

25 November 2022

Ms Kate Andren
Assistant Director, Family Safety Policy
Family Safety Branch
Attorney-General's Department
Canberra ACT 2600

By email: coercivecontrol@ag.gov.au

Dear Ms Andren,

National Principles to Address Coercive Control

1. Women's Legal Services Australia thanks the Attorney-General's Department for the opportunity to comment on the National Principles to address Coercive Control (**National Principles**). We give permission for this submission to be published.
2. This submission is endorsed by Community Legal Centres Australia.

About WLSA

3. Women's Legal Services Australia (**WLSA**) is a national network of 13 specialist women's legal services in each State and Territory across Australia, specifically developed to improve women's lives through specialist legal representation, support, and advocacy.
4. WLSA members provide high quality free legal services, including representation and law reform activities, to support women's safety, access to rights and entitlements, and gender equality. We seek to promote a legal system that is safe, supportive, non-discriminatory, and responsive to the needs of women. Some of our services have operated for almost 40 years.
5. WLSA members have specialist expertise in safety and risk management, maintaining a holistic and trauma-informed legal practice, providing women additional multidisciplinary supports, including social workers, financial counsellors, trauma counsellors, and cultural safety workers, for long-term safety outcomes.
6. WLSA members approach the legal issues facing women and their experience of the legal system within a broader analysis of systemic gender inequality. We are committed to providing individual services whilst also working towards deeper legal and cultural change to redress power imbalances and address violence against women and gender inequality.

Our advocacy focus

7. WLSA and our individual member services work to contribute to policy and law reform discussions to ensure that the law does not entrench gender inequality or gender-based discrimination, or unfairly impact on women experiencing violence and relationship breakdowns. We are informed by a feminist framework that recognises the rights of women as central.
8. Our primary concern when considering any proposed legislative amendments is whether the changes will make the legal system fairer and safer for both our clients and all victims of violence against women. Our submission reflects this focus.

9. The terms “*victim*,” “*survivor*,” and “*victim-survivor*” have been used interchangeably throughout this submission to refer to women, children and others who have experienced or are experiencing family and domestic violence and abuse in any of its forms. While acknowledging that anyone can experience domestic and family violence and abuse, the research and our members experience over more than forty years clearly highlights that domestic and family violence and abuse is predominantly perpetrated by men against women and children. Our language in this submission is gendered to reflect this.
10. Some jurisdictions, such as NSW, are shifting away from the language of “*domestic and family violence*” to “*domestic and family abuse*”. This is to better acknowledge that domestic and family violence and abuse can include physical and non-physical violence and abuse.
11. Coercive control is the underlying dynamic of domestic and family abuse, not a form of domestic and family abuse. As such the terms “*domestic and family violence*”, “*domestic and family abuse*” and “*coercive control*” are used interchangeably throughout this submission. It would be useful to have national consistency in language.

Introductory comments

12. We seek clarification on the purpose of the National Principles. The National Principles currently seem to read as a description of different things related to coercive control. We believe it would be beneficial if the National Principles provided clear guidance on the strategic focus in responding to coercive control and are solution focused.
13. It is important that coercive control is understood as the underlying dynamic of domestic and family abuse and not as a form of domestic and family abuse. This is important if we are working towards national consistency of language and understanding.
14. We are concerned by the inclusion of two principles related to the criminalisation of coercive control. We believe National Principle 7: Criminalisation of coercive control and National Principle 8: Unintended consequences of Criminalisation could be merged into a single principle. There must also be recognition of the need for whole of systems response to coercive control. There is an attempt to recognise this in National Principle 6. However, even this Principle does not adequately acknowledge the role that all legal, service systems and other systems must play a role in addressing coercive control. This must be better addressed.
15. The Principles fail to adequately address accountability of those who use violence and abuse. There must be a greater focus on perpetrator accountability, including through the use of active voice in the document.
16. While there is an attempt to acknowledge victim-blaming attitudes as being damaging there is little included throughout the document to seek to address or respond to this. A social entrapment framework of gendered violence and abuse examines three dimensions of barriers to victim-survivors of such violence and abuse being able to access the support they need:
 - a. *the social isolation, fear and coercion that the predominant aggressor’s coercive and controlling behaviour creates in the victim’s/survivor’s life and how the predominant aggressor’s behaviour constrains the primary victim’s resistance and ability to escape the abuse*

- b. *the lack of effective systemic safety options; and*
- c. *the exacerbation of these previous two dimensions by structural inequities including poverty, historical trauma, colonisation, disability, racism, sexuality and gender, geographic isolation.*¹

17. Adopting such a framework shifts the narrative away from victim-blaming to make visible those who need to be held accountable - individual perpetrators, systems including response systems, governments and society. It better recognises the resilience of victim-survivors and the protective actions they take. We strongly encourage the adoption of a social entrapment model in the National Principles.
18. The social entrapment framework should be included in the introduction to the National Principles with cross-references made throughout the document.
19. The National Principles should include a strong focus on solutions which focus on the safety of women, children and other survivors of gendered violence and abuse. Such solutions must include:
- a. a properly resourced, culturally safe, disability aware and LGBTIQ+ aware service system
 - b. the need for structural and systemic transformational change
 - c. accountability frameworks to address systemic discrimination, including systemic racism, sexism and other forms of discrimination and systemic misidentification of the person most in need of protection.
20. It is important the detailed explanation of the National Principles include references to evidence and literature.

Recommendations

21. In summary we recommend:
- a. National Principles to address coercive control that provide clear guidance on the strategic focus in responding to coercive control and which are more solution focused.
 - b. In identifying, understanding, and responding to coercive control, it is vital to consider context, that is, behaviour that falls within the framework of coercing or controlling or causing fear. It would be beneficial to further explore how this can be considered in a way that focuses on the perpetrator's behaviour. Further it is important to consider the behaviour of the two parties in the context of "*the relationship as a whole*" to ensure accurate identification of the person most in need of protection and the predominant aggressor. This necessitates a move away from an incidents based response.
 - c. Greater visibility of sexual violence and abuse and cultural abuse.

¹ Tarrant, S., Tolmie, J., & Giudice, G. (2019). [Transforming legal understandings of intimate partner violence](#) (Research report 03/2019). Sydney, NSW: ANROWS, p 17(21); ANROWS (2020) Supplementary submission to the Joint Select Committee on Australia's Family Law System

- d. Greater recognition of the need for whole of systems response to coercive control.
- e. Greater visibility of perpetrator accountability.
- f. The incorporation of a social entrapment framework to understand and respond to coercive control.

22. Further detailed recommendations to improve each of the National Principles are outlined below.

National Principle 1: Common Features

- 23. We welcome the recognition of gender inequality and other intersecting inequalities as driving coercive control (**domestic and family abuse**).
- 24. We also welcome the recognition of the fact that coercive control occurs beyond intimate partner violence to also include family and “family like” relationships which can include a paid or unpaid carer for people with disabilities or older people, families of choice for LGBTIQ+ people, and cultural kinship networks.
- 25. There is recognition that coercive control can be used against people of any age – but there is only reference to children and young people. While it is important to specifically name children and young people and to recognise children and young people in their own right, it is also important to name older people.
- 26. It is important that coercive control is understood as the underlying dynamic, not a form of domestic and family abuse.
- 27. While it is possible for coercive control to occur through a single act or omission, it generally refers to a pattern of behaviour that “*intimidates, isolates, humiliates, exploits, regulates and micromanages women’s enactment of everyday life.*”² It’s an attack on a woman’s “*liberty,*” “*autonomy*” and “*personhood*”.³
- 28. While all violence and abuse is unacceptable, not all violence and abuse perpetrated between people in family and family like relationships should be categorised as domestic and family abuse (**coercive control**). To be described as domestic and family abuse the behaviour must come within the framework of coercing or controlling or causing fear, highlighting again the importance of context.⁴ This clarification is important to minimise opportunities for misidentification of the predominant aggressor and person most in need of protection.⁵

² Stark, E. (2007) *Coercive control: How men entrap women in personal life*. New York: Oxford University Press, p171-172

³ Ibid, p13

⁴ Wangmann, J., (2012) “Incidents v Context: How Does the NSW Protection Order System Understand Intimate Partner Violence?” *Sydney Law Review* Vol 34, p 718; Wangmann, J., (2010) “Gender and Intimate Partner Violence: A case study from NSW”, *UNSW Law Journal*, Vol 33(3), p962.

⁵ We note new s22A of the *Domestic and Family Violence Protection Act* through the [Domestic and Family Violence Protection \(Combating Coercive Control\) and Other Legislation Amendment Bill 2022 \(Qld\)](#) seeks to provide legislative guidance on who is the person most in need of protection.

29. We commend the recognition of a variety of behaviours captured in the dynamic of coercive control and tactics used by perpetrators that are underpinned by the coercive and controlling dynamic.
30. We note the reference to “*psychological abuse (including spiritual and religious abuse)*”. It is also important to recognise cultural abuse.
31. It is important that sexual abuse is made visible and recognised in its own right. On page 12 there is a paragraph titled “*Physical abuse (including sexual abuse)*”. Other than the title there is no further reference to sexual abuse.
32. We welcome recognition of the use of children to perpetrate coercive control. However, we are concerned by the current framing of “*withhold contact*” as an example of “*using threats and intimidation*”. There may be important safety reasons to withhold contact. This needs to be recognised.

National Principle 2: Impacts

33. The National Principle on impacts makes no reference to a loss of autonomy.
34. Throughout the document there is a general lack of visibility in holding the perpetrator of domestic and family violence and abuse accountable for their behaviour, including in this Principle.
35. The box in grey on page 4 utilises passive voice, “*Coercive control is one of the factors that can keep victim-survivors trapped by perpetrators in relationships*”.
36. The box below that one uses active voice, “*The way a perpetrator uses coercive control can effectively trap a victim-survivor...*” We prefer the use of active voice and would suggest adding “*primarily men’s use of*” so it reads: “*Primarily men’s use of coercive control is one of the factors that keep victim-survivors trapped by perpetrators in relationships*”. It is important to make clear it is the perpetrator’s use of violence and abuse which traps victim-survivors. Similarly, “*escalation of patterns of coercive control is a significant factor in intimate partner homicide cases*” should name who is using the patterns of coercive control. These comments about the importance of the use of active voice are also relevant to the in-depth section of this Principle.
37. In addition to naming the perpetrator’s use of violence and abuse, this Principle needs to also clearly articulate the systemic and structural barriers that entrap a victim-survivor. The social entrapment framework must be clearly articulated to highlight the role that failings on the part of the systems responses and structural inequalities have in contributing to the entrapment of victim-survivors.

National Principle 3: Community Understanding

38. The framing of this Principle seems incomplete. It currently says:

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.

39. We expect a guiding principle to be solutions focused and suggest adding something to the effect of:

and the respective governments commit to responding to identified gaps in understanding and response and ensuring this is grounded in substantial systems and cultural reform.

40. The first dot point on page 5 says:

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.

41. In addition to referring to “a pattern of abuse” it is also important to refer to “context”. As raised earlier, domestic and family abuse (**coercive control**) is behaviour that comes within the framework of coercing or controlling or causing fear. It would be beneficial to further explore how this can be considered in a way that focuses on the perpetrator’s behaviour.

42. Similarly, in the third paragraph of the box below on page 5 it would be useful to mention context. We suggest adding:

Further, there needs to be consideration of the behaviour of the two parties in the context of the relationship as a whole. A focus on context helps to ensure the accurate identification of the person most in need of protection.

so it reads:

*The Australian Government and state and territory governments recognise that if family and domestic violence **and abuse** responses focus exclusively on single acts of violence and don’t adequately consider the broader pattern of coercive control individual behaviours used by perpetrators can seem less significant and may not be taken seriously. **Further, there needs to be consideration of the behaviour of the two parties in the context of the relationship as a whole. A focus on context helps to ensure the accurate identification of the person most in need of protection.** (Suggested additional text in bold).*

43. We acknowledge there is recognition in the in depth explanation of the National Principle that an incident-based approach may lead to misidentification of the person most in need of protection. It is vital this is also acknowledged in the summary section on page 5.

44. This Principle tries to acknowledge that limited community understanding of coercive control can lead to victim-blaming attitudes and practices, but this needs to be made clearer. It is important the National Principles set out examples of the many reasons why victim-survivors may be unable to leave a person who uses violence. This is important information and leads to a better understanding of the many barriers faced by victim-survivors and also results in less victim blaming. For this reason, it would be educative to refer to the importance of understanding coercive control (**domestic and family abuse**) through a social entrapment model as discussed above.

45. The summary on page 5 does not name poor responses to domestic and family abuse, for example by police, support and other services, the courts and others as contributing to barriers for seeking help. These should be named.

46. It would also be useful in this Principle, perhaps in the more detailed outline, to refer to findings of previous Community Attitude Surveys. For example, acknowledging improved recognition of non-physical forms of domestic and family abuse.

National Principle 4: Effects of Discrimination and Inequality

47. We welcome the inclusion of this Principle but recommend the language is strengthened.

- a. Rather than “*Discrimination and inequality can underpin barriers that victim-survivors face in accessing justice and support...*” (page 6, first dot point) it should read “*Discrimination and inequality underpin barriers ...*”.
- b. Similarly, remove “*can*” in the second dot point so it reads “*Discrimination and inequality creates an environment where perpetrators feel enabled and empowered to use coercive control*”.
- c. Remove “*can*” in the third dot point so it reads “*Discrimination and inequality increase the likelihood of victim-survivors being misidentified as the perpetrator of family and domestic violence*”.
- d. In the box on page 6, remove “*can*” in the first paragraph, second line so reads “*Discrimination and inequality exist in many of the practices, policies and behaviours of organisations, institutions and communities and occur across government, policing, medical, healthcare, legal and service responses.*”
- e. In the box on page 6, remove “*can*” in the fifth paragraph so reads “*Discrimination and inequality in availability and accessibility of services also increase the difficulties for victim-survivors who are trying to access justice and support*”.

48. This Principle is silent on the need for structural and systems reform, including accountability frameworks to address systemic discrimination, including systemic racism, sexism and other forms of discrimination. We again reiterate the importance of the National Principles incorporating a social entrapment framework.

National Principle 5: Lived Experience

49. The summary of this Principle on page 7 does not adequately explain what it means to be trauma-informed. It involves much more than safe environments and recognising the strength of people who share their experience.

50. While there is a more fulsome description of trauma informed practice in National Principle 5 in depth, it would benefit from a greater focus on empowerment and collaboration.

51. We note the reference to “listening” in the box on page 7: “*Working with victim-survivors and listening to their voices and experiences is essential ...*”. It would be useful to explain how governments and others “*listen*”.

52. We recommend inclusion of mechanisms such as lived expertise advisory groups to represent a number of diverse groups, ages and backgrounds to provide policy advice to federal and state/territory governments.

National Principle 6: Coordinated approach to Prevention, Early Support, Response and Recovery

53. It is pleasing to see both victim-survivor safety and perpetrator accountability recognised in this Principle.
54. It is also important to acknowledge “*The justice system alone is not sufficient to address coercive control, and needs to work with other systems involved in the lives of children, young people and adults, such as health, education and social services.*” (page 8).
55. However, it is not clear what is meant by reference to the “*justice system*”. Does this mean the criminal legal system or the legal system more broadly?
56. There needs to be greater recognition that all legal systems (not just the criminal legal system) must improve in their identification and response to coercive control. This includes the domestic and family abuse system, family law system, the care and protection system, the immigration system, the income support system, employment systems, housing, victims support and much more.
57. Again, this Principle needs to acknowledge the importance of a social entrapment framework in ensuring a proper and co-ordinated approach to prevention, early support, response and recovery, including the vital need for cultural and systems reform and addressing structural inequalities, including through accountability frameworks to address systemic discrimination.

National Principle 7: Criminalisation of Coercive Control

National Principle 8: Unintended Consequences of Criminalisation

58. It is not clear why Principle 7 and 8 are separated. To have two National Principles focused on a criminal legal response undermines the message that a criminal legal response is not the only legal and systems response required. We recommend combining these principles, noting the importance in recognising “*unintended but not unanticipated*” consequences.⁶
59. On page 9 reference is made to existing civil laws which may respond to coercive control, such as protection orders. There is no acknowledgment of misidentification of the person most in need of protection and the predominant aggressor. This is problematic as, for example, discussions and proposed solutions in NSW in the context of further criminalising coercive control focused primarily on misidentification in the context of a narrow application of a new offence (narrowing the new offence to intimate partner violence and with the requirement of the intention of the course of conduct to coerce or control). This does not address systemic misidentification, including in the context of civil protection orders.
60. We note National Principle 8 in depth acknowledges “*Misidentification can happen when individual behaviours or events are considered (for example, a single act of physical violence) rather than a pattern of behaviours across a relationship that amounts to coercive control*”, thus emphasising the need for a common understanding. This is relevant to the protection order context. Combining these Principles will assist in making this clear.

⁶ Buxton-Namisnyk, E., Gibson, A and MacGillivray, P. [Unintended, but not unanticipated: coercive control laws will disadvantage First Nations women](#) (2022) *The Conversation*

61. It is important to acknowledge “*Legal responses must be positioned alongside non-legislative approaches, as part of a coordinated approach to addressing coercive control that spans across prevention, early intervention [support], responses and recovery areas*” (page 24). However, there must also be clear articulation of the need for any legislative reform seeking to address coercive control to be accompanied by substantial cultural and systems reform and a clear articulation of what this involves. For example, in the context of further criminalising coercive control in NSW the following cultural and systems reforms have repeatedly been raised by specialist women’s legal services and the sexual, domestic and family abuse sector, including:

- a. accountability frameworks to effectively respond to systemic racism, sexism and other forms of discrimination;
- b. accountability frameworks to ensure the accurate identification of the person most in need of protection. We refer to 16 proposed actions to address systemic misidentification in *Monitoring Victoria’s Family Violence Reforms: Accurate identification of the predominant aggressor* (2021)⁷
- c. regular independent auditing of policing of sexual, domestic and family abuse and the publishing of such reports to help promote continuous improvement and build public confidence in policing of sexual, domestic and family abuse;
- d. co-responder model with police responding with specialist domestic and family abuse workers;
- e. an effective, multi-agency screening and risk assessment framework and associated tools;
- f. significant workforce development, including the co-design and co-delivery of training by sexual, domestic and family abuse experts including people with lived experience, cultural safety experts, disability advocates and LGBTIQ+ advocates that extends beyond the content of the law to also include the nature and dynamics of coercive control, perpetrators use of violence and abuse, accurate identification of the person most in need of protection and conscious and unconscious bias, as well as ongoing evaluation of the effectiveness of training so everyone in all systems gets better at identifying and responding appropriately to coercive control;
- g. significant improvements to the criminal legal system;
- h. whole of systems response to ensure all legal and other systems respond appropriately rather than limiting to a criminal legal response.⁸

62. There also needs to be independent oversight in the implementation and ongoing monitoring and evaluation of any legislative and other reforms to address coercive control to ensure its effectiveness and continuous improvement.⁹

⁷ Monitoring Victoria’s Family Violence Reforms: [Accurate identification of the predominant aggressor](#) (2021) p6 (p10)

⁸ See for example, [Joint Letter](#) to all members of NSW Legislative Council and Legislative Assembly in response to the Crimes Legislation Amendment (Coercive Control) Bill 2022 (NSW)

⁹ We note the important ongoing role of the Victorian Family Violence Reform Implementation Monitor which has provided reports on the effectiveness of implementation of Royal Commission into Family Violence recommendations as well as thematic reports such

63. National Principle 7 in depth acknowledges the development of any specific coercive control offence must consider issues raised in other National Principles. We re-iterate our concerns raised in earlier sections, including, for example, that context (in common features and other sections) must be recognised.
64. On page 24 the reference to “*justice sector*” should be to “*legal sector and system*”. It is important that all legal systems are considered, not just the criminal legal system. Further, noting many victim-survivors do not experience the criminal legal response as “*just*” or “*justice*”, the preferred language is “*criminal legal system*” when referring to a criminal legal response. Similar comments about language apply to pages 10 and 26-27.
65. We note on page 24 the important recognition that “*It is vital that legal responses to coercive control are supported by education and training initiatives to ensure that new laws are implemented effectively and consistently*”. While we agree, it is also important it be clearly articulated that education and training extend well beyond the content of the law and also include training co-designed and co-delivered by sexual, domestic and family abuse experts including people with lived experience, cultural safety experts, disability advocates and LGBTIQ+ advocates focused on the nature and dynamics of coercive control, perpetrators use of violence and abuse, accurately identifying the person most in need of protection and conscious and unconscious bias. Further this training must primarily be face-to-face and regularly independently reviewed for its effectiveness.
66. We believe it is inappropriate to include the word “*unintended*” on its own in relation to describing the consequences of criminalisation of coercive control. First Nations women, culturally linguistically diverse women and many others have raised potential adverse impacts.¹⁰ Some have described these concerns as “*unintended but not unanticipated*”. It is preferable to reference harm minimisation or awareness of likely impact rather than using the term “*unintended consequence*”.¹¹
67. In paragraph 2 in the box on page 10 there is reference to a range of people disadvantaged by the “*justice system*” – we suggest language of “*criminal legal system*”. While we note the list is described as “not limited to” we believe it important to specifically name “*women with lived experience of prison*” or “*criminalised women*” given the pathway for many women to prison may stem from misidentification as the predominant aggressor.
68. Paragraph 4 on page 10 states “*Any coercive control offence must support justice for these groups, and not worsen discrimination and inequality*”. While we support this statement, as reiterated throughout this submission we believe it would be beneficial to name the cultural and systems reform required, including accountability frameworks to address systemic discrimination, accountability frameworks to ensure accurate identification of the person most

as *Accurate identification of the predominant aggressor*. We further note the recommendations of the Queensland’s Women’s Safety and Justice Taskforce for an independent implementation supervisor to oversee implementation of taskforce recommendations. See [Hear Her Voice – Addressing coercive control and domestic and family violence in Queensland](#), Report One, recommendation 88 and [Hear Her Voice – Women and girls’ experiences across the criminal justice system](#) Report Two, recommendation 188

¹⁰ Robinson, C., (2022) [Why Aboriginal women fear NSW’s new coercive control laws could do more harm than good](#), *The Guardian*

¹¹ Buxton-Namisnyk, E., Gibson, A and MacGillivray, P. [Unintended, but not unanticipated: coercive control laws will disadvantage First Nations women](#) (2022) *The Conversation*

in need of protection and regular independent reviews of police response to domestic and family abuse, to ensure such reform occurs.

69. Page 27 acknowledges the risks when victim-survivors are not correctly identified as the person most in need of protection. However, we believe these risks could be better recognised and articulated.

If you require any further information, please contact Liz Snell, Acting Chair of the WLSA Family Law and Domestic and Family Violence Committee on ph 02 8745 6900.

Yours faithfully,

Liz Snell
Acting Chair
Family Law and Domestic and Family Violence Committee
Women's Legal Services Australia