



Muslim Women Australia

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## Muslim Women Australia – Coercive Control Reform Position Statement

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. As a specialist DFV service provider with over 35 years' experience, MWA is a leader in the field.

### *MWA's position on proposed coercive control reforms*

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 reservation. 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 women, 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.

### *MWA's position on proposed coercive control 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.**

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MWA advocates for the centring of the perspectives of women from CALD and faith-based communities in line with the principle of intersectionality. Reforms must acknowledge the diversity within CALD and faith-based communities. 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. Importantly, CALD women cannot be stereotyped as only belonging to newly arrived migrant communities but come from a range of established communities across the settlement spectrum. An intersectional framework, which acknowledges diversity of CALD women's experiences, must underpin best practice for both DFV service provision and reform.

CALD women experiencing DFV often concurrently navigate dual systems – both formal, State (criminal or civil) processes on one hand and informal customary or religious community-based processes on the other – especially within faith-based communities. This means that non-legal avenues for addressing DFV are particularly important in the CALD context. Proposed coercive control reforms must therefore prioritise the provision of culturally, linguistically and religiously appropriate support for CALD and Muslim women experiencing DFV. Namely, by providing adequate funding to existing legal and non-legal specialist organisations servicing CALD and faith-based communities.

### ***Recognising 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. The benefits of legally recognising coercive control include that:

- The state of the law would be updated to reflect best practice in the DFV sector. 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.
- Such recognition would support a 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.

## *The risk of overcriminalisation of marginalised communities*

**MWA recommends that specialist DFV training should be provided to police, prosecutor and judicial as well as cultural competency training (including the use of interpreters in DFV contexts).**

A criminal law approach towards coercive control carries with it the risk of over criminalization of marginalised communities, such as CALD and faith-based communities. As such, MWA recommends that there should be a minimum threshold for criminal prosecutions of coercive control consisting of a combination of three or more 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'.<sup>1</sup> Due to the highly complex and contextual nature of coercive control, there must be measures in place to address the risk of overcriminalisation 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 with Islamophobia. Racialised groups of women often experience the 'double bind' 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.

Further, 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.

In addition to the risk of overcriminalisation of marginalised communities, criminalisation of coercive control also carries with it 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 without avail.

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

### ***'A holistic approach' – the need for diversified avenues for assistance***

**MWA recommends that 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.**

MWA is also concerned that 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.

80% of women do not currently report DFV to police, therefore, there is a need for diversified entry and referral points for women to seek help for DFV. Therefore, extended 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 – a 'holistic approach'. 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 related 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. For CALD and faith-based communities, specialist, integrated service provision is a necessity for ensuring access to justice.

### ***'A community approach' – support for non-legislative specialist, integrated DFV services***

**MWA recommends that the government provide adequate funding to specialist CALD and faith-based community organisations to expand community education and engagement efforts at the grassroots as well as supporting the development of primary prevention and early intervention programs and behavioural change programs for men from CALD communities and faith-based groups.**

As outlined above, criminalising coercive control should not mean a focus on criminalisation. Non-legislative measures, such as community education campaigns, primary prevention efforts and behavioural change programs, are essential in achieving a 'community approach' as opposed to a corrections approach. A community approach to DFV is particularly important due to the fact that many victims of DFV do not necessarily want the offender to be prosecuted for a criminal offence or themselves be involved in 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 reparations). The criminalisation of coercive control in isolation, without adequate funding of specialist, integrated services will not meet victim needs and will result in either very little application of the law or, worse, harmful implementation of the law in marginalised communities.

MWA recommends that adequate government funding be provided to specialist CALD and faith-based services to ensure that criminalisation of coercive control is accompanied by culturally, linguistically, and religiously appropriate community education and engagement at the grassroots level, including the development of primary prevention and behavioural change programs specifically for men from CALD and faith-based communities.

*For a full discussion of MWA's recommendations related to proposed coercive control reforms see Muslim Women Australia, 'Submission to the Joint Select Committee on Coercive Control' (January 2021).*