

**Submission
No 130**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Hume Riverina Community Legal Service

Date Received: 12 February 2021

12 February 2021

Committee Panel Members
Joint Select Committee on Coercive Control
Parliament of New South Wales

Email only: coercivecontrol@parliament.nsw.gov.au

Dear Panel Members,

Submission to the Inquiry on Coercive Control

Hume Riverina Community Legal Service (HRCLS) welcomes the opportunity to make a submission to the Inquiry on Coercive Control.

About HRCLS

HRCLS is uniquely positioned as a cross border community legal centre. Based in Albury-Wodonga on the Victorian–New South Wales border, the centre receives Commonwealth, Victorian and NSW funding to provide generalist legal services to a vast catchment area of 17 Local Government Areas in North East Victoria and the Southern Riverina of New South Wales. HRCLS is classed as a regional, rural and remote community legal centre.

HRCLS assists those who are vulnerable and disadvantaged, and in particular, people who are not eligible for legal aid, but cannot afford a private lawyer. We value a society where all people in our communities enjoy equality of opportunity and have equal access to the law.

Services provided by HRCLS include legal advice and casework assistance with family law issues (child contact, property disputes, child support and spousal maintenance), family violence, child protection, credit and debt problems, fines, motor vehicle accidents, criminal issues, consumer law issues and tenancy issues.

In 2019 / 2020, HRCLS provided advices to 1,770 clients. Approximately 68% of those clients were experiencing, or at risk of experiencing, family violence. We are aware that our catchment area experiences a high level of family violence.

For the period July 2019 to June 2020, the amount of domestic violence related assaults in Albury alone was 37% higher than the NSW state average and the rate of breaches of protection orders in Albury was 54.2% higher than the NSW state average.

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HRCLS has programs that focus specifically on supporting victim-survivors (in our cross border catchment) including:

1. In Victoria, duty lawyer services at three regional Magistrates Courts;
2. A triage call back system where lawyers will call back victim-survivors as soon as possible where a safety risk is identified;
3. Partnerships with first response family violence support services including the Women's Domestic Court Advocacy Service and the Women's Centre in NSW and the Centre Against Violence (CAV) and Gateway Health in Victoria.

Our lawyers observe the detrimental impacts of family violence and coercive control on our clients, and the direct outcomes of their interactions with the current law and justice system. This submission is based on the experience of our lawyers, the clients that we assist and the specific issues that affect our community.

We support the legislative changes to criminalise coercive control provided these changes are coupled with other important actions as discussed below.

We intend to address questions 1, 3, 4, 7, 8 and 10 of the questions posed in the discussion paper.

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

Relationships Included

We believe that the definition of coercive control should recognise that coercive control is present in many different domestic relationships and is not isolated to intimate partners. We support a definition of 'family member' similar to that contained within the *Family Violence Protection Act* (Vic) including intimate partners, any person who is a relative of the victim-survivor, a child who ordinarily resides with the relevant person and extending the definition of 'family member' to those who are considered family taking into account the individual circumstances of the victim-survivor. For example, the concept of family is not necessarily contingent on whether someone is related by blood for our Culturally and Linguistically Diverse (CALD) and Aboriginal communities. Accordingly, victim-survivors of the Aboriginal and CALD communities would not be offered the same level of protection if people who are not related by blood but are considered to be family members are excluded from the definition of 'family member'.

Many of the victim-survivors we assist are subjected to family violence by other family members, including their adult or adolescent children. Anecdotally we are seeing higher numbers of victim-survivors applying for a protection order in relation to other family members, not their intimate partner or ex-partner, than we have in previous years.

Case Study:

An elderly woman instructed that her son and grandson had moved into her home and were taking her Centrelink pension each fortnight. They refused her home care and then did not provide her with care, often leaving her unshowered for many days. They isolated her from her other children, told her off if she wanted to speak to them and called her 'stupid' and 'crazy'. On two occasions her grandson threw cold water on her in the middle of the night, with the intent of inducing a heart attack. There was clearly an ongoing pattern of coercive control, but the client's only legal avenue was to apply for a protection order providing little accountability for the perpetrators.

There is always a risk that including other family members in the definition may result in adolescent children having a criminal history, rather than looking at other preventative and support options to promote change. In our experience, parents mostly do not want their children to be punished or to have a criminal history and often apply for a protection order as a last resort and as a way to seek support and assistance for their child. Despite parents' objections to a protection order, the police will often pursue protection orders which often becomes detrimental to the child / parent relationship.

Further, this may diminish the victim-survivors trust in police with many victim-survivors reporting to us that they had wished they had not contacted the police and that they would not contact police if there was another incident in the future. This is discussed further below.

It is important that victim-survivors who are experiencing coercive control and who are not in an intimate relationship with, or related to, the perpetrator are able to report this behaviour to the police and have an avenue for criminal justice.

Case Study:

A client who has an intellectual disability lived in a home with the perpetrator. The perpetrator was paying rent to the client. The client says the perpetrator is 'like a family member' but they are not related. The perpetrator would do subtle acts such as putting knives underneath the client's pillow, changing the client's medications over to sugar pills, telling the client that no one loves him and convincing the client to list him as a carer for Centrelink. The client reported this behaviour to the police, however he was told by the police that as the perpetrator is paying rent they cannot assist and that it is a civil matter.

Pattern of Behaviour

It is our view that the definition should recognise that family violence is often a pattern of behaviour or a course of conduct, rather than being incident based.

The majority of clients accessing HRCLS services who identify as experiencing family violence experience a range of coercive control behaviours including emotional abuse, gas lighting, isolation from friends and loved ones, threats of physical harm, threats of their children being withheld and financial control. It is important that these behaviours are included in any definition of coercive control and that this is not a closed list. There is a risk that with a closed list, perpetrators will know the behaviours that are contained in the list and will find other ways to coerce, control and dominate their victims. This is discussed further below.

Standard of Proof

HRCLS supports an objective standard of proof when determining the effect of the offending on a victim-survivor similar to the standard contained within the Scottish legislation. Placing the burden of proving harm on a victim-survivor has the potential to increase their trauma and prevent victim-survivors from reporting due to the requirement of them to provide evidence on the harm they have incurred. An objective standard of proof would reduce victim-survivors being re-traumatised when engaging with the criminal justice system, including being cross examined in relation to the impact of the perpetrator's behaviour, as well as the harm and trauma it has caused the victim-survivor. It is our view that this would result in less incidents of perpetrators abusing the system to continue to perpetrate family violence.

Many of the victim-survivors we work with are not aware that what they are experiencing is family violence and/or coercive control and it can take extended engagement with therapeutic services for them to understand that they are victim-survivors and to identify the trauma they have experienced.

Our client's often report that living with the perpetrator is similar to "*walking on egg shells*" or that they are "*making me feel crazy*". It is our view that if the criminal justice system requires victim-survivors to provide evidence of the harm and trauma they have experienced that many victim-survivors will not pursue this avenue.

For example, many of the CALD victim-survivors that we assist see the behaviour of the perpetrator as culturally acceptable and do not recognise that they are experiencing family violence. This is not acceptable and these perpetrators should be held accountable for behaviors that are not tolerated in Australia.

Case Study:

An Indian client experienced significant family violence, including being financially controlled, being made a 'servant' to the perpetrators family, being threatened, being isolated from her family in India and not being allowed to socialise or work. The client believed that this behaviour was normal. It was only once the client left the relationship and received extensive supports and therapeutic services that the client recognised that she was a victim-survivor and that the perpetrator's behaviour was not acceptable. This client would have struggled to provide evidence of the harm and trauma she had experienced prior to her engagement with the domestic violence service.

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 family law and criminal justice systems do not sufficiently recognise the impacts of coercive control on victim-survivors. Whilst there are some existing laws that acknowledge coercive control to be a form of family violence – particularly in civil jurisdictions – in our view these do not sufficiently protect women and children and hold perpetrators accountable.

HRCLS represents numerous women in family law proceedings, with the majority of our clients having experienced family violence. Our lawyers see firsthand the difficulties faced by clients when putting evidence before the courts of family violence, including coercive control. Our clients often report that they don't feel that their evidence is given enough weight, or that the perpetrator of the violence is held accountable within the family law system. This is further addressed below.

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

HRCLS would support improvements to the current framework to better address patterns of coercive and controlling behavior.

At the outset there needs to be comprehensive and targeted training for all stakeholders within the criminal justice system, and in particular for police, members of the judiciary and legal professionals in responding to and addressing family violence and coercive control, for instance:

- A robust review and complaint system needs to be established to ensure that all stakeholders are held to account (different to the police complaints system);

- A significant increase in funding and services. For instance, additional Men's Behaviour Change programs in regional areas and additional funding to front line family violence services.

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

HRCLS has identified the positive outcomes of criminalising coercive control including:

1. This would allow authorities to intervene before behaviour escalates into physical and sexual violence. Physical and sexual violence are the most common acts of family violence that result in our clients obtaining protection orders.
2. Currently within the context of incident-based offending, victim-survivors find it difficult to hold the perpetrator responsible for their behaviour, unless there has been actual physical violence. The criminalisation of coercive control may provide women and children with stronger legal outcomes in relation to the behaviour of coercive control. We believe that this would provide victim-survivors with important symbolic recognition of the impact that the coercive control has had on them and would also allow victim-survivors to have their experiences legitimised by their communities and lead to the community at large holding the perpetrators responsible.
3. The victim's compensation scheme through Victims Services currently requires victim-survivors to provide evidence that an 'act of violence' has occurred. Given that coercive control is not currently a criminal offence, criminalising coercive control will provide victim-survivors with the required evidence to receive access to financial assistance to assist in their recovery from the violence.
4. The criminalisation of coercive control will also assist victim-survivors in their civil proceedings for Apprehended Domestic Violence Orders and in family law proceedings. It is our experience that often those working in the family law system, including Judges, Family Consultants, lawyers and other professionals, undervalue or don't properly address or acknowledge the impact that family violence, and in particular coercive control, has on a victim-survivor and their children. Perpetrators being charged and convicted of an offence of coercive control may provide victim-survivors with better outcomes, particularly in relation to children and their best interests.
5. We regularly assist victim-survivors who have been misidentified by the police as being the perpetrator, when in fact they are the victim. Currently, the police seem to identify the perpetrator based on the incident alone,

rather than a pattern of behaviour or control. This can result in a victim who has defended themselves and/or retaliated being labelled as the perpetrator in the context of a history of ongoing coercive control. In our view, the police taking into account the history of the relationship and previous behaviours would result in less incidents of misidentification. Misidentification often affects the victim-survivor in a whole range of ways including in the family law system and with Apprehended Domestic Violence Orders which fail to recognise their experiences and this reinforces the abuse and trauma that has been experienced.

However, there are also negative consequences as a result of criminalising coercive control which should be considered. These may include:

1. Potential to re-traumatise victim-survivors by having to repeat their stories;
2. Greater burden on victim-survivors engaging in the legal system with an additional legal matter – feelings of being overwhelmed with “too much happening”;
3. Negative impact on victim-survivors if charges don’t succeed, especially where victim-survivors may have to maintain some kind of relationship with the perpetrator due to having children together;
4. If victim-survivors have a further negative experience with Police this will only serve to further alienate them.

These are only some of the considerations and HRCLS appreciates that in depth consideration is required.

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

We recommend the Inquiry consider the following:

Appropriate training for all stakeholders in the criminal justice system and in particular police, members of the judiciary and legal professionals in responding to and addressing family violence and coercive control.

Crucially, there must be significant improvements to the working relationship between the police and victim-survivors and a greater level of education and awareness of family violence amongst all police members. We often hear from our victim-survivor clients that they find the complexities of the police systems and hierarchy confusing. With incident based reporting victim-survivors often face reporting each incident to a different police member, and then have to deal with that member throughout the criminal justice process.

We have observed at times where the police have failed to properly identify incident based family violence, and have misidentified the victim as being the perpetrator. Often this is a tactic used by perpetrators to abuse the system and exert more control over the victim. It is our view that the police require additional and ongoing training to properly identify this kind of violence.

Case study:

A client was supported by our duty lawyer at court as a respondent for a protection order. The police had applied for an order on behalf of her partner. She reported to her lawyer a pattern of controlling behaviours including stalking, monitoring her mobile telephone, financial abuse and threats to harm her and take her children. Following an argument she reported that her partner had punched himself in the face and called the police. When police arrived he was calm and convincing while she was extremely upset and traumatised and therefore she presented to police as hysterical.

Case Study:

- *A client attends at HRCLS in relation to her former partner refusing to return her child to her. The client was the victim-survivor of long term family violence. The client went to her former partner's property to obtain her child back and her former partner called the police. Due to the client being understandably upset when the police attended the property, the client was identified by the police as the perpetrator. This identification was based on the one incident in isolation. It is our view that there may have been a different outcome if the police had investigated the ongoing family violence and pattern of abuse and control.*

The ability for Police to be able to investigate this incident in the context of an ongoing pattern of abuse and control rather than an isolated incident may have better protected the victim-survivor.

Due to the current criminal justice system taking an incident based approach to family violence and often requiring a physical incident to occur before action is taken, victim-survivors are often brushed off when they attend at the police station. Usually the person at the front desk is a uniformed officer, not a specialised family violence officer and they may lack a proper understanding or knowledge of family violence. This is especially prevalent in our remote and regional communities.

HRCLS clients often report that the police have made them feel foolish or like they are being a burden when they attend police stations to report family violence and breaches of protection orders. Victim-survivors are often then reluctant to report future incidents to the police given their negative experiences.

It is our view that the police require in depth training in relation to identifying family violence, and in addition, training in how to interact and obtain all relevant information from a victim-survivor, including the history of acts by a perpetrator that do not arise out of a single incident, in order to make an informed view. This will reduce the risk of a perpetrators conduct being missed by the Police.

When the perpetrator is a member of the police force, the treatment of the victim survivor by the police is often worse. HRCLS has assisted a number of clients who have reported family violence by a police officer. Our clients have reported to us that when making a report to the police, the police have said the following:

- "Don't you think you're being a bit of a princess"
- "Can't you just change your phone number?"
- "We'll have a chat to him, he's a good guy".

Our client's often report to us that even clear breaches of protection orders are missed by the police, leading victim-survivors to be reluctant to report to the police the full extent of the family violence and coercive control by the perpetrator.

Changing the law to include coercive control will have little impact on victim-survivors experiences or perpetrator accountability unless there is a significant shift in the attitudes and knowledge of police, judicial and legal professionals.

Client Story:

Our client obtained a full protection order against her ex-partner. He had also been charged with assaulting her after he strangled her in front of their two children. She had lived in fear from him for the past 11 years. After breaching the protection order, her ex-partner was being held on remand. She contacted the police on the day of his hearing and they told her they would get back to her. She waited nervously by the phone but the police did not call. She called the following day and after several calls was told he had been released the day before. Our client also tried to report breaches of the protection order by her ex-partner calling on a no caller ID and was told "it'd make your life, and ours, a whole lot easier if you just changed your number." The police refused to take her statement. She reports that the police do not understand what she is going through and that simply changing her number will not stop her ex-partner's behaviour. She told her lawyer that she isn't taken seriously by police and will not report to police next time.

That there be a nationally recognised definition of family violence and coercive control as well as a shared understanding and training of how to identify it.

One significant issue that faces victim-survivors in border communities such as Albury-Wodonga is the substantial differences in legislation and processes between the States. For example, there are stark differences between the legislation in relation to protection orders in NSW and in Victoria, including the definition of family violence, the way applications are usually applied for, being mostly by the Police in NSW and by victim-survivors themselves in Victoria, as well as different court processes.

HRCLS often have victim-survivors instruct that family violence has been perpetrated in both NSW and Victoria. Victim-survivors are often unsure of whether to report the family violence to Police in NSW or Victoria, and are often referred to the other State by members of the Police, which is frustrating and unhelpful. It is our view that it is necessary for there to be national consistency.

Case Study:

Our client and her partner lived in Albury in NSW before moving a couple of kilometers south to Wodonga in Victoria. While in Albury, she was assaulted by her partner and NSW Police applied for an AVO for her protection. Before leaving Albury, her then ex-partner breached the protection order on four separate occasions and each time she reported to a different member of the police. She then fled Albury with the assistance of a local family violence service, however, her ex-partner located her and assaulted her in her home. Our client reported this to Victoria Police and asked to change her protection order to include her infant son who was at home during the assault. Victoria Police told her she had to speak with NSW Police. NSW Police told her it was a Victoria Police matter. After several weeks of trying to get assistance from the police, she applied to vary the protection order herself with the assistance of our lawyers. Her ex-partner was then charged in Victoria with assault but NSW Police took carriage of the breach of the AVO from the same incident. She was exhausted and overwhelmed at the number of police members she had to deal with and the complexities arising from the cross-border issues.

There are numerous instances where victim-survivors have brought their own applications in court, only to be later informed that they have filed in the “wrong” court. This is extremely concerning for victim-survivors who may find the system “too hard” and simply give up. This means that many victim-survivors may not have the protection of any Order, further jeopardising their safety.

The other issue concerns services operating in a cross border environment and not necessarily understanding the processes involved, and potentially being unable to assist or providing incorrect referral options to victim-survivors. Again, this leads to confusion and inconsistencies.

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

For the Courts to make an Apprehended Domestic Violence Order (ADVO), they must consider the test under section 16 of the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*. 'Domestic Violence offence' is defined in section 11 of the Act to include "*an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both)*". Based on this, it would appear that the current legislative regime broadly covers coercive control.

It is unclear whether criminalising coercive control will have a compounding impact on the success of a victim-survivor obtaining an ADVO. For example, in a circumstance where a perpetrator is found not guilty of committing coercive control, is it possible that the Court will be less likely to grant the victim an ADVO? Whilst we note that there are different standards of proof that are required, it is concerning that this may be another tactic that the perpetrator can draw upon when responding to an ADVO.

These case studies illustrate only some of the challenges faced by HRCLS clients in the legal system. The system itself can be complicated and difficult to navigate. We find that the additional constraints of poor regional resources such as Court sittings, experts, travel and costs only serve to further disadvantage our clients.

Lastly, the HRCLS calls for a better investment of funding into legal services to support victim-survivors. Currently these services are chronically underfunded and many women remain unable to obtain legal assistance and representation. Increased funding for legal services would undoubtedly result in better outcomes for women who may face multiple related issues such as tenancy, debts and consumer issues.

We thank you for considering our submission. Should you require any further information please do not hesitate to contact us on (02) [REDACTED] or via email at [REDACTED].

Yours faithfully,

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