LEGISLATIVE RESPONSES TO COERCIVE CONTROL IN WESTERN AUSTRALIA

SUBMISSION FROM THE CENTRE FOR WOMEN'S SAFETY & WELLBEING

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Acknowledgement of Country

The Centre for Women's Safety and Wellbeing acknowledges the Whadjuk Nyoongar people as the Traditional Owners of the land where our office is located. We acknowledge Aboriginal and Torres Strait Islander peoples of this nation, and we pay respect to Elders past and present. We acknowledge the continued deep spiritual attachment and relationship of Aboriginal and Torres Strait Islander peoples to this country and commit ourselves to the ongoing journey of reconciliation.

Recognition of victims and survivors

The Centre for Women's Safety and Wellbeing recognises the strength and resilience of adults, children, and young people who have experienced domestic, family, and sexual violence and acknowledge that it is essential that responses to domestic, family, and sexual violence are informed by their expert knowledge and advocacy.

We pay respect to those who did not survive and acknowledge friends and family members who have lost loved ones to the preventable and far-reaching issue of domestic, family, and sexual violence.

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Introduction

Coercive control is a defining feature of domestic and family violence and is a known predictor of escalating violence, including intimate partner homicide. Concerns about the lethality of coercive control in domestic and family violence contexts, and limitations in current responses to the use of coercive control by perpetrators of domestic and family violence, has understandably led to increased public conversation and debate as to whether Western Australia should follow the lead of countries such as England, Wales, and Scotland by criminalising coercive control.

Conversations regarding improving identification of and responses to coercive control have been underpinned by a commitment to a common outcome – to develop consistent and victim-survivor centred responses to coercive control that intervene in and prevent domestic and family violence – and an understanding that this will require a significant shift in how coercive control and associated risk is understood and managed across the entire domestic and family violence response system and the wider community.

Law and policy reform advocates, researchers, and commentators – locally and internationally – are rightly demanding improved justice system responses to coercive control. That is, for justice systems and all practitioners within it to move beyond responding to domestic and family violence as isolated incidents, and towards models of practice that recognise, assess for, and respond to the patterns of coercive and controlling behaviours that thread through domestic and family violence.

The justice system is often criticised for taking an incident-based approach to domestic and family violence and responding mainly to the more readily identifiable forms of violence, such as physical abuse. Proponents of law reform to criminalise coercive control advocate it as a means by which the justice system can better respond to the spectrum of ways in which domestic and family violence is perpetrated, intervene earlier in domestic and family violence, and prevent incidents of serious physical violence.

The Centre for Women's Safety and Wellbeing (CWSW) strongly agrees that the justice system, as a key part of domestic and family violence response, must reflect best practice understandings and approaches to domestic and family violence. This means domestic and family violence must be defined in family violence law to reflect the nature and dynamics of domestic and family violence – including coercive control as a defining feature – and require all justice system stakeholders to enact their responsibilities according to that definition.

Currently, there are significant gaps in responding to coercive control within justice system responses to domestic and family violence in Western Australia. However, it is important to critically assess the effectiveness and potential unintended consequences of

criminalising coercive control in addressing these gaps from a victim-survivor centred perspective.

After consideration of the evidence, the Centre for Women's Safety and Wellbeing concludes that a 'whole-of-system' approach is required to improve responses to coercive control. While the justice system (civil and criminal) forms part of the systemic response to domestic and family violence, CWSW does not support the introduction of a new offence to criminalise coercive control in Western Australia at this time. We believe that significant challenges and limitations need to be addressed before new legislation is considered. This would minimise any unintended consequences of newly introduced legislation in the criminal context.

There are actions that could be taken now to improve responses to coercive control, that extend beyond a criminal justice response to a 'whole-of-system' response to this important and complex issue. It is urgent that we focus on developing best-practice responses to coercive control to ensure Western Australia's systemic response to domestic and family violence meets the needs of all victim-survivors, regardless of whether they engage with the justice system.

Arriving at this position has been very difficult, as there are compelling arguments that support a move to criminalise coercive control. CWSW is acutely aware of the urgency with which new responses to coercive control are required. We have arrived at this position based on extensive research, consultation with domestic and family violence providers and stakeholders, and the CWSW Lived Experience Advisory Group. All domestic and family violence services and CWSW Lived Experience Advisory Group members consulted with support the position that a well-resourced, evidence-based, whole-of-system approach is required to ensure safe and effective responses to coercive and controlling behaviours. However, views on when and if we should criminalise coercive control in Western Australia were not unanimous. CWSW empathise with and respect the views of people with lived experience of domestic and family violence who support the criminalisation of coercive control, while also recognising there are those with lived experience who do not.

CWSW remains open to reviewing our position as new evidence and research emerges and as systems responses to coercive and controlling behaviours in the context of domestic and family violence improve.

Recommendations:

1. Undertake research to assist in improved targeting of areas of weakness in the implementation of Family Violence Restraining Order (FVRO) processes and identify effective interventions to protect and empower victim-survivors. Ensure the benefits and weaknesses of any changes are evaluated to ensure intended outcomes are being achieved. Research must explore the views of professionals including

police, magistrates, lawyers, and survivor advocates on what facilitates and what hinders enforcement.

2. Develop and implement trauma-informed processes throughout the justice system (civil and criminal) to ensure the system is truly victim-centred and does not retraumatise victim-survivors. This will include enhancing current victim support services which will require a commitment to additional funding.

3. Provide sufficient funding and resources for specialist domestic and family violence services and victim support services to ensure that all victim-survivors can access the support they need throughout the justice process.

4. Provide additional funding and resources so all victim-survivors have access to free legal advice, information, and representation so they can make informed decisions about their safety.

5. To effectively reduce and respond to misidentification a whole-of-system effort is required. This will require partners from across different sectors to work together to develop workable solutions for each stage of the process and at a minimum will need to involve government representatives from justice system agencies, the legal sector, the specialist domestic and family violence sector, and Child Protection. Engagement with groups that can represent the unique needs of priority cohorts will also be essential. Close collaboration with Aboriginal organisations will be required to ensure that these solutions adequately address the high rates of misidentification among Aboriginal women.

6. Ensure that each part of the domestic and family violence response system is fully integrated, mutually reinforcing, and facilitating reciprocal accountability. Until we have an inter-departmental, integrated model for domestic and family violence system reform, we will have siloes, inconsistency in practice, and restricted capacity for the various specialist parts of the domestic and family violence response system to be mutually reinforcing.

7. Explore with Aboriginal communities, alternative approaches that might help to address the overrepresentation of Aboriginal people in criminal processes, to reduce magistrates' reliance on 'perceptual shorthands' and resultant negative sentencing discrimination, and to provide a more meaningful sentencing process for Aboriginal people. Strategies must attend to the specific justice needs of Aboriginal women.

8. Provide ongoing and compulsory education and training for all people working in the justice system (civil and criminal) – including developing an understanding of the centrality of coercive control to domestic and family violence – so they can identify and safely respond to domestic and family violence. This education and training must be informed by the expertise of the specialist domestic and family violence sector to ensure it aligns with CRARMF and the emerging evidence-base and will require ongoing funding and resourcing.

9. Analyse family violence legislation in Western Australia to ensure that current legislation is being utilised effectively and to allow for identification of improvements that could be made in the way laws are currently being enforced and implemented.

10. Address the way coercive control is conceptualised and understood, and ensure that this understanding is consistent across systems, services, and agencies. Improved understanding of coercive control across the domestic and family violence response system would better enable those working in the justice system to implement and enforce existing legislation more effectively, addressing many of the gaps in the current response to coercive control, without introducing a new offence.

11. Ensure that the WA Police Force receives ongoing, high-quality training across all policing levels. Police engaged in the Family and Domestic Violence Response Team must be highly specialised domestic and family violence responders and WAPOL must demonstrate active commitment to the FDVRT model.

12. Develop a shared understanding of domestic and family violence across the domestic and family violence system in Western Australia through a more comprehensive rollout of a ('refreshed') CRARMF across the domestic and family violence system, including the WA Police Force and the justice system. This will provide the necessary architecture for identifying and managing domestic and family violence risk and harm from coercive control and help drive the systemic response.

13. Introduce perpetrator focused tools and practice guidance and rollout across the broader domestic and family violence system and continue to develop a shared understanding of perpetrator risk across the entire system. A significant level of ongoing investment will be required by the Western Australian Government to ensure that organisations have access to important and necessary resources, training, and other implementation tools and supports.

14. Improve access to information to understand and manage risk and to improve the visibility of perpetrators within the system. Specific guidance on sharing information about perpetrators and alleged perpetrators of domestic and family violence and increasing the sharing of perpetrator information will lead to an increase in the extent to which perpetrators are kept in view.

15. Develop perpetrator practice guides and risk assessment tools; with training and support provided to workforces to understand and operationalise the guidelines — particularly among justice and universal workforces (hospitals, alcohol and other drug, mental health services, and custodial workforces).

    The forthcoming Perpetrator Response Framework explains the gaps in current responses, details opportunities to improve or strengthen perpetrator responses and ensure that domestic and family violence response systems, including statutory authorities and community organisations, are integrated and work together to

actively respond and contribute towards perpetrator-related risk reduction, risk management, and accountability.

What is coercive control?

The phrase coercive control was coined by Evan Stark whose book Coercive Control: How Men Entrap Women in Everyday Life was published in 2006. It contained a critique of what Stark described as 'the domestic violence paradigm' that focused on discrete incidents of physical violence, between couples sharing a domestic space, where separation was understood to equate to safety for the victim-survivor. Instead, based on work undertaken by the women's movement and his own work with victim-survivors, he outlined a course of conduct by perpetrators that removed their partner's liberty and autonomy. Physical violence can be used by perpetrators of coercive control. This can be frequent or intermittent, 'low level' (in terms of injuries sustained) or severe, or may not be present at all.

Domestic and family violence is considered to be a form of everyday terrorism. It creates long-lasting fear and trauma, which reinforce the abuser's control over the abused person. The frequency and prolonged nature of domestic and family violence, the psychological aspects of this control, and the setting in which domestic and family violence takes place all help to explain these higher levels of fear and trauma.

The research demonstrates that:

1. Fear in situations of domestic and family violence is distinctive: Being abused in a domestic setting, by an intimate partner, shapes the nature of the immediate fear during violent incidents. It also leads to chronic fear which builds up over the long term and can lead to significant trauma and negative effects on health and wellbeing.

   The social and physical entrapment and isolation which often accompanies abuse reinforce these fears and make help-seeking more difficult. Fear is often a key reason for not leaving, and this fear is rational and justified.

2. The psychological and emotional control that result from fear are a key way in which domestic and family violence 'works': Keeping another person in a state of chronic fear does not require physical violence to be used all of the time, or at all.

   Using and playing on fear is common by abusers, and is made possible because of their intimate knowledge of the person they are abusing. Abusers tell powerful stories about the abuse to the person they are abusing, often saying it is the fault of the person being abused. Many victim-survivors experience a state of 'doublethink' as a result.

3. Gender roles within intimate relationships – in other words, who it is who usually does the domestic and emotional work – make abuse easier to perpetrate and harder to escape. Other social inequalities, especially those of sexual orientation, income, class, ethnicity, migrant status, and disability, can also increase fear of domestic and family violence and its effects. All of these factors explain why it is so difficult for people who are abused to leave.

4. Concern for children is central to the fears of many people who experience domestic and family violence: Children are sometimes victimised by the abusive parent, and frequently witness abuse. Children are sometimes deliberately used in one parent's abuse of another. Children are often a key reason for the parent being abused not leaving, as well as eventually being a key reason for leaving. This apparently contradictory situation is explained by the complex and risky nature of the decision to leave.

   In a family where coercive control is utilised, children are not simply witness to acts of physical violence directed at their mother. They experience the rules, threats, control, and fear, and are victimised by these.[1] Children and young people are victim-survivors in their own right.

   Children are affected by many forms of coercive control such as control of time and movement within the home, deprivation of resources, and isolation from the outside world, which prevent them from engaging with wider family, peers, and extra-curricular activities.

   Research has also shown however that children and their mothers often resist the coercive regime imposed by the perpetrator. Resistance often takes the form of finding ways to maintain elements of 'normal life' and close mother-child relationships whenever possible.

   While the harmful effects of coercive control on children must be taken seriously, it should be noted that studies also reveal that some children living with domestic and family violence are 'doing as well' as children who are not living with domestic and family violence. Why some children cope better than others is often explained by the concept of 'resilience'. 'Protective factors' can help build children's resilience, while 'risk factors' can reduce it. This suggests the importance of social policy responses and intervention to build protective factors and reduce risk.

5. People experiencing domestic and family violence are not passive victims, but take many actions to improve their security: Considerable strength and courage are required to live with domestic and family violence, and these emotions are

[1] Katz, Emma 2015 Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed By and Resist Regimes of Coercive Control. Child Abuse Review.

experienced alongside fear. Victim-survivors try to resist and manage abuse and fear in different ways. Many still feel some sense of duty and responsibility toward the abusive partner and some try to 'fix' the abuse. Humiliation and shame at being abused are also powerful emotions for some.

6. After separation, fear often continues. Recovery and restoration are long processes: Abuse often continues after separation and leads to continuing or heightened fear. Trauma, an effect of chronic fear, may fully surface only after separation from the abuser. However, victim-survivors also describe positive outcomes of separation for themselves and their children.

7. Domestic and family violence has a significant impact on women's economic wellbeing and housing security; which intersects with their recovery overall. Domestic and family violence creates complex economic issues for women (and their children), and this disrupts their lives over the short and long term. Financial and housing security goes to the heart of not only their freedom from abuse, but also their recovery and capacity to (re)gain control over their lives.

8. Perpetrators of domestic and family violence who seek to control the victim-survivors before, during, or after separation may make multiple applications and complaints in multiple systems (for example, the courts, Child Support Agency, Centrelink) in relation to a protection order, breach, parenting, divorce, property, child and welfare support, and other matters with the intention of interrupting, deferring, prolonging, or dismissing judicial and administrative processes. This may result in depleting the victim-survivor's financial resources and emotional wellbeing, and adversely impacting the victim-survivor's capacity to maintain employment or to care for children.[2]

Implications for practice:

The coercive control paradigm requires system responses that look beyond discrete acts of violence to build up a picture of the oppressive world the victim-survivor is living in. As such, it is necessary to keep the perpetrator visible in systems and practices, to understand his actions and to hold him accountable for them. This helps us to understand the multiple constraints the victim-survivor is living with and the barriers to her engaging with services fully. In order to do this, we need to listen to the victim-survivor and to her concerns seriously. We need to take a trauma-informed approach to our work. This does not mean being a trauma expert but realising that traumatic

[2]Laing, Lesley, *'It's Like this Maze You Have Make Your Way Through': Women's Experiences of Seeking a Domestic Violence Protection Order in NSW* (Faculty of Education and Social Work, University of Sydney, 2013). Kaspiew, Rae, 'Violence in Contested Children's Cases: An Empirical Exploration' (2005) 19 *Australian Journal of Family Law* 112.

experiences might have a range of impacts which are relevant to the service a whole range of professionals might be delivering to the victim-survivor.

This means taking an approach which focuses not just on risk but on recovery. This holistic approach will consider not just the physical violence faced by a victim-survivor but the impact of control on finances, social life, self-esteem, and development opportunities. Furthermore, separation must not be seen as a panacea to all the problems the victim-survivor is experiencing but must be understood as a high-risk period and that ongoing systems support is necessary. Systems should support the safety and recovery of victim-survivors; systems should be accessible, trauma informed, victim-survivor centred and proficient in responding to coercive and controlling behaviours in the context of domestic and family violence.

Does the *Restraining Orders Act 1997* adequately address the nature and impact of coercive control?

Currently, victim-survivors of domestic and family violence in Western Australia have recourse to Violence Restraining Orders (VRO) and Misconduct Restraining Orders under the Restraining Orders Act 1997 (WA), or the Criminal Code 1913, which requires prosecution of an offence by the police. An "act of family or domestic violence" is one of the grounds which the Magistrates Court may consider when determining whether to grant a Violence Restraining Order. A reference in this Act to family or domestic violence is a reference to: (a) violence, or a threat of violence, by a person towards a family member of the person; or (b) any other behaviour by the person that coerces or controls the family member or causes the family member to be fearful.

Violence Restraining Orders offer a civil law response to domestic and family violence and allow victim-survivors of domestic and family violence to apply for an order that can impose conditions that restrict behaviour that would not otherwise be prohibited by criminal law. Section 61(1) of the Restraining Orders Act 1997 (WA) provides that a breach of a VRO is a criminal offence, and it may be easier to prove a breach than the underlying offence to the requisite degree of proof. This civil pathway provides an avenue for a victim-survivor's experience of domestic and family violence to be validated and an opportunity for some perpetrator accountability. It also provides victim-survivors of domestic and family violence an avenue to the criminal justice process.

If any of the 'conditions' on the Family Violence Restraining Order are subsequently breached by the perpetrator, it is considered a criminal offence. In this way, if a perpetrator is behaving in a way, or using tactics that coerce or control the victim-survivor or cause them to be fearful, under the definition of family violence in Western Australian legislation, this would be considered as committing family violence and therefore constitute a criminal offence of breaching the conditions on the FVRO.

Western Australia introduced the Family Violence Restraining Order in 2015, which constituted an amendment to the Restraining Orders Act 1997. The Family Violence Restraining Order implemented some of the recommendations made by the Law Reform Commission of Western Australia (LRCWA) in its report entitled "Enhancing Family and Domestic Violence Orders", published in June 2014. In its terms of reference, the LRCWA was instructed to consider the benefits of separate domestic and family violence legislation, the utility and consequences of legislation for domestic and family violence restraining orders other than under the Restraining Orders Act 1997, and the provisions which should be included in legislation if it were to be developed.

A common submission made by interested parties to the LRCWA was that domestic and family violence was often misunderstood by police and Magistrates, resulting in an inconsistency in decision making. The significant increase in reported cases of domestic and family violence also meant that Court procedures and processes were under more strain, and efficient processes were necessary.

The LRCWA concluded that no separate domestic and family violence legislation should be enacted, however crucially, that "violence" in a domestic and family violence context can mean more than physical violence and include other forms of social, economic, and emotional abuse. An amendment to the existing legislation was necessary to remove the inconsistencies and to identify more accurately what domestic and family violence is.

In the Government's media release, the then Attorney General, Mr Mischin, stated that the new Family Violence Protection Orders would "be a distinct third category of orders and will adopt a new modern definition of family violence, moving away from the concept of a victim *having to provide evidence of an act of abuse towards behaviour intended to intimidate, coerce, or control* [emphasis added]".[3]

The Family Violence Legislation Reform Act 2020 makes changes to several areas of legislation including:

- The Criminal Code 1913;
- Sentencing Act 1995;
- Sentence Administration Act 2003;
- Bail Act 1982;
- Restraining Orders Act 1997;
- Police Act 1892;
- Road Traffic (Administration) Act 2008;

[3] https://www.mediastatements.wa.gov.au/Pages/Barnett/2015/03/Family-violence-reform-for-Western-Australia.aspx

- Dangerous Goods Safety Act 2004; and
- Evidence Act 1906.

On 1 October 2020 two major changes came into effect: a) A new offence at section 298 of the Criminal Code: Suffocation and Strangulation; and b) A new offence at section 300 of the Criminal Code: Persistent Family Violence.

The Family Violence Legislation Reform Act 2020 also includes a number of other changes, including:

- Aggravated penalties for offences commonly occurring in family violence situations, such as Depravation of Liberty and Threats to Kill;
- Police will be required to record every family violence incident;
- Vehicle owners who are family violence victims will be exempt from the requirement to identify the driver responsible for committing a traffic offence, where the owner of the vehicle involved in the offence can demonstrate that to do so may result in family violence;
- Laws making it easier for evidence of family violence to be introduced in criminal trials;
- Allowance for additional jury directions to counter stereotypes and misconceptions;
- Further amendments to the Restraining Orders Act 1997 and Bail Act 1982 to enhance victim safety and protection, and
- The introduction of a 'Serial Family Violence Offender' declaration, for family violence offenders with two or more convictions (which came into effect 1 January 2021).

According to the Ombudsman of Western Australia report investigating issues associated with Violence Restraining Orders and their relationship with family and domestic violence fatalities, by administering the Restraining Orders Act 1997 in accordance with nine key principles below, state government departments and authorities will have the greatest impact on preventing and reducing domestic and family violence and related fatalities:[4]

(i) perpetrators use family and domestic violence to exercise power and control over victims;
(ii) victims of family and domestic violence will resist the violence and try to protect themselves;
(iii) victims may seek help to resist the violence and protect themselves, including help from state government departments and authorities;
(iv) when victims seek help, positive and consistent responses by state government

[4] Ombudsman Western Australia (2015). Perth, Western Australia.

departments and authorities can prevent and reduce further violence;
(v) victims' decisions about how they will resist violence and protect themselves may not always align with the expectations of state government departments and authorities; this does not mean that victims do not need, want, or are less deserving of, help;
(vi) perpetrators of family and domestic violence make a decision to behave violently towards their victims;
(vii) perpetrators avoid taking responsibility for their behaviour and being held accountable for this behaviour by others;
(viii) by responding decisively and holding perpetrators accountable for their behaviour, state government departments and authorities can prevent and reduce further violence; and
(ix) perpetrators may seek to manipulate state government departments and authorities, in order to maintain power and control over their victims and avoid being held accountable; state government departments and authorities need to be alert to this.

These nine principles illustrate the practical difficulties in ensuring that legislation actually helps victim-survivors of such a complex social phenomenon as domestic and family violence. The critical gap in Victoria's justice system response to family violence identified by the Royal Commission was not the inability of existing laws to respond to coercive control, but rather, the absence of a shared understanding of family violence as coercive control. This, the Commission found, leads to victim-survivors being ignored or disbelieved when they seek help: "Whatever laws we have will be only as effective as those who enforce, prosecute, and apply them. Improving these practices—through education, training, and embedding best practice and family violence expertise in the courts—is likely to be more effective than simply creating new offences."[5]

Are Family Violence Restraining Orders adequately capturing coercive control and patterns of harm in their application:

- through the granting of orders?
- through the prosecution of breaches?

The Family Violence Restraining Order is the main statutory and legal mechanism aimed at ensuring a victim-survivor's immediate and ongoing safety; and is a pivotal provision under domestic and family violence legislation. The administration of the FVRO relies on key statutory response agencies, particularly the police, judicial agencies, and child safety personnel. In addition, domestic and family violence support

[5] https://www.rcfv.com.au/

services in the non-government sector play a crucial role in advocating for victim-survivors and supporting them through redress and recovery.

Though FVROs are associated with a reduction of abuse for many women, a significant number of women are subjected to further abuse after obtaining a FVRO. Consequently, serious concerns have been raised about the degree to which FVROs and their administration adequately meet the safety needs of women and children. For the successful use of FVROs, effective enforcement by police officers and courts is crucial.

As mentioned above, legal responses to domestic and family violence in Western Australia largely favour a civil rather than a criminal response, and FVROs are an effort to ensure the safety of victim-survivors of domestic and family violence. Criminal responses are provided through the enforcement of the FVRO and charging for underlying criminal offences.

Anecdotally, breaches of FVROs are not always followed up diligently, particularly if they are not associated with the use of physical violence or property damage. Domestic and family violence service providers also inform CWSW that women are deterred from reporting a breach of a FVRO because they may not feel believed or may feel less safe in doing so. Lack of consistency in policing is also often raised by service providers. Attitudes of police are reported as variable, with some victim-survivors describing lack of empathy toward their situations, particularly where there is no physical violence. Concern was expressed by the CWSW Lived Experience Advisory Group about the lack of knowledge and understanding of coercive control displayed by some police when they have reported a breach.

There is a tendency to the collapsing of multiple breaches into one charge which means the pattern of coercive and controlling behaviours is not as visible and/or the criminal history of some perpetrators is misleading in relation to recidivism. Douglas and Stark's (2010) work argued that charging each breach action separately will more likely demonstrate patterns of offending and recognise the seriousness of each breach.[6]

Women in the CWSW Lived Experience Advisory Group also spoke of feeling supported by police and were of the view that police actions were empowering to them particularly when they held the perpetrators accountable and made it clear that they viewed breaches as serious even when they did not involve physical violence.

The routine use of risk assessment in relation to breaches of protection orders is recommended by Robertson et al.[7] Particular participant cases were used to illustrate

[6] Douglas, H., & Stark, T. (2010). Stories from survivors: Domestic violence and criminal justice interventions. Brisbane: University of Queensland.

[7] Robertson, N., Busch, R., D'Souza, R., Lam Sheung, F., Anand, R., Balzer, R., . . . Paina, D. (2007). Living at the cutting edge: Women's experiences of protection orders. Volume 2: What's to be done? A critical analysis of statutory and practice approaches to domestic violence. Wellington: University of Waikato.

that sometimes seemingly minor breaches of orders did not reflect in any way the potential serious risk to victim-survivors. Associated with minimising the risk represented by particular respondents, examples were cited of interagency cooperation in responding to risk needs. In some cases there was insufficient evidence to pursue a particular breach, but nevertheless a lethality risk assessment indicated a high level of risk existed. In such cases, referral to a police family violence coordinator resulted in the case being referred to an interagency meeting. The interagency cooperation that followed led to increased safety measures being put in place to protect the victim.

The implementation standards of the legislation – and this is where there are implications for enforcement – are impacted by the constraints on the judiciary in relation to time and heavy workloads, and also by judicial officers' knowledge and appreciation of coercive and controlling behaviours in the context of domestic and family violence. Legislative reform does not in and of itself improve the implementation and enforcement of domestic and family violence legislation as it does not necessarily bring about changed attitudes and increased knowledge and skills of police and the judiciary.

Important to note in this submission focusing on the potential criminalisation of coercive control is that the experience of women in criminal court settings is often described as lonely and isolated with very little support. This is an ongoing theme in women's court experiences overall in relation to breach charges. This emphasises the importance of ensuring that community-based domestic and family violence victim-survivor advocates be made available to women appearing before the courts in domestic and family violence-related matters.

In theory, when a FVRO is in place, police response is more effective as a breach of a FVRO can more likely lead to arrest. When there is a FVRO in place, it also makes it easier for the police to intervene early when a threat has been made, consequently preventing the continuation and escalation of violence. By acting on an incident of a breach of a FVRO, police are not only enhancing the safety of victim-survivors, but they are encouraging the reporting of breaches and sending a message to offenders that a breach of a FVRO is an offence that may be subject to an arrest.[8]

According to domestic and family violence service providers and the CWSW Lived Experience Advisory Group, police nowadays are generally more sensitive to the needs of domestic and family violence victim-survivors, however, the enforcement of FVROs remains incomplete and problematic. The long-term needs of women at risk involve ongoing support through a stronger focus on perpetrator accountability and post-separation recovery and support needs for victim-survivors.

[8] Rollings, K., & Taylor, N. (2008). Measuring police performance in domestic and family violence. Trends & Issues in Crime and Criminal Justice, 367.

Despite reported improvements in police responses to domestic and family violence victim-survivors, fear and distrust of police, the justice system, and government agencies continue to affect engagement with the police, more so for people from Aboriginal and culturally and linguistically diverse communities. It is important that police consider the anxiety that these groups experience when they are obliged to engage with police and/or welfare services[9].

Closely related to interaction with culturally and linguistically diverse population groups is the use of interpreters. Sometimes police use unsuitable interpreters, such as members of the perpetrator's family, that may hinder decisions to prosecute for a breach of a FVRO.

Furthermore, risks inherent in current justice system responses allow misidentification to occur. Poor assessment for coercive control, and use of self-defensive and reactive force, are commonly cited as causes of police wrongfully naming victim-survivors as the perpetrator of violence. Accurately identifying the primary aggressor is a basic prerequisite for ensuring victim-survivors are protected and perpetrators are held accountable for their use of domestic and family violence.

Misidentification is where a victim-survivor is incorrectly identified by police and/or the court as the perpetrator of violence. Domestic and family violence service providers – particularly Aboriginal Community Controlled Organisations – are deeply concerned with the significant risk of victim-survivors being misidentified as the primary aggressor. Misidentifying victim-survivors as the perpetrator of violence creates safety risks and can lead to a series of cascading adverse consequences: loss of housing, child protection intervention, loss of income support, complex and protracted court proceedings, and considerable psycho-social and wellbeing difficulties over time.

To ensure the accurate identification of the primary aggressors and system processes to remedy misidentification at the earliest opportunity, multiple areas need attention, including improving understanding of the dynamics of domestic and family violence – including coercive control – clearer guidance and more integrated processes for dealing with misidentification, and better system monitoring.

To effectively reduce and respond to misidentification a whole-of-system effort is required. This will require partners from across different sectors to work together to develop workable solutions for each stage of the process, and at a minimum will need to involve government representatives from justice system agencies, the legal sector, the

[9] See also, Douglas, Heather; Fitzgerald, Robin --- "The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People" [2018] IntJlCrimJustSocDem 25; (2018) 7(3) International Journal for Crime, Justice and Social Democracy 41

specialist domestic and family violence sector, and Child Protection. Engagement with groups that can represent the unique needs of priority cohorts will also be essential. Close collaboration with Aboriginal organisations will be required to ensure that these solutions adequately address the high rates of misidentification among Aboriginal women.

For the criminal justice system to be effective in its response to FVRO enforcement, a collaborative, coordinated, and interagency approach to addressing domestic and family violence is necessary, but this often does not happen in practice.

It should be noted that there are challenges faced by police, such as workload, and quality and accuracy of data extracted from police systems in enforcement of FVROs. CWSW believes that improved information and intelligence sharing between police and other partner agencies is required to assist police in their effectiveness in responding to and reducing domestic and family violence.

Further, ongoing professional development has the potential to support judicial officers and lawyers in the quality of their listening skills and their ability to empathise in order to enhance interactions in court and legal support settings, particularly where victim-survivors are concerned.

Court systems have the power to empower victims to validate their experience and to aid in their recovery. Courts also have the power to send a strong public message about the abuse itself and the fact that perpetrators will be held accountable. In instances where the courts fail to achieve these two aims, the confidence of both victim-survivors and the community in court processes may be diminished and perpetrators may not only continue to minimise the seriousness of their behaviour, but also disregard the authority of the court.

Strong and consistent enforcement of FVROs is intrinsically linked with risk assessment, risk management, and safety planning. Furthermore, research is important to help us to better target areas of weakness in the implementation of FVRO processes and identify effective interventions to protect and empower women. When changes are made to improve the enforcement of orders, research can play an important role in ensuring the benefits and weaknesses of any changes are evaluated to ensure intended outcomes are being achieved. There is a strong need for evidence-based research that explores the views of professionals including police, magistrates, lawyers, and survivor advocates on what facilitates and what hinders enforcement.

Can current justice system responses to domestic and family violence in Western Australia capture coercive control adequately?

Despite definitional differences regarding the concept of coercive control, there seems

to be a common understanding that the 'problem' that needs to be addressed is the limitations in current responses to coercive control. The inadequacy of current responses to coercive control result in victim-survivors' experiences not being recognised and responded to safely and consistently, and perpetrators not being held accountable for their choice to use violence and instil fear, and responsible for their harmful behaviour. Given the established link between high levels of coercive control and intimate partner homicide[10], failure to respond early, appropriately, and safely can result in death, and this understandably results in a sense of urgency to address this deeply important social phenomenon.

As mentioned earlier, the concept of coercive control has gained more attention within legal and political discourses since the publishing of Evan Stark's book on men's violence against women, where Stark described coercive control as "tactics [used] to intimidate, isolate, humiliate, exploit, regulate, and micromanage women's enactment of everyday life".[11] These 'tactics' instil fear in a victim-survivor, erode their sense of identity and autonomy, and 'entrap' them in a violent relationship by 'closing down' all options for accessing safety and support[12].

Despite coercive control being recognised in current legislation, the tendency is to understand coercive control as a standalone tactic or type of domestic and family violence, or a non-physical form of domestic and family violence. Coercive control is inherent to all forms of domestic and family violence. In this sense, it is a defining feature of domestic and family violence, which can be used as a tactic of domestic and family violence and can also be the outcome of domestic and family violence.

There has undoubtedly been a shift away from understanding domestic and family violence as comprising single discrete instances of physical abuse towards a more comprehensive and accurate paradigm based on coercive control: a model of abuse that encompasses a range of strategies or tactics used by men to dominate their intimate partner. Despite this shift, domestic and family violence laws continue to coalesce around an incident-specific focus and weigh the severity of abuse by the level of force used or injury inflicted.

Reducing coercive control to a stand-alone tactic or type of domestic and family violence risks simplifying the power and control dynamics that are central to identifying and understanding a victim-survivor's complex and unique experience of coercive control. This potentially reinforces incident-based responses to domestic and family violence by looking at 'events of coercive control', rather than considering the totality of a victim-survivor's experience and the pattern of abuse that has been perpetrated against them.

[10] Boxall, H., Doherty, L., Lawler, S., Franks, C., & Bricknell, S. (2022). The "Pathways to intimate partner homicide" project: Key stages and events in male-perpetrated intimate partner homicide in Australia (Research report, 04/2022). ANROWS.
[11] Stark, E. (2007). *Coercive control: How men entrap women in personal life*. New York: Oxford University Press. p171-172.
[12] Tarrant, S., Tolmie, J., & Giudice, G. (2019). Transforming legal understandings of intimate partner violence (Research report 03/2019). Sydney, NSW: ANROWS.

The justice system is not currently equipped to deal with the complexity and nuance that coercive control presents, as there is not yet a common understanding of the role of coercive control in domestic and family violence, nor is there sufficient consistency in responding to domestic and family violence more generally across the system. Therefore, victim-survivors cannot be guaranteed an appropriately safe response when they engage with the justice system.

Whilst definitions of coercive control exist, there is variation in how the concept is interpreted and understood as people try to translate a concept derived from practice into the legal context[13]. Having a clear and consistent understanding of what it is we are trying to address is critically important as it ensures that everyone involved understands coercive control in the same way and helps shape effective justice responses.
The proposed new National Principles will help create a shared national understanding of coercive control and outline a mutual understanding across the Australian Government and state and territory governments about coercive control and how to respond to it. However, political commitment and resourcing will be required to ensure that this understanding is embedded effectively across systems.

Following consultation with domestic and family violence services and the CWSW Lived Experience Advisory Group, and a review of the policy and legislative landscape in Western Australia and academic research and literature, CWSW has formed a view that a 'whole-of-system' approach is required to improve responses to coercive control. Currently, we lack a whole-of-system perspective, which requires us to address the limitations in all parts of the domestic and family violence response system. There are victim-survivors – all of whom experience coercive control through domestic and family violence – who never engage with the justice system due to a myriad of barriers including a well-founded fear that the system will not provide a safe response.

Many justice stakeholders approach domestic and family violence as isolated acts of violence – commonly physical violence – without assessing for and responding to patterns of coercion and control. It will take long term structural and cultural change before all parts of the justice system can understand the complexity that coercive control presents. This is fundamental to providing safer outcomes for all victim-survivors who engage with the system.

Additional limitations in the justice system that impact on how effectively it can currently respond to coercive control include:

- The justice system is not aligned and integrated with other parts of the domestic and family violence response system because of siloed responses. This means that victim-survivors can fall through the gaps that exist between the justice system and the broader domestic and family violence response system.

[13] Walklate, S., Fitz-Gibbon, K., & McCulloch, J. (2017). *Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories.* Criminology & Criminal Justice*, 18*(1), 115-131.

- Support services for victim-survivors are currently not able to provide the level of support that they require post-separation, particularly throughout legal proceedings.
- The justice system is not free from bias and discrimination, nor is it inclusive and accessible for all.

The complexity and particularity of coercive control – the strategic ways in which a specific abuser individualises his abuse based on his privileged access to personal information about his partner – extends beyond the current response capacity of the justice system in Western Australia. The complex and individualised nature of coercive control means that behaviours which are understood as abusive from the perspective of a victim-survivor, might be very difficult for others to identify, evidence, and prosecute within the current justice system.

Proper system integration that includes justice as a core component of domestic and family violence response is urgently needed in Western Australia. A well-integrated domestic and family violence service system can reduce risk to victim-survivors, including the risk of secondary victimisation caused by inappropriate service responses.[14]

To date, the emphasis of system and sector reform has been on collaboration and coordination across the human services and justice sectors. To be effective, each part of the domestic and family violence response system must be fully integrated, mutually reinforcing, and facilitating reciprocal accountability. Until we have an inter-departmental, integrated model for domestic and family violence system reform, we will have siloes, inconsistency in practice, and restricted capacity for the various specialist parts of the domestic and family violence response system to be mutually reinforcing.

Does existing domestic and family violence legislation serve the particular needs of vulnerable groups? Why/why not? What improvements are needed in its implementation or application?

As outlined earlier, the Violence Restraining Order system is a hybrid system of criminalisation in which the VRO itself is a civil order, but any contravention of that order may result in a criminal charge. The prima facie aim of combining a civil VRO with the threat of a criminal charge for a contravention is to promote the safety and protection of the victim-survivor through deterrence for non-compliance with the VRO.

[14] Australia's National Research Organisation for Women's Safety. (2020). Working across sectors to meet the needs of clients experiencing domestic and family violence (ANROWS Insights, 05/2020). Sydney: ANROWS

It is well recognised that the outcomes of criminal justice policies are often variable across groups and may at times produce results disconnected from the initial aims[15].

There has been significant scholarly attention paid to the unintended consequences of various criminal justice responses to domestic and family violence. For example, some studies show greater criminalisation of domestic and family violence victims, primarily women, through pro-arrest policies and mandated victim participation in domestic and family violence prosecutions. Some studies have looked at the factors that are present in dual arrest cases and identified that domestic and family violence incidents that involve alcohol or drugs are more likely to result in dual arrest.[16]

Cunneen[17] and Nancarrow[18] have observed that the civil Domestic Violence Order (DVO) system is particularly likely to enmesh Aboriginal and Torres Strait Islander people within the criminal justice system. There is a persistent and significant overrepresentation of Aboriginal and Torres Strait Islander women as victims of domestic and family violence[19], and a significant overrepresentation of Aboriginal and Torres Strait Islander people as offenders in Australian criminal justice systems more broadly[20]. Of particular concern is that the imprisonment rate of women has doubled in the past decade and this is almost entirely due to the imprisonment of Aboriginal and Torres Strait women[21].

Douglas and Fitzgerald's article[22] makes a number of important findings in the Queensland context. It identifies that a disproportionate number of Aboriginal and Torres Strait Islander people are named on DVOs (as both the aggrieved and the respondent) and subsequently charged with contravention of a DVO, compared to non-Aboriginal people. Moreover, their analysis shows not only that Aboriginal and Torres Strait Islander women are overrepresented in these charges compared to non-Aboriginal women, but in particular, that 69 per cent of women who were sentenced to serve a period of imprisonment for a contravention of a DVO in the 2013-2014 year were Aboriginal and Torres Strait Islander women. The authors argue that, given that, in the

[15] Crutchfield R (2016) Current criminal justice system policy reform movements: The problem of unintended consequences. *Indiana Journal of Law and Social Equality* 5(2): 329-354.
[16] Muftić L, Bouffard J and Bouffard L (2007) An exploratory study of women arrested for intimate partner violence: Violent women or violent resistance? *Journal of Interpersonal Violence* 22(6): 753-774.
[17] Cunneen C (2010) *Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities: Report.* Sydney, New South Wales: University of New South Wales.
[18] Nancarrow H (2016) Legal responses to intimate partner violence: Gendered aspirations and racialised realities. PhD Thesis. Brisbane, Australia: Griffith University.
[19] Judicial Council on Cultural Diversity (2016) The *Path to Justice: Aboriginal and Torres Strait Islander Women's Experience of the Courts*. Sydney, New South Wales: Judicial Council on Cultural Diversity.
[20] Cunneen C (2013) Colonial processes, Indigenous peoples and criminal justice systems. In Bucerius S and Tonry M (eds) *The Oxford Handbook of Ethnicity, Crime and Immigration*: 386-407. Oxford, England: Oxford University Press.
[21] Australian Bureau of Statistics (ABS) (2016) Prisoners in Australia, 2016, Cat. No. 4517.0. Available at http://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0
[22] Douglas, Heather; Fitzgerald, Robin --- "The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People" [2018] IntJlCrimJustSocDem 25; (2018) 7(3) International Journal for Crime, Justice and Social Democracy 41

2011 census, Aboriginal and Torres Strait Islander women accounted for 3.3 per cent of all Queensland women, this demonstrates a startling overrepresentation.

While Aboriginal and Torres Strait Islander women are at the receiving end of increased frequency and severity of domestic and family violence, Douglas and Fitzgerald demonstrate that they are also significantly overrepresented in the QWIC data, compared with non-Indigenous women, as respondents to DVOs, in contravention prosecutions and in sentences of imprisonment for contravention.

Douglas and Fitzgerald suggest that an explanation for Aboriginal and Torres Strait Islander people's overrepresentation across genders may be that the criminal justice system treats Aboriginal and Torres Strait Islander people differently. In the context of contravention charges, this is reflected at both the level of policing and prosecution, but also at the sentencing level. In this context, Douglas and Fitzgerald argue that the political commitment to getting tough on domestic and family violence is now being reflected in legislative sentencing responses and associated judicial decision-making and has a disproportionate impact on Aboriginal and Torres Strait Islander people.

Douglas and Fitzgerald refer to research that suggests that Aboriginal and Torres Strait Islander women are more likely to use physical violence and fight back in response to violence than non-Indigenous women. They write that "ATSI women's use of physical violence may increase the likelihood that DVOs will be made against them by the police, which, in turn, increases their chances of being charged with contraventions. The use of violence in the commission of a contravention may also contribute to higher sentences".

Douglas and Fitzgerald also refer to earlier research that posited that Aboriginal and Torres Strait Islander women may be reluctant to call the police and may choose instead to respond to an attack with violence. This reluctance may result from fears, underscored by personal or community experience, of negative police engagement or children being removed. Interviews with incarcerated Aboriginal mothers in Western Australia found that most of the women who used violence had also been victims of violence.

Douglas and Fitzgerald argue that while using violence in self-defence may be more common among Aboriginal and Torres Strait Islander women, it is also more likely to place them at greater risk of an escalated violent response by an abuser and this may help to explain the large overrepresentation of Aboriginal and Torres Strait Islander women as victims of assault and homicide. Other data point to the greater vulnerability of Aboriginal and Torres Strait Islander women with higher chances of having complex case histories involving victimisation by multiple perpetrators, and situations in which their perpetration of violence is most often preceded by their own victimisation.

Police responses are often implicated in the legal outcomes for Aboriginal and Torres Strait Islander women. For example, police often employed a 'formulaic application of domestic violence legislation'[23] regardless of whether they were responding to a pattern of coercive control, responding to fights arising from anger, or simply resolving disputes in circumstances where the criminal response may be more appropriate. In many cases Aboriginal and Torres Strait Islander women with complex cases, including both victimisation and violence, were not well served by these methods. Nancarrow identifies concerns held by Aboriginal and Torres Strait Islander people about under-protection and over-policing, Aboriginal and Torres Strait Islander people's mistrust of police, a lack of police awareness of Aboriginal and Torres Strait Islander culture, and police bias against Aboriginal and Torres Strait Islander women[24].

Researchers have also pointed to practical issues confronting Aboriginal and Torres Strait Islander women living in rural and remote areas, including potentially being less likely to have access to services[25]. Douglas and Fitzgerald argue that "A lack of services clearly leads not only to reduced access to help, including safe housing and financial and legal aid, but also to police and court intervention. Even where services are available, they may be culturally inappropriate and interpreters may not be available. A lack of appropriate services may also contribute to ATSI women taking self-help measures and using defensive force as a protection strategy." They go on to say that "When ATSI women fight back, they may be perceived to deviate from the stock expectations of the 'perfect victim', or how a woman 'normally' behaves in response to DFV, and this may influence arrest and sentencing decisions."[26]

Douglas and Fitzgerald refer to research that points to differential treatment of Aboriginal and Torres Strait Islander people in relation to the use of DVO contravention charges: "In the DVO context specifically, a study in NSW found that male, young, and Indigenous offenders were charged with breach of a DVO sooner than other defendants after a DVO was ordered (Poynton et al. 2016: 5). As Piquero (2008: 59, 69) observes, police are afforded a high level of discretion and may be exercising this discretion differently in their responses to violence involving ATSI people compared to non-Indigenous people, contributing to the enmeshment of ATSI people in the criminal justice system via the DVO system".

Research undertaken by Bond and Jeffries[27] suggests that the location of legal processing of charges may influence Aboriginal and Torres Strait Islander

[23] Nancarrow H (2016) Legal responses to intimate partner violence: Gendered aspirations and racialised realities. PhD Thesis. Brisbane, Australia: Griffith University.
[24] Nancarrow 2016: 125-127
[25] Blagg H, Bluett-Boyd N and Williams E (2015) *Innovative Models in Addressing Violence Against Indigenous Women: State of Knowledge Paper.* Sydney, New South Wales: Australia's National Research Organisation for Women's Safety.
[26] Douglas, Heather; Fitzgerald, Robin --- "The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People" [2018] IntJlCrimJustSocDem 25; (2018) 7(3) International Journal for Crime, Justice and Social Democracy 41
[27] Bond C and Jeffries S (2011) Indigeneity and the judicial decision to imprison: A study of Western Australia's higher courts. *British Journal of Criminology* 51(2): 256-277 DOI: 10.1093/bjc/azr001.

overrepresentation. They posit that sentencing decisions at the lower court level are likely to be affected by practical constraints; for example, the limited availability of time and contextual information. They argue that the constraints on magistrates in the lower court may make magistrates more likely to use 'perceptual shorthand', pointing out that there are certain perceptual cues that are often linked to racialised interpretations of criminal behaviour, rehabilitative capacity, and social relationships.

It is the view of Douglas and Fitzgerald that the courts have largely resisted taking into account the effects of colonisation generally and its ensuing particular disadvantage in sentencing, finding it difficult to reconcile individualised justice with 'Indigenous justice'. They refer to a High Court case that considered the disadvantages that Aboriginal and Torres Strait Islander people disproportionately experience and the relevance of such disadvantages to sentencing in cases involving domestic and family violence. It is worth quoting in full here:

> In *Munda v Western Australia* ([2013] HCA 38) (the Munda case) the appellant had pleaded guilty to the manslaughter of his de facto spouse and was sentenced to serve a period of imprisonment. Munda unsuccessfully appealed to the High Court on the basis that the sentence was manifestly excessive. In dismissing the appeal, the majority of the High Court observed (at [53]):
>
> To accept that Aboriginal offenders are in general less responsible for their actions than other persons would be to deny Aboriginal people their full measure of human dignity. It would be quite inconsistent with the statement of principle in *Neal* to act upon a kind of racial stereotyping which diminishes the dignity of individual offenders by consigning them, by reason of their race and place of residence, to a category of persons who are less capable than others of decent behaviour. Further, it would be wrong to accept that a victim of violence by an Aboriginal offender is somehow less in need, or deserving, of such protection and vindication as the criminal law can provide. *(Munda v Western Australia* [2013] HCA [53])
>
> The High Court found that mitigating factors, including social disadvantage, should be given their proper weight in sentencing but that this approach could not result in the imposition of a penalty that was disproportionate to the gravity of offending (*Munda v Western Australia* [2013] HCA [53]). In his analysis of the Munda case, Justice Rothman (2014: 10) observes that paragraph 53 of the judgement 'as a statement of principle, it is flawless. As an outcome, if applied superficially, it ignores the very principle it espouses'. He goes on to say:
>
> Any non-Aboriginal who has suffered as a part of a 200-year history of dispossession from their own land; exclusion from society; discrimination; and disempowerment is entitled to have such circumstances considered. In Australia, such persons are confined to the Indigenous population. To treat Aborigines

> differently in Australia by taking account of such factors is an application of equal justice; not a denial of it. (Rothman 2014: 10)
>
> While Rothman does not suggest an alternative sentence in the Munda case, he points to the need for a proper consideration of the history and effect of colonisation in sentencing. His analysis identifies that all ATSI people have experienced colonisation and discrimination. Thus, recognising these factors allows for substantively equal treatment rather than negative racial stereotyping, an interpretation that is not supported by the Munda case.

Douglas and Fitzgerald's analysis of Queensland courts administrative data suggests that the hybrid DVO system contributes to the further enmeshment of Aboriginal and Torres Strait Islander people in criminal justice processes. Of particular concern is the overrepresentation of Aboriginal and Torres Strait Islander women in the DVO system. Douglas and Fitzgerald suggest "alternative approaches that might help to address the overrepresentation of ATSI people in criminal processes. These alternative approaches include the decolonisation of justice (Blagg 2016) and, relatedly, justice reinvestment (Brown et al. 2016). Others have identified the potential of problem solving courts, in particular ATSI sentencing courts, to reduce magistrates' reliance on 'perceptual shorthands' and resultant negative sentencing discrimination and to provide a more meaningful sentencing process for ATSI people (Jeffries and Bond 2013: 111; Marchetti and Daly 2016)." Strategies must attend to the specific justice needs of Aboriginal and Torres Strait Islander women, "the most marginalised group in Australia, who are both under-protected and over-policed and are being incarcerated in ever increasing numbers under a DVO system originally introduced to protect women from DFV."[28]

Should the Western Australian Government criminalise coercive control?

Coercive control is a known precursor and predictor of domestic homicide. This is one of the main drivers of proponents' advocacy to criminalise coercive control. The assumption is that criminalising coercive control will enable earlier justice system intervention, thereby preventing escalation of the violence. However, the criminal justice system was never established to deal with the level of complexity posed by domestic and family violence, as the criminal justice system was designed to respond to

[28] Douglas, Heather; Fitzgerald, Robin --- "The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People" [2018] IntJlCrimJustSocDem 25; (2018) 7(3) International Journal for Crime, Justice and Social Democracy 41

incident-based offences and isolated events or criminal acts[29] between strangers, largely men.[30]

Implementation, and effective and consistent enforcement and prosecution of a criminal offence of coercive control would require a significant shift in the criminal justice system, moving it beyond the 'incident-based response' that currently dominates the system,[31] to one that recognises the complexity of coercive and controlling behaviours and the ongoing pattern of abusive behaviours that are so destructive and harmful to victim-survivors of domestic and family violence.

In civil law, for an order to be made, the court must be satisfied that it is "probable" that the violence occurred and may occur again. By contrast, the burden of proof in the prosecution of criminal offending requires victim-survivors to be considerably more involved in court proceedings and depends on the capacity of the complainant to withstand rigorous cross-examination. This presents barriers to, rather than enhancement of, a victim-survivor's engagement with the justice system. In criminal law, the court must be satisfied "beyond reasonable doubt" that the domestic and family violence occurred. It is a far higher threshold that must be reached. Where coercive control cannot be proven "beyond reasonable doubt", prosecution is unsuccessful.

Data from England and Wales indicates that the low number of cases proceeding to prosecution is due to difficulties achieving the standard of evidence required in criminal proceedings.[32] This can result in the matter ending without justice system acknowledgement of the harm caused.

Unique evidential difficulties would be raised by the criminalisation of coercive control, in part because of the ways in which gendered expectations can disguise the controlling and coercive nature of certain behaviours.

A distinct offence of 'abusive behaviour towards partner or ex-partner' ('domestic abuse') came into force in Scotland via s. 1 of the Domestic Abuse (Scotland) Act 2018. This offence has been widely celebrated for its meaningful incorporation of the concept of coercive control (Evan Stark has described the 2018 Act as 'gold standard' legislation) and it serves as a model for other jurisdictions looking to criminalise coercive and controlling behaviours. However, it is increasingly recognised that overcoming evidential challenges will be key to ensuring the effectiveness of the recent global wave of legislation criminalising coercive and controlling behaviours[33]. There is an emerging global conversation about the complexities of evidencing coercive and

[29] Tolmie, J.R. (2018). op.cit.; Goodmark, L. (2018). *Decriminalizing Domestic Violence: A balanced policy approach to intimate partner violence*. California: University of California Press. Walklate, S., Fitz-Gibbon, K., & McCulloch, J. (2017). op. cit.; Walklate, S. & Fitz-Gibbon, K. (2019). The Criminalisation of Coercive Control: The Power of Law?. *International Journal for Crime, Justice and Social Democracy 8*(4), 94-108.

[30] Carline, A. & Easteal, P. (2016). *Shades of Grey – Domestic & Sexual Violence Against Women: Law Reform & Society*. Routledge; Fitz-Gibbon, K. & Walklate, S. (2018). *Gender, Crime & Criminal Justice* (2nd ed.). Routledge.

[31] Walklate, S., Fitz-Gibbon, K., & McCulloch, J. (2017). op. cit.

[32] Barlow, Johnson, Walklate and Humphreys (2019), 'Putting Coercive Control into Practice: Problems and possibilities', in British Journal of Criminology, 60, 260-179.

[33] Bishop C.P.Bishop and Vanessa Bettinson 2017 Evidencing domestic violence*, including behaviour that falls under the new offence of 'controlling or coercive behaviour Volume 22, Issue 1.

controlling behaviours and the inherent limitations of both legislative and criminal justice responses to domestic and family violence. Cairns offers a comprehensive analysis of the specific evidential difficulties and challenges involved with proving distinct offences of domestic abuse or coercive control.[34]

Furthermore, the ongoing trauma often experienced by victim-survivors is likely to hinder their ability to safely and effectively participate in the criminal justice process. It would require the development of trauma-informed responses across the criminal justice system to ensure that those working in the justice system can, for example, distinguish between violence that occurs in response to ongoing abuse and trauma, and violence that is intentionally used to control, intimidate, and instil fear in a victim-survivor.[35] While criminal law is and always will be part of the domestic and family violence legislative environment, it is not in-and-of-itself necessarily the most effective way of ensuring victim-survivor safety and holding perpetrators accountable.

Many advocates of the criminalisation of coercive control argue that it will change attitudes by sending a strong message about the unacceptability of coercive control. While sending a strong message is important and of value, there is not clear evidence that criminalisation has a symbolic effect of deterring people from using domestic and family violence, nor that the criminal justice response in-and-of-itself leads to a change in perpetrator behaviour or improved safety for women and children.[36] There is also a risk that the symbolic effect of criminalisation will deter victim-survivors from seeking help and/or making reports to police for fear of repercussions.[37] Additionally, there is a significant risk perpetrators of violence may use the offences against victim-survivors and put them at risk of being criminalised.[38]

While justice system intervention is known to be relatively ineffective in deterring chronic reoffenders of domestic and family violence, engagement with the justice system can be effective in deterring some perpetrators from reoffending[39]. For some, the experience of being called to account by police and the court may act as a deterrent and/or prevent further acts of violence. Recent research found that judicial officers, in their capacity to call out domestic and family violence in all its forms and hold perpetrators to account for the abuse, can potentially play an important role in promoting perpetrator behaviour change.[40] However, that voice can be just as effective

[34] Cairns, Ilona 2019 The *Moorov* doctrine and coercive control: Proving a 'course of behaviour' under s. 1 of the Domestic Abuse (Scotland) Act 2018 Volume 24, Issue 4.
[35] Australia's National Research Organisation for Women's Safety. (2020). Accurately identifying the "person most in need of protection" in domestic and family violence law: Key findings and future directions (Research to policy and practice, 23/2020). Sydney: ANROWS.
[36] Barlow, Johnson, Walklate and Humphreys (2019), Putting Coercive Control into Practice: Problems and possibilities, in British Journal of Criminology (2020) 60, 260-179.
[37] Nancarrow (2019), Unintended Consequences of Domestic Violence Law: Gendered aspirations and racialized realities, Palgrave Macmillan, Switzerland.
[38] Goodmark (2018), Decriminalizing Domestic Violence: A balanced policy approach to intimate partner violence, University of Clifornia Press.
[39] Blackburn & Graca (2020), 'A critical reflection on the use and effectiveness of DVPNs and DVPOs', Police Practice and Research, p.13.
[40] Fitz-Gibbon et al (2020), The views of Australian judicial officers on domestic and family violence perpetrator interventions, ANROWS, SydneyPolicy brief: Justice system response to coercive control.

in civil court.

Police are often the first point of contact and gateway into the justice system. A significant body of research has found that victim-survivors of domestic and family violence are often reluctant to engage police. Some reasons include: fear of not being believed, fear of discrimination, fear that police intervention will escalate the abuse, and fear of Child Protection involvement that may result in their children being taken into care.[41] Making coercive control offences effective is reliant on victim-survivors being willing and in a position to engage with police, and open to the potential of criminal charges.

No matter how well-designed they might be, programs to support victim-survivors through criminal proceedings cannot eliminate the fact that criminal proceedings are inherently adversarial and can be a traumatic and disempowering experience for victim-survivors that undermines their recovery efforts.

The criminal justice system can present barriers to help-seeking and engagement in justice responses to domestic and family violence, which can be further compounded by socio-economic disadvantage: "The more criminal law seeks to intervene on behalf of women, the more challenges it poses for them – hurdles to negotiate – and experiences are contingent on variables such as class, ethnicity, and cultural background." This conclusion was reached by the Victorian Royal Commission into Family Violence, which did not recommend the introduction of new criminal offences or sentencing powers and concluded that improving the way current law is applied, enforced, and prosecuted through "education, training, and embedding best practice and family violence specialisation in the courts is likely to be more effective than simply creating new offences or changing sentencing laws."[42]

Currently, it is too early to tell if coercive control offences that have been introduced in other international jurisdictions have led to safer outcomes for victim-survivors[43]. Given how recently these offences were introduced and the variation in the type of offences and the way they have been implemented, clear evidence is yet to emerge about the impact and outcome these offences have had on victim-survivor safety. Data that has emerged since the offences were introduced speaks to the quantum of charges laid and prosecuted, rather than outcome-focussed evaluations[44]. Without robust

[41] Douglas (2012). 'Battered Women's Experiences of the Criminal Justice System: Decentring the Law'. Feminist Legal Studies 20 (2): 121–34.

[42] State of Victoria (2014-2016). *Royal Commission into Family Violence: Report and recommendations, Vol III*. Parl Paper No 132. p189

[43] For example, a coercive control offence was introduced in England & Wales in 2015; the Republic of Ireland in 2018 and Scotland in 2018: ANROWS (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney. ANROWS.

[44] Office of National Statistics UK "Domestic abuse in England and Wales: Overview November 2020. [website, 17 December 2020]< https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/>; "Domestic abuse charges reach four year high", BBC News. (8 September 2020) <https://www.bbc.com/news/uk-scotland-54071027>; "COVID in Scotland: How has the pandemic affected crime levels". BBC News. (13 November 2020) <https://www.bbc.com/news/uk-scotland-54916511> [48] Goodmark, L. (2018). op. cit. p23.

evaluation and evidence, including the perspectives of victim-survivors involved, it is difficult to determine at this stage whether they are having any positive impact on safety and perpetrator behaviour change.

Although the absence of evidence on whether the criminalisation of coercive control results in safer outcomes for victim-survivors on its own cannot form the basis of an argument against criminalisation, the potential impact of the unintended consequences that may result from the introduction of a coercive control offence warrant further and careful consideration. As noted by Goodmark, an important consideration in weighing up whether behaviour should be criminalised, is whether "criminalisation of the behaviour [will] do more good than harm"[48]. The potential unintended consequences raise significant concerns and implications for the safety of victim-survivors and lead us to conclude that the risks of criminalising coercive control at this point in time with our current domestic and family violence response system are considerable.

Research demonstrates that the introduction of criminal sanctions in response to domestic and family violence may lead to victim-survivors being less willing to engage in the justice system[45]. This may be due to a victim-survivor having had negative experiences with the criminal justice system in the past or not wanting the perpetrator to get a criminal record or be incarcerated[46]. This is particularly the case for communities who are already 'over-policed' and have a well-founded fear of structural and institutional power and authority including victim-survivors from Aboriginal and Torres Strait Islander communities and migrant and refugee communities[47].

Further, given that separation is a high-risk time, many victim-survivors choose not to report to police. This may be due to fear of what the perpetrator might do, mistrust of the justice system and the response they will receive, or structural barriers that prevent access to support and safety (such as income and housing)[48]. A greater focus should be directed to removing barriers to reporting rather than potentially creating new ones that may adversely impact on victim-survivors' support and safety options.

The unintended consequences of criminalising coercive control present significant safety risks for victim-survivors that currently outweigh the benefits. Safe and Equal,

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[45] Walklate & Fitz-Gibbon. (2019). *The Criminalisation of Coercive Control: The Power of Law?* International Journal for Crime, justice and society. 8(4): 94-104.

[46] Douglas, H. (2012). *Battered Women's Experiences of the Criminal Justice System: Decentring the law.* Feminist Legal Studies. 20(2): 121-34; Meyer, S. (2011). *Seeking help for intimate partner violence: Victim's Experiences When Approaching the Criminal Justice System for IPV-Related Support and Protection in an Australian Jurisdiction.* Feminist Criminology. 6(4): 268-90.

[47] Maturi, J. and Munro. J. (2020). *Should Australia criminalise coercive control? Fighting domestic violence and unintended consequences*. Asia and the Pacific Policy Society Policy Forum. (accessed 20 November 2020) <https://www.policyforum.net/should-australia-criminalise-coercivecontrol/>; State of Victoria (2014-2016). Vol III. op. cit.; Victorian Law Reform Commission. (2017). Pathways to Justice-Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples. Final Report No. 133 (2017). Vaughan, C. et al. (2016). *Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia.* The Aspire Project: Research report. ANROWS.

[48] UN Women, United Nationals Office on Drugs and Crime (UNODC) and the International Association of Women Police (IAWP) (2021). *Handbook on gender-responsive police services for women and girls subject to violence <https://www.unwomen.org/en/digitallibrary/publications/2021/01/handbook-gender-responsive-police-services>*

the peak body for domestic and family violence services in Victoria, list four unintended consequences of criminalising coercive control, and are summarised below[49]:

1. Secondary victimisation and re-traumatisation

The criminal justice system can be very intimidating for victims-survivors, and often causes fear, a sense of disempowerment, and the potential for 'victim-blaming' to occur[50]. Further, negative interactions with the criminal justice system can be greater for victim-survivors who face marginalisation and discrimination and additional structural barriers to accessing the justice system.

For victims and witnesses who have experienced trauma, involvement in the adversarial criminal justice system can be a particularly difficult and damaging experience[51]. The lengthy nature of the criminal justice process means that there are protracted and ongoing opportunities for re-traumatisation to occur.

Certain aspects of the criminal justice system also increase the potential for victim-survivors to be retraumatised. Firstly, in criminal proceedings, the victim-survivor is viewed as a 'participant' rather than a party to the proceedings which means that there is a risk that they may lose control of the process if it is not a victim-centred one.[52] It can be re-traumatising and result in victim-survivors not being able to continue to engage in the legal process or making a choice not to engage at all.

Secondly, in the criminal justice system, the requirement to prove a crime 'beyond reasonable doubt' requires a greater level of involvement by the victim-survivor (as opposed to civil proceedings)[53]. Given the nuanced and individual experience of coercive control for each victim-survivor, it is likely that there will be no corroborating evidence of the coercive control offence and they would be the primary source of evidence. As a result, there is a high likelihood that victim-survivors will be called as a witness and subjected to cross-examination in criminal proceedings, where their character and the truthfulness of their evidence may be called into question (for example, counselling or mental health records may be subpoenaed and used against a victim-survivor) to a greater extent than for other criminal proceedings related to family violence. There is potential for this to occur more than once if a committal hearing is

[49]Safe and Equal 2021. Responding to Coercive Control in Victoria – Broadening the conversation beyond criminalisation. Melbourne, Victoria.

[50] Orth, U. (2002). *Secondary victimization of crime victims by criminal proceedings*. Social Justice Research*, 15*(4), 313–325; Laing, L. (2017). Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System. *Violence Against Women*, *23*(11), 1314 –1335.

[51] Victorian Law Reform Commission. (2020). *Committals Report March 2020.* p9.

[52] Ibid. see p8

[53] Tolmie. (2018). op cit.; Victoria Legal Aid (n.d.). *Legal Glossary < https://www.legalaid.vic.gov.au/find-legal-answers/legal-glossary>* the 'balance of probabilities' level of proof required in civil cases is easier to prove than the 'beyond reasonable doubt' level of proof required in criminal cases.

held. If appropriate safeguards are not in place this can be a devastating experience for victim-survivors.[54]

In Scotland, steps have been taken to reduce the potential for re-traumatisation by developing protocols for gathering evidence from victim-survivors and introducing a more objective 'reasonable person' test which "shifts focus from the personal reaction of a victim/survivor to the abuse they are experiencing, to the objective wrongfulness of the offender's behaviour"[55]. While this is an important step to address potential re-traumatisation, evidence is yet to emerge as to whether this has resulted in victim-centred and trauma-informed justice processes that increase victim-survivor safety and change perpetrator behaviour.

2. Systems abuse

Criminalisation of coercive control could provide additional opportunities for 'systems abuse' to occur as it would provide an additional avenue for perpetrators to manipulate the legal system to maintain and "reassert their power and control over the victim"[56]. Further, systems abuse may be exacerbated for victim-survivors of family violence who have multi-jurisdictional legal needs as the fragmentation that currently occurs between different legal jurisdictions provides additional opportunities for systems abuse to occur. For victim-survivors of family violence, this fragmentation not only occurs across the various state-based jurisdictions[57] but also extends into the federal jurisdiction via the family law system. Engaging in an additional legal process would mean that for the many victim-survivors who already have multiple legal needs[58], there is greater potential for systems abuse to occur.

3. Increased risk of a victim-survivor being misidentified as the perpetrator of violence

Available evidence shows that "misidentification and the consequential criminalisation of victims has become a common unintended consequence of reliance on legal systems to address problems associated with IPV [intimate partner violence]"[59]. Further, the complex nature of coercive control and the lack of clarity around the concept itself, may lead to police failing to adequately assess who is in need of protection which can lead to

[54] VLRC. (2020). Op. cit. p9

[55] Women's Safety NSW. (2020). Op. cit. p62.

[56] The Australian Institute of Judicial Administration. (2019). *National Domestic and Family Violence Benchbook*. <https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>; see also Monash Gender and Family Violence Prevention Centre (2018). *Research Brief: Systems Abuse.* Monash University. Victoria. https://bridges.monash.edu/articles/Systems_Abuse/8379125.

[57] For example, the civil and criminal jurisdictions in the Magistrates Court of Victoria, Children's Court, VCAT etc

[58] Coumarelos, C. (2019). *Quantifying the legal and broader life impacts of domestic and family violence*. Justice Issues Paper 32. Law and Justice Foundation of NSW.

[59] No To Violence. (2019). Discussion Paper: Predominant Aggressor Identification and Victim Misidentification. p2.< https://ntv.org.au/wpcontent/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf>

victim-survivors being incorrectly named as respondents on FVROs and misidentified as the perpetrator/accused in criminal matters[60].

Research undertaken by ANROWS[61] found that the problem of women being wrongly treated as perpetrators persists. Further, this research found that "based on the available data, it appears that no Australian jurisdiction is currently well-placed to provide a model of police and court practice to effectively address misidentification of victims/survivors as perpetrators of DFV"[62]. Consequently, until robust practices and processes are developed to prevent misidentification from occurring, it's problematic to introduce a new offence that could increase the likelihood of misidentification.

4. Disproportionate negative impact on victim-survivors who are already subject to exclusion, discrimination, and marginalisation

There is a risk that additional criminal responses to domestic and family violence may disproportionately impact on victim-survivors with disabilities, Aboriginal and Torres Strait Islander victim-survivors, victim-survivors from migrant and refugee backgrounds, and victims-survivors within the LGBTIQ+ community. Victim-survivors from these communities already face additional barriers to accessing criminal justice, which include racism and discrimination, language barriers, visa limitations, and lack of access to appropriate information and support[63].

What are alternative options to criminalisation? In what alternative ways can the objects of criminalisation be achieved?

As noted above, the problem that needs to be addressed is the limitations in current responses to coercive control. Fundamental to improving responses to coercive control is a need to change the way coercive control is conceptualised and understood, and ensure that this understanding is consistent across systems, services, and agencies.

Improved understanding of coercive control across the domestic and family violence response system would better enable those working in the justice system to implement and enforce existing legislation more effectively, addressing many of the gaps in the current response to coercive control, without introducing a new offence. Whilst cautioning that cultural and attitudinal change will not occur via training and education alone and will require long-term investment in cultural change and capability building, CWSW highly recommends quality and ongoing domestic and family violence training and education is provided to the professionals working in the justice system.

[60] Tolmie. (2018). op. cit.; NTV. (2019). op. cit.; Nancarrow et al. (2020). Accurately identifying the "person most in need of protection: in domestic and family violence law (Research report). ANROWS.
[61] Nancarrow et al. (2020). Op cit.
[62] ibid
[63] Douglas. (2015). op cit.; Walklate & Fitz-Gibbon. (2019). op. cit.

It is important that training contains contemporary and evidence-based understandings of coercive control. Similarly, it is essential that the WA Police Force receives ongoing, high-quality training across all policing levels. Police engaged in the Family and Domestic Violence Response Team must be highly specialised domestic and family violence responders and WAPOL must demonstrate active commitment to the FDVRT model.

In our view, taking this approach to improving understandings of coercive control across the domestic and family violence response system would be more effective within the current Western Australian landscape than trying to affect this change through the introduction of a new criminal offence. This is primarily because if a new offence were introduced without long-term training and capacity building, it would result in definitional differences arising in the operationalisation and implementation of the offence and the unintended consequences outlined above would be more likely to occur. Further, there is a risk that if a new offence was introduced, a sense of complacency may develop if it is assumed that the introduction of the offence has 'fixed' the problem. This could undermine the long-term effort required to achieve the necessary cultural change in the criminal justice system to move it beyond the current incident-based approach to recognising broader aspects of domestic and family violence and patterns of abusive behaviour[64].

There are actions that can be taken now to improve the understanding of coercive control across the broader domestic and family violence response system and improve current responses to coercive control in the justice system specifically. These immediate and short-term actions include:

1. Undertake research to assist in improved targeting of areas of weakness in the implementation of FVRO processes and identify effective interventions to protect and empower victim-survivors. Ensure the benefits and weaknesses of any changes are evaluated to ensure intended outcomes are being achieved. Research must explore the views of professionals including police, magistrates, lawyers, and survivor advocates on what facilitates and what hinders enforcement.

2. Develop and implement trauma-informed processes throughout the justice system (civil and criminal) to ensure the system is truly victim-centred and does not retraumatise victim-survivors. This will include enhancing current victim support services which will require a commitment to additional funding.

3. Provide sufficient funding and resources for specialist domestic and family violence services and victim support services to ensure that all victim-survivors can access the support they need throughout the justice process.

[64] Tolmie. (2018). op. cit.; Bettinson, V., & Bishop, C. (2015). Is the creation of discrete offence of coercive control necessary to combat domestic violence. *Northern Ireland Legal Quarterly, 66*(2), 179-[ii].

4. Provide additional funding and resources so all victim-survivors have access to free legal advice, information, and representation so they can make informed decisions about their safety.

5. To effectively reduce and respond to misidentification a 'whole-of-system' effort is required. This will require partners from across different sectors to work together to develop workable solutions for each stage of the process and at a minimum will need to involve government representatives from justice system agencies, the legal sector, the specialist domestic and family violence sector, and Child Protection. Engagement with groups that can represent the unique needs of priority cohorts will also be essential. Close collaboration with Aboriginal organisations will be required to ensure that these solutions adequately address the high rates of misidentification among Aboriginal women.

6. Ensure that each part of the domestic and family violence response system is fully integrated, mutually reinforcing, and facilitating reciprocal accountability. Until we have an inter-departmental, integrated model for domestic and family violence system reform, we will have siloes, inconsistency in practice, and restricted capacity for the various specialist parts of the domestic and family violence response system to be mutually reinforcing.

7. Explore with Aboriginal communities, alternative approaches that might help to address the overrepresentation of Aboriginal people in criminal processes, to reduce magistrates' reliance on 'perceptual shorthands' and resultant negative sentencing discrimination, and to provide a more meaningful sentencing process for Aboriginal people. Strategies must attend to the specific justice needs of Aboriginal women.

8. Provide ongoing and compulsory education and training for all people working in the justice system (civil and criminal) – including developing an understanding of the centrality of coercive control to domestic and family violence – so they can identify and safely respond to domestic and family violence. This education and training must be informed by the expertise of the specialist domestic and family violence sector to ensure it aligns with CRARMF and the emerging evidence-base and will require ongoing funding and resourcing.

9. Analyse family violence legislation in Western Australia to ensure that current legislation is being utilised effectively and to allow for identification of improvements that could be made in the way laws are currently being enforced and implemented.

10. Address the way coercive control is conceptualised and understood, and ensure that this understanding is consistent across systems, services, and agencies. Improved understanding of coercive control across the domestic and family violence response system would better enable those working in the justice system to implement and

enforce existing legislation more effectively, addressing many of the gaps in the current response to coercive control, without introducing a new offence.

11. Ensure that the WA Police Force receives ongoing, high-quality training across all policing levels. Police engaged in the Family and Domestic Violence Response Team must be highly specialised domestic and family violence responders and WAPOL must demonstrate active commitment to the FDVRT model.

12. Develop a shared understanding of domestic and family violence across the domestic and family violence system in Western Australia through a more comprehensive rollout of a ('refreshed') CRARMF across the domestic and family violence system, including the WA Police Force and the justice system. This will provide the necessary architecture for identifying and managing domestic and family violence risk and harm from coercive control and help drive the systemic response.

13. Introduce perpetrator focused tools and practice guidance and rollout across the broader domestic and family violence system and continue to develop a shared understanding of perpetrator risk across the entire system. A significant level of ongoing investment will be required by the Western Australian Government to ensure that organisations have access to important and necessary resources, training, and other implementation tools and supports.

14. Improve access to information to understand and manage risk and to improve the visibility of perpetrators within the system. Specific guidance on sharing information about perpetrators and alleged perpetrators of domestic and family violence and increasing the sharing of perpetrator information will lead to an increase in the extent to which perpetrators are kept in view.

15. Develop perpetrator practice guides and risk assessment tools; with training and support provided to workforces to understand and operationalise the guidelines — particularly among justice and universal workforces (hospitals, alcohol and other drug, mental health services and custodial workforces).

    The forthcoming Perpetrator Response Framework explains the gaps in current responses, details opportunities to improve or strengthen perpetrator responses, and ensure that domestic and family violence response systems including statutory authorities and community organisations are integrated and work together to actively respond and contribute towards perpetrator-related risk reduction, risk management, and accountability.

In addition to the specific actions listed above it will be important for ongoing consultation to occur with the specialist domestic and family violence sector and organisations with specialist expertise in working with victim-survivors from different communities. Further, it will also be critical to consult with a broad group of victim-

survivors to ensure that a wide-range of voices are heard and represented[65]. Additional activities should also be undertaken to raise community awareness about the dynamics and nature of coercive control, which we note is likely to result in an increase in disclosures and help-seeking and should be accompanied by additional resourcing for the domestic and family violence sector for it to respond to any increase in demand.

Conclusion

A 'whole-of-system' approach is required to improve responses to coercive control to ensure all victim-survivors can access safety and support. While the justice system (civil and criminal) forms part of the current systemic response to domestic and family violence in Western Australia, CWSW does not support the introduction of a new offence to criminalise coercive control in Western Australia at this stage. Given the risks and concerns outlined throughout this submission, it is CWSW's position that significant further reform and evidence of system readiness is required before further legislation is considered.

Improving 'whole-of-system' responses to coercive control will require many systems and the people within them to change behaviour, attitudes, and actions sustained over time and this will take commitment, effort, focus, and investment over many years. We consider that it is crucial to broaden the conversation outside of the current debate about whether to criminalise coercive control as there is a need to look beyond a 'legal' solution, to a systemic response that involves all parts of the domestic and family violence response system. This will allow the whole system to effectively manage the risk and harm associated with coercive control and ensure safe outcomes for all victim-survivors regardless of where they enter the system. It is our view that there are actions that should be taken now to improve system-wide responses to coercive control, that are not contingent on the introduction of a new offence.

CWSW is committed to continued engagement with domestic and family violence services, our partners and victim-survivors – including those from communities who experience marginalisation, discrimination, and structural barriers to accessing the justice system – as the state, national, and international conversation continues to unfold.

[65] The University of Melbourne & Domestic Violence Victoria (2020). *The Family Violence Experts by Experience Framework: Research Report and Framework 2020*. <https://dvvic.org.au/members/experts-by-experience/>