

**Submission
No 4**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Australasian Centre for Human Rights and Health

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This submission addresses why new laws to name and criminalise coercive control abuse will better protect Australian migrant women

Questions in the discussion paper

1. What would be an appropriate definition of coercive control?

UK definition of controlling coercive behaviours is helpful in delineating the difference between control and coercion.

It needs to be stated that there is an overlap between the two behaviours

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour¹

3. Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?

The prevalence of violence against women remains stubbornly high despite three decades of intensive work in policy, planning and execution of both National and State plans to stop family domestic violence. The number of police call outs in Victoria increased year on year reaching 88,214 in 2020 (up 6.7% from last year)²; and increased rates of family domestic violence during COVID-19³, highlighting limitations in our response to the epidemic of family domestic violence. It calls for highlighting the true nature of family domestic violence. It is not just about the episodic physical violence, as seen in assault victims. It is more fundamental. It is essentially entrapment of the victim, a condition that is produced by prolonged entwining of physical violence with coercive controlling behaviours, such as: intimidation, social isolation, threats, emotional abuse, deprivation of resources, such as access to finances.

This is the underlying structure of family domestic violence. The victim is in a hostage like situation. And as it is ongoing in nature, it makes the victim vulnerable to ongoing abuse.

¹ Controlling or Coercive Behaviour in an Intimate or Family Relationship Legal Guidance, Domestic abuse. <https://www.cps.gov.uk/legal-guidance/controlling-or-coercive-behaviour-intimate-or-family-relationship>

² Crimes Statistics Victoria. Victoria Police family violence incidents infographic <https://www.crimestatistics.vic.gov.au/family-violence-data-portal/family-violence-infographics/victoria-police-family-violence-incident>

³ Police-recorded crime trends in Victoria during the COVID-19 pandemic. 22 September 2020. <https://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/police-recorded-crime-trends-in-victoria-during-the-covid-19>

[The Duluth wheel of power and control](#), developed by the Domestic Abuse Intervention Program in Minnesota, demonstrates many ways in which abuse of power and control can be used to create a coercive and threatening environment. This framework is commonly used by men's behaviour change programs (MBCP) across Australia, supporting men to identify abusive behaviours that are controlling, dominating, threatening as well as brainstorm alternative respectful behaviours.

However, learnings from these programs have not translated into broader understanding by the community, or drastically changed our policy and laws. The result is that women call the police and watch helplessly as the justice system delivers little effective punishment, and everyone knows implicitly that the abuse cycle is likely to continue. We need laws that will redefine psychological abuse in more clear terms, articulate the true nature of family domestic violence and identify ongoing controlling and coercive abuse; and prescribe punishment that fits the crime.

2. How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together to form a pattern of abuse?

Coercive controlling behaviours escape attention in migrant women. The societal construct of the role of a woman/wife is one of subordination. As a result, it is tolerated by women and taken advantage of by men. It facilitates abuse. Added to that is the societal pressure to stay married and comply with societal rules that disrespect a divorced woman.

Migrant women's experiences of family domestic abuse

ACHRH is largely focussed on prevention of gender-based violence in migrant communities. Through this work we have learnt from women of the immense physical, psychological and financial harm caused by coercive controlling behaviours. The context of abuse for many migrant women is within the extended family setting, which adds a further layer of complexity. The perpetrators may be multiple, and it may be woman to woman violence. The victim usually is the newest member of the family, the daughter in law. Some travel long distances to Australia for love, away from familiar support networks. She is often also vulnerable by the nature of her visa, temporary visa, or partner visa⁴.

A migrant woman is vulnerable to domestic abuse, but often does not recognise it. In our experience, it is sometimes physical but more often domestic abuse takes the form of coercive control. Common tools are⁵ :

- keeping her in domestic servitude
- demanding dowry payments
- taking over her hard-earned income
- denying her access to money

⁴ O'Connor M, Colucci E. Exploring domestic violence and social distress in Australian-Indian migrants through community theater. *Transcult Psychiatry*. 2016 Feb;53(1):24-44.

⁵ Erminia Colucci, Manjula O'Connor, Karen Field, Alice Baroni, Reima Pryor, Harry Minas. 2013. Nature of domestic/family violence and barriers to using services among indian immigrant women. *JournL Altertstice*. Vol 3 Issue 2

- socially isolating her from the local community
- restricting communication with her family back home

Within this environment, her every movement and every decision is watched, criticised and controlled.

FGM and forced marriage are some other examples of coercive and controlling abuse.

Women on temporary visas are at greater risk. The risk of deportation by the state should the sponsorship of her visa be withdrawn ensures the perpetrator feels emboldened to commit the crime in plain sight, and often gets away with it, without facing justice. She may be intimidated by threats of deportation by her intimate partner if she does not comply with controlling demands.

The impact on the victim is shown to be present. The texture of fear in ongoing control and coercion is different to assault or episodic violence. It is woven into the personhood of the victim. The result: loss of autonomy and independent thinking, creating a slave or hostage like situation. The psychological harm is multifold; loss of self-respect and self-confidence, lowered self-image, a chronic sense of powerlessness and helplessness that can be internalised psychologically.

This may cause illnesses such as⁶:

- depression
- anxiety
- panic attacks
- post-traumatic stress disorder
- suicidality

As a result, in clinical experience of one psychiatric clinic ⁷ multiple women have faced injustice, having had their children removed on account of “emotional instability” or worse, pronounced “unfit to be mothers” or similar labels put upon them by independent court reports. Their emotional state is further impaired as the custody of their children is handed over to the “calm and stable” perpetrator, the father of their children.

The lack of accurate, clear and uniform legal definition of family domestic violence, and lack of effective punishment is helping the perpetrator to use the justice system to further abuse their victims.

4. Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?

Naming, and defining the coercive controlling behaviours will help educate communities regarding the true nature of family domestic violence and assist in better design of prevention programs.

⁶ Judith Herman. Trauma and Recovery. The Aftermath of Violence--From Domestic Abuse to Political Terror.2015.

⁷ Personal communication with Psychiatrist Dr Manjula O'Connor dated 13/1/21

Migrants would be better supported if they are given opportunities to learn about family violence protection laws of Australia within 1-2 years of arrival⁸.

7. What are the advantages and/or disadvantages of creating an offence of coercive control?

We must be cautious about the harm of criminalising coercive and controlling behaviours.

A poorly written law can lead to doubts about interpretation, and imperfect implementation.

A further fear is the possibility of incarceration of victims. The current family domestic violence laws too can be misused. In the past year alone one psychiatric practice⁷ supported half a dozen victims who were framed as the “perpetrator”, by their perpetrator and the justice system failed them, resulting in hardship, need for psychiatric support, reports and legal costs.

The burden of proof will fall on victims, and the level of proof required will be much higher than the present situation. This may have deterrent effect

The remedy is not to stop the new laws around criminalisation, **rather to draft a law that prescribes a gradient of punishments from civil to criminal, depending on the severity of the offence⁹**, and concentrate on accurate and clear definition of controlling and coercive abuse.

The new laws needs to be supported by ongoing education of police, the judiciary and the community.

A strong engagement of the community during and after the drafting of new laws will enhance its value.

Laws in all the States and Territories of Australia are uniform and have the same definition of family violence, including coercive and controlling behaviours

⁸ See ‘Mutual Cultural Respect’ Evaluation Report on www.achrh.org

⁹ Manjula O’Connor. 2 February 2021. WHY COERCIVE CONTROLLING BEHAVIOURS NEED TO BE NAMED AND CRIMINALISED. Victorian Women’s Trust. <https://www.vwt.org.au/why-coercive-controlling-behaviours-need-to-be-named-and-criminalised>