



Responding to Coercive Control
in Victoria – Broadening the conversation
beyond criminalisation

May 2021



Acknowledgements

Acknowledgement of Aboriginal and Torres Strait Islander peoples

Domestic Violence Victoria and Domestic Violence Resource Centre Victoria acknowledge Aboriginal and Torres Strait Islander peoples as Australia's First Nations and Traditional Owners of Country. We pay respects to Elders past, present and emerging. We acknowledge that sovereignty was never ceded and recognise the right to self-determination and continuing connection to land, waters and culture.

Acknowledgement of Victims and Survivors

Domestic Violence Victoria and Domestic Violence Resource Centre Victoria acknowledge the strength and resilience of adults, children and young people who have experienced family violence and recognise that it is essential that responses to family violence are informed by their expert knowledge and advocacy. We pay respects to those who did not survive and acknowledge friends and family members who have lost loved ones to this preventable and far-reaching issue.

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About Domestic Violence Victoria and Domestic Violence Resource Centre Victoria

Domestic Violence Victoria (DV Vic) and the Domestic Violence Resource Centre Victoria (DVRCV) have merged to form a new peak body for specialist family violence services (SFVSs) responding to victim-survivors in Victoria. The merge brings together the current peak body for Victoria's specialist family violence services supporting victim-survivors (DV Vic) and Victoria's only specialist family violence Registered Training Organisation (DVRCV). As an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of its members utilising an intersectional feminist approach, the new peak body will work towards a world beyond family and gender-based violence, where women, children and all marginalized communities are safe, thriving, and respected.

Working across family violence response and prevention, the peak body is recognised as the state-wide voice of SFVSs responding to victims-survivors and holds a central position in the Victorian family violence system and its strategic governance, providing family violence subject matter expertise to the SFVS sector, government, and other partners and stakeholders. The peak body's work is focused on advocating for, supporting, and building: the capability of specialist family violence practice and service delivery for victims-survivors; broader sector workforce development and capability building across family violence response and prevention; and family violence policy development and analysis, law reform and research.

Language and Terminology Used

Family Violence

DV Vic and DVRCV recognise family violence as any behaviour that occurs in family, domestic or intimate relationships that is physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening or coercive; or is in any other way controlling that causes a person to live in fear for their safety or wellbeing or that of another person. This definition includes violence within a broader family context, such as extended families, kinship networks and 'family-like' relationships which can include a paid or unpaid carer for people with disabilities; families of choice for LGBTIQ people; and cultural kinship networks.¹ In relation to children, family violence is defined as

¹ Domestic Violence Victoria. (2020). *Code of Practice for Specialist Family Violence Services for Victim-Survivors* (2nd ed.). Domestic Violence Victoria. <http://dvvic.org.au/members/practice-development/>; *Family Violence Protection Act 2008* (Vic) s.5. http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/fvpa2008283/

behaviour by any person that causes a child to hear or witness or otherwise be exposed to the effects of the above behaviour.²

Victim-Survivor

DV Vic and DVRCV use the term victim-survivor to refer to the “person, including adults, infants, children and young people, who has experienced family violence”³. The term “acknowledges that the person subjected to family violence is both a *victim* of a crime and a human rights violation, and they are also a *survivor* with respect to their autonomy, strength and resilience”⁴. Gender-inclusive language is used to acknowledge the disproportionate harms of family violence against people who identify as women and their children, while at the same time recognising that family violence impacts people across a diversity of gender identities, sexual identities, social and cultural contexts, and within various intimate partner and family and family-like relationships.⁵ DV Vic and DVRCV acknowledge the emerging evidence-base that is articulating the ways in which gender diverse and gender non-binary communities are targeted and affected by family violence, and which has been under-researched to date. DV Vic and DVRCV also acknowledge that intersecting systems of privilege and oppression translate to diversity in experiences and affects for different groups of victim-survivors.

Perpetrator/User of Violence

The terms ‘perpetrator’ and ‘user of violence’ are used interchangeably to refer to adults who use family violence. DV Vic and DVRCV acknowledge that across the spectrum of experiences and relationships in which family violence is perpetrated, family violence is most frequently and severely perpetrated by men. DV Vic and DVRCV understand this to be a manifestation of gender inequality and gender hierarchies in Australian society, and that people perpetrating violence also experience intersecting systems of both privilege and oppression.

² Domestic Violence Victoria (2020). Op. cit.

³ Ibid. p85

⁴ Ibid. p85

⁵ Ibid.

Introduction

Coercive control in the context of family violence is a complex phenomenon and can be challenging to conceptualise, describe and define. Although the tactics and pattern of behaviours used by each perpetrator and the experience and context for each victim-survivor is unique, coercive control is common to all experiences of family violence and significantly impacts on the safety, autonomy, health and wellbeing of all victim-survivors, ultimately robbing them of their sense of identity and liberty. While it is difficult to convey the nature of coercive control in words on a page, the following quotes taken from submissions made to Victoria's Royal Commission into Family Violence (Royal Commission) describe the devastating impact coercive control has on every aspect of a victim-survivors' life:

"The most distressing thing I lost was me, my [self-worth]. Couldn't think straight, even to the point I couldn't write a shopping list: I couldn't concentrate. I was always worried that I may do or say the wrong thing. It is so hard to describe the mental torment, always questioning yourself. Never being able to comprehend that this person who is supposed to love me can hurt you so badly"⁶.

"He set out to destroy me on every level possible. Physically, mentally, emotionally and spiritually. All of it was intentional and planned"⁷.

"It is the prevalence and the all-encompassing awareness that you are living with something that is dangerous – life threatening. That fact slowly and methodically eats away at your self-awareness and ability to make decisions. All your decisions are about self-preservation and how safe you are from day to day and hour to hour"⁸.

Concerns about the lethality of coercive control in family violence contexts, and limitations in current responses to the use of coercive control by perpetrators of family violence, has understandably led to increased public conversation and debate as to whether Australian jurisdictions should follow the lead of countries such as England, Wales and Scotland by criminalising coercive control. These conversations have been underpinned by a commitment to a common outcome – to develop consistent and victim-centred responses to coercive control that intervene in and prevent family violence - and an understanding that this will require a significant shift in how coercive control and associated risk is understood and managed across the entire family violence response system and the wider community.

⁶ State of Victoria, Royal Commission into Family Violence: Report and recommendations, Vol I, Parl Paper No 132 (2014–16). p19.

⁷ Ibid. p18

⁸ Ibid. p20

As a result of this dialogue, there is an increased understanding and awareness across the community of the centrality of coercive control to family violence, as well as the associated risks.

This paper outlines DV Vic and DVRCV's position on responding to coercive control in Victoria, motivated by the current dialogue related to the criminalisation of coercive control.⁹ It describes how DV Vic and DVRCV understand coercive control and unpacks some of the definitional differences that have arisen in public discourse. The paper then explores the gaps in responding to coercive control within the current systemic response to family violence in Victoria, and critically assesses the effectiveness of criminalising coercive control in addressing these gaps from a victim-survivor centred perspective.

After consideration of the evidence, DV Vic and DVRCV conclude that a 'whole-of-system' approach is required to improve responses to coercive control. While the justice system (civil and criminal) forms part of the systemic response to family violence, DV Vic and DVRCV would not support the introduction of a new offence to criminalise coercive control in Victoria at this stage. Significant challenges and limitations need to be addressed before new legislation is considered. Based on this conclusion, the paper will offer alternatives to criminalisation that focus on actions that could be taken now to improve responses to coercive control, that extend beyond a criminal justice response to a 'whole-of-system' response to this important and complex issue. Through this, DV Vic and DVRCV seek to broaden discussion and generate further conversation to inform the development of best-practice responses to coercive control to ensure Victoria's systemic response to family violence meets the needs of all victim-survivors, regardless of whether they engage with the justice system.

Arriving at this position has been challenging, as there are compelling arguments that support a move to criminalise coercive control¹⁰ and DV Vic and DVRCV are acutely aware of the urgency with which new responses to coercive control are required. DV Vic and DVRCV have arrived at this position based on extensive research, consultation with its membership and partners, and advice from critical friends. DV Vic and DVRCV acknowledge that whilst many of our members support the position outlined in the paper, the views of members on the best responses to coercive control – including criminalisation – are not unanimous. DV Vic and DVRCV also empathise with and respect the views of people with lived experience of family violence who support the criminalisation of coercive control, while also recognising there are those with lived experience who do not.

⁹ As the peak body for SFVs for victim-survivors in Victoria, the analysis in this paper is limited to the Victorian context. We recognise that there are variations in existing family violence legislative and policy frameworks in each State and Territory. DV Vic is not seeking to apply our analysis to jurisdictions outside of Victoria.

¹⁰ For an overview of the potential benefits and risks of criminalisation of coercive control refer to: Australian Women Against Violence Alliance (AWAVA) (2021). *Criminalisation of Coercive Control*. Issues Paper; Women's Safety New South Wales. (2020). *It's time coercive control was made illegal in Australia*. Sydney; Tolmie, J.R. (2018). *Coercive control: To criminalize or not to criminalize?* Criminology & Criminal Justice. Vol 18(1): 50-66.

This paper is not seeking to intensify divisive debate, but rather to add another perspective to the issue from the standpoint of the Victorian system and the reform agenda that is currently underway here. As such, DV Vic and DVRCV remain open to reviewing our position as the reform landscape in Victoria evolves and new evidence and research emerges, to ensure that our position is contemporaneous and considers the current legislative and policy environment. We are committed to open and ongoing dialogue on the response to coercive control in Victoria, including criminalisation, and will continue to engage with our members, victim-survivors and partners as the state, national and international conversation unfolds.

What is Coercive Control?

A clear, consistent, and shared understanding of coercive control across systems, services and agencies must be established before conversations about criminalisation can progress in a meaningful way, as this is fundamental to informing discussions about appropriate responses to coercive control in Victoria¹¹.

Whilst definitions of coercive control exist, in recent public discourse about whether coercive control should be criminalised, variation has emerged in how the concept is interpreted and understood as people try to translate a concept derived from practice into the legal context¹². Having a clear and consistent understanding of what ‘criminalisation of coercive control’ means and the ‘problem’ it is trying to address is critically important as it forms the basis of discussions and debate, ensures that everyone involved understands coercive control in the same way, and helps shape effective responses and solutions¹³. Consequently, in the following two sections of the paper we firstly outline our understanding of coercive control and then secondly the problem criminalisation of coercive control is purported to address. This is a necessary frame for the policy position that DV Vic and DVRCV have formed regarding critical responses to coercive control.

¹¹ We note that the need for a consistent definition of coercive control and of domestic and family violence across legislative and policy settings, Australia-wide was one of the key considerations listed in: Australia’s National Research Organisation for Women’s Safety. (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney: ANROWS.

¹² Walklate, S., Fitz-Gibbon, K., & McCulloch, J. (2017). *Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories*. *Criminology & Criminal Justice*, 18(1), 115-131.

¹³ Tolmie, J.R. (2018). *Coercive control: To criminalise or not to criminalise?*. *Criminology and Criminal Justice*, 18(1), 50-66. p51; Tarrant, S., Tolmie, J., & Giudice, G. (2019). *Transforming legal understandings of intimate partner violence* (Research report 03/2019). Sydney, NSW: ANROWS; Shantiworks. (2020). *Coercive Control & Social Entrapment Workshop Series Week 1*. 7 October 2020. [webinar] Presentation by Julia Tolmie <<http://shantiworks.com.au/coercivecontrolandsocialentrapment-workshopseries/>>

Coercive control in the context of family violence

Coercive control is a pattern of abusive behaviours and tactics used by a perpetrator of family violence to gain power and control over a victim-survivor¹⁴. It has gained more attention within legal and political discourses since the publishing of Evan Stark's book on men's violence against women, where Stark described coercive control as "tactics [used] to intimidate, isolate, humiliate, exploit, regulate, and micromanage women's enactment of everyday life".¹⁵ These 'tactics' instil fear in a victim-survivor, erode their sense of identity and autonomy and 'entrap' them in a violent relationship by 'closing down' all options for accessing safety and support¹⁶.

As the discourse about responding to coercive control has gained traction across Australia, DV Vic and DVRCV have observed and been concerned that coercive control has at times been framed as a stand-alone tactic or type of family violence, which has resulted in conflating the criminalisation of coercive control with the criminalisation of specific tactics, behaviours or types of non-physical family violence.¹⁷ However, DV Vic and DVRCV understand coercive control as inherent to all forms of family violence. In this sense, it is a defining feature of family violence, which can be used as a **tactic** of family violence and can also be the **outcome** of family violence. Consideration of whether coercive control should be criminalised is distinct from considering whether to criminalise individual behaviours or types of non-physical abuse such as financial, emotional or psychological abuse.

Further, reducing coercive control to a stand-alone tactic or type of family violence risks simplifying the power and control dynamics that are central to identifying and understanding a victim-survivor's complex and unique experience of coercive control. This potentially reinforces incident-based responses to family violence by looking at 'events of coercive control', rather than considering the totality of a victim-survivors experience and the pattern of abuse that has been perpetrated against them. This approach underestimates the difficulties posed in trying to enact a criminal response to a phenomenon as individual, complex and all-encompassing as coercive control.

There is also the risk that, as people grapple with this complex phenomenon, the discourse is embedding 'hierarchies' of abuse by suggesting that one type of violence is more harmful than another. This can have a damaging effect on victim-survivor perception of their own experience of family violence. Whilst DV Vic and DVRCV recognise that different physical and non-physical tactics of family

¹⁴ Domestic Abuse Intervention Programs. N.D. *Understanding the Power and Control Wheel*. [website] (accessed 2 December 2020) <<https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/>>

¹⁵ Stark, E. (2007). *Coercive control: How men entrap women in personal life*. New York: Oxford University Press. p171-172.

¹⁶ Tarrant, S. et al. (2019). op. cit. p17; Australia's National Research Organisation for Women's Safety. (2021). Op cit.

¹⁷ In particular, we note that Tasmania is often reported as being the only state that currently criminalises coercive control which is inaccurate as the offences cover specific types of non-physical family violence: 'emotional abuse' and 'intimidation offences' – see for example: <https://www.themandarin.com.au/141486-queensland-labor-becomes-latest-party-to-tackle-coercive-control/>; <https://7news.com.au/news/crime/nsw-parliament-to-consider-new-dv-laws-c-1325120> and <<https://www.smh.com.au/lifestyle/life-and-relationships/ex-family-court-chief-wants-coercive-control-laws-to-criminalise-intimate-terrorism-20201119-p56g4b.html>>

violence indicate higher levels of risk for victim-survivors,¹⁸ all forms of family violence are deeply harmful.¹⁹

The gap in responses to coercive control

Despite definitional differences and the issues outlined above, there does seem to be a common understanding that the ‘problem’ that needs to be addressed is the limitations in current responses to coercive control across the family violence response system. The inadequacy of current responses to coercive control result in victim-survivor experiences not being recognised and responded to safely and consistently, and perpetrators not being held ‘accountable’²⁰ and responsible for their harmful behaviour. Given the established link between high levels of coercive control and family violence homicide²¹, failure to respond early, appropriately and safely can result in death and this understandably results in a sense of urgency to address this problem.

Whilst there is no doubt that the current response to coercive control needs to be strengthened urgently, caution must be taken to ensure that the sense of urgency does not prevent careful consideration of all options and solutions, including those that lie outside of the criminal justice system. Space must also be provided to hear from and listen to a diverse range of voices. If we do not take a ‘whole-of-system’ perspective, there is a risk that limitations in other parts of the family violence system will be overlooked and we risk losing sight of victim-survivors – all of whom experience coercive control through family violence – who never engage with the justice system due to a myriad of barriers including a well-founded fear that the system will not provide a safe response.

¹⁸ Family Safety Victoria (2018). *Family Violence Multi-Agency Risk Assessment and Management Framework: A Shared Responsibility for Assessing and Managing Family Violence Risk*. Melbourne, VIC: State of Victoria; Backhouse, C., & Toivonen, C. (2018). *National Risk Assessment Principles for domestic and family violence: Companion resource. A summary of the evidence-base supporting the development and implementation of the National Risk Assessment Principles for domestic and family violence* (ANROWS Insights 09/2018). Sydney, NSW: ANROWS.

¹⁹ We note that the *Family Violence Protection Act (Vic) 2008* (the FVPA) recognises that all forms of family violence are harmful and can be the basis for civil intervention orders. See s5.

²⁰ Perpetrator accountability refers to: “The process by which the perpetrator themselves acknowledges and takes responsibility for their choices to use family violence and works to change their behaviour. It sits with all practitioners, organisations and systems through their collective, consistent response to promote perpetrators’ capacity to take responsibility for their actions and impacts, through formal or informal services response mechanisms.” Family Safety Victoria (2019). *MARAM Practice Guides: Foundation Knowledge Guide*. Melbourne, Vic: State of Victoria.

²¹ Toivonen, C., & Backhouse, C. (2018). *National Risk Assessment Principles for domestic and family violence* (ANROWS Insights 07/2018). Sydney, NSW: ANROWS. p14; The NSW Domestic Violence Death Review Team (Annual Report, 2015-2017) <<https://www.coroners.nsw.gov.au/coroners-court/resources/domestic-violence-death-review.html#Reports2>>

Criminalising Coercive Control

Coercive control is already recognised in the Victorian law and justice response to family violence

Before discussing whether criminalising coercive control will address limitations in current responses, it is important to consider whether coercive control is already recognised in Victorian law and justice responses. As noted by Women’s Legal Service Victoria (WLSV) in their recent Policy Brief on Justice System Response to Coercive Control, “the law in Victoria recognises that coercive control is family violence [and] coercive control is a central feature of Victoria’s civil law”²².

In Victoria, coercive, controlling and dominating behaviour is enshrined in the definition of family violence within the *Family Violence Protection Act (Vic) 2008* (the FVPA)²³ and its *Preamble*, which sets out the principles underpinning the Act including recognising family violence as ‘patterns of abuse’ that occur over time. As detailed in the *Family Violence Bench Book*, the *preamble* and the *purpose*²⁴ of the FVPA “can be referred to by the court when interpreting specific sections of the Act”²⁵ and therefore play a significant role in providing the context for judicial decision making. The principles set out in the **preamble**, the **purpose**, and the **definition** of family violence in the FVPA guide legal, policy and practice frameworks in Victoria and means that if a victim-survivor is experiencing coercive and controlling behaviours, there is recourse through the civil jurisdiction as a victim-survivor or Victoria Police can apply for a Family Violence Intervention Order (FVIO)^{26,27}. This civil pathway provides an avenue for a victim-survivor’s experience of family violence to be validated and an opportunity for a judicial officer to “capture the attention of the perpetrator and to denounce violence against women and their children”²⁸.

The application for a FVIO provides clear examples of coercive and controlling behaviours (p2), asks specific questions about whether the perpetrator acts in a manner that in any way controls or dominates the victim-survivor and causes them to feel fear for their safety (p7), and importantly asks the victim-survivor to document if there have been “other incidents or **patterns of family violence** by

²² Women’s Legal Service Victoria (2020). *Policy Brief: Justice system response to coercive control*. Melbourne. p6.

²³ *Family Violence Protection Act 2008* (Vic) s.5. op. cit.

²⁴ *Ibid.* s.1.

²⁵ Judicial College of Victoria (2018). *Purpose and scope of Family Violence Protection Act 2008: 1.2 Purpose and principles* <<https://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm#34164.htm>>

²⁶ Note: Victoria Police can also apply for a Family Violence Safety Notice (FVSN) if a person needs immediate protection <<https://www.police.vic.gov.au/intervention-orders>>.

²⁷ Family Violence Intervention Orders are also known as a “domestic violence order (DVO), intervention order, protection order, family violence order (FVO) or a violence restraining order (VRO) in other states and territories”: Magistrates Court of Victoria (2020). *Family violence intervention orders (FVIO)*. <<https://www.mcv.vic.gov.au/family-matters/family-violence-intervention-orders-fvio>>

²⁸ Australia’s National Research Organisation for Women’s Safety. (2020). *The views of Australian judicial officers on domestic and family violence perpetrator interventions* (Research to policy and practice, 13/2020). Sydney: ANROWS. p6.

the respondent [perpetrator] in the past” (p8). If any of the ‘conditions’ on the FVIO²⁹ are subsequently breached by the perpetrator, it is considered a criminal offence, and this acts as a pathway to the criminal justice system³⁰. In this way, if a perpetrator is behaving in a way, or using tactics that are coercive, controlling or instil fear in a victim-survivor, under the definition of family violence in Victorian legislation, this would be considered as committing family violence and therefore constitute a criminal offence of breaching the conditions on the FVIO.

Given the above, DV Vic and DVRCV believes it is how existing legislation is implemented, rather than a lack of legislation, that is limiting how effectively the justice system responds to coercive control. The success of existing legislation is limited by shortcomings in justice system responses to family violence and improvements still need to be made to ensure safe and just outcomes for all victim-survivors. We note that this conclusion was also reached by the Royal Commission into Family Violence, which did not recommend the introduction of new criminal offences or sentencing powers and concluded that improving the way current law is applied, enforced and prosecuted through “education, training and embedding best practice and family violence specialisation in the courts is likely to be more effective than simply creating new offences or changing sentencing laws.”³¹ Likewise, the recent House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry into family, domestic and sexual violence did not recommend criminalisation of coercive control.³²

Although there has been a great deal of reform in the Victorian justice system since the Royal Commission, in such a complex system it will take time for system-wide change to occur and be embedded. Consequently, it would seem prudent to allow time for the reform agenda set out in the recommendations made by the Royal Commission to be fully implemented rather than adding new elements into the system at this time. As recommendations are implemented, ongoing review and evaluation will be essential to ensure the system is functioning in a way that is improving responses for victim-survivors and to identify any unintended consequences and emerging gaps³³.

Limitations of criminal justice responses to coercive control

As noted above, recent conversation and debate has focussed on the criminalisation of coercive control as a way of addressing the limitations in current responses to the use of coercive control by

²⁹ *Family Violence Protection Act 2008* (Vic) Division 5. op. cit. Note: s81(2)(a) prohibits the respondent from committing family violence against the victim-survivor (‘protected person’).

³⁰ *Family Violence Protection Act 2008* (Vic) Division 10. *Contravention of Family Violence Intervention Order* op. cit. Douglas, H. (2015). *Do we need a specific domestic violence offence*. 39(434) Melbourne University Law Review.

³¹ State of Victoria (2014-2016). *Royal Commission into Family Violence: Report and recommendations, Vol III*. Parl Paper No 132. p189

³² Standing Committee on Social Policy & Legal Affairs. (2021). *Inquiry into family, domestic & sexual violence*. Commonwealth of Australia. https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Familyviolence/Report

³³ see Family Violence Reform Implementation Monitor (2019). *Report of the Family Violence Reform Implementation Monitor*. Victorian Government: for commentary on the need to map ‘dependencies’ in reform activity to ensure the family violence system benefits victim-survivors. p6-14.

perpetrators of family violence. Consequently, the following sections of the paper outline DV Vic and DVRCV's views on the introduction of a new offence to criminalise coercive control and a discussion of alternatives to criminalisation that would improve systemic responses to family violence in Victoria.

Following consultation with our members, a review of the policy and legislative landscape in Victoria and academic research and literature, DV Vic and DVRCV have formed a view that a whole of system approach is required to improve responses to coercive control. Whilst criminalising coercive control may lead to some improvements in criminal justice responses, it is unlikely to lead to change required across the Victorian family violence system to improve responses to coercive control and may result in unintended consequences that adversely impact on the safety of victim-survivors.

The criminal justice system is not currently equipped to deal with the complexity and nuance that coercive control presents, as there is not yet a common understanding of the role of coercive control in family violence, nor is there sufficient consistency in responding to family violence more generally across the system. Therefore, victim-survivors cannot be guaranteed an appropriately safe response when they engage with the justice system. In saying this, DV Vic and DVRCV acknowledge that the criminal justice system was never established to deal with the level of complexity posed by family violence, as the criminal justice system was designed to respond to incident-based offences and isolated events or criminal acts³⁴ between strangers, largely men.³⁵

Implementation, effective and consistent enforcement and prosecution of a criminal offence of coercive control would require a significant shift in the criminal justice system, moving it beyond the 'incident-based response' that currently dominates the system,³⁶ to one that recognises complex power dynamics and the ongoing pattern of abusive behaviours that are so destructive and harmful to victim-survivors. Further, it would require the development of trauma-informed responses across the criminal justice system to ensure that those working in the justice system can distinguish between violence that occurs in response to ongoing abuse and trauma and violence that is intentionally used to control, intimidate and instil fear in a victim³⁷ (see discussion below regarding misidentification).

In DV Vic and DVRCV's view, the complexity and "particularity of coercive control - the strategic ways in which a specific abuser individualises his abuse based on his privileged access to personal information

³⁴ Tolmie, J.R. (2018). op.cit.; Goodmark, L. (2018). *Decriminalizing Domestic Violence: A balanced policy approach to intimate partner violence*. California: University of California Press. Walklate, S., Fitz-Gibbon, K., & McCulloch, J. (2017). op. cit.; Walklate, S. & Fitz-Gibbon, K. (2019). The Criminalisation of Coercive Control: The Power of Law?. *International Journal for Crime, Justice and Social Democracy* 8(4), 94-108.

³⁵ Carline, A. & Easteal, P. (2016). *Shades of Grey – Domestic & Sexual Violence Against Women: Law Reform & Society*. Routledge; Fitz-Gibbon, K. & Walklate, S. (2018). *Gender, Crime & Criminal Justice* (2nd ed.). Routledge.

³⁶ Walklate, S., Fitz-Gibbon, K., & McCulloch, J. (2017). op. cit.

³⁷ Australia's National Research Organisation for Women's Safety. (2020). Accurately identifying the "person most in need of protection" in domestic and family violence law: Key findings and future directions (Research to policy and practice, 23/2020). Sydney: ANROWS.

about his partner”³⁸ extends beyond the current response capacity of the criminal justice system in Victoria. The complex and individualised nature of coercive control means that behaviours which are understood as abusive from the perspective of a victim-survivor, might be very difficult for others to identify, evidence and prosecute within the current criminal justice system³⁹. For an individual victim-survivor, the click of a pen, a look or a deliberately chosen word can instil fear and dread as part of a pattern of coercively controlling behaviour, but it can be difficult to demonstrate how this is family violence to a criminal degree.

Consequently, it will take long term structural and cultural change before all parts of the criminal justice system can understand the complexity that coercive control presents, and this is fundamental to providing safer outcomes for **all** victim-survivors who engage with that system. Additional limitations in the criminal justice system that impact on how effectively it can currently respond to coercive control include:

- The criminal justice system is not yet fully aligned and integrated with other parts of the family violence system because the siloed responses noted by the Royal Commission have not yet been adequately addressed⁴⁰. This means that victim-survivors can fall through the gaps that still exist between the justice system and the broader family violence system.
- Victim support services are currently not able to provide the level of support that victims require, particularly throughout lengthy criminal proceedings. A recently completed comprehensive review of victim services in Victoria found that “*for over half of the victims of crime interviewed...support had not been sufficient to meet their needs*”⁴¹.
- The criminal justice system is not free from bias and discrimination, nor is it inclusive and accessible for all.

Whilst a great deal of reform and change has occurred in the Victorian justice system since the Royal Commission, including initiatives to build a shared understanding of family violence and risk across systems through the roll-out of the Multi-Agency Risk Assessment and Management Framework (MARAM),⁴² it will take time for change to be embedded across the justice system. Victoria Police has yet to align its risk assessment and management process with MARAM, though there have been recent positive indications that this is now a possibility. We welcome the inclusion of *legal assistance* and the

³⁸ Stark, E. and Hester, M. (2018). *Coercive Control: Update and Review*. Violence Against Women. Vol 25(1). (accessed 2 December 2020) <<https://journals.sagepub.com/doi/full/10.1177/1077801218816191>>

³⁹ Tolmie, J.R. (2018). op.cit.

⁴⁰ State of Victoria (2014-2016). *Royal Commission into Family Violence: Report and recommendations, Vol III*. Parl Paper No 132.

⁴¹ Centre for Innovative Justice. (2020). *Strengthening Victoria’s Victim Support System: Victim Services Review. Final Report*. RMIT. P13. <https://www.victimsofcrime.vic.gov.au/victims-service-review>, p13

⁴² Family Safety Victoria (2018). op. cit.

courts as priority areas in the Family Violence Reform Rolling Action Plan 2020-2023 and the focus on MARAM within those priorities, as this will assist in building a shared understanding of family violence and risk across the justice system⁴³. Therefore, in our view, it is important to allow time for the impact of the Royal Commission's reform agenda to play out, to ensure that victim-survivors engage with a system that ensures safety and provides the victim-centred and trauma-informed response they need and deserve.

Due to current limitations in criminal justice responses outlined above, DV Vic and DVRCV are not convinced that criminalising coercive control would adequately address the problem it is seeking to address, as it is unlikely to improve criminal and systemic responses to coercive control in Victoria at this stage in the reform journey.

Criminalising coercive control and victim-survivor safety

One of the assumptions underlying policy responses that seek to increase levels of intervention by the criminal justice system is that if a victim-survivor and perpetrator are physically separated (including through State interventions such as Family Violence Intervention Orders) the violence will stop and make the victim-survivor safer. Unfortunately, this is not reflected in the reality of victim-survivors' experiences or research and evidence, which shows that separation is one of the most high-risk times for victim-survivors where violence and risk escalates as the perpetrator "attempts to reassert control or punish the victim"⁴⁴. This high-risk time can extend well beyond separation, with an analysis of intimate partner violence homicides that occurred between 1 July 2010 and 30 June 2014 showing that in almost 20% of cases where a male killed a female partner this occurred more than three months after separation⁴⁵.

Whilst a justice response may interrupt a perpetrator's pattern of abuse, if the underlying behaviour is not addressed the perpetrator's abuse and violence is likely to continue. Whilst physical violence will cease if the perpetrator is excluded from the home or incarcerated, they can still use coercively controlling tactics while remanded or from prison, or they may even get someone else to do this on their behalf. Further, if a perpetrator is incarcerated, their release can be a high-risk time for victim-survivors, particularly if the perpetrator has not had access to and successfully completed rehabilitative/behavioural change programs while in custody, the victim-survivor has not had access to

⁴³ Department of Premier and Cabinet (2020). *Family Violence Reform Rolling Action Plan 2020-2023: Working towards a Victoria free from family violence*. State Government of Victoria <<https://www.vic.gov.au/family-violence-reform-rolling-action-plan-2020-2023>>

⁴⁴ Toivonen, C., & Backhouse, C. (2018). Op. cit. p12; Family Safety Victoria (2018). op cit. Australian Domestic and Family Violence Death Review Network (2018). *Data Report*. (accessed 3 December 2020)<<https://apo.org.au/sites/default/files/resource-files/2018-05/apo-nid174811.pdf>>

⁴⁵ Australian Domestic and Family Violence Death Review Network (2018). Op cit.

funding and support to put security/safety measures in place, or the system has failed to coalesce in other ways to keep the perpetrator in view from a victim-survivor safety-centred perspective.

We note that at this stage it is too early to tell if coercive control offences that have been introduced in other international jurisdictions have led to safer outcomes for victim-survivors⁴⁶. Given how recently these offences were introduced and the variation in the type of offences and the way they have been implemented, clear evidence is yet to emerge about the impact and outcome these offences have had on victim-survivor safety. Data that has emerged since the offences were introduced speaks to the quantum of charges laid and prosecuted, rather than outcome-focussed evaluations⁴⁷. Therefore, without robust evaluation and evidence, including the perspectives of victim-survivors involved, it is difficult to determine at this stage whether they are having any positive impact on safety and perpetrator behaviour change.

Although the absence of evidence on whether the criminalisation of coercive control results in safer outcomes for victim-survivors on its own cannot form the basis of an argument against criminalisation, the potential impact of the unintended consequences that may result from the introduction of a coercive control offence warrant further and careful consideration. As noted by Goodmark (2018), an important consideration in weighing up whether behaviour should be criminalised, is whether “criminalisation of the behaviour [will] do more good than harm”⁴⁸. The potential unintended consequences outlined below raise significant concerns and implications for the safety of victim-survivors and lead us to conclude that the risks of criminalising coercive control outweigh any benefits that may be achieved.

Criminalising coercive control and perpetrator accountability⁴⁹

Whilst the criminal justice system has a contribution to make in holding perpetrators of family violence accountable, “single measures of the criminal justice system-based accountability...do not capture what is required to create a genuine web of accountability around perpetrators in terms of what their family needs to lead safe, dignified and self-determined lives”⁵⁰. This ‘web of accountability’ takes place within the broader coordinated family violence response and is reliant on all parts of the system ‘pivoting to the perpetrator’ and responding consistently. Whilst the introduction of a coercive control offence may

⁴⁶ For example, a coercive control offence was introduced in England & Wales in 2015; the Republic of Ireland in 2018 and Scotland in 2018: ANROWS (2021). *Defining and responding to coercive control: Policy brief* (ANROWS Insights, 01/2021). Sydney. ANROWS.

⁴⁷ Office of National Statistics UK “Domestic abuse in England and Wales: Overview November 2020. [website, 17 December 2020]<<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/>>; “Domestic abuse charges reach four year high”, BBC News. (8 September 2020) <<https://www.bbc.com/news/uk-scotland-54071027>>; “COVID in Scotland: How has the pandemic affected crime levels”. BBC News. (13 November 2020) <<https://www.bbc.com/news/uk-scotland-54916511>>

⁴⁸ Goodmark, L. (2018). op. cit. p23.

⁴⁹ See footnote 20 above for definition of ‘perpetrator accountability’

⁵⁰ Vlasis, R. and Campbell, E., (2019) *Bringing pathways towards accountability together – Perpetrator journeys and system roles and responsibilities*, RMIT University, Melbourne. p15.

have a symbolic effect in recognising the seriousness of this behaviour⁵¹, a criminal response alone will not act as a deterrent or increase perpetrator accountability.

We note that the Royal Commission found limited evidence on the effectiveness of imprisonment as a means of deterring or rehabilitating family violence offenders or in reducing crime. Further, the Royal Commission noted that “a consistent finding in deterrence research is that increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect”⁵². This would suggest that it is not the introduction of new offences that has a deterrent effect but rather the consistency and certainty with which current offences are enforced that will have a greater deterrent effect. This in part led to the Royal Commission concluding that “the introduction of new offences or new sentencing powers is not necessary, [but] there is scope to improve current practices and processes”⁵³.

Given the scale of reform in family violence policy and legislation in Victoria since the Royal Commission, this would suggest that careful consideration and evaluation of how current family violence offences are being implemented in Victoria is warranted before considering whether a new offence is needed. This would establish whether existing legal mechanisms are being utilised and implemented fully, whether they are having the desired ‘deterrent’ effect and whether the broader systemic response to perpetrators is creating the required ‘web of accountability’.

Unintended consequences of criminalising coercive control

DV Vic and DVRCV believe there is a risk of a range of unintended consequences that could result from criminalising coercive control, which are outlined below.

1. Victim-survivors may be less likely to seek help and report family violence to police

Research demonstrates that the introduction of criminal sanctions in response to family violence may lead to victim-survivors being less willing to engage in the justice system⁵⁴. This may be due to a victim-survivor having had negative experiences with the criminal justice system in the past or not wanting the perpetrator to get a criminal record or be incarcerated⁵⁵. This is particularly the case for communities who are already ‘over-policed’ and have a well-founded fear of structural and institutional power and authority including victim-survivors from Aboriginal and Torres Strait Islander communities and migrant

⁵¹ State of Victoria. (2014-2016). Vol III. op. cit.

⁵² *ibid.* p210.

⁵³ State of Victoria. (2014-2016). Vol III. op. cit. p189.

⁵⁴ Walklate & Fitz-Gibbon. (2019). *The Criminalisation of Coercive Control: The Power of Law?* International Journal for Crime, justice and society. 8(4): 94-104.

⁵⁵ Douglas, H. (2012). *Battered Women’s Experiences of the Criminal Justice System: Decentring the law.* Feminist Legal Studies. 20(2): 121-34; Meyer, S. (2011). *Seeking help for intimate partner violence: Victim’s Experiences When Approaching the Criminal Justice System for IPV-Related Support and Protection in an Australian Jurisdiction.* Feminist Criminology. 6(4): 268-90.

and refugee communities⁵⁶. Further, given that separation is a high-risk time, many victim-survivors choose not to report to police. This may be due to fear of what the perpetrator might do, concern that reporting will result in forced separation, mistrust of the justice system and the response they will receive, or structural barriers that prevent access to support and safety⁵⁷. A greater focus should be directed to removing barriers to reporting rather than potentially creating new ones that may adversely impact on a victim-survivor's support and safety options.

We note that in Scotland, there has not been a noticeable decrease in reporting since the introduction of a coercive control offence⁵⁸, but caution that it is difficult to compare Scotland to an Australian jurisdiction, where the impact of colonisation has resulted in Aboriginal and Torres Strait Islander people already experiencing disproportionately high rates of incarceration, discrimination and marginalisation.⁵⁹

2. Secondary victimisation and re-traumatisation

In any response to victim-survivors of family violence, it is crucial that they are central to the process, they are believed, and that their 'truth' is not questioned or 'dismissed' as this can be extremely harmful to a victim-survivor who is already experiencing the ongoing impacts of trauma. Unfortunately, the criminal justice system can be very intimidating for victims-survivors, and often causes fear, a sense of disempowerment and the potential for 'victim-blaming' to occur⁶⁰. Further, negative interactions with the criminal justice system can be greater for victim-survivors who face marginalisation and discrimination and additional structural barriers to accessing the justice system.

A recent review of the committals process in Victoria found that despite efforts to improve the experience of victims/witnesses, many "continue to find their involvement in criminal proceedings unpleasant and stressful. For victims and witnesses who have experienced trauma, involvement in the

⁵⁶ Maturi, J. and Munro, J. (2020). *Should Australia criminalise coercive control? Fighting domestic violence and unintended consequences*. Asia and the Pacific Policy Society Policy Forum. (accessed 20 November 2020) <<https://www.policyforum.net/should-australia-criminalise-coercive-control/>>; State of Victoria (2014-2016). Vol III. op. cit.; Victorian Law Reform Commission. (2017). *Pathways to Justice-Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*. Final Report No. 133 (2017). Vaughan, C. et al. (2016). *Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia*. The Aspire Project: Research report. ANROWS.

⁵⁷ UN Women, United Nations Office on Drugs and Crime (UNODC) and the International Association of Women Police (IAWP) (2021). *Handbook on gender-responsive police services for women and girls subject to violence* <<https://www.unwomen.org/en/digital-library/publications/2021/01/handbook-gender-responsive-police-services>>

⁵⁸ Standing Committee on Social and Legal Affairs. Family, Domestic and Sexual Violence. Public Hearing Transcript: 3 December 2020. P6 <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Familyviolence/Public_Hearings>.

⁵⁹ For further discussion on barriers to reporting for victim-survivors of family violence who are Aboriginal and Torres Strait Islander, see Langton, M., Smith, K., Eastman, T., O'Neill, L., Cheesman, E., & Rose, M. (2020). *Improving family violence legal and support services for Aboriginal and Torres Strait Islander women* (Research report, 25/2020). Sydney: ANROWS. <https://www.anrows.org.au/project/improving-family-violence-legal-and-support-services-for-indigenous-women/>

⁶⁰ Orth, U. (2002). *Secondary victimization of crime victims by criminal proceedings*. *Social Justice Research*, 15(4), 313–325; Laing, L. (2017). *Secondary Victimization: Domestic Violence Survivors Navigating the Family Law System*. *Violence Against Women*, 23(11), 1314–1335.

adversarial criminal justice system can be a particularly difficult and damaging experience”⁶¹. The lengthy nature of the criminal justice process means that there are unfortunately protracted and ongoing opportunities for re-traumatisation to occur.

Certain aspects of the criminal justice system also increase the potential for victim-survivors to be re-traumatised. Firstly, in criminal proceedings, the victim-survivor is viewed as a ‘participant’ rather than a party to the proceedings which means that there is a risk that they may lose control of the process if it is not a victim-centred one.⁶² If a victim-survivor of family violence does not have control of decision making or is subjected to processes that replicate the dynamics of a controlling relationship (i.e. adversarial criminal justice processes), it can be re-traumatising and result in victim-survivors not being able to continue to engage in the legal process or making a choice not to engage at all.

Secondly, in the criminal justice system, the requirement to prove a crime ‘beyond reasonable doubt’ requires a greater level of involvement by the victim-survivor (as opposed to civil proceedings)⁶³. Given the nuanced and individual experience of coercive control for each victim-survivor, it is likely that there will be no corroborating evidence of the coercive control offence and they would be the primary source of evidence. As a result, there is a high likelihood that victim-survivors will be called as a witness and subjected to cross-examination in criminal proceedings, where their character and the truthfulness of their evidence may be called into question (for example, counselling or mental health records may be subpoenaed and used against a victim-survivor) to a greater extent than for other criminal proceedings related to family violence. There is potential for this to occur more than once if a committal hearing is held. If appropriate safeguards are not in place this can be a devastating experience for victim-survivors and in some instances, “more distressing than the crime itself.”⁶⁴

We note that in Scotland, steps have been taken to reduce the potential for re-traumatisation by developing protocols for gathering evidence from victim-survivors and introducing a more objective ‘reasonable person’ test which “shifts focus from the personal reaction of a victim/survivor to the abuse they are experiencing, to the objective wrongfulness of the offender’s behaviour”⁶⁵. While this is an important step to address potential re-traumatisation, evidence is yet to emerge as to whether this has resulted in victim-centred and trauma-informed justice processes that increase victim-survivor safety and change perpetrator behaviour. As noted previously, the current structural limitations in the criminal justice system in Victoria cannot offer adequate safeguards to ensure that victim-survivors are

⁶¹ Victorian Law Reform Commission. (2020). *Committals Report March 2020*. p9.

⁶² Ibid. see p8

⁶³ Tolmie. (2018). op cit.; Victoria Legal Aid (n.d.). *Legal Glossary* <<https://www.legalaid.vic.gov.au/find-legal-answers/legal-glossary>> the ‘balance of probabilities’ level of proof required in civil cases is easier to prove than the ‘beyond reasonable doubt’ level of proof required in criminal cases.

⁶⁴ VLRC. (2020). Op. cit. p9

⁶⁵ Women’s Safety NSW. (2020). Op. cit. p62.

not harmed by the criminal justice process, and therefore caution should be taken to ensure the system can provide a safe response within the current legislative framework before introducing a new offence.

3. Systems abuse

As noted by Douglas (2018)⁶⁶, the justice system cannot always prevent coercive and controlling behaviour taking place during the legal process. Criminalisation of coercive control could provide additional opportunities for ‘systems abuse’ to occur as it would provide an additional avenue for perpetrators to manipulate the legal system to maintain and “reassert their power and control over the victim”⁶⁷. Further, systems abuse may be exacerbated for victim-survivors of family violence who have multi-jurisdictional legal needs as the fragmentation that currently occurs between different legal jurisdictions provides additional opportunities for systems abuse to occur. For victim-survivors of family violence, this fragmentation not only occurs across the various state-based jurisdictions⁶⁸ but also extends into the federal jurisdiction via the family law system. Engaging in an additional legal process would mean that for the many victim-survivors who already have multiple legal needs⁶⁹, there is greater potential for systems abuse to occur.

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

Some researchers and advocates argue that introducing a coercive control offence will reduce the possibility of a victim-survivor being misidentified as the perpetrator of violence⁷⁰ as it would better account for the underlying pattern of behaviour and abuse that a victim-survivor has experienced. DV Vic and DVRCV remain unconvinced by this argument given that available evidence shows that “misidentification and the consequential criminalisation of victims has become a common unintended consequence of reliance on legal systems to address problems associated with IPV [intimate partner violence]”⁷¹. Further, the complex nature of coercive control and the lack of clarity around the concept itself, may lead to police failing to adequately assess who is in need of protection which can lead to victim-survivors being incorrectly named as respondents on FVIOs and misidentified as the perpetrator/accused in criminal matters⁷².

⁶⁶ Douglas, H. (2018). Legal systems abuse and coercive control. *Criminology & Criminal Justice*, 18(1), 84–99.

⁶⁷ The Australian Institute of Judicial Administration. (2019). *National Domestic and Family Violence Benchbook*. <<https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>>; see also Monash Gender and Family Violence Prevention Centre (2018). *Research Brief: Systems Abuse*. Monash University. Victoria. https://bridges.monash.edu/articles/Systems_Abuse/8379125.

⁶⁸ For example, the civil and criminal jurisdictions in the Magistrates Court of Victoria, Children’s Court, VCAT etc

⁶⁹ Coumarelos, C. (2019). *Quantifying the legal and broader life impacts of domestic and family violence*. Justice Issues Paper 32. Law and Justice Foundation of NSW.

⁷⁰ Women’s Safety NSW. (2020). op. cit. p8-9

⁷¹ No To Violence. (2019). Discussion Paper: Predominant Aggressor Identification and Victim Misidentification. p2.< <https://ntv.org.au/wp-content/uploads/2020/06/20191121-NTV-Discussion-Paper-Predominant-Aggressor-FINAL.pdf>>

⁷² Tolmie. (2018). op. cit.; NTV. (2019). op. cit.; Nancarrow et al. (2020). Accurately identifying the “person most in need of protection: in domestic and family violence law (Research report). ANROWS.

We note that recent research undertaken by ANROWS⁷³ found that “despite decades of legislative, policy and procedural reform to address unintended consequences of DFV [domestic and family violence] law in Australia, the problem of women being wrongly treated as perpetrators persists”⁷⁴. Further, this research found that “based on the available data, it appears that no Australian jurisdiction is currently well-placed to provide a model of police and court practice to effectively address misidentification of victims/survivors as perpetrators of DFV”⁷⁵. Consequently, until robust practices and processes are developed to prevent misidentification from occurring, it’s problematic to introduce a new offence that could increase the likelihood of misidentification as “treating victims of violence as perpetrators undermines confidence in the legal system, denies victims/survivors appropriate support, may inadvertently collude with perpetrators in exerting further control over their (ex)partners through systems abuse and has significant, potentially life-long, harmful impacts”⁷⁶.

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

There is a risk that additional criminal responses to family violence may disproportionately impact on victim-survivors with disabilities, Aboriginal and Torres Strait Islander victim-survivors, victim-survivors from migrant and refugee backgrounds, and victims-survivors within the LGBTIQ+ community. Victim-survivors from these communities already face additional barriers to accessing criminal justice, which include racism and discrimination, language barriers, visa limitations and lack of access to appropriate information and support⁷⁷.

Research shows that due to existing structural and systemic barriers in the justice system, victim-survivors from these communities’ experience greater rates of misidentification⁷⁸ and in many instances are subject to over-policing and disproportionately high rates of criminalisation and incarceration⁷⁹. This is particularly the case for people from Aboriginal communities, with recent data from the Australian Institute of Health and Welfare showing that in Australia, “Aboriginal and Torres Strait Islander prisoners accounted for a third (33%) of the total female prisoner population [and] Indigenous women were imprisoned at a much higher rate than non-Indigenous women (453 and 24 per 100,000

⁷³ Nancarrow et al. (2020). Op cit.

⁷⁴ Ibid. p12

⁷⁵ ibid

⁷⁶ Ibid. p9

⁷⁷ Douglas. (2015). op cit.; Walklate & Fitz-Gibbon. (2019). op. cit.

⁷⁸ Ulbrick, M. and Jago, M. (2018). *Policy Paper 1 “Officer she’s psychotic and I need protection”: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria*. WLSV and Monash University; Maturi, J. & Munro, J. (2020). op. cit.; Nancarrow et al. (2020). op. cit.

⁷⁹ Weber, L. (2020). *Systemic racism, violence, and the over-policing of minority groups in Victoria*. Monash Lens. Accessed online <<https://lens.monash.edu/2020/06/22/1380706/systemic-racism-violence-and-the-over-policing-of-ethnic-minority-groups>>; Maturi & Munro op. cit.

adult female population, respectively)⁸⁰. As marginalised communities are not one homogenous group, DV Vic and DVRCV encourage broad consultation with a diverse range of victim-survivors to fully explore how the introduction of a new offence may impact on those communities.

In summary, the unintended consequences outlined in this section present significant safety risks for victim-survivors and consequently, our view is that the potential risks to victim-survivors of introducing a coercive control offence outweigh the benefits at this time. Further, DV Vic and DVRCV believe that there are more immediately effective ways to improve system-wide understanding of coercive control, and that greater consistency and certainty with which current offences are enforced would have a greater deterrent effect than the introduction of a new offence.

A Whole-of-System Approach to Coercive Control

As noted above, the problem that needs to be addressed is the limitations in current responses to coercive control. Fundamental to improving responses to coercive control is a need to change the way coercive control is conceptualised and understood, and ensure that this understanding is consistent across systems, services and agencies (i.e. the criminal justice system *and* specialist family violence system)⁸¹. This ‘whole-of-system’ approach is crucial given that victim-survivors enter the family violence system through a myriad of entry points and therefore there is a need to improve responses to coercive control in all parts of the system⁸². In our view, criminalising coercive control is not the most effective way to develop a shared understanding of coercive control across the Victorian family violence system or change broader social and cultural attitudes on this issue⁸³.

Further, in our view it is possible to develop a contemporary understanding of coercive control across the whole family violence response system which would better equip those working in the criminal justice system to implement and enforce *existing legislation* more effectively, addressing many of the gaps in the current response to coercive control, without introducing a new offence. This was noted by the Royal Commission which concluded that “education, training and embedding best practice and family violence specialisation”⁸⁴ would be more effective than the introduction of new offences. Whilst cautioning that cultural and attitudinal change will not occur via training and education alone and will require long-term investment in cultural change and capacity and capability building, DV Vic and DVRCV

⁸⁰ Australian Institute of Health and Welfare (2020). *The health and welfare of women in Australia’s prisons*. Cat. No. PHE281. Canberra: AIHW. p4

⁸¹ Tolmie. (2018). op. cit.

⁸² Department of Human Services. (2012). *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1-3*. State of Victoria.

⁸³ Douglas. (2018). et al. op. cit.

⁸⁴ State of Victoria. (2014-2016). Vol III. op. cit. p189.

would support a review of content and quantum of existing family violence training and education provided to the professionals working in the justice system. This would ensure that training contains contemporary and evidence-based understandings of coercive control and would assist to identify where enhancements could be made to tools and procedures. In the context of the criminal justice system, this could include a review of the Victoria Police family violence training curriculum, training provided to all staff at the Specialist Family Violence Courts in Victoria, and training delivered by the Judicial College of Victoria. The MARAM roll-out should also be allowed to run its course and evaluated for impact on understanding of and outcomes related to addressing coercive control within the criminal justice system.

In our view, taking this approach to improving understandings of coercive control across the family violence system would be more effective within the current Victorian landscape than trying to effect this change through the introduction of a new criminal offence. This is primarily because if a new offence were introduced without long-term training and capacity building, it would result in definitional differences arising in the operationalisation and implementation of the offence and the unintended consequences outlined above would be more likely to occur. Further, there is a risk that if a new offence was introduced, a sense of complacency may develop if it is assumed that the introduction of the offence has ‘fixed’ the problem. This could undermine the long-term effort required to achieve the necessary cultural change in the criminal justice system to move it beyond the current incident-based approach to recognising broader aspects of family violence and patterns of abusive behaviour⁸⁵.

Immediate actions to improve the whole-of-system approach to coercive control in Victoria

It is DV Vic and DVRCV’s view that there are actions that should be taken now to improve the understanding of coercive control across the broader family violence system and improve current responses to coercive control in the justice system specifically, with an emphasis on ensuring that existing legislation is implemented and enforced effectively in the first instance. The actions we list below are not contingent on the introduction of any new offence and build on reform activity already underway in Victoria. These immediate and short-term actions include:

- Continuing to develop a shared understanding of family violence across the family violence system in Victoria through the roll-out and implementation of the MARAM Framework and Information Sharing reforms (MARAMIS). The MARAMIS reforms provide the architecture in the Victorian family violence system for identifying and managing family violence risk and harm from coercive control and drive the systemic response.

⁸⁵ Tolmie. (2018). op. cit.; Bettinson, V., & Bishop, C. (2015). Is the creation of discrete offence of coercive control necessary to combat domestic violence. *Northern Ireland Legal Quarterly*, 66(2), 179-[ii].

- The introduction of the perpetrator focused tools and practice guidance and the roll-out to Phase 2 organisations in 2021 will provide important opportunities to further embed the MARAMIS across the broader family violence system and continue to develop a shared understanding of family violence risk across the entire system.
- We note that there are an estimated 370,000 workers across Phase Two entities (compared to 33,000 in Phase One)⁸⁶ and a significant level of ongoing investment will be required by the Victorian Government to ensure that Phase Two organisations have access to important and necessary resources, training and other implementation tools and supports.
- Reviewing existing training, tools and processes utilised in the justice system (civil and criminal) to ensure they are aligned to MARAM, as this will facilitate a shared understanding of family violence risk and coercive control is being established across the system.
 - This would include reviewing risk assessment tools that have been developed by individual organisations such as the Victoria Police Family Violence Report (FVR) to ensure these are aligned with MARAM.
- Providing ongoing and compulsory education and training for all people working in the justice system (civil and criminal) - including developing an understanding of the centrality of coercive control to family violence - so they can identify and safely respond to family violence. This education and training must be informed by the expertise of the specialist family violence sector to ensure it aligns with MARAM and will require ongoing funding and resourcing.
- Analysing family violence legislation in Victoria to ensure that current legislation is being utilised effectively and to allow for identification of improvements that could be made in the way laws are currently being enforced and implemented.
- Embed outcome evaluation in the design and implementation of the Specialist Family Violence Courts that includes evaluation of responses to coercive control.
- Developing and implementing trauma-informed processes throughout the justice system (civil and criminal) to ensure the system is truly victim-centred and does not retraumatise victims. This will include enhancing current victim support services in line with recommendations made in the Victim Services Review⁸⁷ which will require a commitment to additional funding.
- Strengthening oversight of perpetrators through the roll-out of the MARAM perpetrator guidance and development of a broader range of responses and perpetrator interventions and

⁸⁶ McCulloch J., Maher, J., Fitz-Gibbon, K., Segrave, M., Benier, K., Burns, K., McGowan, J. and N., Pfitzner. (2020). *Review of the Family Violence Information Sharing Scheme Final Report*. Monash Gender and Family Violence Prevention Centre, Faculty of Arts, Monash University. p12.

⁸⁷ Centre for Innovative Justice. (2020). op. cit.

implementation of the recommendations of the *Counselling Order Review* conducted by the Centre for Innovative Justice.⁸⁸

- Developing and implementing a national family violence risk assessment framework reflecting evidence-based risk assessment tools such as the Victorian Multi-Agency Risk Assessment and Management Framework (MARAM) and the National Risk Assessment Principles for Domestic and Family Violence⁸⁹, underpinned by a national definition of family violence that includes coercive control.⁹⁰

In addition to the specific actions listed above it will be important for ongoing consultation to occur with the specialist family violence sector and organisations with specialist expertise in working with victim-survivors from different communities (for example, Djirra, inTouch, Switchboard, Women with Disabilities Victoria, and Council on The Ageing). Further, it will also be critical to consult with a broad group of victim-survivors to ensure that a wide-range of voices are heard and represented, in line with the evidence-based principles for engaging with victim-survivors as outlined in the *Family Violence Experts by Experience Framework*⁹¹. Additional activities should also be undertaken to raise community awareness about the dynamics and nature of coercive control, which we note is likely to result in an increase in disclosures and help-seeking and should be accompanied by additional resourcing for the family violence sector for it to respond to any increase in demand.

Over time, it will be important to monitor and review emerging evidence from both International jurisdictions that have implemented a coercive control offence and academic research. If in the longer-term evidence has emerged that criminalisation of coercive control is likely to have a positive and safe impact for victim-survivors, and the immediate actions listed above have not significantly improved responses to coercive control in Victoria, consideration could be given to the introduction of an offence at that time. Furthermore, implementing the suggestions for improving the broader systemic response to coercive control outlined in this paper, will mean that the family violence system is better placed to safely implement a new offence if warranted.

Minimum requirements for criminalisation of coercive control

If a decision was made to introduce an offence, the practical effect would very much depend on how this new offence is understood and enforced and whether victim-survivors believe that they will receive

⁸⁸ Centre for Innovative Justice. (2018). *Counselling Order Review – Phase Three: Final Report to the Magistrates’ Court of Victoria*. Centre for Innovative Justice, RMIT University.

⁸⁹ Family Safety Victoria (2018). Op cit.; Toivonen, C., & Backhouse, C. (2018). Op. cit.

⁹⁰ DV Vic notes a similar recommendation for a uniform national definition of family violence that includes coercive control was made by the House of Representatives Standing Committee on Social Policy & Legal Affairs in their report on the *Inquiry into family, domestic and sexual violence* (2021).

⁹¹ The University of Melbourne & Domestic Violence Victoria (2020). *The Family Violence Experts by Experience Framework: Research Report and Framework 2020*. <<https://dvvic.org.au/members/experts-by-experience/>>

a safe response from the criminal justice system. In our view, the following indicators of system readiness should be considered minimum requirements before any new offence is considered for introduction, to minimise unintended consequences arising:

- Demonstrated/measurable attitudinal and cultural change in the way coercive control is understood within the justice system which would be reflected in a departure from the current incident-based approach to seeing family violence as a pattern of abuse behaviour.
- Evidence that policies and procedures have been put in place in the broader justice system that are leading to a reduction in misidentification.
- Extensive consultation with victim-survivors as “in considering how effective an additional criminal justice response would be and to ascertain whether it will result in safer outcomes for victim-survivors it is crucial to consider victims-survivors’ experiences of the criminal justice system”⁹².
- Sufficient funding and resources for specialist family violence services and victim support services to ensure that all victim-survivors can access the support they need throughout the criminal process.
- Additional funding and resources so all victim-survivors have access to free legal advice, information and representation so they can make informed decisions about their safety.

Conclusion

A whole-of-system approach is required to improve responses to coercive control to ensure all victim-survivors can access safety and support. While the justice system (civil and criminal) forms part of the current systemic response to family violence in Victoria, we would not support the introduction of a new offence to criminalise coercive control in Victoria at this stage. Given the risks and concerns outlined throughout this paper, it is DV Vic and DVRCV’s position that significant further reform and evidence of system readiness is required before further legislation is considered. Improving ‘whole-of-system’ responses to coercive control will require many systems and the people within them to change behaviour, attitudes and actions sustained over time and this will take commitment, effort, focus and investment over many years.

We consider that it is crucial to broaden the conversation outside of the current debate about whether to criminalise coercive control as there is a need to look beyond a ‘legal’ solution, to a systemic response that involves all parts of the family violence system. This will allow the whole system to

⁹² Douglas. (2018) op. cit.

effectively manage the risk and harm associated with coercive control and ensure safe outcomes for all victim-survivors regardless of where they enter the system.

DV Vic and DVRCV remain concerned that the current focus on a criminal justice response to coercive control risks perpetuating the siloed systemic responses identified by the Royal Commission and losing sight of victim-survivors who choose not to engage with the justice system, as how other parts of the family violence system identify and respond to coercive control is not being examined. It is only through a whole-of-system approach that best-practice responses to coercive control will be developed and embedded across the entire family violence system to provide a safe response to all victim-survivors.

It is our view that there are actions that should be taken now to improve system-wide responses to coercive control, that are not contingent on the introduction of a new offence and build on current reform activity that is already underway in Victoria. Implementing these actions in the short-medium term will result in improved understanding of coercive control across the family violence system and mean that the development of improved and safer responses for victim-survivors will not be delayed while the introduction of a new offence is considered.

DV Vic and DVRCV are committed to continued engagement with our members, partners and victim-survivors – including those from communities who experience marginalisation, discrimination and structural barriers to accessing the justice system – as the state, national and international conversation continues to unfold. In this sense, we see this position paper as the start of a conversation about developing best-practice responses to coercive control rather than the end.