence is taken to have committed domestic violence.</p> <p>(4) To remove any doubt, it is declared that, for behaviour mentioned in subsection (2) that may constitute a criminal offence, a court may make an order under this Act on the basis that the behaviour is domestic violence even if the behaviour is not proved beyond a reasonable doubt.</p> <p>(5) In this section—</p>

JURISDICTION	PROVISION
	<p><i>coerce</i>, a person, means compel or force a person to do, or refrain from doing, something.</p> <p><i>unauthorised surveillance</i>, of a person, means the unreasonable monitoring or tracking of the person's movements, activities or interpersonal associations without the person's consent, including, for example, by using technology.</p> <p><i>Examples of surveillance by using technology—</i></p> <ul style="list-style-type: none"> •reading a person's SMS messages •monitoring a person's email account or internet browser history •monitoring a person's account with a social networking internet site •using a GPS device to track a person's movements •checking the recorded history in a person's GPS device <p><i>unlawful stalking</i> see the Criminal Code, section 359B.</p> <p>11 Meaning of <i>emotional or psychological abuse</i></p> <p>Emotional or psychological abuse means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.</p> <p><i>Examples—</i></p> <ul style="list-style-type: none"> • following a person when the person is out in public, including by vehicle or on foot • remaining outside a person's residence or place of work • repeatedly contacting a person by telephone, SMS message, email or social networking site without the person's consent • repeated derogatory taunts, including racial taunts • threatening to disclose a person's sexual orientation to the person's friends or family without the person's consent • threatening to withhold a person's medication • preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity

JURISDICTION	PROVISION
	<p data-bbox="360 204 819 236">12 Meaning of <i>economic abuse</i></p> <p data-bbox="376 260 1895 328"><i>Economic abuse</i> means behaviour by a person (the <i>first person</i>) that is coercive, deceptive or unreasonably controls another person (the <i>second person</i>), without the second person’s consent—</p> <p data-bbox="376 352 1968 421">(a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or</p> <p data-bbox="376 445 1980 547">(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child, if the second person or the child is entirely or predominantly dependent on the first person for financial support to meet those living expenses.</p> <p data-bbox="454 571 607 603"><i>Examples—</i></p> <ul data-bbox="454 627 1980 1238" style="list-style-type: none"> • coercing a person to relinquish control over assets and income • removing or keeping a person’s property without the person’s consent, or threatening to do so • disposing of property owned by a person, or owned jointly with a person, against the person’s wishes and without lawful excuse • without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses • preventing a person from seeking or keeping employment • coercing a person to claim social security payments • coercing a person to sign a power of attorney that would enable the person’s finances to be managed by another person • coercing a person to sign a contract for the purchase of goods or services • coercing a person to sign a contract for the provision of finance, a loan or credit • coercing a person to sign a contract of guarantee • coercing a person to sign any legal document for the establishment or operation of a business <p data-bbox="360 1321 875 1353">13 Meaning of <i>relevant relationship</i></p> <p data-bbox="376 1377 734 1409"><i>A relevant relationship</i> is—</p>

JURISDICTION	PROVISION
	<p>(a) an intimate personal relationship; or [see s 14]</p> <p>(b) a family relationship; or [see s 19]</p> <p>(c) an informal care relationship. [see s 20]</p> <p>Schedule – Dictionary</p> <p><i>domestic violence offence</i> means—</p> <p>(a) a domestic violence offence within the meaning of the Criminal Code, section 1; or</p> <p>(b) an offence under part 7. [contravention of domestic violence order, police protection notice or release conditions]</p> <p>Criminal Code Act 1899 (Qld)</p> <p>1 Definitions</p> <p><i>domestic violence offence</i> means an offence against an Act, other than the <i>Domestic and Family Violence Protection Act 2012</i>, committed by a person where the act done, or omission made, which constitutes the offence is also—</p> <p>(a) domestic violence or associated domestic violence, under the <i>Domestic and Family Violence Protection Act 2012</i>, committed by the person; or</p> <p>(b) a contravention of the <i>Domestic and Family Violence Protection Act 2012</i>, section 177(2).</p> <p><i>Note—</i></p> <p>Under the <i>Domestic and Family Violence Protection Act 2012</i>, section 177(2), a respondent against whom a domestic violence order has been made under that Act must not contravene the order.</p>
VIC	<p>Family Violence Protection Act 2008 (Vic)</p> <p>5 Meaning of family violence</p> <p>(1) For the purposes of this Act, <i>family violence</i> is—</p>

JURISDICTION	PROVISION
	<p>(a) behaviour by a person towards a family member of that person if that behaviour—</p> <ul style="list-style-type: none"> (i) is physically or sexually abusive; or (ii) is emotionally or psychologically abusive; or (iii) is economically abusive; or (iv) is threatening; or (v) is coercive; or (vi) in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or <p>(b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).</p> <p>Examples</p> <p>1 The following behaviour may constitute family violence under paragraph (a)—</p> <ul style="list-style-type: none"> • using coercion, threats, physical abuse or emotional or psychological abuse to cause or attempt to cause a person to enter into a marriage; • using coercion, threats, physical abuse or emotional or psychological abuse to demand or receive dowry, either before or after a marriage. <p>2 The following behaviour may constitute a child hearing, witnessing or otherwise being exposed to the effects of behaviour referred to in paragraph (a)—</p> <ul style="list-style-type: none"> • overhearing threats of physical abuse by one family member towards another family member; • seeing or hearing an assault of a family member by another family member; • comforting or providing assistance to a family member who has been physically abused by another family member; • cleaning up a site after a family member has intentionally damaged another family member's property; • being present when police officers attend an incident involving physical abuse of a family member by another family member. <p>(2) Without limiting subsection (1), <i>family violence</i> includes the following behaviour—</p> <ul style="list-style-type: none"> (a) assaulting or causing personal injury to a family member or threatening to do so; (b) sexually assaulting a family member or engaging in another form of sexually coercive behaviour or threatening to

JURISDICTION	PROVISION
	<p>engage in such behaviour;</p> <p>(c) intentionally damaging a family member's property, or threatening to do so;</p> <p>(d) unlawfully depriving a family member of the family member's liberty, or threatening to do so;</p> <p>(e) causing or threatening to cause the death of, or injury to, an animal, whether or not the animal belongs to the family member to whom the behaviour is directed so as to control, dominate or coerce the family member.</p> <p>(3) To remove doubt, it is declared that behaviour may constitute family violence even if the behaviour would not constitute a criminal offence.</p> <p>6 Meaning of <i>economic abuse</i></p> <p>For the purposes of this Act, <i>economic abuse</i> is behaviour by a person (the <i>first person</i>) that is coercive, deceptive or unreasonably controls another person (the <i>second person</i>), without the second person's consent—</p> <p>(a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or</p> <p>(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or the second person's child, if the second person is entirely or predominantly dependent on the first person for financial support to meet those living expenses.</p> <p>Examples—</p> <ul style="list-style-type: none"> • coercing a person to relinquish control over assets and income; • removing or keeping a family member's property without permission, or threatening to do so; • disposing of property owned by a person, or owned jointly with a person, against the person's wishes and without lawful excuse; • without lawful excuse, preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses; • preventing a person from seeking or keeping employment; • coercing a person to claim social security payments; • coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person; • coercing a person to sign a contract for the purchase of goods or services; • coercing a person to sign a contract for the provision of finance, a loan or credit; • coercing a person to sign a contract of guarantee;

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	<ul style="list-style-type: none"> • coercing a person to sign any legal document for the establishment or operation of a business. <p>7 Meaning of <i>emotional or psychological abuse</i></p> <p>For the purposes of this Act, <i>emotional or psychological abuse</i> means behaviour by a person towards another person that torments, intimidates, harasses or is offensive to the other person.</p> <p>Examples—</p> <ul style="list-style-type: none"> • repeated derogatory taunts, including racial taunts; • threatening to disclose a person's sexual orientation to the person's friends or family against the person's wishes; • threatening to withhold a person's medication; • preventing a person from making or keeping connections with the person's family, friends or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity; • threatening to commit suicide or self-harm with the intention of tormenting or intimidating a family member, or threatening the death or injury of another person. • <p>8 Meaning of <i>family member</i></p> <p>(1) For the purposes of this Act, a <i>family member</i>, in relation to a person (a <i>relevant person</i>), means—</p> <ol style="list-style-type: none"> (a) a person who is, or has been, the relevant person's spouse or domestic partner; or (b) a person who has, or has had, an intimate personal relationship with the relevant person; or (c) a person who is, or has been, a relative of the relevant person; or (d) a child who normally or regularly resides with the relevant person or has previously resided with the relevant person on a normal or regular basis; or (e) a child of a person who has, or has had, an intimate personal relationship with the relevant person. <p>...</p>
WA	<p><i>Restraining Orders Act 1997 (WA)</i></p> <p>4 Terms used: family relationship and family member</p> <p>(1) In this Act — <i>family relationship</i> means a relationship between 2 persons —</p>

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	<p>(a) who are, or were, married to each other; or</p> <p>(b) who are, or were, in a de facto relationship with each other; or</p> <p>(c) who are, or were, related to each other; or</p> <p>(d) one of whom is a child who —</p> <p style="padding-left: 40px;">(i) ordinarily resides, or resided, with the other person; or</p> <p style="padding-left: 40px;">(ii) regularly resides or stays, or resided or stayed, with the other person; or</p> <p>(e) one of whom is, or was, a child of whom the other person is a guardian; or</p> <p>(f) who have, or had, an intimate personal relationship, or other personal relationship, with each other; or</p> <p>(g) one of whom is the former spouse or former de facto partner of the other person’s current spouse or current de facto partner.</p> <p>...</p> <p>(3) In this Act a person is a <i>family member</i> of another person if the persons are in a family relationship.</p> <p>5A Term used: family violence</p> <p>(1) A reference in this Act to <i>family violence</i> is a reference to —</p> <p style="padding-left: 40px;">(a) violence, or a threat of violence, by a person towards a family member of the person; or</p> <p style="padding-left: 40px;">(b) any other behaviour by the person that coerces or controls the family member or causes the member to be fearful.</p> <p>(2) Examples of behaviour that may constitute family violence include (but are not limited to) the following —</p> <p style="padding-left: 40px;">(a) an assault against the family member;</p> <p style="padding-left: 40px;">(b) a sexual assault or other sexually abusive behaviour against the family member;</p> <p style="padding-left: 40px;">(c) stalking or cyber-stalking the family member;</p> <p style="padding-left: 40px;">(d) repeated derogatory remarks against the family member;</p>

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	<p>(e) damaging or destroying property of the family member;</p> <p>(f) causing death or injury to an animal that is the property of the family member;</p> <p>(g) unreasonably denying the family member the financial autonomy that the member would otherwise have had;</p> <p>(h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or a child of the member, at a time when the member is entirely or predominantly dependent on the person for financial support;</p> <p>(ha) coercing, threatening, or causing physical abuse, emotional or psychological abuse or financial abuse, in connection with demanding or receiving dowry, whether before or after any marriage;</p> <p>(i) preventing the family member from making or keeping connections with the member's family, friends or culture;</p> <p>(j) kidnapping, or depriving the liberty of, the family member, or any other person with whom the member has a family relationship;</p> <p>(k) distributing an intimate image of the family member without the family member's consent, or threatening to distribute the image;</p> <p>(l) causing any family member who is a child to be exposed to behaviour referred to in this section.</p> <p>(3) For the purposes of this Act, a person who procures another person to commit family violence is taken to have also committed the family violence.</p> <p><i>[Section 5A inserted: No. 49 of 2016 s. 7; amended: No. 4 of 2019 s. 10; No. 30 of 2020 s. 54.]</i></p>
SA	<p><i>Intervention Orders (Prevention of Abuse) Act 2009 (SA)</i></p> <p>8 Meaning of abuse—domestic and non-domestic</p> <p>(1) Abuse may take many forms including physical, sexual, emotional, psychological or economic abuse.</p> <p>(2) An act is an act of abuse against a person if it results in or is intended to result in—</p> <p>(a) physical injury; or</p> <p>(b) emotional or psychological harm; or</p> <p>(c) an unreasonable and non-consensual denial of financial, social or personal autonomy; or</p>

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	<p>(d) damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person.</p> <p>(3) Emotional or psychological harm includes—</p> <p>(a) mental illness; and</p> <p>(b) nervous shock; and</p> <p>(c) distress, anxiety, or fear, that is more than trivial.</p> <p>(4) Emotional or psychological harm—examples</p> <p>Without limiting subsection (2)(b), an act of abuse against a person resulting in emotional or psychological harm may be comprised of any of the following:</p> <p>(a) sexually assaulting the person or engaging in behaviour designed to coerce the person to engage in sexual activity;</p> <p>(b) unlawfully depriving the person of his or her liberty;</p> <p>(c) driving a vehicle in a reckless or dangerous manner while the person is a passenger in the vehicle;</p> <p>(d) causing the death of, or injury to, an animal;</p> <p>(e) following the person;</p> <p>(f) loitering outside the place of residence of the person or some other place frequented by the person;</p> <p>(g) entering or interfering with property in the possession of the person;</p> <p>(h) giving or sending offensive material to the person, or leaving offensive material where it will be found by, given to or brought to the attention of the person;</p> <p>(i) publishing or transmitting offensive material by means of the Internet or some other form of electronic communication in such a way that the offensive material will be found by, or brought to the attention of, the person;</p> <p>(j) communicating with the person, or to others about the person, by way of mail, telephone (including associated technology), fax or the Internet or some other form of electronic communication in a manner that could reasonably be expected to cause emotional or psychological harm to the person;</p>

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	<ul style="list-style-type: none"> (k) keeping the person under surveillance; (l) directing racial or other derogatory taunts at the person; (m) threatening to withhold the person's medication or prevent the person accessing necessary medical equipment or treatment; (n) threatening to institutionalise the person; (o) threatening to withdraw care on which the person is dependent; (oa) forcing the person to marry another person; (ob) preventing the person from entering the person's place of residence; (oc) taking an invasive image (within the meaning of Part 5A of the <i>Summary Offences Act 1953</i>) of the person and threatening to distribute the image without the person's consent; (p) otherwise threatening to cause the person physical injury, emotional or psychological harm or an unreasonable and non-consensual denial of financial, social or domestic autonomy or to cause damage to property in the ownership or possession of the person or used or otherwise enjoyed by the person. <p>(5) Unreasonable and non-consensual denial of financial, social or personal autonomy—examples</p> <p>Without limiting subsection (2)(c), an act of abuse against a person resulting in an unreasonable and non-consensual denial of financial, social or personal autonomy may be comprised of any of the following:</p> <ul style="list-style-type: none"> (a) denying the person the financial autonomy that the person would have had but for the act of abuse; (b) withholding the financial support necessary for meeting the reasonable living expenses of the person (or any other person living with, or dependent on, the person) in circumstances in which the person is dependent on the financial support to meet those living expenses; (c) without lawful excuse, preventing the person from having access to joint financial assets for the purposes of meeting normal household expenses; (d) preventing the person from seeking or keeping employment; (e) causing the person through coercion or deception to— <ul style="list-style-type: none"> (i) relinquish control over assets or income; or

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	<ul style="list-style-type: none"> (ii) claim social security payments; or (iii) sign a power of attorney enabling the person's finances to be managed by another person; or (iv) sign a contract for the purchase of goods or services; or (v) sign a contract for the provision of finance; or (vi) sign a contract of guarantee; or (vii) sign any legal document for the establishment or operation of a business; <p>(f) without permission, removing or keeping property that is in the ownership or possession of the person or used or otherwise enjoyed by the person;</p> <p>(g) disposing of property owned by the person, or owned jointly with the person, against the person's wishes and without lawful excuse;</p> <p>(h) preventing the person from making or keeping connections with the person's family, friends or cultural group, from participating in cultural or spiritual ceremonies or practices, or from expressing the person's cultural identity;</p> <p>(i) exercising an unreasonable level of control and domination over the daily life of the person.</p> <p>(6) If a defendant commits an act of abuse against a person, or threatens to do so, in order to cause emotional or psychological harm to another person or to deny another person financial, social or personal autonomy, the defendant commits an act of abuse against that other person.</p> <p>(7) A defendant may commit an act of abuse by causing or allowing another person to commit the act or to take part in the commission of the act.</p> <p>(8) If the act of abuse is committed by a defendant against a person with whom the defendant is or was formerly in a relationship, it is referred to in this Act as an act of domestic abuse; and for that purpose, 2 persons are in a relationship if—</p> <ul style="list-style-type: none"> (a) they are married to each other; or (b) they are domestic partners; or (c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other; or

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	<p>(d) 1 is the child, stepchild or grandchild, or is under the guardianship, of the other (regardless of age); or</p> <p>(e) 1 is a child, stepchild or grandchild, or is under the guardianship, of a person who is or was formerly in a relationship with the other under paragraph (a), (b) or (c) (regardless of age); or</p> <p>(f) 1 is a child and the other is a person who acts in <i>loco parentis</i> in relation to the child; or</p> <p>(g) 1 is a child who normally or regularly resides or stays with the other; or</p> <p>(h) they are brothers or sisters or brother and sister; or</p> <p>(i) they are otherwise related to each other by or through blood, marriage, a domestic partnership or adoption; or</p> <p>(j) they are related according to Aboriginal or Torres Strait Islander kinship rules or are both members of some other culturally recognised family group; or</p> <p>(k) 1 is the carer (within the meaning of the <i>Carers Recognition Act 2005</i>) of the other.</p> <p><i>Criminal Law Consolidation Act 1935 (SA) – references to domestic relationships</i></p> <p>5AA Aggravated offences</p> <p>(1) Subject to this section, an aggravated offence is an offence committed in 1 or more of the following circumstances:</p> <p>...</p> <p>(g) the offender committed the offence knowing that the victim of the offence was a person with whom the offender was, or was formerly, in a relationship;</p> <p>...</p> <p>(4a) Two people will be taken to be <i>in a relationship</i> for the purposes of subsection (1)(g) if—</p> <p>(a) they are married to each other; or</p> <p>(b) they are domestic partners; or</p> <p>(c) they are in some other form of intimate personal relationship in which their lives are interrelated and the actions of 1 affects the other; or</p>

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TAS	<p><i>Family Violence Act 2004 (Tas)</i></p> <p>4 Interpretation</p> <p><i>family relationship</i> means a marriage or a significant relationship within the meaning of the Relationships Act 2003 , and includes a relationship in which one or both of the parties is between the ages of 16 and 18 and would, but for that fact, be a significant relationship within the meaning of that Act;</p> <p><i>family violence</i> offence means any offence the commission of which constitutes family violence;</p> <p>...</p> <p>7 Family violence</p> <p>In this Act – <i>family violence</i> means –</p> <p>(a) any of the following types of conduct committed by a person, directly or indirectly, against that person's spouse or partner:</p> <ul style="list-style-type: none"> (i) assault, including sexual assault; (ii) threats, coercion, intimidation or verbal abuse; (iii) abduction; (iv) stalking and bullying within the meaning of section 192 of the Criminal Code ; (v) attempting or threatening to commit conduct referred to in subparagraph (i) , (ii) , (iii) or (iv) ; or <p>(b) any of the following:</p> <ul style="list-style-type: none"> (i) economic abuse; (ii) emotional abuse or intimidation; (iii) contravening an external family violence order, an interim FVO, an FVO or a PFVO; or <p>(c) any damage caused by a person, directly or indirectly, to any property –</p>

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	<p>(i) jointly owned by that person and his or her spouse or partner; or</p> <p>(ii) owned by that person's spouse or partner; or</p> <p>(iii) owned by an affected child.</p> <p>8 Economic abuse</p> <p>A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:</p> <p>(a) coercing his or her spouse or partner to relinquish control over assets or income;</p> <p>(b) disposing of property owned –</p> <p>(i) jointly by the person and his or her spouse or partner; or</p> <p>(ii) by his or her spouse or partner; or</p> <p>(iii) by an affected child –</p> <p>without the consent of the spouse or partner or affected child;</p> <p>(c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;</p> <p>(d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;</p> <p>(e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.</p> <p>Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.</p> <p>9 Emotional abuse or intimidation</p> <p>(1) A person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner.</p>

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	<p>Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.</p> <p>(2) In this section –</p> <p>a course of conduct includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation.</p> <p>9A Limitation period for offences under section 8 or 9</p> <p>A complaint for an offence against section 8 or 9 must be made against a person within 12 months from the day on which the action, or the last action, that made up the course of conduct to which the matter of complaint relates, occurred.</p> <p>13 Sentencing factors</p> <p>When determining the sentence for a family violence offence, a court or a judge –</p> <p>(a) may consider to be an aggravating factor the fact that the offender knew, or was reckless as to whether, a child was present or on the premises at the time of the offence, or knew that the affected person was pregnant; and</p> <p>(b) must take into account the results of any rehabilitation program assessment undertaken in respect of the offender and placed before the court or judge.</p>
ACT	<p><i>Family Violence Act 2016 (ACT)</i></p> <p>8 Meaning of <i>family violence</i></p> <p>(1) In this Act:</p> <p><i>family violence</i> means—</p> <p>(a) any of the following behaviour by a person in relation to a family member of the person:</p> <ul style="list-style-type: none"> (i) physical violence or abuse; (ii) sexual violence or abuse; (iii) emotional or psychological abuse; (iv) economic abuse;

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	<p>(v) threatening behaviour;</p> <p>(vi) coercion or any other behaviour that—</p> <p>(A) controls or dominates the family member; and</p> <p>(B) causes the family member to feel fear for the safety or wellbeing of the family member or another person; or</p> <p>(b) behaviour that causes a child to hear, witness or otherwise be exposed to behaviour mentioned in paragraph (a), or the effects of the behaviour.</p> <p>Examples—par (b)</p> <ol style="list-style-type: none"> 1 overhearing threats being made in another room of the house 2 seeing an assault or seeing injuries on a family member who has been assaulted 3 seeing people comfort a family member who has been abused <p>(2) Without limiting subsection (1), <i>family violence</i> by a person in relation to a family member of the person includes the following:</p> <ol style="list-style-type: none"> (a) sexually coercive behaviour; (b) damaging property; (c) harming an animal; (d) stalking; (e) deprivation of liberty. <p>(3) In this section:</p> <p><i>economic abuse</i>, of a family member, means behaviour by a person that is coercive, deceptive or that unreasonably controls the family member without the family member’s consent including by the person’s exploitation of power imbalances between the person and the family member—</p> <ol style="list-style-type: none"> (a) in a way that takes away the financial independence or control the family member would have but for the behaviour; or (b) if the family member is wholly or predominantly dependent on the person for financial support to meet the living expenses of the family member or the family member’s child—by withholding the financial support. <p>Examples</p> <ol style="list-style-type: none"> 1 stopping the family member from having access to money to meet normal living expenses

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	<p>2 requiring the family member to transfer or hand over control of assets or income</p> <p>3 stopping the family member from trying to get employment</p> <p>4 forcing the family member to sign a legal document such as a power of attorney, loan, guarantee</p> <p>5 forcing the family member to claim social security payments</p> <p><i>emotional or psychological abuse</i>, of a family member, means behaviour by a person that torments, intimidates, harasses or is offensive to the family member including by the person’s exploitation of power imbalances between the person and the family member.</p> <p>Examples</p> <p>1 stopping the family member from visiting or having contact with family or friends</p> <p>2 stopping the family member from engaging in cultural or spiritual practices</p> <p>3 repeated derogatory or racist comments</p> <p>4 threatening to disclose personal information about the family member</p> <p>5 threatening to withhold medication, personal health care items or other things necessary to the family member’s health or quality of life</p> <p>6 threatening to self-harm as a way of intimidating the family member</p> <p>9 Meaning of <i>family member</i></p> <p>In this Act:</p> <p><i>family member</i>, of a person, means—</p> <p>(a) a domestic partner or former domestic partner of the person; or</p> <p>(b) an intimate partner or former intimate partner of the person; or</p> <p>(c) a relative of the person; or</p> <p>(d) a child of a domestic partner or former domestic partner of the person; or</p> <p>(e) a parent of a child of the person.</p> <p>34 Final orders—grounds for making</p> <p>(1) A court may, on application, make a final order if satisfied that—</p>

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	<p>(a) the affected person has reasonable grounds to fear family violence by the respondent; or</p> <p>(b) the respondent has used family violence against the affected person.</p> <p><i>Note 1</i> The court must consider the matters mentioned in s 14 in deciding whether to make the final order.</p> <p><i>Note 2</i> An <i>affected person</i> includes any child who hears, witnesses or is otherwise exposed to family violence committed against another person (see s 8 (1), def <i>family violence</i>, par (b) and dict).</p> <p><i>Note 3</i> This section does not apply to consent orders (see s 33 (2) (b)).</p> <p>(2) For this section—</p> <p>(a) if some or all of the respondent’s alleged behaviour in relation to which the application is made appears to be minor or trivial when viewed in isolation, or appears unlikely to recur, the court must still consider whether the behaviour forms part of a pattern of behaviour by the respondent from which the affected person needs protection; and</p> <p>(b) it is sufficient to establish that the affected person has reasonable grounds to fear family violence by the respondent, or that family violence has been used by the respondent in relation to the affected person, if the respondent has—</p> <p>(i) engaged in behaviour mentioned in section 8 (1), definition of <i>family violence</i>, paragraph (a) in relation to the affected person; and</p> <p>(ii) the behaviour constitutes an offence.</p> <p>(3) However, it is not necessary to prove that any particular behaviour constitutes an offence to establish that family violence occurred.</p> <p>Dictionary [at end of Act]</p> <p><i>family violence offence</i> means an offence if the conduct making up the offence is family violence.</p>
NT	<p><i>Domestic and Family Violence Act 2007 (NT)</i></p> <p>5 Domestic violence</p> <p><i>Domestic violence</i> is any of the following conduct committed by a person against someone with whom the person is in a domestic relationship:</p> <p>(a) conduct causing harm;</p>

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	<p><i>Example of harm for paragraph (a)</i> <i>Sexual or other assault.</i></p> <p>(b) damaging property, including the injury or death of an animal; (c) intimidation; (d) stalking; (e) economic abuse; (f) attempting or threatening to commit conduct mentioned in paragraphs (a) to (e).</p> <p><i>Note</i> <i>Under Part 2.2, a DVO may be sought, and made, against a person if the person counsels or procures someone to commit the domestic violence, see section 17.</i></p> <p>6 Intimidation</p> <p>(1) Intimidation of a person is:</p> <p>(a) harassment of the person; or</p> <p><i>Examples of harassment for paragraph (a)</i></p> <p>1 <i>Regular and unwanted contacting of the person, including by mail, phone, text messages, fax, the internet or another form of electronic communication.</i></p> <p>2 <i>Giving or sending offensive material to the person.</i></p> <p>(b) any conduct that causes a reasonable apprehension of:</p> <p>(i) violence to the person; or</p> <p>(ii) damage to the property of the person, including the injury or death of an animal that is the person's property; or</p> <p><i>Example of conduct for paragraph (b)(i)</i> <i>Sexually coercive behaviour.</i></p> <p>(c) any conduct that has the effect of unreasonably controlling the person or causes the person mental harm.</p> <p>(2) For deciding whether a person's conduct amounts to intimidation, consideration may be given to a pattern of conduct (especially domestic violence) in the person's behaviour.</p>

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	<p>8 Economic abuse</p> <p>Economic abuse, of a person, includes any of the following conduct (or any combination of them):</p> <p>(a) coercing the person to relinquish control over assets or income;</p> <p><i>Example of coercion for paragraph (a)</i></p> <p><i>Using stand-over tactics to obtain the person's credit card.</i></p> <p>(b) unreasonably disposing of property (whether owned by the person or owned jointly with the person or someone else) without consent;</p> <p>(c) unreasonably preventing the person from taking part in decisions over household expenditure or the disposition of joint property;</p> <p>(d) withholding money reasonably necessary for the maintenance of the person or a child of the person.</p> <p>9 Domestic relationship</p> <p>A person is in a domestic relationship with another person if the person:</p> <p>(a) is or has been in a family relationship with the other person; or</p> <p>(b) has or had the custody or guardianship of, or right of access to, the other person; or</p> <p>(c) is or has been subject to the custody or guardianship of the other person or the other person has or has had a right of access to the person; or</p> <p>(d) ordinarily or regularly lives, or has lived, with:</p> <p>(i) the other person; or</p> <p>(ii) someone else who is in a family relationship with the other person; or</p> <p>(e) is or has been in a family relationship with a child of the other person; or</p> <p>(f) is or has been in an intimate personal relationship with the other person; or</p> <p>(g) is or has been in a carers relationship with the other person.</p>
CTH	<p>Family Law Act 1975 (Cth)</p> <p>4 Interpretation</p>

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	<p>(1AB) For the purposes of: ...</p> <p>(aa) section 4AB; and</p> <p>...</p> <p>a person (the first person) is a member of the family of another person (the second person) if:</p> <p>(d) the first person is or has been married to, or in a de facto relationship with, the second person; or</p> <p>(e) the first person is or has been a relative of the second person (as defined in subsection (1AC)); or</p> <p>(f) an order under this Act described in subparagraph (i) or (ii) is or was (at any time) in force:</p> <p>(i) a parenting order (other than a child maintenance order) that relates to a child who is either the first person or the second person and that is in favour of the other of those persons;</p> <p>(ii) an order providing for the first person or the second person to have custody or guardianship of, or a right of access to, the other of those persons; or</p> <p>(g) an order under a law of a State or Territory described in subparagraph (i) or (ii) is or was (at any time) in force:</p> <p>(i) an order determining that the first person or the second person is or was to live with the other of those persons, or is or was to have custody or guardianship of the other of those persons;</p> <p>(ii) an order providing for contact between the first person and the second person, or for the first person or the second person to have a right of access to the other of those persons; or</p> <p>(h) the first person ordinarily or regularly resides or resided with the second person, or with another member of the family of the second person; or</p> <p>(i) the first person is or has been a member of the family of a child of the second person.</p> <p>4AB Definition of <i>family violence</i> etc.</p> <p>(1) For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful.</p> <p>(2) Examples of behaviour that may constitute family violence include (but are not limited to):</p> <p>(a) an assault; or</p> <p>(b) a sexual assault or other sexually abusive behaviour; or</p> <p>(c) stalking; or</p>

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	<ul style="list-style-type: none"> (d) repeated derogatory taunts; or (e) intentionally damaging or destroying property; or (f) intentionally causing death or injury to an animal; or (g) unreasonably denying the family member the financial autonomy that he or she would otherwise have had; or (h) unreasonably withholding financial support needed to meet the reasonable living expenses of the family member, or his or her child, at a time when the family member is entirely or predominantly dependent on the person for financial support; or (i) preventing the family member from making or keeping connections with his or her family, friends or culture; or (j) unlawfully depriving the family member, or any member of the family member's family, of his or her liberty. <p>(3) For the purposes of this Act, a child is exposed to family violence if the child sees or hears family violence or otherwise experiences the effects of family violence.</p> <p>(4) Examples of situations that may constitute a child being exposed to family violence include (but are not limited to) the child:</p> <ul style="list-style-type: none"> (a) overhearing threats of death or personal injury by a member of the child's family towards another member of the child's family; or (b) seeing or hearing an assault of a member of the child's family by another member of the child's family; or (c) comforting or providing assistance to a member of the child's family who has been assaulted by another member of the child's family; or (d) cleaning up a site after a member of the child's family has intentionally damaged property of another member of the child's family; or (e) being present when police or ambulance officers attend an incident involving the assault of a member of the child's family by another member of the child's family.

Appendix B: Domestic Abuse (Scotland) Act 2018

Section 1: Abusive behaviour towards partner or ex-partner

(1) A person commits an offence if—

- (a) the person (“A”) engages in a course of behaviour which is abusive of A’s partner or ex-partner (“B”), and
- (b) both of the further conditions are met.

(2) The further conditions are—

- (a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,
- (b) that either—
 - (i) A intends by the course of behaviour to cause B to suffer physical or psychological harm, or
 - (ii) A is reckless as to whether the course of behaviour causes B to suffer physical or psychological harm.

(3) In the further conditions, the references to psychological harm include fear, alarm and distress.

Section 2: What constitutes abusive behaviour

(1) Subsections (2) to (4) elaborate on section 1(1) as to A’s behaviour.

(2) Behaviour which is abusive of B includes (in particular)—

- (a) behaviour directed at B that is violent, threatening or intimidating,
- (b) behaviour directed at B, at a child of B or at another person that either—
 - (i) has as its purpose (or among its purposes) one or more of the relevant effects set out in subsection (3), or
 - (ii) would be considered by a reasonable person to be likely to have one or more of the relevant effects set out in subsection (3).

(3) The relevant effects are of—

- (a) making B dependent on, or subordinate to, A,
- (b) isolating B from friends, relatives or other sources of support,
- (c) controlling, regulating or monitoring B’s day-to-day activities,
- (d) depriving B of, or restricting B’s, freedom of action,
- (e) frightening, humiliating, degrading or punishing B.

(4) In subsection (2)—

- (a) in paragraph (a), the reference to violent behaviour includes sexual violence as well as physical violence,
- (b) in paragraph (b), the reference to a child is to a person who is under 18 years of age.

Section 3: Extra-territorial jurisdiction

(1) An offence under section 1(1) can be constituted by a course of behaviour engaged in by A even if the course of behaviour occurs wholly or partly outside the United Kingdom.

(2) If the course of behaviour occurs wholly outside the United Kingdom—

- (a) A may be prosecuted, tried and punished for the offence—
 - (i) in a sheriff court district in which A is apprehended or in custody, or

- (ii) in a sheriff court district that is determined by the Lord Advocate, as if the offence has been committed entirely in that district,
- (b) the offence is, for all things incidental to or consequential on trial and punishment, deemed to have been committed entirely in that district.

(3) Subsections (1) and (2) apply only if A, when the course of behaviour occurs—

- (a) is habitually resident in Scotland, or
- (b) is a UK national.

(4) “UK national” means someone who is, as referred to in the British Nationality Act 1981—

- (a) a British citizen,
- (b) a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen, or
- (c) a British subject or a British protected person.

Section 4: Evidence of impact on victim

(1) The commission of an offence under section 1(1) does not depend on the course of behaviour actually causing B to suffer harm of the sort mentioned in section 1(2).

(2) The operation of section 2(2)(b) does not depend on behaviour directed at someone actually having on B any of the relevant effects set out in section 2(3).

(3) Nothing done by or mentioned in subsection (1) or (2) prevents evidence from being led in proceedings for an offence under section 1(1) about (as the case may be)—

- (a) harm actually suffered by B as a result of the course of behaviour, or
- (b) effects actually had on B of behaviour directed at someone.

Section 5: Aggravation in relation to a child

(1) This subsection applies where it is, in proceedings for an offence under section 1(1)—

- (a) specified in the complaint or libelled in the indictment that the offence is aggravated by reason of involving a child, and
- (b) proved that the offence is so aggravated.

(2) The offence is so aggravated if, at any time in the commission of the offence—

- (a) A directs behaviour at a child, or
- (b) A makes use of a child in directing behaviour at B.

(3) The offence is so aggravated if a child sees or hears, or is present during, an incident of behaviour that A directs at B as part of the course of behaviour.

(4) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A or B (or both).

(5) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—

- (a) has ever had any—
 - (i) awareness of A's behaviour, or
 - (ii) understanding of the nature of A's behaviour, or
- (b) has ever been adversely affected by A's behaviour.

- (6) Evidence from a single source is sufficient to prove that the offence is so aggravated.
- (7) Where subsection (1) applies, the court must—
- (a) state on conviction that the offence is so aggravated,
 - (b) record the conviction in a way that shows that the offence is so aggravated,
 - (c) take the aggravation into account in determining the appropriate sentence, and
 - (d) state—
 - (i) where the sentence imposed in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or
 - (ii) otherwise, the reasons for there being no such difference.
- (8) Each of subsections (2) to (4) operates separately along with subsection (5), but subsections (2) to (4) may be used in combination along with subsection (5).
- (9) Nothing in subsections (2) to (5) prevents evidence from being led about—
- (a) a child's observations of, or feelings as to, A's behaviour, or
 - (b) a child's situation so far as arising because of A's behaviour.
- (10) In subsections (4) and (5), the references to adversely affecting a child include causing the child to suffer fear, alarm or distress.
- (11) In this section, the references to a child are to a person who—
- (a) is not A or B, and
 - (b) is under 18 years of age.

Section 6: Defence on grounds of reasonableness

(1) In proceedings for an offence under section 1(1), it is a defence for A to show that the course of behaviour was reasonable in the particular circumstances.

- (2) That is to be regarded as shown if—
- (a) evidence adduced is enough to raise an issue as to whether the course of behaviour is as described in subsection (1), and
 - (b) the prosecution does not prove beyond reasonable doubt that the course of behaviour is not as described in subsection (1).

Section 9: Penalty for offence under section 1(1)

A person who commits an offence under section 1(1) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

Section 10: Making references to behaviour

(1) Subsections (2) to (4) explain what is meant by the references to behaviour in this Part.

- (2) Behaviour is behaviour of any kind, including (for example)—
- (a) saying or otherwise communicating something as well as doing something,
 - (b) intentionally failing—
 - (i) to do something,
 - (ii) to say or otherwise communicate something.

- (3) Behaviour directed at a person is such behaviour however carried out, including (in particular) —
- (a) by way of conduct towards property,
 - (b) through making use of a third party, as well as behaviour in a personal or direct manner.
- (4) A course of behaviour involves behaviour on at least two occasions.

Appendix C: Serious Crimes Act 2015 (England and Wales)

Section 76: Controlling or coercive behaviour in an intimate or family relationship

- (1) A person (A) commits an offence if—
- (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
 - (b) at the time of the behaviour, A and B are personally connected,
 - (c) the behaviour has a serious effect on B, and
 - (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are “personally connected” if—
- (a) A is in an intimate personal relationship with B, or
 - (b) A and B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.
- (3) But A does not commit an offence under this section if at the time of the behaviour in question—
- (a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and
 - (b) B is under 16.
- (4) A’s behaviour has a “serious effect” on B if—
- (a) it causes B to fear, on at least two occasions, that violence will be used against B, or
 - (b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities.
- (5) For the purposes of subsection (1)(d) A “ought to know” that which a reasonable person in possession of the same information would know.
- (6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—
- (a) they are, or have been, married to each other;
 - (b) they are, or have been, civil partners of each other;
 - (c) they are relatives;
 - (d) they have agreed to marry one another (whether or not the agreement has been terminated);
 - (e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
 - (f) they are both parents of the same child;
 - (g) they have, or have had, parental responsibility for the same child.
- (7) In subsection (6)—
- “civil partnership agreement” has the meaning given by section 73 of the Civil Partnership Act 2004;
- “child” means a person under the age of 18 years;
- “parental responsibility” has the same meaning as in the Children Act 1989;
- “relative” has the meaning given by section 63(1) of the Family Law Act 1996.
- (8) In proceedings for an offence under this section it is a defence for A to show that—

- (a) in engaging in the behaviour in question, A believed that he or she was acting in B's best interests, and
- (b) the behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection (8) if—

- (a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and
- (b) the contrary is not proved beyond reasonable doubt.

(10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

(11) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

Appendix D: Domestic Violence Act 2018 (Ireland)

Section 39 Offence of coercive control

(1) A person commits an offence where he or she knowingly and persistently engages in behaviour that—

- (a) is controlling or coercive,
- (b) has a serious effect on a relevant person, and
- (c) a reasonable person would consider likely to have a serious effect on a relevant person.

(2) For the purposes of subsection (1), a person's behaviour has a serious effect on a relevant person if the behaviour causes the relevant person—

- (a) to fear that violence will be used against him or her, or
- (b) serious alarm or distress that has a substantial adverse impact on his or her usual day-to-day activities.

(3) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, and
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years, or both.

(4) In this section, a person is a “relevant person” in respect of another person if he or she—

- (a) is the spouse or civil partner of that other person, or
- (b) is not the spouse or civil partner of that other person and is not related to that other person within a prohibited degree of relationship but is or was in an intimate relationship with that other person.