

# Submission to consultation on criminalising coercive control in NSW – exposure draft bill

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## About Community Legal Centres NSW

CLCNSW is the peak representative body for 41 community legal centres in NSW. Our team supports, represents and advocates for our members, and the legal assistance sector more broadly, with the aim of increasing access to justice for people in NSW.

Community legal centres (CLCs) are independent non-government organisations that provide free legal services to individuals and communities, at times when that help is needed most, and particularly to people facing economic hardship.

CLCNSW represents the views of community legal centres to the government and broader community, advocates on key law reform and policy issues, and supports community legal centres to improve the efficiency and quality of services they deliver to the community.

## Recommendations summary

1. Immediately establish an independent, multi-agency taskforce to oversee the consultation on draft legislation, implementation, and ongoing review of the legislation.
2. Introduce a definition of domestic and family abuse into the *Crimes (Domestic and Personal Violence) Act 2007 (CDPV Act 2007)* which governs our Apprehended Violence Orders (AVOs). This will improve a common understanding of domestic and family abuse and the overarching framework as one of power, control, coercion and causing fear.
3. Broaden the application of the legislation from intimate partner to domestic relationship. Use the current definition of ‘domestic relationship’ in section 5 of the *CDPV Act 2007* of to ensure consistency across legislation, set community norms and encapsulate the range of domestic relationships in which coercive control can occur.
4. With the introduction of a definition of domestic and family abuse in the *CDPV Act 2007*, embed cultural and systems reform, both broadly in the community, and in police response to domestic and family abuse. Police readiness is vital given their important role as first responders and the significant proportion of their work responding to domestic and family abuse.<sup>1</sup>
5. Legislate a commencement date of 4 years to ensure system readiness.

6. Include a legislative requirement to table a report to Parliament outlining the steps taken towards cultural and systems reform implementation prior to the commencement of a new offence. Include a provision to delay the commencement date if implementation preparation is insufficient.
7. Include a legislative requirement for regular and ongoing statutory reviews following commencement, with the first review no more than 18 months after commencement. Evaluations of the experience of victim-survivors must be integral to these reviews.

## About the recommendations

### 1. Independent multi-agency taskforce

Recommendation 1 of the Joint Select Committee on Coercive Control (the Committee), states that:

*commencement of a criminal offence should not occur without a considerable prior program of education, training and consultation with police, stakeholders and the frontline sector. Following drafting and legislation of such an offence, and prior to commencement, implementation should be assisted through a multi-agency taskforce.*<sup>2</sup>

While it's questionable that a 'considerable prior program' has occurred, the legislation has been drafted and it is time to establish the taskforce to continue consultation and oversee commencement and implementation. This recommendation was supported by the NSW government in its response to the Committee.<sup>3</sup>

#### Recommendation 1

**Immediately establish an independent, multi-agency taskforce to oversee the consultation on draft legislation, implementation, and ongoing review of the legislation.**

### 2. Domestic abuse in legislation

Before commencement, we need a consistent definition of domestic abuse across all NSW laws to capture the pattern of violent or threatening behaviour that coerces or controls a person or causes that person to be fearful.

Recommendation 2 of the Committee states that:

*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. This should be done as a priority, before criminalising coercive control.*<sup>4</sup>

The NSW government agreed to this recommendation in principle.<sup>5</sup>

This could be guided by the definition of family violence in the Australian Law Reform Commission and New South Wales Law Reform Commission report *Family Violence – A National Legal Response* which has been adopted as the definition of family violence in the *Family Law Act 1975 (Cth)*.<sup>6</sup> The definition should also align with national principles on coercive control to ensure national consistency.

The Committee reported that one advantage of reforming the civil regime first is that ADVO applications have a lower standard of proof. They reported that NSW Police told the Inquiry that this is beneficial because 'there is a 'reduced need for particulars', victims can provide a typed statement of evidence, and there is no 'wide ranging cross-examination' as compared to a criminal trial'.<sup>7</sup>

Amending the *CDPV Act 2007* would allow for a transition period before the commencement of a stand-alone coercive control offence and time for activities required to embed cultural and systemic changes.

## Recommendation 2

**Introduce a definition of domestic and family abuse into our *Crimes (Domestic and Personal Violence) Act 2007 (CDPV Act 2007)* which governs our Apprehended Violence Orders (AVOs). This will improve a common understanding of domestic and family abuse and the overarching framework as one of power, control, coercion and causing fear.**

### 3. Intimate Partner relationship

Limiting the application of coercive control legislation to an intimate partner relationship will not lead to the cultural shift required to address coercive control nor set community norms and expectations about control, abuse and power of one person over another. It will send the inconsistent message that this pattern of behaviour is wrong in the specific context of intimate partner relationships but not others.

Limiting to intimate partner will also miss how coercive control plays out for particular groups and in particular contexts. Examples include: elder abuse; threats to visa or migration status; threats to take children away from Aboriginal women; experiences of carer relationships or experiences in disability group homes; reproductive coercion; experiences in chosen family relationships; dowry stealing; early or forced marriage; financial control by extended family members; image-based abuse, particularly for young women; threatening to out somebody or controlling their gender expression.

## Recommendation 3

**Broaden the application of the legislation from intimate partner to domestic relationship. Use the current definition of 'domestic relationship' in section 5 of the *CDPV Act 2007* to ensure consistency across legislation, set community norms and encapsulate the range of domestic relationships in which coercive control can occur.**

### 4. Extend commencement timeframe

The timing for consultation and commencement of a new coercive control offence is too fast to adapt to the cultural and systems reforms needed to implement a robust law that has the desired consequences and aligns with and complements existing legislation in NSW and nationally. We need to extend the timeframe for consultation and commencement of the legislation to guarantee the cultural and systemic changes necessary.

The gold standard for implementation of coercive control legislation is in Scotland, which took four years and centred the experiences of victim-survivors. Importantly, implementation work continues in Scotland with a legislative requirement to centre victim-survivors experiences in the ongoing monitoring and evaluation and continuous improvement of the reforms.

As well as extending the existing timeframe, the following recommendations will further help to ensure that we get the best legislation that ultimately protects women and children, holds perpetrators accountable for their behaviour and avoids unintended consequences.

## Recommendation 4

**Legislate a commencement date of 4 years to ensure system readiness.**

## 5. Cultural and systems reform

There are a range of reforms that would improve cultural and systemic readiness for implementation of coercive control legislation in the public sphere, within systems and services, and the police.

### Awareness-raising and training

The Committee recommends running awareness campaigns for the NSW public about coercive control ahead of its implementation. They recommend:

- General awareness campaigns<sup>8</sup>
- Targeted campaigns developed with First Nations communities, culturally and linguistically diverse communities, LGBTIQ+ communities, people with disability, and rural and remote communities.<sup>9</sup>
- Content about coercive and controlling behaviour in school programs about respectful relationships.<sup>10</sup>
- Regularly repeated training on identifying, recording and responding to coercive control for police officers, judicial officers and prosecutors, and workers in the domestic abuse, health care, housing, education and child protection sectors.<sup>11</sup>

These recommendations were supported by the NSW government.<sup>12</sup>

### Systems and services readiness

Ongoing workforce development across all systems and sectors will help people to improve identification and response to domestic and family abuse. To assist all systems and services in identifying and responding to domestic and family abuse, a multi-agency risk assessment and management framework could be implemented. The *Family Violence Multi-Agency Risk Assessment and Management Framework* of the Victorian government could be used as a model.<sup>13</sup>

In recognition of the fact that domestic and family violence is the single largest driver of homelessness for women and children, ensure that building adequate social housing is placed at the core of all government efforts to address gendered violence. This includes increasing levels of support and human services available in regional, rural, and remote communities, particularly for social housing, safe and emergency accommodation, counselling, and drug treatment and rehabilitation services.

Eligibility for temporary accommodation, crisis accommodation and social housing needs to be amended, so that everyone experiencing sexual, domestic and family violence and abuse has a safe place to live, regardless of visa status.

## Police readiness

The Committee reported that Police readiness was critical to the effective implementation of coercive control legislation.<sup>14</sup>

The training program for police in Scotland was designed to ‘advance staff and officer’s knowledge of the dynamics of power and control in abusive relationships and to tackle the myths and misconceptions, so of which are still common in our communities.’<sup>15</sup>

The training program was developed and implemented with their partners Safelives, who are a UK national charity committed to ending domestic abuse and a consortium of other partners including statutory and non-statutory service providers.<sup>16</sup> This enabled them to deliver face-to-face training for more than 14,000 officers and staff across the organisation.<sup>17</sup> A similar model should be adopted in NSW.

In April 2022, the Audit Office of NSW released a report, *Police responses to domestic and family violence* which assessed whether the NSW Police Force has effective systems, processes, resources, and capability to respond to domestic and family violence events in New South Wales. Before commencement of new and more complex domestic abuse legislation which creates a new offence for coercive control, implementing the recommendations of the report would significantly enhance police readiness. They recommend:

- Improve workforce and workload data collections, analysis and reporting on domestic and family violence workload volumes and allocations of specialist and frontline police to meet demands.
- Structure and resource the domestic and family violence strategic policy function to a level commensurate with workload volumes and risks associated with domestic violence policing.
- Review debriefing protocols, procedures, and resources for police after domestic and family violence incidents.
- Improve databases and information systems for recording domestic violence events so that related events and individuals are automatically connected.
- Design a procedure to collect, collate, and analyse service user and stakeholder feedback about police responses to domestic and family violence.
- Review existing activity measures and targets for domestic and family violence and expand to include performance measures, service quality measures and outcomes reporting.
- Review the process for investigating allegations of domestic and family violence against current and former serving police personnel and implement procedures to ensure processes are independent of interested parties and mitigate conflicts of interest.<sup>18</sup>

## Recommendation 5

**Legislate a commencement date of 4 years to ensure system readiness.**

### 6. Report to parliament prior to commencement

This is an important accountability and evaluation mechanism that will ensure that the cultural and systemic changes, partly outlined above and supported by the NSW government<sup>19</sup>, are implemented.

If step 2 is taken and a definition of domestic and family abuse is included in the *CDPV Act 2007* analysis of how this is working can be included in this report and provide insight into the potential barriers to implementing a new stand-alone coercive control offence, policies and practices and how these barriers can be addressed. This is particularly important before considering introducing a new stand-alone coercive control offence.

## Recommendation 6

**Include a legislative requirement to table a report to Parliament outlining the steps taken towards cultural and systems reform implementation prior to the commencement of a new offence. Include a provision to delay the commencement date if implementation preparation is insufficient.**

### 7. Ongoing review

Further criminalising coercive control comes with a high risk for victim-survivors who are predominantly women and children. The most at-risk communities are those who already experience institutionalised discrimination, including Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people, LGBTQI+ people, people with disability, young people and older people.

Institutionalised discrimination leads to delays in police responding, women feeling judged and silenced, their experiences minimised and not being seen as a reliable witness. Women's criminalisation often stems from being misidentified as the predominant aggressor. The Committee identified 'misidentification of victims, and over-criminalisation (especially for Aboriginal and Torres Strait Islander people)' as a key challenge when introducing new domestic abuse offence.<sup>20</sup>

Regular and ongoing review of coercive control legislation is recommended to ensure that the legislation has the intended consequences.

## Recommendation 7

**Include a legislative requirement for regular and ongoing statutory reviews following commencement, with the first review no more than 18 months after commencement. Evaluations of the experience of victim-survivors must be integral to these reviews.**

## More information

Thank you for taking the time to consider our submission. If you have any questions or require further input, please contact us at [clcnsw@clcnsw.org.au](mailto:clcnsw@clcnsw.org.au) or (02) 9212 7333.

Yours faithfully,

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<sup>1</sup> The NSW Police Force responds to over 140,000 domestic and family violence calls for assistance every year. This equates to one call every four minutes. According to NSW Bureau of Crime Statistics and Research statistics, the number and volume of domestic and family violence crime types have increased from October 2016 to September 2021. Cited in Audit Office of New South Wales [Police responses to domestic and family violence](#), 4 April 2022, accessed 24 August 2022.

<sup>2</sup> New South Wales Parliament Joint Select Committee on Coercive Control [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p xiv.

<sup>3</sup> NSW Government [NSW Government Response to NSW Joint Select Committee on Coercive Control](#), accessed 19 August 2022, p 3.

<sup>4</sup> New South Wales Parliament Joint Select Committee on Coercive Control [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p xiv.

<sup>5</sup> NSW Government [NSW Government Response to NSW Joint Select Committee on Coercive Control](#), accessed 19 August 2022, p 3.

<sup>6</sup> Australian Law Reform Commission and NSW Law Reform Commission, [Family Violence – A National Legal Response](#), Part B 5. A Common Interpretative Framework — Definitions in Family Violence Legislation, 2010, accessed 17 August 2022, p17.

<sup>7</sup> New South Wales Parliament Joint Select Committee on Coercive Control [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p 29.

<sup>8</sup> New South Wales Parliament Joint Select Committee on Coercive Control, Recommendation 9, [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p 48. Supported by the NSW government.

<sup>9</sup> New South Wales Parliament Joint Select Committee on Coercive Control, Recommendation 9, [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p 48. Supported by the NSW government.

<sup>10</sup> New South Wales Parliament Joint Select Committee on Coercive Control, Recommendation 10, [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p 51. Supported by the NSW government.

<sup>11</sup> New South Wales Parliament Joint Select Committee on Coercive Control, Recommendation 19, [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p 74. Supported by the NSW government.

<sup>12</sup> NSW Government [NSW Government Response to NSW Joint Select Committee on Coercive Control](#), accessed 19 August 2022, p 3.

<sup>13</sup> Victorian Government [Family Violence Multi-Agency Risk Assessment and Management Framework](#), accessed 31 August 2022.

<sup>14</sup> New South Wales Parliament Joint Select Committee on Coercive Control, Recommendation 19, [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p viii.

<sup>15</sup> Domestic Abuse Coordination Unit Police Scotland, [Submission to the Inquiry Coercive control in domestic relationships](#), Submission 146 25 February 2021, accessed 24 August 2022, p 1.

<sup>16</sup> Domestic Abuse Coordination Unit Police Scotland, [Submission to the Inquiry Coercive control in domestic relationships](#), Submission 146 25 February 2021, accessed 24 August 2022, p 2.

<sup>17</sup> Domestic Abuse Coordination Unit Police Scotland, [Submission to the Inquiry Coercive control in domestic relationships](#), Submission 146 25 February 2021, accessed 24 August 2022, p 2.

<sup>18</sup> NSW Audit Office [Police responses to domestic and family violence](#), 4 April 2022, accessed 31 August 2022.

<sup>19</sup> NSW Government [NSW Government Response to NSW Joint Select Committee on Coercive Control](#), accessed 19 August 2022, pp 4 & 5.

<sup>20</sup> New South Wales Parliament Joint Select Committee on Coercive Control, Recommendation 19, [Coercive control in domestic relationships](#), Report 1/57 – June 2021, accessed 19 August 2022, p 13.