



**Submission to the
Government of Western Australia
Office of the Commissioner for Victims of
Crime**

**Legislative Responses to Coercive Control in Western
Australia**

July 2022

About Carers WA

Carers WA is the peak body representing the needs and interests of carers in Western Australia and is part of a national network of Carers Associations. Carers provide unpaid care and support to family members and friends who are living with disability, facing mental health challenges, long term health conditions (including a chronic condition or terminal illness), have an alcohol or drug dependency, or who are frail due to age. The person they care for may be a parent, partner, sibling, child, relative, friend or neighbour.

Caring is a significant form of unpaid work in the community and is integral to the maintenance of our aged, disability, health, mental health, and palliative care systems.

Some important facts about carers include:

- There are currently 2.65 million unpaid carers in Australia.
- There are more than 230,000 families and friends in a caring role in Western Australia, or approximately 1 in 9 in the community.
- The replacement value of unpaid care, according to a report undertaken by Deloitte, Access Economics, “The economic value of unpaid care in Australia in 2020” is estimated at \$77.9 billion per annum.

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1.0 Introduction

Carers WA appreciates the opportunity to provide feedback on the Legislative Responses to Coercive Control in Western Australia Discussion Paper and welcomes the intent of the discussion paper to improve safety for victim survivors of family and domestic violence in a way which does not cause adverse impact on victims.

2.0 General Feedback

2.1 Clarity, Definition and Scope

Carers WA is supportive of a strengthened response to occurrences of family and domestic violence (FDV) and increased recognition and responses to the spectrum of behaviours which may be involved and experienced by victim-survivors, which constitute physical, mental and psychological abuse.

The Association recognises that national principles are under development to achieve a common understanding of coercive control, as well as the nature and scope of a criminal offence for coercive control. However, we are concerned the criminalisation of coercive control without this initial wider community understanding of this term, as well as what is covered by it and what is not covered by it, may result in adverse impacts to victim-survivors and other groups not necessarily intended to be captured within the term or the proposed criminal offense. As such, Carers WA recommends the introduction of any criminal offence for coercive control be timed and staged appropriately in alignment with that of the work being undertaken at a national level to achieve a widespread understanding of this term, coupled with a state-based widespread awareness campaign prior to implementation of any criminal offence.

An offence for coercive control without clarity in definition, scope and recognition of the complexity of cases, carries with it the likelihood of adverse impact on the victim-survivors, with not much data yet available on the benefits involved. The discussion paper recognises the challenges involved in the identification of coercive control due to the contextual nature of abusive behaviours, which may vary between relationships and cultures. It is also noted that criminalisation may result in implications for vulnerable groups, including higher rates of secondary victimisation through criminal justice processes for victim-survivors, but only limited evidence exists thus far about the effectiveness of coercive control offences and the impact on victims. Therefore, Carers WA recommends the collection and consideration of additional data on jurisdictions which have already introduced criminal offences for coercive control, as part of an evaluative process to determine the effectiveness of criminalisation of coercive control, to enable pre-identification and planning for any adverse impact on victims or other groups.

Further, while the discussion paper mentions being mindful throughout consultation of the possible implications of criminalisation for vulnerable groups, this does not directly elaborate on the role that disability, mental illness, alcohol and drug dependency, or chronic illness may play for the perpetrator or victim in cases of family and domestic violence. For example, an individual with dementia may present with symptoms inclusive of aggressive behaviours such as hitting, kicking, cursing or threatening towards another person.¹ As such, Carers WA recommends the consultation and any resulting criminal offence, legislation or guidelines include comprehensive consideration and explanation of the role that health conditions, mental illness and alcohol and drug dependency can play in family and domestic violence.

Recommendations:

1. Any proposed criminal offence for coercive control be timed and staged appropriately in alignment with that of the national principles being developed and any other work being undertaken at a national level to achieve a widespread understanding of this term, coupled with a state-based widespread awareness campaign prior to implementation of any criminal offence.
2. Additional data be collected and considered on jurisdictions which have already introduced criminal offences for coercive control, as part of an evaluative process to determine the effectiveness of criminalisation of coercive control, to enable pre-identification and planning for any adverse impact on victims or other groups.
3. The coercive control consultation and any resulting criminal offence, legislation or guidelines include comprehensive consideration and explanation of the role that health conditions, mental illness and alcohol and drug dependency can play in family and domestic violence.

¹ (Band-Winterstein & Avieli, 2019)

2.2 Carer Recognition

While some vulnerable groups are directly named within the discussion paper as ones which will be considered throughout the consultation, and the potential implications for these groups, there is not mention or recognition of the vulnerable group of informal carers; or differentiation made between paid support worker, other support staff and informal unpaid carers.

In Western Australia, the Carers Recognition Act 2004 (the Act) defines a carer as an individual who provides unpaid care and assistance to someone with disability, a chronic illness, mental health challenge, alcohol or drug dependency, or who is frail due to age.² The Act also sets out how carers are to be treated and involved in services which impact on them and their role.³ Carers could be caring for multiple people; be a family member, friend or neighbour; the caring role could be ongoing or occasional; and a carer's age could range from that of a young carer (aged 8-24 years) to much older.

Carers play a significant role in supporting Australia's health system, providing care worth \$77.9 billion per year (1% of Australia's GDP),⁴ but often at a substantial cost to their own wellbeing and financial security⁵. On average, carers lose \$392,500 in wages to age 67 and a further \$175,000 in superannuation.⁶ The most affected 10% of carers will lose \$940,000 in lifetime income and \$444,500 in superannuation.⁷ The demand for informal carers is expected to increase by 23% by 2030,⁸ up from the present conservatively estimated 2.65 million carers in Australia, 231,400 of which are in WA.⁹ This has more recently been estimated at 320,000 in the Carers Recognition Act 2004 Review Report.¹⁰

In addition, carers face significant challenges, being 2.5 times more likely to suffer low wellbeing than the average Australian; have significantly higher levels of psychological distress; be twice as likely to have poor health; be three times as likely to regularly experience loneliness; have poorer financial wellbeing; and are less likely to be employed.¹¹ Young carers in particular have been identified by the Australian Child Wellbeing Project as being one of the four most at-risk groups of young people in Australia.¹²

² (Government of Western Australia (Department of Communities), 2016)

³ (Government of Western Australia (Department of Communities), 2016)

⁴ (Deloitte Access Economics, 2020)

⁵ (Centre for Change Governance and NATSEM, University of Canberra, 2021)

⁶ (Furnival & Cullen, 2022)

⁷ (Furnival & Cullen, 2022)

⁸ (Deloitte Access Economics, 2020)

⁹ (ABS, 2019)

¹⁰ (Government of Western Australia (Department of Communities), 2021)

¹¹ (Centre for Change Governance and NATSEM, University of Canberra, 2021)

¹² (Australian Child Wellbeing Project, 2016)

Any form of relationship may have the potential to contain coercive control by any party involved, and as a disadvantaged and vulnerable group informal unpaid carers are recommended to be recognised and considered within the coercive control consultation and any subsequent actions taken. For carers in particular, FDV may exhibit itself in different ways, a consideration which is important to make when looking at the contextual complexities of different cases. These may include where a loved one is exhibiting abusive behaviour due to their condition, such as with dementia; it may involve a mental health condition; the carer and their care recipient may have had an abusive relationship in the past which has continued throughout or due to the onset of a health condition; the carer may be a victim-survivor of domestic violence and separated from their partner; or there may be a young carer involved who is experiencing coercive control as a result of or in addition to the health condition/mental health condition of the care recipient. These situations may also be worsened or enabled by systemic faults which have assisted in facilitating occurrences of coercive control.

These contextual complexities, including those involved in a caring role, which may present as part of a FDV/coercive control case or occurrence mean that a standardised blanket offence or tick-box approach to a criminal offence for coercive control may often not be suitable. As such, it is recommended that a scale be considered in the development of any criminalisation of coercive control, with inbuilt flexibility for consideration of alternate responses to cases, with appropriate regard given to the contextual complexities of each case or occurrence.

Further, it is also recommended that awareness-raising and education initiatives be considered to increase recognition of the role of informal carers, the challenges faced within a caring role, and support measures which could be considered to help address underlying influences which may in time contribute to occurrences of coercive control. In addition, it is recommended consideration be given to clarifying within the consultation process and any subsequent action, actions which may be perceived to fall within the very broad definition and scope of coercive control presented within the discussion paper. For example, where there is a guardianship or administrator order in place, or where an action is legally protected in certain cases for both formal and informal caregivers. Ensuring clarity on these matters in the event of a criminal offense being created for coercive control, could assist in preventing potentially unnecessary misinterpretation in the future which may cause additional stress and trauma to carers and the person they care for.

Recommendations:

4. Informal unpaid carers be recognised and considered within the coercive control consultation and any subsequent actions.
5. Consideration be given to the inclusion of a scale in the development of any criminalisation of coercive control, with inbuilt flexibility for consideration of alternate responses to cases, with appropriate regard given to the contextual complexities of each case or occurrence.
6. Awareness-raising and education initiatives be considered to increase recognition of the role of informal carers, the challenges faced within a caring role and support measures which could be considered to help address underlying influences which may in time contribute to occurrences of coercive control.
7. Consideration be given to clarifying within the consultation process and any subsequent action, actions which may be perceived to fall within the very broad definition and scope of coercive control presented within the discussion paper. For example, where there is a guardianship or administrator order in place, or where an action is legally protected in certain cases for both formal and informal caregivers.

2.3 A Holistic Response to Coercive Control/FDV

Any strengthened consequences to FDV and coercive control are recommended to be accompanied by a strong framework of actions to address the underlying influences of domestic violence, as well as a holistic and effective plan of rehabilitation and support for both perpetrator and victim-survivor to reduce the likelihood additional offenses.

Addressing underlying influences and systemic faults

This framework of actions to address the underlying influences of domestic violence would be envisaged to both investigate and address systemic faults which may enable or contribute to coercive control, as well as provide additional supports and services to vulnerable groups which may be more prone to coercive control or FDV.

In the case of the vulnerable group of young carers this may include increased awareness of the existing supports and services available to young carers through service providers such as Carers WA, with the investigation of what additional support may be needed on a case-by-case basis for the young carer and their family.

Systemic faults which may contribute to coercive control for young carers could be combatted by investing in initiatives to ensure the young carer is fully supported in their education, work and family life to have the same opportunities as everyone else. This may include ensuring full attendance throughout their schooling (with supports given if this is not the case); financial support to the young carer themselves; education in life skills such as work skills, how to apply for HECS, Centrelink processes; digital literacy education; capacity building in other areas on a case-by-case basis; and supporting the young carer should they wish to become independent. Also of importance is ensuring young carers and their lived experience is involved in the development of services which impact on them and their roles.¹³

Holistic and effective plan of support and rehabilitation for both victim-survivor and perpetrator

When FDV and coercive control is identified as occurring, this is indicative of a need for intervention through a holistic plan of support and rehabilitation for both victim-survivor and perpetrator, to assist in addressing the underlying contributing factors which have led to the FDV and coercive control. This plan would aim to support both victim-survivor and perpetrator on a holistic physical, mental and psychological level to reduce the likelihood of repeat occurrences of FDV and coercive control. Supports may also need to consider elements such as housing, financial assistance, legal aid, etc.

¹³ (Saunders, Brown, Bedford, & Naidoo, 2019)

Recommendations:

8. Any strengthened consequences to FDV and coercive control are recommended to be accompanied by a strong framework of actions to address the underlying influences of domestic violence, as well as a holistic and effective plan of rehabilitation and support for both perpetrator, victim-survivor, and other family members to reduce the likelihood of additional offenses.

Summary of Recommendations

1. Any proposed criminal offence for coercive control be timed and staged appropriately in alignment with that of the national principles being developed and any other work being undertaken at a national level to achieve a widespread understanding of this term, coupled with a state-based widespread awareness campaign prior to implementation of any criminal offence.
2. Additional data be collected and considered on jurisdictions which have already introduced criminal offences for coercive control, as part of an evaluative process to determine the effectiveness of criminalisation of coercive control, to enable pre-identification and planning for any adverse impact on victims or other groups.
3. The coercive control consultation and any resulting criminal offence, legislation or guidelines include comprehensive consideration and explanation of the role that health conditions, mental illness and alcohol and drug dependency can play in family and domestic violence.
4. Informal unpaid carers be recognised and considered within the coercive control consultation and any subsequent actions.
5. Consideration be given to the inclusion of a scale in the development of any criminalisation of coercive control, with inbuilt flexibility for consideration of alternate responses to cases, with appropriate regard given to the contextual complexities of each case or occurrence.
6. Awareness-raising and education initiatives be considered to increase recognition of the role of informal carers, the challenges faced within a caring role and support measures which could be considered to help address underlying influences which may in time contribute to occurrences of coercive control.
7. Consideration be given to clarifying within the consultation process and any subsequent action, actions which may be perceived to fall within the very broad definition and scope of coercive control presented within the discussion paper. For example, where there is a guardianship or administrator order in place, or where an action is legally protected in certain cases for both formal and informal caregivers.
8. Any strengthened consequences to FDV and coercive control are recommended to be accompanied by a strong framework of actions to address the underlying influences of domestic violence, as well as a holistic and effective plan of rehabilitation and support for both perpetrator, victim-survivor and other family members to reduce the likelihood of additional offenses.

Conclusion

Should any further information be required regarding the comments included within this submission, or assistance from the perspective of WA carers, Carers WA would be delighted to assist. Please contact Carissa Gautam from Carers WA at policy@carerswa.asn.au.

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