Submission No 2

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

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This submission is based on almost 30 years of research in Australia on violence against women including coercive control, interpersonal sexual violence, battered women who kill, media portrayal of violence against women, sexual assault and the law, doctors' attitudes about domestic violence (DV), homicide between adult sexual intimates, domestic violence among migrants in Australian and studies of how other intersectional factors such as Aboriginality may affect victims' and defendants' access to justice.

Over the years, I have interviewed and surveyed many survivors of DV, victims of rape, health practitioners, counsellors and legal practitioners. Most of my books and over 160 academic journal articles and chapters are evidence of my legal research on family violence, family law, self-defence, provocation, diminished responsibility and sexual assault law reform. See attached list of publications, which also shows that I have been active in consultant research projects on violence against women. My research activities have translated into being an invited public speaker and educator on battered women who kill, DV and sexual assault to a variety of over 150 forum. My publications have also been cited in Court matters such as *R v TP* [2018] NSWSC 369. Also recently, Hopkins, Carline and Easteal, "Equal Consideration and Informed Imagining: Recognising and Responding to the Lived Experiences of Abused Women Who Kill" [2018] 41 *Melbourne University Law Review* 1201 is cited in *R v Cahill* (No. 4) [2018] NSWSC 1896.

In addition, my specialised knowledge has been recognised in the following ways:

- Member, Order of Australia (2010) 'for service to the community, education and the law through promoting awareness and understanding of violence against women, discrimination and access to justice for minority groups.'
- Awarded ACT Australian of the Year for 2010. The award reads:

 Dr Patricia Easteal has made an outstanding contribution to the advancement of human rights and justice in Australia. Her research, writing, teaching and advocacy has had a powerful impact on law reform and policy, especially in the area of violence against women.
- Finalist, Australian Human Rights Commission, Individual Community Award (2012) awarded to a person with a track record in promoting and advancing human rights in the Australian community on a not-for-profit basis.

Why am I making this submission?

From what I have found over these many years of research, I am convinced that family abuse is complex and often difficult for those who have neither experienced it nor worked in a related field to understand. It is clear to me that, holistically, each controlling behaviour is part of a pattern of coercive control or FV. And, as I show later in this document, it is that holistic context of FV/coercive control plus the individual manifestations that affect its victims. Most survivors I have spoken to over the years found non-physical control to be more injurious over time given its more subtle and longer lasting nature. However, a major consequence of the inability to truly conceptualise the family violence dynamic is that the criminal justice system and the community tend to gradate violence to the point of not recognising the seriousness of non-physical domestic violence either within criminal law, protection order legislation or in family law. As a further consequence, both victims' inability to leave the violent home and, the fact that many of those who do, return can be hard to comprehend.

In the following sections of the submission, I describe an holistic view of coercive control. I do this because over the past three decades, although Australian governments have tried to more effectively protect the victims of family violence, the effect has been limited. The domestic homicide rate- the tip of the DV iceberg – remains the same as when I wrote *Killing the Beloved* in 1993. Such deaths of women and children represent the failure of our governments and communities to understand the gravity of every manifestation of coercive control and the numerous warning signs – many that are non-physical- that precede these tragedies.

Dynamics and Manifestations of Abuse¹,

The battered woman's 'reality' of what she is experiencing is not about a single strike; such a perspective is non-inclusive of her reality. Any one 'incident' is in actuality just a small part of a complex pattern of control and cannot be adequately understood nor its gravity measured in isolation from that background. At the core of the coercive control cycle is disempowerment and degradation. The person at the centre has been referred to in the literature as Jekyll and Hyde DV perpetrator personality and behaviour. Also, it may refer to how they behave towards their victim – how they may switch between punishing and comforting.²

Control or the need to exert power is at the core of the picture of domestic abuse. It manifests in a variety of ways, including many forms of coercive control. Further, all types of domestic violence/coercive control behaviours are generally not one-off but get more serious over time.

Acts of control may begin or become exacerbated post-separation. It is well documented that the time of leaving a relationship can be one of the most dangerous for women. All manifestations discussed below may be triggered or heightened. In addition, as discussed below, other types of coercive control may be added to the abuser's repertoire.

The dynamics of each sign of coercive control is commonly slow, insidious and isolating, often punctuated by periods of remorse and promises that it won't happen again. It is erratic with no logical cause. The cycle is repeated over and over with the violence increasing in degree over time. The stages do not proceed at any set pace. They vary over time within a relationship and among different couples.

The composition of the abuse also varies. In addition, there is usually no warning that the escalation stage is about to occur. A precipitating incident may involve a seemingly minor incident such as the woman's failure to have the correct condiment on the table with dinner.

To the outside world, the relationship may appear to be normal. The "Don't talk" rule of violent and dysfunctional families means that the abuses are often kept as a secret. These households are facades to the outside world.

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¹ This part of the submission is drawn in part from my research including the following three books: Anna Carline and Patricia Easteal (2014) Shades of Grey: *Domestic and Sexual Violence Against Women – Law Reform and Society*, Routledge, London; Patricia Easteal (2001) *Less than Equal: Women and the Australian Legal System*, Butterworths, Sydney; Patricia Easteal and Louise McOrmond-Plummer (2006) *Real Rape, Real Pain: Help for Women Sexually Assaulted by Male Partners*, Hybrid, Melbourne.

² Eve Lundgren (1995) Feminist Theory and Violent Empiricism, Aldershot, UK.

Physical Abuse

There are many types of physical violence aside from slapping, punching and kicking that most of us equate with domestic violence. These acts include: pushing, being held against her will, biting, choking, being hit while pregnant, being sat on, shoving, grabbing, hair pulling, pinning against a wall, banging head on wall, burning and many more.

Breaking (and/or throwing) furniture, doors, crockery or other items and punching holes through walls are physically violent and threatening acts that are not uncommon with family violence. Damaging objects is controlling and results in hurt and/or fear.

As with other types of violence, these behaviours may become normalized and the victim unable to see them or name them as violence.

Sexual Violence (IPSV)

The risk factors for IPSV include:

- Being physically abused
- Being pregnant
- Being ill or recently discharged from the hospital
- Attempting to leave a partner
- Being separated or divorced³

This list shows clearly that there is a connection between vulnerability of the victim and coercion by the abuser. Sexual assault becomes a means of reinforcing the abuser's power over his partner.

As with the physical abuses, victims become hyper-vigilant and acutely sensitive to paralinguistic cues that violence is likely. As a victim of coercive control violence, and ultimately IPSV, the victim's apparent 'consent' may likely be the result of fear in what could occur if she does not acquiesce. If there has been physical abuse, a certain look or the raising of a hand and the woman's shut down mechanism may be triggered.

With IPSV, women may experience a combination of social coercion, interpersonal coercion, threat of physical force, and physical force coercion. The nature of the coercion may change over the course of the relationship, in the context of changing abuse patterns.

Emotional Abuse

Aside from physically violent behaviours, a fairly continuous manifestation of abuse is the emotional or psychological offensive of belittlement and humiliation. These acts include verbal put downs that denigrate her appearance, behaviour, and the essence of her identity. The violent man tells the victim that his behaviour is her fault: for instance, if she were a better person/partner/mother, he would not have to treat her in this way.

Post-separation emotional/verbal coercive control is common particularly in social media and e-communication. Social media is increasingly being seen as necessary to include on family violence Orders as a space requiring protection from these controlling behaviours. Such technology-facilitated abuse has become an increasing weapon in the perpetrator's arsenal.

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³ Discussed by Raquel Bergen in *Marital Rape: New Research and Directions* (2006).

The perpetrator may use the legal system and other "systems" to control the woman. One US study found that a type of post-separation abuse included ex-husbands who might repeatedly and falsely report the mother to Child Protective Services.⁴

The objective of a perpetrator's emotional coercive control behaviours is to cause his victim to feel self-hatred and disempowered, with no sense of control over her life.

Mental Abuse

Mental abuse is similar to emotional abuse; however with this type of control, the batterer plays with the victim's mind as well as her emotions. In healthy relationships, differences of opinion are allowed and respected. With mental abuse, there are two ways to think: the abuser's way or the wrong way. He responds contemptuously to all of his victim's opinions and invalidates her perspective. What *she* knows has no value.

Mental abusers lie to distort or manipulate the victims' perceptions. He may play "mind games"; for example, denying that something happened even when the woman knows that it did occur. This is a form of gaslighting: telling her that she's crazy for continuing to maintain what she knows to be true.

Social Control

Social control may be another common manifestation of coercive control. Initially flattering – "I want you all to myself"- it may evolve into extreme possessiveness and control over whom the woman speaks to and socializes with.

It is not uncommon for the battering victim to become increasingly isolated from family and friends. She may continue to see them but as she usually does not disclose about the coercive control, there is an emotional isolation.

Survivors report being monitored by their partner before the relationship ended. Increasingly technology is being used for this purpose.

Economic or Financial Abuse

Some abusive men adopt the creed that "money is power." They may hold socially conservative ideas about the male partner being entitled to control finances.

Money may be withheld. And any income or resources that the woman brings in may be controlled. Also, she may be expected to help out in the family business for neither wages nor recognition as an equal.

This type of abuse, like the others, may take place post-separation. One example is when the batterer withholding or reducing child support. This is particularly relevant when the payer is self-employed or paid as on a contract basis and is able to manipulate income figures. As the Women's Legal Services Australia in a submission to a Parliamentary Inquiry concluded, ... child support 'can often be a conduit for perpetrators to continue their abuse.'5

⁴ April M. Zeoli, Echo A. Rivera, Cris M. Sullivan, and Sheryl Kubiak, (2013) 'Post-Separation Abuse of Women and their Children: Boundary-setting and Family Court Utilization among Victimized Mothers' *J Fam Violence*. 28(6): 547–560.

⁵ See http://www.wlsa.org.au/submissions/parliamentary inquiry into the child support program

Abuse of the Children

Aside from children experiencing witnessing as a harm, it is estimated that more than half of violent partners also directly target the children in the family. The abuse of the children is another form of control used by the perpetrator to establish and maintain dominance.

Post-separation, children may be used as pawns to exert control over the mother. This can be done in a myriad of ways either by the batterer subtly manipulating the child(ren) or more overtly encouraging the child to denigrate her/his mother or by the one parent indirectly and directly contributing to the child(ren) being afraid of or uncomfortable with the other parent. The parent at the receiving end of the child(ren)'s anxious feelings and negative behaviour loses control in their relationship with their child.

Other Post-Separation Manifestations of Control

These are a series of one or more specific actions, directed at, and designed to frighten women post-separation.

Controlling behaviours can be 'indirect, subtle and psychologically traumatic, involving threats of harm, humiliation and insults, and financial or legal abuse.' Family violence is often characterised by one party attempting to control the other party and stalking by one party attempting to have contact with the other against their wishes. ⁶

These actions are intended to maintain contact with or exercise power and control over another person. For example, the stalker may follow the victim, keep the person under surveillance, send letters, emails or telephone or use social media, damage property or leave material where it is likely to be found by the victim.

It is the essence of "domestic" stalking that threats are often not explicitly stated but instead may be implicit in the nature and repetition of the harassment. Being watched and followed can serve to evoke fear and terror in the victim. Indeed, in the context of an abusive relationship, many seemingly innocent acts such as the sending of flowers and "love letters" become endowed with ominous meaning. ⁷ Social media is reported to be used as a means of humiliating, denigrating and isolating survivors.

The Family Court may be another site for the exercise of coercive control through vexatious litigation. Recent research suggests that 'vexatious litigants may share similar characteristics with domestic violence offenders, namely coercion and control.' Exerting coercive control may include repetitively instigating proceedings, trying to take control during already existing proceedings, applying for access to children, property and pets, and refusing to mediate, thereby accumulating court costs.⁸

Effects of Coercive Control

FV/coercive control commonly affects the victim in certain ways, which are described next. These are consequences of the specific dynamics and manifestations of FV outlined above. Understanding that all manifestations do affect victims is essential and helps to explain some

⁶ Emma Fitch and Patricia Easteal (2017) 'Vexatious Litigation in Family Law and Coercive Control: Ways to Improve Legal Remedies and Better Protect the Victims,' *Family Law Review*, 7, 103-115. 7 Amanda Pearce and Patricia Easteal (1999) The 'Domestic' in Stalking: Police and the Law in the ACT. *The Alternative Law Journal* 24(4): 165–169, 174.

⁸ Emma Fitch and Patricia Easteal (2017) 'Vexatious Litigation in Family Law and Coercive Control: Ways to Improve Legal Remedies and Better Protect the Victims,' *Family Law Review*, 7, at p 103.

victim behaviours such as returning to the violent home, not disclosing the abuses and self-preservation action.

Fear

As the coercive control behaviours escalate, its effects change and increase in intensity. Anxiety and discomfort slowly transition to fear. Due to the unpredictable nature of the violence discussed above, victims are extremely fearful, not knowing what will trigger abusive behaviour.

Fear may contribute to returning to the marital residence – such reconciliations are not uncommon with coercive control. The increasing isolation from potential support pathways and inability to discuss what is happening may mean that the battered woman/survivor of coercive control sees no way of staying safe.

Self-Blame and Low Self-Trust

According to the National Domestic and Family Violence Bench Book, emotional abuse has particular impacts on its targets.^{9:}

Past perceptions of emotional or psychological abuse as having fewer, less severe and more transient consequences than physical violence have been superseded by a growing understanding of its impacts on victims *including* increased rates of serious or chronic illness, disability or impairment, post -traumatic stress disorder, depression, misuse of alcohol and drugs, dysfunctional parenting and long-term low self-esteem.

Indeed, the survivors I have talked to for various research projects and volunteer positions over the past 25 years (over 1000) agree that the effects of emotional violence are far deeper and damaging than physical injuries. As explained by a survivor in Easteal 2001:¹⁰

Women once bruised and broken. But the bruises heal, the bones mend...don't they? Maybe...those that you see...What about the bruises inside? The broken confidence, the lack of esteem, the degradation of self? The guilt? The shame! The lack, complete and total, of trust? What about the loss of belief in oneself - as a worthwhile human being? The wounds the world can't see...Are the wounds most devastating, the wounds most destructive

Accordingly, survivors of coercive control do not trust themselves.

The person living with family violence may experience a dwindling sense of self—of personhood. Because they have kept silent and because the person perpetrating the violence has repeatedly told them that the violence is their fault, they may feel shame and guilt having internalised this blaming.

Lack of self-trust can be exacerbated by mental and emotional abuse such as gaslighting, by which an abusive partner breaks down the woman's ability to trust her own "reality", which makes her 'more vulnerable to the effects of abuse, making it more difficult to leave the abusive relationship.'11

10 Patricia Easteal (2001) Less than Equal: Women and the Australian Legal System, Butterworths, Sydney.

⁹ http://dfvbenchbook.aija.org.au/contents

¹¹ National Domestic Violence Hotline (ND) A Deeper Look into Gaslighting < https://https://www.thehotline.org/resources/a-deeper-look-into-gaslighting/ >

Feelings of Powerlessness

Powerlessness is a normal response to the abnormal experience of coercive control.

The cost of the erosion self is a feeling of relative weakness and subjugation, which may deter victims from leaving the violent relationship and from help-seeking. Feeling powerless makes disclosure problematic. Women are often afraid to mention IPV and IPSV because of issues fear of retaliation by abusive (ex) partners. In fact, for those raped by current or ex-partners, 'fear of the perpetrator' is the most common explanation provided for not reporting.

The woman victimised by coercive control may develop a psychological condition labelled by some psychologists as learned helplessness. This is a type of post-traumatic stress disorder, which involves marked low self-esteem and high levels of dependency and passivity.

Walking on Eggshells

This type of behaviour is characteristic of victims of coercive control. It is a survival mechanism.

Emotionally Cut off

As a consequence of both being isolated and of the "Don't talk rule", many victims of coercive control, became emotionally cut off from others.

Hyper-Vigilance (Post-separation)

Victims of coercive control may become hyper-vigilant and extremely sensitised to possible triggers and/or signs that violence is imminent.

The effects of experiencing the different types of coercive control family abuse therefore include becoming constantly vigilant against the ever present but erratic threat of violence and control. Similar to a hostage, danger seems to be a constant and potentially imminent.

Post separation, stalking and the perpetrator's misuse of the legal system may contribute to the survivors' feelings of being trapped and paralysed.

Denial and Minimising and Non-Disclosure

The normalisation of abusive behaviour may contribute to victims' denial. Many women do not identify behaviours as controlling until they are out of the relationship. A further factor that affects the behaviours of a victim of coercive control such as preventing disclosure is the victim's normalising and minimising of what is occurring.

For the survivor of emotional, and/or physical, financial and sexual abuses, what would seem like a bizarre life to one on the outside becomes normalcy for those who live within the cycle of violence. Violence becomes so normative that its victims may trivialise or normalise it to the point of invisibility. The bizarre becomes normal. Narrow definitions of violence and the power of words to construct reality may help to obscure the violence from the victim's own vision. This contributes to the woman remaining or returning to the violent relationship.

Women are often afraid to mention IPV and IPSV as they are afraid of retaliation by abusive (ex) partners. Fear of violence or revenge has been found as the most common explanation provided for not reporting.¹²

¹² See for instance Emma Birdsey and Lucy Snowball (2013) Reporting Violence to Police: A survey of victims attending domestic violence services, NSW Bureau of Crime Statistics and Research.

In addition to fear, disclosure by family violence victims is low as the psychological effects of coercive control may impede help-seeking. For instance, denial discussed above can affect a woman's ability to seek help. And a further factor non-conducive to disclosure is the victim's normalising and minimising of what is occurring.

The increasing isolation from potential support pathways and inability to discuss what is happening may mean that the victim of coercive control sees no way of staying safe. If they have become socially isolated from friends and family, informal disclosures to them may also be problematic.

Being a choice-maker is a challenge for someone whose self-esteem has been diminished. The victim internalizes the blame that the perpetrator is likely to have included in his abusive litany, which further erodes her sense of self. Feelings of relative weakness, subjugation, and powerlessness make disclosure problematic.

Additionally, there is the added variable of how one's disclosure has been treated in the past. For example, if a person's trust in a professional or someone to whom they have disclosed is breached, they may be further silenced. Inadequate professional responses also make a person less likely to disclose to another person. An example: one woman disclosed to her doctor that she had been waking up to her husband sexually assaulting her. The doctor's opinion was that wake-up sex is "sexy" and that the woman should appreciate it as such." ¹³

Service providers' and friends' responses do not need to be verbal to be harmful. Changing the subject, silence or refusing to recognize coercive control as an issue at all can be damaging. If this occurs once, it makes disclosure to another person more problematic.

Contacting the police can be even more problematic than disclosing to a health practitioner, family or friend. We can only speculate about what percentage of coercive control survivors report as we can only estimate the actual prevalence of family violence.¹⁴ We do know that even of those women who sought help from a domestic violence service, only half made a report to the police.¹⁵

It is not surprising that when a victim does finally disclose or report, there is frequently a delay, which can be days, months and even years after she first experiences DV. For instance, 58% of women who experienced sexual assault by a current or ex-partner had never reported the incident to police and 24% had never sought advice or support. Further, the combination of shame, secrecy, denial, isolation, fear and lack of trust in oneself and in others discussed above contribute to a low proportion reporting to the police. Some women who have sought help from police have reported receiving treatment ranging from ignorance to apathy. This can

¹⁵ Emma Birdsey and Lucy Snowball (2013) Reporting Violence to Police: A survey of victims attending domestic violence services, NSW Bureau of Crime Statistics and Research.

¹³ Louise McOrmond-Plummer, Patricia Easteal and Jennifer Levy-Peck (eds) (2014) *Intimate Partner Sexual Violence: A Multidisciplinary Approach to Survivor Support and System Change* Jessica Kingsley Publishers, London at p 21.

¹⁴ An 'educated' estimate would be between 20% and 25%.

¹⁶ See Australia's National Research Organisation for Women's Safety ANROWS (2014) *Violence Against Women: Key Statistics* http://anrows.org.au/publications/fast-facts/violence-against-women-key-statistics.

be a factor in reluctance to report subsequently. The type of response may correlate with the manifestation of coercive control being reported.

Conclusion

I strongly believe that it is necessary for the manifestations, dynamics and effects of coercive control to be understood by governments and community and integrated into all relevant legal frameworks. Tragically many of the individual types of coercive control are not understood by the community and legal systems as serious.

And there is a lack of recognition concerning how each manifestation is part of the whole: family violence is a complex and intricate dynamic. Further, the non-physical types of control are very common and, as noted above, may have longer-term effects of the victims and their children. However, the legal response comes holistically from a community contextual lens of family violence that prioritises and gradates physical violence. Many agencies and criminal justice workers neither understand how non-physical coercive control manifests nor the nature of its destructive effects on survivors.

For example, survivors have reported to me that the current definition of FV is too narrow. Some suggest (and I agree) that a broader definition in, for example, civil legislation, might help to ensure implementation that more closely mirrored the legislation. If the family violence legislation does not specifically name certain actions such as technological abuse as breaching offences, or there is a narrow understanding of the extensive range of behaviours, which can in fact constitute such control, then police may be reluctant to act although for the survivor, these actions may be forming part of a pattern of keeping her under the perpetrator's thumb.

Therefore, whilst I support the objective of criminalising non-physical coercive control, it is my opinion that, wherever possible, instead of differentiating the non-physical from physical violence, legal systems -substantively and procedurally – should broaden the definition and examples of family violence (or domestic violence) to include all manifestations of coercive control. Expanding legislative definitions wherever possible (and examples provided) will act hopefully to ensure recognition both of the victims' gradation of injury and how each manifestation of coercive control is part of the bigger picture of family violence.

There is an urgent need for increased understanding and reform. I hope that this submission proves useful to the Joint Select Committee in effecting such changes.

PROF PATRICIA EASTEAL AM, PhD PUBLICATIONS AND RESEARCH

(VAW indicated with *)

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 - *122. Emma Roff and Patricia Easteal, Engaging with the Victims' Reality of Domestic Violence: A Discourse Analysis of Judicial Understanding of Survivor-Perpetrated Homicides, Accepted *Monash Law Review* subject to revision
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