



Shoalcoast Community Legal Centre Inc

ABN 85 989 128 796

What would you say to victim-survivors who want this reform?

We acknowledge and respect the individual lived experiences of victim-survivors as well as their views on the criminalization of coercive control. We see the devastating impacts of coercive control on those who have experienced, and those who continue to experience, coercive control. It is an abhorrent form of abuse that negatively affects the short and long-term physical, emotional, physical, social and financial health of victim-survivors. We want to see reforms that will end this kind of abuse, reforms that make women and children safe.

Our submission was informed by our professional experience working with vulnerable, marginalised and socially and financially disadvantaged clients who are victim-survivors. Whilst some of these victim-survivors are supportive of criminalisation, many would not benefit from criminalisation.

We frequently speak with victims who are seeking to amend their witness statements, or seeking advice about whether they are obliged to attend court in compliance with a subpoena because they do not want their partner to go to gaol. We are also often contacted by victim-survivors seeking to amend the conditions of an ADVO to facilitate contact with a perpetrator. For some of these clients, they want the children to maintain a relationship with the father and separate the violence they experienced from the experience of their children. Some of these client's need a 'break' from their children, for their mental wellbeing, or so that they can go to work. Some clients continue to be financially dependent on the perpetrator. These clients would not be supportive of criminalisation.

We are also not convinced that criminalisation will necessarily lead to genuine cultural change and better outcomes for victims of coercive and controlling behaviour, but do have genuine concerns regarding the possible negative consequences of criminalisation. Whilst it may not be the experience of all victim-survivors, it is the experience of some of our clients that they do "just want the abuse to stop" but do not want the perpetrator to be charged. The reasons for this are many, and would not be considerations at the forefront of the minds of individual survivors, if it was not there lived experience. For example, the impact of intergenerational trauma can result in a general distrust of law enforcement and government institutions, and there is not a desire to increase potential interactions with the police, and therefore they are not supportive of criminalisation.

We note that there are also risks to victim-survivors from engaging with inadequately trained and resourced police. Whilst there are some excellent responses from the police under the existing legislative framework, there are also a number of victim-survivors who seek help and are let down by the system. They are dismissed, told that they are not experiencing 'family violence', that they are being unreasonable, that they should have got help sooner. This does not result in cultural change. Perpetrators are not deterred from any form of family violence if they do not expect the legislation to be enforced.

If there is insufficient knowledge and assistance for victim-survivors under the current framework which is primarily focused upon single acts of physical violence, there are risks that inadequately equipped police could inform a victim that she is not a victim of coercive control, implying the behaviour she is being subjected to is reasonable and acceptable. This

will not result in a decrease in the incidence of coercive controlling behaviour, it will not result in cultural change and it will not make women safer.

There are also the clients who have been subject to years of abuse, but when the police do attend they are misidentified as the primary aggressor. For example, where a victim-survivor was being strangled (but no marks were left) but she scratched the perpetrators face when trying to get him to release her, she was named as the defendant on the ADVO application.

We also note it is unlikely that women still living in coercive controlling relationships (for whatever reason) would be able to make a submission to this inquiry. We would also anticipate, that formal engagement with an inquiry such as this, is also less likely from individual victim-survivors who identify as Aboriginal and Torres Strait Islander, or where English is a second language, for those with disability and those with different cultural or religious backgrounds, and whilst we can directly speak for these individuals, we do advocate for the Committee to seek to consult widely with different victim-survivors.

Does leaving coercive control out of the criminal scheme actually sends a message that it is less serious than physical assault?

It is certainly not our view that coercive control is less serious than physical assault; for many of our clients the ongoing psychological, emotional, social and financial consequences of coercive control are much more significant and long-lasting than the physical assaults they have experienced. We very much want to see the implementation of measures and reforms that result in the real reduction in the incidence of coercive control, which may, or may not include criminalisation.

Our concerns are that hastily enacted legislation, criminalising coercive control could result in unintended consequences which result in further harms to some victim-survivors and without appropriate funding, education and resourcing, the effectiveness of any such legislation will be undermined. We hope the final recommendations of the Committee engender real cultural change with strong messaging to the wider community about the seriousness of, and unacceptability of, coercive control.

We further caution that failure to adequately educate, train and resource law enforcement, prosecutors, lawyers and judges, will undermine enforcement of legislation criminalising coercive control. This would equally send the message that coercive control is considered less serious than physical assault if prosecutions are unlikely to be pressed or fail to result in convictions.

Can some of the arguments against criminalisation be used to justify the decriminalisation of offences like sexual assault?

We firstly note that our position is not staunchly against the criminalisation of coercive control, it is a position of caution. Caution that lack of consultation and careful drafting will lead to unintended consequences adversely affecting some victim-survivors. Caution that lack of proper training, education, resources and cultural change will lead to ineffective implementation of the legislation and risk further harms to victim-survivors. Caution that criminalisation fails to account for the reality for some clients, who (despite the domestic abuse) depend on a perpetrator financially and socially and cannot safely or practically leave. Caution as to the effectiveness of criminalisation as a general deterrent.

There are some differences between the difficulties in criminalising coercive control and offences like sexual assault. For example, we anticipate that misidentification of a primary aggressor is unlikely to be a consideration in sexual assault cases. Sexual assault matters are also incident based offences as opposed the pattern of behaviour nature of coercive

control, which brings difficulties with respect to evidentiary requirements for successful prosecution.

And whilst not arguing for the decriminalisation of sexual assault, the appalling conviction rates and experiences of victims of sexual assault reporting and engaging with the criminal justice process¹, do little to support the notion that criminalisation will result in genuine cultural change or reduce the incidence of coercive and controlling behaviours. There is evidently a need for change in community culture with respect to sexual assault², as with coercive control, and would also advocate for further resourcing, funding, training, and education.

How widely have you consulted with victim-survivors for your submissions?

Our position is informed by our everyday work as legal practitioners assisting many different victim-survivors:³ some of whom have successfully left the relationship; some who successfully left one abusive relationship to commence a second subsequent relationship; some of whom tried to leave, and then return; and those who remain in the relationship. These clients come from a wide range of cultural, social, and economic backgrounds.

In the 2019-2020 financial year, we provided 706 services to clients experiencing family violence including advice, discrete assistance, duty representation and ongoing casework, and the Shoalcoast practice having a combined experience of over 20 years in this area. We also engaged in informal discussions with some of the frontline services across our community to understand their perspective, but not represent their views, on the issue.

We were cautious to delineate the extent of our expertise in our submission, with paragraphs 2-6 providing context as to our service and family and domestic violence experience, and paragraphs 7 & 9 expressly identifying some of the limits of our input. We also recommend, and continue to recommend, that other experts and those with lived experience should be extensively consulted including frontline services working with both perpetrators and victim-survivors, and community members and services from the Aboriginal and Torres Strait Islander Community, the LGBTQI community, the CALD community and those with disability at paragraph 8 of our submission.

As legal practitioners, as opposed to victim-survivors with individual lived experience, we must carefully consider the reality of how proposed legislation might operate including the potential impact on the vulnerable and disadvantaged members of the community, who are likely to be disproportionately affected by unintended consequences of such legislation and are unlikely to engage in a formal submission process. We are also familiar with the deficiencies in the operation of the current legislative framework, and the limitations of the law in effecting change, and accordingly raised these concerns within our submission.

We reiterate the need to genuinely engage and consult widely with victim-survivors, particularly, Aboriginal and Torres Strait Islander women, migrant women, CALD, LGBTQI+, those with disability, and other disenfranchised groups, whose voices may not be represented before the Committee through formal channels. We further recommend engagement with perpetrators, and frontline service working with perpetrators, to assist in

¹ NSW Law Reform Commission, Report 148 - Consent in relation to sexual offences (September 2020), pages 14-28

² For example, <https://www.abc.net.au/news/2020-12-16/magistrate-criticises-craig-mclachlan-lawyer-over-questioning/12985916>

³ Advice is also sometimes provided to perpetrators, particularly those seeking family law advice, who do not self-identify as such, but their instructions indicate they are engaging in coercive and controlling behaviours.

identification of measure that will genuinely result in reduction of coercive and controlling behaviours.