

EMBOLDEN SA INC:
**POSITION PAPER ON COERCIVE
CONTROL AND THE LAW IN
SOUTH AUSTRALIA**

SEPTEMBER 2021

About Embolden

Embolden SA Inc. is the statewide peak body of organisations working to respond to and eliminate domestic, family, and sexual violence in South Australia.

Our members provide services that promote women and their children's safety and wellbeing, and work to prevent and respond to violence against women.

We lobby and advocate for women's rights to respect, safety and self-determination, and represent providers of specialist services in the domestic, family and sexual violence and related sectors, including services that work with men who use violence against women and Aboriginal specialist services.

Acknowledgement of Country

We acknowledge and respect Aboriginal peoples as the state's first peoples and nations, and recognise Aboriginal peoples as traditional owners and occupants of land and waters in South Australia. Sovereignty has never been ceded. It always was and always will be, Aboriginal land.

We recognise that their spiritual, social, cultural and economic practices come from their traditional lands and waters, that they maintain their cultural and heritage beliefs, languages and laws which are of ongoing importance, and that they have made and continue to make a unique and irreplaceable contribution to the state.

We acknowledge that Aboriginal peoples have endured, and continue to endure, injustices and dispossession of their traditional lands and waters.

We continue to pay respect to the resilience and strengths of Ancestors and Elders past, present and those emerging.

Table of Contents

About Embolden	1
Acknowledgement of Country	1
About this Position Paper	3
Acronyms used	4
Introduction	5
Summary of Priority Action Areas and Recommendations	8
Discussion	9
Recommendations	18
References	23

About this Position Paper

This position paper has been prepared by Embolden with consultation and input from its members and key stakeholders, including women with and without children who have lived experience of coercive control in the context of domestic, sexual and family violence. Our position has been developed with reference to the available literature and evidence base on coercive control and legislative measures to prevent and respond to this abuse in Australia and worldwide.

The term 'sexual and gender-based violence', used throughout this paper, allows us to encompass not only intimate partner or domestic and family violence, but also sexual violence committed outside of intimate relationships as well as violence against women committed by and within institutions. This term encompasses violence committed against women (both cis-and-transgender) as well as non-binary people, serving as "an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (i.e., gender) differences between males and females" (UNFPA 2019, pg. v). The term 'sexual and gender-based violence' draws attention to underlying drivers of violence that are rooted in rigid and binary gender norms, gender inequality, unequal power relationships, coercion and control, and reinforced by patriarchal social constructs (UNHCR 2021, DV Vic 2020). It includes sexual violence that can occur both within and outside the context of domestic and family violence.

This position paper is published on behalf of our member organisations, including:

Bramwell House
Ceduna Regional Domestic Violence and Aboriginal Family Violence Services
Coober Pedy Regional DV & Aboriginal Family Violence Service
Cross Border/APY Lands Aboriginal Family Violence Service
Fleurieu and KI DV Service
Homelessness Gateway Service
Kornar Winmil Yunti Aboriginal Cooperation
Limestone Coast Domestic Violence Service
Murray Mallee and Adelaide Hills DV Service
Nunga Mi:Minar
OARS Community Transitions
Port Augusta Regional DV & Aboriginal Family Violence Service
Relationships Australia (SA)
Riverland Domestic Violence Service
Victim Support Service
Vinnie's Women's Crisis Centre
Whyalla Regional Domestic Violence Service
Women's Legal Service SA
Women's Safety Services SA
Yarredi Services
Yarrow Place
Yorke and Mid North Domestic Violence Service
Zahra Foundation Australia

Acronyms used

DFV	Domestic and family violence
DFSV	Domestic, family and sexual violence
FSF	Family Safety Framework
IPF	Intimate partner fatalities
IPV	Intimate partner violence
LGBTIQ+	People who are lesbian, gay, bisexual, transgender, intersex or queer
MAPS	Multi-Agency Protection Service
NGO	Non-government organisation
RRR	Rural, regional and remote areas
SAPOL	South Australian Police
SGBV	Sexual and gender-based violence
TPV	Temporary Protection Visa

Introduction

This paper details Embolden SA's position on whether new legislation should be introduced concerning the criminalisation of coercive control in South Australia. It provides recommendations on three Priority Action Areas to take immediate and long-term actions to support victim-survivors' safety, freedom and access to justice. This relates to the safety of women and their children experiencing sexual and gender-based violence (SGBV), and domestic and family violence (DFV) in particular, as the broad demographic most at risk of harm from violent, controlling perpetrators, the vast majority of which are men (ABS 2016, Boxall, Morgan & Brown 2020, Nancarrow 2019).

Over recent years, there has been growing awareness around Australia of the issue of coercive control as a distinct aspect of domestic, family and sexual violence (DFS), characterised by a pattern of controlling and manipulative behaviours and “acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim” (Women’s Aid 2020, pg. 1).

The brutal murder of Hannah Clarke and her three children¹ in March 2020, and subsequent advocacy by her parents² and others including the women’s safety sector, is widely acknowledged as a ‘flashpoint’ for this raised awareness, with intensified media attention and community discussions around what it is, how serious its effects, and how Australian federal and state law and justice systems may better support community safety by reviewing the issue of coercive control with regard to legislative reform. Hannah was subjected to coercive control by her (estranged at the time of death) husband, among other forms of abuse. Research from the UK suggests that the presence of coercive control in a relationship is a higher risk factor for intimate partner fatalities (IPF) than prior incidences of physical violence and that coercive control is present in the vast majority of IPF cases (Myhill & Hohl 2016, Monckton Smith 2019). These findings are supported in an Australian context, for example, by the NSW

¹ Hannah and her children Aaliyah, Laianah and Trey were murdered on 19 Feb 2020 in QLD by Rowan Baxter. He committed suicide at the scene. More at: https://en.wikipedia.org/wiki/Murder_of_Hannah_Clarke

² See: <https://smallsteps4hannah.com.au/>

Domestic Violence Death Review Team in a report on domestic violence femicides, which found that "a number of its cases... were preceded by histories of [nonphysical] forms of coercive and controlling behaviour" (NSW DVDRT 2020, p. 68).

As identified by the Australian Women Against Violence Alliance (AWAVA 2021), across the Australian women's safety landscape, there is a shared understanding of the scale and severity of coercive control's pervasiveness within abusive intimate partner and family settings, and the urgent need for action against it. However, several distinct views on how to most effectively address this issue are emerging, with strong proponents across a spectrum of informed opinion. This encompasses those calling for the criminalisation of coercive control (Women's Safety NSW 2020, InTouch 2021, Women's Legal Service Tasmania 2020) to those cautioning against, each with credible arguments to support their position (AWAVA 2021). Other suggestions include the placement of coercive control-related offences into civil, rather than criminal, legislation (Women's Legal Service Victoria 2020), or recommend a focus on systems reform (State of Victoria 2016) and building the evidence base (Women's Legal Service NSW 2020), citing gaps in research centred around victim-survivor voices and the need to consider potential harmful unintended consequences (Fitz-Gibbon, Walklate & Meyer 2020). We would emphasise that another commonality shared is the motivation by concern for women and their children's safety, and a desire to stop deaths and other harms caused by perpetrators' adherence to a "malevolent course of conduct" encompassing violation of physical integrity; denial of respect and autonomy; isolation; and ultimately stripping away all vestiges of autonomy, liberty and personhood (Stark 2009). Current to time of writing, several states are considering whether to introduce coercive control offences into the criminal code, including New South Wales, Queensland and South Australia.

Embolden is committed to partnering with the State Government, SAPOL, research bodies, other NGOs and stakeholders to improve whole-of-system responses, support and outcomes for victim-survivors of SGBV, including those at risk of; experiencing; or recovering from coercive control and related abuses.

The purpose of this paper is to:

- Offer context on the issue of coercive control's placement in law from an intersectional feminist-led perspective, with particular reference to the jurisdiction of South Australia;
- Articulate Embolden's position on this issue; and
- Provide recommendations to services, providers, governments (state and federal) and other stakeholders in determining policy and action priorities, and best practice processes and outcomes, concerning coercive control and its effects.

Summary of Priority Action Areas and Recommendations

Priority Action Area 1: DEFINE AND EDUCATE

Recommendations under Priority Action Area 1

- Establish a **national definition for family and domestic violence**
- Establish a **national definition for sexual assault**
- **Community education and awareness of coercive control**

Priority Action Area 2: CONSULT AND RESEARCH

Recommendations under Priority Action Area 2

- **Ensure best practice justice system responses** to and prevention of coercive control
- South Australian Law Reform Institute (SALRI) to **consider the matter of placement of coercive control in criminal and/or civil law in South Australia**
- **Review SA Family Safety Framework** risk assessment, practice manual and sharing protocols

Priority Action Area 3: INVEST AND TRAIN

Recommendations under Priority Action Area 3

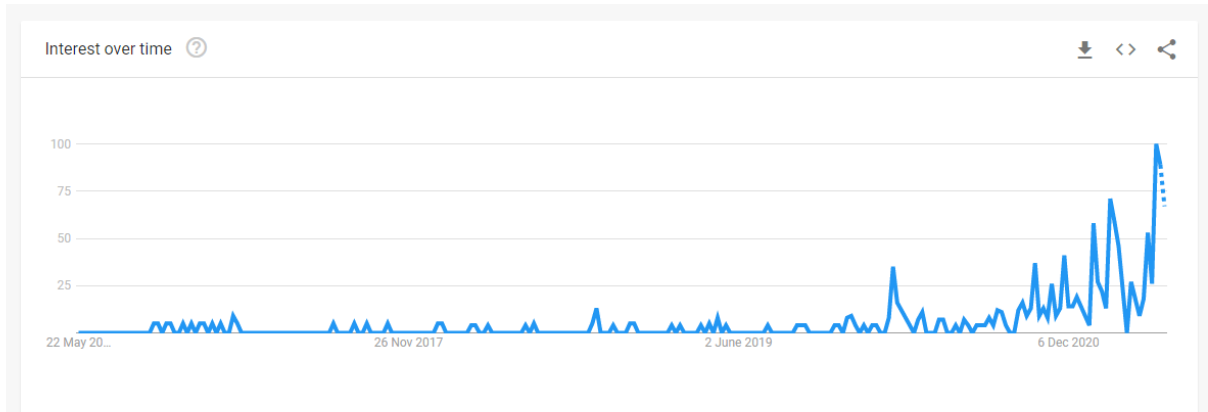
- **Invest in evidence-based responses, interventions and programs** which support women and children's safety and freedom from abuse
- **Whole-of-system training and awareness to recognise and respond to domestic violence and sexual assault**, and particularly to recognise and respond to the presence of coercive control

Discussion

The concept of coercive control as a corrosive, complex set of behaviours and actions that constitute abuse, particularly in family and intimate partner settings, has been steadily gaining momentum in Australia and internationally for over a decade since its popular definition by Evan Stark (2006, 2007), building upon the work of (amongst others) Dobash & Dobash (1979), Herman (1992), Jones (1994), Pence & Paymar (1993) and Johnson (1995). However, the rate at which awareness of this issue is spreading has increased exponentially over the past 18 months (see Fig 1).

Coercive control's implication in several recent high profile cases of domestic homicides, and concurrent work by advocates and researchers, have marked a shift in community awareness, discourse, and expectations when it comes to domestic violence – *what* it is, *why* it occurs, and *how* it should be addressed most prominently. It is cause for solemn celebration of the tireless work of advocates, survivors, researchers, and policymakers in raising awareness of the key issues; and in the strong systemic changes to improve victim-survivors access to safety, justice and freedom, that such a "wicked problem" as domestic violence (Mulayim, Jackson & Lai 2017), let alone its most sinister yet insidious manifestation of coercive control, is being recognised as one of – if not *the* – most serious and urgent sociopolitical crisis Australia is facing today. However, as almost one woman a week is known to have lost her life due to domestic violence, and one child every two weeks is killed by a parent in Australia (AIHW 2019), it is clear that much more can, and must, be done to prevent and respond to domestic and family violence. What is less clear, and currently the topic of intensive discussions across the nation, is how coercive control may be best defined, placed, and addressed within Australia's justice and legal responses to most effectively save lives and minimise harm to those affected by it.

Figure 1: Australian internet search trends for “coercive control” over five year period (2016–2021)



(Source: Google)

Coercive Control: International and National Perspective

Coercive control has been criminalised in the UK and Wales since 2015. The legislation introduced a new offence in (s76) of "controlling and coercive behaviour." In addition, the legislation moved away from focusing on single incidents of violence or abuse to looking at a pattern of behaviour. There is, however, a strong legislative focus on the impact of the behaviour on the victim. "Serious effect" has been described within the legislation as behaviour that causes the victim to fear physical violence on at least two occasions or that the behaviour causes serious alarm or distress (ANROWS 2021, p.5).

Data available on the impact of the UK and Wales legislation indicated that the number of people arrested is increasing. However, just over 700 cases had been prosecuted by 2018 (Stark & Hester 2019). The number of successful convictions was unable to be obtained.

In 2019, Ireland commenced legislation that was replicated on the UK and Wales legislation. There is no data currently available on the impact of the Irish legislation.

Scotland introduced legislation in 2018, which, whilst it does not mention the words 'coercive control', recognises and acknowledges the gendered nature pattern of

abuse, and in particular, included ex-partners within its' remit (Walklate & Fitz-Gibbon 2019). The legislation does this by focusing prosecution attention on proving that the behaviour was likely to cause physical or psychological harm to the victim rather than prove the victim suffered harm (ANROWS 2021).

The Scottish legislation was also more progressive than that of the UK and Wales. It made specific reference to and included children witnessing domestic violence against a parent/guardian as co-victims within their own right. The more nuanced understandings of the Scottish legislation was made possible through intensive consultations with relevant stakeholders (ANROWS 2021).

However, much like its UK, Wales and Irish legislative counterparts, the Scottish legislation has had limited success. Since coming into force in April 2019, 400 crimes were recorded by police, and 190 cases were referred for prosecution, but only 13 successful convictions were obtained.

Tasmania is currently the only Australian state with legislation that criminalises non-violent behaviours. The two criminal offences relate to economic abuse and emotional abuse. The legislation requires multiple incidents of abuse that must occur within a 12-month cycle (ANROWS 2021). Since its implementation in 2004, there have only been eight convictions for emotional abuse (McGorriery & McMahon 2019). This low conviction rate is despite there being 68 prosecutions between 2004 and 2017 (ANROWS 2021). Only five cases of economic abuse had been prosecuted between 2004-2017, and these charges were also accompanied by the charge of emotional abuse (ANROWS 2021).

Coercive control has now garnered public attention throughout Australia at both state and national levels. In September 2020, a coercive control bill was put forward in NSW Parliament by the NSW opposition Labor Party³, and similar bills are being considered in QLD and Victoria. In October 2020, a coalition of domestic violence advocates, including White Ribbon Australia and Women's Safety NSW, launched a campaign

³ See <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3797>

calling for the national criminalisation of coercive control⁴. In June 2021, the New South Wales Joint Select Committee on Coercive Control released preliminary findings supportive of the legislative criminalisation of coercive control (Parliament of NSW 2021). However, that Joint Select Committee has also recommended further consultation to occur with Aboriginal and Torres Strait Islander communities and other vulnerable groups within the community. In South Australia, Labor's Shadow Minister for Women and Prevention of Domestic Violence, Katrine Hildyard MP, has introduced a coercive control bill "aimed at outlawing a range of intimidating, controlling and threatening behaviours" (Hildyard 2020, pg. 1).

In South Australia, the *Intervention Orders (Prevention of Abuse) Act 2009* (the Act 2009) already contains provisions relevant to coercive control, including a definition of abuse as "including [acts of] physical, sexual, emotional, psychological or economic abuse" (pg. 8). Furthermore, the examples provided in section 8(3) to (5) of the Act 2009 provide a non-exhaustive list of forms of domestic abuse that demonstrate the clear intention of the legislation to encompass not only physical abuse also coercive control. Although Intervention Orders in South Australia are civil in nature, the breach of an intervention order and offences stemming from the breach are criminal. As such, there is already recognition within the existing legislative framework for the criminalisation of coercive control. The shortcomings within the current system relate to enforcement and the need for more significant cultural change amongst the judiciary, legal profession, and law enforcement.

Concerns Regarding Criminalisation of Coercive Control

Assessments of the current legislative criminalisation of coercive control (and nonphysical elements of domestic and family violence) within various legislative systems have raised, and continue to identify, concerns regarding the implementation and enforcement of the criminalisation of coercive control. A summary of the shortcomings of the various legislative instruments concerning coercive control are listed in the following table:

⁴ See <https://www.womenssafetytynsw.org.au/impact/article/new-coalition-calls-for-immediate-action-on-criminalising-coercive-control/>

COUNTRY	CONCERNS
UK & Wales	<p>Definition</p> <ul style="list-style-type: none"> • Criminalised "controlling or coercive behaviour in an intimate or family relationship" • Legal boundary created within the legislation means that the couples who were in a prior relationship and no longer living together are not covered by the legislation <p>Enforcement</p> <ul style="list-style-type: none"> • Research found that police enforce the offence at a low rate • Also, police officers did not have the necessary understanding or tools to identify nonphysical forms of domestic/family violence • Police officers found it challenging to gather evidence of sustained coercive and controlling behaviours, leading to lower arrest and charge rates
Ireland	<p>Definition</p> <ul style="list-style-type: none"> • Irish definition closely resembles the English and Welsh legislation • Focuses on knowingly and persistently engaging in controlling or coercive behaviour and which a reasonable person would be likely to consider to have a serious effect • It requires prosecution to prove that the defendant used coercive and controlling behaviour but did not expand the meaning of what constitutes coercive and controlling behaviour • The first conviction occurred a year after the legislation came into effect <p>Enforcement</p> <ul style="list-style-type: none"> • Police have made calls for more training on identifying and responding to coercive control

Scotland	<p>Definition</p> <ul style="list-style-type: none"> • Despite the progressive nature of legislation, concerns remain as to whether the legislative intent will have a meaningful impact due to the role of the courts and the legal profession in interpreting legislation
Australia (Tasmania)	<p>Definition</p> <ul style="list-style-type: none"> • Criminalised economic abuse and emotional abuse • Economic abuse is difficult to prosecute with respect to proving intent to cause harm. Also, proving course of conduct for economic abuse may be difficult • In relation to emotional abuse, multiple incidents of emotional abuse required to meet the course of conduct of occurring within the period of a month. The Offence is also limited by the use of the word "unreasonably", which implies that there are some elements of coercive control that are acceptable (ANROWS 2021) • There are overlaps between the offences and other available offences which impacts their use (Fitz-Gibbon, Walklate & Meyer 2020) <p>Enforcement</p> <ul style="list-style-type: none"> • Both offences are prosecuted at a significantly lower rate than in comparison to the number of family violence incidents recorded by police • Enforcement impacted by insufficient police training and investigative practices <p>Community Awareness & Education</p> <ul style="list-style-type: none"> • Lack of community awareness about nonphysical forms of domestic and family violence

The brief analysis of existing legislations indicates quite strongly that:

*“Legislative changes cannot on their own lead to improvements. **Whatever laws we have will be only as effective as those who enforce, prosecute and apply them.** Improving these practices – through education, training and embedding best practices and domestic abuse expertise – is likely to be more effective than the creation of new offences alone”*

(Burman & Brooks-Hay 2018, p.78) (emphasis added)

These same sentiments are echoed in the 2021 Position Paper on the issue by InTouch, in which the organisation argues:

*“**Without implementing a whole of system change,** the impact of criminalising coercive control will be detrimental to its intent”*

(InTouch 2021, pg. 1) (emphasis added)

Key advocates, academics and expert bodies caution against uniform criminalisation of coercive control (Fitz-Gibbon, Walklate & Meyer 2020a), arguing that there is no ‘one-size-fits-all’ answer suitable across state jurisdictions in Australia, and that the evidence available does not support the need for, or clear benefit of, adopting coercive control offences (Fitz-Gibbon, Walklate & Meyer 2020b). The Victorian Royal Commission into Family Violence, for example, cautions that “introducing new offences...often has only a symbolic effect” and notes that:

*“**Whatever laws we have will be only as effective as those who enforce, prosecute and apply them.** Improving these practices – through education, training and embedding best practice and family violence expertise in the courts – is likely to be more effective than simply creating new offences”*

(State of Victoria 2016, pg. 27)

There are legitimate concerns about potentially harmful unintended consequences for victim-survivors (Maturi & Munro 2020), particularly those who already have experienced poor or otherwise compromised justice system responses, including First Nations women and their communities (Douglas & Fitzgerald 2018), women with

disabilities (McVeigh 2015), LGBTIQ+ people, CALD communities, including migrant and refugee women (Judicial College of Victoria 2011), and women from lower socio-economic backgrounds.

Concerns have also been raised about the burden of proof threshold required in the criminal code, and advocates such as Women's Legal Services Victoria have recommended that coercive control should be dealt with by the civil jurisdiction rather than bring victim-survivors into contact with the criminal justice system (WLSV 2020). The criminal threshold levels required by the criminal justice system often pose evidentiary issues for many victim-survivors. Also, additional resources would be required by police to investigate and obtain the necessary evidence so that prosecution is not solely reliant on victim-survivors' testimony.

In addition, the difficulties posed by the criminal justice for victim-survivors is well documented (Walklate & Fitz-Gibbon 2019). The law often presents additional hurdles and challenges which victim-survivors must navigate the more it tries to protect. These challenges are then often exacerbated by the intersections arising from factors such as class, race/ethnicity and culture.

Despite differences across the sector as to whether or not criminalisation of coercive control is the optimal approach, as detailed by AWAVA in its Issues Paper on coercive control (AWAVA 2020), commonalities on both sides of the debate include agreement that:

- Coercive control does belong in law (debate is centred on **where** in the law it should be situated);
- Coercive control constitutes domestic and family violence and needs to be understood as part of a pattern of violence;
- A national definition of domestic and family violence should be sought;
- Effective education and training for police and justice system officials are essential;
- A holistic response to DFSV across the whole system beyond criminalisation is required.

Therefore Embolden recommends a cautious approach with respect to the enactment or implementation of any new offences. Further consultation to better understand the needs of and impact of any proposed legislative changes on vulnerable groups is required. For many vulnerable groups including First Nations communities, there are often significant and profound unintended consequences created by the introduction of new legislative offences in this area (Walklate & Fitz-Gibbon 2019). Additionally, further research and evidence are required with respect to identifying the effectiveness of standalone offences in improving victim-survivors' safety and learning from their voices and lived experiences (Fitz-Gibbon, Walklate & Meyer 2020).

Recommendations

Embolden supports measures by governments in all jurisdictions to prioritise action under the following three Priority Action Areas:

Priority Action Area 1: DEFINE AND EDUCATE

Recommendations under Priority Action Area 1

- That Australian federal, state and territory governments actively and immediately support the establishment of a consistent **national definition for family and domestic violence**, in which coercive control is recognised as a pattern of abuse, in consultation with specialist women's and family violence services and experts by lived experience of family and domestic abuse beginning with the National Women's Safety Summit in September 2021
- That Australian federal, state and territory governments actively and immediately support the establishment of a consistent **national definition for sexual assault**, in which coercive control is recognised as a pattern of abuse, in consultation with specialist women's and sexual assault services experts by lived experience of sexual abuse beginning with the National Women's Safety Summit in September 2021
- That Australian federal, state and territory governments commit to funding, promoting and supporting **community education and awareness of coercive control** in the context of gender-based violence, including primary prevention activities across the eleven key settings, including (but not limited to) education and care settings for children and young people; workplaces; health, family and community services; public spaces; and legal, justice and corrections contexts (Our Watch, ANROWS & VicHealth 2015)

Priority Action Area 2: CONSULT AND RESEARCH

Recommendations under Priority Action Area 2

- That the South Australian government, through the Parliament of South Australia Social Development Committee, Attorney-General's Department, and Office for Women, closely consult with the community, and key stakeholders, on the steps it will take **to ensure best practice justice, legal and service system responses to and prevention of coercive control**. This includes engaging with victim-survivors and the domestic, family and sexual violence sector, with an intersectional lens that critically engages with risk and potential impact on victim-survivors and communities, including:
 - First Nation women, children and communities;
 - People living with disability;
 - Women from culturally and linguistically diverse communities, particularly migrants, refugees and those on temporary protection visas;
 - LGBTIQ+ communities, and
 - Others who are affected by gender-based violence.
- That the South Australian Attorney-General commission a report from the South Australian Law Reform Institute (SALRI) to **consider the matter of placement of coercive control in criminal and/or civil law in South Australia**, including reporting on the potential benefits, risks and other consequences of introducing new legislation, and reviewing existing legislation and processes including the efficacy of intervention orders, with clear and evidence-based recommendations and pathways to action
- That the **Multi-Agency Protection Service (MAPS) and SA Family Safety Framework (FSF) review their risk assessment, practice manual and sharing protocols** to determine whether coercive control is adequately and appropriately defined, recognised and responded to by all participating members

Priority Action Area 3: INVEST AND TRAIN

Recommendations under Priority Action Area 3

- That Federal, State, Territory and local governments invest in evidence-based responses, interventions and programs which support women and children's safety and freedom from abuse, encompassing primary prevention, intervention, crisis response and recovery, that are underpinned by an understanding of the gendered drivers of violence and advised, led or co-designed with the specialist women's safety sector and experts by experience of domestic and family violence
- That the South Australian government, SAPOL and other relevant whole-of-system bodies commit to significant training and awareness measures to recognise and respond to domestic violence and sexual assault, and particularly to recognise and respond to the presence of coercive control, for:
 - SAPOL personnel, including but not limited to frontline officers;
 - Magistrates;
 - Aboriginal Liaison Officers;
 - Corrections personnel;
 - Child Protection personnel;
 - Witness Assistance Officers, and
 - Other relevant law enforcement, healthcare and justice system officials.

Further to the above Priority Action Areas, Embolden recommends governments of all Australian jurisdictions increase funding to specialist women's and culturally specific services that meet the standards identified by the Australian Women Against Violence Alliance (AWAVA 2016) of:

- A rights-based approach
- Advancing gender equality and women's empowerment
- A client-centred approach
- Women's safety is central
- Perpetrator accountability
- Accessible culturally-appropriate and sensitive services

Conclusion

Embolden SA's position is that the existing evidence base does not currently support the introduction of new legislation regarding the criminalisation of coercive control in South Australia. Further research is needed to determine where coercive control does belong in South Australian law, whether civil, criminal, or across both codes. This research must include extensive and close consultation with victim-survivors with lived experience of coercive control, and the specialist women's safety services that support them, and should be underpinned by an intersectional feminist understanding of the gendered drivers of violence (Our Watch, ANROWS & VicHealth 2015); the expertise and leadership of Aboriginal family violence and community controlled organisations in understanding causes and contributors of family violence against Aboriginal people including gender, colonisation, discrimination and intergenerational trauma and the provision of culturally safe and specialist support services (Braybrook 2015); and a victim-survivor centred, trauma-based, empowering framework that recognises the complexity of intersectionality (AWAVA 2016), diversity of lived experience and need for appropriate, accessible and culturally safe responses, including for First Nations communities, LGBTIQ+ people, women and girls with disability, women and communities from culturally and linguistically diverse backgrounds, and remote, regional and rural communities.

South Australia is well-placed to refine and strengthen its justice and legal systems to protect the rights and safety of victim-survivors of gender-based violence by immediately prioritising best practice, training, and adherence to existing guiding principles, initiatives and legislation. This includes the National Domestic and Family Violence Bench Book and appropriate additions being made to the South Australian Criminal Trials Bench Book, SAPOL and legislature workforce training; and the Family Safety Framework as but a few examples. Such an approach would build upon the significant reform and investment by both incumbent and former governments in partnership with the sector over decades of advocacy, service response and policymaking, while identifying and addressing gaps and opportunities to improve family safety across system, service and community responses.

Embolden SA and its' members advocate for a three-pronged approach consisting of:

- Immediate action to strengthen existing supports, *while*
- Working towards national definitions and community understanding of coercive control specifically, and domestic, family and sexual violence more broadly (in consultation as described above), *alongside*
- Thorough consideration of where the issue of coercive control is to be most safely and effectively placed in South Australian law (whether criminal, civil, or both codes), to be undertaken by SALRI and in close consultation with victim-survivors, the specialist domestic, family and sexual violence sector, women's legal services, and other key stakeholders

References

Australian Bureau of Statistics (ABS) 2016, *Personal Safety Survey*, ABS, Canberra.

Australian Institute of Health and Welfare (AIHW) 2019, *Family, domestic and sexual violence in Australia: continuing the national story 2019—In brief*, cat. no. FDV 4. AIHW, Canberra.

Australia's National Research Organisation for Women's Safety (ANROWS) 2021, *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021), ANROWS, Sydney, available at: <https://www.anrows.org.au/publication/defining-and-responding-to-coercive-control/>.

Australian Women Against Violence Alliance (AWAVA) 2021, 'Criminalisation of Coercive Control', *Issues Paper*, AWAVA, Canberra.

Australian Women Against Violence Alliance (AWAVA) 2016, 'The role of specialist women's services in Australia's response to violence against women and their children', *Policy Brief: 7 April 2016*, AWAVA, Canberra.

Boxall H, Morgan A & Brown, R 2020, 'The prevalence of domestic violence among women during the COVID-19 pandemic', *Statistical Bulletin 28*, Australian Institute of Criminology (AIC).

Braybrook, A 2015, 'Family violence in Aboriginal communities', *DVRCV Advocate*, 2nd ed, Spring/Summer 2015, Domestic Violence Resource Centre Victoria (DVRCV).

Dobash, RE & Dobash, R 1979, *Violence against wives: A case against the patriarchy*, Free Press, New York.

Domestic Violence Victoria (DV Vic) 2021, *DV Vic Code of Practice*, available at: <http://dvvic.org.au/wp-content/uploads/2020/07/DV-Vic-Code-of-Practice-v1.0-FINAL.pdf>.

Douglas, H & Fitzgerald, R 2018, 'The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People' *International Journal for Crime, Justice and Social Democracy*, vol. 7, no. 3, pp. 41-57.

Herman, JL 1992, *Trauma and recovery: The aftermath of violence*, Basic Books, New York.

Hildyard, K 2020, Katrine Hildyard for Reynell (Facebook), 2 December 2020, available at:
<https://www.facebook.com/KatrineHildyardForReynell/photos/a.543730142355243/3688753704519522>.

Fitz-Gibbon, K, Walklate, S, Meyer, S 2020a, 'Australia is not ready to criminalise coercive control – here's why', *The Conversation* [website], available at:
<https://theconversation.com/australia-is-not-ready-to-criminalise-coercive-control-heres-why-146929>.

Fitz-Gibbon, K, Walklate, S, Meyer, S 2020b, *Criminalisation of Coercive Control - Research Brief*, Monash University, available at:
<https://doi.org/10.26180/5f72806cd6ab2>.

Intervention Orders (Prevention of Abuse) Act 2009 (SA), available at:
[https://www.legislation.sa.gov.au/LZ/C/A/INTERVENTION%20ORDERS%20\(PREVENTION%20OF%20ABUSE\)%20ACT%202009/CURRENT/2009.85.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/INTERVENTION%20ORDERS%20(PREVENTION%20OF%20ABUSE)%20ACT%202009/CURRENT/2009.85.AUTH.PDF).

InTouch Multicultural Centre Against Family Violence 2021, *Criminalisation of Coercive Control. Should coercive control be a criminal offence in Victoria? Position Paper*, January 2021.

Johnson, MP 1995, 'Patriarchal terrorism and common couple violence: Two forms of violence against women', *Journal of Marriage and Family*, vol. 57(2), pp. 283-294.

Jones, A 1994, *Next time she'll be dead: Battering and how to stop it*, Beacon Press, Boston.

Judicial College of Victoria 2011, *Family Violence Bench Book*, Melbourne.

Maturi J & Munro J 2020, 'Should Australia criminalise coercive control? Fighting domestic violence and unintended consequences', *Asia & the Pacific Policy Society Policy Forum*, 9 November 2020, available at: <https://www.policyforum.net/should-australia-criminalise-coercive-control/>.

McGorrery P & McMahon M 2019, 'Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence', *Criminology & Criminal Justice*, October 2019.

McVeigh, K 2015, 'Women with disabilities excluded from domestic abuse law, say campaigners', *The Guardian*, 29 January 2015, available at: <https://www.theguardian.com/society/2015/jan/28/coercive-control-women-carers-disability-serious-crime-bill>.

Monckton Smith, J 2020, 'Intimate Partner Femicide: Using Foucauldian Analysis to Track an Eight Stage Progression to Homicide', *Violence Against Women*, 26(11), pp. 1267–1285.

Mulayim, S, Jackson, M, Lai, M 2017, 'Domestic violence in Australia: A wicked problem', in Peterson, DS & Schroeder, JA (ed.), *Domestic Violence in International Context*, Routledge, Oxon, pp. 165–179.

Myhill, A & Hohl, K 2016, 'The "Golden Thread": Coercive Control and Risk Assessment for Domestic Violence', *Journal of Interpersonal Violence*, vol. 34(4).

NSW Domestic Violence Death Review Team 2020, 'Report 2017–2019', Domestic Violence Death Review Team (DVDRT), Sydney.

Nancarrow, H 2019, *Unintended consequences of domestic violence law: Gendered aspirations and racialised realities*, Palgrave Macmillan.

Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth 2015, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Our Watch.

Parliament of New South Wales, 'Coercive control in domestic relationships', *Joint Select Committee on Coercive Control Report 1/57*, June 2021, Sydney, available at <https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Report%20-%20coercive%20control%20in%20domestic%20relationships.pdf>.

Pence, E & Paymar, M 1993, *Education groups for men who batter: The Duluth model*, Springer Publishing Company.

Stark, E 2006, 'Commentary on Johnson's "conflict and control: Gender symmetry and asymmetry in domestic violence"', *Violence Against Women*, vol. 12, no. 11, pp. 1019–1025.

Stark, E 2007, *Coercive control: How men entrap women in personal life*, Oxford University Press, New York.

Stark, E & Hester, M 2019, 'Coercive Control: Update and Review', *Violence Against Women*, Vol. 25(1), pp. 81–104, available at: <https://journals.sagepub.com/doi/full/10.1177/1077801218816191>.

UNFPA 2019, *The Inter-Agency Minimum Standards for Gender-Based Violence in Emergencies Programming*, United Nations Population Fund, available at: https://www.unfpa.org/sites/default/files/pub-pdf/19-200_Minimun_Standards_Report_ENGLISH-Nov.FINAL_.pdf.

UNHCR 2021, *Gender-based Violence*, United Nations Refugee Agency, available at: <https://www.unhcr.org/gender-based-violence.html>.

Walklate, S & Fitz-Gibbon, K 2019, 'The criminalisation of coercive control: The power of law?', *International Journal for Crime, Justice and Social Democracy*, vol. 8, no. 4, pp. 94-108.

Women's Aid 2020, *What is coercive control*, [website], available at: <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/coercive-control/>.

Women's Legal Service Victoria (WLSV) 2020, *Policy Brief: Justice system response to coercive control*, August 2020, Melbourne.

Snell, L 2020, 'Why we need a thorough consultation process on how to effectively address coercive controlling violence', Women's Legal Service NSW (WLS NSW).

Women's Legal Service Tasmania (WLST) 2020, *Submission: Inquiry into Family, Domestic and Sexual Violence*, available at: <https://womenslegaltas.org.au/wlst-submission-into-inquiry-into-family-domestic-and-sexual-violence/>.

Women's Safety NSW 2020, 'Criminalising Coercive Control Position Paper', Women's Safety NSW.