MONASH GENDER AND FAMILY VIOLENCE PREVENTION CENTRE

Research Brief
The Criminalisation of Coercive Control

Introduction

Coercive control is a key feature of intimate partner violence. Framed by Evan Stark (2007) as a 'liberty crime', his conceptualisation of coercive control sought to capture the long-term, ongoing nature of a wide range of forms of violence which are not exclusively physically but can pervade an individual's daily life with devastating impact. It is not a new concept. Coercive control has been articulated in the work of Dobash & Dobash (1979), Schechter (1982), Ptacek (1999) amongst others. Indeed, Hamberger, Larsen & Lehrner, (2017) identify 22 different definitions of coercive control all of which carry with them different implications for research and practice. Importantly as Wangmann (2020: 222) states: 'What is fundamental to all of this theoretical work is that this understanding of control came from the accounts provided by women themselves'.

Whilst the concept of coercive control has been utilised in clinical and other settings to help women make sense of what is going on in their lives for some time, it was the publication of Stark's book in 2007 which resulted in a concerted push to bring coercive control beyond this practice setting into the remit of the criminal law. Across the globe this has led to a range of different criminal law interventions including the use of coercive control in expert testimony in court proceedings, its use as a specific defence for action taken particularly in cases of homicide, its use as a constituent element of specific offences, and as a specific criminal offence in its own right (all of which are examined in Walklate & Fitz-Gibbon, 2019). Each of these interventions require the law to move beyond responding to violence as an isolated incident and to take account of an identified and evidenced course of conduct.

Interestingly the shift from the theoretical recognition of coercive control (rooted in women's own accounts of their lives) towards the criminalisation of coercive control has occurred without any systematic evidence from women (and/or others subjected to coercive control) as to whether or not such criminalisation would be an answer to the violence(s) in their relationships. Given the well-documented reluctance of women living with violence(s) of all kinds to engage in the criminal justice process (Bailey, 2010; Hoyle & Sanders, 2000; Buzawa, Buzawa & Stark, 2017; Reeves & Meyer, forthcoming; Nancarrow, 2019), the absence of survivor voices is a fundamental evidential gap in contemporary knowledge about and argument for criminalisation on behalf of women.

The criminalisation of coercive control internationally

Over the last 10 years, new offences of coercive control have been introduced to varying degrees across the United Kingdom, Europe and Australia (Douglas 2015) and debated in the US (Tuerkheimer 2007). While these offences have taken varied forms - in terms of the label applied to the abusive behaviour they are designed to address and in terms of their inclusivity (e.g., some are gender-specific and/or apply only to those in intimate partner relationships) - at the core of each has been an argument that a new category of criminal offence is necessary to capture a pattern of abusive behaviours the law is otherwise incapable of responding to.

In 2015, a new offence of "controlling or coercive behaviour" was introduced in England and Wales (section 76, *Serious Crime Act 2015*). This offence, as defined in this law at present, is gender-neutral and limited to behaviour between persons in a current intimate relationship and/or who live together (Home Office 2015). The offence covers a wide range of behaviours and draws directly on the work of Stark.

Evidence on the efficacy of this offence in England and Wales is at present limited. However, in terms of take-up within the criminal justice system, the statistics indicate its presence as an offence is increasing. For example, there were just over 9,000 offences of coercive control recorded by the police in England and Wales in the year ending March 2018, out of a total of just over 2 million incidents of domestic abuse recorded for that year (Office of National Statistics 2018) representing a doubling of such recorded offences when compared with 2017. This figure increased again to 17,616 for year ending March 2019 with the prevalence of domestic abuse remaining the same (Office of National Statistics 2019). Increasing rates of this kind are considered normal for new offences though do suggest an increasing embrace of this offence by front-line police officers. However, early evaluations of the English legislation have pointed to problems for frontline police officers in 'seeing' coercive control (Wiener 2017), in practitioner understandings of coercive control more generally (Brennan et al. 2018; Robinson, Pinchevsky & Guthrie 2018) and problems associated with evidential difficulties (Bishop & Bettinson 2018), with the work of Barlow et al. (2020) making the case for a deeper and more holistic embrace of such an offence within the criminal justice process as a whole. Despite these mixed evaluations, similar offences have continued to emerge in nearby jurisdictions, including in Scotland (see below) and in Ireland (section 39, Domestic Violence Act)

In 2018, Scotland introduced similar legislation. However, unlike the English law the Scottish offence is drafted to recognise the gendered pattern of intimate partner violence and also allows for criminalisation of behaviours between ex-partners (*Domestic Abuse (Scotland) Act 2018)* with Stark referring to this as the new 'gold standard' for such legislation (quoted by Scott, 2020, see also Burman & Brooks-Hay, 2018). The approach adopted in the Republic of Ireland echoes that of England and Wales (Soliman, 2019).

The push to criminalise coercive control in Australia

While coercive and controlling behaviours are recognised as abuse in the definition of domestic and family violence (DFV) in civil law in the majority of Australian states and territories (see for example *Queensland's Domestic and Family Violence Protection Act 2012*; *Victoria's Family Violence Protection Act 2008*). Tasmania remains the only Australian jurisdiction to have introduced a specific criminal offence to cover this form of DFV. Over the past five years, the absence of coercive control in the form of a specific criminal offence across other Australian jurisdictions has animated significant debate and in recent years calls for reform. While neither the Victorian Royal Commission into Family Violence (RCFV, 2016) nor the Queensland Special Taskforce (2015) recommended the introduction of an offence of coercive control, in recent years momentum has begun to push for a reconsideration of these positions.

Research clearly indicates that coercive control is a significant dynamic of DFV and that it manifests in a wide variety of ways including financial, psychological and technology facilitated abusive practices (see, inter alia, Johnson et al 2019; Harris & Woodlock, 2019; Buchanan & Humphreys, 2020; Singh & Sidhu, 2020). Research also evidences that coercive control is a key risk factor preceding intimate partner homicide (Myhill & Hohl, 2019). There has been considered academic debate addressing whether a specific offence of coercive control is an appropriate response to this evidence (Douglas, 2015; 2018). Much of the public and policy debate concerning coercive control has been driven by concerned activists and the powerful impact of specific individual cases. Moreover, whilst some work has considered how women manage coercive control in their relationships (see, inter alia, Bruton & Tyson 2017) or how it may affect women's help-seeking (Meyer, 2009), no research has considered the criminalisation of coercive control through the eyes of those most likely impacted by such a development: victim/survivors. Recent work by Douglas and

Fitzgerald (2020) on the offence of non-fatal strangulation demonstrates the value for the framing of law in taking such views into account.

The 2004 Tasmanian reforms

The Tasmanian *Family Violence Act 2004* introduced two new offences: one of economic abuse and one of emotional abuse and intimidation. These offences bear some comparison to the English legislation - both of which fit within the rubric of coercive control and both are couched in terms of an ongoing course of conduct. The uptake of the new offences has been limited. In the decade following the introduction of the reforms there were eight people convicted of emotional abuse or intimidation. Research found that the lack of prosecutions was not due to practitioners' unwillingness to pursue cases under the new laws but rather flaws in the drafting of the legislation itself (McMahon & McGorrery, 2016).

The analysis undertaken by McMahon and McGorrery (2016) highlights several limits of the reforms, including that:

- Incidents need to be reported within 12 months of their occurrence
- The legislative drafting lacks clarity concerning understandings of reasonableness in relation to each of these behaviours
- There are difficulties in operationalising emotional abuse in the legal context
- There are overlaps between the offences in terms of what is included/excluded
- There are overlaps between these offences and other offences on the statute books, arguably making both redundant.

The limits of criminalisation

Since the introduction of the new English offence in 2015, there has been an emerging body of research documenting the limits of the criminalisation of coercive control and urging caution in the adoption of coercive control offences (see, inter alia, Hanna, 2009; Walklate & Fitz-Gibbon, 2019; Walklate, Fitz-Gibbon & McCulloch, 2018). This work has critically examined the:

- challenge of relying upon victims of coercive control to report to police,
- barriers to help-seeking experienced within a coercively controlled relationship,
- limitations of police (and other criminal justice professionals) abilities in effectively identifying and investigating coercive control, and
- difficulty of evidencing coercive control to the requisite legal standard.
- difficulties inherent in the recourse to law itself and its capacity to represent victim/survivor interests.

This work urges caution in progressing and/or implementing new offences by drawing attention to the significant gaps in current evidence, including the absence of research evidence based on victim/survivor voices and absence of research evidence clearly identifying the effectiveness of standalone offences in improving victim/survivor safety. This cautious outlook draws on broader feminist legal and criminological scholarship that has documented the unintended consequences and limits of criminal justice policy and legal interventions for women victims of intimate partner violence (see, inter alia, Chesney-Lind, 2002; Douglas, 2008; Goodmark, 2018; Meyer, 2011; Nancarrow, 2019).

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