



THE LAW SOCIETY  
OF NEW SOUTH WALES

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Dear Dr Popple,

### **Draft National Principles to address Coercive Control**

Thank you for the opportunity to contribute to a Law Council submission in response to the Meeting of Attorneys-General's draft National Principles to address Coercive Control (**National Principles**). The Law Society's Family and Criminal Law Committees contributed to this submission.

#### **General Comments**

The Law Society supports the development of national principles to inform measures to address coercive control. We are of the view that an effective response to coercive control will be significantly assisted by consistent definitions of coercive control across legislative and policy settings nationally.

Our responses to the draft National Principles are set out below.

#### **National Principle 1: Common Features**

**The Australian Government and state and territory governments recognise the following common features of coercive control:**

- Coercive control is often a significant part of a person's experience of family and domestic violence.
- Coercive control involves perpetrators using abusive behaviours in a pattern over time in a way that creates and keeps power and dominance over another person or persons.
- As part of this pattern, perpetrators may use physical or non-physical abusive behaviours, or a combination of the two. The specific behaviours can look different in each relationship.
- In intimate partner relationships, coercive control is most often used by cisgender male perpetrators against women (both cisgender and transgender) who are their current or former partner, and their children.
- Coercive control can be used by or against people of all genders, sexual orientations, cultures and classes. People of all ages may also have coercive control perpetrated against them, including children and young people.
- Coercive control is most often identified in the context of intimate partner relationships, it can also be used by perpetrators in broader family relationships (including cultural kinship and family of choice relationships).

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- Family and domestic violence, including coercive control, is driven by gender inequality within society. Gender inequality can also combine with other forms of inequality and discrimination, which can influence a victim-survivor's experience of coercive control.

Definitions of domestic and family violence (DFV) vary across jurisdictions. However, a distinguishing feature of coercive control is a pattern of abuse which is controlling and which causes fear or has to intent to do so, also described as behaviour which is intended to deny agency and autonomy or personhood.<sup>1</sup> This feature distinguishes coercive control from physical or non-physical aggression which is combative rather than controlling. The distinction is particularly important to avoid misidentifying victim-survivors of coercive control as perpetrators, for example if they have resisted or retaliated against their perpetrator.

In that context, it is important to avoid characterising coercive control as a particular type of DFV, or as part of a spectrum of behaviours that can contribute to DFV, with coercive control at one end and serious physical violence at the other. Conceptualising coercive control in such terms can reinforce unhelpful beliefs about DFV which leave victim-survivors and the broader community more likely to recognise and respond to sexual and physical violence than to patterns of psychological and financial abuse (as suggested in Principle 3).

We suggest adding a bullet point under Principle 1 clarifying that coercive control should be understood as an overarching element of all DFV behaviours, rather than as a tactic or an example or type of DFV behaviour.<sup>2</sup> We note this conceptualisation of coercive control is implicit in the *Family Law Act 1975* (Cth), which defines “family violence” as “violent, threatening or other behaviour ... *that coerces or controls a member of the person’s family ... or causes the family member to be fearful*”.<sup>3</sup>

In relation to the final bullet point under Principle 1, we agree that coercive control is usually gendered, given that intimate partner violence is predominantly perpetrated by men against women.<sup>4</sup> However, we disagree that it is in all cases driven by gender. In many cases, other forms of discrimination based on racial, economic, social, cultural and geographic factors are strongly at play, affecting the incidence of, and responses to, coercive control. As noted in Principle 4, discrimination and inequality can operate to empower perpetrators to use coercive control.

## **National Principle 2: Impacts**

**The Australian Government and state and territory governments recognise that coercive control has significant short and long term harmful impacts on victim-survivors and communities.**

- The effects of coercive control can build up and become worse over time.
- Coercive control can affect a victim-survivor's whole life, and take away their independence, dignity, sense of self-worth, identity, feeling of security and health and wellbeing.
- Escalation of patterns of coercive control is a significant factor in intimate partner homicide cases.
- Coercive control is one of the factors that can keep victim-survivors trapped by perpetrators in relationships.

<sup>1</sup> Ibid; E Stark, *Coercive control: How men entrap women in personal life*, New York: Oxford University Press, 2007; N Cortis and J Bullen, *Building effective policies and services to promote women's economic security following domestic violence: State of knowledge paper* (ANROWS Landscapes, 08/2015).

<sup>2</sup> ANROWS, *Policy Brief: Defining and responding to coercive control* (January, 2021) 2.

<sup>3</sup> Section 4AB.

<sup>4</sup> H Nancarrow, *Unintended consequences of domestic violence law: Gendered aspirations and racialised realities* (2019) Melbourne, Palgrave Macmillan.

- In an intimate partnership context, coercive control does not always end when a relationship is ended, with perpetrators' abusive behaviour at risk of increasing during and after separation.

In relation to the second bullet point, we suggest the description of types of impact on a victim-survivor should also refer to a loss of autonomy, which is key to understanding why a victim-survivor may not seek help or leave the relationship. The second paragraph of the commentary to Principle 2, which refers to isolation, loss of employment and loss of financial security, speaks to a loss of autonomy.

In the third bullet point, it may be worth adding the word 'many' before 'intimate partner homicide cases', and also add that a pattern of escalating coercive control is an important indicator of future homicide.

We note in relation to the final bullet point that, in our member's experience, coercive control rarely ends when the relationship ends, but generally continues after separation, and is a common feature of coercive or controlling behaviour in separating couples.

We suggest adding a bullet point indicating that a long history of coercive control will often cause the victim-survivor permanent psychological and/or emotional impairment, which may affect their ability to relate their narrative to support services or to the justice system. Practitioners report that long-term coercive control can affect a victim-survivor's parenting ability, which can adversely affect children and other members of the household and the outcome of any parenting dispute.

### **National Principle 3: Community Understanding**

**The Australian Government and state and territory governments recognise that coercive control has not been consistently recognised, understood or responded to as family and domestic violence.**

- The community, legal system, law enforcement bodies and courts can have a focus on physical violence and single acts of violence, rather than a pattern of abuse over time.
- Community attitudes, and perpetrator behaviours that are controlling and isolating, can prevent victim-survivors from understanding that they are experiencing abuse or from seeking support.
- All jurisdictions recognise and are actively responding to these identified gaps in understanding and response.

We agree that community misunderstanding of coercive control can be a barrier to coercive control being identified by victim-survivors and responders, and appropriately addressed. It can also be a barrier to effective prevention strategies.

However, we suggest that, as with Principle 1, it is important in Principle 3 to clarify that coercive control is an overarching element of all DFV, and an indicia of DFV, whether or not physical violence is involved. It may be helpful to add a bullet point to this effect.

### **National Principle 4: Effects of Discrimination and Inequality**

**The Australian Government and state and territory governments recognise that discrimination and inequality within the practices, policies and behaviours of organisations, institutions and communities can impact a victim-survivor's experience of coercive control. These issues must be considered in any policies or solutions to address coercive control.**

- Discrimination and inequality can underpin barriers that victim-survivors face in accessing justice and support, impact a victim-survivor's ability, confidence or willingness to seek help, as well as the quality of support they receive; and increase the negative effects coercive control has on victim-survivors.
- Discrimination and inequality can create an environment where perpetrators feel enabled and empowered to use coercive control.
- Discrimination and inequality can increase the likelihood of victim-survivors being misidentified as the perpetrator of family and domestic violence.

The responsibility of government to put in place frameworks that address coercive control, including frameworks for practices and behaviours that address discrimination and inequality, is discussed in relation to Principle 6.

### **National Principle 5: Lived Experience**

**The Australian Government and state and territory governments recognise the importance of ensuring that the lived experience of victim-survivors, including children and young people, informs policies and solutions to address coercive control.**

We suggest Principle 5 should expressly refer to the need for interaction with victim-survivors to be trauma-informed, in ways that ensure questions are asked appropriately and not in ways that inadvertently collude with a perpetrator.

### **National Principle 6: Coordinated Approach to Prevention, Early Intervention, Response and Recovery**

**The Australian Government and state and territory governments recognise the importance of coordinated approaches to addressing coercive control.**

- Approaches should be based on a shared understanding of coercive control.
- Governments, civil society, businesses, academics, communities and families all have roles to play to support the safety of victim-survivors and accountability of perpetrators.
- There is no single approach to addressing coercive control, but all areas involved in addressing family and domestic violence should work together to reduce duplication and gaps in services.
- Actions should be evidence-based, trauma-informed and occur across prevention, early intervention, response and recovery.
- Approaches should focus strongly on education and training.

The National Principles note that governments have recognised coercive control through legislative definitions and offences. Principle 6 notes that government has a role to play in supporting the safety of victim-survivors and in holding perpetrators to account, and that approaches should focus on education and training.

Equally important, however, is the need for proactive systems reform through the reform of organisational culture, process and expertise. While it may be beyond the scope of the National Principles themselves, it will be important that government responses to coercive control include the creation and implementation of frameworks that ensure that responders, including service providers and the justice system, apply the National Principles. These frameworks may be legislative, regulatory or administrative.

One approach to this is the use of a "social entrapment framework". It has been suggested that applying a social entrapment analysis to intimate partner violence would require systemic responses to coercive control to be informed by:

1. all coercive and controlling behaviours;
2. responses of family, community and agencies; and
3. structural inequities.<sup>5</sup>

This approach would require the justice system and other responders to examine patterns of behaviour over time, the surrounding context of the behaviour, and the social, economic and cultural forces influencing the actions of the perpetrator and the victim-survivor. It may help to identify patterns of behaviour, explain aggression or other “imperfect” behaviour on the part of the victim-survivor or why a victim-survivor is entrapped within the relationship dynamic, and help in predicting future behaviour.

It will also be important to ensure responders have the capacity to implement the National Principles. Applying a framework that characterises coercive control as an overarching element of DFV, such as a social entrapment framework, may be time and resource intensive. There are particular challenges for police, for example, whose approach tends to be incident-based and retrospective, rather than pattern-based and future focused.<sup>6</sup> Ensuring police have the expertise and time to investigate patterns of events in order to assess future risk is likely to have significant resourcing implications.

Accountability frameworks will need to be implemented to ensure compliance with the National Principles. This should include improving police accountability through mandatory independent auditing of police responses. We note also that the Australian Human Rights Commission has called for trauma informed, culturally informed family violence response training which incorporates accountability frameworks to address systemic racism against first nations peoples.<sup>7</sup>

### **National Principle 7: Criminalisation of Coercive Control**

**Whether coercive control should be a specific criminal offence, and the form this may take, is a matter for individual state and territory governments to determine. State and territory governments agree that the development and implementation of any specific coercive control offence should involve consideration of the National Principles to Address Coercive Control. It is also only one part of a broader approach to addressing coercive control.**

The Law Society supports this principle, noting our response to Principle 6.

### **National Principle 8: Unintended Consequences of Criminalisation**

**State and territory governments agree that the decision to criminalise, and the development and implementation of any coercive control offence, should involve careful consideration of unintended consequences for victim-survivors and perpetrators, particularly those already disadvantaged by the justice system. This includes the risk of victim-survivors being misidentified as perpetrators of family and domestic violence or further traumatised through difficult criminal justice processes, and the risk of increasing the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.**

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<sup>5</sup> S Tarrant, S, J Tolmie, G Giudice, *Transforming legal understandings of intimate partner violence* (Research report 03/2019) Sydney, ANROWS.

<sup>6</sup> H Nancarrow, K Thomas, V Ringland, T Modini, *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020), Sydney, ANROWS.

<sup>7</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani (Women’s Voices): Securing Our Rights, Securing Our Future Report* (2020) 103.

The risk of misidentification of the victim-survivors as perpetrators is not the only possible unintended consequence of criminalisation. If an offence of coercive control is drafted too broadly, it risks criminalising dynamics and behaviour within intimate relationships that do not warrant moral, let alone criminal, sanction. It is necessary for the offence to be properly defined both at law, and in each particular case, for the criminal law to be effective at identifying behaviour to both the community and offender that constitutes a criminal wrong in order for it to have a deterrent effect. Clarity is especially important if the criminal law is to achieve general deterrence and denunciation.

As noted above under National Principle 6, government has an obligation to develop accountability frameworks that monitor and audit system responses to coercive control. This is especially important to identifying the unintended consequences of criminal offences. As a minimum, regular auditing of police and justice responses should examine data on the number of prosecutions laid and outcomes of those prosecutions for victim-survivors and perpetrators.

We support the ANROWS recommendation for funding of measures that monitor the implementation of coercive control offences, including unintended consequences.<sup>8</sup>

Thank you for the opportunity to contribute to the Law Council's submission. Questions at first instance may be directed to Sue Hunt, Principal Policy Lawyer on (02) 9926 0218 or by email: [sue.hunt@lawsociety.com.au](mailto:sue.hunt@lawsociety.com.au).

Yours sincerely,

A handwritten signature in black ink, appearing to be 'JvP', with a long horizontal flourish extending to the right.

pp.  
Joanne van der Plaats  
**President**

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<sup>8</sup> ANROWS, *Policy Brief: Defining and responding to coercive control* (January, 2021), Recommendation 3.