

## Should coercive control be criminalised?

The Australian family violence and legal sectors are currently debating whether or not coercive control should be made a criminal offence. Although this issue has been raised and discussed for some time, the debate has recently been reignited by the murder of Hannah Clarke and her three children Aaliyah, Lailanah, and Trey in February of 2020 by their father, Ms Clarke's ex-husband Rowan Baxter. Baxter had subjected Ms Clarke and their children to years of abuse, as well as controlling and coercive behaviours.<sup>1</sup>

Coercive control is a pattern of behaviour whereby one person in the relationship (usually a male) uses emotional and psychological manipulation to control and diminish the freedom and identity of the other – most commonly, through threats, coercion, intimidation, emotional abuse, humiliation, stalking and surveillance. The far-reaching impacts of coercive control in the context of family violence are well known and acknowledged. Research shows that coercive control is frequently used in situations of family violence, and is almost always a major pattern of behaviour prior to homicide.<sup>2</sup> This form of abuse can cause entrapment "that can be hostage-like in the harms it inflicts on dignity, liberty, autonomy and personhood as well as to physical and psychological integrity."<sup>3</sup>

inTouch Multicultural Centre Against Family Violence (inTouch) would support the introduction of legislation that criminalises coercive control, along with a range of other changes to the family violence response sector. It is our view that criminalising this serious and destructive behaviour would protect women and children, and will provide women with better opportunities for recourse for the suffering they have endured. We also believe that such legislation has the potential to send a strong message to the community condemning coercive control in relationships, and could contribute to a stronger, more comprehensive response to family violence from the police and justice systems.

Whilst we support the idea of introducing legislation to criminalise coercive control, our organisation also recognises that such legislation may have far-reaching unintended consequences, particularly for vulnerable individuals and marginalised communities. These consequences cannot be understated and therefore along with any such legislation, there must be education, training and policy change to ensure that the risk of adverse impacts on vulnerable people are mitigated. Crucially, there must be vast improvements and changes to the working relationship between police and victim-survivors. Without implementing a whole of system change, the impact of criminalising coercive control will be detrimental to its intent.

inTouch provides assistance to women who are victim-survivors of family violence. The overwhelming majority of our clients have experienced family violence perpetrated by their male partner and/or other family members. The issues that we have identified and the recommendations that we make in this document are therefore based on the experiences of these women and their children.

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<sup>1</sup> Kelly Hughes, Hannah Clarke's domestic violence murder highlighted coercive control – but has anything changed? ABC News (10 Aug 2020) <https://www.abc.net.au/news/2020-08-10/anti-domestic-violence-laws-to-criminalise-coercive-control/12377952>.

<sup>2</sup> Amy Dale, "Criminalising coercion", LSJ Online (1 Sep 2020) <https://lsj.com.au/articles/criminalising-coercion/>

<sup>3</sup> Amy Dale, "Criminalising coercion", LSJ Online (1 Sep 2020) <https://lsj.com.au/articles/criminalising-coercion/>

## About inTouch

inTouch provides integrated, culturally responsive services to migrant and refugee communities. Over the past 35 years, we have addressed the specific needs of communities and helped over 20,000 women experiencing family violence. In the 2019-20 financial year, inTouch provided services to 1311 women from 98 different countries, and 1277 of their children.

We have become a critical piece in Victoria's family violence response system. In 2016, the Royal Commission into Family Violence in Victoria recommended that the government fund inTouch to better support the sector in meeting the needs of individuals from refugee and migrant backgrounds experiencing family violence. The reach and impact of inTouch's work has significantly increased due to this support.

inTouch works across the family violence continuum, from prevention and early intervention, to crisis intervention, post-crisis support and recovery. Our services and programs include:

- An integrated, culturally responsive model based on inLanguage, inCulture case management. Our culturally diverse case managers offer direct client services in over 25 languages. They have a unique understanding of a client's lived migration experience, cultural influences, and the barriers they face when trying to seek help.
- An in-house accredited community legal centre, the only one of its kind in a specialist family violence service, which provides legal advice, court advocacy and immigration support to inTouch clients.
- Capacity building of specialist and non-specialist family violence providers and community organisations to better deliver support to refugee and migrant women experiencing family violence. This includes a public training calendar.
- An early intervention program, Motivation for Change, working directly with men from culturally and linguistically diverse communities who use violence towards their families.
- A recovery program, inSpire, helping women and children move on from experiencing family violence.
- A victim-survivor advisory group called Inspire for Change, comprised of former inTouch clients. This advisory group guides and informs many of our programs, policy and initiatives.

This paper has been informed directly through ongoing discussions with our clients-facing case management team, our legal centre, staff from Motivation for Change – our perpetrator intervention program, as well as the views of Inspire for Change, our victim-survivor advisory group.

## Why coercive control should be criminalised

### Criminalising coercive control would protect women and children from serious harm or murder

Research has shown that there are patterns of behaviour perpetrated by men who use violence prior to killing their current or former partner.<sup>4</sup> In the overwhelming majority of cases in which men kill their partners, there has "almost uniformly been a history of perpetrating coercive control."<sup>5</sup> For some of these men, killing their partners and/or children will be the first act of physical violence.<sup>6</sup> In such cases, criminalising coercive control could have helped the police and the courts to recognise the abuse and intervene prior to the escalation to devastating physical harm.<sup>7</sup>

The overwhelming majority of inTouch's high risk clients, including those whose cases are on the Risk Assessment and Management Panels (RAMP), have been subjected to ongoing emotional abuse, isolation, surveillance, and other behaviours that amount to coercive control, as well as physical violence. The type of risk the man poses to the woman's safety (and potentially to that of her children) is recognised by the system

<sup>4</sup> Jane Monckon Smith, "Intimate partner femicide: Using Foucauldian analysis to track an eight stage progression to homicide," *Violence Against Women*, Vol 26, No. 11 (2020).

<sup>5</sup> Paul McGorrey et al, "Coercive control is a form of intimate terrorism and must be criminalised," *The Guardian* (6 October 2020) <https://www.theguardian.com/commentisfree/2020/oct/06/coercive-control-is-a-form-of-intimate-terrorism-and-must-be-criminalised>.

<sup>6</sup> Paul McGorrey et al, "Coercive control is a form of intimate terrorism and must be criminalised," *The Guardian* (6 October 2020) <https://www.theguardian.com/commentisfree/2020/oct/06/coercive-control-is-a-form-of-intimate-terrorism-and-must-be-criminalised>.

<sup>7</sup> Paul McGorrey and Marilyn McMahon, "Coercive control is a key part of domestic violence. So why isn't it a crime across Australia?" *The Conversation* (27 February 2020), <https://theconversation.com/coercive-control-is-a-key-part-of-domestic-violence-so-why-isnt-it-a-crime-across-australia-132444>.

– and then in turn reflected in the support from her local RAMP. Often, family violence services that are providing support to the woman are also acutely aware of the risk their client faces of serious harm or death. Despite widespread knowledge of this risk to the woman, unless the man acts on the intimidation and commits a crime, the response from law enforcement is limited.

We believe that criminalising coercive control would intercept men who pose a serious risk to the safety of their current or former partner, prior to any serious physical harm or murder. It would enable law enforcement to respond more effectively in these challenging and dangerous situations.

## Criminalising coercive control would improve the justice response to family violence

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 – we believe these do not sufficiently protect women and children and hold perpetrators accountable. Many of those who oppose criminalising coercive control call on these existing systems and avenues to be improved in order to respond more effectively to family violence. Whilst we agree this to be true, inTouch believes that this improvement should be accompanied by the addition of coercive control as a criminal offence.

Our policing and justice systems currently look to individual acts of family violence. These individual acts are usually physical forms of violence such as assaults. Whilst a family law court may hear that the woman has been subjected to behaviours that amount to coercive control, the response from the court doesn't always consider these in relation to decisions and judgements that are made. For example, it can be very difficult for a woman's concerns relating to the behaviour of her children's father to have any impact on the outcome of a parenting order without there being any criminal conduct identified.

"Coercive control doesn't carry enough weight in the family law courts currently. Even if we raise it during a hearing, it's not taken seriously enough because it's not a criminal offence. If we make it a criminal offence, and he has broken a law, the family law courts as well as other courts will take it more seriously and it will have a very real impact on the outcome of the matter – which is what our clients deserve. The suffering she has experienced because of his harmful behaviour has to be better acknowledged in court and she should be compensated for this." inTouch Family Lawyer

"Intervention orders aren't enough sometimes. Sometimes you can't get an intervention order easily – the police don't believe you. Sometimes the intervention order runs out and then he comes back to hurt you. And sometimes because he didn't breach the intervention order, his abuse isn't on his record. There needs to be more accountability." Inspire for Change Victim Survivor Advisory Group Member

"We hear too many reports of breaches of intervention orders that the police have not appropriately responded to. For example, a client's ex-husband tried to add her on Facebook and WhatsApp to intimidate her. When she reported these breaches, action wasn't taken by the police. Not only that, but his behaviour had no impact on subsequent family law proceedings." inTouch Case Manager

We believe that the use of coercive control by a perpetrator of family violence should play a much greater role in the decisions that a judge makes when deciding a family law matter. Coercive control has significant impacts on the victim and perpetrators can sabotage the mother and child relationship. These impacts must be better recognised and play a greater role in any decision that is made by the court in relation to parenting orders and the resolution of other disputes through the family courts.

"We often see women misidentified as 'bad mothers' by the courts and child protection agencies. The reality is that her choices and behaviours are caused by the fact that she's navigating a system under coercion and fear." inTouch Family Violence Practitioner

Criminalising coercive control would also assist women to gain recourse and compensation for their experiences. The inTouch Legal Centre supports many clients through their Victims of Crime Assistance Tribunal (VOCAT) applications. Compensation from VOCAT can provide victim-survivors with much needed recourse for their suffering. Financial payments through VOCAT can reimburse women for medical costs, loss of income, and other costs incurred as a result of the violence they've endured. Abusive behaviours that are associated with coercive control are frequently excluded from the VOCAT process as they are not criminal

offences. A woman may have suffered years of degradation, isolation, and emotional control causing her loss of income, drastic impacts on her career and possible medical intervention. Criminalising coercive control would recognise the severe impacts of this type of abuse through the courts and tribunals.

“Sometimes we have to advocate for ourselves so much in the courts and with the police. So many things happen and it’s hard to make people listen. Maybe this will make them listen better.” Inspire for Change Victim Survivor Advisory Group Member

## Legislative change can help change behaviour and community attitudes

State and territory governments across Australia, as well as the Federal Government, have invested considerably into prevention and early intervention, as well as crisis responses to family violence. The Victorian Government, since the Royal Commission in particular, has become an international example of this type of investment and the transformative effect it can have on the community response to family violence.

Criminalising coercive control would cement and further project the message that such behaviour in relationships is harmful. It will increase the public’s understanding of all forms of family violence, and condemn this type of abuse in relationships more broadly and strongly.

“Criminalising coercive control will send a strong message to our community that family violence is serious and will not be tolerated. Many of our clients who experience coercive control suffer so much for long periods of time. The consequences of this abuse are often very severe and some women never completely recover. It needs to be condemned strongly.” - inTouch Case Manager

“Sometimes it’s not until you have left the relationship that you realise what you were suffering all those years.” Inspire for Change Victim Survivor Advisory Group

Along with changing community attitudes more broadly, early interventions for coercive and controlling behaviour through policing, child protection agencies, and the courts can encourage and guide men to undertake behaviour change programs. inTouch’s Motivation for Change program works with men from migrant and refugee backgrounds who have used family violence. Our program works with men to highlight the impact of their behaviour on their families, and to hold them accountable for their abuse and their choice to use violence. Working with men in this way is crucial for our overall objectives in reducing family violence and keeping women and children safe.

## Criminalising coercive control legitimises the experiences of victim-survivors

Many victim-survivors of family violence have endured extended periods of harmful and damaging behaviours including degradation, isolation, emotional abuse, and other forms of coercive control. Rather than looking at this overall pattern of abuse and behaviour, our current family violence response system responds to individual incidents – often physical abuse. Many victim-survivors have told us that it is the coercive control that can have the greatest impact on their lives and their wellbeing. Criminalising this behaviour would legitimise the experience of these victim-survivors.

“If this behaviour was a crime and the message was clear that it’s illegal in Australia, then maybe our families will understand too – that the break-up of the relationship wasn’t my fault. It will help our families understand what we’ve been through.” Inspire for Change Victim Survivor Advisory Group Member

## Concerns and challenges

Whilst our organisation supports the introduction of legislation to criminalise coercive control, we believe there are a number of issues that must be considered prior to its implementation. We understand that criminalising such behaviour can have far-reaching consequences that may adversely impact men from marginalised communities, as well as some women and children. It is therefore crucial that the government undertakes a broad and thorough consultation across the community, and implements educational initiatives and policies to mitigate the risk of adverse impacts on vulnerable communities. There are also significant structural and systemic issues that must be addressed in order for any such legislation to be equitable and effective.

We are aware that Aboriginal and Torres Strait Islander communities, and some migrant and refugee communities are over-represented in the criminal justice system. Over-policing and racial profiling have had disastrous consequences for these communities. We are acutely aware of the fact that criminalising such conduct as coercive control may have disproportionate impacts on communities and groups that are already over-policed. This is a significant concern that must be addressed.

Furthermore, inTouch and many family violence advocates are aware that women from migrant and refugee communities are more likely to be misidentified as the predominant aggressor than other women in the community.<sup>8</sup> This is also the case for Aboriginal and Torres Strait Islander women.<sup>9</sup> The introduction of legislation to criminalise coercive behaviour could therefore increase the mistaken criminalisation of victim-survivors.

Our organisation is also concerned with the elements of proof of such legislation. In international jurisdictions, coercive control has been difficult to prove. Those who oppose criminalising this behaviour point to the challenges of placing such complex onus of proof on a victim-survivor. Providing proof of such behaviour may be very difficult particularly for some of our clients who have lower Australian systems literacy as they are recent arrivals in Australia. This could make it difficult to successfully prosecute and convict a perpetrator of this abuse.

inTouch also understands the complexities and the challenges that may arise for women who choose to reunite or stay in the relationship with someone who is subjecting her to coercive control. We believe some women may choose not to disclose the abuse for fear of criminalising her current or former partner – with concerns regarding the consequences of a conviction and criminal record. We believe this may be of particular concern for those who are experiencing family violence and coercive control perpetrated by their child. We are acutely aware of the pressure this may place on the victim and whether or not she wants to report the abuse.

## Recommendations

### 1. A national definition of family violence and coordinated approach to family violence and coercive control

The Australian Law Reform Commission's Family Violence – A National Legal Response<sup>10</sup> recommended a common interpretative framework in relation to family violence across "state and territory family violence legislation, the Family Law Act and, in limited circumstances, the criminal law."<sup>11</sup> We believe this is a crucial way to ensure that understanding and responses to coercive control and family violence more broadly are consistent and effective. This should be done nationally through thorough consultations with the justice system and family violence services.

### 2. The government must undertake broad community consultations and fund education on the meaning of coercive control

Family dynamics differ across our communities. It is critical that prior to any steps taken to criminalise coercive control, the government undertakes extensive consultations with communities. Policy makers must understand nuances in family relationships and must also devise the most effective ways to work with communities to build their knowledge and understanding of coercive control. Furthermore, communities must play a pivotal role in shaping police and justice system understanding of the family unit in their communities. Without this reciprocal education process, lack of understanding of these complex laws will lead to fear in communities and a lack of co-operation.

### 3. A clear distinction and process must be made for low-risk offenders compared with high-risk or repeated offenders.

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<sup>8</sup> No To Violence, Predominant Aggressor Identification and Victim Misidentification (2019), < <https://ntv.org.au/wp-content/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf> >.

<sup>9</sup> No To Violence, Predominant Aggressor Identification and Victim Misidentification (2019), < <https://ntv.org.au/wp-content/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf> >.

<sup>10</sup> Australian Law Reform Commission, Family Violence – A National Response Summary Report, (October 2010) <https://www.alrc.gov.au/wp-content/uploads/2019/08/Report-Summary.pdf>.

<sup>11</sup> Australian Law Reform Commission, Family Violence – A National Response Summary Report, (October 2010) <https://www.alrc.gov.au/wp-content/uploads/2019/08/Report-Summary.pdf>.

We believe that in order for any such legislation to create behaviour change in our community, the justice system must be ready for a nuanced approach to its response. There must be a focus during sentencing on behaviour change for perpetrators of coercive control who pose a lower risk of harm to their current or former partner. We believe that men's behaviour change programs such as inTouch's Motivation for Change can play a critical role in highlighting the impacts of such behaviour on men and their families. These programs must be culturally appropriate, responsive and intersectional. We believe that criminalising coercive control could help to direct more men into these programs.

Criminalising coercive control would also ensure that men who pose a higher risk of harm to women and children will be convicted and face imprisonment – for the sake of the safety of the woman.

#### **4. Ongoing funding and research into men's behaviour change programs**

We believe in order for any such legislation relating to coercive control to be effective in changing the behaviour of men, there must be ongoing commitment and funding for men's behaviour change programs as well as specialist programs such as inTouch's Motivation for Change program. Ongoing commitment from Commonwealth and State Governments will ensure these programs continue. Governments must invest in researching best practice in these programs, as well as evaluating the programs to ensure that they are as effective as possible.

#### **5. Refugee and asylum seeker status should not impact sentencing outcomes**

We are aware that criminal charges and/or convictions can have significant and uneven impacts on those with particular migration status. For example, the Australian Government can and does revoke the citizenship or visa of those who are dual citizens or on temporary visas, who have been charged and convicted of crimes that are considered serious. We do not believe that a person's migration status should determine the outcome of their journey through the justice system. Rather, we hold that all people in Australia should face the same, equitable consequences for their actions.

#### **6. Police must improve their work with victim-survivors of family violence**

Women from migrant and refugee communities who experience family violence face a multitude of barriers to seeking support and safety. Introducing legislation to criminalise coercive control may have specifically different impacts on migrant and refugee communities. Language and systemic barriers for example, may lead to misidentification of predominant aggressor, and may also make coercive control challenging to identify. Police, family violence services and courts must work together with community groups to ensure there is knowledge of the way that such abuse manifests in migrant and refugee communities.

Furthermore, police must strengthen their response to family violence to ensure it is responsive to the experiences of migrant and refugee women. It is our view that despite policy directives and laws that govern policing, the police response to family violence can be insufficient. It is common place at inTouch to hear from clients that despite reporting breaches of intervention orders, police have failed to arrest and prosecute the perpetrator.

Police must undergo extensive, ongoing training to work better with victim-survivors of family violence from migrant and refugee communities. Police must use interpreters more frequently and effectively. They must ensure that they properly understand the experiences and needs of the victim-survivor. This is particularly the case if coercive control is criminalised. The police must collaborate with victim-survivors when coercive control is in play. If this is done and executed correctly, it could improve the systemic response to family violence more generally.

#### **7. Education in schools and communities about the meaning of family violence, coercive control and how it manifests in relationships**

Criminalisation of coercive control will require extensive education across the community. The Victorian Government has implemented Respectful Relationships across schools in the state. These programs provide insights into the causes of family violence and there is some inclusion of coercive control in parts of the curriculum. Criminalising this abuse will require this education to be entrenched through the school system.

In particular, extensive work may need to be done with migrant, refugee and faith communities. The criminalisation of this behaviour may generate some fear and concern, and may result in community members not disclosing the abuse. For example, education must offer the distinction between coercive control and family units where people are consenting to more traditional gender roles.