



22 February 2021

Committee Secretary
Joint Select Committee on Coercive Control
Parliament of New South Wales
6 Macquarie Street
Sydney NSW 2000

By email: coercivecontrol@parliament.nsw.gov.au

Dear Committee Secretary,

Inquiry into coercive control in domestic relationships

Thank you for the opportunity to provide input to the Joint Select Committee on Coercive Control's inquiry into coercive control in domestic relationships (the inquiry).

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 doesn't occur in a vacuum and that introducing a new offence criminalising coercive control will have broader impacts that need consideration, such as how it would 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 banking industry.

EARG NSW members are of the view that coercive control, which should include economic abuse, should be recognised as part of DFV. However, we have concerns that introducing a law to criminalise coercive control will not necessarily achieve better outcomes for victim survivors, especially without a robust, thorough consultation, education for all sectors and proper funding.

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

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) providing assistance to clients who have experienced coercive controlling behaviours and in particular economic abuse. See more details about EARG members and contributors below at Appendix 1.

Economic Abuse, DFV and how it relates to coercive control

Coercive control has been a part of understanding DFV, and has been analysed and understood through both research, policy and legislation both in Australia and in comparable jurisdictions such as the UK and Scotland.¹ Whilst there is no agreed definition for coercive control the research has conceptualised it as having three elements: intentionality on the part of the abuser; the negative perception of the controlling behaviour on the part of the victim; and the abuser's ability to obtain control by use of a credible threat.² Coercive control aims to encapsulate the patterns of abusive behaviours that occur in DFV which may seem like small incidents to an individual but have the impact of removing freedom, autonomy and agency from the victim survivor.

Economic abuse, also described as financial abuse, is a form of family, domestic and sexual violence and would form part of coercive controlling behaviours. 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.³ Economic abuse can occur alongside other forms of violence such as physical, emotional and sexual violence.

A recent study into the prevalence of economic abuse between intimate partners demonstrated that 11.5% of Australians had experienced it and that women experience it at higher rates (15.7%) than men (7.1%). The 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.⁴

Debts are a common barrier to a victim survivor remaining in or returning to an abusive relationship. A victim survivor can experience the financial impact long after the relationship has ended.

The below real story is archetypal of the complex, intersecting and diverse issues people face when experiencing economic abuse and coercive control, and some of the system challenges they face.

¹ Paul McGorrey and Marilyn McMahon 'Criminalising Coercive Control: An Introduction' in Marilyn McMahon and Paul McGorrey (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* (Springer, 2020). See also Walklate S and Fitz-Gibbon K (2019) The criminalisation of coercive control: The power of law? *International Journal for Crime, Justice and Social Democracy* 8(4): 94-108.

² Evan Stark *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007)

³ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0/>

⁴ 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.

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 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 after, 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*

Comments on the criminalisation of coercive control as it relates to economic abuse

Need for more thorough consultation

Whilst EARG NSW welcomes the establishment of the Joint Select Committee on coercive control, we reiterate our concerns around the short timeframe as outlined in our letter to the Committee on 14 December 2020. We note that in Scotland, where the government has recently introduced coercive control laws which are considered best practice, 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 both the DFV sector, people with lived experienced and marginalised groups.⁵ In order for the Committee members to be well informed, there needs to be opportunities for members to hear from marginalised communities, and conduct a proper consultation. We note that making a submission is one way to raise issues but this is not an accessible avenue for everyone, and EARG NSW encourages the Committee to work actively with these groups.

We also want to draw attention to the NSW Bureau of Crime Statistics and Research (BoCSaR) commissioned research about the existing pattern of behaviour offences (stalking

⁵ Scottish Government 'Domestic Abuse Act in Force' available here <https://www.gov.scot/news/domestic-abuse-act-in-force/>

and intimidation offences) which is expected to be released in March 2021. This data and research will be critical to inform the Committee's findings in relation to coercive control. We are concerned that the reporting period for submissions was too early to consider this critical research from BoCSaR.

The Government should conduct a proper consultation with those with lived experience, the DFV service sector including financial counsellors, police and the judiciary as well as marginalised groups including Aboriginal and Torres Strait Islander people, before introducing new legislation to criminalise coercive control.

Review the efficacy of existing laws to address coercive control

Many of our members provide direct legal assistance to victim survivors of economic abuse, and through this experience we have identified existing laws, policies and training which could better support victim survivors. We are of the view there should be a review into how existing laws are working before introducing another offence which may have unintended adverse impacts.

One example is the criminal offence of fraud which could be used to charge and prosecute perpetrators of economic abuse; however, complaints are rarely investigated by police. Our members have had numerous cases where a victim survivor has reported their partner using their personal identification documents to fraudulently take out loans and other contracts in their name but they have been told by police officers that it's a 'family matter' or a 'civil law matter'. The best outcome we have seen was where the police officer at least made the report, but told the victim survivor it was just to appease the creditor chasing her for the debt and there would be no further police investigation. This seems to be an issue with training and implementation of the existing law.

Abby's Story

Abby was in a domestic violence relationship where she experienced emotional and financial abuse. When she decided to leave her ex-partner, he threatened to send naked photos 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. Her partner's email threatened that there were 'more to come'.*

Abby sought help from a Community Legal Centre to obtain her credit reports. Abby discovered that her ex-partner had fraudulently created multiple "buy-now-pay-later" 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 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. Through contacting the agencies where the falsified accounts were created, she learned that they required a police statement and statutory declaration as evidence of fraud. In order to rectify her situation and have the accounts closed and removed from her credit report, 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 the 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.

**Name changed to protect client's privacy*

Another issue for review is that economic abuse is not considered by the *Crimes (Personal and Domestic Violence) Act 2007* (NSW).⁶ All other state jurisdictions in Australia have a definition for DFV that includes forms of abuse such as emotional, psychological, coercive or financial, which would encapsulate coercive controlling behaviours, even if they don't have a specific offence of coercive control. It would create an anomaly if a perpetrator could be prosecuted for economic abuse under a coercive control offence but a victim survivor is not eligible for protection under an ADVO for economic abuse.

We are of the view that economic abuse should be specifically recognised and defined in any law and policy changes relating to coercive control. We refer the Committee 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, to adopt consistent definitions across jurisdictions as well as within the Family Law Act.⁷

Whilst family law legislation recognises coercive controlling behaviours including financial abuse, in practice EARG members have not found this to be an effective way of dealing with coercive control. In fact, perpetrators often use the family law to further abuse victim survivors. Any consideration of new legislation for coercive control would need to consider the intersections with the family law system. EARG NSW suggests the Committee consider the recommendations made in the ALRC's report as discussed above in relation to harmonisation of family violence definitions across jurisdictions.⁸

Prevention

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.

Given the endemic levels of DFV in Australia, we are of the view there should be significant investment in research and education for the prevention of coercive control, including economic abuse.

Need for practical solution for victim survivors of economic abuse

Whilst 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

⁶ Barwick, K., McGorrery, P., and McMahan, M. (2020) 'Ahead of Their Time? The Offences of Economic and Emotional Abuse in Tasmania, Australia' in Marilyn McMahan and Paul McGorrery (eds) *Criminalising Coercive Control: Family Violence and the Criminal Law* Springer, 135, 155.

⁷ 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.

⁸ 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.

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 even if coercive control is criminalised, cases of economic abuse which do not also involve physical violence may be overlooked or not prioritised. Consideration must also be given to the way in which criminalising coercive control could adversely impact a victim-survivor whose case is not investigated by police or is later rejected for prosecution.

Address adverse impact of increased demand from creditors for police and judicial evidence

EARG members have been working with creditors for many years to try to educate them about trauma informed practice and the barriers victim survivors face in reporting DFV to police, as well as the fact that in NSW, ADVOs are not available for economic abuse alone. We foresee if coercive control is criminalised, 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 risk by making police reports. This may also make it harder for victim survivors to advocate for themselves against these creditors, leading to an increase in demand for representation from community legal centres and financial counselling services.

Plan to address the broader impact of coercive control

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 controlling offences in other jurisdictions, there is still not enough evidence that criminalisation of coercive control has been successful in supporting victim survivors.⁹ Research and practice has demonstrated that some of the reasons it hasn’t been effective is that 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’s not clear that the law, which has already struggled with responding to DFV, can recognise coercive control sufficiently.¹⁰

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,¹¹ culturally and linguistically diverse communities and other marginalised people.¹²

⁹ 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

¹⁰ 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.

¹¹ Blagg H (2016) *Crime, Aboriginality and the Decolonisation of Justice*. 2nd edn. Sydney: Federation Press.

¹² 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:

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.¹³ The UK case law 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.¹⁴ 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.¹⁵

Ongoing reform work required

Before NSW considers criminalising coercive control, more work needs to be done on understanding how it works, considering the evidence from other jurisdictions and also how coercion relates more broadly to the current criminal justice and civil system for DFV. Education, prevention and other mechanisms have the ability to address coercive control and economic abuse without the blunt force of the law. This would make redress more accessible for the wider community, would lead to broader cultural change around how we as a community understand coercive control and DFV, and represent a more holistic approach to a serious and devastating social problem. A public education campaign to ensure that coercive control is understood by the broader community could be one way of addressing this.

Any changes to the criminal law in NSW should be accompanied by education and training to support better understanding of coercive control within the criminal justice system; with both the police, judiciary, and the DFV sector, including financial counsellors.

Conclusion

EARG NSW supports coercive control being recognised in NSW, however before introducing a criminal offence or any further legislative and policy change, we recommend a thorough and robust consultation equivalent to the consultation undertaken in Scotland to ensure diverse engagement with all relevant groups. The NSW Law Reform Commission would be well placed to conduct such a review.

EARG NSW recommends further consultation include consideration of:

- Existing laws and policies;
- Adverse consequences for victim survivors;

<https://intouch.org.au/wp-content/uploads/2021/01/inTouch-Position-Paper-Criminalisation-of-Coercive-Control-2021-FINAL.pdf>

¹³ 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

¹⁴ 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.

¹⁵ 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

- Evidence based research on prevention and deterrence;
- Adequate funding to the sector to implement changes; and
- Education, awareness raising and training for all sectors of society, not just the police and judiciary.

EARG NSW would welcome recognition of economic abuse in that consultation and any subsequent changes to laws and policies.

We would welcome the opportunity to discuss this with the Committee further. Please contact Gayatri Nair, Policy and Capacity Building Officer of Redfern Legal Centre's Financial Abuse Service NSW at gayatri@rlc.org.au to arrange a meeting with EARG NSW.

Yours Sincerely,

Economic Abuse Reference Group NSW



Laura Bianchi

EARG NSW Coordinator

Team Leader & Solicitor of Redfern Legal Centre's Financial Abuse Service NSW

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