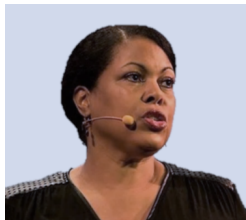


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Criminalising coercive control: a complex discussion

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The following article outlines the multi-faceted and complex system of behaviours that constitute coercive control, and raises a cautionary note about the evidentiary hurdles required for successful prosecutions, should coercive control be criminalised in NSW.

Introduction

Coercive control has become a prominent feature in discussions of intimate partner abuse in recent years. Even a perfunctory examination of coercive control links it to significantly increased risk of serious harm and homicide.¹ In Australia, coercive control is currently a criminal offence only in Tasmania.² The drive to change this has included a media awareness campaign to improve understanding of this cluster of behaviours.³ It has progressed to dedicated efforts to make coercive control a crime. In NSW, a Parliamentary Joint Select Committee, established in October 2020, has recommended that coercive control be criminalised on the basis that current laws do not provide adequate protection for victims. The Committee also recommended that initially the *Crimes (Domestic and Personal Violence) Act 2007* be amended to create a clear and accessible definition of domestic abuse, which includes coercive and controlling behaviour.⁴ Two private member's Bills were introduced into NSW Parliament in 2020.⁵

Proponents for legislative reform note coercive control is more than removing the ability of victims to make decisions. It is more, even, than hyper-vigilance and chronic fear of punishment.⁶ Recognised danger assessments note exponentially higher risk of serious injury or homicide if the relationship with prominent coercive control features is ended by the victim. The NSW Death Review Team also observed significantly increased risk of serious harm or homicide for women in these relationships.⁷ This increased risk is evident even when there is no previous history of serious physical assault.⁸

Advocates view the push to make coercive control a crime as offering the "strongest denunciation" of these harmful behaviours while prompting the wider community to gain a shared understanding.⁹ Yet, criminalising coercive control is complex. Legislators need to offer a distinct, quantifiable category of behaviours under the definition of "coercive control", not just a restyling of actions already included under domestic abuse definitions. The initial phases of

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coercive control should also be explored when the psychological conditioning of victims is reinforced. The roles of cultural norms and individual rights must also be addressed. Those involved must prepare to handle an influx of cases reliant upon allegations that cannot necessarily be verified with physical or medical evidence. Done properly, criminalising coercive control can be a new opportunity for the system to identify a dangerous hazard and help victims exit without harm.

Many Australians only became aware of “coercive control” after the brutal murder of Hannah Clarke and her three children, Aaliyah (6), Laianah (4) and Trey (3), in February 2020. They were splashed with petrol and set alight by her estranged husband, Rowan Baxter. There have been other vicious homicides of women since the Clarke murders, including Kelly Wilkinson, who was allegedly set alight and burned to death by her ex-husband in April 2021. Yet, the Clarke story epitomised the importance of coercive control as a key factor in harmfully abusive relationships.¹⁰ The tragic tale of this photogenic family filled newspapers for months. It resulted in a task force and reinforced efforts in Queensland and NSW to make coercive control illegal.

Interestingly, Ms Clarke did not have the history of serious physical assault that most expected to precede — and predict — her murder. She had, however, been subject to recent violence.

The work by Jacqueline C Campbell highlights the hazards.¹¹ This identifies coercive control as a serious harm risk. Combined with the recent violence experienced by Ms Clarke, and her relatively new separation, these three elements gave Hannah Clarke a 900% increased risk of being murdered by Rowan Baxter.

Defining coercive control

What is coercive control? Knowing what it is, what it does and how to identify its dynamics are crucial first steps.¹²

Evan Stark¹³ devised the term “coercive control”. He identified four key factors: violence, intimidation, isolation, and control.¹⁴ Violence includes all types of punishment: emotional, psychological, sexual, and physical. Intimidation involves threats including emotional blackmail, menacing behaviours, vows to harm or ruin the victim or loved ones. Isolation involves actions that make it difficult or impossible for victims to maintain relationships with others. Control includes loss of agency by the victim over every aspect of life through strict rules and demands. It includes close monitoring and surveillance through means such as scrutinising devices or installing stalker apps.

The evidentiary challenge with the use of the term “coercive control” is that the definition of associated behaviours is “deeply contextual”.¹⁵ The term offers a more detailed definition of domestic violence. It does not inform how coercively controlled relationships are created, how they are maintained, or why it can be so difficult for victims to exit.¹⁶ Without that understanding, new laws may provide an opportunity for perpetrators to continue their repertoire of controlling behaviours.¹⁷

Explaining coercive control

Coercive control victims do not generally agree to become confined to a lonely, scary space.¹⁸ Victims are usually deceived. By the time they recognise the extreme nature of their relationship, they are deeply entangled emotionally, psychologically, practically and financially.

Dominant partners do not need to be Machiavellian geniuses to accomplish this feat. They use simple operant conditioning, ie, punishment and reward, from the earliest days of the relationship.¹⁹ Whenever the targeted victim obeys the dominant partner and surrenders control, a reward is given. If the victim demurs or objects, they are punished.

Targeted victims who do not exit this dynamic early and conclusively are quickly conditioned to submit without question. The dominant partner is then able to maximise their power.²⁰

A simple model can demonstrate, briefly, how this is done.

Table 1. Coercive control²¹

Negative behaviour used	Positive behaviour used
1. Violence, including sexual violence	1. Attention, affection, appreciation
2. Intimidation	2. Protection, promises, gifts
3. Isolation	3. Focus on victim, plan future together
4. Control	4. Commitment, prioritisation

In the beginning, the dominant partner ascertains the desires and priorities of the targeted victim. This is often mistaken for genuine emotional interest. It is a necessary tool for manipulation. These may be unique or based upon broader cultural norms. The dominant partner then promises to provide these in exchange for trust, emotional commitment, and compliance. Eventually, frequent rewards are not necessary. Lack of punishment becomes a reward.

The submission response can thereafter be triggered by facial expressions or words associated with punishment, or by promising that desired rewards will be granted.

Coercive control destroys personal agency for the victim, supplanting it with complete dependence upon and submission to the dominant partner.²²

These relationships, like all abusive relationships, share the advantage of intensity. This push-pull, punishment-reward dynamic is enticing. It creates what psychologists call a “trauma bond”, an emotional link formed by intensity, not true intimacy. It should not be under-estimated; these bonds are difficult to sever.²³

In my TEDx talk, I described coercive control as a suffocating system where someone controls every aspect of their victim’s life, what the victim does, says,

eats, dresses, where and how the couple live, whether the victim is allowed to get an education or have a job, whether the victim has access to money and how it's spent, how many children the couple have and the rules for rearing them.²⁴

Coercive control creates extreme double standards favouring the dominant partner. It includes pathological levels of jealousy and a sense of ownership of the victim. Every aspect of the victim's life, including when and how long the victim sleeps, bathroom and hygiene habits, everything in their sex life and the agenda for daily activities are beyond the victim's authority. Breaking the rules in fact or in the perception of the dominant partner results in punishment. The type and severity of punishment is arbitrarily changed at the will of the dominant partner.

The victim's relationships are monitored, even with family. The victim is forbidden any relationship unless the dominant partner agrees. Permission can be withdrawn for any reason, or none at all, at any time. Survivors describe it as a type of slavery.

Dominant partners put enormous effort into gaining and maintaining this level of absolute control over their partners' lives. It minimises the likelihood their victim will leave the relationship, seek redress or take decisive action.

My own work focuses on the earliest indicators of coercive control.²⁵ It is also useful in demonstrating existing markers for identifying coercive control in relationships.

Coercive control is not a single act but a multi-faceted and complex system based upon severe emotional and psychological manipulation by the dominant partner. It does not require any type of physical assault, although the breaching of sexual boundaries is common.

Legislating coercive control

Domestic violence is generally understood as a system of physical, emotional, psychological, and financial maltreatment of one intimate partner by another.²⁶ This is a broad description and relatively vague.

Coercive control is more specific. In 2015, England and Wales criminalised coercive control.²⁷ As noted above, in Australia, recent endeavours include a Joint Select Committee established in NSW in October 2020,²⁸ and a taskforce in Queensland specifically to examine coercive control and women's experiences in the criminal justice system.²⁹

Various national and international advocacy groups such as CAPS³⁰ in NSW and Scottish Women's Aid made presentations to various State and federal Parliaments to criminalise coercive control.³¹ Women's Aid in Scotland were instrumental in encouraging Scotland to declare coercive control a crime against persons, culminating in April 2019 with the commencement of the *Domestic Abuse (Scotland) Act 2018*.³²

Northern Ireland followed suit in 2021.³³ The *Domestic Abuse (Scotland) Act* is often labelled the "gold standard".³⁴ With more than 1,000 charges reported in 2019–20, with 96% of charges prosecuted in Scotland, there is cautious optimism that serious cases missed with a broader definition of domestic violence can now be successfully prosecuted.³⁵

Coercive control also matters because when detected early, targeted victims can identify key risk factors and exit. Knowing their increased risk of serious harm when they do leave, victims can seek protection. Acknowledgement of this risk enables relevant agencies to meet that need.

Many of the relationship dynamics defining coercive control are still ignored or underestimated.³⁶ Education on coercive control can teach both the seriousness of this system and its dangers.

Discussion

Although research has defined coercive control as the foundation of abusive relationships, clarifying it sufficiently so it can be criminalised and result in successful prosecutions may not be as straightforward.

There are those who are concerned by the response of law enforcement to women who become actively involved in physical altercations with their coercively controlling partner, especially when these women are Aboriginal or Torres Strait Islander. There are claims these women are often disbelieved or blamed for the violence that occurs.³⁷

And what of choice? What about women who willingly enter a relationship with a domineering partner? If this dynamic is agreeable to the couple, is the law able to make it illegal?

Then there is culture. Australia is proudly multicultural. Many of the people who move to Australia originate from patriarchal cultures where submission by women is expected, and men have complete authority over their families. None of these cultures encourage mistreatment of women. Yet, factors exist that increase women's risk and decrease their likelihood of reporting. What is the law to do in these cases?³⁸

Understanding coercive control is crucial to fundamentally addressing domestic abuse and violence. It has even been described as a "golden thread" that can improve the ability of experts, including law enforcement and the judiciary, to predict the risk of future harm.³⁹

If legislators follow through and define coercive control as a criminal act in NSW, education and extensive consultation would be necessary components of this decision.⁴⁰ Consideration should also be given to any implications upon freedom of choice and the diverse cultural norms that may be affected.

Endnotes

- * The author is a social psychologist and domestic violence specialist. She is the Principal/Managing Director, McMillan Consulting Group, an author and creator of Unmasking the abuser, TEDxCanberra — YouTube, 2015, accessed 29/6/2021, an innovative program for the prevention and improved response to domestic abuse and violence.
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- 16 H Boxall and A Morgan, "Experiences of coercive control among Australian women" (2021) 30 *Australian Institute of Criminology Statistical Bulletin*.
- 17 H Douglas, "Legal systems abuse and coercive control" (2018) *Criminology and Criminal Justice* 84.
- 18 K Anderson, "Gendering coercive control" (2009) 15(12) *Violence against women* 1444. Cultural norms, supported by the majority of studies, demonstrate females are significantly more likely than males to become involved in an abusive, coercively controlled relationship.
- 19 J Staddon and D Cerutti, "Operant conditioning" (2003) 54 *Annual Review of Psychology* 115.
- 20 This is made easier if targeted victims are pre-conditioned to accept the dominant partner's complete authority, either through cultural conditioning, history of a coercively controlled relationship, or a dramatic difference in privilege or advantages (including financial) by the dominant partner.
- 21 In my *Unmasking the Abuser* program, above n *, we explore how this is done in detail, customised according to the needs of the participants. It is available to the public, in person and virtually. It is available on podcast, on all podcast platforms.
- 22 J Moore, "What is the the sense of agency and why does it matter?" (2016) 7 *Frontiers in Psychology* 1272. Personal agency is feeling in control of one's life, its consequences, being able to make decisions, knowing you will be at least partially responsible for how things turn out based upon your decisions.
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- 24 D McMillan, "Unmasking the abuser", above n *.
- 25 D McMillan, *But he says he loves me: how to avoid being trapped in a manipulative relationship*, Allen & Unwin, 2007.
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