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Coercive control, social entrapment and criminalised women

Promised as a child. Married at 15. Mother at 16. Repeated assaults. 18 years, 37 hospital admissions. Bruises, abrasions, lacerations, broken jaw, facial fractures. Choking. Sexual assault. Police reports. Brutality. Nightmares. Depression. Post-traumatic stress disorder. Domestic Violence Order. Full no contact. Unwanted visit. Unwanted sexual advance. Retreat. Pursuit. Physical struggle. Use of a weapon. Death. Arrest. Manslaughter. Prison.

Three children. Relationship. Partner committed violent offences against third party. Imprisoned. Separation. Ex-partner released. Woman located. Threats of violence. Pressure to resume relationship. Ongoing threats. Ongoing Abuse. Stalking. Threats to strangers. Repeated false imprisonment. Repeatedly restrained from leaving. Repeatedly kicked and punched to the face, head, chest. Escape. Located again. And again. Restrained from leaving. Again. Repeated police calls. Repeated attempts to leave. Ongoing jealousy, stalking, violence. Punched. Broken rib. Internal bleeding. Death.

Kill or be killed.

These are the tragic experiences of many domestic and family violence (DFV) victims in the Northern Territory.

Women are predominantly the victims of DFV.¹ But women, particularly Aboriginal women, are also the fastest growing prison population across Australia.² These two facts are connected. The majority of women in prison have experienced DFV.³ These experiences are significant risk factors for imprisonment. Too often, it is only after a woman has been criminalised that she is identified as a victim who needed significantly more support than she had received to manage her safety, and the safety of her children.

In an ongoing national DFV crisis, the Northern Territory has experienced an increase in the number of reported DFV related assaults in the order of 30%.⁴ This article explores the criminalisation of women in the Territory focusing on the consequences when women are misidentified as primary perpetrators. We also seek to highlight a systemic failure to support women who use or have used violence to resist ongoing abuse and coercive control.

It is clear there is an urgent need for a more robust and widespread understanding of coercive control to underpin community and justice

system responses to family violence, whether or not a specific criminal offence is introduced. In doing so, we draw attention to the fundamental role of specialist women's legal services.

Victims misidentified as perpetrators

Single mum. New relationship. Violence. Jealousy. Ongoing assaults. Hit with a rock. A metal bar. Hospitalised. Surgery. Attempts to leave. Heavy drinking. Ongoing violence. Vicious and controlling behaviour. Attempts to leave. Physical and sexual assaults. Kicked in the mouth. Lost teeth. Stabbed in the stomach. Burnt with a stick. Financial control. Forced to beg. Domestic Violence Orders. Perpetrator convicted 10 times... Ongoing violence. Use of violence to resist. Prison. Ongoing violence. Prison. Reciprocal DVO. Further financial control. Further threats. Cognitive impairment. Post-traumatic stress disorder. Alcohol use disorder. Ongoing violence. Stabbed by perpetrator. Armed with weapon. Assaults perpetrator. Perpetrator suicides. Prison

Recent research supports our experience that women are increasingly being misidentified as perpetrators of DFV.⁵ The number of women served with DVOs is disproportionate when we consider what is known about the gendered nature of DFV.⁶

By way of brief background, each state and territory has a civil legislative regime to facilitate the making of protection orders referred to as DVOs (known in other jurisdictions as apprehended violence orders or family violence intervention orders).⁷ These orders seek to protect a victim of DFV by prohibiting the named respondent from specified behaviour. A breach of an order constitutes a criminal offence. In the NT, police may make an interim DVO if satisfied it is necessary to ensure a person's safety.⁸ DFV is defined to include conduct causing harm, damaging property, intimidation, stalking and economic abuse. The legislation specifically allows for consideration to be given to a pattern of conduct. As explored in our previous contribution to *Balance* magazine, the

definition is arguably broad enough to encompass the patterns of behaviour which are coercive control but unfortunately many instances of coercive control are not yet widely recognised or accepted as DFV.⁹

Following well established understandings of the gendered nature of DFV, it would be expected that the vast majority of respondents to DVO's would be male.¹⁰ In other words, it would be reasonable to expect that few women would be identified as respondents. Yet, Central Australian Women's Legal Service is increasingly being asked for assistance by women who have been served with a DVO by police or by their abusive partner/ex-partner. This experience is consistent with the findings of Australia's National Research Organisation for Women's Safety (ANROWS).¹¹ ANROWS recent report draws attention to the number of women being identified as respondents to DVOs across all States and Territories.

In the NT, the number of female respondents to DVO applications from 2015-18 was more than one fifth of the total number of respondents.¹² Alarmingly, the NT reports a significantly disproportionate rate for breaches by female respondents, and Indigenous female respondents in particular.¹³ The consequences are significant. As a 'protected person' under a domestic violence order (DVO), perpetrators are being provided yet another tool by which to effect coercive control. Women who are alleged to have breached orders attract a criminal justice system response with broad ranging adverse impacts on their family life, social life, finances and employment, whether or not they subsequently serve time—a very real prospect in the NT where mandatory sentencing applies.¹⁴ There are significant consequences for women's ongoing safety, trust in police and the legal system.

In the past six months, CAWLS has assisted over 30 women challenge applications for DVOs against them. The cases are varied and have involved both misidentification by police and systems abuse by perpetrators. Both concepts are explored below before we highlight the need >

for earlier intervention to identify and support women at risk of ongoing violence and coercive control. Interaction with the criminal justice system and/or incarceration should not be the trigger for identifying victims of family violence. Women deserve better options than to kill or risk being killed.

Misidentification – A failure to understand resistive violence

Violently raped. Defensively armed. Hurt. Humiliated. Angry. Scared. Distrustful. Harassed. Followed. Stalked. Attacks perpetrator in public. Arrested. Charged. Sentenced. Imprisoned.

Misidentification of a woman who uses violence as either the primary aggressor or a participant in mutual violence (i.e. ‘she gives as good as she gets’) appears to be increasing. From our perspective, the causes of misidentification are deeply rooted in misconceptions about both the nature of DFV, particularly coercive control, and when, how and why women use violence. Frequently, police are called to respond to a domestic violence ‘incident’ in which both the perpetrator and the victim appear to have used violence. In many situations of apparent ‘mutual violence’ it may seem challenging for police to obtain a clear understanding of the nature of the violence that has taken place. There are a number of complex and interrelated reasons which create and compound this difficulty. A significant factor is that first responders do not yet have the required training, resources or support they need to thoroughly and safely investigate histories of coercive control. Consequently, our system continues to fail to misidentify the true perpetrator of family violence and fails to apprehend the nature of ongoing risk for the victim.

Misconceptions about the nature of DFV are tied to the perpetuation of the ‘ideal victim’ stereotype. The ideal victim does not use violence. She is passive, submissive and helpless. The stereotype of the ideal victim continues to infect decision-making in the justice system

from first responders through to judicial officers. Evidence of physical resistance is taken ‘as evidence that [the woman] had negotiating power in the relationship and [is] therefore responsible for what is a ‘bad relationship’’.¹⁵ Women who use violence to resist a pattern of abuse (i.e. coercive control) are seen as perpetrators.¹⁶

As noted by ANROWS, women who use resistive violence are more likely to use weapons to counter a physical strength disadvantage.¹⁷ The use of weapons will often produce a visible physical injury. To those unfamiliar with the nature of coercive control, a purely physical injury may appear more severe and more urgent than decades of sexual, psychological, emotional, social, economic, financial and technological abuse. Yet, we know that coercive control—which may include any combination of these forms of abuse—is a significant risk factor for intimate partner homicide.¹⁸

In both Queensland and Western Australia, further legislative steps have been taken to militate against the tendency for women to be misidentified as perpetrators. Both jurisdictions include the concept of ‘person most in need of protection’ within their civil protection order schemes in an attempt to reduce the number of ‘reciprocal DVO’s’ or ‘cross-applications’ being brought before the court. This concept is intended to reflect the fact that DFV must be distinguished from resistive or retaliatory violence. DFV is characterised by coercive control. It is a pattern of abuse motivated, consciously or otherwise, by a desire to dominate or control. The explanatory memorandum to the Queensland legislation specifically notes that ‘[B]oth people in a relationship cannot be a victim and a perpetrator of this type of violence at the same time’.¹⁹ ANROWS recent research project demonstrates that despite these amendments to clarify the intention of DVOs—to address coercive control—there is a gap between intention and application ‘largely due to a lack of comprehension of key concepts, uncertainty about procedural expectations, and organisational practices and culture’.²⁰

Women are too often in the situation of kill or be killed, stab or be brutally assaulted. If she does resist she runs the risk of being labelled a DFV perpetrator. If she is judged as capable of taking other measures to protect herself, she will likely be served with a DVO protecting the man that has repeatedly assaulted her, raped her and systematically abused her. If she breaches the DVO, she faces criminal charges. So what options does she realistically have?

A robust social entrapment analysis informed by an understanding of coercive control might counter the instinct to suggest she should call the police, lock the doors or simply pack up and leave. The enduring presence of victim-blaming highlights the need for a much greater understanding of coercive control, and social entrapment, to be embedded in not only our legal response but also our broader community.

Understanding Coercive Control – A crucial element in a Social Entrapment Framework

Married. Emigrated to Australia. Worked as a doctor. Regularly assaulted. Bashed with a rolling pin. A metal chair. Forced to perform sexual acts for strangers online. Forced to watch child pornography and child abuse. Forced to engage in sexual acts with other women. Struck and killed husband while asleep. Arrested. Charged. No self-defence. Manslaughter. Imprisonment.

In 2019, ANROWS recommended that the justice system utilise a social entrapment framework to respond to women who have killed their intimate partners.²¹ This follows a similar recommendation by the New Zealand Family Violence Death Review Committee (NZFVDR) in relation to understanding intimate partner violence.²² NZFVDR have suggested that intimate partner homicide would be more accurately framed as a form of social entrapment that has three dimensions:

- the social isolation, fear and coercion that the perpetrator's coercive and

controlling behaviour creates in the victim's/survivor's life;

- the lack of effective systemic safety options; and
- the exacerbation of these previous two dimensions by the structural inequities associated with gender, class, race and disability.²³

Inherent in a social entrapment framework is an understanding of the particular coercive and controlling behaviours that have been used against the victim. Despite recognition in most civil protection regimes of the relevance of a pattern of behaviour, our current response to DFV fails to reflect a sophisticated and nuanced understanding of the realities of coercive control. ANROWS suggests that the current legal framing of intimate partner violence uses either one of two problematic theories of violence.²⁴ The first is described as 'a bad relationship with incidents of violence' and the second as 'battered woman syndrome'.²⁵

The 'bad relationship' theory reflects an incident-based approach which does not reflect an understanding that the pattern of ongoing abuse 'is bigger than any acts of physical violence and has a cumulative and compounding effect on the victim/survivor'.²⁶ The abuse is contextualised as discrete incidents which, once over, do not impact the victim's ability to leave or implement safety strategies.²⁷ The safety responses that are assumed to be available to victims are much less accessible and effective when viewed through a lens of coercive control and ongoing threat. Yet, women who cannot initiate or access the safety strategies assumed to be available—including calling police, leaving the relationship and seeking refuge—are criminalised when force, the only available path of resistance, is used to resist ongoing violence.

The failure of the 'bad relationship' theory to reflect an understanding of the cycle of violence led to the development of 'Battered woman syndrome' or 'learned helplessness'.²⁸ However, as ➤

noted by ANROWS, these theories are still based on an understanding that the victim has not made a rational choice. The concept of learned helplessness does not engage with the true nature of coercive control.²⁹ Battered woman syndrome relies on the woman being passive and any evidence of physical resistance prior to the ultimate act of homicide is as evidence she did have power, could have left and is therefore responsible for the violence perpetrated against her.³⁰

ANROWS notes there is evidence that most DFV victims are proactive help seekers within the constraints of their circumstances.³¹ However, they frequently receive unhelpful or unsafe responses or their abusive partner deliberately thwarts their acts of resistance.³² This is consistent with CAWLS experience. Many women recount attempting to report to police only to be told there is no urgent threat. A number of clients have attended the clinic to seek support reporting family violence. It is not uncommon for police to decline to issue an interim DVO on the basis the matter is not 'urgent' despite the occurrence of serious physical assault within the preceding 48 hours. Although we accept that the power to issue an interim DVO is constrained, we suggest a more robust understanding of coercive control, coupled with greater investigative resources and safety planning support for police and for women would impact the number of applications perceived to be necessary to ensure a person's safety because of urgent circumstances. It would certainly enhance the effectiveness of the justice and service sector response, and likely reduce the number of women whose only path of resistance is the use of violence. The current justice and service sector response to women seeking assistance is too often unhelpful, unsafe and reduces the victim's capacity to resist ongoing abuse.

It is interesting to note, that a significant proportion of women we have assisted to defend DVO applications had actually initiated the call for police assistance. These women had fought back against a physical attack, had often used a weapon but had also sought assistance

from police. They were often identified as a perpetrator of DFV on the basis of the injury caused to the other party. The woman's reports of serious assault, often including less visible injuries such as sexual assault, strangulation or suffocation—red flags for intimate partner homicide—are not accepted as a rational basis for the use of resistive violence at the time of police attendance and/or arrest. Rather, it is left to the court to determine the true nature of the violence which has occurred. However, the court can only respond to the evidence before it, which, without a fully informed coercive control investigation, will be presented as an incident of mutual violence. This experience highlights the urgent need for enhanced training on the nature and impact of coercive control, as well as the vital role that specialist women's services play in responding to women who experience violence.

So far, we have not specifically raised the additional barriers faced by Aboriginal and Torres Strait Islander women.³³ Aboriginal and Torres Strait Islander women participating in research led by ANROWS explained that they experienced reluctance to cooperate with police or prosecution due to prior experience of inappropriate responses, intimidation, racism and mistrust of police in general as well as feelings of loyalty and self-preservation.³⁴ Similarly, women from other culturally and linguistically diverse backgrounds often experience additional barriers to access to justice in relation to policing family violence.³⁵ Migrant women who present at CAWLS often have concerns about the impact of police intervention on their own visa status. They also have limited access to social supports, and many have no social security rights.

In order for the justice system to respond appropriately to women who use violence, it is vital to understand why they have used violence. Suggesting alternatives that do not exist for that woman is tantamount to the justice system colluding with the perpetrator of the abuse. Further, in order to prevent women using violence to resist abuse and coercive control, the justice system and the service sector needs to better respond to calls for assistance and empower

women with realistic options to manage their safety. Key to ensuring better responses is a better understanding of coercive control.

Systems abuse

Met at work. Moved in together. Attacked three times. Strangulation. Suffocation. Dragged by hair. Reported to police. Domestic Violence Order. Perpetrator applies for private DVO against victim. Fictitious. Exaggerated. Exorbitant costs to contest application. Consent without admissions. Perpetrator advised workplace, lodged workplace bullying complaint. Terrified to report to police. Fear of being criminalised. Quit job with no alternative income.

We have also seen a number of private applications for DVOs being made by abusive partners. Hijacking a system designed to protect a victim and weaponising it against her is described as systems abuse. The perpetrator uses the system to perpetuate the abuse. As noted above, a DVO can be a powerful tool for abuse when it is made in favour of a coercive and controlling partner or ex-partner. The likelihood a woman subject to a DVO will report violence being committed against her is reduced due to the risk that the perpetrator will assume control of the narrative. The trust in the system is eviscerated. Targeted intervention to identify potential systems abuse and provide tailored assistance to women needs to be further developed. This will involve training and support for court staff, the service sector and ensuring there is a funded specialist women's legal service that women can readily access.

Conclusion

In our previous contribution to *Balance* magazine, we explored the debate surrounding the potential criminalisation of coercive control. We suggested that a coercive control lens may allow for correction of misidentification of primary perpetrators. In this article, we have explored that suggestion further, highlighting the need for a more informed justice system response to coercive control to ensure that our civil protection regime does not operate as a pathway to the criminalisation of women.

We reiterate our call for urgent coercive control training and support for the justice system stakeholders to ensure red flags are identified, information and risk assessment is informed and that police and decision-makers are able to identify retaliatory and resistive violence in the context of abuse and victimisation—and ultimately social entrapment. ■

For Central Australian readers, CAWLS is facilitating a free workshop on Identifying and Responding to Coercive Control for the Family Law Pathways Network on Wednesday 17 March, 9.00 – 11.30 am. Registration is required. For further information please email: pathwaysas@ra-nt.org.au

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