

**Submission  
No 74**

## **COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS**

**Organisation:** Lou's Place

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## **SUBMISSION TO THE NEW SOUTH WALES JOINT SELECT COMMITTEE INQUIRY ON COERCIVE CONTROL**

### **About Lou's Place**

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### **Our Service Model**

Lou's Place is a women's day refuge and crisis service, located in Kings Cross. Our service assists women experiencing or at risk of experiencing homelessness, domestic and family violence, child protection issues, complex trauma, substance use issues, disability and mental health conditions. Lou's Place is a safe place for women and offers a range of free supports, services and group activities. It is the only refuge of its kind in Sydney and has received no government funding since it began operation in 1999.

Lou's Place provides a supportive context for women to tackle life's challenges by offering services that help them rebuild self – respect, stability and security in their lives. Our safe environment allows women the opportunity to consider their options, imagine a different life and take steps to build it. This is achieved through the therapeutic case management services provided by our staff team, and a community of women supporting each other. Apart from case management, we offer drop in and referral assistance where no appointment is necessary. We also offer range of therapeutic activities and group work programs to build confidence, develop life skills and promote healing and recovery. Our only eligibility criteria is that the person is over 18 years of age and identifies as a woman. We work with women for as long as they'd like to work with us.

Lou's Place has significant experience in providing services to women who have experienced domestic violence. Majority of women who access Lou's Place have experienced or are experiencing some form of domestic violence. In addition to case management services, Lou's Place runs various psycho-educational and therapeutic groups, which assist women in understanding their abuse and healing from it. Recently, Lou's Place received funding from Women NSW for a specialist domestic violence case management position. Lou's Place is a member of Domestic Violence New South Wales (DVNSW), the peak body for domestic violence services in NSW.

## Practice Recommendations

Our submission recommends that the NSW Government focus on:

1. Implementing a coercive control offence
2. Creating a suitable definition for coercive control
3. Undertaking extensive consultation with key stakeholders including those with lived experience prior to implementing offence
4. Implementing focussed training of police, child protection other first responders and the courts prior to implementation
5. Understanding and addressing shortcomings of ADVOs
6. Considering and addressing legislative issues
7. Implementing a range of non-legislative activities to support a coercive control offence

### **1. Implementing a coercive control offence**

Lou's Place supports the implementation of a separate offence of coercive control for intimate partner violence. The current offences of stalking and harassment and the ADVO framework are not sufficient to ensure victims' safety and hold perpetrators accountable. However, we understand legislating coercive control poses unique challenges and risks, particularly due to the nature of the offence, which seeks to criminalise a series of events, rather than a single incident. Our submission uses practice examples and case studies to illustrate the importance of a separate offence of coercive control as well as how certain risks of legislating the offence could be mitigated.

### **2. Creating a suitable definition of coercive control**

A clear, nationalised definition would assist in creating uniformity on how coercive control is conceptualised and addressed. The definition, including that which would be included in the legislation, would benefit from a number of non-exhaustive listed examples that are consistently used as part of coercive control. Feedback from women we work with supports the assertion that 'the coercive methods that enable one human being to enslave another are remarkably consistent.'<sup>1</sup> Biderman's Chart of Coercive Control would assist in suggesting broad categories of types of behaviour coercive control can fall under, including isolation, exhaustion, threats, humiliation and degradation,

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<sup>1</sup> Herman, 1997 cited in Jess Hill, *See What You Made Me Do*, Black Inc.: Victoria, 2019 17.

among others.<sup>2</sup> Biderman's framework can be supported by examples from those with lived experience of abuse. The examples given in the Scottish legislation could also be used as a guide.<sup>3</sup>

### **3. Undertaking extensive consultation with key stakeholders, particularly those with lived experience, prior to implementing the offence**

The current timeframe for community consultation is not sufficient. Scotland is considered the 'gold standard' for coercive control, partly due to the extensive consultation with key stakeholders such as policy experts at the Scottish Women's Aid.<sup>4</sup> We propose lawmakers in NSW regularly liaise with peak body DVNSW, particularly during the drafting period. Language used in the legislation should be checked with DVNSW, their member services and those with lived experience. The government should hold focus groups with victim/survivors and their supports to ensure the legislation reflects the needs of those who experience domestic violence. Longer consultation periods could allow for general training for first responders on domestic violence and coercive control to commence ahead of more specific training once the legislation is enacted.

### **4. Implementing focussed training of police, child protection other first responders and the courts prior to implementation**

Extensive training of police, child protection, other first responders and the courts is necessary to ensure success of the legislation. Another reason Scotland is considered the 'gold standard' is due to the specialist training officers received prior to the introduction of the legislation.<sup>5</sup> Most importantly, the training should have a strong focus on the gendered nature of coercive control, particularly that it is overwhelmingly perpetrated by men against women.<sup>6</sup> This would assist police, first responders and the courts to correctly identify the primary victim.

The training should not only focus on assisting officers to understand and investigate crimes under the offence, but also the patterns, dynamics and complexities of domestic violence and coercive control. This would ameliorate issues we are currently seeing in practice, where police note the offence on the charge sheet as 'domestic violence related' in all cases where the parties live together, without any regard to the context of the offending or the primary victim. This has led to primary victims having domestic violence related charges on their criminal history, even where they are not the primary aggressor.

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<sup>2</sup> Biderman, 1957 cited in Jess Hill, above n 1.

<sup>3</sup> *Domestic Abuse (Scotland) Act 2018*, cited in NSW Government (2020) *Coercive Control Discussion Paper* at 4.5.

<sup>4</sup> DVNSW, *Coercive Control Background Paper*, December 2020 13.

<sup>5</sup> *Ibid.*

<sup>6</sup> Michael Flood, *Where Men Stand: Men's roles in ending violence against women*, 2010 9.

The training should also include information on 'acts of resistance.' Acts of resistance are protective behaviours that women use to keep themselves and their children safe. They are easily misconstrued as controlling behaviours. For example, a mother might withhold her children from the perpetrator to keep them safe. Another example is where a woman might return to the violence after leaving, as she understands that it is safer than staying away. In practice, we see acts of resistance misconstrued as the exertion of power and control, leading to women being wrongly charged or the defendant in a ADVO.

Through our work supporting mothers in child protection processes, we have noticed a need for increased protection of mothers and children who are experiencing violence. Too often, children are removed from both parents where there is abuse from the father toward the mother and/or their children. This compounds the trauma of abuse for both the mother and children. Safety of the children should be considered more broadly than a child removal and all first responders should be trained in this regard.

Impacts of long-term abuse should also be included in the training. This would assist in protecting particularly vulnerable women. Experiencing coercive control for even short periods of time can lead to mental health issues and substance misuse. Often, these more complex presentations prevent victim/survivors from getting the help they need. Many of our clients who are experiencing domestic abuse feel that police and the courts do not help or believe them because of their co-existing mental health and substance misuse issues.

Similarly, lifetime experiences that lead to women becoming a victim of domestic abuse should be included in the training. Many of the women who access Lou's Place and have experienced domestic abuse have also had adverse childhood experiences such as sexual abuse or neglect. Understanding these early experiences should be a prompt for extra support, rather than a reason that women are blamed for the abuse. First responders should understand that there is no 'perfect victim', to reduce bias on who 'deserves' support. The courts should also be trained in common presentations of victim/survivors and give jury directions to that effect.<sup>7</sup> The following case study demonstrates how a lack of understanding of a victim/survivor's history and the violence she faced led to a compounding of trauma through child protection and domestic violence processes:

#### *Case Study - Hafa*

Hafa\* is a Middle Eastern woman who arrived in Australia with her husband. Hafa stated that she was 'sold' to her husband prior to coming to Australia; Hafa's husband is 19 years older than Hafa. Hafa advised that she experienced extensive physical and emotional abuse from her father as a child and was not emotionally supported by her mother. Following Hafa arriving in Australia, Hafa experienced social isolation, significant language barriers and physical, emotional, sexual and financial abuse by her husband. Hafa has four children from the marriage. Her children were also victims of physical, emotional and sexual abuse by her husband. When Hafa attempted to intervene in the abuse of her children by her husband, she was subjected to severe physical violence amounting to torture.

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<sup>7</sup> See below – 'Considering and addressing legislative issues' 7.

Hafa and her husband separated in 2016; this separation was instigated by an Apprehended Violence Order protecting Hafa and the children from the father. Following Hafa's separation from her husband, Hafa had significant difficulties in day-to-day management of the children due to their traumatised behaviour. Hafa also experienced difficulties in making basic decisions due to the extensive control that her husband had over the family while he was in the home. This resulted in Hafa being unable to make any independent decisions for herself or the children. In addition, Hafa continued to have minimal social networks to assist her in gaining knowledge and skills for her parenting and lifestyle. This led to involvement from the Department of Communities and Justice and the children being removed from the care of Hafa. The removal of Hafa's children has ultimately added another layer of trauma to both Hafa and her children that will continue to impact them. It demonstrates the serious issues that can arise when responders are not sufficiently trained in coercive control, cultural awareness or the impacts of long-term abuse.

Lou's Place strongly advocates for extensive and ongoing training of police, child protection, other first responders and the courts to support the legislation. While the Discussion Paper asserts that coercive control is often difficult to identify, our experience in case management and collaboration with other frontline services suggests that with proper training, coercive control can be quite simple to detect.

## **5. Understanding and addressing shortcomings of ADVOs**

There are many shortcomings with the current ADVO framework. While we support a review to address these shortcomings, our client feedback is that ADVOs are not sufficient to protect victim/survivors of domestic violence and that a stronger criminal response is necessary.

ADVOs remain a civil matter until they are breached. Consequently, many women who are experiencing domestic violence are extremely cynical in an ADVO's ability to protect and hold perpetrators accountable. As DVNSW notes, the current Australian framework has attracted criticism from Amnesty International and the United Nations Special Rapporteur on Violence against Women, stating 'civil protection orders are an essential part of the state's responsibility to protect survivors of violence, but should complement, not replace a criminal response.'<sup>8</sup> ADVOs should be one of the many choices victim/survivors have in keeping themselves safe, but not the only option.

In addition, many of our clients do not want to go to police to get an ADVO for a myriad of reasons including past negative experiences with police, fear of escalating the violence, fear of creating issues with contact with children where they are not included on the ADVO and disbelief in their ability to provide real protection. Our clients report that many perpetrators feel that ADVOs are something that the victim has the choice to take out against them, whereas criminal charges are the police's responsibility. As a result, criminal charges would remove some of the burden of pursuing protection away from victim/survivors. The following case study illustrates some of the shortcomings of ADVOs.

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<sup>8</sup> Amnesty International (2008) cited in DVNSW, *Coercive Control Background Paper*, December 2020 5.

### *Case Study – Talia*

Talia is a non-Australian Muslim woman, who arrived in Australia on a scholarship. Talia religiously married a man and begun living with him. Her husband was severely abusive, causing her to fear for her life. She reported the violence to the police and requested a full non-contact ADVO. However, police only issued the standard condition ADVO and no other information or support was provided to her. Police did not cooperate to escort her to pick up her household items, meaning Talia had to leave her rental unit without any personal belongings. She was also required to pay for relocation costs by herself. Talia and her family overseas continued to receive threats from the perpetrator. No ADVO breaches were charged by police.

This case study demonstrates the shortcomings of the police to adequately work with and support people of different cultural backgrounds where there is domestic violence. If the police were appropriately trained, they would have issued a full non-contact ADVO, assisted Talia to retrieve her personal items, linked Talia in with culturally-appropriate community supports to ensure she could relocate safely and be provided with sufficient emotional support. A sufficient response to this case also requires adequate funding to community services.<sup>9</sup>

Further, Lou's Place has noticed an increase in ADVOs being placed on women who are the primary victim, protecting the perpetrator and thus allowing increased exertion of coercive control. This is particularly concerning where mothers who are primary caregivers have ADVOs that inhibit their access to their children. While a pattern of coercive control may be sufficient to establish an ADVO at present, our experience is that this approach is rarely used in practice. Instead, we observe ADVOs being put in place when there is criminality between offender and victim, with little regard to all the context and circumstances of the relationship. Training on coercive control generally could help address this issue with ADVOs to enable them to better support victim/survivors and their children.

## **6. Considering and addressing legislative issues**

### A legal presumption

Given domestic abuse is overwhelmingly perpetrated by men against women,<sup>10</sup> as well as constant misidentification of women as aggressors, Lou's Place advocates for a legal presumption which presumes that women are the primary victim where there is coercive control in a heterosexual relationship. This presumption could be built into the legislation as a protective measure against misidentification of victim/survivors and legal systems abuse. The burden of disproving the presumption would be placed on the defendant.

### Barriers to accessing court – giving evidence and insufficient penalties

Lou's Place supports a legislative approach that minimizes the victim/survivor's role in the proceedings. For the women we work with, the major barriers to pursuing a criminal response are fear and apprehension around the court system and insufficient penalties to hold perpetrators accountable. Many women find the court system far too retraumatizing for the penalty the perpetrator receives. Consequently, we support Scotland's objective standard in

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<sup>9</sup> See below – 'Implementing a range of non-legislative coercive control issues to support a coercive control offence' 8.

<sup>10</sup> Above n 6.

assessing harm, where proof of actual harm suffered is not required. Harm should be construed broadly, considering the many different types of coercive control.<sup>11</sup> Although it will not eliminate victim/survivor's involvement in the court proceedings, it could greatly reduce their role in having to provide evidence of the harm and present for oral testimony.

However, through our work at Lou's Place, we realise that many behaviours that cause fear to a victim in a relationship where there is coercive control would not cause a reasonable person fear. Accordingly, there must still be an avenue for the victim/survivor to put this evidence forward. A jury direction could support this particular complexity.<sup>12</sup>

Lou's Place supports higher penalties to hold perpetrators accountable. The current offences of stalking and harassment carry a maximum prison sentence of five years. An offence of coercive control should carry a substantially higher penalty, given that it will capture a series of offences. Another reason it should attract significantly higher penalties is because domestic violence is born out of a breach of trust in romantic relationships. Our clients report that this is a significant factor in the extremely damaging, long-term psychological consequences they suffer because of coercive control. Consequently, we support Scotland's higher penalties, which carry a maximum 14 years imprisonment on indictment.

Some victims do not report domestic violence due to fear of danger escalating, while others do not report as they hope the perpetrator will change. Restorative justice processes should be offered to all victim/survivors of coercive control. Given that many of our clients report feeling alienated from the criminal justice system's response, giving victim/survivors a choice would be empowering. However, as with all responses to coercive control, restorative justice options should be built with the correct input from victim/survivors and come with the right support, to ensure the process is not co-opted by perpetrators seeking to avoid harsher penalties.

### Defences

The defence that the behaviour was 'reasonable in the circumstances' must also capture series' of events, not single incidents, to adequately protect victim/survivors. Single incidents can often appear reasonable unless taken together with a series of other abusive acts. Gaslighting behaviour is a pertinent example of this issue. For example, a perpetrator may gaslight their victim by constantly moving their victim's house or car keys. When taken as a single incident, the perpetrator could argue they 'were just putting the keys back in the cupboard'. However, when taken in context of the relationship, a pattern of gaslighting behaviour where the perpetrator constantly moves the victim's belongings without their knowledge evidences abuse. This could be supported by training magistrates and judges on typical examples of domestic abuse as well as jury directions.

### Jury directions

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<sup>11</sup> See above – 'Creating a suitable definition of coercive control' 2.

<sup>12</sup> See below – 'Considering and addressing legislative issues' 7.



Jury directions can and should be used to educate jurors on coercive control. Jury directions should be used to dispel domestic violence myths and provide greater clarity on areas such as:

- Different types of domestic violence (domestic violence is not just physical),
- Behaviour that appears innocuous to the public, may have specific meaning to the victim/survivors (such as a sideways glance),
- Acts of resistance,<sup>13</sup>
- Reasons victim/survivors might stay in the abuse, typical time periods for leaving abuse and dangers that arise when leaving abuse, and
- Impact of domestic abuse (particularly psychological abuse) on the appearance of victim/survivor's credibility.

Lou's Place submits that the government and lawmakers should consult extensively and often with DVNSW, member services and those with lived experience during the lawmaking process.

## **7. Implementing a range of non-legislative activities to support a coercive control offence**

Legislating coercive control carries many complexities. These issues can be mitigated by supporting the legislation with several social and economic measures to ensure a whole-of-systems response. The following case study illustrates how a legal response is not always an option for victim/survivors.

### *Case study – Ana*

Ana\* is a 24-year-old Aboriginal woman who fled her psychologically abusive partner, Vic, with their 3-month-old son, Jackson. Ana tried to leave Vic on numerous occasions but due to his many connections and his coercive control of her, she returned as a means to keep safe. Vic is 20-years Ana's senior and is from a large Middle Eastern family who have often helped Vic find Ana when she has left (through social media, phone tracking and trickery). Ana has been unable to involve the police due to the fear of Vic's connections within the underworld (namely bikie gangs, corrupt police, and drug rings). Ana expressed that it was not an option for her to report Vic to the police or apply for an ADVO as this would put her in more danger. Although Ana has changed her number, email and blocked both Vic and his family from all forms of communication, her fear around danger due to his connections is ever-present. Since leaving Vic, Ana has had great difficulty in accessing refuge for her and her son, including the approval of an emergency transfer with housing, due to not having a current ADVO in place or police event number. This has put Ana in a precarious situation where she has had to decide between her and Jackson's safety or returning to live with Vic simply to have a place to live.

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<sup>13</sup> See above – 'Implementing focussed training of police, child protection other first responders and the courts prior to implementation' 3.

The case study illustrates some of the shortcomings of a legal response, as well as how victim/survivors can be trapped within systems (housing, police) whilst trying to leave abusive relationships and ensure their safety. Consequently, it is of utmost importance that regardless of whether an offence is legislated, non-legislative activities must be strengthened. As a member of DVNSW, we support their suggestions for non-legislative activities including:

- Additional funding for domestic violence and social services sector to better respond to sexual, domestic and family violence,
- Thorough training in domestic violence, trauma-informed care and cultural awareness and competency for all first responders, including police, health and education staff,
- Utilising a gendered approach to address domestic violence,
- Substantial investment in primary prevention,
- Community awareness campaigns about coercive control and non-physical forms of domestic violence,
- Additional regulations, measures and safeguards from tech companies and banks to address technological-facilitated abuse,
- Improved risk assessments,
- Ongoing review processes,
- Reframing the system to adopt a framework of perpetrator accountability, and healing/reparation to the victim/survivor by utilising experts trained in intimate partner violence and restorative justice.
- Community accountability strategies.
- Investment in community bystander training, noting that most victim/survivors do not report violence to the police.
- Increased resourcing for police to be better equipped to respond to domestic violence,
- Education in schools e.g. children in the UK are now offered information about coercive control,
- Night patrols such as those designed and run by Aboriginal women in some remote communities.



## References

DVNSW, (2020) Coercive Control Background Paper.

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