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Australian Psychological Society response to Discussion Paper: Coercive Control

- The Australian Psychological Society (APS) is the peak body for psychologists in Australia representing over 25,000 members. A number of our psychologists work with people who use and experience coercive control on a daily basis - in a range of settings.
- The APS welcomes the NSW Government Department of Communities and Justice (Crime Prevention) discussion about criminalising coercive control as a pattern of behaviour in domestic relationships. This area requires social and legal reform as the psychological impact of coercive and controlling behaviours is devastating to victims*. Regulation is challenging to enforce though, as coercive and controlling behaviour is difficult to define and is contextual in nature. For these reasons, codification of this behaviour needs to be carefully considered.
- In principle, whilst there may be benefits in codifying coercive control, questions remain about the readiness of the legal system to do so. Therefore, rather than taking a particular position regarding whether or not the APS supports codification, we have outlined key considerations to inform the discussion from a psychological perspective.
- The APS suggests that ongoing discussion regarding the criminalisation of coercive control needs to consider current research into:
 - The effectiveness of criminalisation nationally and internationally in decreasing the incidence of coercive control and increasing the safety of those who experience it, and
 - Understanding perpetrator typology and patterns of coercive behaviour.

The APS believes that the current discussion around codifying coercive control indicates an increased understanding of the complexity of the dynamics of domestic violence, in particular perpetrator behaviour and the impact on victims. Changes to legislation seeking criminalisation should be part of an integrated response including continuing community education and specific training for all relevant parties.

**Please note that whilst we have used the terms perpetrator and victim this is to be consistent with the discussion paper and significant existing research evidence. In line with expert recommendations we advocate for the terms 'users' and 'experiencers' of coercive control instead.*

1. What would be an appropriate definition of coercive control?

The APS considers an appropriate definition of coercive control integral to any new legislation, and further, that it is recognised that this particular form of domestic violence is based on a pattern of behaviour that cannot be understood by considering individual incidents in isolation from each other.

- The definition should take into account:
 - That the abuse is **not limited to physical violence** but inclusive of all forms of aggression where there is a pattern of behaviour characterised by the use of force (name calling, threats, public denigration) and/or other controlling aspects (financial abuse, monitoring and surveillance etc...) of an emotionally abusive nature;
 - The **impact** of the abuse on the victim (fear, isolation, loss of self-worth and dignity, loss of autonomy and capacity for decision-making etc...); and
 - The **intention** or motivation behind the behaviour on the part of the perpetrator (physical coercion, isolation, degradation, intimidation, etc...).
- The definition also needs to:
 - Recognise that types of behaviour may change over time and vary in frequency and severity
 - Include current and former relationships as coercive control may extend beyond separation
 - Include situations where psychological violence is present without physical violence
 - Avoid use of gendered pronouns in descriptions of all involved parties.

The APS endorses that an appropriate definition of coercive control be included in any related legislation. Of the existing legislative definitions, that employed in the Domestic Abuse (Scotland Act) 2018 appears to be the most suitable based on the above criteria.

2. How should it distinguish between behaviours that may be present in ordinary relationships with those that taken together form a pattern of abuse?

The APS considers that relationships where coercive control exists can be distinguished from ordinary relationships by the presence of an unequal power dynamic, the use of force and a pattern of behaviour that causes the recipient to experience fear.

- Unequal power dynamics and the use of force (physical or not) to constrain or control a partner are key aspects of relationships in which coercive control is experienced (Stark & Hester 2019). In ordinary relationships, the power dynamic will shift according to different circumstances and need. In a coercive controlling relationship one partner seeks to exert power or dominance over the other person, in many, or all aspects of the relationship, and will use force to achieve this outcome.
- Fear on behalf of the victim is also a central feature of a relationship where coercive control is present. This has been recognised by being incorporated into the Victorian Family Violence Protection Act 2008.
- Legislation needs to recognise that the victim's experience of fear is the key factor, not whether the perpetrator intended fear to be experienced.

The APS advises that in ordinary relationships each party is free to express their thoughts and feelings and display behaviour without fear of reprisal from the other. Ideally conflict is not avoided at all costs and each party seeks to resolve it for the benefit of the relationship, as opposed to coercive control where one person dominates and the other is diminished, punished or harmed as a result of the other's interactions.

3. Does existing criminal and civil law provide the police and courts with sufficient powers to address domestic violence, including non-physical and physical forms of abuse?

This question is beyond the role of the APS and therefore no response is included.

4. Could the current framework be improved to better address patterns of coercive and controlling behaviour? How?

The APS supports the points outlined in the discussion paper about how to improve the current framework to better address patterns of coercive and controlling behaviour.

- We highlight point 3.17 that existing provisions against coercive controlling behaviours can be improved by providing training for police officers and other DFV services.
- The APS recommends psychological assessment in cases where coercive control may be present to support the police and courts in gathering evidence and sentencing. For example, assessments for coercive control may include application of the Dominance–Isolation subscale of the widely used Psychological Maltreatment of Women Inventory (Tolman, 1992), and assessments of the frequency and severity of violent behaviours, harassment, fear and perceived threat.

The APS believes that irrespective of whether or not NSW codify coercive control in separate legislation, improvements can be made to the existing framework.

5. Does the law currently provide adequate ways for courts to receive evidence of coercive and controlling behaviour in civil and criminal proceedings?

See answer to Question 6 below.

6. Does the law currently allow evidence of coercive control to be adequately taken into account in sentence proceedings? If the answer is no to either of the above questions, how could the law be improved to ensure the evidence is admissible and is given adequate weight in civil and/or criminal proceedings?

From a psychological perspective, we have the following concerns about evidence gathering and sentencing:

- There is a challenge associated with identifying what constitutes coercive controlling behaviour as the legal system is being asked to consider motive as well as behaviour. Courts may not be in a position to adequately assess and fully appreciate the impact of all types of coercive controlling behaviours.
- Under existing NSW legislation there are no assurances that victims would be protected if they came forward to apply for an apprehended domestic violence orders (ADVOs) based on coercive control. Current definitions and responses may be too narrow to definitively capture coercion and control.
- In reality courts are receiving evidence of coercive and controlling behaviour as part of ADVOs, but may only be able to deal with isolated incidents. To overcome this challenge, patterns of conduct need to be taken into account.
- An additional concern is the increasing complexity of trying to prove this behaviour within a context that places onus of proof on the victim. Perpetrators utilising coercive and controlling behaviour are often skilled at identifying their partners' thought patterns and vulnerabilities, and so any charges made against offenders need the full support of the court process, with the victim's short- and long-term safety being the overriding factor across all levels of intervention.

The APS advocates for gathering of evidence and sentencing procedures to take into account the psychological impact of both processes on those experiencing coercive control - beyond the trauma and distress that they have likely already suffered.

7. What are the advantages and/or disadvantages of creating an offence of coercive control?

The APS believes that there are both advantages and disadvantages to codifying coercive control.

Advantages

- If successfully developed, managed and administered, making coercive control illegal could take steps towards addressing the lived reality of most victims by:
 - Validating the rights of the victim to be protected within the context of a relationship.
 - Supporting general deterrence by sending the message that this behaviour is damaging, against human rights and unacceptable both socially and legally.
 - Providing the means to legally intervene with coercive controlling behaviours to prevent possible escalation of violence. In the absence of codification, victims of coercive control are less likely to report the abusive behaviour, risking increasingly violent acts on the part of the perpetrator - including homicide.
 - Encouraging recognition of coercive control as a pattern of abusive behaviour which increases the likelihood of prosecution and moves the legal system towards “offender accountability” rather than “victim-blaming” (Stark & Hester, 2019, p. 86).

Disadvantages

- Research clearly demonstrates that punitive measures (imprisonment) do not necessarily lead to a decrease in aggressive behaviour or changes to perpetrator attitudes towards domestic violence. (Gilligan, 2001). Other measures may need to be considered as part of any new legislation, for example court diversion programs.
- There is a risk that the evidence threshold will be set too high for an offence to have occurred and the burden of proof will be placed on the victim, causing them undue stress without securing a conviction.
- In addition, coercive control may be too difficult to police and prosecute and seen as a ‘lesser’ offence than physical assault. It may also open the door for ‘system abuse’ and for perpetrators to make claims of contributing behaviour against their partners.

The APS believes that any changes to the current law need to be accompanied by significant police training, increased legal support for victims, and improved resourcing for family violence services. The safety of victims needs to be ensured both whilst court proceedings are undertaken, and afterwards, in cases where a conviction is not secured.

Resourcing must also be provided to assist perpetrators to change their behaviour patterns, and not simply contribute to the prison population. This includes mandating completion of accredited behaviour change programs and sentencing offenders to community correction orders that are enforced in a way that ensures victims’ ongoing safety.

8. How might the challenges of creating an offence of coercive control be overcome?

If codification were to proceed, the APS recommends the following to begin to address some of the challenges associated with creating an offence of coercive control and implementing the law:

- A comprehensive definition of coercive control developed through professional consultation mechanisms with policy staff, justice department staff and psychologists to ensure shared understanding.

- Police liaison and training to address misperceptions about coercive control and identify barriers to gathering evidence prior to laws being introduced, as they did in Scotland.
- Further research and international benchmarking to improve understanding of perpetrator typology and identify those more likely to use coercion and control in order to inform training across all levels of intervention.
- The use of evidence-based measures of coercive controlling behaviours (e.g. the Checklist of Controlling Behaviors) and psychological assessment to shift the burden of proof away from victims (Lehmann, Simmons & Pillai, 2012).
- Ensuring that victims trust that coercive control will be treated in the same way as physical violence despite the lack of physical evidence.

The APS recommends ongoing discussion and broad consultation regarding codifying coercive control and continuing review of outcomes-based research evidence from overseas.

9. If an offence of coercive control were introduced in NSW, how should the scope of the offence be defined, what behaviours should it include and what other factors should be taken into account?

The APS believes that the definition of the scope of the offence of coercive control and the behaviours it includes need to be kept broad. Please refer to our answers to questions 1 & 2 for additional information.

- Each situation has to be examined separately and viewed through the lens of broad patterns of behaviours that include the communication of a threat with meaningful negative consequences of non-compliance, intense surveillance and prolonged efforts to wear down the victim's resistance. Perpetrators often tailor their coercive behaviours to exploit specific vulnerabilities of their victims, which may diminish the victims' confidence in their own perceptions or accounts of reality. A thorough assessment is required to piece this complex collection of evidence together. Unlike single incident crimes, coercive control involves establishing patterns of sustained assault that include subtle behaviours, such as gaslighting and neglect (Dutton & Goodman, 2005; Streker, 2013).
- Cultural nuances, gender/linguistic differences, Aboriginal and Torres Strait Islander social norms and beliefs, attitudes towards LGBTIQ+ communities and contextual circumstances have to be researched and considered in terms of how legislation is appropriately developed and enacted.

Psychologists are well placed to assist law makers to define the scope of the offence of coercive control, what behaviours it should include and other factors to take into account. Psychologists provide evidence-based interventions for perpetrators and victims, and undertake research in coercive control.

10. Could the current legislative regime governing ADVOs better address coercive and controlling behaviour? How?

This question is beyond the scope of the APS, however, a recent systematic review and meta-analysis of the effectiveness of ADVOs found, overall, mixed results in terms of reducing recidivism. While there was evidence to suggest that ADVOs led to reduced subsequent acts of violence for some groups, ADVOs were not effective in completely stopping or preventing continued violence (Cordier, Chung, Wilkes-Gillan, & Speyer, 2019).

11. Should the common law with respect to context and relationship evidence be codified within the CPA (or other relevant NSW legislation) to specifically govern its admissibility in criminal proceedings concerning domestic and family violence offences? If yes, how should this be framed?

This question is outside of the expertise of the APS.

12. Would jury directions specifically addressing domestic and family violence be of assistance in criminal proceedings? If so, what should a proposed jury direction seek to address?

The recommendation that jury directions would be of assistance in criminal proceedings is supported.

- DFV and coercive control are complex areas to understand. It may be difficult to demonstrate a clear pattern of coercion and control. Perpetrators may exhibit nuanced behaviours that create doubt to an external party, but are coded to have a specific meaning for the victim (Streker, 2013).
- Juries need to understand the traumatic nature of coercive control and the impact it has on victims.
- Instruction around the legislation is essential to promote an objective perspective based on the law rather than personal experience - which is inextricably shaped by factors such as gender, culture etc.

Psychologists can contribute to developing education materials to assist juries in cases of coercive control and the APS would be happy to assist with this project.

13. Should provisions with respect to sentencing regimes be amended? If so, how?

From a psychological perspective it is our view that:

- Sentencing should be based on identifying, assessing and managing antecedents of coercive, controlling behaviour - following appropriate psychological assessment and,
- Punishment is not necessarily a general or specific deterrent for violence (Gilligan, 2001). A more holistic approach is required to address the complex reasons people behave violently (Kjaerulf et al., 2016). Sentencing, for example, needs to include psychological interventions and treatment.

APS psychologists are able to provide ongoing advice and assistance regarding appropriate assessment and intervention.

14. Are there any other potential avenues for reform that are not outlined or included in the questions above?

The APS has no additional comments to add.

15. What non-legislative activities are needed to improve the identification of and response to coercive and controlling behaviours both within the criminal justice system and more broadly?

The APS supports the use of non-legislative activities to improve the identification of and response to coercive and controlling behaviours.

We recommend:

- Education, and awareness training in coercive control for all front line health workers as part of onboarding.
- Extended education and training for mental health workers and teachers.
- Further research into evidence-based assessment measures to identify whether coercive control is present in a relationship.
- Further research into the effectiveness of existing DFV intervention programs, along with further development of early intervention and treatment programs for both perpetrators and victims of coercive control. Current evidence regarding the effectiveness of existing DFV programs is contradictory and suggests that they do not always reduce recidivism in perpetrators (Misso, 2019).
- Research into understanding and working with psychological antecedents of coercive and controlling behaviours to inform intervention programs for both victims and perpetrators.

- The development of education and training programs as a prevention mechanism for the general public, schools, the police and other DFV stakeholders.
- Raising awareness of coercive control and its impacts through media, including social media.

APS psychologists play a key role in improving outcomes for those who use and experience coercive control. The APS recommends that this be extended to improving family and community outcomes by implementing psychologically-informed education, awareness and training programs and conducting appropriate research.

The APS would be very happy to provide any further information to the Committee as required.

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Australian Psychological Society

The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time, knowledge, experience and evidence-based research to this submission. Their psychological expertise in the area of Family Domestic Violence and Coercive Control was highly informative and greatly appreciated.

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