

Answer to question on notice - ACON

We wish to provide the below response to Ms Steph Cooke's question on notice, that is:

In relation to identity based abuse needing to be recognised, do you see this recognition forming part of the definition of coercive control and if so, how do you believe that might be captured?

In our response, we note that we are speaking specifically to the potential of a definition of coercive control in legislation criminalizing such behaviours. As we highlighted in our submission and during the hearing, ACON are not a legal service and so we provide this response with the caveat that legal experts should, in consultation with communities, lead drafting of legislation.

ACON believes that the experience of identity-based abuse falls within definitions of coercive control commonly used by respected organisations in the domestic and family violence space such as ANROWS and Women's Safety NSW. As ANROWS articulate in their submission to the Joint Select Committee on Coercive Control:

"Coercive control cannot, however, be reduced to a list of forms of abuse. Rather, as described by Stark (2007, it is an attack on autonomy, liberty and equality. That is, it is aimed at dominating and controlling the life of another person to the extent that they are effectively denied personhood, and the right to think and act independently of the perpetrator."

(p1, ANROWS submission: submission No. 96)

As ACON articulated in our submission, identity-based abuse specifically aims to change, minimize or silence a person's identity independent of the user of violence, and thus is aligned with ANROWS' definition of coercive control.

We support the submissions of our fellow NSW Women's Alliance Members Women's Safety, DVNSW and Women's Legal Service NSW in their views that any legal definition of coercive control or family violence should leave open the categories of behaviours that constitute coercive control or family violence. As the experience of many LGBTQ victims of violence demonstrates, coercive and controlling behaviour can manifest in many ways, and limiting the types of behaviours that constitute coercive control risks excluding victims from the protection of the law.

By way of example for how identity-based abuse could be included in a broad definition of coercive control, we can look to the submission of Women's Safety NSW, who make the following recommendation:

"Women's Safety NSW recommends that the types of behaviours captured in the Scottish model, that is, "violent, threatening or intimidating" conduct, or conduct which would be reasonably likely to have one or more of the effects as follows for the base of the new domestic abuse offence, but replacing the term "threatening" with the term "menacing":

- a) making B dependent on, or subordinate to, A,*
- b) isolating B from friends, relatives or other sources of support,*
- c) controlling, regulating or monitoring B's day-to-day activities,*
- d) depriving B of, or restricting B's, freedom of action,*
- e) frightening, humiliating, degrading or punishing B."* (p157, Women's Safety NSW submission: submission No. 133)

This definition would clearly encapsulate behaviours involved in identity-based abuse such as:

- Ridiculing a partner's body, appearance or identity (humiliating and degrading)

- Cutting a person off from LGBTQ community events (isolating)
- Threatening to out the person (frightening, punishing and isolating the person)

However, the 'heterosexual face' of domestic and family violence often means that identity-based abuse is invisible to service providers, the justice system and even to LGBTQ communities. As such, ACON believe that it is important to also specifically name identity-based abuse as an example of specific behaviours that may constitute the offence, either within the legislation or in accompanying statutory guidance. This would facilitate improved understanding of the needs of LGBTQ people by law enforcement and the judicial system in utilising any legislation that comes in to force.