

Project Team - Coercive control exposure draft Bill  
Policy, Reform and Legislation Branch  
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August 30, 2022

Dear Project Team,

### **Public Consultation on Crimes Legislation Amendment (Coercive Control) Bill 2022**

Barnardos Australia (Barnardos) thanks the Department of Communities and Justice for the opportunity to provide our feedback on the NSW Government's exposure draft Crimes Legislation Amendment (Coercive Control) Bill 2022.

Barnardos is a not for profit, children's social care charitable organisation providing direct support to 15,000+ children and their families in the Australian Capital Territory (ACT) and New South Wales (NSW) each year, in addition to foster care and open adoption (the latter for non-Aboriginal children) for over 1,000 children and young people. We work in areas with significant Aboriginal populations such as Central Western NSW, the South Coast, Western Sydney and Inner Sydney. For close to 100 years, we have been working together with children, young people and families to break the cycle of disadvantage, and create safe, nurturing and stable homes, connected to family and community.

### **Barnardos' knowledge of this area**

Domestic and family violence (DFV) heavily impacts the lives of the children and families Barnardos supports. For example, DFV is one of the most common reasons for referral for families to services delivered by Barnardos' Children's Family Centres. Barnardos' data indicates that 80% of referrals for families to Brighter Futures and Family Preservation services have DFV as a referral reason. In rural NSW, DFV continues to be the number one referral reason to Barnardos' homelessness services. In Penrith, an outer metropolitan area of Sydney, 90% of family referrals to our intensive family preservation program (for families who have children at risk of significant harm and are at risk of placement in out-of-home care) have DFV identified as one of the main reasons for referral.<sup>1</sup>

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<sup>1</sup> MyStory Referral Analysis Report.

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Further, in FY21 nine out of 10 (89%) of the 1,262 children and young people in Barnardos' out-of-home care (OOHC) had domestic and family violence identified as a key contributory issue to the need for care, by the NSW Children's Court.<sup>2</sup>

### **The urgent need for a longer consultation process**

Barnardos believes the significance and severity of coercive control cannot be overstated for the children and families in our services and we welcome the NSW Government's ongoing commitment to legislative reform. Should robust and effective legislation be passed, it will support the work we do in our service delivery with victim survivors of DFV to recognise coercive control, particularly for recognizing how a perpetrator can use children to perpetrate violence and manipulate outcomes to the perpetrator's advantage. Further, enacting legislation will provide an opportunity to strengthen community-based training and education around how to ensure that perpetrators of DFV are not using services involvement to threaten or intimidate victims and survivors with negative outcomes, alongside balancing our duty of care. We therefore strongly support the NSW Government's commitment to criminalising coercive control to improve identifying and responding to domestic and family violence.

However legal reform that affects the safety and security of the most vulnerable and disempowered members of our community should not be rushed. We are concerned that the extremely tight timeline for the current consultation process is inadequate to ensure that legislation is sufficient to deal with the complexities of DFV and protect victim survivors of coercive control. In our view, longer and more in-depth consultation is required to ensure that the offences are well constructed to cover the range and types of psychologically harmful abuse and controlling behaviours that vulnerable children and families typically experience. Moreover, time needs to be provided within the consultation process to capture what will be required to support effective implementation of the legislation if we are to enable more holistic responses across systems to coercive control directed against children and women. Understanding the training and resources needed to improve police responses to coercive control should also be a particular focus of further consultation.

Barnardos believes the establishment of an independent coercive control implementation taskforce, as has been recently proposed by the NSW Women's Alliance, would be an excellent mechanism to achieve an effective consultation process. This taskforce could take oversight of the draft legislation, consultation processes and implementation readiness (inclusive of systems reform, training, monitoring and evaluation).

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<sup>2</sup> Barnardos Annual Review 2020-2021; MyStory Referral Analysis Report for NSW (Barnardos Agency) and ACT Together out-of-home care programs.

It is paramount that the voices of children and young people who have lived with the impact of coercive and controlling behaviours by perpetrators be listened to in this process.

### **Removing unintended effects of the Exposure Draft Bill**

In Barnardos' view there are a number of gaps, inconsistencies and weaknesses in the Exposure Draft Bill which may result in unintended consequences of proposed legislation. These include:

- Barnardos believes a significant weakness of the Exposure Draft Bill is that s54D(1) only recognises coercive control engaged in by an adult (18 years and older) where the abusive behaviour is directed against another 'adult and other person [who] are or were intimate partners.'
- In our view the assumption that coercive control only occurs between adult intimate partners is demonstrably false, as children and young people can experience coercive and controlling behaviours directly.<sup>3</sup>
- Further, the draft legislation reinforces the invisibility of children and young people as victims in their own right. For example, it does not create the status for children as co-victims with the nonoffending parent, has been the approach in international jurisdictions such as Scotland.
- We are concerned that the meaning of 'abusive behaviour' in s54F will have unintended effects on victim wellbeing and safety. The meanings provided do not capture the use of a third party to exercise coercion or control by the perpetrator towards the person towards whom the coercive behaviour is directed. This is a pattern of menacing behaviour frequently seen by Barnardos' practitioners, where perpetrators try to use a service or family member to raise concerns about the victim to prevent them from having contact with their children or to increase the perceived risk of the victim to children.
- Extensive efforts to control and undermine financial autonomy are often observed by our practitioners, however the two examples in paragraph s54F(2)(g) provide only limited practical guidance in identifying the types of financially controlling behaviours used by perpetrators.
- We are highly concerned about the vulnerability of our clients who are either pregnant or in substance misuse programs and who are victims of coercive control. For example, our practitioners often observe the harms of interference by perpetrators in the treatment of mothers who have substance misuse issues. Intimate partners may sabotage efforts by pregnant women and mothers to seek access to treatment and support and actively seek to facilitate drug use as an extension of their control. Failing to care for children, and coercing

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<sup>3</sup> For examples distilled from survivor stories, see Urquhart, R., & Doyle, J. (2022). *Truth is the abuse never stopped: Adult insights on the support they received when impacted by childhood domestic and family violence* (Barnardos Australia Survey 2022). Barnardos Australia.

women to leave the safety of residential treatment programs, have very serious implications for women's and children's safety and wellbeing. Without the proper supports and resources being rolled out in the implementation of the legislation women and children in this vulnerable cohort will remain exposed to harm.

- We are concerned that the inclusion of an intention to cause physical and mental harm when defining an offence in 54D(1) may render the legislation ineffective. A more effective approach would be to create a threshold of likelihood to cause physical or mental harm to the other person.
- Barnardos notes that s54E may provide scope for spurious defences for perpetrators. In the example given in the Fact Sheet, perpetrators may argue that they are withholding finances from another person because they are gambling, whereas gambling may be something the other person is doing to seek safety or seek their own money.

Overall, we believe these unintended effects should be carefully and cautiously addressed within a more extended consultation process with expert stakeholders on DFV, including drawing on the lived expertise of victim survivors of domestic and family violence. In particular a more extensive and prolonged consultation is needed with groups who are highly vulnerable to the impact of coercive control, notably children and adult victim survivors who are Aboriginal, have a culturally and linguistically diverse background, are people with a disability or who identify as LGBTQIA+, in order to further strengthen the proposed Bill.

Thank you once again for the opportunity to provide this submission, and please contact Dr Robert Urquhart, Head of Knowledge, Outcomes & Research on [rurquhart@barnardos.org.au](mailto:rurquhart@barnardos.org.au), tel (02) 9218 2392 or mobile 0431 404 199 should you require further information on our feedback.

Yours sincerely,



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