



Development of national principles on addressing coercive control

Terms of reference, 1 July 2021

Background

All Governments recognised in the Fourth Action Plan of the *National Plan to Reduce Violence Against Women and their Children 2010-2022* that emotional, psychological and financial abuse are all types of domestic violence, as is controlling a partner through fear, coercion or intimidation. The issue of coercive control has gained increased attention and awareness and National Cabinet's work on women's safety recognises that all governments have responsibility for these important issues.

Addressing coercive control raises complex legal and policy questions, upon which a national approach would be beneficial to minimise inconsistencies and enable national synergies and clear messages.

On 1 April 2021, the House of Representatives Standing Committee on Social Policy and Legal Affairs published the report from its *Inquiry into Family, Domestic and Sexual Violence*. The Committee recommended that the Australian Government and state and territory governments develop shared principles to guide any criminalisation of coercive and controlling behaviour, with a view to ensuring consistency across jurisdictions to the extent possible (recommendation 24). In making this recommendation, the Committee recognised that there was no consensus of opinion amongst stakeholders as to the merits of criminalisation, and that the decision to criminalise coercive control is a matter for the legislature of each state and territory. The Committee also made recommendations with respect to broader systems reform, such as in relation to awareness raising, training and risk management (recommendations 25-27).

On 9 June 2021 the Meeting of Attorneys-General (MAG) agreed to co-design national principles to develop a common understanding of coercive control and matters to be considered in relation to the potential criminalisation of coercive control, in consultation with women's safety officials, noting criminalisation ultimately remains a matter for decision by individual jurisdictions, and some jurisdictions have already criminalised coercive control. The MAG's Family Violence Working Group will lead this project and will report back to the MAG by February 2022.

National principles

The national principles will consist of two parts. The first part will establish a common understanding of coercive control, including the impacts on women and vulnerable groups and best practice approaches to systems reforms. The second part will address high level questions about the nature and scope of any criminal offence of coercive control and associated implementation issues. The principles will not be a 'model law' or a prescriptive instruction, rather a guide and a high level starting point for jurisdictions to consider. They will note that each state and territory will ultimately determine what is most appropriate within their jurisdiction. The national principles will also acknowledge that some aspects of coercive control may already be addressed by justice systems.

A preliminary list of matters that may be the subject of national principles, building upon the list recommended by the House of Representatives Standing Committee on Social Policy and Legal Affairs' Inquiry into Family, Domestic and Sexual Violence where possible, is as follows:

PART I: UNDERSTANDING AND ADDRESSING COERCIVE CONTROL

1. A common understanding of what is coercive control and its impact

As a starting point, the principles will state the key aspects of coercive control and its impacts. This will include the behaviours and patterns of behaviour that constitute coercive control, including the individual, tailored and specific nature of the conduct used by the perpetrator. It will consider the pervasive nature of coercive control and common manifestations of harm.

2. Considering the impacts of coercive control on women and groups who may be vulnerable or systematically disadvantaged

Consideration is to be given to how coercive control affects key groups (including Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse groups, LGBTIQ+ people, elderly people, children and people living with disability; and intersectionality across these groups), their needs and how any identified risks and adverse effects could be mitigated (including through legal safeguards, associated support mechanisms, and strengths-based, healing-informed options).

3. A holistic assessment of systems reforms issues, including but not limited to minimum standards for training, and public awareness raising

The principles will set out best practice strategies for training and awareness, preventative measures, stakeholder engagement on coercive control, consideration of resourcing issues for frontline services, strengthening policing responses and public and targeted campaigns to raise awareness.

PART II: MATTERS TO CONSIDER WITH RESPECT TO ANY FUTURE CRIMINALISATION

1. The breadth of relationships captured

For example, whether the offence should only apply to intimate partners and former partners, or more broadly to other relationship types.

2. The behaviours and patterns of behaviour

For example, in light of the common understanding of coercive control developed in Part I of the national principles, consideration of the types of behaviour (physical and non-physical), how to capture patterns of behaviour and effects of behaviours.

3. The elements of any new offence

Noting jurisdictional variations (such as the different ways of constructing offences in Code and common law jurisdictions), the principles will highlight the types of things to consider when developing an offence.

4. A consideration of penalties

It is not appropriate to establish an actual maximum penalty in the principles due to jurisdictional variations, therefore the principles could consider the types of penalties that may be appropriate to reflect the seriousness of the offending.

5. Associated implementation issues

In addition to general systems reforms noted in Part I, additional implementation matters with respect to enacting a new offence, such as delayed legislative commencement to allow additional training and awareness and joint protocols between police, prosecution and social services agencies, could also be included in the principles. Building upon the consideration of

women and groups who may be vulnerable or systematically disadvantaged in Part I, consideration will also be given to how potential adverse or unintended impacts of criminalisation on these people can be mitigated. This will include a particular focus on the policing response.

6. Interaction between any specific coercive control legislation and existing legislation relating to domestic and family violence

The national principles will consider how coercive control is currently captured within relevant legislation (including criminal and family laws) and how to best manage interactions between existing frameworks, including state, territory and Commonwealth laws to ensure equitable justice outcomes for victims regardless of jurisdiction.

This list is indicative only, is subject to consultation with stakeholders and may evolve over time.

How jurisdictions will work collaboratively to develop the national principles

Development: The Family Violence Working Group will conduct regular meetings to draft proposed key principles for consultation with stakeholders. This will include questions for discussion at the National Women's Safety Summit on 29-30 July 2021, followed by a discussion paper later in 2021.

Consultation: The Family Violence Working Group will conduct extensive consultation on the discussion paper and proposed principles. This could include targeted bilateral and roundtable meetings, including with police (for example, through the Australian and New Zealand Policing Advisory Agency - ANZPAA) and drawing on the expertise and networks of key NGOs. It will also be informed by relevant state and territory inquiries, such as the NSW Parliamentary Inquiry on Coercive Control and Queensland's Women's Safety and Justice Taskforce. This will include consideration of the stakeholder consultations already conducted.

Women's safety officials and the Women's Safety Taskforce will be consulted over the course of developing the principles, particularly on how this work will interact with and complement work to develop the next *National Plan to End Violence against Women and Children*, due to commence in 2022.

Approval: The MAG would consider and approve the Family Violence Working Group's proposed national principles on understanding and addressing coercive control. These would be made public, and would be a guide for jurisdictions seeking to improve their laws, practices and services to prevent, govern, and respond to coercive control, noting that this will ultimately be a matter for individual jurisdictions.