

4 November 2022

To the Hon. Mark Speakman, Attorney General
CC: Hon. Natalie Ward MLC, Minister for Women's Safety
and the Prevention of Domestic and Sexual Violence

Crimes Legislation Amendment (Coercive Control) Bill 2022

We, the signatories to this Joint Letter, have concerns about the Crimes Legislation Amendment (Coercive Control) Bill 2022 ('the Bill') and continue to hold those concerns. However, **the most significant and pressing concern is** ensuring cultural and systems reform including through **robust implementation and monitoring and evaluation** to ensure the safety of victim-survivors who are predominantly women and children.

We acknowledge the Government's commitment and bipartisan efforts in seeking to address coercive control. We call on the Government and all members of the Legislative Council to support amendments to the Bill that focus on ensuring cultural and systems reform occur which are vital to the success of any reforms to address coercive control. We refer to our Joint Submission in response to the inquiry on this Bill which discusses the need for such safeguards in more detail. The Joint Submission is available [here](#).

In the Legislative Council Standing Committee on Social Issue's report from their inquiry into the Coercive Control Bill made public today restated calls from the sector to prioritise broader cultural and systems reform to address gendered violence, and the unanimous agreement that the taskforce should be independent.

Proposed amendments

We call for the following amendments to the Bill:

- 1. Ensuring the Implementation, Monitoring and Evaluation Taskforce is:**
 - **Independent, and**
 - **includes several First Nations representatives, including a representative from the Aboriginal Women's Advisory Network, representatives from other priority populations, lived expertise and more than one representative from the domestic and family violence sector.**

An independent taskforce is best practice and has been a feature of significant reform in other jurisdictions, such as the independent Family Violence Reforms Implementation Monitor in Victoria. The Queensland Women's Safety and Justice Taskforce has recommended an independent implementation supervisor to have oversight in responding to coercive control "*so the public will know the progress of its proposed reform*" with regular reporting to ensure "*public accountability and transparency*".

- 2. Ensuring more comprehensive review provisions that seek to address some of the cultural and systems reform work required. The non-exhaustive list of further issues that must be included in the statutory review provision include:**
 - i. an assessment of the effectiveness of training and examination of transcripts as was included for the sexual consent reforms;**

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

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

These recommended review provisions were included in our [joint submission](#) as well as being tabled in the Inquiry into the Crimes Legislation Amendment (Coercive Control) Bill 2022 (NSW) for consideration as amendments and available [here](#).

3. Amendments to help in ensuring accurate identification of the person most in need of protection in the *Crimes (Domestic and Personal Violence) Act*, including:
 - i. **A contextual definition of “domestic and family abuse” in the *Crimes (Domestic and Personal Violence) Act* which rather than separating “violent and threatening behaviour” from its context, includes “violent, threatening or other behavior that coerces, controls or causes fear”, similar to the definition of “family violence” in s4AB of the *Family Law Act 1975 (Cth)***
 - ii. **referring specifically to the behaviour of the persons in the relevant relationship to be considered in the context of the relationship as a whole** (proposed amendment to s8(1A)(c) of the *Domestic and Family Violence Protection Act* through the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Qld))
 - iii. **legislative guidance to identify the person most in need of protection** consistent with proposed new s22A of the *Domestic and Family Violence Protection Act*

Act through the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Qld)

- iv. **inserting a principle that “only 1 domestic violence order should be in force unless, in exceptional circumstances, there is clear evidence that each of the persons in the relationship is in need of protection from the other” and generally requiring such applications to be heard together and requiring the court to decide which of the parties to the relevant relationship is the person most in need of protection** (proposed sections 4(2)(e), 41C, 41D, 41G) of the *Domestic and Family Violence Protection Act* through the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Qld)

Proposed amendments 3(ii) to 3(iv) are taken from the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Qld). This Bill was introduced on 14 October 2022, since the introduction of the NSW Bill and is part of the first stage legislative and systems reform against coercive control in Queensland prior to criminalisation.

These provisions were tabled in the Inquiry into the Crimes Legislation Amendment (Coercive Control) Bill 2022 (NSW) for consideration as amendments and available [here](#). They are also extracted as Appendix A below.

Further cultural and systems reform

In addition to these legislative amendments, we also call on all members of the Legislative Council to commit to properly resourcing the independent taskforce and further cultural and systems reform including:

1. accountability frameworks to effectively respond to systemic racism, sexism and other forms of discrimination;
2. accountability frameworks to ensure the accurate identification of the person most in need of protection. We refer to 16 proposed action to address systemic misidentification in *Monitoring Victoria’s Family Violence Reforms: Accurate identification of the predominant aggressor (2021)* tabled in the Coercive Control Bill 2022 inquiry [here](#)
3. 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;
4. co-responder model with police responding with specialist domestic and family abuse workers;
5. an effective, multi-agency screening and risk assessment framework and associated tools;
6. significant workforce development;
7. significant improvements to the criminal legal system;
8. whole of systems response.

Should you have any questions, please contact Liz Snell, Women’s Legal Service NSW on ph 02 8745 6900, Rachael Martin, Wirringa Baiya Aboriginal Women’s Legal Centre on ph: 02 9569 3847 or Renata Field, DV NSW on ph: 02 9698 9777.

Yours faithfully,

1	Teddy Cook	Director, Community Health	ACON
2	Mark Patrick	Principal Solicitor	Australian Centre for Disability Law
3	Penny Hood	Acting CEO	Barnardos Australia
4	Gina Vizza	Manager	Blue Mountains Women's Health & Resource Centre
5	Eleanor Campbell	Counselling Coordinator & Clinician	Bondi Beach Cottage
6	Jayke Burgess	Advocate	
7	Arlia Fleming	Centre Director/Principal Solicitor	Central Tablelands and Blue Mountains Community Legal Centre
8	Ashlee Donohue	Specialist DFV consultant	
9	Delia Donovan Bridget Mottram	CEO Senior Policy Officer	DVNSW
10	Stacy Treloar	CEO	Far West Community Legal Centre Limited Warra Warra Legal Service Women's Domestic Violence Court Advocacy Service Staying Home Leaving Violence Programs located in Broken Hill & Wentworth
11	Adam Washbourne	Founder and President	Fighters Against Child Abuse Australia
12	Sara Friedman	Advocate	
13	Hayley Foster	CEO	Full Stop Australia
14	Erin Hunt	Hearing Support worker	Housing Plus/ WDVCS Dubbo
15	Alison Maher	Acting Principal Lawyer	Hume Riverina Community Legal Service
16	Bronwyn Ambrogetti	Managing Solicitor	Hunter Community Legal Centre
17	Synthia Huynh	DVNSW victim-survivor policy advisory group member	
18	Louise Farroway	Centre Co-ordinator	Illawarra Legal Centre
19	Sunila Kotwal	Executive Officer	Immigrant Women's SpeakOut Association of NSW
20	Emma Golledge	Director	Kingsford Legal Centre
21	Warren Strange	CEO	Knowmore
22	Vicki Johnston	CEO	Leopard Consulting; Executive Assistant, Moving Forward
23	Chris Jones	Director and Founder	LIVEfree PROJECT

24	Rachael Natoli	CEO	Lokahi Foundation
25	Robert Pelletier	Executive Officer	Macarthur Legal Centre
26	Sarah Dahlenburg	Assistant Principal Solicitor	Mid North Coast Legal Centre
27	Kate Marijan	Coordinator	Mission Australia Court Support Service
28	Professor Kate Fitz-Gibbon	Director	Monash Gender and Family Violence Prevention Centre
29	Dr Ellen Reeves	Postdoctoral Research Fellow	Monash Gender and Family Violence Prevention Centre
30	Tatiana Lozano	Manager	Mountains Outreach Community Service
31	Bronwyn Penrith	Director	Mudgin-Gal
32	Lisa Ronneberg	Chairperson	Newcastle Domestic Violence Committee
33	Fiona Edwards	Team Leader	Nova for Women and Children
34	Yumi Lee	CEO	Older Women's Network NSW
35	Sebastian Zagarella	CEO	People with Disability Australia
36	Jonathon Hunyor	CEO	Public Interest Advocacy Centre
37	Alexis Goodstone	Interim CEO	Redfern Legal Centre
38	Major Paul Hateley	Head of Government Relations	The Salvation Army
39	Shannon Wright	CEO	Seniors Rights Service
40	Astrid Perry	Head of Women, Equity and DFV	Settlement Services International
41	Louisa Stewart	Principal Solicitor	Shoalcoast Community Legal Centre
42	Jane Matts	Founder	Sisters-In-Law
43	Yvette Vignando Janice Waring Farah Assafiri	CEO Manager, Sydney WDVCS Manager, South West Sydney WDVCS	South West Sydney Legal Centre
44	Margherita Basile	Manager	Sydney Women's Counselling Centre
45	Elfa Moraitakis	CEO	SydWest Multicultural Services
46	Sina Tehrani	DVNSW victim-survivor policy advisory group member	
47	Tara Ward	Principal Lawyer	The Animal Defenders Office
48	Thea Deakin-Greenwood	Director - Practice, Advocacy and Policy	Transforming Justice Australia
49	Prof Jennifer Burn	Director of Anti-Slavery Australia	University of Technology Sydney
	Dr Jane Wangmann	Associate Professor	UTS: Law
50	Catalina Valencia	DVNSW victim-survivor policy advisory group member	
51	Kerrie Thompson	CEO Victim Support Unit	Victims of Crime Assistance League (Hunter)

52	Rev. John Owen	Pastor/CEO	Wayside Chapel
53	Siobhan Bryson	CEO	WEAVE
54	Patrick O'Callaghan	Principal Solicitor	Western NSW Community Legal Centre
55	Rebecca Dominguez	Principal Solicitor	Western Sydney University Justice Clinic
56	Rachael Robertson	Senior Solicitor	Western Women's Legal Support
57	Christine Robinson Rachael Martin	Co-ordinator Principal Solicitor	Wirringa Baiya Aboriginal Women's Legal Centre
58	Denele Crozier AM	CEO	Women's Health NSW
59	Gloria Larman	CEO	Women's Justice Network
60	Trish Connolly	CEO	Yfoundations
61	Carolyn Jones	Principal Solicitor (Harm Practice)	Youth Law Australia
62	Gail Thorne Philippa Davis	Community Access Officer Principal Solicitor	Women's Legal Service NSW

Appendix A

Proposed Amendments of *Domestic and Family Violence Act 2012* through the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022 (Qld)

Contextualising domestic and family abuse

Section 8

Insert—

(1A) Behaviour, or a pattern of behaviour, mentioned in subsection (1)

(c) is to be considered in the context of the relationship between the first person and the second person as a whole.

Legislative guidance on who is the person most in need of protection in a relevant relationship

Insertion of new s22A

Insert —

22A Who is the person most in need of protection in a relevant relationship

(1) A person (the **first person**), who is in a relevant relationship with another person (the *second person*), is the **person most in need of protection** in the relationship if, when the behaviour of each of the persons is considered in the context of their relationship as a whole—

(a) the behaviour of the second person towards the first person is, more likely than not—

(i) abusive, threatening or coercive; or

(ii) controlling or dominating of the first person and causing the first person to fear for the safety or wellbeing of the first person, a child of the first person, another person or an animal (including a pet); or

(b) the first person's behaviour towards the second person is, more likely than not—

(i) for the first person's self-protection or the protection of a child of the first person, another person or an animal (including a pet); or

(ii) in retaliation to the second person's behaviour towards the first person, a child of the first person, another person or an animal (including a pet); or

(iii) attributable to the cumulative effect of the second person's domestic violence towards the first person.

(2) In deciding which person in a relevant relationship is the person most in need of protection, a court must consider—

(a) the history of the relevant relationship, and of domestic violence, between the persons; and

(b) the nature and severity of the harm caused to each person by the behaviour of the other person; and

(c) the level of fear experienced by each person because of the behaviour of the other person; and

(d) which person has the capacity—

(i) to seriously harm the other person; or

(ii) to control or dominate the other person and cause the other person to fear for the safety or wellbeing of the first person, a child of the first person, another person or an animal (including a pet); and

(e) whether the persons have characteristics that may make them particularly vulnerable to domestic violence. Examples of people who may be particularly vulnerable to domestic violence—

- women
- children

- Aboriginal peoples and Torres Strait Islander peoples
- people from a culturally or linguistically diverse background
- people with disability
- people who are lesbian, gay, bisexual, transgender or intersex
- elderly people

Minimising multiple protection orders against both parties in existence at once

Principles of Act

Amendment of s 4(2)(e)

Insert

self-protection—

- (i) the person who is most in need of protection in the relationship should be identified; and
- (ii) only 1 domestic violence order protecting that person should be in force unless, in exceptional circumstances, there is clear evidence that each of the persons in the relationship is in need of protection from the other;

Amendment of s 41C (Hearing of applications—cross applications before same court)

(1) Section 41C(2)(a) and (b)—

omit, insert—

(a) hear the applications together; and

(b) in hearing the applications, consider—

(i) the principle mentioned in section 4(2)(e); and

(ii) whether it is necessary to make arrangements for the safety, protection or wellbeing of the person most in need of protection in the relevant relationship that exists between the persons who are the aggrieveds and respondents to the applications.

(2) Section 41C(3)— omit.

(3) Section 41C(4)— renumber as section 41C(3).

Amendment of s 41D (Hearing of applications—cross applications before different courts)

(1) Section 41D(3) and (4)—

omit, insert—

(3) If the court hears the applications, the court must consider—

(a) the principle mentioned in section 4(2)(e); and

(b) whether it is necessary to make arrangements for the safety, protection or wellbeing of the person most in need of protection in the relevant relationship that exists between the persons who are the aggrieveds and respondents to the applications.

(2) Section 41D(5)— renumber as section 41D(4).

Insertion of new s 41G After section 41F—

insert—

41G Deciding cross applications

(1) This section applies to a court hearing the following applications together under section 41C, 41D or 41E—

(a) the original application and cross application;

(b) the variation application and cross application.

(2) The court must decide—

- (a) which of the parties to the relevant relationship is the person most in need of protection in the relationship; and
 - (b) the application that makes, or varies, the protection order that is necessary or desirable to protect the person most in need of protection from domestic violence; and
 - (c) if the other application is an application for a protection order—to dismiss the other application; and
 - (d) if the other application is an application for the variation of a protection order—to vary the order by reducing its duration so that the order ends.
- (3) Despite subsection (2), the court may make, or vary, a protection order under both applications if the court is satisfied that, in exceptional circumstances—
- (a) there is clear evidence that each of the parties to the relevant relationship is in need of protection from the other party; and
 - (b) it is not possible to decide whether 1 party's need for protection is greater than the other party's need for protection.
- (4) The relevant relationship mentioned in subsection (2) and (3) is the relevant relationship that exists between the persons who are the aggrieved and the respondent to—
- (a) the original application and the cross application mentioned in section 41A(1); or
 - (b) the first protection order and second protection order mentioned in section 41A(2); or
 - (c) the original protection order and the cross application mentioned in section 41A(3).