



Law Council
OF AUSTRALIA

National Principles to Address Coercive Control

Commonwealth Attorney-General's Department

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About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level, speaks on behalf of its Constituent Bodies on federal, national and international issues, and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2022 are:

- Mr Tass Liveris, President
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- Mr Greg McIntyre SC, Treasurer
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The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.asn.au.

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- Law Institute of Victoria;
- Law Society of New South Wales;
- Law Society of South Australia; and
- Law Society of Western Australia.

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Introduction

1. The Law Council is highly supportive of the development of the National Principles to Address Coercive Control (**National Principles**) to inform various measures aimed at addressing coercive control, noting that effective responses to coercive control will be greatly assisted by nationally consistent policy settings. Coercive control arises in many family and domestic violence (**FDV**) situations and the implementation of measures to address coercive control is essential to assist victim-survivors in seeking proper and substantive justice.
2. Coercive control involves perpetrators using abusive behaviours in a pattern over time in a way that creates and maintains power and dominance over another person or persons.¹ Perpetrators may use physical or non-physical abusive behaviours, or a combination of both. Coercive control is often a central or underlying feature of FDV, and is a known predictor of future or escalated family violence.
3. The Law Council commends the Attorney-General's Department for the trauma-informed approach to coercive control outlined in the Draft National Principles, and makes the following observations with a view to refining the National Principles prior to their finalisation.

General feedback on the National Principles

4. At a general level, the Law Council observes that the structure and wording of the National Principles document is at times confusing. There is significant repetition and overlap between Principles, specifically in the overview boxes and the expansion boxes. While this may reflect the interrelatedness of coercive control across various policy areas, there may be scope for the information to be synthesised into a singular box under each National Principle, outlining the Principle and explanation without considerable repetition.
5. The categories of the National Principles can also be confusing at times, again with significant overlap. For example, many activities that assist with community understanding of coercive control in National Principle 3 could also advance the co-ordinated approach in National Principle 6. Similarly, many of the effects of discrimination and inequality in National Principle 4 have considerable overlap with the lived experiences of victim-survivors in National Principle 5. Consideration could be given to consolidating National Principles where appropriate, with further exploration of the various themes in sub-categories.

Implementation

6. While the intentions behind the National Principles are admirable, Commonwealth, state, and territory governments will need structures in place to successfully implement and measure the progress of policies designed to address coercive control over time. These frameworks may be legislative, regulatory, or administrative.

¹ Meeting of Attorneys-General, *National Principles to Address Coercive Control – Consultation Draft* (September 2022) 3.

7. One approach that has been suggested to the Law Council is the use of a 'social entrapment framework'. Applying a social entrapment analysis to intimate partner violence would require systemic responses to coercive control to be informed by:
 - all coercive and controlling behaviours;
 - responses of family, community, and agencies; and
 - structural inequities.²
8. 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.

Specific comments on the National Principles

National Principle 1: Common features of coercive control

9. The Law Council acknowledges the difficulty in comprehensively defining coercive control. However this difficulty underscores the importance of attempts being made to create a clear and unified definition, so that coercive control can be clearly identified and acted upon. In the Law Council's view, the benefits of the expansion of the definition of FDV (and subsequent community understanding) across jurisdictions has yielded improved outcomes for victim-survivors, and the provision of clarity on the common features of coercive control should be viewed in the same way.

Coercive control as an underlying or central feature of FDV

10. National Principle 1 identifies seven distinct features of coercive control, including that it is often a significant part of an individual's experience of FDV and can involve physical or non-physical abusive behaviours.
11. A key distinguishing feature of coercive control is a pattern of abuse that is controlling, and which causes fear or has intent to do so. It is also described as behaviour that is intended to deny agency and autonomy or personhood. This feature distinguishes coercive control from physical or non-physical aggression which is often 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.
12. Due to the nature of coercive control as a pattern of behaviour over time, coercive control may be commonly unrecognised and underdefined as a form of FDV, which impacts the ability of victim-survivors to access appropriate protection and legal services. It is therefore important to avoid characterising coercive control as a particular type of FDV, or as part of a spectrum of behaviours that can contribute to FDV, with coercive control at one end and serious physical violence at the other. Conceptualising coercive control in such terms may reinforce unhelpful beliefs about FDV which leaves victim-survivors and the broader community more likely to

² S Tarrant, S, J Tolmie, G Giudice, *Transforming legal understandings of intimate partner violence* (Research report 03/2019) Sydney, ANROWS.

recognise and respond to sexual and physical violence than to patterns of psychological and financial abuse.

13. In light of the above, the Law Council suggests that National Principle 1 could articulate coercive control as an underlying or central feature of FDV, instead of a 'significant part of a person's experience of FDV'. Coercive control is most often present in conjunction with other forms of FDV, or the precursor to other serious FDV behaviours, and this link could be more strongly identified in the National Principles.
14. Alternatively, Principle 1 could clarify that coercive control should be understood as an overarching element of FDV behaviours. 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'.³

Older women

15. There is scope for the National Principles to provide greater detail on the impact of coercive control perpetrated against older people, and older women in particular. Specifically, National Principle 1 could expressly note that coercive control can be perpetrated against people of all ages, 'including children, young people, and older persons'.
16. Older women are a particularly vulnerable cohort with regards to FDV. They are less likely to report FDV or coercive control behaviours as a result of financial dependence on their partner or family members, fear of isolation, heightened risk of estrangement from their children and/or grandchildren, feelings of shame and a general lack of knowledge about available services and the law. This is particularly important in the context of a general lack of awareness of the controlling, manipulative and intimidatory nature of coercive control as a common form of elder abuse.

Pregnancy

17. Research indicates that FDV is likely to escalate around significant life events, including during pregnancy or after the birth of a child.⁴ These behaviours can include coercing someone to become pregnant, deliberately sabotaging birth control efforts or coercion over pregnancy outcomes, and are likely to have significant and longstanding consequences for the victim-survivor.⁵
18. Victim-survivors are often at their most vulnerable during pregnancy, or after the birth of a child, due to limited or decreased access to financial resources (particularly if accessing parental leave or time off work), and isolation from their regular networks. The Law Council suggests that further emphasis be placed in the National Principles on the potential for coercive control behaviours to occur in connection with the pre- and post-partum periods.

³ Section 4AB

⁴ Monica Campo, *Domestic and Family Violence in Pregnancy and Early Parenthood*, Australian Institute of Family Studies (2015) 1-2. Available at <https://aifs.gov.au/sites/default/files/publication-documents/cfca-resource-dv-pregnancy_0.pdf>.

⁵ Grace KT, Anderson JC, *Reproductive Coercion: A Systemic Review, Trauma, Violence and Abuse* 2018, Vol. 19(4) 371-390; Tarzia, L. (2018) "How can we improve the health systems response to reproductive coercion in the Australian context?: Safer Families Centre of Research Excellence Discussion Paper #1" Safer Families Centre of Research Excellence Discussion Paper Series, available at <www.saferfamilies.org.au/discuss/>.

Threats of self-harm and suicide

19. National Principle 1 cites the use of ‘threats and intimidation’ as a type of abusive behaviour used by perpetrators. The Law Council also suggests adding reference to a pattern of threats of suicide or self-harm as a coercive controlling behaviour, noting that such behaviour is a common strategy for manipulation and control by perpetrators, and could be included under National Principle 1 as a common feature of coercive control.

Systems abuse

20. The Law Council has been made aware of situations where victim-survivors report being afraid to speak to their lawyers about FDV or coercive control, particularly in circumstances where a perpetrator or collusive family member is present. It is understood that this is a particularly common experience for vulnerable cohorts of victim-survivors, including migrant women and older women.
21. National Principle 1 identifies restricting a victim-survivor’s freedom or independence as a common feature of coercive control, and in this context, there may be scope to highlight that withholding access to legal services or preventing a victim-survivor from being alone with legal representatives may constitute a form of systems abuse.⁶

Emphasis on cisgender males

22. Principle 1 includes the following statement:

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.

23. It is acknowledged that coercive control is usually gendered, given that intimate partner violence is predominantly perpetrated by men against women.⁷ However, not all cases are driven by gender, and in many instances other forms of intersectional 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 under National Principle 4, discrimination and inequality can operate to empower perpetrators to use coercive control.
24. It is submitted that this dot point may benefit from more nuanced expression. For example, while emotional abuse is distinguishable from coercive control, the Australian Bureau of Statistics has identified that one in four women and one in six men have experienced partner emotional abuse since the age of 15.⁸

⁶ NSW Department of Communities and Justice, Submission No 131 to the House Standing Committee on Social Policy and Legal Affairs, Inquiry into Family, Domestic and Sexual Violence (1 April 2021) 30.

⁷ H Nancarrow, *Unintended consequences of domestic violence law: Gendered aspirations and racialised realities* (2019) Melbourne, Palgrave Macmillan.

⁸ Australian Bureau of Statistics, *Domestic Violence: Experiences of Partner Emotional Abuse* (2022). Available at <<https://www.abs.gov.au/articles/domestic-violence-experiences-experiences-partner-emotional-abuse#prevalence-rates>>.

Gender inequality

25. The final dot point under Principle 1 notes the following:

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.

26. As noted above, coercive control and other forms of FDV are widely recognised and evidenced as being significantly driven by gender inequality. However, the National Principles should make allowance for coercive control as experienced by men, Indigenous peoples, and members of the LGBTQIA+ community.
27. While it is noted that National Principle 1 states that coercive control 'can be used by or against people of all genders, sexual orientations, cultures and classes', the statement could be regarded as internally contradictory when viewed in the context of the above.

National Principle 2: Impacts of coercive control

28. National Principle 2 lists five examples of the short-term and long-term impacts of coercive control on victim-survivors and communities, including issues such as the fact the effects of coercive control can become worse over time and that escalation of such patterns of behaviours is a significant factor in intimate partner homicide cases.
29. The Law Council regards recognition that coercive control has significant short-term and long-term harmful impacts on victim-survivors and communities as being:
- (a) necessary to ensure that a perpetrator is not able to use the family law system as a mechanism to continue the control;
 - (b) a crucial component to the education of relevant stakeholders (including legal practitioners, decision makers and family consultants) to ensure that they are trauma informed and are able to implement processes to ensure that a victim-survivor is safe to share their experience;
 - (c) necessary to ensure that both the parent/spouse and child (or children) victim-survivors are not exposed to further trauma through physical contact with the perpetrator unless it is necessary and adequate precautions have been implemented to avoid risks to their safety;
 - (d) necessary to any consideration of matters listed under paragraph 60CC(2)(b) of the Family Law Act in relation to parenting matters; and
 - (e) a relevant factor to be considered when determining the weight to be attributed to a victim-survivor's contributions pursuant to sections 79 and 90SM of the Family Law Act, and their future needs pursuant to subsection 75(2), though it is acknowledged that this would require significant reform.
30. In relation to the second bullet point, it is suggested that 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. In support of this, the second paragraph within the commentary to Principle 2, which

refers to isolation, loss of employment and loss of financial security, speaks to a loss of autonomy.

31. In the third bullet point under National Principle 2, 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 the risk of future homicide.
32. In relation to the final bullet point under National Principle 2, it may add value to note that coercive control rarely ends when the relationship ends, can continue long after separation, and is a common feature of coercive or controlling behaviour in separating couples.
33. The Law Council suggests that a bullet point be added under National Principle 2 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

34. The Law Council supports measures that will promote an increased understanding within the legal community and the community at large, leading to effective recognition, understanding and response to coercive control. In particular, so that:
 - decision makers can identify coercive control in proceedings in circumstances where victim-survivors often cannot see the true nature of the behaviours. This requires significant education programmes being undertaken routinely by decision makers including hearing from victim-survivors; and
 - there is recognition that each individual act may not seem inappropriate in isolation, but it is often the cumulative effect of the actions of perpetrators that amounts to coercive control.
35. Legal representatives are well-placed to identify coercive control in family law matters and provide best practice guidelines to articulate the behaviours in Court documents and other relevant documents to support the victim-survivors' experience. However, the current limitation of 10 pages for affidavits in support of interlocutory orders makes it extremely difficult to set out details of a pattern of behaviour over a period of time.⁹ As there is greater awareness of this type of FDV and a growing need to particularise the conduct in affidavits, this rule makes harder the process of properly supporting victim survivors and securing their safety and proper outcomes for their children.
36. The Law Council agrees that community misunderstanding of coercive control can be a barrier to coercive control being identified by victim-survivors and responders, and being appropriately addressed. It can also be a barrier to effective prevention strategies.
37. However, the Law Council suggests that, as with Principle 1, it is important that Principle 3 clarify that coercive control is an overarching element of all FDV, and an indicia of FDV, whether or not physical violence is involved. It may be helpful to add a bullet point to this effect.

⁹ Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021, 2.02.

First responders

38. The Law Council strongly supports the focus in National Principle 3 on ensuring service providers, first responders and the justice system take steps to increase awareness about the various cultural norms, gender issues, mental health concerns, disability needs, and coercive control of FDV dynamics that may be relevant in a family violence context.
39. In particular, the likelihood of misidentification of the primary aggressor is increased where first responders, such as police, have insufficient understanding of coercive control dynamics. First responders can compound the trauma of FDV where the victim-survivor is mistakenly identified as the predominant aggressor and the perpetrator is instead determined to be in need of protection, particularly when responding to a single incident of abuse.
40. The Law Council supports targeted and ongoing community education on coercive control for stakeholder groups, such as the police, in addition to the general public, to increase community understanding and challenge stereotypes, preconceptions and victim-blaming attitudes towards coercive control.

National Principle 4: Effects of discrimination and inequality

41. There is a pressing need to address the effects of discrimination and inequality from a family law perspective. This is particularly the case given:
 - (a) a significant power imbalance already exists between victim-survivors and perpetrators in the context of coercive control including financial control and isolation; and
 - (b) victim-survivors in family law proceedings are often at a financial disadvantage where they have had little or limited access to family income and/or assets.
42. Coercive control, and FDV more generally, can be experienced by anyone at any time. However, the Law Council recognises that certain demographics may be more vulnerable to experiencing FDV, including people with intellectual or psychological disabilities, Aboriginal and Torres Strait Islander women, women experiencing financial hardship or women with culturally and linguistically diverse (**CALD**) backgrounds.¹⁰ It is important to ensure that information on FDV and coercive control is accessible, understandable, and available to people from these potentially vulnerable groups.

Culturally and linguistically diverse communities, and people on temporary visas

43. Non-citizen victim-survivors of FDV face increasing barriers by virtue of their CALD background, both in access to legal services and the FDV system. CALD victim-survivors quite often live under high levels of dependence on the perpetrator, which may be exacerbated by the use of coercive control strategies.¹¹
44. The potential shame and stigma associated with FDV, particularly for women from refugee and migrant backgrounds, is a major hurdle to seeking assistance and

¹⁰ Australian Institute of Health and Welfare, *Family, Domestic & Sexual Violence in Australia* (2018) 31; Australian Bureau of Statistics, *Domestic Violence: Experiences of Partner Emotional Abuse* (2022). Available at <<https://www.abs.gov.au/articles/domestic-violence-experiences-partner-emotional-abuse#prevalence-rates>>.

¹¹ Royal Commission into Family Violence: Report and recommendations (Vic), (Parl Paper No 132, 2014-2016) 105.

leaving an abusive relationship.¹² A consistent finding from the Victorian Royal Commission into Family Violence is that men may utilise women's temporary visa status and financial dependence to invoke a fear of deportation as a means of control and coercion.¹³

45. Victim-survivors from CALD backgrounds often experience FDV in a 'combination of factors including social isolation, limited English proficiency, trauma, gender roles, and traditional roles and patriarchal beliefs'.¹⁴ An added complexity is that CALD migrant victim-survivors are often made to feel indebted where they are being sponsored by their partner. This may contribute to a perceived obligation to accept their partner's abuse or controlling behaviour. It is therefore important that CALD migrant victim-survivors have access to culturally informed services that can assist them in securing safe shelter and legal help, especially given their insecure immigration status.
46. Noting the above, consideration should be given to the National Principles specifically highlighting, under National Principle 4, the additional challenges which are likely to be experienced by victim-survivors with CALD backgrounds.

LGBTQIA+ people

47. The LGBTQIA+ organisation *With Respect* found that cisgender lesbian women more commonly experience FDV than cisgender gay men, and that violence from other family members may be more prevalent in younger transgender and LGBTQIA+ communities.¹⁵ This may occur through young people being excluded from the family home on the basis of their LGBTQIA+ status or other unique forms of abuse, such as threats from family to 'out' them.¹⁶
48. LGBTQIA+ people experience multiple barriers to receiving support and reporting violence. *With Respect* identified that invisibility of LGBTQIA+ FDV leads to a lack of recognition by mainstream service providers, due to the dominant understanding of FDV as involving a cisgender male perpetrator and cisgender female victim.¹⁷ LGBTQIA+ people may also feel invisible in the FDV system due to a low level of representation or awareness among police, in the courts and the community generally.¹⁸ Finally, individuals may not seek help for fear of homophobia, transphobia, discrimination, or that their experience may not be validated or believed.
49. Flowing from the development of the National Principles, there is likely to be a need for additional funding and other support for legal service providers, advocacy organisations, health and support services, and community groups, to continue and

¹² Mission Australia, 'Out of the shadows, Domestic and Family Violence: A Leading Cause of Homelessness in Australia' (2019).

¹³ Royal Commission into Family Violence, Reports and recommendations (Parl Paper No 132, 2014-16) 104.

¹⁴ Kaur, J and Atkin, N, 'Nexus between Domestic Violence and Child Protection: Multidimensional Forms of Oppression Impacting Migrant and refugee Women in Australia' *Australian Social Work* (2018) 71(2) 238-248, 240.

¹⁵ With Respect, 'Family Violence & LGBTIQ' With Respect (Article, 2020)

<<https://www.withrespect.org.au/professionals/about/family-violence-lgbtqi-communities>>.

¹⁶ Royal Commission into Family Violence (Summary and Recommendations, March 2016) 35

<<http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>>.

¹⁷ With Respect, 'Family Violence & LGBTIQ' With Respect (Article, 2020)

<<https://www.withrespect.org.au/professionals/about/family-violence-lgbtqi-communities>>.

¹⁸ Royal Commission into Family Violence (Summary and Recommendations, March 2016) 35

<<http://rcfv.archive.royalcommission.vic.gov.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Summary.pdf>>.

expand existing specialist or targeted LGBTQIA+ services in response to local legal need.¹⁹

Aboriginal and Torres Strait Islander communities

50. The Victorian Royal Commission into Family Violence noted that Aboriginal and Torres Strait Islander persons are significantly less likely to report FDV than non-Aboriginal and Torres Strait Islander persons, for a range of reasons including 'fear about the consequences of disclosure [in particular, child removal], distrust of government agencies and service providers, historical and cultural factors and a lack of access to support services.'²⁰
51. Facilitating access to culturally safe FDV services, support networks, allied social and health services and programs, may promote improved engagement from Aboriginal and Torres Strait Islander communities. The Law Council supports the work of community controlled legal services in providing support to Aboriginal and Torres Strait Islander clients experiencing FDV through family or civil law matters, with the provision of appropriate referrals to access local support programs and emergency relief monies.

People with disability

52. In Australia, women with disabilities experience high levels of FDV, and have high levels of unmet needs in terms of access to community support services for FDV.²¹ The Law Council is concerned that, during separation, parental disability can be misconceived and argued as having a negative impact on parenting capacity,²² which may affect the orders made under the Family Law Act. A narrow interpretation of FDV as spousal and/or intimate partner violence risks overlooking other forms of abuse including coercive control.
53. In 2021, the Law Council of Australia published a model definition of family violence.²³ The model definition not only provides an accurate reflection of the features and dynamics of family violence and a non-exhaustive list of prohibited behaviours, but also includes behaviour that is coercive, or controls or dominates the family member. The model definition also considers abuse targeted towards people living with a disability and provides a basis for a coordinated and integrated approach to addressing FDV committed against women with disabilities and their children.

¹⁹ Ibid, 4.

²⁰ Royal Commission into Family Violence (Report and Recommendations, March 2016) Vol V, 28; UN General Assembly, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences on her Mission to Australia, 38th Sess, Agenda Item 3, UN Doc A/HRC/38/47/Add.1 (17 April 2018) [43].

²¹ Women with Disabilities Australia (WWDA), Submission to the Preparation Phase of the UN Analytical Study on Violence against Women and Girls with Disabilities (A/HRC/RES/17/11) (December 2011) 4.

²² Australian Women Against Violence Alliance, 2018 CEDAW Shadow Report—Violence Against Women: A non-governmental perspective on Australia's implementation of CEDAW, 70th sess, 13.

²³ Law Council of Australia, Model Definition of 'Family Violence' (27 November 2021). Available at <<https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/model-definition-of-family-violence>>.

National Principle 5: Lived experience

54. Reflecting on the importance of ensuring that the lived experiences of victim-survivors inform policies relating to coercive control, the Law Council considers that such experiences could be used to:
- (a) educate stakeholders such as legal practitioners, decision makers and family consultants to assist them to identify patterns of behaviour that might constitute coercive control, understand the long-term and short-term impacts of coercive control on victim-survivors, and identify where certain court processes may re-traumatise a victim-survivor and identify alternate systems to avoid that risk;
 - (b) aid the implementation of policies, procedures, and systems to ensure that the family law system is not able to be used by perpetrators as a mechanism to continue the control;
 - (c) inform key stakeholders about the services that may be of assistance to both parent/spouse and child (or children) victim survivors in both the short and long term; and
 - (d) formulate a definition to assist in findings being made by Courts regarding coercive control conduct.
55. When gathering perspectives from victim-survivors with a view to informing policy matters, it is critical that interactions are trauma-informed in ways that ensure questions are asked appropriately and not in ways that inadvertently collude with a perpetrator. The Law Council suggests that Principle 5 should expressly refer to this requirement.
56. Further, the Law Council is of the view that the National Principles could include intersectional case studies or anecdotes from victim-survivors and their families, which highlight how coercive controls impact across a diverse range of different socioeconomic, cultural, and gendered circumstances. These examples would assist with providing governments, services, and the general public with an understanding of the real and personal experiences of coercive control on a diverse range of people. In particular, the Law Council emphasises that the experiences of victim-survivors navigating the justice system are useful in highlighting opportunities to improve the legal response or address deficits. For example, the lived experience of victim-survivors in relation to the ability to appear in court remotely, and the ban on direct cross-examination by a self-represented respondent have contributed to beneficial reform in these areas.²⁴
57. The Law Council notes that the emphasis in the Family Law Act on the child's right to a meaningful relationship with their family member in a family law matter may result in an order for the child to spend time with the perpetrator of family violence. While judicial officers attempt to ensure that all appropriate safeguards are in place to ensure the safety of the child and/or victim-survivor, the risk of re-traumatisation arises where a victim-survivor parent is required to facilitate contact or encourage and facilitate a meaningful relationship between the child and the perpetrator. These lived experiences relating to the emotional wellbeing of a parent

²⁴ Mandy Burton, 'Specialist Domestic Violence Courts for Child Arrangement Cases: Safer Courtrooms and Safer Outcomes?' (2018) 40(4) *Journal of Social Welfare and Family Law* 537; House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (Report, December 2017) 134 [4.175]; *Family Violence Protection Act 2008* (Vic) s 70(3)(b).

victim-survivor should be taken into consideration on any proposed reform on coercive control.

National Principle 6: Coordinated approach to prevention, early intervention, response and recovery

58. Where possible, a consistent approach to identifying and responding to coercive control should be adopted across states and at the federal level to avoid confusion, misidentification and support early intervention. A clear example of family law inconsistencies becoming problematic is the inconsistent definition of a de facto relationship across different legislative instruments.
59. The National Principles note that governments have recognised coercive control through various legislative definitions and offences. Specifically, Principle 6 states 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.
60. It will be important to ensure first responders have the capacity to implement the National Principles. Applying a framework that characterises coercive control as an overarching element of FDV, 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.²⁵ 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.
61. 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. Related to this point, it is noted 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.²⁶

Clear pathways for a coordinated approach

62. The Law Council considers that it would be beneficial for the National Principles to provide a clear framework which outlines the types of responsibilities and actions which should fall to key government bodies and stakeholder organisations. The broad nature of the National Principles does not currently provide for accountability targets to measure success and progress. The Law Council recommends that the framework should also consider how community awareness of coercive control will be increased, including police and justice responses.

Inconsistent definitions of FDV

63. Pursuant to the development of the National Principles, the Law Council continues to recommend the adoption of a national model definition of FDV, which includes coercive control, to ensure the same types of FDV behaviours are recognised, and the experiences of victim-survivors can be better understood across the country.

²⁵ 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.

²⁶ Australian Human Rights Commission, Wiyi Yani U Thangani (Women’s Voices): Securing Our Rights, Securing Our Future Report (2020) 103.

Inconsistent definitions of FDV across State, Territory and Federal legislation create additional barriers for victim-survivors experiencing FDV and coercive control. For example, the *Family Violence Protection Act 2008* (Vic) includes threats to pets as a form of FV,²⁷ while the definition under the federal Family Law Act does not.²⁸

64. The efficacy of a national family violence definition relies on consistency, flexibility, and comprehensiveness. The Law Council appreciates the difficulty in creating uniformity across jurisdictions which have developed existing and unique legal approaches. However, it reiterates its strongly held view that consistent definitions should be a priority between jurisdictions, and continue to promote the Law Council's model definition of family violence for consideration.²⁹
65. A consistent FDV definition that includes coercive control is essential to effectively support people affected by coercive control, improve the legal and community understanding of what constitutes coercive control, and support practitioners to identify and address coercive control concerns.

National Principle 7: Criminalisation of coercive control

66. The criminalisation of coercive control will ultimately remain a matter for the states and territories. However the Australian Government is well-placed to facilitate a national dialogue on whether the offence should be created, and the Law Council applauds the open-minded approach adopted in National Principle 7.
67. In general, the Law Council is supportive of the development of shared principles to guide any criminalisation of coercive control by states and territories and run a public awareness campaign on the nature of coercive control. Such an approach was recommended by the House of Representatives Standing Committee on Social Policy and Legal Affairs' (SPLA) *Inquiry into Family, Domestic and Sexual Violence in 2021*.³⁰
68. However, the development and implementation of any specific coercive control offence should be regarded as only one part of a broader approach to addressing coercive control. Regardless of whether there is a standalone offence of coercive control, the Law Council endorses a holistic and therapeutic approach to the issue, noting in particular that there is limited evidence as to the effectiveness of imprisonment as a means of deterring or rehabilitating FDV offenders or in reducing crime.³¹
69. The Law Council recognises that criminal punishment is not always the most appropriate method of deterrence for perpetrators and may in fact, encourage a cycle of reoffending.³² As of yet, there is little by way of conclusive evidence to suggest that introducing a standalone offence of coercive control increases women's safety outcomes or improves their access to justice.³³ In the absence of such compelling evidence, it may be that jurisdictions appropriately adopt a view that

²⁷ *Family Violence Protection Act 2008* (Vic), s 5(2)(e).

²⁸ *Family Law Act 1975* (Cth), s 4AB.

²⁹ Law Council of Australia, *Model Definition of 'Family Violence'* (27 November 2021), available at <<https://www.lawcouncil.asn.au/policy-agenda/advancing-the-profession/model-definition-of-family-violence>>.

³⁰ House of Representatives Standing Committee on Social Policy and Legal Affairs, *Parliamentary Inquiry into Family, Domestic and Sexual Violence* (Final Report, March 2021), Rec 24.

³¹ Royal Commission into Family Violence (Final Report, March 2016) vol 2, 27.

³² *Ibid.*

³³ Dr Kate Fitz-Gibbon, Director, Monash Gender and Family Violence Prevention Centre, *Committee Hansard: Standing Committee on Social Policy and Legal Affairs' Inquiry into Family, Domestic and Sexual Violence* (8 September 2020) 10.

increased community awareness of coercive control and civil law penalties are sufficient to act as a deterrent.

Definitional challenges

70. Definitional challenges remain the most critical drafting aspect to the criminalisation of coercive control. An offence of coercive control, like the offences of maintaining an unlawful sexual relationship with a child (**MUSR**) or stalking, are seeking to criminalise a course of conduct, rather than discrete acts such as an assault or a theft.
71. In particular, unlike the MUSR offence where the acts are themselves unlawful, a prospective coercive control offence may seek to criminalise behaviours that, whilst unpleasant and even offensive, may be lawful. The line between when lawful behaviours become the subject of a criminal sanction may therefore be problematic, especially if that line is based on the subjective experience of the 'controlled' party.

Retrospectivity

72. One key consideration in relation to the criminalisation of coercive control is the extent to which it may apply indefinitely to past conduct—whether there are any time limitations on such an offence, and its potential retrospective operation. It may be that the national principles highlight this potential tension.
73. As a matter of principle, that it would be highly unfair to criminalise past behaviours that were legal, however repugnant, at the time. For such an offence to operate retrospectively would be contrary to the very long held and observed legal principles of fairness to accused persons that, for an act to be an offence, the act must be unlawful at the time and not made unlawful retrospectively.

Inadequacies of criminalisation

74. As noted above, addressing the root causes of the offending, as opposed to an overreliance on criminalisation is likely to lead to marked improvements for both the victim-survivors and perpetrators. This approach to integrated therapeutic responses, involving child protection, family law and FDV legal services is an effective method for addressing broader issues underpinning the incidence of coercive control, by providing collaborative 'wrap around' care that promotes community-based, family-centred services and support.³⁴
75. The Law Council is supportive of targeted therapy and meaningful rehabilitation to address the underlying causes of criminal behaviour as a more effective response to prevent re-offending. While it is necessary in certain situations to incarcerate persistent violent offenders, the Law Council urges that evidence-based strict enforcement of community-based sentences, as well as focused deterrence, should play an important role in preventing the reoccurrence of violence and abuse.³⁵
76. The Law Council remains concerned that the criminal justice system is at times ill-equipped to deal with the nuanced complexity of coercive control, including police responses and the need to establish patterns of abuse as opposed to a single incident. Substantial institutional and behavioural reforms would be required before the prosecution of an offence could be successful. Additionally, behaviours that may

³⁴ Family and Relationships Services Australia, *Strengthening Prevention and Early Intervention Services for Families into the Future* (Report, March 2017) 15.

³⁵ Harley Boxall, Anthony Morgan, Australian Institute of Criminology, 'Repeat domestic and family violence among young people', *Trends & issues in Crime and Criminal Justice* (2020) 591.

be abusive from the perspective of the victim-survivor may be legal in other contexts or otherwise difficult to identify, prove and prosecute within the criminal justice system.³⁶

Considerations for the development of a coercive control offence

77. In the circumstance that states or territories do seek to criminalise coercive control, the Law Council supports mandated education programs on coercive control for all stakeholders, including police, prosecutors, lawyers, health professionals and social services professionals.
78. The Law Council notes the challenges for prosecutors to prove coercive control beyond reasonable doubt in criminal proceedings. Criminal law offences are often incident-based, which means that proving a course of conduct over a period of time to reach the required statutory threshold can be difficult. Given the nuanced and individual experiences of coercive control for each victim-survivor, there may be minimal corroborating or admissible evidence of the offence besides the victim-survivor's witness statement.³⁷
79. However, in submitting to the abovementioned SPLA inquiry in 2020, the Law Council referred to data from England and Wales as being relevant to the discussion regarding the utility of an offence of coercive control, including statistics on successful convictions overseas. In conclusion, the Law Council noted that the number of convictions in comparable jurisdictions shows that it is possible to prove the offence beyond reasonable doubt and is, in the Law Council's view, high enough to warrant consideration of the value of the offence in Australia.

National Principle 8: Unintended consequences of criminalisation

80. The Law Council is cognisant of the potential for unintended consequences to arise in response to the criminalisation of coercive control, as highlighted by the National Principles. The National Principles are well-placed to adopt a position on the necessity and efficacy of criminalisation of coercive control for consideration by Australian states or territories, which incorporates considerations of potential unintended consequences and strategies for mitigating these outcomes.
81. In particular, the Law Council notes that certain demographics are likely to be disproportionately affected by criminalisation of the offence, including those who are 'over-policed' and/or have a history of structural and institutional marginalisation, including Aboriginal or Torres Strait Islander communities and migrant and refugee communities.³⁸
82. A significant risk which would undermine the purpose of such a reform, is the potential consequence for coercive control legislation unintentionally being used against victims. Where a victim-survivor is mistakenly identified as the predominant aggressor and the perpetrator in need of protection, this may result in serious

³⁶ Tolmie, J.R. (2018). Coercive control: To criminalise or not to criminalise?. *Criminology and Criminal Justice*, 18(1), 50-66. 51.

³⁷ Domestic Violence Australia and Domestic Violence Resource Centre Victoria, 'Responding to Coercive Control in Victoria – Broadening the conversation beyond criminalisation' (May 2021) 18.

³⁸ Maturi, J. and Munro, J, 'Should Australia criminalise coercive control? Fighting domestic violence and unintended consequences' *Asia and the Pacific Policy Society Policy Forum* (November 2020); Australian Law Reform Commission, *Pathways to Justice-Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No. 133, 2017); Vaughan, C. et al. *Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia*, The Aspire Project: Research Report, ANROWS (2016).

consequences to the victim-survivor. As noted above, education on coercive control and the many forms which it may be expressed is essential for first responders, legal practitioners and service providers to be able to correctly identify the victim-survivor. The Law Council submits that until robust practices and processes are developed to prevent misidentification from occurring, it is problematic to introduce a new offence that could increase the likelihood of misidentification.³⁹

83. 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. For it to have a deterrent effect, the offence must be properly defined both at law and in each particular case, for the criminal law to be effective at identifying, to both the community and offender, behaviour that constitutes a criminal wrong. Clarity is especially important if the criminal law is to achieve general deterrence and denunciation.
84. Research suggests that criminal sanctions in response to FDV may lead to victim-survivors being less willing to engage in the justice system, either due to past negative experiences with the criminal justice system or a desire to avoid incarceration or impose a criminal record on the perpetrator.⁴⁰ This is particularly so for migrant victim-survivors dependant on their partner's visa or older women experiencing coercive control by a close family member. Criminalisation of coercive control may also exacerbate existing issues with police responses to FDV, including 'fear of gender bias, discrimination, not being believed, fear that the abuse will escalate following police intervention, or that they will be blamed for the abuse committed against them'.⁴¹
85. As noted above under National Principle 6, the Australian 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.
86. Finally, the Law Council is supportive of the recommendation by the Australian National Research Organisation for Women's Safety for funding of measures that monitor the implementation of coercive control offences, including unintended consequences.⁴²

³⁹ Domestic Violence Australia and Domestic Violence Resource Centre Victoria, '*Responding to Coercive Control in Victoria – Broadening the conversation beyond criminalisation*' (May 2021) 20.

⁴⁰ See, Walklate & Fitz-Gibbon, 'The Criminalisation of Coercive Control: The Power of Law?' *International Journal for Crime, Justice and Society* 8(4): 94-104 (2019).

⁴¹ Australian Women Against Violence Alliance, Submission No 122.1 to the House Standing Committee on Social Policy and Legal Affairs, Inquiry into Family, Domestic and Sexual Violence (1 April 2021) 5.

⁴² ANROWS, *Policy Brief: Defining and responding to coercive control* (January, 2021), Recommendation 3.