

**Submission
No 20**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

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Date Received: 25 January 2021



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25 January 2021

Via Email Only: natalie.ward@parliament.nsw.gov.au

The Hon Natalie Ward, MLC Chair
Joint Select Committee on Coercive Control
Parliament House
“Eora Country”
Macquarie Street
SYDNEY NSW 2000

Dear Ms Ward

Discussion Paper: Coercive Control

Joplin Lawyers appreciates the opportunity to make a submission to the Inquiry into coercive control in domestic relationships.


Joplin Lawyers is best known for its experience in Family Law and Domestic Violence. The director of the firm, Joplin Higgins, was selected as one of ten Westpac Social Change Research Fellowships to further work in domestic violence reduction programmes. Joplin is a vocal and dynamic advocate for increasing the awareness of the prevalence of domestic violence in the community and a vigorous believer in the necessity of rehabilitation processes for the perpetrators of domestic violence.

Joplin Higgins has chosen to focus the submission to the questions raised in the Discussion Paper Coercive Control – Non-legislative issues:

1. What non-legislative activities are needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly?

For any legislation to be effective in protecting victim-survivors and children subjected to domestic abuse and coercive control, it is fundamental that government and non-government services are intensively trained in recognising and responding to coercive control. This includes but not limited to, police officers, judges, judiciary staff, child protection services, education and support services. Without the appropriate training, it is unlikely any legislative provisions drafted criminalising coercive control will have the desired outcome.

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INTRODUCTION

Australia has the unique opportunity to observe international jurisdictions and how they have implemented coercive control laws including the non-legislative measures that have operated alongside the legislation. We are currently at a turning point for domestic abuse laws and their implementation.

As highlighted in the discussion paper, Scotland and England and Wales both have offences criminalising coercive control. Scotland has been regarded as having the highest standard of coercive control laws. Drafting of the provisions in Scotland was extensively considered as well as the training that would operate alongside the laws. Collaboration took place over 3-4 years and involved multiple agencies including women's organisations.

Coercive control requires the identification of a pattern of behaviour resulting in power and control and entrapment of a victim. This moves away from the incident-based model that has dominated the legal response to domestic abuse, with a stronger focus of incidents of physical violence committed by a perpetrator. Not only will identification of coercive control support prosecution and convictions under proposed legislation, but it may also additionally assist in protecting victims from future physical harm. Coercive control has been identified as a critical risk factor in cases of lethal violence against victims.¹

APPROACHES

Scotland

The extensive training of police, prosecutors and judges in Scotland has promoted greater success in implementing the Domestic Abuse (Scotland) Act 2018. This has resulted in 92% of charges related to domestic abuse proceedings to court in 2019-2020, in comparison to 85% in 2013-2014.² The laws were also paired with a public awareness campaign to shift attitudes in broader society. The majority of convictions have been guilty pleas.³ This has alleviated the burden on victims to testify in court and relay their experiences of abuse. Currently the conviction rate for the laws is at 82%.⁴

14,000 Police Scotland officers received specialised training, enhancing their ability to implement the law. The Scottish Government provided £825,000 to Police Scotland to be trained to apply the new Act. Since 2018, prior to the Act, 18,500 officers and staff received online training on domestic abuse and the new offence. 14,000 officers received additional face-to-face training in 2020. The training, Domestic Abuse Matters Scotland Change Programme, was delivered by SafeLives, between December 2018 and March 2020. The training focused on a dual-approach, participants having the benefit of being trained by one domestic abuse expert and one police expert.⁵ Training was delivered to officers of all levels, including members of the senior leadership and executive team.

¹ Andy Myhill, 'The Golden Thread: Coercive Control and Risk Assessment for Domestic Violence' (2016) 34 (22) *Journal of Interpersonal Violence* 4477, 4478.

² Scottish Legal News, *Domestic abuse charges reach five-year high* (8 September 2020) <https://www.scottishlegal.com/article/domestic-abuse-charges-reach-five-year-high>

³ Global Rights for Women, *Coercive controlling violence: enforcement of the criminal law in Scotland* (18 June 2020)

⁴ David Mandel and Ruth Stearns Mandel, *Coercive Control Laws: A discussion with investigative reporter and author Jess Hill* (19 January 2021) <https://safeandtogetherinstitute.com/coercive-control-laws-a-discussion-with-investigative-reporter-and-author-jess-hill/>

⁵ Safe Lives, *Domestic Abuse Matters Evaluation Report* (2020) 1, 4.

Outcomes focused on:

- Understanding of the tactics perpetrators when they are coercively controlling victims;
- Understanding the stages of coercive controlling behaviour and why victims appear to not always support police action;
- Understanding of the tactics perpetrators use to keep victim(s) within a relationship;
- Understanding of the typologies of domestic abuse;
- Knowledge of the types of questions that could encourage victims to disclose;
- Understanding of the key provisions of the Domestic Abuse (Scotland) Act 2018 and how to apply the new Section 1 offence;
- Knowledge of how it is best to record domestic abuse on police records;
- Understanding of evidence gathering and advice around protection;
- Understanding of the tactics perpetrators use to manipulate police officers/staff; and
- Recognising the impact of domestic abuse and coercive control on children.⁶

Training in Scotland covers a wide range of factors relevant to recognising and responding appropriately to coercive control. It is evident Scotland carefully considered how the training would be delivered to ensure the new laws were effective, producing better outcomes for victims.

England and Wales

Comparatively, England and Wales legislation on coercive control has not translated as well into practice. A lack of focus on in person training, frequency and emphasis on communication skills with vulnerable people weaken the effectiveness of the training in England and Wales, the report stating the police response to domestic abuse was “not good enough.”⁷ Training of criminal justice staff was identified as a critical factor in the implementation of the new laws as well as multi-agency engagement.⁸

Since the introduction of the laws, training has been updated and implemented more consistently across England. Coercive control provisions used only 62 times in the first six months of criminalisation,⁹ emphasising the need for an improved police response. In 2017, only eight out of 43 police forces in England and Wales had participated in new national training. Low prosecution rates were linked to the lack of training in applying coercive control laws. Additionally, a focus on incidents of physical violence was reported to be a key issue for police.¹⁰ For the same year, 4,686 defendants were prosecuted for coercive control offences with only 5 per cent convicted of the offence.¹¹ The stark difference in conviction rates highlights the importance of training in the success of the criminalisation of coercive control.

⁶ Ibid 7.

⁷ HMIC, *Everyone's business: Improving the police response to domestic abuse* (2014) 1, 122.

⁸ Home Office, *Strengthening the Law on Domestic Abuse Consultation – Summary of Responses* (2014) 1, 8.

⁹ Matthew Weaver, *Police to get more training to detect non-physical domestic abuse* (2016) The Guardian <https://www.theguardian.com/society/2016/sep/21/police-to-get-more-training-to-detect-non-physical-domestic-abuse>

¹⁰ Alan Travis, *Police not equipped to enforce new domestic abuse laws* (2017) The Guardian <https://www.theguardian.com/uk-news/2017/dec/29/police-not-equipped-to-enforce-new-domestic-abuse-laws>

¹¹ Charlotte Barlow et al, 'Putting Coercive Control into Practice' (2019) 60 (1) *The British Journal of Criminology* 160, 163.

AUSTRALIAN CONTEXT

A broad range of services across a variety of sectors respond to domestic abuse daily. Comprehensive training promotes a common understanding of domestic abuse, whilst being tailored to the service type provided. Services and support can be argued to be complex and fragmented, further highlighting the need for consistent training for delivery staff. Training needs to operate across all levels, including executive, management and frontline staff.

NSW Domestic and Family Violence Blueprint for Reform: 2016 – 2021 provides direction for a domestic violence system over five years, aiming to deliver evidence-based quality services. With the Blueprint due for review this year, there is an opportunity to consider how coercive control training will align with the Blueprint.

Whilst there has been considerable discussion regarding the criminalisation of coercive control in Australia and how it will be drafted, there has been minimal discussion on the training for those involved in enforcing the laws and service delivery to domestic abuse victims.

As police are at the forefront of protecting victims and providing access to justice, it is critical they are intensively trained to recognise coercive control if the laws are to operate effectively. With prosecutions for domestic abuse falling by 24 per cent in 2019,¹² the current laws criminalising other types of domestic abuse are struggling to produce convictions, suggesting greater training across all points of the criminal justice system is required. With key differences in domestic violence reports and criminal justice outcomes, there is concern the criminalisation of coercive control will not be followed with critical non-legislative measures to support its effectiveness.

TRAINING RECOMMENDATIONS

1. NSW Police

As domestic abuse reports are such a large part of police work, it is recommended the course structure for police recruitment include a complete course on domestic and family violence practice. This would form part of all policing pathways including associate degree in policing practice and bachelor of policing. Currently, the learning modules do not indicate training in domestic and family violence.¹³ Outcomes would include those forming part of Scotland's training program, shifting from the focus on obtaining evidence related to stand alone incidents of physical injury caused by violence to a pattern of conduct.

Additionally, police would be trained in obtaining evidence in a domestic abuse context and collating evidence such as witness statements and technology records and assessing the risk of offenders more thoroughly.

Training would be trauma-informed and compulsory for all police officers. Police officers already practicing will also be required to complete the training to ensure consistency. Regular refresher modules would also be necessary, aligning with current and improved research on domestic abuse and coercive control and responsive to any changes in the field.

2. Legal representation, judges and judicial staff

¹² Caelainn Barr and Alexandra Topping, *Domestic abuse prosecutions fell by 25% at the end of 2019* (2020) The Guardian <https://www.theguardian.com/society/2020/apr/30/domestic-abuse-prosecutions-fell-by-25-at-end-of-2019>

¹³

https://www.police.nsw.gov.au/recruitment/university_certificate_in_workforce_essentials/course_structure

Similar to policing, a module on domestic and family violence would form part of practical legal training programs. The module would be specifically tailored for legal services and domestic and family violence in a legal context. Alongside supporting victims and identifying tactics and types of abuse and perpetrators, solicitors would be trained in presenting evidence relevant to domestic and family violence and its impact, working with clients experiencing domestic violence, technology, impacts on children and young people and making referrals to other support services for victims. Current practitioners and staff would also be required to undertake the training. Updates in training would additionally form part of professional development.

3. Child protection caseworkers

Training for child protection caseworkers would be tailored to identifying and supporting children who are victims of domestic abuse and coercive control as well as their parents. Child protection caseworkers would be trained in assessing the risk perpetrators pose to children and targeting services based on the risk and typology of perpetrators, in order to ensure children's safety. This would include the impacts of coercive control on the child and how children can be used to exert coercive control as well as their relationships with primary carers and engaging parents who use violence.

4. Childcare and education

Teachers have a fundamental role in supporting children and young people experiencing domestic abuse and coercive control at home. Current school teachers and early childhood educators would undertake training in recognising behaviours across all ages linked to domestic abuse and coercive control. They would also be trained in undertaking conversations with parents of children who they suspect may be victims of coercive control. The course would be compulsory for students entering teaching and early education degrees and TAFE courses.

5. Health, aged care, disability and in-home support services

A module on domestic and family violence would form part of health degrees include medicine, nursing and allied health and be tailored to suit a health context. This would enable health providers to appropriately respond to patients who they think may be at risk of domestic abuse and coercive control. Current health practitioners and support workers would also be required to undertake the training.

6. Advocacy and Support Services

To work within any domestic abuse service or support, staff would be required to undertake compulsory domestic abuse and coercive control training. The course would be broad but comprehensive and relevant to all types of services provided.

7. Voluntary training for staff outside major government and service providers

Less intensive training could be provided for any workplace, community service or voluntary organisation wanting to increase their awareness and ability to recognise domestic abuse and coercive control. As women form the majority of victims, this could include services predominantly utilised by women such as hairdressers, beauty salons and women retail stores. Training could also be offered to libraries, council services and clergy and places of worship.

The training recommendations are not exhaustive and collaboration with all agencies that come into contact with victims and children of domestic abuse and coercive control is vital.

CONCLUSION

Identification of coercive control requires careful and thorough analysis of the pattern of behaviour of the perpetrator. Without adequate knowledge and skills and a holistic, multi-agency approach, it is unlikely criminalisation of coercive control in New South Wales will be successful. Intensive, consistent and specialist training for those in contact with domestic abuse victims, children and perpetrators will be fundamental to any coercive control legislation introduced in New South Wales.

If we may offer any further submissions, please do not hesitate to contact Joplin Higgins.

Yours faithfully
Joplin Lawyers



Joplin Higgins
Lawyer