

**Submission
No 105**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Restorative Justice DFV

Date Received: 2 February 2021



Submission to the Parliament of New South Wales Joint Select Committee on Coercive Control inquiry into coercive control in domestic relationships

By a collective of practitioners, academics, sector experts and people with lived expertise in NSW

January 2021

This submission is authored by a group which includes practitioners, academics, sector experts and people with lived expertise in NSW who are passionate about community led initiatives to address and ultimately end gender based violence. The collective has substantial concerns about the implementation of a coercive control offence in NSW, as we do not believe that it will materially reduce the occurrence of coercive control in the community, and we believe that it has the potential to negatively impact upon victim-survivors. In order to significantly reduce coercive control in the community, primary prevention and early intervention must be substantially funded.

We believe that coercive control is prevalent in the community, and we condemn any use of violence, control, abuse or coercion. As individuals and as a group we are working at a community level to respond to harm in all forms. We welcome innovative, alternatives to punitive responses. However, we do not feel that additional criminal legislation will be effective in addressing this problem, and recommend that resources are used otherwise in order to improve victim safety in NSW.

We recommend:

- A. That Coercive Control is not criminalised as a separate offence in NSW.**
- B. That alternative options to criminalisation are piloted including restorative justice options based in the community and in the criminal justice system.**
- C. Funding of Aboriginal and Torres Strait Islander controlled organisations to implement solutions to address coercive control by and for Aboriginal communities.**

Despite the concerning high levels of reports to police about domestic and family violence, we acknowledge that there are much higher levels of abuse in the community, with only a small percentage of victim-survivors choosing to engage with the criminal justice system (ANROWS, 2020). Reasons for this include fear of institutionalised racism, lack of accessibility, the prevalence of black deaths in custody, lack of trust in the system, minimisation of harm and a lack of suitable options for victim-survivors who wish to remain with their partner. To ensure redress is available to those who have experienced harm, we recommend that the NSW Government invest in a number of restorative justice pilots in order to offer a variety of redress options beyond the ADVO and criminal system, including healing options designed by and for Aboriginal and Torres Strait Islander communities.

Restorative justice is a mechanism for addressing harm and is based on the premise that when a harm occurs, victim-survivors have needs and rights to have a voice; and those responsible for the harm have obligations and need to be held accountable. We support restorative justice being offered alongside a criminal response to ensure that survivors have options empowering them to address the harm they have experienced in a safe manner and facilitating a process centering around their needs. Restorative justice has the best evidence for reducing crime rates, is affordable to deliver and can deliver high levels of survivor satisfaction in contrast to the criminal legal system and when delivered along carefully delineated parameters (Strang and Sherman, 2013). Internationally and throughout Australia, individuals and community-based agencies are leading efforts to address harm by facilitating a process in which the person causing harm takes accountability for their actions, as well as finding ways to

meaningfully make amends. Establishing restorative justice practices results in safety and support for survivors, especially from marginalised communities.

We support initiatives such as [Elizabeth Evatt Community Legal Centre](#) working in collaboration with Jane Bolitho, UNSW, that are taking a lead in designing restorative opportunities to address gender-based violence in NSW.

Concerns about the impact on First Nations Peoples

- In NSW Aboriginal and Torres Strait Islander people are imprisoned at a rate nearly 10 times higher than non-Aboriginal people (Australian Bureau of Statistics 2020). It is likely that First Nations people will be negatively impacted by any introduced legislation at a disproportionately high rate.
- Institutionalised racism prevents many women and children from reporting to police and from experiencing support and safety if they do (for example, the case of Ms Dhu in Western Australia). We are concerned by steps that seek to further rely upon a system for which many communities feel already disconnected and is unsuccessful in addressing high levels of violence in Aboriginal and Torres Strait Islander communities.
- Furthermore, we are concerned that responding to societal and community-based problems with punitive and carceral-based solutions will further exacerbate, stigmatise and alienate communities and individuals for whom trauma, and the precursors to harm, are already entrenched. The structural oppression and marginalisation of First Nations people through the impacts of colonisation and the criminal legal system are apparent and well known, and we are concerned that relying upon these existing hierarchies will do little to assist the people who are most harmed by violence.

We are concerned criminalisation of coercive control will have negative impacts on other marginalised communities including:

- Other people of colour,
- Women on temporary visas,
- People with disabilities,
- Lesbian, Gay, Bisexual, Transgender, Intersex and Queer identifying people who also experience higher rates of incarceration in comparison with heterosexual and cisgender populations.

Experience in other jurisdictions

Tasmania is the only Australian jurisdiction to have offences criminalising forms of coercive control independently from Apprehended Domestic Violence Orders. A review of the efficacy of the Tasmanian Family Violence Act was conducted in 2016 (McMahon and McGorrey 2016). The authors, McMahon and McGorrey, make the following observation:

“In 2014-15, 2,600 incidents of family violence were reported to police in Tasmania, and 1,329 family violence orders were issued by them. There were 330 reported breaches of these orders. By contrast,

only eight people have been convicted of emotional abuse or intimidation under s 9 of the Act in the decade since it came into effect, with all prosecutions ancillary to other domestic violence offences. There have been no convictions at all for economic abuse under s 8 in that period. Clearly, the legislation has not opened floodgates. It has, in fact, had very little impact.” (McMahon and McGorrey 2016, p. 11)

Although there may have been higher conviction rates in England, Scotland and Ireland, it is too early to evaluate the success of the legislation, and to measure the possible unintended consequences. It is also important to note that the UK does not have a First Nations population, and that the response in Australia needs to be substantially different.

Finally, it is worth noting that three large bodies of work investigating domestic and family violence have not recommended the introduction of coercive control legislation; the Queensland Special Taskforce (2015), Victorian Royal Commission into Family Violence (2016); and the NSW Domestic Violence Death Review Team 2017-2019 Annual Report. However, implementing many of the recommendations stemming from these bodies could reduce the occurrence of domestic and family violence.

Police powers are sufficient

Police are not equipped to implement a coercive control offence. We do not believe that a small amount of training will improve this situation, as widespread cultural change is necessary.

- Services in NSW frequently support women who are incorrectly identified as the primary aggressor. Police are already unable to reliably identify the primary aggressor under existing laws which criminalise stalking, intimidation and harassment. Ongoing research on this topic continues to reveal this anomaly and we have no confidence that adding additional offences types will improve police response to domestic violence, especially when being asked to respond to the subjective subtleties of what might be perceived as coercive and controlling behaviour.
- There are higher rates of domestic violence perpetration amongst police than the general population. Studies found that police officers were between two and four times more likely to abuse their partner (Lonsway, 2006). It is questionable whether such a male dominated, hierarchical institution with a high number of male perpetrators is well suited to being first responders to crimes such as coercive control (Goodmark, 2015).
- The vast majority of domestic and family violence is not reported to police, therefore the majority of responses should not be centred in this system. A recent report by the Australian Research Organisation for Women’s Safety (ANROWS) suggested the figure of unreported violence may be as high as 90% (ANROWS, 2020). Solutions must be resourced to ensure that those who choose not to engage with the criminal justice system are able to access safety and redress.

- Lastly, we submit that the criminal legal system and increased policing have failed to reduce offences such as domestic violence. Despite being one of the Premier's Priorities for the past three years, reducing the rate of domestic and family violence reoffending has not been achieved. Imprisonment, intervention orders such as ADVO alone have not succeeded in reducing violence against women or children and we are dubious that additional police powers will illicit this result.

We recommend this review take consideration of the arguments presented by Professor Leigh Goodmark in her important work "Decriminalising Domestic Violence" (2018) and consider the arguments in that book regarding both the causes of and approaches better suited to a response to domestic and family violence such as addressing economic insecurity, availability of therapeutic pathways to address trauma, alcohol and other drug use, and the use of restorative justice as a better pathway and choice for victim-survivors of domestic and family violence.

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References

Australia's National Research Organisation for Women's Safety. (2020). Improving family violence legal and support services for Aboriginal and Torres Strait Islander peoples: Key findings and future directions (Research to policy and practice, 25–26/2020). Sydney: ANROWS.

Australian Bureau of Statistics (2020). Aboriginal over-representation in the NSW Criminal Justice System. Accessed:

https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Aboriginal-over-representation.aspx

Goodmark, L. (2015). Hands up at home: Militarized masculinity and police officers who commit intimate partner abuse. *BYU L. Rev.*, p.1183.

Goodmark, L. (2018). Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence. Oakland, California: University of California Press.

Lonsway, K. A. (2006) 'Policies on Police Officer Domestic Violence: Prevalence and Specific Provisions Within Large Police Agencies', *Police Quarterly*, 9(4), pp. 397–422. doi: [10.1177/1098611104268884](https://doi.org/10.1177/1098611104268884).

Mcmahon, M., and Mcgorrey, (2016). 'Criminalising emotional abuse, intimidation and economic abuse in the context of family violence: The Tasmanian experience', *The University of Tasmania Law Review*, vol. 35, no. 2, pp.1-22.

Strang H, Sherman LW, Mayo-Wilson E, Woods D, Ariel B. (2013). Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review. *Campbell Systematic Reviews* 2013:12