



Legislative Assembly for the
Australian Capital Territory

Standing Committee on Legal Affairs

Submission cover sheet

Inquiry into the Crimes (Coercive Control) Amendment Bill 2026

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Standing Committee on Legal Affairs

By email: LACommitteeLegal@parliament.act.gov.au

Dear Committee

RE: Inquiry into the Crimes (Coercive Control) Amendment Bill 2026

1. The ACT Law Society (the Society) welcomes the opportunity to comment on the Crimes (Coercive Control) Amendment Bill 2026.
2. The Society acknowledges the policy intent underpinning the Crimes (Coercive Control) Amendment Bill 2026 and recognises the ACT Government's commitment to addressing serious and ongoing forms of family violence.
3. The Society maintains its historical opposition to the criminalisation of coercive control. However, in light of the anticipated passing of the bill in 2026, this submission focuses on issues relevant to ensuring any such framework is workable and proportionate.
4. This submission has been informed by the Society's Criminal Law Committee, whose members have extensive experience practising in family violence matters across both civil and criminal jurisdictions.

Systemic risks associated with criminalisation

5. The Society remains concerned that criminalising coercive control will produce significant strain on the criminal justice system, with foreseeable consequences including:
 - a. A high proportion of defended matters, given the seriousness of the offence, the proposed penalties, and the inherently contestable assessment of patterns of behaviour, intention, and reasonableness, likely exacerbating delays in an already resource-constrained jurisdiction.

- b. Relationship-wide evidentiary disputes, requiring extensive examination of the broader dynamics of the relationship, including large volumes of electronic communications to establish context and consent, drawing proceedings closer to complex family law litigation.
 - c. Substantial resourcing demands on police, prosecutors, courts, and defence practitioners, arising from large and intrusive briefs of evidence—often involving full digital extractions—placing particular pressure on Legal Aid ACT and other limited services.
6. These systemic risks underscore the importance of restraint and strong safeguards in the design of the offence.

Areas of support

Mental element: intention rather than recklessness

- 7. The Society supports the Bill's use of intention as the relevant mental element, rather than recklessness.
- 8. This approach better reflects the conceptual core of coercive control as a deliberate pattern of domination and control, rather than unintended harm arising from negligent or careless conduct. It also reduces the risk of misidentifying victim-survivors who engage in defensive or survival strategies as offenders, and helps mitigate the risk of over-criminalisation, particularly for Aboriginal and Torres Strait Islander people and other marginalised groups who are already over-represented in the criminal justice system.

Delayed commencement

- 9. The Society supports the proposed two-year delayed commencement of the offence. Given the novelty of a pattern-based offence and its departure from incident-focused criminal law, delayed commencement is essential to allow adequate time for:
 - a. specialist training across police, prosecutors, the judiciary, and legal practitioners;
 - b. development of investigative and prosecutorial guidelines;
 - c. mitigation of heightened risks of misidentification of victim-survivors if frontline systems are unprepared; and

- d. community education to ensure the offence is not misunderstood as criminalising ordinary relationship conflict.

Improvement on earlier iterations

- 10. The Society acknowledges that the current Bill represents a material improvement on the coercive control legislation tabled in 2024 by the Opposition.¹
- 11. In particular, the removal of strict liability elements addresses serious concerns that were held about compatibility with the *Human Rights Act 2004* (ACT). Courts have consistently held that the use of strict liability for offences carrying imprisonment risks breaching fundamental principles of criminal justice. As observed in *R v Vaillancourt* [1987] 2 SCR 363 at [27], the principles of fundamental justice generally require proof of a subjective mens rea in order to avoid punishing the “morally innocent”.
- 12. Departure from this approach results in a Bill that is less vulnerable to human rights challenge and better aligned with core criminal law principles.

Key concerns

Scope of the offence

- 13. The Society remains concerned about the breadth of the offence. As drafted, the Bill captures conduct between “family members,” extending well beyond current or former intimate partner relationships. This is broader than the New South Wales offence, which was intentionally limited to intimate partner relationships at commencement, with the NSW Government expressly stating that this was to test the operation of a novel and complex offence before any expansion.²
- 14. There would be benefit in including a clear definition of family member. In its current form, the offence may capture conduct that is not intended to fall within its scope, including ordinary disciplinary actions involving children. It may also extend to circumstances of elder abuse that are not appropriately addressed by this offence. For example, an adult child exerting pressure on a parent to enter residential aged care could potentially be captured by the existing provisions, notwithstanding that such conduct may be better regulated under alternative legal frameworks.

¹ Crimes(Coercive Control) Amendment Bill 2024 (ACT).

² Department of Communities and Justice NSW, ‘Coercive Control Discussion Paper’ (Discussion Paper No 1, Department of Communities and Justice NSW, October 2020) 15.

15. By contrast, the NSW offence adopted a more limited definition. That experience has itself been constrained, as reflected in a low charge rate (see item 32).
16. The broader ACT approach risks criminalising conduct that may be distressing, dysfunctional, or harmful, but not appropriately addressed through criminal sanction. It also creates cross-border inconsistencies, increasing complexity for practitioners and law enforcement where parties move between jurisdictions.
17. The Society considers that limiting the offence, at least initially, to current and former intimate partner relationships would be a more cautious and evidence-based approach.
18. Further, while some cases of family violence clearly exemplify coercive control, many will not. In a significant proportion of cases, the boundary between harmful but lawful behaviour and criminal conduct will be difficult to discern, creating legal uncertainty for accused persons, victim-survivors, police, and courts.

Legal uncertainty in application

19. The Bill poses significant challenges for legal practitioners in advising clients and assessing criminal liability, particularly where conduct falls within recognised grey areas of human behaviour.
20. Scenarios involving financial pressure, threats connected to shared resources, parenting disputes, surveillance motivated by alleged child safety concerns, and mutual hostility following separation illustrate the difficulty of determining where coercion ends and reasonableness begins.
21. These examples demonstrate that, even among experienced practitioners, it is often unclear whether conduct would amount to coercive control.
22. Such uncertainty risks inconsistent policing, defensive over-charging, and lengthy litigation, undermining confidence in the offence.

Vagueness and definition of “family violence”

23. The offence relies on the concept of “family violence” without introducing a clear definition within the *Crimes Act 1900* (ACT) itself.
24. While the Society recognises the drafting challenge of balancing flexibility with certainty, an overly broad or vague definition risks:
 - a. capturing unhealthy or mutual relationship conflict rather than abuse;
 - b. net-widening effects on marginalised communities; and

- c. creating ambiguity for police and courts when assessing intent, harm, and reasonableness.

25. The Society recommends adopting, or expressly incorporating, the definition of family violence in section 8(1)(a) of the *Family Violence Act 2016* (ACT) subject to it being limited to current or former intimate partners. This would promote consistency across civil and criminal jurisdictions, support coherent police and judicial practice, and reduce confusion for victim-survivors navigating multiple systems.

Maximum penalty and procedural consequences

- 26. The proposed maximum penalty of seven years' imprisonment is comparatively high when assessed against other offences in the ACT.
- 27. While alignment with the NSW model may support harmonisation, it does not resolve the question of proportionality in the ACT context. A high maximum penalty has significant procedural consequences. For example, the offence will be indictable and may be prosecuted in the ACT Supreme Court, not only the ACT Magistrates Court where it may be more appropriately heard noting the court's jurisdiction over the vast majority of family violence matters.
- 28. Further, the DPP would not be able to file an election to dispose of this offence summarily noting the current maximum penalty. This could lead to a delay in matters being referred to the ACT Supreme Court which could result in proceedings of this nature being weaponised by one party against another or otherwise having significant unintended detrimental consequences on one or the other party.
- 29. Supreme Court proceedings are complex, resource-intensive, and slow, with implications for access to justice, delay, and trauma for all parties.

Consultation and preparedness

- 30. Comparative experience from Scotland demonstrates that the relative success of its coercive control offence depended heavily on extensive consultation, specialist training, and dedicated police resources.³
- 31. Early experience in New South Wales has reinforced concerns raised during their own consultation processes. Police leadership has publicly acknowledged that coercive

³ Ibid.

control investigations cannot be handled within routine response models, require trained investigators, extended timeframes, and detailed corroborated evidence.⁴

32. Early data indicating high reporting rates, but low charge outcomes sharpen concerns about attrition, deterrence, and public confidence. From July 2024 to June 2025, only nine charges were laid and only one of those charges resulted in a conviction.⁵ There is also a real risk that coercive control offences draw resources away from early-intervention, civil protections, and victim support pathways that may be more effective in preventing escalation.⁶

Coercive Control Advisory Committee

33. The Society notes that the steering committee established to provide advice on the legislation comprised representatives from a range of organisations, including frontline support services, advocacy bodies, and justice agencies. While the inclusion of these perspectives is important, the Society observes that the composition of the committee was weighted significantly toward frontline service providers, with comparatively limited representation from legal stakeholders.
34. Given the significant implications that the coercive control offence will have for the criminal justice system, the Society considers it essential that the advisory committee established under the Bill includes a more balanced representation of legal and frontline expertise. Expanding legal representation (particularly from organisations experienced in criminal law - defence, and prosecution) would assist in ensuring that the implementation and operation of the offence are informed by a comprehensive understanding of its practical legal impacts.

⁴ Lia Harris, 'NSW Police Investigating more than 80 cases of coercive control, with senior officers tasked to enforce new domestic violence laws', *ABC News* (online, 10 October 2024) <<https://www.abc.net.au/news/2024-10-10/nsw-police-80-cases-coercive-control-senior-officers/104449842>>.

⁵ NSW Bureau of Crime Statistics and Research, *Coercive Control Monitoring Report June 2025* (Statistical Report No 1, September 2025)

⁶ Kid, Jessica and Soliman-Marron Rhiannon, 'DV support services say more women are seeking help for coercive control since new state laws', *ABC News* (online, 19 September 2025) <<https://www.abc.net.au/news/2025-09-19/slow-but-consistent-uptake-of-new-coercive-control-laws-nsw/105795204>>.

Final Comments

35. The Society recognises the policy intent underpinning the Bill and supports several key elements that strengthen its legal integrity. However, significant concerns remain regarding scope, certainty, proportionality, consultation, and system capacity.

36. If the offence is to be enacted, it is critical that it is narrowly tailored, coherently integrated with existing family violence frameworks, supported by robust training and resourcing, and subject to careful monitoring and review. Without these safeguards, there is a risk that the legislation will fail both victim-survivors and the broader justice system.

Yours sincerely,

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