



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: [Inquiry into Crimes \(Coercive Control\) Amendment Bill 2026](#))

Members:

MS C BARRY (Chair)
MR T WERNER-GIBBINGS (Deputy Chair)
MS R VASSAROTTI

PROOF TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 20 AUGUST 2026

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Secretary to the committee:
Ms A Lee (Ph: 620 70524)

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

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Amended 20 May 2013

The committee met at 9.01 am.

YAR, DR ELIZABETH, Private capacity

THE CHAIR: Good morning and welcome to the public hearings of the Standing Committee on Legal Affairs for its inquiry into the Crimes (Coercive Control) Amendment Bill 2026. The committee will today hear from Elizabeth Yar, Sisters in Spirit Aboriginal Corporation, Women's Health Matters ACT, Our Watch, the Domestic Violence Crisis Service, YWCA ACT, Canberra Rape Crisis Centre, ACT Law Society, Women's Legal Centre ACT, Legal Aid ACT, the Victims of Crimes Commissioner and the ACT government.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contributions they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event.

This hearing is a legal proceeding of the Assembly and has the same standing as proceedings of the Assembly itself. Therefore, today's evidence attracts parliamentary privilege. The giving of false or misleading evidence is a serious matter and may be regarded as contempt of the Assembly. The hearing is being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web streamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that question on notice". This will help the committee and witnesses to confirm questions taken on notice.

We welcome Elizabeth Yar. For the *Hansard* record, please state the capacity in which you appear.

Dr Yar: I am here as an individual victim-survivor of coercive control.

THE CHAIR: Thank you for your courage to come in. Please note that as a witness you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would you like to make a brief opening statement?

Dr Yar: Yes. I would like to start by thanking the chair and the committee for inviting me to speak here today. I made a submission under my own name and I came here today to the public hearing because I am really aware that coercive control flourishes in silence. When I have had some little doubts about outing myself as a victim-survivor in this way, I have remembered how suffocating it was to be in a relationship where I did not have a voice, how difficult it was to leave that relationship and how long it has taken me to find my own voice and be able to speak up in this way. I feel really privileged to be here and to be able to speak.

THE CHAIR: Thank you very much. I am sure that many women and people who have experienced coercive controlling in its various forms would appreciate your evidence today. So thank you for having the courage to do this for the unseen victims.

I have a question around your recommendation concerning a proposed offence provision under section 72J. You have spoken about the proposed defence of reasonableness and the need to include clearer statutory guidance around the assessment of whether conduct is “reasonable in all the circumstances”. Can you talk us through what you think the bill must do to achieve this?

Dr Yar: Thank you for the question. I understand why we have this reasonableness defence in the legislation, and I think it is really important that it is there, but I am suggesting that there needs to be perhaps some more statutory guidance around it. I also can see that, in a piece of legislation, you do not necessarily want to tie yourself down too tightly to what that means and that there is a reason why we put flexibility around the wording. However, as I think I made clear in my submission, one of the characteristics of coercive control is the fact that it seems so reasonable and is often made up of a series of reasonable acts that only become coercive control and unreasonable when they are placed in the context of each other.

That can be very, very hard to untangle. It can be very hard to recognise when you are living it. In fact, you can often only identify coercive control after the fact, as retrospective. I gave an example in my submission of something that seemed like a reasonable protective act for my safety from my partner and the involvement of a counselling service that was very gender-informed and yet still made the mistake of not recognising that the decision to act in that particular way, as I outlined in my submission, actually played into a pattern of coercive control and placed me at risk of physical violence at that point as well. I was thinking about that line between what is reasonable and what is unreasonable and how hard it has been for me to sort through.

It is a pattern. I think that is what it comes back to. I know that the bill talks about that pattern and that it is not an individual act. In trying to get that balance between how we look at acts that are legal and reasonable if you ask the average person on the street but unreasonable in the context of a specific relationship and a specific pattern of abuse, I think that there could be more guidance in the legislation around that.

THE CHAIR: You gave a few examples in your submission around what that guidance should include. Could you explain that and how you see that working?

Dr Yar: I am not sure that I am completely qualified to indicate the wording of the legislation.

THE CHAIR: You are very qualified.

Dr Yar: Let me just think this through.

THE CHAIR: An example of what the legislation can include that would perhaps reflect what reasonableness means in the circumstances.

Dr Yar: Okay. I think maybe teasing out this idea of what a pattern of coercive control means and maybe talking about how those acts might work together and what that can look like. Maybe it is about what that can look like. Some of this comes in the implementation, not in the legislation. It is helping police, child protective services and doctors and so on to understand what those patterns can look like. Some of that is

the implementation, but it is also quite important to get that right in the legislation.

THE CHAIR: Thank you. That is really useful. I want to put a proposition to you in terms of “recklessness” and “intent”. I want to get your views on whether you think that “recklessness” should be reflected in the provisions of the bill as against “intent”, as proposed by the bill.

Dr Yar: I think my first and almost instinctive response to that is that coercive control, almost by definition, is an act of intent rather than recklessness. I acknowledge that there are risks in extending that to “recklessness”, and I think that we have seen in domestic violence provisions in the past and in policing around domestic violence that there can be misidentification. I can see a scenario where the strategies that somebody is using in the context of broader domestic violence, perhaps physical violence, could then be turned around to an accusation of the victim-survivor actually being the person who is coercively controlling.

So I think there are risks in expanding it, but I still think that there could be benefit in doing so. I think that there would be people who may be better placed in terms of teasing that out. I would just say that I have mixed feelings about how that could play out. I would hate for us to have a really great piece of legislation that is trying to do really good work that actually ends up benefiting women like myself who are white and educated and then doing harm to the same women that are so often harmed by the legal system that I am kind of aware of in other ways as well. I can see that there are risks with expanding it to “recklessness”.

MS VASSAROTTI: I really wanted to thank you, Elizabeth, for coming today. It is a huge thing to come out and talk about this publicly and is something that I think many, many women and victim-survivors really appreciate. So I really wanted to acknowledge that in the first place. I note that in your submission one of your recommendations talks about appropriately recognising lived experience and remunerating it when it is used in advisory committees and stuff like that. So I wanted to really recognise that.

I am interested in getting a bit more information and perspective from you on your fourth recommendation, which was around the review under section 72K. Your recommendation was that it needs to be strengthened by setting up the evaluation framework before commencement. I am really interested in getting some more detail from you in relation to that recommendation and how that would look from your perspective, knowing that you would probably be drawing on some professional experience around that as well as your personal lived experience.

Dr Yar: Thank you. Of course, my professional experience is part of who I am as a person, and so I am trying to separate them out and answer this from my personal lived experience. But, yes, I am drawing on some understanding of how these processes work from my job as well.

MS VASSAROTTI: Which is valuable and perfectly appropriate.

Dr Yar: One of the main things that I would say is that it is really, really important that there is a review of this legislation and that it goes through that process. But

understanding some of the parameters of that and how that looks from the outset can be really helpful in ensuring that what is picked up through the review process is accurate, strong and informed by lived experience, including real diversity. I come here as one person who is speaking about my own lived experience. I certainly cannot speak for everybody or anybody else, really, other than myself. There is a huge range of different kinds of experience, and I think that, if some of those views and experiences can be drawn into evaluation frameworks and so on, that would be extremely helpful for the legislation and for the implementation of it. We will learn how good the legislation is partly through the implementation and how the implementation works and whether it does what it is set out to achieve, and I think hearing from people that it impacts directly will be incredibly useful.

MS VASSAROTTI: You have touched a couple of times on diversity and particularly intersectionality and you have talked about the need for the implementation plan and review to be able to really go into that issue of intersectionality. So I was just wondering if you would be able to provide a little bit more detail around that.

Dr Yar: I think we all know that legislation falls differently on different populations and that there are some populations that this piece of legislation could pose specific risks to—and it is probably the same populations that many of these sorts of pieces of legislation pose similar kinds of risks to. I know that other people—again, more expert than me—will probably speak to you about the impact on First Nations communities. I think that is really important, especially when we think about things like the intersection with child support and some of the reluctance that people might have, which almost anyone would have, in terms of getting child support involved.

Again, I can speak from my own experience that that is a weak spot and it is a point that is open to exploitation in terms of coercive control. When there are children involved and when child protection gets involved because of violence and family circumstances, you really are opened up to the risk of that being weaponised. If the people in that system are not well-trained to understand coercive control—which I think has been the case—and have not been particularly aware of coercive control, then that adds another layer of risk.

I did try to speak in my submission to perhaps some groups that are not necessarily picked up in the same way that we might go through the list of vulnerable or protected characteristics or whatever and think about what the particular types of vulnerabilities are that can mean someone is at greater risk, either because they are less willing to contact anyone about what is happening or for other sorts of factors. I raised people who have insecure immigration status as a particular area of concern and people with histories of poor mental health. Again, this is something that can be very well weaponised in a situation of coercive control. We are not even talking about serious diagnosed psychiatric disorders but just a history of anxiety or depression, which so many of us have as women. So many of us can be burdened. A lot of us have experiences perhaps of using anti-anxiety medication. These things can be exploited and weaponised in relationships. This can place people at greater risk and also at risk of not wanting to expose themselves when there are legal systems, health systems and child support potentially involved as well. I would also say that people who have had contact with the criminal system themselves can be at a much greater risk of coercive

control from a partner and being unable to get police involvement and police support at that time.

MS VASSAROTTI: Thank you.

THE CHAIR: There have been conversations around the proposed term of imprisonment, with folks suggesting that perhaps there is value in having a minimum term of imprisonment to allow the victim greater control so that the matters can be heard in the Magistrates Court rather than it being the perpetrator or the accused person's right to elect then to have the matter heard in the Magistrates Court. I just wanted to hear your views on that. Currently, it is a seven-year term of imprisonment and, because it is above the five-year term, the accused would need to elect to have the matter heard summarily in the Magistrates Court. I want to get to get your views on what you see playing out in that.

Dr Yar: I assume that this is a question that will be presented to people who are legal experts, and they will be much better placed to talk through some of the implications of five years, seven years or whatever it is. The only point I would make from my own experience is that anything that has the risk of handing more control to someone who is using coercive control is something that should be thought through really carefully. It is kind of the point of coercive control that you stay involved in someone's life however you can achieve that, whether it is by drawing out legal processes, involvement with children or whatever you can do to stay involved, because it is only when you have contact with the person in some way that you continue to assert that control. That is my experience. So anything that keeps the two parties locked in a connection with each other, even if that is through the legal system, should be thought through carefully, including what the implications are and what safety could be put in place for victim-survivors through those processes as well.

THE CHAIR: Thank you very much. That was really useful. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you so much.

Short suspension

DE RUYTER, MS URSULA, Acting Co-Chief Executive Officer, Women's Health Matters

KELLY-CHURCH, MS RACHELLE, Executive Director, Sisters In Spirit Aboriginal Corporation

WALKER, MR MAURICE, Chair, ACT Aboriginal and Torres Strait Islander Elected Body

THE CHAIR: We welcome witnesses from Sisters in Spirit Aboriginal Cooperation and Women's Health Matters. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would anybody like to make a brief opening statement?

Ms De Ruyter: Yes. I have a brief opening statement, if that is okay. Thank you, Secretary and committee. I will begin by acknowledging the Ngunnawal people as the traditional custodians of the land that we meet on today and also by thanking the Aboriginal and Torres Strait Islander women who shared their experiences and expertise to inform our submission to this inquiry. My role today is to speak to the process behind our submission and the analysis underneath it. I will not speak on behalf of Aboriginal and Torres Strait Islander people with lived and living experiences of domestic, family and sexual violence. That is not my place. My colleagues, Ms Kelly-Church from Sisters in Spirit and Mr Walker from the ACT Aboriginal and Torres Strait Islander Elected Body, are here to do that.

The submission to the inquiry is through a partnership between Sisters in Spirit and Women's Health Matters under the Victim Survivor Voices Project. It draws on two consultation forums, held in May and June this year—one with Aboriginal and Torres Strait Islander people with lived and living experience of domestic, family and sexual violence and one with workers from ACT based Aboriginal community controlled organisations, many of whom have their own lived experiences of domestic, family and sexual violence. We also drew on existing research and data to inform our submission.

Women's Health Matters' role was to support consultation design, undertake thematic analysis and draw recommendations from what the participants told us, in close consultation with Sisters in Spirit throughout. In our submission we do not take a position for or against the criminalisation of coercive control. What our process surfaced consistently and very strongly was that criminalisation on its own will not make Aboriginal and Torres Strait Islander women and children safer. Participants that we spoke to throughout our consultation described fear of misidentification, fear of losing children, and experiences of systems that themselves operate coercively. It is critical that Aboriginal and Torres Strait Islander voices are prioritised in this inquiry, not only as one perspective among many to be weighed evenly but also because this community will be disproportionately affected by this bill and because reforms built around the needs of those most affected tend to work best for everybody. Thank you.

THE CHAIR: Thank you very much. And thank you for coming in today, making your submission and contributing to how we shape this legislation to better reflect the views of the community. I note your concerns around criminalisation not essentially improving safety for victims, and I also note, from trends that you identified in your

consultation, that criminalisation may further discourage reporting of violence. I have a few questions, particularly around the definitions in the bill. There are suggestions that the definitions should include some social structures that exist in the First Nations community. I want to get your views on how you think the definitions could better reflect the social structures that exist, particularly in the First Nations community.

Ms Kelly-Church: Is that in terms of the definition of family?

THE CHAIR: Yes; that is right.

Ms Kelly-Church: We held only two consultations. We did not do a lot around the definitions and what they should be inclusive of. More work would need to be done specifically in our community around what it would mean, because the Aboriginal and Torres Strait Islander community is diverse, and, in saying that, the Torres Strait Islander community is very distinct from the Aboriginal one. We did not go into that depth during our consultation, so that work would need to be done.

THE CHAIR: Do you have any preliminary views on the sorts of things that could be captured in the definition to reflect the structures of the families?

Ms Kelly-Church: Doing some work around what kinship is in our communities, because it can be different for each community. This is really diverse and transient as well. I cannot speak on what should be in this bill to cover everyone in the ACT.

THE CHAIR: Thank you. You also highlighted some significant and serious concerns around misidentification of victim-survivors and how that disproportionately affects the First Nations community. Is there anything that you can suggest that could probably strengthen the bill to ensure that the risk of misidentification is mitigated?

Ms Kelly-Church: There will have to be a lot of systems work around that. What came out really loudly in the consultations was fear of that, for our women in particular. There is also fear that our men will be disproportionately affected by the bill. We see it at Sisters in Spirit. We run a legal clinic in partnership with Legal Aid, and we see it constantly already, so we feel that, when this bill comes into effect, it is only going to increase. That systems work has to happen immediately.

THE CHAIR: I sincerely apologise for putting you on the spot, but can you give me an example, obviously de-identified, of how misidentification can play out in domestic and family violence?

Ms Kelly-Church: Sure. At the moment, we are supporting one older Aboriginal lady through the justice system. We strongly believe she was misidentified. We were able to get her legal representation. She was initially turned away by the courts when she reached out to get an FVO on the person we think is the primary aggressor, and it was just by luck that she came to our service and we were able to look at the historical pattern of violence and her seeking of help through different systems and being turned away. Everywhere she tried to get help, they turned her away.

We were able to work with her legal representation around the misidentification stuff. We have been able to write submissions. We are going to have conversations with the

DPP. They are also very interested in this aspect in our community. We are hoping to get a good outcome for her. We were successful in getting an FVO on her behalf, and that does not happen often, as she has criminal charges on foot. It is very complex. She is very vulnerable, and we have seen that many times through our service. Her case is not isolated. There are many more women who have not come to our support services.

THE CHAIR: There has been a real lack of trust in the system. You also mentioned that there could potentially be misidentification of men in the First Nations community. Do you have an example of how that could play out, especially in coercive control?

Ms Kelly-Church: My view has always been that Aboriginal people are—and it is a fact—highly over-represented in the criminal justice system. I believe strongly that this may affect people with lower socioeconomic status and Indigenous background, and that includes our men. Criminalisation of our people is something that I am not supportive of, but I do agree that something definitely needs to happen in the domestic violence space.

Ms De Ruyter: Based on the research that we did for the submission, the offender rate for Aboriginal and Torres Strait Islander people in the ACT is 10 times the rate of criminalisation of non-Indigenous people.

THE CHAIR: In that sense, noting that there is a strong push for something to be done in the coercive control space, do you think that the two-year implementation period should strongly focus on education? And, if you do, how do you see that? What areas do you see the government focusing on to achieve the objective of educating people on coercive control?

Ms Kelly-Church: It definitely has to happen alongside this process. I have not seen it a lot in our community, and the women that we spoke to definitely had not had any exposure to—

THE CHAIR: What coercive control is and not even recognising it.

Ms Kelly-Church: Yes—and that the bill was even coming. A lot of work needs to be done in our community in particular.

Ms De Ruyter: I wonder if it would be worthwhile speaking to the language piece that we heard through the submission, about coercive control being a quite westernised term.

Ms Kelly-Church: In our community, we spoke a lot about how we would identify coercive control, and the language was not consistent with what is in the bill or what is generally known to be coercive control. Language would be critical in any sort of education campaign in our community. I understand the government is doing some work around consulting with our community, but I do not think it is enough. It definitely has not filtered down to the community yet. Our women said strongly that education should be in our schools first and foremost. We do not yet know what that will look like. We would need to do some more work around that.

THE CHAIR: Thank you very much.

MS VASSAROTTI: Thank you so much for your submission and the work to inform the submission. I recognise that it is an area that is really complex and tricky and can be quite traumatising, even from talking through it, so I want to thank you for that. In the opening statement you spoke to systems that are inherently discriminatory and racist and disproportionately impact First Nations communities, as well as the real fears around some systems. You mentioned child protection as a particular area, in terms of some of the fears, such as people losing their children as a result of engaging with the system and this potentially having an increased impact. I am interested in getting your perspective on some of that and maybe looking at some of the particular systems—child protection might be one of them—in terms of what you feel needs to happen alongside work in this area. We know that we need to do a lot of work in that system that is way beyond this piece of legislation, but I am interested in whether you see that particular things need to happen because of the direct impact of this potential legislation.

Ms Kelly-Church: In every system, and in policing in particular. We heard from our women that the health space is a place of fear for disclosing and reporting, and in schools as well. A lot of mums come to us and are too frightened to tell the school that something is happening, for fear that they will report. It is about every system, really, because there is so much fear in the community. We really wanted to highlight that in our submission. I cannot speak highly enough of how fearful the community is of reporting in the various systems, because of the consequences.

MS VASSAROTTI: You spoke about the need for education within the community, which is really important, but, also picking up the point about fear and concern in how disclosures happen, do you have perspectives on the kind of education that is needed within the system to be able to better support First Nations people and victim-survivors to do things such as seek help and disclose?

Ms Kelly-Church: I think it is multilayered. For our community, that will look different to, say, workers in the police force, hospitals or schools. Getting mainstream workers to understand what coercive control might look like in our communities is something that needs to happen, but, for our community to be able to name coercive control in the way that we see it, we have to make sure that they come together in a way that is going to keep our women safe. I do not think that is happening at the moment. A lot of work has to be done around that. Some of the mums that we spoke to are seeing it with their kids as well. They are in relationships at really young ages, so trying to figure out where we target that information for the young people and make sure that they are safe to access services in their own right is going to be challenging—for police as well, because we support young people to go to the police, and they do not necessarily recognise it as domestic violence or coercive control, which is quite problematic because it is starting young.

MS VASSAROTTI: Can you talk a bit more to that—seeking help, particularly from the police, and it not being—

Ms Kelly-Church: They are not being heard?

MS VASSAROTTI: Yes. It would be good to hear a bit more about that.

Ms Kelly-Church: We have also had challenges when same-sex couples try to get support from the police. We have seen that a bit—us trying to navigate who we speak to in that space and to get them to recognise that this is domestic violence. I do not think they are seeing it like that. We are still doing work around that and are supporting our women through that. Education is multilayered. It has to come from more consultation and more training as well.

MS VASSAROTTI: Thank you.

MR WERNER-GIBBINGS: I thank you both. This is for Sisters in Spirit. The recommendations about what could be achieved separately from legislation are at page 4 in your submission. It was brought up that misidentification is one of the areas that needs work. Through the experience of the people your organisation has worked with and recommendations you might have heard, have you come to: “It would be better if this happened”? Are there practical suggestions that you could give to the committee and we could pass on about how misidentification could be reduced or, in a perfect world, prevented?

Ms Kelly-Church: There is the training of police and also my views around mainstream services—how they engage with our women and our people in general. We know we are so highly over-represented in using the services, but whether they are culturally appropriate or safe for our women to use is another story. The government is committed to investing more in ACCOs, which is great, but, for instance, our service gets program funding to run the whole service and we are not able to do the work that we want to do in that space. It is about a whole system change and uplift to be able to respond better.

MR WERNER-GIBBINGS: Regarding culturally-safe practices that could and should be incorporated into support services, you mentioned there are separate cultural requirements or sensitivities and needs for the people that you are representing: Aboriginal and Torres Strait Islander people. If you were the government, how would you best find an acceptable floor of culturally-safe practices to incorporate into services that would be useful for all the people that you are working with, as opposed to balancing one against the other or not being as inclusive as possible but being as useful as possible?

Ms Kelly-Church: That is tricky. There is no mechanism to determine whether a service is culturally safe, and I do not think there is enough work being done to measure that.

MR WERNER-GIBBINGS: Would it be measurable? The government could do some work and at least try.

Ms Kelly-Church: Yes. Toora did a review. They went to the community and asked the women who have used their service, “Are we culturally appropriate and safe?” I have not seen that often, and I have been in the sector for a little while. There are ways to do that and it should be done, I think.

MR WERNER-GIBBINGS: Are there examples that you could highlight that have been a useful attempt or are there some incorporated and effective practices that could serve as an example or a template for other services?

Ms Kelly-Church: Like culturally-safe practices or—

MR WERNER-GIBBINGS: Yes—even government organisations or people who are working on the issue.

Ms Kelly-Church: Of cultural safety?

MR WERNER-GIBBINGS: Examples of a culturally-safe practice that was incorporated into a support service and seems to have worked or has been helpful.

Ms Kelly-Church: Having a dedicated Aboriginal unit is great. It does not necessarily mean you have to have Aboriginal funding to do that. You should just run it in your service. There is a view that you need funding to do that, but I do not agree with that. It is about working in collaboration with ACCOs. We have seen great outcomes when we work collaboratively with mainstream services. We see great outcomes when an Aboriginal worker is employed. There are a lot of mainstream services that do not do that, yet their proportion of Aboriginal clients is through the roof. Why is there not a proportionate employment level? There are those types of things, as well as engaging with the Elected Body. There are so many people in the community who are willing to work with mainstream services and they have to reach out.

Mr Walker: I apologise for being late. It was my turn to take the kids to school and then I got caught in traffic.

MR WERNER-GIBBINGS: Justified.

MS VASSAROTTI: We have all been there.

Mr Walker: There are mainstream organisations that have been trying for years to attract Aboriginal and Torres Strait Islander workers to that sector. There is lots of apprehension around Aboriginal people using those services, because of the lack of cultural intervention. It has fallen back on ACCOs. There are lots of practices that have not been experienced by government, because until now we have not had the opportunity—obviously through the ACT agreement and also the Closing the Gap Agreement—to look at different ways, take risks around “What if we employ Aboriginal people?” and write what is going to be seen as culturally safe for the community. As Rachelle pointed out, there has not been that investment by some of the mainstream organisations to go out into community and ask those really hard questions. I support that statement.

I came in late, so I do not know what has been said. I apologise again to you guys for not being here in partnership. The Elected Body is in support of the changes to coercive control, but only if it is done in the right way for Aboriginal and Torres Strait Islander people. You just talked about over-representation. I do not really want to

repeat the stuff that has already been said. From the Elected Body's point of view, there are some of the things around supports to build and adapt in addressing coercive control. However, legislation alone will not improve the outcomes. Success will depend on implementation that is culturally safe, trauma informed and guided by self-determination. This reform should strengthen safety for Aboriginal and Torres Strait Islander women, men and families while advancing the ACT's commitment under the Closing the Gap agreement. We are focusing on priorities 1 and 2, around making sure that we are forming meaningful and effective partnerships with community organisations. We know that our ACCOs are strong in their identity and in the way that they work, and the Elected Body supports that trend because they are the lifeblood of our community. That is where our people go first. Alternatively, we would like to have options for our mob to use, but, like Rachelle said, it is about finding somewhere that is reasonably safe.

Whilst we are talking about culture and being culturally safe, that could mean a lot of different things to different people. For a person who is experiencing domestic violence or coercive violence and for the first time wants to break away from that lifestyle, it is going to be really important to be safe—"I'm an Aboriginal man or an Aboriginal woman. I want to approach a service. I just want to be safe"—rather than thinking about the cultural aspect of it, so that, when they get there, they find that things are done in a way that they have never seen other services do.

THE CHAIR: That is really useful. Thank you very much. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you so much.

Short suspension

BOXALL, DR HAYLEY, Senior Research Fellow, Australian National University
LISTO, DR ROMY, Manager, Prevention Strategy and Policy Development, Our Watch

THE CHAIR: We welcome witnesses from Our Watch and ANU Centre for Social Policy Research. For the Hansard record, when you first speak, please state your name and the capacity in which you appear. Please note that as witnesses you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would anybody like to make a brief opening statement?

Dr Listo: Yes, I will. My name is Dr Romy Listo, and I am here as the Manager for Prevention Strategy and Policy Development at Our Watch. I would like to begin by acknowledging the Ngunnawal people as the traditional custodians of the lands that we are meeting on today. I pay my respects to elders past and present, and extend that respect to any Aboriginal and Torres Strait Islander people who are here with us today.

Our Watch is a national leader in the primary prevention of violence against women and their children. Our submission focuses on how the proposed bill can be strengthened through a primary prevention lens, and how a primary prevention approach can complement the introduction of new laws to guide the whole-of-system reform required to ensure these legislative reforms are introduced in an effective way.

Primary prevention aims to stop violence before it starts, by addressing the structural causes and underlying drivers of violence. It requires changing the social conditions that give rise to violence; reforming the institutions and systems that excuse, justify or promote such violence; and shifting the power imbalances and social norms, structures and practices that drive and normalise it.

Coercive control can be understood as one manifestation of the broader pattern of violence against women. Our Watch acknowledges that states and territories are moving toward legislating the criminalisation of coercive control, but we also note that there is limited evidence to suggest that it sufficiently improves the safety of women as a standalone intervention. The offence needs to be accompanied by sustained primary prevention that addresses the gendered drivers of violence.

In practice, implementing a primary prevention approach alongside coercive control legislation in the ACT includes coordinated community education that addresses the gendered drivers of violence; workforce capability development with police, prosecutors and legal professionals; implementation planning with the specialist sector; and cross-sector governance to support the safe and effective implementation of the offence.

The committee has an opportunity to make recommendations to the ACT government to ensure that the bill contributes to safer and more equitable outcomes for victim-survivors and to the long-term primary prevention goal of preventing violence before it occurs.

Thank you for the opportunity to appear today. I am looking forward to your

questions.

THE CHAIR: Thank you for your attendance today and thank you for your submission as well. Hayley, have you got an opening statement?

Dr Boxall: I would just like to make some comments, if I could. I would like to acknowledge that I am dialling in from Arrernte lands in central Australia today. Thank you so much for the opportunity to address the committee.

Just to echo the comments that have already been made, thank you for the consideration of how we do the bill implementation properly, and how we can make it safer. But just to echo those comments of there is no considerable evidence, as of yet, that legislation in and of itself will improve the safety of women and children—which is obviously one of the driving goals of this proposed legislation.

However, when thinking about how to implement this legislation, it does need to be seen as achieving that goal of improving understanding and awareness of what coercive control is. Legislation has a very important symbolic and education kind of role in the community. And so, if it does have one of its stated aims of improving that understanding, we also need to ensure that the systems and services that are there to respond to that improved understanding and awareness are equipped to respond appropriately—but also to address what could potentially be an increase in help-seeking behaviours.

So, in the implementation of this legislation, we need to ensure that there are services that are equipped to respond to those, potentially, first help-seeking opportunities for women and children who are affected by these behaviours. But we also need to ensure that the legislation is actually fit for purpose, in that if someone does reach out to the police to say that they have experienced these behaviours, that the police are adequately equipped and resourced to respond appropriately.

And so, one of the major concerns that we have with this legislation is the inclusion of intent as part of the evidentiary requirement for proving the offence. And this is something that we have seen in Queensland and New South Wales as potentially providing and creating a barrier to access to justice for those people who do want a criminal justice response.

So, thank you for the opportunity to speak to you today, and, obviously, happy to address any questions that you might have.

THE CHAIR: Thank you very much, Hayley, for that very comprehensive submission. And I agree. My views are that legislation in itself may be reactive, rather than proactively preventing coercive control. So, primary prevention is part of—and should be part of—the package.

I just had one question around best practice. In any of your experience, what does best practice look like in other jurisdictions across Australia—or even overseas, with countries with comparable jurisdiction? And is there any evidence of how primary prevention sits alongside a bill of this nature?

Dr Boxall: Primary prevention is not necessarily my area of expertise. I am more in the tertiary end of things, so I might defer to my learned colleague from Our Watch to address that comment.

Dr Listo: I think that we would say that there is no single jurisdictional model that we would recommend that the ACT replicates, but that there are elements that can be learnt from other jurisdictions and applied here.

For example, New South Wales has strong governance arrangements through the Implementation and Evaluation Taskforce, which has six reference groups that are each chaired by a member of the taskforce and ensure that the views of those different reference groups are considered in the implementation of the bill. They have also done multiple awareness campaigns and educational resources.

Queensland has a communications framework which we think is a really strong example of a communications framework. It has been informed by significant consultation. It was designed to be used by government agencies, the DFV prevention sector, and corporate and community organisations as well.

We would also look at Scotland, which has taken a train-the-trainer approach and where they have engaged women's safety peaks to train local domestic abuse specialists to deliver sessions on coercive control to key services that come into contact with victim-survivors and perpetrators.

So, those are some of the elements that we think can be learnt from other jurisdictions, but there is no specific jurisdiction that we would suggest that model could be applied here.

I think what I would also say, in terms of a primary prevention approach, we can sort of talk about that in the context of both the broader system that the ACT operates in, and the need for primary prevention to be really embedded in the ACT through a whole-of-government approach. Primary prevention, we know, works well when it is reinforced at multiple different layers; in interpersonal relationships as well as at the community and societal levels. So, it is part of, I guess, a broader system that would need to be established and strengthened.

But in relation to coercive control, in the implementation of this offence, as Hayley had mentioned, there is a really strong symbolic function of law and the opportunity, then, around that—and around that the education and community awareness and training of workforces that is done to implement the offence can have a primary prevention component to it, where it is also looking to address the gendered drivers of violence at the same time as educating about the offence itself.

Dr Boxall: If I can just add on to that, if that is okay? I think the point about having a comprehensive system response with primary prevention elements embedded as part of the response is really important. But as part of that, we also need to remember early intervention needs to be part of that, as well.

And in particular, when we are thinking about the intergenerational transmission of domestic and family violence, and coercive control is part of that. Particularly as we

are seeing emerging evidence of children are not just, you know, experiencing it through being exposed to it, but they are also being weaponised by abusive parents, to either be part of the coercive control that mum—and typically mum—is being subjected to. So, being part of monitoring and stalking, having their electronic devices—kind of enable the GPS, and that kind of thing.

We have to be really mindful that is setting up the groundwork for them to go on to either experience these behaviours or perpetrate these behaviours later on.

And that is something that the ACT is currently significantly lacking. We do not have good early intervention services for young people who are starting to use these behaviours, but also who are higher risk for using these behaviours because they have experienced them in the home.

There are a couple of pilot programmes in the ACT. Be.Me is one. PCYC does some work around this as well. But when we are thinking about a comprehensive response, we need to really have view of children and young people, so if mum reports and is experiencing this, we need to be able to get in with the young people in their lives as well.

THE CHAIR: Thank you. We have heard evidence of where education and primary prevention should sit. We have heard some evidence that perhaps it starts in schools, community groups. Do you have any suggestions on where primary prevention can be best embedded, to have the most impact?

Dr Boxall: Again, I am not the primary prevention expert so I will defer to Our Watch on that kind of point. But when I am thinking about the different spaces within which this education can be provided, I think community spaces that young people actually engage with is something that is really, really important—particularly when we are thinking about higher-risk kids who in their teen years may not be going to school and so, in our reliance on school as being the site through which we develop and deliver this training we are kind of potentially missing them at that kind of point. And I would also make the point that, if we are waiting until they hit adolescence, when they are hitting high school, then we are probably already missing them.

I have recently done a research project looking at location sharing within dating relationships. And the young people that we were speaking to as part of that were saying that they were getting their first phones when they were 10, 11 or 12. And that is when they started using location sharing. And that is when they started entering their first dating relationships. But it was not until they were 14-15 that they actually had access to the respectful relationships curricula.

So, it is about thinking about: we need to get it in earlier if we are using schools as a space to do that work—but also acknowledging that that is not always the best space. But also, it is not always the space that young people are using.

One of the things I like about the Be.Me program in Australia is that it is that side-by-side kind of model—that there is a young person who has a case worker, social worker, who goes with them to spaces that they want to be in, and they do that side-by-side kind of respectful relationships education. But again, I will defer to Our

Watch about the best spaces for primary prevention.

Dr Listo: Thanks, Hayley. And I think, just to say that primary prevention and the intention of primary prevention is about addressing the underlying, and changing the underlying social conditions that create an environment in which violence occurs. So, I guess, respectful relationships education is one setting, and schools are one setting where we think that we can have a significant impact. We call these big-reach settings for primary prevention.

I think what Hayley is talking about is that respectful relationships education also offers an opportunity for early intervention, and engaging with people who are at risk of violence or perpetration of violence. But, from a primary prevention point of view, primary prevention is trying to reach the whole of the population, to change the underlying social conditions, the norms, the attitudes that create an environment that we have as a society where violence is able to occur.

So respectful relationships education, and the education system is one key setting. We would say that workplaces are another setting that we can reach the whole of population, or a significant amount of the population, through. There are also community environments. Sporting organisations and sporting cultures is also a key setting that Our Watch does a significant amount of work in, and that we would see as one of our key settings as well. And governments are also an area where we really have an opportunity to shift, I guess, the overall structures that enable violence.

I should say that, when we are talking about the drivers of violence, what we are talking about are the condoning of violence against women; men's control of decision making, and limits to women's independence in private and public life; rigid gender stereotyping; and male peer relations and cultures of masculinity. So those are the elements that we are trying to shift.

THE CHAIR: Thank you.

MS VASSAROTTI: Thanks for the evidence that has been provided. Having done a little bit of work in primary prevention, it is really, really useful for us to be reflecting on. We really have not come as far as we would have liked to, given we have been talking about this for some time.

Dr Boxall, I was particularly interested in exploring further the issues that you raised around your concerns about the idea of intent, particularly as you see it has been playing out in other jurisdictions. It would be great to just get some more evidence and information about where you see some of the challenges, and then how we might be able to respond to that through the legislation here in the ACT.

Dr Boxall: Sure. So, intent is an element of the proposed bill, but it is also an element in Queensland and New South Wales and there has been quite a lot of, I guess, debate about whether or not intentionality—so the intent to control or to create fear—should be part of the legislation. And the major issues that have been brought up are that it is very difficult to prove intent.

And that is because—there are a couple of interrelated issues. Firstly, there is

recognition that many perpetrators of domestic and family violence are very, very good at creating alternative narratives, in particular around denial and minimisation and victim blaming. So, they are very good at crafting narratives that minimise their accountability for what they have done, and also very good at externalising the causes of the behaviour. So, “I was drunk”, “I was high”, “I got really, really upset”, “There’s a lot of stress in my life”; those kinds of things.

And we see that reflected when we speak to victim-survivors in a lot of the ways that they talk about the abuse that they have experienced, about their internalisation of that blame. And this is particularly likely in those situations where gaslighting is part of the abuse that they have been subjected to. And it is one of the frameworks through which we kind of understand women's staying in relationships for such a long period of time; because the narratives that their partners craft for them about the nature of the abuse that they are experiencing are very compelling.

So, when we are trying to prove this in a court of law, to say that the specific intent behind this behaviour was to control and to create fear, we are dealing with an issue of there is an alternative narrative that the perpetrator has likely practiced over an extended period of time—and has been very effective at communicating for a long period of time. And so, their ability to say, “No, it wasn't about control, it was about intoxication,” or, “It was about my emotional state. I was really angry”—all those kinds of things—starts to become very difficult to prove in an evidentiary kind of way.

And that has been borne out in my conversations with practitioners in advance of when this bill was proposed, but also in New South Wales and Queensland, particularly with police officers going, “We are trying to think about how we can prove intent”, when it is a very difficult thing to actually articulate.

And another aspect of this is that, although we have in our minds that perpetrators are these narcissistic, very very manipulative individuals, there are also many people who do not even really have a good understanding of why they do what they do. And this is something that really comes to the front when you speak to men's behaviour change practitioners, is that they do not really have an understanding of why they do what they do—particularly because they know the behaviours do not make them happy. They are not conducive to having a good relationship.

And so, because of these issues, what we have seen in international jurisdictions is that they do not have intent as part of their definition of the offence. They have got something like recklessness. So, in Scotland, it is recklessness; so, that the person was reckless as to whether or not the behaviours would likely cause control or harm. And so then, instead of trying to prove what was going on in the perpetrator’s mind at the time of perpetrating these offences, it is much more about, “Well, a reasonable person would have expected that your behaviours would have this impact.”

So that is the issue—the main issue—around intent, and that is not even bringing in the additional overlay of disability and neurodivergence. And there is this small but growing body of evidence which has demonstrated that neurodivergence and disability are much higher amongst perpetrators of domestic and family violence and that, in some circumstances, their use of these abusive behaviours is not from a frontal brain intent to control or create fear, but to mitigate emotional dysregulation and

distress associated with—which is a symptom of their disability.

Myself and Professor Lorana Bartels with Erin Cowey wrote a paper about this, around the lack of attention to disability within the legislation, and the issues that this could cause.

So, it is a really difficult thing to prove intent. You can, then, see why other jurisdictions have avoided it. And it could also help us to explain why the numbers of prosecutions and charges in New South Wales have been so low; because they do have that similar evidentiary threshold.

THE CHAIR: Just a really quick follow-up question, Dr Hayley. There are submissions that support intent as the evidentiary burden of proof, and the argument is that it better supports the, I guess, definition of coercive control, which is continued sustained behaviour—rather than recklessness, which could significantly disadvantage, for example, culturally and linguistically diverse communities who do not understand, in the first instance, coercive control as a thing, or even First Nations communities. I just wanted to get your views on how you see that sitting outside of the mainstream engagement with that part of the legislation.

Dr Boxall: Yeah. It is hard, and I completely understand. And I agree that we actually do not have a good understanding of what coercive control looks like in non-white heteronormative relationships. All the research that has really been done on coercive control has come from Western, white kind of frameworks. We currently do not have really strong evidence in Australia about what coercive control looks like and feels like in First Nations communities or migrant communities or homosexual, LGBTQIA+ communities. So, there is that element of it. But the issue, again, I guess it comes to, “Well, what is the intent of the legislation?” Symbolically, yes, we can stick to what is very kind of like, you know, a very standard definition of what coercive control is, if the intent of the legislation is to educate the community.

But if we are also saying that we want to use this legislation for the purpose of protecting women and children who are experiencing these behaviours, and in some circumstances that may involve a criminal justice response—and certainly, that has been a lot of the campaigning that Hannah Clarke's parents have done, is that this legislation could have saved Hannah Clarke because it could have provided a mechanism for incarcerating Rowan Baxter before he had gone on to perpetrate that horrific violence.

But when you look at it, it would be really difficult to prove that Rowan Baxter had the intent to control and cause fear. And in many circumstances practitioners themselves find it really, really difficult to answer some of these questions of: “Is this coercive control? Is this dysregulation? Is this ra-ra-ra?”

I am of two minds. I like the definition because it is actually very stringent, so it makes it very difficult to kind of meet that evidentiary bar. But if the stated intent and purpose is to support and validate the experiences of people who experience these behaviours by saying, “Yes, this is an offence. Yes, this is not okay and yes, there is a criminal justice response,” then the evidentiary bar is too high.

So yeah, it is really, really hard, and I do not know whether legislation is the place, or the court of law is the place where we adjudicate some of this stuff when practitioners on the ground are still grappling with this.

THE CHAIR: Thank you. I had one more question from the Victims of Crime Commissioner, but I will come back to it. Mr Werner-Gibbings?

MR WERNER-GIBBINGS: I have a question for Our Watch. Your submission at page 10, the suggestion to amend the text of section 433(3) to specifically require the minister to appoint representatives from different named sectors to the coercive control advisory committee. In theory, or in principle I think that is an excellent suggestion. However, I am interested in how you would view that working in practice: operating in such a large group, and the ability to get substantive, useful information into the bureaucracy and up to the minister, that is being agreed in a timely way and has sort of a significant weight of agreement of the contributions behind it. And do you think that would be usefully different from the expert reference group that is referred to in the legislation as well, at 433(4)?

Dr Listo: I think the intent of that recommendation is that, whether it is the advisory committee or the expert reference group, it is critical that the community—you know, Aboriginal community-controlled organisations and some of the other groups that we have listed in our submission—have a role in that consultation and advice to the minister, and particularly around how the offence is implemented and how it is also monitored, I guess, over the course of its implementation.

MR WERNER-GIBBINGS: Okay. So, it would be a significant body with a significant body of work, but valuable enough to make it worthwhile, to make sure that everyone—as many people as possible who want to be involved in it—? It is not a matter of going out and demanding that people be involved in the group, but giving them the opportunity and saying, “This is what is being discussed and we would like your input.”

Dr Listo: Yes. I think it is about making sure that the communities that are likely to be most affected by the implementation of this bill have an opportunity to provide input into its implementation.

MR WERNER-GIBBINGS: Okay. Thanks, Chair.

THE CHAIR: I have a question for you, Hayley. In one of your recommendations, you call for the bill or its accompanying regulations to include an explicit mechanism for identifying the person most in need of protection before a charge proceeds, to reduce the risk of victim-survivor misidentification. Can you please elaborate on those mechanisms and how you see that operating in practice?

Dr Boxall: Sure. I think that there are some useful examples around Australia that could be brought to bear here. In particular, in Queensland, when there are false applications being made for a DVO, there is now a mechanism for the consideration of, “Well, who is actually the person most in need of protection within this relationship?” And once that has been determined, then the application where they would be the respondent on a DVO is actually dismissed.

This was in direct response to recognising that police turn up to an incident, they are not quite sure what is going on and so they may just decide to put in mutual orders because they are kind of like, “Well, the court will sort it out”. But then what happens is that the victim-survivor is criminalised. There is now a criminal mechanism that he can use to call the police and get her breached, which then has roll-on implications for her, and undermines her help-seeking strategies, and things like that.

So, I think something like that in here would be really, really useful. And it could just be as simple as including language around the need to consider who the person most in need of protection is. And many jurisdictions, including the ACT, have got some specialist DFV units now, who can potentially support that through the delivery of training and guidelines and things like that.

But this is one of the main criticisms of coercive control legislation in Australia specifically that has been raised across multiple different jurisdictions. And domestic and family violence researchers and scholars and advocates have raised this as a particular issue for their communities, as being that this is just expanding police control but also, it means that perpetrators now potentially have a mechanism for reducing help-seeking, because they can say: “Well, you hit me that time”, or, “You took my bank card away from me, and so I can call the police and accuse you of coercive control.”

So, I do not think it needs to be significant. I think it just needs to be additional wording in the legislation to encourage and guide the practitioner to think about the person most in need of protection. And as we said in the submission, the updated RAMF has specific guidance around that. But those are guidelines; it is not a legislative mandate that there has to be that formal consideration. And I think, because of that risk, that needs to be something that is actually a legislative requirement that they do consider that.

And, to Our Watch’s point about the representation of different orgs on any kind of committee or oversight kind of board for the implementation of that legislation, I think their input would be invaluable for ensuring that the misidentification risk is mitigated in the legislation. And they can also provide you with advice from the ground about how this is starting to impact their communities.

THE CHAIR: My sincerest apologies; so you think that should be embedded in the bill?

Dr Boxall: Yeah, I think so. I think otherwise it becomes a “nice to think about” but not a mandated requirement. And I think that, while there is obviously every intent that the legislation will be accompanied by guidelines, training—all of those kinds of things—I think that the risk is sufficient enough to require a legislative amendment to make it an explicit requirement.

THE CHAIR: Thank you. That is really useful. Just one more question, if I may. Some submissions have called for an expansion of the proposed definition of harm in this bill, to include relationships beyond the family relationship. I just wanted to get your views on that.

Dr Boxall: If we are thinking about the symbolic importance of the legislation, I think that it is important to include a range of domestic relationships and familial relationships, particularly as there is emerging research and evidence that has been looking at coercive control within parent-child relationships and things like that. But at the same time, I understand why the bill has been drafted as it is; because it is potentially taking a bit of a graduated approach, like, let us start with intimate partner and then expand it to domestic. But I think if we are looking at the symbolic value, then it would be important to include those additional familial relationships.

The question mark, then, is how equipped are services to respond to that? And I do not think the ACT service system is equipped to deal with a young person who is using coercive control and behaviours against a parent, and vice versa. I just do not think that there is a diversity of services that can actually meaningfully respond in those circumstances. So, I do not think that the legislation should move ahead of the service system response.

THE CHAIR: Thank you. And one more question. I know you and I, in our previous lives, have talked about evaluation a lot, Hayley, and I just wanted to get your views, again, noting your recommendation around the coercive control advisory committee developing mechanisms for extended ongoing evaluation. Is this something that you think should be done prior to implementation?

Dr Boxall: Embedding evaluation?

THE CHAIR: Prior to implementation.

Dr Boxall: Yeah. I think if it is implemented, then evaluation needs to be there from the start.

THE CHAIR: And what do you see in that evaluation—what are the key, I guess, functions or elements of that framework? What do you think would be most important or useful?

Dr Boxall: Well, the stuff that BOCSAR is doing, I think, is really valuable in terms of providing real insights into the procedural aspects of it; how many matters are being opened, how many proceed to charge. Looking at that attrition is really, really important, I think.

But I think that the piece that we are kind of missing at the moment is an understanding of why matters are falling out of that system response. And I know that New South Wales are currently evaluating, and I am sure that that is part of it. But understanding of the points of dropout—so, why matters aren't proceeding—but also looking at, probably, detailed case files in terms of looking at, well, how are the police actually investigating, interpreting evidence, to get a sense of more kind of like their comfort and ability to implement the legislation.

And of course, central to all of this are the voices of victim-survivors. So, they need to be a really central part of that, to understand their experiences of reporting, of their progression through the criminal justice system and those kinds of things. So,

victim-survivor voice has to be central but, I think, initially, it is going to be a lot of procedural understanding. So, how is this being implemented? How many go through? Where are the attrition points? I think those are really essential.

THE CHAIR: It seems to me that the work that New South Wales is currently doing would really help inform how we develop, I guess, the legislation. But also because they have the similar or proposed similar evidentiary burden of proof.

Dr Boxall: Honestly, yeah, and I guess this is one of those— and I remember when we were talking about coercive control legislation a few years ago—the advice very much that was being fed back to government was, “Can we wait until we see what happens in New South Wales? Can we wait until the findings from the evaluation, particularly from the victim-survivor piece?”

You asked about best practice; I think there is no real example of best practice. We often look to Scotland because it is one of the longest running pieces of legislation, but we actually do not really have a good understanding of what best practice is and what it looks like. And evaluation is really good for identifying what is not working well, and avoiding those pitfalls.

It would be good to see if ACT could take a similar approach that Queensland has taken, which is a very long implementation kind of lead in. New South Wales did something similar as well. Because it would be invaluable to be able to see what happens in New South Wales with their evaluation work, to see what learnings can be gleaned from them.

THE CHAIR: Thank you.

MS VASSAROTTI: Reflecting on the evidence that you have been presenting this morning, I am really struck by this tension that we have: that, you know, we are very alive to the issues of intersectionality; we know about the disproportionate impact for particular groups in the community; but then, also, sitting beside is that view that potentially this legislative approach is going to be most powerful in its symbolism rather than in its actual intent.

So, I was sort of interested to unpack that a little bit; some of the evidence that you have talked about in terms of the evidence coming around neurodivergence and what that disproportionate impact might be.

So, how do you bring some of those threads together in relation to a view that the legislative response might be predominantly symbolic because of the ability to prosecute—but also, you know, a concern that there might be groups in the community that are disproportionately impacted through criminalisation. Do you have any thoughts about that?

Dr Boxall: I have thoughts, but I will throw that to Our Watch first.

Dr Listo: I think, just to comment, I guess that our focus or our comment around the symbolic aspect of the legislation is in part because our lens that we bring to this inquiry is around primary prevention. So, it is not necessarily within our expertise to

be talking about the technical aspects of how the offence will function. But I think, in terms of mitigating those risks of harm and the potential impacts on particular communities, from our perspective, that is why the implementation and a really strong planned implementation approach is going to be very critical for the ACT.

MS VASSAROTTI: Thank you.

Dr Boxall: Just to echo that, I think that what we have learnt from the other jurisdictions is that a careful approach and a staged approach, and long lead-in times are essential here. And I think Our Watch's recommendation around the advisory group, in terms of that oversight harm committee, is really, really helpful—understanding the ACT context and, you know, we are small, but we have a lot of opinions, and how difficult that advisory group could be to convene. I think that there is also the perception of good-faith engagement as well.

And I think it is also worth being really mindful that there is a lot that has been happening in the ACT in the last 18 months around domestic and family violence reform. There is the ACT plan, there are the updates to the RAMF, there was the work that myself and Kate Fitz-Gibbon did around men's behaviour change in terms of mapping the ecosystem in the ACT. So, I think that sector is pretty cooked in terms of just very over-consulted—and that is not even mentioning the legislative changes around information sharing.

So, there is a lot of change in a very small ecosystem of services, and so it would be great if the committee had the ability to be really mindful of all of that change, and potentially find a mechanism for meaningful engagement—not just around this legislation but around all of the reforms, so that they would not just have jurisdiction over looking at the implementation of this legislation, but also all of the different pieces of change that have come through the ACT and are being implemented over the next six months.

But as to your actual question of, “How do you manage that tension?”, I honestly do not know. This is why I am hesitant around the legislation, simply because I do not know whether the court of law is the place to be making some of these decisions, simply because the court of law has a really important role to play in our response to domestic and family violence but it is a fairly blunt instrument. And the courts are going through their own journeys, in terms of trying to upskill judges and legal officers in terms of their understanding of domestic and family violence. And the police are going on their own journeys.

So, I think slow and gradual movement towards it is where the opportunity lies for not doing undue harm.

THE CHAIR: Thank you. Any other questions? I think we have finished early, because we have exhausted our questions. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof Hansard. Thank you very much.

Short suspension.

PATERSON, DR MARISA, Minister for Health, Minister for Mental Health, Minister for Police, Fire and Emergency Services and Minister for Gaming Reform
HAIGH, MS KATHRYN, Deputy Director-General, Justice, Justice and Community Safety Directorate

LAWSON, DETECTIVE SUPERINTENDENT KYLIE, Head, Family and Sexual Violence Command, ACT Policing

LEE, DEPUTY COMMISSIONER SCOTT, Chief Police Officer, ACT Policing

NG, MR DANIEL, Executive Group Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate

THE CHAIR: I welcome Dr Marisa Paterson MLA, the Minister for Police, Fire and Emergency Services, and officials. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly.

Would anybody like to make a brief opening statement? No? Thank you for your attendance today. My first question is around how the government arrived at the legislation in general, and particularly around concerns that have been raised regarding the proposed scope of the legislation. Some are saying that it is too broad; some are saying that it is too narrow. Can you explain how you arrived at the scope of the legislation?

Dr Paterson: To begin with, ACT Labor had an election commitment to explore the criminalisation of coercive control this term. There was work done in the last term of government, in terms of the Domestic Violence Prevention Council providing advice to the then minister around whether coercive control should be a standalone offence. At that time the advice was that there was more work to do in the jurisdiction before an offence came into play. Over this term of government, there have been motions in the Assembly, and a lot of community will and advocacy to see a standalone offence.

THE CHAIR: My sincerest apologies; I should have been clearer. It is particularly around harm, and whether you think harm includes psychological harm, emotional harm—the scope of the legislation, particularly around the harm element of it.

Dr Paterson: With the scope of the legislation, over the past year, a steering committee looked at the standalone offence of coercive control. That committee had a broad range of stakeholders involved in that process. That committee looked at different aspects of the bill, including the scope of relationships. I think there has been quite a common understanding around the scope of harm, and what coercive control actually is, in terms of a pattern of controlling, coercive behaviours. The debate was not around the definition of coercive control in itself; it was more around the scope of relationships.

THE CHAIR: Is it the evidence that perhaps harm will not include emotional or psychological issues?

Dr Paterson: It absolutely does.

Mr Ng: I have read and understood the privilege statement. In relation to the

definition, Ms Barry, this is a feature that we have tried to adopt across different components of the legislation, the bill. The bill seeks to engage with and leverage off existing infrastructure in the ACT's criminal law and various definitions—for example, family violence and, out of the Family Violence Act, the definition of “family member”. The definition of “harm” is one that is taken from the Criminal Code, and that definition includes psychological harm, which relates to emotional abuse.

The key expectation, probably, working through the implementation period, is that when one looks at the legislation on its face, it does not necessarily reflect, in its fullest terms, all the different, complementary pieces of legislation which sit across the ACT statute book and which will support the implementation of the events themselves.

Dr Paterson: This is where ACT Policing are really experienced. They are across the other legislation and have a very detailed understanding of how domestic and family violence manifests.

Dep Commissioner Lee: I have read and acknowledge the privilege statement. As the minister said, certainly, ACT Policing appreciate the consultation with and engagement of ACT Policing in the development of the legislation. We support the bill as it has come forward. If I can focus on the scope of the legislation, we support the current scope, in terms of the breadth of relationships, noting that we have the two-year implementation, which we think will be particularly important in ensuring that we have the capability, the training uplift and the processes in place prior to implementation. Given the complexity of the standalone offence, the provision of the two-year implementation time frame is important, in our view.

In terms of our assessment of harm and the other offences that are available to us around domestic and family violence, obviously, they are issues that are well practised within ACT Policing. In particular, it is part of the capability uplift that we deliver through our domestic and family violence command. I am happy to go into that in more detail, Ms Barry, if you wish. Superintendent Lawson is the head of our domestic and family violence command. I am happy to pass to her to go into more detail, if you wish.

THE CHAIR: I think that your answer is satisfactory; thank you. Based on ACT Policing's experience, do you see coercive control forming part of the suite of charges in addition to, say, other domestic and family violence charges? What is the nature of the evidence that you would need to collect so that it is not just symbolic, when you compare them to other serious domestic and family violence offences?

Dep Commissioner Lee: On that issue, I will pass to Detective Superintendent Lawson. We see the coercive control standalone offence as an important offence, particularly in terms of a course of conduct where we can intervene at an earlier stage, before it escalates into violent offending, where there are other charges that are available to us that we can proceed with. Having the coercive control standalone offence is an important mechanism for police, for the better protection of victim-survivors. In terms of how they may intersect on a case-by-case basis, I will pass to Superintendent Lawson on that issue.

Det Supt Lawson: As a standalone offence, it enables police to examine the primary aggressor and the person most in need of protection through a holistic investigation, rather than responding to an incident-based situation, which may answer your question Ms Barry, in that the charge of coercive control may not be the only charge going forward. But we do recognise that a coercive control investigation will take a longer period of time, in order to understand the power and dynamics within that relationship and the best supporting evidence to meet the intention and threshold of the bill. It might be that our police attend an incident and lay a charge or follow the pro-arrest, pro-charge domestic and family violence policy of the day. Meeting that threshold is immediately obvious through an assault, strangulation or another charge, whilst we are also looking at collecting evidence for a charge of coercive control. We can see that both are occurring in parallel.

THE CHAIR: With respect to collecting evidence on coercive control, I know that there have been submissions that have said evidence like text messages and phone conversations—telecommunications—are easier to collect. What other evidence can you collect that would go towards proving that a person has engaged in a repeated pattern of behaviour?

Det Supt Lawson: The direct evidence of the victim-survivor is crucial. Also, there is the supporting evidence of witnesses. It can also take the form of diary or notation. We look to our other partner jurisdictions who are looking at means to support victim-survivors in collating and collecting evidence. There are tools like Empower, which is app based, and is able to collect evidence discreetly.

We will look at financial records, particularly where financial control is demonstrated or reported. There is stalking and other monitoring behaviour—looking at a range of CCTV. We are alive to the issue that technology is being used to monitor movements and patterns. There are a range of evidence collection methods, and we will listen to the narrative of the person before us. That helps to inform the investigative avenues and the steps that police will undertake.

Dep Commissioner Lee: Ms Barry, that is another key element of the two-year implementation. Certainly, with the complexity of these investigations, part of the learnings and the engagement with the other jurisdictions is around the specialist capabilities that we will require to support these investigations—for example, around digital forensic officers, financial analysts et cetera. There will be other evidence sources where we will need to ensure that we have the capability to be able to obtain that material, as part of the investigation and prosecution.

THE CHAIR: We have heard some evidence around one of the key factors that could strengthen the bill. Detective Superintendent Lawson, I think you touched on this a bit: identifying the person in need of protection. Can you explain how that currently happens? Minister, would you consider including that as a key consideration in the bill?

Ms Lawson: Within coercive control, that is really about looking at that course of conduct or the behaviours. Police are very familiar with, and already every day engage with, cross-allegations by partners. It is not unfamiliar to police to receive

allegations or counter-allegations. It is about unpacking that information, looking to the evidence that supports the claims and demonstrating that through that evidence collection.

THE CHAIR: Minister, is there any thought about including that—

Dr Paterson: That question is better put to Minister Tough. She is the minister who is responsible for the legislation.

THE CHAIR: I will move quickly to some tension issues around the proposed adoption of intent as a fault element, rather than recklessness. There has been a suggestion that the evidentiary burden of proof for intent is quite significant. It is about whether the intention of the bill is to have a criminal justice response to coercive control. Is that for Minister Tough as well?

Dr Paterson: Mr Ng can speak a little bit to the framing of the legislation, and CPO can talk to Policing's views around that.

Mr Ng: Chair, your question goes to the policy intent behind—

THE CHAIR: The policy intent around the intent, as against recklessness, as the evidentiary burden of proof, and how you came to that.

Mr Ng: Certainly, we heard a range of different views about what the fault elements should be. If I could make a couple of factual reflections, obviously, the bill before the Assembly reflects the landing point that the government reached, resulting from the outcome of all the feedback that was received through the consultation process. The minister referred to this. The directorate worked with Victim Support ACT to chair a steering committee, which had a range of views from not only the justice agencies but also community sector stakeholders, to inform government's decisions on the final form of the bill. Certainly, the fault element was one area where there was a rich amount of feedback, with different perspectives about what the fault elements should be.

Some of the key policy considerations which underpinned the government's position on the bill involved a scan of other Australian jurisdictions. Other Australian jurisdictions that have standalone coercive control offences do adopt intent as the fault element. In that context, this offence is a novel exercise for the ACT. There is no existing offence which directly deals specifically with coercive control. That was an important consideration, in that we were aligning with other jurisdictions. It does allow for some operational benefits as well—the sharing of education materials and learnings from other jurisdictions. As the minister and CPO have reflected, there is this implementation journey that agencies will need to go on; it was considered that there was a benefit in aligning with other Australian jurisdictions and not increasing the novelty of the situation in the ACT.

Dr Paterson: Ms Barry, ACT Policing have a view on this as well.

Dep Commissioner Lee: ACT Policing supports the intent-based fault element, particularly as we commence implementation of a complex offence, so that it ensures

the offence is directed towards deliberate and sustained patterns of coercive and controlling behaviour. It is certainly ACT Policing's view that the requiring of proof of intent also appropriately distinguishes purposeful coercive conduct from behaviour that may be harmful but was not intended to coerce or control. In ACT Policing's view, particularly when you look at some of the stakeholder and community concerns, it also provides an important safeguard, as we progress implementation, in insuring against over-criminalisation and the misidentification of victim-survivors, particularly given the broad scope of the relationships that are captured by the offence.

That is ACT Policing's view. We think it is a more appropriate fault element, as we undertake implementation within the ACT. From discussions with our partners, it is also something that is in an evolving space nationally, as other jurisdictions are learning from their own implementation. It is something that is subject to ongoing consideration and review from the other jurisdictions as well—between intent and recklessness. Our view is that intent is the appropriate fault element for the ACT.

Dr Paterson: There had been some concern raised by stakeholders in New South Wales in particular around the fact that there were very few charges being laid, and that this was because the threshold was too high. However, the recent data from New South Wales shows that, in the first 18 months, there were 22 charges laid, but in the last six months alone, there has been a doubling of that—41 charges. With what we are starting to see from New South Wales now, given the length of time and that this is an offence that is demonstrating a pattern of behaviour, they are starting to see a pick-up of charges being laid and reports coming in.

THE CHAIR: Better evidence, identification?

Dr Paterson: Yes. Again, we will continue to watch New South Wales and Queensland very closely, and how their bills continue to be implemented.

THE CHAIR: The Victims of Crime Commissioner reflected on the fact that the ACT's applicable recklessness test has a significantly higher threshold than the equivalent test in New South Wales. The commission considered that this, together with other proposed safeguards, better supports the argument that it should be "reckless" rather than "intent". I want to get your views on that.

Dr Paterson: It might be best to ask that during Minister Tough's session. It sits more firmly with her.

MS VASSAROTTI: We have talked a little bit about the concerns about misidentification. Certainly, we have already heard evidence from some members of the community regarding some reservations around criminalisation disproportionately falling on particular groups. You have already touched on the issue of multiple allegations being something that the police currently deal with. We know that there is significant hesitation and fear from particular parts of the community. The First Nations community, obviously, is one that jumps to mind.

It would be good to hear from Policing in terms of the work that needs to be done in the implementation to ensure that this legislation and the offence identify the right people, keep victim-survivors safe and recognise some of the inherent challenges that

we have, particularly within the police system, in engaging with First Nations communities and other groups that have intersectional disadvantage.

Dep Commissioner Lee: Thanks for the question. We can provide the committee with some detail about what we are already doing. Certainly, significant capability upwards has been occurring within ACT Policing in terms of the training for our members, including some recent mandatory training that was undertaken across all ACT Policing members up to the level of superintendent, which focused on misidentification and coercive control training. A multitude of those issues have been implemented by our domestic and family violence unit. I will pass back to Superintendent Lawson, who can talk you through that in quite some detail.

Det Supt Lawson: There have been two significant training uplifts. The ACT government allocated \$100,000 to ACT Policing. We engaged with academics; we went out to tender and, in collaboration with Swinburne University, prepared a mandatory two-day training program whereby all frontline police would partake in that training. That is a significant uplift for ACT Policing. It includes the dynamics and the current evidentiary and academic picture of domestic and family violence in Australia, and what lessons and themes we are observing from overseas as well.

That training was also complemented by the commonwealth government, who partnered with ANZPAA to look at different delivery methods for frontline police. Excitingly, they developed a virtual reality platform where coercive control was delivered through lived experience—actual incidences that police across Australia had attended and unpacked, and some that were going through the criminal justice system, to look at those lessons in that coercive control environment and how they were aligned and responded to by police. The virtual reality package also allowed police to take some different, alternative pathways and look at consequences from different decision-making models.

MS VASSAROTTI: Following on from that, in relation to breaking down those barriers and working with our local First Nations communities around addressing some of those concerns, particularly as we look at additional potential offences, is there particular work that is happening or planned?

Dep Commissioner Lee: ACT Policing gives a real priority to our engagement with our First Nations community. That occurs under our First Nations engagement strategy. It is a strategy that was developed with community, following the Ombudsman own-motion investigation into our First Nations community engagement. It contains the key pillars of work that we need to do in partnership with the community. We certainly acknowledge that there is more for us to do there, and it is a real focus for us.

There are a couple of areas that I would touch on in particular. There is the cultural literacy training which has been established under that strategy. There are around 860 or 870—it is in that rough order of magnitude—of our police officers, including others that engage in the ACT as part of ACT Policing, from professional standards and some of those areas, that undertake that cultural literacy training. We constantly look at our culturally safe practices. Our First Nations LOs support that activity. I have already prioritised additional resources into our liaison officer team, so that

team is now 24/7 on call and is available to either provide advice or to deploy out to support our general duties members or our domestic and family violence members, where we may have matters involving the First Nations community. It is so that we can ensure that we have that ability to work through those issues within our First Nations community.

There are a range of those practices that are underway, and we will continue to evolve and develop them, in partnership with the First Nations community. We absolutely want the community to be involved in the effectiveness of those strategies, and to look at whether we need to adjust or put in place additional mechanisms to ensure that there is a level of comfort that we are delivering more equitable outcomes for our community.

Dr Paterson: I would add the Jumbunna report to that. This speaks to a whole-of-government view and recommendations to address over-representation. Obviously, there are recommendations that are directed to police but that also speak to the broader system. I listened to the evidence of Rochelle, from Sisters in Spirit, this morning, around the fear and concerns from the Aboriginal and Torres Strait Islander community in reporting not just to police but to child protection. I think there is whole-of-government work that is beginning to work through those recommendations that is broader than policing.

MS CASTLEY: The Victorian government recently introduced its own coercive control legislation, and there is a lot of overlap between the two bills. The difference is that the Victorian bill explicitly addresses the issue of extraterritoriality. While the ACT does not, noting how close we are to New South Wales, I believe this is one of the most serious concerns that I have with the ACT bill, as it stands. From a policing perspective, how do you intend to deal with the offence when significant components of the course of conduct could occur outside the ACT?

Dr Paterson: This is a very relevant question, given the operation that occurred in the last week.

MS CASTLEY: It is very timely, yes.

Dr Paterson: I will hand over to police.

Dep Commissioner Lee: I will pass to Superintendent Lawson on that, if I can. As you saw recently, as the minister touched on, we have extremely close relationships with NSW Police, in terms of how we operate across the border.

Det Supt Lawson: Recently, you would have seen highlighted the collaboration and the work through the week of action. ACT Policing adopted that as Operation Shepherd. New South Wales run three campaigns per year, being Operation Amarok. That is just one example. On a day-to-day basis, police are sharing information and intelligence, working collaboratively across our borders. Particularly in the technological space, we are seeing those borders extend overseas. The criminality aspect and reach are monitored and information is shared. That will only be further enhanced and supported through new mechanisms, like the information sharing act. Beyond just police partner agency sharing, it is about sharing particularly in coercive

control with our sector—understanding risk, where high risk is, talking to our sector partners to ensure that we are watching and are aware of where risk is in our community, and where that extends across borders.

Dr Paterson: Ms Castley, Ms Haigh has something to offer.

Ms Haigh: Ms Castley, it is a really important point that you have raised. What underpins the legislative basis for such close engagement that we have been hearing about is that, in the ACT, unlike Victoria, we have a Criminal Code. Part of that code, part 2.7, deals expressly with extraterritoriality and enables a geographical application of all code offences. In due course, assuming that the bill is passed, it will include coercive control when certain conditions are met. That includes that there needs to be a geographical nexus between the purported offending and the ACT, and that can arise in a number of ways. It will arise if the offending occurs wholly or partly in the ACT and, importantly, if the conduct occurs outside the ACT but it has an impact here in the territory. If someone from outside the territory, for example, was attempting to exert control over a person in the ACT, subject to the other elements of the offence being satisfied, there would be a legislative basis for pursuing that offence here.

MS CASTLEY: That information sharing would occur; we would not have a situation where someone is either-or living there, and has to go through the whole ordeal again to try and get some kind of investigation underway?

Ms Haigh: If the police were satisfied that there was sufficient evidence to prove the various elements of the offence in the ACT, yes, it would enable a brief of evidence to be collated and referred to the prosecuting agency. It would mean that if the ACT police were taking action, it would not be necessary for the victim-survivor to look to police in another jurisdiction to prosecute conduct that had occurred in Canberra, because of that provision generally in the code around extraterritorial application.

Det Supt Lawson: To operationalise that, I would take you back a couple of years, when ACT Policing, together with ACT government, had the Sexual Assault (Police) Review. One of the very key outcomes of that review was a no-wrong-door approach. We immediately looked at different referral pathways for victim-survivors into ACT Policing. It goes to the very heart of your question. We do not want victim-survivors to have to retell their story. We want to capture that evidence and share that with the right police jurisdiction that can take action. That might be through evidence-in-chief interviews. Again, they do not have to then provide that evidence; we have captured that lawfully and can use that in the criminal justice system. It is about sharing those techniques and ensuring that their story or evidence is captured immediately. The back end is about navigating how that is shared, rather than them having to repeat their story.

THE CHAIR: I have a question, going back to harm and what constitutes harm, especially in the context of coercive control, appreciating that this is a very new space for all of us, in navigating it. Has consideration been given to adequately capturing what could constitute harm? I appreciate Mr Ng's evidence that the current definition would work within the frameworks that already exist in the criminal justice system. I wonder whether there is anywhere in the criminal justice system where financial harm is captured as harm, spiritual harm—

Dr Paterson: That is all included.

THE CHAIR: That is all included? Okay.

Ms Haigh: It is picked up through the definition of family violence in section 8 of the Family Violence Act, which informs the relevant definition of the elements of the offence for the purposes of coercive control.

THE CHAIR: That is useful; thank you. One other question I had was around the definition of who coercive control can apply to.

Dr Paterson: Minister Tough will be able to answer that. It sits in her remit around the legislation.

THE CHAIR: Okay. Mr Ng, you will be appearing in that session as well, because it is a policy question?

Mr Ng: I will be back; yes, indeed.

THE CHAIR: Thank you. On behalf of the committee, I thank you for your responses today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*.

BILLS, MS KATE, Head of Practice, Early Intervention Legal Practice, Legal Aid Commission

DE BRUIN, DR JAN, Head of Practice, Criminal Legal Practice, Legal Aid Commission

HARRINGTON, MS TORI, Director of Legal Services, Women's Legal Centre ACT

ROSENMAN, MS ELENA, Chief Executive Officer, Women's Legal Centre ACT

THE CHAIR: We welcome witnesses from Women's Legal Centre and ACT Legal Aid. Please note that as a witness you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Does anyone have an opening statement that they would wish to make?

Ms Bills: I have a brief opening statement.

THE CHAIR: Awesome; thank you, Ms Bills.

Ms Bills: We are pleased to be here today to participate in your inquiry into the coercive control legislation. Dr Boersig sends his apologies. I would like to acknowledge that there are likely victim-survivors of domestic and family violence involved in your inquiry and that coercive control, being a form of this violence and underpinning so much of it, is a deeply personal issue to so many people.

I am speaking today from my perspective as the head of the early intervention Legal Practice. Our practice assists victim-survivors of domestic and family violence through grants of legal assistance, duty services and outreach services, including the Health Justice Partnership with the North Canberra Hospital and the Centenary Hospital for Women and Children. Jan is speaking as the head of the criminal law practice of Legal Aid, which assists, through duty services and grants of legal assistance, perpetrators of domestic and family violence. Together, we bring perspectives of victim-survivors and perpetrators of coercive control.

Ultimately, Legal Aid supports the need to criminalise coercive control, which is reflected in our public submission. We also raise issues around the scope of the proposed offence, the definition of harm and the proposed penalty of seven years. You will see in our submission that we submit that Legal Aid should be part of the proposed advisory committee; that it should continue after the three years if there is a need for it; and that the review should occur within two and not three years. It is also imperative that the government invests in community engagement in education and training for frontline justice staff, as well as community and support services.

THE CHAIR: Thank you very much. Thank you for your attendance. Are there any more opening statements?

Ms Rosenman: Yes. We have made a submission, which I would refer you to. The Women's Legal Centre has been a service in the ACT community for 30 years. Our practices include: family law, migration, a sexual violence legal service, an employment and discrimination practice, and the Mulleun Mura, which is a specialist program that is run for First Nations women by First Nations women. Obviously, the

centre's work is very focused on issues of gender-based violence and gender discrimination. One of the things that we have seen over time has been the steady increase in requests for assistance from the ACT community. For example, in the last year the telephone requests for assistance increased by 30 per cent. What we have not seen is a commensurate increase in the capacity of frontline services to respond to those. We welcome the increase in requests for assistance. I think they are demonstrative of the fact that more and more people in Canberra understand domestic and family violence and are reaching out for help. But I guess there is a commensurate responsibility to make sure that we are actually able to offer that assistance.

We also support, broadly, the purpose of the bill. We have concerns that there are significant improvements that could be made to make sure that the bill is actually meaningful, able to be implemented and does act to increase the safety of women and children in Canberra and also the accountability for perpetrators of violence.

We are looking forward to talking about it today, and particularly, the things that we are interested in discussing with our colleagues here in the committee include the fault element—the elements of the offence. I think there have been some good points raised about review and the role of the committee, particularly around measures that we can include to reduce the risk of misidentification. We are happy to answer whatever questions you have for us, but we are really keen to make sure that we touch on those.

THE CHAIR: Thank you very much. I just want to start off while it is fresh in my mind and touch on evidence we heard from the minister for policing around the definitions of harm. Please correct me, as well, if I am not interpreting this correctly. I know that your submission identifies that the definition of harm is probably too narrow to encapsulate what would constitute coercive control, but the minister's evidence just then was that the broader definition, or the broader context, of coercive control is captured in the Family Violence Act.

MS VASSAROTTI: Yes. I think they were saying that the Family Violence Act definition, which picks up issues including financial and emotional abuse, informs the criminal definition of harm—

THE CHAIR: Thank you for helping me. I just wanted to get your views on whether you think that alleviates the concerns you have raised in your submission and what your views are on whether that definition appropriately alleviates the concerns that you raised in your submission.

Ms Rosenman: The short answer to that is no. While the centre is strongly supportive of aligning the elements of this offence with the Family Violence Act, we also have concerns about the definition of family violence in the Family Violence Act, and particularly that there is a large number of tactics that we see clients subjected to on a very regular basis that would not be captured by the definition in the Family Violence Act. To give you an example, one of the things that probably is most prevalent, and I think this is also linked to some of the fears that we hear particularly from First Nations women and women from cultural and linguistically diverse backgrounds—migrant backgrounds—is around systems abuse, particularly around reporting women to other authorities. Two authorities loom very large: for First Nations women and

migrant women, child and family services; and for migrant women, the immigration department. The threat to make reports to either of those we see as totally debilitating and paralysing for our clients. The amount of fear and paralysis that that engenders, particularly in the First Nations and migrant clients we see, is one of the most significant things that we have seen in our practice.

We would strongly support reviewing the definition of family violence in that act. I am a bit unclear about the timing. There is a review—I think the timing on that is a bit caught up in the passage of other bills. But absolutely we would be strongly recommending that there should be a serious review of what is included in the—

THE CHAIR: Family Violence Act itself?

Ms Rosenman: Yes. And I would also say, both Jan and I were on the steering committee that was involved in the drafting of this bill, and there were a number of issues raised by people who represent particular segments of society about what they saw in the clients they assist. I would say the important groups were First Nations women—Aboriginal women’s experience of being denigrated on the grounds of race and their children being de-identified was a very common experience; obviously, the LGBTIQ+ community is very worried about how information about their identity might be used; and included in the submission are women with disabilities. The withholding of care, or the ability to exit and to live their lives, were things that came up really strongly through that committee that would, arguably, not be captured by the definition in the Family Violence Act.

THE CHAIR: A follow-up question, Ms Vassarotti?

MS VASSAROTTI: It is actually from my colleague, who is not here, and it is picking up on the definition of harm. One of the issues that you raised in your submission was around the concept of spiritual harm. I was just wondering if you could provide a little bit more context in relation to that and how that could be captured?

Ms Rosenman: I do not have an answer to how it could be captured, but I think, in terms of the spiritual harm, obviously that is very linked to the types of tactics we see used against First Nations women. Certainly, the First Nations colleagues that we work with at the centre often can see the destructive nature of removing or imperilling a woman’s connection to her own culture—and particularly her children—and her ability to pass on culture and protect her children’s connection with that culture as well.

THE CHAIR: Thank you. There is an interesting concept that you raised in your submission, and that is the concept of the mixed fault element—to the extent that the conduct itself is intentional, the effect of the conduct is assessed as a standard of recklessness. Can you explain that and what you mean by that?

Ms Harrington: I think as the offence is written at the moment, with having the fault element of intention, it is a very high evidentiary burden. So, in thinking about how that intention would be proved outside of direct evidence of a text message or an admission that the intention was to coerce and control, you would have to infer it from

circumstances, and I think that the evidentiary burden there would be very, very high for a prosecution. That is something that we have seen in jurisdictions across Australia, including New South Wales, which comes front of mind, where that evidentiary burden has been very difficult to prove. I know, talking to colleagues in New South Wales, that there has been a number of cases where women have basically retracted their statements just because they feel like they were not getting anywhere.

I think that is something we want to try and avoid here in the ACT. The mixed fault element, we think, is a more balanced approach. You still have the intention connected to the conduct, but then you have recklessness as to whether that conduct would have the result—so, the coercive controlling effect. In the ACT, the bar when it comes to recklessness is quite high. There has to be a substantial risk, and then a perpetrator has to turn their mind to that risk and then go forward, and that needs to be unjustifiable. We think that, within the concept of recklessness, that is quite a high bar, and this reflects what we are seeing in terms of coercive control and the behaviours of perpetrators as well, because what you are most often seeing is that sort of pattern of behaviour that is very subtle and that is very hard to infer intention from. Recklessness, I guess, reflects the reality. I do not know if you wanted to add anything to that in terms of New South Wales experience there, Elena?

Ms Rosenman: This is an element of the offence that we probably feel the strongest about, and we definitely feel that the way it is drafted places too high a bar, such that there is a question around how many charges and whether or not we will see any successful prosecutions of this. This is actually one of the reasons that the criminalisation of coercive control has historically not always been supported by the specialist frontline service sector—more and more legislation looks like governments and communities take this seriously, but when they are never actually able to successfully prosecute, it is experienced by many women as another form of, essentially, state-sanctioned gaslighting. I think, historically, that is the reason you will have heard quite mixed views from within the sector over time. I think this bill as it is drafted is a very conservative approach to legislating for coercive control, and on those grounds, I think it is a bit disappointing.

The ACT government has been waiting and waiting and waiting to do this, and the reason they have told us they have been waiting is that they wanted to learn from the experiences of other jurisdictions. New South Wales started this process. Their discussion paper went out in 2020. This is now six or seven years old in New South Wales, and what the ACT has put forward does not build on the New South Wales experience at all.

I think there has been concern that this would lead to the over-criminalisation of behaviour that is otherwise not criminal, and to that I would say two things. The whole point of this bill is that it is around changing our idea around what is criminal. What I noticed throughout the submissions was a lot of language around “ordinary family dynamics” and “disagreements between families”, that is actually itself a way of minimising the exact harm that we are trying to protect people from. We will withstand a very high level of dysfunction and harm within the family dynamic under core precepts of what we think the law will do.

The second thing I would say about it is that there was this very strong idea that we

wanted to avoid over-criminalisation. I do not know if you have seen that the New South Wales Bureau of Crime Statistics and Research put out a report in December that spoke to the first 18 months of the—

THE CHAIR: Implementation?

Ms Rosenman: Yes. What they found was that there were 473 coercive control incidents in that 18-month period. But to put that into perspective, I went back and did some research looking at the big picture and what that means. In the same period—in that same 18-month period—New South Wales Police responded to 290,000 call-outs for domestic and family violence, or 500 a day. So, 290,000 call-outs led to 473 coercive control incidents, led to 22 charges being laid, which led to one conviction. In the same period of time, 27 women—at least 27 women—were murdered because of domestic and family violence. I think this committee has to think in a very serious way about what it is doing here. Is it doing the bare minimum or does it actually have intent to change the experience of women that are affected by this behaviour?

THE CHAIR: Thank you. That is a very powerful submission. I want to get your views, Dr de Bruin, about where the fault element sits and whether the legislation has struck the right balance.

Dr de Bruin: I think it is the right balance. In my submission it is a course of conduct offence that would be quite easy to prove because it would rely on conduct that occurred over a period, and that conduct will allow whoever is the tryer of fact to draw inferences from the conduct. If I looked at the sort of conduct that I have observed over time from clients that were charged with family violence offences, I would say that it is quite easy to say that they have intended to achieve a certain result, and you often have more than one example of them behaving in that coercive manner.

Once you have this combination, it is in my mind very easy to draw the inference that you need from the fact, once it is established. You should not look at it as a type of assault that happens in a few seconds—a single blow or a push. This is something that is happening over time, and you have more than one example of it. That is the course of conduct that the court will look at. Once that is established, it will be very easy, in my submission, for the tryer of fact—that is, the jury, judge or magistrate—to draw inferences from the conduct that it was there to achieve a particular result. I can take you through numerous examples that I have observed over time, and there is only one inference that you will arrive at, once I take you through it.

THE CHAIR: How do we reconcile the evidence that, say, for example—and again noting that this is outside our jurisdiction—290,000 offences only led to one conviction? What do you think, in your experience, resulted in that very low conviction rate?

Dr de Bruin: In my experience, it would be the case that the other offences are so easy to prosecute. You have a call-out. You arrive at the house. There is evidence of the family violence in the form of injuries. There are witnesses present. So it is easy to prosecute that sort of an offence.

When you think of coercive control, we are talking about conduct that occurred over time. We know that police have limited resources. Doing that investigation is going to take months to get it all together. The easy way is to charge what is there and then to move, I suppose, to the next call-out. It is an incredibly hard job. It must be very hard for police officers going out to homes, seeing all of those things. To try and find the quick fix, but it is not an easy fix, is to look at how you can get the perpetrator out of the home, how you can get him in custody and how you can get him before the court so that the court can put appropriate bail conditions in place—getting his orders in place to protect the family. They are things that you can do almost immediately. But if the control, for example, is financial control, that would have happened over years. We will have to go through bank statements. We will have to involve children. We will have to involve family members. We will have to involve friends. That is not something you can achieve in a week or two. We are talking about months here.

With this type of prosecution, my biggest concern for a victim is that their whole life will be put on display, because the perpetrators of this type of offence are the types of people who would like a court forum and who would want to be out there to show that there is no coercive control—that they had to do that to protect the children from the complainant. There is always a good explanation that they are ready to offer. They will abuse the court process by pleading not guilty. If you do not keep the matter in the Magistrates Court, they will go to the Supreme Court, where you can wait 2½ years for the trial. In the meantime, there is the complainant somewhere out there whose life is being investigated and who is on the receiving end of criminal proceedings.

Ms Rosenman: Can I respond to that? To some extent, if Dr Bruin’s supposition is correct, which is that there are fewer coercive control charges because other charges are easier to make out, my view is that that is precisely the point that we are making—that what that continues to do is to take our minds to where there is visible injury or other offences that can be charged. And that is the problem—that there is no offence that can be charged without those injuries, or physical harm, to somebody. What we also know is that for many, many women that we see, their experience of coercive control and violence does not necessarily include physical violence.

I do not have it to hand, but I would really encourage the committee to have a look at the evidence around the domestic violence reviews, both here in the ACT and in other states and territories, that actually demonstrate that the lethal violence was the first expression of physical violence in the relationship. What I would say in response is that if it is the case that we are not prosecuting coercive control because it is easier to only prosecuting assault charges, then that is precisely the dynamic that this legislation is attempting to change.

THE CHAIR: I have just a really quick follow-up question. It appears to me that the tension is in the definition or the proposed scope of coercive control being continued repeated behaviour. Correct me if I am wrong, but should, then, the focus be on, for example, a singular incident where you have got multiple occurrences? In that incident you would have financial abuse, spiritual abuse and physical abuse. Do you think, then, that substantiates a coercive control charge, rather than waiting to collect evidence over time?

Ms Rosenman: I am not sure I follow that logic. Our concern is around the fault element of the bill. Very clearly it is our view that the bill should be amended to adopt the mixed fault elements so that you do not need to prove the intent.

MS CASTLEY: Which is the recklessness part. Is that what you want?

Ms Rosenman: Yes.

MS VASSAROTTI: This is an interesting panel, because I think there are a few elements and there is some divergence of views. I am interested in picking up the definition of who is captured in the legislation. I think Legal Aid was suggesting that the ACT definition goes further than any other jurisdiction. My understanding is that it is fairly close to the Queensland definition. Certainly, picking up some discussion we have just had in terms of the level of dysfunction that we accept, particularly in family dynamics, I am interested in getting the perspectives of both organisations around where the legislation has landed around that scope of who is captured, particularly in terms of relationships, because I think you have different views.

Ms Rosenman: Where the bill has landed in terms of adopting the definition of relationship that mirrors the definition in the Family Violence Act is absolutely our preferred position—from a range of perspectives, as practitioners in the sector and also, would say, thinking very clearly about the experience of clients. One of the things that we see is that the broader relationship definition that includes extended family members absolutely reflects people's experiences of domestic and family violence that they bring to the centre on a daily basis.

The other thing that I would say from the conversation in the steering committee—and I note that there are a number of people in the steering committee who are not before this committee and were not able to make a submission for various, I suspect, capacity reasons—is that this was probably the issue that caused the most conversation in the steering committee. What was prosecuted repeatedly and very passionately from colleagues—from the disability sector, from the LGBTQA+ sector and from the First Nations representatives that were on the committee—was that without this expanded definition, this bill was of very little use and would not respond to the needs of the clients that they were seeing. Certainly, that has been expressed and seen in the work of the centre as well.

The other thing that I would say is that, just from a practicality perspective, when it comes to advising clients and assisting clients to understand legal protections in the ACT, having to explain that the same behaviour can be cause for a family violence order but does not fall within the definition of coercive control, or vice versa, is a really unnecessarily complicated change.

Dr de Bruin: I think we have set it out in our submission: our concern is that the scope is not in line with all these other jurisdictions. I do not say we have to follow what Queensland, South Australia and New South Wales are doing—I am certainly not saying that. However, we are concerned about criminalising conduct that, in my view, should not be criminalised. What we have to establish here is coercive control that means there is some control over a person, and that takes the form of a family member or a former family member. Scotland may have followed a different approach.

But the thing is that we have to think about Scottish law. It is not necessarily the same type of environment as we have here, and bearing in mind what they are doing might not well fit within our legislative framework.

Legal Aid are in favour of a narrow approach. We say other jurisdictions provide good guidance as to how we should define that relationship, and that should be the starting point. If there is a need after that to move on to other types of relationships, that can be addressed by way of review that the legislation intends to establish. So we say let's use a narrow approach and then let's move on from there if there is a need for a broader approach.

MS VASSAROTTI: Yes, okay. My understanding was it did align fairly closely with the Queensland definition.

Ms Rosenman: It aligns with the South Australian definition and, I think, the Queensland definition as well.

MS VASSAROTTI: Okay, yes.

Dr de Bruin: I stand corrected then.

Ms Rosenman: But Scotland uses “partner” and “ex partner”.

Ms Harrington: I want to say that, through our work with our clients, we see a lot of instances of coercive control from a domestic or intimate partner, but so often it also includes coercive control being perpetrated by members of the family and broader relationships. I think if we were to narrow this down to just intimate partner relationships, it would come to a situation where the direct partner would be able to be prosecuted under the offence but the other family members that were conducting the same behaviour would not be able to be prosecuted. I guess, from our perspective, that does not really make too much sense.

MS VASSAROTTI: Okay, thank you.

THE CHAIR: Ms Castley?

MS CASTLEY: Can you explain the rationale for having coercive control addressed as a summary offence and what risks this might entail?

Dr de Bruin: The summary offence is an offence that will stay in the Magistrates Court. It is an offence provision that cannot go to the Supreme Court. Usually, it is the penalty that dictates where the matter can go. You also can have what is called a “summary indictable” type of offence. For a summary indictable offence, once it is enacted, the penalty, I think, is seven years, and that means that the offender can decide if he wants to go to the Supreme Court. That means the matter can be committed to the Supreme Court, where there is the possibility that that person will stand trial before a judge or a jury, depending if an election is filed or not. This is not a summary-only offence because the penalty takes it to that summary-indictable-type of offence. An indictable offence is an offence that, I think, carries more than 13 years, with a few exceptions there.

Our submission, if that is the question, is that it should stay a summary indictable offence and that there should be some way for the DPP to keep the matter in the Magistrates Court. We say that is that prosecution in the Magistrates Court, in my submission, is easier because it is a much more controlled environment, and it is not a place where people's lives are often put on display. In Supreme Court trials, that is a place when news is usually made, and you don't have that often in a Magistrates Court matter. The courtrooms are smaller. Most importantly, you may get an outcome within 12 months, whereas the moment you venture into the Supreme Court, you are looking at between two and 2½ years. If I think of victims, I say that is far too long—it does not matter if it is coercive control or any other matter.

MS CASTLEY: Is there a greater risk of misidentification if it was dealt with as a summary offence, do you think?

Dr de Bruin: I would say no. I cannot see any reason why there is a greater risk of misidentification. It is still the same process that you follow. All matters start off in the Magistrates Court, and then eventually there is a point where we can either go to the Supreme Court or stay in the Magistrates Court. This is the type of matter that has the possibility of staying in the Magistrates Court, and we are talking about 10 to 12 weeks before we reach that point. Hopefully, throughout that period of time, there will be ample opportunity to correct the misidentification if that has happened.

Ms Harrington: I think we would generally agree with what has been said by Legal Aid. I cannot recall what Legal Aid says in terms of the maximum penalty, but our view is that the seven-year maximum is appropriate. We would not support that being reduced to five. When we look at the sort of suite of against-the-person offences in the Crimes Act, we think seven years is about right. I think reducing it to five years does not send the right message in terms of the seriousness of the conduct.

I think everything else that Legal Aid has said, we would agree with. I think in many cases, it is preferred for matters to be heard through the Magistrates Court, for all the reasons that have been provided. It may be that on occasion in very serious matters, it is most appropriate to go to the Supreme Court, and that could still happen, but we think that it is important that it is the prosecution's decision and not something that a defendant or a perpetrator could weigh in on or have too much control over because of the risk of ongoing systems abuse.

Ms Rosenman: The other thing I draw attention to is that if the ACT reduced the maximum penalty to five years, we would then have the lowest maximum penalty in the country, which, again, I am not sure—

THE CHAIR: Just on that penalty, and indictable and summary offences—and please correct me, it has been a while that we have been in this space—my understanding is that because it is seven years, the defendant would need to elect to have the matter heard summarily in the Magistrates Court. But your evidence is that if you reduce it—and your evidence is also that there are circumstances or that you support hearing the matter more expeditiously in the Magistrates Court. So how do we resolve this tension? If the accused needs to elect to have the matter heard in the Magistrates Court, there is a potential, as we have heard from several submissions, that that could

be used to perpetrate, or continue to perpetuate, the abuse. How do we reconcile this obvious tension, then?

Ms Rosenman: I think that, not being drafters, we have probably not sought to resolve the problem ourselves, but, as I think a number of submissions have raised, it is possible to, essentially, create a carve-out within the legislation so that—

THE CHAIR: In the Crimes (Sentencing) Act?

Ms Rosenman: Yes—and that already applies to some offences in the act. The Victims of Crime Commissioner's submission actually, I think, makes this quite specific—about the provision that would need to be amended. Also, I suspect the DPP would be able to give some pretty good advice about how this issue could be managed.

Dr de Bruin: I think it is important to start thinking in a broader sense of a carve-out, so I strongly recommend some form of carve-out that allows the DPP some control over not only this type of matter but other matters as well. There is a real question is if all matters should go to the Supreme Court. I agree with the submission that serious matters should go to the Supreme Court, but it is a limited resource that we have. My submission is that at some point in time, perhaps not now, we should create a carve-out where it is possible the DPP gets to control which matters should go to the Supreme Court and the matters that should remain in the Magistrates Court. They already have an election to file for summary disposal; that is in the Crimes Act. But that will not apply to this offence once it is created. You are absolutely right that it is for the defendant to consent to—

THE CHAIR: Yes. So, a carve-out in the Crimes (Sentencing) Act would probably be the better approach to mitigate that. I have one last question, and it is on resourcing. Being external agencies, this bill would have significant impact on you workload. How do you think the government should address that?

Ms Bills: From an early intervention, legal practice perspective, we staff the domestic violence unit at the Magistrates Court. We have at least four solicitors, ideally, daily often helping women get family violence orders, and other orders as well. We have already seen clients come in asking about coercive control and if what they are experiencing is it. So there is a degree of public awareness about it which will only increase, which will lead to an increase in demand for the services of an already overstretched unit. The reality is that everyone who presents to this unit cannot be seen on the day that they come seeking protection, which is heartbreaking and speaks to the need for an increase in funding for it—a need that I think could only increase with the passage of such a bill and the public awareness around it.

MS VASSAROTTI: Can I ask a follow-up from that? We did hear in estimates a couple of weeks ago of some of the work that is happening around some auditing, particularly for Legal Aid, to identify unmet need, in order to support consideration about ongoing funding. The fact that this is new legislation coming that could increase demand even further—are you aware if that is being captured in the work that is happening to date around resource consideration?

Dr de Bruin: We will have to take that question back to Dr Boersig. I do not think we

are in a position to answer that.

MS VASSAROTTI: Okay.

THE CHAIR: Any other comments to make?

Ms Rosenman: I think it would be a shared position that we have a concern around the gap between the need in the community and the frontline services' response to meet that need. It is already an issue. I would say that I think what comes through to me both in the steering committee and very clearly in the submissions is how the success of this bill is absolutely reliant on implementation and resourcing. I think it is certainly concerning to me that we have not seen, in the budget that we have just had, despite the preparatory work on the bill and the very strong focus on pushing this through, no preparatory allocations of funding to actually support the implementation.

I would say that frontline services here are turning women and children away on a daily basis. That is absolutely the case at Women's Legal. I know it is the case for colleagues across the sector. I know it is the case at Legal Aid. Between Women's Legal and Legal Aid, we are the only free legal assistance services in relation to family law, particularly, and there is no way on the resources that we have available that we can meet that need, and that absolutely increases the risk over time.

MS CASTLEY: Can I just ask again: will you be putting submissions into the budget process to the government asking for more resources, or is it something you just assume they will do as part of their implementation of the bill?

Dr de Bruin: I assume we will do that, because I can see that it is an expensive offence to defend. This is a matter where I anticipate that you will have to get reports, where you will have to approach experts and where subpoenas be would one of the ways that you would have to see how you are going to answer a case that is put against a client. I anticipate it is going to be expensive, and I anticipate that at some point in time we will put a proposal forward for funding.

Ms Rosenman: My expectation is that, with the resources currently available within the government, there would be a strongly considered implementation plan that actually was developed in consultation with the people working on the ground, and that there would be a collaborative process around making sure that there is adequate resources. We are obviously very focused on legal assistance and community services, but I would also say that obviously there are very real implications for both policing and other justice agencies. It would be my expectation that government, as part of as part of making this proposal, would also be considering how it would support its implementation.

THE CHAIR: Thank you. On behalf of the committee, I thank you for your response today. If you have taken any questions of notice, please provide your answers to the committee secretariat in five business days of receiving the uncorrected proof *Hansard*. Thank you very much.

Ms Rosenman: Can I just add two things that we did not get to very, very quickly?

THE CHAIR: Of course.

Ms Rosenman: The first is that we did not talk about misidentification. I really draw the committee's attention to our colleagues at Sisters in Spirit, who have made a very good recommendation around adding an independent review process for First Nations and culturally and linguistically diverse women. That is a recommendation that we would strongly support. The other issue is around the oversight committee. It is inexplicable that that oversight committee expires a year after the offence starts and before the statutory review. We would really strongly recommend amendments to extend that committee and to be quite explicit about its functions along the lines of what we saw in New South Wales.

THE CHAIR: Thank you very much.

Hearing suspended from 12.22 to 1.23 pm

McKENNA, MR ADRIAN, Co-Chair, Criminal Law Advisory Committee, ACT Law Society

THE CHAIR: We welcome the witness from the ACT Law Society. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would you like to make an opening statement?

Mr McKenna: Yes, thank you. The Law Society welcomes the opportunity to speak with the committee today. We acknowledge the policy intent underpinning the Crimes (Coercive Control) Amendment Bill 2026 and the ACT government's commitment to addressing serious and ongoing forms of family violence.

We are pleased that the bill has improved significantly from earlier iterations. In particular, we support the decision to require intention rather than recklessness as the relevant mental element, and the proposed two-year delayed commencement period to allow for training, community education and system preparedness. However, we remain concerned about the breadth and complexity of the proposed offence. As drafted, it extends beyond intimate partner relationships to a wider category of family members, creating uncertainty about the types of conduct that may be captured and increasing the risk of unintended consequences.

The Law Society is also concerned that key concepts within the bill lack sufficient clarity. Coercive control is, by its nature, a complex and highly contextual form of behaviour. Without clear and consistent definitions, there is a risk of inconsistent decision-making, overcharging and lengthy litigation, which may undermine confidence in this offence. This is particularly important given the significant demands that the offence is likely to place on police, prosecutors, courts, legal assistance services, and victim support services. Comparative experience demonstrates that successful implementation depends on extensive training, resourcing and ongoing monitoring.

Overall, we support a cautious and evidence-based approach. If the offence is enacted, it should be aligned with existing family violence frameworks, supported by robust safeguards, and accompanied by adequate training and resources. Done well, the legislation has the potential to strengthen protection for victim-survivors while maintaining fairness, clarity and confidence in the justice system.

THE CHAIR: Thank you for your submission and your comments. I want to kick off with something that you mentioned in your opening statement, around the fault elements of intent versus recklessness.

Mr McKenna: Yes.

THE CHAIR: Several submitters have given evidence to this committee, and we have had conflicting views. There are views in support of intent, and there are views in support of recklessness. One comment that I wanted to draw on was the evidence of one of the submitters—I think it was Women's Legal—that the element of intent is so hard to prove that it essentially renders the bill ineffective. I want to get your views on

that. I heard you talk about the bill striking the right balance. I want to get your views on whether you think that proving intent would be more difficult than proving recklessness, and why you still hold the strong view that that is the right balance.

Mr McKenna: Our view, from the Law Society, is that it is not an unusually high bar—intent is a mental element for quite a range of offences—in what we would anticipate would be coercive control offences, whether it is just intimate partners or former intimate partners, or whether the broader expanded family member use is included. It is likely to include things that will be fairly obvious, one way or the other, about things like phone records, emails between partners, social media messaging apps between partners or family members, letters, recorded phone calls, recorded mobile phone videos or audio recordings. These sorts of things very commonly come up in family violence offences, in my experience. There can be little doubt in the right cases, where the evidence is there, that intention can be established, particularly when there is basic corroboration of what a complainant would say.

Yes, necessarily, intention is a higher bar than recklessness, but it is a question, as you were alluding to, about what is the right balance. This offence, importantly, as one of its elements, has that the DPP do not have to prove the specific incidents that underpin the coercive control offence. That is a departure from most criminal offences—a fairly significant departure. Something of that nature, for example, exists in the very serious, persistent sexual abuse offence, but that is a lower bar than almost all other offences, to have no requirement to have to prove specific incidents within an offence.

There are steps that have been taken in terms of what is drafted to make proving an offence easier in the right circumstances, but in terms of taking that additional step on top of that, and in the context—it cannot be forgotten—of this being a human rights jurisdiction, where a potential defendant is entitled to know precisely what an offence is and what are the limits of an offence, and not have it be an impossible grey area, we would respectfully submit that intention is the right fault element, and it does strike the right balance.

THE CHAIR: There was a comment from the Victims of Crime Commissioner that, in the ACT, the applicable recklessness test has a significantly higher threshold than the equivalent test in New South Wales. I want to get your views on that. The submission is that recklessness should be considered as the right test because, in the ACT, we have a significantly higher bar to prove recklessness than in New South Wales, for example.

Mr McKenna: I would not agree with that submission. I think that the fundamentals of recklessness are, putting it bluntly, being aware of a risk that an outcome will occur and proceeding with your actions regardless of that risk of an outcome. It is the same test, for example, that would apply in sexual assault in the ACT and in New South Wales.

The reason recklessness, we would say, is a problem for this offence, in part, is because coercive control should not be something that is accidental, an unforeseen side effect or a mistake. If the point of a coercive control crime is to capture deliberate mistreatment of a partner or a family member, and control of them, it should appropriately be very clear that it is intentional. It is clearly meant to be a form of

control of a partner and not an unintended consequence, perhaps, that might emerge out of other grey areas, like a legitimate argument that might arise in any relationship, or tension between family members that are not in intimate relationships, such as in an example of an elderly parent that might be at the stage where siblings disagree about whether they should be transitioning into aged-care assistance.

If recklessness was an element that applied, one could see how one sibling could take another sibling to the police for being reckless about insisting that their father, for example, be put into an aged-care home as soon as possible, against the wishes of the other sibling. That could be seen as reckless coercive control of that parent, whereas perhaps the community might think reasonable minds may differ about that argument.

MS CASTLEY: I think the idea of coercive control is that it is a pattern of behaviour; it is not just one recorded phone conversation.

Mr McKenna: No, that is right.

MS CASTLEY: It is not something that can be taken quickly, in one person's thought, to have had intent or not intent.

Mr McKenna: That is true. Obviously, it cannot be a one-off incident, and it has to be identified as being a course of conduct.

MS CASTLEY: Correct, yes.

Mr McKenna: But persons in intimate relationships, or parents and a child, as everyone obviously agrees, have extended arguments, disagreements, disputes and conflict about a whole range of very sensitive, family-related issues. It is very common for things to keep re-emerging over and over, in a relationship. The Law Society would say it is very important that the greyiness of what people would accept as conflict in a family is not too easily straying into a crime that carries, at the moment, a maximum of seven years imprisonment.

THE CHAIR: You mentioned that the legislation provides for legal uncertainty. Can you please expand on those legal uncertainties?

Mr McKenna: I gave the example of the aged-care debate. Another example of uncertainty, where the broad family members definition is applied, is a parent and child, in the sense of a child that is under the age of 18, and questions of discipline of that child. At the moment, using that example, family violence is not defined at all in this offence provision. Does family violence extend to a parent being intimidating of their child in arguing with or disciplining them about failing to attend school? What if that school non-attendance issue comes up over and over again for the parent and the child, and the parent is yelling at their child now? It is not acceptable conduct, in most circumstances, but should that be a crime of coercive control, of the parent trying their best to discipline their child? In a parent disciplinary scenario of their child, that is one example of where uncertainty can arise.

More broadly, as I said before, the lack of definition of family violence is a very significant uncertainty here. In both the New South Wales and Queensland equivalent

offence provisions, they do define what is the conduct that represents the offence. Submissions have previously been made in early iterations about this offence that a solution to the lack of a definition of what family violence is could simply tie it to the definition under the Family Violence Act, which is section 8. That sets out a broad range of tests. I do not see how, at all, it would undermine the intent of the offence provision. It would, clearly, be easier for police to determine what is and is not family violence and properly exercise the charging threshold.

We all might agree on what family violence is, but does your average person think that that means physical violence only, and not threatening behaviour? If there is no definition of family violence, aren't they entitled to think, if they have read this current charge provision, that it only extends to physical violence? That is an uncertainty and it is a problem.

The other problem, in terms of uncertainty, would be what arises from the broader family members' point of view, which I have already made various comments about. It is uncharted territory. That does not mean it should never be tried in legislation, but it is a reality that, again, in New South Wales and Queensland, those offence provisions are limited to intimate partners or former intimate partners. New South Wales is not yet at the stage where they are confident enough to expand the definition to all family members. There is uncertainty in going first in new, uncharted waters, in children and elderly parents, and even in very conflict-driven siblings that may be of roughly the same age. This offence could still arise, perhaps inappropriately, in some scenarios.

MS VASSAROTTI: I want to ask about something that has come up a couple of times, in terms of a number of submitters suggesting that the definition in the ACT legislation goes beyond that of other jurisdictions, whereas other submitters have said that it is actually aligned with South Australia and Queensland. I am a bit confused.

THE CHAIR: I am confused, yes.

Mr McKenna: As far as I am aware, the only jurisdictions in which it is currently an offence are Queensland and New South Wales. Elsewhere—

MS CASTLEY: Tasmania.

Mr McKenna: coercive control is adopted as a protective regime—protection orders, civil restraining orders—and there are various definitions of family members for that purpose. In terms of a criminal offence, my understanding is that the ACT would be the first to make it a family member and not an intimate partner or a former intimate partner. Certainly, “family member” is defined very clearly in the Family Violence Act. It is appropriate, of course, that there be a very broad definition for family violence orders to include children, elderly parents and the like.

I have the current Queensland and New South Wales acts with me. 334C of the Queensland Criminal Code says, “A person who is an adult commits an offence if the person is in a domestic relationship with the other person.” In New South Wales, section 54D of the Crimes Act says, “An adult commits an offence if the adult engages in abusive behaviour.” Again, that is defined, or if “the adult and other person

are or were intimate partners”. Very clearly, in New South Wales and Queensland, it is intimate or former intimate partners only. I am not sure about the status of South Australia—

MS CASTLEY: Tasmania.

Mr McKenna: I thought Tasmania might have been first with raising coercive control in a civil context, but I could be wrong about that.

MS CASTLEY: With the authorship of your submission, I would note that paragraph 4 says it is informed by the Law Society’s Criminal Law Committee. The society does not seem to publish names of the members, but I looked around, and it includes yourself, obviously. Your own website notes that you have previously defended a Yugoslavian war criminal convicted of genocide, an individual who previously ran 1800drinkdrive, and another individual whose website talks about his extensive work defending people accused of sexual assault. What contributions to this submission on the coercive control bill were made by people who are not currently engaged in criminal work?

Mr McKenna: We had input from our Family Law Committee about this bill. It is important to note that it is not just lawyers that work in criminal defence law in the ACT Law Society that have given input; I and many members also work in the protection order space, which includes family violence orders and personal protection orders, which includes acting, on many occasions, for applicants in support of protection. We have had input from family lawyers and lawyers that do a lot of protection order and family violence order work.

MS CASTLEY: You referenced the family violence and children committee; is that correct? Does that still exist?

Mr McKenna: The Family Law Committee. The family violence committee no longer exists, so input on issues relating to family violence usually comes from both the Criminal Law Committee and the Family Law Committee.

MS CASTLEY: Again, for my reference, who did you consult within the family—

Mr McKenna: I do not have a list of names, as to precisely what each opinion was of the many members of the Family Law Committee. The ACT Law Society consults any relevant committees on a regular basis. I could not give you the particulars of the number of emails or conversations between family law committees and staff of the Law Society. I am happy to take that on notice.

MS CASTLEY: Yes, that would be great, because I would like to understand whether it is fair to say that your submission has not sought specific collaboration with lawyers who deal with family law and domestic and family violence cases.

Mr McKenna: I think it is unlikely that that is the case, and I am happy to take that on notice.

MS CASTLEY: Given that your submission is the only one that I have seen that

opposes the criminal coercive control offence, and a number of supportive submissions have been received from practising lawyers, is it fair to say that the submission is not representative of Canberra's legal community?

Mr McKenna: No, it is not fair to say that. It is fair to respond that there are many genuine opinions in the Canberra legal community. Lawyers come from all walks of life. That includes prosecutors, defence lawyers, family lawyers, lawyers from Women's Legal Centre and so forth. The Law Society takes a position after consulting its relevant committees and makes submissions accordingly. But no-one can pretend that we have done a survey of all 2,000 members of the ACT Law Society or indeed—whatever the number is—5,000 members of the legal community, to figure out what the percentages are.

On the comment about this being the only submission opposing—if it were true—that there should be an offence at all, yes, initially we opposed it, and we still say that it is preferable that there is not an offence standing alone for this conduct, and that it can be captured as a general principle by other existing offences. But I would say that we have been very responsive and supportive of acknowledging that, with the decision, the tide, effectively, is that an offence is appropriate. We completely acknowledge that, and we have been completely constructive at all times in acknowledging that fundamental point that it is happening; the offence is happening in some shape or form, and we are here to help. Just because we initially said that we do not support a standalone offence does not mean we do not want to be a part of making it an effective, well-balanced and workable offence.

MS VASSAROTTI: I am interested in getting a little bit more information regarding what you said in the submission about the maximum penalty of seven years. You are saying that it is comparatively high, when you look at other offences in the ACT. We have had other submissions that have suggested that it feels about right, and that it is similar to some other offences in other states. I am interested in getting some further information about that.

Mr McKenna: The maximum penalty is the same, of course, what is proposed here, as it is in New South Wales. One of the big concerns about it being seven years is that it removes the ability of the Director of Public Prosecutions to summarily consent to lock in the jurisdiction of the ACT Magistrates Court to deal with this offence to finality, regardless of the views of the defendant.

Any offence that carries more than five years imprisonment cannot be “peffed”, as we say in the industry, which means the prosecution cannot file an election for summary disposal for any offence carrying a penalty higher than five years imprisonment. The concern is—and this is probably more a concern for victims, I would say, rather than defendants—is that defendants can have this offence, in its current iteration, committed to the ACT Supreme Court for trial. Current delays, from working in this field, in the ACT Supreme Court might be, from start to finish, about 2½ to three years at the moment. If it were misused as a tactic by a defendant to delay and obfuscate, that could be a big problem.

If it were five years imprisonment, that would match quite a lot of offences of its type, such as contravening a family violence order, the non-aggravated version of assault

occasioning actual bodily harm, and the like. Five years is the jurisdictional limit for the Magistrates Court for sentencing, anyway, so it would still have quite significant scope for sentencing for worst category cases of offences of coercive control, setting three or four years imprisonment for the appropriate matters.

I understand, of course, that it is the same as what New South Wales has. That is a fair point. In response to that, I would say not giving the DPP the power to elect for this to be dealt with summarily could be a problem. But nor would we submit that it would be appropriate to make this the only crime in the whole territory that has a special prosecution election power for the DPP. That would open a can of worms, I would suggest. We say that perhaps the appropriate maximum penalty could be five years imprisonment. It still provides the court with sufficient scope to reflect the criminality of the offence and avoids the possibility of it ever being committed to the ACT Supreme Court for trial, and a three-year wait, potentially.

MS CASTLEY: In one of the previous hearings, we heard that we would be the weakest jurisdiction, if we did reduce it to five years. What are your thoughts on that?

Mr McKenna: It depends on one's definition of "weakest". Yes, it would be a lower maximum penalty than the New South Wales and Queensland offence provisions, and it would be a question for the Legislative Assembly, ultimately, to decide what is the balance between having the toughest possible, so to speak, maximum penalty for the offence and the risk of having matters dragged through the Supreme Court, as an extension of, perhaps, family violence for three years, in certain cases.

MS CASTLEY: Are you aware of any other experts, service providers or stakeholders who are also looking to water down the timeframe, or are you the only ones?

Mr McKenna: Water down the timeframe? What timeframe?

MS CASTLEY: From seven to five; are you the only ones?

Mr McKenna: I have not studied other submissions about maximum penalty. I cannot speak for anyone else. I think I have made my point as to why a lower maximum penalty is warranted, on behalf of the Law Society, but I cannot speak for others.

THE CHAIR: Can I ask about that maximum penalty? The evidence we have heard is that there could potentially be a carve-out in the Crimes (Sentencing) Act so that you have a special provision where, for very serious offences, for example, there is an exception and they could be heard in the Supreme Court, but for less serious coercive control offences, they could be heard summarily in the Magistrates Court. I want to get your views on that.

Mr McKenna: In answer to an earlier question, I think there had been other submissions, from memory, raising the concern about the seven-year maximum penalty being not subject to a "peff". I thought there were others that had made that submission, so perhaps not—

THE CHAIR: Legal Aid.

Mr McKenna: Perhaps not a suggestion necessarily that it should be reduced per se, but that concern about what is the consequence of the seven-year maximum. Going back to the question, if the offence remained as is, with a seven-year maximum penalty, obviously, there is a capacity, as I said, for it to be misused. But there is also a capacity—and the system would probably work fine—for the courts to determine, or a combination of defence lawyers or prosecutors, what the rarer matters are that everyone agrees should appropriately be dealt with in the ACT Supreme Court. Because it would be an indictable matter, the test for the court is: is it appropriate that a matter be committed to the ACT Supreme Court? Usually, by convention, if a defendant does not consent for a matter to be dealt with summarily, generally, it is committed to the ACT Supreme Court, but it can be resisted by a prosecutor. In an appropriate case, a magistrate can find that it is not appropriate for a matter to be heard in the ACT Supreme Court.

Perhaps, if the seven-year maximum penalty would stay, our submission would be that there would not be any requirement to seek an additional carve-out. There is a capacity for matters that perhaps prosecution, defence and the court think are appropriately heard in the ACT Supreme Court to be heard in the ACT Supreme Court.

THE CHAIR: Just to clarify, so that I understand what your evidence is, my understanding—and please forgive me if I am wrong—is that, unless the alleged perpetrator elects to have the matter heard summarily, it must be heard in the Supreme Court.

Mr McKenna: No.

THE CHAIR: Okay, that is not correct.

Mr McKenna: No. A defendant does not have a veto, an absolute power, to keep an indictable matter in the Magistrates Court. By convention, in 99 per cent of cases, if a defendant does not consent to summary jurisdiction, usually not much is said in resistance to that, and a court commits the matter for trial or sentence to the ACT Supreme Court.

There are some matters where, if a defendant says, “I do not consent to this matter being heard summarily,” and a prosecutor in particular says, “We would submit that this is appropriately dealt with in the Magistrates Court,” and there is a contested question about jurisdiction, the Magistrates Court, under section 375 the Crimes Act, has the power to decide what is the appropriate jurisdiction.

It is possible for a prosecutor to persuade a magistrate to stop a defendant misusing the system and committing the matter for trial. The concern is that that does not often happen. It is quite rare—very rare—that there is a jurisdictional debate between a prosecutor and defence lawyer with a magistrate about whether a matter should be in the Magistrates Court or the Supreme Court.

MS CASTLEY: I have questions about your submission. Paragraphs 14 and 16

suggest that the offence could capture ordinary disciplinary actions of parents to children or adults exerting pressure on elders. I believe we have discussed this briefly.

Mr McKenna: Yes.

MS CASTLEY: Given the fault element of intent and the defence of reasonableness, what conduct is at risk of being wrongly criminalised, in your view?

Mr McKenna: At the moment, as I have said, the definition of family violence is not clearly set out. If section 8 were adopted, coercive behaviour is one of the definitions under family violence, emotional or threatening behaviour, or economic abuse. One can imagine scenarios where a parent withholds pocket money from a teenager. Perhaps that is done by the father, and the mother thinks that is very wrong and unfair, and it is intentional by the father to withhold pocket money from the child because they think it is a form of discipline. I can construct an argument that that would be a contravention of the coercive control act. If that is economic abuse and it is intentional economic abuse against a family member, that could be charged and potentially prosecuted. Other examples—

MS CASTLEY: I think I get where you are going.

Mr McKenna: Yes.

MS CASTLEY: Paragraph 16 says that the bill risks criminalising conduct that should not be addressed through criminal sanctions. Can you provide one example of the conduct that you have in mind that you believe constitutes coercive control, where it causes harm to an individual, but it should not be criminalised?

Mr McKenna: Yes, the example I gave before.

MS CASTLEY: Yes, okay.

Mr McKenna: There is the example I gave earlier of debates about an elderly parent being put into a nursing home, effectively, or not. That can be intimidating for the elderly parent, if they perceive it is unfair that a daughter, for example, is strongly pressuring them to move into a nursing home as being for their own good. There is harm being occasioned to the elderly person, depending on the circumstances. It is intentional; it could be seen as emotional or psychological abuse, under the definition in the Family Violence Act. It could be seen as threatening behaviour.

If you were to ask members of the community, and if they were apprised of all the facts, they might think that it is inappropriate behaviour of the daughter to pressure their father to go into a nursing home. But there are always questions in society about what is inappropriate, perhaps unbecoming, morally questionable and grey conduct that should not stray the lines of a crime that could result in a deprivation of your liberty.

MS CASTLEY: Finally, going back to the submission, could you confirm whether the Elder Law and Succession Law Committee was consulted on your submission?

Mr McKenna: I cannot confirm that. I can take that on notice.

MS CASTLEY: Thank you.

THE CHAIR: On behalf of the committee, I thank you for your attendance today. As you have taken questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*.

Short suspension

TOUGH, MS CAITLIN, Minister for Human Rights, Minister for Community Services, Minister for Corrections, Minister for Women, Seniors and Veterans and Minister for the Prevention of Domestic, Family and Sexual Violence

BANKS, MR GERRY, Acting Executive Branch Manager, Domestic, Family and Sexual Violence Office, Health and Community Services Directorate

BUXTON, MS CLAIRE, Executive Branch Manager, Legislation Policy and Programs, Justice and Community Safety Directorate

HAIGH, MS KATHRYN, Deputy Director General, Justice and Community Safety Directorate

NG, MR DANIEL, Executive Group Manager, Legislation Policy and Programs, Justice and Community Safety Directorate

WINDEYER, MS KIRSTY, Deputy Director-General, Community, Health and Community Services Directorate

THE CHAIR: We welcome, Ms Caitlin Tough MLA, Minister for the Prevention of Domestic, Family and Sexual Violence, and officials. Please note that as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would anyone like to make a brief opening statement?

Ms Tough: No; we are happy to go to questions.

THE CHAIR: Thank you very much. Thank you for your attendance today and thank you for coming back. There is tension between various submitters around the definition of coercive control and what is likely to be captured in the legislation. Some of the submitters, particularly the Women's Legal Service, have indicated that there are some conducts that are not captured by the current definitions in section 8 of the Family Violence Act, particularly conduct relating to systemic abuse in a cultural context. I just wanted to know how you see that view reflected in the legislation and whether or not there is a scope to expand the definitions to include those conducts.

Ms Tough: I will start off and then hand to officials if there is anything else anyone wants to add. The definition to start off with is that coercive control is a pattern of abusive behaviour aiming to dominate and control a person. It is that pattern of behaviour around controlling someone or trying to coerce them into doing something. We have settled on a definition of family member. So it is not just an intimate partner; it can be provided to the whole family. It is an offence that applies to adults—adult relationships with adult children, but not to children, even if they may be showing some of those behaviours. It is a pattern. Does anyone else want to add anything to that definition from what has been discussed earlier?

Mr Ng: Chair, I think what I might do is expand on some of the evidence I gave this morning. I think you referred to the content of the definition of family violence in the Family Violence Act, which is picked up in the Coercive Control Bill. You have received evidence through the course of today which outlines the different heads of family violence—physical violence, sexual abuse, emotional abuse, psychological abuse and economic. These are fairly broad concepts, but one of the considerations that went into picking up that definition was the support and the ability for justice agencies and community sector agencies to understand and implement these. Coercive

control in the concept of family violence as currently articulated in the Family Violence Act has been in place for some time. It is well-known to justice agencies and community sector agencies. One of the considerations in the context of introducing what is a quite novel offence for the ACT is that it did leverage off a more familiar set of terms that are known in the justice sector and community.

THE CHAIR: One argument I have heard is that the definition of harm does not capture financial harm. Are you saying that that is covered?

Mr Ng: Just to make sure I am answering that question correctly—

THE CHAIR: Or reputational harm even.

Mr Ng: There is probably a dichotomy between concept of activities which constitute family violence as opposed to the kind of concept of what harm occurs. A useful way to describe it in the context of family violence and the types of activities that could constitute a course of conduct that would be coercive control, economic abuse is specifically mentioned as one of those heads of family violence.

THE CHAIR: Are you saying that those harms fall within the umbrella of, say, economic abuse, for example?

Ms Haigh: To build on Mr Ng's answer: yes, that is right. When you are looking at what is picked up through this offence, you have to read in full the definition of family violence in section 8. As Mr Ng said, that steps through a number of actions, and that includes economic abuse. That is specifically articulated in the Family Violence Act.

THE CHAIR: Where would reputational harm, for example, sit in that definition?

Ms Haigh: There is in that a range of examples that are given, including item number 5—"emotional or physical abuse, economic abuse, threatening behaviour, coercion or other behaviour that controls or dominates a family member or causes a family member to fear for their safety or wellbeing of the family". They are very broadly drafted provisions. As we heard from the police this morning, there is a range of evidentiary practices that they would look at to see if those elements were satisfied.

MS VASSAROTTI: We have had a number of submitters that have actually not made the link between section 8 in the Domestic Violence Act and how it links to this legislation. That includes people that have come from the legal fraternity as well. So I am interested in your perspective. Are people not picking up something in the legislation or would there be—

THE CHAIR: Hence the confusion.

MS VASSAROTTI: Yes. Is there an opportunity to potentially explicitly make that link so there is not a confusion?

Mr Ng: Yes, certainly, Ms Vassarotti. The manner of drafting is something we work really closely with the Parliamentary Counsel's Office on. Some of the considerations

we have in mind go to the integrity of the statute book making sure that there is not a duplicative conduct out there and, if we are seeking to leverage off existing definitions that already sit in other legislation, that it does not just get doubled every time one introduces a law which uses that term.

But I would agree that there is a benefit in guidance materials which could crystallise the intended operation of these laws. That is one of the regular things we might do with a piece of complex new legislation and make sure there is guidance materials out there and education materials which properly articulate the intended operation of the legislation. One can accept that the range of legislation working together has raised different views about how it is intended to operate. But it probably goes to the importance of that implementation work, which has been highlighted as important over the next couple of years.

THE CHAIR: Thank you. The proposition I wanted to test with you in the previous session was around the Victims of Crimes Commissioner’s evidence about the test being “reckless” rather than “intent” and her submission that in the ACT the applicable recklessness test has a significantly higher threshold than the equivalent test in New South Wales, for example. I just wondered whether you had given any consideration to that and whether you considered that position to be accurate?

Ms Tough: I am happy to jump in on that one. Following on from what the Victims of Crime Commissioner raised this morning—that the ACT’s legislation does have a higher threshold for recklessness than the New South Wales threshold—the fault element of intent was considered the most appropriate fault element here in the ACT for the legislation, partly because it is a complex and novel offence. It is something new for the ACT and fairly new across Australia.

“Intent” is consistent with what other jurisdictions have had in their legislation. So it enables the ACT to consider what is happening in other jurisdictions, with a like for like comparison on that. “Intent” is capturing the nature of coercive control as a deliberate and targeted course of action rather than a behaviour which might legitimately be protective. So it is a safeguard in that. Although the threshold of “recklessness” here is higher than New South Wales, it still poses a risk of potential over-criminalisation, as determined through the consultation so far. That is why we have landed on going with the “intent” threshold.

THE CHAIR: The evidence we heard from the Women’s Legal Centre was that that test essentially weakens the bill and probably does little to nothing to protect coercively-controlled victims. I wanted to get your views on that, whether that is an appropriate representation and how you had considered those submissions in the draft.

Ms Tough: I appreciate everyone’s views. I think I should start off by saying that we are really open to what the committee comes back to us with recommendations on all parts of the bill, noting it is quite a novel offence. We are open to hearing everyone’s views. Landing on “intent”, after hearing many different voices throughout the drafting and consultation period beforehand, is intended as both a safeguard for people being misidentified and for over-criminalisation and sticking with what other jurisdictions have done. I might hand to Ms Buxton, who was the co-chair of the steering committee for some of the views that were heard throughout.

Ms Buxton: Through the steering committee, we heard various views, particularly on the fault element. I think one of the important things to note with adopting the fault element of intent is that it was intended to, I suppose, guard against unintended consequences and the possibility of over-criminalisation of conduct. Particularly when we note—as we spoke about earlier in the hearings today—that we have adopted a broad definition of scope of relationships, I think the risk of unintended consequences may be higher if we had both “recklessness” and a broader scope of relationships. Attempting to find a balance within the offence, through extensive engagement both within the steering committee and with stakeholders directly, we concluded that the risks were particularly heightened for vulnerable communities, noting the broad scope of relationships, and therefore went with “intent” as the fault element.

Ms Haigh: If I may briefly add, you have heard evidence that we modelled these provisions closely on the New South Wales and the experience of other states and then there was the evidence this morning from the police that, with the passage of time, they are seeing the number of prosecutions in New South Wales increasing with the fault element of intent.

MS VASSAROTTI: Thank you for going there, because I wanted to pick up on that evidence that we talked about this morning and getting that information about the fact that prosecutions are picking up after that first 18 months. Again, we heard some fairly compelling evidence from the Women’s Legal Centre that, while we might be seeing that increase, when you look at the prosecution of coercive control, particularly in the context of domestic violence offences, it does not get even close to being proportionate in terms of the incredible 29,000 or something offences—

THE CHAIR: It was 219 something.

MS VASSAROTTI: Yes, 219 prosecutions and one successful. Then there has also been a reflection that we have taken quite a long time with this, with the recognition that we were seeing what was happening in other jurisdictions. In terms of learning from those other jurisdictions, going back to that discussion around “intent” versus “recklessness” and the experience of New South Wales and the fact that it has been relatively difficult to see prosecutions, do you think there is room for further reflection on that element in particular?

Ms Tough: Like I said, we are open to hearing what the committee comes back with and hearing all the different stakeholders. I think having the oversight committee will be really helpful in that first period of the legislation in the implementation and then the early stages of it being a crime in helping report back to government on what is being heard on the ground and what people are experiencing. The statutory review a few years after commencement will also help us go, “What did we hear? How many successful prosecutions were there? How many unsuccessful ones were there?” and really help us to understand what is going on on the ground. But I appreciate that there are a wide range of views. We have landed where we have trying to balance the safeguards as well as making sure that coercive control is recognised as a crime.

MS CASTLEY: While we are on intent, we heard previously from the ACT Law Society that this offence could lead to a parent being charged for withholding pocket

money or a family could be charged for putting their parent in a nursing home—for potentially seven years. Does the government actually believe that that is a credible concern? There must be other areas of law where this sort of stuff is also taken care of. Can you talk to that with this legislation?

Ms Tough: Yes, definitely. That is why this legislation has safeguards in place. Part of that is the intent—you have to be intending to cause harm to the person—and there is a defence of “reasonableness” as well. If the course of conduct is seen as being reasonable in the circumstances that it is occurring in, then that is not criminalised. Those two safeguards are there to make sure that in some situations where someone might go, “Is that coercive control?”, in the context of how it is occurring, it would not be coercive control, to try and protect people from misidentification or things like that.

MS VASSAROTTI: I am interested in getting a bit of a reflection around the maximum penalty. There have been a couple of submitters that have talked about the challenges of the seven-year maximum penalty particularly meaning that it will go through the Supreme Court, and that might have significant detrimental impact on victims because of the timeframes and delays. I would also be interested in a reflection on whether that is in line with other jurisdictions and the types of offences. It would be useful to get your perspectives on whether those things were considered in coming to the maximum penalty and getting any further info that would be helpful for us in considering those submissions.

Ms Tough: The maximum penalty being seven years is to reflect the seriousness of coercive control as a crime and the harm that it causes. We are showing that it is not just a small thing to do; it is a crime and we are recognising that seven years is an appropriate penalty for the offence. It does also align with New South Wales and South Australia. It is shorter than the Queensland maximum penalty, but we thought it lands in a good spot to show that it is a crime. It also gives the police a broader range of investigative tools that might not be available at a lower penalty. I am happy to pass to officials for what was heard during the steering committee about why we landed in that spot.

Ms Buxton: Thank you, Minister. To add to the minister’s response, another reason is that the seven-year penalty is commensurate with other like offences in the existing ACT legislation, including stalking, for example. Again, as the minister said, the reason we landed on seven years is to reflect the seriousness of the conduct. We recognise that that means that the offence will be tried in the Supreme Court in most cases. But, again, it is to reflect the serious nature of the conduct.

MR WERNER-GIBBINGS: The bill establishes the Coercive Control Advisory Committee to provide advice to the minister responsible for the Domestic Violence Agencies Act 1986, which is currently Minister Tough. How is that committee going to work? There are a number of committees and advocacy groups that we have heard about or discussed that are going to be involved in the development and use of this legislation. What types of advice is that committee going to provide to the government?

Ms Tough: Great question. The committee is a formal mechanism to receive advice

from key stakeholders so we can actively monitor the progress in the implementation periods and then in the first year of the offence after it commences. It will help the minister, myself, actually hear from the ground what is happening, how implementation is going and how the offence is working in the first place. It will give us that flexibility of understanding what is going on as it is happening in the early days. Is there anything other officials would like to add about the importance of the advisory committee?

Ms Windeyer: Thank you for the question. The advisory committee can also establish expert reference groups to support its advisory functions. That will enable a broader range of experts to provide support and advice to the minister.

MR WERNER-GIBBINGS: Can it establish those groups on its own volition?

Ms Windeyer: We will just check that, Mr Werner-Gibbings.

Mr Banks: I do not believe it can do it on its own volition. I will defer to my JACS colleagues for the exact wording of the bill.

Mr Ng: Happy to, Mr Banks. I refer the committee to clause 6 of the bill, which contains section 433. Subsection (4) of that provision enables the advisory committee to establish an expert reference group to assist the committee in the exercise of its functions. There is a bit of agency there for the committee to consider whether it is useful or desirable. Some of that goes to the intent and focus of the advisory committee on what the core issues are at the particular stages of implementation. There is a space for the committee to operate prior to the commencement of the offence itself, and then there is a further opportunity for the committee to provide support to the minister after the offence has commenced.

Ms Tough: Just on that, I would add that, just in advance of the establishment of the committee, the scope of its functions will be settled by the minister, which will include its terms of reference. So just before it commences, there will be that scope actually visible for everyone to understand what it is doing, and we will settle that before it occurs.

MR WERNER-GIBBINGS: At this distance, is there an idea of what it is going to look like and what the make-up of the committee will be—public servants, victim-survivors, legal professionals, crisis support services? Is that being thought about?

Ms Haigh: Presently, the bill does not specify the membership. The thinking behind that is to ensure that there is sufficient flexibility to enable the membership to be flexible and responsive to emerging issues. But, obviously, I think we would look at what is across the system already and provide advice to the minister on what we thought would be best reflective of all stakeholders.

Ms Windeyer: That is right. Stakeholders talked about the need for diverse representation on the advisory committee, which is accepted. So you would expect that there would be wide representation, for example, from people perhaps with lived experience or their advocates, the DFSV sector, the legal sector, the Aboriginal and Torres Strait Islander community, the multicultural community, the LGBTIQ+

community and others. Certainly at this stage that will be considered as part of that further work in development of the scope of the advisory committee and its membership.

Ms Tough: And if the committee does have views on this, please—

MS CASTLEY: We certainly do have views.

Ms Tough: Yes, I know you have had lots of views. If this is something the report covers, we are very happy to take views on board.

MS CASTLEY: It looks like it could just be the minister.

Ms Tough: It will not, but—

MS CASTLEY: That was a concern for me. With the police group this morning I briefly touched on extraterritoriality, and they gave some really great answers. But I have a couple of more questions. How will the ACT offence operate with regard to family or the intimate relationships between an individual who is based in Canberra and an individual who is based in Queanbeyan? Is it the ACT government's position that the offence will apply in a situation where coercive control largely occurs in New South Wales but against an ACT resident? Can you just expand on that for me?

Ms Tough: Yes, definitely. I am just reading through my notes after your session earlier, because it is a really important question, recognising that, being a city-state, surrounded by a different state, there are a lot of interjurisdictional relationships and different family make-ups. So it is a really important that we get it right. The geographical nexus exists where the offending occurs wholly or partly in the ACT or conduct occurs outside the ACT but has an effect in the ACT. If the perpetrator is living outside the ACT—I think that was your example—but directs coercive and controlling behaviour towards a victim-survivor in the ACT, the offence may apply because the harmful effects are experienced here in the ACT.

MS CASTLEY: Okay. From a digital perspective, it could be all over the place. Does the government have safeguards in place for ACT residents to make sure that that is taken care of as well?

Ms Tough: If the pattern of coercive control is occurring across multiple jurisdictions, the offence may apply because the offending part of it is occurring here. Mr Ng, do you want to add anything?

Mr Ng: Yes, I am happy to. Ms Castley, if I could clarify: does your question go to the manner in which this will operate in the other jurisdictions—for example, in the Queanbeyan scenario?

MS CASTLEY: Yes, I guess so. There is every chance that you could live in Canberra and be in a relationship with someone in Queanbeyan. Why has the government not considered, like Victoria did, putting in the bill that there will be this ability to go across the territory?

Mr Ng: Understood. The only reason that we did not have a standalone provision in the same way that Victoria did was that we had the ability to leverage off an existing provision in our Criminal Code, because we are a code jurisdiction as opposed to the commonwealth jurisdiction of Victoria.

Ms Buxton: I would just add to that. You were talking about use of technology. The legislation currently contemplates family violence being perpetrated through the harmful use of technology. There are examples of using a computer system to deny access to a family member and using electronic messaging to send abusive or threatening messages. That is currently contemplated in the legislation as part of the definition of family violence. So, certainly, control or coercion that occurred by electronic means from someone in Queensland to someone in the ACT would be encapsulated.

MS CASTLEY: And regardless of New South Wales, Queensland, because you could have family members trying to put someone in a nursing home from Queensland or Western Australia.

Ms Buxton: Yes.

Ms Tough: Yes. The wonderful bit about the Criminal Code is that it is already embedded in our legislation that you could be somewhere else other than the ACT. It is a really important thing to make sure we have that right.

MS CASTLEY: Thank you.

THE CHAIR: I have remembered the examples I wanted to use about the definitions of coercive control from the Women's Legal Service. That was that, in their view, there are instances where the threat to a visa or of a report to immigration or child protection should constitute coercive control. I just wanted to get your views on whether you see that being captured in the current definition under section 8.

Ms Haigh: It is a great question. I think the point we would make is that the definition of family violence is very broad and, depending on the particular facts and circumstances of those examples, the definition would be broad enough to include that kind of behaviour. The definition of family violence includes coercion or any other behaviour that controls or dominates a family member or causes a family member to fear for their safety or their wellbeing. It does not articulate exactly what the facts are that might cause those feelings to arise, which I think in many ways ensures a more expansive application. Ms Buxton, did you want to add anything?

Ms Buxton: I suppose the only thing I would add is that we are committed to continually reviewing our laws, including family violence laws, in consultation with stakeholders to make sure that they are fit for purpose and remain modern. Our understanding of family violence continues to evolve. So, for that reason, we engage on a very regular basis with stakeholders, some of whom you have heard from today. It is something that we are always committed to considering.

Ms Haigh: I might add that another part of that definition concerns emotional or psychological abuse, and that provides examples such as stopping a family member

from visiting or having contact with families or friends and stopping a family member from engaging in cultural or spiritual practices.

THE CHAIR: Thank you. My last question is around funding for implementation of the legislation. The concern raised by some of the submitters is that we have had success to develop this legislation when you compare it to the work that has been done in New South Wales, but there is not currently any budget line item to go towards the implementation of legislation if it does pass. I just wanted to get your views on that.

Ms Tough: That is a great question. I am working with my ministerial colleagues, particularly the police minister and Attorney-General, to engage with the justice agencies to understand any additional resourcing requirements needed to support implementation with the new offence, because we know that, once you tweak one part of the justice system, there are flow-on effects to different parts—so just understanding how that might come about—and working with stakeholders so that we know how to safely and effectively implement this and educate the community across the implementation period.

We are currently scoping the implementation requirements to support the offence and building upon some of the work that has already been undertaken, such as the coercive control education campaign that happened last year. I see the advisory committee playing a really critical role in that work of understanding where best to target the implementation work alongside the work that is happening with the implementation of the Domestic, Family and Sexual Violence Strategy, which had an additional \$47.8 million over four years in this year's budget to support a broad range of frontline services.

So, all of that together, we are really working to understand what the needs are of the implementation period. Further resourcing will be a matter for the future budget considerations, but we are trying to understand where our best approach is and where we need to be putting the resources so that this is a really effective provision when it comes into place and that we can bring the community and all the services along with us in the uplift of education, understanding of the crime of coercive control.

THE CHAIR: On the advisory committee, I think it was Women's Legal Centre again who said—and forgive me if this has already been touched on—that it needs to be extended from 12 months at least until the post implementation period. Has any consideration been given to that extension of time for the advisory committee?

Ms Tough: Yes, recognising it runs three years from the notification of the bill, which really only covers the first year after coercive control is under crime. Part of that is so that we have flexibility in what the governance and the oversight look like going forward. That is not to say that the committee itself will not continue or there will be nothing; it just gives government flexibility to see at that point what the best structure and mechanism are going forward. Noting that in the sector there are a lot of different bodies, advisory committees and councils that operate, it just gives government that flexibility to know where best to turn at that point looking forward.

THE CHAIR: Thank you very much. On behalf of the committee, I thank you for

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your evidence today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you.

Short suspension

FORD, MS JULIETTE, Victims of Crime Commissioner, ACT Human Rights Commission

THE CHAIR: We welcome the Victims of Crime Commissioner. Please note that, as a witness, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would you like to make a brief opening statement?

Ms Ford: Thank you, Chair. Could I please open by confirming that I support the criminalisation of coercive control by the introduction of a standalone offence—that is, with the objective of improving the recognition of and responses to coercive control in ACT criminal law. At the outset, though, it should also be noted that the introduction of this standalone offence can only be one of a suite of measures to improve whole-of-systems responses to coercive control and family violence. In this regard, by way of evidence and as a matter of imperatives, I refer you to the *ACT domestic and family violence death review*, number one for 2023, commonly referred to as the “death review”. It studied homicides in the ACT from 2000 to 2020. In the majority of cases, an ongoing pattern of coercive control was identified and, in 75 per cent of those cases, there was a clear absence of or minimal physical violence. That would indicate that stepping in and identifying this particular set of behaviours early in the criminalisation of this offence is required, given the statistics that we know from data in the ACT.

This point is also well made in three other submissions—and I understand you may have already had the opportunity of hearing from the submitters this morning—that is, the Our Watch submission, the DVCS submission and the submission that was jointly prepared by Sisters in Spirit and Women’s Health Matters. I will not take you in detail to those submissions, but I would like to draw your attention to a couple of points. One is the point that is made by Our Watch, and it is significant: applying a primary prevention lens to this work in general to address coercive control under the ACT government strategy, by working with specialist organisations, by continuing to do community education campaigns and by investing in the uplift in the capacity and capability of those prevention organisations. They also have a point of view in relation to the membership of the oversight committee that I will refer to later on.

From a response perspective in particular in the introduction of this offence, the submissions that have been prepared by ACT Policing and by DVCS, the Women’s Legal Centre and others have all given comprehensive information in relation to the importance of appropriate investment to increase both the capacity and the capability of all justice agencies and frontline stakeholders. Again leaning into the work of the Elected Body’s submission and Sisters in Spirit with Women’s Health Matters, as well as other submissions, it is imperative that it includes ACCOs as well as what you might consider to be traditional justice agencies: the Women’s Legal Centre, DVCS, my organisation and others.

Coming from agencies is one point, but the imperative in relation to the necessity for this investment comes from the voices of victim-survivors. In this regard, I refer you to the work of the ANU Centre for Social Policy Research and their submission—the work that is set out at page 4 regarding the imperative—that is, the chilling effect of

encouraging and inviting victims to seek assistance from the justice agency. There is therefore the risk of putting their own safety at risk in circumstances where agencies or the systems do not have the capacity to appropriately respond. That is also a reference and a nuance of the Sisters in Spirit and Women's Health Matters' submission. It is a point well made. The work that was done to engage with and seek the voices of victim-survivors in that piece certainly informs and makes this overarching piece in relation to investment an imperative, to ensure that the offence is successful in its intent and being implemented.

In relation specifically to the elements of the offence, first, for an order to be effective, it must be capable of being investigated and it must be capable of being successfully prosecuted, and that must occur without delay. While the educative purpose of criminalising coercive control and alternative responses is important, the denunciatory effect of criminalising coercive control is undermined if the offence is not operational. In this regard, I am recommending that there be an expansion of the fault element, that there be an expansion of the definition of harm, and that we maintain the penalty at a maximum of seven years but make consequential amendments to the Crimes Act to allow the DPP, for this offence, to opt for the case to be heard in the Magistrates Court.

I am further proposing that the oversight mechanism is maintained until at least the conclusion of the review, and that the format and construct of that oversight committee includes stakeholders from community and has a large remit in relation to its terms of reference. Although I use the word 'large', I am using that word because often, when we think about the remit of an oversight in relation to the operation of an offence, we look at it in a very narrow frame. The imperative in relation to the success or otherwise of this offence will require a broader frame in relation to what the terms of reference of that oversight committee are tasked to do.

Chair, that was probably a bit longer than you anticipated, but I thought I would draw your attention to the key points in relation to my submission.

THE CHAIR: Thank you so much. I have a few questions. Where do I start? On the issue of the fault element—intent against recklessness—we have heard varying views about where that balance would sit. An interesting concept was proposed by the Women's Legal Centre. My sincerest apologies; they gave evidence about it this morning. In their submission, they said:

The Centre strongly recommends the Bill be amended to adopt a mixed fault element. The underlying family violence should be required to be intentional, while the resulting coercive or controlling effect should be assessed on the basis of recklessness. By requiring intentional engagement in the relevant conduct while assessing its coercive or controlling impact through the lens of recklessness, the offence appropriately focuses on the foreseeable consequences of abusive behaviour rather than the perpetrator's claimed motivations.

I want to get your views on whether you are aware of that proposal and how you think that would play out in practice, but, most importantly, how that would be reflected in sentencing.

Ms Ford: You have answered my question, Chair. The proposition intellectually is

interesting. The key issue is: how do you ensure that this offence on the books is operational and can be prosecuted and can be investigated? When I consider my colleagues at ACT Policing in relation to the necessity to investigate this offence, this should not be the first offence that has a complicated proposition in relation to fault.

I understand the government's point of view in relation to why they have proposed "intent". However, there is more than sufficient evidence available now to indicate that this offence, if it does not adopt a fault element of "recklessness", is at severe risk of becoming anachronistic on the books. The extensive data from New South Wales, which I am aware that you have been referred to by other submissions put today, makes it absolutely clear. The numbers for the first 12 months are: 225 reports; five went to prosecution; one was successful; two were withdrawn; and two are pending. I know that data has updated those numbers. But the point that has been made—and I may have overheard you put this to government—is that, when you look at that number of reports, as compared to the extensive number of reports of domestic and family violence that are made to New South Wales Police—and this is data in the Boxall and Bartels report—it indicates that we are looking at the tip of the iceberg.

We have before us evidence in relation to the fact of the challenges that New South Wales have already confronted in adopting intent as the fault element. We also have before us that already the relevant reference group has recommended to the New South Wales evaluation taskforce to review that particular fault element and to consider "recklessness". Given the timing in relation to operationalising this offence, it is more than likely that, by the time this offence is on the books and commences, New South Wales will have responded to what is clear data that indicates that having "intent" as a narrow fault element is not achieving what it was intended to do and it is not allowing further offences to progress.

There have been legitimate concerns in relation to adopting "recklessness" as a fault element, with regard to unintentionally capturing a group of people that should not form part of this offence or be investigated on this offence, or the issue of misidentification. On that, I would make two points. One is that the test of recklessness in the ACT—in the way it is drafted—is different to New South Wales. Some of those concerns are addressed by what our law currently says for post-2003 offences.

On the matter of misidentification, my response is from the work of Sisters in Spirit and Women's Health Matters. The work in their submission identifies that what is important is that, if you criminalise coercive control as an offence, you do the appropriate investment. At page 13 they say:

Misidentification will not be resolved by limiting the scope of relationship ... or by raising the fault element to intent.

In fact, by making an offence on the books one that is not capable of being prosecuted, you are putting people further at risk in relation to their safety. You have to do that investment piece to ensure that this offence is properly investigated by our first responders, who are properly skilled to do the work. Limiting the fault element is not the appropriate policy answer to that question.

THE CHAIR: The one position that the government put in terms of why the fault element of “intent” was put forward in the bill is that, if you read that in conjunction with the expanded scope of who is captured in the bill, it provides the appropriate safeguards required to prevent overcriminalisation. I want to get your views on whether you think that balance is accurate or whether you think—

Ms Ford: I do not consider the fault element as being the appropriate response, in relation to the fact that the scope of relationships is wide.

THE CHAIR: Broader.

Ms Ford: Again, I go to New South Wales, where there is already identification that it is important that a review of the scope of relationships is included. We further have a very clear stakeholder commitment in relation to the scope of relationships being broad. Otherwise, you run the risk of certain relationships falling within the scope of this offence, which could encourage coercively controlling behaviour to occur by other people outside the scope.

Regarding the question of fault, adopting “recklessness” and adopting the ACT test, in my view, allows for—with appropriate other investment—appropriate protection in relation to cases that should not be caught by this offence and should not be investigated. There is no point in opening the scope of relationships subject to this offence and then closing the door in relation to those offences being properly investigated and prosecuted, because we have the data that says the number of cases currently being investigated in other states and territories is minimal, and the number of reports in relation to domestic and family violence are in the tens of thousands.

Regarding the ACT government’s commitment to addressing domestic, family and sexual violence, where it is recognised that how people act is informed by coercive and controlling behaviours and if we are committed to a community that is going to lower and/or prevent it by primary prevention and response, we have to have an offence on the books that sends a message to community that this behaviour will not be tolerated.

THE CHAIR: I have a quick question around your suggestion about consequential amendments to the Crimes (Sentencing) Act. We have heard evidence from the Law Society that it is not up to the defendant to pick and choose where their matter is to be heard; that, in certain circumstances, the court would make the decision as to whether a matter can be heard in the Magistrates Court or whether it needs to be committed to the Supreme Court. Your suggestion comes from the fact that currently, because of the length of imprisonment proposed in the bill, it is up to the accused person to elect whether their matter is heard somewhere. I want to get your views on that position from the Law Society.

Ms Ford: The point of view of the Law Society, and focusing on what the current section in the Crimes Act provides vis-a-vis an accused’s option to either stay in the Magistrates Court or take the risk and remain in the Supreme Court, is one proposition. The point in relation to who makes that decision is not relevant to the question of allowing the prosecution to have the ability—withstanding the sentence is above five years—to choose to have the matter heard summarily. I imagine—and I have not

spoken to my colleagues at the Law Society—that the reason they are making that point is in response to concerns raised around it being a potential opportunity for an accused to deliberately delay and allow the proceedings to continue, from the point of view of the victim or complainant being at risk of further systems abuse. That is one point, and that is pleasing to hear.

The other point, however, which is important from the point of view of operationalising this offence, is to allow the DPP to have that option too. It is working to an either/or situation, which is the dilemma that has been the subject of discussion in this committee. Reduce the sentence to five years and the current section in the Crimes Act applies for the purposes of the prosecution; however, it does not send the appropriate message to community in relation to the seriousness of this offence.

Part of the piece of work that territory governments have done over the recent period is to send a real message to community that domestic and family violence offences are not tolerated; they are serious. With aggravated circumstances for certain offences, the maximum penalties reflect that. That does not limit the discretion of the final decision-makers. However, it is sending a clear message to community in relation to the seriousness of these offences or otherwise. The mere fact that it is preferable for some cases to be heard in the Magistrates Court versus the Supreme Court should not be the reason to inform the attitude towards this offence and what the penalty should be. A clear, obvious and simple amendment could be made to achieve the conundrum that is being discussed and addressed in submissions.

THE CHAIR: Thank you.

MS VASSAROTTI: You have made the point really well, as other submitters have—that this is one element that sits in a suite of work, including primary prevention. Also, a lot of work needs to be done around implementation. At 19. and 20. in your submission, you talk about the further consultation that is required, particularly to ensure that we do not have misidentification. In the context of delayed implementation and the implementation plan, I am interested in getting your perspective on how you think that should play out and the timing of it, given we will have delayed implementation of the bill.

Ms Ford: I certainly support the delayed implementation and it being a period of two years. There is obviously flexibility at the end of that period, if the work is not done, to contemplate an extension of that time, as necessary. However, having a two-year period keeps everybody focused in relation to the imperative of the work that needs to be done—staying within that frame. Regarding the consultation piece, I see this as a bit of an opportunity as to what that reference group or oversight mechanism should look like. I would contemplate that the standing up of that oversight mechanism can then drive and inform what the further consultation in the community should look like. Excellent recommendations are made across a number of submissions in relation to who should be on that oversight mechanism. There is also what I would certainly consider a best practice example sitting across the border in relation to the work that New South Wales has done in setting up an oversight mechanism and then an expert reference group. The legislation allows for an expert reference group to be set up.

The piece that is going to be important from that consultation is that the terms of

reference of that oversight committee are broad and do not take what I would consider the pure legal view. That is important. As a lawyer, I understand that the legal construct is important, but the legal construct does not occur in a vacuum. There is the proposition about the importance of data collection in relation to charges and prosecution, but it is also in the context of the number of reports of domestic and family violence—the piece that the ANU Centre for Social Policy Research refers to. But I also refer you to the submission from the Elected Body and the submission from Sisters in Spirit and Women’s Health Matters which ask you to consider: what are the definitions of success in relation to the implementation of this standalone offence? That is taking it to a broader piece, in relation to improving safety. So we start to measure not just the things and the doing but also what the outcomes were. Our Watch talked about seeing this as part of an overall piece of work that sits within primary prevention as well as the response piece.

So, when I am talking about consultation, I am talking about consultation into community and ongoing consultation with respect to victim-survivors. We have already, through Women’s Health Matters, mechanisms that are safe for that work to continue. It is about consultation across all of what you would consider to be your expected stakeholders—both within government and outside government—who do the frontline work, to understand what a successful prosecution looks like. That then means engaging with our colleagues at the courts, who will be dealing with these cases as they come forward.

The point is well made across submissions that we may see a group of victims that we do not see now—those who are experiencing coercive control, are existing in that environment and trying to remain safe, and may not feel that they can report now, because they do not feel there is a mechanism to report. An opportunity for agencies like mine to have greater eyes on those people and the risk that they manage, so that agencies like mine, DVCS and others can do the appropriate work that sits alongside this is the imperative. I have given a longer answer—

MS VASSAROTTI: No—it is a good answer.

Ms Ford: It is the piece in relation to what consultation looks like. It is an ongoing piece, it is a dynamic piece and it is a piece for government to then inform how it engages with this reform, not just as a law on the books but also what it means as a point of social policy and social change, in relation to behaviour. I do not need to draw this committee’s attention to how that is an imperative, given what we have seen and what has been reported most recently in relation to the number of homicides and sexual assaults.

MS VASSAROTTI: Thank you.

MR WERNER-GIBBINGS: I beg your pardon, Commissioner. Something the minister said in our previous conversation triggered something that I wanted to go back to—not for you; I wanted to ask her—so I have been looking for it and I could not find it. I am about to ask a question and I do not know if you have already responded to it. If you have, excellent; I will get it from the Hansard. Your submission recommends expanding the fault element to include “recklessness”, whereas other submissions—for example, the Law Society—oppose this. Has that been asked?

THE CHAIR: Yes.

MR WERNER-GIBBINGS: Okay. I will find the answer.

Ms Ford: What I would say is that I made a table to identify the number of submissions and the quality of the submissions, in relation to which submissions supported the proposition of expansion to “recklessness” and which submissions invited you to relook at the proposition of “intent”. Even when I looked at the submission from ACT Policing, their formal position is “intent”; however, they noted the work that is going on in New South Wales and also the considered debate that is proceeding now in relation to it. This particular reform has attracted a lot of attention and you have been provided with a number of extremely high-quality submissions. When I looked at the quality of the submissions, there was consistency on the fault element, the oversight mechanism, the penalty and the proposition of “harm”, which the Women’s Legal Centre and Legal Aid have drawn your attention to.

I did not address it in my submission, but I support entirely the point that is being made, and it was put quite succinctly in the Legal Aid submission. So, when I cast my mind across all of the submissions, I want to make it clear that my point in relation to “harm” was consistent with that of Legal Aid and was explored in the Women’s Legal Centre submission.

THE CHAIR: On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. Thank you. And, if you would like to table your table, we would love to have it, if it is table-able!

Ms Ford: Could I double-check? I am pretty certain it is all right, but I am sure that my team would like, before it was tabled—

THE CHAIR: I am happy for you to provide it on notice.

Ms Ford: I am more than happy to provide it to you.

THE CHAIR: Thank you very much.

Ms Ford: Thank you for the opportunity.

Short suspension

DWYER, MS LEAH, Director of Policy and Advocacy, YWCA Canberra
KARLSSON, MS TIFFANY, Chief Executive Officer, Canberra Rape Crisis Centre
WEBECK, MS SUE, Chief Executive Officer, Domestic Violence Crisis Service

THE CHAIR: We welcome the witnesses from the Domestic Violence Crisis Service, YWCA Canberra and the Canberra Rape Crisis Centre. Please note that, as witnesses, you are protected by parliamentary privilege and bound by its obligations. You must tell the truth, as giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Would anybody like to make an opening statement?

Ms Dwyer: In the spirit of solidarity, we pre-caucused and decided that we would just go to questions.

THE CHAIR: That is good. Ms Vassarotti, would you like to go first?

MS VASSAROTTI: Sure. Thank you very much for your submissions. We really appreciate it. It is a great thing to come at the end, because we have been talking about lots of things, and it would be good to get your perspective on some of them. You have covered some of them in your submissions. We have been talking quite a lot about the scope around fault, and intent versus recklessness. It would be good to get a sector perspective.

There has been a lot of conversation about the experience in New South Wales. While the government have said that they picked up the idea of intent to keep it consistent with other jurisdictions, there is certainly a perspective from people across a number of legal perspectives that that has seen a very low rate of prosecution and successful prosecutions. In particular, when you look at the significant reporting around domestic and family violence, coercive control has been a tiny drop in the ocean. There is a view that we have the evidence in front of us, and it is important to go to recklessness. I would like to start by getting a perspective from the sector around that issue and whether you think we have the balance right in the current version of the bill.

Ms Webeck: Our submission outlines our concerns that the balance is not right. While I can understand an argument about working to align with other jurisdictions, this is new across all jurisdictions. Frankly, there is more to learn about what not to do from other jurisdictions at this point than there is to learn about what to do. I do not think it is a valid argument to design legislation that impacts ACT victim-survivors of domestic and family violence based on other jurisdictions having done it that way, so it is a trodden path.

We hold concerns that have been, I am sure, communicated in this process not only by submission but by presentation, along with many of our sector colleagues, that the provisions around intent do not strike the right balance; that, in some ways, the argument around intent has been framed as a way of being able to test some of the issues we have seen around misidentification of primary aggressor. In our submission, we have outlined that that is a deeply disturbing platform to rest on, if we are looking at drafting legislation to protect people when misidentification occurs rather than resourcing implementation frameworks that enable misidentification to be an anomaly, rather than something that we plan to have to engage with for the majority of time.

We are certainly concerned around the current provisions of intent, as they stand.

Ms Dwyer: I also want to pick up on some of the commentary in an earlier session, with regard to the feedback that was received in the consultation. There was broad agreement, at least in the task force that was set up. It was implied that there was broad agreement that the fault element of intent was agreed to, and that is not the case. It was raised consistently, primarily by the frontline services sector, that it was not the standard that we wanted, and that evidence in New South Wales was showing that the intent element was holding back on effective prosecution of the offence.

The other thing to think about is that where someone goes to a police station and makes a claim, the police have to make a determination in that moment about whether there is an intent there. We know that perpetrators will say, “I didn’t intend to do it. I was doing it in our best interests. We’ve got to watch money at the moment, that’s why I cancelled the credit card.” Being able to have this, “I didn’t intend for it to happen that way,” or “I was just looking after our best interests,” is a defence that is routinely capitalised on.

It is about getting over that initial threshold of having a police officer in the moment respond to a claim, before it even lands in the hands of the DPP, for example, because their position was, “It would be easy to prosecute, because when you have all the evidence in front of you, the intent would be demonstrable.” We know that actually getting that first, initial response to be in your favour is very hard.

Ms Karlsson: I will jump in as well. We, too, through the consultations and in our submission, said that we were very concerned about restricting the fault element to intention. We thought that the high evidentiary burden would be detrimental to victim-survivors. We thought it would result in low prosecution and conviction rates, and that has been the case in New South Wales so far.

Between 2024 and December 2025, there were 473 coercive control incidents recorded by New South Wales Police and only 22 charges were laid. As of the date of our submission, only one was proven. It is pretty clear that it is not working in practice so far. We do not think, in relation to sexual violence, that this really high evidentiary barrier could be viewed in isolation from the chronic under-reporting of sexual violence. Sexual violence is both widespread and under-reported. Victim-survivors continue to face systemic barriers when seeking protection and justice; we know that is a fact.

We know that 92 per cent of women who experience sexual violence by a male did not report their most recent incident to police. We have consistently said that recklessness and intention need to be part of the fault element of the offence. We think the approach in the Scottish model is much better. That is the approach of the Domestic Abuse (Scotland) Act 2018. As a sector, we also heard others in the consultation say similar things.

THE CHAIR: We know that, in the ACT, the police are responsible for gathering the evidence to support the charge. The police gave evidence that they support the intent element of the bill. I want to get your views on that, noting that you have expressed strong views against that. Do you know why they support intent as against reckless? Is

it easier to gather evidence—

Ms Karlsson: It would be easier to administer.

THE CHAIR: than to support recklessness? I thought maybe you had a view on that. It was interesting to hear them support intent rather than recklessness. Is it because it would be easier to gather evidence?

Ms Webeck: I think the reasoning for prefacing intent for ACT Policing would be a question for them as to why they see that as the preferable model. When we are talking about significant social reform that is ultimately signposted by legislative reform, it is not uncommon for victim-survivor advocate or led organisations to be in a differing position than those policing the law and the operationalisation of that.

What we have seen in other jurisdictions around the complexity of advocating with police to pick up instances of coercive control and to investigate and apply resources to the investigation of that, is that it has proven an unintended consequence of the burden of collating evidence to victim-survivors, as well as to frontline service agencies. Individuals experiencing domestic and family violence are reaching out to provide information about their experience on any given day, or information or evidence that they have from a text message exchange and the like to sit somewhere, generally understood as evidence-banking, in order to have the ability to have that resource behind them, when they feel like going to police.

They might have issues with veracity of information to provide to police in order to convince police to investigate. A fundamental, primary barrier for victim-survivors is knowing that, often, reporting to police does not result in action because it does not meet a threshold of their assessment or their evaluation.

THE CHAIR: Of their own personal safety.

Ms Webeck: That is right. That then puts our service system in a really juxtaposed position, where you end up with frontline service agencies advocating, pushing and working with justice agencies to try and get them to recognise the experiences of coercive control, but you cannot even get them investigated to start with.

The concern around intent or recklessness is about the prosecution of those matters and offences, but the issue with whether it is intent or recklessness starts all the way back to when a victim-survivor comes forward and says, “This is what is occurring to me.” It goes to whether there is a decision to investigate and apply resources to work with that victim-survivor to gather evidence and information to assess whether or not charges can be laid. While it is a piece that has been housed in this kind of debate, about the ability to prosecute charges, it is actually about the ability for us to ever see those charges.

THE CHAIR: That is a good way of putting that; thank you.

MR WERNER-GIBBINGS: This question is for DVCS. The submission recommends that the government consider adequate implementation time to allow for training for police, judiciary, statutory child protection and the legal profession, as

well as the substantial cultural and system reforms that are needed. How long do you think it will take? Based on previous experience with implementation of reforms or changes, what kind of timeframe would be the base-level requirement in terms of time to get training effectively inculcated and cultural awareness raised?

Ms Webeck: If I had a clear-cut answer to that, we would not be here, because we would not be experiencing gender-based violence as an entire society. When we are talking about training and education, we are not just talking about training and education on the legislation or on the policing of that offence. Domestic, family and sexual violence is a pervasive social issue on which we are seeing backsliding around attitudes and behaviours globally. Just because somebody wears a uniform or has a particular position in a government department does not mean that they are not enculturated into the attitudes, behaviours and environment that allow violence against women and children to continue to be perpetrated, as well as all the other intersecting “isms”, “obias”, discrimination and exclusion of marginalised community groups.

We are not talking about understanding coercive control and the tenets of the legislation. We are talking about unpacking values, attitudes and behaviours, and creating systemic systems reform in institutions that are built on power and control. That is a thing on which we need to be eyes-on and active from now until the end of humanity, essentially. But when we are talking about the implementation of a legislative process like this, we believe that there need to be the appropriate mechanisms to engage the appropriate training. It is not just an e-learning module. It is about the nitty-gritty values, attitudes and behaviours.

With training, it cannot happen from within institutions, because institutions grow hierarchy that operates on power and control. And that takes time; it takes resources. The question is: what resources are the government willing to apply to it? How are they willing to partner with expertise in the jurisdiction who can do that work for them? Really, it is about how long an implementation timeline can be.

We are not talking here about something simple. When we look at the domestic and family violence death review handed down last year, the number one finding in that internal activity of government was that, for women whose lives were ended due to domestic and family violence by suicide, the vast majority of them had been misidentified as a primary aggressor by policing, by child statutory protection, or both. This is not just about whether or not we put a successful rung into legislative reform. It is actually about people’s lives.

We think that the timeline is subject to what the government’s commitment is to resourcing that activity effectively. If it was a wholehearted, all-in, “Let’s co-design what that looks like. Let’s resource it effectively,” then potentially a two-year delay is manageable to do that work. But, depending on Treasury and budget cycles, it is probably more likely to be anywhere from three to five years.

I do not believe that we will get that lead time. I do not believe that we will get the investment and activity around implementation that we need, so we step back and we start to think about what are the pieces that need to be in place, in the hope of doing no more harm because of this.

MR WERNER-GIBBINGS: A brilliant answer; thank you.

MS CASTLEY: Ms Karlsson, we discussed what is not in the bill, and you were talking about relationships that are not covered. Could you explain a bit more for the committee what your thoughts are on that?

Ms Karlsson: Absolutely, and thanks for that question. This is the biggest issue for us in the sexual violence space. Coercive control can be perpetrated in relationships that are broader than just family relationships. We know, in terms of sexual violence, that around a third of assaults occur within the family, including intimate relationships, but also children, siblings, uncles, grandpas—the whole range of family relationships.

What we have been asking for throughout the consultation is for the bill to go far enough to reflect the areas where sexual violence occurs in our community. We want everyone protected through this coercive control legislation. We know that sexual violence occurs in a range of settings outside the home, in workplaces, sporting groups, nursing homes, daycare, schools, community groups, religious groups—everywhere. What we are really hoping for is an expansion of the scope of the relationship.

That was also reinforced in the Women's Health Matters 2025 report. I am sure they spoke to that as well. In their report, *'Too urgent to rush': victim survivor voice consultation report for improving ACT justice system responses and community awareness of coercive control*, victim-survivors highlighted that coercive control could occur in any relationship context where there is an imbalance of power. That is certainly true of sexual violence as well.

Other jurisdictions have a broader scope of relationship provisions, and we would really like that in the ACT. We want all victim-survivors of sexual violence to be protected by this legislation. We do not want it limited to just a subset of where sexual violence occurs. That has been our biggest issue throughout the consultation. It does not go broad enough to protect everyone who needs protecting by this.

THE CHAIR: Thank you. I have a few questions, particularly around the definition of what is included in coercive control. We have heard some evidence, particularly from the government, around the scope of the offending that could be captured under the coercive control definition. That is covered by section 8 of the Family Violence Act. We have also heard from the Women's Legal Centre, for example, that things such as the threat of a visa cancellation or the threat of a report to a child protection agency are not adequately captured in that definition. The government has given evidence this afternoon that that is captured—that the definition is broad enough that it captures that. I want to hear your view on that.

Ms Dwyer: In one of the sessions that we had with the steering committee, there was a general conversation about whether the Family Violence Act, as it is, is contemporaneous enough to meet the coercive control reforms that were being proposed. There was a wide discussion on section 8. I do agree with the evidence that Women's Legal gave. The understanding of family violence is dated from what we knew in 2016, with some minor tinkering here and there. But there is no reference to

examples of how a visa might be weaponised or how systems in general might be weaponised. We also might have examples in our client base where someone is denied the opportunity to learn English, as an example, to maintain their reliance on the family unit.

There is absolutely a need to review that. If we are going to have this two-year delay process towards operationalisation, there is the opportunity to look at the existing Family Violence Act and the definition of family violence, as well as the definition of harm, which I know is not in the Family Violence Act, but the coercive control bill refers to the definition. I do not believe that that definition of harm is suitable, because it only discusses physical forms of harm and psychological forms of harm. There is no discussion there about reputational forms of harm that might come out of coercive-controlling relationships, or financial harm that might arise.

I think there is a broad suite of reviews that could happen. It is a shame that the review of the Family Violence Act has been deferred. While we discuss family violence safety notices or we talk about coercive control, we are just pushing that down the road a little bit more.

THE CHAIR: Thank you. That is really useful to know, and you have also covered my other question, which was around the definition of harm. There is just one more proposition that I want to test, and it is around the length of imprisonment. There have been conversations about whether the length of imprisonment should remain at five years, so that the matter can be heard summarily in the Magistrates Court. But then it does not reflect the severity that is placed on domestic and family violence matters. There were some conversations about leaving it at seven years, but amending the Crimes (Sentencing) Act to have a carve-out provision, where the prosecution can elect for the matter to be heard summarily. I want to hear your views on that.

Ms Karlsson: From our perspective, we agree that the offences should be able to be summarily disposed of in the Magistrates Court, to avoid delays in the Supreme Court.

THE CHAIR: But without requiring the—

Ms Karlsson: Without requiring the defendant's consent, yes.

THE CHAIR: But leaving it at seven years; is that right?

Ms Dwyer: At seven years?

Ms Karlsson: Yes, to allow that to happen.

Ms Webeck: It is an interesting point to be discussing when, if we do not do the implementation right, the maximum does not really matter. We are having conversations about very finite semantics, without a guarantee that we are investing time in activity that will have a marked impact in our community.

However, we are absolutely aligned that the maximum penalty of seven years is an appropriate reflection of the gravitas of the offence, but we remain concerned that if there is not a carve-out that enables it to be summarily heard in the Magistrates Court,

we will delay justice; we will create slipstreams of ongoing harm for victim-survivors, and we will keep victim-survivors trapped in a system in which they have very little say, autonomy or ability to move on to recovery and healing, if they are still awaiting the outcome of matters in the Supreme Court that could take years to be listed.

We are very supportive not only of seven years but also of the pursuit of the carve-out, to ensure that it can be dealt with summarily in the Magistrates Court.

Ms Dwyer: There are carve-outs that do exist—

Ms Webeck: There are.

Ms Dwyer: with aggravated burglary and robbery, I think. When this came up in conversation, I almost felt like it was a bit of an anomaly that the government may not have considered. Our preference, obviously, would be in line with others, that the DPP have a discretion to have the charge disposed of summarily, that the consent of the defendant is not required, and that it is disposed of in the Magistrates Court to avoid that delay. My general view is that I hope that the government skipped this accidentally, and that a recommendation of the committee is that it gets addressed.

Ms Karlsson: I feel a tension between what I would like in principle, in terms of all of these offences, all the sexual violence sentencing laws. I feel that we want to send a message to the community that these things are not acceptable. Intuitively, I would like them to be really high, across the board. From a practical level, we have said we are keen for the lower level, so that it can be dealt with in the Magistrates Court. There is that principle versus practicality, in terms of how it affects victim-survivors.

MS VASSAROTTI: I want us to have a bit of a discussion around the oversight mechanism and oversight body. I note in your submissions some discussion around the fact that the legislation is pretty silent on that. While you would not want to be too prescriptive in legislation, there is a real risk in it being so open, so I want to get your perspective on what should be contained in the legislation, the guidance that we should be giving government in relation to forming that oversight body, and how it might operate in practice.

Ms Dwyer: My initial piece of feedback is that the bill itself has a three-year time period for the committee to exist and, given that there is a two-year delay to operationalisation, the committee can have a role—and it should have a role—in managing implementation prior to operationalisation, but the fact that there will only be one year of operationalisation, where we might be able to have the committee look at whether it is working on the ground, is problematic for me. Outside of the law reform that we have talked about already, there is a general need, in my view, for the advisory committee to essentially do the groundwork in terms of what we are actually capturing in the ACT and what we know about domestic and family violence as it happens. If we look at the BOCSAR reports and all the information that they capture when it comes to “What are the circumstances of an incident of coercive control?” we would not have that information in order to understand the effectiveness at all. That is just one element of it.

MS VASSAROTTI: This has been discussed with the government, with government

representatives, and the view is that the three-year timeframe does not mean that something will not be moving forward, but they want to maintain flexibility so they can work out what they need after that year of operation. What is your perspective on that?

Ms Webeck: I might take this one, if that is all right. I have sat at this table at a number of junctures and spoken about the complexity in the ACT. There are no domestic, family and sexual violence governance mechanisms occurring in the ACT, and the product of a robust and effective public service is not content expertise around domestic, family and sexual violence; it is about operating a public service, delivering outcomes for community, and partnering with expertise in a broad range of scopes, whether it be about small business or sexual violence. Actually, there has been a curtailing of all avenues for the domestic, family and sexual violence sector and expertise—which is quite robust here in the ACT—to have any kind of say, engagement or guidance in a formalised process. There are many intergovernmental committees, reference groups and discussions, but there is nothing happening with the expertise of the sector.

Regarding opportunities in other pieces of legislation, the Domestic and Family Violence Death Review is a great example. The legislation allows for an expert advisory committee. However, government chose not to stand that up, and we suffered for that. Extensive labour was put onto frontline service delivery agencies, and the outcome of that activity was far less than it could have been if there had been partnership with expertise to produce that activity.

My concern is that wishy-washy language is going to mean that there is no advisory group or reference group, or that it will be a consultation on the terms of government only and the information coming from there will be synthesised in a way that does not reflect the experience or the expertise of the panel. But also, at the end of that three-year term—with one year of having an operational piece of legislation—what comes next is determined by the government of the day, without the voices, and then the labour comes back to the frontline service expertise, where advocacy and activity have to take place in order to have voices heard.

At some point, if we believe what we are being told—that it is everybody's responsibility to end domestic, family and sexual violence in our community—we have to share power in that. That means committing to genuine partnership in creating the expertise to govern implementation. There is an opportunity for social and society reform here. We do not get another jump at this, so, if we fail at the three-year mark, we will have failed our community for generations to come. I am not sure that the expertise around domestic, family and sexual violence in the ACT that sits outside of public service environments can stomach that for much longer. Shared commitment, shared governance, shared responsibility, and shared accountability—anything failing that sets up our society to be promised something that will not be delivered.

Ms Dwyer: My fear would be that, in lieu of a robust advisory committee and oversight mechanism, the general observation or monitoring of progress would rely on perhaps a statement to the Assembly, which is reflective of the Family Violence Act. The minister gives an annual statement to the Assembly about the operation of the act and what they are doing, and, to be perfectly honest, it often reads like just

marketing—that the government is doing X program and X program, but it does not necessarily reflect the reality on the ground. My fear, which I expressed at the steering committee, is that, without having an actual advisory committee, I do not want to see this important law reform being reduced to one statement once a year at the Assembly—a statement that is written by public servants and is just about programs and how they might be working in the community.

Ms Karlsson: I do not mind what it looks like, as long as it partners with us and as long as it is genuinely looking at the issues that we have been raising here today. I feel that there are fundamental flaws and scope issues with the legislation. Whatever that body looks like, I want it to genuinely look at whether this is protecting our community in the way that it deserves to be protected.

MS CASTLEY: I feel that we have covered the same topics over and over today, across all of the different groups that have appeared. I imagine you have kept tabs on it during the day. Is there anything that you think the committee has not heard that would be important to take note of, as the last session of the afternoon? Is there anything that you would like to expand on?

Ms Karlsson: I would acknowledge that this is a fantastic start and I have been really pleased to be involved in the process so far. It is exciting that this is here and it exists. I just want it to go further and properly protect the community.

Ms Webeck: Coercive control is not new; it is new language to describe old behaviour and old patterns that we have not responded well to in criminal justice settings and systems or in responding to victim-survivors or, indeed, in mapping the behaviours of those using violence in our community. There are already mechanisms that enable policing around that and also enable charging for those particular activities or acts of violence that people use. Legislating against coercive control is as much about social reform as it is about the opportunity to lay more charges or an umbrella charge over somebody's use of violence. If that is how we are communicating, we run the risk at this point that we promise our community something that we cannot deliver—not policed, not charged, not convicted. It further harms victim-survivors by promising them one more thing that is not acceptable to you—"We have this legislation and we have this charge, but it does not apply to you." That further harms victim-survivors and compounds the impact of stigma, shame, discrimination and self-doubt about the experience that they have been enduring.

We have to get this right so that we can actually respond to coercive control in our criminal justice settings, right from the time when somebody reaches out for support, and that takes cultural and attitudinal change, not just mechanical training around how to police a particular crime. If we do not do that, we are not doing anything with this legislation. This is going to live or die by the implementation piece, and that is either a promise that we make to our community that we can fulfil or a promise that we make that further marginalises and harms those experiencing domestic and family violence.

MS CASTLEY: Could you expand a little. We both agree it is an old behaviour with a newer term. However, we heard from the police today that, until the physical violence act has occurred, they actually cannot charge anyone for a pattern of coercive

control without this legislation. My thought on this legislation is that the idea is that we want to catch it before it becomes a physical act of violence. So that I understand, what did you mean when you said that we are not actually helping society?

Ms Webeck: We often see the provision of an interim family violence order listing a series of behaviours and activities undertaken by somebody using violence. If we cannot get police to respond to breaches of that—to investigate, substantiate and then charge—that is an avenue where coercive control is on display for criminal justice entities, in a way where they can say, “We don’t need to charge under a coercive control charge, but it is a breach of a family violence order.” We cannot get a response there. When we have other forms of domestic and family violence, there are charges for stalking, harassment, intimidation et cetera. If we are not charging for that, why are we, all of a sudden, able to charge for coercive control, broadly?

MS CASTLEY: Because it is all dumped into one. I think the important point is that we want to make sure that, before they get to that point and the physical breach has occurred, the police could have been investigating in order to take action before that physical act occurred.

Ms Webeck: But they can. Stalking, intimidation and harassment are not physical acts of violence in the context of the law.

MS CASTLEY: No—coercive control is so much more than that.

Ms Webeck: Absolutely, but, if we are not actually policing the individual activities that sum up coercive control and responding to them in their own unique needs as well—if we are not doing that as a baseline—throwing coercive control over the top as an offence that can be charged for is not going to miraculously change the model of policing if we do not have the responses to victim-survivors. Yes, it is an easier form of bundling a series of uses of violence into one before physical violence occurs, but, if we are not getting the baseline policing of responding to concerns of threats of violence or harassment or text messages or surveillance or whatever it might be, why do we think adding another offence is actually going to change the social construct that we have for victim-survivors, where they are not getting the policing responses that they need?

MS CASTLEY: Perhaps more staffing for policing is the answer.

THE CHAIR: In light of all of the conversations we have had about implementation, I want to get your views on the fact that there is no implementation dollar amount in the current budget. The evidence we have heard from the government is that it would be included in the next budget and they want to work out the scope of what implementation would look like. I want to get your views on what you think the government should be doing prior to implementation and whether you see that as a weakness in the implementation.

Ms Dwyer: Prior to this, we had the coercive control ad campaign, if you remember. It was borrowed from New South Wales; it was not specific to the ACT. I think \$375,000 was budgeted towards it. It was on social media, from what I recall, and I am not sure of the extent to which it was successful or the impact it was meant to have.

I think it was just, “Let’s do this before we do that,” which is problematic in itself. In terms of the budget that might be set aside for implementation, how long is a piece of string? Maybe other people have a different view on it, but, regarding money expended so far, that is what I can refer to: the ad campaign.

Ms Karlsson: I would like to see some funding go to frontline services to be able to explain this. As have said before, the scope is not appropriate for sexual violence victim-survivors. We would need some funding, resources and materials to explain it. Say two parents come in the door with four-year-old child sexual abuse victim-survivors. One has been abused in the family home by the father; one has been abused in a daycare setting by a carer. One of them will be covered by the coercive control laws; one of them will not. How are my staff going to provide the support and explain, “This is coercive control for you, but it’s not coercive control for you,” when they are experiencing exactly the same coercive control? The inconsistency is problematic, and I think that needs to feed into the implementation and how, as a community, we are going to explain that we have picked some winners in terms of who is entitled to have protection through the coercive control laws.

Ms Dwyer: The sexual violence stuff is interesting to scope out a bit further. Tiffany and I were talking before we came in here. There is also what is outstanding. I refer to the model in the UK, where there is statutory guidance on what needs to be considered when the police or other investigators are looking at a possible coercive control incident. The list of things includes stuff that is difficult to codify: becoming socially isolated, having your reputation tarnished—all that kind of stuff. But, if we think about the sexual violence context, if a risk assessment is conducted that incorporates sexual violence, the question is not: “Have you been raped?” The question is: “Have you been pressured to engage in a sexual activity that you do not wish to take part in?” That is it in a nutshell.

There is an understanding in the broader community about sexual violence and perhaps within the police force or within how we read the Family Violence Act. If we see the words “sexual violence”, the common understanding of that could be “rape”. It is not: “My husband forced me to set up an OnlyFans account. I didn’t want to take part in it. He takes all the money, but I have to do this. I have to engage in these activities that I don’t want to engage in.” It is very difficult to understand that nuance without the expertise of the sector being involved. There is also the linear understanding of sexual violence in general. You might want to expand on that.

Ms Karlsson: To give one example, the perpetrator would be looking at a particular victim-survivor and saying, “How can I control this person?” In the example of the four-year-olds, for one of them it might be, “Don’t tell Mum or I’ll kill your dog”; for the other one it might be, “Don’t tell your mum or I will start on your little sister.” It is always dependent on what is going to work on the child in the particular situation. You cannot list all of the things; it is infinite and dependent on what the perpetrator is seeing as their way to control.

Ms Webeck: It highlights a need. It is an interesting analysis, but it highlights a need around some of the community translation and mapping issues, around where offences apply and do not apply. We have offences around child grooming and child sexual assault, and, as such, you would not necessarily have a duplication of coercive

control charges applied, because the principles around grooming are consistent in that context, but there may be coercive control charges towards a parental figure of the child who has been groomed. There is a need for some community literacy and mapping around the intention, where particular types of violence may be utilised and how it does or does not fall in. I think it signifies the need for implementation of some of the mapping work and some of the community literacy-raising.

On the question around whether this comes online and we wait until the next budget cycle, we have made some decisions without line of sight to reality, because that next budget cycle could be a \$150,000 allocation, with a decision to do one particular activity; it could be a million dollars or it could be a million dollars over 10 years—who knows? But it feels a bit chicken-or-egg and it feels a bit like we are taking a gamble—“Don’t worry. It’ll be okay. We’re going to look at implementation later”—when, as a jurisdiction, we have experiences of watching an implementation timeline disappear and then something is in situ. We bear the consequences of that with our interface with the community and the people who are highly traumatised, and we receive no more resources. The community has expectations about the response, but the system cannot deliver because the implementation sat outside of the budget cycle.

THE CHAIR: Thank you, Sue. You have talked a lot about education, early intervention and making sure that the education piece happens. I would love to see the government invest in that education piece, at least whilst we wait for implementation of the legislation. On behalf of the committee, I thank you for your attendance today. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. If members wish to ask any questions on notice, please upload them to the parliamentary portal as soon as possible and no later than five business days from today.

The committee adjourned at 3.55 pm