

**CRIMINAL LAW (COERCIVE CONTROL AND AFFIRMATIVE CONSENT) AND OTHER LEGISLATION  
AMENDMENT BILL 2023**

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**Submitted by:** Dr Terry Goldworthy & Dr Mathew Raj  
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Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
Email: LASC@parliament.qld.gov.au

FACULTY OF SOCIETY & DESIGN

Bond University  
Gold Coast, Queensland 4229  
Australia

Toll free 1800 650 121  
(within Australia)

Ph: +61 7 5595 2522  
Fax: +61 7 5595 2545  
(from overseas)

Email: fsd@bond.edu.au

ABN 88 010 694 121  
CRICOS CODE 00017B

## Submission <sup>1</sup> to Legal Affairs and Safety Committee in relation to the Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023, by Associate Professor Terry Goldsworthy <sup>2</sup> and Assistant Professor Matthew Raj<sup>3</sup>.

### Introduction

This submission will deal with the issues around the proposed creation of the criminal offence of coercive control. The bill proposes, among other things, to amend the *Criminal Code Act 1899* ('*Criminal Code*') with the insertion of a new offence for coercive control:

#### *334C Coercive control*

*(1) A person who is an adult commits an offence (a coercive control offence) if—*

*(a) the person is in a domestic relationship with another person (the other person); and*

*(b) the person engages in a course of conduct against the other person that consists of domestic violence occurring on more than 1 occasion; and*

*(c) the person intends the course of conduct to coerce or control the other person; and*

*(d) the course of conduct would, in all the circumstances, be reasonably likely to cause the other person harm.*

*Maximum penalty—14 years imprisonment.*

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<sup>1</sup> The authors stress that, throughout this submission, the views expressed are those of the authors; and do not necessarily reflect the opinions of their employer, Bond University.

<sup>2</sup> Dr Terry Goldsworthy (tgoldsw@bond.edu.au) is an Associate Professor of Criminal Justice and Criminology, in the Faculty of Society and Design at Bond University. He was previously a Detective Inspector with 28 years' service in the Queensland Police Service and separated from the service in 2013.

<sup>3</sup> Dr. Matthew Raj is an Assistant Professor in the Faculty of Law at Bond University.

## The intricate characteristics of coercive control.

Coercive control frequently manifests within the framework of intimate relationships and exhibits intricate connections with power dynamics, trauma, and emotional manipulation (Dutton & Goodman, 2005; Stark & Hester, 2018; Walby & Towers, 2018). The efficacy of the criminal justice system in successfully addressing these intricate and deeply ingrained issues may be limited. In certain instances, it may be more suitable to adopt a comprehensive approach that integrates social services, counselling, and education (Barlow et al., 2019). In addition to this the pursuit of more traditional offence may be more efficient and successful.

Power dynamics play a significant role in the manifestation of coercive control within intimate relationships (Katz, 2015). Perpetrators of abuse employ a range of strategies, including emotional manipulation, economic coercion, and social isolation, in order to assert dominance and maintain control over their targets (Stark & Hester, 2018). The presence of power imbalances can provide significant challenges for individuals who find themselves in such situations, as it can impede their ability to extricate themselves from these circumstances, disclose the abuse, or even acknowledge that they are being subjected to coercive control (Katz, 2015; Stark, 2008).

The criminal offence of coercive control is designed to safeguard victims against a detrimental and all-encompassing type of abuse. However, there exist valid issues regarding its effectiveness as a policy response within the realm of criminal law. The complexities surrounding the definition and substantiation of coercive control, the risk of excessive criminalisation, unanticipated outcomes, allocation of resources, and the intricate nature of this matter collectively underscore the necessity for an effective strategy that integrates criminal legislation with preventive measures, educational initiatives, and support networks. Achieving a thorough and effective response to coercive control necessitates adopting a balanced strategy that acknowledges the intricate nuances and complexities inherent in this issue.

## Problems with identifying and demonstrating coercive control

Coercive control is a detrimental and pervasive conduct that can inflict severe and enduring consequences onto individuals who experience it. This phenomenon encompasses a series of actions that erode an individual's ability to exercise self-governance, personal liberties, and overall welfare (Burman & Brooks, 2018). Given the significance of this matter, numerous nations have contemplated or enacted penal statutes in order to tackle coercive control (Aldridge, 2020; Candela, 2016; Douglas, 2017; Dutton & Goodman, 2005; House of Representatives Standing Committee on Social Policy and Legal Affairs, 2021; Walklate & Fitz-Gibbon, 2021). Although the underlying motives driving the implementation of legal measures are commendable, this submission seeks to examine the potential limitations and drawbacks of criminalising coercive control as a policy response.

The concept of coercive control encompasses a diverse array of controlling and abusive behaviours, hence giving rise to ambiguity in its definitions. The range of abusive behaviours encompasses emotional abuse, social isolation, financial control, and manipulation, among various others. Diverse meanings and definitions of coercive control may exist among different jurisdictions and stakeholders. The presence of ambiguity in this context has the potential to result in inconsistent implementation of legal principles and challenges in accurately recognising and resolving instances of abusive conduct.

The task of defining and substantiating coercive control has several challenges (Stark, 2008). One of the primary obstacles in the process of criminalising coercive control is in the establishment of a precise and universally acknowledged definition for this concept. The concept of coercive control is multifaceted and contingent upon specific circumstances and context, hence presenting challenges in formulating a comprehensive and exact legal definition. The presence of ambiguity in legal definitions can pose challenges for law enforcement officials, legal practitioners, and judges in their efforts to achieve consistent application of the law. This has the potential to create miscarriages of justice.

In the current bill the proposed definition of coercive control is simply defined as:

*334A Definitions for chapter*

*In this chapter— coercive control means the offence mentioned in section 334C.*

Essentially the proposed definition then defaults to a range of behaviours outlined in how domestic violence is defined in the proposed s334B.

*334B What is domestic violence*

*(1) Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a*

*domestic relationship that—*

*(a) is physically or sexually abusive; or*

*(b) is emotionally or psychologically abusive.*

*or*

*(c) is economically abusive; or*

*(d) is threatening; or*

*(e) is coercive; or*

*(f) in any other way controls or dominates the second person and causes the second person to fear for the second person's safety or wellbeing or that of someone else.*

The bill provides further details in s334A as to examples of what this type of behaviour may entail.

***Economic abuse*** means behaviour by a person (the first person) that is coercive, deceptive or

unreasonably controls another person (the second person)—

*(a) in a way that denies the second person the economic or financial autonomy the second person would have had but for that behaviour; or*

*(b) by withholding or threatening to withhold the financial support necessary for meeting the reasonable living expenses of the second person or a child.*

*Examples—*

- *coercing a person to relinquish control over assets and income*

- *unreasonably removing or keeping a person's property, or threatening to do so*

- *unreasonably disposing of property owned by a person, or owned jointly with a person, without lawful excuse*

- *preventing a person from having access to joint financial assets for the purposes of meeting normal household expenses without lawful excuse*
- *preventing a person from seeking or keeping employment*
- *coercing a person to claim social security payments*
- *coercing a person to sign a power of attorney that would enable the person's finances to be managed by another person*
- *coercing a person to sign a contract for the purchase of goods or services*
- *coercing a person to sign a contract for the provision of finance, a loan or credit*
- *coercing a person to sign a contract of guarantee*
- *coercing a person to sign any legal document for the establishment or operation of a business*

***emotional or psychological abuse*** means behaviour by a person towards another person that torments, intimidates, harasses or degrades the other person.

*Examples—*

- *following a person when the person is out in public, including by vehicle or on foot*
- *remaining outside a person's residence or place of work*
- *repeatedly contacting a person by telephone, SMS message, email or social networking site*
- *repeated derogatory taunts, including racial taunts*
- *threatening to disclose a person's sexual orientation to another person*
- *threatening to withhold a person's medication*
- *preventing a person from making or keeping connections with the person's family, friends, kin or culture, including cultural or spiritual ceremonies or practices, or preventing the person from expressing the person's cultural identity*
- *threatening to withdraw support for a visa for a person or a member of the person's family*
- *threatening to have a person or a member of the person's family deported*
- *coercing or threatening a person to gain further or larger dowry gifts*
- *interfering with a person's ability to access or communicate with the person's friends or family or with support services by restricting access to any means of communication or otherwise*

Coerce is defined in s334B (4) as being “coerce, a person, means compel or force a person to do, or refrain from doing, something.”

This definition and examples provided are extraordinarily wide and would capture a range of activities that may in fact be totally acceptable and normal. For example, who determines what is an acceptable financial support for a child? If someone contacts the immigration department to inform them of a person who is illegally in Australia, they may face the prospect of committing a criminal offence if they are in a defined domestic relationship, even though the person is here illegally. Will it be the case that if you are in a relationship with someone you can know now not lawfully inform the government of that person being in the country illegally? It is unclear how someone can threaten to have someone deported? Surely that is a government decision, not of the individual reporting it. If there are valid grounds for deportation is the proposal that these should be ignored if there is an issue of domestic violence in the relationship

paradigm. Will it be a fact that if someone reports this now, they expose themselves to a criminal offence even if someone is staying the country illegally.

Take for instance the proposed definition in the bill and consider the below scenario.

*Person A and B are in a defined domestic relationship. Person A says to person B “If you go out with your friends on Friday night, I am not having sex with you for a week”. This occurs on a regular basis.*

Has person A fulfilled the requirements of coercive control as outline in the bill? It would be reasonable to say that they have. The behaviour could be argued to be coercive, the threat from A is causing B to refrain from going out. It is a pattern of behaviour that has occurred over time. It would also seem to satisfy at least three arms of s334B (3):

- (k) isolating a person from friends, relatives or other sources of support.*
- (l) controlling, regulating or monitoring a person’s day-to-day activities.*
- (m) depriving a person of, or restricting a person’s, freedom of action.*

Further the scenario outlined would match one of the examples given in 334A “preventing a person from making or keeping connections with the person’s family, friends...”. But is this the type of behaviour that the proposed bill is seeking to capture?

Moreover, establishing the existence of coercive control within the legal framework might present significant difficulties. In contrast to tangible criminal acts like assault or stalking, coercive control frequently encompasses psychological manipulation, which may manifest in subtle ways and prove challenging to substantiate (Myhill & Hohl, 2016). Victims may lack concrete proof or may experience difficulties in precisely recollecting every instance of control. Consequently, the attainment of convictions for coercive control may present challenges, perhaps leading to a lack of adequate justice for victims within the legal framework.

One of the key issues that arises when attempting to define and establish the existence of coercive control is the presence of several challenges. These challenges encompass both conceptual and evidentiary aspects, thereby complicating the process of accurately identifying and proving instances of coercive control. Conceptually, the lack of a universally accepted definition of coercive control poses a significant hurdle. This can lead to inconsistencies and confusion in its application.

It might be difficult to recognise and prove coercive control for several reasons. One issue is that coercive control frequently manifests itself in subtle, hidden ways that are challenging to identify and record (Stark, 2008). Coercive control mainly consists of psychological, emotional, and controlling strategies that can be more difficult to identify than physical abuse, which leaves obvious scars (Stark, 2008). Because of this, it may be difficult for victims to describe their experiences and for professionals to recognise and act upon instances of coercive control.

Another issue is that, as opposed to being limited to isolated instances, coercive control is a pattern of behaviour that develops over time (Dutton & Goodman, 2005). It entails a variety of strategies used to create dominance and control, including financial control, emotional manipulation, isolation, and surveillance (Dutton & Goodman, 2005). Conventional frameworks of domestic violence, which frequently concentrate on physical abuse, may find it difficult to adequately describe or comprehend these behaviours (Dutton & Goodman, 2005).

Because of this, the complete scope and significance of coercive control could be disregarded or downplayed.

Moreover, proving coercive control in a court of law can be challenging. Instead of appreciating the cumulative impact of a pattern of coercive control, the judicial system frequently depends on proof of individual violent occurrences or acts (Myhill & Hohl, 2016). Because of this, it may be difficult for victims to get legal protection or for offenders to face consequences for their actions (Myhill & Hohl, 2016). Additionally, because coercive control is not recognised or understood in the legal or social institutions, victims may encounter obstacles when trying to obtain resources and support.

The effectiveness of legislation in altering the behaviour of individuals who engage in harmful actions may be subject to challenges. Coercive control frequently emerges as a result of deeply entrenched patterns of behaviour and attitudes (Dutton & Goodman, 2005; Myhill & Hohl, 2016). The act of criminalising the behaviour does not guarantee the successful rehabilitation or prevention of future instances of abuse.

In brief, because coercive control is covert, the behaviour is cumulative and predictable, there are difficulties in legal settings, and there are complicated dynamics involved, it can be difficult to identify and prove. Acknowledging and resolving these issues is essential to providing victims with adequate support, prosecuting offenders, and averting additional harm.

## Possible Difficulties with the Proposed Legislation

This section canvasses parts of the proposed offence of Coercive Control contrary to (the proposed) s334C of the *Criminal Code Act 1899* ('*Criminal Code*'). In so doing, the section draws attention to elements of the offence (and defence) which may create procedural difficulties.

The offence, then, has several elements (s334C(1)(a)-(d)). The prosecution must prove beyond reasonable doubt that:

- An **adult** (defined in s1 *Criminal Code*);
- In a **domestic relationship** (defined in s1 *Criminal Code*) with another person (the other person);
- Engaged in a **course of conduct** (undefined) **against the other person**; and
- That course of conduct consisted of **domestic violence** (defined in s334B) on more than one occasion; and
- The person **intended** the course of conduct to **coerce** (defined in s334B(4)) or **control** (undefined) the other person; and
- The course of conduct would, in all the circumstances, be **reasonably likely** (undefined) to cause the other person **harm** (defined in s334A).

Note, then, that the following elements are undefined in statute: 'course of conduct', 'control' and 'reasonably likely'. This may create uncertainty regarding charging decisions, and prosecutions generally, particularly where acts of domestic violence were committed sporadically, months apart, and/or in diverse ways (e.g., the accused was economically abusive when excessive amounts of money were spent by their partner on Melbourne Cup Day in 2024, and then threatening on Melbourne Cup Day in 2025). Will a 'course of conduct' be satisfied prima facie/beyond reasonable doubt with a gap of one calendar year?

There is also the fact that the offence does not require actual harm to occur (ss 334C(1)(d) and 334D(2)). This is not without precedent as there are similarities with other offences in the *Criminal Code* (for example, Unlawful Stalking contrary to 359B, where the intentionally directed conduct ‘would cause the stalked person apprehension or fear, reasonably arising in the circumstances, of violence’, etc). Note that Unlawful Stalking, simpliciter, carries a maximum penalty of five years’ imprisonment. It is somewhat at odds with general principles of crime and punishment to create an offence which carries a maximum penalty of 14 years’ imprisonment where, conceivably, no injury, harm, or, indeed, awareness by the victim of any acts by the accused, have occurred. As such, this offence is committed by a partner who leaves seventeen abusive voice messages and three SMS messages, directed at their partner (say, for neglecting to collect the children from school on time), but all sent to the wrong phone number (that is, their partner never received any of those messages).

It is also worth noting that the offence in s334C requires that the prosecution prove beyond reasonable doubt that the course of conduct be ‘against the other person’ and, yet s334D(1) provides that it is ‘immaterial whether the domestic violence that constituted the course of conduct against the other person was carried out in relation to another person or the property of another person’.

One of two interpretations can be made of this provision (that is, s334D(1)): either a) acts of domestic violence towards another person (which formed part of a course of conduct against the other person) are not to be taken into account, or b) (which, we say is more likely the intention of the drafters), even if acts of domestic violence forming the course of conduct against the other person were committed against others (e.g., the victim’s parents, children, colleagues), this will be taken into account when determining whether a course of conduct occurred. As many will no doubt be familiar, legislative provisions are typically interpreted in favour of an accused and, as such, this provision, if interpretation ‘b)’ is the intention of the drafters, ought to be redrafted. Something akin to ‘a course of conduct can include acts of domestic violence carried out in relation to a person other than the other person, or the property of another person’. Again, there are problems with even this revision, as there ought to be some sensible nexus between the acts of domestic violence constituting the course of conduct.

This possible interpretive issue aside, the offence is committed when, for example, an accused is both physically and verbally abusive to their partner on one occasion for spending money and is then ‘threatening’ towards their partner’s parents for failing to help curb their partner’s spending habits.

### On ‘Intention’

In Queensland ‘intention’ is defined by common law,<sup>4</sup> and where an offence requires proof of a particular result (here, to coerce or control the other person), the prosecution must establish that the accused had that result as their ‘purpose’ or ‘object’ at the time of engaging in the conduct. Relevantly, then, s23(2) of the *Criminal Code* provides that ‘Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.’ Here, the proposed s334C(1)(c) makes express that the defendant must intend (by their conduct) to coerce or control the other person (as the particular result).

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<sup>4</sup> *Zaburoni v The Queen* [2016] HCA 12.



This means that when engaging in acts of domestic violence (e.g., being economically abusive by removing access to a credit cards or savings account), the accused must have, as their purpose, to control the other person or to compel or force the other to do something (save money) or refrain from doing, something (spend money). In circumstances where the purpose or object was only to save family money (for a holiday, gambling debt, or school fees), then the acts (towards a partner), though meeting the threshold of domestic violence, may not, at common law, meet the requisite intention threshold (that is, the subjective purpose of the accused was not to control the victim, but to save money). Recklessness or foresight of an outcome (i.e., that the accused's actions will control the other person's spending habits) will not suffice.

Although the prosecution is required to prove a course of conduct of domestic violence, the proposed legislation expressly provides that the prosecution need not prove that every act of domestic violence (forming part of the course of conduct) was intended to coerce or control the other person. So that, taking a simplified example, where an accused commits two acts of domestic violence (e.g., is 'threatening' (s334B(1)(d)) and 'economically abusive' (s334B(1)(c)) the prosecution is not required to prove that each of these acts (of domestic violence) were intended to coerce or control the other person. It is difficult to understand how, procedurally, the prosecution will be able to abandon the element of intent for some acts (of domestic violence), but then must, overall, satisfy the element of intention in s334(1)(c). Alternatively, and more hazardous, it seems that a prosecution would stand in circumstances where, (as an example) of nine instances of domestic violence against the other person, one was definitively intended to control the other.

### Reverse Burden Defence

Proposed s334C (10) provides that 'it is a defence for the person to prove that the course of conduct for the coercive control offence was **reasonable** in the context of the relationship between the person and the other person as a whole'. It is anticipated that this reverse burden defence will be relied on and form part of the basis for many trials. Clearly then, this defence sanctions controlling behaviour of another, so long as it is reasonable. It is envisaged that this will be left to the courts which will, rightly or wrongly, take up time and resources of the already busy District Courts. Again, as the offence carries potentially significant penalty, perhaps subsection (10) could be removed, and the prosecution be required to prove that the course of conduct was unreasonable in the circumstances.

### Duplicity and Double Punishment

s334C (6) and (7) allow for an act forming part of the course of conduct to be charged in addition to the course of conduct itself. Further, a person charged with both offences (in the same indictment) can be both convicted and punished for all of the offences charged. Hypothetically then, a single act of damaging property (of another) (wilful damage) can be charged in addition to the act forming part of the offence of coercive control. The *Criminal Code* (and general principles of criminal law) is firmly settled on this approach, by virtue of s16, which reads:

*16 Person not to be twice punished for same offence*  
*A person cannot be twice punished either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof the person causes the death of another person, in which case the person may be convicted of the offence of which the person is guilty by reason of causing such death, notwithstanding that the person*

*has already been convicted of some other offence constituted by the act or omission.*

Clearly, then, the single act of damaging property, cannot be twice punished. The attempts to ensure that cumulative sentences are not imposed for multiple convictions (see proposed s334C(9)), does not cure the prima facie breach of s 16 *Criminal Code*.

It may be worth considering these other offences to be charged alternative counts on an indictment.

## **Jurisdiction**

Of note, this offence must be heard summarily on prosecution election where the accused enters a guilty plea. This may incentivise accused persons to enter a guilty plea to avoid expense, delay, greater penalty, recording of a conviction, and other matters. The hazard is that a person may enter a guilty plea to avoid any of the aforementioned, in circumstances where the interests of justice are not served by them so doing. Those accused who contest the matter (rightly or wrongly) will be committed to the District Court, which is already overborne with matters.

## **The possibility of excessive criminalisation and revictimisation**

The criminalisation of coercive control gives rise to apprehensions over the potential for excessive criminalisation. Overcriminalisation occurs when there is an excessive number of criminal laws or when activities that should not be considered crimes are criminalised. It can have detrimental effects on individuals and communities, including disparities in treatment and prevention approaches, overpolicing of certain populations, and violations of individual rights.

When examining the concept of coercive control, it is crucial to acknowledge the potential implications of overcriminalisation, which gives rise to several significant factors that warrant careful analysis. The question of whether coercive control should be primarily addressed as a criminal problem or through alternate avenues, such as civil orders or social services, necessitates careful consideration.

Overcriminalisation refers to the phenomenon where governments create an excessive number of criminal laws or criminalise activities that should not be considered crimes (Shackelford, 2013). It is characterised by the proliferation of criminal law provisions that are difficult to enforce and often have negative side effects (Krajewski, 2012). Overcriminalisation can occur in various contexts, and the criminalisation of certain behaviour's or populations (Barak et al., 2020; Carvalho, 2020; Collier & Daniel, 2019; Tsai et al., 2019). This can create challenges in the legal system, including difficulties in enforcement and the potential for unjust outcomes.

The potential ramifications of criminalising coercive control should be taken into consideration, as it may result in unforeseen outcomes. For example, the apprehension of legal action may deter individuals who have experienced abuse from disclosing it, since they may be apprehensive about the potential repercussions it could have on their family members who are also implicated in the abusive behaviour. This could potentially impede the timely implementation of non-criminal intervention measures and provision of assistance to individuals affected by the situation. Moreover, it is worth noting that individuals who engage in abusive behaviour may intensify their actions, understanding the potential legal repercussions they face. This escalation of abuse can significantly heighten the level of danger experienced by victims.

The criminalisation of coercive control is intended to protect victims and hold offenders accountable; however, there are concerns regarding the unintended consequences and limitations of such legislation. Coercive control legislation may expand the scope of criminal law to include a vast array of behaviours and actions that fall under the umbrella of coercive control (Brennan & Myhill, 2021). This can result in a rise in the number of people who are criminalised, including those who may not pose a significant risk of injury or who may be victims themselves (Brennan & Myhill, 2021). The expansive application of the law may cause the criminal justice system to be overburdened and divert resources from addressing more severe cases of domestic abuse (Walklate & Fitz-Gibbon, 2019).

Another concern is the possibility of revictimisation. Historically, the criminal justice system has been criticised for its treatment of domestic violence victims, which frequently retraumatizes them during the legal process. The enactment of legislation mandating coercive control may not inherently address these systemic issues and may even exacerbate them. As coercive control frequently entails subtle and non-physical forms of abuse that are difficult to document and present as evidence (Walklate & Fitz-Gibbon, 2019), victims may have difficulty proving its elements. This can cause victims to be disbelieved, their experiences to be minimised, or their cases to be dropped for lack of evidence (Walklate & Fitz-Gibbon, 2019). The proliferation of coercive prosecution policies toward victims of domestic violence has been criticized for potentially further victimizing and coercing victims (Ford, 2003).

Furthermore, coercive control can be difficult to demonstrate in legal settings. The legal system often relies on evidence of specific incidents or acts of violence, rather than recognizing the cumulative effect of a pattern of coercive control (Myhill & Hohl, 2016). This can make it challenging for victims to obtain legal protection or for perpetrators to be held accountable for their behaviour (Myhill & Hohl, 2016). Additionally, victims may face barriers in accessing support and resources due to the lack of recognition and understanding of coercive control within legal and social systems. Additionally the court process itself could be misused to exert further coercive control on the victim by the defendant (Gutowski & Goodman, 2023).

The legal proceedings can impose significant emotional strain on victims, especially in instances involving coercive control. Retraumatization may occur when victims are compelled to repeat their experiences inside a court context. The psychological strain associated with engaging in legal processes may serve as a deterrent for victims, leading to a reluctance in seeking assistance or reporting instances of abuse. In addition, the efficacy of coercive control legislation in preventing and addressing domestic violence is still under debate. Some argue that criminalisation alone may not be adequate to address the complex dynamics of coercive control and that a multifaceted approach, including social support, education, and prevention programmes, is required (Brennan & Myhill, 2021). The criminal justice system may lack the capacity or expertise to effectively address underlying issues and provide victims with the necessary support (Walklate & Fitz-Gibbon, 2019).

It is imperative to acknowledge that the efficacy of coercive control legislation may differ among jurisdictions and is contingent upon the extent to which the law enforcement personnel are adequately trained in the new law, how rigorously the law is enforced, alongside the availability of support services for victims.

In conclusion, even though the purpose of coercive control legislation is to protect victims and hold perpetrators accountable, there are concerns regarding overcriminalisation and revictimisation. It is essential to carefully consider the potential unintended consequences and limitations of such legislation and to implement comprehensive support systems to resolve the

complex dynamics of coercive control. Addressing overcriminalisation requires a critical examination of the criminalisation process and a re-evaluation of the necessity and enforceability of criminal laws.

## The difficulty of the investigations required

One aspect that warrants further examination is the intricate and multifaceted nature of coercive control investigations. The intricate characteristics of coercive control constitute a pivotal element that necessitates additional investigation when contemplating its criminalisation as a policy measure. The phenomenon of coercive control is not a simplistic matter, but rather a complex issue that manifests within nuanced interpersonal relationships. The complex nature of this phenomenon poses a significant challenge in terms of successfully addressing it within the framework of the criminal justice system.

The covert nature of coercive control is a challenge. Unlike physical violence, which may leave visible evidence, coercive control predominantly consists of psychological, emotional, and manipulative tactics, which are more difficult to detect and document (Kelly & Johnson, 2008). These tactics frequently take place behind closed doors and may not be immediately apparent to external observers or even the victims. As a result, gathering sufficient evidence to establish a pattern of coercive control can be difficult for investigators.

Another difficulty is the use of victim testimony. Frequently, coercive control entails forms of maltreatment that leave no physical evidence or witnesses (Kelly & Johnson, 2008). Due to fear, shame, or a lack of awareness that their experiences constitute coercive control, victims may also be reluctant to come forwards or reveal the full extent of the abuse. This can make it difficult for investigators to obtain reliable and consistent accounts of the abuse, which is essential for constructing a successful investigation.

It is possible that individuals who have experienced coercive control may not possess comprehensive documentation that unequivocally substantiates the occurrence of the abusive behaviour. There are other factors that can contribute to this phenomenon, including as the presence of fear towards the abuser, limited knowledge about the nature of the abuse, or the slow and subtle way the control is exerted. It is possible that individuals who have experienced victimisation may not possess preserved records of text messages, emails, or other modes of communication that could potentially function as substantiating evidence within a legal setting. Demonstrating the persistent nature of coercive control becomes a formidable task considering these circumstances.

The inclusion of a "pattern" element is a common requirement in numerous legal definitions of coercive control. Demonstrating a pattern can be a laborious task that may necessitate the accumulation of evidence over a prolonged duration. The potential consequence of this situation is a potential hindrance to the timely implementation of intervention and the administration of justice for victims who are in immediate need of protection. It may also preclude charges being pursued under this particular offence section due to the onerous investigative effort required to show the context, pattern and types of behaviour engaged in.

The implementation of criminal legislation requires the deployment of substantial resources to effectively enforce the law. This encompasses the provision of education and training to law enforcement personnel, legal practitioners, and members of the judiciary in order to enhance their comprehension of the intricacies associated with coercive control (Barlow et al., 2019; Myhill et al., 2023). These resources possess the potential to be significant and might

potentially redirect financial and human resources away from other urgent law enforcement priorities.

In situations of coercive control, the dynamics of power and control can further complicate investigations. By isolating their victims from support networks, monitoring their activities, and manipulating their perceptions, perpetrators of coercive control frequently exert substantial control over their victims (Katz, 2015). This can create an atmosphere of fear and reliance, making it difficult for victims to report abuse or cooperate with investigations. To establish trust and provide a secure environment for victims to share their experiences, investigators may need to employ specialised techniques and methods.

Moreover, the legal and systemic response to coercive control may vary from jurisdiction to jurisdiction. Some legal systems may lack specific laws or provisions that recognise coercive control as a distinct offence, which can have an effect on the investigation process (Katz, 2015). Investigators may need to navigate complex legal frameworks and collaborate closely with prosecutors to ensure that the elements of coercive control are adequately addressed in the charges presented against the offender.

Due to the covert nature of the abuse, reliance on victim testimony, power dynamics, and varying legal responses, it can be challenging to investigate domestic violence offences involving coercive control. Effectively identifying and addressing instances of coercive control requires investigators, prosecutors, and support services to possess specialised knowledge, sensitivity, and collaborate.

## Prosecutorial obstacles to the coercive control offence

The literature indicates that the effective prosecution of offences related to coercive control presents significant difficulties. A recent study conducted by Brennan and Myhill (2021) examined the outcomes of police interventions in cases involving coercive control crimes in comparison to regular domestic abuse crimes. The findings revealed that coercive control crimes present more significant procedural obstacles and exhibit a much lower likelihood of leading to successful prosecutions when compared to common domestic abuse crimes. This observation implies that the process of collecting evidence and establishing the constituent parts of the offence in cases involving coercive control may provide challenges.

The implementation of dedicated legislation to tackle coercive control has been regarded as a favourable advancement in certain jurisdictions. Despite legislating against coercive control in 2004 in Tasmania, very few prosecutions have been commenced (McMahon & McGorrery, 2016). It was noted that since:

*“...their inception they have been bedevilled by problems of overlap and redundancy, difficult and uncertain statutory construction, and the availability of alternative legal strategies for indirectly or directly criminalising the conduct that is proscribed in the offences. These difficulties have contributed to the rarity of prosecutions.” (McMahon & McGorrery, 2016, p. 22)*

By the end of 2019 only some 198 charges had been laid using the legislation, despite being enacted in 2004 (House of Representatives Standing Committee on Social Policy and Legal Affairs, 2021).

In Scotland the *Domestic Abuse (Scotland) Act 2018* provides a distinct offence of domestic abuse, including engaging in a ‘course of behaviour which is abusive’ of a partner or ex-partner. The prosecution service of Scotland outlined the use of the offence:

*In 2019-20, 1,065 charges of engaging in a course of abusive behaviour were reported, accounting for 3.5 per cent of all domestic abuse charges reported. Court proceedings were commenced in 96 per cent of these charges...” (House of Representatives Standing Committee on Social Policy and Legal Affairs, 2021, p. 121)*

In the United Kingdom coercive control has been criminalised since 2015, the offence of controlling or coercive behaviour (CCB) came into force through Section 76 of the *Serious Crime Act 2015*. The stated aim of this new offence was to close “a gap in the law around patterns of coercive and controlling behaviour during a relationship between intimate partners, former partners who still live together, or family members” (Home Office United Kingdom, 2021, p. 5).

The review showed that the number of CCB offences recorded by the police has increased from 4,2461 in 2016-17 to 24,8562 in 2019-20. In 2019, 1,112 defendants were prosecuted for CCB offences (either as the principal or non-principal offence), which is an increase of 18% from the previous year. In each year, the majority of recorded CCB offences (93% to 94%) involved female victims. The conviction rate of those charged was 52 percent. Between 2016-20 there were a total of 55771 CCB offences recorded, over the same period there were only 1723 prosecutions, of these only 907 resulted in convictions (Home Office United Kingdom, 2021). Only three percent of CCB cases were prosecuted, and less than two percent of reported CCB offences resulted in a conviction.

Societal attitudes and perceptions may also exert an influence on the successful prosecution of offences related to coercive control. According to Robinson et al. (2017), studies indicate that there could be a deficiency in comprehension and acknowledgement of coercive control as a type of abuse. This phenomenon could perhaps lead to a hesitancy in pursuing legal action or an inability to fully comprehend the gravity of the transgression.

Moreover, the intricate dynamics of coercive control can provide significant obstacles for victims when it comes to disclosing their experiences and engaging in the legal proceedings. The phenomenon of coercive control frequently encompasses a recurring sequence of manipulative tactics and social isolation, hence creating obstacles for victims in their efforts to seek assistance or disclose instances of abuse (Ford, 2003).

Emotional and psychological abuse are the primary components of coercive control. In contrast to acts of physical violence, these various manifestations of abuse pose difficulties in terms of their documentation and establishment of evidence within a legal context. Victims may lack apparent physical injuries, and the evidence at hand may be textual exchanges, electronic mail, or other modes of communication that are subject to varying interpretations. The assessment of the psychological consequences of such abuse on victims and its alignment with the legal criteria for criminal prosecution may frequently pose challenges for courts.

Coercive control, in contrast to isolated instances of physical violence, is characterised by its protracted nature, often spanning a considerable duration. This implies that a considerable duration may elapse before several victims become aware of their abusive circumstances. Upon



seeking aid or reporting the abuse, individuals may have already experienced considerable harm. The nature of coercive control, which occurs gradually and persists over time, may provide challenges for criminal laws and the investigations that follow in that they often centre around individual, isolated incidents.

When examining these difficulties, it is important to consider the following major aspects. In contrast to criminal offences with material manifestations, such as assault or stealing, coercive control frequently lacks discernible physical evidence. The abuse predominantly occurs inside the emotional and psychological domain, rendering it challenging to substantiate or furnish tangible evidence of such mistreatment. The presence of discernible injuries or tangible evidence may be absent in cases involving victims, so introducing complexities in the endeavour to collect evidence for the purpose of legal prosecution.

The subjective nature of coercive control is frequently dependent on the subjective experiences and perceptions of individuals who have been victimised. The psychological and emotional ramifications of these behaviours might vary among individuals, and the definition of abusive control in one relationship may diverge from that in another. The presence of subjectivity in this context poses difficulties for law enforcement officials, judges, and juries who are tasked with assessing the extent to which a particular case satisfies the requirements for legal action.

Coercive control frequently encompasses the use of psychological manipulation tactics, which may manifest in subtle and elusive manners, posing challenges for detection. Perpetrators employ several strategies, including gaslighting, emotional blackmail, and manipulation through guilt and love, to exert and sustain dominance over their victims. The detection and substantiation of these types of manipulation might pose significant challenges due to their potential lack of discernible external evidence.

In summary, the prosecution of coercive control offences has encountered several obstacles pertaining to the collection of evidence, procedural complexities, societal perceptions, and victim engagement. Although the implementation of dedicated legislation targeting coercive control has been a commendable advancement, further efforts are required to enhance the efficacy of prosecuting such offences. This may entail additional training for law enforcement personnel and legal experts, enhancing knowledge regarding coercive control as a type of abuse, and offering victims with the necessary support and resources to report incidents and engage in the legal proceedings.

## Alternative Approaches

The adoption of trauma-informed approaches is crucial for tackling the issue of coercive control, as it frequently results in trauma for the victims (Dutton & Goodman, 2005; Ko et al., 2008). Individuals who have been subjected to continuous psychological abuse may manifest symptoms such as fear, anxiety, sadness, and post-traumatic stress disorder (Jakovljević & Nkopodi, 2023; Walby & Towers, 2018). The potential consequences of criminalising coercive control without a comprehension of trauma and its ramifications may result in the traumatising of survivors inside the legal framework.

Furthermore, the processes involved in coercive control can be complex and multidimensional. It frequently coexists with other types of abuse, including economic, sexual, and physical abuse (Myhill & Hohl, 2016). Due to this intricacy, it may be difficult to distinguish between the many types of abuse and comprehend the precise effects of coercive control on victims (Katz, 2015). It necessitates an all-encompassing, holistic approach to intervention and assessment that considers the several facets of coercive control.

The intricate characteristics of coercive control indicate that a singular focus on criminalisation may not yield optimal outcomes in addressing this issue. To disrupt the perpetuation of abusive behaviours, it is imperative to adopt a multifaceted approach that encompasses the implementation of rehabilitation and intervention programmes targeting the individuals responsible for the abuse. Although the imposition of criminal penalties is deemed appropriate in certain instances, it may not effectively target the underlying factors contributing to coercive control, such as deeply entrenched behavioural patterns. Moreover, it may not effectively serve as a deterrent against future instances of abusive behaviour.

Various interventions and support services are aimed at confronting the dynamics of coercive control and assisting victims constitute noncriminal responses to coercive control. These approaches emphasise victim empowerment, awareness-raising, and the provision of resources to aid those afflicted by coercive control. Among the possible noncriminal responses to coercive control are the following:

- Intervention programmes are designed to aid victims and hold offenders accountable through counselling, therapy, and education. They provide a secure environment for victims to share their experiences, learn about healthy relationships, and develop regaining control and autonomy strategies (Kelly & Johnson, 2008).
- Support services, organisations and helplines provide victims of coercive control with assistance and direction. They provide information, emotional support, safety planning, and referrals to shelters, legal aid, and counselling services (Wydall & Zerk, 2020).
- Education and awareness campaigns and public education initiatives raise awareness of coercive control, its indicators, and its consequences (Stark & Hester, 2018). These campaigns seek to challenge societal attitudes, foster understanding, and encourage early intervention and support for victims.
- Professionals in disciplines such as law enforcement, healthcare, and social work can receive training to recognise and respond to coercive control. This training equips them with the knowledge and skills necessary to recognise indicators of coercive control, offer appropriate support, and refer victims to appropriate services (Crossman et al., 2015).
- Collaboration between multiple agencies, such as law enforcement, social services, and healthcare providers, can facilitate a coordinated response to coercive control (Barlow et al., 2019). This strategy ensures that victims receive comprehensive support, and that information is effectively shared among professionals.
- Continued research on coercive control is necessary to better comprehend its dynamics, effects, and effective interventions. Thomas et al. (2013) state that research can inform the development of evidence-based practises and policies and contribute to the ongoing dialogue surrounding coercive control.

Notably, these noncriminal responses should be implemented in tandem with efforts to address systemic factors that contribute to coercive control, such as gender inequality and societal attitudes towards power and control in relationships. It is possible to construct a comprehensive and holistic response to coercive control that supports victims, holds perpetrators accountable, and promotes societal change by combining these approaches.



## Conclusions

It has been argued that instead of exclusively depending on the criminalisation of coercive control, a more comprehensive strategy should be implemented to effectively tackle this issue. This approach may involve the utilisation of civil remedies, the utilisation of protection orders, the provision of counselling services, and the facilitation of rehabilitation programmes. This approach has the potential to provide victims a variety of alternatives, enabling them to select the course of action that is most suitable for their individual circumstances.

It is imperative to acknowledge that the importance of tackling coercive control should not be overshadowed by the possibility for overcriminalisation. Ensuring the safeguarding of victims and the establishment of accountability for criminals is of paramount importance. Nonetheless, it is imperative to establish a harmonious balance between the criminalisation of coercive control and the implementation of alternative strategies, such as social services, counselling, and education. This is crucial to maximise the efficacy of coercive control legislation, while simultaneously mitigating any inadvertent repercussions and preventing an excessive strain on the legal system. The efficacy of these tactics may differ depending on the circumstances, and their implementation should be informed by an understanding of local requirements and available resources.

There needs to be more data gathered as to the effectiveness of coercive control punitive sanctions. The assessment of the efficacy of coercive control legislation necessitates the thorough gathering and analysis of extensive data. The data in question encompasses several aspects, such as the reported incidence of instances, the number of successful convictions, and the consequential effects on the victims involved. The data's availability and quality may differ across jurisdictions, posing difficulties in reaching conclusive findings.

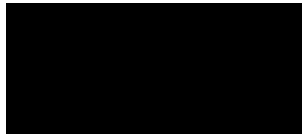
The task of establishing coercive control in a legal setting poses challenges mostly stemming from the psychological and emotional aspects of the abusive behaviour. The potential consequences of this situation include difficulties in obtaining legal convictions, even when substantial proof of abusive conduct is present. It is reasonable to posit that the judicial system may lack sufficient capacity to effectively address the complexities inherent in these circumstances.


There have been concerns regarding the inadvertent outcomes associated with legislation pertaining to coercive control. One perspective suggests that the apprehension of facing legal repercussions may serve as a deterrent for victims to disclose instances of abuse, as they may harbour concerns regarding the potential legal ramifications for their intimate partners or relatives. This has the potential to impede timely intervention and provision of assistance to individuals affected by the situation.


The allocation of resources is a crucial aspect in addressing the criminalisation of coercive control, necessitating substantial investments in legal proceedings and victim support programmes. There is an argument that the allocation of these resources may be optimised by directing them towards prevention, education, and support programmes that have a comprehensive approach to addressing the issue, rather than punitive outcomes.

In conclusion, the challenges related to defining and validating coercive control emphasise the importance of adopting a thorough and nuanced approach when considering the possibility of criminalising this behaviour. The prioritisation of establishing legal protections for victims is

of paramount significance. However, it is equally essential to recognise the complex nature of this issue and explore alternative strategies for its resolution. These may include the establishment of comprehensive support systems, educational programmes, and preventive measures. Furthermore, it is crucial to underscore the importance of collaboration among legal professionals, social workers, mental health experts, and advocacy groups to develop effective solutions for combating coercive control.



Dr. Terry Goldsworthy  
Associate Professor  
Criminal Justice and Criminology  
Faculty of Society and Design  
Bond University  
Email - 

Dr. Matthew Raj  
Assistant Professor  
Law Faculty  
Bond University  
Email - 

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