Law Council
OF AUSTRALIA

Continuing Professional Development for Legal Practitioners on Coercive Control

Attorney-General's Department

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Telephone +61 2 6246 3788
Email mail@lawcouncil.au
PO Box 5350, Braddon ACT 2612
Level 1, MODE3, 24 Lonsdale Street,
Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
www.lawcouncil.au

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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 2023 are:

- Mr Luke Murphy, President
- Mr Greg McIntyre SC, President-elect
- Ms Juliana Warner, Treasurer
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member
- Ms Tania Wolff, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple. The Secretariat serves the Law Council nationally and is based in Canberra.

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

Acknowledgements

The Law Council is grateful for the assistance of its Family Law Section in the preparation of this submission, in addition to the following Constituent Bodies:

- Law Society of the Australian Capital Territory;
- Law Society of New South Wales;
- Law Society of South Australia; and
- Law Institute of Victoria.

General comments

1. The Law Council welcomes the opportunity to provide a submission to the Attorney-General's Department in response to the Discussion Paper titled 'Continuing Professional Development for Legal Practitioners on Coercive Control'. The Law Council notes that this consultation will inform the development and delivery of continuing professional development (**CPD**) training for legal practitioners on coercive control, with $0.9 million over 4 years provided for this project.[1]

2. The Law Council understands that the training proposed within the Discussion Paper is intended to form a part of a nationally-coordinated approach to education and training on family, domestic and sexual violence for community frontline workers, health professionals, and the justice sector. It will also support implementation of the National Plan to End Violence against Women and Children 2022–2032.[2]

3. In particular, the coercive control training measure is intended to respond to reports and inquiries that have recommended improved education for legal sector professionals in relation to family violence.[3] The Law Council has previously expressed its support for additional family violence training across the profession.[4]

4. 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. Coercive control is often a central or underlying feature of a perpetrator's use of family violence.[5]

5. Understanding and responding to coercive control is an important part of preventing and responding to family violence. The Law Council supports measures that will promote an increased understanding within the legal community of coercive control which will, in turn, lead to effective recognition and improved responses. Targeted and ongoing community education, including for the legal profession and others within the justice system, can be an important component of such measures.

Effective use of the allocated funding

6. In the Law Council's view, funding of $0.9 million over four years is unlikely to be sufficient to develop and deliver the training package as contemplated.

7. It is likely that resourcing even a modest training program consistent with the National Principles to Address Coercive Control, rolled out across all jurisdictions, to a significant cross-section of legal practitioners, and allowing for a focus on those

[1] Attorney-General's Department, Continuing Professional Development for Legal Practitioners on Coercive Control (Discussion Paper, 2 June 2023) 1.
[2] Ibid.
[3] Ibid. See also House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into family, domestic and sexual violence* (Report, March 2021) rec 26; Joint Select Committee on Australia's Family Law System, Improvements in family law proceedings (Second Interim Report, March 2021), rec 15; Australian Law Reform Commission, *Family Law for the Future — An Inquiry into the Family Law System* (Report No 135, March 2019) rec 52.
[4] Law Council of Australia, Submission to Council of Attorneys-General Family Violence Working Group, *Options for improving the family violence competency of legal practitioners: Consultation Paper* (30 September 2019) 8-9.
[5] *National Plan to End Violence against Women and Children 2022–2032* (17 October 2022) 37; Meeting of Attorneys-General, *National Principles to Address Coercive Control – Consultation Draft* (September 2022) 3.

who encounter clients affected by family and domestic violence including coercive control, would exceed the allocated funding.

8. Given the current budget envelope, the Law Council suggests 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. 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 and legal assistance organisations.

9. Such an approach would also align with the recommendation of the House of Representatives Standing Committee on Social Policy and Legal Affairs in the Report on its Inquiry into family, domestic and sexual violence that:

> *… the Australian Government and state and territory governments consider developing minimum standards for training on coercive control and including training on coercive control in relevant professional qualifications.*[6]

10. Standards should be developed in close consultation with the legal profession and community-based family violence services.

Continuing Professional Development for Legal Practitioners

Which types of organisations would be best placed to develop and deliver this training program?

11. Whether the Australian Government chooses to allocate the funding to the development of national standards, or to the delivery of a training package (as appears to be currently envisaged), the Law Council recommends that one organisation should be appointed as a program lead and be empowered to collaborate with other organisations to facilitate an intersectional approach to training through shared experiences and resourcing. These organisations should include those working directly with victim-survivors of family violence, First Nations people, LGBTQI+ people, people with refugee, migrant or culturally and linguistically diverse backgrounds, and people living with disabilities or other vulnerabilities.

12. Providers of the training will need to engage with individuals who have extensive knowledge and experience when dealing with coercive control behaviours, highlighting the need to incorporate services which are in connection with victim survivors. From the outset, direct input from victim-survivors should be included in the development and design of the proposed program. Involvement of victim-survivors should then continue into the delivery of the project.

13. It is important to recognise the definition of who can be a victim-survivor of coercive control (set out at paragraph 4 above)—noting that such behaviours are not only present in intimate partner relationships. As examples, similar relationship behaviours can occur for older people, perpetrated by their children in the context of elder abuse, or between people with a disability and their carers.

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[6] House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into family, domestic and sexual violence* (Report, March 2021) rec 26.

14. 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 and an adequate consultation process. To tailor 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.

15. The Law Council particularly notes the importance of engaging with Aboriginal and Torres Strait Islander community-controlled organisations to ensure that the perspectives of First Nations peoples are appropriately reflected, and to ensure that cultural safety and sensitivity is front and centre. There is a need to ensure that any systemic education includes the effects of trauma, including intergenerational, historical and complex trauma.

16. A substantial range of training materials and courses suitable for educating legal practitioners on coercive control is already available across Australia. The types of organisations that may be best placed to develop and (potentially) deliver these training programs are those with existing expertise in developing and delivering family violence education programs, such as:

    - specialist family violence victim-survivor organisations;
    - 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; and
    - universities with the ability to access specialist and expert content/presenters and existing channels with capacity to deliver micro credentials.

17. Consideration could be given to conducting an audit of the availability of this type of training with a view to leveraging existing material, wherever possible.

Content

18. The Law Council recognises that the varied legislative responses to coercive control across Australian jurisdictions increase the difficulty of providing national CPD training on coercive control for the profession. However, the Law Council sees benefit in encouraging all practitioners to have a sufficient level of understanding of coercive control generally, as well as some knowledge of the specific legislative approaches across jurisdictions. The Law Council recommends the development of both introductory foundational training and specialist intensive training, to account for practitioners' differing practice areas and varying levels of interaction with victim-survivors. To the extent that a nationally consistent approach is possible, this would be preferred.

19. Any family safety professional competency package must ensure that legal practitioners are trained to understand the psychological complexities and inter-party dynamics that exist in coercive control matters, how to identify these dynamics in a client's unique circumstances, the impact of coercive control on a broad range of legal issues across jurisdictions, and the resources and referral opportunities that are available. The Law Council recommends that training for the profession should also include real, de-identified and intersectional case studies or anecdotes from victim-survivors and their families, which would highlight the impact of coercive control across a diverse range of different socioeconomic, cultural, and gendered circumstances. It is important to increase awareness across the profession about

the various cultural norms, gender issues, mental health concerns, and disability needs that may be relevant in a family violence context, and particularly in circumstances of coercive control.

20. The Law Council highlights the need for training that takes lessons from trauma-informed practice, gendered and intersectional perspectives on coercive control, risk identification, assessment and management, and lessons on the impact of misidentification of victim-survivors as perpetrators, and systems abuse by perpetrators. While practitioners do not need to be experts in coercive control risk management and response, they should be equipped to identify coercive control, communicate concerns to clients in a trauma-informed way and have a general understanding of appropriate referral or support organisations that may be able to assist the client, particularly relating to any immediate risk assessments.

21. Some members of the legal profession have advised that, in circumstances where practitioners consider that they have identified circumstances of coercive control or other family violence, many are unsure what to do next or how to support the client. Training for legal practitioners is incomplete without sufficient education on appropriate referral pathways. As such, training should include referral resources and links to a range of support organisations to better equip practitioners to respond to concerns. A referral directory with information regarding other relevant support services, would assist practitioners to promote a more coordinated case-management approach. Given the limitations of the proposed funding envelope, some additional funding to support referral resources may be required.

22. The Law Council also notes that there may be benefit in ensuring that practitioners are provided with a general overview of relevant legislation across Australia, as it is not uncommon for victim-survivors to relocate to other jurisdictions when escaping family violence.

Provision of national and/or local information

23. Any national-level training program would necessarily need to focus on principles, concepts and shared law. However, for the training to be most effective, it will largely need to 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 the criminalisation of coercive control and recognition of the jurisdictional differences such as the case in 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. Commissioning jurisdictional resource kits for training participants would be important if a national training program were established.

Mode of delivery

24. As stated above, the Law Council suggests 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.

25. 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 likely be the most cost-effective to produce and most affordable for legal professionals.

26. This approach would assist in ensuring that training can provide general guidance on coercive control dynamics and behaviours, supplemented by further training specific to the practitioner's jurisdiction.

27. The Law Council supports a model that 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. 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.

28. 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. Current work could be built on to increase consistency, in terms of content and user experience. This would mean that all Australian legal professionals would receive the same basic training, with jurisdictional specific content added as a separate component.

29. 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. Stakeholder input will be necessary for such a website to be effective.

Data and evaluation requirements

30. 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, and collate and anonymise feedback. This would be most effectively done via an established Learning Management System. Alternatively, an online survey tool that allows for anonymised collection of data may be a low-cost option.

31. 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.

32. The Kirkpatrick model is a standard measure of learning effectiveness—measuring four criteria: reaction, learning, behaviour, and results.[7] Whether the training was effective in upskilling legal practitioners could be tested using established methodologies. There should be certification on successful completion of a learning module.

33. Funding and conducting an extensive survey of legal practitioner needs, 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.

[7] See, eg, Poorvu Center for Teaching and Learning, Yale University, *Kirkpatrick Model* (Web Page) <https://poorvucenter.yale.edu/Kirkpatrick>.

Additional comments

34. Many practitioners enter the profession with a limited understanding of family violence and coercive control. Increasing the level of early education at the university or practical legal training level would ensure that all practitioners entering the profession have a basic understanding of family violence and coercive control dynamics.[8] As part of this work, there may be value in establishing greater connection between law schools and other faculties (such as social work or medicine) for undergraduate education awareness.

35. Further, the Law Council notes that, whilst many law graduates will practise law in their careers, others may enter fields that are likely to have a significant impact on the law, such as politics, legal education, or policy roles in government departments. For this reason, the Law Council suggests that early education for law students is essential in supporting greater community understanding of, and responses to, family violence and coercive control.

[8] See further, Law Council of Australia, Submission to Council of Attorneys-General Family Violence Working Group, *Options for improving the family violence competency of legal practitioners: Consultation Paper* (30 September 2019) 10.