

**Submission
No 122**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Western NSW Community Legal Centre

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SUBMISSION TO THE 2020/2021 NSW GOVERNMENT INQUIRY INTO COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS
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*For our clients.
We see you. We hear you. We believe you.*

My Destruction

Author: Anonymous, age 14.

*Sweltering, suffering, burning,
I stand.
Not knowing, blind, unsure.*

*One is real.
A fierce conflagration,
Roaring wild in the wind.*

*The flames erupt,
The beast's unleashed,
The damage is soon to come.*

*The smoke chokes me.
The flame blinds me.
The heat ignites me.*

*Terror, fear, dread,
The alarm is rung.
Confusion engulfs me.*

*The second is of the heart and mind,
Incineration from the inside.
To ash I crumble.*

*I yearn to run,
Yet my feet do not carry.
I am stuck.*

*Emotions removed,
I feel nothing.
I am alone.*

*The fires flare.
They are a team,
Two working as one.*

*Although different,
The fires' goals are the same.
They share one aim,
My destruction.*

*Blazing, roasting, scorching,
They burn.
Uncaring, cruel, barbarous.*

1. ABOUT WNSWCLC AND WWLS

Western NSW Community Legal Centre Inc (**WNSWCLC**) is a community-based, not-for-profit organisation located in Dubbo that provides free legal services to people in Western NSW who experience social, economic and/or geographic disadvantage. WNSWCLC provides legal advice, ongoing casework, referrals and representation, and offers outreach services to rural and remote towns, servicing an area of approximately 200,000 square kilometres, bordered by Mudgee in the east, the Queensland border to the north, and Bourke and Cobar in the west. WNSWCLC also engages in community legal education, law reform and offers media comment on issues of importance.

Western Women's Legal Support (**WWLS**) is WNSWCLC's specialist domestic violence unit. WWLS was established in 2015 after the Commonwealth Government identified Western NSW as having some of the highest rates of family and domestic violence in the country. WWLS provides holistic legal and non-legal support to female victim-survivors of family, domestic and sexual abuse and their children. WWLS covers the same geographic area as WNSWCLC and is the only specialist family and domestic violence legal service based west of the Blue Mountains that assists all demographics of society, including Aboriginal and Torres Strait Islander, culturally and linguistically diverse, gender and sexually diverse and homeless peoples.

The offices of WNSWCLC and WWLS are located on the land of the Tubba-Gah people of the Wiradjuri Nation, who we recognise as its traditional owners and we acknowledge that sovereignty was never ceded. In addition to Wiradjuri Nation, the area of Western NSW which we service spans across the traditional land of the Kamilaroi, Wongaibon, Wailwan, Ngemba, Barkindji, Murrawarri and Yuwaalaraay peoples.

2. INTRODUCTION

2.1 Overview of this submission

WNSWCLC and WWLS welcome the opportunity to make a submission to the Joint Select Committee (**Committee**) in relation to its inquiry into coercive control in domestic relationships (**Inquiry**).

We hope that the Inquiry reflects a turning point in our society's understanding of family and domestic abuse. The announcement of the Inquiry in late 2020 shows that the NSW Government has recognised what those working in the domestic violence sector have seen for decades – that abuse in family and domestic relationships is not only physical. For many victim-survivors, the worst part, the abuse hardest to recover from, and which makes leaving an abusive relationship often impossible, is not the bruises or

broken bones. Instead, it is the prolonged financial dependence, the psychological control, domination and emotional manipulation.

Recognising this, however, is only the first step. The NSW Government must dedicate funding, time and other resources to properly address and respond to the threat posed by non-physical abuse in family and domestic relationships. This is no easy task. The gendered nature of family and domestic abuse reflects entrenched social and cultural values on the role and place of women in society. For effective change to be achieved there needs to be a holistic cultural shift in terms of attitudes towards women. There must be education for police, the legal fraternity, the medical profession, others working in the domestic violence space and the community at large (men, women and children). And there must be criminalisation to give meaningful, legal recognition of the extreme harm caused by patterns of non-physical abuse and to ensure that victim-survivors are supported, protected and empowered.

This submission advocates for a holistic response to coercive control, including criminalisation. It does so in three parts:

- First, we provide an **overview of coercive control** by exploring our client's experiences of non-physical abuse within family and domestic relationships. We outline the most common forms of non-physical abuse our clients experience, explore how the impact of this abuse is compounded in regional, rural and remote communities, consider how the family law system is used by perpetrators to maintain and extend control, and explore the impact of this abuse on victim-survivors.
- Second, we evaluate the **effectiveness of the current system in responding to coercive control**. We explore in detail the limitations of the current criminal and civil regimes in responding to our clients' experiences of family and domestic abuse. This section specifically addresses terms of reference (**ToR**) 3, 4, 5, 6 and 10 of the NSW Department of Communities and Justice (**DCJ**) Discussion Paper on Coercive Control (October 2020) (the **Discussion Paper**).
- Finally, we explore **what legal and non-legal change is needed to effectively address coercive control**. We argue that legal reform will not, in and of itself, be sufficient to resolve all issues currently facing victim-survivors of coercive control. However, criminalisation is an essential element of a holistic response. This section responds to ToR 1, 7, 8, 9 and 15 of the Discussion Paper. Further consultation is required to better understand how the scope of a coercive control offence should be defined.

2.2 Explanation of terms

Throughout this submission, we use the term 'family and domestic abuse' to capture the range of abusive and controlling conduct and behaviours which our clients experience, usually at the hands of their intimate partner but also at the hands of family and kin members within a household setting. The term is intended to capture physical violence and non-physical abuse and coercion.

We predominantly describe family and domestic abuse as being perpetrated by men against women and their children. There is no escaping the fact that family and domestic abuse is a highly gendered issue. Women are more likely to experience family and domestic abuse than men, the abuse which they experience is generally more repeated and systemic and has more severe consequences, and in the large majority of cases the perpetrators are male. This is particularly the case when talking about coercive control. As is explored further below, the defining element of a coercive relationship is one person establishing power, domination, and control over their partner. It is a deliberate and methodical power imbalance which, in heterosexual relationships, is undeniably aided by historic gender roles and biases.

Although this submission focuses on family and domestic abuse in heterosexual relationships, we do acknowledge that males are victims of family and domestic abuse, just as females can be perpetrators. Emerging research is also revealing the high prevalence of family and domestic abuse among gender and sexually diverse communities, and we have had first-hand experience assisting same-sex and transgender clients in escaping abuse. More work is required to understand the true prevalence and impact of family and domestic abuse in diverse communities however such work is beyond the scope of this submission.

2.3 Limitations of this submission and need for further consultation

Unfortunately, due to time and resource constraints we have not had the opportunity to consult or collaborate with other stakeholders and domestic violence partners in our service region, canvass the views of our clients or discuss our position with our Aboriginal and Torres Strait Islander working group. Our submission was instead developed relying on WNSWCLC's 25-year history of providing legal support to victim-survivors of family and domestic abuse in Western NSW, and the extensive knowledge, skills and experience of our staff. However, the lack of external consultation is a significant limitation of our submission.

In developing a strategy for responding to coercive control, the NSW Government must make the time to hear from victim-survivors themselves and must listen to the

experiences and opinions of diverse groups, including Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse communities, older women, and those living in regional, rural and remote areas. The steps the NSW Government takes to combat coercive control will directly impact on the lives of victim-survivors, their experiences of abuse and their ability to escape. Unfortunately, previous government campaigns against family and domestic abuse (specifically television advertising campaigns) have, for many victim-survivors, led to an escalation of violence. This should be avoided at all costs, and the only way to do so is to ensure that victim-survivors are extensively involved in the policy reform process.

In coming months and years, WNSWCLC and WWLS will be conducting further research and consultations on the prevalence, impact and preferred response to coercive control in Western NSW. We welcome the opportunity to share our findings and consult further with the NSW Government in the future.

3. UNDERSTANDING COERCIVE CONTROL

3.1 Our client's experiences of coercive control

WNSWCLC and WWLS broadly agree with the definition and examples of coercive control set out in Part 2 of the Discussion Paper. Importantly, as recognised within that definition, coercive control is not a single specific act or behaviour. Instead, it refers to the pattern of exerting power to control, coerce and isolate another person over a prolonged period of time. It is the process by which a perpetrator methodically erodes another person's autonomy, independence, dignity and identity. It has been described as being akin to torture and terrorism. The three most distinctive features of coercive control are "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".¹ The specific conduct that coercive control involves can vary significantly from case to case. But whatever the means, the end result is the same – the deliberate control and oppression of the victim.

In our experience providing frontline assistance to victim-survivors of family and domestic abuse, the most common ways perpetrators exert power and control over their victims include:

- constant name-calling, shaming and attacks on self-esteem, including telling victim-survivors that they are worthless and/or that no-one else would ever love them (thus manipulating the victim-survivor to stay in the relationship);

¹ Sandra Walklate and Kate Fitz-Gibbon, 'The Criminalisation of Coercive Control: The Power of Law?' (2019) 8(4) *International Journal of Crime, Justice and Social Democracy* 94, 95.

- isolating and controlling behaviour, including preventing victim-survivors from seeing their family and friends, from working and, in some cases, from leaving the house at all (meaning leaving the relationship is not a viable option for victim-survivors because they have been isolated from all other support networks);
- preventing victim-survivors from having social media accounts and/or excessively monitoring these accounts with the intention of “catching” the victim-survivor in the act of being unfaithful;
- monitoring and stalking, whether by means of repeated telephone calls and messages, installation and monitoring of spyware on victim-survivors’ technological devices and/or loitering outside the victim-survivor’s home or place of work;
- threatening to kill victim-survivors, their children, themselves and/or their pets if the victim-survivor does not comply with the perpetrator’s requests;
- denying victim-survivors access to bank accounts, forcing them to put mortgages or other debts in their names, and forcing them to transfer ownership of property into the perpetrator’s name (making victim-survivors completely financially dependent on the perpetrator so that they have no financial means to leave the relationship);
- depriving the victim-survivor of basic human needs, including food, clothing, sleep and/or medical care;
- enforcing rules and activities that humiliate, degrade or dehumanise;
- inducing exhaustion through sleep deprivation; and
- generally controlling everyday aspects of victim-survivors’ lives, including what they can wear and who they can see.

The patterns of behaviour identified above are just some examples of the ongoing, coercive and controlling behaviour that our clients are often subjected to on a daily basis. Whilst a significant proportion of victim-survivors supported by WNSWCLC and WWLS have been the victim of physical and/or sexual violence, the examples above each occur regularly and separately to any specific physical incident.

Many clients who we assist report a single significant act of physical or sexual abuse, often many years previously, which was used by the perpetrator to show the victim-survivor what they were capable of, thereby creating the “credible threat” giving power to the verbal, psychological and emotional abuse. For others, however, there may be no history of physical abuse at all. Instead, the combination of verbal, psychological and financial control is sufficient in and of itself to make a victim-survivor feel trapped and like there is no escape. A classic example of this is a perpetrator who subjects their spouse to a constant barrage of jibes, including telling them that “*nobody else would ever love you*”, that “*nobody would believe you over me*”, that “*nobody would ever help you*”, that “*you are lucky I took pity on you*” and that “*you wouldn’t survive without*

me". In the majority of cases, a perpetrator will combine verbal abuse with other controlling conduct to reinforce the dependence of the victim-survivor on them and force the victim-survivor to accept the abuse as truth. Research and experience show that it is the cumulative effect of abusive patterns of behaviour which wear down and isolate victim-survivors over time.

3.2 Coercive control in regional, rural and remote communities

In regional, rural and remote communities, geographic isolation is a driving and reinforcing element of the psychological control held by perpetrators of family and domestic abuse over their victims. For many people, it is difficult to comprehend the extent of isolation and sheer distances in remote areas and the physical barrier these create to accessing help. Bourke, for example, is a town of 2,500 people which had 99 reported incidents of domestic violence related assaults in the 12 months to March 2020.² It is 375 kilometres or a four-hour drive from the closest regional hub, Dubbo, where most support services are centrally located. The limited available local services are more often than not running over capacity, only able to provide bare minimum support and women and children who are not in emergency situations can be turned away.

In Dubbo, the wait-time for an appointment with a female GP is often two to three weeks, the wait for an urgent legal appointment can be three to four weeks, and the wait for a public psychologist or psychiatrist appointment is three to six months. Housing support is even more limited. We understand that there are currently 50 women and children on the priority waiting list for emergency accommodation at a refuge in Dubbo that only has five rooms. As at 30 June 2020, the waiting time for social housing in the Dubbo Zone for properties with three or more bedrooms was five to ten years. This lack of housing support means that women frequently stay with or return to an abusive partner because they do not have anywhere safe to go.

The lack of police presence is also a concern. Many remote towns do not have a 24-hour staffed police station and others may only ever have one officer on duty. This means it can often take over an hour for police to arrive and the limited permanent police presence can also undermine the effectiveness of Apprehended Domestic Violence Orders (**ADVOs**) because police are not physically present to enforce the orders. Historically, the Far West and Orana region has had the highest proportion of ADVO

² NSW Bureau of Crime Statistics and Research, Domestic Violence Statistics in NSW https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Domestic-Violence.aspx.

breaches of any region in NSW, with almost one in four final orders made between 1 July 2013 and 30 June 2014 being breached by 30 June 2015.³

Finally, our clients express significant privacy concerns over reporting family and domestic abuse in small towns. Small social circles in remote towns where “everyone knows everyone” mean that it is highly likely that police, health workers and other support workers will know both the offender and the victim-survivor. This contributes to a heightened culture of underreporting of abuse as victim-survivors fear that a report of abuse will not be taken seriously or that the person to whom the report is being made will take the perpetrator’s side (including by saying “*I know [X] and he would never do that*”). Many victim-survivors do not want to be seen attending a police station, court, women’s shelter or other support service over fear of community judgment and/or backlash.

In almost all cases we see, perpetrators seek out and/or take advantage of geographic isolation, the small-town mentality and lack of resources to reinforce their psychological control. Many of our clients are originally from metropolitan cities but were convinced by their partners that it was in their interests to relocate to a remote town. Our clients frequently report that after arriving in town the perpetrator prohibited them from visiting family and friends and eventually cut them off from their support networks entirely. From the perpetrator’s perspective it is much easier to control a person in a place where the victim has no supports, there is no public transport or other easy escape route, there are no domestic violence support services, and, due to remoteness, there is limited to no public visibility of the relationship, meaning others do not interfere.

In regional, rural and remote areas, perpetrators also emphasise their geographic isolation as a way of deterring the victim-survivor from reporting the abuse, including by reminding the victim-survivor that no one will hear them scream, telling them that no one will help or believe them, and reinforcing that they have nowhere to escape to. If a victim-survivor in a regional or remote town does attempt to seek help, whether from police or a domestic violence support service, but a lack of resources means that help is not immediately provided, the police and/or support service can unwittingly become a colluder to the perpetrator’s psychological abuse by reinforcing to the victim-survivor that no-one can help them.

Many victim-survivors of family and domestic abuse, regardless of geographic location, feel like they have no choice but to stay in an abusive relationship. But, for victim-survivors living 300 to 400 kilometres from a regional hub, in areas with high rates of

³ Suzanne Poynton et al, ‘Breach rate of Apprehended Domestic Violence Orders in NSW’ (Issue Paper No 119, NSW Bureau of Crime Statistics and Research, September 2016) 4.

gun ownership, with no support network, isolated from friends and family, with no access to money or transport, and who at the height of COVID-19 were being told not to leave their home and communities, the feelings of entrapment and hopelessness are significantly heightened. Perpetrators know this and use it against them.

3.3 Coercive control within the family law system

Coercion and control do not stop when a victim-survivor manages to leave an abusive relationship. In fact, the 12-month period following the victim-survivor's escape is the most dangerous time. This is particularly the case where there are children involved and a female victim-survivor's escape leads to the commencement of family law proceedings. Under the *Family Law Act 1975* (Cth), there is currently a presumption that parents share equal parental responsibility for the upbringing of their children until they turn 18. The law thus requires women who are fleeing abuse to continue to engage with their ex-partners about the care and upbringing of their children, regardless of the history of family and domestic abuse. In a high percentage of cases, perpetrators of family and domestic abuse take advantage of this requirement to continue to isolate, control and intimidate victim-survivors post-separation. This continuation of abuse through the Family Court system must be recognised, understood and addressed in any response to coercive control.

Based on the first-hand experiences of our clients, ways in which perpetrators continue to exert control through the family law system can include:

- perpetrators intentionally refusing to compromise or reach agreement regarding care of the children, which in turn leads to the accumulation of debilitating court costs. (Our clients frequently report agreeing to arrangements which put their and/or their children's safety at risk because they simply cannot afford to fight the matter in court);
- perpetrators routinely threatening the victim-survivor with court and/or making up allegations of abuse, neglect and unfit parenting;
- perpetrators turning the children against the victim-survivor, including by telling the children that any stress and/or anxiety they are feeling over their parents' separation is the victim-survivor's fault, and telling children that the victim-survivor does not love them or want to see them (also known as parental alienation);
- perpetrators verbally and psychologically abusing the victim-survivor when the parties are forced to have contact with each other during change-over;
- the perpetrator using the family court system to prevent the victim-survivor from relocating with the kids to escape abuse. Without the option of relocation, the victim-survivor remains at the mercy of the perpetrator who may continue to stalk, harass and intimidate the victim survivor, particularly in remote towns; and

- perpetrators threatening or actually committing violence against the children as a way of controlling the victim-survivor.

Victim-survivors regularly relay their experiences of the Family Court system as one that dismisses their experiences of coercive control on the basis that “*there is no evidence of physical violence*” and that “*everyone gets angry sometimes*”. Lawyers who know how the system operates are advising women that they have no option but to compromise on what they view as safe because the alternative is to risk becoming the hostile party, in which case he may get even more contact. The flow-on effects of this cannot be understated. When a woman is told you have no choice but to compromise, a message is sent to her, her kids and society at large: what he is doing is okay, you are powerless, and no-one will help.

The family law process can, and is, being used by perpetrators to maintain and extend their control and domination. Although not raised in the Discussion Paper, this strategy must be understood and addressed in the NSW Government’s response to coercive control.

3.3 The impact of coercive control

For many victim-survivors, the long-term impacts of controlling, non-violent behaviour are significantly worse than the impact of any physical violence. Psychological impacts can include constant fear, anxiety, insecurity, loss of self-esteem, self-worth and identity, depression and, “most destructive ... loss of self”.⁴ Abuse is also a significant driver of poverty, homelessness and financial insecurity of women. Both the psychological and financial consequences of family and domestic abuse can have intergenerational impacts on women, their children and families.

What our staff and clients say on coercive control

‘I would rather be hit every day of the week.’

Source: multiple WWLS clients.

‘It is the deprivation of liberty ... it just invalidates you as a human being’.

Source: WWLS Aboriginal Support Worker.

⁴ Kristy Candela, ‘Protecting the Invisible Victim: Incorporating Coercive Control in Domestic Violence Statutes’ (2016) 54(1) *Family Court Review* 112, 115.

'It [coercive control] creates a sense of dependency – that the victim can't survive on their own. It leads to constant second-guessing, a complete lack of confidence because all their [the victim-survivors'] power has been taken away. It destroys any sense of self-worth and identity. Victims feel like they are no-one without him ... suicide threats have a huge impact because the responsibility for his well-being is put on her. She blames herself for everything'.

Source: WWLS caseworker.

'The kids and I were constantly walking on egg-shells, doing whatever we could not to set him off. We changed our routines, our lives. But no matter how hard we tried, it was only a matter of time. There was always something else that would set him off.'

Source: WNSWCLC client.

'For him, the whole point of the relationship is to stop her from leaving. He conditions her to think that leaving is the worst thing that could happen. She doesn't realise that nothing could be worse than the hell she is living.'

Source: WWLS solicitor.

4. THE EFFECTIVENESS OF THE CURRENT SYSTEM IN ADDRESSING COERCIVE CONTROL

4.1 How is family and domestic abuse addressed in NSW?

In NSW, family and domestic abuse is only a prosecutable criminal offence if there is a discrete physical threat within a domestic relationship (such as an assault, damage to property, or incident of stalking or intimidation) which already amounts to an offence under existing criminal law. This means that unless the ongoing, coercive behaviours referred to above are accompanied by an act of physical violence, no criminal offence has been committed. In cases where an offence has been committed, for example an assault, the investigation and prosecution process is focused on that discrete act, meaning that the history of coercive and psychological abuse is often inadmissible in criminal proceedings.

In most cases, family and domestic abuse is addressed through NSW's civil regime of ADVOs. When a person in need of protection (**PINOP**) experiences violence, or a threat of violence, and has reasonable grounds to fear further violence, intimidation or stalking, an ADVO can be put in place to protect them from further harm. The ADVO prescribes certain conditions which the perpetrator is required to comply with. Breach of those conditions amounts to a criminal offence.

Part 3 of the Discussion Paper outlines NSW's current system for criminalisation of family and domestic abuse in more detail.

4.2 Do the NSW criminal and civil regimes adequately address coercive control?

NSW's criminal and civil law regimes fail to adequately address non-physical forms of family and domestic abuse. This can clearly be seen by exploring the real-life experiences of our clients and considering how the criminal and civil regimes apply (or fail to apply) to their situations.

We note that the names and other identifying information of our clients have been changed or removed. In some cases, experiences have been combined and/or split to assist with deidentification. Many of the examples reflect the experiences of multiple clients. In none of these cases was the conduct described prosecuted by NSW Police.

Example 1: Deprivation of liberty and basic human needs

Rose: Rose was locked in her small room at night with her young child. The room had no bed, so Rose was forced to sleep on the floor. She was forced to go to the toilet in a bucket. Her partner slept at the door of the room to prevent her from leaving.

Penelope: Penelope was prohibited by her partner from going to the toilet. The bathroom door was kept locked and Penelope would have to beg to use it. Often Penelope's partner would make her soil herself and would then refuse to let her change her clothes. After Penelope left the relationship, her confidence and self-esteem were so low that she continued to ask permission to go to the bathroom.

For both Rose and Penelope, the prohibition against going to the toilet had a significant impact on their physical and mental well-being. They developed severe anxiety and shame about having to use the toilet and limited what they ate and drank to try to control the situation, which in turn affected their physical health. They were degraded

and humiliated and this had a significant impact on their self-esteem and self-worth. Their partners then took advantage of their poor mental health to extend their psychological control by telling the women that nobody else would ever love someone who, in Rose's case, slept on the floor and went to the toilet in a bucket, or in Penelope's case, soiled herself.

However, under NSW criminal law neither Rose nor Penelope's partners committed an offence. For Rose, her partner made no outward or explicit threat against her as to amount to assault, battery or even intimidation. However, his presence at the door, along with the history of other coercive and controlling behaviours, amounted to a credible threat and meant she felt she could not leave her bedroom at night. Similarly, for Penelope, the bathroom was kept locked and constant monitoring by her partner and the lack of transport in a remote town meant she was made to feel like she could not escape.

The United Nations has recognised the right to sanitation as an essential component of the universal human right to an adequate standard of living. Rose and Penelope were also deprived of their rights to be free from cruel, inhumane, or degrading treatment or punishment, their right to liberty and their right to be free from unlawful interference. Despite this, because there was no physical violence or threat of violence, their deprivation of rights is not captured within NSW's 'violent-incident model' for criminal law.

Example 2: Psychological control and gaslighting

Sam: At night Sam's partner placed an electronic sound device under the house. When Sam tried to sleep she could hear noises, knocking, ringing, a baby crying, someone trying to break in. When she asked her partner about it, he said she was crazy. He said she shouldn't see her friends or family because they would judge her, "*nobody wants to be friends with a crazy person*". Sam suffered severe paranoia and anxiety. Only later did she find out the sounds were the result of her partner placing the electronic device.

Ange: Ange's partner would intentionally wake her in the middle of the night, often between five and ten times a night, by pushing her out of bed, pulling her hair or pouring a bucket of freezing water on her. As a result, Ange experienced a constant state of physical and mental exhaustion and was unable to function. She lost her job and stopped seeing family and friends.

For Sam and Ange, the psychological control and abuse which they were subjected to is simply not captured within any existing criminal offence. Potentially, Ange could report

being pushed out of bed and/or having her hair pulled and attempt to have her partner charged with assault. However, the absence of physical injuries and witnesses, the context in which the abuse occurred, and her partner's constant jibes that he would simply tell police that she fell out of bed or that he was sleep walking deterred Ange from reporting the abuse.

In terms of protection under the civil regime, to get an ADVO the onus is on Sam and Ange (or police on their behalf) to prove on the balance of probabilities that they have reasonable grounds to fear the commission of a domestic violence offence, intimidation or stalking. In the absence of a physical threat there is simply no grounds to get an ADVO. And in the absence of a criminal offence, an ADVO or charges, Sam and Ange are ineligible for a range of services and support for victim-survivors of family and domestic abuse, including financial support through NSW Victims' Services scheme and housing support. The lack of support compounds the psychological abuse they experienced by limiting their options to escape.

Example 3: Financial abuse and control

Talia: When Talia met her partner she was financially independent. However, shortly after they met, Talia's partner told her that he was worried other men would be tempted by her so it was best if she reduce her work hours. He then insisted that, for her protection, it was best he drop Talia off at work and pick her up. Eventually, Talia was prohibited from working at all. She became financially dependent on her partner making Talia feel that it was impossible to leave the relationship.

Nadine: Nadine had no access to money as her partner controlled all the finances. When it came to grocery shopping, he would give her \$50.00 to buy groceries for their family of four. He would drive her to the shops and wait in the car while she shopped so she could not run off. Once home, Nadine would be made to produce the receipt and justify each purchase.

Georgia: Georgia's partner would control all aspects of her life. Recently, she left him and purchased a property in her own name with inheritance money. However, shortly afterwards, Georgia's partner manipulated her to let him move in by making allegations of unfit parenting, threatening to have DCJ remove the kids, threatening that Georgia would never see the kids again and threatening that he would commit suicide. Through intimidation and emotional manipulation, he then forced Georgia to leave the property. Georgia and her three kids are currently homeless. Police told Georgia there is no immediate threat and this is a family/civil matter.

Unfortunately for Talia, Nadine and Georgia there is no offence in NSW prohibiting a person from financially controlling their partner. Historic biases around gender roles within a domestic relationship also mean that many clients in their situation do not recognise this financial control as abuse and consequently do not seek assistance. However, this abuse can have devastating psychological and financial implications for victim-survivors. Our clients frequently report deep-seated dependence on their partners. They fear that they will not be able to survive life without their partner because they have never been allowed to have a bank account or spend money without permission, and have no experience paying bills or meeting other financial obligations.

In failing to capture the financial abuse as criminal, the law not only fails to acknowledge the lived experiences of Talia, Nadine and Georgia, it also undermines their attempts to escape abusive relationships. In Georgia's case, as the law does not recognise the abuse as criminal, her partner gets to stay in the house while she is forced to find alternate accommodation. If there had been physical violence, Georgia would be able to get an ADVO to prohibit her partner from approaching or contacting her and from attending the home. However, in the absence of any physical threat, Georgia has no grounds to obtain an ADVO.

Example 4: Social isolation

Lucy: Lucy's husband would not allow her to make friends. Shortly after their kids started school, Lucy started to befriend other parents. In response, her husband changed the kids' school to prevent her connecting socially. When Lucy met parents at the new school, her husband relocated the family to a remote town. The school drop-off was the only social interaction Lucy had. Eventually, her husband withdrew the kids from school all together to prevent Lucy from socialising.

Ingrid: Ingrid's partner would frequently accuse her of cheating. He would not let her leave the house or socialise with other men. One day, after Ingrid had been watching TV, her partner returned home and accused her of seeing another man. He explained he had placed a tape recorder under the couch and had heard a man on the recording. It was a male voice on the TV.

Gemma: If Gemma left the house, her partner would make her send pictures to him every 15 minutes to prove where she and the kids were. He would dictate what the picture had to be of (for example, in front of a tree or on the swings at the park) so that Gemma could not fabricate the pictures.

Similar to every other example provided, the social isolation and control which Lucy, Ingrid and Gemma's partners are exerting constitute a breach of fundamental human rights, including the right to liberty, the right to freedom of movement and the right to work. However, the current criminal and civil law regimes in NSW provide these women with no legal recourse against the abuse. The NSW criminal and civil frameworks must be reformed to better address patterns of coercive and controlling behaviour and protect, support and empower victim-survivors.

4.3 Does the law provide adequate ways for courts to receive evidence of coercive control in civil, criminal and sentencing proceedings?

We do not practise in criminal law and it is usually police who take out ADVOs on behalf of our clients. However, our clients frequently report dissatisfaction with the way in which courts receive evidence of the history of family and domestic abuse, particularly coercive control, in both criminal and civil proceedings. In particular, our clients have raised the following concerns:

- When a perpetrator is charged with a criminal offence relating to a specific physical incident of family or domestic abuse, the investigation and prosecution process is solely focused on that discrete act. Evidence of the history of any previous family and domestic abuse, whether physical or non-physical, is inadmissible and not put before the Court. This undermines the holistic experience of the abuse of victim-survivors.
- When a perpetrator who has abused a victim-survivor for a prolonged period is only charged in relation to a single incident, he is often either able to negate the charge completely, arrange a plea, obtain a section 10, or argue for a Community Corrective Order or other non-custodial sentence. Victim-survivors complain that justice is not achieved – she endures ten years of abuse and he may never be locked up.
- In reporting family and domestic abuse to police, a victim-survivor is putting themselves at significant risk of retaliatory physical and psychological harm from the perpetrator. When victim-survivors see perpetrators not charged or negotiate non-custodial sentences, they are discouraged from reporting future abuse because they are made to believe that nothing will happen and that there are no consequences for the conduct.
- When victim-survivors report coercive controlling behaviours to police, they are often told by police there is nothing they can do in the absence of physical violence. When victim-survivors report that a perpetrator is using the children to control them, they are often told by police that it is for the Family Court to address.

Although our direct experience in civil, criminal and sentencing proceedings is limited, based on the anecdotal experiences of our clients, the law does not currently provide adequate ways for courts to receive evidence of prolonged histories of abuse, particularly coercive control.

4.4 What impact is the failure to adequately address coercive control having on victim-survivors?

The current systems' sole focus on physical incidents (threats and violence), and failure to address non-physical patterns of abusive behaviour, is problematic for several reasons:

- First, it removes acts or threats of physical violence from the broader context of a coercive and controlling relationship in which they occur, which means that the full experiences of victim-survivors, and totality of harm suffered, are not recognised or considered.
- Second, it suggests that physical abuse is more serious than non-physical abuse, and therein fails to recognise the psychological harm caused by non-physical abuse, devaluing the experiences of victim-survivors. This can compound the psychological impacts of such abuse and create a barrier to reporting and accessing support.
- Third, it means that victim-survivors of financial, emotional and/or psychological abuse have no legal recourse against their perpetrators and are often not able to obtain protection under the civil protection regime.
- Fourth, victim-survivors report not being supported by police because police have limited powers to intervene in the absence of a physical threat (the lack of police support can again compound the psychological impact of abuse).
- Fifth, the lack of legal avenues and police support makes it even more difficult for many victim-survivors, particularly those in rural, regional and remote areas, to escape violence because they cannot have the perpetrator removed from their house.
- Sixth, the lack of recognition of non-physical forms of family and domestic abuse means that victim-survivors of prolonged psychological and/or financial abuse may not be able to access victims support, including financial assistance and recognition payments under the NSW Victims Services scheme.
- And seventh, the lack of legal recognition of the harm caused by coercive and controlling behaviour undermines the social and cultural recognition of non-physical forms of abuse within broader society. This has significant flow-on effects for victim-survivors who do not themselves recognise financial, emotional and/or psychological abuse for what it is and assists perpetrators to justify their behaviour.

5. A MODEL FOR REFORM

The previous section of this submission looked at deficiencies in the current response to family and domestic abuse. This section recommends changes which are needed to address coercive control more effectively.

5.1 Need for a holistic response

Family and domestic abuse is a catastrophic social, health and economic issue across Australia, and it has been for decades. The Commonwealth Government and state and territory governments around the country have sought to address the issue as an urgent priority. But progress has been limited. Rates of family and domestic abuse are higher than ever, underreporting remains rife (particularly where there is no physical violence), many women and children simply do not recognise that they are victims because community understanding of what abuse is remains limited, and over 50% of police officers believe that arrests should only be made when there is clear evidence of physical injury.⁵

Most concerningly, in a 2020 White Ribbon study of community understanding of family and domestic abuse:

- 33% of people aged 18 to 34 did **not** consider hitting, punching, or restraining a person in any way to be a form of domestic violence;
- 39% of people aged 18 to 34 did **not** consider controlling money so a person is dependent on the other for finances to be a form of domestic violence;
- 40% of people aged 18 to 34 did **not** consider non-consensual sexual activity to be a form of domestic violence;
- 40% of people aged 18 to 34 did **not** consider isolating a person from friends, relatives, or other sources of support to be a form of domestic violence; and
- 46% of people aged 18 to 34 did **not** consider making constant phone calls, sending text messages or spying using electronic means to be a form of domestic violence.⁶

Our society, in particular our younger generations, remain disturbingly conditioned to think that each person consciously and freely consents to the dynamics of their relationship, whatever they may be, and consequently that any controlling or intimidating behaviour is okay (who are we to judge or interfere). To address coercive control, we must shift this understanding and, to do so, we must criminalise it. Until

⁵ Heather Douglas, 'Policing Domestic and Family Violence' (2019) 8(2) *International Journal for Crime, Justice and Social Democracy* 43.

⁶ White Ribbon, *The Essential Report – White Ribbon (National)* (7 October 2020) <https://www.whiteribbon.org.au/awcontent/whiteribbon/62/62c22247-3dac-4c04-a296-c6f7314f6af7.pdf>.

coercive control is prohibited at law, non-physical abuse will continue to be viewed by society as less significant and less harmful than physical violence. Criminalising coercive control will go a long way in denouncing the abusive behaviours which victim-survivors experience on a daily basis and legitimising the psychological and financial harm suffered as a result.

However, legal reform is just one part of a holistic response. Criminalising coercive control will not, in and of itself:

- make women and children suddenly aware that the psychological control which they are experiencing is not okay;
- evaporate the fears of victim-survivors of reporting abuse;
- empower the woman who is not permitted to leave her house to stand up to her partner; or
- change the mind of a police officer who decides nothing is wrong because "*he never touched her*".

International experiences (in particular, England, Scotland and Wales) have shown that in order to effectively respond to coercive control, a holistic cultural shift is needed to change community attitudes to women, relationships and abuse. This will involve a combination of legal reform, targeted education for members of the police, judiciary and legal fraternity, and wider community education. Early evaluations of the English coercive control offence, introduced in 2015, showed it was underutilised due to a lack of understanding on the part of prosecutors on the meaning of coercive control.⁷ In comparison, in Scotland, the introduction of a coercive control offence in 2018 was accompanied by specific, comprehensive training for just less than 20,000 police officers and staff and early indicators suggest that this approach has been more successful.⁸

NSW must adopt a holistic response to coercive control. Wholesale community education is needed. Children (boys and girls) must be taught what a healthy relationship is and, more importantly, what is not okay. Teachers, nurses, sporting coaches and community leaders must be equipped with the skills to identify signs of non-physical abuse and the courage to speak up. The NSW Police Force and judicial officers must undergo comprehensive and ongoing training in recognising, understanding and responding to non-physical forms of abuse. And the law must be changed to convey to the community that family and domestic abuse, regardless of its form, is not okay and will be prosecuted. Criminalisation is a key component of a holistic response to broaden

⁷ Walklate and Fitz-Gibbon, above n 1, 99.

⁸ Police Scotland, 'More than 1300 crimes recorded under new domestic abuse laws' (24 February 2020) <<https://www.scotland.police.uk/what-s-happening/news/2020/february/more-than-1300-crimes-recorded-under-new-domestic-abuse-laws/>>.

community perceptions of family and domestic abuse and support, protect and empower victim-survivors.

5.2 Addressing criticisms of a proposed coercive control offence

There have been several criticisms of the proposal to introduce a coercive control offence in NSW. One of the most significant criticisms is that a coercive control offence will be used by perpetrators against victim-survivors and could become a means of further control and intimidation. This is a valid concern and a risk which will need to be carefully considered and addressed. However, this issue of misidentification of the primary aggressor in family and domestic abuse cases is not new. According to research conducted by Women's Legal Service Victoria, women are being misidentified as perpetrators in one in eight family violence intervention orders (Victoria's equivalent to ADVOs), with almost three in five women who are named as perpetrators on intervention orders actually being the victim.⁹ This is often the result of misunderstanding of family and domestic abuse on the part of police and, in particular, a failure by the attending officer to consider the wider context of abuse rather than a single incident.

Shifting NSW's approach to family and domestic abuse away from a traditional incident-based framework through the criminalisation of coercive control should reduce the frequency of such misunderstandings. Comprehensive training for all members of the NSW Police Force and other first responders on non-physical abuse and dynamics of coercive relationships will allow for the wider context of abuse to be recognised. This should in turn minimise the risk of a new offence being used against victim-survivors. To-date, the experience in other international jurisdictions supports this view, with over 99% of convictions for coercive control offences in England and Wales being of male perpetrators.¹⁰ Whilst concern over misidentification is valid, the risk can be mitigated through the adoption of a holistic response. The low risk does not provide reason enough not to criminalise coercive control.

The other dominant criticism of a coercive control offence is that the criminal justice system is not the appropriate avenue for addressing coercive control. Critics suggest that given current low reporting and prosecution rates of domestic violence offences, and general difficulties faced by women in engaging with the criminal justice system, criminalisation of coercive control will not affect meaningful change. However, WNSWCLC and WWLS are of the view that the NSW Government cannot choose a course of inaction simply because of the fear of failure.

⁹ Emma Younger, 'When police misjudge domestic violence, victims are slapped with intervention order applications', *ABC News* (Online) < <https://www.abc.net.au/news/2018-08-15/domestic-violence-victims-mistaken-for-perpetrators/10120240>>.

¹⁰ Paul McGorrrery and Mariyln McMahon, 'Prosecuting controlling or coercive behaviour in England and Wales: Media reports of a novel offence' (2019) *Criminology & Criminal Justice*, 1, 6.

This submission has clearly identified that the current system is failing our women and children, and victim-survivors more generally. The legal system's failure to recognise coercive control is playing into the hands of perpetrators who wish to silence and disempower their victims. Whilst, as addressed above, a cultural shift is needed to ensure that any legislative change is not simply symbolic, legislative change does play a part in influencing social opinions. The NSW Government must recognise the need for a whole of government approach, of which criminalisation is a key component.

5.3 What should a coercive control offence look like?

The proposal of a specific legislative provision is beyond the scope and expertise of this submission and requires careful and considered drafting to ensure that the provision does not make things more difficult for victim-survivors. The process of translating clinical concepts of coercion, control and intimidation into legislation is difficult and will take time and extensive consultation, but now is the time to invest in that process.

Based on our experiences assisting victim-survivors, the following issues must be carefully considered in drafting and implementing an offence:

- **Evidentiary burden:** Under NSW's current criminal law regime, prosecutions for domestic violence offences frequently fall away because of a lack of physical evidence and the reluctance of a victim-survivor to give oral evidence against an offender. Our criminal legal system sets a high burden of proof for establishing a criminal offence, and rightly so. However, for coercive control there is rarely, if ever, physical evidence meaning that evidence for prosecution of an offence will largely rely on the oral testimony of victim-survivors.

In drafting a coercive control offence, a very delicate balance must be achieved between the rights of perpetrators to be presumed innocent until an offence is proven against them, and the rights of victim-survivors to be believed and not to be re-traumatised by a system designed to protect them. This could be done through provisions of the offence addressing evidence requirements and/or by strengthening legal and non-legal structures intended to protect victim-survivors of family, domestic and sexual abuse within the criminal justice systems. For example, there is already an urgent need for the NSW Government to provide additional funding for safe rooms in court houses (particularly in regional, rural and remote areas), and strengthen laws protecting victim-survivors from direct cross-examination by self-represented perpetrators.

- **Consistent definition of coercive control:** Coercive control requires a holistic response and must be addressed across intersecting legal systems. To effectively

respond to coercive control, the NSW Government must consider the implications of creating a coercive control offence outside of the criminal justice system. For example, if a parent is found guilty of a coercive control offence, will that be viewed to pose a significant risk to their child under Department of Communities and Justice child removal policies? And how will a conviction of a coercive control offence be weighted in family law proceedings?

To ensure clarity and effective implementation, a nationally consistent definition of coercive control, and family and domestic abuse more broadly, must be adopted across intersecting systems of law, including the criminal law system, the family law system, child protection system and civil regimes (including NSW's system of ADVOs). A national approach will also provide certainty to victim-survivors who experience abuse in multiple jurisdictions and/or cross state borders to escape abuse.

- **Broad scope of behaviour:** As considered above, the behaviour that characterises a coercive relationship can be broad and differ significantly from case-to-case. As a result, the definition of coercive control must also be broad to ensure it captures all victim-survivors' experience. Similarly, to legislation enacted in England and Scotland, any Australian offence should be directed at criminalising a repeated pattern or course of behaviour rather than individual discrete acts.
- **Retrospective application:** Most new criminal offences do not have retrospective application because a key tenant of the rule of law is that laws are known and accessible at the time they apply. However, the defining feature of coercive control is that it is a course of conduct that has occurred over a prolonged period of time. In drafting an offence, the legislature should ensure that evidence of behaviours and/or conduct which occurred before the commencement of the provision can be put before the Court.

6. CONCLUSION

This submission has sought to shed light on the diverse lived experiences of women and children of family and domestic abuse, specifically coercive control, and the failure of NSW's current criminal and civil regimes to recognise and adequately respond to those experiences. It has advocated for holistic social, cultural and legal reform to ensure that non-physical abuse is recognised and understood, and it has highlighted the need for victim-survivors to have legal recourse against perpetrators who inflict catastrophic harm and trauma on them. Criminalisation of coercive control is only one element of a

whole of government response needed to family and domestic abuse. But criminalisation is essential and will have lasting practical and symbolic implications.

The Inquiry is an important but preliminary step in addressing non-physical forms of family and domestic abuse. Before legislating or rushing into a response, WNSWCLC and WWLS urge the NSW Government to take the time to consult widely, and in particular listen to the diverse experiences of Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse peoples, and those living in regional, rural and remote communities. Whilst an urgent response to family and domestic abuse is needed, it must be a considered response and one that will provide meaningful change to those most in need of our protection – victim-survivors. After all, we owe it to them not to make things worse.

For any questions or to discuss this submission further please contact Hannah Robinson, Generalist/Law Reform Solicitor at WNSWCLC, on [REDACTED] or at [REDACTED].

Yours faithfully

Western NSW Community Legal Centre Inc
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Per:

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On behalf of

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