

**Submission
No 124**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Victims of Crime Assistance League (Hunter) NSW

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Victims of Crime Assistance League (Hunter) NSW

**Submission to the
Joint Select Committee
on Coercive Control**

*Coercive Control
in
Domestic Relationships*

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Introduction

Victims of Crime Assistance League (VOCAL) Hunter NSW is an Incorporated Charity organisation that supports men, women and children who are victim-survivors of any crime type throughout NSW. For the past 30 years we have been providing information, guidance and support to individuals and families who have been impacted by crime. We act in a consultative capacity to State and Federal governments on matters pertaining to victims' rights.

VOCAL's Victim Support Unit receives funding from NSW Department of Communities and Justice (Victims Services) to provide a free service to victims of crime in the Hunter region. Support is wide-ranging in scope, and is individualised to the specific needs of each client. The support we provide around legal processes includes assistance and advocacy with apprehended domestic violence orders (ADVOS), personal violence orders (PVOs), police reports, witness support in criminal court hearings, child protection reports and support through Family Court matters.

Female victims of family violence present to our service with significantly different experiences and disclosures of domestic abuse to that of our male victims. We acknowledge that coercive control and domestic abuse is a gendered issue and in this submission we will refer to women as victim-survivors and men as the perpetrator of domestic abuse. This paper will look at the terms of reference as requested and in particular the key areas of:

1. Defining coercive control
2. Coercive control behaviours compared to behaviours within healthy relationships
3. The current civil and criminal law responses to non-physical domestic abuse
4. Apprehended Domestic Violence orders and coercive control
5. Current criminal legislation regarding stalking or intimidation
6. Improving systemic responses
7. The Domestic Violence Safety Assessment Tool
8. Advantages of creating an offence of coercive control
9. Disadvantages of creating an offence of coercive control

Summary of key discussion points

- NSW legislation in response to domestic violence does not meet community expectation, nor does it adequately address the significant mental harm that victims/survivors suffer over extensive periods of exposure to non-physical abuse. Victim/survivors feel they are not believed.
- We encourage the Government to prioritise the safety of women and children and include criminalising coercive control in the management of family violence. Victim/survivors have described coercive control as worse than physical abuse.
- Current legislation restricts police and the judiciary in providing adequate safety and protection for victim/survivors experiencing non-physical forms of domestic abuse.
- The Domestic Violence Safety Assessment Tool needs to be updated to include coercive control behaviours.
- We support the recommendation that coercive control becomes a criminal offence. Additional recommendations include adding a domestic relationship as an aggravating factor to the current offence of stalk or intimidation and to include coercive control as a standard condition of Apprehended Domestic Violence Orders (ADVOs).
- For coercive control legislation to succeed, we recommend a full evaluation of how current policy intersects with police practices.
- To address what we see as gaps in services and understanding of how to manage issues of abuse, we recommend increasing police numbers, recourses and training.

Defining coercive control

Coercive control refers to a set of physical and/or non-physical behaviours that one person uses to manipulate, harass, intimidate, dominate and control another person. Coercive control is a multi-dimensional act that is inclusive of; but not limited to; violence (physical and sexual), threats, intimidation, isolation, stalking, monitoring (technology), emotional abuse, litigation abuse, financial abuse, creating dependency and manipulation. It may include physical and/or sexual harm but often it presents in non-physical forms of abuse that is difficult to identify.

The use of instilling fear and intimidation in another person is to exert power and control over them. Coercive control subtly attacks a women's autonomy, diminishing her independence and ultimately making her dependant and subordinate to her abuser.

Victims/survivors adapt their behaviours and responses to attempt to avoid escalating behaviours and violence, but part of coercive control involves the abuser constantly changing the rules. The victim/survivor feels and are told in both covert and overt ways that they are ‘never good enough’ or ‘should try harder’. The abuser deflects blame by getting the victim to review her own opinion of herself as well as her behaviours. This is not done to just to make the women feel bad about herself. It also has the effect of getting her to look in the wrong places for an explanation as to why she is unhappy. Perhaps she is repeatedly told she is “too emotional”, “has mental health issues”, “overacts”, “doesn’t understand” or just isn’t “smart enough”. Ultimately, she ends up believing she is not good enough and this invariably leads to an erosion of self-esteem as the victim/survivor is made to feel that she is at fault for the unhealthy relationship. In other words, the gendered nature of coercive control likely makes it difficult to recognise certain behaviour as abusive in the first place. She stays because she loves the good parts of him, and she stays because she believes she can fix the relationship by ‘trying harder’.

Most abusive men do not rely entirely on outright verbal abuse, threats or physical intimidation as their own means of power and control. While these behaviours may be present within the intimate relationship, abusers find they gain more power by using subtler tactics of manipulation that are much harder to name or identify.¹ The NSW Death Review Team² undertook an examination of 112 intimate partner deaths and found that 111 (99%) had used coercive controlling behaviours prior to killing their partner.

The general mindset that permeates through State and Federal jurisdictions is that once the relationship has ended; domestic violence will cease. VOCAL’s anecdotal evidence correlates with extensive research that indicates as the intimate relationship ends, the perpetrator intensifies coercive control as a means to maintain dominance and continue to control the victim/survivor. This often occurs through harassment, intimidation, stalking, verbal abuse, financial abuse, emotional blackmail, restricting child support and litigation abuse. The National Domestic and Family Violence Bench Book (2020) acknowledges that abusers, post separation, making several applications and complaints in multiple systems relating to a protection order, breach, parenting, divorce, property, child and welfare support and other matters with the intention of interrupting, deferring, prolonging or dismissing judicial and administrative processes, which may result in depleting the victim’s financial resources and emotional wellbeing and adversely impacting the victim’s capacity to maintain employment or to care for children.³

VOCAL recommends that an objective standard of proof is required if criminalising coercive control, meaning that prosecutors are required to prove that a reasonable person would be harmed under the same circumstances. This is opposed to the current subjective nature of proving beyond a reasonable doubt that the offender intended to cause harm. Any definition for legislative purposes must clearly articulate that perpetrating behaviours may encompass one, some, or all forms of various types of physical and non-physical abusive behaviours. Such behaviours include, but are not limited to the following:

¹ Bancroft, L (2004) *When Dad Hurts Mum. Helping your children heal the wounds of witnessing abuse*. New York. Berkley Press.

² NSW Government (2020) *NSW Domestic Violence Death Review Team Report 2017 2019*. (<https://www.parliament.nsw.gov.au/tp/files/77348/Report%20of%20the%20DVDRT%202017%20to%202019.pdf>)

³ National Domestic and Family Violence Bench Book (2020). <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>

- 1) Controlling, regulating and/or monitoring a person's daily activities. This may include monitoring where a person has been and who they were with, monitoring their car kilometres and regulating areas of travel, monitoring phone calls, texts and other forms of communication.
- 2) Depriving someone of their autonomy and freedom of action. This may include telling someone how to dress, preventing them from leaving the house, denying someone access to medical treatment or medical assistance.
- 3) Isolating the other person from friends, family and support services.
- 4) Controlling and withholding access to finances. This can include manipulating joint finances, controlling another person's wage or withholding child support.
- 5) Strategic litigation abuse, where a perpetrator of family violence makes misleading and false statements to simultaneous systems (including police, family and community services, child support and Centrelink) and misdirect the issues away from their behaviours,
- 6) Frightening, humiliating, and punishing the other person.

VOCAL support the Bill⁴ submitted by Abigail Boyd MP that references:

14A Abusive behaviour in domestic relationship

- (1) A person must not engage in a course of behaviour that is abusive of another person with whom the person has, or has had, a domestic relationship.
Maximum penalty – Imprisonment for 10 years or 50 penalty units, or both.
- (2) For the purpose of subsection (1), a person engages in a course of behaviour that is abusive of another person if –
 - a. the behaviour –
 - i. is violent, menacing or intimidating, or
 - ii. has, or is reasonably likely to have, one or more of the following effects -
 - A. making the other person dependent on, or subordinate to, the person,
 - B. isolating the other person from friends, relatives or other sources of support,
 - C. controlling, regulating or monitoring the other person's day-to-day- activities,
 - D. depriving the other person of, or restricting the other person's, freedom of action,
 - E. frightening, humiliating, degrading or punishing the other person, and
 - b. the person intends to cause, or is reckless as to whether the course of behaviour causes, the other person to suffer physical, emotional or psychological harm, including fear, alarm or distress, and
 - c. behaviour of a type referred to in paragraph (a) occurs on 2 or more occasions, and

⁴ Boyd, A. (2020) *Controlling Behaviour is Domestic Abuse*. <http://nswcoercivecontrolbill.com.au/the-bill/>

- d. a reasonable person would consider the course of behaviour to be likely to cause the other person to suffer physical, emotional or psychological harm, including fear, alarm or distress.

Anecdotal evidence shows us that targeting and/or threatening to harm family, friends, children, and animals is a common way perpetrators seek to control, manipulate and intimidate an intimate partner. VOCAL recommends that any legislation mirrors the recommendation included in the above mentioned bill that behaviour may have, or be reasonably likely to have, an effect on a person even if the conduct is directed at:

- (a) A third person, including a child, relative or friend of the person, or
- (b) the property of the person, or
- (c) a companion animal, within the meaning of the *Companion Animals Act 1998*, or any other domesticated animal.

Coercive controlling behaviours compared to behaviours within a healthy relationship

Healthy relationships are interdependent, meaning you seek support from each other but you maintain your individuality. The roles within healthy relationships naturally evolve over time. In healthy relationships there is trust, honesty, mutual agreeance, communication, compromise and flexibility. There typically is no behaviours of intimidation, threats or violence if outcomes don't occur as expected. There is no pattern.

In contrast, coercive control is when behaviours and actions are twisted into tools to instill fear and compliance. Over time, as the relationship develops, abusers take key information about the victim's insecurities, vulnerabilities and fears and slowly use these over to dominate and control their partner into compliance. Coercive control is nuanced in nature the behaviours which could comprise it are diverse and somewhat unique to each relationship. These behaviours cause harm to the victim/survivor and any definition in law must capture the diversity of coercive control for the legislation to be effective.

Coercive control is an ongoing course of conduct whereby the perpetrator seeks to intentionally constrain the agency of the victim. Frequency of behavior is key⁵. As coercive control is largely a pattern of behaviours, as opposed to individual stand out incidences, and it is our experience that many women do not realize they are in an abusive relationship because there are times of reward and happiness interwoven with threats/actual punishment.

The pervasive actions of the abuser strip away the decision making process, freedom and independence of the victim/survivor. There is no flexibility within the relationship for different opinions and no equal decision making. The *threat* of violence underpins coercive control, with the victim believing they have no choice but to comply and fear that if they say no there will be

⁵ Hardesty JL, Crossman KA, Haselschwerdt ML, Raffaelli M, Ogolsky BG, Johnson MP. *Toward a Standard Approach to Operationalizing Coercive Control and Classifying Violence Types*. J Marriage Fam. 2015 Aug;77(4):833-843. doi: 10.1111/jomf.12201. PMID: 26339101; PMCID: PMC4553695.

violent consequences. Dutton and Goodman's (2005) states coercive control is a multidimensional and repetitive process of responses, usually in the form of demands that ultimately end in compliance because the victim believes she will experience more negative consequences for noncompliance.⁶

Lived Experience: What survivors tell us

One survivor disclosed:

“He would check my phone constantly. I wasn't allowed any friends unless they were his friends. I wasn't allowed to see my family. I had to have long hair despite always having short hair. Even when I was physically breastfeeding our baby he would insist I stop it and do things for him. If I didn't do what he wanted he would tell me that I didn't love him and that he'll go and find someone else. He would yell and carry on, and my main fear was he would take it out on the children”.

The question of distinguishing between behaviours within a healthy relationship compared to the ones that form a pattern of abuse can only be determined when looking at the context of the relationship and the experiences of the victim-survivor. Research indicates that forms of persuasion, control and the expectation of compliance are seen as following a circuitous and predictable path.⁷ In our experience, victim-survivors of coercive control routinely describe an intense love bombing phase at the beginning of the relationship. Love-bombing is described as the presence of excessive communication at the beginning of a romantic relationship in order to obtain power and control over another person's life.⁸ After this, perpetrators use coercive behaviours to dominate and control certain aspects of the relationship, using intimate knowledge of their partner's fears and insecurities as a weapon.

Survivors report being told the following by their abuser:

“If you ever leave me I would kill myself”

“If you leave me you'll never see the children again”

“If you leave me I'll just quit my job so I won't have to pay child support”

“You're useless, fat and ugly and no one will want you”

“You wouldn't survive without me”

“I'll have you scheduled to mental health”

⁶ Lehmann, P. Simmons, C.A., and Pillai, V.K. (2012). *The Validation of the Checklist of Controlling Behaviours (CCB): Assessing Coercive Control in Abusive Relationships*.

⁷ Ibis.

⁸ Strutzenburg, C; Wiersma-Mosley, J; Jozkowski, K; Becnel, J. (2017) *Love-bombing: A Narcissistic Approach to Relationship Formation*. <https://scholarworks.uark.edu/cgi/viewcontent.cgi?article=1013&context=discoverymag>

In an attempt to avoid the negative consequences associated with non-compliance, victim/survivors adapt their own behaviours to comply with what the abuser wants at that moment. Victim-survivors report that they begin to become hyper vigilant to ‘keep the peace’ within the relationship. The perpetrator has the means and power to punish the victim-survivor for non-compliance and the victim-survivor learns to adapt and modify her behaviours and responses to comply with her partner’s demands and/or mood. We know that the consequences of coercive control are accumulative rather than incident-specific⁹. Therefore, the understanding of the victims experience of abuse and her compliance in the context of her relationship is essential and cannot be adequately addressed under a single incident report, as is current process for police and legal action.

The current criminal and civil law response to non-physical acts of abuse

Coercive control is not a new phenomenon. It has been formally recognised in domestic and family violence since 1977. Although victim/survivors continuously speak out about the impact of non-physical acts of domestic violence, and despite research recognising that physical, psychological, social and financial consequences for victim/survivors are catastrophic, there is no current civil or criminal legislation in NSW that addresses this specific form of abuse.

We argue that existing criminal and civil legislation restricts police and the judicial system in providing adequate safety and protection for victim/survivors experiencing non-physical forms of abuse. The nuances of non-physical coercive control make it challenging to correlate with current civil and criminal legislation, and ultimately leaves many victims/survivors at risk of harm. Despite research indicating that the time of separation is an amplified period of danger for the victim/survivor,¹⁰ there remains significant system failures within state and federal response to domestic violence. As a perpetrator feels they are losing control of the relationship, there is often an upsurge of nonphysical tactics, and our experience is that separation does not bring safety or freedom from abuse. The problem with the narrow, individualistic focus of the criminal law is that it ignores the contexts in which single incidents occur and therefore obscures the dynamics of control, power and gender inequity that makes coercive control distinctively wrong and harmful.¹¹ We desperately need a judicial system that recognises and responds to gendered violence and that can provide necessary interventions to keep women and children safe.

⁹ Katz, E; Nikupeteri, A; Laitinen, M. (2020) *When Coercive Control Continues to Harm Children: Post Separation Fathering, Stalking and Domestic Violence*. Child Abuse Review Vol. 29 (310-324) (2020)
<https://onlinelibrary.wiley.com/doi/pdf/10.1002/car.2611>

¹⁰ Douglas, H. (2017). *Legal Systems Abuse and Coercive Control*. Faculty of Law, University of Queensland.
<https://law.uq.edu.au/files/28536/Douglas%20Systems%20Abuse%202017.pdf>

¹¹ Cairns, I. (2020) *The Moorov doctrine and coercive control: Proving a ‘course of behaviour’ under s. 1 of the Domestic Abuse (Scotland) Act 2018* The International Journal of Evidence & Proof 2020, Vol. 24(4) 396–417
<https://journals.sagepub.com/doi/pdf/10.1177/1365712720959857>

Apprehended Domestic Violence Orders and observed limitations that reduce safety

It is our experience that ADVOs are difficult to obtain. An ADVO constitutes the primary means in the State of asserting the fundamental right to freedom from fear¹². Fear is subjective and it is the context in which the family and domestic violence behaviours take place that provides meaning to the person who is the subject of the abuse¹³. Victim/survivors report they seek police intervention for ongoing non-physical violence but are often turned away with little assistance. In some cases, police contact the offending person to get their version of events. This puts the victim in significant danger, for the offender knows the victim has spoken to police and with no further police action the offender believes he can continue the abuse without ramifications.

The current standard conditions of an ADVO is that *the defendant must not assault, threaten, stalk, harass or intimidate, intentionally or recklessly destroy or damage property of a victim*¹⁴ with the standard of proof being the balance of probability. Our experience is ADVOs are difficult for many victims/survivors to successfully obtain post separation due to the absence of physical abuse. Police actions can be limited, particularly if there are children as part of the family unit. In the absence of physical abuse, police generally advise the victim/survivor to either change phone numbers/shut down social media, install home security cameras or engage a family law solicitor. The onus is placed on the victim/survivor, not the perpetrator, and abuse continues. One of the things that victim/survivors need at this time is a system that protects them. They need to be believed and have their concerns legitimately managed. We are seeing impediments in this process.

One victim/survivor details:

“Police were very quick to dismiss how fearful I was. The DVSAT indicated I was at serious threat but they said because there was no physical evidence it was his word against mine. At this stage I had contacted the police several times over the years for help, but nothing was done. I don’t even think they looked at my previous reports. I felt they had no understanding of what it was like to be subjected to domestic violence and even when I ended the relationship the abuse and harassment continued. Instead of phoning the perpetrator and believing him (he denied the assault) they told me it was a Family Law issue. I asked for a ADVO but they said no. I had hoped they would talk to me more about what I was experiencing and help me with safety options”.

¹² Women’s Legal Service NSW. (2018). *A Practitioners Guide to Domestic Violence Law in NSW*. Women’s Legal Service NSW.

¹³ Douglas, H. (2017). *Legal Systems Abuse and Coercive Control*. Faculty of Law, University of Queensland. <https://law.uq.edu.au/files/28536/Douglas%20Systems%20Abuse%202017.pdf>

¹⁴ State of New South Wales (NSW Police Force). *Apprehended Violence Orders* https://www.police.nsw.gov.au/crime/domestic_and_family_violence/apprehended_violence_orders_avo

Current processes and assumptions that minimise disclosures of abuse.

There is danger in the management of women when their concerns are labelled as a result of inappropriate perceptions, with the benefit going to the abuser. Many people label traumatised women as “hysterical” “crazy” “mentally ill”. Hennessy¹⁵ (2018) states that a desire to label the victim has allowed many people to minimise their responsibility to protect the woman, and that this convenient shifting of blame is one of the main reasons our response remains inadequate and the abuse continues. If the abuse is deemed inconsequential, but the impact on the victim is overwhelming and ongoing, the perpetrator can be viewed as the stable party or even, in a most alarming role reversal, the true victim¹⁶. For example, victim/survivor feedback on police responses include:

“What he is doing shouldn’t cause you to be fearful”

“He hasn’t physically hurt you in the past so you have nothing to worry about”

“Come back in when he hits you”

“Get a family court solicitor”

Responses from the Federal Family Court have included:

“You use to love each other once, why can’t you get along now?”

“The abuse wasn’t that bad otherwise you would have gotten an ADVO”

“I think you and his ex-partner have formed an alliance and are exaggerating the abuse”

One survivor states:

“The psychological abuse was unrelenting and manifested in strange and disturbing remarks and behaviours, often with raised voice, screaming or an unmistakable look of rage which I can picture clearly, even to this day. The behaviours were repeated and relentless and most often occurred without witnesses. There were other incidents which included lewd sexual behaviour, physical pushing grabbing and withholding finances”.

If NSW wants to effectively reduce domestic violence, we need to shift our focus and concentrate more resources into early intervention and primary prevention. VOCAL recommends that coercive control behaviours become as a standalone mandatory condition of an ADVO and shifting the mindset to look at patterns of behaviours in addition to stand alone incidents of violence.

¹⁵ Hennessy, D. (2018). *How He Gets Into Her Head. The Mind of the Male Intimate Abuser*. Hussar Books. Cork University Press

¹⁶ Douglas, H. (2017). *Legal Systems Abuse and Coercive Control*. Faculty of Law, University of Queensland. <https://law.uq.edu.au/files/28536/Douglas%20Systems%20Abuse%202017.pdf>

Another area of possibility is giving Magistrates that issue Final ADVOs some legislative power to direct an offender to behavioural change programs. Many people view an ADVO as ‘just a piece of paper’. Serious, repeat offenders who have no legal regard ignore these orders and only some of which will result in a criminal breach.

While we acknowledge protection orders are a civil matter, we recommend State courts adopt a similar approach to that of the Federal jurisdiction, where directions are given to behavioural change programs. In Family Court proceedings, litigants can be ordered to undertake parenting programs, behavioural management programs, and/or seek mental health interventions. While we have not witnessed any legal ramifications for litigants not participating in court ordered programs, the consequences of not participating may result in limited time spent with their children.

If local court Magistrates had the legislative powers at an ADVO hearing to direct defendants to intervention programs, then perpetrator accountability and addressing abusive behaviours would be a strong intervention focus. This is especially needed if there are children of the relationship, and the ADVO allows the offender to maintain contact with his children. Domestic violence perpetrators ‘need to accept responsibility for choosing to use violence and to, instead, learn to behave in a non-coercive, non-abusive manner.’¹⁷ Currently, the only mandated options for behavioural change programs is through NSW Community Corrections – after criminal sentencing has occurred. A more holistic approach from the beginning will ensure that social supports and legal interventions are available for both offender and victim/survivor, thus helping to reduce the impact of further violence.

Current Criminal Legislation

To make any legislation of coercive control effective, there must be a fundamental shift away from the incident-based paradigm currently operating in the legal system. Considering risk to victim/survivors via methods used to evaluate incident-based crimes is both inappropriate and dangerous for family violence matters. In such matters, the incremental and cumulative effect of coercive control is lost, and victim/survivors experiences are too often dismissed.¹⁸

Stalk or Intimidate with the intent to cause fear of physical or mental harm is defined in the Crimes (Domestic and Personal Violence) Act 2007¹⁹, S13 as:

- (1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is guilty of an offence.
Maximum penalty—Imprisonment for 5 years or 50 penalty units, or both.

¹⁷ Hannah, M.T & Goldstein, B. (2010) *Domestic Violence, Abuse and Child Custody*. Legal Strategies and Policy Issues. Civic Research Institute.

¹⁸ Stark, E & Hester, M. (2018) *Coercive and Control: Update and Review*. Violence Against Women 2019, Vol. 25(1) 81–104 <https://journals.sagepub.com/doi/10.1177/1077801218816191>

¹⁹ NSW Crimes (Domestic and Personal Violence) Act 2007

- (2) For the purposes of this section, causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship.
- (3) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.
- (4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared physical or mental harm.
- (5) A person who attempts to commit an offence against subsection (1) is guilty of an offence against that subsection and is punishable as if the offence attempted had been committed.

The charges of stalking and/or intimidation with the intent to cause fear of physical or mental harm is the only offence that may fit under the coercive control umbrella. Anecdotally, victim/survivors experience frustrations and judgement when reporting behaviours that they feel are stalking and/or intimidating. It is not uncommon for victims to repeatedly present to a police station requesting protection from the same offender. Each incident on its own may seem trivial in nature, but in the context of coercive control it instils fear within the victim.

One client discloses:

“I did not tell him where I was moving to once I ended the relationship. Somehow he found out where I was living and he began driving past my house, revving his car, slow down or repeatedly press the car horn. This would occur day or night and I felt it was his way of saying “I know where you live now”. His behaviours continued and I started to feel unsafe and worried – especially at night. I was aware his behaviour was unpredictable and this scared me. I went to the police and they advised me to get cameras at the home. I did this. The next time he drove past I took the footage to the police. They said that despite me knowing it was his car I could not prove he was the person driving. Another time I went reported the same behaviours I was told ‘maybe he needs to drive past your house to get to work’. I didn’t report again.”

Technology is a significant aspect of everyday life and technology facilitated abuse can be a large element of coercive control. At the time of first report, victim/survivors are told that cyberstalking, monitoring app, tracking devices, and spyware are too difficult to investigate. We recommend increasing police resources to be able to respond to technology facilitated abuse. For many people who have had no previous interactions with the law, and have no physical evidence to rely on, they struggle to understand unfamiliar systems yet hold high expectations that the legal systems will hold perpetrator accountable. Inadequate system responses create a negative relationship between victim/survivor and police, thus contributing to the perpetrators coercive control and threats of ‘No one will believe you’ and ‘No one will help you’.

In addition to criminalizing coercive control, VOCAL recommends strengthening the current stalking or intimidate charge by adding a domestic relationship as an aggravating factor. The breach of trust within a domestic relationship could be considered an aggravating factor,

NSW Crimes (Sentencing Procedure) Act 1999²⁰ outlines aggravated factors to be considered in sentencing can include;

- S21A (2) (ea) the offence was committed in the presence of a child under 18 years of age,
- (eb) the offence was committed in the home of the victim or any other person,
- (eg) the injury, emotional harm, loss or damage caused by the offence was substantial, and/or
- (ek) the offender abused a position of trust or authority in relation to the victim.

Case law in NSW indicates that the fact that an offence is committed while an offender is subject to the conditions of a protection order to protect the victim of the offence, may be treated as an aggravating factor²¹. Similar in other jurisdictions, the domestic relationship between offender and victim is a matter of judicial discretion as seen in *R v MFP* by the Victorian Court of Criminal Appeal:

*“Moreover, I think it can be seen to be aggravating both as to its potential consequences and also in as much as a husband (or a wife) is in a privileged position in relation to a spouse. They each know the everyday movements, the habits, the likes and dislikes, the fears and pleasures of their spouse, which might enable them not only to effect an attack more easily on their victim but also to devise the kinds of attack which could more seriously affect their spouse, not merely physically, but so as to cause mental anguish ...”*²²

In *R v MFP* [2001] VSCA 96, the Victorian Court of Criminal Appeal noted that an intimate relationship places spouses in a ‘privileged position’, stating:

*“They each know the everyday movements, the habits, the likes and dislikes, the fears and pleasures of their spouse, which might enable them not only to effect an attack more easily on their victim but also to devise the kinds of attack which could more seriously affect their spouse, not merely physically, but so as to cause mental anguish”*²³

The cumulative psychological abuse constraining the lives of women and children in domestic abuse limits the victim’s quality of life, can result in an inability to work, homelessness and poverty. Consequences of psychological abuse can be drastic and life changing. Research found that there was a more consistent relationship between psychological abuse and PTSD than between physical violence and PTSD. Society recognises this in war veterans, child abuse victims, as well as in victims of other violent crimes. It is time the serious impact on women and children of

²⁰ NSW Crimes (Sentencing Procedure) Act 1999

²¹ Australian Law Reform Commission (2010) *Family Violence – A National Legal Response*. ALRC Report 114 NSWLRC Report 128. <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/13-recognising-family-violence-in-offences-and-sentencing-3/recognising-family-violence-in-sentencing/#:~:text=13.129%20The%20sentencing%20legislation%20of,or%20related%20to%20the%20offender>

²²ibid

²³ Sentencing Advisory Council (2015) *Sentencing of Adult Family Violence Offenders. Final Report 5*. https://www.sentencingcouncil.tas.gov.au/_data/assets/pdf_file/0018/333324/SAC_-_family_violence_report_-_corrected_accessible_version_for_web.pdf

domestic abuse is recognized and responded to. We need to improve current laws if we are to truly seek and manage the safety of women and children.

Under the Domestic Abuse (Scotland) Act 2018²⁴, an aggravating factor of a domestic violence act is specific in relation to a child. Scotland legislation states:

S5 (2) the domestic violence offence is so aggravated if, at any time in the commission of the offence:

- (a) A [the offender] directs behaviour at a child, or
 - (b) A [the offender] makes use of a child in directing behaviour at B [the victim]
- (3) The offence is so aggravated if a child sees or hears, or is present during, an incident of behaviour that A [the offender] directs at B [the victim] as part of the course of behaviour;
- (4) The offence is so aggravated if a reasonable person would consider the course of behaviour, or an incident of A's [the offenders] behaviour that forms part of the course of behaviour, to be likely to adversely affect a child usually residing with A [the offender] or B [the victim] (or both).
- (5) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child
- (a) has ever had any:
 - (i) awareness of A's behaviour, or
 - (ii) understanding of the nature of A's behaviour, or
 - (b) has ever been adversely affected by A [the offenders] behaviour.

Making a domestic relationship an aggravating factor in the current crime of stalk or intimidate with the intent to cause fear of physical or mental harm, will serve to act as a deterrent for future offending, validate and recognize the harm done to victim/survivors and send a strong community message that the legal system responds to all types of violence.

NSW needs to create legislation that identifies coercive control and implement systems that will safeguard women and children from ongoing forms of both physical and non-physical abuse. Policy makers, politicians and key stakeholders within sectors that work with victims/survivors of family violence must recognise that it is incredibly difficult to leave a violent and controlling relationship. Separation is not an event, but a process. A victim/survivor faces many complex challenges that have a direct impact on her immediate physical safety, her children's safety, financial access, and access to safe accommodation, psychological support, access to support services and the support of the police and legal sector to help re-establish safety.

²⁴ Domestic Abuse (Scotland) Act 2018

Pre-implementation of coercive control recommendations

System Reform

There is no consistent national definition on what constitutes family and domestic violence. Before any legal reform is implemented, the current framework around family and domestic violence within both State and Federal standings must be thoroughly reviewed and streamlined.

The public message that ‘domestic violence is a crime’ misleads victim/survivors. People seeking protection, support and assistance are told through media campaigns and key stakeholder departments that domestic and family violence is a crime. Victim/survivors of coercive control and other non-physical violence believe that police have the legislative powers to intervene and protect. There are inconsistencies with what society is told about domestic and family violence and what the criminal law can respond to.

NSW Department of Communities and Justice states:

- *“Domestic and family violence is any behaviours in an intimate or family relationship which is violent, threatening, coercive or controlling, causing a person to live in fear²⁵.”*
- *“Domestic and family violence includes different types of abuse. A person doesn’t need to experience all of these types of abuse for it to be a crime under the law.²⁶”*
- *“Domestic and family violence is a crime. It is defined in the Crimes (Domestic and Personal Violence) Act 2007”.²⁷”*

The Federal Family Court Act states *“Family violence means violent, threatening or other behaviours by a person that coerces or control a member of the person’s family or causes the family member to be fearful²⁸.”*

Services Australia (Centrelink, Medicare and Child Support) state *“Family violence is any behaviours that is violent, threatening, controlling, intended to make you or your family feel scared and unsafe”.*

Finally, the NSW Police website states: *“Domestic and family violence is a crime”²⁹.*

²⁵ State of New South Wales (Department of Communities and Justice) *Safer Pathway: What is domestic and family violence?* <https://www.dcj.nsw.gov.au/families-and-communities/safer-pathway/what-is-domestic-and-family-violence>

²⁶ State of New South Wales (Department of Communities and Justice) *Family and Community Services: About domestic and family violence.* <https://www.facs.nsw.gov.au/domestic-violence/about/types-of-abuse-in-dv>

²⁷ State of New South Wales (Department of Communities and Justice) *Family and Community Services: The Law on Domestic Violence* <https://www.facs.nsw.gov.au/domestic-violence/police-law-help/the-law>
²⁸ <http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-violence/what-is-family-violence/>

²⁹ State of New South Wales (NSW Police Force) *Domestic and Family Violence is a Crime.* https://www.police.nsw.gov.au/crime/domestic_and_family_violence/what_is_domestic_violence

Misleading narratives and system inadequacies

This inconsistent narrative is misleading and continues to be problematic and dangerous for victim/survivors. In reality, police and the criminal justice system are unable to adequately respond to most allegations of domestic and family violence, specifically coercive control, threats and intimidation. As previously stated, even a civil ADVO is difficult to obtain. The criminal justice system responses to non-physical domestic violence is likely a key factor in why domestic violence is an under-reported crime, with many victim/survivors having reported once state they will not report again due to system inactions. With psychological, financial and systems abuse being significant to coercive control, it is essential that our legal system responds to this. Currently, the Federal and State Governments messages condoning domestic violence is not being backed by legal action.

Government stakeholders including Health, Education, Police and both State and Federal Judicial systems must have a unified stand on this national crisis that kills, on average, 1 woman per week. The current framework is disjointed, complex and inadequate, increasing the level of risk to women and children. Victim/survivor service providers are required to provide crisis support, interventions and case management to manage risk, on a significantly limited budget. As previously stated, the current framework around family and domestic violence within both State and Federal standings must be reviewed before legal reform occurs.

We must not focus solely on improving the State's current framework. The Family Court system was never designed or intended to deal with matters of family violence and it has long been identified that the Family Court system needs to be re-designed to adequately respond to child safety issues within the family dynamic. Progress in this area remains limited and slow. While the Family Law Act references coercive control as an ailment of family violence, in practice the Federal jurisdiction responses to family violence are largely dismissed, minimised and ignored. Protective parents who attempt to shield their children from ongoing physical, psychological and sexual violence are accused of parental alienation, despite this outdated theory being debunked. It appears that there is a perception when parties separate the abuse and risk is reduced. The focus of the orders we see is to promote a co-parenting agenda not safety and certainly deficient in the management of trauma in children.

Urgent review of the Domestic Violence Safety Assessment Tool (DVSAT)

VOCAL recommends the structure of the DVSAT be redefined to identify coercive controlling behaviours. Some survivors report that while DVSAT provides a minimal snapshot of physical abuse, threats, financial control, sexual violence and some forms of emotional abuse, it does not capture all offending behaviours within an abusive relationship. Below are several questions on the DVSAT that VOCAL believe need to be removed, and that the DVSAT ask questions the victim is unlikely to know.

- Question 6: *Has your partner ever been charged with breaching an apprehended violence order?*
Police have access to this information and the victim may not be aware of previous orders.
- Question 11: *Has there been a recent separation (in the last 12 months) or is one imminent?*
Domestic abuse can present at any stages in intimate relationship, and level of risks is relevant regardless of whether it is pre or post separation.
- Question 13: *Is your partner unemployed?*
There are no current studies that highlight employment status as a defining factor in the perpetrating of domestic violence.
- Question 17: *Is your partner currently on bail or parole, or have they served a time of imprisonment or recently been released from custody in relationship to offences of violence?*
Police have access to this information and the victim may not be aware of this previous criminal convictions.
- Question 22: *Is there any conflict between you and your partner regarding child contact or residency issues and/or family court proceedings?*
This could be reworded to ‘Has your partner ever stated he/she would restrict your child access or residency status if you were to separate?’ The word conflict creates a very different narrative which results in police referring to it as a Family Court matter.
- Question 23: *Are there children from a previous relationship present in your household?*
There are no current studies that highlight step-children as a defining factor in the perpetrating of domestic violence.
- Question 35: *Has your partner ever been arrested for sexual assault?*
Police have access to this information and the victim may not be aware of this.

A whole system approach is required to addressing domestic and family violence. VOCAL is aware that currently the DVSAT rating is not passed in to prosecutors, defence or Magistrates in domestic violence matters. We recommend that the DVSAT rating and be made available to Magistrates in ADVO mentions and Local Court hearings, so to better inform Court of the current and potential threat of ongoing violence.

Why legislate a crime of coercive control?

There are significant advantages to criminalising coercive control, including;

1. Updating legislation and system practices to prevent violence requires a holistic approach to understanding the context and experiences of the abusive relationship, as opposed to focusing on a single incident.
2. Coming in line with community expectations. As previously stated, society is told domestic and family violence is a crime, but currently there are gaps in criminal and civil legislation for domestic violence offences.
3. Correlating with the human rights framework that people should be free from fear and harm, and have freedom of movement and thought.
4. Holding many more domestic violence perpetrators accountable;
5. Creating a deterrent for ongoing abusive behaviour that are based on control and power over another person;
6. Assist with early interventions, meaning social and legal interventions can work to help prevent the escalation of abuse before it reaches physical violence, sexual violence or homicide.

Some challenges that may come with criminalising coercive control include:

1. Perpetrators using the system to further abuse victims by making false and misleading statements
2. Failure to correctly investigate claims made, and hold those who make false claims to account
3. Parents who withhold their children for safety reasons in line, with the requirement of Children and Young Persons (Care and Protection) Act 1998 are seen as coercively controlling.
4. Vulnerable women who have been psychologically abused may not have capacity to advocate for themselves or are so indoctrinated that they are unable to make a complaint on their own.
5. Both Men and women may not completely comprehend what Coercive Control is and how to manage a complaint to police. When we ask our clients about the term many find it hard to describe.
6. Failure of systems and processes to properly address claims in our current domestic abuse complaints process
7. Sufficient funding by government to manage significant education programs and cultural change required to better recognize and manage abuse within police and judicial settings.
8. Evidentiary burden and proving 'harm' beyond reasonable doubt using the objective test
9. Poor funding to ensure post separation safety
10. The possibility of reduced pre and post implementation compliance.

Conclusion

VOCAL support the criminalisation of coercive control and recommends a *gradient of response* depending on the severity of the abuse and whether it should be criminal or civil. It is essential that these behaviours causing harm are addressed at a legislative level, come in line with community expectations.

It is our recommendation that any future legislation should make clear reference to the fact that coercive control is a pattern of multi-type behaviours that essentially deprives the victim of their autonomy by monitoring and restricting their movements, decisions and behaviours. Understanding that these techniques create confusion and compliance with the victim-survivor is a key component when defining the scope of coercive control. Many perpetrators rarely need to use physical violence as means of control as the psychological torture that is imposed on their victim means physical violence is simply not necessary

While the need to legislate coercive control is important, there is also a great need to recognise the psychological harm it causes and the systems that support the management of psychological trauma need sufficient funding to support victim/survivors.

References

- Australian Law Reform Commission (2010) *Family Violence – A National Legal Response*. ALRC Report 114 NSWLRC Report 128. <https://www.alrc.gov.au/publication/family-violence-a-national-legal-response-alrc-report-114/13-recognising-family-violence-in-offences-and-sentencing-3/recognising-family-violence-in-sentencing/#:~:text=13.129%20The%20sentencing%20legislation%20of,or%20related%20to%20the%20offender>
- Bancroft, L (2004) *When Dad Hurts Mum*. Helping your children heal the wounds of witnessing abuse. New York. Berkley Press.
- Boyd, A. (2020) *Controlling Behaviour is Domestic Abuse*. <http://nswcoercivecontrolbill.com.au/the-bill/>
- Cairns, I. (2020) The Moorov doctrine and coercive control: Proving a ‘course of behaviour’ under s. 1 of the Domestic Abuse (Scotland) Act 2018 *The International Journal of Evidence & Proof* 2020, Vol. 24(4) 396–417
<https://journals.sagepub.com/doi/pdf/10.1177/1365712720959857>
- Domestic Abuse (Scotland) Act 2018
- Douglas, H. (2017). *Legal Systems Abuse and Coercive Control*. Faculty of Law, University of Queensland. <https://law.uq.edu.au/files/28536/Douglas%20Systems%20Abuse%202017.pdf>
[Family Law Act 1975](#)
- Hannah, M.T & Goldstein, B. (2010) *Domestic Violence, Abuse and Child Custody*. Legal Strategies and Policy Issues. Civic Research Institute.
- Hardesty JL, Crossman KA, Haselschwerdt ML, Raffaelli M, Ogolsky BG, Johnson MP. *Toward a Standard Approach to Operationalizing Coercive Control and Classifying Violence Types*. *J Marriage Fam*. 2015 Aug;77(4):833-843. doi: 10.1111/jomf.12201. PMID: 26339101; PMCID: PMC4553695
- Hennessy, D. (2018). *How He Gets into Her Head. The Mind of the Male Intimate Abuser*. Hussar Books. Cork University Press
- Katz, E; Nikupeteri, A; Laitinen, M. (2020) *When Coercive Control Continues to Harm Children: Post Separation Fathering, Stalking and Domestic Violence*. *Child Abuse Review* Vol. 29 (310-324) (2020) <https://onlinelibrary.wiley.com/doi/pdf/10.1002/car.2611>
- Lehmann, P. Simmons, C.A., and Pillai, V.K. (2012). *The Validation of the Checklist of Controlling Behaviours (CCB): Assessing Coercive Control in Abusive Relationships*.
- National Domestic and Family Violence Bench Book (2020). <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>

NSW Crimes (Domestic and Personal Violence) Act 2007

NSW Crimes (Sentencing Procedure) Act 1999

NSW Government (2020) *NSW Domestic Violence Death Review Team Report 2017 2019*. <https://www.parliament.nsw.gov.au/tp/files/77348/Report%20of%20the%20DVDRT%202017%20to%202019.pdf>

NSW Government (2020) *NSW Police Force: Domestic and Family Violence is a Crime*. https://www.police.nsw.gov.au/crime/domestic_and_family_violence/what_is_domestic_violence

Sentencing Advisory Council (2015) *Sentencing of Adult Family Violence Offenders. Final Report 5*. https://www.sentencingcouncil.tas.gov.au/_data/assets/pdf_file/0018/333324/SAC_-_family_violence_report_-_corrected_accessible_version_for_web.pdf

Stark, E & Hester, M. (2018) *Coercive and Control: Update and Review*. *Violence Against Women* 2019, Vol. 25(1) 81–104 <https://journals.sagepub.com/doi/10.1177/1077801218816191>

State of New South Wales (Department of Communities and Justice) *Safer Pathway: What is domestic and family violence?* <https://www.dcj.nsw.gov.au/families-and-communities/safer-pathway/what-is-domestic-and-family-violence>

State of New South Wales (Department of Communities and Justice) *Family and Community Services: About domestic and family violence*. <https://www.facs.nsw.gov.au/domestic-violence/about/types-of-abuse-in-dv>

State of New South Wales (Department of Communities and Justice) *Family and Community Services: The Law on Domestic Violence* <https://www.facs.nsw.gov.au/domestic-violence/police-law-help/the-law>

State of New South Wales (NSW Police Force) *Domestic and Family Violence is a Crime*. https://www.police.nsw.gov.au/crime/domestic_and_family_violence/what_is_domestic_violence

Strutzenburg, C; Wiersma-Mosley, J; Jozkowski, K; Becnel, J. (2017) *Love-bombing: A Narcissistic Approach to Relationship Formation*. <https://scholarworks.uark.edu/cgi/viewcontent.cgi?article=1013&context=discoverymag>

Women's Legal Service NSW. (2018). *A Practitioners Guide to Domestic Violence Law in NSW*. Women's Legal Service NSW.