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Dear Mr Quigley and Ms McGurk MP,

**RE: Legislative Responses to Coercive Control in Western Australia**

The Australian Psychological Society (APS) is pleased to provide a response to *Legislative Responses to Coercive Control in Western Australia – Discussion Paper (the Discussion Paper)*. Many of our psychologists work with clients who are victim-survivors or perpetrators of coercive controlling behaviours throughout Australia on a daily basis - in a range of settings.

The APS supports and congratulates the Western Australian Government for recognising the importance of coercive control as a set of insidious behaviours that can be 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. We also appreciate that the process is part of a broad plan to reduce and address family violence: *Path to Safety: Western Australia's Strategy to Reduce Family and Domestic Violence 2020-2030*<sup>1</sup> as success in reducing coercive control will ultimately require broad social change.

As with all our work at the APS, we consider the issues in light of the Sustainable Development Goals (SDGs)<sup>2</sup>. Of particular relevance to coercive control is SDG Target 5.2 Eliminate all forms of violence against all women and girls<sup>3</sup> 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 exploitation<sup>4</sup>.

We applaud the fact that the question of whether to legislate against coercive control has recently been considered by several Australian states. The APS acknowledges the recent agreement of the Meeting of Attorneys-General (MAG) to co-design common, national principles to build a consistent understanding of, and approach to, coercive control<sup>5</sup>. Irrespective of whether, and how it is legislated in each jurisdiction, a common agreement of principles is an important step to ultimately increase community understanding, and ultimately improve the safety of potential victims. In our response we note that there are other individuals and organisations better placed to comment on the suitability of the current legislative framework in Western Australia, so we have focussed on the psychological considerations of issues raised in *the Discussion Paper*.

If any further information is required from the APS, I would be happy to be contacted on (03) 8662 3300 or by email at [z.burgess@psychology.org.au](mailto:z.burgess@psychology.org.au)

Yours sincerely

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## Legislative Responses to Coercive Control in Western Australia

### Recognising the pattern of violence

When considering definitions of coercive control, it is important to note that lists do not adequately capture the "process" and pattern of coercive control or behaviours that appear insignificant or non-abusive to those outside an abusive relationship. For example, behaviour that might seem helpful in an ordinary relationship, such as giving a gift or using tracking apps to keep the family safe, can coerce and control in an abusive relationship<sup>6</sup>.

There is some consensus that the elements of an appropriate definition include:

- intentionality and motivation on the part of the perpetrator to have control over, or subjugate, the victim<sup>6</sup>,
- the controlling and persistent behaviour is perceived as negative by the victim in that non-compliance with the perpetrator's demands (attempts to control) will be met with a negative consequence, and
- the perpetrator's ability to obtain and maintain control is linked to a credible threat of a meaningful negative impact for the victim<sup>7,8</sup>.

It is for these reasons that threats or expectations of negative consequences are very important in the coercive controlling dynamic<sup>9</sup> and the legislation must attempt to capture *the impact* of the controlling and threatening behaviours on the victim-survivor. It is impossible, therefore, for a list of abusive behaviours to capture all the possible ways that a victim-survivor can be coercively controlled. Given this, if regulatory changes were to proceed in Western Australia, the APS suggests that the legislation include an emphasis on the *impact* or *perceived impact* of coercive control on the victim-survivor rather than including a non-exhaustive list of behaviours. The list included in the *Legislative Responses to Coercive Control in Western Australia: Fact Sheet* form a good basis as they attempt to describe the impact of the behaviours, however, we would suggest clear articulation that this is only a subset of possible ways that coercive control can be exercised.

### Criminalisation of Coercive Control

In principle, whilst there may be benefits in codifying coercive control, questions remain about the readiness of the legal system and broader social systems to do so. 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.

As previously described, the APS considers an appropriate definition of coercive control integral to any new legislation, and further, that it is recognised that this is *a pattern of behaviour* that cannot be understood by considering individual incidents in isolation from each other. We would like to emphasise significant psychological factors in the consideration of codification, particularly as the number of convictions does not equate to better outcomes for victims<sup>10</sup>. From a psychological perspective, the APS suggests that there may be both advantages and disadvantages to legislating against coercive control.

### Possible benefits of legislating against coercive control

If successfully developed, managed and administered, making coercive control illegal could contribute to addressing the lived reality of most victim-survivors by:

- Validating the rights of the victim-survivor to be protected within the context of a relationship,
- Validating the feelings of victim-survivors in attempting to understand the behaviour as "not being acceptable",
- 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, victim-survivors 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"<sup>11(p. 86)</sup>.

## Risks of legislating against coercive control

- 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<sup>12</sup>. Although complex and fraught with methodological challenges, evidence suggests that the reconviction rate varies considerably internationally, with Australia being one of the highest<sup>13</sup>. 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-survivor, 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<sup>10</sup>. It may also open the door for 'system abuse' and for perpetrators to make claims of contributing behaviour against their partners.
- One concern with the introduction of coercive control legislation is adding to an already 'stressed' system. Evidence-based standards and approaches for working with victim-survivors and perpetrators will be essential to ultimately improve outcomes.

## Providing evidence in the context of coercive control

Irrespective of the legislative pathway chosen, compassion and respect for victims, and consideration of their safety and the impact of legislation is paramount. Given this, 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 victims' interaction with the justice system. A trauma-informed approach should be taken<sup>14,15</sup>. 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 coercive control - beyond the trauma and distress that they have likely already suffered. This may include a number of options, for example, a prohibition on the accused cross examining the victim-survivor in person.

Other considerations include:

- Inability of victim-survivors to fully explain the impact of the behaviours - due to the complexity and the effects of being a victim-survivor of a coercive-controlling behaviour, it may be impossible for a victim to realise, understand, and/or articulate the dynamics of the relationship and the full impact. It is critical, therefore, that psychologists make a thorough psychological assessment of victims and, ideally, perpetrators to fully elucidate the intent and impact of the behaviours.
- Importance of the admissibility of psychologists' statements as an explanatory supplement to victim-survivors' evidence. Not only does this provide insight into the context of the behaviour, it may help to explain retaliatory or compliant behaviour of victims who are trying to maximise their safety or the safety of their loved ones (e.g. children or relatives).

Although the APS cannot comment on the current use of the new sections 37-39 of the Evidence Act 1906 (WA) and the legal implications of its inclusion, we do commend the emphasis on the "cumulative effect of family violence, including psychological effect<sup>16(p. 66))</sup>" as part of the permissible evidence. We also applaud the explicit mention of exacerbating factors due to inequalities for example from people from particular racial groups, gender, disability status as well as "social, cultural and economic factors<sup>16(p. 66))</sup>". In addition, we support the inclusion of the evidence surrounding the "dynamics of relationships"<sup>16(p. 67)</sup> as this may allow the *impact* and *intention* of the pattern of behaviour to be articulated and considered.

## Community Education and language used to describe coercive control

The APS believes that the current discussion around codifying coercive control indicates an increased understanding of the complexity of the dynamics of non-physical violence, in particular perpetrator behaviour and the impact on victim-survivors. Regardless, if the Western Australian government were to proceed with codification, changes to legislation seeking criminalisation should be part of an integrated response including continuing community education and specific training for all relevant parties.

Community education about coercive control and its psychological, behavioural, and socio-cultural underpinnings, could help to improve community understanding and action. Some groups are especially vulnerable to coercive

control due to risk factors such as economic inequality, disability, and cultural norms and biases<sup>11</sup>. Community education should explicitly address coercive control for these vulnerable groups.

This should include plain English and information in other languages about the evidence-based psychological, behavioural and social-cultural factors and processes associated with coercive control, and the opportunities to improve identification and intervention at the individual and societal levels. For example, kits based on these educational resources, can be developed to inform the media and program producers about appropriate ways to report on and represent coercive control in popular entertainment.

In particular, the language used to communicate the impact of coercive control on victim-survivors is important for the following reasons:

- Language provides a way to articulate the behaviours and their impact which helps victim-survivor, perpetrator, and community understanding,
- Appropriate language corresponds to the seriousness of the impact of the behaviours on victim-survivors, and
- Appropriate language cannot 'rationalise' or 'explain away' the behaviour of the perpetrator.

The term 'coercive control' is effective in that it starts to describe the *function* of the behaviours and the intent of perpetrators to control or subjugate the other<sup>6</sup>. Nationwide, the inclusion of 'coercive control' in any relevant legislation is critical in increasing community awareness by contributing to a national understanding of these behaviours and their impact on victim-survivors.

### **Other considerations – the role of psychology**

Psychologists can play a key role in improving outcomes for those who use and experience coercive control. We suggest that this be extended to improving family and community outcomes by implementing psychologically-informed education, awareness and training programs and conducting appropriate research. Given that victim-survivors may access assistance through a number of channels, it is important to:

- Provide education, and awareness training in coercive control for all front-line health workers as part of on-boarding <sup>see 17</sup>,
- Extend education and training for mental health workers and teachers,
- Develop education and training programs as a prevention mechanism for the general public, schools, the police and other stakeholders,
- Support trauma-informed policing practices that foster the empowerment of victim-survivors to have agency over their situation,
- Expand the provision of day and night online support services for victim-survivors, particularly those in regional and remote areas, and
- Promote a comprehensive co-response model which prioritises victim-survivors' and family safety.

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

The skillset and expertise of APS members across Australia, including in Western Australia, means that we are well placed to support the reduction of coercive control, regardless of whether or not it is codified. In particular, psychologists are able to assist in the assessment of victim-survivors and perpetrators, providing psychological support services, training of the police and judicial personnel, as well as raising community awareness.

Logically, the APS expects that if coercive control were to be legislated against, there will be more victim-survivors identified who would require psychological support services. It is imperative that the Western Australian Government provide appropriate funding to support these services. However, given that this is a national issue, the APS has previously advocated that the Federal Government provide funding through the Medicare Benefits Scheme (MBS) to enable victim-survivors of coercive control to access an extended number of Medicare rebatable sessions - similar to the Eating Disorder Psychological Treatment MBS items.

*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.*

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