



31 August 2022

Policy, Reform and Legislation
NSW Department of Communities and Justice
Locked Bag 5000
Parramatta NSW 2123
By email: policy@justice.nsw.gov.au

Dear Director of Policy, Reform and Legislation,

Thank you for the opportunity to provide feedback on the NSW Government's exposure draft *Crimes Legislation Amendment (Coercive Control) Bill 2022* (NSW)(the **Bill**).

Background: Western Sydney University Justice Clinic

The [Western Sydney University Justice Clinic](#) is a community legal service, where practicing lawyers and academics work on client cases and law reform and access to justice projects, run legal outreach clinics, teach the university's clinical legal and internship subjects, and operate the university's student legal service. Part of our caseload involves working with victim-survivors of coercive control within the context of family violence, sexual violence and modern slavery.

Summary of recommendations

A summary of our recommendations is provided below, with further detailed commentary following.

1.	An independent and multi-agency implementation taskforce is established and begins its consultative work before any legislation to criminalise coercive control is proposed.
2.	The consultation period for this Bill and any future, related legislation run for at least six (6) months, which will require opening up this Bill to a second round of consultation.
3.	That the necessary programs, education, training and reform are initiated before introduction of a new offence, with a further implementation period to embed cultural and systems reform of at least four (4) years from the time any legislation is introduced.
4.	Further consultation on the definition and operation of "domestic abuse" provisions being proposed in the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW). Introduction of a "domestic abuse" offence which captures coercive and controlling behaviour in the C(DPV)Act and forms grounds for an ADVO before any introduction of a stand-alone coercive control ("abusive behaviour") criminal offence.
5.	Expand the offence from intimate partner relationships only, with consideration given to drawing from the current definition of "domestic relationship" in section 5 of the C(DPV) Act.
6.	Consideration given to how any new coercive control offence or domestic abuse definition will address existing bias and tendency to misidentify the primary aggressor, which should include further training and guidelines for law enforcement.



7.	Where the stand alone coercive control offence is introduced, the review period should be reduced from three (3) years to no more than 18 months following commencement.
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Detailed response and recommendations

1. Implementation taskforce and consultation period

- 1.1 It was the “*strongly held unanimous Committee view*” and recommendation of the Joint Select Committee on Coercive Control (**Joint Select Committee**)¹ that an extensive implementation process should take place before legislation to criminally recognise coercive control is introduced.
- 1.2 The NSW Government Response to the Joint Select Committee (**NSW Government Response**)² supported the Joint Select Committee’s recommendations (1),(20)-(22) that the NSW Government establish an implementation taskforce to manage the introduction of a criminal offence of coercive control.³ The taskforce was to consult with stakeholders “*including NSW Police, victim survivors, the domestic abuse sector, disability advocacy organisations, and representatives of culturally and linguistically diverse, Aboriginal and Torres Strait Islander and LGBTQ communities*” before proposing final legislation.
- 1.3 Regardless, our understanding is that no such implementation taskforce has been established, and certainly not the independent, multi-agency taskforce appropriate for such oversight and governance.
- 1.4 Furthermore, the consultation period for this Bill ran for a mere six (6) weeks from 20 July 2022 to 31 August 2022. We strongly support the urgent request of the NSW Women’s Alliance, the DVNSW Aboriginal Torres Strait Islander Steering Committee, and the DVNSW Lived Experience Policy Advisory Committee in its call to the NSW Attorney-General for the Bill to be opened to a second round of consultation.⁴ As noted in the Open Letter which we have signed,

Responding to coercive control is an important reform, long advocated for by victim-survivors and domestic and family violence workers. However, the draft Bill is complex legislation, and

¹ NSW Parliament, Joint Select Committee on Coercive Control, *Coercive control in domestic relationships* (Report 1/57 – June 2021)(**Joint Select Committee Report**), p v, available at <https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Report%20-%20coercive%20control%20in%20domestic%20relationships.pdf>.

² NSW Government Response to NSW Joint Select Committee on Coercive Control (17 December 2021) (**NSW Government Response**), available at <https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Government%20response%20-%20Joint%20Select%20Committee%20on%20Coercive%20Control%20-%2017%20December%202021.pdf>.

³ Ibid, p 6.

⁴ NSW Women’s Alliance and DV NSW, Open Letter in Support of Second Consultation for Draft Coercive Control Bill (August 2022).

*without being given the appropriate time for consideration and consultation it has the potential to harm the very people it was designed to protect.*⁵

Recommendation 1: That an independent and multi-agency implementation taskforce is established and begins its consultative work before any legislation to criminalise coercive control is proposed.

Recommendation 2: The consultation period for this Bill and any future, related legislation run for at least six (6) months, which will require opening up this Bill to a second round of consultation.

2. Extensive consultation, education and training required before offence introduced

- 2.1 The NSW Government Response supported recommendations (17) and (19)⁶ of the Joint Select Committee that specifically addressed the need to consult with stakeholders such as the Aboriginal and Torres Strait Islander community, and implement repeated and tailored training for police officers, judicial officers and prosecutors, and workers in the domestic abuse, health care, housing, education and child protection sectors. Ideally, this should all occur before and alongside the introduction of the criminal offence of coercive control.
- 2.2 Furthermore, the NSW Government Response supported all recommendations of the Joint Select Committee in relation to the need to develop and deliver early intervention programs (recommendation 8), awareness campaigns (recommendation 9), school programs (recommendation 10), resources (recommendations 11 – 13), and education and training in relation to the elements of a proposed offence and of the judiciary and legal profession (recommendation 22).
- 2.3 This embedding of cultural and systems reform is crucial to the appropriate and successful introduction, implementation, identification, and enforcement of the offence.
- 2.4 Nonetheless, this consultation period in relation to criminalising coercive control in intimate partner relationships has been minimal and it is unclear what progress is being made by the NSW Government to develop and deliver the programs, education, training and reform that needs to co-exist alongside the implementation of this new offence.

Recommendation 3: That the necessary programs, education, training and reform are initiated as soon as possible and certainly before introduction of a new offence, with a further implementation period to embed cultural and systems reform of at least four (4) years from the time any legislation is introduced.

3. Definition of ‘domestic abuse’ should be aligned between NSW legislation and amended prior to introducing coercive control offence

- 3.1 The NSW Government Response supported in principle the Joint Select Committee’s recommendation (2) that a clear and accessible definition of domestic abuse which includes

⁵ Ibid, p 1.

⁶ NSW Government Response, p 5.

coercive and controlling behaviour should be introduced into the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (**C(DPV) Act**) as a priority before criminalising coercive control.⁷

- 3.2 As noted in the Joint Select Committee report, there is widespread support for a clear statutory definition of domestic abuse that includes coercive and controlling behaviour,⁸ and experts have testified to the value in having “*a common language and understanding of domestic abuse .. across all our systems including family law, care and protection, domestic violence, housing, victims support, immigration, income support etcetera*”.⁹
- 3.3 While we support the Bill’s introduction of a definition of “domestic abuse” as section 6A of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) we have concerns about the drafting (e.g. the current definition is unclear and will still not form grounds for an Apprehended Domestic Violence Order (ADVO)) and its dissimilarity with the concept and definition of “abusive behaviour” and the coercive control offence being introduced as sections 54F and 54D of the *Crimes Act 1900* (NSW)(**Crimes Act**). This requires further examination and evaluation.
- 3.4 The introduction of a new definition of “domestic abuse” into the C(DPV)Act before any stand-alone coercive control criminal offence is legislated will allow time for appropriate training and education of system actors (such as police, judicial officers and specialist services) and an assessment of whether a stand-alone coercive control offence is even necessary following any C(DPV)Act amendment.

Recommendation 4: Further consultation on the definition and operation of “domestic abuse” provisions being proposed in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). Introduction of a “domestic abuse” offence which captures coercive and controlling behaviour in the C(DPV)Act and forms grounds for an ADVO before any introduction of a stand-alone coercive control (“abusive behaviour”) criminal offence.

4. Offence should not be limited to intimate partner relationships

- 4.1 The Bill limits the new coercive control offence in the Crimes Act to intimate partners, meaning a person who is or has been married or a de facto partner to the first person, or has or has had an intimate personal relationship. We note that “intimate personal relationship” is not defined under new section 54C except that it need not involve a relationship of a sexual nature.

⁷ Ibid, p 3.

⁸ Joint Select Committee Report, [3.29] p 25.

⁹ Liz Snell, Law Reform and Policy Coordinator, Women’s Legal Service NSW, Transcript of evidence, 23 February 2021, p 42, as cited in NSW Parliament, Joint Select Committee on Coercive Control, *Coercive control in domestic relationships* (Report 1/57 – June 2021), [3.32] p 26, available at <https://www.parliament.nsw.gov.au/ladocs/inquiries/2626/Report%20-%20coercive%20control%20in%20domestic%20relationships.pdf>.

- 4.2 By limiting the offence to intimate partner relationships, other relationships where coercive control is an issue are excluded and remain uncaptured by the legislation. For example, carer relationships, other familial relationships such as an adult child to a senior parent, and Indigenous kin relationships.
- 4.3 Consideration could be given to drawing from the meaning of “domestic relationship” under section 5 of the C(DPV) Act, which includes relationships where the persons involved are or have been married, de facto, in an intimate personal relationship, living or lived in the same household, living or lived in the same residential facility, have or had a paid or unpaid carer relationship, are related, are Indigenous kin, or have both had a domestic relationship with the same person (e.g. a person’s ex-partner and current partner would have a domestic relationship).
- 4.4 As well as marginalising people by denying them the same access to the justice system based on a limited concept of relationships (e.g. those with a disability, seniors, and Aboriginal and Torres Strait Islander people), excluding any type of relationship but intimate partner relationships as currently defined in the Bill greatly limits the efficacy of any introduction of a stand alone coercive control offence.

Recommendation 5: Expand the offence from intimate partner relationships only, with consideration given to drawing from the current definition of “domestic relationship” in section 5 of the C(DPV) Act.

5. Ongoing potential for mis-identification of the primary aggressor of coercive control offence

- 5.1 The Bill does not appear to address the ongoing issue of misidentification of the primary aggressor in either the new coercive control offence in the Crimes Act or the new definition of domestic abuse in the C(DPV) Act. While we unfortunately accept that misidentification is an existing feature of our system, we note the evidence of Scottish Women’s Aid to the Joint Select Committee in regard to the introduction of the highly regarded Domestic Abuse (Scotland) Act 2018, which noted:

...the issues in NSW will include existing system bias that results in misidentification of Indigenous women and other women of colour, and I would recommend investment in establishing a strong evidence base for existing problems and setting the bar high in how implementation of a new law will address existing bias.¹⁰

- 5.2 A primary factor that can assist to address the issue of existing bias and misidentifying the predominant aggressor is training and guidelines to assist police, particularly before any new offence or definitions are introduced. To draw again from the Scottish experience, it was the evidence of Police Scotland to the Joint Select Committee that their police undertook

¹⁰ Dr Marsha Scott, Chief Executive, Scottish Women’s Aid, Answers to Questions on notice – Scottish Women’s Aid, 20 May 2021, available at <https://www.parliament.nsw.gov.au/ladocs/other/15588/Answers%20to%20Questions%20on%20notice%20E2%80%93%20Scottish%20Women%27s%20Aid.pdf>.

extensive training in partnership with domestic abuse and public health agencies “to understand and identify the subtle nuances of coercive control and how the legislation could be applied”¹¹ as well as to develop a Joint Protocol to prevent victims being misidentified as perpetrators.¹²

- 5.3 There is potential with the new coercive control offence for increased misidentification of the perpetrator, for example, where a mother may be accused of exercising coercive control when she does not allow her children to spend time with a father due to abuse or other concerns. Where such a person is then charged with a coercive control offence, they may be forced to rely on the weakly drafted defence provisions in section 54E of the Crimes Act that the “*course of conduct was reasonable in the circumstances*”.

Recommendation 6: Consideration given to how any new coercive control offence or domestic abuse definition will address existing bias and tendency to misidentify the primary aggressor, which should include further training and guidelines for law enforcement.

6. Review period should be reduced from three (3) years

- 6.1 The current review period for the new coercive control offence is three (3) years, which we submit is far too long and should be reduced to 18 months at a maximum to allow for prompt and thorough review and evaluation, including the efficacy of the implementation, any cultural and systems reform, reports to police, prosecution rates, and the experiences of victim-survivors.

Recommendation 7: Where the stand alone coercive control offence is introduced, the review period should be reduced from three (3) years to no more than 18 months following commencement.

We welcome any further opportunities to contribute to the exposure draft and any associated consultation. For further enquiries or discussion on the above or other recommendations, please do not hesitate to contact the writer at r.dominguez@westernsydney.edu.au.

Yours faithfully,



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¹¹ Police Scotland, Answers to Questions on notice – Police Scotland, 9 June 2021, p 6, available at <https://www.parliament.nsw.gov.au/ladocs/other/15725/Police%20Scotland.pdf>.

¹² Ibid, p 2.