

**Submission  
No 113**

## **COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS**

**Organisation:** Office of the Director of Public Prosecutions (Tasmania)

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## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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INQUIRIES: Ms M Figg

OUR REF: 19922-20

YOUR REF:

4 February 2021

The Chair  
Joint Select Committee on Coercive Control  
Parliament House  
Macquarie Street  
Sydney NSW 2000

By email: [coercivecontrol@parliament.nsw.gov.au](mailto:coercivecontrol@parliament.nsw.gov.au)

Dear Ms Ward

### **Submission of the Office of the Director of Public Prosecutions (Tasmania)**

Thank you for your email dated 11 November 2020 inviting our office to make a submission to the Joint Select Committee on coercive control.

As noted by the Discussion Paper, Tasmania is the only jurisdiction within Australia that has enacted specific offences that address coercive and controlling behaviours, namely sections 8 and 9 of the *Family Violence Act 2004*. Section 8 creates an offence of 'economic abuse' and section 9 creates an offence of 'emotional abuse or intimidation'. Both are punishable by up to 2 years' imprisonment.

As these offences are summary offences, they are usually prosecuted by Tasmania Police. Tasmania Police may have further insight into the benefits and challenges of prosecuting these offences, particularly the specialist 'Safe at Home' unit. However, it is the understanding of our office that these offences can be difficult to prove to the requisite standard, particularly in relation to proving the mental element.

In *Howe v S* [2013] TASMC 33, Magistrate Brett (as he then was) discussed the mental element that must be proved in a charge contrary to s9 of the *Family Violence Act 2004* (emotional abuse or intimidation). His Honour held that s9 requires the prosecution to prove that the defendant knew or ought to have known that the course of conduct in which he was engaging is 'likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in his spouse or partner'. As noted in the Discussion Paper, this has created a high bar for successfully prosecuting the offence, with the majority of prosecutions occurring in circumstances where it is plainly obvious that the offender knew or ought to have known that his or her conduct was likely to unreasonably control or intimidate, or cause mental harm, apprehension or fear to the complainant.

It is also our understanding that additional difficulties have arisen in relation to the limitation period imposed by the *Family Violence Act* for laying a complaint, which was increased in 2015 from 6 months to 12. Often, particularly in cases of economic abuse,

significant investigation needs to occur, including the obtaining of bank records and other financial documentation before charges can be brought.

Further, it is rare that economic abuse, or emotional abuse or intimidation, occurs in isolation from other acts of family violence. In practice, evidence of coercive or controlling behaviours on the part of an accused is often adduced as 'relationship' or 'context evidence' to assist in proving charges of family violence. This type of evidence is usually admissible in this way to support prosecutions for different charges, including crimes of physical and sexual violence. For this reason, coercive and controlling behaviours are not always charged as a separate offence where there are other extant family violence matters, to avoid a situation where complainants are required to give evidence on multiple occasions.

The above factors may help to explain the reasonably low number of prosecutions in Tasmania for the offences since their inception in 2004.

In 2017 the Tasmanian government introduced the crime of persistent family violence (see s170A of the *Criminal Code* (Tas)). Tasmania was the first jurisdiction to create this crime, which criminalises an ongoing course of family violence offending. The crime of persistent family violence is punishable by up to 21 years' imprisonment (as all crimes contained with the *Code* are).

A charge brought pursuant to s170A of the *Code* requires a minimum of three instances of 'unlawful family violence acts' perpetrated against a spouse or partner. This does not necessarily have to amount to a family violence offence within the meaning of the *Family Violence Act*, however in practice it usually does. It is not necessary to prove the dates on which the unlawful family violence acts were committed or the exact circumstances in which they were committed (s170A(4)(a)).

Ordinarily prosecutions under this section will only be instituted where there are at least three occasions of serious, indictable offences (see DPP Prosecution and Policy Guidelines). A charge brought under this section of the *Code* must be authorised by the Director. However, despite this general approach there is nothing to prevent instances of economic abuse or emotional abuse or intimidation forming one of the three unlawful family violence acts required by the section, if the Director considers it appropriate to do so in the circumstances of the particular case. Further, where there are three or more instances of indictable offences alleged in a count contrary to s170A of the *Criminal Code*, additional particulars of emotional abuse and intimidation can be included as part of the charge. For sentencing purposes, it is useful be able to particularise coercive or controlling behaviours as part of a course of conduct amounting to the crime of persistent family violence (see, e.g. *State of Tasmania v Wade Richard Burgess*, Comments on Passing Sentence, Porter AJ, 30 September 2019).

Nonetheless, it has been beneficial to have separate, independent charges available within the Tasmanian legislative scheme that specifically address coercive and controlling behaviours. Notwithstanding the challenges, there have been a number of successful prosecutions under ss 8 and 9 of the *Family Violence Act 2004*, and it is likely to be increasingly used as a particular of crimes against s170A as more prosecutions under the section occur.

Please do not hesitate to contact me should you have any queries.

Yours sincerely



Madeleine Figg

**CROWN COUNSEL**

**For DIRECTOR OF PUBLIC PROSECUTIONS**