



## Reproductive Coercion and Legal Recognition: Views of Domestic Violence Support Workers and Lawyers

**Heather Douglas**

The University of Queensland, Australia

**Nicola Sheeran**

Griffith University, Australia

**Laura Tarzia**

The University of Melbourne, Australia

### Abstract

Reproductive coercion is increasingly recognised as a common part of women's experiences of domestic violence. The term refers to behaviour that aims to compromise a woman's control over her reproductive choices. It includes coercing a woman to become pregnant or to terminate a pregnancy and sabotaging contraception. There is no Australian research exploring how domestic violence support and legal services understand and respond to reproductive coercion when it is raised. Drawing on focus group discussions, this article questions the use of the terminology 'reproductive coercion' suggesting that 'reproductive abuse' may be more accessible. The article finds that the response to reproductive coercion in the legal context may be similar to sexual violence allegations, particularly regarding difficulties associated with reporting and with the victim being believed. This connection is worthy of further investigation. The article concludes that legislative change may improve the recognition of reproductive coercion.

### Keywords

Domestic violence; family violence; reproductive coercion; sexual assault, law; coercive control.

*Please cite this article as:*

Douglas H, Sheeran N and Tarzia L (2020) Reproductive coercion and legal recognition: Views of domestic violence support workers and lawyers. *International Journal for Crime, Justice and Social Democracy*. Advance online publication. <https://doi.org/10.5204/ijcjsd.1704>

Except where otherwise noted, content in this journal is licensed under a [Creative Commons Attribution 4.0 International Licence](https://creativecommons.org/licenses/by/4.0/). As an open access journal, articles are free to use with proper attribution.

ISSN: 2202-8005



## Introduction

Reproductive coercion (RC) is a behaviour that compromises a woman's reproductive autonomy. It includes compromising her ability to use, or have access to, safe contraceptive methods or forcing her to have a termination (Clark et al. 2014). In a relationship context, perpetrators of RC draw on physical, psychological, sexual, economic and other strategies to maintain power and control over the woman's reproductive choices (Miller and Silverman 2010). For example, a woman may be threatened with physical harm if she does not become pregnant, continue a pregnancy, or terminate a pregnancy, or she may be psychologically intimidated to prevent her from terminating a pregnancy. Behaviours associated with RC include sabotaging birth control such as throwing away contraceptive pills, forced unprotected sex, intentional misuse of condoms or financially preventing the woman from obtaining forms of contraception (Price et al. 2019). RC is often associated with a broader pattern of domestic violence (DV) and coercive control (Marie Stopes Australia 2018: 7), but the role of RC in the context of DV is understudied (Fleury-Steiner and Miller 2019). Research drawing on Australian counselling agency data suggests that the experience of RC is common in relationships where there is DV (Price et al. 2019). While some research has considered whether current legal definitions of DV recognise RC (Douglas and Kerr 2018), no research has explored how DV support and legal services (which provide information and advice to victims/survivors of DV as part of their role) understand and respond to RC when it is raised. Drawing on focus group discussions, this article considers this question.

## Background

In Australia, DV is increasingly framed as coercive control (Council of Australian Governments 2019: 56), and Stark's (2007) formulation of coercive control has been influential. Stark identified that an abuser's exercise of coercive control involves the use of a variety of methods including physical violence, threats, deprivation of basic needs, surveillance, degradation, isolation and exploitation (Crossman and Hardesty 2018: 203; Douglas, Harris and Dragiewicz 2019; Stark 2007: 209). Stark also recognised that coercive control is gendered and relies on vulnerability arising from sexual inequality within the broader society (2007: 229; Stark and Hester 2019: 88). RC is identified as a significant problem that often co-occurs with other forms of DV and may be part of coercive control (Price et al. 2019).

While RC may be just one aspect of the pattern of DV experienced by a person, it is useful to examine it discretely as it may raise specific issues for how to appropriately respond to that aspect of the abuse (Douglas, Harris and Dragiewicz 2019: 555). In their analysis of the data held by a statewide counselling service in Queensland, Australia, Price et al. (2019) found a 21 per cent co-occurrence of RC and other forms of DV in Queensland women experiencing an unplanned pregnancy. International population estimates place the prevalence of co-occurring RC and other forms of DV at between 9 and 40 per cent depending on the population studied (Black et al. 2010; Clark et al. 2014; McCauley et al. 2014; Miller and Silverman 2010; Moore, Frohwirth and Miller 2010; Nikolajski et al. 2015; Rosenbaum et al. 2016; Silverman and Raj 2014). In an American study, Fleury-Steiner and Miller (2019) interviewed 172 women shortly after a DV protection order hearing. They found that one in four of them had experienced RC in the context of DV (including birth control sabotage and pregnancy pressure). Similarly, Douglas and Kerr (2018) interviewed women who had experienced DV and had engaged with the legal system to respond to violence. Interviews with the women revealed experiences of RC, including forced birth control use, removal of condoms to promote pregnancy and denial of access to contraception as part of a wider pattern of abuse and coercive control. Their study also explored the identification of RC in reported legal cases, which they found was extremely rare (Douglas and Kerr 2018).<sup>1</sup>

Given the frequent co-occurrence of DV and RC, or of RC as an integral part of the pattern of coercive and controlling behaviours underpinning DV (Grace and Anderson 2018; Moore, Frohwirth and Miller 2010), many women seeking advice and information from DV support services and specialist legal services are likely to have experienced RC. A disclosure of RC may have implications for safety planning, risk assessment and legal responses. Little is known, however, about how workers in these contexts identify and respond to disclosures of RC. Most research about RC to date has focused on healthcare settings

(Fleury-Steiner and Miller 2019; Tarzia et al. 2019a; Tarzia et al. 2019b). One US study explored the extent to which DV advocates proactively and/or reactively addressed RC with women accessing DV victim services (McGirr et al. 2017). This study found that despite low levels of discomfort when discussing topics related to RC and minimal barriers to discussing it, few advocates regularly addressed the topic. McGirr et al. (2017) recommended universal education to every client, with discussions covering typical coercive behaviours, emergency contraception, pregnancy testing, contraception that can be used without a partner's knowledge as well as checking that pregnant survivors feel safe to decide about their pregnancies. As little is known about how support workers and lawyers respond to disclosures of RC we explore the issue in the following sections of this article.

## **The Focus Group Study**

### ***Study Context***

This research was conducted in Queensland and Victoria. In recent years, significant legal and other reforms in response to two major inquiries about DV have occurred in both states (State of Victoria 2016; Not Now, Not Ever 2015). Two of the most common legal applications women make in the aftermath of DV are for civil protection orders under state protection order law and child residence and contact orders under Commonwealth family law (Dragiewicz 2015: 127). The definitions of DV in state protection order legislation in both Queensland and Victoria and in the Commonwealth *Family Law Act 1975* are comparable. The definitions in state protection order legislation include physical and sexual abuse, emotional and psychological abuse, economic abuse and coercive control that occurs in certain relationships including intimate partner relationships (*Domestic and Family Violence Protection Act 2012* (Qld), s8; *Family Violence Protection Act 2008* (Vic), s 5). The definition of DV in family law matters is similar to, although slightly narrower than, the definition of DV in Queensland and Victorian state protection order legislation. The *Family Law Act 1975 (Cth)* (section 4AB) includes assault, sexual assault and abuse, stalking, derogatory comments, intentional destruction of property, destruction of an animal, unreasonable denial of financial support and coercive control. Notably, these legal definitions do not specifically identify RC as a form of DV.

Douglas and Kerr (2018) argued that civil protection order and family law legislation probably already encapsulate most forms of RC as an aspect of coercive control. However, published cases and training materials for judicial officers, lawyers or police rarely identify RC. While current legal definitions of DV applicable in Victoria and Queensland may incorporate RC behaviours, we know little about how support workers and lawyers are responding to disclosures of RC in the context of providing legal information and advice about DV.

### ***Approach and Methodology***

To explore how DV support workers and lawyers are responding to disclosures of RC, the researchers undertook focus groups with service providers based in non-governmental services that assist women with DV. The researchers undertook six focus groups corresponding to a specialist DV legal service, a specialist DV service for culturally and linguistically diverse women and a general DV support service in both states (see Table 1). The researchers sent invitations and an information sheet about the project via email to service directors inviting participation in the focus groups. Potential service directors contacted the researchers if they wanted their service to participate in the focus groups. Directors of services then invited participants to the focus group. Each focus group ran for approximately 60–90 minutes. The focus groups were audio-recorded and transcribed. Each of the authors manually coded the transcripts to identify themes using Braun and Clarke's (2006) thematic analysis approach and then crosschecked for consistency.

Thirty-eight service providers participated in six focus groups corresponding with the three services in Melbourne and three in Brisbane. All the focus group participants were women. Of the participants, 26 worked as social workers or counsellors, 11 worked as lawyers, and one worked as a paralegal. All the participants delivered services to women who have experienced DV. The researchers ensured the

confidentiality of participants' names and employers. References to comments made in the focus groups identify the focus group number (see Table 1). Legal service participants were primarily legally trained, although one paralegal (a trainee lawyer) and three social workers employed at the legal services also participated in the legal service focus groups. Support service participants were all trained counsellors or social workers.

**Table 1. Focus group details**

FG #	State	Type of service	Number of participants
1	QLD	Domestic violence (general)	7
2	QLD	Legal	5
3	VIC	Legal	9
4	QLD	Domestic violence (CALD/immigrant)	6
5	VIC	Domestic violence (CALD/immigrant)	5
6	VIC	Domestic violence (general)	6

We recognise that there are limitations in the approach we followed in this study. The research reflects the views and experiences of a small group of social workers, lawyers and a paralegal worker who work with women who have experienced DV (Dingwall 1997: 52, 54). The workers we spoke to all work in specialist DV services in two major Australian cities. Given different legal definitions in state protection order legislation, it is unclear to what extent the findings might be relevant to other states. However, by moderating a discussion with service providers who work with DV survivors, the researchers were able to gain insight into how current law and legal responses are perceived as relevant and applicable to RC perpetrated in the context of DV, and how they might better respond in the future. In the following sections, we discuss three interrelated themes about law and RC<sup>2</sup> identified from the focus groups: understanding and legislating RC, strategies and challenges around naming RC in legal processes, and the impact of trauma on the disclosure, consistency and credibility of the evidence. In the final section of this article, we conclude with some suggestions for the future.

### *Understanding and Legislating Reproductive Coercion*

We asked focus group participants how they understood RC. Often participants understood the concept very broadly. For example, one focus group participant commented:

It can include anything that might be from forced sexual violence to stopping someone from using different forms of contraceptive, tampering with contraception, also forcing someone to have abortions if they don't want to have abortions and stuff like that. Anything that's controlling someone else's autonomy and their choices around their own—I would also say generally sexual health but also mainly regarding pregnancy. (FG 2)

Focus group participants commonly viewed RC as indistinguishable from sexual assault/violence. This view of RC is not surprising given that women's experiences of RC are often enmeshed with their experiences of sexual violence (Bagwell-Grey, Messing and Baldwin-White 2015; Tarzia et al. 2020), and both experiences impact very directly on women's bodily autonomy. However, some participants did differentiate between the two experiences. For example, one worker said: 'Sometimes [RC] exists without the sexual assault. The sex can be consensual, but not the outcome' (FG 5), and another commented 'not forcing her to have sex ... but telling her, you need to have a baby ...' (FG 4).

The overlap between RC and other forms of DV, beyond sexual assault/violence, was identified by some participants. For example, isolation and financial abuse are forms of coercive control associated with DV (Stark 2007), and participants highlighted the effect of isolation tactics and financial control in limiting the woman's reproductive choices:

Often, he'll try to isolate her so that she doesn't go to antenatal appointments, so she can't go to the GP, she can't talk to anybody, and will try and keep her in the home isolated from family and friends. (FG 6)

... the coercion extends way beyond the reproductive behaviours, but he also forces her to be reliant on him for all of those things, for medical care, for transport to get to the medical care. So, she's beholden to him for her basic human rights and for everything. (FG 1)

As observed earlier, there is increasing acceptance in Australia that DV should be understood as a form of coercive control (Council of Australian Governments 2019: 56; Douglas, Harris and Dragiewicz 2019: 553). Legal service participants explicitly applied the lens of coercive control to their understanding of RC. For example, '... reproductive coercion ... it's usually a part of a much greater dynamic of a lot of control, a lot of power over the person ...' (FG 3); RC is 'quite common, I found, in domestic violence, but it's always just been an aspect of the broader control' (FG 2).

We asked participants whether the definitions of DV in protection order and family law legislation encapsulated RC. Generally, participants considered that although the legislation does not explicitly identify RC, references to coercive control in the definitions are broad enough to cover RC: 'I think the definitions are not bad' (FG 3). Specifically related to the definition of DV in the *Family Law Act 1975*, one participant commented: 'the definitions are pretty well written in the *Family Law Act* ... they invite you to look expansively ... at family violence. I think that that's a good approach to have' (FG 3).

Several participants pointed to the educative or expressive function of the law. One participant commented: '... it's the balancing act of whether the law can act ... in an educative way ... the law is powerful, and if you say in the law "it's recognised, this is domestic violence", they could go to their counsellor and say this is what's happened' (FG 2).

This point has been identified by scholars working to draw attention to other emerging forms of gendered harm, such as image-based abuse (Henry and Powell 2016: 411; McGlynn and Rackley 2017: 535). Some focus group participants thought that it would be useful to include an example of RC in the legal definitions of DV in both the protection order and family law legislation: 'the list of examples is good because it's [RC] just another form' (FG 4). A participant suggested that including an example of RC: 'at least gives the client the option and maybe the prompt that this thing that happened was domestic violence, and then she can make a decision about that' (FG 2).

While there was general support in focus groups for the inclusion of an example of RC to sit alongside the definition of DV in protection order and family law legislation, some participants were sceptical about referring explicitly to the term 'reproductive coercion' within any legal definition of DV. The question of how to frame gendered harms in legislation in a way that improves legal recognition by support workers and legal actors but also reflects women's experiences of the harm has been the subject of much discussion, especially in the context of criminal law. For example, Henry and Powell (2016: 411) and Douglas (2015: 437) have questioned what kinds of laws are appropriate to respond to DV, and what kinds of laws can capture the harms associated with specific forms of abuse? While individual behaviours such as sabotaging contraception were readily recognised by participants in our study as a form of DV, most agreed that the terminology of 'RC' is not yet widely used in the DV support sector or by women who have experienced it. One participant described RC as a 'tricky term' (FG 6), and another participant said that our request to her organisation to participate in a focus group about RC was the first time she had seen the term:

... to tell you the truth, this is the first time I see ... I mean, we talk about forced sexual assault, unwanted abortion, forced IVF babies and all this stuff, but never really saw reproductive coercion. This is the first time. (FG 5)

Generally, participants preferred that current definitions of DV in legislation should provide 'explicit' behavioural examples of RC, as this approach would connect better with women's experiences. One participant commented that RC is:

kind of a fancy word. That's what I see it as. It's quite fancy terms ... So, I think [you'd be] like, oh that's not me. Whereas if you had those explicit examples of tampering with contraception ... That could really—someone could read that and be, like, oh my God he did that to me. (FG 1)

Overall, participants agreed that current definitions of DV in protection order legislation in Victoria and Queensland and federal family law legislation could be interpreted to encapsulate RC as an aspect of coercive control. However, there was general agreement that examples would improve the recognition of RC as a harm, both for women who experienced it and those working to support them.

Researchers and practitioners outside the legal field have suggested that the word 'coercion' contributes to the lack of clarity (Tarzia et al. 2019b: 1403). Tarzia et al. (2019b: 1403) propose that 'reproductive abuse' may be a more appropriate term. Given participants' reference to the terminology of RC as 'tricky' and 'fancy', 'reproductive abuse' may be a more accessible description to use in engaging both with clients and with legal processes (Bagwell-Gray, Messing and Baldwin-White 2015: 332). The terminology of 'reproductive abuse' is broad enough to cover not only forced pregnancy through sexual assault or contraceptive sabotage but also forced abortion or assaults that are intended to cause miscarriage.

### *Strategies and Challenges of Naming Reproductive Coercion in Legal Processes*

When support workers and their clients identify RC as part of the experience of DV, questions arise about whether, and how, that information should be used in legal applications and court proceedings. Participants consistently stated that when supporting victims of DV to access legal responses, they focus on helping the victim get what she wants and needs in the least traumatic way:

Let's make sure it's good evidence or good grounds, so you get what you need, get what you're asking for, and make sure that you're safe. That is our focus; our focus is all about safety and getting an instrument that protects her and children if she wants it. (FG 2)

Participants generally agreed that the decision whether to include specific allegations of RC in a legal application is often a strategic question and depends on the woman's goals. Some participants observed that where there is other evidence of DV available, the woman might choose not to include the experience of RC in her application. Some participants mentioned that one of the roles of the lawyer is to minimise risk to the client, and this might mean that together they decide not to disclose certain allegations to the court (or the abusive partner) in the context of negotiation towards the safest conditions for a protection order or child contact. Some participants described this decision-making as a 'cost-benefit' analysis:

Participant 1: Will it make any difference? Because will the magistrate actually get it that she's been pregnant for the last seven years constantly. Will they actually—will that make any difference if she puts it in that application?

Participant 2: It's really a cost-benefit analysis over the cost to the woman of disclosing it ... (FG 1)

While ultimately the woman will decide what to include in a legal application, participants explained that as support workers and lawyers, they give clients information and advice about which of their experiences of DV need to be identified in an application to best assure its success. Some participants said that, in their experience, judicial officers might disregard allegations of RC:

... we know from attending court that there are certain things that they will maybe disregard or there are certain things that they really want to see ... I would say that reproductive coercion is not one of those accepted evidential [matters that] get you over the line. (FG 1)

Some thought that judicial officers might misunderstand claims of RC: 'I think the other side of reproductive coercion for us is that a lot of people do not get it, do not understand, including other services like police, the courts' (FG 1). One worker discussed a similar point observing that 'physical violence ... bruises, cuts, scratches, photos, videos' (FG 1) were the things magistrates needed to make protection orders. This view is consistent with previous research that has highlighted that magistrates often focus on physical violence and visible injury when determining whether DV has occurred (Douglas 2015; Lynch and Laing 2013).

As noted earlier, most participants understood RC as a subset of, or at least very strongly related to, sexual violence. This understanding may explain why several participants drew on their experience of including allegations of sexual violence in legal applications when talking about reactions to allegations of RC in the legal process. Generally, participants agreed that the courts, abusive partners and their lawyers take allegations of sexual assault particularly seriously, and therefore would have a similar response to allegations of RC. One of the key concerns raised by participants was that if RC or sexual abuse was alleged, abusers would be more likely to contest or deny it than other forms of DV. One participant commented: 'when you start putting in a really serious allegation, it's oh, I never did that, I'm going to fight this. Then they've got to go through that system and be cross-examined' (FG 2). Another participant said:

I know that we're very cautious about putting allegations of sexual violence in protection order applications because responses have not always been positive to those allegations being in protection order applications ... it does not always end up well for clients, particularly in the hearing space if she's cross-examined by the perpetrator. (FG 1)

The avoidance of re-traumatisation resulting from disclosure in legal applications and subsequent cross-examination was one of the main reasons participants identified for not including sexual abuse, and as a corollary RC, in legal applications:

Participant 1: I'm always mindful of not wanting the clients to be further traumatised, but it's a very complicated area.

Participant 2: Also, you'd have to be thinking around if they do raise it, if the matter does go to trial, you can be cross-examined about it as well. (FG 2)

Some participants pointed to the role of the judge as the gatekeeper who determines what evidence is legally 'persuasive' and 'relevant', and thus, whether it can be heard in the court. Several participants identified that even when women wanted to name RC in legal proceedings, it was sometimes difficult to identify evidence that would meet the threshold considered persuasive or relevant in the legal process. A participant explained:

In terms of the ... reproductive coercion is that it's difficult for the client to explain it in a way that we can include that in the affidavit, because often we will hear, he didn't want me to have the baby. You can't—it's an opinion, so how do you put that in? So, you have, well, how do you know that he didn't want to have the baby? (FG 3)

Further, participants mentioned that women had, usually, already separated from the perpetrator when they disclosed RC. Thus, by the time they sought legal advice and information, the RC (and separation) had occurred months or years in the past. According to some participants, in this context, magistrates will not find the woman's testimony about RC 'relevant' to questions about her ongoing and future safety: 'you've

got this child; it was the result of a violent incident. How much does the court care about that? I don't know' (FG 2), and:

I've particularly had matters where we'll have a client saying, 'oh, you know, he wanted me to have an abortion' ... Those sorts of arguments are rarely used, simply because it's not likely to be very persuasive to the magistrate, because, well, he said that however many years ago, right now is a different story. (FG 3)

One participant lawyer reported that a magistrate found that her client's evidence of RC was 'historical' and therefore not relevant when the lawyer tried to introduce it. This participant said the exclusion of evidence on the basis that it is 'historical' is common in the family courts where cases might take a long time to come before the court: 'the notion of family violence being historic is still very prevalent in the decision-making in the family law courts' (FG 3).

Despite the reluctance of courts to hear about RC incidents that occurred in the past, another legal service participant explained that the history of DV, including RC, may be important in establishing a pattern of coercive and controlling behaviour and a sense of ongoing threat for the woman who is seeking orders. She said that she had challenged a reference made by the abuser's lawyer to past abuse being 'historical'—implying the abuse was not legally 'relevant'—in a recent case. (FG 3)

Participants, especially legal service participants, identified that they were often strategic in determining which aspects of the victim's story to retell in the court process. While the motives for leaving some parts of the victim's story out were based on the best interests of the victim—aiming to avoid the re-traumatisation of cross-examination and secure the client's best outcome—there are risks in this approach. Burgin (2019; see also Craig 2018: 9–12) explored this issue in the context of rape trials and showed how women victims of rape and sexual assault could lose control of their narrative of events. There is a long history of feminist research pointing to the law's disqualification of women's experience and knowledge (Smart 1989: 34–35). More generally, the assumption that RC will attract these problems may contribute to silencing complaints about it and inhibiting the development of knowledge about it.

### *The Impact of Trauma on the Disclosure, Consistency and Credibility of Evidence*

Some participants identified that clients did not usually disclose information about RC in initial interviews. Many participants drew on their experiences of the patterns of sexual assault disclosure from previous clients when they talked about the likelihood of clients' delayed (or lack of) disclosure of RC. Particularly, participants identified the need to build trust over time before clients were able to make highly personal disclosures:

... our clients initially, they—particularly for sexual abuse, they will not identify that at an early stage ... That will come up later, and ... that tends to take a bit of trust between the lawyer and the [client] ... (FG 3)

I feel like sexual violence and reproductive coercion are the most under-reported things that are then going to come out later in your relationship with that client. (FG 1)

Participants reported that the type of interview context has implications for whether the victim/survivor will disclose more intimate and personal experiences of DV. For example, one participant stated that if it is a one-off meeting at the courthouse to give basic advice, there is less opportunity for a relationship to be built and thus likely to be less disclosure of more intimate details of DV. In contrast, a worker who can build a relationship with a client over multiple meetings may develop enough trust to promote disclosure:

... it depends on the situation in which we're dealing with [clients]. I mean, if it's a duty lawyer you've got 15 minutes with them. If it doesn't come up, you don't really have that opportunity in that sort of situation. But if you've got an ongoing casework relationship, I

think there's more opportunity to ask those questions ... You've got to build up that trust a little bit. (FG 2)

Research has suggested a relationship between the disclosure of RC and the development of trust over time. For example, in their study of data held by a pregnancy counselling service (Children by Choice), Price et al. (2019) found that certain disclosures were more likely to be made with repeated contact with the service. Research has also shown that shame and self-blame are some of the reasons why sexual violence is less likely than other forms of DV to be reported (at all) or to be reported later in the recovery journey (Heenan 2004; Tarzia 2020; Wall 2012). Shame and self-blame may also influence women's reluctance to reveal RC, which underscores the need for trust and time to facilitate disclosure.

In the legal context, however, participants highlighted that delays in disclosure could affect the way the victim's credibility is perceived. Some participants suggested that perpetrators and their lawyers may exploit the delayed disclosure. For example, early in her interactions with a support service, a woman may apply for a protection order, and there may not yet have been any disclosure of RC. An application for family law child contact may come later. By then, the worker's relationship with the client may have developed, and more intimate details of the abuse, like RC, may be disclosed. However, participants suggested that there may be risks to the woman in including the new disclosures in the subsequent legal proceedings. One participant commented:

... any other versions of those events can be very fertile grounds for cross-examination as to credibility. What I'm talking about is, if there is a version, for example, that's been given to the police, and then there is another version of the relationship that's in a domestic violence protection order, then one of the things that the defence will do is say, well you never mentioned this in your domestic violence order application. As a way of suggesting to whoever's deciding these matters, the jury, that one of these versions is inaccurate, and which of those versions is it? (FG 2)

Another participant in this focus group commented: 'the law is around consistency, and any inconsistency is questioned' (FG 2). However, this assumption that inconsistency is akin to fabrication or lack of reliability clearly fails to account for the need for trust to be developed before intimate details of the abuse are disclosed.

Participants identified that the focus on consistency also fails to account for the effects of trauma on memory. As one participant commented: 'A hallmark of trauma is not to be able to tell your story in the same way twice' (FG 3). Memories may be disorganised, and it may be too stressful for the woman to talk about everything at once:

Because it's not something that you want to try and just get all the information at once. Because also in the same way with trauma memories; they're not necessarily going to remember everything you said afterwards if they've just spoken about all the awful things they've experienced. You've got to do it in little chunks. (FG 2)

A participant identified the need to explain to lawyers for the other party and judges the reasons why a story might have changed over time:

you get a lot of push back from the other party, and from the courts, and they'll just say, well, you didn't raise it then ... even though you might say, well, the fact of the matter is yes ... she is raising it now because she's in a position to raise it now because she has been getting mental health supports, and because ... she's safe. (FG 3)

A legal service participant identified the lack of training and understanding of trauma-informed practice as a barrier to understanding the journeys of disclosure of DV generally. For example: '... I think it comes

back to—particularly with judges pushing back on that inconsistency, is they're not trauma-informed. They're not getting the training about the effect of family violence' (FG 3).

Several participants observed that survivors' narratives of their abuse were sometimes not coherent, and that trauma can affect survivors' narratives. DV is, of course, a traumatic experience (Salter et al. 2020: 10), and research suggests that the effects of trauma may be particularly heightened in the context of sexual abuse within an intimate relationship (Kessler et al. 2017: 12). Given the intimate nature of RC, it may be, as our participants suggest, a similarly traumatic experience for women. The effects of trauma on memory and narrative are well-recognised (Chivers-Wilson 2006; Hepp et al. 2006; Mott et al. 2015). Memories associated with traumatic events are not stored in a verbal, linear, narrative form but as dissociated images and sensations (Herman 1997). Loss of memory or uncertainty about the trajectory of an experience is also a common effect of trauma as is delaying the retelling of a traumatic event (Epstein and Goodman 2019; Herman 1997; Segovia, Strange and Takarangi 2015). An early complaint, with a linear narrative demonstrating a clear recollection of events, is expected from the legal process, and this is at odds with the effect of trauma.

The evidentiary problems that have obstructed rape and sexual assault claims may also affect complaints of RC. For example, research has identified rape myths, including that false allegations are common and delayed reporting is suspicious (Smith and Skinner 2017: 443–444; Temkin and Krahe 2008; Tuerkheimer 2017). Our focus group participants suggested that similar myths seem to be influencing considerations about how claims of RC are perceived within legal processes.

## **Discussion and Conclusion**

Research now recognises that RC negatively affects mental health, sexual and reproductive health as well as maternal and child health—and that it is a common tactic of coercive control in the context of DV (Marie Stopes Australia 2018: 7, 11). In seeking information and advice about their options, survivors of DV may disclose RC to support workers and lawyers. Despite its small scale, this initial study provides valuable information to inform future research and practice. Given the findings, it would be interesting to extend this work to jurisdictions that do not include coercive control within the definition of DV in protection order legislation.

This study explored how DV support and legal services understand and respond to RC when it is raised. While RC was identified as a relatively new term for participants in this study, there was a generally shared understanding among focus group participants about the kinds of behaviours that commonly underpin RC, with many participants understanding it as an aspect of coercive control (Stark 2007). Consistent with this view, many participants thought that RC was encapsulated in legislative definitions of DV in protection order legislation and family law legislation applicable in Victoria and Queensland as they include a reference to 'coercive' or 'controlling' behaviour.

Consistent with other research (e.g., Tarzia et al. 2019b: 1403), some participants suggested that the terminology 'reproductive coercion' was too complex and not clearly connected to women's experiences. Consequently, participants did not support the terminology of 'RC' being included in the legislation. However, several participants thought it would be helpful to include a specific example of behaviour commonly associated with RC alongside the definition of DV in the relevant legislation. This addition may help women to identify their experience of RC as an aspect of DV and would be consistent with the approach taken in the reproductive health context (Cappelletti, Gatimu and Shaw 2014). Many participants viewed sexual violence and RC as closely linked. While this may often be the case, RC is not always underpinned by sexual violence (e.g., forced abortion may be preceded by consensual sex). This distinction must be clear in any training and information developed on this topic.

Participants identified that disclosures of RC, like sexual assault, are unlikely to be made until trust is developed over time with a support worker or lawyer. However, by the time claims of RC reach the legal

realm, again, similar to claims of sexual assault (Temkin and Krahe 2008), they may be determined to be 'historical' and thus irrelevant to the woman's future safety in protection order and family law applications. Research focusing on sexual assault and rape has identified that delayed disclosures, changes in the complainant's story or a lack of coherency have implications for the credibility of accusers and can lead to the disqualification and exclusion of their experiences in the legal context (Smith and Skinner 2017). Participants in this study considered that disclosures of RC would, similar to rape and sexual assault, be disqualified and excluded from the legal context. Like sexual assault and rape, there may be no other evidence of RC except the statements of the accused and the accuser. This opens the way for an assessment of the credibility of each party, and historically women—especially traumatised women—have not fared well in this context (Tuerkheimer 2017: 3).

This research highlights that support workers and lawyers working with DV survivors approach allegations of sexual violence and RC similarly. In the legal context, similar barriers and issues appear for RC as there are for sexual violence. Legislative recognition of RC through the inclusion of an example of RC in relevant statutes may go some way towards improving the recognition of RC as a form of DV in the legal context. However, as the continuing debates about sexual assault reform show, the assumption about women's credibility and the 'historical' evidence issues that continue to infuse law are difficult problems to address (Burgin 2019; Tuerkheimer 2017).

### **Ethics Approval**

This research received ethical approval from Griffith University, The University of Queensland and The University of Melbourne Human Research Ethics Sub-Committees (Griffith University approval number 2017000964). We thank the workers who agreed to participate in the focus groups.

*Correspondence:* Heather Douglas, Professor, Law School, The University of Queensland, St Lucia, 4072, Brisbane, Australia. Email: [h.douglas@law.uq.edu.au](mailto:h.douglas@law.uq.edu.au)

---

<sup>1</sup> Tarzia et al.'s (2019b) approach to understanding the relationship between RC and DV argues that all women who have experienced RC have also experienced DV because by definition RC is a form of psychological abuse, although not all women who have experienced DV experience RC.

<sup>2</sup> We have discussed culturally and linguistically diverse women's experiences in a recent issues paper (Douglas, Sheeran and Tarzia 2020).

## References

- Bagwell-Grey M, Messing J and Baldwin-White A (2015) Intimate partner sexual violence: A review of terms, definitions, and prevalence. *Trauma, Violence & Abuse* 16(3): 316–335. <https://doi.org/10.1177/1524838014557290>
- Black M, Basile K, Smith S, Walters M, Merrick M, Chen J and Stevens M (2010) National intimate partner and sexual violence survey 2010 summary report. *National Center for Injury Prevention and Control, Centers for Disease Control and Prevention*. <https://doi.org/10.1093/oxfordhb/9780199844654.013.0003>
- Braun V and Clarke V (2006) Using thematic analysis in psychology. *Qualitative Research in Psychology* 3(2): 77–101. <https://www.tandfonline.com/doi/abs/10.1191/1478088706qp063oa>
- Burgin R (2019) Persistent narratives of force and resistance: Affirmative consent as law reform. *British Journal of Criminology* 59: 296–314. <https://doi.org/10.1093/bjc/azy043>
- Cappelletti M, Gatimu J and Shaw G (2014) *Exposing reproductive coercion: A toolkit for awareness raising, assessment, and intervention*. Feminist Women’s Health Centre, National Coalition against Domestic Violence and National Organization for Men Against Sexism.
- Chivers-Wilson K (2006) Sexual assault and posttraumatic stress disorder: A review of the biological, psychological and sociological factors and treatments. *McGill Journal of Medicine* 9(2): 111–118. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2323517/>
- Clark LE, Allen RH, Goyal V, Raker C and Gottlieb AS (2014) Reproductive coercion and co-occurring intimate partner violence in obstetrics and gynecology patients. *American Journal of Obstetrics and Gynecology* 210(1): 42.e1–42.e8. <https://doi.org/10.1016/j.ajog.2013.09.019>
- Council of Australian Governments (2019) *Fourth Action Plan: National Plan to Reduce Violence Against Women and their Children 2010–2022*. Canberra: Commonwealth of Australia. <https://www.dss.gov.au/women-publications-articles-reducing-violence/fourth-action-plan>
- Craig E (2018) *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession*. Montreal: McGill University Press.
- Crossman K and Hardesty J (2018) Placing coercive control at the center: What are the processes of coercive control and what makes control coercive? *Psychology of Violence* 8(2): 196–206. <https://doi.org/10.1037/vio0000094>
- Dingwall R (1997) Accounts, interviews and observations. In Miller G and Dingwall R (eds) *Context and Method in Qualitative Research*: 51–65. London: Sage.
- Douglas H (2015) Do we need a specific domestic violence offence? *Melbourne University Law Review* 39(2): 434–471.
- Douglas H, Harris B and Dragiewicz M (2019) Technology-facilitated domestic and family violence: Women’s experiences. *British Journal of Criminology* 59(3): 551–570. <https://doi.org/10.1093/bjc/azy068>
- Douglas H and Kerr K (2018) Domestic and family violence, reproductive coercion and the role for law. *Journal of Law and Medicine* 26(2): 341–355. <https://www.ncbi.nlm.nih.gov/pubmed/30574723>
- Douglas H, Sheeran N and Tarzia L (2020) *Identifying and Responding to Reproductive Coercion in a Legal Context: Issues Paper*. Brisbane: The University of Queensland. <https://espace.library.uq.edu.au/view/UQ:0e77e7e>
- Dragiewicz M (2015) Family law reform and domestic violence: Lessons from Australia. In Goel R and Goodmark L (eds) *Comparative Perspectives on Gender Violence: Lessons from Efforts Worldwide*: 127–140. New York: Oxford University Press.
- Epstein D and Goodman L (2019) Discounting women: Doubting domestic violence survivors’ credibility and dismissing their experiences. *University of Pennsylvania Law Review* 167: 399–461.
- Fleury-Steiner R and Miller S (2019) Reproductive coercion and perceptions of future violence. *Violence Against Women* 26(10): 1228–1241. <https://journals.sagepub.com/doi/10.1177/1077801219856107>
- Grace KT and Anderson JC (2018) Reproductive coercion: A systematic review. *Trauma Violence Abuse* 19(4): 371–390. <https://doi.org/10.1177/1524838016663935>
- Heenan M (2004) *Just ‘Keeping the Peace’: A Reluctance to Respond to Male Partner Violence*. Australian Centre for the Study of Sexual Assault Issues No 1, Australian Institute of Family Studies. <https://aifs.gov.au/publications/archived/4178>
- Henry N and Powell A (2016) Sexual violence in the digital age: The scope and limits of criminal law. *Social & Legal Studies* 25(4): 397–418. <https://doi.org/10.1177%2F0964663915624273>
- Hepp U, Gamma A, Milos G and Eich D (2006) Inconsistency in reporting potentially traumatic events. *The British Journal of Psychiatry* 188(3): 278–283. <https://www.ncbi.nlm.nih.gov/pubmed/16507971?dopt=Abstract>
- Herman J (1997) *Trauma and Recovery: The Aftermath of Violence—From Domestic Abuse to Political Terror*. New York: Basic Books.

- Kessler R, Aguilar-Gaxiola S, Alonso J, Benjet C, Bromet EJ, Cardoso G, Degenhardt L et al. (2017) Trauma and PTSD in the WHO World Mental Health Surveys. *European Journal of Psychotraumatology* 8(sup 5): 1–16. <https://doi.org/10.1080/20008198.2017.1353383>
- Lynch D and Laing L (2013) *Women Get Lost in the Gaps: Service Providers' Perspectives on Women's Access to Legal Protection from Domestic Violence*. Sydney: Sydney University. <https://ses.library.usyd.edu.au/handle/2123/9195>
- Marie Stopes Australia (2018) *Hidden Forces—Shining a Light on Reproductive Coercion: A White Paper*. Melbourne: Marie Stopes Australia. [https://www.mariestopes.org.au/wp-content/uploads/Hidden-Forces\\_MSA-RC-White-Paper\\_FINAL\\_WEB.pdf](https://www.mariestopes.org.au/wp-content/uploads/Hidden-Forces_MSA-RC-White-Paper_FINAL_WEB.pdf)
- McCauley HL, Falb KL, Streich-Tilles T, Kpebo D and Gupta J (2014) Mental health impacts of reproductive coercion among women in Côte d'Ivoire. *International Journal of Gynecology and Obstetrics* 127(1): 55–59. <https://doi.org/10.1016/j.ijgo.2014.04.011>
- McGirr S, Bomsta H, Vandegrift C, Gregory K, Hamilton B and Sullivan C (2017) An examination of domestic violence advocates' responses to reproductive coercion. *Journal of Interpersonal Violence* 35(9–10): 2082–2106. <https://doi.org/10.1177/0886260517701451>
- McGlynn C and Rackley E (2017) Image-based sexual abuse. *Oxford Journal of Legal Studies* 37(3): 534–561. <https://doi.org/10.1093/ojls/gqw033>
- Miller E and Silverman JG (2010) Reproductive coercion and partner violence: Implications for clinical assessment of unintended pregnancy. *Expert Review of Obstetrics and Gynecology* 5(5): 511–515. <https://doi.org/10.1586/eog.10.44>
- Moore AM, Frohwirth L and Miller E (2010) Male reproductive control of women who have experienced intimate partner violence in the United States. *Social Science and Medicine* 70(11): 1737–1744. <https://doi.org/10.1016/j.socscimed.2010.02.009>
- Mott J, Galovski T, Walsh R and Elwood L (2015) Change in trauma narratives and perceived recall ability over a course of Cognitive Processing Therapy for PTSD. *Traumatology* 21(1): 47–54. <https://psycnet.apa.org/doiLanding?doi=10.1037%2Ftrm0000012>
- Nikolajski C, Miller E, McCauley HL, Akers A, Schwarz EB, Freedman L, Steinberg J et al. (2015) Race and reproductive coercion: A qualitative assessment. *Women's Health Issues* 25(3): 216–223. <http://doi.org/10.1016/j.whi.2014.12.004>
- Not Now, Not Ever Report: Special Taskforce on Domestic and Family Violence in Queensland (2015). *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*. Brisbane: Queensland Government. <https://www.csyw.qld.gov.au/campaign/end-domestic-family-violence/about/not-now-not-ever-report>
- Price L, Sharman L, Douglas H, Sheeran N and Dingle G (2019) Experiences of reproductive coercion in Queensland women. *Journal of Interpersonal Violence*: 1–21. <https://doi.org/10.1177/0886260519846851>
- Rosenbaum JE, Zenilman J, Rose E, Wingood G and DiClemente R (2016) Predicting unprotected sex and unplanned pregnancy among urban African-American adolescent girls using the theory of gender and power. *Journal of Urban Health* 93(3): 493–510. <https://doi.org/10.1007/s11524-016-0047-8>
- Salter M, Conroy E, Dragiewicz M, Burke J, Ussher J, Middleton W, Vilenica S, Martin Monzon B and Noack-Lundberg K (2020) *'A Deep Wound Under My Heart': Constructions of Complex Trauma and Implications for Women's Wellbeing and Safety from Violence* (Research Report 12/2020). Sydney: ANROWS.
- Segovia D, Strange D and Takarangi K (2015) Trauma memories on trial: Is cross-examination a safeguard against distorted analogue traumatic memories? *Memory* 25(1): 95–106. <https://doi.org/10.1080/09658211.2015.1126608>
- Silverman J and Raj A (2014) Intimate partner violence and reproductive coercion: Global barriers to women's reproductive control. *PLOS Medicine* 11(9): e1001723. <https://doi.org/10.1371/journal.pmed.1001723>
- Smart C (1989) *Feminism and the Power of Law*. London: Routledge.
- Smith O and Skinner T (2017) How rape myths are used and challenged in rape and sexual assault trials. *Social & Legal Studies* 26(4): 441–466. <https://doi.org/10.1177/0964663916680130>
- Stark E (2007) *Coercive Control: How Men Entrap Women in Personal Life*. Oxford: Oxford University Press.
- Stark E and Hester M (2019) Coercive control: Update and review. *Violence Against Women* 25(1): 81–104. <https://doi.org/10.1177/1077801218816191>
- State of Victoria (2016). *Royal Commission into Family Violence: Report and Recommendations*. Melbourne: State of Victoria.
- Tarzia L (2020) Towards an ecological understanding of intimate partner sexual violence. *Journal of Interpersonal Violence*. Advance online publication. <https://doi.org/10.1177/0886260519900298>
- Tarzia L, Srinivasan S, Marino J and Hegarty K (2020) Exploring the gray areas between 'stealth' and reproductive coercion and abuse. *Women & Health*. Advance online publication. <https://doi.org/10.1080/03630242.2020.1804517>

- Tarzia L, Wellington M, Marino J and Hegarty K (2019a) How do health practitioners in a large Australian public hospital identify and respond to reproductive abuse? A qualitative study. *Australian and New Zealand Journal of Public Health* 43(5): 457–463. <https://doi.org/10.1111/1753-6405.12923>
- Tarzia L, Wellington M, Marino J and Hegarty K (2019b) 'A huge, hidden problem': Australian health practitioners' views and understandings of reproductive coercion. *Qualitative Health Research* 29(10): 1395–1407. <https://journals.sagepub.com/doi/10.1177/1049732318819839>
- Temkin J and Krahe B (2008) *Sexual Assault and the Justice Gap: A Question of Attitude*. Oxford: Hart Publications.
- Tuerkheimer D (2017) Incredible women: Sexual violence and the credibility discount. *University of Pennsylvania Law Review* 166(1): 1–58. [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9601&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9601&context=penn_law_review)
- Wall L (2012) *The Many Facets of Shame in Intimate Partner Sexual Violence: ACSSA Research Summary*. Melbourne: Australian Centre for the Study of Sexual Assault. <https://aifs.gov.au/sites/default/files/publication-documents/ressum1.pdf>

### Legislation cited

- Domestic and Family Violence Protection Act 2012* (Qld)  
*Family Law Act 1975* (Cth)  
*Family Violence Protection Act 2008* (Vic)