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Muslim Women Australia

SUBMISSION TO THE JOINT SELECT COMMITTEE ON COERCIVE CONTROL

JANUARY 2021

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I. INTRODUCTION

Muslim Women Australia (MWA) is pleased to contribute to the NSW Joint Select Committee on Coercive Control. MWA is well placed to advise the Committee on this issue having supported culturally and linguistically diverse (CALD) and Muslim women experiencing domestic and family violence (DFV) for over 35 years.

MWA is a specialist provider of DFV services for CALD and faith-based communities. We implement and advocate for culturally and religiously appropriate best practice models of DFV service provision to deliver holistic support options. Our services focus on DFV prevention and early intervention, safe and supported crisis and transitional accommodation, rapid rehousing and intensive support for clients with complex needs as well as supporting women in their own choice of home. MWA's support of CALD women experiencing DFV includes extensive support for their children in a manner which prioritises safety and facilitates access to housing, legal, migration, financial, employment, educational and spiritual services. For more information about MWA's services and history see Appendices 1 and 2 to this submission.

MWA encourages the Committee to centre the perspectives of women from CALD and faith-based communities, with a greater recognition of their intersecting needs including migration status, communication barriers and cultural diversity (see Part II of this submission). Our submission is based on MWA's experience and research and evidence provided by staff and clients (see Part III of this submission). A summary of our recommendations in response to the Terms of Reference is provided in Part IV.

A preliminary concern that MWA would like to raise with the Committee is the lack of community consultation due to the limited time frame provided for submissions to this inquiry. We refer the Committee to the successful experience of criminalising coercive control in Scotland, which has in large part been credited to their extensive consultation process. The importance of extensive consultation in the context of coercive control is to ensure that the voices of marginalised communities are heard in order to identify unintended, and potentially negative, consequences of the proposed reforms. MWA recommends that extended consultations (with a minimum of 12-24 months lead in time) would be of benefit in order to more deeply engage with the community before the direction for reform is decided.

At this point in time, although MWA supports the criminalisation of coercive control in principle, we have a number of concerns regarding the potentially problematic implementation of criminal provisions in practice. We take our advocacy against DFV with the utmost seriousness and therefore cannot

commit to endorsing the current proposal for criminalisation without systemic reforms and community consultation.

When it comes to protecting and empowering women good intentions are not enough. We must take the time and put in the effort to understand how criminalisation may adversely affect CALD and Muslim women, in order to holistically protect them. Further, we believe that criminalisation of coercive control in isolation is insufficient to adequately protect and empower victims of DFV and that systemic reforms must occur alongside the proposed revision of criminal law provisions.

The recommendations in this submission are endorsed by Domestic Violence NSW (DVNSW), No to Violence (NTV), Womens Safety NSW and NSW Council of Social Service (NCOSS).

This submission was also shared with Womens Legal Services NSW and Womens Health NSW.

II. CENTRING CALD AND MUSLIM WOMEN

MWA would like to draw the Committee's attention to the need to consider intersectionality when reviewing law and policy related to coercive control. Intersectionality can be defined as 'a prism for seeing the way in which various forms of inequality often operate together and exacerbate each other'.¹ The Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children 2010-2022 recognises that some communities within Australia experience DFV in complex ways due to the 'intersections of racism, language barriers, religious and cultural practices and the immigration process' amongst other factors.² An intersectional framework which acknowledges such systemic inequalities underpins best practice for DFV service provision.

Intersectional identity markers impacting the way CALD women experience the world include, but are not limited to, 'first language spoken, visible minority status, migration status, religious affiliation, region of residence, sexual orientation, family type, marital status, occupation, sector of employment, or labour force status'.³ The experiences of CALD and Muslim women are often compounded by factors such as a lack a familial and social support networks, communication or language difficulties, limited access to services, and consequences (or fear of consequences) for their migration status. These factors,

¹ Kimberlé Crenshaw, 'Mapping the Margins of Intersectionality, Identity Politics, and Violence Against Women' (1991) 43(6) *Stanford Law Review* 1241-1299.

² ANROWS (2020), *Prevention of violence against women and safer pathways to services for migrant and refugee communities*, p. 6.

³ Harmony Alliance (2020), *Framework on Intersectionality in Policy and Practice for Migrant and Refugee Women*, p. 3.

combined with lack of knowledge about the Australian legal system, make it difficult for CALD women to recognise or report family violence. In addition, many CALD women face racism and discrimination when seeking help through mainstream DFV service providers.⁴ This includes service providers' assumptions about violence being a part of CALD community cultures and negative stereotypes about CALD or Muslim communities.

In saying this, CALD and faith-based communities are diverse and not all members of these communities will be affected to the same degree by these factors. It is well documented that due to these intersecting complexities, a 'one-size-fits-all' approach does not work to address DFV in CALD communities.⁵ This is because multiple identities and experiences exist under the label of 'CALD'. For example, CALD women have vastly different experiences depending on whether they are a first or second-generation migrant, the life stage they were at when migration took place, whether they are a recent migrant/refugee or depending on their visa pathway. CALD women are not only from newly arrived migrant communities but extend across the spectrum of settlement including established communities. In supporting CALD women, it is important that there is a balance between cultural responsiveness and cultural stereotyping. Therefore, DFV services must centre the needs of CALD women and provide access to culturally, linguistically and religiously appropriate support without perpetuating misconceptions often attached to the experiences of CALD women.

Furthermore, while this submission addresses formal legal and policy reform on the topic of coercive control, it must be kept in mind that CALD women experiencing DFV often concurrently navigate dual systems, especially within faith-based communities. By dual systems we mean both formal, State (criminal or civil) processes on one hand and informal customary or religious community-based processes on the other. This is due to the fact that CALD, faith-based communities are characterised by marital relationships and caring structures which generally require involvement by religious leaders. MWA acknowledges that the reality for many CALD women escaping DFV involves engagement with both formal and informal processes and that this is often overlooked in the discourse relating to centring the needs of CALD communities and DFV.⁶ This means that non-legal avenues for addressing DFV are particularly important in the CALD context.

⁴ 'In Australia, particular groups of CALD clients, including asylum seekers and refugees, as well as Muslim women, have reported particularly high experiences of racism from service providers': ANROWS (2020), *Prevention of violence against women and safer pathways to services for migrant and refugee communities*, p. 67 citing Rees and Pease, 2006 and Vaughan et al., 2015.

⁵ ANROWS (2020), *Prevention of violence against women and safer pathways to services for migrant and refugee communities*, p. 15 citing evidence from CALD Projects with Action Research.

⁶ For more information of religious family conflict and dispute resolution processes in CALD and Muslim communities see Farrah Ahmed and Ghena Krayem, *Understanding Sharia Processes: Women's Experiences of Family Disputes* (Hart, forthcoming).

Against this background, two major themes that run throughout this submission are the need for:

- Culturally, linguistically and religiously appropriate DFV services, including specialisation of services to meet the needs of CALD and Muslim women; and
- The centring of CALD and faith-based perspectives in informing appropriate legal and policy responses to coercive control, as well as in non-legal initiatives to prevent and address DFV.

III. TERMS OF REFERENCE

1. What would be an appropriate definition of coercive control?

Coercive control can be defined as a pattern of behaviour centred around power, domination and control by a perpetrator over a victim, including physical, sexual, psychological, financial, technological and emotional abuse; deprivation of liberty; isolation of the victim from their support networks; and acts of intimidation (such as threats or surveillance).⁷

The legal recognition of coercive control, in line with the above definition, would update the state of the law to reflect best practice. DFV service providers, including MWA, have been advocating against violence against women *in all its forms* for many years. The concept of coercive control is therefore not new and has long been recognised by MWA, whether by the name ‘coercive control’ or by other descriptors.

Further, MWA supports the shift from an incident-based understanding of DFV to a pattern-based understanding of DFV. Legal and policy recognition of coercive control as a pattern of behaviour carried out over time is essential to shifting criminal, civil and other approaches away from an incident-based approach, which does not adequately capture the nature of DFV.

i. Defining relationships

MWA believes the scope of relationships captured by potential coercive control provisions should not be limited to intimate partner violence but extend to family-based violence and post-separation abuse. This will make the legislation more accessible for women from CALD and faith-based communities,

⁷ 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.

for example by capturing elder abuse that takes place by adult children or carers and abuse within extended family structures.

The current definition of ‘domestic relationship’ in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) is expansive and would allow for coercive control in all family settings to be captured. In saying this, additional checks and balances within the legislation should be included to protect marginalised communities from over criminalisation or other unintended, harmful consequences (explained in Section 1(ii) and (iii) below).

On this point we endorse and adopt Women’s Safety NSW’s submission, where they state that:

For the criminalisation of coercive control to afford meaningful protection to domestic violence victims/survivors, it must be recognised that abuse can occur in a range of different domestic relationships. Controlling and coercive behaviours and the damage they cause are not limited to intimate partner relationships, but can also arise in parent/child relationships, within extended families, and in any other domestic relationships. These behaviours can continue to exist even when parties are not living in the same household.

The following case studies from MWA clients illustrate the complexity of coercive control in terms of relationships, such as abuse within caring and extended family relationships.

MWA Case Study: Elder abuse by carer

When 66-year-old Z* came to MWA seeking crisis and transitional support, like many other seniors from multicultural communities, she wasn’t aware of the term ‘elder abuse’. Z didn’t want to be a burden to her family, so she has struggled on her own to make ends meet. One day in June 2020, she confided in her nephew that a woman she had befriended and was living with had physically assaulted her by slapping her on the face, the woman also yelled at Z, called her names and limited Z’s access to her family.

Z had suffered for over five years at the hand of this “friend”. What had begun as seemingly friendly support resulted in manipulation and abuse. Z’s car, phone and superannuation were all now under the abuser’s control. The perpetrator had Z move into her home under the premise that the woman was helping Z, but then charged her \$400 weekly for eight months until Z relocated. Z was also subject to a range of controlling behaviours including chaperoned shopping, counselling appointments and visits under the guise that the perpetrator was supporting Z due to Z’s limited English. Z’s fear heightened when her “friend” became physically and verbally abusive. Since leaving the perpetrator has attempted emotional abuse by threatening to self-harm, which was reported to police.

MWA has supported Z by providing coordinated and integrated case management, with safety and risk assessment plans to support Z’s accommodation, financial and health needs. She says: ‘MWA has given me so much light, reassurance and understanding on how to cope and protect myself. MWA staff gave me so much hope, the support [staff] have been very good to me.’

MWA Case Study: Child abuse by stepparent or parent's partner

C* was initially referred to MWA because of family issues, at that time C and her seven children were living in a studio type granny flat. MWA supported the family with the provision of transitional accommodation. During the case management phase, it was revealed that C's elder daughter had suffered sexual assault at the hands of her mum's new husband. As a result, the perpetrator was jailed and later deported. Upon arrival at MWA, C's daughter was very reserved, angry and opened up to the counsellor about her suicidal thoughts. C and her children are now settled in a new home.

ii. Defining behaviour

MWA suggests that examples of the *kinds* of abusive behaviours that fall within the scope of coercive control provisions should be clearly outlined in relevant law and policy documents. For example, by using a non-exhaustive list of behaviours that fall within the relevant provision.⁸

There are a number of well-recognised types of behaviour that may constitute coercive control, such as efforts to isolate the victim from their friends, family or support networks, withholding reasonable access to joint resources (i.e. assets or money), threatening to take the victim's children away or unreasonably restrict access to the children, controlling or monitoring the victim's day-to-day activities (including tracking the victim's location using software or apps), or psychological control and manipulation including gaslighting and threats of self-harm.

MWA recommends that there should be a minimum threshold for criminal prosecutions of coercive control consisting of a combination of three or more recognised types of coercive control. The reason for this recommendation is to counter the risk that criminalisation could 'inadvertently criminalise relationship behaviours that are generally socially accepted, or behaviours which may be acceptable in the context of one relationship but not in the context of another'.⁹ Due to the highly complex and contextual nature of coercive control, there must be measures in place to address the risk of over-criminalisation of relationship behaviour that – although unhealthy – does not meet a criminal threshold.

This is particularly so for CALD and faith-based communities, which may be unfairly impacted due to racism and discrimination in the application of criminal law. DFV manifests differently for various communities. For Muslim women in particular, their experiences of gendered violence may intersect

⁸ *Acts Interpretation Act 1901* (Cth), s 15AD.

⁹ NSW Government, 'Coercive Control' (Discussion paper, October 2020), p. 24-5.

with Islamophobia. Racialised groups of women often experience the ‘double bind’¹⁰ which is the meeting point between Islamophobia/imperialism and gender injustice, in which women find themselves subject to criticism both within and beyond their communities in the fight for gender justice.

Women from CALD and faith-based communities frequently report to MWA experiences of discrimination when dealing with police and/or government service providers who do not understand the intimate, familial and communal relationships, expectations and norms that exist in their communities or do not listen to what victims want for themselves in the process. Criminal justice stakeholders, in particular police, prosecutors and judges, need to receive specialised DFV training in order to understanding the highly contextual nature of coercive control, as well approaching coercive control in a way that is culturally competent in terms of how coercive control may present in different communities.

MWA recommends that the explanatory memorandum accompanying the proposed legislation should include an explanation of the intersection of law, gender bias and racialised discrimination, with specific reference to the need for cultural competency in order to avoid over-criminalisation of marginalised communities in Australia. Further interpretative guidelines, such as the Domestic Violence Safety Assessment Tool Guide (DVSAT) and judicial and police guidebooks, must be expanded to include specialised coercive control and cultural competency training for decision-makers.

MWA Case Study: Need for culturally and linguistically appropriate DFV services

R* arrived very unhappy with the organisations that she was previously connected to, she felt her culture wasn't understood and that she needed didn't feel safe. She did not expect any help at all as for the last two years she has been moved from one service to another. R is severely depressed and continues to receive abusive texts from her ex-husband. Today she is moving into her own place (via the Start Safely program). MWA provided her with extensive support including crisis and transitional accommodation as well as advocacy with housing, income support and financial counselling, food vouchers, psychologist and counselling support, as well as employment opportunities and life skills. R is now working and empowered, she says 'I feel that my feet is on the ground ... I am so thankful to MWA, you guys [helped] straightway and just got me going the right way.'

¹⁰ Shakira Hussein, 'Double Bind and Double Responsibility: Speech and Silence among Australian Muslim Women' in Shahram Akbarzadeh (ed), *Challenging Identities: Muslim Women in Australia* (Melbourne University Press, 2010), p. 159.

The following case studies illustrate the different types of coercive control at play in MWA client cases.

MWA Case Study: Types of coercive control

M* experienced physical and verbal violence from her husband (who had alcohol and drug dependency issues), as well as financial abuse including her husband opening a bank account in her name to avoid being taxed. M also endured threatening behaviour from her in-laws who are overseas and from her in-law's family towards her family overseas. An ADVO was put in place but her husband breached the ADVO. M is an only child and her parents are unhappy that she left her marriage.

M received support from MWA with finding independent accommodation, advocacy for Start Safely and with her real estate agent to be removed from her previous lease, financial support and in-kind support such as household and baby items, medical and psychological support and legal and consulate support to assist with replacement of missing legal documentation. M also requested mediation between her and her parents. She says here seeing her daughter happy at the refuge has made her feel that she made the right decision by leaving.

MWA Case Study: Post-separation abuse and ADVO limitations in the current system

T* contacted MWA when staying at her cousin's house. T disclosed that she experienced violence from her husband and his family but thought it was normal. Each time her and her partner argued, he kicked her out of the house and she slept in the car. Sometimes if she went out to buy dinner, she would come back and her husband would have locked all the doors to the house. She hadn't yet reported anything to the police. She was experiencing emotional, psychological and financial abuse. She has no money in her bank account as her partner hacks into her bank account and takes the money. The house they are living in belongs to her mother-in-law. She does not receive any government payments as her partner owns a business. Once in crisis accommodation, post-separation abuse escalated with increased threats to T and her children, with an incident at the school. When an ADVO was sought, the police said that she couldn't apply due to a lack of evidence and the length of time between incidents. MWA has provided crisis and transitional accommodation, as well as a new phone, psychological, financial and wellbeing support and case management for her children.

MWA Case Study: Coercive control in CALD contexts

L* escaped a DFV relationship and was severely depressed. Her partner was controlling, she was not allowed to go anywhere or socialise and experienced verbal and physical abuse. L's partner threatened to send her back to her home country (Kenya) and threatened her son (including putting her son in the boot of his car) amongst other threats. This caused L to experience severe anxiety attacks. MWA supported L with crisis and transitional accommodation, advocacy for special benefit payments and legal support via Legal Aid and Immigration Rights and Advice Centre. L is currently in a transitional property, connected to Opportunities Pathways and is very happy with the quality and culturally appropriate support that she received.

iii. Perpetrator intention and impact on the victim

MWA recommends that proposed coercive control provisions include an objective test of the 'reasonable person' with respect to the elements of perpetrator intent and a subjective test with respect to the impact of behaviour on the victim.

Applying an objective test with respect to perpetrator intention to coerce, control or intimidate the victim implies that the behaviour would not be criminal if the course of behaviour was reasonable in the circumstances. On one hand, this would provide some protection against over-criminalisation of relationship behaviour that does not meet a criminal threshold (as raised above). On the other hand, an objective test does not completely mitigate such risks as the interpretation of 'reasonableness' in coercive control contexts may be effected by gender bias and unconscious bias against marginalised communities. An objective standard of care with respect to perpetrator intention may also protect against coercive control provisions being weaponised by perpetrators against victims (discussed below under Term of Reference #7).

With respect to impact on the victim, the reason for recommending a subjective test is that this would require prosecution to show actual harm and would therefore protect against prosecutions where no actual harm has been suffered by the victim (i.e. behaviour which arguably does not meet the criminal threshold). However, the way in which harm or impact on the victim is defined in the legislation is important as not to create too high an evidentiary standard for victims to meet. A further concern is that a higher evidentiary burden on victims may lead to re-traumatisation of victims during proceedings. Steps need to be actively taken to make protect victim-witnesses against re-traumatisation.

2. How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?

As mentioned above, MWA is concerned that the potential for criminal overreach would disproportionately impact CALD and faith-based communities due to the lack of nuance in understanding the role of culture and religion in these communities. As outlined above, while the definition of what behaviour constitutes coercive control and what relationships fall within these provisions should be expansive, MWA recommends that:

- The criminalisation of coercive control should have a minimum legislative threshold consisting of a combination of three or more forms of coercive behaviour;

- The test for perpetrator intention should be anchored by a consideration of reasonableness in the circumstances (i.e. an objective test) to provide an in-built protection against over-criminalisation of normal (or unhealthy but not criminal) relationship behaviours; and
- The impact of alleged behaviour should be assessed with respect to the individual victim (i.e. a subjective test) to guard against over-criminalisation of relationship behaviour that does not, in fact, have a negative impact.

As mentioned above, it is essential that any criminalisation of coercive control be accompanied by adequate DFV and cultural competency training for criminal justice stakeholders and broader systems reform aimed at protecting victims, in particular to guard against re-traumatisation of victim-witnesses in criminal proceedings. Further, community education programs and adequate ongoing funding to support integrated DFV service provision must form part of broader system reforms so that CALD and Muslim women reporting violence have access to support within their communities and understand the nature of coercive control as well as their rights under the law.

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?

No. As mentioned above, current criminal and civil law approaches to DFV are limited to incident-based approaches which do not recognise the broader picture of DFV in terms of patterns of abusive behaviour, as well as a lack of engagement with non-physical forms of DFV.

While not addressed within the scope of this submission, it is important to note that whether existing stalking and intimidation laws can be reformed to better address coercive control or whether the civil law system can be better utilised, are relevant considerations for this inquiry. Adopting MWA's recommendation of extended consultations (i.e. 12 to 24 months lead time) would allow time for a review of the NSW Bureau of Crime Statistics and Research's (BoCSAR) evidence on existing pattern-based offences (which will be released in March 2021 at the earliest).

4. Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?

MWA endorses and adopts Women Safety NSW's recommendation regarding increased court specialisation, including the creation of DFV specialised courts or court days, in addition to the prioritisation or expedition of DFV matters.¹¹

¹¹ Women's Safety NSW, 'Criminalising Coercive Control' (Position paper, 11 September 2020), p. 92-6.

5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings? How could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?

No. In both the processing of ADVO's and prosecution of DFV, current laws do not adequately take into account evidence of patterns of abusive behaviour. As mentioned previously, this is because the current criminal law approach to DFV focuses on incidents of violence. In addition, in CALD contexts, there have been reports to MWA of a lack of availability of interpreters as well as a lack of adequately trained interpreters. For example, cases where interpreters have not understood terminology related to DFV and where police have asked victims questions via an interpreter in the vicinity of the perpetrator.

MWA Case Study: Elder abuse in CALD context

Police attended the home of a family with elder mother and disabled son cared for by the daughter. Police questioned elderly mother *in the presence of her daughter* using an interpreter, however the interpreter did not ask appropriate questions. When the case coordination team interviewed the mother, family violence and elder abuse were identified, staff then questioned police officers as to what steps were taken. In following up the incident, the initial attending officer then went back and found the elderly mother with two black eyes. Case managers who have an appropriate understanding of DFV, cultural competency and in-person interpreting allowed the elderly mother (victim) to explain the financial and physical abuse she and her disabled son were experiencing at the hands of her daughter.

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

Creating an offence of coercive control has the potential to acknowledge abuse that is occurring but is not yet captured by existing provisions, in particular the recognition of coercive control could promote the identification of patterns of violence and non-physical forms of violence. The criminalisation of a broader range of abusive behaviours means that evidence about non-physical forms violence will become relevant to criminal proceedings and can be admitted as evidence, in other words it will become legally relevant. The legal recognition of coercive control would also bring the law into line with existing best practice in DFV service provision and potentially enable early intervention both to protect victims and rehabilitate offenders, as well as improving perpetrator accountability for non-physical forms of violence and pattern-based violence.

i. Systems abuse by the perpetrator

In addition to the risk of over-criminalisation of marginalised communities outlined above, a potential disadvantage of criminalising coercive control is the risk of systems abuse due to misidentification of the primary aggressor. For example, in CALD communities if the perpetrator has better English and speaks to police, or the victim's account of events is not facilitated by an interpreter, then the victim may be misidentified as the perpetrator. Police routinely do not provide interpreters and multicultural communities have tried to engage with police many times on these issues. Internal police processes to review these practices need to be finalised before criminalisation of coercive control comes into effect.

MWA Case Study: Misidentification of woman as primary aggressor and systems abuse

W* experienced verbal, emotional and physical abuse by her husband and his family, particularly his sister, for many years. She couldn't take it anymore and moved out with her youngest son. Her other children wanted to stay with their dad and were utilised to coerce her. Upon entering crisis accommodation, W attended a park and her husband forcibly took her youngest son from her. The police attended the incident but said that they couldn't do anything and advised her that as he is the father she needs to apply for a court order. W's husband and his sister threatened her by saying that they would call the Department of Communities and Justice and the police to report her for taking their Centrelink money and hitting them.

While in crisis accommodation with other vulnerable women and children, police attended the refuge at 2 am to detain W stating that serious statements had been made against her by her husband and his sister alleging child abuse. Other examples of misreporting include when W's family falsely reported their car stolen when W had the car and when her husband reported the kids missing from school when the kids were under W's care. MWA advised local police of the potential harm and trauma caused by the way the manner was dealt with. MWA and multiple agencies are collaborating to support W while she goes through the criminal and family legal systems misidentified as the primary aggressor.

MWA Case Study: DFV and systems abuse by perpetrators

A researcher in one of Australia's prominent institutions, P* experienced physical, sexual and emotional abuse by her husband. COVID19 changed her working conditions and she was advised to work remotely. The abuse escalated whilst she was working from home. COVID19 pushed her towards fleeing for safety. As a result of his abuse, P was hospitalised and state intervention occurred while hospitalised in order to determine the nature of the issues and risk to their child, as her husband accused her of trying to commit suicide. An ADVO was sought and P and her son entered crisis accommodation, deeply depressed and highly emotional.

Her husband is known to sue all services he comes into contact with, making attempts to gain access to her health and housing records. She continues to face challenges, trying to end the lease that is under her name, re-register her car, sort out her finances, as well deal with the various services her husband has placed complaints with about her. MWA provided P and her son with extensive, coordinated housing, legal, financial and parenting support which saw them transition to temporary accommodation to continue rebuilding and focussing on becoming self-sufficient and safe.

Further, protections for non-offending parents must be in-built into any proposed legislative provisions to protect women who take steps to protect their children against perpetrators from being mistakenly criminalised and to ensure that perpetrators cannot weaponise coercive control provisions against victims.

ii. The need for diversion and referral avenues

MWA is also concerned that the expansion of a criminalisation approach may mean that once women enter the criminal justice system there will be no avenues or diversion opportunities should women wish not to participate in criminal proceedings. Entering the criminal system may not always be in the victim's best interest or may be against the victim's wishes, due to a number of factors including familial and communal ties, stigma, lengthy criminal proceedings, re-traumatisation during police processes and prosecution and issues related to victim and child safety (e.g. an escalation in post-separation abuse).

Many women want violence to stop and seek police protection or intervention in situations of exacerbated violence and stress but may not wish to participate in a formal prosecution. As mentioned previously, there is a need for DFV police training as well as cultural competency training, in addition to greater cooperation and referral systems between police and community organisations.

MWA Case Study: The need for referrals and diversion programs in line with victim needs

“Once in the system, there is no way out, no emergency exits, often this occurs in highly stressful situations where women aren’t in a state to make an informed decision. They just want the violence to stop, they don’t want to go through lengthy years of processes.” – MWA frontline worker

“We’ve seen women who having gone through the criminal justice system and family law system were repeatedly revictimised and have required a lifetime of counselling to deal with the trauma.” – Frontline worker

iii. Systems reform

As raised above, MWA is concerned that due to limited lead in time the institutions implementing proposed coercive control provisions will be inadequately prepared in terms of training and guidelines. A major concern is the implementation of coercive control laws by police and the need for policing reforms as part of the process of criminalisation. In addition to training, education campaigns and guidelines, there must be ongoing reviews or mechanisms for accountability in order to ensure that coercive control provisions are not being applied in a harmful way against women or marginalised communities.

MWA endorses and adopts Women’s Safety NSW’s recommendation with respect to the necessity of accompanying system reforms, that:

simply enacting the new legislation without implementing the necessary system reforms will result in very little change in practice, and therefore women’s access to safety, justice and wellbeing in the context of domestic and family violence. Additionally, for the few cases that may proceed without the appropriate guidelines, training and specialisation, there may be a risk of systems abuse by perpetrators and a lack of safety in the legal process for victim-survivors.¹²

Further, police are rarely the first point of contact and women may or may not seek to pursue or participate in criminal proceedings. As 80% of women do not currently report DFV to police, there is a need for diversified entry and referral points for women to seek help for DFV.¹³ Therefore, extended

¹² Women’s Safety NSW, ‘Criminalising Coercive Control’ (Position paper, 11 September 2020), p. 15.

¹³ Australian Institute of Health and Welfare, ‘Family, domestic and sexual violence in Australia’ (AIHW, 2018), available at: <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-sexual-violence-in-australia-2018/>.

consultation and coordination between community organisations and police is necessary to ensure that criminalisation is part of a larger integrated strategy to combat coercive control.

It is well-documented that there are several structural barriers for women from CALD and faith-based communities in seeking help from the police or other government departments including: distrust of law enforcement, language barriers and limited access to interpreters, a lack of access to services and limited understanding of DFV and/or the Australian legal system, service models that are either religiously, linguistically or culturally inappropriate, concerns regarding their immigration status, fear of losing custody of their children if they report violence, lack of financial stability or independence, community stigma or fear of social isolation within their communities, and racism and discrimination when reporting.¹⁴ For CALD communities in particular, integrated and specialised service provision is a necessity for ensuring access to justice ranging from primary prevention to culturally sensitive intervention.

MWA Case Study: Non-criminal/alternative avenues for assistance

For years K* has been isolated from everything and not allowed to leave the house without her husband. Her husband has not worked for the past 7 months, he used to work in IT and he stays up all night on the computer. There is no physical abuse but she can't take it anymore. He always calls her names also takes all her money. She has sought help from MWA but at this stage doesn't want to leave the relationship or report violence to the police.

14. Are there any other potential avenues for reform that are not outlined or included in the questions above?

As emphasised above, criminalising coercive control should not mean a focus on criminalisation. Criminalisation without adequate funding of relevant services at the community level and comprehensive front line training will result in either very little application of the law or, worse, harmful implementation of the law in marginalised communities.

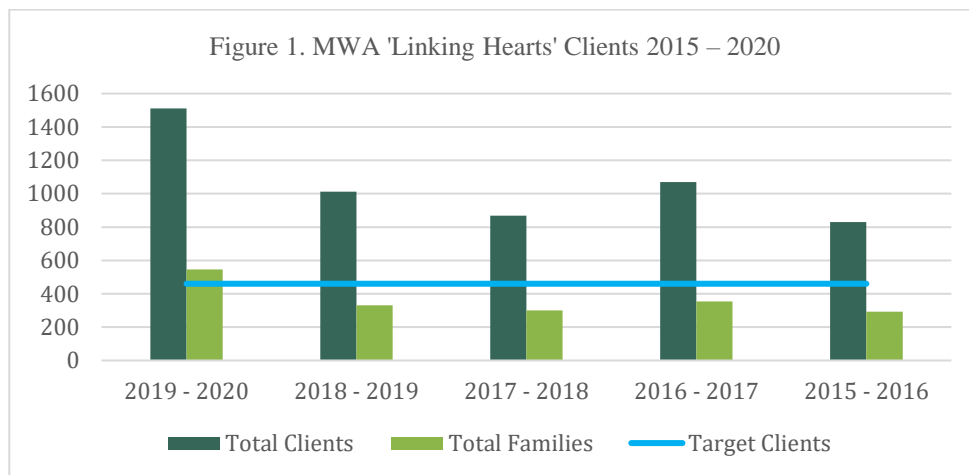
MWA requests that the concerns and needs of CALD and faith-based communities be centred to ensure that the potential risks of criminalisation are mitigated as far as possible. Mitigating such risks must include as a priority the funding of specialised DFV services for CALD and faith-based communities.

¹⁴ InTouch Multicultural Centre Against Family Violence (2010), *Barriers to the Justice System Faced by CALD Women Experiencing Family Violence*; University of Queensland Pro Bono Centre, 'Domestic and Family Violence in Culturally and Linguistically Diverse (CALD) Communities' (Report, 2020); ANROWS (2020), *Multicultural and Settlement services supporting women experiencing violence: The MuSeS project*.

Specialisation of services is a key strategy in achieving best practice in DFV service provision. Specialisation here does not mean only expertise or experience in DFV but expertise or experience in multicultural service provision by organisations such as MWA that provide assistance to clients experiencing DFV in a culturally responsive and competent manner. Amongst other reasons, specialisation in DFV in CALD and faith-based communities is necessary due to victims in these communities navigating concurrent processes when seeking help. As mentioned earlier, victims from CALD and Muslim backgrounds tend to engage with informal community, religious or cultural avenues of dispute resolution before, in addition to or instead of reporting violence to the police.

MWA has raised the issues of pluralistic nature of dispute resolution systems in CALD and faith-based communities and the need for culturally and religiously appropriate specialised DFV care in a number of previous government submissions.¹⁵ MWA recommends that adequate funding be provided to specialist services so that criminalisation of coercive control will be accompanied by community education and engagement at the grassroots level.

Further, the expansion of community organisation activities to include education on and support for coercive control needs to be viewed in a context where community organisations have experienced overwhelming demand on their services during the COVID19 pandemic (see Figure 1).



While MWA's current service is effective in supporting families experiencing DFV, in the last financial year the demand on our services and case complexity has increased.¹⁶ In 2020, MWA supported 1510 individuals experiencing DFV, compared to a client service target of 460 clients. The current funding

¹⁵ For example, see Muslim Women Australia (2020), *Submission to the Inquiry on Sexual, Domestic and Family Violence*; Muslim Women Australia (2020), *Submission to the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality Bill)*.

¹⁶ Muslim Women Australia, *Domestic and Family Violence, CALD Communities and COVID19* (Preliminary Report, September 2020).

for organisations such as MWA is therefore already stretched thin with our organisation running as efficiently as possible and at full capacity. Additionally, eligibility criteria for funding should be reviewed in order to include women on temporary visas.¹⁷

MWA Case Study: Need for cooperation and improved referral systems

Referred to MWA by the police, A* escaped severe abuse, both to her and her children, perpetrated by her husband. The children used to hide under the bed whenever someone knocked on her door. MWA provided wrap-around assistance to A and her children. A recently received her PR and is now able to access further payments and Start Safely. The children are much happier and doing very well at school. They are still in our transitional property and will relocate as soon Start Safely is approved.

MWA Case Study: Need for multi-agency collaboration and wrap-around services

D* experienced DFV, with ADVO against her husband who was on a skilled visa. She has one child and was pregnant and is a refugee on a bridging visa. MWA provided crisis accommodation. D also required multi-agency collaboration to meet extensive needs. In this instance support was easier to provide as D could access payments from Settlement Services International. D is now in our transitional property receiving comprehensive support and advocacy for her protection visa and refugee support, as well as financial and psychological support and antenatal planning. Medical support for her child's hearing, psychology and speech pathologist. D has now given birth, she is overwhelmed but receiving extensive wrap-around support, at least 3-4 times weekly she is contacted

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?

Non-legislative measures to address coercive control include expansion and strengthening of risk assessment tools, primary prevention efforts, and behavioural change programs, in addition to measures mentioned above – community education campaigns, training for relevant institutional stakeholders, funding for specialised services and further collaboration between community organisations and police including improved integration of services and referral systems. Although not the focus of this submission, non-legislative measures are essential in achieving a community approach as opposed to a corrections approach.¹⁸

¹⁷ MWA is currently working with Department of Community and Justice and the Department of Community Services on improving access to service providers for Temporary Visa holders, who access support at the peripherals of the system. As mentioned in Part II of this submission, these issues are specific to some CALD women (i.e. temporary visa holders) but do not apply to others across the settlement spectrum.

¹⁸ NSW Women's Alliance (2020), *Joint Submission to the Inquiry on Sexual, Domestic and Family Violence*, p. 7.

A community approach to DFV is particularly important due to the fact that many victim-survivors do not necessarily want the offender to be prosecuted for a criminal offence or themselves be involved in potentially traumatic criminal proceedings but want the violence to stop and for the offender to get help to reduce recidivism (i.e. a focus on perpetrator accountability, therapeutic intervention, healing and reparation). As outlined above, any effective response to DFV must involve a broad range of coordinated service responses across a range of sectors.

IV. SUMMARY OF RECOMMENDATIONS

Based on expertise in providing DFV services for CALD and faith-based communities, MWA's recommendations with respect to the Committee's Terms of Reference are as follows:

Recommendation with respect to Terms of Reference 1 and 2 – defining coercive control

The definition of coercive control must balance the comprehensive protection of victims against the risk of overcriminalisation of marginalised communities. As such MWA recommends that:

- The definition of 'domestic relationship' in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) be adopted for the purposes of criminalising coercive control;
- The definition of coercive control should include a minimum legislative threshold consisting of a combination of three or more forms of coercive behaviour;
- Perpetrator intention should be determined by applying an objective test; and
- The impact on the victim should be determined by applying a subjective test.

Protections for non-offending parents must also be in-built into any proposed legislative provisions to protect women who take steps to protect their children against perpetrators from being mistakenly criminalised and to ensure that perpetrators cannot weaponise provisions against victims. Further, MWA recommends that the explanatory memorandum accompanying the proposed legislation include an explanation of the intersection of law, gender bias and racialised discrimination, with specific reference to the need for cultural competency in order to avoid over-criminalisation of marginalised communities in Australia.

Recommendation with respect to Term of Reference 7 – systems abuse and systems reform

MWA recommends that:

- DFV police, prosecutor and judicial training should be implemented as well as cultural competency training (including regarding the use of interpreters in DFV contexts);
- Extended consultation and coordination should be facilitated between police and community organisations including diversified entry and referral points and avenues for diversion of cases from the criminal justice system;
- Implementation of coercive control provisions in the criminal law system must be subject to ongoing reviews or other accountability mechanisms in order to ensure that coercive control provisions are not being applied in a harmful way against women or marginalised communities; and
- DFV specialist courts should be created or, at a minimum there should be DFV allocated court days with specialist judges, in addition to the prioritisation or expedition of DFV matters.

Recommendation with respect to Terms of Reference 14 and 15 – non-legal activities and reforms

MWA recommends that:

- The government provide long-term funding to specialist CALD and faith-based community organisations to provide culturally, linguistically and religiously appropriate DFV services;
- The government provide adequate funding to specialist CALD and faith-based community organisations in order to expand community education and engagement efforts at the grassroots level to socialise new coercive control laws; and
- The government support specialist services in the development of primary prevention and early intervention programs and behavioural change programs for men from CALD communities and faith-based groups.

Lastly, MWA recommends that the Committee should extend community consultations on coercive control reforms (with a minimum of 12-24 months lead in time) as well as centring the concerns and needs of CALD and faith-based communities to ensure that the potential risks of over-criminalisation are mitigated as far as possible.

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APPENDIX 1. MWA'S SERVICES

MWA is a representative body for Muslim women working to enrich humanity, advocating for the rights of all women, through authentic leadership based on our Islamic principles.

Established in 1983 by migrant Muslim women to allow for the full participation of Muslim women in Australian society, MWA delivers an array of holistic, integrated, culturally and religiously appropriate intervention and support services, while providing community development and capacity building initiatives.

Nationally, MWA plays an active representative and advocacy role for Muslim women and CALD communities working towards inclusive policies and social cohesion. Australian Muslims come from 183 countries, making them one of the most ethnically and nationally heterogeneous communities in Australia.

For over 35 years, MWA has supported CALD and faith-based communities as a specialist provider of domestic and family violence support (DFV), implementing and advocating for culturally and religiously appropriate best practice models of service provision delivering holistic support options focusing on prevention and early intervention, safe and supported crisis and transitional accommodation, rapid rehousing and intensive support for clients with complex needs as well as supporting women in their own choice of home.

Over the last five years MWA has supported over 5,000 clients from 90 different ethnic groups. Our professionally trained and experienced staff has supported women and children escaping DFV, men seeking intervention, families at risk of and experiencing homelessness in accessing safe, quality supported crisis and transitional accommodation and wrap-around services.

MWA staff were recognised at the SHS Good Practice Award 2020 with winners in the Lifetime Achievement and Leading Practitioner categories, recognising over 20 years of serving society's most vulnerable through sincerity and dedication.

MWA has led the way in centring the needs of CALD and faith-based communities, advocating for holistic, culturally and religiously competent, community-led and trauma-informed practice. In working towards a DFV free Australia, MWA's highly experienced and professional staff, highlight the healing and therapeutic nature of utilising faith as a tool for empowerment, with a client-centred focus to maintain a client's dignity at every stage of support.

We understand at MWA that there is a spectrum of needs amongst the communities that we serve. The settlement journey includes the direct support of newly arrived migrants and refugees, meeting the needs of migrants across the continuum as they age, and responding to second and third generation Australians in terms of owning their Australian, cultural and religious identities.

An intersectional, coordinated, whole of community approach underpins our work across all service areas.

In NSW we operate from two locations. Lakemba, which is our primary office, has an open-door policy and hosts many of our programs and staff. We also have a regional office at Bass Hill which hosts closed support groups and programs.

Across Australia MWA partners with the Islamic Society of Darwin, the Islamic Centre of Western Australia and the Islamic Council of Victoria and has a premises in Dandenong, Victoria which will be fit for purpose post COVID19 pandemic.

At MWA we provide a range of holistic and integrated support services:

- Domestic and Family Violence and Homelessness Support
- Settlement Support
- Financial Support via Emergency Relief and Energy Accounts Payment Assistance (ER and EAPA)
- Outreach services:
 - Financial Counselling
 - Legal Aid
- TAFE Vocational Education courses: English, computer and childcare courses
- Community development programs for young people, mothers, seniors and health and wellbeing initiatives.

APPENDIX 2. MWA'S HISTORY

MWA was established 37 years ago in 1983 to allow for the full participation of Muslim women in Australian society. 1983 was a time when public awareness and understanding of Islam and of Australia's Muslims was minimal.

The MWA was initially aimed at facilitating the integration and participation of newly arrived immigrants, to enable Muslim communities to prosper religiously and economically, as they settled in their new home. Our settlement support services continue to this day.

MWA has at its core, the philosophies of *'empowerment through faith'* and *'together we are better'*, putting into practice the prophetic teaching "those who are most loved by God, are those that are most beneficial to people".

Early on in the work of MWA, it was identified that while support and counselling could be provided to women and their children dealing with DFV, the issue of accommodation needed a more permanent solution. Thus in 1988 the first ever Muslim women refuge was established, the Muslim Women's Support Centre (MWSC) which operated for over 25 years.

MWSC emphasised the right of women to have access to information and their right to make their choices based on that information; and to be aware of their rights under both Islamic and Australian Law. It gave women the autonomy to choose how to deal with their issues, by facilitating safe and neutral spaces for mediation and family restoration, where there was no continued risk of physical harm; as well as to provide a service that was culturally and religiously inclusive. This included a comprehensive understanding of cultural and religious issues affecting Muslim women, such as the provision of halal meat, staying away from alcohol, or even access to ablution and prayer facilities, as well as having appropriate access to their preferred religious leader, which is central to navigating Islamic marriage and divorce.

After 25 years of operation, the changes from the NSW Government 'Going Home Staying Home' reform saw an end to the MWSC as a specialist homelessness service. However, the best practice model used throughout its operation, its foundational principles and the sincerity and integrity of the experienced caseworkers for over two decades made an impact across the sector. The legacy of MWSC continues on in the form of the MWA Linking Hearts Multicultural Family Violence and Homelessness Support Service. We chose the name Linking Hearts, because as humans we have the same fundamental

needs; when we connect heart to heart, and deal with causes, not just symptoms, real healing, connection and understanding can happen.

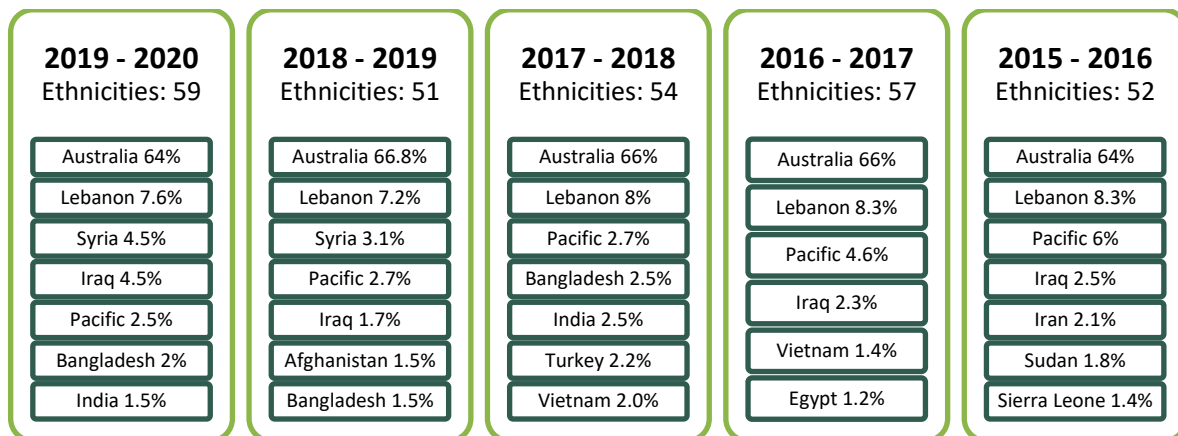
MWA Linking Hearts Multicultural Domestic Violence and Homelessness Support Service – Best Practice Model

MWA Linking Hearts Multicultural Family Service is funded by the NSW Department of Communities and Justice under the ‘Going Home Staying Home’ reforms to provide families from CALD backgrounds with culturally and religiously safe and supported crisis and transitional accommodation.

MWA Linking Hearts established a holistic and coordinated model bringing expert service providers to deliver integrated support options focusing on prevention and early intervention, safe and supported crisis and transitional accommodation, rapid rehousing and intensive support for clients with complex needs.

Over the last five years MWA has supported over 5,000 clients from 90 different ethnic groups (see Figure 2). Our professionally trained and experienced staff have supported women and children escaping DFV, men seeking intervention, families at risk of and experiencing homelessness in accessing safe, quality supported crisis and transitional accommodation and wrap-around services.

Figure 1. MWA ‘Linking Hearts’ Client Ethnicities Recorded from Data 2015 – 2020



MWA provides a one-stop service which maintains client dignity and works toward equitable access and culturally and religiously inclusive service provision, for women, children and men. MWA staff were recognised at the SHS Good Practice Award 2020 with winners in the Lifetime Achievement and Leading Practitioner categories, recognising over 20 years of serving society’s most vulnerable with sincerity and dedication.

MWA manages two crisis Guest Homes and 31 Transitional homes; nine of which are managed by MWA solely and the others in partnership with community housing partners: Evolve Housing, Mission Australia Housing, Amelie Housing and Metro Housing.

The Linking Hearts Multicultural Service is committed to an authentic inclusive and integrated support and intervention practices. Intensive case management is provided inclusive of:

- Accommodation, tenancy and housing;
- Safety planning;
- Medical, health and well-being services;
- Financial support and counselling;
- Immigration support;
- Legal services;
- Individualised intensive case management for children;
- Parenting support;
- Support to manage interpersonal relationships;
- Immigration support and status resolution;
- Legal support stable;
- Future security planning (i.e. education and employment);
- At-Home Support: connects women and their children with access to all services to mitigate relocation impacts on the family, giving women choice and making perpetrators accountable for violence. Access to crisis and temporary accommodation is accessible should there be an immediate need; and
- Post support which involves six months ongoing and continuous support for a client once all goals have been achieved and has long term accommodation

Linking Hearts Multicultural Service is committed to an authentic ‘nurture and grow’ space, where women and children are supported with respect and dignity through a holistic service model; as well as through ‘whole of community’ primary prevention initiatives which work toward gender equality and respectful relationships.

The Linking Hearts service model is underpinned by best practice approaches to ensure equitable access so that all women can rebuild and live healthy lives, free from violence. A fundamental principle of Linking Hearts is inclusivity of faith and cultural competency to ensure that the multifaceted needs of women are met in accordance with their intersecting identities. MWA’s best practice community-led, holistic, integrated prevention and intervention service have proven effective in establishing therapeutic and healing worker-practitioner relationships and environments and should inform a national response.