28 October 2022

Committee Members
Standing Committee on Social Issues
NSW Parliament

By email:

Dear Committee members,

Inquiry into the Crimes Legislation Amendment (Coercive Control) Bill 2022

We, the signatories to this joint submission, are writing to you in response to the inquiry into the Crimes Legislation Amendment (Coercive Control) Bill 2022 (the Bill). We recognise the Government's commitment and bi-partisan efforts to address coercive control.

We have raised concerns about the Bill including about:

- the removal of recklessness from the mental element of the new offence;
- the need for a contextual definition of domestic abuse in the *Crimes (Domestic and Personal Violence) Act*;
- the need for explicit recognition of sexual and physical violence and abuse in the definition of "*abusive behaviour*";
- the need for better recognition of financial and economic abuse in the definition of "*domestic abuse*" and "*abusive behaviour*";
- limiting the scope of the offence to intimate partners;
- the need for the immediate establishment of an independent taskforce;
- the importance of the implementation of substantial cultural and systems reform;
- the need for regular and ongoing reviews with comprehensive review provisions.

Our concerns are focused on wanting to ensure the safety of women, children and other victim-survivors as well as holding perpetrators accountable for their use of domestic and family abuse.

We continue to hold the concerns outlined above, but the most significant and pressing concern is robust implementation and monitoring and evaluation.

Marsha Scott from Scottish Women's Aid states:

> *The only way we can honour the suffering and the courage of those who took this on to begin with is by going into it knowing that we're going to get it wrong, but that our biggest learning is going to be from how we got it wrong. So be ready to implement robustly... assess mercilessly with the input and feedback from your coalface, amend, and then try it all again and repeat*. (Coercive Control and NSW Legislation Forum, July 2022)

We strongly believe robust implementation requires an independent taskforce.

Independent taskforce

An independent taskforce for oversight of implementation and monitoring and evaluation is best practice. We have seen the benefits of Victoria's independent Family Violence Reforms Implementation Monitor, including in its first topic report *Monitoring Victoria's family violence reforms Accurate identification of the predominant aggressor (2021)* which outlined specific systems and cultural reform required to address the issue of misidentification of the predominant aggressor.

Similarly, the Queensland Women's Safety and Justice Taskforce has recommended independent monitoring and reporting on processes towards criminalising coercive control.

Many have raised concerns about misidentification of the predominant aggressor. We share these concerns. The Bill proposes to address this by starting with a narrow application of the offence, for example, by requiring an intention of the course of conduct of abusive behaviour to coerce or control (and removing recklessness as an alternative) and by limiting to intimate partner violence and reviewing the impacts on First Nations people through the statutory review mechanism. This does not address the underlying root causes of misidentification. If the root causes of misidentification are not addressed through cultural and systems reform, the issue of misidentification, particularly in relation to apprehended domestic violence orders, will remain. This is why cultural and systems reform is so important.

We believe it is vital the NSW coercive control taskforce is independent, well resourced and required to regularly table reports to Parliament to ensure transparency and accountability.

Comprehensive training for all key professionals (police, legal professionals, judicial officers, and other professionals working within the criminal legal system) will be required. Training on the content of legislative changes is insufficient when this legislation represents an entirely new way of policing and prosecuting, being contextual rather than incident based.

While ongoing training is required, implementation of cultural and systems reform requires much more than training. It requires, for example:

- accountability frameworks to effectively respond to systemic racism, sexism and other forms of discrimination;
- accountability frameworks to ensure the accurate identification of the person most in need of protection;
- regular independent auditing of policing of sexual, domestic and family abuse and the publishing of such reports to help promote continuous improvement and build public confidence in policing of sexual, domestic and family abuse;
- co-responder model with police responding with specialist domestic and family abuse workers;
- an effective, multi-agency screening and risk assessment framework and associated tools;
- significant workforce development;
- significant improvements to the criminal legal system;
- whole of systems response.

Cultural and systems reform must be properly funded.

It is important that cultural and systems reform is specifically included in the legislative review provision relating to the main purposes of an independent Coercive Control Implementation and Evaluation Taskforce and it be clear how the taskforce provision interacts with the review provision: s54I. It is essential that an independent taskforce has oversight of such work.

We recognise the amendments that have passed the Legislative Assembly. We welcome the clear timeframe for establishing a Coercive Control Implementation and Evaluation Taskforce and regular reporting to the Minister and tabling of such reports to Parliament within 21 days of receiving it. We commend more regular reviews.

However, the taskforce is not independent. Further, it must include more than one representative from the domestic and family violence sector. It must also include several First Nations representatives, including a representative from the Aboriginal Women's Advisory Network and representatives from other priority populations.

The independent taskforce should also have oversight of the implementation of all Joint Select Committee on Coercive Control recommendations.

We reiterate it is vital this taskforce be independent.

Extending time for implementation

We want new reform intended to protect victim-survivors from domestic and family abuse to succeed. To do so it is imperative there is sufficient preparation time and sufficient safeguards to guard against unintended consequences and limit traumatisation of victim-survivors.

We believe it will take much longer than 15.5 to 19.5 months to implement training for all police, judiciary and the legal profession as well as substantial cultural and systems reform outlined above. We commend the proposed amendment that legislates regular progress reports to the Minister be tabled in Parliament and reiterate the importance of an independent taskforce. There needs to be an openness to extend the implementation period if required.

More detailed statutory review provisions

In addition to the issues already included in the statutory review provision, there must be consideration of the effectiveness of training and how the offence is being used. Proposed s54HA(3)(b) refers to the taskforce "*provid[ing] advice and monitor[ing] training, education and resourcing in relation to the coercive control offence*". While this is important, it can be strengthened by requiring an assessment of the effectiveness of training, similar to the statutory review provision for the sexual consent reforms.

Proposed s54HA(3)(c) refers to "*provid[ing] advice about the commencement dates of, and interaction between the definition of* ***domestic abuse*** *in the Crimes (Domestic and Personal Violence) Act 2007, section 6A and the coercive control offence*". It needs to be made clear the definition of domestic abuse itself and the effectiveness of the definition will be part of the regular statutory reviews.

Proposed s54HA(3)(d) refers to the role of the taskforce in "*evaluat[ing] the implementation of the coercive control offence and resourcing in relation to the coercive control offence*". We believe more detail is required and recommend a non-exhaustive list of further issues that must be included in the statutory review provision:

- an assessment of the effectiveness of training and examination of transcripts as was included for the sexual consent reforms;
- the use (or lack thereof) of the provision by different groups of people (as victim-survivors and accused);
- when a victim-survivor reports a course of conduct of abusive behaviour and police do not lay charges and the reasons for not laying charges;
- the types of behaviours being captured by the offence (and whether charges are being laid that concern non-physical forms of coercive control only);
- the extent to which the offence is used as a stand-alone offence or in combination with other charges;
- the use of the defence contained in s 54E;
- any variations in the use of the offence across different police areas;
- how often the new offence is used as the grounds for an AVO. If the police do not think it meets the criminal threshold when do they think the behaviour is sufficient to be the grounds for an AVO;
- victim-survivors' experience of the criminal legal process when involved in offences under s54D;
- the operation of the reasonable person test and whether it needs to be simplified;
- a review of the definition of "*domestic abuse*" in the *Crimes (Domestic and Personal Violence) Act* to assess its educative function and how the definition improves police practice in responding to domestic and family abuse;
- consideration of review provisions in Scotland's legislation:
    - *The number of cases for which criminal proceedings are undertaken*
    - *The number of convictions in criminal proceedings*
    - *The average length of time from service of the complaint or indictment to finding or verdict as to guilty (including plea of guilty)*
    - *Provide with respect to particular:*
        - *Areas,*
        - *Types of court*

Annual data on the use of the offence must also be published.

Some of the signatories to this letter are appearing before the Committee. We look forward to the opportunity to discuss these important matters further.

Should you have any questions, please contact Liz Snell, Women's Legal Service NSW on ph 02 8745 6900 or Rachael Martin, Wirringa Baiya Aboriginal Women's Legal Centre on ph: 02 9569 3847.

Yours faithfully,
Insert signatories

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