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Via email: [agdpolicyandanalytics@sa.gov.au](mailto:agdpolicyandanalytics@sa.gov.au).

Dear Ms Meador,

### **Implementation considerations should coercive control be criminalised in South Australia**

The Australian Psychological Society (APS) is pleased to provide a response to the consultation regarding the *Discussion Paper: Implementation considerations should coercive control be criminalised in South Australia (the Discussion Paper)*. Legal and social reform in this area is critical as the psychological impact of coercive and controlling behaviours is devastating to victims and legislation is difficult to enforce. The APS commends the proactive approach from the Attorney-General's Department as the legislation will only be effective in reducing harm if it is implemented in a receptive social and legal context.

At the APS we embed social impact and sustainability within our operations, advocacy, and initiatives guided by the United Nations global Sustainable Development Goals (SDG)<sup>1</sup>. The APS considers the social change associated with the successful implementation of *The Discussion Paper* as a critical element of the legislative attempt to reduce and address coercive control and domestic violence more broadly. Specifically, this work can help to realise SDG 16 which aims to *provide access to justice for all and build effective, accountable and inclusive institutions*<sup>2</sup>. Given the relationship between coercive controlling behaviours and intimate partner homicide<sup>3</sup>, this work is particularly relevant to SGD Target 16.1: *Significantly reduce all forms of violence and related death rates everywhere*<sup>2</sup>. In addition, the implementation of this legislation is relevant to the SDG target 5.2 in its endeavour *to end all forms of violence against all women and girls*<sup>4\*</sup>.

This submission provides a response that highlights the most salient issues and recommendations from an evidence-based psychological perspective which addresses the four major themes highlighted in *The Discussion Paper*. However, we acknowledge that more research is needed to determine the effectiveness of interventions and implementation approaches. In preparing this submission, the APS has consulted broadly across our national membership base of psychologists with specialist knowledge relevant to the area.

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\*The APS acknowledges the current debate in the scientific literature regarding the gendered nature of coercive control. Although the vast majority of reported cases are a man perpetrating coercive control over a woman, there are exceptions whether they be in same-sex relationships or female perpetrators<sup>5</sup>. It is because of these exceptions, that the APS submission is written in a gender-neutral format <sup>see also 6</sup>.

## 1. Awareness raising and engagement

As noted in *The Discussion Paper*, the key to understanding coercive control is that it is a process or pattern of behaviour rather than isolated behaviours or incidents<sup>7</sup>. Before any legislation can be enacted it is crucial that an appropriate, evidence-based definition is developed (as per *The Discussion Paper*, page 3).

Not having a shared understanding of coercive control risks further marginalising any future victims. Given the complex nature of this behaviour, the definition must 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 a persistent and 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...),
- The **intention** or motivation behind the behaviour on the part of the perpetrator (subjugation, physical coercion, isolation, degradation, intimidation, etc...),
- That types of behaviour may **change over time** and **vary in modality** (e.g. in person vs online), frequency, and severity, and
- **Current and former** relationships - as coercive control may extend beyond separation.

Critically, each situation must 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 may exhibit nuanced behaviours that create doubt to an external party, but are coded to have a specific meaning for the victim<sup>8</sup>. In addition, 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 abuse, coercive control involves establishing patterns of sustained assault that include subtle behaviours, such as 'gaslighting' and neglect<sup>8,9</sup>. Compared to other offences, therefore, it may be difficult to demonstrate a clear pattern of coercion and control as the result of the behaviours is ultimately compliance and may not be initially traumatic. It is for this reason, that awareness raising and community understanding of the nature of coercive control is fundamental to the legislation's success.

Community education about coercive control and its psychological, behavioural, and socio-cultural underpinnings, could help to improve 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>7</sup>. Community education should explicitly address coercive control, and determine the best ways to engage, with these vulnerable groups.

The language used to communicate the impact of coercive control on victims is particularly important for the following reasons:

- Language provides a way to articulate the behaviours and their impact which helps victim, perpetrator, and community understanding,
- Appropriate language corresponds to the seriousness of the impact of the behaviours on victims, 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>. It is important to acknowledge, however, that not all victims may describe that they are being 'coerced'. The complexity of the dynamic and the behaviour of the perpetrator can be subtle and remove the autonomy of the victim over time. Recognising the persistent pattern of behaviour in the context of the relationship is key to identifying coercive control.

The APS advocates for any messaging about coercive control to be part of a national conversation and a strong stance against any type of family violence.

## 2. Education and training

It is important to note that the impact of the introduction of the legislation will be minimal unless victims are supported in their attempt to seek assistance, and ultimately, justice.

People experiencing family and domestic violence are less likely to leave abusive relationships when there is insufficient psychological support to make the decision, or without connection to safe, local services tailored to their individual need. This creates a revolving door of victims leaving and being forced to return to violent relationships, due to a lack of emotional, psychological, and practical resources. There is a pressing need to ensure that the psychological workforce is trained to the highest standards to effectively assist victims in times of crisis and greatest risk.

By their nature, laws against coercive control rely on police involvement. However, victims may be reluctant to seek assistance from police due to their safety being endangered or fearing they will not be believed. As previously mentioned, if the legislation does proceed, it will be important to establish a comprehensive definition of coercive control developed through professional consultation mechanisms with police force staff, justice department staff and psychologists to ensure shared understanding. 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. The APS recommends ongoing discussion and broad consultation regarding codifying coercive control and continuing review of outcomes-based research evidence from Australia and overseas.

Further, successful implementation will require 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. Additional research and international benchmarking to improve understanding of perpetrator typology, in order to inform training across all levels of intervention, is indicated. 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<sup>10</sup> is also required. Finally, ensuring that victims trust that coercive control will be treated in the same way as physical violence, despite the lack of physical evidence, will be imperative.

From a psychological perspective, it is the impact of legislation on victim which is critical. Given this, the APS recommends that the court and associated personnel be trained and exposed to the lived experience of victims of coercive control to gain insight into the impact of these complex behaviours and victims' interaction with the justice system. Other considerations include:

- **Treating the behaviour as a pattern, not a stand-alone incident** - it is critical that the whole context of the relationship and the pattern of behaviours be examined and admissible in court. Otherwise, the acts in isolation may not be 'illegal' despite the devastating effects they may have on victims.
- **Inability of victims to fully explain the impact of the behaviours** - due to the complexity and the effects of being subject to coercive-controlling behaviour, it may be impossible for a victim to understand and articulate the dynamics of the relationship. It is critical, therefore, that victims, and ideally perpetrators, undergo psychological assessment to fully elucidate the intent and impact of the behaviours.
- **Importance of the admissibility of psychologists' statements** - statements from psychologists must be admissible as an explanatory supplement to victims' 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 minimise the effects of the coercive controlling behaviour.

- **Victim safety** - perpetrators utilising coercive and controlling behaviour are often skilled at identifying their partners' thought patterns and vulnerabilities. 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.

### 3. Supports and services for victims/survivors

The approach of the service system should be evidence-based with the principles of compassion and trauma-informed practice with safety being paramount<sup>see 11</sup>. Service providers need to be appropriately trained and experienced<sup>5,12</sup>. Given the complexity of the behaviours and the long-term devastating impact that coercive control can have on mental health, advanced training and expertise from mental health professionals is required. As regulated practitioners, APS members regularly work with victims of domestic violence to support them through each part of their experience. As previously mentioned, it is essential that the psychological workforce is appropriately trained to support victims of coercive control.

It is essential that the Attorney-General's Department establishes processes to ensure equitable access services and support. For example, residents in regional and remote regions face particular challenges when accessing domestic and family violence services. One positive outcome of the global COVID-19 pandemic is the familiarisation with technological solutions to service delivery. Opportunities such as day and night online zoom support for victims should be expanded and properly resourced.

The possible inequalities that can be seen in residents without internet access or who have limited digital literacy must also be addressed. Similarly, linguistically, ability, and culturally diverse South Australian residents should be supported as they often represent populations who are particularly vulnerable, partially due to the difficulty of accessing services. Problems may be exacerbated when diverse community groups do not consider some controlling behaviours as problematic in an intimate relationship. Sufficient translators, resources in language, and community awareness in culturally and linguistically diverse groups are required. It has also been found that LGBTIQ+ people who seek support if they are abused, or wish to change their behaviour toward their intimate partner, may find it particularly difficult to access appropriate services<sup>13</sup>.

The APS suggests a comprehensive co-response model which prioritises victim and family safety. There are examples of effective co-response models in Australia that promote a shared understanding by the core service team. One example is the Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) in Victoria which outlines the common approach across services to identify, assess and manage family violence risk<sup>14</sup>. This approach facilitates information sharing across services to co-develop a management plan.

The APS acknowledges that not all victims of coercive control seek support from mainstream domestic violence services for a multitude of reasons. As previously described, increased public awareness may assist victims to identify and articulate their experience and, in turn, seek help. Increased public awareness may also assist unrelated service personnel (banks, hairdressers, real estate agents etc.) or mainstream medical (or otherwise) service providers to identify and assist victims and direct them to receive appropriate support<sup>15</sup>. Given that victims 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 15</sup>,
- Extend education and training for mental health workers and teachers, and
- Develop education and training programs as a prevention mechanism for the general public, schools, the police and other stakeholders.

The nature of coercive control means that many victims may not have access to the financial resources necessary to pay for services in the private sector. Ideally, a co-ordinated and

integrated system would be available to victims, according to their personal risk profile and circumstances. This may include more resources being dedicated to public support systems.

Logically, the APS expects that if coercive control were to be criminalised, more victims would potentially be identified – increasing the need for psychological support services. It is imperative that the South Australian Government is prepared to provide appropriate funding to for these services.

However, given that this is a national issue, the APS has previously advocated for the Federal Government to also consider providing funding through the Medicare Benefits Schedule (MBS) to enable victims of coercive control to access an extended number of rebatable sessions - similar to the Eating Disorder Psychological Treatment MBS items.

#### **4. Appropriate responses to and for perpetrators**

Working with perpetrators to achieve behavioural change can be challenging, as it often requires a marked shift in their long entrenched attitudes and beliefs<sup>6</sup>. If coercive controlling behaviour is not addressed, it is highly likely that perpetrators will use similar behaviours in the future <sup>see 16</sup>.

There is a critical need to develop and evaluate perpetrator programs to ensure that supported initiatives are evidence-based <sup>see 16,17</sup>. Funding such programs may not be as attractive to Governments as initiatives to support victims, however, action must be taken to stop the cycle of abuse.

Like support offered to victims, it is essential that there are opportunities for perpetrators living in rural and remote areas to participate in behavioural change programs. Online opportunities also may address some of the reported incidences of perpetrators not attending behavioural change programs because they are “inconvenient” or “too difficult to attend in person”. For both online and in-person programs, it is important to acknowledge that effective cognitive and behavioural change is not the same as merely attending <sup>see 18</sup>. Thorough psychological assessment is required to determine whether any behavioural change program has been effective.

An APS member with specific expertise in the area of coercive control drew our attention to one program which uses a different approach to working with perpetrators of domestic violence (and other offences). Using immersive, outdoor activities and other counselling and mentoring sessions, *Hard Cuddles* facilitators and mentors, some with lived experience, create an environment to remodel communication patterns and address a variety of emotional challenges<sup>19</sup>.

#### **Other comments**

The APS supports working toward national consistency, such as the work by the Meeting of Attorneys-General (MAG), to co-design common, national principles to build an understanding of and approach to coercive control<sup>20</sup>. Irrespective of how it is legislated in each jurisdiction, a common agreement of principles is an important step to ultimately increase community understanding and improve the safety of potential victims.

In addition, there is a need to consider the following:

- Cultural nuances, gender/linguistic differences, Aboriginal and Torres Strait Islander social norms and beliefs, attitudes towards LGBTIQ+ communities and contextual circumstances must be researched and considered in terms of how legislation is appropriately developed and enacted.
- Juries need to understand the traumatic nature of coercive control and the impact it has on victims. Instruction to juries 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 and legislative personnel in cases of coercive control. APS would be happy to assist with this project.

In addition, research is required to ensure:

- Evidence-based assessment measures to identify whether coercive control is present in a relationship.
- The effectiveness of existing domestic and family violence 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 programs is contradictory and suggests that they do not always reduce recidivism in perpetrators<sup>17</sup>.
- Understanding and working with psychological antecedents of coercive and controlling behaviours to inform intervention programs for both victims and perpetrators.

Thank you for the opportunity to respond to this consultation. If any further information is required from the APS I would be happy to be contacted through my office 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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*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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