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LAWYERS

CRIMINALISATION OF COERCIVE CONTROL/ABUSIVE BEHAVIOUR

This has been a hot topic for a while now and rightly so. There needs to be continuing community discussion and education to ensure the balance in any future laws will ultimately be right.

The NSW Government is looking to join the only other state in Australia, namely, Tasmania, to criminalise coercive control. The NSW Law Society has endorsed the Government in calling for its criminalisation.

What is Coercive Control – Dictionary Definition?

Coercive control is a type of domestic violence that manifests in psychological abuse via a pattern of acts: threats, manipulation, surveillance, isolation from friends and family, restricting access to finances and rigid rules with harsh consequences are common examples. It is a crime in some countries including the UK, France, and Ireland.

The proposed laws are still some-time away and will likely be introduced into NSW between February and July 2024, relating to intimate partners.

The salient points of the legislation as currently proposed are:

- Coercion will come under the umbrella heading of “abusive behaviour”.
- Whether the alleged behaviour amounts to being abusive will be determined by the application on an objective test, that is, what would a reasonable person think?
- The maximum period of imprisonment proposed for the worse type of case is 7 years.
- To defend any charge, the defence will have the onus to point to evidence that raises the reasonable possibility that the conduct complained was of reasonably necessary in the circumstances, AND to be found not guilty, the prosecution will have to have failed to negate that reasonable possibility beyond reasonable doubt.

Examples of coercive control include cutting off access to money, installing surveillance devices in the home or on a phone, isolating from family and friends, threatening to withdraw support for a visa or to kill a pet – can destroy a woman who will never experience a physical assault. But many do not recognise themselves as victims.

The NSW Domestic Violence Death Review Team’s most recent report, investigating murders between 2017 and 2019, found 77 of the 78 perpetrators used coercive control on their partner before killing them. This follows earlier research from the NSW Bureau of Crime Statistics and Research in 2016 that found women who experienced emotional abuse were 20 times more likely to subsequently suffer from physical violence.

Caution

Lawmakers must be careful to draw a line between criminal behaviour and a relationship that may be dysfunctional, but not necessarily coercive.

In my view, the proposed offence needs to capture the persistent nature of the offending, that is that the conduct is intentional and persistent, such that an essential element of the offence that must be proved before an alleged offender can be found guilty is that of specific intent. Prosecutors having to prove specific intent is a very important safeguard against capturing those whose actions may fall short of the criminal conduct intended.

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