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Level 11, 257 Collins Street
Melbourne VIC 3000
PO Box 38
Flinders Lane VIC 8009
T: (03) 8662 3300

Director, Legal Policy
Department of the Attorney-General and Justice
GPO Box 1722
DARWIN NT 0801
Emailed to: Policy.AGD@nt.gov.au

Dear Ms Clee,

APS Response to the Exposure Draft Justice Legislation Amendment (Domestic and Family Violence) Bill 2023

The Australian Psychological Society (APS) is pleased to provide feedback to the Exposure Draft Justice Legislation Amendment (Domestic and Family Violence) Bill 2023 (*The Exposure Draft*) and commends the Northern Territory (NT) Government for its broad and comprehensive approach to addressing coercive control and other forms of domestic and family violence. Many of our members work with clients who are victim-survivors or perpetrators of domestic and family violence and coercive controlling behaviours in a range of settings. In a similar approach to our previous response¹, we have selectively focused on the psychological considerations of the Bill and acknowledge that other individuals and organisations that are better placed to comment on the legal suitability of aspects of *The Exposure Draft*.

As with all our work at the APS, we consider the current issues in light of the Sustainable Development Goals (SDGs)². Of particular relevance to coercive control is SDG Target 5.2 Eliminate all forms of violence against all women and girls³ and 16.1 Significantly reduce all forms of violence and related death rates everywhere in the public and private spheres, including trafficking and sexual and other types of exploitation⁴.

As we have mentioned in responses to other consultations^{e.g. 1,5,6}, we applaud the fact that the question of whether to legislate against coercive control is currently being considered by the Standing Council of Attorneys-General⁷. Working towards national consistency, this collective effort will help raise awareness of this devastating social issue. We also acknowledge the NT's contribution to this work and commend the legislative connections to the forthcoming *National Principles to Address Coercive Control* (relevant to proposed Section 91C).

Irrespective of if, how, and/or when the NT moves towards criminalisation of coercive control, there must be a clear signal that it takes the matter seriously and that this behaviour will be associated with serious consequences. As outlined in our previous response¹, while we support having a long lead time which may be required to achieve the systemic, legislative, and social reforms required for successful preparation and implementation, we emphasise the importance of creating regular, measurable targets to keep on track. It will be important to determine whether the preparations are working to move towards the aspirational zero incidence of domestic and family violence.

Proposed preamble of the Domestic and Family Violence Act 2007

The APS considers the preamble to be clear and to strongly communicate the intention of *The Exposure Draft*. The reference to different populations, especially vulnerable populations, and the acknowledgement of the impacts on children communicates a clear understanding of the psychological, physical, and emotional wellbeing, social and other impacts of domestic and family violence and coercive control. In addition, we would like to draw attention to:

(h) We recommend “*coercive control is a particularly harmful form of domestic violence that involves a pattern of violent, threatening or intimidating behaviour that has the effect of*”.

This would make the preamble more consistent with the definition of coercive control (Section 5B) and highlights the fact that acts of coercive control do not happen in isolation and must be interpreted in the context of the entire relationship. We do, however, commend the inclusion of the effect of the behaviour on the victim-survivor.

Proposed 5A Emotional or psychological abuse of the Domestic and Family Violence Act 2007

We acknowledge the efforts to articulate the diversity of ways that emotional and psychological abuse can take place. We commend the fact that subsection 2 does not limit subsection 1 as it is impossible to articulate all the ways that a person can be emotionally or psychologically abused.

Subsection 3 is important as it emphasises the importance of considering a pattern of behaviour, rather than isolated incidents.

Proposed 5B Coercive Control of the Domestic and Family Violence Act 2007

Coercive control emerges within the intersubjectivity of an intimate relationship. That is, the meaning of behaviour – including its coercive effect – emerges within the particularities, history and context of a given relationship. While in most cases we might expect that a ‘reasonable person’ will be able to identify a link between a perpetrator’s behaviour and the likely fear of violence or adverse impact that it would cause, this is not always the case. Behaviours can be coercive in the nuanced context of a relationship in ways which may not, on the surface, appear to be so to an objective ‘reasonable person’. Related to subsection 2, it is not sufficient to simply consider what is ‘reasonable’ as consideration should be given to the impact of the behaviour on the victim-survivor. For example, giving flowers to a partner may be considered a positive or neutral action by a reasonable person, however, if it signals approval for withdrawing from a family event then it can represent a much more sinister action in the context of the controlling dynamic⁸.

Coercive control is a form of abuse which is grounded in the psychological realities of the victim-survivor, the perpetrator and the relationship. We believe that psychologists have an important role in ensuring that victim-survivors are heard and that coercive behaviour is appropriately prosecuted. Evidence from psychological assessments of the victim-survivor, if they choose to provide such evidence, would be highly probative to show the very real, significant and lasting effects of a perpetrator’s actions within the context of the relationship. The legislation should reflect this position.

Proposed Section 9 of the Domestic and Family Violence Act 2007

The proposed definition of domestic relationship is not clear and the references to the respective parties are confusing.

Proposed Section 110 of the Domestic and Family Violence Act 2007

We commend the consideration of the potential impact of seeing the defendant on the victim-survivor. We also appreciate that the victim-survivor is given the choice of presenting in person or via audiovisual link.

Proposed Section 24 of the Bail Act 1982

The APS endorses the inclusion of the perspective of the victim-survivor regarding the suitability of the defendant being released on bail as the safety of the victim-survivor is paramount. It is sometimes important to acknowledge, however, that due to the complexity and the effects of being a victim-survivor of a coercive-controlling behaviour, it may be impossible for victim-survivors to realise, understand, and/or articulate the dynamics of the relationship and the full impact. It is critical, therefore, that psychologists are able to undertake a thorough assessment of victim-survivors and, ideally, perpetrators, to fully elucidate the intent and impact of the behaviours.

Proposed Section 21GA of the Evidence Act 1939.

We commend the use of experts (as defined in subsection 3) to provide additional insight into the effects of coercive control and domestic and family violence generally. As discussed in our previous response¹, psychologists with appropriate competence in this area may be able to provide insights into the victim-survivors’ evidence, particularly if they are unable to articulate the full impact of the behaviours. Psychologists’ evidence may also help to explain retaliatory or compliant behaviour of victim-survivors who are trying to maximise their safety or the safety of their loved ones (e.g., children or relatives).

Proposed Section 106B(9) of the Sentencing Act 1995.

The APS supports the proposed insertion as cross examination could be potentially traumatising for the victim and dissuade victim-survivors from reporting domestic and family violence. As previously suggested¹, we recommend that the court and associated personnel be trained and exposed to the lived experience of victim-survivors of coercive control to gain insight into the impact of these complex behaviours and victim-survivors' interaction with the justice system. A trauma-informed approach should be taken^{9,10}. As suggested, this may mean that court proceedings, evidence gathering and sentencing procedures need to consider the psychological impact of these processes on those experiencing domestic and family violence – beyond the trauma and distress that they have likely already suffered.

We thank you for the important work you are doing in this matter. If any further information is required from the APS, we would be happy to be contacted through the national office on (03) 8662 3300 or by email at z.burgess@psychology.org.au

Yours sincerely

Dr Zena Burgess, FAPS FAICD
Chief Executive Officer

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.

References

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