



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

Aboriginal Family Legal Service WA

July 2023

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1 Introduction

Aboriginal Family Legal Service (AFLS) welcomes the opportunity to provide a submission to the Attorney General's Department Discussion Paper on the design of a grant opportunity for a suitably qualified organisation or consortium to develop and deliver a family safety professional competency package to educate and train legal practitioners on coercive control.

AFLS is a specialist Aboriginal Community Controlled Organisation operating under the Family Violence Prevention Legal Service (FVPLS) program funded by the Commonwealth Government through the National Indigenous Australians Agency. The AFLS FVPLS program provides specialist legal assistance and wrap-around non-legal supports to Aboriginal and Torres Strait Islander people experiencing or at risk of family and domestic violence and/or sexual assault.

AFLS is the largest FVPLS operating in Western Australia, with services delivered to the East and West Kimberley, Gascoyne, Midwest, Goldfields, Pilbara and Perth metropolitan regions. AFLS offices are located in Broome, Kununurra, Carnarvon, Geraldton, Kalgoorlie, Port Hedland and Perth, from which outreach services extend to over 30 remote Aboriginal townships and communities. AFLS has a service delivery area of approximately 1,978,622 square kilometres, with an estimated Aboriginal and Torres Strait Islander population of 72,961.

This submission seeks to highlight the particular considerations we deem essential for legal practitioners engaging with Aboriginal and Torres Strait Islander victims, who may experience coercive control as a feature of family and domestic violence. AFLS will draw on elements of our submission to the Attorney General's Department Consultation Draft of the National Principles to Address Coercive Control, to inform this response.

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

A. Content for inclusion in a family safety professional competency package to educate and train legal practitioners on coercive control

Aboriginal and Torres Strait Islander people experience family violence broadly, and coercive control more specifically, in the context of complex intergenerational trauma from a history of dispossession, discrimination and disempowerment. Blagg et al. suggest that while Aboriginal women are vulnerable to common forms of coercive control, they "may also experience forms of lateral and intergenerational coercion that side outside conventional paradigms of coercive control as a purely gendered phenomenon."¹ They refer to negative behaviours between family members such as humbugging (aggressively demanding money, goods and services) and jealousy, which is the practice of "testing the loyalty of a partner by excessive flirtation with another."²

It is not appropriate, therefore, for the family safety professional competency package to exclusively refer to coercive control as a product of gender inequality, as was suggested by the Consultation Draft

¹ Blagg et al., 'Innovative models in addressing violence against Indigenous women: *Final Report*', 2018. Australia's National Research Organisation for Women's Safety.

https://apo.org.au/sites/default/files/resource-files/2018-01/apo-nid130566_1.pdf

² Blagg et al., 'Innovative models in addressing violence against Indigenous women: *Final Report*', 2018. Australia's National Research Organisation for Women's Safety.

https://apo.org.au/sites/default/files/resource-files/2018-01/apo-nid130566_1.pdf

on the National Principles to Address Coercive Control.³ Any education and training package on this topic for legal practitioners must explore how the unique historical experiences Aboriginal and Torres Strait Islander people may impact their contemporary experiences of violence, including coercive control as a feature of family and domestic violence. This should also include information on how perpetrators may manipulate legal systems (i.e. systems abuse) to entrench their control of their victim/s. For Aboriginal people in particular, there is a strong link between family violence and the removal of children from their families and placement into the out-of-home care system, where Aboriginal children are severely overrepresented. The threat of removal can be weaponised by perpetrators to stop victims from reporting and addressing their abuse. The education and training package must therefore look at the relationships between the use of coercive controlling behaviours, continued abuse of victims due to manipulation of fears of child removal, and the impacts of actual child removal on families and children due to family violence child abuse concerns.

We note, per the suggestion made by the Attorney General's Department in National Principle 3: Community Understanding, of the Consultation Draft on the National Principles to Address Coercive Control, that 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."⁴ This approach is an important driving force in why legal practitioners experience barriers to appropriately identifying and addressing coercive control as a feature of family and domestic violence. In AFLS's experience, we concede that while legal assistance services may make efforts to adopt approaches to understanding violence that incorporate meaningful understandings of patterns of abuse including coercion, family violence matters generally occur within a system that fails to understand or ensure effective responses not only to coercive control, but to even less sophisticated actions of family violence such as physical violence. Incidents of police putting 72 hour orders on perpetrators when called to a family violence incident, for example, and never following up on the offences that led to police being called or failing to engage in prevention and safety planning with victims, demonstrate the operational environment in which physical, tangible acts of violence are being perpetrated and managed.

The failures on the part of systems responses to understand coercive control is therefore a key driver of poor practitioner understanding and response. We support commentary within National Principle 7 of the Consultation Draft on the National Principles to Address Coercive Control, that enforced legal responses to coercive control are:

*Only one part of broader efforts to address coercive control. 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, response and recovery areas.*⁵

³ Australian Government Attorney-General's Department, 'Consultation Draft – National Principles to Address Coercive Control', 16 September 2022, <https://consultations.ag.gov.au/families-and-marriage/coercive-control>.

⁴ Australian Government Attorney-General's Department, 'Consultation Draft – National Principles to Address Coercive Control', 16 September 2022, <https://consultations.ag.gov.au/families-and-marriage/coercive-control>.

⁵ Australian Government Attorney-General's Department, 'Consultation Draft – National Principles to Address Coercive Control', 16 September 2022, <https://consultations.ag.gov.au/families-and-marriage/coercive-control>.

We refer to and endorse Respect Victoria's position paper on Coercive Control and the Primary Prevention of Family Violence, which stresses the importance of accelerating broader systems and cultural changes in response to coercive controlling behaviours:

Criminalisation and enforcement alone will not prevent coercive control as it is an inherently reactive approach dealing with situations once they have developed to a harmful point... it is particularly important that any legislative approach not be pursued without attending at the same time to the more fundamental drivers of family violence and violence against women – including discrimination, marginalisation, inequality and abuse of power – which also often drive inequality in access to justice and support.

Any education and training package on this topic, in addition to investing in practitioner understanding of coercion and other unhealthy behaviours in intimate and other family relationships, must therefore be complemented by structural changes to criminal justice responses to family violence and police investigations. This combined approach must be reflected in the discourse of the training package, and must capture the demand for targeted investment in systems reform as an enabler of practitioner best practice service delivery for victims of coercive control.

3 Continuing Professional Development for Legal Practitioners

A. Design, delivery and reach of the training program

It is our first preference that specialist intensive training specifically targeting lawyers working in areas of law that frequently encounter FDV is developed, closely followed by introductory foundational training modules for all practitioners. We also strongly advocate for the application of training programs developed for this purpose, for police. In the particular context of Aboriginal family violence, it is our view that failures on behalf of the police and court systems to provide decent responses and eventual prosecutions of perpetrators of physically violence acts means that the capacity of a coercive control offence to lead to policing or court outcomes which bring any additional safety to victims of violence, without sufficient training of police and court staff, is contentious. We also have concerns regarding the expansion of police discretion through coercive control legislation which could become another mechanism to further disempower Aboriginal women who are victims of this form of abuse and make them more vulnerable to victimisation. We therefore consider that training in coercive control is critical not only for the legal profession but for all those practitioners, with an emphasis on police, engaging with victims of such violence.

4 Grant Opportunity Guidelines

A. Development and delivery of a coercive control training program

The development of a training program on coercive control must be driven by specialist family violence experts, and be co-led by Aboriginal family and domestic violence expertise. The training program cannot be a one-size-fits-all package, noting the differences in coercive control legislation across each state and territory. The principles of coercive control will be applicable across the country, however the information on criminalisation of coercive control must be tailored to the unique circumstances of each jurisdiction. The program must also be cognisant of how coercive control may be experienced differently across jurisdictions, including in rural, regional and remote areas, and must specifically refer to the various and diverse victimisation experiences of Aboriginal people. Regarding the establishment of a consortium or sub-contracting arrangements, we are not best placed to provide comment on this.

5 Data and Evaluation Requirements

Ongoing data collection will be critical to determining the effectiveness of a CPD training program for legal (and other) practitioners on coercive control. We consider that one of the most important elements of data collection will be participant's perceived prior knowledge of and reflections on how the training has challenged their thinking on coercive control. This outcomes-based data collection will be able to tell us more about their learnings than the number of sessions they attended.