

**Submission
No 129**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Australian Association of Social Workers

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Submission to Inquiry into coercive control in domestic relationships

Joint Select Committee on Coercive Control

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AASW

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Australian Association
of Social Workers

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The Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the professional body representing more than 13,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, discrimination, and matters that influence people's quality of life.

The social work profession

Social work is a tertiary qualified profession recognised internationally that pursues social justice and human rights. Social workers aim to enhance the quality of life of every member of society and empower them to develop their full potential. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession, and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Professional social workers consider the relationship between biological, psychological, social and cultural factors and how they influence a person's health, wellbeing and development. Social workers work with individuals, families, groups and communities. They maintain a dual focus on improving human wellbeing; and identifying and addressing any external issues (known as systemic or structural issues) that detract from wellbeing, such as inequality, injustice and discrimination.

The AASW position on family violence

The AASW endorses Domestic Violence Victoria's definition, identifying family violence as:

...a pervasive, life-threatening crime that impacts on thousands of women and children with serious physical, psychological and economic effects. Family violence includes not only physical assaults but also an array of power and control tactics used along in concert with one another... Family violence can occur within any intimate relationship, age and ethnicity. While it can be perpetuated by

*any member of a family against another, it is more likely to be perpetrated by men (predominately by a woman's current or ex- partner) against women and children.*¹

The causes of family violence are complex and include individual, environmental, cultural, and social factors, such as gender inequality and community attitudes towards women. As the fundamental cause of violence against women, gender inequality is reflected across all aspects of a woman's life. Women experience a range of discrimination, including lower incomes, poor health, and wellbeing outcomes across the lifespan as a consequence of not only violence but structural discrimination based on their gender. Discrimination based on gender has been widely documented in a range of structural settings, such as unequal economic, social, and political power between men and women.

The AASW also appreciates that family violence affects members of the LGBTIQ+ community. We acknowledge that these factors can intersect to create unique experiences of violence. The AASW acknowledges that this submission does not include the voices of all of these experiences and therefore recommends additional research to better understand and address experiences of violence by marginalised groups in Australia in the future.

Social workers are integral to the delivery of support and intervention services for victims and survivors of family violence. In their practice, social workers believe that everyone has a right to live free from fear and violence in their home and broader society. The scope of social work practice includes counselling, crisis interventions, group work and case management; as well as policy development, research, evaluation and advocacy. Above all, social workers are deeply committed to challenging family violence at an individual, community, and systemic level, with the twin aims of ending it and of minimising its profound, long-lasting impacts.

Our submission

We welcome the opportunity to provide our comments for the NSW government in relation to the discussion paper on coercive control. **While we support the recognition of coercive control in the context of family violence, it is the overall recommendation of AASW that the NSW Government further evaluate international and local evidence and further consult with key stakeholders prior to adding a separate offence of coercive control to the *Crime Act 1900 (NSW)*.** In this submission, we will provide comment under the following questions in the discussion paper:

- How should it (the legislation) distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?
- What are the advantages and/or disadvantages of creating an offence of coercive control?

¹ Australian Association of Social Workers 2019. "The Scope of Social Work Practice: Social Work in Family Violence." *The Australian Association of Social Workers*. August. Accessed July 14, 2020. <https://www.aasw.asn.au/document/item/12226>.

- Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?
- 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?

Recommendations

- That the NSW government facilitate a thorough consultation with the specialist domestic and family violence sector, leaders and leading organisations representing marginalised groups, including Aboriginal community-controlled organisations and lived experience organisations, and people with lived expertise to appreciate the complexities and the unintended consequences of this legislation,
- That Department of Communities and Justice examine the extent to which existing criminal and civil protection orders in NSW respond adequately to non-physical forms of domestic and family violence,
- That the NSW Government develop a whole-of-government approach to responding to and preventing domestic and family violence in NSW in consultation with the specialist domestic and family violence sector, experts and experts by experience, that is sufficiently resourced, reviewed, monitored and evaluated,
- That the NSW Government substantially increase investment in the ongoing education and training of police and judicial officers in how to effectively and appropriately police and prosecute domestic and family violence crimes, including non-physical abuse,
- That the NSW implement changes to Apprehended Domestic Violence Order (ADVO) legislation to provide immediate protections to victim-survivors, and to further cover the breadth of coercively controlling behaviours,
- That the NSW government increase funding to the specialist domestic and family violence sector to ensure that women, children and sex and gender diverse people impacted by domestic and family violence receive effective specialist support (including those who do not choose to seek redress via the criminal justice system),
- That the NSW Government provide sustained funding to domestic and family violence primary prevention and early intervention programs, services and education campaigns to stop the violence before it begins, and to change the culture of gendered violence in NSW

How should it (the legislation) distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?

AASW members told us they see many patterns of ongoing controlling behaviours experienced by victim-survivors of family violence, including:

- Financially controlling behaviours,
- Emotionally controlling behaviours,
- Constriction of freedom of movement,
- Use of information technology, such as social media platforms, to stalk and harass.

These behavioural patterns are fundamentally different in intent and the experience of the victim-survivors to normal and healthy relationship conflict. Social workers have skills in assessing the overall patterns of behaviours experienced in situations of coercive control along with how to respond effectively to ensure the victim-survivors safety. Social workers play a significant role to access and have the skills to work with the complexities of coercive control.

Recommendation

- That the NSW government facilitate a thorough consultation with the specialist domestic and family violence sector, leaders and leading organisations representing marginalised groups, including Aboriginal community-controlled and lived experience organisations, and people with lived expertise to appreciate the complexities and the unintended consequences of this legislation.

What are the advantages and/or disadvantages of creating an offence of coercive control?

The advantages of creating an offence of coercive control

The AASW agrees that the creation of such offence is a form of recognition of coercive control as a lethal and non-physical form of family violence which has been neglected by the police and the justice systems in the past. According to the Family and Domestic Violence Death Reviews report 2017-2019, women who have been murdered by their partner-perpetrator experience coercive control prior to the murder.² The AASW highly recommends the NSW government reviews whether existing criminal and civil protection orders respond adequately to non-physical forms of family violence and other international evidence to consider the merit of an offence of coercive control.

² NSW Family and Domestic Violence Death Reviews Team, 2020. Report 2017-2019. Sydney, Australia.

The disadvantages of creating an offence of coercive control

The AASW is concerned that there is little solid evidence at both a local and international level that a criminalisation approach to coercive control can reduce the occurrence of family violence. As suggested by the discussion paper, there is a discrepancy amongst current literature as to whether criminalisation of coercive control can deter family violence.³ Social workers are concerned that marginalised women, for example, Aboriginal and/or Torres Strait women and women from culturally and linguistically diverse communities, will be further disadvantaged, considering the structural barriers and challenges they have already experienced with the police and justice systems. This means that the creation of an offence of coercive control can have an unintended consequence of over-policing women who are already disadvantaged. **We refer the NSW government to the submissions made by organisations that work with these marginalised communities, including Domestic Violence NSW, South West Sydney Legal Centre, and Muslim Women Australia.**

In addition, our members who work with victim-survivors told us that the threshold of recognising family violence by the Department of Communities and Justice is incident-based, instead of pattern-based. It means that a critical incident has to occur before the victim-survivors are eligible to receive support from the Department. Although we acknowledge that the creation of an offence of coercive control is an attempt to address this, if there is no whole-of-department change to recognise ongoing abusive behavioral patterns, it cannot ensure that victim-survivors receive the support required.

Recommendations

- That Department of Communities and Justice examine the extent to which existing criminal and civil protection orders in NSW respond adequately to non-physical forms of domestic and family violence,
- That the NSW develop a whole-of-government approach to responding to and preventing domestic and family violence in NSW in consultation with the specialist domestic and family violence sector, experts and experts by experience, that is sufficiently resourced, reviewed, monitored and evaluated.

Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?

The AASW agrees that the major issue with court system is not whether they are endowed with sufficient power to address family violence, but its culture that further marginalises victim-survivors. For example, our members told us that victim-survivors are regularly re-traumatised by the system as they are told by their lawyers that they cannot say anything to the Family Court because 'there is

³NSW Government. 2020. Coercive Control: discussion paper October 2020. Sydney, Australia.

no evidence'. There have been cases that some clients who persist in raising their safety concerns for themselves and/or their children have lost their legal representation right before hearing dates. This shows that the Family Court and legal representatives of victim-survivors need to understand coercive control and other non-physical form of FV so not to re-traumatise victim-survivors who are going through court processes.

In relation to NSW police, the AASW suggests that despite their power to arrest and prosecute, the culture within the police force has been unwelcoming to many victim-survivors who report incidences of coercive control. Our members told us that the police in regional NSW did not take swift action on some reports of family violence and child abuse, as they are often treated as 'fights' when it's not a physical form of family violence. In some cases, our members told us that clients with documented, severe physical injuries have had ADVOs taken against them by police on behalf of their abusive partners. These example shows that the NSW police is not adequately trained understand the gendered dynamics of family violence and the impact on victim-survivors.

Recommendation

- That the NSW government amends Apprehended Domestic Violence Order (ADVO) legislation to provide immediate protections to victim-survivors, and to further cover the breadth of coercively controlling behaviours,
- That the NSW substantially increase investment in the ongoing education and training of police and judicial officers in how to effectively and appropriately police and prosecute domestic and family violence crimes, including non-physical abuse.

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?

Broadly speaking, the AASW supports that primary and early intervention programs are key to address coercive and controlling behaviours in the community. This includes education campaigns and programs at all levels of communities, such as schools, workplaces, and sporting clubs. These campaigns can increase the community awareness of controlling behaviours without introducing punitive measures. Other primary prevention programs such as men's mental health support and women's legal services should receive sustained funding to improve the early identification of controlling behaviours.

In addition, a more diverse range of services should be funded and delivered to victim-survivors of all backgrounds, including LGBTIQ, different religions, and different abilities. Victim-survivors from marginalise communities often experienced multiple barriers to access mainstream services. For example, AASW members suggest that international students might not have the knowledge of the Australian legal system to understand their rights and court processing in NSW. This deters them

from seeking redress through the criminal justice system. Increasing the variety of specialist service can ensure that people receive effective and culturally safe support.

Recommendations

- That the NSW government provide sustained funding to domestic and family violence primary prevention and early intervention programs, services and education campaigns to prevent family violence,
- That the NSW government increase funding to the specialist domestic and family violence sector to ensure that women, children and sex and gender diverse people impacted by domestic and family violence receive effective specialist support (including those who do not choose to seek redress via the criminal justice system).

Conclusion

The AASW submits that the NSW government should further evaluate international and local evidence and consult with key stakeholders prior to adding a separate offence of coercive control to the *Crime Act 1900* (NSW). We welcome the opportunity to further discuss any of the points raised in this submission.



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