



30 August 2022

NSW Department of Communities and Justice

By email: policy@justice.nsw.gov.au

To whom it may concern,

Exposure draft Crimes Legislation Amendment (Coercive Control) Bill 2022

Thank you for the opportunity to provide input to the exposure draft Crimes Legislation Amendment (Coercive Control) Bill 2022 (the **Draft Bill**). Our input is narrowly focused on responses to economic abuse based on casework experience.

We endorse the submissions provided by Women's Legal Service NSW, Domestic Violence NSW and Redfern Legal Centre and refer to them in this submission. We also refer to our previous [submission](#) to the NSW Parliament Joint Select Committee on Coercive Control and [subsequent appearance](#) at the Inquiry's hearings.

Our input is narrowly focused on responses to economic abuse based on casework experience. Coercive control is complex both in nature and in understanding not only by victim survivors, but by the judiciary, the police and the broader community. Even within the domestic and family violence (**DFV**) sector there are differing views on approaches to criminalising coercive control. The Economic Abuse Reference Group (**EARG**) NSW also recognises that DFV does not occur in a vacuum and that the introduction of an offence criminalising coercive control will have broader impacts that require consideration, such as how the offence will interact with the family law system, migration law and social security. It will also have policy and practice implications for services that support victim survivors such as the DFV sector and the financial services industry.

EARG NSW members are of the view that coercive control, which includes economic abuse, should be recognised as part of DFV. While we are pleased to see that behaviours comprising financial and economic abuse are described in the Draft Bill, we consider that these terms need to be explicitly defined in the legislation and the behaviours described consistently. We also have concerns that the introduction of the offence in section 54D of the proposed Amendment of the *Crimes Act 1900* (the **Proposed Offence**) will not necessarily achieve better outcomes for victim survivors, especially without a robust, thorough consultation, systems and cultural reforms, education for all sectors, and proper funding for frontline services.

Some of our members have also made individual submissions to this inquiry covering issues relevant to their broader work in DFV.

Contents

Economic Abuse Reference Group	3
Economic Abuse	4
<i>Jessica's Story</i>	4
A phased approach to criminalising coercive control	5
Need for more thorough consultation, training, and systems and cultural reform	6
Lessons to be learned from other jurisdictions	7
Comments on the Draft Bill as it relates to economic abuse	7
Economic and financial abuse should be specifically defined	7
Examples of economic and financial abuse should be consistent between legislation	8
Definitions of economic and financial abuse should be harmonised across Australian jurisdictions	8
Reforms must be accompanied by further education and training, and greater investment in frontline services	9
Need for practical solution for victim survivors of economic abuse	9
Adverse impact of increased demand from creditors for police and judicial evidence such as ADVOs	9
<i>Abby's Story</i>	10
Challenges addressing coercive control through the criminal justice system	11
<i>Esther's Story</i>	12
Potential for misidentification of victim survivors as perpetrators of coercive control	13
Coercive control should not be limited to intimate partner relationships	13
Conclusion	14

Summary of Recommendations

EARG NSW recommends:

1. A phased approach to criminalising coercive control, starting first with a definition of domestic abuse, which includes coercive and controlling behaviour, in the ADVO Act;
2. More thorough consultation, training, and systems and cultural reform;
3. Taking the opportunity to learn from other jurisdictions, including Scotland, prior to criminalising coercive control;
4. Specifically defining economic abuse and financial abuse in the Crimes Act and the ADVO Act;
5. Ensuring the examples of economic abuse and financial abuse are consistent in both the Crimes Act and the ADVO Act;
6. Harmonising the definitions of economic abuse and financial abuse across Australian jurisdictions; and
7. Accompanying the reforms with further education and training, and greater investment in frontline services to meet increased demand.

EARG NSW also recommends that further consideration be given to:

1. Proper consultation with marginalised groups and victim survivors;
2. Practical solutions for victim survivors of economic abuse;
3. The adverse impact of increased demand from creditors for police and judicial evidence such as ADVOs;
4. The challenges of addressing coercive control through the criminal justice system;
5. The potential for misidentification of victim survivors as perpetrators of coercive control; and
6. Recognising the various forms of relationships in which coercive control occurs.

Economic Abuse Reference Group

The EARG is an informal group of community organisations which work collectively to influence government and industry responses to reduce the financial impact of family violence. Members include DFV services, community legal services and financial counselling services, and we involve other organisations in our work where relevant.

This submission was prepared with input from New South Wales members and contributors to the EARG. Some of our members have experience (as lawyers or financial counsellors) assisting clients who have experienced coercive controlling behaviours, particularly economic abuse. See more details about EARG members and contributors below at Appendix 1.

Economic Abuse

Economic abuse, also described as financial abuse, is a form of family, domestic and sexual violence. It has significant and devastating impacts at an individual, community and societal level. Economic abuse can take various forms, including accruing debt or other liabilities in the other person's name, not contributing to joint loans, controlling all finances, not making shared financial decisions, withholding necessities, preventing someone from obtaining or remaining in employment, and stopping someone from accessing education or a means to become financially independent.

Around 85% of women who access DFV services in Australia say that they have experienced some level of financial abuse as part of the coercive control in their relationship.¹ Economic abuse can occur alongside other forms of abuse such as physical, emotional and sexual violence.

A 2017 study into the prevalence of economic abuse between intimate partners found that 11.5% of Australians had experienced it and that women experience it at higher rates (15.7%) than men (7.1%). These gender differences are important because it is well understood that family, domestic and sexual violence is gendered, and that women are the majority of victims and experience more severe consequences.²

Debts are a common factor forcing victim survivors to remain in or return to an abusive relationship. Victim survivors often experience financial impacts long after the relationship has ended.

The stories throughout this submission, provided by EARG NSW members, are archetypal of the complex, intersecting and diverse issues people face when experiencing economic abuse and coercive control.

Jessica's Story

When Jessica met her partner, she had long term employment, a stable rental and significant savings. After they moved in together, Jessica's partner became increasingly reliant on her to pay for the rent, bills and groceries. Slowly, the controlling behaviour escalated. Jessica's partner encouraged her to give him joint access to her savings account and later stole most of the money by transferring it to an overseas account without her permission.*

He convinced Jessica she was no good at IT, so he could get access to her personal banking details and set up passwords for her online accounts. He got a

¹ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0/>

² Kutin, J, Russell, R and Reid, M 2017, 'Economic abuse between intimate partners in Australia: Prevalence, health status, disability and financial stress', *Australian and New Zealand Journal of Public Health*, vol. 41, no. 3, pp. 269-274.

credit card online in Jessica's name without her knowledge. He wanted a brand-new luxury car, so he coerced Jessica into getting an expensive car loan in her name.

Jessica was struggling to afford the repayments across these various loans. Her partner refused to contribute and lied that he was working when he was actually gambling at the casino. When Jessica finally confronted him about money, he became violent and strangled Jessica. She says she was afraid that he would have killed her if a neighbour had not come to her aid. Finally, while Jessica was supposed to be protected by an ADVO, her partner pressured her to attend the bank with him and withdraw a large sum of cash from her account. Shortly afterwards, he left Australia and Jessica was left with all the debt.

Jessica's experience of domestic violence made her so unwell she was unable to work. She went months with no income, during which time she attempted suicide and obtained more debt in an attempt to manage her existing debt. For years, Jessica was being chased by debt collectors and suffering from extreme financial stress. Despite working long hours, she could not get ahead. Eventually, her wages were garnished, reducing her income to only \$495 per week which was less than her weekly rent, let alone her other bills and debt repayments. She had over \$100,000 debt and was facing homelessness when she contacted a community legal centre for advice. The community legal centre helped Jessica advocate with creditors (some waived her debts), keep her tenancy and get compensation from one creditor for almost \$25,000. Unfortunately, she has been unable to locate her ex-partner to recover her life savings.

**Name has been changed for privacy*

A phased approach to criminalising coercive control

While EARG NSW welcomes the commitment of Government to introduce reforms on coercive control, we note that this has happened very quickly, from the establishment of the Joint Select Committee on coercive control in late 2020 to the introduction of the Draft Bill in July 2022 and only six weeks for the community to respond to the Draft Bill.

We understand Government intends to introduce this legislation in Spring 2022, and that the proclamation period is likely to be 12 months or more. This time frame is too short to fully understand and consult with relevant stakeholders including police, the judiciary, the sector and people with lived experience. There are procedural matters that will need to be better understood, as well as systems and cultural reforms and training of the police and judiciary.

EARG NSW supports and reiterates Recommendation 2 of the Report of the Joint Select Committee on Coercive Control: that the NSW Government propose amendments to the *Crimes (Domestic and Personal Violence Act) 2007 (ADVO Act)* to create a clear and accessible definition of domestic abuse, which includes coercive and controlling behaviour as a priority, before criminalising coercive control.³

We need a phased approach to criminalising coercive control in NSW. This must start with a definition of coercive control that includes all forms of domestic and family violence (not limited

³ Joint Select Committee on Coercive Control, Parliament of New South Wales, *Coercive control in domestic relationships* (Report 1/57, June 2021) at 25, available at <https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Report%20-%20coercive%20control%20in%20domestic%20relationships.pdf>.

to intimate partner relationships, as discussed further below), a family violence multi-agency risk assessment and management framework and systems and cultural reform. The cultural reform must include police implementation of the Auditor-General's recommendations from the recent audit of police responses to domestic and family violence discussed further below. There must also be an extensive and proper consultation with the specialist DFV sector, leaders and organisations representing priority populations, and people with lived experience during the consultation period of the Draft Bill. This reform is complex and important, and six weeks is not a sufficient period to conduct extensive consultations. We need to get it right.

We consider that if the amendments to the *Crimes Act 1900* (**Crimes Act**) proceed, the proclamation period should be no less than two years.

Need for more thorough consultation, training, and systems and cultural reform

As highlighted in other submissions, EARG NSW emphasises the importance of robust consultation. It is important to ensure proper consultation to hear the experiences of priority populations, including First Nations people, refugee and migrant communities, including people on temporary visas experiencing violence, people with disability, LGBTIQ+ communities, people who are homeless, people with lived experience of prison, people in regional, rural and remote areas, older people and younger people, and the services supporting priority populations, to have input into proposed solutions. This includes ensuring that voices of people with lived experience are included in policy and law reform changes in NSW.

We note that in Scotland, where the coercive control laws which came into force in 2019 are widely considered the 'gold standard', there was a significant consultation period of approximately four years. The consultation was an inclusive process and important not only because of its duration but also its consideration of the DFV sector, people with lived experience and marginalised groups.⁴ We note that making a written submission is one way to raise concerns, but this is not an accessible avenue for all stakeholders who are likely to be impacted by this legislation. EARG NSW encourages the Government to work actively with these groups to elevate the voices of marginalised communities and conduct a proper consultation.

The Queensland Women's Safety and Justice Taskforce in November 2021 recommended the criminalisation of coercive control in Queensland but with an important precondition:

*"The Taskforce recommends that no new offences to criminalise domestic and family violence commence until service and justice system responses are improved. The Taskforce is satisfied that to do so would involve an unacceptable risk of unintended consequences, which could cause more harm to those whom the reforms are intended to protect, particularly First Nations peoples."*⁵

As discussed further below, the Draft Bill carries the risk of unintended consequences for victim survivors of coercive control, particularly First Nations women who are already at heightened risk of being misidentified as the primary perpetrator of DFV.

Legislating to criminalise coercive control will not address these issues unless it is prefaced by substantial training and systems and cultural reform within the police and judiciary. We

⁴ Scottish Government 'Domestic Abuse Act in Force' available here: <https://www.gov.scot/news/domestic-abuse-act-in-force/>

⁵ https://www.womenstaskforce.qld.gov.au/data/assets/pdf_file/0013/700600/volume-1-executive-summary-and-introduction.pdf at xxx.

refer to and endorse the recommendations made by Women’s Legal Service NSW in this regard.

Lessons to be learned from other jurisdictions

There is an opportunity for the Government to learn from the experiences of other jurisdictions which have already criminalised coercive control before legislating to criminalise coercive control in NSW.

The Scottish model for criminalising coercive control is suggested to be best practice, however the legislation is still new and there is yet to be evidence that criminalising coercive control deters perpetrators. A recent report by the Scottish Centre for Crime and Justice Research found that victim survivors feel alienated and excluded from the justice process, despite the criminalisation of coercive and controlling behaviour. 16 per cent of women surveyed reported that they felt less safe because of police responses, with one woman reporting she was “left feeling she would need to evidence physical violence to get the intervention she needed to feel safe”.⁶ This sentiment is shared by victim survivors who have attempted to report domestic abuse to the police in NSW, as detailed in Esther’s story below.

Impending data from the UK, including the statutory review of the Scottish coercive control legislation and surveys of people with lived experience, will provide valuable insights and lessons to inform the NSW Government’s approach to criminalising coercive control.

Comments on the Draft Bill as it relates to economic abuse

In the event this phased approach is not adopted, the remainder of our submission addresses the proposed amendments to both the Crimes Act and the ADVO Act in the Draft Bill.

Economic and financial abuse should be specifically defined

While we commend the inclusion of economically and financially abusive behaviours in the Draft Bill, we have concerns that the Draft Bill contains no definition of economic or financial abuse. There is also overlapping yet inconsistent language adopted between the two pieces of legislation, with references to ‘domestic abuse’ compared to ‘abusive behaviour’.

The proposed section 6A of the ADVO Act specifically refers to behaviour that is ‘economically abusive’ at section 6A(1)(c) yet does not define this term anywhere. Neither the terms economic abuse nor financial abuse are well understood by the general public. Economic and financial abuse are still under-researched and poorly understood compared with other forms of DFV, including because there is a “lack of shared language and broad public awareness around financial abuse, preventing people affected from recognising or naming the perpetrator’s behaviour as financial abuse” and because “victim-survivors may have difficulty distinguishing economically abusive patterns in their relationship from the economic insecurity they experience as women”.⁷

This term should be specifically defined in the ADVO Act, and financial or economic abuse should be included and defined in any offence of coercive control in the Crimes Act, through consultation with practitioners, academics and people with lived experience.

⁶ <https://www.sccjr.ac.uk/wp-content/uploads/2022/08/Domestic-Abuse-Scotland-Act-2018-and-the-Criminal-Justice-System.pdf> at 24.

⁷ Breckenridge, J., Singh, S., Lyons, G., Suchting, M., (2020) Understanding Economic and Financial Abuse in Intimate Partner Relationships. Sydney: Gendered Violence Research Network, UNSW Sydney (<https://www.commbank.com.au/content/dam/commbank-assets/support/2020-11/unsw-report-1-financial-abuse-ipv.pdf>) at 11.

Examples of economic and financial abuse should be consistent between legislation

The Draft Bill describes a number of 'behaviours' that comprise economic and financial abuse, but which are not consistent between the Amendment of the Crimes Act and the Amendment of the ADVO Act. This inconsistency is likely to give rise to confusion, as some of the behaviours described in the Crimes Act are broader than the behaviours described in the ADVO Act.

Further, the examples at points 1, 4 and 5 of section 54F(2)(g) only relate to a small subset of financially abusive behaviour, such as withholding financial support and access to financial assets including joint assets. There is no reference to coercing victim survivors to take on debt or liabilities in their name for the perpetrator's benefit, or being made solely responsible for household debts and the associated impact on their credit score, both of which are common tactics of financial abuse. Financial and economic abuse are much broader than the above examples⁸ and perpetrators are incredibly sophisticated in the tools and tactics they use to exert control and inflict harm.

While we recognise that examples are an educative tool and helpful for the police and judiciary, we have concerns that in practice, the list of examples provided will be understood and used by decision-makers as an exhaustive list. We refer to the approach used in the Scottish offence of coercive control, which describes the effects rather than the behaviours of coercive control, in recognition that perpetrators often tailor their behaviour to inflict the maximum impact on their victim within the context of their relationship. These behaviours may seem innocuous to an outsider, though the effects are evident.

Definitions of economic and financial abuse should be harmonised across Australian jurisdictions

All other state jurisdictions in Australia have a definition of DFV that includes forms of abuse such as emotional, psychological, economic or financial abuse,⁹ so we are pleased to see that economic and financial abuse is being contemplated in the Draft Bill.

However, our concerns remain that because the definition and language is not harmonised even within the Draft Bill (see above comments regarding the examples of behaviour), this legislation will be complex and challenging to use and may not achieve the intended outcome.

As highlighted in previous submissions, we reiterate the importance of harmonising the definitions, as economic abuse does not occur in a vacuum and will have impacts across other legislative instruments both at a state and federal level and particularly in relation to family law. We refer to the recommendations contained in the Australian Law Reform Commission's Final Report 'Family Violence – A National Legal Response' which recommended family violence definitions include economic abuse, and that consistent definitions be adopted across jurisdictions as well as within the Family Law Act.¹⁰ EARG NSW reiterates the

⁸ See, for example, the various ways economic and financial abuse are defined and described in the Australian literature: Breckenridge, J., Singh, S., Lyons, G., Suchting, M., (2020) Understanding Economic and Financial Abuse in Intimate Partner Relationships. Sydney: Gendered Violence Research Network, UNSW Sydney (<https://www.commbank.com.au/content/dam/commbank-assets/support/2020-11/unsu-report-1-financial-abuse-ipv.pdf>) at 59-60.

⁹ Barwick, K., McGorrery, P., and McMahon, M. (2020) 'Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' in Marilyn McMahon and Paul McGorrery (eds) Criminalising Coercive Control: Family Violence and the Criminal Law Springer, 135, 155.

¹⁰ Australian Law Reform Commission (2010) Family Violence – A National Legal Response (ALRC Report 114), available at <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/> see recommendations 5, 6 and 7.

recommendations made in the ALRC's report as discussed above in relation to harmonisation of family violence definitions across jurisdictions.¹¹

Reforms must be accompanied by further education and training, and greater investment in frontline services

Education, prevention and other mechanisms have the ability to address economic abuse without the blunt force of the law. This would make these reforms more accessible for the wider community, would lead to broader cultural change around how we as a community understand coercive control, economic abuse and DFV, and represent a more holistic approach to a serious and devastating social problem.

Any reforms should be accompanied by education, awareness raising and training to support better understanding by both the police, judiciary and the DFV sector, including community workers and financial counsellors, as well as industry.

Given the endemic levels of DFV in Australia, there is also a need for significant investment in research and education for the prevention of coercive control, including economic abuse.

Finally, the proposed reforms and accompanying awareness raising among the community are likely to result in a significant increase in victim survivors seeking help and support, including many victim survivors who have never previously identified or disclosed their experience of abuse. Victim survivors and other people impacted by coercive control will require assistance navigating the various police, legal and social support systems. These reforms need to be accompanied by a significant and targeted investment of resources and funds in frontline services, particularly domestic violence services, the community legal sector and financial counselling sector, which are likely to experience a considerable increase in demand to assist victim survivors of economic abuse to regain their financial security.

Need for practical solution for victim survivors of economic abuse

While a conviction may be important to some victim survivors, our members are concerned that criminalising coercive control will not provide victim survivors with a practical solution to the impacts of economic abuse, which is generally overwhelming debt and long-term financial insecurity. After enduring the court process, victim survivors of economic abuse will still be left to manage the debt, clean up their credit report and try to recover from the financial sabotage in order to secure their future financial independence.

We are also concerned that despite the Draft Bill criminalising coercive control, cases of economic abuse which do not also involve physical violence may be overlooked or not prioritised, as has occurred in the United Kingdom. Consideration must also be given to the ways in which criminalising coercive control could adversely impact a victim survivor whose case is not investigated by police or is later rejected for prosecution.

Adverse impact of increased demand from creditors for police and judicial evidence such as ADVOs

EARG members have been working with creditors and industry for many years to improve their understanding of trauma informed practice and the barriers victim survivors face in reporting DFV to police. It was previously, and unfortunately in some industries still is, common practice for creditors to request an ADVO as evidence to substantiate a victim survivor's 'claim'

¹¹ Australian Law Reform Commission (2010) Family Violence – A National Legal Response (ALRC Report 114), available at <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/> see recommendations 5, 6 and 7.

of having experienced DFV, even where the victim survivor has not experienced forms of DFV that would give rise to an ADVO in NSW.

We note that the Draft Bill does not include 'domestic abuse', including coercive control and financial abuse, as grounds for an ADVO, and refer to the submission made by Women's Legal Service NSW in this regard.

However, we also have concerns that, if ADVOs are available in circumstances of economic or financial abuse alone, creditors may have an increased expectation that all victim survivors will report economic abuse to the police, and will require victim survivors to provide police and judicial evidence in order to 'prove' they have experienced economic abuse when making complaints and hardship applications. We fear this will result in many victim survivors not having access to those remedies without exposing themselves to significant trauma or safety risks by making police reports. This may also make it harder for victim survivors to advocate for themselves when seeking to resolve debts with creditors, leading to an increase in demand for representation from community legal centres and financial counselling services.

Abby's Story

Abby experienced coercive control, including emotional and financial abuse, in her relationship. When she decided to leave her ex-partner, he threatened to send exposed pictures of her to her friends and family. The abuse continued even after Abby escaped the relationship, when her ex-partner forwarded her emails from a debt collector chasing her for debts she knew nothing about. When a community legal centre assisted her to obtain her credit reports, Abby discovered her ex-partner had fraudulently opened several "buy-now-pay-later" accounts in her name using her personal details. She had no knowledge these accounts existed until she was being chased by multiple companies to pay thousands of dollars that were owed on these accounts.*

Abby didn't know where to turn for assistance. She was born in Thailand and doesn't have a good grasp of English, and requires an interpreter for legal appointments. When she tried to explain what had happened to the creditors who were chasing her for debts, she was asked for an ADVO and told that they required a police statement and statutory declaration as evidence of fraud. In order to have the debts waived and removed from her credit report, she had no choice but to make a report to the police.

When Abby went to the police to report the fraud, a male police officer interviewed her and took down very basic details of her situation. The police statement they provided to her stated that the "possible identity fraud" was committed online "by an unknown person" but that there would be no further investigation because "all reasonable enquiries" had been completed. The fact that Abby was a domestic violence survivor was not noted, despite the fact there was an ADVO in place to protect her from her ex-partner. The police noted that Abby was receiving assistance to seek account closures and debt waivers, and that the only purpose of Abby making a complaint to the police was to receive an Event number so the accounts could be closed. The police provided no further assistance in her matter and failed to make appropriate enquiries regarding her safety or her experience domestic abuse.

**Name has been changed for privacy*

Challenges of addressing coercive control through the criminal justice system

DFV and coercive control have far reaching impacts in a person's life and the current systems both in NSW and nationally do not address it sufficiently, so any approach to introducing a criminal offence for coercive control in NSW needs to be considered within this broader context.

As identified by numerous researchers and through the implementation of coercive control offences in other jurisdictions, there is still not enough evidence that criminalisation of coercive control has been successful in supporting victim survivors.¹² Research and practice has demonstrated that such legislation has not been effective in part because coercive control is complex, deeply contextual and is always changing in response to the circumstances of the relationship. It is also very subjective to the relationship, so it is not clear that the criminal justice system, which has already struggled with responding to DFV, can recognise coercive control sufficiently.¹³ Indeed, the Proposed Offence lacks recognition of the contextual basis of abusive relationships and the power imbalance that is inherent in situations of coercive control.

Some of the unintended consequences of criminalising coercive control are that it will disproportionately affect marginalised groups where barriers already exist to reporting DFV, such as within Aboriginal and Torres Strait Islander communities,¹⁴ culturally and linguistically diverse (**CALD**) communities and other marginalised groups.¹⁵

There are also challenges and limitations within the criminal justice system itself. Within the police and judiciary there are challenges with both understanding and appropriately supporting victim survivors of DFV.¹⁶ The United Kingdom's criminalisation of coercive control has also demonstrated this lack of recognition by police and prosecutors of non-physical forms of domestic abuse. Research and analysis of case law has found that the majority of cases of coercive control were charged in conjunction with either a physical or sexual assault charge.¹⁷

¹² Fitz-Gibbon K., Walklate S. and Meyer S. (September 2020) Research Brief: The Criminalisation of Coercive Control. Monash Gender and Family Violence Prevention Centre. Available at: https://bridges.monash.edu/articles/online_resource/Criminalisation_of_Coercive_Control_-_Research_Brief/13017743

¹³ Fitz-Gibbon K, McCulloch J and Walklate S (2017) Australia should be cautious about introducing laws on coercive control to stem domestic violence. *The Conversation*, 27 November. Available at <https://theconversation.com/australia-should-be-cautious-about-introducing-laws-on-coercive-control-to-stem-domestic-violence-87579> See also Tolmie J (2018) Coercive control: To criminalize or not to criminalize? *Criminology & Criminal Justice* 18(1): 50–66.

¹⁴ Blagg H (2016) *Crime, Aboriginality and the Decolonisation of Justice*. 2nd edn. Sydney: Federation Press.

¹⁵ InTouch Multicultural Centre Against Family Violence (2021) Criminalisation of Coercive Control. Should coercive control be a criminal offence in Victoria? Position Paper. January 2021. Available at: <https://intouch.org.au/wp-content/uploads/2021/01/inTouch-Position-Paper-Criminalisation-of-Coercive-Control-2021-FINAL.pdf>

¹⁶ Fitz-Gibbon K., Walklate S. and Meyer S. (September 2020) Research Brief: The Criminalisation of Coercive Control. Monash Gender and Family Violence Prevention Centre. Available at: https://bridges.monash.edu/articles/online_resource/Criminalisation_of_Coercive_Control_-_Research_Brief/13017743

¹⁷ Wiener, C. (2017) Seeing what is 'invisible in plain sight': Policing coercive control. *The Howard Journal of Crime and Justice*, 56(4): 500-515.

See also Wangmann, J. (2020) Coercive Control as the Context for Intimate Partner Violence: The Challenge for the Legal System. In M. McMahon and P. McGorrery (eds.), *Criminalising Coercive Control*, Singapore; Springer Nature.

See also, Robinson, AL., Pinchevsky, G., & Guthrie, J. (2018) A small constellation: Risk factors informing police perceptions of domestic abuse. *Policing and Society*, 28 (2): 189-204.

Following the criminalisation of controlling or coercive behaviour in an intimate or family relationship in England and Wales, the majority of cases involving the new offence have been run in conjunction with charges of either physical or sexual assault. The two cases which have not included charges of physical or sexual violence relied on previous incidents of physical assault as evidence of the 'factual matrix' for the charge of coercive and controlling behaviour.¹⁸ A recent review of the offence of 'controlling or coercive behaviour' (CCB) in England and Wales by the UK Home Office found:

*“Experimental statistics show that CCB offences were often prosecuted alongside violent offences, which raises questions around the effectiveness of the offence where abusive behaviours consist of non-physical abuse. This is an area requiring further investigation, considering that the Crime Survey for England and Wales data indicate that non-physical abuse is the most often reported type of domestic abuse.”*¹⁹

Research in Tasmania demonstrated that one explanation for a low uptake in prosecutions for coercive control was a lack of understanding within the police and judiciary.²⁰

This highlights the inherent difficulty in the investigation and prosecution of a coercive control offence in the absence of an event of physical or sexual violence, yet some of the most insidious forms of domestic abuse, including financial abuse, are not physical. The Proposed Offence represents a significant shift from incident-based investigations to nuanced investigations of courses of conduct that are very contextual and unique to each relationship. In England and Wales:

*“Police data suggest that only a small proportion of recorded CCB offences result in a charging decision being made by the CPS, perhaps highlighting the potential difficulty in building a strong evidence case for CCB offences. Further, the charge rate for CCB is lower compared with that for domestic abuse related offences more generally...”*²¹

We consider there is a risk of this behaviour continuing to go undetected and unprosecuted, even after the introduction of a criminal offence.

Esther's Story

Esther experienced emotional and financial abuse throughout her 11-year relationship with her ex-partner. When she ended the relationship, she was left with a large number of debts resulting from this financial abuse, including a car loan, personal loan and toll debts.*

Esther's ex-partner had possession of a car which was registered and insured in Esther's name. The car loan was also in Esther's name. After the relationship ended, Esther withdrew consent for her ex-partner to continue using the car, but he refused to return it or make any payments towards the car loan, leaving Esther to bear the full financial burden. The car finance company told Esther she would need to report the car to the police as stolen before they could help her.

When Esther contacted the police to report her situation, she was dismissed and treated poorly. She described that one male police officer talked down to her and

¹⁸ *R v Katira (Tarang)* [2020] EWCA Crim 89; *R v Whitham (Jake Anthony)* [2019] EWCA Crim 1933.

¹⁹ Home Office (United Kingdom) *Review of the controlling or coercive behaviour offence* (10 May 2021) at 48, available at <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence>.

²⁰ Barwick, K., McGorrery, P., and McMahon, M. (2020) 'Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' in Marilyn McMahon and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* Springer, 135, 155.

²¹ Home Office (United Kingdom) *Review of the controlling or coercive behaviour offence* (10 May 2021) at 47.

made her feel worthless. When she asked to make an appointment with a Domestic Violence Liaison Officer, as recommended by a community legal centre, she was told that her situation was a civil matter and that the police could not do anything.

Esther requested to speak with a female officer instead, and disclosed that she wanted to make a safety plan. Esther explained that her ex-partner was aggressive and had punched walls and threatened her. The police officer told Esther that because her ex-partner had not approached her or threatened her in the last few months, there was nothing they could do. Esther was told to download an AVO application and call the police if her ex-partner physically threatened her.

Esther felt that the police were unwilling to assist her because she had not experienced physical abuse, rather than taking her concerns seriously and acting pre-emptively to protect her. She described feeling like she was being interrogated, rather than supported and assisted. The police provided no further assistance and failed to make appropriate enquiries about Esther's experience of domestic abuse.

**Name has been changed for privacy*

Potential for misidentification of victim survivors as perpetrators of coercive control

The legislation in the Draft Bill raises concerns around how First Nations and CALD communities will be affected. Aboriginal and Torres Strait Islander victim-survivors are disproportionately misidentified as the primary aggressor of DFV.²² The stereotypical assumptions of victim-survivor behaviours following domestic and family violence play a detrimental role in misidentification, highlighting the need for an extensive understanding of the complex dynamics involved in coercive control among the police and judiciary in particular.

Coercive control should not be limited to intimate partner relationships

The Proposed Offence in section 54D of the Crimes Act is limited to abusive behaviour towards intimate partners. However, it is important to recognise that a course of conduct that consists of abusive behaviours as defined in the Draft Bill can apply to various forms of relationships, including familial relationships. The criminalisation of coercive control must reflect the range of domestic relationships in which DFV, including coercive controlling behaviour, occurs, as defined in section 5 of the ADVO Act.

The Draft Bill poses a risk to First Nations and CALD communities, people with disability, older people and people living in residential care as abuse within broader family relationships and communities is not addressed. The sole consideration of coercive control by intimate partners excludes many situations in which victim-survivors experience coercive control in the context of DFV, for example coercive control perpetrated by an adult child against their aged parent, or by a carer against a person with a disability who is dependent on their care, or by an extended family member or kin against another family member. It is essential that this legislation considers the diverse ways coercive control exists in communities, in particular in First Nations and CALD communities, where family violence may be much broader than the relationships between intimate partners.²³

²² Queensland Domestic and Family Violence Death Review and Advisory Board '2016–17 Annual Report' (2017) at 82: "in the majority of cases reviewed by the Board in the Aboriginal family violence homicide meeting, nearly all of the victims had a prior history of being recorded as both respondents and aggrieved parties".

²³ See, eg, Breckenridge, J., Singh, S., Lyons, G., Suchting, M., (2021) Understanding Economic and Financial Abuse Across Cultural Contexts. Sydney: Gendered Violence Research Network, UNSW Sydney; and

“While First Nations people may experience economic and financial abuse within intimate partner relationships, the evidence suggests that abuse can also occur within the broader family system. Factors such as cultural norms around shared wealth and resources and cultural expectations around the management of finances and caregiving roles in families may increase risk of economic and financial abuse for First Nations peoples.”²⁴

This exclusion further marginalises aged people, people with disability, Aboriginal and Torres Strait Islander and culturally diverse people by denying them the same access to the justice system as those in intimate partner relationships.

Conclusion

EARG NSW supports coercive control being recognised in NSW, however we are disappointed a new criminal offence has been introduced without proper and robust consultation as recommended by the Joint Select Committee on Coercive Control.

We reiterate our primary recommendation that the Government adopt a phased approach by amending the ADVO Act in the first instance to include a definition of domestic abuse which includes coercive and controlling behaviour, then undertaking a consultation equivalent to the consultation undertaken in Scotland to ensure diverse engagement with all relevant groups, accompanied by significant investment in systems and cultural reforms, prior to introducing a standalone criminal offence of coercive control. The NSW Law Reform Commission would be well placed to conduct such a review.

Thank you for the opportunity to provide comments on the Draft Bill. We have no objection to this submission being published.

We would welcome the opportunity to discuss this further. Please contact Jasmine Opdam at nsw@earg.org.au to arrange a meeting with EARG NSW.

Yours Sincerely,

Economic Abuse Reference Group NSW

Jasmine Opdam

EARG NSW Coordinator

Acting Team Leader of Redfern Legal Centre’s Financial Abuse Service NSW

Gayatri Nair

EARG NSW Coordinator

Policy & Capacity Building Officer of Redfern Legal Centre’s Financial Abuse Service NSW

Breckenridge, J., Singh, S., Lyons, G., Suchting, M., (2021) Understanding Economic and Financial Abuse In First Nations Communities. Sydney: Gendered Violence Research Network, UNSW Sydney.

²⁴ Breckenridge, J., Singh, S., Lyons, G., Suchting, M., (2021) Understanding Economic and Financial Abuse In First Nations Communities. Sydney: Gendered Violence Research Network, UNSW Sydney at 3.

Appendix 1

The Economic Abuse Reference Group is an informal group of community organisations which influences government and industry responses to the financial impact of DFV. Our members include family violence services, community legal services and financial counselling services.

Initially established to consider recommendations of the Royal Commission into Family Violence in Victoria, EARG has input to national issues such as banking and insurance. The Victorian and New South Wales chapters have input to state issues (for example energy, tenancy and fines).

Not all organisations contribute on every issue – and other organisations may contribute from time to time.

Organisations which contribute to EARG NSW work include:

- Care Financial Counselling Service & Consumer Law Centre (ACT)
- Centre for Women's Economic Safety
- Domestic Violence NSW
- Financial Counsellors Association of NSW
- Financial Rights Legal Centre (NSW)
- Good Shepherd Youth and Family Services Australia & New Zealand
- Justice Connect
- Legal Aid NSW
- Northern Rivers Community Legal Centre
- Redfern Legal Centre's Financial Abuse Service NSW
- Women's Legal Service NSW