



Immigration Advice
and Rights Centre

16 March 2021

The Hon. Natalie Ward, MLC
Joint Select Committee on Coercive Control
By email: coercivecontrol@parliament.nsw.gov.au

Dear Chair,

Inquiry into coercive control in domestic relationships

Thank you for the opportunity to provide a submission to the Joint Select Committee's inquiry into coercive control in domestic relationships.

The Immigration Advice and Rights Centre

The Immigration Advice and Rights Centre (**IARC**), established in 1986, is a community legal centre in New South Wales specialising in the provision of advice, assistance, education, training and law and policy reform in Australian immigration and citizenship law.

IARC provides free and independent immigration advice and assistance to vulnerable people in New South Wales. We also produce legal resources such as information sheets and conduct legal education and information seminars for members of the public. Our clients are low or nil income earners and frequently experience other disadvantages including low level English language skills, disability and past experience of torture, trauma and family and domestic violence.

IARC's work has a special focus on the intersection between family violence and immigration law. Over 40% of our legal services are delivered to people on temporary visas experiencing family violence. In 2019/20 IARC provided 1,026 individual legal services to 490 women experiencing family violence.

Our submission on criminalising coercive control

The definition of domestic and family violence, as it applies in immigration law, has developed significantly over the past 20 years. While it was once understood to be generally restricted to physical violence¹, it is now accepted to include conduct amounting to, *inter alia*, controlling behaviour and emotional, psychological and financial abuse².

It is IARC's experience that women from a culturally and linguistically diverse (**CALD**) background, particularly those on temporary visas, experience additional and complex barriers to escaping or reporting domestic and family violence (**DFV**). It is well established that CALD women are less likely to report and may find it more difficult to address or escape, domestic and family violence.³

¹ See *Cakmak v Minister for Immigration & Multicultural & Indigenous Affairs* [2003] FCAFC 257

² See *Sok v Minister for Immigration & Multicultural & Indigenous Affairs* [2005] FCAFC 56

³ Department of Social Services - Hearing her voice: kitchen table conversations on violence against culturally and linguistically diverse women and their children, 2015, page 8.

Threats of visa cancellation, deportation and separation from children are a common tactic used by abusive partners to exploit and control women on temporary visas and prevent the reporting of abuse. This behaviour, no doubt, also serves to establish a fear of police and the legal system.

Other common barriers to escaping DFV for migrant women include language barriers, isolation and not having access to social security, Medicare or housing. These barriers are exacerbated when the victim-survivor has children in her care. IARC's experience is consistent with recent research out of Queensland on the unintended consequences that current DFV legislation is having for CALD women. The report found⁴:

- current justice system responses to DFV can be coercive in themselves, and refugee and migrant groups are at higher risk of carceral interventions due to prejudicial beliefs, as well as the practice of police taking out intervention orders against perpetrators without the consent or knowledge of the victim places the victim at a greater risk of violence;
- refugee and migrant women report being 'blamed and shamed' by their community if they report violence, or if police get involved without their consent, again placing the victim at a greater risk of violence;
- visa limitations often heavily restrict choices made by women on temporary visas, and this could be considered another type of 'systems abuse'. As well as visa limitations, there are restrictions on access to social services such as Medicare, Centrelink and Housing, and even work rights in some circumstances, placing additional burden on specialist services to provide support;
- there is evidence that police end up charging women victim-survivors due to factors such as language barriers, police not using interpreters, police misreading situations;
- systemic racism is clouding the implementation of law, and that justice responses to DV continue to be rooted in masculine institutions, and carry an inherent bias against women; and
- the overall finding of this research found that refugee and migrant women are at a greater risk of systems abuse and other unintended consequences brought about by legislating coercive control.

While in principle we welcome measures that may deter any form of family violence, we are concerned that criminalising coercive control, without also addressing the barriers mentioned above, will only divert attention from the ongoing legal and social issues that prevent our clients from accessing safety and reporting abuse, and it will result in our clients being targeted as perpetrators of DFV, when they are in fact, the victims. We agree with InTouch that "*without implementing a whole of system change, the impact of criminalizing coercive controlling behaviour will be detrimental to its intent*"⁵.

Further, we believe the criminalization of coercive and controlling behaviour without major reform to the current system that prevents and responds to DFV, will not significantly change the considerable barriers to reporting and safety that women on temporary visas experience.

Specialised domestic and family violence services need long term sustainable funding

Our service works closely with a variety of very highly specialised DFV services including women's refuges, local health districts, medical professionals, court advocacy services, other legal services, migrant support services, settlement services, psychologists, social workers and educational facilities. Many of these services refer clients to us for legal advice and assistance, and we work in collaboration with services to provide a holistic support to women who have experienced DFV.

⁴ Maturi J, Munro J, 2020, Should Australia Criminalise Coercive Control?, Asia & The Pacific Policy Society (available at <https://www.policyforum.net/should-australia-criminalise-coercive-control/>)

⁵ InTouch, Criminalisation of Coercive Control, Position Paper, January 2021

The work is highly specialised and without these services, women on temporary visas who experience DFV would be far more likely to be unable to access information and resources and legal advice, particularly about their visa and immigration issues.

It is clear from the work we do, that women on temporary visas who experience domestic and family violence require highly specialised services that are suitably qualified to cater to their unique experience of domestic and family violence and the barriers they face in reporting, and accessing information, safety and legal advice. These services are crucial for women who have experienced DFV, as well as for the effective response to DFV by the police and the judiciary. Women who have experienced DFV who are well supported are better informed, and far more likely to leave violent and abusive relationships and to engage with the police and the judiciary in relation to the DFV.

Better training and education for police

Police response to domestic and family violence for women on temporary visas is inconsistent, and in many cases problematic. Many of our clients over the years have described frustration and a sense of helplessness when reporting family violence to the police. A focus on physical violence over other forms of abuse, and a lack of understanding of the impact of culture on communication, as well as language barriers can result in the victim's fears for safety not being understood or prioritised. Failing to engage professional, gender-sensitive and non-familiar interpreter services results in ineffective communication and/or concerns for confidentiality and privacy. It is not unusual for a perpetrator to call the police and allege they are afraid for their safety, in an attempt to retaliate, destabilise and punish the victim-survivor. Clients have reported being viewed as the perpetrator by police, despite a history known to police of DFV by the perpetrator against the victim. Clients have also reported prejudicial and discriminatory behaviour by police towards them as CALD women.

Successful operation of an offence of coercive control rests heavily upon victims-survivors and the police being willing and able to work collaboratively with one another – a relationship that is often problematic. This requires that officers are well educated on the gender dynamic of violence; to be free from prejudice against marginalised groups; and to move away from assessing an isolated “incident” and rather interpret abuse as a series of interrelated events.⁶

Consequently, it is our recommendation that any changes to the current DFV framework also include a commitment to training and education of the police in their response to DFV-related crimes, and that the training and education focus on the experience of DFV on particular vulnerable groups of women, such as women on temporary visas who experience DFV, and CALD women.

Our previous submissions on DFV

IARC has made two submissions in the last few years on potential changes to the law that affect women on temporary visas who experience DFV:

- Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into family, domestic and sexual violence; and
- Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the practice of dowry and the incidence of dowry abuse in Australia.

⁶ Fitz-Gibbon, Kate; Walklate, Sandra; Meyer, Silke; Reeves, Ellen; Segrave, Marie; McGowan, Jasmine (2021): Submission to Joint Select Committee on Coercive Control_NSW. Monash University. Online resource. <https://doi.org/10.26180/14085650.v1>

In both submissions (**attached**), we made a number of recommendations to expand the definition of family violence under the Migration Regulations 1994 (Cth), and to provide better safeguards and protections, including social services access, to women on temporary visas who experience DFV, as well as provide better and consistent funding to services, legal and otherwise, who provide support to women on temporary visas who experience DFV. We encourage this Committee to make recommendations that the Federal government adopt some or all of the recommendations we made in our submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into family, domestic and sexual violence, which represent practical and realistic measures to decrease the incidence of women on temporary visas, along with their children, from experiencing domestic and family violence.

Please contact **Jessica Schulman** if you would like to discuss any aspect of our submission.

