



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

# Crimes Legislation Amendment (Coercive Control) Bill 2022



Report 62

November 2022

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Standing Committee on Social Issues

# **Crimes Legislation Amendment (Coercive Control) Bill 2022**

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Crimes Legislation Amendment (Coercive Control) Bill 2022

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Chair: Hon. Scott Barrett, MLC



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## Table of contents

	<b>Terms of reference</b>	<b>iv</b>
	<b>Committee details</b>	<b>v</b>
	<b>Chair’s foreword</b>	<b>vi</b>
	<b>Recommendation</b>	<b>vii</b>
	<b>Conduct of inquiry</b>	<b>viii</b>
<b>Chapter 1</b>	<b>Crimes Legislation Amendment (Coercive Control) Bill 2022</b>	<b>1</b>
	<b>Joint Select Committee on Coercive Control</b>	<b>2</b>
	Key findings and recommendations	2
	<b>Overview of the bill</b>	<b>3</b>
	<b>Key issues raised by stakeholders</b>	<b>7</b>
	Mental element of the offence	7
	Independent taskforce to oversee implementation	9
	Strengthening the statutory review provisions	10
	The need for broader cultural and systems reform	12
	Other issues	13
	<b>Committee comment</b>	<b>14</b>
<b>Appendix 1</b>	<b>Submissions</b>	<b>17</b>
<b>Appendix 2</b>	<b>Witnesses at hearings</b>	<b>18</b>
<b>Appendix 3</b>	<b>Minutes</b>	<b>20</b>

## Terms of reference

That:

- (a) the provisions of the Crimes Legislation Amendment (Coercive Control) Bill 2022 (not yet accompanied by a Statement of Public Interest), be referred to the Standing Committee on Social Issues for inquiry and report,
- (b) on the President reporting receipt of a message from the Legislative Assembly forwarding the Crimes Legislation Amendment (Coercive Control) Bill 2022 for concurrence, the bill be referred to the Standing Committee on Social Issues for inquiry and report, and
- (c) the committee report by 4 November 2022.<sup>1</sup>

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 18 October 2022.<sup>2</sup>

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<sup>1</sup> The original reporting date was 31 October 2022 (*Minutes*, NSW Legislative Council, 18 October 2022, pp 3728-3729). The reporting date was later extended to 4 November 2022 (*Minutes*, NSW Legislative Council, 19 October 2022, pp 3767-3768).

<sup>2</sup> *Minutes*, NSW Legislative Council, 18 October 2022, pp 3728-3729.

## Committee details

### Committee members

<b>Hon Scott Barrett MLC</b>	The Nationals	<i>Chair</i>
<b>Hon Mark Buttigieg MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>Hon Aileen MacDonald MLC*</b>	Liberal Party	
<b>Hon Shayne Mallard MLC</b>	Liberal Party	
<b>Revd the Hon Fred Nile MLC</b>	Independent	
<b>Hon Peter Primrose MLC</b>	Australian Labor Party	
<b>Hon Chris Rath MLC</b>	Liberal Party	

\* The Hon Aileen MacDonald MLC substituted for the Hon Scott Farlow MLC from 21 October 2022 for the duration of the inquiry.

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## Chair's foreword

On 18 October 2022, the Legislative Council referred the provisions of the Crimes Legislation Amendment (Coercive Control) Bill 2022 to the Standing Committee on Social Issues for inquiry and report by 31 October 2022. This reporting date was subsequently extended by the House to 4 November 2022.

The object of the bill is to amend the *Crimes Act 1900* to make it an offence to engage in coercive control against a current or former intimate partner, and to amend the *Crimes (Domestic and Personal Violence) Act 2007* to provide that coercive control falls within the definition of domestic violence offence.

As part of the inquiry, the committee took evidence from a range of individuals and organisations, including sector advocates, legal organisations, community service providers, academics and medical professionals, and received a number of submissions.

The committee heard that there is widespread consensus about the need to criminalise coercive control. However, there were diverging views among stakeholders about whether the bill's approach to achieving this is the right way forward, with some expressing support for the bill, and others expressing concerns about aspects of the bill.

The bill in question has evolved over years of development, since the establishment of the Joint Select Committee on Coercive Control back in March 2020. It was clear many of the same issues we heard have been raised in that time and were considered in the drafting of the bill, as acknowledged by the Attorney General in his second reading speech upon introducing this bill.

In those circumstances, and given the limited time available to the committee, the committee refers the bill back to the House for its consideration, including those matters set out in this report.

On behalf of the committee, I would like to sincerely thank all stakeholders who participated in this important inquiry, especially at such short notice. I would also like to thank my committee colleagues for their contributions to the inquiry, as well as the secretariat and Hansard staff for their assistance.



Hon Scott Barrett MLC  
**Committee Chair**

## Recommendation

### Recommendation 1

15

That the Legislative Council proceed to debate the Crimes Legislation Amendment (Coercive Control) Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during consideration of the bill in committee of the whole.

## Conduct of inquiry

The terms of reference for this inquiry were referred to the committee by the Legislative Council on Tuesday 18 October 2022.

The House originally specified that the committee report by Monday 31 October 2022, a very tight turnaround of 13 days.

The House subsequently extended the reporting date to Friday 4 November 2022. Nevertheless, this was still a very tight turnaround of 17 days, limiting the capacity of the committee to undertake a full inquiry.

In the time available, the committee received six submissions and one supplementary submission to the inquiry.

The committee also held a public hearing at Parliament House on Monday 31 October 2022.

This short report was prepared in the time available to the committee after the public hearing.

Inquiry related documents are available on the committee's website, including submissions, the hearing transcript and tabled documents.

# Chapter 1 Crimes Legislation Amendment (Coercive Control) Bill 2022

This report commences by setting out the background and purpose of the Crimes Legislation Amendment (Coercive Control) Bill 2022, a brief outline of the 2021 Joint Select Committee on Coercive Control, and an overview of the bill's provisions. The report then summarises the key issues raised by stakeholders during this inquiry.

## Background and purpose of the bill

- 1.1 The Crimes Legislation Amendment (Coercive Control) Bill 2022 (the bill) was introduced in the Legislative Assembly on 12 October 2022 by the Attorney General, the Hon Mark Speakman SC MP.
- 1.2 On 18 October 2022, the Legislative Council referred the provisions of the bill to the Standing Committee on Social Issues for inquiry and report, with the reporting date set for 31 October 2022.<sup>3</sup> On 19 October 2022, the House extended the reporting date to 4 November 2022.<sup>4</sup>
- 1.3 The bill seeks to:
  - amend the *Crimes Act 1900* to make it an offence to engage in coercive control against a current or former intimate partner
  - amend the *Crimes (Domestic and Personal Violence) Act 2007* to provide that coercive control falls within the definition of domestic violence offence
  - make consequential amendments to the *Crimes (Sentencing Procedure) Act 1999* and the *Criminal Procedure Act 1986*.<sup>5</sup>
- 1.4 The Attorney General stated in his second reading speech that 'these are landmark reforms that are crucial to ensuring that we recognise in law a pattern of behaviour that is identified as an almost invariable precursor to domestic violence homicide'.<sup>6</sup>
- 1.5 The bill was introduced following several rounds of stakeholder engagement and consultation in relation to the criminalisation of coercive control that began in March 2020, when the Attorney General indicated that the NSW Government would consult on laws to address coercive controlling behaviour.<sup>7</sup> Following a Joint Select Committee inquiry into coercive control in domestic relationships, discussed below, an exposure draft bill was released on the Have Your Say consultation webpage, with a six-week consultation period. As a final step, the

<sup>3</sup> *Minutes*, NSW Legislative Council, 18 October 2022, pp 3728-3729.

<sup>4</sup> *Minutes*, NSW Legislative Council, 19 October 2022, pp 3767-3768.

<sup>5</sup> Explanatory Note, Crimes Legislation Amendment (Coercive Control) Bill 2022, p 1.

<sup>6</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>7</sup> NSW Government, *Coercive Control Discussion Paper*, October 2020, p 6.

NSW Government held 27 stakeholder roundtables and targeted consultations in August and September 2022, prior to the bill's introduction.<sup>8</sup>

## Joint Select Committee on Coercive Control

- 1.6** In October 2020, the two Houses established a Joint Select Committee on Coercive Control, to inquire into and report on coercive control in domestic relationships, answering the questions posed in the NSW Government's *Coercive Control Discussion Paper*. The Joint Select Committee was chaired by the Hon Natalie Ward MLC, and included members of the Liberal Party, The Nationals, the Australian Labor Party, The Greens and Pauline Hanson's One Nation Party.
- 1.7** During the Joint Select Committee's nine-month inquiry, the committee heard from more than 70 stakeholders over the course of five hearings and one regional site visit, including advocacy groups, medical professionals, academics and legal experts, as well as people with lived experience of coercive control. The committee also received 156 written submissions.

### Key findings and recommendations

- 1.8** The Joint Select Committee tabled its report in June 2021. Overall, the committee found that current laws do not adequately cover coercive and controlling behaviour, which means that police and the courts cannot address this type of abuse and victim survivors are not adequately protected.<sup>9</sup>
- 1.9** The committee's central recommendation was that the NSW Government should criminalise coercive control, with commencement of the criminal offence to occur following a considerable program of education, training and consultation with police, stakeholders and the frontline sector.<sup>10</sup>
- 1.10** The committee recommended that a taskforce be established to lead further consultation 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, about education and implementation of the offence.<sup>11</sup>
- 1.11** The committee also recommended that:
- before coercive control is criminalised, the NSW Government should propose amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to create a clear and accessible definition of domestic abuse which includes coercive and controlling behaviour<sup>12</sup>

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<sup>8</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>9</sup> Joint Select Committee on Coercive Control, NSW Parliament, *Coercive control in domestic relationships* (2021), p 18.

<sup>10</sup> Joint Select Committee on Coercive Control, *Coercive control in domestic relationships*, p 1.

<sup>11</sup> Joint Select Committee on Coercive Control, *Coercive control in domestic relationships*, p 83.

<sup>12</sup> Joint Select Committee on Coercive Control, *Coercive control in domestic relationships*, p 25.

- the NSW Government should increase the maximum penalty for breaching apprehended domestic violence orders and remove specific intent from the stalking and intimidation offence<sup>13</sup>
- if an offender is in an intimate personal relationship with a victim and has previously engaged in coercive and controlling behaviours, this should be an aggravating factor in sentencing.<sup>14</sup>

**1.12** The committee also made a number of recommendations aimed at improving the response to all types of domestic abuse based on an early intervention and public health-focused approach, including around building awareness and education, increased resources and innovative service delivery models.<sup>15</sup>

## Overview of the bill

**1.13** The object of the bill, as set out in the explanatory note, is to amend the *Crimes Act 1900* to make it an offence for an adult to engage in repeated or continuous abusive behaviour against a current or former intimate partner, known as coercive control. As noted above, the bill also seeks to amend the *Crimes (Domestic and Personal Violence) Act 2007* to provide that coercive control falls within the definition of domestic violence offence.<sup>16</sup>

**1.14** In his second reading speech, the Attorney General remarked that the bill was a 'clear component' of the NSW Government's response to the recommendations of the Joint Select Committee, and delivers on the 'commitment to victim-survivors of domestic violence and New South Wales frontline services by enacting a standalone offence to criminalise coercive control'.<sup>17</sup>

**1.15** The Attorney General outlined that coercive control is an insidious form of domestic abuse that involves patterns of behaviour that have the 'cumulative effect of denying victim-survivors their autonomy and independence',<sup>18</sup> explaining:

The abuse could be physical, sexual, psychological or financial. It does not show itself in the same way each time or even in physical symptoms each time. Abusers often take pains to isolate victim survivors from friends, family and support systems, making protection even harder. It is not as easy to detect as bruises or broken bones, but coercive control can be deadly.<sup>19</sup>

<sup>13</sup> Joint Select Committee on Coercive Control, *Coercive control in domestic relationships*, pp 33 and 35.

<sup>14</sup> Joint Select Committee on Coercive Control, *Coercive control in domestic relationships*, p 37.

<sup>15</sup> Joint Select Committee on Coercive Control, *Coercive control in domestic relationships*, Chapter 4.

<sup>16</sup> Explanatory Note, Crimes Legislation Amendment (Coercive Control) Bill 2022, p 1.

<sup>17</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>18</sup> Media Release, Attorney General, Minister for Women's Safety and the Prevention of Domestic and Sexual Violence, 'Coercive control bill passes Lower House', 19 October 2022.

<sup>19</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

- 1.16** When describing how the bill will address the issue of coercive control, the Attorney General identified two pillars to the reforms: first, the creation of a standalone criminal offence of coercive control in intimate partner settings; and second, the creation of a definition of domestic abuse.<sup>20</sup>
- 1.17** **Schedule 1** to the bill will amend the *Crimes Act 1900* and would create a standalone criminal offence of coercive control.<sup>21</sup> The proposed new sections are set out in detail below:
- **Proposed new section 54C** defines 'intimate partner' as two people who are or have been: married to one another; de facto spouses of one another; or in an intimate personal relationship with one another, whether or not that relationship involves or involved a relationship of a sexual nature.
  - **Proposed new section 54D** creates the coercive control offence which is punishable by a maximum penalty of imprisonment for 7 years. The section provides:
    - (1) An adult commits an offence if—
      - (a) the adult engages in a course of conduct against another person that consists of abusive behaviour, and
      - (b) the adult and other person are or were intimate partners, and
      - (c) the adult intends the course of conduct to coerce or control the other person, and
      - (d) a reasonable person would consider the course of conduct would be likely, in all the circumstances, to cause any or all of the following, whether or not the fear or impact is in fact caused—
        - (i) fear that violence will be used against the other person or another person, or
        - (ii) a serious adverse impact on the capacity of the other person to engage in some or all of the person's ordinary day-to-day activities.

Maximum penalty—Imprisonment for 7 years.
    - (2) For subsection (1)(a)—
      - (a) the course of conduct may be constituted by any combination of abusive behaviours, and
      - (b) whether the course of conduct consists of abusive behaviour must be assessed by considering the totality of the behaviours.
  - **Proposed new section 54E** includes a defence to the coercive control offence that the person's conduct was reasonable in all circumstances. To make out the defence, the evidence presented must be capable of raising the issue, and then it falls to the prosecution to prove beyond reasonable doubt that the course of conduct was not reasonable.

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<sup>20</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>21</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

- **Proposed new section 54F** defines 'abusive behaviour' as behaviour that consists of or involves violence or threats against, or intimidation of, a person; or coercion or control of the person against whom the behaviour is directed. The section also includes a non-exhaustive list of the types of behaviours that may constitute abusive behaviour.
- **Proposed new section 54G** defines a 'course of conduct' to mean behaviour that is engaged in repeatedly or continuously, but it does not have to be an unbroken series of incidents or in immediate succession.
- **Proposed new section 54H** sets out procedural requirements. It will mean that the prosecution will not need to state the exact dates, times and particulars of any specific instances of abusive behaviour that make up a course of conduct.
- **Proposed new sections 54I and 54J** require the Minister to establish a Coercive Control Implementation Evaluation Taskforce, as well as to conduct a statutory review two years after commencement.<sup>22</sup>

**1.18** A key drafting choice of the bill was to limit the scope of relationships covered to 'current and former intimate partners'. According to the Attorney General, part of the consideration was to avoid the risk of over-criminalisation and to 'safeguard against the risk of misidentification of victims as perpetrators'.<sup>23</sup> In the second reading speech, the Attorney General referred to Professor Evan Stark, a leading authority on coercive control, whose view is that:

An offence of coercive control is better limited to intimate partner relationships at this time and should not be treated at law as the same as elder abuse, or sibling on sibling, because the nature of the offending is very different. The dynamics of coercive and controlling behaviour as they manifest in intimate partner settings are innately different from how similar behaviours manifest in other relationships.<sup>24</sup>

**1.19** Another key drafting choice relates to the mental element of the offence, namely an intention to coerce or control the other person, rather than a lower mental state such as recklessness or an intention to cause physical or mental harm. The Attorney General described this choice as striking an appropriate balance and going 'to the heart of what coercive control is all about', namely an intention to 'dominate and control another person in order to deprive them of their sense of autonomy and freedom'.<sup>25</sup>

**1.20** A third drafting choice was with regard to whether there should be a minimum number of incidents that must be identified to constitute a 'course of conduct'. The Attorney General stated it was a deliberate drafting choice not to set an 'arbitrary' number of incidents.<sup>26</sup>

<sup>22</sup> Explanatory Note, Crimes Legislation Amendment (Coercive Control) Bill 2022, p 2; Crimes Legislation Amendment (Coercive Control) Bill 2022, Sch 1.

<sup>23</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>24</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>25</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>26</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

**1.21** **Schedule 2** to the bill would amend the *Crimes (Domestic and Personal Violence) Act 2007* to introduce a new definition of 'domestic abuse' into the Act which encompasses coercive control, and to include this within the definition of 'domestic violence offence'.<sup>27</sup>

- **New section 6A** defines 'domestic abuse' as:

... any of the following behaviours directed by one person (the first person) against another person (the second person) with whom the first person has a domestic relationship—

- (a) violent or threatening behaviour,
- (b) behaviour that coerces or controls the second person,
- (c) behaviour that causes the second person to fear for the person's safety or wellbeing or the safety and wellbeing of others.

The section goes on to provide a non-exhaustive list of examples that may constitute domestic abuse if threatened or engaged in. This includes behaviour that is physically abusive, sexually abusive, or economically or financially abusive (such as withholding financial support, preventing or restricting a person seeking employment, or restricting access to income). It also covers behaviour that is verbally abusive, behaviour that shames, degrades or humiliates, as well as behaviour that damages property or threatens death or injury to a child or animal.<sup>28</sup>

- **Section 11** incorporates the new definition of 'domestic abuse' into the definition of 'domestic violence offence'.<sup>29</sup>

**1.22** **Schedule 3** to the bill makes an amendment to the *Crimes (Sentencing Procedure) Act 1999* to allow a victim impact statement to be made for the coercive control offence.<sup>30</sup>

**1.23** **Schedule 4** to the bill would amend the *Criminal Procedure Act 1986* to provide that the coercive control offence must be dealt with summarily unless the prosecutor or person charged chooses to have the offence dealt with on indictment.<sup>31</sup>

**1.24** The Attorney General acknowledged that stakeholders had differing opinions as to how the issue of coercive control should be addressed, and that there were contrasting views on particular aspects of the bill. In this context, he noted that the bill followed 'extensive

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<sup>27</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022; Crimes Legislation Amendment (Coercive Control) Bill 2022, Sch 2.

<sup>28</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022; Explanatory Note, Crimes Legislation Amendment (Coercive Control) Bill 2022, p 2; Crimes Legislation Amendment (Coercive Control) Bill 2022, Sch 2.

<sup>29</sup> Crimes Legislation Amendment (Coercive Control) Bill 2022, Sch 2, s 11(c).

<sup>30</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022; Crimes Legislation Amendment (Coercive Control) Bill 2022, Sch 3.

<sup>31</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022; Crimes Legislation Amendment (Coercive Control) Bill 2022, Sch 4.

consultation' and represents 'the best initial model for New South Wales and our unique community'.<sup>32</sup>

- 1.25** The bill is drafted to commence by 1 July 2024 but no earlier than 1 February 2024. The Attorney General explained that the long lead time is a 'key safeguard' to ensure the community is aware of coercive control, that careful consideration is given to implementation, and that there is appropriate training, education and resourcing in place for police, judicial officers, lawyers and frontline services.<sup>33</sup>

## Key issues raised by stakeholders

- 1.26** This section outlines the key issues raised by stakeholders at the hearing, including the mental element of the coercive control offence, the need for an independent taskforce to oversee implementation, the strengthening of the statutory review provisions, the need for broader cultural and systems reforms, and several others.

### Mental element of the offence

- 1.27** A number of stakeholders, including Domestic Violence NSW, Full Stop Australia, Wirringa Baiya Aboriginal Women's Legal Centre, Women's Legal Service NSW and Illawarra Women's Health Centre, raised concerns about the removal of 'recklessness' from the mental element of the new offence, with the bar set at 'intention'. These stakeholders urged the NSW Government to reintroduce 'recklessness' to s 54D, as per the earlier exposure draft of the bill.<sup>34</sup>
- 1.28** The main concern raised was that by removing recklessness from the bill, the bar is set 'too high' for a matter to be prosecuted or result in a conviction. As noted by Full Stop Australia, the nature of coercive control is that the perpetrator often feels justified in their behaviour, believing they are acting in the best interests of the victim-survivor, rather than intending to coerce or control:

Perpetrators of coercive control rarely admit their intentions and will obfuscate, minimise and deny wrongdoing. Some will admit their actions but deny the intent was malicious, instead believing that they have a 'right' to set rules and boundaries over their family and that their behaviour was a reasonable reaction to the victim's mental health or other behaviour that required 'correcting'. It will be a significant barrier to many victims if 'intent' is required to be proven, especially for particularly vulnerable women

<sup>32</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>33</sup> Mark Speakman, Second reading speech: Crimes Legislation Amendment (Coercive Control) Bill 2022.

<sup>34</sup> Evidence, Ms Renata Field, Acting Chief Executive Officer, Domestic Violence NSW, 31 October 2022, p 2; Evidence, Ms Hayley Foster, Chief Executive Officer, Full Stop Australia, 31 October 2022, pp 4 and 10; Evidence, Ms Angela Lynch, Advocacy Manager, Legal and Policy, Full Stop Australia, 31 October 2022, p 6; Evidence, Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW, 31 October 2022, p 30; Evidence, Ms Rachael Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, p 30; Evidence, Ms Sally Stevenson AM, Executive Director, Illawarra Women's Health Centre, 31 October 2022, p 50.

such as those who have mental health concerns or are from culturally and linguistically diverse backgrounds and highly patriarchal cultures.<sup>35</sup>

**1.29** In contrast, the Aboriginal Legal Service NSW/ACT, who opposed the introduction of a new coercive control offence at this time, argued that the mental element of the offence being limited to an intention to coerce or control could be a safeguard against overreach and misidentification.<sup>36</sup> The Aboriginal Legal Service NSW/ACT noted that this is a particular concern for Aboriginal communities, with Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy and Practice, Aboriginal Legal Service NSW/ACT, explaining:

Founding the criminality on recklessness would just mean that it is more open to capture behaviour that doesn't really strike at the heart of the offence, which is that intent to deprive someone of their autonomy. I think this is particularly pertinent in Aboriginal communities, where the chaotic nature of existence and the endemic issues around mental health, alcohol and other drug issues would mean that there would be a real risk of capturing people, including victim-survivors, in this net of criminality.<sup>37</sup>

**1.30** Ms Hopkins warned that if the coercive control offence is expanded to incorporate a mental element founded on recklessness, there is a risk of an adverse impact on the over-representation of Aboriginal people in custody, including Aboriginal women, as has occurred in the context of the intimidation and stalking offence in the *Crimes (Domestic and Personal Violence) Act 2007*, which incorporates a recklessness standard.<sup>38</sup>

**1.31** The NSW Bar Association supported the mental element of the offence being limited to an intention to coerce or control. Mr Stephen Odgers SC, Co-Chair, Criminal Law Committee, NSW Bar Association, argued that limiting the offence to conduct involving an intention to coerce or control 'limit[s] the risk of the offence being used as a weapon against the very people it's designed to protect'.<sup>39</sup> Mr Odgers also disputed that an intention to coerce or control represents a high bar, stating that in his view, 'if you can prove that there's been a course of conduct that involves the clear exercise of control, the inference that it was intended to control is inevitable and will rarely present difficulties for a prosecution'.<sup>40</sup>

**1.32** Ms Rachael Martin from Wirringa Baiya and Ms Liz Snell from Women's Legal Service NSW, on the other hand, expressed concern that recklessness was not included in the bill, with Ms Snell arguing that there is potential that it will result in the unintended consequence that it emboldens perpetrators to continue perpetrating their behaviour because they aren't held

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<sup>35</sup> Submission 6, Full Stop Australia, p 6; see also Evidence, Dr Bridget Mottram, Senior Policy Officer, WDVCAS Program, Domestic Violence NSW, 31 October 2022, p 4.

<sup>36</sup> Evidence, Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy & Practice, Aboriginal Legal Service NSW/ACT, 31 October 2022, p 12.

<sup>37</sup> Evidence, Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy and Practice, Aboriginal Legal Service NSW/ACT, 31 October 2022, p 13.

<sup>38</sup> Evidence, Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy and Practice, Aboriginal Legal Service NSW/ACT, 31 October 2022, p 15.

<sup>39</sup> Evidence, Mr Stephen Odgers SC, Co-Chair, Criminal Law Committee, NSW Bar Association, 31 October 2022, p 19.

<sup>40</sup> Evidence, Mr Stephen Odgers SC, Co-Chair, Criminal Law Committee, NSW Bar Association, 31 October 2022, p 23.

accountable.<sup>41</sup> Ms Martin argued that misidentification would not be solved through the drafting of the bill, only through cultural and system reform.<sup>42</sup>

- 1.33** Women's Community Shelters and No to Violence expressed their broad support for the bill while acknowledging there is scope to go further. Ms Annabelle Daniel, Chief Executive of the Women's Community Shelters stated that while she supports the bill she is not adverse to 'recklessness' being included in the future, however she remarked:

We can no longer afford to let the perfect be the enemy of the good. We have a chance here to achieve a once-in-a-generation change to how we as a society conceptualise and respond to domestic abuse.<sup>43</sup>

### **Independent taskforce to oversee implementation**

- 1.34** Proposed new s 54I of the *Crimes Act 1900* requires the Minister to establish a Coercive Control Implementation and Evaluation Taskforce. The bill states that the taskforce is to include the following members appointed by the Minister:

- the Secretary of the department in which this Act is administered, who is to be the chairperson of the taskforce
- a representative of the NSW Police Force
- the chair of the Domestic and Family Violence and Sexual Assault Council
- a member from the domestic and family violence sector with substantial expertise and experience in domestic and family violence service delivery.<sup>44</sup>

- 1.35** A key concern raised by stakeholders in relation to the taskforce was that its members are to be 'appointed by the Minister'. The vast majority of witnesses during the hearing stressed the importance of having an 'independent' taskforce.<sup>45</sup>

<sup>41</sup> Evidence, Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW, 31 October 2022, p 30.

<sup>42</sup> Evidence, Ms Rachael Martin, Principal Solicitor, Warringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, p 30

<sup>43</sup> Evidence, Ms Annabelle Daniel, Chief Executive Officer, Women's Community Shelters, 31 October 2022, p 38.

<sup>44</sup> Crimes Legislation Amendment (Coercive Control) Bill 2022, Sch 1.

<sup>45</sup> Evidence, Dr Bridget Mottram, Senior Policy Officer, WDVCAS Program, Domestic Violence NSW, 31 October 2022, p 4; Evidence, Ms Hayley Foster, Chief Executive Officer, Full Stop Australia, 31 October 2022, p 4; Evidence, Ms Renata Field, Acting Chief Executive Officer, Domestic Violence NSW, 31 October 2022, p 8; Evidence, Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy and Practice, Aboriginal Legal Service NSW/ACT, 31 October 2022, p 12; Evidence, Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW, 31 October 2022, pp 28 and 33; Evidence, Ms Rachael Martin, Principal Solicitor, Warringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, p 29; Evidence, Dr Jane Wangmann, Associate Professor, Faculty of Law at UTS, 31 October 2022, p 48; Evidence, Ms Gayatri Nair, National Coordinator Economic Abuse Reference Group, 31 October 2022, p 49; Evidence, Ms Sally Stevenson AM, Executive Director, Illawarra Women's Health Centre, 31 October 2022, p 50; Evidence, Professor Kate Fitz-Gibbon, Director of Monash Gender and Family Violence Prevention Centre, 31 October 2022, p 52.

- 1.36** In addition, the committee received a written submission signed by 43 organisations, including Wurringa Baiya Aboriginal Women's Legal Centre, Domestic Violence NSW, Full Stop Australia, and Women's Legal Service NSW, urging the NSW Government to establish an independent taskforce with oversight of implementation, as well as training and ongoing monitoring and evaluation.<sup>46</sup> The submission emphasised the need for the taskforce to be 'independent, well-resourced and required to regularly table reports to Parliament to ensure transparency and accountability'.<sup>47</sup>
- 1.37** Wurringa Baiya added that the taskforce must include representation from Aboriginal women, 'to ensure that Aboriginal women are consulted on every aspect of the implementation and review process'.<sup>48</sup> Wurringa Baiya recommended such representation should come from the recently established Aboriginal Women's Advisory Network (AWAN).<sup>49</sup>
- 1.38** There were a number of organisations, including Domestic Violence NSW, who told the committee that an independent taskforce should be established prior to the commencement of the offence to ensure training is provided and the bill is proclaimed 'safely'.<sup>50</sup> Similarly, Legal Aid NSW noted that '[s]uch a taskforce could report to the NSW Government on an appropriate time for the new offence to commence after sufficient training and education has been rolled out'.<sup>51</sup>
- 1.39** This view was shared by Ms Jacqui Watt, Chief Executive at No to Violence, who cautioned the NSW Government to 'tread cautiously' during implementation 'to guard against the unintended consequences that may arise by criminalisation and prepare for the anticipated consequences'.<sup>52</sup>

### **Strengthening the statutory review provisions**

- 1.40** Proposed new s 54J of the *Crimes Act 1900* provides for a series of statutory reviews to be conducted, initially two years after the commencement of the bill. The purpose of the reviews is to determine whether the policy objectives of the provisions remain valid, and whether the terms of the provisions remain appropriate for securing those objectives.
- 1.41** Subsection 54J(2) sets out certain matters that must be considered when conducting the reviews:
- whether s 54D(1)(c) should be extended to cover recklessness
  - whether the provisions should apply to relationships other than current and former intimate partner relationships
  - the impact of the provisions on Aboriginal people

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<sup>46</sup> Submission 4, Multiple signatories care of Women's Legal Service, p 2.

<sup>47</sup> Submission 4, Multiple signatories care of Women's Legal Service, p 2.

<sup>48</sup> Evidence, Ms Rachael Martin, Principal Solicitor, Wurringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, p 30.

<sup>49</sup> Evidence, Ms Rachael Martin, Principal Solicitor, Wurringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, p 30.

<sup>50</sup> Evidence, Ms Renata Field, Acting Chief Executive Officer, Domestic Violence NSW, 31 October 2022, p 9.

<sup>51</sup> Submission 3, Legal Aid NSW, p 14.

<sup>52</sup> Evidence, Ms Jacqui Watt, Chief Executive Officer, No to Violence, 31 October 2022, p 39.

- whether victims of an offence may be misidentified as perpetrators
- whether the penalty for the offence under s 54D(1) should be extended.

1.42 A number of stakeholders, including those who appeared before the committee at the hearing, called for a significant expansion of the matters to be considered as part of the statutory reviews.

1.43 In their joint submission, stakeholders including Domestic Violence NSW, Full Stop Australia, Wirringa Baiya Aboriginal Women's Legal Centre and Women's Legal Service NSW, called for the statutory review provisions to be amended to include the following non-exhaustive list of matters:

- 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, and 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 s 54D
- 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 2007* 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)

- provided with respect to particular:
  - areas
  - types of court.<sup>53</sup>

1.44 Stakeholders also called for the publication of annual data on the use of the offence.<sup>54</sup>

### **The need for broader cultural and systems reform**

1.45 A number of stakeholders, including the Aboriginal Legal Service NSW/ACT, Women's Legal Service NSW, Wirringa Baiya Aboriginal Women's Legal Service, Economic Abuse Reference Group, as well as Professor Kate Fitz-Gibbon, Dr Jane Wangmann and Ms Sally Stevenson AM, called for broader cultural and systems reform as a priority.<sup>55</sup>

1.46 Cultural and systems reform was described as reform 'that can address systemic racism, sexism and ongoing failures to understand the nature of domestic and family violence, and the wide range of ways in which victim-survivors in all their diversity react and respond to that violence'.<sup>56</sup> The committee heard that cultural and systems reform could involve measures such as:

- 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

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<sup>53</sup> Submission 4, Multiple signatories care of Women's Legal Service NSW, p 4. See also Tabled document, Domestic Violence NSW, *Suggested additional review provisions*, October 2022, p 1.

<sup>54</sup> Submission 4, Multiple signatories care of Women's Legal Service NSW, p 4. See also Tabled document, Domestic Violence NSW, *Suggested additional review provisions*, October 2022, p 1.

<sup>55</sup> Evidence, Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy and Practice, Aboriginal Legal Service NSW/ACT, 31 October 2022, pp 12 and 14; Evidence, Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW, 31 October 2022, pp 28-34; Evidence, Ms Rachael Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, pp 29-36; Evidence, Dr Jane Wangmann, Associate Professor, Faculty of Law, University of Technology Sydney, 31 October 2022, p 49; Evidence, Ms Gayatri Nair, National Coordinator Economic Abuse Reference Group, 31 October 2022, p 49; Evidence, Ms Sally Stevenson AM, Executive Director, Illawarra Women's Health Centre, 31 October 2022, p 50; Evidence, Professor Kate Fitz-Gibbon, Director of Monash Gender and Family Violence Prevention Centre, 31 October 2022, p 51.

<sup>56</sup> Evidence, Dr Jane Wangmann, Associate Professor, Faculty of Law, University of Technology Sydney, 31 October 2022, p 49.

- whole of systems response.<sup>57</sup>

1.47 It was emphasised to the committee by some stakeholders that cultural and systems reform should occur before coercive control is criminalised. As Ms Snell commented, 'if you're just putting another tool in the toolkit for a system that is not working, then how can we expect there to be change?'.<sup>58</sup>

### Other issues

1.48 Other issues raised by stakeholders at the hearing are detailed below.

- **Commencement of the offence:** Under cl 2 of the bill, the coercive control offence will not commence until, at the earliest, 1 February 2024, and potentially not until 1 July 2024, to enable thorough and detailed training, education and other implementation activities to support the offence. During the hearing a number of stakeholders called for a longer proclamation period, arguing that additional time was needed 'to ensure that the community as well as the people enforcing this legislation have the skills and understanding to really make it work'.<sup>59</sup> However, Ms Annabelle Daniel from Women's Community Shelters described a commencement date of longer than 12 months as 'quite extraordinary'. In her view, commencement of the bill should be initiated as early as possible, stating '[m]y mind is always to the lives that could be saved if you act sooner rather than later'.<sup>60</sup>
- **The need to focus on the impacts of the behaviour:** It was noted by stakeholders that the way the offence has been drafted focuses on the behaviour of the offender, listing examples of types of abusive behaviour, rather than focusing on the impact of that behaviour on the victim-survivor. Stakeholders cautioned that without a contextual definition that recognises the power imbalance inherent in such relationships, there is a greater risk of misidentification and a less effective offence overall.<sup>61</sup>

<sup>57</sup> Submission 4, Multiple signatories care of Women's Legal Service NSW, p 2.

<sup>58</sup> Evidence, Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW, 31 October 2022, p 34.

<sup>59</sup> Evidence, Ms Renata Field, Acting Chief Executive Officer, Domestic Violence NSW, 31 October 2022, p 7. See also Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy and Practice, Aboriginal Legal Service NSW/ACT, 31 October 2022, p 13; Evidence, Dr Jane Wangmann, Associate Professor, Faculty of Law, University of Technology Sydney, 31 October 2022, p 48.

<sup>60</sup> Evidence, Ms Annabelle Daniel, Chief Executive Officer, Women's Community Shelters, 31 October 2022, p 42.

<sup>61</sup> Evidence, Dr Karen Williams, Consultant Psychiatrist, RANZCP, and Founder of Doctors Against Violence Towards Women, 31 October 2022, p 57; Evidence, Professor Kate Fitz-Gibbon, Director, Monash Gender and Family Violence Prevention Centre, 31 October 2022, p 55; Evidence, Dr Jane Wangmann, Associate Professor, Faculty of Law, University of Technology Sydney, 31 October 2022, p 53; Evidence, Ms Jasmine Opdam, Acting Team Leader, Financial Abuse Service NSW, Redfern Legal Centre, 31 October 2022, p 56.

- **Limitation of the offence to intimate partner relationships:** A number of stakeholders called for the application of the offence to be expanded beyond 'intimate partner' relationships to include other family relationships.<sup>62</sup> It was acknowledged by all participants that coercive control can occur outside of intimate partner settings, however stakeholders including Women's Community Shelters and No to Violence noted the higher prevalence of domestic and family violence homicide among intimate partners.<sup>63</sup> According to Ms Daniel, expanding the offence beyond intimate partner relationships would require further expertise and input, commenting, 'let's make this work first before we go down that path'.<sup>64</sup> On the other hand, Ms Martin from Wirringa Baiya noted that they had received from Aboriginal communities 'very strong feedback that they think it should be broader than intimate partner relationships'.<sup>65</sup>

## Committee comment

- 1.49** This report has set out the background to and overview of the provisions of the Crimes Legislation Amendment (Coercive Control) Bill 2022, and has briefly explored the key issues that were raised by inquiry participants.
- 1.50** It is evident to the committee that the current laws in New South Wales do not adequately respond to coercive control, and that there is a need to criminalise this insidious and misunderstood form of domestic and family violence.
- 1.51** However, there were diverging views among stakeholders about whether the bill's approach to achieving this is the right way forward, with some expressing support for the bill, and others expressing concerns about aspects of the bill. A key point of contention was around whether the coercive control offence ought to include 'recklessness' in the mental element. There was broader consensus among stakeholders around the need for cultural and systems reform and the need for robust and ongoing monitoring and review.
- 1.52** This inquiry has provided a further mechanism by which stakeholders have been able to place on record their views about the merits of the bill. However, due to the limited time available to conduct this inquiry, the committee has not had enough time to fully explore all of the issues raised in relation to the bill.

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<sup>62</sup> Evidence, Ms Hayley Foster, Chief Executive Officer, Full Stop Australia, 31 October 2022, p 4; Evidence, Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW, 31 October 2022, p 28; Evidence, Ms Dixie Link-Gordon, Senior Community Access Officer, First Nations Women's Legal Program, Women's Legal Service NSW, 31 October 2022, p 35; Ms Sally Stevenson AM, Executive Director, Illawarra Women's Health Centre, 31 October 2022, p 50.

<sup>63</sup> Evidence, Ms Annabelle Daniel, Chief Executive Officer, Women's Community Shelters, 31 October 2022, p 45; Evidence, Ms Jacqui Watt, Chief Executive Officer, No to Violence, 31 October 2022, p 45.

<sup>64</sup> Evidence, Ms Annabelle Daniel, Chief Executive Officer, Women's Community Shelters, 31 October 2022, p 45.

<sup>65</sup> Evidence, Ms Rachael Martin, Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, p 35.

- 1.53** However, the committee does acknowledge this Bill has had a long evolution, only being introduced following several rounds of stakeholder engagement and consultation that began in March 2020. Many of the concerns heard in this inquiry appear to have been considered in the drafting of this legislation and addressed by the Attorney General in his second reading speech which deals with why particular drafting choices were made.
- 1.54** In those circumstances, the committee refers the bill back to the House and recommends that the House proceed to debate the Crimes Legislation Amendment (Coercive Control) Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during consideration of the bill in committee of the whole.

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**Recommendation 1**

That the Legislative Council proceed to debate the Crimes Legislation Amendment (Coercive Control) Bill 2022, and that the concerns identified by stakeholders as set out in this report be addressed during consideration of the bill in committee of the whole.

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## Appendix 1 Submissions

No.	Author
1	Name suppressed
1a	Name suppressed
2	Cult Information and Family Support (CIFS NSW)
3	Legal Aid NSW
4	Multiple signatories care of Women's Legal Service NSW
5	Confidential
6	Full Stop Australia

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
<b>Monday 31 October 2022</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Ms Renata Field	Acting Chief Executive Officer, Domestic Violence NSW
	Dr Bridget Mottram	Senior Policy Officer, WDV CAS Program, Domestic Violence NSW
	Ms Hayley Foster	Chief Executive Officer, Full Stop Australia
	Ms Angela Lynch <i>(via videoconference)</i>	Advocacy Manager, Legal and Policy, Full Stop Australia
	Ms Sarah Hopkins	Principal Solicitor of Justice Projects, Policy & Practice, Aboriginal Legal Service NSW/ACT
	Mr Stephen Odgers SC	Co-Chair, Criminal Law Committee, NSW Bar Association
	Ms Rose Khalilizadeh	Public Defender and member, Criminal Law Committee, NSW Bar Association
	Ms Rachael Martin	Principal Solicitor, Wirringa Baiya Aboriginal Women's Legal Centre
	Ms Dixie Link-Gordon	Senior Community Access Officer, First Nations Women's Legal Program, Women's Legal Service NSW
	Ms Liz Snell	Law Reform and Policy Coordinator, Women's Legal Service NSW
	Ms Annabelle Daniel	Chief Executive Officer, Women's Community Shelters
	Ms Libby Gauld	Development Director, Women's Community Shelters
Ms Jacqui Watt	Chief Executive Officer, No to Violence	

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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Dr Karen Williams	Consultant Psychiatrist, RANZCP, and Founder of Doctors Against Violence Towards Women
	Professor Kate Fitz-Gibbon	Director of Monash Gender and Family Violence Prevention Centre
	Dr Jane Wangmann	Associate Professor, Faculty of Law, University of Technology Sydney
	Ms Gayatri Nair	National Coordinator, Economic Abuse Reference Group
	Ms Jasmine Opdam	Acting Team Leader, Financial Abuse Service NSW, Redfern Legal Centre
	Ms Sally Stevenson AM <i>(via videoconference)</i>	Executive Director, Illawarra Women's Health Centre

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## Appendix 3 Minutes

### Minutes no. 42

Wednesday 19 October 2022

Standing Committee on Social Issues

Members' Lounge, Parliament House, Sydney 6.32 pm

#### 1. Members present

Mr Barrett, *Chair*

Mr Buttigieg, *Deputy Chair*

Ms Boyd

Mr Farlow (from 6.51 pm)

Mr Mallard (from 6.34 pm)

Revd Nile

Mr Primrose

Mr Rath

#### 2. Previous minutes

Resolved, on the motion of Ms Boyd: That draft minutes no. 41 be confirmed.

#### 3. Inquiry into provisions of the Crimes Legislation Amendment (Coercive Control) Bill 2022

##### 3.1 Terms of reference

The committee noted the following terms of reference referred by the House on 18 October 2022:

That:

- (a) the provisions of the Crimes Legislation Amendment (Coercive Control) Bill 2022 (not yet accompanied by a Statement of Public Interest), be referred to the Standing Committee on Social Issues for inquiry and report,
- (b) on the President reporting receipt of a message from the Legislative Assembly forwarding the Crimes Legislation Amendment (Coercive Control) Bill 2022 for concurrence, the bill be referred to the Standing Committee on Social Issues for inquiry and report, and
- (c) the committee report by 31 October 2022.

##### 3.2 Seek a resolution from the House to extend the reporting date

Resolved, on the motion of Ms Boyd: That the Chair seek a resolution from the House to extend the reporting date of the inquiry to Friday 4 November 2022.

##### 3.3 Proposed timeline

Resolved, on the motion of Revd Nile: That the committee adopt the following timeline for the administration of the inquiry:

- Monday 31 October 2022 – hearing
- Thursday 3 November 2022 – circulation of Chair's draft report
- Friday 4 November 2022 – report deliberative
- Friday 4 November 2022 – report tabling

##### 3.4 Stakeholder and witness list

Resolved, on the motion of Revd Nile: That the following stakeholders be invited to appear as a witness at the hearing:

- Aboriginal Legal Service NSW/ACT
- NSW Bar Association
- Legal Aid NSW
- Women's Community Shelters

- No to Violence
- Domestic Violence NSW
- Full Stop
- Wirringa Baiya
- Women's Legal Service NSW (First Nations Legal Service)
- RANZCP
- Professor Kate Fitz-Gibbon
- Dr Jane Wangmann
- Economic Abuse Reference Group

Resolved, on the motion of Mr Mallard: That the Chair's draft hearing schedule be circulated prior to the hearing.

### 3.5 Post-hearing responses

The committee noted that there is insufficient time for stakeholders to provide answers to questions on notice or supplementary questions.

Resolved, on the motion of Mr Mallard: That transcript corrections and clarifications to evidence be provided within 24 hours of the receipt of the transcript by the witness.

### 3.6 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder emails and a media release distributed to all media outlets in New South Wales.

## 4. Adjournment

The committee adjourned at 6.56 pm until Monday 31 October 2022, 9.00 am, Macquarie Room, Parliament House (public hearing).

Jessie Halligan  
Committee Clerk

## Minutes no. 43

Monday 31 October 2022

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney 9.00 am

### 1. Members present

Mr Barrett, *Chair*

Mr Buttigieg, *Deputy Chair*

Ms Boyd

Mrs MacDonald

Mr Mallard (until 2.04 pm, then from 2.36 pm)

Mr Primrose

Ms Sharpe (via videoconference from 11.00 am) (participating)

### 2. Apologies

Revd Nile

Mr Rath

### 3. Previous minutes

Resolved, on the motion of Ms Boyd: That draft minutes no. 42 be confirmed.

#### 4. Correspondence

Committee noted the following items of correspondence:

##### ***Received:***

- 21 October 2022 – Email from Bo Ok, Office of the Hon Scott Farlow MLC, Government Whip in the Legislative Council, advising that Mrs MacDonald will be substituting for Mr Farlow for the duration of the inquiry into the Coercive Control Bill
- 24 October 2022 – Email from Cherie Pittman, A/Director Legal Services, Legal Aid NSW, declining the invitation to appear at the Coercive Control Bill hearing
- 31 October 2022 – Letter from the Hon Mark Speakman SC MP, Attorney General, regarding an issue raised during the Coercive Control Bill hearing.

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

##### **5.1 Submissions**

Resolved, on the motion of Mr Mallard: That the committee authorise the publication of submission nos. 2, 3, 4 and 6.

Resolved, on the motion of Mr Mallard: That the committee authorise the publication of submission no. 1, with the exception of identifying information which is to remain confidential, as per the request of the author.

Resolved, on the motion of Mr Mallard: That the committee keep submission no. 5 confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information

##### **5.2 Answers to questions and supplementary questions**

The committee noted that, as previously resolved, there is insufficient time for witnesses to provide answers to questions on notice or supplementary questions.

##### **5.3 Allocation of questioning**

Resolved, on the motion of Ms Boyd: That the allocation of questioning be left in the hands of the Chair, with a 5 minute block for the Opposition, Crossbench, and Government at the start of each witness session.

##### **5.4 Public hearing**

The committee proceeded to take evidence in public.

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, questions on notice, virtual hearing etiquette and other matters.

The following witnesses were sworn and examined:

- Ms Renata Field, Acting Chief Executive Officer, Domestic Violence NSW
- Dr Bridget Mottram, Senior Policy Officer- WDVCS Program, Domestic Violence NSW
- Ms Hayley Foster, Chief Executive Officer, Full Stop Australia
- Ms Angela Lynch, Advocacy Manager, Legal and Policy, Full Stop Australia (*via videoconference*)

Ms Field tabled the following documents:

- Document entitled 'Suggested additional review provisions'
- Open letter to the Attorney General from the NSW Women's Alliance
- Report by the Scottish Centre for Crime & Justice Research entitled 'Domestic Abuse (Scotland) Act 2018 and the Criminal Justice System'.

Ms Mottram tabled the following documents:

- Letter to the committee by six members of the Domestic Violence NSW Lived Experience Policy Advisory Group
- Report by Domestic Violence NSW entitled 'Policing of Domestic and Family Violence in NSW'

- Table of recommendations and response from NSW Police from the NSW Auditor-General's report entitled 'Police responses to domestic and family violence'.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy & Practice, Aboriginal Legal Service NSW/ACT

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Stephen Odgers SC, Co-Chair, Criminal Law Committee, NSW Bar Association
- Ms Rose Khalilizadeh, Public Defender and member, Criminal Law Committee, NSW Bar Association

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Rachael Martin, Principal Solicitor, Wurringa Baiya Aboriginal Women's Legal Centre
- Ms Dixie Link-Gordon, Senior Community Access Officer, First Nations Women's Legal Program, Women's Legal Service NSW
- Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW

Ms Snell tabled the following documents:

- Document entitled 'Proposed actions to address systemic misidentification'
- Extract from Queensland legislation

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Annabelle Daniel, Chief Executive Officer, Women's Community Shelters
- Ms Libby Gauld, Development Director, Women's Community Shelters
- Ms Jacqui Watt, Chief Executive Officer, No to Violence

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Karen Williams, Consultant Psychiatrist, RANZCP, and Founder of Doctors Against Violence Towards Women
- Professor Kate Fitz-Gibbon, Director of Monash Gender and Family Violence Prevention Centre
- Dr Jane Wangmann, Associate Professor, Faculty of Law at UTS
- Ms Gayatri Nair, National Coordinator Economic Abuse Reference Group
- Ms Jasmine Opdam, Acting Team Leader, Financial Abuse Service NSW, Redfern Legal Centre
- Ms Sally Stevenson AM, Executive Director, Illawarra Women's Health Centre (*via videoconference*)

Dr Wangmann tabled the following document:

- Document entitled 'Selection of research studies'

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 16.32 pm.

### 5.5 Tended documents

Resolved, on the motion of Ms Boyd: That the committee accept and publish the following document(s) tendered during the public hearing:

- Document entitled 'Suggested additional review provisions', tendered by Ms Field
- Open letter to the Attorney General from the NSW Women's Alliance, tendered by Ms Field
- Report by the Scottish Centre for Crime & Justice Research entitled 'Domestic Abuse (Scotland) Act 2018 and the Criminal Justice System', tendered by Ms Field.

- Letter to the committee by six members of the Domestic Violence NSW Lived Experience Policy Advisory Group, tendered by Ms Mottram
- Report by Domestic Violence NSW entitled 'Policing of Domestic and Family Violence in NSW', tendered by Ms Mottram
- Table of recommendations and response from NSW Police from the NSW Auditor-General's report entitled 'Police responses to domestic and family violence', tendered by Ms Mottram
- Document entitled 'Proposed actions to address systemic misidentification', tendered by Ms Snell
- Extract from Queensland legislation, tendered by Ms Snell
- Document entitled 'Selection of research studies', tendered by Dr Wangmann.

### 5.6 Correspondence from the Attorney General

Resolved, on the motion of Mrs MacDonald: That the letter from the Attorney General dated 31 October 2022 be authorised to be published.

## 6. Next meeting

The committee adjourned at 16.38 pm until Friday 4 November 2022, 10.00 am, Room 1043, Parliament House (report deliberative).

Jessie Halligan  
**Committee Clerk**

### Draft minutes no. 44

Friday 4 November 2022

Standing Committee on Social Issues

Room 1043, Parliament House, Sydney 10.04 am

## 1. Members present

Mr Barrett, *Chair* (videoconference)

Mr Buttigieg, *Deputy Chair* (via videoconference until 10.15 am, then in person from 10.16 am)

Ms Boyd

Revd Nile

Mrs MacDonald

Mr Mallard

Mr Primrose

Mr Rath

## 2. Previous minutes

Resolved, on the motion of Ms Boyd: That draft minutes no. 43 be confirmed.

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

### 3.1 Name suppressed submissions

Resolved, on the motion of Mr Primrose: That the committee authorise the publication of submission no. 1a, with the exception of identifying information which is to remain confidential, as per the request of the author.

### 3.2 Consideration of Chair's draft report

The Chair submitted his draft report entitled *Crimes Legislation Amendment (Coercive Control) Bill 2022*, which having been previously circulated, was taken as being read.

Ms Boyd moved: That the following amendments proposed by members not be considered:

a) Amendment of Mr Buttigieg:

- That the following new paragraphs be inserted before paragraph 1.1:

'On 24 September 2020, Anna Watson MP, Member for Shellharbour and Opposition Whip in the Legislative Assembly introduced and second read a private members bill titled Crimes (Domestic and Personal Violence) Amendment (Coercive Control—Preethi's Law) Bill 2020 in the Legislative Assembly.

On 21 October 2020, the Joint Select Committee on Coercive Control was established.

On 18 March 2021, the above bill was voted on and defeated in the Legislative Assembly.

On 30 June 2021, the Joint Select Committee on Coercive Control delivered 23 recommendations.

On 17 December 2021, the Government gave their response. The NSW Government supported, in full, in part or in principle, 17 of the Committee's 23 recommendations. Six recommendations were noted.'

- That paragraph 1.1 be amended by inserting 'The current bill under consideration,' before 'The Crimes Legislation Amendment (Coercive Control) Bill 2022 (the bill) was introduced in the Legislative Assembly on 12 October 2022 by the Attorney General, the Hon Mark Speakman SC MP.'

b) Amendment of Mr Mallard: That the following new paragraph be inserted after paragraph 1.6: 'Shortly before the establishment of this committee, in September 2020, Anna Watson MP, Member for Shellharbour and Opposition Whip in the Legislative Assembly introduced and second read a private members bill titled Crimes (Domestic and Personal Violence) Amendment (Coercive Control—Preethi's Law) Bill 2020 in the Legislative Assembly. This Bill was voted on and defeated in March 2021.'

c) Amendment of Ms Boyd: That the following new paragraph be inserted after paragraph 1.1: 'The introduction of the bill followed bills to criminalise coercive control introduced by Abigail Boyd MLC (on 17 June 2020) and by Anna Watson MP (on 22 September 2020).'

Question put.

The committee divided.

Ayes: Mr Barrett, Ms Boyd, Revd Nile, Mrs MacDonald, Mr Mallard, Mr Rath.

Noes: Mr Buttigieg, Mr Primrose.

Question resolved in the affirmative.

Resolved, on the motion of Ms Boyd: That paragraph 1.5 be amended by omitting 'that began in March 2020, when the NSW Government announced it would seek to address coercive control' after 'stakeholder engagement and consultation', and inserting instead:

'in relation to the criminalisation of coercive control that began in March 2020, when the NSW Attorney General, the Hon Mark Speakman SC MP, indicated that the NSW Government would consult on laws to address coercive controlling behaviour'. [FOOTNOTE: NSW Government, *Coercive Control Discussion Paper*, October 2020, p 6.]

Resolved, on the motion of Ms Boyd: That paragraph 1.5 be amended by inserting ', with a six-week consultation period' after 'Have Your Say consultation webpage'.

Resolved, on the motion of Ms Boyd: That:

- a) paragraph 1.9 be amended by omitting 'and with implementation overseen by multiagency taskforce' at the end of the paragraph
- b) the following new paragraph be inserted after paragraph 1.9:

'The committee recommended that a taskforce be established to lead further consultation 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, about education and implementation of the offence'.

Resolved, on the motion of Ms Boyd: That paragraph 1.28 be amended by omitting 'In contrast, stakeholders such as Aboriginal Legal Service NSW/ACT and the NSW Bar Association supported the mental element of the offence being limited to an intention to coerce or control, as a safeguard against overreach and misidentification', and inserting instead 'In contrast, the Aboriginal Legal Service NSW/ACT, who opposed the introduction of a new coercive control offence at this time, argued that the mental element of the offence being limited to an intention to coerce or control could be a safeguard against overreach and misidentification' [FOOTNOTE: Evidence, Ms Sarah Hopkins, Principal Solicitor of Justice Projects, Policy & Practice, Aboriginal Legal Service NSW/ACT, 31 October 2022, p 12].

Resolved, on the motion of Ms Boyd: That paragraph 1.30 be amended by omitting 'Mr Stephen Odgers SC, Co-Chair, Criminal Law Committee, NSW Bar Association shared these concerns, arguing that limiting the offence to conduct involving an intention to coerce or control' and inserting instead 'The NSW Bar Association supported the mental element of the offence being limited to an intention to coerce or control. Mr Stephen Odgers SC Co-Chair, Criminal Law Committee argued that limiting the offence to conduct involving an intention to coerce or control'.

Resolved, on the motion of Ms Boyd: That the following new paragraph be inserted after paragraph 1.30:

'Ms Rachael Martin from Warringa Baiya and Ms Liz Snell from Women's Legal Service, on the other hand, expressed concern that recklessness was not included in the bill, with Ms Liz Snell arguing that there is potential that it will result in the unintended consequence that it emboldens perpetrators to continue perpetrating their behaviour because they aren't held accountable. Ms Martin argued that misidentification would not be solved through the drafting of the bill, only through cultural and system reform' [FOOTNOTE: Evidence, Ms Rachael Martin, Principal Solicitor, Warringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, p 30].

Resolved, on the motion of Ms Boyd: That paragraph 1.31 be amended by omitting 'A number of other stakeholders including' before 'Women's Community Shelters'.

Resolved, on the motion of Ms Boyd: That paragraph 1.46 be amended by inserting 'On the other hand, Ms Martin from Warringa Baiya noted that they had received from Aboriginal communities 'very strong feedback that they think it should be broader than intimate partner relationships' after 'let's make this work first before we go down that path'. [FOOTNOTE: Evidence, Ms Rachael Martin, Principal Solicitor, Warringa Baiya Aboriginal Women's Legal Centre, 31 October 2022, p 35].

Resolved, on the motion of Mr Mallard: That paragraph 1.50 be amended by inserting 'further' before 'mechanism'.

Resolved, on the motion of Mr Mallard: That the following paragraph be inserted after paragraph 1.50:

'However, the committee does acknowledge this Bill has had a long evolution, only being introduced following several rounds of stakeholder engagement and consultation that began in March 2020. Many of the concerns heard in this inquiry appear to have been considered in the drafting of this legislation and addressed by the Attorney General in his second reading speech which deals with why particular drafting choices were made.'

Resolved, on the motion of Mr Mallard: That

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- The report to be tabled on 4 November 2022.

#### 4. **Adjournment**

The committee adjourned at 10.34 am, *sine die*.

Jessie Halligan  
**Committee Clerk**





