

**Submission
No 57**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Catholic Women's League Australia – New South Wales Inc

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Catholic Women's League Australia - New South Wales Inc

*Do not be afraid, I will help you.
(Isaiah 41:13)*

28th January 2021

It is with pleasure that Catholic Women's League Australia - New South Wales Inc. (CWLA-NSW) provides a submission to the Inquiry into coercive control in domestic relationships.

About the Catholic Women's League in New South Wales

CWL NSW has been present in New South Wales for more than a century, beginning in 1913 with the Catholic Women's Association. We have approximately 1650 active members in the eight Catholic dioceses in New South Wales.

Our organisation fosters the spiritual, cultural, intellectual, and social development of women and promotes the role of lay women in the mission of the Church.

This submission is made on behalf of CWLA-NSW, a member organisation of the Catholic Women's League Australia Inc. (CWLA), the national peak body representing the League's six-member organisations located throughout Australia. In addition to its long-standing presence in Australia, CWLA has a consultative status with the Economic and Social Council of the United Nations and is also a member of the World Union of Catholic Women's Organisations, which represents one million women in 60 countries.

Introduction

Our members are daughters, sisters, aunts, mothers, grandmothers and even great-grandmothers who believe in the need for robust protections for women and children in vulnerable situations, and who also believe that society is best served by providing families the support needed to grow in stability and opportunities for reconciliation.

As an organisation that is the voice of Catholic women in New South Wales and Australia, we are particularly concerned about the destructive effects of coercive control that many women suffer from, particularly the emotional and psychological damage that this form of control brings about.

Coercive control is a significant predictor of intimate partner homicide. The NSW Domestic Violence Death Review Teams' (DVDRT) has identified evidence of sometimes long histories of other forms of coercive and controlling behaviours in the majority of cases it has reviewed.

There are no specific criminal offences in NSW for coercive and controlling behaviour. Nevertheless, there are existing offences that are able to address some elements of coercive control and there may be scope to leverage these existing frameworks to better address coercive and controlling behaviours.¹

¹ NSW Government's Discussion Paper on Coercive Control, October 2020, 3.4 p. 10, <www.crimeprevention.nsw.gov.au/domestic-violence/Pages/coercive-control-discussion-paper.aspx>

For this reason, CWLA-NSW supports the DVDRT's recommendation 9:

That the Department of Communities and Justice examine the extent to which existing NSW laws (criminal and civil protection orders) respond adequately to non-physical forms of domestic and family violence and to patterns, rather than incidents, of violence. This examination should include:

- 1. a qualitative review conducted with NSW police about what forms of behaviour are being targeted under the offence of 'stalking or intimidation', whether such charges are laid on their own or in combination with other offences, and the relationship context of such offences; and*
- 2. monitoring the progress and implementation of offences of coercive control and domestic abuse in other jurisdictions.²*

We are grateful for the opportunity to review and comment on the NSW Government's Discussion Paper into Coercive Control (**Discussion Paper**.)

Structure of submission

This submission will not address every question as numbered in the Discussion Paper. Instead, a general response is provided below and, where appropriate, the Discussion Paper questions to which it corresponds is noted.

Benefits and challenges of creating an offence of coercive control - Question 7

If coercive control is criminalised, the resulting benefits mentioned in the Discussion Paper will take place. They are as follows:

- The creation of a coercive control offence may allow the State to address a destructive aspect of domestic and family violence (DFV) that is currently outside the scope of the criminal law.
- Ascribing separate criminal liability to coercive control would provide recognition to the distinct and harmful impact these behaviours can have on an individual.
- The offence would also carry with it its own penalty. This would allow for courts to specifically punish an offender for such behaviour, which would appear on an offender's criminal history.
- Creating a specific offence would send a clear and direct message to the community that coercive and controlling behaviour is unacceptable and will not be tolerated.
- Legislative recognition of coercive control may also complement educative and awareness raising exercises undertaken by governments and others about the nature and impact of DFV on victims and families.³

Additionally, a separate criminal offence for coercive control may also serve as an early warning sign to those in relationships marked by controlling behaviours, both victim and perpetrator. A comprehensive awareness-raising and education campaign could be critical in equipping individuals to seek early intervention. Enabling individuals to understand the concepts behind coercive control and how to identify such behaviours will better equip both victims and perpetrators to reflect on their relationship(s), identifying unhealthy relationship behaviours and make choices to protect or remove themselves, including reporting or seeking help at an earlier point before escalation.

² Domestic Violence Death Review Team, *Report 2017-2019 (2020)*, 72

³ *NSW Government's Discussion Paper on Coercive Control*, October 2020, 6.2-6.6 p. 24, <www.crimeprevention.nsw.gov.au/domestic-violence/Pages/coercive-control-discussion-paper.aspx>

A separate criminal offence may also provide the justification for the expansion of existing support options for victims of DFV to include support for those who are victims of coercive control.

CWLA NSW realises that the criminalisation of coercive control will result in potential challenges, such as those listed in the Discussion Paper:

- There is a risk that legislation could inadvertently criminalise relationship behaviours that are generally socially accepted, or behaviours which may be acceptable in the context of one relationship but not in the context of another.
- Any potential criminal offence would need to be complemented by comprehensive social services support and adequate front-line training.
- The new “course of conduct” model of offending that coercive control represents would pose novel challenges to evidence gathering and prosecution.
- The nuanced and complex behaviours that constitutive coercive control will present significant investigative challenges for police. Whilst victim-survivors may be able to provide police with a history of how the behaviour has affected them over time, reducing this into the form of evidence that is necessary to found a criminal prosecution will present conceptual and practical difficulties. Any criminal offence, whether it criminalises individual acts of a course of conduct, requires evidence that meets a certain standard of specificity.⁴

There are also challenges that arise particularly when placed against the backdrop of the cultural diversity of NSW. It is important for legislators to understand that in a number of cultures, it is normative for a husband and father in a household to exercise a considerable amount of control over family life and decision-making. While never using multiculturalism as an excuse for condoning abusive behaviours, it is important that legislation is not drafted and enforced solely through a predominantly Anglo-Saxon lens, but that it also takes account of other cultural norms.

In addition to considerations regarding ethnicity, there are also important religious elements to be considered. For example, the Discussion Paper lists the denial of birth control as a behaviour that is included as being indicative of coercive control. However, in some faiths - including the Catholic faith, the adherents to which make up 22.6 per cent of NSW residents - artificial contraception is not permitted. In many other faith communities, abortion is similarly not permitted, and it would be quite usual for a male partner to seek to convince a woman to not go through with an abortion. In these cases, it would be incorrect to suggest that a rejection of contraceptive methods or abortion is in every case a sign of controlling behaviour.

Overcoming challenges of creating an offence of coercive control - Questions 8 and 9

CWLA-NSW realises that in constructing an offence of coercive control it has to be carefully structured to ensure that it captures the relevant conduct sought to be criminalised, whilst not capturing other conduct that is not properly the subject of a criminal offence.

If a “course of conduct” offence is to be introduced where patterns of behaviour are considered, then the offense must also be assessed within the broader context of the relationship, which will include a consideration of the familial, cultural, and religious aspects that may have framed the relationship.

It might also be useful for the legislation to include an exhaustive list of conduct that could constitute coercive control, such as is provided for economic abuse in the Tasmanian *Family Violence Act 2004*. Such specificity could assist in educative efforts about what constitutes coercive control, rather than it

⁴ NSW Government’s Discussion Paper on Coercive Control, October 2020, 6.7-6.13 pp. 24-25, <[www.crimeprevention.nsw.gov.au/domestic violence/Pages/coercive-control-discussion-paper.aspx](http://www.crimeprevention.nsw.gov.au/domestic%20violence/Pages/coercive-control-discussion-paper.aspx)>

being a crime for which the elements are determined in court. It could also assist in community acceptance of such a law and dispel legitimate concerns that a law could punish the general vicissitudes of family life. While we appreciate that an exhaustive list of behaviours inevitably means that some controlling behaviours are overlooked, it is likely that a pattern of controlling conduct would not be present if it did not include at least several of the behaviours provided in eventual legislation.

Sentencing and other avenues for reform - Questions 13 and 14

The Discussion Paper appears to propose imprisonment as the most appropriate sentence for a coercive control offence.

However, given that introducing a course of conduct offence would be novel, it would be preferable that a sentence of imprisonment is only considered if evidence of the outcomes of incarceration for victims and perpetrators of a course of conduct offence is gathered and supports such a conclusion. It could be that custodial sentencing in such situations could be counter-productive, and this would not be known without an evidence-based approach.

It is also necessary to consider whether other forms of intervention that can address behavioural patterns might be more appropriate, particularly when it comes to first offences. For example, interventional therapy and focused counselling with approved counsellors such as Interrelate could be considered as a mandatory alternative to imprisonment for first offenders, with community service and other alternate forms of sentencing also considered as options.

The ability for counselling to be a first step might also encourage perpetrators to step forward voluntarily to receive assistance and make it easier for victims to report problematic behaviour to police (or counsellors or medical professionals who might be mandatory reporters) without the concern that it could risk imprisonment.

Controlling behaviour is often underpinned by a complex psychological condition that requires clinical psychologist counselling of the perpetrator. Additionally, couple's counselling and perhaps mediation to rehabilitate the perpetrator and, if possible and if desired, heal the relevant relationships. It is not necessarily the best outcome to assume a relationship is irretrievable under these circumstances, and that behaviour cannot be modified with early intervention.

The Discussion Paper makes no provision for the extensive psychological counselling required to treat the psychopathology of a perpetrator, nor does it make any provision for attending to the perpetrators' mental health issues. Perhaps early intervention that results in counselling with psychologists could be implemented in recognised cases identified by trained police as described. Where perpetrators do not agree to this, Community Treatment Order legislation could be expanded to respond to this need, rather than immediately turning to imprisonment as a solution.

Furthermore, evidence of the outcomes of incarceration for perpetrators and victims a course of conduct offence should be gathered and considered prior to any proposed sentencing reform.

Non-legislative activities that could assist - Question 15

CWLA-NSW realizes that moving away from a primarily incident-based, physical violence approach to the policing and prosecution of coercive offences would require a significant change in response across the criminal justice sector.

It will be necessary to raise public awareness and understanding of the new offence to ensure the community understands the scope of behaviors that are criminal and to encourage them to report or seek help under the new laws as appropriate.

Experiences in other jurisdictions indicate this takes time and considerable effort. For example, following the introduction of coercive control laws in England and Wales, police were found to display a lack of understanding of coercive control – maintaining a greater focus on physical violence consistent with standard, incident-based police responses to DFV, rather than taking into account the cumulative and often complex nature of coercive and controlling behaviours. In contrast, Scotland adopted a long lead time prior to commencement of its offence; it invested heavily in the training of frontline police officers and other relevant staff (undertaken in partnership with DFV specialists), and in educating the general public.

Consequently, consideration needs to be given to how existing training could be augmented to increase its focus on identifying and responding to coercive and controlling behaviours to facilitate earlier intervention. Training needs to be undertaken to ensure there is a common understanding of the dynamics of coercive control across the different services and capacity to respond appropriately.

Education and awareness raising activities are critical in the effort to understand the complex concept of coercive control.

CWLA-NSW recognises that consideration has to be given to a range of non-legislative activities which could improve policy and service responses and community awareness about coercive control. These activities are relevant regardless of whether legislative reform is pursued.

Development of tailored training and resources for recognising and responding to coercive control is particularly relevant because of longstanding approaches to combatting DFV, which have tended to focus on individual incidents of violence or physical violence, as noted above in relation to the criminal justice system. Coercive control behaviours may not always be recognised as elements of coercive control, especially if the victim does not themselves appreciate the abuse that they are being subjected to.

Coercive control is a complex concept, and it challenges many pre-existing beliefs and attitudes. These normative beliefs need to be transformed in order to raise awareness and shift understandings about the kind of behaviour that is coercive or controlling and therefore unacceptable. Education and awareness raising activities are critical to this effort and are necessary to embed any change in relation to coercive control. Prevention activities are expansive and can involve both whole of population approaches (such as community awareness campaigns) and targeted approaches (such as primary, secondary, and tertiary level education or developing specific messaging and resources for at risk individuals and communities).

If an education campaign with respect to coercive control is to be introduced, it is important to simultaneously expand supports available to victims of abuse and coercion, be they partners or children. Women's refuges are often full, and the lack of alternatives usually sees women and children sleeping in the car. Men's refuges do not exist, but may be necessary especially to facilitate family recuperation, counselling and mediation. This would be an alternative to having an immediate custodial arrangement for a perpetrator and would be more constructive for both the perpetrator and for his future relationships or present or future family.

Conclusion

CWLA-NSW is grateful for the opportunity to provide this submission for your consideration. Our hope is that any legislation regarding an offence of coercive control will achieve both the goal of protecting the vulnerable against coercion and providing opportunities for rehabilitation and family reunification.

Ann Pereira

President