

14 November 2022

Ms Teresa McMichael
Director, Family Safety Branch
Attorney-General's Department

By email: coercivecontrol@ag.gov.au

Dear Ms McMichael

Draft National Guidelines to Address Coercive Control

Legal Aid NSW welcomes the opportunity to provide feedback on the draft National Principles to address Coercive Control (the **Draft Principles**).

Domestic and family violence cuts across Legal Aid NSW's family, civil and criminal law divisions and impacts on many of our clients.

We provide specialist services to victim-survivors¹ of domestic and family violence, including through our Domestic Violence Unit, a trauma-informed multidisciplinary service made up of lawyers, social workers and financial counsellors. Our Women's Domestic Violence Court Advocacy Program (**WDVCAP**) administers NSW Government funding to 27 non-government organisations to provide Women's Domestic Violence Court Advocacy Services (**WDVCAS**), the main frontline, specialist support service for female victims of domestic and family violence in NSW. Our specialist Elder Abuse Service is focused on supporting older people at risk of or experiencing elder abuse. Our criminal defence practice represents people charged with domestic and family violence offences, and in some instances, defends applications for Apprehended Personal Violence Orders (**ADVOs**).

Our feedback on the Draft Principles is informed by our experience assisting both victims of domestic and family violence, defendants to ADVO applications and those charged with domestic and family violence offences.

Legal Aid NSW supports the development of the Draft Principles and their objective of supporting government and non-government organisations involved in addressing coercive control to help raise community awareness of coercive control, inform more

¹ Victim-survivor is used in this letter to denote a person who is the victim or complainant or alleged victim of domestic and family violence or sexual violence. Some people who experience violence prefer the term 'victim' and others prefer the term 'survivor'. We acknowledge every person's experience is unique and individual to their circumstances.

effective responses to family and domestic violence, and promote more consistent support and safety outcomes for victim-survivors.

We make the following comments on specific draft Principles:

- **Draft Principle 1 Common Features**

Draft Principle 1 states that coercive control is most often identified in the context of intimate partner relationships and can occur in a broad range of relationships, including broader family relationships and within cultural kinship connections in Aboriginal and Torres Strait Islander communities.

We consider that the proposed criminal offence of coercive control in NSW should not apply to this broad range of relationships, as discussed further under Draft Principle 7 below.

- **Draft Principle 2: Impacts**

Legal Aid NSW acknowledges the significant and long-lasting impacts of coercive and controlling behaviour on victims of domestic and family violence—as described in Draft Principle 2 and explanatory notes—it impacts on their dignity, liberty, autonomy and personhood, as well as to their physical and psychological integrity. We also acknowledge the evidence that coercive control is a significant predictor of intimate partner homicide.

- **Draft Principle 3: Community Understanding**

We acknowledge the findings of the NSW Joint Select Committee on Coercive Control's Inquiry into coercive control in domestic relationships, that NSW laws do not respond well to coercive control as a type of abuse, and there is poor understanding of it in our community.¹

- **Draft Principle 4: Effects of Discrimination and Inequality**

Legal Aid NSW agrees that discrimination and inequality particularly impact the way groups such as Aboriginal and Torres Strait Islander peoples, people who are from culturally and linguistically diverse communities, people who are migrants or refugees, people who live on temporary visas, LGBTQIA+ people, people with disability and people who live in rural, regional or remote areas of Australia experience coercive control.

- **Draft Principle 5: Lived Experience**

We support the lived experience of victim-survivors, including children and young people, informing policies and solutions to address coercive control.

- **Draft Principle 6: Coordinated approach to prevention, early intervention, response and recovery**

Legal Aid NSW agrees that all areas involved in addressing family and domestic violence should work together to address coercive control and reduce duplication and gaps in services. We agree that actions should be evidence-based, traumainformed and occur across prevention, early intervention, response and recovery, and that approaches should focus strongly on education and training.

¹ Joint Select Committee on Coercive Control Report 1/57, *Inquiry into coercive control in domestic relationships* (June 2021), vi.

We strongly support the implementation of an extensive primary prevention and awareness-raising campaign for the broader community that acknowledges the gendered drivers of domestic and family violence, and seeks to change the behaviours and norms, in all areas of society that excuse, justify or even promote violence against women and their children. We consider this is particularly important given the findings of the Victorian Royal Commission into Family Violence, that “there is some evidence that exposure to family violence as a child can lead to intergenerational transmission of violence: children exposed to family violence are more likely to hold attitudes that justify their own use of violence.”²

- **Draft Principle 7: Criminalisation of coercive control**

Legal Aid NSW has made detailed submissions about the proposed offence of coercive control in NSW.³ We agree that criminalisation is only one part of a broader approach to addressing coercive control.

Legal Aid NSW supports the criminal offence of coercive control in NSW being limited to behaviour by an adult directed to a current or former partner. While we acknowledge that coercive control appears in broader family violence situations such as elder abuse, we consider that the risks of capturing non-criminal behaviour outweigh the benefits of potential criminalisation of coercive control in a broader range of exploitative relationships.

Legal Aid NSW also supports the criminal offence of coercive control in NSW excluding child defendants under 18 years of age. We consider that the dynamics of domestic and family violence perpetrated by children differ significantly from adult domestic and family violence behaviour, as acknowledged in the NSW Youth Justice Domestic and Family Violence Strategy.⁴

- **Draft Principle 8: Unintended Consequences of criminalisation** Legal Aid NSW strongly agrees that the decision to criminalise, and the development and implementation of any coercive control offence, should involve careful consideration of unintended consequences for victim-survivors and perpetrators, particularly those already disadvantaged by the justice system. We agree that this includes the risk of victim-survivors being misidentified as perpetrators of family and domestic violence or further traumatised through difficult criminal justice processes, and the risk of increasing the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system.

Legal Aid NSW considers that to minimise these risks, comprehensive training should be provided for frontline justice staff regarding the dynamics of domestic and family violence, the complex nuances of coercive control and approaches to identifying the primary victim prior to the commencement of any new legislation on coercive control. This training should be provided to police, supervising police officers and other criminal justice participants including prosecutors, defence lawyers and lawyers working with victims, court staff and judicial officers.

² *Victorian Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 1, 37.

³ [Legal Aid NSW submission](#) to the NSW Department of Communities and Justice, Crimes Legislation Amendment (Coercive Control) Bill 2022, August 2022 and [Legal Aid NSW submission](#) to the NSW Joint Select Committee Inquiry into Coercive Control, February 2021.

⁴ Youth Justice Domestic and Family Violence Strategy 2019-2022, (November 2019) 4 <
<http://www.juvenile.justice.nsw.gov.au/Documents/youth-justice-domestic-and-family-violence-strategy-2019-2022.pdf>>

Thank you again for the opportunity to provide feedback on the Draft Principles. If you have any questions or would like to discuss this feedback further, please contact



Yours sincerely

A handwritten signature in blue ink, appearing to read 'Monique Hitter'.

Monique Hitter
Chief Executive Officer