

# Policy Brief:

## Justice system response to coercive control

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## About Women's Legal Service Victoria

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Women's Legal is a state-wide legal service in Victoria, and has provided services to women experiencing family violence and relationship breakdown for nearly 40 years. We specialise in issues arising from relationship breakdown and violence against women, across the intersecting areas of law: family violence law, family law, child protection, and victims of crime.

### Our vision

A society that is gender equitable and free from violence is the overarching goal of Women's Legal. The outcomes we seek to achieve through our work are:

- Systems and institutions facilitate women's economic, legal and social autonomy
- Decision makers change law and policy to promote women's rights
- Legal and justice workplaces are gender equitable and non-violent

### Our approach

As a feminist organisation, we work:

- **Alongside women**, promoting 'power with' or 'power for' our clients, rather than being complicit in a legal system that maintains 'power over' our clients
- In a way that is **woman-focused**, engaging the whole person, appreciating the complexity of her situation and supporting women to address all of their needs
- As part of a **movement for social change** to challenge the social, political, economic and legal structures that oppress women. We work as equal partners with everyone with whom we work, recognising their strengths and unique contributions. We take up a leadership role when we can be most effective by engaging or influencing others

### What we do

Women's Legal specialises in issues arising from relationship breakdown and violence against women. We do this by:

- Providing free legal advice and representation to women
- Campaigning for law and policy that respects and promotes the rights of women
- Delivering professional development, community development, and prevention of violence against women programs

## Foundations of this policy brief

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Women's Legal Service Victoria provides legal assistance to approximately 3000 women every year, of whom more than 70 per cent are experiencing or have experienced family violence.

As lawyers, educators, and reform advocates, we offer valuable insight into justice system responses to coercive control.

This policy brief is informed by our extensive family violence legal practice experience and in-depth understanding of Victoria's legislative and policy landscape. It is also informed by a review of key literature and research, including the findings of Victoria's Royal Commission into Family Violence.

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## Executive summary

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Women's Legal believes that the justice system response to coercive control can and should be improved. This can most effectively be achieved by improved activation of existing best practice family violence models, professional practice principles and legislative requirements in the justice setting. We oppose the criminalisation of coercive control.

Coercive control is a defining feature of family violence, and it is the experience of coercive and controlling behaviour that victims commonly describe as the worst type of abuse they experience. Coercive control is a known predictor of escalating violence, including domestic homicide.

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 family violence as isolated incidents (commonly focused on physical violence), and towards models of practice that recognise, assess for and respond to the patterns of coercive and controlling behaviour that underpin domestic abuse.

The growing pressure for improved justice system responses to coercive control is important, welcomed and overdue.

Policy and public debate surrounding justice system responses to coercive control often focuses on **whether** coercive control should be in law, as compared to **where** coercive control should be in law. This is a crucial distinction, and a significant focus of this policy brief.

The brief discusses the purported benefits of criminalising coercive control, and examines some of the underlying assumptions about whether criminalisation can achieve its intended goals. The brief explores the existing legislative and policy environment in Victoria, and puts forward recommendations to improve the justice response to coercive control.

There is currently no compelling evidence that laws criminalising coercive control internationally have contributed to victim survivor safety, recovery and long-term wellbeing. Women's Legal is of the view that the creation of laws to criminalise coercive control are detrimental to safety and accountability outcomes and offer no clear benefits that justify their introduction.

Women's Legal advocates that the existing and complementary civil and criminal legislative environment in Victoria strikes the right balance to account for the socio-legal complexities of family violence.

We need to shift the conversation in Victoria. Our focus should not be on whether to introduce a criminal offence of coercive control. Coercive control is already in family violence law in Victoria, it is a centrepiece of the family violence policy environment and reform agenda, and it is a central feature of family violence practice frameworks and professional codes of practice.

Our attention must turn to addressing systemic barriers and professional learning needs to justice stakeholders' exercising their existing responsibilities to assess for and respond to coercive control and family violence in all its forms.

### Summary of recommendations

1. Family violence reform must be inter-departmental and include the justice system as a core part of family violence response
2. Practitioners across the justice sector must exercise their existing responsibilities and consistently assess for and respond to coercive control and family violence in all its forms
3. Tailored training and system improvements must be rolled out across Victoria's justice system to support practitioners' capacity to exercise their existing policy, professional practice and legislative responsibilities
4. Accountability mechanisms must be established that require justice practitioners to meet their existing policy, professional practice and legislative responsibilities
5. Training for non-legal family violence practitioners must be rolled out on justice system navigation, to support legal needs identification and referral, and strengthen inter-disciplinary practice
6. Monitoring and evaluation of professional practice and system improvements across the justice system must be measured relative to outcomes, and not only whether activities and changes have occurred. In particular, the extent to which reforms:
  - Improve victim survivor safety, wellbeing and recovery
  - Improve the accountability of perpetrators of family violence

## Context

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Coercive control is a defining feature of family violence. Victims frequently refer to coercive and controlling behaviour as the most enduring and damaging abuse they experience. Patterns of controlling and coercive behaviour are known predictors or precursors of domestic homicide. Victoria's Royal Commission into Family Violence found:

*"Ignoring patterns of controlling behaviour and focusing only on physical violence trivialises the abuse victims endure and traps them in violence. It can also have lethal consequences"<sup>1</sup>*

Rightly, there is increasing demand, locally and internationally, for improved justice system responses to coercive control.

The justice system is often criticised for taking an incident-based approach to family violence; responding mainly (and in many instances, only) 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 family violence is perpetrated, and intervene earlier in family violence to prevent incidents of serious physical violence.<sup>2</sup>

## Purpose of the policy brief

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Debate on the justice response to coercive control has largely focused on the purported benefits and pitfalls of introducing criminal offences. The debate is quite polarised, with advocates either strongly in favour or strongly opposed to criminalisation.

What is often missing from discussion about the justice response to coercive control is alternatives to criminalisation. That is: not **whether** coercive control should be in law, but **where** coercive control should be in law.

This brief explains why Women's Legal opposes criminalisation of coercive control, and advocates that coercive control is best placed in civil law, as the jurisdiction best suited to respond to the socio-legal complexities of family violence.

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<sup>1</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16), p.25

<sup>2</sup> Stark and Hester (2019), Coercive Control: Update and review, *Violence Against Women*, Vol. 25(1) 81–104

## Should coercive control be in family violence law?

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Yes.

It should go without saying that the justice system, as a key part of family violence response, must reflect best practice understandings and approaches to family violence. This means family violence must be defined in family violence law to reflect the nature and dynamics of family violence – including coercive control as a defining feature – and require all justice system stakeholders to enact their responsibilities according to that definition.

## Family violence law in Victoria

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The law in Victoria recognises that coercive control is family violence. Coercive control is a central feature of Victoria's civil law *Family Violence Protection Act (2008)*.

In its definition of family violence, the Act recognises that family violence includes coercive behaviour that controls or dominates a family member – and includes emotional, psychological, and economic abuse.<sup>3</sup>

Family violence is defined in Victoria's *Family Violence Protection Act (2008)* as:

- (a) *behaviour by a person towards a family member of that person if that behaviour*
  - (i) *is physically or sexually abusive; or*
  - (ii) *is emotionally or psychologically abusive; or*
  - (iii) *is economically abusive; or*
  - (iv) *is threatening; or*
  - (v) *is coercive; or*
  - (vi) *in any other way controls or dominates the family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person; or*
- (b) *behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a)<sup>4</sup>*

Importantly, the Family Violence Protection Act explicitly recognises (bold is our emphasis):

- (e) *that family violence may involve overt or subtle exploitation of power imbalances and may consist of isolated incidents or **patterns of abuse** over a period of time<sup>5</sup>*

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<sup>3</sup> Family Violence Protection Act 2008 (Victoria), Section 5

<sup>4</sup> Family Violence Protection Act 2008 (Victoria, Part 2, Section 5, *Meaning of Family Violence*

<sup>5</sup> Family Violence Protection Act 2008 (Victoria), Preamble

The Preamble in the Act is commonly used by lawyers from Women's Legal (and others, of course) when making submissions in court. We draw attention to the Preamble as a key feature of the legislation, as it is the lens through which the legislation is to be interpreted.

Victoria's family violence legislation, policy settings, and professional codes of practice require consistent and comprehensive assessment and response by all family violence system stakeholders, including justice stakeholders.

The *Family Violence Protection Act* (2008) ensures a person is held criminally accountable where a Family Violence Intervention Order is breached. The Victoria Police Code of Practice requires members to assess for coercive control, and investigate and lay criminal charges where appropriate, including for contraventions of Family Violence Intervention Orders and Family Violence Safety Notices<sup>6</sup>.

The existing and complementary civil and criminal legislative environment in Victoria strikes the right balance to account for the socio-legal complexities of family violence. Victoria's Royal Commission into Family Violence considered the introduction of new offences, and found that new offences often have only a symbolic effect that does not result in changes in practice.<sup>7</sup> Four years on from release of the Royal Commission report and recommendations, Commissioner Marcia Neave recently reiterated reservations about the introduction of criminal offences of coercive control, emphasising the practical difficulties in ensuring that these offences actually help victims of family violence<sup>8</sup>.

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 victims being ignored or disbelieved when they seek help.<sup>9</sup>

## Should coercive control be in criminal law?

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Proponents of law reform to criminalise coercive control say it is a means by which the justice system can better respond to the spectrum of ways in which family violence is perpetrated,

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<sup>6</sup> Victoria Police, Code of Practice for the Investigation of Family Violence

<sup>7</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16), p.27

<sup>8</sup> Neave (2020), 'Foreword', in McMahon and McGorriery (eds), *Criminalising Coercive Control: Family violence and the criminal law*, Springer, Singapore

<sup>9</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16), p.27



and intervene earlier to family violence and thereby prevent incidents of serious physical violence.<sup>10</sup>

While criminal law is and always will be part of the family violence legislative environment, it is not in-and-of-itself the most effective way of ensuring victim survivor safety and holding perpetrators accountable.

In considering the introduction of new offences, Victoria's Royal Commission into Family Violence found:

*“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.”<sup>11</sup>*

## Are criminal offences of coercive control working?

The answer is not straightforward.

This is partly because crimes of coercive control introduced in England, Wales and Scotland are relatively new, and partly related to how we measure success.

### Reports, charges and prosecutions

Coercive control offences were introduced in England and Wales in 2015 and in Scotland in 2018.<sup>12</sup> It may simply be too soon to meaningfully know how effective they have been. While there has been an increase in reports of domestic abuse to police<sup>13</sup>, the majority of arrests for coercive control have been dropped without someone being charged, and there have been a very small number of successful prosecutions to date.<sup>14</sup>

<sup>10</sup> Stark and Hester (2019), Coercive Control: Update and review, *Violence Against Women*, Vol. 25(1) 81–104

McMahon and McGorry (2020), *Criminalising Coercive Control: Family violence and the criminal law*, Springer, Singapore

<sup>11</sup> State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16), p.27

<sup>12</sup> Serious Crime Act (England and Wales) 2015 (UK)  
Domestic Abuse (Scotland) Act 2018 (UK)

<sup>13</sup> Office for National Statistics, *Domestic abuse prevalence and trends, England and Wales: year ending March 2019*, UK

<sup>14</sup> Barlow, Johnson & Walklate (n.d.), *Policing Responses to Coercive Control*, School of Law, Lancaster University, Lancaster

Cowling (2018). ‘Domestic Abuse: Majority of Controlling Cases Dropped’. *BBC News*, 4 December 2018

Importantly, to make meaning of the numbers we must consider what was in place prior to the introduction of the offences. Prior to the introduction of the offences, coercive control was not in family violence law – civil or criminal – in England, Wales and Scotland. As such, there is no baseline against which to compare or measure success. Put differently, if we only consider numbers, any use of the new laws can, logically, be described as “success”.

It might be assumed that increased reports to police of domestic abuse are due to the introduction of the new offences, but it could just as easily be due to improved police record-keeping<sup>15</sup>. Additionally, heightened public discussion of family violence commonly leads to an increase in reports to police. In the United Kingdom there was an 88 per cent increase in reports of domestic abuse to police between 2013 and 2017, and this period includes the two years before the new offences were introduced.<sup>16</sup>

At this point in time the statistics on reports to police, charges, and prosecutions in England, Wales and Scotland do not tell us much about whether the newly introduced offences are working.

## Measuring success

Where coercive control offences have been introduced, the only measure of success to date is whether the laws have been used.

Victim survivor safety and perpetrator accountability must be the paramount concern in all law and policy responses to family violence. Therefore, efficacy must be measured in terms that include, at least, exploration of the impacts of the new offences on:

- Victim survivor safety, recovery and wellbeing
- Victim survivor experience of the court process and justice system
- Perpetrator accountability, reoffending and behaviour change
- Misidentification and criminalisation of victim survivors
- Criminalisation of marginalised population groups

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<sup>15</sup> Office for National Statistics (2019), *Domestic abuse prevalence and trends, England and Wales: year ending March 2019*, UK

<sup>16</sup> Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (2019), *The police response to domestic abuse: an updated report*, UK

## Symbolic effect to deter use of violence

It has been argued that creating laws to criminalise coercive control has a symbolic effect that can influence community attitudes and act as a deterrent to perpetrators.<sup>17</sup>

Advocates of criminalisation argue that it sends a strong message about the unacceptability of coercive and controlling behaviour.<sup>18</sup> The underlying principle is that criminalisation will change attitudes by sending a strong message about the unacceptability of coercive control and domestic abuse in all its forms, and thereby reduce its prevalence. However, statistics from the Crime Survey for England and Wales (which collates data from a broad range of sources, and is different to statistics specific to reports to police) found there has been no change in the prevalence of family violence in England and Wales since the introduction of the offences.<sup>19</sup>

The argument that criminalisation can act as a deterrent to perpetrators relies on the assumption that the threat of criminal repercussions or imprisonment deters people from using family violence. However, evidence shows that criminal sanctions have limited effectiveness in preventing repeat perpetration of family violence.<sup>20</sup>

While justice system intervention is known to be relatively ineffective in deterring chronic reoffenders of family violence<sup>21</sup>, engagement with the justice system can be effective in deterring some perpetrators from reoffending. 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 family violence in all its forms and hold perpetrators to account for the abuse, can potentially play an important role in achieving perpetrator behaviour change.<sup>22</sup> However, the potential for the authoritative voice of the court to hold this cohort of perpetrators to account and

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<sup>17</sup> Douglas H (2015) Do we need a specific domestic violence offence? *Melbourne University Law Review* 39: 434–471.

<sup>18</sup> McMahon and McGorrery (2020), *Criminalising Coercive Control: Family violence and the criminal law*, Springer, Singapore

<sup>19</sup> Office for National Statistics (2019), *Domestic abuse prevalence and trends, England and Wales: year ending March 2019*, UK

<sup>20</sup> Sloan, Platt, Chepke, and Blevins (2013) "Deterring domestic violence: Do criminal sanctions reduce repeat offenses?" *Journal of risk and uncertainty* 46, no. 1, 51-80

<sup>21</sup> Blackburn & Graca (2020), 'A critical reflection on the use and effectiveness of DVPNs and DVPOs', *Police Practice and Research*, p.13

<sup>22</sup> Fitz-Gibbon et al (2020), *The views of Australian judicial officers on domestic and family violence perpetrator interventions*, ANROWS, Sydney

achieve behaviour change is not dependent upon the jurisdiction in which it occurs. That voice can be just as effective in civil court.

## Early intervention to prevent escalation of violence

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.

A significant body of research has found that victims of family violence are 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 child(ren) being taken into care.<sup>23</sup>

Making coercive control offences effective is reliant on victims being willing and in a position to engage with police, and open to the potential of criminal charges. This is particularly problematic for women in relationships where there is coercive control (and potentially more so for victims at most risk) due to the higher chance they are experiencing isolation and a lack of independent decision-making skills and social support.<sup>24</sup>

## Are there risks of adverse consequences?

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Yes.

There are several risks that are discussed in the literature on criminalisation of coercive control, and here we discuss some of the concerns raised about potential adverse impacts.

### Victim survivor experience of the justice system

A criminal offence of coercive control may fundamentally and adversely change the court experience for victim survivors of family violence, due to the burden of proof required.

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<sup>23</sup> Douglas (2012). 'Battered Women's Experiences of the Criminal Justice System: Decentering the Law'. *Feminist Legal Studies* 20 (2): 121–34

Meyer (2011). 'Seeking Help for Intimate Partner Violence: Victims' Experiences When Approaching the Criminal Justice System for IPV-Related Support and Protection in an Australian Jurisdiction'. *Feminist Criminology* 6 (4): 268–90

<sup>24</sup> Stark (2007). *Interpersonal violence. Coercive control: How men entrap women in personal life*. Oxford University Press.

In civil law, for an order to be made, the court must be satisfied that it is “probable” the violence occurred, and may occur again.

By contrast, the burden of proof in the prosecution of criminal offending requires substantially greater victim involvement in court proceedings, and depends on the capacity of the complainant to withstand rigorous cross-examination. This presents obstacles to, rather than enhancement of, family violence victim survivors' engagement with the justice system.

In criminal law, the court must be satisfied “beyond reasonable doubt” that the violence occurred. It is a far higher threshold that must be reached. Where coercive control cannot be proven “beyond reasonable doubt”, prosecution is unsuccessful. Early 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.<sup>25</sup> This can result in the matter ending without justice system acknowledgement of the harm caused.

### Adverse symbolic effect

There is no compelling evidence that criminalisation has a symbolic effect of deterring people from using family violence, nor that the criminal justice response in-and-of-itself leads to a change in perpetrator behaviour or improved safety for women<sup>26</sup>.

In fact, the symbolic effect of criminalisation may be detrimental to victim survivor safety, as it may deter victim survivors from seeking help and/or making reports to police for fear of repercussions.<sup>27</sup>

Additionally, we share the concern raised by others that there is a significant risk perpetrators of violence may use the offences against victim survivors and put them at risk of being criminalised.<sup>28</sup>

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<sup>25</sup> Barlow, Johnson, Walklate and Humphreys (2019), ‘Putting Coercive Control into Practice: Problems and possibilities’, in *British Journal of Criminology* (2020) 60, 260-179, Advance Access publication 22 July 2019

<sup>26</sup> Barlow, Johnson, Walklate and Humphreys (2019), Putting Coercive Control into Practice: Problems and possibilities, in *British Journal of Criminology* (2020) 60, 260-179, Advance Access publication 22 July 2019

<sup>27</sup> Nancarrow (2019), *Unintended Consequences of Domestic Violence Law: Gendered aspirations and racialized realities*, Palgrave Macmillan, Switzerland

<sup>28</sup> Goodmark (2018), *Decriminalizing Domestic Violence: A balanced policy approach to intimate partner violence*, University of California Press

## Impact on victim survivors

Criminalisation of coercive control can adversely impact victim survivors of family violence in several ways. This includes criminalising victim survivors that are wrongfully identified as the perpetrator of violence, and creating barriers to help-seeking and engagement in justice responses to family violence.

Victim survivors being misidentified as the perpetrator of violence has been a significant focus among family violence system stakeholders in Victoria in recent times. Misidentification is where a victim survivor is incorrectly identified by police and/or the court as the perpetrator of violence. A review by Women's Legal of 600 client cases found that, where women were named as respondents to intervention order applications, 68 per cent were misidentified as the predominant aggressor.<sup>29</sup>

A 2019 paper by No To Violence included case study analyses to identify patterns in misidentification, and found:

*"In each of these cases, women have been designated as an aggressor towards a male who has historically used violence against her, including extreme physical violence, sexual violence (one incident occurring in front of children), verbal abuse, starvation, imprisonment, and other forms of extreme coercion and control. Despite this, the victim has been nominated as the aggressor, in many instances for extremely spurious reasons".*

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. 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<sup>30</sup>.

Despite family violence law and the police Code of Practice requiring assessment for coercive control, it remains challenging to achieve consistent best practice assessment and

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<sup>29</sup> Ulbrick and Jago (2018), *"Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria*, Women's Legal Service Victoria

<sup>30</sup> No To Violence (2019), *Discussion paper: Predominant Aggressor Identification and Victim Misidentification*, Melbourne

response. Given the assessment errors and challenges already known, the potential impacts of criminalisation on misidentified victim survivors would be profoundly exacerbated.

What victim survivors want from the justice response to family violence is often neglected in these discussions. Victims often contact police with a desire for the violence to stop, and do not necessarily want the perpetrators arrested.<sup>31</sup> A 2015 study asking family violence victim survivors to identify what is important to their sense of justice found that active participation, being heard, validation, offender accountability and restoration are key.<sup>32</sup> These findings are consistent with family violence practice frameworks that emphasise victim-centred, trauma-informed and restorative practice, and which centre the importance of rebuilding power and control that the experience of family violence commonly takes away from victim survivors.

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 disempowering experience for victim survivors.

The criminal justice system can present barriers to help-seeking and engagement in justice responses to 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.”<sup>33</sup>*

## Impact on marginalised population groups

Disadvantaged population groups will be most affected by the introduction of coercive control offences. While, of course, criminal law has its place in family violence response, a trend towards criminalisation is a trend away from approaches that are victim-centred, trauma-informed and restorative.

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<sup>31</sup> Hoyle (2008). “Will she be safe? A critical analysis of risk assessment in domestic violence cases”. *Children and Youth Services Review*, 30(2008), 323–337. Elsevier, Oxford

<sup>32</sup> Neilson & Renou (2015), *Will Somebody Listen to Me: Insight, actions and hope for women experiencing family violence in regional Victoria*, Loddon Campaspe Community Legal Centre, Bendigo Victoria

<sup>33</sup> Walklate & Fitz-Gibbon. (2019), The Criminalisation of Coercive Control: The Power of Law?, in *International Journal for Crime, Justice and Society*, 8(4):94-104)

The emphasis on a criminal response with the current push for coercive control offences creates particular risks for marginalised population groups. Indigenous people are particularly vulnerable to the adverse impacts of a criminal justice focused response.<sup>34</sup>

## What needs to change in Victoria?

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Women's Legal consistently advocates – as lawyers, educators and reform advocates – that the justice response to coercive control must be substantially improved and consistently applied. For too long and too frequently, many justice stakeholders approach family violence as isolated acts of violence – commonly physical violence – without assessing for and responding to patterns of coercion and control. Our opposition to the criminalisation of coercive control must not be seen as advocating a weakened justice system role in responding to coercive control.

### Family violence system integration

Demand for justice system reform to align with best practice in family violence implicitly recognises the essential role of the justice system in family violence response. Yet, at present, justice is often positioned on the margins of family violence system reform.

Proper system integration in Victoria that includes justice as a core component of family violence response is urgently needed. A well-integrated family violence service system can reduce risk to victim survivors, including the risk of secondary victimisation caused by inappropriate service responses.<sup>35</sup>

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

At the time of writing, Victoria's second Family Violence Rolling Action Plan (2021 to 2023) is in development. The Plan will prioritise the reforms and activities for the next three-year

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<sup>34</sup> Douglas (2015). 'Do We Need a Specific Domestic Violence Offence'. *Melbourne University Law Review*, 39: 434

<sup>35</sup> 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



phase of implementation of recommendations of the Royal Commission into Family Violence. Now is the time to achieve proper and long-overdue family violence system integration by including justice.

### Activate existing legislative, professional practice and policy responsibilities

Justice system improvements are urgently needed to move away from incident-based approaches to family violence and respond to coercive control as one of the most harmful and enduring forms of family violence experienced by victim survivors.

We need consistent assessment and response to coercive control across Victoria's justice system, and all legal and justice sector practitioners consistently exercising their responsibilities under the *Family Violence Protection Act (2008)*, professional codes of practice, and family violence practice frameworks.<sup>36</sup>

Women's Legal has witnessed exemplary practice among justice system practitioners in assessing and responding to coercive control (as well as having witnessed terrible practice, of course). We say this as practitioners with an unwavering commitment to building a justice system that is consistently victim-centred, trauma-informed, and best practice in responding to family violence that recognises coercive control as a defining feature. We highlight the existing exemplary practice in order to illustrate that it is not a matter of **whether** we have the right legislation, policies and professional codes in place – we do. Rather, the problem we must resolve in Victoria is a lack of consistency in application.

The *Family Violence Protection Act (2008)*, professional codes of practice (including Victoria Police<sup>37</sup>), and the *Multi-Agency Risk Assessment and Management* framework<sup>38</sup> are broadly consistent in their principles, content and purpose.

Activating existing legislative, professional practice and policy requirements to respond to coercive control as family violence, and supporting justice practitioners to exercise their responsibilities is the justice system reform challenge facing us in Victoria.

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<sup>36</sup> Douglas (2018), *Legal Systems Abuse and Coercive Control*, Criminology & Criminal Justice, Vol. 18(1) 84–99

<sup>37</sup> Victoria Police, Code of Practice for the Investigation of Family Violence

<sup>38</sup> Victorian Government, Multi-Agency Risk Assessment and Management Framework

## Conclusion

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Women's Legal welcomes the current pressure for improved justice responses to coercive control, and wholeheartedly agrees that reform is urgently required.

Women's Legal opposes the criminalisation of coercive control.

Where criminal laws regarding coercive control have been introduced, the only measure of success to this point is whether the laws have been used. Even within that limited measure of success, there have been very few successful prosecutions to date.<sup>39</sup>

Conversely, there are compelling concerns that criminalising coercive control risks unintended consequences<sup>40</sup>, and:

- adversely impacts victim survivor safety and perpetrator accountability
- impairs victim survivor engagement with and experience of the justice system
- disproportionately and detrimentally impacts disadvantaged population groups

The existing and complementary civil and criminal legislative environment in Victoria strikes the right balance to account for the socio-legal complexities of family violence. The Victorian legislative and policy environment requires assessment for and response to coercive control by all actors across the family violence system, including justice stakeholders, and there are no clear benefits to justify the introduction of a new offence.

The focus of debate on justice responses to coercive control must shift away from **whether** coercive control should be in law, to **where** coercive control should be in law. Coercive control is best placed in civil law, as the jurisdiction best suited to respond to the socio-legal complexities of family violence. Coercive control is a central feature of Victoria's *Family Violence Protection Act (2008)*. The existing and complementary civil and criminal legislative environment in Victoria strikes the right balance to account for the socio-legal complexities of family violence.

Locally, we must use the renewed demand for better justice system responses to coercive control to achieve reform that activates the existing legislative, policy and practice responsibilities of all stakeholders across Victoria's justice system.

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<sup>39</sup> Barlow, Johnson & Walklate (n.d.), *Policing Responses to Coercive Control*, School of Law, Lancaster University, Lancaster

Barlow, Johnson, Walklate & Humphreys, Putting Coercive Control Into Practice: Problems and possibilities, in *British Journal of Criminology* (2020) 60, 260-179, Advance Access publication 22 July 2019

<sup>40</sup> Walklate, Fitz-Gibbon & McCulloch (2018), Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories, in *Criminology and Criminal Justice*, Vol 18, Issue 1

## Recommendations

1. Family violence reform must be inter-departmental and include the justice system as a core part of family violence response
2. Practitioners across the justice sector must exercise their existing responsibilities and consistently assess for and respond to coercive control and family violence in all its forms
3. Tailored training and system improvements must be rolled out across Victoria's justice system to support practitioners' capacity to exercise their existing policy, professional practice and legislative responsibilities
4. Accountability mechanisms must be established that require justice practitioners to meet their existing policy, professional practice and legislative responsibilities
5. Training for non-legal family violence practitioners must be rolled out on justice system navigation, to support legal needs identification and referral, and strengthen inter-disciplinary practice
6. Monitoring and evaluation of professional practice and system improvements across the justice system must be measured relative to outcomes, and not only whether activities and changes have occurred. In particular, the extent to which reforms:
  - Improve victim survivor safety, wellbeing and recovery
  - Improve the accountability of perpetrators of family violence

## References

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- 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
- Barlow, Johnson & Walklate (n.d.), *Policing Responses to Coercive Control*, School of Law, Lancaster University, Lancaster
- Barlow, Johnson, Walklate and Humphreys (2019), 'Putting Coercive Control into Practice: Problems and possibilities', in *British Journal of Criminology* (2020) 60, 260-179, Advance Access publication 22 July 2019
- Blackburn & Graca (2020), 'A critical reflection on the use and effectiveness of DVPNs and DVPOs', *Police Practice and Research*, <https://doi.org/10.1080/15614263.2020.1759059>
- Cowling (2018). 'Domestic Abuse: Majority of Controlling Cases Dropped'. *BBC News*, 4 December 2018. <https://www.bbc.com/news/uk-46429520>
- Domestic Abuse (Scotland) Act 2018 (UK)
- Douglas (2012). 'Battered Women's Experiences of the Criminal Justice System: Decentering the Law'. *Feminist Legal Studies* 20 (2): 121–34
- Douglas (2015). 'Do We Need a Specific Domestic Violence Offence'. *Melbourne University Law Review*, 39: 434
- Douglas (2018), 'Legal Systems Abuse and Coercive Control', *Criminology & Criminal Justice*, Vol. 18(1) 84–99
- Family Violence Protection Act 2008 (Victoria), [http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol\\_act/fvpa2008283/](http://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/fvpa2008283/)
- Fitz-Gibbon et al (2020), *The views of Australian judicial officers on domestic and family violence perpetrator interventions*, ANROWS, Sydney <https://d2rn9gno7zhxqg.cloudfront.net/wp-content/uploads/2020/06/08081754/PI.17.02-Fitz-Gibbon-RR.pdf>
- Goodmark (2018), *Decriminalizing Domestic Violence: A balanced policy approach to intimate partner violence*, University of California Press
- Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (2019), *The police response to domestic abuse: an updated report*, UK, <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/the-police-response-to-domestic-abuse-an-update-report.pdf>
- Hoyle (2008). 'Will she be safe? A critical analysis of risk assessment in domestic violence cases'. *Children and Youth Services Review*, 30(2008), 323–337. Elsevier, Oxford. <https://doi.org/10.1016/j.childyouth.2007.10.009>
- McMahon and McGorery (2020), *Criminalising Coercive Control: Family violence and the criminal law*, Springer, Singapore
- Meyer (2011). 'Seeking Help for Intimate Partner Violence: Victims' Experiences When Approaching the Criminal Justice System for IPV-Related Support and Protection in an Australian Jurisdiction'. *Feminist Criminology* 6 (4): 268–90

Nancarrow (2019), *Unintended Consequences of Domestic Violence Law: Gendered aspirations and racialized realities*, Palgrave Macmillan, Switzerland

Neilson & Renou (2015), *Will Somebody Listen to Me: Insight, actions and hope for women experiencing family violence in regional Victoria*, Loddon Campaspe Community Legal Centre, Bendigo Victoria

No To Violence (2019), *Discussion paper: Predominant Aggressor Identification and Victim Misidentification*, Melbourne, <https://ntv.org.au/wp-content/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf>

Office for National Statistics, *Domestic abuse prevalence and trends, England and Wales: year ending March 2019*, UK

Serious Crime Act (England and Wales) 2015 (UK)

Sloan, Platt, Chepke, & Blevins (2013) "Detering domestic violence: Do criminal sanctions reduce repeat offenses?." *Journal of risk and uncertainty* 46, no. 1, 51-80

Stark (2007), *Interpersonal violence. Coercive control: How men entrap women in personal life*, Oxford University Press.

Stark and Hester (2019), 'Coercive Control: Update and review', *Violence Against Women*, Vol. 25(1) 81–104

State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16)

Ulbrick and Jago (2018), "Officer she's psychotic and I need protection": Police misidentification of the 'primary aggressor' in family violence incidents in Victoria, Women's Legal Service Victoria <https://www.womenslegal.org.au/files/file/WLSV%20Policy%20Brief%201%20MisID%20July%202018.pdf>

Victorian Government, *Multi-Agency Risk Assessment and Management Framework*, <https://www.vic.gov.au/maram-practice-guides-and-resources>

Victoria Police, *Code of Practice for the Investigation of Family Violence*, <https://www.police.vic.gov.au/code-practice-investigation-family-violence>

Walklate & Fitz-Gibbon (2019), 'The Criminalisation of Coercive Control: The Power of Law?', *International Journal for Crime, Justice and Society*, 8(4):94-104

Walklate, Fitz-Gibbon & McCulloch (2018), 'Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories', in *Criminology and Criminal Justice*, Vol 18, Issue 1