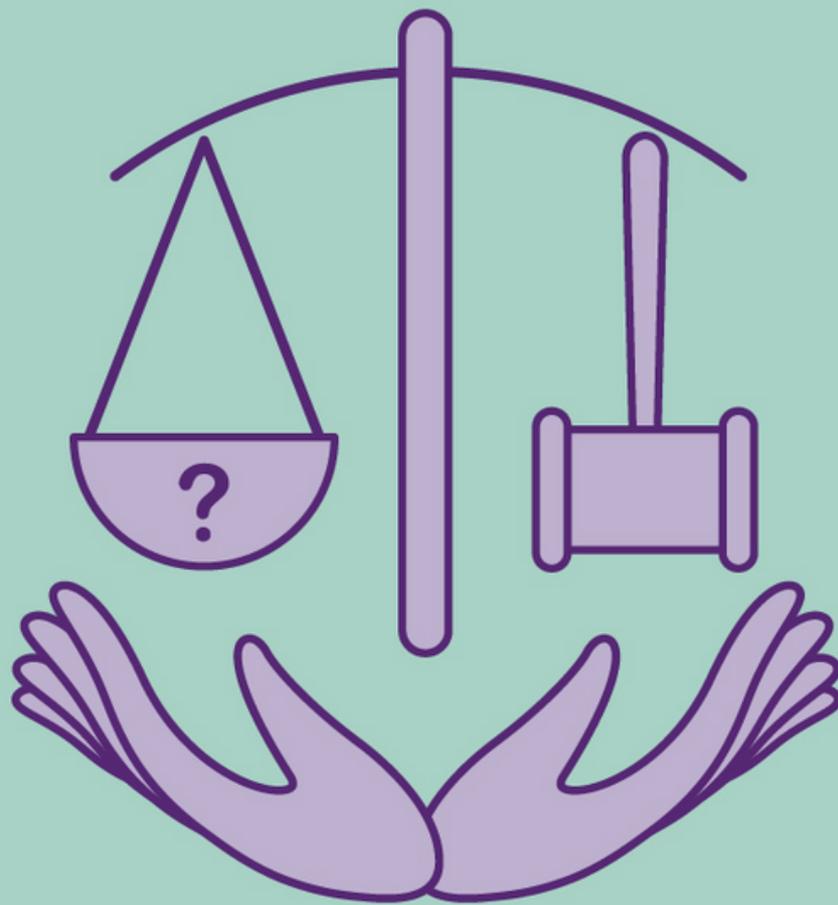

Victim-survivors' views on and expectations for the criminalisation of coercive control in Australia: Findings from a national survey



2023

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Acknowledgement of Country

We acknowledge the Traditional Custodians of the land on which we come together to conduct our research and recognise that these lands have always been places of learning for Aboriginal and Torres Strait Islander peoples. We pay respect to all Aboriginal and Torres Strait Islander Elders – past and present – and acknowledge the important role of Aboriginal and Torres Strait Islander voices and their ongoing leadership in responding to domestic, family and sexual violence.

Acknowledgements

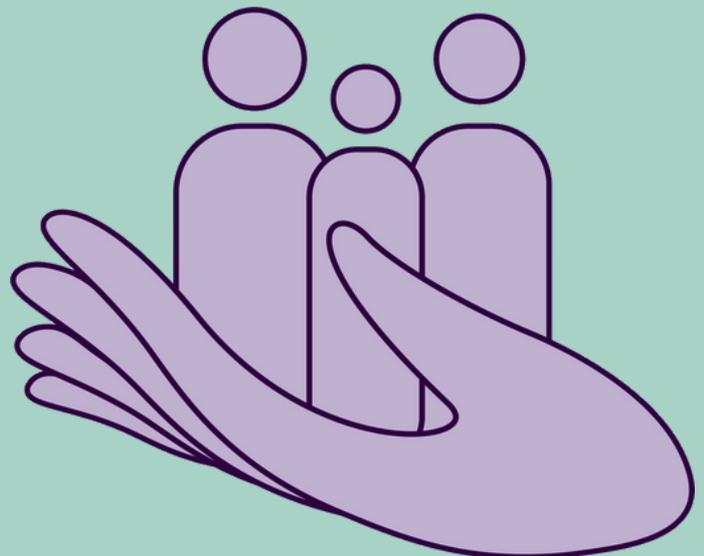
This research would not have been possible without the trust and generosity of the 1,261 victim-survivors who participated in our survey and shared their experience and views on the criminalisation of coercive control with our research team. We are extremely grateful to you for doing so, thank you very much.

We would also like to thank Dr Brittany Ralph, Ben Scott and Hannah Petocz who have provided valuable research assistance on the wider study within which this survey sits, and in particular for their support during the data analysis phase.

Professor Kate Fitz-Gibbon led this project in her capacity as Director of the Monash Gender and Family Violence Prevention Centre. The Report findings are wholly independent of Kate Fitz-Gibbon's role as Chair of Respect Victoria.

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A stylized illustration of a woman's profile in shades of purple and blue, looking towards the left. Above her head is a large, light purple thought bubble with two smaller circles leading to it. A horizontal line passes through the top of the thought bubble.

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EXECUTIVE SUMMARY

There has been unprecedented attention at the national and state level over the last decade on improving and reforming responses to domestic, family and sexual violence across Australia. The findings of recent national and state level reviews have revealed the significant limitations in legal responses to domestic and family violence, and the need to develop new policies and practices to better respond to perpetrators and ensure the safety of victim-survivors. Within this reform context, and in the wake of several high-profile intimate partner homicide cases, there has been increasing debate surrounding the need to criminalise coercive and controlling behaviours.

This study originated from a recognition that debates surrounding legal responses to coercive control were largely occurring across Australia and elsewhere internationally in the absence of any significant evidence as to the views and experiences of victim-survivors of domestic and family violence. Presenting the findings of a national survey of 1,261 victim-survivors of coercive control, this study significantly advances Australian understandings of victim-survivors views on the criminalisation of coercive control.

This study found that 87.5 per cent of survey participants believe coercive control should be a criminal offence including 91 per cent of female identifying survey participants and 69.5 per cent of male identifying survey participants. 86.67 per cent of LGBTQA+ participants; 85 per cent of First Nations participants believed coercive control should be a criminal offence and 87 per cent of participants with disability believed coercive control should be a criminal offence.

Responses received from victim-survivors were remarkably consistent. 93 per cent thought that criminalisation would improve community awareness of coercive control. Mirroring the wider survey sample, victim-survivors from LGBTQA+ communities, First Nations victim-survivors, and victim-survivors living with a disability also consistently identified improved community awareness as the key benefit of criminalisation.

72 per cent of victim-survivors believed that criminalisation of coercive control will achieve greater safety for victim-survivors as a benefit of creating a standalone offence. When examining perceptions of what a coercive control offence will achieve among First Nations survey participants, this drops down to 31 per cent. The lack of faith in the criminalisation of coercive control increasing victim-survivor safety among First Nations populations is likely a reflection of the lived experience of First Nations victim-survivors of domestic and family violence more broadly.

Victim-survivors, including those who supported the criminalisation of coercive control in principle, recognised the limits of law, the negative impacts of the justice system and the need for whole system approaches. Many victim-survivors were adamant that the objectives of reform would not be achieved without substantive care and investment in implementation. For those Australian state and territory jurisdictions that proceed with the criminalising of coercive control, victim-survivor views from this national survey highlight in-principle support for criminalisation alongside the importance of:

- Whole of system training which validates and affirms the seriousness of this form of domestic and family violence.
- Close monitoring and consideration of the impact criminalisation will have on First Nations and other marginalised communities from the outset. Implementation with First Nations leaders is critical.
- Monitoring the initial implementation of the offence, including a focus on identifying initial trends in misidentification.
- Accompanying any move towards criminalisation with the continued development of a suite of perpetrator interventions that specifically address this form of domestic and family violence.

INTRODUCTION

The adequacy of legal system responses to coercive control have animated significant debates in Australia and elsewhere in recent years. Coercive control describes 'a course of conduct aimed at dominating and controlling another (usually an intimate partner but can be other family members) and is almost exclusively perpetrated by men against women' (Australia's National Research Organisation for Women's Safety, 2021: 1). Coercive control is a significant dynamic of domestic and family violence. It manifests in a wide variety of behaviours including physical, sexual, financial, psychological, stalking, threats, harassment, technology facilitated abuse, systems abuse, and isolation (see, inter alia, Buchanan & Humphreys, 2020; Department of Social Services, 2022; Harris & Woodlock, 2019; Johnson et al., 2019; Singh & Sidhu, 2020). Research also evidences that coercive control can be a key risk factor preceding intimate partner homicide (Myhill & Hohl, 2019).

Over the last 10 years, new offences of coercive control have been introduced to varying degrees across the United Kingdom, Europe and Australia (Douglas, 2015; Fitz-Gibbon & Walklate, 2021) and debated in the US (Tuerkheimer, 2007). While these offences have taken varied forms - in terms of the label applied to the abusive behaviour they are designed to address and in terms of their inclusivity (e.g., some are gender-specific and/or apply only to those in intimate partner relationships) - at the core of each has been an argument that a new category of criminal offence is necessary to capture a pattern of abusive behaviours the law is otherwise incapable of responding to.

In 2015, a new offence of "controlling or coercive behaviour" was introduced in England and Wales (section 76, *Serious Crime Act 2015*). This offence, as defined in this law at present, is gender-neutral and limited to behaviour between persons in a current intimate relationship and/or who live together (Home Office 2015). The offence covers a wide range of behaviours and draws directly on the work of Stark (2007).

Evidence on the efficacy of this offence in England and Wales is emerging. In terms of take-up within the criminal justice system, statistics indicate its presence as an offence is increasing. For example, there were just over 9,000 offences of coercive control recorded by the police in England and Wales in the year ending March 2018, out of a total of just over 2 million incidents of domestic abuse recorded for that year (Office of National Statistics 2018), representing a doubling of such recorded offences when compared with 2017. This figure increased again to 17,616 for year ending March 2019 with the prevalence of domestic abuse remaining the same (Office of National Statistics 2019). Increasing rates of this kind are considered normal for new offences and may suggest an increasing embrace of this offence by front-line police officers. However, while frontline policing statistics suggest an increasing recognition of the offence, prosecution rates remain low. Prosecution rates are subjected to significant attrition. For example, despite 33,954 offences being recorded by police in England and Wales in the year ending March 2021 there were only 373 convictions in the same period.

Early reviews of the English legislation have pointed to problems for frontline police officers in 'seeing' coercive control (Wiener, 2017), in practitioner understandings of coercive control more generally (Brennan et al. 2018; Robinson, Pinchevsky & Guthrie, 2018) and problems associated with evidential difficulties (Bishop & Bettinson 2018). Other issues have also arisen in response to the English legislation, for example, on the efficacy of the law as a response to such complex behaviour (Walklate et al., 2018; Fitz-Gibbon & Walklate, 2021) and the challenges posed for risk assessment in relation to coercive control (Barlow & Walklate, 2021).

Despite these mixed evaluations, similar offences have continued to emerge in nearby jurisdictions, including in Scotland (part 1, Domestic Abuse (Scotland) Act 2018) and in Ireland (section 39, Domestic Violence Act). In 2018, Scotland introduced similar legislation. However, unlike the English law the Scottish offence is drafted to recognise the gendered pattern of intimate partner violence and also allows for criminalisation of behaviours between ex-partners (*Domestic Abuse (Scotland) Act 2018*) with Stark referring to this as the new 'gold standard' for such legislation (quoted by Scott,

2020, see also Burman & Brooks-Hay, 2018). The legal approach adopted in the Republic of Ireland echoes that of England and Wales (Soliman, 2019).

The criminalisation of coercive control in Australia

There has been considered academic debate addressing whether a specific offence of coercive control is an appropriate response to this evidence (see, among others, Douglas, 2015; 2018; Tolmie, 2018; Evlin, 2021). Much of the public and policy debate concerning coercive control has been driven by victim-survivor advocates, practitioners, journalists, and activists. The debate in Australia has also been shaped by the powerful impact of specific individual cases of intimate partner femicide and familicide (see, for example, Green, 2023). Those in support of a stand-alone coercive control offence have argued that a law will play a pivotal role in setting the standard for acceptable and unacceptable behaviour and that the criminalisation of coercive control will save women's lives (Hill, 2019; McMahon & McGorry, 2016). It has further been argued that the current lack of a criminal offence limits women's help-seeking options along with perpetrator accountability. Others have raised concerns about the ways in which the domestic and family violence law reform has historically brought about unintended consequences for those who it seeks to protect, and that the expansion of the criminal law will increase incarceration rates for diverse communities – particularly First Nations communities (Nancarrow, 2019; Goodmark, 2023).

While coercive and controlling behaviours are recognised as abuse in the definition of domestic and family violence (DFV) in civil law in the majority of Australian states and territories (see for example *Queensland's Domestic and Family Violence Protection Act 2012*; *Victoria's Family Violence Protection Act 2008*), the absence of coercive control in the form of a specific criminal offence has animated calls for reform.

Tasmania remains the only Australian jurisdiction to have introduced a specific criminal offence to cover aspects of this form of DFV. While neither the Victorian Royal Commission into Family Violence (RCFV, 2016) nor the Queensland Special Taskforce (2015) recommended the introduction of an offence of coercive control, in recent years momentum has begun to push for a reconsideration of these positions. In 2021, the New South Wales' Joint Select Committee on Coercive Control recommended the introduction of a coercive control criminal offence in the state. Similarly, the Hear Her Voice report published by the Women's Safety and Justice Taskforce in Queensland recommended the criminalisation of coercive control to be enacted after a 'lengthy period' to 'ensure the community, police, the criminal justice system and the service sector are fully educated and prepared' (Women's Safety and Justice Taskforce, 2021, p. ix). The Queensland government has committed to introducing the proposed offence by 2024. The legislation passed parliament in early 2023 and is currently being implemented under the guidance of specific recommendations made by the Women's Safety and Justice Taskforce. The South Australian Government has also committed to a coercive control offence and underwent a consultation process in 2022 on how to best implement a new law.



THIS STUDY

To date, no research has considered the criminalisation of coercive control through the eyes of those most likely impacted by such a development: victim/survivors. As such, this study originated from a recognition among the research team that debates surrounding legal responses to coercive control were largely occurring across Australia and elsewhere internationally in the absence of any significant evidence as to the views and experiences of victim-survivors of domestic and family violence. The study significantly advances Australian understandings of victim-survivors views on the criminalisation of coercive control. This is an important and timely contribution that we hope will assist in informing improved policy and practice responses in this space.

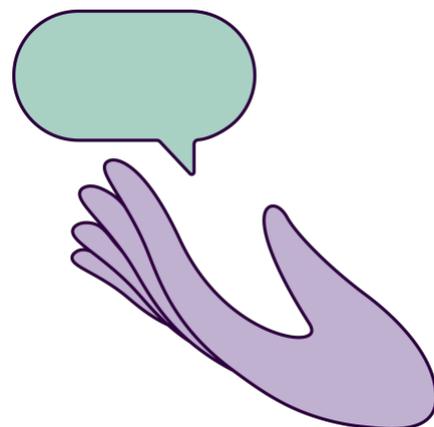
Survey design

This Report presents the findings from a national survey of victim-survivors' views on the criminalisation of coercive control.¹ The survey represents the first stage of data collection in a wider study of Australian victim-survivors' experiences of, and views on the criminalisation of coercive control. The second stage of this study, which involved in-depth interviews with 170 victim-survivors of coercive control, has been funded by the Australian Institute of Criminology. The findings from that phase of the study will be published by the Australian Institute of Criminology in a forthcoming report.

The survey was open to adult Australians (aged 18 years and over) who have experienced coercive control in a domestic and family violence context. The online anonymous survey combined a series of demographic questions with multiple choice and open-ended questions. Participation in the survey was anonymous. The survey was administered via the Qualtrics platform online and was advertised on social media platforms (twitter, LinkedIn), via relevant support services and community organisations, and through the professional networks of the research team and the Monash Gender and Family Violence Prevention Centre. The survey was open for a 5-week period from May-June 2021.

1,261 victim-survivors of coercive control from across Australia participated in the survey.²

The survey asked six questions seeking participants views specifically on criminalisation. This included three multiple choice questions, and three open ended questions.



¹ Monash University Human Research Ethics Committee (MUHREC) approval was granted for this study, project number: 27305.

² For further details on the survey participant sample and their experiences of coercive control, please view our participant data snapshot: <https://doi.org/10.26180/17102987>

VICTIM-SURVIVOR VIEWS ON THE CRIMINALISATION OF COERCIVE CONTROL

The vast majority of victim-survivors supported the criminalisation of coercive control. The survey findings reveal that:



Victim-survivors who supported criminalisation described this reform as ‘essential and very overdue’, ‘vital and timely’, and ‘imperative’. Several participants communicated a sense of urgency surrounding the speed with which they would like to see this reform introduced. In their responses to the open-text questions in the survey numerous victim-survivors recounted the severity of the coercive control they experienced, and the need for the criminal law to evolve to encompass all forms of domestic, family and sexual violence. As two victim survivors commented:

“In many ways, the scars are deeper than physical violence and I would like to see coercive control taken seriously.”

“I believe it is imperative to criminalise this abusive pattern of behaviours. My second abuser was what I now know to be abusing me via coercive control. This escalated into physical violence and I was beaten black and blue. I believe criminalising it would give a greater chance that it might not reach the physical battering point. I have experienced every type of abuse and the far-reaching impact of coercive control is the most difficult to recover from.”

There was a shared view among victim-survivors that the traditional incident-based focus of the criminal justice system, including police and courts, has failed to keep pace with understandings of intimate partner violence, including coercive control, as a pattern of abusive behaviours.



SUPPORT FOR CRIMINALISATION

The survey asked victim-survivors who supported or were unsure about criminalisation, what effect they thought a criminal offence of coercive control will have.³ Interestingly, across all cohorts of survey participants the most selected perceived outcome of criminalisation was that it will improve community awareness that domestic and family violence is not only physical abuse/ constitutes more than physical types of violence. Victim-survivors were least likely to identify the achievement of improved safety outcomes and greater justice for victim-survivors as likely effects of the introduction of an offence of coercive control.

Table 1: Total survey sample views on the benefits of criminalisation

Multiple choice response options	% of survey sample
It will improve community awareness that DFV is not only physical abuse/is more than physical types of violence	93%
It will send a clear message that this form of DFV is not acceptable	90%
It will allow police to respond to coercive control	87%
It will improve community awareness of this form of DFV	87%
It will ensure the criminal justice system takes coercive control seriously	85%
It will allow the court to punish perpetrators for their behaviour	78%
It will improve perpetrator accountability	78%
It will bring greater justice for victim-survivors	72%
It will improve victim/survivor safety	72%

When separate analyses were conducted to identify the views of specific cohorts of victim-survivors' on the benefits of criminalisation, the responses received from victim-survivors were remarkably consistent. Mirroring the wider survey sample, victim-survivors from LGBTQA+ communities, First Nations victim-survivors, and victim-survivors living with a disability also consistently identified improved community awareness as the key benefit of criminalisation.

³Only survey participants that selected that they supported or did not hold a view on the criminalisation of coercive control responded to this question. These findings are based on responses received from those 865 survey participants.

One significant difference did emerge – whereby First Nations victim-survivors who either supported or were unsure of criminalisation of coercive control were even less likely to believe that criminalisation will improve victim-survivor safety. As shown in Table 1 (above, 72 per cent of all victim-survivors in this study believed that criminalisation of coercive control will achieve greater safety for victim-survivors as a benefit of creating a standalone offence. When examining perceptions of what a coercive control offence will achieve among First Nations survey participants, this drops down to 31 per cent as shown in Table 2 (below). The lack of faith in the criminalisation of coercive control increasing victim-survivor safety among First Nations populations is likely a reflection of the lived experience of First Nations victim-survivors of domestic and family violence more broadly. The experiences of First Nations women's contact with police, courts and corrections in the context of domestic and family violence highlight a disproportionate risk of misidentification, not being taken seriously, being re-victimised by police and having to rely on the use of violence as self defence in the absence of culturally sensitive and protective criminal and social justice responses to domestic and family violence (Howard-Wagner & Brown, 2021; Nancarrow, 2019; Nancarrow et al., 2020).

Table 2: First Nations victim-survivors' views on the benefits of criminalisation

Multiple choice response options	% of First Nations sample
It will improve community awareness that DFV is not only physical abuse/is more than physical types of violence	86%
It will send a clear message that this form of DFV is not acceptable	83%
It will allow police to respond to coercive control	72%
It will improve community awareness of this form of DFV	75%
It will ensure the criminal justice system takes coercive control seriously	72%
It will allow the court to punish perpetrators for their behaviour	78%
It will improve perpetrator accountability	61%
It will bring greater justice for victim-survivors	61%
It will improve victim/survivor safety	31%

Table 3: LGBTQA+ victim-survivors' views on the benefits of criminalisation

Multiple choice response options	% of LGBTQA+ sample
It will improve community awareness that DFV is not only physical abuse/is more than physical types of violence	93%
It will send a clear message that this form of DFV is not acceptable	91%
It will allow police to respond to coercive control	83%
It will improve community awareness of this form of DFV	87%
It will ensure the criminal justice system takes coercive control seriously	81%
It will allow the court to punish perpetrators for their behaviour	74%
It will improve perpetrator accountability	76%
It will bring greater justice for victim-survivors	71%
It will improve victim/survivor safety	68%

Table 4: Victim-survivors with disability victim-survivors' views on the benefits of criminalisation

Multiple choice response options	% of disability sample
It will improve community awareness that DFV is not only physical abuse/is more than physical types of violence	86%
It will send a clear message that this form of DFV is not acceptable	86%
It will allow police to respond to coercive control	77%
It will improve community awareness of this form of DFV	78%
It will ensure the criminal justice system takes coercive control seriously	81%
It will allow the court to punish perpetrators for their behaviour	72%
It will improve perpetrator accountability	73%
It will bring greater justice for victim-survivors	72%
It will improve victim/survivor safety	66%

As shown in Tables 1-4 (above) the key benefit of criminalisation from the victim-survivor viewpoint was the opportunity to utilise a new criminal law to improve community awareness and understanding of non-physical forms of intimate partner violence. A significant majority of victim-survivors also believed that criminalisation would send a 'clear message' that this form of domestic and family violence is not acceptable. As two victim-survivors commented:

"I believe criminalising it will not only help the victims of the worst and most obvious instances of CC, but in naming it and bringing awareness, it will educate many others and help the victims and perpetrators and couples of less extreme but still very damaging behaviour patterns understand that it is not acceptable behaviour."

"If it were criminalised, it would be well known that it's absolutely not ok. At present there are grey areas that our society finds acceptable... mostly to do with skewed ideas on what constitutes a healthy relationship not to mention skewed ideas on what is acceptable for men and women. Criminalisation shows that on one level, we as a society know that coercive control is wrong."

That a new offence of coercive control was viewed as a vital vehicle through which improved community awareness could be achieved, is particularly important given that within the survey sample only 38 per cent of victim-survivors identified the abusive behaviours they were experiencing as domestic and family violence at the time of the victimisation. The preventative element of raised community awareness as well as the potential to enhance informal support systems for victim-survivors, is well captured in the reflections of two victim-survivors:

"The best thing about creating the offence will be the discussion, lessons and community understanding of it. Knowing the behaviors to look for would prevent victims staying in bad relationships and enable them to get help. I hope it would also discourage people when they realise that they are perpetrators, and they are the behaviours they frequently use against their partners and seek help for them to change."

"I also feel if coercive control laws were in place - my situations would not have occurred because it would have been validated instead of silenced and been made invisible."

Through raising awareness both among victim-survivors as well as the broader community, survey participants also empathised that a broad benefit of criminalisation would be enhanced referral pathways and improved informal support systems for victim-survivors.

Victim-survivors emphasised the opportunity that a new offence would offer enhanced opportunities to increase perpetrator accountability. Perpetrator accountability has been a key focus of recent domestic and family violence reform agendas in Australia (Department of Social Services, 2022; Royal Commission into Family Violence, 2016). Numerous victim-survivors viewed a new law as a vehicle through which their perpetrator would have been held to account. Three victim-survivors commented:

“Let the abuser know their behaviours weren't acceptable and their actions would be held accountable.”

“Cause him to be held accountable as he has never had any accountability and always disrespected women and authority. Any time I had confronted him he humiliated me I Want someone who knows all the tricks he uses and understands a narc[issistic] personality to be able to say professionally enough is enough you will not do this to anyone ever again.”

“I think it's important, I really think it will help ... like these guys get away with so many breaches I hear and I wasn't even successful at getting one unless I did it myself, we need some additional help!!!!”

Beyond perpetrator accountability specifically, the criminalisation of coercive control was viewed as a way to ensure that the outcomes of the justice system reflect the totality of victim-survivor experiences of domestic and family violence, and the seriousness of that offending. As one victim-survivor remarked:

“Both of my perpetrators should have done jail time. Unfortunately, this seems to be the only way that some people learn to STAY AWAY. The second one was only recently, and no justice has been served despite telling the police.”



CONCERNS SURROUNDING CRIMINALISATION

Among the total survey sample there were a small number of victim-survivors that did not believe that coercive control should be criminalised. Male victim-survivors of coercive control were the most likely to not support criminalisation, with 16 per cent of male respondents reporting this view, followed by survey participants who identified as gender diverse, of whom 12 per cent did not believe coercive control should be a criminal offence. Female victim-survivors who responded to this survey were least likely to hold the view that coercive control should not be a criminal offence, with only 3.6 per cent of female participants selecting this option.

Victim-survivors who opposed the criminalisation of coercive control emphasised:

- the importance of focusing on improving other points of the system response to coercive control,
- their own negative experiences with the police and the criminal court system, and
- the limits of criminal law reform to achieve transformative change.



Interestingly, even among those victim-survivors who supported the criminalisation of coercive control, there was a clear recognition of the limits of the law. Numerous victim-survivors that selected that they believed coercive control should be criminalised, shared a view that it would not have helped in their own experience but that they hoped the system could be improved for victim-survivors in the future. This highlighted the limits of the present criminalisation debate in Australia which has often delineated views into simple 'supporting' or 'opposing' criminalisation groups. The nuance in victim-survivors' viewpoints is well captured by the following remark:

"The benefit of the specific law would be in all the things that come with it including clear definitions, education for police, magistrates and the public. As with all new laws there is the risk of misuse by perpetrators and unintended consequences that could have catastrophic effects for victims, to be taken into consideration."

There were numerous victim-survivors who expressed a particular concern that the criminalisation of coercive control would lead to further misidentification of victim-survivors.



Victim-survivors were particularly concerned that limited police understandings of non-physical forms of violence would increase the risk of misidentification. In the absence of an understanding of the complexities of coercive control, and the different ways in which victim-survivors of domestic and family violence may present, the police may incorrectly identify the predominant victim-survivor as the predominant aggressor (Nancarrow et al., 2020; Reeves, 2021). Further, when abusers engage in 'legal systems abuse', which may include having the victim-survivor misidentified, police may be unable to recognise that such manipulative behaviours are often one part of the abuser's campaign of coercive control (Douglas, 2018).

Participants in the study also recognised that the risk of misidentification may be heightened for groups from marginalised communities, such as First Nations women, migrant and refugee women and women with disability – whose lived experience may deviate from system perceptions of the 'ideal' domestic and family violence victim (see also Mansour, 2014; Reeves, 2020; Reeves & Meyer, 2021; Women's Legal Service Victoria, 2018). As two victim-survivors explained:

"Existing criminalisations [sic] have not helped people like me much, if at all. I know multiple people who were misidentified, had their psychological histories used against them, been stressed by the process to achieve little improvement if any in their safety. In some cases, it only antagonised the abuser more. I've attended funerals of people who tried to use the criminal justice system. It's been very obvious to me, in my personal and work life that Aboriginal, people of colour, and anyone from the queer community got little help from it, and most of them said they felt really traumatised by trying to get any justice or help from the criminal system."

"I do genuinely fear for true victims being mistaken as the abuser, It is clearly evident with Indigenous women, but there needs to be a law against coercive control and serious training for police to understand what they're dealing with."

Victim-survivors often reflected on their own experience, describing a fear that if an offence of coercive control had been in law at the time of their victimisation that their perpetrator would have used it against them. One victim-survivor remarked:

“I really think people pushing for coercive control laws do not realise how easily such laws can be turned on the victim DARVO style.⁴ Increasingly research shows victims are having AVO's taken out against them. The police believe and want to believe that men are DV victim's too. If they are sociopathic and non-emotional they can talk the police around to believing they are the victim.”

Some victim-survivors in this study already had lived experience of being misidentified as the predominant aggressor under existing laws, including civil intervention orders. Some victim-survivors therefore felt that the criminalisation of coercive control would provide abusers with additional mechanisms to control and punish them, especially in the post-separation context. Given this, victim-survivors emphasised the need for whole-of-system reform in combination with the criminalisation of coercive control, in order to ensure that appropriate safeguards were in place to protect victim-survivors from unintended consequences such as misidentification and legal systems abuse.



Victim-survivors, including those who supported the criminalisation of coercive control in principle, recognised the limits of law and the negative impacts of the justice system.

In the open text responses to the survey, victim-survivors identified a distrust of the ability of police to respond effectively and to enhance the safety of victim-survivors as central to why they felt criminalisation of coercive control would have limited impacts on victim-survivor safety. Victim-survivors often reflected on their own negative experiences with the police. This includes incidents where they believed that police did not respond appropriately, did not take their victimisation seriously, did not understand their victimisation, and circumstances where they were misidentified by police as the predominant aggressor. As three victim-survivors described:

“I wasn't taken seriously by many of the police at the local station. The file notes I saw said it was a nasty marriage breakup and tit for tat. It was so hard to ask for help to start with and incredibly depressing seeing half of them thought I was as bad as he was when I was trying to report abuse, drivebys, harassment.”

“Police are untrained even when it is law. They questioned me in front of my ex-partner. When police were called I was told to keep quiet and even with everything that has happened the police will not take me seriously and will take his side every time whether the evidence is there or not.”

“It's one thing to criminalise it but it's a whole other thing to have police take it seriously. Policing needs to be completely overhauled to treat domestic and family violence with the seriousness and haste with which it needs to be treated.”

There was a commonly held view among victim-survivors that police were not effectively responding to individual incidents of domestic and family violence, and that without a significant investment in specialist training, the shift to a coercive control 'pattern based' approach to policing would be ineffective in achieving its objective. Victim-survivors' experiences of police also highlight the

⁴ DARVO is an acronym used to refer to 'deny, attack, and reverse victim and offender', see further Harsey & Freyd (2020).

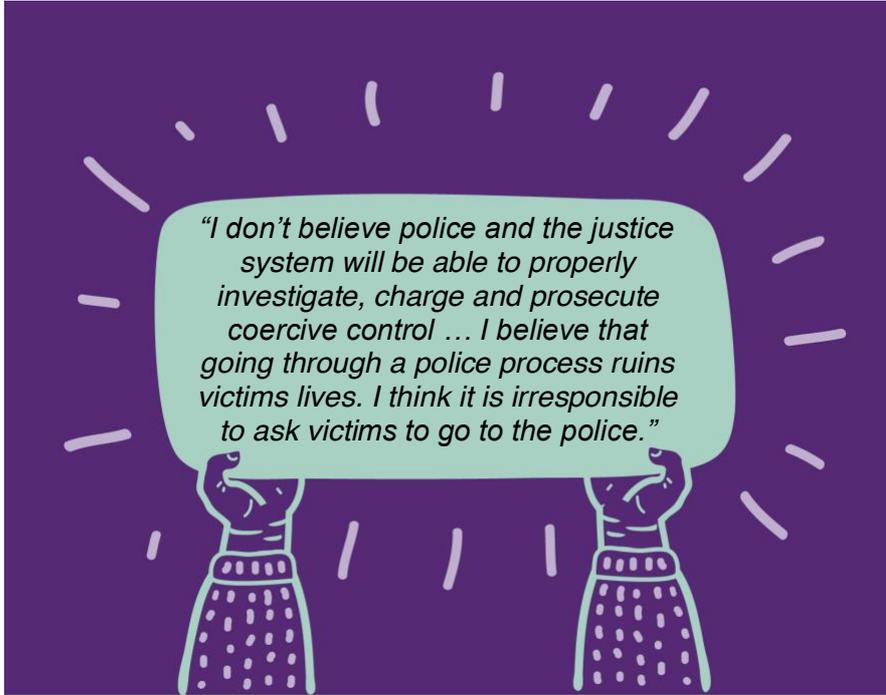
importance of cultural change, and the need to ensure that the policing of coercive control is viewed as serious police business. Several victim-survivors held concerns whether a cultural shift would be achieved through criminalisation:

“I don’t believe the police would be supportive because it’s a can of worms they never want to open.”

“I don’t think police give a shit and it’s going to be a huge problem to get them to have a cultural shift.”

“The police didn’t charge the abuser for the crimes they had already committed. I doubt it would have made a [difference].”

Research has consistently documented the many reasons why women victim-survivors of domestic and family violence are hesitant to engage police. They fear gender bias, discrimination, not being believed, that the abuse will escalate following police intervention, or that they will be blamed for the abuse committed against them. For women within a coercively controlled relationship, these barriers to seeking help are particularly insurmountable and are especially so for those from marginalised groups (Stubbs & Wangmann, 2015), particularly First Nations women (Wilson, 2017, see also Nancarrow, 2019).

An illustration on a purple background showing two women from the waist up, wearing traditional Indigenous-style dresses with white polka dots. They are holding a large, light green speech bubble. The background is decorated with white dashed lines radiating outwards.

“I don’t believe police and the justice system will be able to properly investigate, charge and prosecute coercive control ... I believe that going through a police process ruins victims lives. I think it is irresponsible to ask victims to go to the police.”

In addition to their reflections on the risks of police engagement, numerous victim-survivors reflected on the trauma of engaging with the criminal court process, recognising that the criminalisation of coercive control would likely necessitate victim-survivor input during the prosecution process, and specifically during criminal trials. The survey asked victim-survivors if they would have been willing to give evidence in court if a criminal offence of coercive control had been in place at the time of their victimisation. Even where they had expressed support for criminalisation, victim-survivors overwhelmingly expressed hesitation to provide evidence in court. As one victim-survivor commented:

“At the time my self-esteem was so thoroughly destroyed that I would not have been able to. I would have thought that no one would believe me, and they’ll believe him. Because he will present as confident and likeable, and I’d present as a crazy woman seeking to destroy a man’s life and reputation ... He had made me believe that no one would believe me, after 20 years of that – I believed that too.”

“We can have all the laws we like, the problem lies with proving that there was coercive control or abuse or strangulation, or stalking etc etc ... How do you prove it? Do you know how hard it is to prove something in a court of law for the average person, to know what admissible evidence is and to gather it? ... Most women in coercive control situations are so beaten down that they cannot even put 2 words together to describe what’s going on let alone be able to present it in court.”

Interestingly, for some victim-survivors, even where they recognised and had experienced the trauma of engagement with the criminal justice system they were still in support of criminalisation. As captured in the remarks of two victim-survivors:

“I was too traumatised to be in a court physically near him. It would have had to be done remotely and I would have needed a lot of support to cope. I was only beginning to understand it as DV and the impact it had caused to my sons and me. But yes, with the right support I think I could have been open to it.”

“I would not want to suffer double victimisation at the hand of the legal system as I have in the past. However, I would happily support another women to do this.”

These reflections highlight the hopes for improved police, civil and criminal justice responses to, including the Identification and prosecution of non-physical forms of domestic and family violence. However, past police responses to domestic and family violence experienced by victim-survivors reveal that even where the abusive behaviour constitutes a crime already and/ or where physical evidence is easier to produce due to the nature and impact of physical forms of domestic and family violence (e.g. physical injuries, property damage), findings reveal victim-survivor experiences marked by disbelief, disrespect, misidentification and retraumatisation inflicted by the legal system. This highlights the need for a domestic and family violence and trauma-informed legal system that is victim-survivor rather than offender-centric to support the ultimate goal of criminalising coercive control, including victim-survivor safety and perpetrator accountability.



THE EXPERIENCES OF TASMANIAN VICTIM-SURVIVORS

In 2004, the Australian state of Tasmania was the first jurisdiction to introduce legislation which criminalised patterns of nonphysical harm, under the *Family Violence Act 2004* (Tas), (see ss 8-9). The offence was introduced as part of larger sweep of criminal legal system reforms in the state under the Safe at Home policy initiative. Whilst the legislation was far more nuanced than any DFV legislation in use on mainland Australia, its use has been very scarce. The Tasmanian legislation has suffered from a number of implementation issues, largely due to legislative limitations including but not limited to: a statute of limitations of 12 months (previously only six months); a lack of clarity around conceptualisations of ‘reasonableness’; and an overlap of the offences with other offences (for a more in-depth analysis, see McMahon & McGorrery, 2016). As of 2017, there had been 68 cases of emotional abuse prosecuted in Tasmania, and five cases of economic abuse (Barwick et al., 2020). Despite the slow uptake, Barwick, McGorrery & McMahon (2020, p. 156) observe that the offences fill an important gap in the law:

...the value of the offences cannot be measured simply by the number of prosecutions to date, or what parliament intended them to achieve. The potential for the charges to deal with the many and varied social evils that rise in domestic abuse scenarios is, only just starting to be seen and is certainly yet to be exhausted.

Given Tasmania’s unique policy context, as part of this study we were eager to gather insights into victim-survivors’ experiences with the offence. In total, 46 Tasmanian victim-survivors participated in the survey. Despite 90 per cent of Tasmanian participants being in support of the criminalisation of coercive control, only 50 per cent were aware that Tasmania had existing coercive control criminal offences. 27.5 per cent of participants had direct experiences with the offences. Some participants who did not have experience with the offences had otherwise engaged with the criminal and/or civil legal system for protection from coercive control but were not made aware of the offences or were told by the police that their abusers could not be charged. These findings suggest that a lack of awareness of the offences, and a hesitancy of the legal system to charge perpetrators with the offences, may contribute to the aforementioned implementation issues in Tasmania.

Of the 46 victim-survivors living in Tasmania:



The second stage of this study which was funded by the Australian Institute of Criminology and involved in-depth interviews with victim-survivors of coercive control, including nine Tasmanian victim-survivors, will provide more detailed insights into the operation of the Tasmanian offences of emotional abuse and intimidation and economic abuse.

POLICY IMPLICATIONS

This study provides new evidence to inform the safe implementation of coercive control for jurisdictions that proceed to introduce an offence of coercive control. As in all areas of policy development, it is essential that state governments across Australia respond to the evolving evidence-base and ensure that policy and practice reform is informed by the views and experiences of victim-survivors. Queensland and New South Wales state governments have committed to implementing a stand-alone offence of coercive control. This study provides vital insights into the broader reforms needed to best ensure safe implementation of any new laws.

A nuanced analysis of victim-survivor experiences belies the complexity of understanding their views on this topic, the perceived benefits of criminalisation alongside the fears of engaging with justice processes. Importantly, throughout victim-survivor responses to our survey the importance of investment and education was seen paramount. Even where they supported the criminalisation of coercive control in principle, many victim-survivors were adamant that the objectives of that reform would not be achieved without substantive care and investment in implementation. As one victim-survivor remarked:

“Criminalisation of coercive control **MUST** come with education at all levels - first responders, judiciary, schools, communities, churches, workplaces, universities, etc. Policing must shift from incident-based policing to pattern-based policing. It must be done in a way that means that perpetrators do not use coercive control laws as systems abuse.”

Further, victim-survivor confidence in criminalisation achieving greater safety for victim survivors was limited, especially for First Nations survey participants. If the move towards criminalisation in the Australian context is to achieve its frequently promoted aim of saving women’s lives and holding perpetrators accountable, it must recognise and address victim-survivors’ current concerns that the legal system in its current form fails to adequately support and protect many victim-survivors and further traumatises and at the extreme end criminalises victim-survivors.

For those Australian state and territory jurisdictions that proceed with the criminalising of coercive control, victim-survivor views from this national survey highlight in-principle support for criminalisation alongside the importance of:

- Improvements in police risk, identification, assessment and management processes.
- Whole of system training which validates & affirms the seriousness of this form of domestic and family violence.
- Consideration should be given to how ‘net widening’ will assist in improving perpetrator accountability and responses to breaches of domestic violence orders.
- The impact on First Nations and other priority communities must be closely monitored and considered from the outset. Implementation with First Nations leaders is critical.
- Police guidelines and specialist training are required from the outset to assist in minimising the risk of misidentification of victim-survivors.
- Monitoring of the initial implementation of the offence should include a focus on identifying initial trends in misidentification.
- The introduction of a new offence will require a substantive investment in court resources and training to support safe implementation and careful consideration of evidentiary requirements.
- Finally, criminalisation of coercive control must be accompanied by the continued development of a suite perpetrator interventions that specifically address this form of domestic and family violence to ensure that accountability is accompanied by evidence-based behaviour change programs that minimise the risk of reoffending and thus a continuous cycle of criminalisation.

Importantly, while the focus of this study was on victim-survivor views on the criminalisation of coercive control, it is essential that we do not lose sight of the importance of prevention and early intervention. Australia's National Plan to end Violence against Women and Children 2022-2032 (DSS, 2022) lists coercive control as a key area of focus. The National Plan references the current development of the Commonwealth National Principles to Address Coercive Control which aim to raise awareness, and to inform more effective and consistent responses to coercive control, including through training and education. We hope the findings from this study can inform the development of effective responses to domestic, family and sexual violence in Australia, but we do stress that this study should not be viewed as the sole point of victim-survivor input in future policy and practice reform on coercive control. Lived experience expertise must be embedded at each point of the policy design and implementation process.

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