

**Submission  
No 36**

## **COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS**

**Organisation:** Royal Australian and New Zealand College of Psychiatrists

**Date Received:** 28 January 2021



The Royal  
Australian &  
New Zealand  
College of  
Psychiatrists

Inquiry into coercive control – January 2021

# Improving the mental health of the community

## Introduction

The NSW Branch of the Royal Australian and New Zealand College of Psychiatrists ('RANZCP') welcomes the opportunity to respond to the Joint Standing Committee on Coercive Control.

RANZCP is a membership organisation that trains doctors to be medical specialists in the field of psychiatry, supports and enhances clinical practice, advocates for people affected by mental illness and advises governments on mental health care. The College has over 6900 members, including more than 5100 fully qualified psychiatrists (consisting of both Fellows and Associates of the College) and around 1800 members who are training to qualify as psychiatrists (referred to as Associate members or trainees). RANZCP NSW Branch (NSW Branch) represents more than 1200 Fellows and 400 trainees.

The NSW Branch of RANZCP makes this submission in support of introducing specific family violence offences targeting coercive controlling behaviours. Family, domestic and sexual violence has a significant impact on the mental health and the wellbeing of victims. Violence of any sort against women and children is a major cause of reduced quality of life, of distress, injury and death, and has major secondary effects for families, communities, and the economy.

The NSW Branch of RANZCP recognises the creation of new offences alone is unlikely to achieve the intended impact and that substantial institutional reform and support for implementation measures are needed. This in part requires police, lawyers and courts to embrace and consider coercive control as a series of behaviours and actions as opposed to focusing on single incidents. It also requires an investment in facilitated discussions within the community to challenge norms permissive of family violence. It requires the links between gender inequality and family violence to be recognised by all those responding to family violence.

We hope that as a result of this inquiry, policy and programs are strengthened to prevent violence, and the safety of victims of family violence who are predominantly women and children, are ensured.

## Questions in the discussion paper

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

The NSW Branch believes the list of behaviours set out in the discussion paper on p.7 provides an adequate basis for a statutory definition of coercive control. Further, the model developed by Evan Stark, which is referred to in the discussion paper, provides a useful framework in which to distinguish types of behaviours and the harms they cause to victims of coercive control.

The NSW Branch also favours the definition of coercive control as defined in the UK's Serious Crimes Act 2015. Thus:

**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 behaviour."

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

## **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?**

We would argue that there are several elements that could be considered to distinguish between socially acceptable behaviours in intimate relationships with those deemed to be of an abusive nature. These elements should include the following:

- The controlling or coercive behaviour must take place repeatedly or continuously. This could mean, but is not limited to, actions that cause the victim to change their way of living, such as isolating a woman from family and friends, controlling where they can go and who they can see, enforcing rules and activities that humiliate, degrade or dehumanise them, or severely limiting economic independence.
- The pattern of behaviour must have caused serious harm to a victim's well-being. This means causing fear that violence will be used against them or causing distress which has a substantial adverse effect on a woman's usual day-to-day activities.
- The behaviour must be such that the perpetrator knows or ought to know that it will have a serious effect on the woman. 'Knowing' in this context means that which a reasonable person in possession of the same information would know.

By no means are these distinguishing elements comprehensive; they are likely to be broadened over time as discussion and further study on this issue progresses.

## **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?**

We submit that existing criminal law covering offences such as intimidation and stalking do not cover the scope of behaviours that would be captured by a coercive control offence. We acknowledge the crime of assault has gradually expanded in scope to include some non-physical injury in the form of mental or psychological harm, however, satisfying the requisite degree of mental harm suffered is generally a high threshold (requiring, for example, serious psychological injury and consequently the offence remains relatively narrowly construed in cases of non-physical harm). Further, assault offences are constrained by a single-incident framework which fails to capture the pattern of behaviours associated with coercion and control.

It is our understanding that the offence of stalking encapsulates a wide range of behaviours that overlap with the types of behaviours targeted by a coercive control offence, however this does not accord with common understandings of the definition of stalking which in the main involves a stranger or estranged partner. It is inadvisable, in our view, to broaden the ambit of accepted definitions of stalking in an attempt to incorporate coercive control in family settings into the definition. This accords with case law in England, which has tended to conclude that stalking offences should not include situations of coercive control in intimate relationships.

There is a gap in the existing criminal law which fails to recognise that family violence is commonly characterised by a pattern of behaviour, rather than a single specific incident. Furthermore, existing laws do not adequately capture the range of non-physical abusive behaviours that constitute family violence. Coercive control offences are therefore necessary to capture the full range of behaviours and can include conduct directed towards people other than the victim themselves (such as children or other family members, or even pets), that constitute family violence.

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

We submit that coercive control needs to become a defining feature of the justice system and family violence laws in NSW. The current framework needs to be strengthened (even reframed) to ensure the justice system better responds to the spectrum of behaviours in which family violence is perpetrated and intervenes earlier to ensure victim survivor safety and holding perpetrators accountable.

Creating a specific offence of coercive control will send a clear, consistent message to frontline agencies that non-violent control in an intimate relationship is criminal. Explicitly capturing this in legislation may also help victims identify the behaviour they are suffering as wrong and encourage them to report it, and cause perpetrators to rethink their controlling behaviour.

Reframing non-physical forms of abuse as coercive control recognises that security, dignity, autonomy, and liberty are rights that are universally recognised as worthy of state protection, which gives justice professionals, as one example, a robust legal tool they could use to shift from victim safety to offender accountability, and so remove an important context for victim-blaming. Further, criminalising coercive control has the advantage of making the non-physical violence within an abusive relationship evidentially significant in legal cases.

Criminalising coercive control can also enhance community recognition of domestic violence and assist victims to better understand the abuse they have experienced. They can therefore better describe their experiences and educate others about the complexity and seriousness of non-physical violence.

The impacts of coercive control are extensive. Without a specific coercive control offence, the justice system struggles to adequately protect victims of domestic abuse. For example, when there is a situation in which victims of coercive control are unable or unwilling to report abuse, the coercive control offence allows for concerned third parties (e.g. friends, family) or police to take action against the presence of coercive control behaviours.

#### **5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?**

#### **6. Does the law currently allow evidence of coercive control to be adequately taken into account in sentence proceedings?**

**If the answer is no to questions 5 or 6, how could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?**

We submit it is important that the standard of proof for the offence is not prohibitively high and that the legal response be considered on a gradient scale from a civil to criminal offence depending on the severity of the offence. We support an objective standard of proof for ascertaining the effect of an offender's behaviour on the victim. In the UK legislation, controlling or coercive behaviour is regarded as having a 'serious effect' on the victim if it causes the victim to fear 'on at least two occasions, that violence will be used against [the victim]', or it causes the victim 'serious alarm or distress which has a substantial adverse effect on [the victim's] usual day-to-day activities'.<sup>1</sup>

While this provision places emphasis on the need for there to be an element of fear, the requirement for the offender's conduct to cause the victim fear on at least two occasions, 'reverts the focus of the offence to individual incidents' and the victim having to establish their own experience of fear. Placing the burden on victims to prove their own fear in court

---

<sup>1</sup> Serious Crime Act 2015 (UK) s 76(4)

can lead to increased trauma, and discourage victims of abuse from engaging with the legal system. Therefore, while there should be a subjective standard when assessing whether the perpetrator intended to instil fear in their victim, the objective standard adopted by the Scottish legislation when ascertaining the impact of the offender's acts upon the victim may be more appropriate. An objective standard, in which it need only be shown that a 'reasonable person' would be fearful under the same circumstances would lead to greater accessibility for victims.

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

We believe creating an offence of coercive control will have the following main advantages:

- As noted in the discussion paper, coercive control is a known precursor and predictor of domestic homicide. This is one of the main reasons for the criminalisation of coercive control; it will enable earlier justice system intervention, thereby preventing escalation of the violence.
- Such an offence will send a strong message about the unacceptability of coercive and controlling behaviour and the accumulative harm it causes.
- While justice system intervention is known to be relatively ineffective in deterring chronic reoffenders of family violence, engagement with the justice system can be effective in deterring some perpetrators from reoffending. For some, the experience of being called to account by police and the court may act as a deterrent and/or prevent further acts of violence.
- Adoption of the coercive control model essentially changes the underlying principles and values that guide funding, research, and interventions to prevent and address domestic violence. The most significant benefit of adopting the coercive control model is that it helps systems, professionals, and the public to understand that domestic violence is damaging to the whole community and can have a very serious effect on the physical and mental health on those who are directly involved, as well as children who witness the violence.
- It will encourage the development of programs to treat offenders.

Some potential shortcomings with the creation of an offence of coercive control are briefly described below.

One potential shortcoming is that it could adversely change the court experience for victim survivors of family violence, due to the burden of proof required. In civil law, for an order to be made, the court must be satisfied that it is "probable" the violence occurred, and may occur again. By contrast, the burden of proof in the prosecution of criminal offending requires substantially greater victim involvement in court proceedings and depends on the capacity of the complainant to withstand rigorous cross-examination. This presents obstacles to, rather than enhancement of, family violence victim survivors' engagement with the justice system.

In criminal law, the court must be satisfied beyond reasonable doubt that the controlling behaviour occurred. It is a far higher threshold that must be reached. Where coercive control cannot be proven, prosecution is unsuccessful. This can result in the matter ending without justice system acknowledgement of the harm caused.

Another potential shortcoming with the creation of an offence of coercive control is its application to situations involving the care of vulnerable people particularly, in institutions and in the home. Because the offence will be framed in the context of family domestic violence, the application of the law to situations involving, for example, people with a

disability in institutional care, may be problematic particularly if the level and type of non-physical abuse is the same as that experienced in a domestic violence context.

Finally, disadvantaged population groups will be most affected by the introduction of coercive control offences. While, of course, criminal law has its place in family violence response, a trend towards criminalisation is a trend away from approaches that are victim-centred, trauma-informed and restorative. The emphasis on a criminal response with the current push for coercive control offences creates particular risks for marginalised population groups such as Aboriginal and Torres Strait Islander people and culturally and linguistically diverse communities who are over-represented in our criminal justice system.

## **8. How might the challenges of creating an offence of coercive control be overcome?**

There will need to be a broad-based community education campaign to educate the public and relevant stakeholders (police, courts, frontline services etc) about what an offence of coercive control is and the penalties that apply to offenders.

It is vitally important that reforms are accompanied by appropriate guidelines, training and specialisation which will ensure that the legislation is enacted decisively and presents the opportunity to reduce the risk of system abuse from increased awareness of the complexity of domestic violence cases.

Programs designed to treat offenders and prevent the over-representation of vulnerable groups in the justice system (e.g. Aboriginal and Torres Strait Islander people) will also be needed. A graded response would allow the police to proceed with civil offence and only later approach the criminal system for serious offences.

## **9. If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?**

The NSW Branch favours a definition of coercive control that captures the types of behaviours set out on p.7 of the discussion paper. This includes but not limited to behaviour that isolates a person from family and friends, deprives them of their basic needs, takes control of where a person can go, repeatedly puts them down, enforces rules designed to degrade or dehumanise, deprives them of money, forces them to have sex, and threatens to hurt or kill them.

The victim and perpetrator must be 'personally connected' at the time the behaviour takes place, and cover behaviour in an intimate, family or household relationship including ex-partner.

The behaviour must also have had a 'serious effect' on the victim, meaning that it has caused the victim to fear violence will be used against them on more than one occasion, or it has had a 'substantial adverse effect on the victims' day to day activities' and mental health. The alleged perpetrator must have known that their behaviour would have a serious effect on the victim, or the behaviour must have been such that he or she 'ought to have known' it would have that effect.

## **10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?**

We strongly advise against this approach.

ADVOs require an order to be in place before any criminal sanction can be imposed with the breach(es) to the order constituting the offence rather than the behaviour itself.

We are of the view that this by-proxy criminalisation is insufficient, and leads to confusion in community understandings of ADVOs work; that is, they require a two-step process: having an order in place and the perpetrator being punished when they breach the order (even

when non-physical violence is involved). The whole point of creating a coercive control offence is to eliminate the problems associated with court orders.

**11. Should the common law with respect to context and relationship evidence be codified within the CPA (or other relevant NSW legislation) to specifically govern its admissibility in criminal proceedings concerning domestic and family violence offences? If yes, how should this be framed?**

We have no comment to make regarding this question.

**12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?**

We have no comment to make regarding this question.

**13. Should provisions with respect to sentencing regimes be amended? If so, how?**

We have no comment to make regarding this question.

**14. Are there any other potential avenues for reform that are not outlined or included in the questions above?**

See Q.15.

**15. What non-legislative activities are needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly?**

Alongside the enactment of the new coercive control offence, the NSW Branch of RANZCP recommends the implementation of a number of system tools, resources and guidelines to assist key actors in the civil and criminal justice system in implementing the laws as intended. This should include the following:

- Further investment in integrated socio-legal models of support to address the complex needs of the victims. We know from experience that victim survivors can easily become overwhelmed with multiple issues they need to deal with, and also the justice system response, which may exacerbate stress, avoidance and anxiety. Unresolved issues may snowball out of control, contributing to further distress, and potentially contribute to further legal issues. Family violence and trauma informed social workers, financial counsellors and lawyers embedded into community legal services can address multiple issues and support which can significantly reduce the trauma, stress, anxiety and financial hardship that clients may be experiencing.
- Investment is also needed in prevention and interventions that will ease the burden of increased demand on the rest of the system and reduce the inefficiencies created in the 'revolving door'; that is, women and children returning to the service system due to inadequate supports the first time round. Emergency help lines must also be adequately resourced so that callers whose lives may be in danger are attended to straight away.
- Broader education and training across all sectors are essential, including family court professionals, maternal child and health nurses, psychologists, doctors and all other members of the legal profession. Integration and coordination of services across these systems is also essential for supporting the safety and options for women and children who are experiencing family violence. Developing workforce expertise around domestic violence means that training should be mandatory and ongoing for health workforce including GP, emergency department health workers, members of the legal profession, including magistrates and judges, and police.



- Central to any preventative response to domestic and family violence, and gender equality is community responsibility. Addressing violence is not a private matter but a community responsibility and requires community-level education and partnerships.
- In the long-term, there needs to be a focus on challenging the aspects of our culture that lead to violence against women and children. Genuine commitment to gender equality needs to be demonstrated across society – particularly in business and politics. This will require changes to childcare arrangements and cultural assumptions so that women and men share this role more equally. Multiple levels of intervention are needed not only to address the known antecedents of violence, but also to disrupt the social-cultural norms and hierarchies that provide the fertile ground for violence to persist.