



Coercive control in family law matters

Date: Monday June 12, 2023

In family law proceedings, coercive control is dealt with as a form of family violence. It can also be addressed in the criminal law system through family violence restraining orders and/or criminal charges.

In this blog, we explore:

common signs of coercive control;

how the courts treat coercive control in family law matters; and

how the courts treat coercive control in a criminal law context.

What is coercive control?

Coercive control is a [form of family violence](#) which is not restricted to acts of physical or sexual abuse. It is a pattern of controlling and manipulative behaviours exerted by one person in a relationship over the other to create an environment of fear, isolation, intimidation, humiliation, and domination.

Coercive control is insidious and often described as the feeling of always walking on eggshells or being held hostage.

What are some of the signs of coercive control?

A perpetrator of coercive control may deploy a variety of tactics to harm the survivor, including but not limited to:

isolating you from your support system;

monitoring your activity and movements;

intimidating you with an aggressive demeanour and abusive language;

denying your freedom and autonomy;

gaslighting you by making you question your experiences and reality;

humiliating you with name-calling and severe criticism;

restricting your access to money and finances;

forcing you to take care of all the domestic duties;

manipulating your children, friends or family to turn against you;

shaming aspects of your health and body;

demanding sexual acts from you; and

threatening the well-being of yourself, your children or your pets.

What is the impact of coercive control?

As well as the more immediate effects of coercive control mentioned previously, survivors suffer serious and prolonged damage to their mental health and emotional well-being. At its worst, coercive control erodes the survivor's capacity to resist and escape the

abusive relationship, increasing the risk of both serious physical injury and, in some cases, ultimately death.

What does the law say about coercive control?

Coercive control in family law parenting matters

In relation to parenting matters, there is a legal presumption that both parents have [equal shared parental responsibility](#) for their child. This means both parents will share major long-term decisions about their child in relation to medical, religious, and cultural matters, as well as their child's education and living arrangements.

However, Section 61DA of the Family Law Act 1975 (Cth) ('the Act') states the presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with a parent of the child) has engaged in abuse of the child or family violence.

Pursuant to Section 4AB(1) of the Act, family violence includes any behaviour that 'coerces or controls' a family member. Accordingly, you may be able to obtain an order from the Family Court for sole parental responsibility of your child in the event you have suffered coercive control at the hands of the perpetrating party.

The Act also affords protection to [children in the determination of their best interests](#). Section 60CC indicates:

'the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence'

is the Court's primary consideration and carries greater weight than the other primary consideration for 'the child to have a meaningful relationship with both of the child's parents'.

Therefore, you may be able to obtain a [parenting order](#) from the Court on the basis of protecting the child from coercive control.

Coercive control in family law property matters

In relation to property matters, the Court is required to determine the contributions made by the parties as set out in Section 79(4) of the Act.

The decision of *Marriage of Kennon* (1997) 22 Fam LR 1 outlined circumstances where family violence perpetrated by one party made the contributions of the other party more

'arduous' and the family violence had a 'significant adverse impact' on that party's contributions.

Consequently, family violence (which includes coercive control) can be taken into account by the Family Court when determining orders for the distribution of property. However, the Court in Kennon stated this consideration would apply in exceptional cases.

Coercive control and criminal law

In Western Australia, survivors of family violence can apply to the Magistrates Court for a family violence restraining order ('FVRO') protecting themselves, and potentially their children, from the perpetrator.

Pursuant to Section 5A of the Restraining Orders Act 1997 (WA), family violence includes any behaviour that 'coerces or controls' a family member. The Court can make an FVRO if the perpetrator has:

committed family violence against you and is likely to commit family violence against you in the future; or

you have reasonable grounds to apprehend that the perpetrator will commit family violence against you.

Another response in Western Australia to family violence is the criminal offence for persistent family violence in Section 300 of the Criminal Code Act Compilation Act 1913 (WA).

This offence applies where three or more family violence offences are committed by the perpetrator against you within a ten-year period. Some family violence offences covered by the Section 300 offence include:

threats;

stalking;

distribution of an intimate image;

suffocation and strangulation;

wounding and similar acts;

various assault offences; and

statements or acts creating a false apprehension as to the existence of threat or danger.

While coercive control itself is not a separate offence in Western Australia or New South Wales, criminalisation is being considered by both states.

An Australian jurisdiction which has dealt with coercive control is Tasmania, which criminalised economic abuse and emotional abuse or intimidation in Sections 8 and 9 of the Family Violence Act 2004 (TAS). Other international jurisdictions, such as England, Wales, Ireland, and Scotland, have also criminalised coercive control.

Getting help from a family lawyer

If you have separated from your partner, or you are considering separation, and you have concerns about coercive control and family violence, there are options to seek advice and assistance.

Your first priority is your safety and the safety of your children. Australia-wide support services are available with:

- [Relationships Australia](#); and
- [White Ribbon Australia](#).

If your safety, or the safety of your children, is at imminent risk, you should contact police on [000](#).

At Meillon & Bright, we are able to assist you to obtain parenting orders and/or financial/property orders to protect you and your children and secure some financial independence.

The information contained in this article is of general nature and should not be construed as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.