



29 January 2021

Ms Natalie Ward
Committee Manager
Parliament House
Macquarie Street
Sydney NSW 2000

Submission to the Joint Select Committee on Coercive Control in response to the Coercive Control Discussion Paper (October 2020)

Dear Natalie,

Thank you for the opportunity to comment on the Coercive Control Discussion paper. The [Centre for Women's Economic Safety](#) (CWES) welcomes the NSW Government's attention on the issue and recognises the potential to improve responses to people experiencing domestic and family violence. An offence of coercive control could save lives and this submission supports its creation.

About the Centre for Women's Economic Safety (CWES)

The mission of the Centre for Women's Economic Safety (CWES) is to raise awareness and understanding of intimate partner economic abuse and to advocate for social changes that support women's economic safety and opportunity.

CWES is an unincorporated organisation operating on a not-for-profit basis, based in NSW. It is auspiced by Domestic Violence NSW Service Management, a registered charity and public benevolent institution endorsed as a deductible gift recipient (DGR).

The Centre works:

1. Towards prevention and early intervention of economic abuse by raising awareness and understanding of the issue;
2. To advocate for social, service and system change to better support women's economic safety and opportunity; and
3. To support women experiencing economic abuse by connecting them with the information and resources they need.

About this submission

This submission supports:

- The creation of a coercive control offence that names and defines economic, emotional and psychological abuse in addition to physical and sexual violence.
- A definition of coercive control that recognises abusive behaviours having an effect on the victim's day to day life of being 'unreasonably constricted' and/or physically or psychologically harmed.
- The adoption of existing definitions of 'domestic relationship', 'relative' and 'carer/dependent' in the existing Crimes (Domestic and Personal Violence) Act 2007 No 80 in any new legislation.



This submission further recommends:

- ADVOs be utilised more broadly to enable financial orders to protect victim survivors from further economic abuse
- Significant investment in training in coercive control and economic abuse for police and the legal profession
- The recruitment by police of forensic accountants to work on economic abuse cases
- A communications and awareness-raising campaign about coercive control
- Support for a national employer's initiative on domestic and family violence
- A redress scheme for victims of economic abuse
- An exemption from the Legal Aid means test for survivors of economic abuse; and/or
- A no-interest-loans scheme for victims of coercive control who have 'means' on paper but are unable to access them because of the perpetrator's behaviour.

This submission is informed by:

- Interviews to investigate service responses to domestic economic abuse in the United Kingdom, United State and Canada conducted for my Churchill Fellowship 2019.
- Interviews with victim-survivors of domestic and family violence (most involving coercive control and economic abuse).
- Interviews and group discussions with frontline DFV service providers in Australia.
- My experience in financial wellbeing (Former CEO Financial Literacy Australia and former Executive Manager Financial Wellbeing at Commonwealth Bank).

This submission addresses 10 of the 15 questions posed in the Coercive Control Discussion Paper (NSW Government Oct 2020). Please find responses to Questions 1, 2, 3, 4, 7, 8, 9, 10, 14, 15, on the following pages.

I would be happy to share the final Churchill Fellowship report on international service responses with the Committee in the second quarter of 2021.

Should you have any further questions, please don't hesitate to contact me.

Your sincerely,

Rebecca Glenn

Founder, Centre for Women's Economic Safety

RESPONSES TO COERCIVE CONTROL DISCUSSION PAPER QUESTIONS

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

The key elements of an appropriate definition of coercive control are to:

- recognise a **pattern** of abusive behaviour
- **name specific types of abusive behaviour** (Economic, Physical, Sexual, Emotional and Psychological) and provide non-exhaustive examples of these
- specify that the pattern of behaviour would **unreasonably constrict** the victim's life (for instance by limiting freedom of movement, activity, association, speech, consumer activity, decision-making, or physical autonomy).
- specify that the behaviour is likely to cause physical or psychological harm (fear, distress, alarm) and that the perpetrator **intended** to cause harm or was **reckless** enough to cause harm.
- include a '**reasonable person**' test to judge the likelihood of harm.

Family Violence Protection Act (2008) Victoria

The definition of family violence used in this Victorian Family Violence Protection Act (2008) is the national benchmark and has influenced international legislation. The definition acknowledges that domestic and family violence extends beyond physical and sexual violence and both names and defines economic abuse and emotional or psychological abuse. The limitation of the definition in Victoria is that it does not criminalise all these behaviours and does not sufficiently emphasise coerced debt, that is, where partners or family members create debt in a victim's name (through loans, credit cards or unpaid bills) against their will and often not to their benefit.

Domestic Abuse Act (2018) Scotland

What the Domestic Abuse Act (2018) does well is to recognise the pattern of behaviour and the harm that the behaviour causes. It criminalises non-physical forms of abuse - psychological *domestic abuse* and coercive and controlling behaviour. One of the most effective aspects of this law is the threshold test of a reasonable person providing a framework for courts to assess the evidence. For the first time it enables police to investigate the full context and circumstance of the abuse. The Scottish legislation is less effective in its failure to name and define specific types of abuse such as non-physical forms of violence including economic abuse. Because of its focus on effects of abuse rather than types of abuse being experienced, advocates in Scotland say the police charges often don't reflect the full scope of abuse. As a result, economic abuse is still rarely identified.

Serious Crime Act (2015) Section 76 - UK Controlling or Coercive Behaviour in an intimate or family relationship (UK)

The UK legislation makes controlling and coercive behaviour an offence and also includes the 'reasonable person' test. It recognises a pattern of behaviour that has a serious effect that is likely to cause serious alarm or distress which has a 'substantial adverse effect on [the victim's] usual day to day activities'. This is positive in that it captures both 'distress' and 'adverse impact on day-to-day activities', however it requires a link between the two. A more effective definition would require either or both 'distress' and 'adverse impact on usual day-to-day activities'. This legislation also fails to name and define non-physical forms of violence like economic abuse.

Domestic Abuse Bill UK (2020)

The Domestic Abuse Bill (2020) aims to build on the existing **Serious Crime Act (2015) UK** and improves upon the Controlling and Coercive Behaviour offence by expanding the definitions of non-physical forms of violence. The inclusion of economic, emotional and psychological abuse in the definition emphasises that domestic abuse is more than physical and sexual violence. It is an effective approach to emulate.

The Bill also creates a domestic abuse commission (Office of Domestic Abuse Commissioner) and a range of initiatives to improve responses from local authorities and courts. This includes a duty on local authorities to provide safe accommodation, and a statutory presumption that victims of domestic abuse are eligible for special measures in criminal, civil and family (eg no cross examination by perpetrators).

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

This is a key challenge for the creation and enforcement of legislation. A definition that met one or both of the tests of behaviour being “unreasonably constricting” and “likely to cause physical or psychological harm”, would help distinguish between behaviours that may be present in ordinary relationships which in another context could constitute abuse.

Take the example in the discussion paper of one person controlling the household finances: Many healthy relationships feature one person predominantly managing the household finances. When the relationship is healthy, this is unlikely to constrict the other person’s life and won’t cause distress.

The important question is whether or not the person who does not control the finances *could* have a say in the household finances if they wanted to; do they know - or *could* they know if they asked - what assets, liabilities and products the household has? If a person is unable to participate in certain activities they would like to because they don’t have access to money, or they’re fearful of even having a money conversation with their partner then that is a good signal that the financial control being exerted is abusive.

Understanding the context and likely consequences of any action or non-action, is the key.

Economic abuse is broader than ‘control’ of finances and economic resources. Perpetrators also sabotage, exploit and manipulate economic and financial resources as a way to exercise power and control over their partner. Often the use of economic abuse intersects with other forms of abuse in a coercive and controlling way. A victim may understand explicitly or implicitly that if they don’t give their partner money, they will be assaulted. They may know that the only way they’ll receive an ‘allowance’ is if they engage in unwanted sexualised activity. They may have been told over and over again that they’re terrible with money and believe it. As such it is vital that coercive control legislation names economic abuse among the non-physical forms of violence which constitute criminal abuse.

3. Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?

No. Existing Domestic Violence laws are based on incidents and focused on behaviour which is physically abusive, or overtly threatening, or causes damage to property. Patterns of non-physical abusive behaviour are mostly ignored.

Existing DFV legislation in NSW makes no mention of economic, emotional and psychological abuse and does not sufficiently capture the extent to which a person's liberty can be compromised by coercion rather than physical restraint.

Currently, economic abuse is generally not considered by police and the courts and remains one of the most common reasons victims stay with, or return to, a perpetrator when they otherwise don't want to.

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

- *For key elements that could be introduced to improve existing legislation, see our response to Q1, including details of national and international best practice.*
- *For details on civil laws and how ADVOs could be expanded to help address economic abuse, see our response to Q 10.*

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

The advantages of creating an offence of coercive control are:

- **Life-saving:** This legislation will save lives. Too many victims of coercive control are not taken seriously until they are dead. Having an offence on the statute books, provided it is backed with appropriate training, will provide victims, police and other stakeholders, with **more tools** by which to hold a perpetrator to account for their actions and create safety for victims.
- **National recognition of non-physical family violence:** NSW is the only state or territory in Australia that does not have legislation which recognises economic, emotional or psychological abuse. An offence of coercive control will help to address non-physical domestic and family violence in NSW. In the future, an alignment of definitions and legislation across jurisdictions would be ideal.
- **Include economic abuse in coercive control:** An opportunity to name 'economic abuse' in NSW legislation for the first time is important for two main reasons:
 - (1) alongside other forms of non-physical forms of violence, it will better capture the scope of family violence; and
 - (2) some forms of economic abuse create a digital footprint providing investigators with potential evidence which is harder to gather in relation to emotional and psychological abuse.
- **Symbolic:** An offence of coercive control will help **increase community awareness** of the reality of domestic and family violence and shift ideas of domestic abuse cases as just a "bad relationship" or "he just has a bit of a temper." Importantly, for victims whose self-esteem has often been deliberately and severely eroded by the offender, an offence of coercive control will validate their experience. Victims often talk about their despair at how their partner, or former partner, can get away with their behaviour and even be enabled by police and other systems.

While some have argued there is a danger of the legislation being 'ineffective' if it serves only a 'symbolic effect', the Committee should not underestimate the power of the symbolic effect, while also working to ensure the legislation is effective through thoughtful consultation, careful design and unhurried implementation.

The main potential disadvantage of a new offence is creating legislation with such a high bar of evidence that it leads to a low rate of charging and/or a high failure rate of prosecutions. This would send a counter-productive and dangerous signal to victims that they won't be successful and to perpetrators that they're unlikely to be held to account. Recent examples of acquittals in sexual assault cases have confirmed for many victim-survivors of sexual assault that the system is stacked against them and it is not worth going to the police about the crime/s committed against them.

Conversely, the law could cause harm if the evidence bar is too low, and police are not properly trained to understand the dynamics of coercive control and the *critical* nature of understanding each individual's context. In particular, the current sector concerns that victims are being misidentified as primary aggressors will continue and perhaps worsen.

8. How might the challenges of creating an offence of coercive control be overcome?

The challenges of creating an offence of coercive control can be overcome with:

- A comprehensive and careful consultation process to continue as legislation is drafted to test thinking of how the legislation will be applied in the real world and to avoid unintended consequences.
- A significant investment in training - *especially* of NSW Police but also the legal profession (*see response 15 for detail on what this could entail*).
- A significant investment in communications and community awareness-raising about coercive control: how to recognise it, how to respond and where to refer.
- A review mechanism with key stakeholders to assess how the law is working in practice after 12-18 months, and to recommend any amendments.

NSW has a wealth of expertise and experience in understanding domestic and family violence. Frontline workers responding to victims understand the insidious nature of coercive control and the complexities of lived experience. **Key stakeholders** must include victim-survivors who have experienced the application (or non-application) of the law in this time period, women's and community legal services, DFV service providers, police, and organisations that represent the LGBTQ community and women from marginalised populations (eg, women with a disability, Indigenous women, older women, migrant and refugee women).

9. If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?

There are other stakeholders with specific expertise on the full scope of coercive control who are better placed to define behaviours and factors in more detail. However, CWES suggests that the definition of 'domestic relationship', 'relative' and 'carer/dependent' in the existing NSW Crimes (Domestic and Personal Violence) Act 2007 No 80, should be replicated for any new criminal offence of coercive control to ensure the legislation covers current and former partners, and other domestic relationships.

Post-separation abuse is an emerging issue that needs to be captured by new legislation.

Coercive control legislation must include specific reference to, and a definition of, economic abuse. The definition should include examples of specific behaviours that may constitute economic abuse while not being limited to these. Many perpetrators adapt quickly to new laws, new products, and new guidance, with new tactics to overcome safeguards, so any list of behaviours should be illustrative and expressly not exhaustive.

Advocates in England and Scotland say the drawback of not 'naming' specific forms of abuse in the Domestic Abuse (Scotland) Act (2018) is that less well understood forms of abuse, like economic abuse, are still not being picked up by police. They observe that as a result, women's experiences of abuse in Scotland are not reflected in the charges being laid under the new law.

The Domestic Abuse Bill UK (2020) UK does include a definition of economic abuse (see below) but is not yet in force.

The Domestic Abuse Bill (2020) defines economic abuse thus:

“Economic abuse” means any behaviour [by A] that has a substantial adverse effect on B’s ability to—

- (a) acquire, use or maintain money or other property, or
- (b) obtain goods or services.’

Statutory guidance accompanying the UK Bill further describes economic abuse and provides a limited number of examples. Like the Victorian legislation there is a lack of emphasis on coerced debt, which should be addressed in any NSW legislation.

10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?

Yes, the current legislative regime could be further developed to respond to more non-physical forms of abuse and highlight existing powers. Currently ADVOs are based on physical safety. This is essential and must remain a primary consideration. However, economic safety supports well-being *and* safety. The current legislation empowers the courts to ‘place whatever restrictions on a defendant’s behaviour to ensure the safety and protection of the protected person’. Awareness raising of the potential to request financial protection as part an ADVO should be introduced for police prosecutors, judicial officers, lawyers, court advocacy services, DVLOs and the DV sector in general. For instance, to request to protect assets, freeze joint bank accounts (except for a nominated amount for day-to-day expenses), and suspend redraws on a mortgage account. While affected individuals can request this directly of their financial institution, it may not be safe to do so, and there isn’t a mechanism to quarantine ‘living money’ when it happens.

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

Redress for victims

Potential actions to improve access to redress for women who have experienced coercive control and economic abuse:

- **A Legal Aid means test exemption** should be made for victims of coercive control involving economic abuse, who ‘on paper’ hold joint assets with a perpetrator.

- **Extend the Victims Compensation scheme** to victims of coercive control who don't meet the existing criteria of experiencing physical violence.
- Or, **establish a fund for coercive control victims** through a system of fines being levied against perpetrators (potentially at the lower level of evidence of offenders being those who have a domestic violence order against them)
- **A no-interest loan scheme** for victim-survivors with significant 'on paper' assets to assist them in securing legal representation that can be repaid when/if those assets become 'unlocked' via a Court Order.

Domestic and family violence often ruins people financially, and there aren't many options for victim-survivors hoping for a civil remedy. If they've experienced coercive control and economic abuse they are unlikely to have enough money to secure a lawyer. In many cases, they are also unable to meet the eligibility criteria for Legal Aid because the means test will include any assets they have 'on paper' even if the perpetrator's actions mean they have little hope of accessing or liquidating those assets.

Even in the relatively uncommon scenario of a perpetrator being arrested, charged and convicted, the victim-survivor is still left with enduring consequences for their economic, physical, mental and emotional wellbeing which can impact their ability to quickly return to employment and other activities. Direct financial compensation would provide victim-survivor with resources in their control, that they can direct to where they feel the greatest need.

15. What non-legislative activities are needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly?

Professional training

Police and lawyers must receive training to understand the dynamics of coercive control, the intersection of economic abuse with all other forms of violence, the importance of responses and resistance to violence, the role of social responses in informing victim-survivor decision-making, and the critical importance of context.

Even without legislative change, this training would likely result in improvements in the quality of police response to victims of DFV and less traumatic experiences of the legal system. This would be a significant achievement even without a corresponding increase in charging and prosecutions, although such improvements would likely support this outcome also.

Too many police, lawyers and court officers can be, inadvertently, manipulated and co-opted by perpetrators to extend their abuse. Very few of these professionals have sufficient training in coercive control.

Police training in Response-Based Practice has the potential to equip officers with an approach to questioning which better reveals the context of the abuse. It can reveal the situational logic of the victim in their decision-making and navigation through day-to-day life with an abusive person. This information is an important part of the fact pattern in cases of domestic and family violence.

*CWES would be happy to facilitate an observation session for the committee and relevant stakeholders of an economic abuse training session, as is being delivered to Police in England, by my colleagues at Surviving Economic Abuse.

Recruit forensic accountants to support police work on economic abuse

Some forms of economic abuse create a digital footprint providing investigators with potential evidence. However, it requires a specific skill set to uncover patterns of financial abuse and more sophisticated forms of financial manipulation. If police had forensic accountants on staff, they would be better equipped to identify coercive economic behaviour.

Increase guidance and resources

The NSW Government should also fund Recommendation 8 of the Domestic Violence Death Review Team (NSW) 2017-2019 Report to increase guidance and resources to support safety planning by generalists and specialist responding to victims of domestic and family violence. The government's response to the report says it supports this Recommendation in principle subject to available funding.

Community awareness campaigns

A significant investment in educating the public about coercive control is an important corollary to professional training.

The effectiveness of any new offence will also be impacted by the community's awareness and understanding. So long as misunderstandings, myths and stereotypes continue to exist in the community about domestic and family violence, victim-survivors will continue to experience further harms through unsupportive and judgmental responses from others.

Critically, the pool from which juries are drawn is the community. If the community remains ill-informed, the likelihood of the jury to do its job is compromised.

As community attitudes start to shift and awareness and understanding increases, more victim-survivors are likely to feel comfortable to speak out. Over time, this will elevate survivor voices in efforts to improve community understanding.

Employer initiatives

The NSW Government, perhaps with COAG partners, could consider supporting the establishment of a national Employers Initiative on Domestic and Family Violence to mobilise industry in efforts to improve responses to domestic and family violence. Employers represent a huge opportunity to build community awareness and understanding of the issue.

Many large employers are already taking steps to build understanding of DFV and to support the physical and economic safety of their employees and customers. While this is happening in an ad-hoc way in Australia, a more coordinated approach would reduce duplication and increase adoption of best practice in workplaces across Australia. In the UK, an organisation has been formed to facilitate this important work; The Employers Initiative on Domestic Abuse. It is a model worth considering here.

Survivors of DFV often lose or leave their jobs as a result of the abuse, or they may not have worked for a long time. Maintaining employment while managing the fallout of DFV is difficult enough, let alone starting a new job or retraining. The flow on effects of no or low income can be significant and compounding for adults and their dependents.

Financial Services

Financial institutions could look to improve their understanding and response to economic abuse. Current best practice examples from the Commonwealth Bank and NAB could serve as a starting point for organisations considering their response to the financial issues related to coercive control. In particular the utilisation of specialist teams to work with customers impacted by domestic family



violence including economic abuse. Financial institutions could also consider how they develop safeguards in their policies around address identification, and the appropriateness of joint products.

CWES, in partnership with Insight Exchange, will be providing further guidance for organisations considering their response to economic abuse in the first half of 2021.