



**COERCIVE CONTROL
EXPOSURE DRAFT BILL 2022**
Standing Committee on Social Issues

**Submission of the Community Restorative
Centre**

Prepared by Sophie Russell
with Lucy Phelan, Claire McMahon, Marisa Moliterno,
Kelly Parker, and Chris Sheppard

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Acknowledgements

CRC acknowledges the Traditional Custodians of the land on which we all work and live. We recognise their continuing connection to land, water, and community and pay respects to Elders, past and present. We acknowledge that sovereignty was never ceded. This always was, always will be Aboriginal Land. We recognise that conversations about domestic and family violence including coercive control should centre the voices, knowledge and experiences of First Nations people and communities.

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Introduction: Coercive Control Draft Exposure Bill

Thank you for the opportunity to provide comment on the draft *Crimes Legislation Amendment (Coercive Control) Bill 2022*. The focus of this submission is on our concerns related to women at risk of criminal justice system involvement and draws from our expertise as a community sector organisation providing support to criminalised women and men.

We recognise the very serious and significant impact of coercive control, particularly on the lives of women and their children. However, we remain concerned about the potential negative impacts of criminalisation for women, especially those from marginalised groups, including First Nations women. We understand that some of these concerns were also shared during the Joint Select Committee on Coercive Control inquiry and similar inquiries which have taken place in other Australian jurisdictions (see, for example, Sisters Inside and Institute for Collaborative Race Research, 2021).

We note that the short timeframe (6 weeks) for submissions to the draft bill has limited the potential to adequately capture the experiences of criminalised women who have endured domestic and family violence. Recommendation 1 of the Joint Select Committee states that the NSW government should commence a considerable programme of consultation, including with the frontline sector, prior to the commencement of a criminal offence of coercive control. Due to the short timeframe provided, resourcing and staffing constraints, we were unable to provide a submission to the Joint Select Committee's inquiry in 2021. Thus, CRC has not been consulted in any form and we are concerned that the views of some of the most marginalised women in our communities have not been appropriately considered. In this submission we detail a number of factors relevant to the draft legislation which we believe require careful consideration, specifically that:

- The criminalisation of coercive control will increase the likelihood of criminalising marginalised women experiencing domestic and family violence, including First Nations women.
- Situating a response to coercive control in the criminal legal system requires women involving the police, which is problematic for marginalised women for a number of reasons.
- The criminal legal system is a blunt tool to address domestic and family violence, including coercive control.

We conclude our submission by highlighting the need to look at responses to coercive control that lie outside of the criminal legal system and reiterate calls for improvements to non-legal responses, including early intervention, broad public education, increased funding to community-based services which support women who are at risk of violence, and individually tailored approaches to men who perpetrate domestic violence including coercive control. In the context of rising imprisonment rates of both First Nations women and men, as well as the historical and ongoing failures of the criminal legal system to address men's violence against women, it is crucial that such approaches are culturally safe, and trauma and violence informed. We acknowledge that First Nations voices should be listened to and centred and



their solutions to problems of domestic and family violence should be adequately resourced and supported.

About the Community Restorative Centre

The Community Restorative Centre (CRC) is the lead NGO in NSW providing specialist support to people affected by the criminal justice system, with a particular emphasis on the provision of post-release and reintegration programs for people with multiple and complex needs. CRC has over 70 years specialist experience in this area. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal justice system involvement, and build pathways out of the criminal justice system. CRC works holistically to do this, addressing issues such as homelessness, drug and alcohol use, social isolation, physical and mental health, disability, employment, education, family relationships, financial hardship, and histories of trauma. All CRC services utilise a human rights framework which recognise the inherent value of all people and aim to create genuine opportunities for people affected negatively by the criminal justice system. People leaving prison and their families have the right to be treated fairly and have the ability to make genuine choices about building pathways out of the criminal justice system and into the community.

The Miranda Project

The Miranda Project is a women's specific diversion and reintegration service that has been operating at CRC since 2017. The Miranda Project is run by women for women and works to empower women to live lives that are free from the criminal justice system and violence. It provides an innovative approach to supporting vulnerable women at risk of both domestic and family violence and criminal justice system involvement. Miranda is co-located with Penrith Women's Health Centre and provides gender specific, specialist support to women who have frequently spent their lives being 'managed' by the criminal justice system, rather than being supported in the community. Unfortunately, it is not uncommon for women to return to violent relationships when they exit prison because they simply do not have any other options. The Miranda Project is an attempt to disrupt this cycle and provide women the support they need to live free from violence. Miranda workers support women with a range of issues including social and emotional wellbeing, physical and mental health, child and family contact, legal needs, staying safe, and sourcing accommodation. Miranda achieves this via individualised holistic case-management, outreach support in the community, in-reach into prisons, and a range of social, recreational, and educational group activities in a safe women only drop-in space. Miranda offers a vital safe social engagement space, alongside practical support, skill development, and connection with other key services. An evaluation of the Miranda Project found positive outcomes across a range of different domains: 86% of women engaged in the program remained in the community; 62% reported improved housing stability; 49% reported improved financial responsibility; 62% reported increased general safety since connecting with the program; and 46% had improved compliance with community sanctions (Shepherdson and Roberts, 2020, p. 4).



A picture of the women in prison in NSW

Criminalised women experience high levels of social marginalisation, poverty, homelessness, mental health needs, disability, and trauma, which are often linked to their experiences of interpersonal, domestic and family violence (JH&FMHN, 2017a, 2017b). Alongside this, First Nations women experience institutional and intergenerational trauma due to government policies of child removals, intervention, surveillance, and over-policing in the lives of First Nations families and communities. It is clear that criminalised women are some of the most marginalised within our communities. Domestic violence scholars have suggested that the focus of 'domestic violence policy must change to accommodate the needs of the neediest women who experience violence' (Goodmark, 2009, p.49). **We argue that it is critical that adequate attention is paid to the needs of criminalised women who have experienced domestic and family violence.**

For criminalised women who have experienced domestic and family violence, there is no neat binary between 'victim' and 'offender' (Larance et al., 2022). Women released from prison are 16 times more likely to die from violence than women of the same age in the general population (Willoughby et al., 2021). Research by Buxton-Namisnky (2021) on the deaths of First Nations women killed by an intimate partner found that the vast majority of women had interacted with police in relation to domestic violence prior to their deaths. Women have often come into contact with the criminal legal system in the context of their experiences of and resistance and responses to violence. Our experience providing frontline support in this area, and supported by Australian and international literature, is that women resist and respond to violence in various ways, including through:

- Use of substances to manage the trauma and symptomology associated with the violence they have endured which can then lead to involvement with the criminal justice system (Bevis et al., 2020; Corston, 2007).
- Trauma presentations in terms of impacts on mental health which can lead to involvement with the criminal justice system (Segrave and Carlton, 2010; Stathopoulos et al., 2014).
- Being homeless as a result of the victimisation which can then lead to risk taking behaviours to have needs met resulting in involvement with the criminal justice system (Baldry and McCausland, 2009; Mayock, Sheridan and Parker, 2015).
- Physically fighting back abusers and then being charged with offences related to that action such as assault, grievous bodily harm and having ADVOs placed upon them or cross over ADVO's placed between them. As a result, women are labelled as perpetrators and in essence become punished for being a victim (Nancarrow et al., 2020; Wangmann, 2009).

Marginalised women are at risk of becoming criminalised

Our key concern regarding the criminalisation of coercive control in NSW is the potential for this legislation to be used against victim survivors of domestic and family violence, which will likely be **the very women it ostensibly intends to protect**. Research by ANROWS noted that women (and particularly First Nations women) identified as a perpetrator of violence are



often misidentified when looking at the full sequence of events (Nancarrow et al., 2020). We are particularly concerned of the potential for this legislation to be used against First Nations women, which is especially troubling in the context of escalating imprisonment rates of First Nations women in NSW and across other Australian jurisdictions (Ooi, 2018), and the high rates of First Nations children in out-of-home-care.

Concerns about net-widening as a result of criminalising coercive control have been raised by various domestic violence scholars (see, for example, Walklate and Fitz-Gibbon, 2021), as well as in other Australian inquiries on coercive control (Good Shepherd Australia New Zealand, 2021; Reeves, 2021). Misidentification of women as the primary perpetrators of coercive control may be a manifestation of ‘systems abuse’ (Douglas, 2018), whereby ‘legal and other systems are utilised as a tool of abuse against the victim-survivor’ (Reeves, 2021, p.40). It is not unusual for our clients to have their mental health needs, disability, or drug and alcohol use utilised against them by police, courts, child protection and other mainstream service systems. If legislation prescribing a standalone criminal offence for coercive control is to be enacted, there is a critical need to ensure appropriate steps are taken to reduce the likelihood of women victim survivors being misidentified as perpetrators. One such step could include the revision of terminology and the implementation of appropriate safeguards within legislation that are designed to protect victim survivors. As it stands, the specific terminology used in the draft bill and their meaning have the potential for being used against victims of violence. The below paragraph explicates our concerns.

Firstly, we are concerned about the phrasing contained in Schedule 1 *Amendment of Crimes Act 1900 No 40*, including **s 54F Meaning of “abusive behaviour”**, and the implications for s 54D Abusive behaviour towards current or former intimate partners. Section 54F (1) states ‘... *abusive behaviour means behaviour that consists of or involves... (b) coercion or control of the person against whom the behaviour is directed*’. Section 54F(2)(g) states that this could include engaging in or threatening to engage in ‘*depriving a person of liberty, restricting a person’s liberty or otherwise unreasonably controlling or regulating a person’s day to day activities*’. Examples for paragraph (g) states that this could include ‘*preventing a person from making or keeping connections with the person’s family, friends or culture...*’

We hold the same concerns for Schedule 2 *Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80*. Section **6A Meaning of “domestic abuse”** states that ‘*domestic abuse may include... preventing the second person from... making or keeping connections with the person’s family, friends or culture*’.

We are concerned that the phrasing within both sections creates the possibility for women to be criminalised for restricting contact between violent ex-partners and their children. We note that an additional safeguard should be placed into this legislation to prevent this. For example, one provision that could be considered is reflected in the *Family Law Act 1975*, which defines family violence in **Section 4AB(1)** as meaning ‘*violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family, or causes the family member to be fearful*’. Specifically, tying coercive control to ‘causing fear’ may limit the potential for the legislation to be misused against women. We argue that such a provision should be included in the coercive control draft bill.



Secondly, we have concerns regarding **Section 54D(d) Abusive behaviour towards current or former intimate partners**, which states:

‘a reasonable person would consider the course of conduct would be likely, in all circumstances, to cause either or both 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, (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’.

The term ‘reasonable person’ will likely have negative consequences for marginalised women, as the notion of ‘reasonable person’ rests on patriarchal, white, heteronormative and ableist assumptions. It is well-known that people with complex needs such as physical disabilities, cognitive impairments, intellectual disabilities, mental illness (including PTSD), and substance use disorders are over-represented in prison populations. Clients of CRC frequently experience stigma and discrimination as a result of their criminalisation, mental health concerns, disability, or drug and alcohol use. This section opens up opportunities for criminalised women to be misidentified if their actions don’t fit within normative conceptions of ‘reasonableness’. Similarly, this section draws concerns that the concept of ‘reasonableness’ could be invoked by perpetrators of male violence as a defence for coercive control.

The risk of misidentifying women as perpetrators in this legislation carries real and significant negative impacts through perpetuating trauma and disadvantage compounded by criminal justice system involvement. The negative impacts of criminal justice involvement can include, but are not limited to:

- **Mental Health & Wellbeing:** The nature and processes of prison can re-traumatise women as they often replicate previous experiences of domestic violence, including strip searches, property searches, being physically placed in cells or in solitary, having a constant lack of privacy.
- **Barriers to accessing services:** Women exiting prison frequently face stigma and discrimination when attempting to access services in the community and can be excluded due to their criminal record. There are extremely limited specialist services for women trying to leave violent relationships who also have criminal justice system involvement.
- **Lack of housing options:** Time spent in prison often destabilises access to housing, and can jeopardise rental leases, which drives many people exiting prison into homelessness. Some women will choose to return to violence after prison as this is their only option when it comes to securing an address for either parole or bail.
- **Financial independence:** It is difficult for women who have been in prison to gain financial independence and access employment. Further, women’s childbearing and support responsibilities limit work opportunities. This, paired with a criminal record, severely limits women’s capacity to gain employment (Baldry et al. 2018).
- **Family and children:** The implications of losing contact with children, involvement of children in child protection systems (especially for First Nations women) and trying to keep children safe while in custody are consistently difficult issues for women in prison.



We note that the evidence presented to the Joint Select Committee on Coercive Control emphasised the need to pay careful attention to implementation and recommended a multi-agency taskforce to implement a coercive control offence. It is not clear from publicly available information what consideration is being given to implementation and if and how the implementation taskforce has been involved as the legislation has been drafted. This is significant given what we know about the risk of misidentification. The NSW Government should establish an independent implementation taskforce as a priority and that further information regarding implementation and insights regarding consultation should be made available *prior* to the introduction of legislation. Further, despite recommendations from the Joint Select Committee that consideration should be given to the fact of victim survivor resistance and misidentification, it is not clear how this has been considered. First Nations organisations, people and communities should be adequately consulted about the implementation process and concerns outlined in the Joint Select Committee’s final report be adequately addressed.

Criminalising coercive control relies on women involving the police

Placing coercive control within the domain of the criminal justice system creates a range of hurdles for marginalised women, especially those with histories of criminal justice system involvement. The most significant of these is that seeking help for coercive control relies on women involving the police. In our experience, criminalised women are not likely to call the police because they have experienced negative interactions with them, including being removed from their parents care as children, having their own children removed from their care, experiences of arrest and victimisation within and by the system (see also Buxton-Namisnyk, 2021). It has been found that women are often fearful of involving the police due to a fear of the potential implications of this on their lives. As Walklate and Fitz-Gibbon (2019, p.101) highlight: ‘fear of their partner, fear of the system and fear of what they might lose by exposing themselves to the criminal justice process (e.g., their role as mothers to their children)’. Involving police in family and domestic violence matters has many nuanced complexities that can threaten ostracisation from community or endangering the lives of community members, police mistreatment, racial discrimination, and child removal. Indeed, feedback from CRC workers reported that some First Nations women fear being ostracised from their community if they pursue the criminal legal system as a response to family violence, as they fear being viewed as the reason for sending First Nations people to prison, and the risks of them being harmed or dying in prison are real.

The historical legacy of the police in enforcing colonial and racial violence, the ongoing over-surveillance and over-policing of First Nations people, and their experiences of racism and discrimination, means they often do not view the police as a service that exists to support them (Buxton-Namisnyk, 2021). Given the longstanding historical context of colonisation and violence against First Nations people, we do not believe this is something which can be addressed solely through additional training and resourcing of police forces. We note that significant structural, institutional, and cultural change within police that addresses systemic racism is required. However, we are strongly against resources being funnelled into the



expansion of policing budgets, as this is likely to ultimately be more harmful, than supportive. For instance, one can already look towards the link between current over-policing within First Nations communities and high incarceration rates of First Nations peoples. Instead, resources should be directed and reinvested into community-based supports, which have proven to be the most effective in helping women leave coercive controlling and DV relationships.

In light of this, it is our view that we should look beyond the police in our responses to domestic and family violence.

The criminal legal system is a blunt tool to address domestic and family violence, including coercive control

While we acknowledge it was the recommendation of the Joint Select Committee on Coercive Control to create a separate offence of coercive control, we reiterate the point that the criminal legal system is a blunt tool to address domestic and family violence. Domestic violence scholars have advocated for relegating the legal system to a more limited role, rather than an expansion of criminalisation (see, for example, Goodmark, 2009). As Walklate and Fitz-Gibbon (2019, p.102) argue, ‘the creation of a new offence does not deal with any of the well-documented concerns women have for not engaging with the criminal justice process’, such as those we have outlined above.

In our experiences of working with both women and men, the criminal legal system reproduces configurations of violence and reinforces gendered violence. Prisons are, by definition, explicitly controlling environments that are not conducive to changing the behaviour and lives of people. Much of our work at CRC is working with people while they recover from the trauma of imprisonment. As Sisters Inside and the Institute for Collaborative Race Research (2021, p.3) have pointed out ‘**the state is the primary perpetrator of coercive control**’ in the lives of First Nations communities.

While prisons may provide a brief period of incapacitation, there is no strong evidence that criminalisation deters men from committing further acts of violence (Goodmark, 2009, p.51), yet there is evidence that imprisonment makes reoffending more likely.

We support Walklate and Fitz-Gibbon’s (2019, p.99) statement:

Legislative change cannot on its own lead to improvements. Whatever laws we have will be only as effective as those who enforce, prosecute and apply them. Improving these practices – through education, training and embedding best practice and domestic abuse expertise – is likely to be more effective than the creation of new offences alone.

Responding to coercive control outside the criminal legal system

It is our view that solutions to insidious forms of domestic and family violence, including coercive control, cannot be found within institutions of punishment and control, such as



criminal justice systems. We reiterate calls made by others and provided in evidence to the Joint Select Committee that there is a significant need for more funding and investment in:

- Primary prevention of violence against women activities and initiatives delivered in meaningful and culturally appropriate ways, including broader public education and early intervention for young people on healthy relationships and how to identify and respond to coercive control.
- Targeted, responsive, and specialised services appropriate for women experiencing coercive control, including women who have been criminalised. Such services must be place-based and available across regional, rural, and remote areas; they must be trauma and violence informed, culturally appropriate, and include adequately funded First Nations led services.
- Holistic, relational, and long-term support models for people exiting prison, which builds positive pro-social connections and skills for healthy and respectful relationships.
- Safe and affordable housing options for women escaping violence. We find that women who have experienced violence often struggle to find somewhere safe and secure to live and often end up in homeless and couch-surfing.
- Individually tailored programmes which are meaningful for men who perpetrate violence (Goodmark, 2009). To do this, a greater understanding of how to change the behaviour of, and constructively work with, men that perpetrate violence and coercive control is critical. It is our experience that men require long-term holistic support to foster trusting relationships with services in order to be able to work on the drivers for committing violence.

Other considerations relevant to the draft bill

Review of Bill

We note Section 54I of the Bill, which states that the Bill will be reviewed after a period of 3 years. Given the potential of this legislation to be used against victim survivors, it is our view that there should be a commitment to earlier and ongoing review that includes broad consultation, especially with First Nations people, communities, and community-controlled organisations. There is also a need to ensure that the review is not only focused on reporting the numbers of people charged under the legislation, but to understand how the legislation is being used and experienced by victim survivors, the overall impact on community safety, and the effectiveness in addressing and reducing coercive control.



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