

Redfern Legal Centre



NSW Department of Communities and Justice
93 George Street
PARRAMATTA NSW 2150

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

30 August 2022

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 **Exposure Draft Bill**).

We would welcome the opportunity to meet with you to discuss our submission.

We have no objection to this submission being published.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Katherine McKernan', is placed above the typed name.

Katherine McKernan
CEO

Redfern Legal Centre



Crimes Legislation Amendment (Coercive Control) Bill 2022 Submission

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1. Summary of Recommendations

1. Adopt 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 before introducing a standalone criminal offence.
2. Insert new sections containing definitions of “economic abuse” and “financial abuse” in the Crimes Act and the ADVO Act.
3. If retaining examples of financially and economically abusive behaviour, replicate the examples used in the Crimes Act in the ADVO Act.
4. If retaining examples of financially and economically abusive behaviour, insert additional examples that involve perpetrators coercing victim survivors to take on debt and liabilities or be solely responsible for household debts.
5. Amend definition under s 54D(1)(a) to insert the words “in circumstances of a power imbalance between the persons” after the words “another person”.
6. In s 54D(1)(c)(i) and (ii), replace the words “cause physical or mental harm to the other person” with “coerce or control the other person”.
7. Amend definition under s 54F(2)(a) to insert the words “that does not include refusing access to a child”.
8. Amend elements of the offence under s 54D by addition of s 54D(3):

“In circumstances where the intimate partners are:

 - a. No longer in an intimate relationship; and
 - b. Entitled to commence, or have commenced proceedings in the Federal Circuit and Family Court of Australia in relation to property and/or parenting proceedings, behaviour occurring after the conclusion of the intimate relationship which is solely relating to:
 - i. access to a child of the relationship between the intimate partners; and/or
 - ii. financial assets of the intimate partners

shall not constitute an offence under this section.”
9. Amend s 54D of the Crimes Act to apply to all domestic relationships as defined in s 5 of the ADVO Act.
10. Delay criminalisation of coercive control until significant investments have been made in systems and cultural reform, education, training and funding of frontline services.
11. Proclamation date to be at least two years after the date of the Draft Bill passing.

2. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area and across New South Wales through its specialist state-wide legal services, including the Financial Abuse Service NSW.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are financial abuse, tenancy, domestic violence, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

3. RLC's work in domestic and family violence

RLC has over three decades of specialist experience in domestic and family violence (DFV) in New South Wales, receiving its first formal recognition for these services in 1996 with a Special Award for dedication and commitment to the prevention of domestic violence from the NSW Minister for Community Services. The award recognised a scheme pioneered by RLC – the Women's Domestic Violence Court Assistance Scheme – a holistic approach to the provision of services for women seeking legal protection from domestic violence which has since been extended throughout NSW by Government. Additionally, RLC has initiated or been actively involved in projects which have led to the establishment of the Welfare Rights Centre, Prisoners Legal Service, Accommodation Rights Service, Consumer Credit Legal Centre (now Financial Rights Legal Centre) and Campbelltown Legal Service, among others.

In 2014, RLC began providing legal services to victim survivors of financial abuse through our credit, debt and consumer law practice. RLC identified that there was a need for a more specialised and state-wide service for people who were experiencing legal issues associated with DFV and financial abuse, including family law expertise in financial matters such as property settlements, spousal maintenance and child support.

Since 2019, RLC has provided legal advice and representation to NSW-based clients affected by financial abuse from an intimate partner, via our specialist Financial Abuse Service NSW. In addition to providing legal support for victim survivors of financial abuse and other coercive controlling behaviour, the Service provides community legal education and engages in capacity-building and reform work to drive systemic change and prevent financial abuse.

RLC also coordinates the NSW chapter of the Economic Abuse Reference Group NSW, 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.

Given RLC's expertise in financial abuse, this submission will focus on the Draft Bill as it relates to economic and financial abuse, which are widespread and underreported forms of coercive control in abusive relationships.

4. RLC endorses the submissions made by Women's Legal Service NSW and Domestic Violence NSW and submits as a member of the Economic Abuse Reference Group NSW

RLC endorses the submissions made by Women's Legal Service NSW and Domestic Violence NSW.

RLC has also made a joint submission as a member of the Economic Abuse Reference Group NSW.

5. Phased Approach to Addressing Coercive Control

We refer to the NSW Parliament Joint Select Committee on Coercive Control's report dated 30 June 2021. The Joint Select Committee's second recommendation was:

That the NSW Government should propose amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to create a clear and accessible definition of domestic abuse, which includes coercive and controlling behaviour. This should be done as a priority, before criminalising coercive control.¹

RLC endorses this recommendation and approach, such that the Exposure Draft Bill should amend only the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (**ADVO Act**) in the first instance. For all of the reasons that follow, and all of the reasons set out in the Joint Select Committee's recommendations, we support this phased approach and we refer to and endorse the submissions made by Domestic Violence NSW and Women's Legal Service NSW in this respect. However, in the alternative, the remainder of our submission addresses the current Exposure Draft Bill, as it amends both the *Crimes Act 1900* (NSW) (**Crimes Act**) and the ADVO Act.

Recommendation

- 1. Adopt 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 before introducing a standalone criminal offence.**

6. Specific comments on the Exposure Draft Bill

6.1 Legislation should include consistent definitions and examples of financial and economic abuse

The Exposure Draft Bill proposes that the definition of 'domestic abuse' to be inserted at section 54F of the Crimes Act include if one person is 'economically abusive' to another person, and the two people are in a domestic relationship. None of the terms economic abuse, economically abusive nor financial abuse are defined in the Exposure Draft Bill. The Exposure Draft Bill refers to behaviours which constitute financial abuse, but inconsistent examples of behaviours are given in the proposed amendments to the Crimes Act and the ADVO Act. Economic abuse and financial abuse should be specifically defined in the legislation and example behaviours should be harmonised between the pieces of legislation, to ensure consistency in understanding and responding to these behaviours.

While financial abuse is broadly understood as a subset of economic abuse, definitions of economic and financial abuse vary within the family violence sector. Consultation should occur in relation to definitions to be inserted into the Exposure Draft Bill for 'economic abuse' and 'financial abuse' to ensure that these definitions capture the views of practitioners, academics and people with lived experience. By way of illustrative example, the UNSW Gendered Violence Research Network adopts the following definitions, while recognising the various ways in which economic abuse and financial abuse are defined and understood in Australia:

Economic abuse: Refers to a pattern of control, exploitation or sabotage of money, finances and economic resources (such as food, transportation, accommodation) affecting an individual's capacity to acquire, use

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

and maintain economic resources and threatening their economic security and self-sufficiency.

Financial abuse: Refers to a pattern of control, exploitation or sabotage of money and finances affecting an individual's capacity to acquire, use and maintain financial resources thus threatening their financial security and self-sufficiency.²

The behaviours set out in the Exposure Draft Bill are far narrower than the definitions outlined above. While the Exposure Draft Bill does qualify that the behaviours are not exhaustive, and no list could effectively contain all examples of economic and/or financial abuse, the preferred path would be to provide the relevant definition. Providing a list of examples, by contrast, will encourage decision makers to rely on the limited list provided, rather than recognising the wide range of behaviours which constitute financial and economic abuse. In addition, the narrow examples of specific behaviours could risk misidentification of the primary perpetrator (see section 5.2 below).

It is important that financial and economic abuse are defined in the Exposure Draft Bill, so the experiences of victim survivors of economic and financial abuse are protected by the legislation, and are not excluded due to over reliance on specific examples in the Exposure Draft Bill. By including examples without a definition, there is a significant risk that the examples have a limiting effect on decision-makers, so that if a victim survivor reports financial abuse or coercive control that does not fall within the list of examples, they will not be supported. In our experience, victim survivors of financial abuse and other coercive controlling behaviours have not generally had positive experiences interacting with NSW Police, even when reporting behaviour which would constitute a criminal offence under the current *Crimes Act*. Should the legislation be made in line with the Exposure Draft Bill, there is a significant risk that future victim survivors will have similar negative interactions with the Police if their experience of financial abuse falls outside of the specific examples.

Case Study: Victim Survivors' Interactions with the Police

Rose* was in a domestic violence relationship with her husband for over 5 years. During this time she experienced severe emotional and financial abuse and felt that her husband exerted complete control over her. After she fled the relationship, Rose discovered that the car loan she believed they had taken out together was in her name alone, leaving her solely responsible for over \$70,000 debt. When she sought legal advice about the car loan, she realised that her husband had falsified her payslips and other financial documents in order to secure the loan in her name. Rose was born overseas and has a limited understanding of English, so she requires an interpreter during appointments with her lawyers and other services.

RLC assisted Rose to surrender the car and have the outstanding car loan waived. Rose then wanted to report the suspected fraud by her ex-husband to the police. She felt strongly that her ex-husband should face consequences for his actions. When she called the police station, they sent two male police officers to her home to take a statement without an interpreter. Her report was not taken seriously. The male police officers joked with her about her situation and refused to take a statement about the fraud as the perpetrator was her husband at the time. Despite the fact there was already an ADVO in place to protect her and her children from her ex-husband, which had been issued by the same police station, this failed to signal a red flag to the officers she was dealing with that Rose was in danger and had experienced domestic violence from the person she was trying to make a report about. The officers left without taking a statement from Rose. She felt that her concerns about her ex-husband had not been heard, and was unsure of where to turn to next if the police refused to believe her.

** Not the client's real name.*

² Gendered Violence Research Network, UNSW Sydney 'Understanding Economic and Financial Abuse in Intimate Partner Relationships' (October 2020).

We also recommend that, should examples remain in the legislation, these be consistent across amendments to the Crimes Act and ADVO Act. Current inconsistencies in the Exposure Draft Bill are as follows:

	Crimes Act wording	ADVO Act wording
<i>Example of restrictions on autonomy</i>	“making unreasonable demands on how a person exercises the person’s financial, personal, sexual or social autonomy and making threats of negative consequences for failing to comply with the demands” (s 54F(2)(g) example 1)	“unreasonably denying the second person the financial autonomy the person otherwise would have” (s 6A(2)(f))
<i>Example of withholding financial support</i>	“withholding financial support necessary for meeting the reasonable living expenses of a person, or another person living with or dependent on the person, in circumstances in which the person is dependent on the financial support to meet their living expenses” (s 54F(2)(g) example 4)	“unreasonably withholding financial support needed to meet the reasonable expenses of the second person, or the person’s child, at a time when the person is entirely or predominantly dependent on the first person for financial support” (s 6A(2)(g))
<i>Example of withholding access to financial assets</i>	“preventing or unreasonably regulating a person from having access to the person’s financial assets, including financial assets held jointly with another person” (s 54F(2)(g) example 5)	Does not appear
<i>Example of depriving a person of their liberty</i>	“depriving a person of liberty, restricting a person’s liberty or otherwise unreasonably controlling or regulating a person’s day-to-day activities” (s54(2)(g))	“unlawfully depriving the second person, or a person with whom the second person has a domestic relationship, of their liberty” (s 6A(2)(i))

In each of the above cases, should the illustrative examples be maintained, we recommend replicating the wording in the Crimes Act in the ADVO Act as the former are more detailed and provide more support to decision makers in identifying coercive control.

Further, the above examples are limited to circumstances of economic and financial abuse where the perpetrator withholds access to assets or financial support under their control. This assumption ignores common tactics of financial abuse where the victim survivor is coerced to:

- take on debt or liabilities in their name for the perpetrator’s benefit;
- sign legal or financial documents (including for the establishment or operation of a business) or make claims for the benefit of the perpetrator (and/or a third party associated with the perpetrator);
- be solely responsible for household debts (such as rent, utilities and telecommunications accounts), leaving them with the financial liability and impacts on their credit report; and/or
- provide financial support for the perpetrator or fund the perpetrator’s gambling, drug or alcohol expenses.

Recommendation

- 2. Insert new sections containing definitions of “economic abuse” and “financial abuse” in the Crimes Act and the ADVO Act.**
- 3. If retaining examples of financially and economically abusive behaviour, replicate the examples used in the Crimes Act in the ADVO Act.**
- 4. If retaining examples of financially and economically abusive behaviour, insert additional examples that involve perpetrators coercing victim survivors to take on debt and liabilities or be solely responsible for household debts.**

6.2 Reduce risk of misidentification of perpetrator

We have significant concerns about how the Exposure Draft Bill will lead to effective identification of the perpetrator of coercive control, including financial and economic abuse. It is reassuring that the proposed offence recognises that coercive control involves a course of conduct, however the Exposure Draft Bill does not address the additional element which distinguishes coercive control in domestic relationships, being the imbalance of power between the perpetrator and the victim-survivor.

6.2.1 Risk of victim-survivor being misidentified as primary perpetrator of coercive control, if power imbalance is not recognised

We have particular concerns around First Nations and Culturally and Linguistically Diverse (CALD) victim-survivors of financial abuse, who are more likely to be mis-identified as perpetrators. In 2017, the Queensland Domestic and Family Violence Death Review and Advisory Board identified that “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”.³ In determining whether a particular set of events constitutes coercive control, the legislation should explicitly address the need to consider the imbalance of power. The creation or exploitation of this imbalance of power is key to perpetrators continuing to trap victim-survivors in abusive relationships.

We are concerned that without recognition of this power imbalance, the behaviour of victim survivors of coercive control may be misconstrued by police or even used by perpetrators to threaten police intervention. This could result in those fleeing from a relationship characterised by coercive control, or taking steps to protect themselves from an abusive partner, being charged with a criminal offence under s 54D. We have experience assisting many clients from First Nations and CALD communities who have been misidentified by NSW Police as primary perpetrators of family violence and subsequently been served with an ADVO. This is reflected by the findings of Women’s Legal Service Victoria which found:

The misidentified women we see through our duty lawyer service often present with the following demographic characteristics and indicators of disadvantage, which give necessary context to her victimisation:

- Indigenous women, with histories of complex, intergenerational trauma who in addition, may experience racial discrimination and prejudice when engaging with police
- Refugee and migrant women, who may also face discrimination in engaging with police...⁴

³ Queensland Domestic and Family Violence Death Review and Advisory Board ‘2016–17 Annual Report’ (2017) at 82.

⁴ Ulbrick M and Jago M, Women’s Legal Service Victoria ““Officer she’s psychotic and I need protection”: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria’ (2018).

Case Study: Misidentification of Perpetrator

Erin*, an Aboriginal woman, was in a relationship characterised by coercive control for about 3 years. She ended the relationship when her niece disclosed that Erin's partner had harassed her for sexually explicit photographs. When Erin confronted him about it, he reacted violently and hit her with an open fist. She reported the assault to the police, who told her that even though she had a photograph of the red mark that had been left, it was her word against his, and they declined to charge him with any offence.

Financially insecure, she returned to stay in her caravan on his property as she felt like she had no other option. On one occasion, she returned to find that the lock had been removed from her caravan door and items had been removed from her caravan. She confronted him and, in her frustration, kicked over a garden ornament. He called the police and she was charged and served with an ADVO.

After the court ordered an interim ADVO, Erin returned to recover her property, as she understood she was permitted to do so. A confrontation ensued in which Erin's ex-partner alleged she had attempted to take his property, and contacted the police. Erin was charged with breaching the ADVO and was not permitted to recover her property, leaving her in continuing serious financial instability and without a safe location to live.

** Not the client's real name.*

In the above case study, as Erin interacted with her ex-partner on a number of occasions rather than just one, her behaviour could be described as a course of conduct and police may have considered that it fell within the s 54D offence, had the legislation been in place at the time. However, a review of all of the circumstances of the relationship would reveal that there was a significant power imbalance between Erin and her ex-partner and she should not have been forced to defend herself in court.

Should the legislation not reflect the reality of the inherent power imbalance by adopting a contextual definition of 'abusive behaviour', there are two key downsides:

- Requiring victim survivors to defend themselves against criminal charges is onerous, traumatising and perpetuates systems abuse; and
- The already-overworked court system should not be required to waste resources and meet the demand of going to final hearing for matters which should not have been the basis of a criminal charge initially.

Victim survivors should not be required to rely upon the defence that "the course of conduct was reasonable in all the circumstances" under s 54E. Decision makers who are making the decision to charge individuals should have the power imbalance front of mind and should be required to consider this power imbalance before proceeding to lay charges. These decision makers should be protecting victim survivors of coercive control, not retraumatising them and exposing them to the criminal process. We consider that the inclusion of this power imbalance as an element of the offence would increase the level of protection afforded to victim survivors under the amended Crimes Act.

The Scottish legislation criminalising coercive control, which is widely viewed as best practice coercive control legislation, defines the offence on the basis of the outcome or effect on the victim survivor, rather than the action of the perpetrator. This is an alternative means of recognising the power imbalance; it recognises that a similar set of behaviours can lead to very different outcomes, depending on the individual circumstances of the people involved and the power imbalance between them.

Our experience is that perpetrators are creative, and highly capable of tailoring their behaviour to cause harm to their partners in the particular context of their relationship. By way of example, partners in many types of relationships may take on joint debts. However, one of the behaviours we see often is victim survivors being coerced into taking out a loan for the benefit of the perpetrator only. It can be difficult for outsiders to recognise behaviour that has caused distress and harm to victim survivors without understanding the power imbalance in a relationship. There is a need for cultural and systems reform to assist the police, judiciary, domestic violence sector and the community more broadly to recognise these particular behaviours. The lens of recognising the power imbalance would provide an important safeguard in the legislation.

We have identified a number of circumstances in which victim-survivors are at significant risk of being mis-identified as a perpetrator of coercive control and financial abuse based on the examples of ‘abusive behaviour’ in s 54F(2)(g):

- A perpetrator of coercive control and financial abuse regularly drains the joint bank account to gamble or purchase alcohol or drugs, and the victim survivor takes away the debit card on pay day so they can pay rent and purchase the family’s groceries.
- A victim survivor flees the matrimonial home with three children, and withdraws a modest amount from the joint offset account to establish a rental property for themselves and the children. They are unable to work, so periodically withdraw amounts from the joint account to their personal account to meet rent and living expenses.
- In commencing making a safety plan with a domestic violence caseworker, a victim survivor opens a bank account in their own name and begins to deposit their salary into this account. Their partner, a perpetrator of coercive control who has chosen not to work, reports to the police that they can no longer afford rent or living expenses for themselves or their child from a previous relationship as financial support has been withdrawn.
- A victim survivor asks a perpetrator to pay for the car loan which was taken out jointly, in circumstances where the car has only ever been used by the perpetrator, as they are getting default notices. As the perpetrator does not respond to a number of text messages, the victim survivor writes to the loan provider, who proceeds to repossess the vehicle to recover their outlay of funds.

Absent an express acknowledgement of the power imbalance, all of the above scenarios could lead to a victim-survivor being charged with the s 54D offence of abusive behaviour and facing the need to defend themselves despite their own trauma and financial instability.

6.2.2 Risk of victim-survivor being identified as primary perpetrator of coercive control post-separation

The risk of misidentification of a perpetrator is heightened when applied to post-separation behaviour between parents, where there is an existing jurisdiction in which to resolve disputes that are inappropriate to be dealt with between the parents.

Parents who restrict access to children on the basis of safety concerns should not be subject to criminal charges. In circumstances where it is found that a parent has acted unreasonably in withholding access to children and orders are subsequently made under the *Family Law Act 1975* (Cth), the judicial decision maker can order make up time. This is a far more appropriate outcome than the parent being charged with a criminal offence for what could be genuine concern for the child’s safety and best interests. Parents should be safeguarded in circumstances where they are protecting their children from abuse. In fact, the state requires protective behaviours from parents in a child protection context. On the current Draft Exposure Bill, parents could face being reported to police and being investigated when they are reasonably ensuring their children do not face further harm after escaping a situation of family violence. Police and victim survivor resources should not be wasted on addressing such reports.

Case Study: Parent protecting their child from harm

Julie* was in a de facto relationship for 14 years and had one five-year-old child from that relationship. She had separated after experiencing family violence including sexual, physical, psychological and financial abuse. The child had witnessed the violence perpetrated against Julie and was displaying signs of trauma, including wetting her bed and selective mutism.

After the breakdown of the relationship, Julie received communication from her partner requesting time with their daughter which Julie repeatedly refused out of concern for her daughter's welfare. The pattern of requests and refusals continued for approximately one year post-separation.

During the relationship, Julie's partner had prevented her from working and she had no funds to set up a new home for herself and her child after separation. Her partner was earning \$200,000 per annum and gave Julie enough money to pay for groceries and other living expenses whilst they were cohabiting but closed off all access to funds from a joint account after they separated. Julie withdrew three sums from the mortgage redraw facility totalling \$12,000 as well as a cash advance of \$5,000 from a credit card account to support herself and her daughter as she set up a new household.

** Not the client's real name.*

It is arguable that under the proposed definition of 'abusive behaviour' in s 54F in the Exposure Draft Bill, Julie's conduct in not allowing time with a child and in withdrawing funds from the joint account to support herself postseparation falls within the scope of the s 54D offence. Despite taking steps to protect herself and her child, she would risk prosecution, or at least investigation by police, and may need to obtain legal advice and rely on the defence in s 54E.

Recommendation

- 5. Amend definition under s 54D(1)(a) to insert the words "in circumstances of a power imbalance between the persons" after the words "another person".**
- 6. In s 54D(1)(c)(i) and (ii), replace the words "cause physical or mental harm to the other person" with "coerce or control the other person".**
- 7. Amend definition under s 54F(2)(a) to insert the words "that does not include refusing access to a child".**

6.3 Maintain certain post-separation conduct as within the jurisdiction of the *Family Law Act 1975* (Cth)

There is a need to distinguish between conduct which occurs during a relationship and after the breakdown of a relationship. This is not to claim that coercive control cannot occur after the end of a relationship – in fact, the end of a relationship or a victim survivor attempting to leave a relationship is a risk factor for further abuse. However, in the context of parenting and property disputes, as highlighted above at 5.2.2, there are behaviours which may be reported to the police as allegedly meeting the definition of a s 54D offence. However, there is already a functional and appropriate jurisdiction for allegations of such behaviour, being the Federal Circuit and Family Court of Australia. Changing the current legislative position in relation to coercive control while the parties are able to commence proceedings in the Federal Circuit and Family Court of Australia will not, in our view, improve the position for victim survivors compared to

the current legislation and instead risks systems abuse.

Systems abuse remains a risk in the context of family law, however, given that systems abuse can involve applications and reports in multiple contexts and in multiple jurisdictions, the criminalisation of coercive control post-separation risks another means by which a perpetrator could victimise victim survivors. A criminal charge or ADVO on the basis of the Exposure Draft Bill could be further used to gain leverage in family law proceedings, and apply pressure to victim survivors in circumstances which ultimately reduce their financial and emotional reserves. This should not be allowed to occur.

By failing to distinguish between during a relationship and post-separation, the legislation does not recognise the realities of family law matters. Currently, if a parent withholds their child from the other parent in circumstances where there are not parenting orders in place and there is a report to the police, the police will inform the parent that the jurisdiction for such disputes is the Family Court. Doing so unilaterally, without significant safety concerns, can lead to significant issues in those Family Court proceedings, and orders being made against the parent who withheld access to the child. This is the appropriate means of resolving such disputes. In the event there are significant safety concerns, there are means to address this through the current legislative landscape. The current landscape has the additional benefit that the decision maker will be a trained judicial officer with experience in reviewing and assessing evidence of the same.

In addition, as highlighted above, withdrawing funds from a joint account for living expenses could be seen to be an offence under s 54D based on the examples given in s 54F(2)(g), yet it may be reasonably required for a victim survivor to support themselves when leaving a relationship, and indeed is often done on the recommendation of a family lawyer. Requiring the victim survivor to undergo a police investigation and establish that this was “reasonable in all the circumstances” under s 54E is unnecessarily onerous when there is an existing jurisdiction to address whether such withdrawals are reasonable or not. This is likely to promote and increase the risk of systems abuse and should not occur.

Recommendation

8. Amend elements of the offence under s 54D by addition of s 54D(3):

“In circumstances where the intimate partners are:

(a) No longer in an intimate relationship; and

(b) Entitled to commence, or have commenced proceedings in the Federal Circuit and Family Court of Australia in relation to property and/or parenting proceedings,

behaviour occurring after the conclusion of the intimate relationship which is solely relating to:

i. access to a child of the relationship between the intimate partners; and/or

ii. financial assets of the intimate partners

shall not constitute an offence under this section.”

6.4 Recognise wide range of relationships coercive control can impact

The proposed offence of section 54D applies only to abusive behaviour in intimate partner relationships. It is important to recognise that a course of conduct that consists of abusive behaviours as defined in the Exposure Draft Bill can and does apply to various forms of relationships, including broader familial relationships and caring relationships. The criminalisation of coercive control must reflect the range of domestic relationships in which DFV, including coercive controlling behaviours, occurs.

The limited scope of the proposed offence poses a risk to Aboriginal and Torres Strait Islander and CALD communities, people with disability, older people and people living in residential care. Financial abuse and coercive control may be perpetrated by extended family members or kin against another family member, not just against an intimate partner.⁵ In Aboriginal and Torres Strait Islander communities, practices such as humbugging or demand sharing (while sometimes protective amongst multi-generational family groups) may reach a point of financial abuse against not only by an intimate partner, but also extended family members.⁶ The Draft Bill also excludes instances of 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. A failure to recognise the various presentations of coercive control outside of the intimate partner relationship context will lead to victim survivors being left unrecognised and unprotected.

Recommendation

- 9. Amend s 54D of the Crimes Act to apply to all domestic relationships as defined in s 5 of the ADVO Act.**

6.5 Additional investments required in education, training and funding of frontline services

We refer to and endorse Women’s Legal Service NSW detailed and considered submissions, particularly in relation to cultural and systems reform. The Joint Select Committee on Coercive Control made a number of recommendations, not simply in relation to legislative change (in a phased way, as referred to above at section 4), but also in relation to:

- Public education about all forms of domestic abuse;
- Funding for front line services;
- Improving the policing of domestic abuse;
- Education and training for frontline staff;
- Oversight of domestic abuse laws and services.

The report of the Joint Select Committee made the clear recommendation that “The criminal offence should only commence after considerable education, training and consultation with police, stakeholders and the frontline sector.”⁷

It is clear that there is significant work to be completed before there should be any criminalisation of coercive control. Even in jurisdictions where coercive control has been criminalised, there are inconsistent and mixed outcomes for victim survivors. While a statutory review of the Scottish legislation is due shortly, some initial findings have been published. A survey completed in January 2022 to review the first two years after the Scottish legislation was introduced found:

The findings indicate that police involvement either made no difference to the levels of control the women felt (35%) or made them feel they had less control (30%) (Figure 9). For another 9% police involvement did not make any difference to their feelings of control, however, they felt in control throughout. Only 14% of the responses showed women felt more in control.⁸

⁵ Gendered Violence Research Network, UNSW Sydney ‘Understanding Economic and Financial Abuse Across Cultural Contexts’ (June 2021).

⁶ Gendered Violence Research Network, UNSW Sydney ‘Understanding Economic and Financial Abuse in First Nations Communities’ (March 2021).

⁷ Joint Select Committee on Coercive Control, Parliament of New South Wales, *Coercive control in domestic relationships* (Report 1/57, June 2021) viii.

⁸ Lombard, N, Proctor, K and Whiting, N The Scottish Centre for Crime & Justice Research, Domestic Abuse (Scotland) Act 2018 and the Criminal Justice System (January 2022).

Despite the criminalisation of coercive control in the United Kingdom, coercive control and financial abuse are rarely investigated and prosecuted in the absence of physical or sexual abuse. A recent review of the coercive control legislation in England and Wales found:

Experimental statistics show that CCB [controlling or coercive behaviour] offences were often prosecuted alongside violent offences, which raises questions around the effectiveness of the offence where abusive behaviours consist of non-physical abuse.⁹

The review also identified the importance of the police having “the training and specialist resources needed to establish whether there are patterns of controlling or coercive behaviours underlying the incident that led to a police callout”.¹⁰ This demonstrates that the need for further support, education and training to recognise and support victim survivors of coercive control and financial abuse, particularly in the absence of physical or sexual violence.

This accords with the experiences of many of our clients who have told us that the Police have not responded appropriately when their situation does not easily fall within a report of physical violence.

Case Study: Inappropriate response to police report

Abby* was in a domestic violence relationship where she experienced emotional and financial abuse. When she left her ex-partner, she discovered that he had fraudulently created multiple “buy now pay later” (BNPL) accounts in her name, using her personal details and an email address that he had created in her name. She had no knowledge these accounts existed until she received letters of demand. Through RLC contacting the BNPL providers, she learned that they required a police statement and statutory declaration as evidence of fraud. She would have 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” and 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 from a community legal centre to seek account closures and waivers from the companies, 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 for her matter and failed to make appropriate enquiries regarding the presence of domestic violence.

** Not the client’s real name.*

RLC has concerns about all of the above steps being completed prior to criminalisation of coercive control. By way of illustrative example, the Financial Abuse Service at RLC is one of only two dedicated financial abuse legal services in Australia (and the only one with state-wide coverage), and assists victim survivors across NSW who have experienced financial abuse, but receives only \$50,000 per year in NSW Government funding. Only \$700,000 over two years has been earmarked specifically to “support the NSW Government’s commitment to outlaw coercive control.”

Further resourcing of services which support victim survivors of coercive control will be required, but also education of the general public, police and decision makers across the legal system. The Exposure Draft Bill marks a shift from incident-based policing to examining a course of conduct throughout the relationship,

⁹ 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>.

¹⁰ Home Office (United Kingdom) *Review of the controlling or coercive behaviour offence* (10 May 2021) at 5, available at <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence>.

which will require a very significant shift in attitudes and understanding not only for the police, but also for the wider community, and is likely to require more intensive police and judicial resources. Without such steps, outcomes will undoubtedly not improve for victim survivors.

Recommendation

10. Delay criminalisation of coercive control until significant investments have been made in systems and cultural reform, education, training and funding of frontline services.

6.6 Proclamation Period to be at least 2 years

On 22 August 2022, Mark Speakman MP stated, in relation to the proclamation period:

“The experience in jurisdictions which have introduced coercive control criminalisation in the last decade demonstrates the need for this long lead time of at least 12 months. The suggestion was that in England and Wales there wasn't enough time to do this. Scotland took a much lengthier approach. One of the issues I'm keen to get feedback in the consultation process is... how long stakeholders think we need before we commence the Act.”¹¹

We consider that, for reasons explained further above at section 6.5, the proclamation period should be at least two years to allow sufficient time for the above processes to occur.

Recommendation

11. Proclamation date to be at least two years after the date of the Draft Bill passing.

¹¹ Evidence to Regional NSW and Stronger Communities Committee, Legislative Council, Sydney, 22 August 2022, 6 (Mark Speakman, Attorney General).