Submission No 1

INQUIRY INTO CRIMES LEGISLATION AMENDMENT (COERCIVE CONTROL) BILL 2022

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Submission to LC Standing Committee for Social Issues regarding the DRAFT Coercive Control Bill 2022 (NSW)

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1. Introduction

Coercive control is merely a sub-set of psychological harm.

Rather than address coercive control using the Crimes Act, where relationships have deteriorated into a pattern of abusive behaviour by a person to the extent that requires imprisonment, we believe that a pathway for 'early intervention' is required.

Our proposal is that:

a. Psychological harm be specifically recognised in the Mental Health Act
b. That the associated Mental Health Regulations and Guidelines provide a pathway for compulsory mental health assessment of a perpetrator of psychological harm by a mental health professional. That pathway entails both parties initially undergoing a non-threatening clinical assessment by a Clinical Psychologist that will reveal any underlying mental health conditions of both parties. Mental health issues may be genetic, learned behaviours, environment related, financial related, drug related (either illicit or prescription) or a combination of these factors. Professional treatment or mediation can then follow.

2. Shortcomings of the DRAFT Coercive Control Bill 2022 (NSW)

We believe the shortcomings of the current DRAFT Bill are as follows:

a. By using the Crimes Act – matters in a relationship must have deteriorated to such an extent that imprisonment is required – ie the Act does not promote early intervention to address coercive control (abusive behaviour).

b. The DRAFT bill does not consider that a perpetrator of coercive control (psychological harm) may in fact have a mental health issue that could be genetic, learned behaviours, environment related, financial related, drug abuse (either illicit or prescription) or a combination of these factors. Assessment by a mental health professional is therefore required before progressing matters to Court.

c. The current DRAFT only addresses intimate relationships and not other family relationships where coercive control (psychological harm) is happening. We believe that a coercive control (psychological harm) legal framework needs to include the extended family group ie Parent/Child, siblings and in-laws (eg mother-in-law to daughter-in-law) as well as intimate persons as proposed.

d. The DRAFT Bill effectively labels an alleged perpetrator as guilty (possibly based on false, frivolous or vexatious claims), and that person must subsequently prove their innocence in Court. This is similar to the ADVO provisions under the Crimes Act that has led (in our case) to frivolous or vexatious interim orders being drawn up, and then the Court system being 'clogged' as alleged perpetrators prove it is the PINOP

who has a psychological problem, or alternatively un-necessary orders are made simply because it is 'too stressful', 'too hard' or 'too expensive' to mount a defence. Where the matter is not defended in Court, the person who sought the orders can continue to make false claims and cause ongoing psychological harm with full legal protection.

e. The DRAFT Bill – using the Crimes Act as proposed – will make persons reluctant to enter into intimate relationships for fear of possible future false claims against them that could lead to seven years imprisonment. This Bill potentially destroys the family as the basis of Society.

3. Advantages of amending the Mental Health Act (NSW)

We believe that coercive control is merely a sub-set of psychological harm, and that perpetrators of psychological harm have a mental health issue. Therefore it is logical that the Mental Health Act be used to help such perpetrators – rather than labelling them as Criminals when matters have deteriorated to that extent.

What is required is a pathway by which persons may be "compulsorily referred" to a Mental Health Professional (Clinical Psychologist) at an early stage (early intervention) and undergo a non-threatening mental health assessment, **BEFORE** relationships deteriorate to abusive behaviours and violence.

Our proposal is that:

a. Psychological harm be specifically recognised in the Mental Health Act

b. That the associated Mental Health Regulations and Guidelines be amended to provide a pathway for the compulsory mental health assessment of a perpetrator of psychological harm by a mental health professional. That pathway entails both parties initially undergoing a non-threatening clinical assessment by a Clinical Psychologist that will reveal any underlying mental health conditions of both parties. Mental health issues may be genetic, learned behaviours, environment related, financial related, drug related (either illicit or prescription) or a combination of these factors. Professional treatment or mediation can then follow.

c. That extended family members can recommend a person undergo such a mental health assessment (as outlined above) as they are in a position to recognise early warning signs. Our proposal is not limited to intimate persons.

4. Our Case Study

Our case, spanning over twenty years – the last thirteen (13) years actively seeking the mental health assessment for a family member through all available avenues (family, friends, Church, Guardianship Tribunal, Mental Health Triage and GP) – demonstrates the failure of the current system to address psychological harm.

In an early mediated session between victim and the perpetrator of psychological harm, the perpetrator 'broke down' and confessed to creating harm, but then continued to carry on with prior behaviours. This demonstrates that perpetrators of psychological harm behave differently when confronted with their victim and that they require a mental health assessment by a mental health professional.

In 2012 we made a submission to the Mental Health Act review seeking the specific recognition of psychological harm in the Act and included a comprehensive case study that included a full clinical assessment of the primary victim by a Clinical and Forensic Psychologist showing that the victim had no propensity for psychological disorders.

In our case, personal research into the family history of the perpetrator revealed a suspected genetic propensity for psychological disorders and an over-representation of suicide and early deaths.

In 2015, the 'official response' in the letters we received from the Mental Health Department is *"…that there are a number of mechanisms that allow a person to be assessed for potential involuntary treatment and that psychological harm was already adequately included in these processes."*

We only learnt in 2019 that our 88 page submission was never presented to the Mental Health Act review committee because it was "…too lengthy to scan".

For the next seven years we have sought a pathway via Mental Health Triage, the persons GP, and other family members. We have also been lobbying Politicians to raise questions in Parliament regarding the supposed pathway. We have also sought meetings with the succession of Mental Health Ministers and NSW Premiers (without success) as well as raising our case with our local State and Federal members.

The Health Care Complaints Committee(HCCC) advised us that a Doctor is not legally required to have a mentally ill person assessed **UNLESS** they physically threaten themselves or others ie psychological harm is NOT covered. Also, a Doctor is not required to insist on mediation (with other family members or the victim). A GP may prescribe anti-depressants or other 'mind altering' drugs without a patient ever being required to be clinically assessed by a mental health professional ie Clinical Psychologist.

Our case is fully documented in State Records with both the Department of Health and the Attorney General.

We both continue to experience nightmares due to the ongoing harm by this perpetrator who has estranged us from our adult children and extended family and friends.

5. **What our case demonstrates – that there is no pathway for compulsory assessment for psychological harm.**

Our case clearly demonstrates there is **NOT** a pathway to have a person compulsorily assessed for psychological harm (contrary to the Government Statements)

The Mental Health Department acknowledge psychological harm as a mental health issue. We acknowledge expanding the scope of the Act will incur additional costs (eg additional Clinical Psychologists) but believe these costs will be more than offset by reduced Court costs, domestic violence, youth radicalisation and incarceration rates - through early intervention.

It is important to note that under Medicare, an individual is entitled to multiple consultations with a mental health professional under a mental health care plan – but very few people know of this. Hence, concerns about affordability of reform is exaggerated.

6. **Concluding remarks**

Coercive control is merely a sub-set of psychological harm.

Coercive control should be addressed by amendments to the Mental Health Act and not the Crimes Act.

By addressing coercive control (psychological harm) early (through proposed Mental Health Clinical Assessment Orders) relationships will not deteriorate to the point where crimes are committed and innocent parties impacted.

By using the Mental Health Act to specifically recognise psychological harm, the extended family group may be protected from coercive control – not just intimate persons.

We urge the Standing Committee on Social Issues to COMPLETELY REJECT the proposed Bill and ask the Lower House to ‘start again’ using the Mental Health Act.