



THE LAW SOCIETY
OF NEW SOUTH WALES

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5 July 2023

Dr James Popple
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: nathan.macdonald@lawcouncil.au

Dear Dr Popple,

**Continuing Professional Development for Legal Practitioners on Coercive Control:
Discussion Paper**

The Law Society appreciates the opportunity to provide input into the Law Council's submission to the Attorney-General's Department on its Discussion Paper. The Law Society's Family Law Committee and Professional Development Department contributed to this submission.

The Law Society supports a nationally coordinated approach to education and training on coercive control for legal practitioners. We note that the current phase of the consultation is directed towards developing and delivering continuing professional development (CPD) programs. We look forward to the opportunity to contribute to the ongoing development of this important training for lawyers.

General comments

It is our view that the budget of \$0.9 million over four years will not be sufficient to develop and deliver the training modules as contemplated. This order of funding may suffice for the development of a package of materials for legal practitioners in NSW over four years, however it is not enough, we suggest, to develop and deliver CPD training at the national level.

Given the current budget envelope, we suggest that it would be preferable to prioritise the development of national standards and objectives for the training, so that accredited providers and/or legal organisations are able to develop and deliver their own compliant training at their own expense. Private legal firms and organisations may wish to develop their own training as applicable to their areas of practice. It may also be appropriate for the states and territories to provide additional funding for training for their own courts, legal aid agencies and other legal assistance sectors.

The stated objective of developing the training is to respond to recommendations to better educate legal practitioners who encounter clients affected by coercive control. However, the objectives of the training itself have not been clearly articulated. Defining these objectives will inform the content and structure of the modules, including how they should be delivered, and who should deliver them.

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney
ACN 000 000 699 ABN 98 696 304 966

lawsociety.com.au

T +61 2 9926 0333 F +61 2 9231 5809
E lawsociety@lawsociety.com.au

Law Council
OF AUSTRALIA
CONSTITUENT BODY

We understand that a substantial range of training materials and courses suitable for educating legal practitioners on coercive control is already available across Australia. This includes comprehensive and well-regarded training delivered within the Federal Circuit and Family Court of Australia, as well as commercially available training for legal professionals and other freely available courses for frontline workers. Consideration could be given to conducting a full audit of the availability of this type of training with a view to leveraging existing material where possible.

Our comments in response to the questions in the Discussion Paper are set out below.

Contributing to the National Plan to End Violence against Women and Children 2022-2032

The points for consideration are expressed very broadly and need to be more specific in relation to each state and federal area of law intended to be covered by the module and customised for each target audience. Different skill sets are needed, for example, to respond to coercive control in a family law context and in a criminal law context. Extensive work would be required to provide the level of detail requested and we submit that the context should be guided by the objectives of the training.

It is not clear whether the list is intended to include practical steps that could be taken by practitioners in different contexts and to cover issues such as the psychological impact of this type of work and the effects of vicarious trauma on practitioners.

Continuing Professional Development for Legal Practitioners

As stated above, we suggest that prioritising the development of national standards and objectives to assist legal organisations to develop and deliver their own training is the most effective way to deliver training within the funding envelope. If funding permits, the development of a national e-learning module covering federal areas of law, supplemented by modules covering state-based areas of law for each state or territory, would be the most cost-effective to produce, and most affordable for legal organisations.

As previously discussed, we suggest conducting a national audit to determine what relevant CPD training is currently available for legal practitioners.

There is no accreditation program for providers of CPD to solicitors in NSW. Solicitors are required to undertake and record ten hours of applicable training, through a self-assessment process, which meets the requirements of the *Legal Profession Uniform Law (NSW)*, including mandatory requirements in each CPD year which runs from 1 April to 31 March the following year.

Development and delivery of CPD training requires the following expertise:

- A clear understanding of the requirements of s 52 of the *Legal Profession Uniform Law (NSW)* including mandatory rule 6.1 (being completion of at least one hour of ethics and professional responsibility, practice management and business skills, professional skills and substantive law, respectively);
- The ability to deliver content to a standard that meets both these compulsory fields and offers expert knowledge; and
- The ability to deliver training across multiple formats including e-learning, face-to-face and live online sessions is also important as is educational and instructional design

capabilities, the ability to initiate, develop and maintain relationships with experts who can create, present and review content, and programming and execution skills.

Training which is designed or structured to meet mandatory CPD requirements, or which is inherently capable of meeting them owing to the nature of its content, attracts interest and participation. An example of this would be the module, "Sexual harassment training – changing workplace culture", currently run periodically by the Law Society, which may satisfy a mandatory component under the ethics and professional responsibility requirements. Training offered in a variety of formats (eg. webinar, face-to-face) is also essential to enable effective engagement. Completion certification is also critical to engagement from legal practitioners.

Effective promotion of the training (eg. the Law Society promotes CPD to its members via electronic direct mail, advertising on social media such as LinkedIn and industry media) also attracts interest and participation, as does the creation and funding of follow up material and/or a reference manual, print and digital, for use by practitioners on an 'as needs' basis after their training.

Grant Opportunity Guidelines

The types of organisations best placed to develop (and potentially) deliver these training programs are those with existing expertise in developing and delivering domestic violence education programs, including those currently offering such programs:

- Legal practitioner member bodies.
- Commercial legal education and professional development organisations.
- Higher education providers already delivering continuing legal education and professional development through in person and digital channels.
- Universities with ability to access specialist and expert content/presenters and existing channels with capacity to deliver micro credentials.

Training must be tailored to address reforms specific to the state or territory where the training is being delivered to take account of the variation in applicable state and territory laws. Examples include the different state and territory laws dealing with criminal activity; another example is the case of Western Australia, which is vested with both state and federal jurisdiction in family law and has its own court in the Family Court of Western Australia.

Any national training program would necessarily need to focus on principles, concepts and shared law. This may not prove to be effective in the case of most legal practitioners, who require training to focus on the laws and resources of their specific state or territory. Commissioning jurisdictional resource kits for training participants would be essential if a national training program was established.

We are concerned that resourcing even a modest training programming consistent with the National Principles to Address Coercive Control, rolled out across all jurisdictions, to all legal practitioners, and allowing for a focus on those who encounter clients affected by family and domestic violence including coercive control, would exceed the allocated budget.

We support a model which is both low in actual cost to the practitioner, and efficient in terms of time taken to complete. Delivering this would require substantial investment in content development, instructional design, expert feedback, and user testing to ensure it met the requirements of the National Principles. Resistance to participation owing to self-perceived irrelevance to an area of practice or a coercive control knowledge gap should also be addressed through a funded national education and awareness campaign targeted at legal practitioners.

As noted above, there are advantages to establishing a consortium or coalition with partner organisations in that there are established groups already offering coercive control training in many jurisdictions. Conversely, we note that consistency, in terms of content and user experience, is the principal advantage of a single organisation managing the development of the content. This would mean that all Australian legal professionals would receive the same basic training, with jurisdictional specific content added as a separate component.

In addition to the training, an online resource, such as a website would need to be funded, developed, created, tested, and maintained by a professional provider of web services with stakeholder input to be effective.

To address specific issues relevant to regional and remote communities and vulnerable groups, engaging with stakeholders from these groups would be critical to effective delivery of any programs to meet their needs. This engagement would require identification of the most appropriate stakeholders in terms of individuals and groups and an adequate consultation process with those stakeholders. In terms of tailoring the courses to different areas of legal practice, stakeholder input from peak bodies, industry groups and policy committees in specific practice areas should be sought and implemented.

Data and evaluation requirements

Participant engagement may be measured by response, registration/enrolment, attendance, and survey. All providers would need to be able to reach potential participants via advertising or promotion, record data as well as collate and anonymise feedback. This would be most effectively done via an established Learning Management System. Alternatively, an online survey tool, such as Survey Monkey, which allows for anonymised collection of data may be a low-cost option.

All data collected will be subject to privacy law requirements. Data on the number of participants completing the training, including self-disclosed practice areas, preliminary and post course surveys (taken immediately and three months post training) in terms of understanding the key policy objectives and whether they were able to implement them, could be collected, collated, and submitted to the Attorney-General's Department and/or available for audit.

The Kirkpatrick model is the standard measure for learning effectiveness – measuring four (4) levels of criteria: reaction, learning, behaviour, and results. Whether the training was effective in upskilling legal practitioners could be tested using established methodologies and certification on successful completion of a learning module.

Funding and conducting an extensive survey of legal practitioner needs, by using providers experienced in survey methodology and reporting could determine whether the training was effective in reaching and being accessible to those legal practitioners who would most benefit from the training.

If you have any further questions in relation to this letter, please contact Sue Hunt, Senior Policy Lawyer on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,



Cassandra Banks
President