

Position Statement: NSW Crimes Legislation Amendment (Coercive Control) Bill 2022

Introduction

Efforts to criminalise coercive control are an important part of shaping a better overall response to domestic and family violence in New South Wales (NSW). Coercive control is defined by Evan Stark as preventing someone in an intimate or familial relationship from 'freely developing their personhood, utilising their capacities, or practising citizenship, consequences they experience as entrapment' (2007, p.4). This insidious pattern of behaviour underpins all forms of abuse and is the source of significant, long-term harms to the social, emotional, and economic wellbeing of victim-survivors. Criminalising coercive control may ensure that the danger of being controlled, isolated and terrorised is not overlooked, and that perpetrators are identified and held responsible for this damaging conduct (Johnson et al. 2019, p19).

Recently, NSW reached a significant milestone with the introduction of the Crimes Legislation Amendment (Coercive Control) Bill 2022. It creates an offence of coercive control with appropriate safeguards in the Crimes Act 1900, which will carry a maximum sentence of seven years in jail (Attorney General 2022). The following elements must be present to satisfy the offence:

- An adult has engaged in a course of conduct against their current/former intimate partner that consists of 'abusive behaviour'; and
- The person intended the course of conduct to 'coerce or control the other person; and
- A reasonable person would consider that the course of conduct, in all circumstances:
 - would either cause a person to fear the violence will be used against them or someone else; or
 - cause a 'serious adverse impact' on the other person to engage in some or all of their ordinary day-to-day activities.

This paper details No to Violence's overall position on the Crimes Legislation Amendment (Coercive Control) Bill 2022 and provides further recommendations that may strengthen its application and overall implementation.

Background

The decision to criminalise coercive control in NSW was preceded by considerable consultation including a parliamentary inquiry and a draft exposure Bill. The NSW Joint Select Committee was established on 21 October 2021 to inquire into and report on coercive control in domestic relationships, prompted by the devastating occurrence of 29 domestic and family murders within the state in 2020 (NSW Joint Select Committee 2021) and the 2019 report of the Domestic Violence Death Review Team's report that found that 99% of the homicides it reviewed were preceded by coercive control. Initial submissions were sought in response to a discussion paper, followed by a series of hearings in March 2021 that drew upon the expertise of academics, experts, frontline service

providers, law enforcement and other stakeholders, and to which No to Violence contributed and appeared as a witness. This feedback informed the Committee's final report, released on 30 June 2021.

The NSW Government's Response to the NSW Joint Select Committee on Coercive Control was made on 17 December 2021 and stated clear support for the criminalisation of coercive control – albeit, with a considerable program of education, training and consultation with police, stakeholders and the frontline sector (p.3) leading up to its commencement. A draft Exposure Bill was released in July 2022 alongside consultation with stakeholders. The Bill was introduced on 12 October 2022.

No to Violence provided substantial feedback at all stages of this process, both as a peak body and on behalf of the NSW's men's services sector. Our initial submission to the Joint Select Committee on Coercive Control drew upon consultations held with around 500 experts, organisations, academics and victim-survivors from across Australia, England and Scotland. Importantly, these consultations included significant input from victim-survivors, Aboriginal and Torres Strait Islander women, LGBTIQ+ individuals and communities, and people from migrant and refugee backgrounds. No to Violence also provided evidence at the Joint Select Committee Hearings. Most recently, No to Violence attended several consultations between government and the NSW domestic violence sector and made a submission in response to the draft Exposure Bill.

No to Violence's support for the Bill

No to Violence broadly supports the NSW's governments efforts to introduce a standalone offence of coercive control and commends their efforts to take strong effort on increasing the accountability of perpetrators and the safety of victim-survivors. It is our view that its inclusion in statute has the potential to form improved responses to family and domestic violence, by better defining the extent of its totality and reflecting the lived experience of victim-survivors. We also note that criminalisation will help to validate victim-survivors' experiences of abuse; highlight the effect of all forms of abuse; provide a framework for improving policing, criminal justice, service, and community responses; and increase the safety of victim-survivors at high risk of harm (No to Violence 2021).

Our support of the Bill reflects key amendments that will ultimately strengthen its application and implementation. This includes better recognition of how the fear of violence or actual violence towards someone known by a victim-survivor can be used as a form of coercive control, and a more nuanced depiction of technology-facilitated abuse. Importantly, these amendments reflect recommendations made within No to Violence's submission to the NSW Government on the Exposure draft Crimes Legislation Amendment (Coercive Control) Bill 2022, including:

- **Recommendation 2:** The bill should include that not only fear of violence towards the victim, but also fear of violence or actual violence towards someone known to the victim, can be used against them.
- **Recommendation 4:** The bill be amended to include 'stalk, harass or control' to be more inclusive of different forms of technology-facilitated coercive control.
- **Recommendation 6:** A NSW Government and Implementation Taskforce be established prior to the implementation of the offence to ensure that first responders, justice, specialist domestic and family violence services, universal and generalist services, and the broader community are prepared for the introduction of coercive control legislation.

We welcome the establishment of a multi-disciplinary implementation taskforce that will provide significant guidance and oversight on the operationalisation of this offence. This is an important step towards ensuring that first responders, justice, specialist domestic and family violence services, universal and generalist services, and the broader community are prepared for the introduction of coercive control legislation. It will ensure better mitigation of any unintended consequences that occur during implementation, including the misidentification of the primary aggressor.

Finally, No to Violence supports for the Bill's delayed commencement. In his second reading of the Crimes Legislation Amendment (Coercive Control) Bill, Attorney-General Mark Speakman confirmed that 'the provisions [at Clause 2] will commence on 1 July 2024 or a date or dates sooner by proclamation but no earlier than 1 February 2024' (2022 p8. We welcome this news, as this delay will create opportunities for additional consultation, and help support the significant structural transformation required for support the operation of the offence to function as intended.

Recommendations and consideration for implementation

While No to Violence supports the criminalisation of coercive control in principle, the efficacy of a new offence will depend on the legislation being fit for purpose, meaningful, and inclusive. Although we acknowledge the significant efforts made to capture more extensive examples of forms of coercive control and abuse amid amendments to Schedule 1 54F(2), additional forms of coercion might be included to include:

- reproductive coercion
- forced sex work
- forcing a victim-survivor to engage in unlawful activities
- additional elements of financial abuse such as dowry abuse, and deliberate withholding of child support payments

Although legal reform to capture patterns of domestic and family violence is necessary to give it appropriate recognition and response, effectively preventing and responding to coercive control is unlikely to be achieved by legislation alone. For instance, the number of women murdered each year by their intimate partner in the United Kingdom has remained constant despite the creation of new laws targeting domestic and family violence (Barlow & Walkate 2020).

For this reason, any efforts to criminalise coercive control must be supported by a strategic, and well-considered approach to implementation. We welcome the news that \$4.9 million is being provided to support coercive control training for police, and to fund multiple awareness campaigns and educational resources – which builds upon a previous \$0.7 million announced in the 2022-23 budget (Treasurer, Attorney General, Minister for Women, Minister for Women's Safety and the Prevention of Domestic and Sexual Violence 2022). However, police training focused on what coercive control is and how it should be responded to is only one part of the systemic transformation required to enable the successful implementation of this offence.

Instead, we should aim for wider police reform that supports an improved response to domestic and family violence overall. This includes by paying particular attention towards improving the policing response to marginalised communities such as Aboriginal and Torres Strait Islander peoples, and migrant, refugee, and culturally and linguistically diverse communities. Additionally, significant efforts must be made to educate police on how perpetrators of domestic and family violence can manipulate, mislead, and deceive police, leading to victim-survivors being misidentified as the predominant aggressor (No to Violence 2019).

To support a truly effective and informed approach to the implementation of a coercive control offence in NSW, we recommend the NSW government takes the following actions (No to Violence 2022):

- NSW Police are supported to enable reform of practices, procedures and culture and contribute to the development of collaborative projects and knowledge sharing to support the introduction of the new offence.
- NSW Police receive training on assessment of the predominant aggressor.
- That a description of coercive control as an underlying tactic of domestic and family violence is included in supporting materials such as legal explanatory notes, risk assessments and police and community education, to ensure that coercive control is not seen as separate from or a less serious form of domestic and family violence.

Conclusion

The criminalisation of coercive control is an important step towards the legitimate recognition of victim-survivor experiences and an increased capacity to hold perpetrators accountable within the criminal justice system. However, effectively preventing and responding to coercive control is unlikely to be achieved by legislation alone. Systemic reform to address the drivers of gendered violence is what is required in the longer term.

No to Violence commends the NSW government's introduction of this important legislative reform. We look forward to working with government to ensure the Bill is implemented in a manner that realises its objectives – to hold perpetrators accountable for their use of violence and increase the safety of victim-survivors.

References

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