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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES (COERCIVE CONTROL) AMENDMENT BILL 2024

EXPLANATORY STATEMENT

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CRIMES (COERCIVE CONTROL) AMENDMENT BILL 2024

This explanatory statement relates to the *Crimes (Coercive Control) Amendment Bill 2024* as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

BACKGROUND

Coercive control is a form of domestic and family violence that comprises patterns of abusive conduct.

It is defined in the Bill as a course of conduct consisting of abusive conduct against a person's partner or former partner, which is intended to coerce or control.

Abusive conduct consists of actual or threatened forms of conduct, including physical violence or abuse, coercion to engage in sexual activity, reproductive coercion, economic abuse, verbal abuse, shaming, degrading, humiliating, harm to a child or another person to manipulate, harm to an animal to manipulate, self-harm or suicide so as to torment, damaging property, isolating someone from family and friends, isolating someone from cultural or religious practices, restricting or depriving liberty, stalking, harassment, unauthorised or unreasonable surveillance or monitoring of activities, communications or movement, unreasonable disclosure of personal information, making false claims to harm reputation, or any other family violence.

The definition of abusive conduct set out in the Bill is informed by the definitions of coercive control included in the *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW), the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* (Qld), the ACT Domestic and Family Violence Risk Assessment and Management Framework and is further informed by the lived experience of victim-survivors.

Legislation criminalising coercive control or forms of coercive control has been passed in New South Wales, Queensland and Tasmania. Western Australia and South Australia have committed to criminalising coercive control. Introducing a criminal offence for coercive control in the ACT will ensure that the territory's legal response to domestic and family violence is consistent with other jurisdictions, including NSW with whom the ACT shares a border community.

The coercive control criminal offence will allow for the enforcement and prosecution of domestic violence before an incident of physical assault or homicide takes place.

Criminalisation is consistent with calls from stakeholders, frontline services, law enforcement and victim-survivors who have highlighted the need for a stronger legal framework to address coercive control.

A coercive control criminal offence is also intended to enable cultural change around coercive control, in conjunction with the education and training campaign committed to by the ACT Government.

OVERVIEW OF THE BILL

The Bill amends the *Crimes Act 1900* to create a standalone criminal offence for coercive control.

The Bill sets out a maximum penalty of 7 years imprisonment for an offender convicted of a coercive control offence. This is in line with the NSW coercive control offence. The maximum penalty is the same as that applied to a bodily harm offence aggravated in a family violence context. This is in line with advice from victim survivors that coercive control is often as harmful or more harmful than physical assault in a domestic violence situation.

The Bill's commencement date is 12 months after passing, allowing a year for adjacent education campaigns and training to occur in line with stakeholder advice. This is consistent with the motion passed by the Legislative Assembly in May 2024, which committed the government to implementing an education campaign on coercive control and to providing training to police and other frontline services.

The Bill is intended to align with the NSW coercive control offence wherever possible in order to ensure that legal responses to domestic violence are consistent across both jurisdictions, given the border community. Numerous provisions of the Bill reflect this intention, including the maximum penalty for offenders, strict liability for the causing of fear of violence or serious adverse effect on capability to engage in day-to-day activity, and the requirement for a defendant to adduce evidence that the course of conduct was reasonable.

Also, in line with the NSW offence, coercive control constitutes a course of conduct committed against a current or former domestic or intimate partner, rather than any other family member as well as set out in the Qld offence.

Some provisions of the Bill were mirrored from the Qld legislation, including that providing that a jury is not required to be satisfied about the same incidents of conduct alleged to form

part of the course of conduct, and that it is not necessary to prove that the defendant intended each individual incident of family violence in the course of conduct to coerce or control.

These provisions mirrored from the Qld coercive control criminal offence will improve the ability for a coercive control offence to be prosecuted in the ACT.

The Bill makes consequential amendments to the *Bail Act 1992* and the *Working with Vulnerable People (Background Checking) Act 2011*.

The amendment to the *Bail Act 1992* provides that coercive control offences are considered with a presumption against bail for offenders.

The amendment to the *Working with Vulnerable People (Background Checking) Act 2011* will provide that a person found to have committed a coercive control offence against a vulnerable person will be disqualified from receiving a working with vulnerable people registration, while a person found to have committed a coercive control offence against someone other than a vulnerable person may receive a conditional working with vulnerable people registration.

The Bill provides that a review into the legislation must take place 2 years after commencement and be reported on by the Minister to the Legislative Assembly before another year passes.

CONSULTATION ON THE PROPOSED APPROACH

The *Crimes (Coercive Control) Amendment Bill 2024* reflects the coercive control criminal offences legislated in New South Wales and Queensland.

The stakeholders that engaged in direct consultation on the Bill's exposure draft include:

- Australian Federal Police Association
- Domestic Violence Crisis Service ACT
- National Women's Safety Alliance
- Relationships Australia
- YWCA Canberra
- Women's Health Matters
- ACT Law Society

Previous advice on coercive control criminal offences was also considered from stakeholders and reports including:

- ACT Bar Association
- ACT Council of Social Services
- ACT Domestic, Family and Sexual Violence Strategy
- ACT Domestic and Family Violence Death Review 2023
- ACT Domestic and Family Violence Risk Assessment and Management Framework
- Civil Liberties Australia
- *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW)
- *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023* (Qld)
- Domestic Violence Crisis Service Submission to the ACT Domestic, Family and Sexual Violence Strategy
- Domestic Violence Prevention Council Advisory Board
- *Family Violence Act 2004* (Tas)
- National Principles to Address Coercive Control in Family and Domestic Violence
- Parliament of New South Wales' Joint Select Committee on Coercive Control - Coercive Control in Domestic Relationships Report
- Women's Legal Centre ACT

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

Broadly, the Bill engages and supports the following rights under the *Human Rights Act 2004* (HR Act):

- Section 8 – Right to recognition and equality before the law (*promoted*)
- Section 9 – Right to life (*promoted*)
- Section 10 – Protection from torture and cruel, inhuman or degrading treatment (*promoted*)
- Section 11 – Protection of the family and children (*promoted*)
- Section 12 – Right to privacy and reputation (*promoted*)
- Section 13 – Freedom of movement (*promoted and limited*)
- Section 18 – Right to liberty and security of person

- Section 24 – Right not to be tried or punished more than once (*limited*)
- Section 25 - Retrospective criminal laws (*limited*)

Rights promoted

Section 8 – Right to recognition and equality before the law

Section 8 of the HR Act provides that: everyone has the right to recognition as a person before the law, everyone has the right to enjoy their human rights without distinction or discrimination of any kind, and everyone is equal before the law without discrimination (everyone has the right to equal and effective protection against discrimination on any ground). The Bill promotes the right to recognition and equality before the law by ensuring that all victims of domestic and family violence can access justice and assistance via the legal system, whether or not the abuse inflicted on them is physical or non-physical coercive control.

Section 9 – Right to life

Section 9 of the HR Act provides that: everyone has the right to life from birth, and that no-one may be arbitrarily deprived of life. The majority of intimate partner homicides are preceded by coercive control. Criminalising the form of abuse and allowing the law to intervene before a homicide occurs promotes the right to life.

Section 10 – Protection from torture and cruel, inhuman or degrading treatment

Section 10 of the HR Act provides that: no-one may be tortured or treated or punished in a cruel, inhuman or degrading way. The Bill promotes this right by criminalising a course of conduct including many forms of abusive conduct that constitute torture or cruel, inhuman or degrading treatment or punishment.

Section 11 – Protection of the family and children

Section 11 of the HR Act provides that: the family is entitled to be protected by society and that a child has the right to the protection needed by them because of their status as a child. This Bill promotes the protection of the family and children by allowing for the prosecution and potential prevention of abusive patterns of behaviour that would otherwise harm them.

Section 12 – Right to privacy and reputation

Section 12 of the HR Act provides that: everyone has the right to not have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily and not to have their reputation unlawfully attacked. This Bill promotes these rights through its provisions including stalking and unauthorised or unreasonable surveillance, monitoring and tracking as

forms of abusive conduct. It also promotes these rights through its provisions including unreasonable disclosure of personal information, recording and images and making false claims to harm reputation as forms of abusive conduct.

Section 13 – Freedom of movement

Section 13 of the HR Act provides that: everyone has the right to move freely within the ACT and to enter and leave it, and freedom to choose their residence in the ACT. This Bill promotes this right through its provisions including restricting or depriving of liberty or unreasonably controlling or regulating activities as forms of abusive conduct.

Section 18 – Right to liberty and security of person

Section 18 of the HR Act protects individuals against intentional bodily or mental injury. It imposes a positive obligation on government to take appropriate measures to protect individuals from foreseeable threats to bodily or mental integrity. This includes a requirement to respond appropriately to patterns of violence against categories of victims such as those of sexual violence and family violence. This Bill promotes the protection of the family and children by allowing for the prosecution and potential prevention of abusive patterns of behaviour that would otherwise harm them.

Rights limited

The preamble to the HR Act notes that few rights are absolute and that they may be subject only to the reasonable limits in law that can be demonstrably justified in a free and democratic society. Section 28(2) of the HR Act contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Section 13 – Freedom of movement

Section 13 of the HR Act is set out above. This Bill may proportionally and justifiably limit the right to freedom of movement as an increased likelihood of being refused bail would restrict an accused's freedom of movement where they are refused bail and remanded in custody while awaiting trial.

Section 24 – Right not to be tried or punished more than once

Section 24 of the HR Act provides that: no-one may be tried or punished again for an offence for which they have already been finally convicted or acquitted in accordance with law. This Bill may proportionally and justifiably limit this right as forms of abusive conduct, which are

already criminalised such as stalking or assault may be considered as part of a coercive control course of conduct.

Section 25 - Retrospective criminal laws

Section 25 of the HR Act provides that: no-one may be held guilty of a criminal offence because of conduct that was not a criminal offence under Territory law when it was engaged in. This Bill may proportionally and justifiably limit this right as forms of abusive conduct considered in a coercive control course of conduct may have occurred prior to the commencement of the criminal offence.

CLAUSE NOTES

Clause 1 Name of Act

This clause sets out the name of the proposed Act as the *Crimes (Coercive Control) Amendment Act 2024*.

Clause 2 Commencement

This clause provides that the Act will commence 12 months after its notification day.

Clause 3 Legislation Amended

This clause states that the Act amends the *Crimes Act 1900*.

The Act also amends the *Bail Act 1992* and the *Working with Vulnerable People (Background Checking) Act 2011*.

Clause 4 Offences against Act---application of Criminal Code etc Section 7A, note 1, new dot point

This clause provides for a minor and consequential amendment.

Clause 5 New sections 35AAA and 35AAB

This clause inserts new section 35AAA to outline a coercive control offence. This section states that a person commits a coercive control offence if they engage in a course of conduct consisting of abusive conduct against their partner or former partner, which is intended to coerce or control. It also states that a reasonable person would consider this course of conduct likely to result in fear of violence or a serious adverse effect on the capacity to engage in ordinary day-to-day activities for the partner or former partner.

This section sets out the maximum penalty for committing a coercive control offence as imprisonment for 7 years.

This section sets out that strict liability applies to (1) (c). This means that the intent of the offender for their actions to result in fear that violence will be used, or a serious adverse effect on capacity to engage in day-to-day activities, does not have to be proven by the prosecution. The prosecution must only prove that a reasonable person would consider the course of conduct to result in the above outcomes.

This section sets out that an offence is not committed if the course of conduct was reasonable in all the circumstances. The burden of proof falls on the defendant to prove that this is the case.

This section sets out that a course of conduct constituting coercive control may consist of any combination of incidents of abusive conduct, and the conduct must be considered as a whole to determine if it consists a course of conduct. The trier of fact (judge or jury) must be satisfied beyond reasonable doubt that the evidence establishes a course of conduct that consists of abusive conduct. The trier of fact needs only to be satisfied that a course of abusive conduct took place, they are not required to be satisfied that a specific incident of alleged abusive conduct took place to the extent that they would be were the specific incident charged as a separate offence. The prosecution is required to allege the nature of the conduct that amounts to a course of conduct, and the particulars of the period of time over which the course of conduct took place. It is not necessary for the prosecution to prove that the person intended each incident of abusive conduct in the course of conduct to coerce or control, nor must they prove that fear of violence or an adverse effect on the capacity to engage in ordinary day-to-day activities actually occurred.

This section outlines the definition of abusive conduct to include actual or threatened:

- Physical violence or abuse;
- Coercion to engage in sexual activity;
- Reproductive coercion;
- Economic abuse of the person;
- Verbal abuse;
- Conduct that shames, degrades or humiliates the person;
- Harm to a child or anyone else if the person does not comply with a demand;
- Harm to an animal if the person does not comply with a demand;
- Self-harm or suicide, for the purpose of tormenting, intimidating or frightening the person;
- Damaging property;
- Isolating the person from their family or friends;
- Preventing the person from engaging in their cultural or religious practices, or isolating the person from their cultural or religious identity;
- Restricting or depriving the person of their liberty or unreasonably controlling or regulating their activities;
- Stalking;
- Harassment;
- Unauthorised or unreasonable surveillance, monitoring or tracking of the person's activities, communications or movements (whether by following the person, using technology or in any other way;

- Unreasonable disclosure of personal information about, or an image or recording of, the person;
- Making false claims to harm the person's reputation;
- Any other family violence against the person.

This section defines a course of conduct to include repeated conduct, or continuous conduct, or both, or a series of incidents of conduct occurring over time that do not occur in immediate succession.

This section defines a partner or former partner as a person's domestic partner or former domestic partner, or intimate partner or former intimate partner. The definition of intimate partner in the *Family Violence Act 2016* is referenced, which sets out that an intimate partner is:

- Someone with whom the person has an intimate relationship, whether they are members of the same household or not.
- Factors used to indicate whether an intimate partner relationship exists include the extent to which each person is personally dependent on the other, the extent to which each is financially dependent on the other, the length of the relationship, the frequency of contact between each other, if there is or has been a sexual relationship, the extent to which each is involved in or knows about the other's personal life, the degree of mutual commitment to a shared life, and if the two people share care or support for children or other dependents.

This section references the *Family Violence Act 2016* for its definition of economic abuse. This definition applies to a "family member" as the person experiencing economic abuse. However, in the context of the coercive control offence it will apply only to a partner or former partner, as set out in subsection (1) (a). The *Family Violence Act 2016* sets out that economic abuse is:

- Behaviour by a person that is coercive, deceptive or that unreasonably controls the (partner or former partner) without the (partner or former partner's) consent including by the person's exploitation of power imbalances between the person and the (partner or former partner)---
 - (a) In a way that takes away the financial independence or control the (partner or former partner) would have but for the behaviour; or
 - (b) If the (partner or former partner) is wholly or predominantly dependent on the person for financial support to meet the living expenses of the (partner or former

partner) or the (partner or former partner's) child---by withholding the financial support.

- This definition sets out examples including:
 1. Stopping the (partner or former partner) from having access to money to meet normal living expenses
 2. Requiring the (partner or former partner) to transfer or hand over control of assets or income
 3. Stopping the (partner or former partner) from trying to get employment
 4. Forcing the (partner or former partner) to sign a legal document such as a power of attorney, loan, guarantee
 5. Forcing the (partner or former partner) to claim social security payments

Reproductive coercion is listed under (c) in section (9) as a form of abusive conduct.

Reproductive coercion is defined as coercive or controlling behaviour including forcing a person to become pregnant or denying birth control, or demanding an abortion.

Section (9) (s) ensures that forms of family violence not listed under the list of forms of abusive conduct can also be considered coercive control if undertaken as a course of conduct.

Section 35AAB

New section 35AAB sets out a review for the coercive control offence, providing that the Minister must review the operation and effectiveness of the offence 2 years after commencement, and report back to the Assembly before 3 years after commencement.

Schedule 1 Consequential Amendments

This section also outlines consequential amendments made by the Bill.

The Bill will amend the *Bail Act 1992* to list coercive control of a partner or former partner as an offence to which presumption of bail does not apply.

The Bill will amend the *Working with Vulnerable People (Background Checking) Act 2011* to consider a coercive control offence against a vulnerable person as a Class A disqualifying offence meaning that the offender cannot attain a working with vulnerable people registration, and a coercive control offence other than against a vulnerable person as a Class B disqualifying offence meaning that a conditional working with vulnerable people registration can be attained.