

Answers to questions on notice – De Saxe O'Neill Family Lawyers

1. How coercive control and in particular coercive control legislation fits into the NSW Domestic and Family Violence Blueprint for Reform 2016 – 2021

A clear statutory definition of domestic and/or family violence in NSW legislation which includes the various indices of abuse including conduct which constitutes coercive control is needed. Currently the blueprint has non-statutory definitions of domestic and family violence which includes coercive control. What is apparent is that whilst the blueprint makes it clear that domestic and family violence is a crime, coercive control is not currently a criminal offence in NSW. Incorporating a statutory definition within legislation that makes it clear that coercive control is a crime would be an important addition to the Blueprint.

2. Section 61DA of the Family Law Act – presumption of equal shared parental responsibility (“ESPR”)

This section provides a presumption that it is in the best interests of the child to make an order that provides for the parents to have ESPR. This places an obligation on the parents to consult with each other and make a genuine effort to agree on major long-term decisions about the child including;

- Education
- Religious and cultural upbringing
- Health
- Name change
- Changes to the child’s living arrangements which make it significantly more difficult for the child to spend time with a parent

The section provides that the presumption doesn’t apply in cases of child abuse or family violence however it is not automatically displaced. A victim of domestic violence has to apply to the court for sole parental responsibility to prevent the abuse, from continuing. For a judge to apply the section and conclude that the ‘violence’ is not ‘family violence’ then the presumption will not be displaced and the door is open for the abuse to continue – particularly in cases of coercive control.

We see that a perpetrator of coercive control will often use the family law system to continue their behaviours and use the children against their ex-partner.

Having a conviction for coercive control will assist family lawyers in these applications however there is no guarantee on their success. The discretion of the court to impose parenting arrangements on separated parents remains problematic in this area for victims of coercive control and unless there is an intersection between the State and Federal legislation where domestic/family violence is concerned, it will remain a live issue.

3. Potential for false claims of parental alienation by perpetrators of coercive control

A further problematic issue we see in Family law is that even where we have successfully assisted a victim escape a coercive controlling relationship, the perpetrator will often use the family law system to bring a parenting application alleging parental alienation. The victims invariably are trying to stay safe and rebuild their lives and the children are often so traumatised that spending substantial and significant time with the perpetrator is not advised. Again, the perpetrators misuse the court system to continue the abuse. Having coercive control criminalised will assist family law judges in their assessment of claims of parental alienation.