




Western Sydney MRC's Submission to improve the Crimes Legislation Amendment (Coercive Control) Bill 2022

The NSW Government draft Crimes
Legislation Amendment (Coercive Control)
Bill 2022

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Evan Stark (2007) Coercive Control. How Men Entrap Women in Personal
Life. New York: Oxford University Press.

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The NSW Government draft Crimes Legislation Amendment (Coercive Control)
Bill 2022

Date: 24 August 2022

Email: policy@justice.nsw.gov.au

Subject: Western Sydney MRC's Submission to improve the Crimes Legislation
Amendment (Coercive Control) Bill 2022

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Introduction

Western Sydney Migrant Resource Centre (Western Sydney MRC) is a community based non-profit organisation established to relieve the situation of people and communities actively and directly from diverse backgrounds whose social condition finds them disadvantaged. We aim to promote the principles of access and equity for diverse communities and identify and promote disadvantaged groups' needs to ensure that no one is left behind. Underpinning our principles are the core values of Human Rights.

The organisation has been at the centre of diverse communities in the Liverpool and surrounding LGAs for the past 42 years. According to the 2021 census data, New South Wales (NSW) has a diverse population with 34.6% born overseas, and specifically in Liverpool nearly half the population is born overseas at 48.8%. Working closely with individuals and families, especially in multicultural communities has made us sensitive to how policies and practices are framed, often overlooking diverse worldviews. We welcome the opportunity to provide feedback on the government's exposure draft Crimes Legislation Amendment (Coercive Control) Bill 2022.

Coercive Control is an element of entrapment that underlies behaviours constituting Family and Domestic Violence. The aim of this behaviour is to force the vulnerable party of the relationship, whether it be child, wife, sister, or mother to submit to the behaviour against their will. Such a control mechanism is the foundation of patriarchal societies. We believe it is necessary to distinguish between the terms coercive control and controlling behaviour. Although both terms have the essence of control, the difference is in the repeated nature of



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coercive control using violence, intimidation, humiliation with the intent to harm a victim survivor into submitting while making it appear as if the submission was of one's own free will. **Controlling behaviour**, on the other hand, is when one party controls aspects of the victim- survivor's life, such as finances, exposure to training and education, social network, and free will.

In this submission, we want to examine the proposed bill through the lens of diverse communities' values, beliefs, and cultures. This submission will first provide a brief background to familial makeup of Culturally and Linguistically Diverse (CALD) communities in relation to Family and Domestic Violence, followed by the current laws in the family and domestic violence space. With this context, we identify gaps in the proposed Coercive Control Draft Bill 2022 providing several real-world examples. Finally, we propose recommendations to improve the bill to reflect the everyday experiences of coercion in CALD communities.



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Background to familial makeup of CALD communities in relation to Family and Domestic Violence

CALD communities are diverse in their composition, culture, and belief, but one thing they have in common is the influence of family. In CALD communities' families are not just the nuclear family. Traditionally CALD families are made of extended families such as parents in law, siblings in law, aunts and uncles and cousins. Domestic and Family Violence has long been based using these principles to prevent and protect victim survivors.

Many cultures within the CALD communities work on the philosophy 'it takes a couple to have children, but a village to raise them' in saying this many families are not purely nuclear families as recognised in the western culture. CALD families rely heavily on extended family to endorse cultural aspects on children and the functioning of the family. Therefore, a composition of a CALD family relies heavily on the views and advice of older family members such as grandparents, in-laws, uncles, and aunts. The methodologies used within many families is the respect to the elders in the family this is usually the oldest male in the family and hence making them very patriarchal in structure.

By implementing a "Coercive Control Bill' purely based on intimate relations will not protect persons in a situation where the coercive control is from a

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member of an extended family or even an older sibling who holds the role as the head of the nuclear family. It is understandable that the Bill is aimed to reduce coercive control within an intimate relationship leading to homicide, but coercive control in a familial context leads to mental health issues, suicide issues and homelessness. Coercive control within families also occurs by extended families in the realms of dowry abuse, forcing marriages on young girls and female genital mutilation in the aim of protecting families from shame.

Current Family and Domestic Violence Laws

The terms ‘domestic violence’ and ‘family violence’ are usually interlinked and refer to violence occurring within a domestic relationship. It is important to look at the definitions within the law to identify the importance of the two terms and how inter-related they really are in the context of protecting victim survivors and their children.

The object of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)¹ as mentioned in section 9 states

- (1) *The objects of this Act in relation to domestic violence are—*
- (a) *to ensure the safety and protection of all persons, including children, who experience or witness domestic violence, and*
 - (b) *to reduce and prevent violence by a person against another person where a domestic relationship exists between those persons, and*
 - (c) *to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women, and*
 - (d) *to enact provisions that are consistent with the United Nations Convention on the Rights of the Child.*

The Crimes Act defines a domestic violence offence in section 11 as

- (1) In this Act, ***domestic violence offence*** means an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being—
- (a) a personal violence offence, or



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¹ <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-2007-080#sec.11>



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- (b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or
- (c) an offence (other than a personal violence offence) the commission of which is intended to coerce or control the person against whom it is committed or to cause that person to be intimidated or fearful (or both).

(2) In this section, **offence** includes an offence under the *Criminal Code Act 1995*² of the Commonwealth.

When dealing with perpetrators of domestic violence the act defines what is considered a domestic relationship by defining the term in section 5

1) For the purposes of this Act, a person has a **domestic relationship** with another person if the person—

- (a) is or has been married to the other person, or
- (b) is or has been a de facto partner of that other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household as the other person, or
- (e) is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*), or
- (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person (subject to section 5A), or
- (g) is or has been a relative of the other person, or



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² <https://www.legislation.gov.au/Details/C2022C00156>



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- (h) in the case of an Aboriginal person or a Torres Strait Islander, is or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

The definition of relatives is provided in section 6 to include:

- (i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or
- (ii) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law, or
- (iii) a brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law, or
- (iv) an uncle, aunt, uncle-in-law or aunt-in-law, or
- (v) a nephew or niece, or
- (vi) a cousin,
of the other person



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The current version of the coercive control draft bill does not align with the laws mentioned above.

[Blind spots in Coercive Control Draft Bill 2022](#)

[Family connections](#)

The Crimes Legislation Amendment (Coercive Control) Bill 2022 'Coercive Control, in 'intimate relationships', which seems a contradiction of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) where the coercive control under s11(1)(c) covers behaviour that projected towards a victim survivor inclusive of relatives as defined by the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

Coercive Control can occur within a familial context and can result in forced marriages³, divorces and practice of cultural traditions not currently condoned in western society. In creating this bill based on intimate relations only defeats the purpose of *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to

³ Although Forced marriages are covered under other legislation, the effect of the coercive behaviour by family and extended family to force the marriage is emotional and psychological abuse currently very difficult to prove within the existing Family and Domestic Violence clause within the Crimes Act.



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prosecute offenders causing victim survivors harm through the current laws which recognises the experiences of victim survivors because of familial influence and coercion to satisfy cultural practices.

The Crimes Legislation Amendment (Coercive Control) Bill 2022⁴ fails to acknowledge the effects of coercive control in familial settings by limiting the offence to intimate relations. This is appearing to be a contradiction of the current *Crimes (Domestic and Personal Violence) Act 2007* (NSW) where coercive control is recognised as part of the Family and Domestic Violence laws in acknowledging the behaviours can come from relatives as well as partners. It is important to maintain a consistent approach to enable ease and consistency in enforcement protecting young vulnerable girls from avenues of forced marriages or the enforcement by family of cultural beliefs through coercion.

There are certain practices within the CALD community that have an underlying element of coercive control, these include; forced marriages, divorces, arranged marriages and the use of religions to impose gender specific behaviour and practices. In making the coercion factor relevant only in intimate relations, vulnerable young girls are being left unprotected in situations of forced marriages. In such context it is usually a female being deprived of her freedom through a form of coercion, including the use of physical or sexual violence, or being refused freedom until they accept the marriage. Other types of coercion are less obvious because they involve psychological and emotional pressure. These types of coercion can include making a person feel responsible for, or ashamed of the consequences of not marrying, such as bringing shame on their family.

A further practice is the influence of the extended family in situations of divorce, where the wife seeking the divorce is not granted this until she travels to an overseas country where the law is favourable to men and risks losing her children. This type of coercion is not the result of an intimate relationship but the result of protecting the blood line in some families and ensuring that children are not raised by a strange man in the event the woman decides to remarry.

Working amid CALD communities in Sydney, we have encountered situations where certain members of the community are practicing cultural practices because of the religious interpretations. For example, virginity tests carried out by wives



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⁴ <https://www.nsw.gov.au/sites/default/files/2022-07/Consultation%20draft%20-%20Crimes%20Legislation%20Amendment%20%28Coercive%20Control%29%20Bill%202022.pdf>



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of religious leaders on young girls seeking marriage. These are usually demands of the prospective partners family to confirm the purity of the girl. Such cultural practices imposed upon vulnerable young people through pressures of extended family have not been considered in the draft bill.

In relation to the use of coercive control to force victim survivors to carry out an activity in another jurisdiction, the definition needs to recognise the behaviour in other jurisdictions if the person carrying out the offence lives in NSW. This is like the Female Genital Mutilation and Paedophilia offences currently in place.

The UK has had a coercive control offence since 2015⁵ carrying a 5-year imprisonment term. The difference between the proposed Bill and the UK version of the offence is the element of familial coercive control being recognised. The Istanbul Treaty⁶ became effective in 2014, creates a legally binding framework at the European level to prevent, prosecute and eliminate violence against women and domestic violence (Council of Europe, 2022b). The Convention defines ‘domestic violence’ as:

all acts of physical, sexual, psychological, or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether the perpetrator shares or has shared the same residence with the victim (Convention on preventing and combating violence against women and domestic violence, 2014, art 3).

Parties to the Convention are required to take any legislative and other measures necessary ‘to ensure that the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalised’ (art 33). There are also several aggravating circumstances that must be taken into consideration (art 46).

The essence of this, is that recognises that coercion can impair psychological integrity and that psychological abuse can occur within a family. Therefore, enforcing the effect of family abuse on a victim survivor. It is important to note



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⁵ <https://www.legislation.gov.uk/ukpga/2015/9/section/76/enacted>

⁶ Which is a product of the Convention on preventing and combating violence against women and domestic violence established by the Council of Europe in 2011.



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that Australia is not a signatory of the Istanbul treaty, but nevertheless if the emphasis is on eliminating Family and Domestic Violence, it is important that detailed and comprehensive study is carried in relation to coercion and its links to not only intimate relations, but familial relations as well.

[Legal age of consent: S54D Abusive behaviour towards current or former intimate partners](#)

It is important to identify the gap within the draft bill that contradicts the current legal age of consent being 16 years of age. The draft bill specifies that the coercive control is applicable to an offence committed by an adult (adult defined as a person 18 years or older), in an intimate relationship defined in s54c as *intimate partner, of a person (the first person), means a person who—*

- (a) is or has been married to the first person, or*
- (b) is or has been a de facto partner of the first person, or*
- (c) has or has had an intimate personal relationship with the first person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature*



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The situation here is that although an intimate relationship can commence from the age of 16, coercive control identified in these relationships cannot be prosecuted as the parties are under the age limit indicated.

Case Study

Farida (16 years) came to Australia as a refugee with her parents, she is of Islamic background and wears hijab, she attended a local high school where she met Ayman who was born and raised in Australia and is very westernised. They started as friends because Farida felt comfortable with Ayman and felt supported by him. Their bond became stronger, and they eventually started dating without Farida's parents finding out. Farida was very much in love with Ayman and started to send him photos without her hijab on and wearing some culturally inappropriate clothing. She explained to him that if her parents ever found out about the photos, that she would be in a lot of trouble. As the relationship progressed Ayman wanted more intimacy and continually asked Farida for sex and she refused. Ayman became extremely angry and frustrated, so he began to threaten Farida that he would send the photos to her parents and show them to the other boys in the school. Farida felt compelled to give Ayman what he wanted to keep her secret safe. Although Farida gave into Ayman's coercion, he proceeded to show the photos to other male students.



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Religion as a means of control: S6A Meaning of Domestic Abuse

Although this S6A (2) gives the victim survivor the protection of being able to practice religion and culture, it does not protect against the use of religion and culture to control the victim survivor. Although this is not the essence of the religion and culture, the interpretation of certain aspects are often used to control women and demoralise shaming them if they do not obey the interpreted religious or cultural practices. Their families are shamed in the community by the perpetrator and to save face the woman is forced to submit causing an element of control by males.

Recommendations

1. The recommendations from an organisation servicing the CALD communities would be to ensure that law is passed as to align with current Domestic and Family Violence legislation to include coercive control by extended family because of cultural or religious practices. Doing so will be cover the cultural diversity within the NSW community and serve the purpose of protecting women and children seeking a safer and more recognised gender equality.
2. As part of the implementation of the Coercive Control legislation, it is important to develop resources or guidelines to assist the justice system to implement the law as intended, like that developed by the UK. Resourcing as it stands needs to be increased; there needs to be resourcing across non-legislative measures inclusive of:
 - Expansion and strengthening of risk assessment tools to capture coercion
 - Primary Prevention efforts – training for community/religious leaders and community focused training packages that work towards behaviour change.
 - Community education campaigns that are culturally specific expanding over multilingual media
 - Training relevant institutional stakeholders providing cultural competency in relation to coercive behaviour
 - Developing a tool to assist Police in the investigation process that will draw out coercive behaviour in Family and Domestic Violence



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3. Aligning the Coercive Control Bill to enhance the current Domestic and Family Violence provisions within the Crimes Act looking at including coercive control in a familial context.

- Expansion and strengthening of risk assessment tools (DV Safety Assessment Tool; judicial and police guidebooks)
- Primary prevention efforts
- Behaviour change programs
- Community educations campaigns
- Training for relevant institutional stakeholders (DFV, cultural competency)
- Funding for specialist services without time limitations
- Training and capacity building of general practitioners in the aspects of Domestic and Family Violence especially within the coercion aspect of Domestic and Family Violence and mandatory reporting
- Greater and improved collaboration between community services and police, including improved integration of services and referral system
- Specialisation - pluralistic nature of dispute resolution systems in CALD and faith-based communities



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4. The term 'adult' in S54D be removed to aligned with the legal age of consent protecting all relationships



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5. S6A(2) needs to include a clause to show that the use of religion or culture is also considered as domestic abuse.



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