

SUBMISSION

Joint Select Committee on Coercive  
Control

January 2021





## Acknowledgement of Traditional Custodians

ACON acknowledges the Traditional Custodians of the lands on which we work. We pay respect to Aboriginal Elders past, present and emerging.

## About ACON

ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders within NSW with a number of national programs including in sexual, domestic and family violence (SDFV). Established in 1985, ACON works to create opportunities for people in our communities to live their healthiest lives.

We are a fiercely proud community organisation, unique in our connection to our community and in our role as an authentic and respected voice.

Members of NSW's sexuality and gender diverse communities experience health disparities when compared to health and wellbeing outcomes experienced by the total population. They may also face significant barriers to accessing traditional healthcare pathways. These issues can be compounded by other factors in a person's life, such as living with a disability or being from a culturally diverse background.

We recognise that members of our communities share their sexual and gender identity with other identities and experiences and work to ensure that these are reflected in our work. These can include people who are:

- Aboriginal and Torres Strait Islander Peoples
- people with HIV
- people from culturally and linguistically diverse backgrounds
- people who use drugs
- mature aged people
- young adults
- people with disability.

We know that how our communities define and describe themselves changes, and we strive to ensure that all people we work for feel welcomed by the services we offer and the language we use.

ACON has been working to build community awareness of SDFV issues within sexuality and gender diverse communities and improve service delivery for LGBTQ people affected by domestic and family violence for over 15 years. The ACON LGBTQ Sexual, Domestic and Family Violence Program is the only specialist SDFV initiative for sexuality and gender diverse communities in NSW and we are considered within NSW and nationally as having specialist expertise.

During this time we have developed educational and awareness raising campaigns, undertaken research into the experiences of sexuality and gender diverse communities experiences and needs,



undertaken capacity building of mainstream organisations, implemented bystander initiatives, survivor support groups and piloted the first behaviour change program for LGBTQ people who use violence.

We offer our feedback and recommendations drawing on this expertise.

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## Introduction

ACON welcomes the opportunity to provide a submission to the Joint Select Committee on Coercive Control, speaking to the needs and experiences of sexuality and gender diverse people who have experienced or used coercive control.

Sexual, domestic and family violence (SDFV) is a critical issue for the sexuality and gender diverse communities that ACON works with and represents. ACON has had a dedicated NSW SDFV project since 2004. ACON's primary activities in this area include:

- social marketing campaigns and other community awareness raising initiatives
- research
- policy development and advocacy
- resource development
- capacity building and training for police and other service providers
- client support, counselling and referrals to specialist legal and court support and victims' compensation (historically limited without active promotion as we have not had funding for this work until COVID-19 crisis funds were made available in 2020).

ACON holds significant expertise in the area of LGBTQ+ sexual, domestic and family violence, however we are not a legal service. As such, in this submission ACON does not take a position on whether coercive control should be criminalised, instead we outline some of the key non-legislative activities that should be undertaken if coercive control is criminalised to ensure that criminalisation benefits victims and perpetrators of violence. This submission primarily addresses the questions 4, 7, 8 and 15 from the NSW Government discussion paper on coercive control, in relation to sexuality and gender diverse communities.

ACON supports non-legislative LGBTQ+ inclusion activities such as training for police and judiciary, capacity building of the community and health sector in LGBTQ+ inclusion as related to SDFV, investment in community education and awareness raising initiatives, and ongoing investment in non-punitive interventions for perpetrators and victims of violence. Criminalisation of coercive control could have a number of benefits for victims and the Australian community if implemented in conjunction with non-legislative LGBTQ+ inclusion activities. Conversely, if these non-legislative reforms are not undertaken, it is possible that coercive control laws could be utilised by users of violence as part of legal systems abuse.

This could see victim/survivors inappropriately charged as a primary aggressor, with marginalised and criminalised communities such as Aboriginal and Torres Strait Islander women, and LGBTQ+ people at the greatest risk of this systems abuse. For non-legislative interventions and legal systems to be effective for LGBTQ+ people it is therefore essential that those delivering services and working within justice systems have an understanding of diverse sexualities and genders and the ways in which SDFV including coercive control behaviours are experienced, the ability to appropriately identify primary aggressors and systems that support inclusive practice.

ACON is concerned that the tight timeframes for this inquiry may impact the ability to undertake genuine consultation with the sexual, domestic and family violence sector and with victim/survivors.



Further, criminalisation of coercive control should not be the only action needed to end domestic and family violence or increase safety. Many more measures, such as investment in long term primary prevention projects are needed to reduce the prevalence of intimate partner violence.

## Impact of Coercive Control on LGBTQ+ people

Research demonstrates that LGBTQ+ people experience intimate partner violence at similar or higher rates to cisgender heterosexual women (Our Watch, 2017). Data from Private Lives 3, a national study of over 6,000 LGBTIQ Australians, demonstrates that a high number of LGBTQ+ people experience forms of violence that can be used as components in the perpetration of coercive control, including verbal abuse (42.5% of survey respondents had experienced this form of violence), financial (16.1%), emotional (48.1%), social isolation (26.7%), threats of self-harm or suicide (23.1%) and LGBTIQ-related abuse (10%) (Hill, Bourne, McNair, Carman, & Lyons, 2020). These behaviours are not always considered to be criminal offences, restricting the ability of LGBTQ+ people to access Apprehended Domestic Violence Orders (ADVOs) or other legal pathways to justice.

LGBTQ+ people can experience unique forms of violence, sometimes referred to as identity-based abuse (Gray, et al., 2020). This can include coercive actions such as pressuring the person to conform to gender norms or undergo surgery they do not want, corrective rape, and threatening to 'out' the person's gender, sexuality, HIV status, occupation as a sex worker and/or illicit drug use. The person using violence may also exert control on their partner by telling them that they won't be believed because of their gender or sexuality.

Coercive control is an attack on "autonomy, liberty and equality" (Stark, 2006, as cited in Nancarrow, Thomas, Ringland, & Mondini, 2020, p. 47) that aims to achieve dominance over the other person. Identity-based abuse, which specifically aims to change, minimise or silence a person's identity, clearly constitutes coercive control, and any definition of coercive control in legislation should be inclusive of these behaviours.

The high rates of coercive control in LGBTQ relationships, and the fact that some of these forms of violence are unique to our communities clearly underscores the importance of addressing coercive control in NSW. It is important that the needs of LGBTQ+ people who have experienced violence are considered in all potential legislative changes, and in all non-legislative activities such as training and service provision enhancements.

## Potential Advantages of Criminalising Coercive Control

As outlined in our introduction, ACON does not take a position in this submission as to whether coercive control should be criminalised. However, we note that if legislation is implemented in conjunction with supporting activities including training and community education, that the criminalisation of coercive control could increase safety for LGBTQ+ people as it could:

- assist police and other SDFV responders to assess and determine the "primary aggressor" in LGBTQ+ relationships, leading to enhanced service provision for victims
- assist LGBTQ+ people who have experienced or used coercive control to access support services (including mandated programs)
- support policing to move from an incident-based approach to a course of conduct approach
- provide us with the opportunity to increase community awareness, enabling community members to identify and understand the nature and impacts of coercive control.

ACON also advocates that any legislation must take into consideration and reflect the needs, experiences and protections for sexually and gender diverse communities and for accompanying



interventions such as community awareness campaigns, sector training and service delivery resourcing that meets the needs of the LGBTQ+ community.

### **Determining the “primary aggressor”**

In our work with NSW Police, health services and mainstream DFV professionals, we have heard that they sometimes have difficulty in determining who the “primary aggressor” is. The fact that intimate partner violence is understood through a gendered perspective assists them in responding to incidents between heterosexual cisgender men and women as they know that it is statistically most likely that the woman has been victimised by a man, even where both parties are claiming to be the victim. However, when responding to violence within LGBTQ+ relationships, where for example people may be of the same gender or in a polyamorous relationship, professionals can have difficulty understanding who the victim of violence is and the potential for multiple perpetrators.

If coercive control was criminalised and training and assessment tools were updated, with LGBTQ+ specific content, responders to violence would be better equipped to assess for and recognise patterns of coercive control, which would assist them to identify the primary aggressor. This would ensure that sexuality and gender diverse people are given the appropriate support and interventions, whether they are the victim or primary aggressor.

This is particularly important when you consider that sexuality and gender diverse people are far less likely than the general population to find support services that meet their specific needs (O'Halloran, 2015), and that when they do disclose violence, LGBTQ people generally do not receive a specialist response and little or no access to resources or services (Ovenden, et al., 2019).

In a recent Australian national study, 4,731 LGBTQ people who had reported having experienced violence from an intimate partner or family member were asked whether they had reported the most recent instance in which this occurred to a professional service, and whether they felt supported by this service. Just 5.9% of respondents reported their experience to police, and of these people, only 45% felt supported (Hill, Bourne, McNair, Carman, & Lyons, 2020). Only 2.5% reported their experience to a lawyer, legal service or court system, and of those that did, 57.1% felt supported (Hill, Bourne, McNair, Carman, & Lyons, 2020).

The fact that many LGBTQ+ people did not feel supported demonstrates the need for improvement within policing and legal systems. In conjunction with non-legislative activities, the criminalisation of coercive control could offer one avenue for improvement in provision of support to LGBTQ+ people who have experienced violence.

### **Access to support services**

If rolled out in conjunction with funding for support services, the criminalisation of coercive control could also increase the number of perpetrators of violence who access behaviour change programs. If coercive control were criminalised, this would increase pathways for LGBTQ+ people who use violence to be referred into or be mandated to attend behaviour change programs.

Through contact with police and the justice system, people who use violence would be provided with information about behaviour change services, and in some instances, may be mandated to enter one



of these programs. There are currently very few behaviour change support options open to LGBTQ+ people, and for criminalisation of coercive control to be effective in increasing community safety, this must change.

### **Supporting a course of conduct approach to policing**

As the *Coercive Control - discussion paper* (NSW Government, 2020) states, NSW's current model of criminal law (and thus of policing) is incident or event-based, and the introduction of an offence of coercive control would represent a move towards a course of conduct approach, where the broader context of a relationship is assessed to understand the nature and impact of abuse on a victim over time.

This shift has the potential to assist victims of violence to better understand and articulate their experiences and could reduce the evidentiary burden on victims to prove a 'single' event occurred, if they are able to instead present evidence of actions over time. This change could lead to improved outcomes for victims and greater accountability for perpetrators of violence. A course of conduct approach to policing would be most effective if paired with non-legislative mechanisms for police and domestic and family violence service providers to work more closely together.

With additional resourcing, case workers could assist victims by presenting evidence collected through their time working together with police and supporting victims to engage with police. As previously explained, this is particularly relevant to LGBTQ+ communities, as many police and service providers struggle to identify the aggressor, especially in relationships between two people of the same gender.

Opening additional avenues for people to access police and justice responses through other service providers such as domestic and family violence caseworkers could be crucial to the success of a course of conduct approach to responding to intimate partner and family violence.

### **An opportunity to increase community awareness**

If the criminalisation of coercive control is accompanied by a community education campaign that is inclusive of sexual and gender diverse people or accompanied with a targeted co designed messaging with LGBTQ communities, this will see our communities be better equipped to identify and understand the nature and impacts of coercive control.

As explored further below, there is a lack of understanding about the impact of coercive control on victims. Community awareness campaigns that are inclusive of LGBTQ+ people, would see an increase in the ability of community members to recognise that their experiences constitute domestic and/or family violence and to know how they can access help.

### **Non-legislative activities that are required for effective change**

As we have indicated throughout this submission, any legislative change, civil or criminal, must be supported by non-legislative activities to be effective. These activities must be actively inclusive of





LGBTQ+ people and include resourcing for interventions that target the specific needs of the community.

If the NSW Government undertakes to criminalise coercive control without investing in non-legislative activities, it is likely that criminalisation would not result in change, as the Tasmanian experience of introducing offences without training and support for police and the judiciary demonstrates (NSW Government, 2020).

Without appropriate training, policy review, community education and additional funding for support services, there is a risk that coercive control will not lead to significant change, and that it could impact negatively on vulnerable communities (Walklate & Fitz-Gibbon, 2019). If the decision to introduce coercive control legislation is made, ACON recommends the following activities be undertaken to address these risks and ensure that coercive control legislation achieves the desired results:

### **Training and policy review for Police and the Judiciary**

All members of the NSW Police force and the judiciary should be provided with training that supports them to understand the nature of coercive control and the effects that it has on people who have experienced violence. Police should also be provided with extensive training of how to assess for coercive control when responding to incidents and working with victims.

LGBTQ+ people experience unique forms of identity based coercive control, as well as barriers disclosing their experiences and accessing support, such as a fear of discrimination from police and a higher threshold to abuse as a result of life-long lived experiences of discrimination. It is important that these experiences are included in training so that police are better equipped to work with LGBTQ+ people who have experienced coercive control.

Additionally, the NSW Government Coercive Control discussion paper, in discussion of the risk of that coercive control legislation could lead to the misidentification of the primary aggressor, states that in England and Wales, the offence has been appropriately operationalised “by recognising the gendered nature of this type of offending (NSW Government, 2020, p. 26). This implies that recognising that women are overwhelming more likely than men to experience intimate partner violence, has helped police to determine the victim. In LGBTQ+ relationships, the ‘truth’ that men are *unlikely* to have experienced violence is not applicable.

The drivers of violence in LGBTQ+ communities are based on rigid expectations of gender and the privileging of heterosexual, cisgender masculinity (Carman, et al., 2020). While the violence in LGBTQ+ relationships is also gendered, this can look different than for cisgender heterosexual relationships. Specific training for police, the justice system and service providers on the nature and drivers of violence for LGBTQ+ people is essential to ensure that the “primary aggressor” is correctly identified in LGBTQ+ relationships where coercive control exists.

All risk assessment tools such as the DVSAT, policies and prosecution and sentencing guidelines related to DFV should be reviewed to ensure that they adequately support police to approach DFV. Risk assessment tools, including trials of these tools, often focus on the female-victim/male-



perpetrator binary, thus excluding many LGBTQ+ community members. Reviews of the risk assessment tools should include an assessment of their use and effectiveness for LGBTQ+ people.

## Community education

While community understandings and attitudes towards intimate partner violence have come a long way in recent years, there remains a lack of understanding about the use and impact of intimate partner violence on victims, and the way that coercive control can be operationalised to make it dangerous for people to leave violence. For example, 32% of respondents who completed the National Community Attitudes towards Violence Against Women Survey (NCAS) in 2017 felt that a female victim who does not leave an abusive partner is partly responsible for the abuse continuing (ANROWS, 2018).

While we do not have comparative data for LGBTQ+ people, it is highly likely, given the relative invisibility of LGBTQ+ intimate partner violence, that the same issues exist for our communities. The NCAS also tells us that 40% of respondents would not know where to go if they needed to get outside advice or support for someone about a domestic violence issue (ANROWS, 2018). Any changes to legislation could be paired with public education and awareness raising initiatives.

Even in the absence of legislative changes regarding coercive control, more work needs to be done to improve community knowledge about intimate partner violence and the services available. Any changes to legislation need to be communicated to the community, so that the public understand what behaviours constitute coercive control, that it is illegal, and how to seek support. If community members are not aware of the changes to legislation, then we will not see sufficient uptake of the coercive control offence.

Much of the community education and primary prevention frameworks such as Change the Story exclusively depict (heterosexual cisgender) men's violence against (heterosexual cisgender) women. This framing leaves LGBTQ+ communities without messaging that they can see themselves in and contributes to the invisibility of LGBTQ+ intimate partner violence, and the difficulties that many LGBTQ+ community members face in recognising that their experiences constitute intimate partner violence. It is important this issue is not replicated in community messaging about coercive control.

The government should ensure that LGBTQ+ people are named and included in all mainstream campaigns about coercive control. Additionally, LGBTQ+ specialist organisations should be funded to develop campaigns and information specifically for sexuality and gender diverse communities. While there has been work done raising awareness there is more work to be done to foster a dialogue, trust and to address barriers to support for SDFV, recognising the impact of historical criminalisation of homosexuality, and the ongoing stigma and discrimination faced by sexually and diverse communities.

In ACON's experience as a community organisation delivering health and education programs to sexually and gender diverse communities for over thirty-five years, co designed and peer led responses that enable LGBTQ people to see themselves, their lived experiences and targeted messaging are most effective.



## Additional funded service supports

Prosecutions for coercive control offences are not likely to significantly reduce rates of intimate partner violence in NSW in themselves. To see sustained change and provide the best support possible to both victims and perpetrators of coercive control, interactions with police and the justice system should be used as opportunities to connect people with appropriate support such as casework, housing support and behaviour change programs. Current programs have limited funding and capacity.

LGBTQ+ people in NSW have difficulty accessing safe and supportive services (O'Halloran, 2015). There are very few services that are equipped to provide responsive and safe supports to LGBTQ+ people who have experienced violence. As ACON outlined in our submission to the National Inquiry into Sexual, Domestic and Family Violence (see attached), with the exception of one care coordinator position and a small amount of funding for discretionary spending to support safety needs in one-off 2020-21 COVID funding to ACON, there are no direct LGBTQ+ client support services funded in NSW.

ACON had partnered with Relationships Australia in 2016-18 to deliver assertive follow up to GBQ men in the Men's Safer Pathways Pilot. Through this experience we identified that the lack of police and service provider training, and inadequate sexuality and gender data collection resulted in low numbers of referrals from police being made to the Safer Pathways Program. The crisis management and case conferencing provided by government and support services will be essential in implementing coercive control legislation and minimising risk to life and harm posed by SDFV.

ACON delivers fee-for-service SDFV Inclusive Practice Training through social enterprise Pride Training, with some government contracts, and a membership program Pride In Health and Wellbeing for community and health organisations. We receive inquiries from mainstream SDFV services recognising the need for capacity building to be LGBTQ+ inclusive, however resource limitations act as a barrier to ensuring these services are supported to be inclusive. ACON advocates that sexuality and gender diverse people should have equitable access to quality and responsive SDFV services wherever they present.

It is also important for people who use violence to access support to change their behaviours so that they do not continue to use violence against their partners. Despite this, except for ACON's Proud Partners program, all perpetrator interventions available in NSW target cisgender heterosexual men.

ACON has heard from Behaviour Change Network facilitators that they are concerned about the safety of GBQ men (cis and trans) in largely heterosexual groups. Proud Partners is the only program in NSW that is inclusive of female (cis and trans) and non-binary people who use violence. Proud Partners currently has funding to run programs in 2021 and 2022, however we require long-term, sustainable funding to build referral pathways with the DFV sector.

It is important that all LGBTQ+ people in NSW, including in regional areas, have access to safe behaviour change services, and this will only be achieved through greater investment in behaviour change programs, including LGBTQ+ specific programs.



The introduction of coercive control legislation has the potential opportunity to connect many more LGBTQ+ people into support, however for this to be effective, the support must be there, and it must be inclusive. The NSW Government should use this chance to strengthen the availability of supports, and strengthen the connection between service providers and police.

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