



31 August 2022

Policy, Reform and Legislation
Department of Communities and Justice
Locked Bag 5000
Parramatta NSW 2124
By email only: policy@justice.nsw.gov.au

Dear Officer,

Submission on the Crimes Legislation Amendment (Coercive Control) Bill 2022

We thank the NSW Department of Communities and Justice for the opportunity to comment on the Crimes Legislation Amendment (Coercive Control) Bill 2022 (the **Bill**). We give the NSW Government permission to publish our feedback and for our feedback to be provided to those undertaking the review.

About Kingsford Legal Centre

Kingsford Legal Centre (**KLC**) has provided free legal advice, casework, and community legal education to our local community in south-east Sydney since 1981. We are part of the UNSW Sydney Law Faculty and provide clinical legal education to over 500 of its students each year. As a generalist community legal centre, we have experience in providing assistance and representation to people in our community experiencing domestic and family violence. In 2021, we gave 118 family law advices to clients and provided intensive assistance with 12 family law cases. The majority of these clients were female (72%) and were experiencing family violence (66%).

Given the limited time frame from commenting on the Bill, we only make the brief comments below. We endorse the submission of the Women's Legal Service NSW on this Bill, which provides greater detail on how the Bill should be revised to better support the rights and interests of victim-survivors of coercive control.

Key issues for Comment

1. Limited consultation period on the Bill

We support an urgent extension on the consultation period on the Bill. We endorse the recent joint open letter by the NSW Women's Alliance and Domestic Violence NSW on this, which called on the NSW Government to extend the consultation period by 6 months. The current consultation period of 6 weeks is simply not enough time to allow for proper

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consultation on the Bill, including with priority populations who will be most affected by the Bill.¹ The Government must provide more time to enable comprehensive and meaningful consultation on the Bill with all impacted stakeholders, including First Nations peoples and communities, refugee and migrant communities, people with disability, non-binary, trans and gender diverse communities, regional, rural and remote communities, children and young people, older women and women in prison.²

Recommendation: We recommend that the NSW Government extend the consultation period for the Bill by at least 6 months.

2. Need for further consultation on the Bill only covering intimate partner violence

We are concerned that the Bill only covers coercive control between intimate partners, and not also other kinds of domestic and family relationships. We note that Full Stop Australia has already raised this as an issue, calling on the NSW Government to extend the application of the law to victim-survivors of coercive control in other domestic and family relationships.³ We also note concerns raised by Wirringa Baiya Aboriginal Women's Legal Centre that the narrow definition of relationships under the Bill will not reflect the experience of some Indigenous communities.⁴ The NSW Government must consult with all impacted stakeholders to ensure that the Bill reflects the complex nature of coercive control, and the lived experience of a broad range of victim-survivors.

Recommendation: We recommend greater consultation on the Bill on whether and how it should be extended to cover coercive control in relationships beyond intimate partners, such as those covered under the current definition of 'domestic relationship' under the *Crimes (Domestic and Personal) Violence Act 2007 (NSW)*.

3. Concern about inconsistency in definitions of domestic abuse under the Bill

We are concerned by the Bill's proposal of different definitions of domestic abuse. The Bill proposes one new definition of 'abusive behaviour' under the *Crimes Act 1900 (NSW)*⁵, and another definition of 'domestic abuse' under the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*.⁶ We call for greater consultation on this. Creating one comprehensive definition of domestic abuse across NSW legislation could offer clarity for victim-survivors and assist with ensuring that domestic violence laws are consistently understood, applied,

¹ NSW Women's Alliance and Domestic Violence NSW, Open Letter to the Hon Natalie Ward titled 'Re: Urgent Request to Extend Consultation Period for the Public Exposure Bill to Criminalize Coercive Control', 26 July 2022, 1.

² Ibid, p. 2.

³ Full Stop Australia, Coercive Control Set to Be Criminalized in NSW, as Full Stop Australia Calls for Similar Reforms Across Australia, 20 July 2022 < <https://fullstop.org.au/news/coercive-control-set-to-be-criminalised-in-nsw-as-full-stop-australia-calls-for-similar-reforms-across-australia>>.

⁴ Tasmin Rose, 'Rushed NSW Coercive Control Laws Could Discriminate Against Minorities, Experts Say' The Guardian (Online), 22 July 2022.

⁵ *Crimes Legislation Amendment (Coercive Control) Bill 2022 (NSW)*, proposed section 54F of the *Crimes Act 1900 (NSW)*.

⁶ Ibid, proposed section 6A of the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*.

and enforced. This would also reflect the call for greater consistency in domestic abuse laws, as recommended by the NSW Joint Select Committee on Coercive Control.⁷

We are also concerned that the proposed definition of ‘abusive behaviour’ under the *Crimes Act 1900* (NSW) does not include any reference to sexual violence. Instead, the section provides an example of abusive behaviour being a person making unreasonable demands on a person’s sexual autonomy.⁸ We find this section inconsistent with the NSW Government’s recent affirmative consent laws, which reformed the *Crimes Act 1900* (NSW) to clearly provide that consent to any sexual activity must be freely and voluntarily given, including by being free from coercion, blackmail, or intimidation.⁹ We are concerned that behaviour may be characterised as ‘unreasonable demands’ on a person’s sexual autonomy, when it should be understood as sexual assault.

Recommendation: We recommend the Bill is revised to ensure a consistent and comprehensive approach to defining domestic abuse in NSW, including by covering sexual violence. We refer to the comprehensive recommendations of the Women’s Legal Service NSW on this, including the need for a definition of “domestic and family abuse” in the Crimes (DPV) Act which can ground ADVOs.

4. Holistic approach to criminalising coercive control needed, including education and training and diversion programs

We are also concerned that this Bill is being proposed without a clear commitment by the Government to introducing other key reforms to ensure that coercive control in NSW is best addressed and prevented. A key recommendation of the Joint Select Committee on Coercive Control was the need to ensure a whole of government approach to most effectively implementing any coercive control law.¹⁰ We urge the government to implement this and other key recommendations by the Committee.

A) Education and training for communities, police, and decision-makers

In particular, we call on the government to ensure that any new coercive control law is passed alongside reform that seeks to prevent coercive control from occurring, such as through trauma-informed and culturally appropriate education and training for all impacted communities and stakeholders on coercive control. It is not enough to simply criminalise coercive control without people and communities understanding the nature of coercive control, it’s harms and what any new offence means.

We also submit that it is especially vital that any coercive control law is implemented with greater education and training for police and decision-makers on the nature of coercive

⁷ Parliament of New South Wales, Joint Select Committee on Coercive Control, ‘Coercive Control in Domestic Relationships’ (June 2021), p. 39.

⁸ *Crimes Legislation Amendment (Coercive Control) Bill 2022* (NSW), proposed section 54F(g) to *Crimes Act 1900* (NSW).

⁹ *Crimes Act 1900* (NSW) section 61HJ(f).

¹⁰ Parliament of New South Wales, Joint Select Committee on Coercive Control, ‘Coercive Control in Domestic Relationships’ (June 2021), p. 44.

control and the risk of victim-survivors being wrongly identified as perpetrators of coercive control. The Joint Select Committee on Coercive Control acknowledged the misidentification of perpetrators of domestic violence as a key issue in the context of ADVOs, and one that disproportionately impacts Indigenous women.¹¹ Any training on coercive control for communities but especially for police and decision-makers (including judges and victim-services) must address this issue and include unconscious bias training.

B) Perpetrator intervention and rehabilitation programs

The Joint Select Committee on Coercive Control also recommended that the NSW Government consider improving resources for behaviour change programs.¹² We believe this reform is key for preventing coercive control and ensuring systemic change to eliminate all forms of gender-based violence. As the report recognised, any policy framework to address violence against women and children must include an integrated system for perpetrator intervention and change.¹³ However, we also recommend that the Government develop these programs for use as diversion programs for perpetrators. NSW courts should be equipped to refer perpetrators to educational and supportive rehabilitation programs on coercive control where appropriate to divert perpetrators out of the criminal justice system.

Recommendation: We recommend that the Government introduce any coercive control bill alongside other key recommendations of the Joint Select Committee on Coercive Control. In particular, we urge the Government to provide a clear plan for greater education and training on coercive control with all relevant stakeholders, including impacted communities, police and decision-makers, and appropriate early intervention and diversion programs for perpetrators.

5. Phased approach to implementation of any coercive control offence

We support a phased approach for the introduction for any coercive control offence in NSW, starting with the introduction of a definition of domestic and family abuse in the Crimes (DPV) Act and an evaluation of its effectiveness. Any new coercive control offence must be implemented after cultural and systems reform in NSW to ensure that communities, police, and decision-makers are able to properly understand the nature and operation of the offence. This is also vital to ensure that any potential unintended harmful consequences of the offence can be addressed.

Recommendation: We refer to the comprehensive recommendations of the Women's Legal Service NSW on this, including the need for a legislative requirement to table a report to Parliament outlining the steps taken towards cultural and systems reform implementation prior to the commencement of a new coercive control offence.

¹¹ Ibid, p. 23

¹² Ibid, p. 59.

¹³ Ibid, p. 59.

6. Concern that the Bill only sets one review process for the Bill

We are concerned that the Bill only proposes a one-off review, after the period of 3 years from its commencement.¹⁴ We support calls to amend the Bill to include regular reviews of the legislation. This is vital to ensure that the law is working effectively in practice and is refined to best support the rights and interests of victim-survivors and others. This is especially needed given the short-time frame for consultation on the Bill.

Recommendation: We recommend that the Bill is revised to include regular and ongoing reviews of the operation of the legislation, with the first review no more than 18 months after commencement.

7. Need for independent coercive control implementation task force

In order to best support consultation on the Bill and any further development and implementation of the Bill, the NSW Government must urgently establish an independent coercive control taskforce. This was recommended by the Joint Select Committee on Coercive Control for implementing a coercive control offence.¹⁵ However, there is benefit for such a taskforce being established now, to ensure oversight on consultation of the Bill and to assist with its further development and implementation. This taskforce should also be tasked with ongoing independent review of the legislation.

Recommendation: The NSW Government must urgently establish an independent coercive control implementation taskforce to oversee the development and implementation of the Bill. This taskforce should also be equipped to independently review the legislation on an ongoing basis.

8. Additional funding for victim-survivors of domestic and family violence

The Joint Select Committee on Coercive Control made a number of recommendations on resourcing for domestic abuse and housing services. This included recommendations for the NSW Government to “improve resources” for domestic abuse service providers and housing services and improve resources for women’s domestic violence court advocacy services, particularly in rural and regional areas.¹⁶ We urge the NSW Government to urgently implement these recommendations, with a focus on substantially increasing and sustaining funding for these services.

Recommendation: The NSW Government must urgently provide increased and sustained funding for housing and other support services for victim-survivors of domestic and family violence, including for free legal services and non-legal services.

¹⁴ *Crimes Legislation Amendment (Coercive Control) Bill 2022* (NSW), proposed section 541(2) to *Crimes Act 1900* (NSW).

¹⁵ Parliament of New South Wales, Joint Select Committee on Coercive Control, ‘Coercive Control in Domestic Relationships’ (June 2021), p. 83.

¹⁶ *Ibid*, p. 54.

If you have any questions about this letter, please contact Emma Golledge at legal@unsw.edu.au.

Yours faithfully,

KINGSFORD LEGAL CENTRE



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