Government of **Western Australia**
Department of **Justice**
Office of the Commissioner for Victims of Crime

Legislative responses to coercive control in Western Australia

Consultation outcomes report

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Contents

Acknowledgements

We acknowledge the Whadjuk Nyoongar people, Traditional Owners of the land on which we work, and pay our respects to their Elders past and present. We extend that respect to Aboriginal and Torres Strait Islander peoples across Western Australia and respect their continuing culture and contribution.

We acknowledge the Menang Nyoongar people of Kinjarling; the Southern Yamatji people of Jambinu; the Kariyarra, Ngarla and Nyamal people of Marapikurrinya; the Nanda People; and the Yawuru people of Rubibi, Traditional Owners of the lands on which we stayed as part of this consultation process.

We recognise the strength, resilience and capacity of First Nations people in this land.

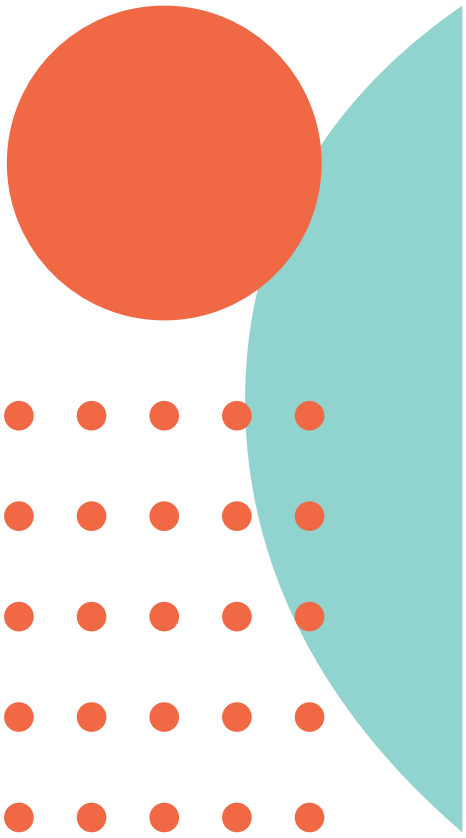
We acknowledge victim-survivors of family and domestic violence and celebrate their strength and resilience.

We thank the individuals who shared their stories and ideas as part of this consultation process. We also thank the organisation representatives who gave generously of their time and contributed their experience and knowledge.

Support

This report includes stories about people who have experienced coercive control and contains information that may be confronting or distressing to readers. If you need support after reading this information, help is available through the following services:

- 1800RESPECT 1800 737 732
- Women's Domestic Violence Helpline (WA) 1800 007 339
- Men's Domestic Violence Helpline (WA) 1800 000 599
- Crisis Care 1800 199 008
- MensLine Australia 1300 789 978
- Lifeline Australia 13 11 14.



Foreword

The Attorney General, the Hon John Quigley MLA tasked the Office of the Commissioner for Victims of Crime with undertaking a review into legislative responses to coercion and control in Western Australia. This review involved examining the literature on this topic, scrutinising the responses in other jurisdictions and consulting with the Western Australian community.

This report is the outcome of that process. During the consultation period we received hundreds of responses. We extend our deep respect and gratitude to the people who shared their thoughts and experiences with us throughout the process. We especially thank people who have experienced coercive control and acknowledge those who work tirelessly to support victim-survivors and hold perpetrators to account.

It was very apparent to us that the issue of coercive control has touched many people in the community. We found that this is an insidious and unrelenting form of violence that results in lasting and cumulative harm. Abusers use tactics to instil fear and undermine a victim-survivor's sense of self, capacity for independent decision-making, and ability to resist or escape the abuse. Although each person's experience of coercive control may be different, what is consistent is that people exercising coercive control cause their victims significant pain, fear and trauma.

A clear finding from the consultations is that the justice system alone cannot stop coercion and control. What is needed is a whole-of-government and whole-of-community approach to recognising and responding to these behaviours.

The report makes 24 recommendations designed to work in sync to achieve systemic reform across multiple government agencies and processes. At the heart of these recommendations is the requirement that we have a system that can respond to patterns of abuse, correctly identify the victim and provide a meaningful response wherever coercive control occurs.

Our vision for reform is a systemic response to coercive control that offers support, safety and protection to victim-survivors, and accountability to perpetrators. That should come at any time that victim-survivors need help.

A dedicated project team compiled this report, recognising that what they were tasked to do required professionalism, empathy and respect. Each of them was extraordinary in their commitment to the task. They respected the words of every victim-survivor and produced a report which took on a complex topic and developed a series of recommendations which can have real and lasting impacts. I owe each of them an enormous debt of gratitude.

Kati Kraszlan
Commissioner for Victims of Crime

Terms and abbreviations

In this report, we use the term 'victim-survivor' to refer to people who have experienced coercive control. We use this term because it is consistent with language used in the submissions we received, and because it is generally familiar.

We use the word 'perpetrator' to refer to people who have used coercive control to perpetrate abuse. We use this term throughout the report for consistency.

We acknowledge the prevalence of violence that occurs in intimate partner relationships but, in this report, we use the terms 'family and domestic violence' or 'family violence' to reflect that violence and coercive control occurs in many types of family relationships. We also note that other states, territories and countries use slightly different terms such as domestic and family violence, domestic violence and domestic abuse. Where we talk about those jurisdictions specifically, we may use the alternate term.

We use the term 'Aboriginal' in recognition that Aboriginal peoples are the original inhabitants of Western Australia.

We use the acronym LGBTQIA+ as an umbrella abbreviation to embrace diverse sexualities, genders and sex characteristics. The acronym generally stands for lesbian, gay, bisexual, trans, queer or questioning, intersex and asexual. There is not one LGBTQIA+ community. There are many different communities, groups and individuals with distinct experiences.

We recognise that many different terms are used to describe the types of behaviours and people we discuss in this report and we acknowledge that not all people will identify with the terms and abbreviations we use in this report.

Other terms and abbreviations used in this report include:

Aboriginal Empowerment Strategy	*Aboriginal Empowerment Strategy: Western Australia 2021–2029*
AFSS	*Aboriginal Family Safety Strategy 2022–2032*
AIJA	Australian Institute for Judicial Administration
ALRC	Australian Law Reform Commission
ANROWS	Australia's National Research Organisation for Women's Safety
CRARMF	Common Risk Assessment and Risk Management Framework
Criminal Code	*Criminal Code Act Compilation Act 1913* (WA)
DFV	domestic and family violence
DVO	domestic violence order
EPA	Enduring Power of Attorney

EPG	Enduring Power of Guardianship
Evidence Act	*Evidence Act 1906* (WA)
Family Court	Family Court of Western Australia
Family Court Act	*Family Court Act 1997* (WA)
Family Law Act	*Family Law Act 1975* (Cth)
FDV	family and domestic violence
FDVRT	Family and Domestic Violence Response Teams
FVHAT	Family Violence History Assist Tool
FVRO	family violence restraining order
IPC	interpersonal conflict
IPV	intimate partner violence
National Plan	*National Plan to End Violence against Women and Children 2022–2023: Ending Gender-Based Violence in One Generation*
National Principles	National Principles to Address Coercive Control
Ombudsman Report	*Investigation into Family and Domestic Violence and Suicide*
RO Act	*Restraining Orders Act 1997* (WA)
SAT	State Administrative Tribunal
SPLA Committee	House of Representatives Standing Committee on Social Policy and Legal Affairs (Australian Government)
WA	Western Australia
WACOSS	Western Australian Council of Social Service
WA Police	Western Australia Police Force

Chapter 1: Executive summary

In this report we present findings and recommendations arising from consultation about legislative responses to coercive control in Western Australia (WA). In a family and domestic violence context, 'coercive control' describes how perpetrators 'exert power and dominance over victim-survivors using patterns of abusive behaviour over time that create fear and deny liberty and autonomy'.[1] The Western Australian Government sought feedback from victim-survivors, stakeholders working with victim-survivors in the justice system and family and domestic violence sector, legal and social services, academics, advocates and the community about:

- the impact of coercive control in WA
- current responses to coercive control in WA
- future responses to coercive control in WA.

The focus of the consultation process was on legislative responses—that is, how comprehensively the law addresses coercive control through WA's civil and criminal legislative frameworks.

1.1 Background and consultation process

In Chapter 2 of this report, we describe what we did as part of the consultation process to talk to people and hear different views.

In Chapter 3, we explain the political and legal context of coercive control and how it is dealt with in diverse ways by different governments. We discuss the development of the National Principles to Address Coercive Control in Family and Domestic Violence (National Principles) and legal reform in other states and territories around Australia. We also talk about coercive control in the context of gender-based violence and understanding family violence beyond physical abuse.

1.2 Experiencing coercive control and seeking help

In Chapter 4 of this report, we share feedback from the consultation process about what coercive control feels like for people who experience it and the debilitating impact it has on victim-survivors. We talk about how victim-survivors experience fear, loss of autonomy and loss of sense of self, and how their recovery can be lengthy. We discuss the impact on Aboriginal women, people with disability, older people, refugee and migrant people, LGBTQIA+ people, and children. We report how lack of awareness and understanding of coercive control in the community presents a barrier to people obtaining the help they need. We also discuss the need to increase the visibility of perpetrators in responding to coercive control.

In Chapter 5, we describe barriers to seeking help for people experiencing coercive control, including specific barriers for people from diverse backgrounds and communities. We report what we heard about the multiple systems people experiencing coercive control must navigate to seek help, including those of health, housing, police and child protection. We also talk about some alternatives to these systems such as community-led responses.

1.3 Legal responses to coercive control in Western Australia

In Chapter 6, we examine how the family violence restraining order (FVRO) scheme addresses coercive control. We review consultation feedback about specific provisions in the *Restraining Orders Act 1997* (WA) and the restraining order process. We consider what it is like to navigate the legal system to obtain an FVRO for someone who has experienced coercive control, namely the application process, how magistrates respond to applications, the impact of legal support and the experience of applying for a restraining order when there has been no physical harm. We also discuss tools and training for legal professionals and the role of the police in the restraining orders scheme.

In Chapter 7, we describe how victim-survivors of family violence experience the legal system and how perpetrators of coercive control can use the legal system to continue their abuse. We discuss whether existing criminal offences, including the persistent family violence offence, provide an adequate response to coercive control. We review *Evidence Act 1906* (WA) provisions and consider how they support understanding of the nature of family violence in criminal court processes. We also explore the link between coercive control and the family law system. While the family law system was outside the scope of this consultation, we received many submissions about this topic and include the main themes in this report.

In Chapter 8, we consider the introduction of a new offence to criminalise coercive control. We discuss feedback from the consultation process on the possible benefits and risks of introducing a new offence. We talk about what is needed to support the implementation of a new offence, look at case studies from other jurisdictions who have criminalised coercive control and talk about the next steps.

The overarching theme of our consultation findings is that urgent systemic reform is required, and our recommendations are intended to work together to create this reform. Participants in this consultation process agreed that change is necessary to improve how our legal and support systems respond to coercive control so that victim-survivors can receive the support and help they need. We argue that immediately introducing a new stand-alone criminal offence of coercive control would not be effective without this much needed systemic reform—the same issues would continue to prevent victim-survivors from securing the safety, protection and justice they need.

The introduction of a new stand-alone criminal offence of coercive control is ultimately a decision for the Western Australian Government but we recommend that the development of a new offence should follow a phased approach, and we recommend the Western Australian Government consider the model contained in the *Hear Her Voice: Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland*.[2] This phased approach would provide the required systemic reform needed for a new offence to be effective. It would enable us to provide victim-survivors the safety, protection and justice they need and effectively hold perpetrators to account for the harm they cause.

1.4 Recommendations

We make the following recommendations to the Western Australian Government:

#	Recommendation
1	Commission community education campaigns about coercive control within existing Western Australian Government mechanisms as part of the state's family and domestic violence prevention work. Community education campaigns and education materials should be informed by and align with the National Principles, represent a diverse range of experiences, extend beyond intimate partner relationships (e.g. to include older people experiencing elder abuse) and be community-led where possible.
2	Acknowledge children as victims in their own right within policy and legislative reforms addressing family and domestic violence.
3	Implement consistent, shared language about coercive control across all government responses (legislation, policy, projects, programs and service delivery) and community sector responses where practicable to increase understanding of coercive control and minimise confusion. This shared language should reference the National Principles.
4	Establish a community of practice or similar network group to enable the government and non-government family violence sector to share expertise on responding to coercive control, and implement a mechanism for this network to feed into government initiatives.
5	Provide ongoing practical training for police officers at the local level about what coercive control is and how to identify and consider the personal, cultural and community factors involved for individual victim-survivors and perpetrators, in order that police officers can identify the warning signs.
6	Embed collective understanding of coercive control that aligns with the National Principles in the Collective Risk Assessment and Risk Management Framework.
7	Review how coercive control presents and how it affects victim-survivors in all data collection and information-sharing models to promote consistency across agencies.
8	Undertake further policy work on using family violence expert witnesses and reports in court proceedings.
9	Amend s 5A of the *Restraining Orders Act 1997* (WA) to reflect the patterned nature of coercive control and its cumulative effect on victim-survivors. Amendments should align with the National Principles.
10	Review definitions of the terms 'family relationship' and 'family member' in s 4 of the *Restraining Orders Act 1997* (WA) to broaden the range of relationships included.
11	Consider how the powers granted in s 24A of the *Restraining Orders Act 1997* (WA) could be applied more effectively in practice (e.g. police and other support persons applying more regularly for family violence restraining orders on behalf of victim-survivors).
12	Develop standard conditions on family violence restraining orders that specifically target coercive control.

13	Use a co-design process to review the family violence restraining order application form and accompanying affidavit to support applications for restraining orders on the basis of coercive control.
14	Provide resourcing and support to Court and Tribunal Services (Department of Justice) to train administrative staff on family violence.
15	Continue to provide resourcing to judicial bodies so judicial officers can participate in ongoing training about identifying and responding to coercive control in trauma-informed ways.
16	Develop a tool to document coercive control that victim-survivors and support persons can use for all family and domestic violence–related processes, including safety planning, family violence restraining order applications and criminal court matters. Provide resourcing to the family and domestic violence service sector and other responders for training on how to use the shared tool. Consider how any tool interacts with risk assessment and information sharing tools used by government agencies.
17	Resource the family and domestic violence service sector to develop workforce understanding of restraining order processes.
18	Review police guidelines for investigating family violence callouts, applying for family violence restraining orders, serving family violence restraining orders, following up on breaches and charging of breaches, including how to classify and charge individual breaches in the context of coercive control.
19	Undertake further policy work on the *Restraining Orders Act 1997* (WA) to develop a legislative framework for managing breaches of restraining orders that reflect patterns of abuse.
20	Undertake further policy work to investigate how existing offences in the *Criminal Code Act Compilation Act 1913* (WA) may effectively capture patterns of abuse.
21	Undertake further policy work to investigate how aggravating circumstances in the *Sentencing Act 1995* (WA) may capture patterns of abuse.
22	Develop training for lawyers about coercive control.
23	Consider the introduction of a new criminal offence addressing coercive control in Western Australia.
24	Adopt the phased approach contained in *Hear Her Voice: Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* as a best practice model for legislative development and implementation in Western Australia.

Chapter 2: The consultation process

We are immensely grateful to all the people who put time, thought and care into providing submissions. It is very apparent that the issue of responding to coercive control has touched many people and weighed heavily in their thoughts. Many submissions expressed pain and frustration at a system they regard as failing them in a time of great personal need. Many also expressed hope for change and for a future in which a more compassionate and holistic response may be possible. This report should be considered a starting point in an ongoing conversation.

The Attorney General, the Hon John Quigley MLA and the then Minister for the Prevention of Family Violence, the Hon Simone McGurk MLA, announced a community consultation process on the legislative responses to coercive on 29 March 2022. The official closing date for submissions was 31 July 2022 but we continued to receive submissions and meet with stakeholders until September 2022. To support consultation, we published a detailed discussion paper, a fact sheet and an easy read publication. The detailed discussion paper asked 15 questions to guide responses from stakeholders with experience in responding to family violence. The fact sheet was produced for a general public audience and asked five questions about coercive control and the law:

1. Should we talk about patterns of family violence behaviour using the words "coercive control", or should we talk about it another way?
2. Have you been able to get a family violence restraining order to stop a person from using coercive control against you?
3. How can we improve the way the justice system (e.g. police, judges) helps victim-survivors of coercive control?
4. Should we make a new criminal offence of coercive control?
5. How can we help victim-survivors of coercive control feel safe?

We provided members of the community, including victim-survivors, with a number of options for participating in consultation, namely by phone, meeting in person, hard-copy or emailed written submissions and completing an online submission form. The online submission form was available on the public website: Family Violence and Coercive Control – we want your views (www.wa.gov.au) for the duration of the public consultation period. The online submission form asked two questions:

1. How can we improve the way the justice system helps victim-survivors of coercive control?
2. Should we make a new criminal offence about coercive control? Please tell us your reasons.

The then Minister for the Prevention of Family and Domestic Violence, the Hon Simone McGurk MLA, hosted a coercive control roundtable discussion as part of the 16 Days in WA: Stop Violence Against Women in December 2022. The roundtable was attended by 20 people including victim-survivors, members of government agencies, the family and domestic violence sector and the community legal sector. The roundtable focused on the preliminary findings from the consultation process and priorities for action. We produced a consultation snapshot for the roundtable.

The majority of submissions from victim-survivors supported the introduction of a new offence to criminalise coercive control but their reasons for this position varied. Many submissions from victim-survivors also identified issues with the justice system that impacted on their feeling of safety and ability to receive help for coercive control.

In this report, we seek to highlight the diversity of views we heard during consultation. We aim to place the views of victim-survivors, their family members and stakeholders in a prominent position. Where possible we quote directly from submissions we received. Unless specifically named in the text, we generally refer to victim-survivors and non-government stakeholders as respondents.

Unless a citation is provided all quotations in this report are taken from submissions to the consultation process. The next page is an overview of consultation activities. A list of all organisations that we either met with or received a submission from is contained in Appendix 1.

Submissions

Online submissions	294
Written submissions	60
In person submissions	19

Consultation events

Single agency meeting	32
Multi-agency meeting	5
Forums	3
Presentations	3
Regional	15

Total number of participants for all events (approx)
350

Type of online submissions

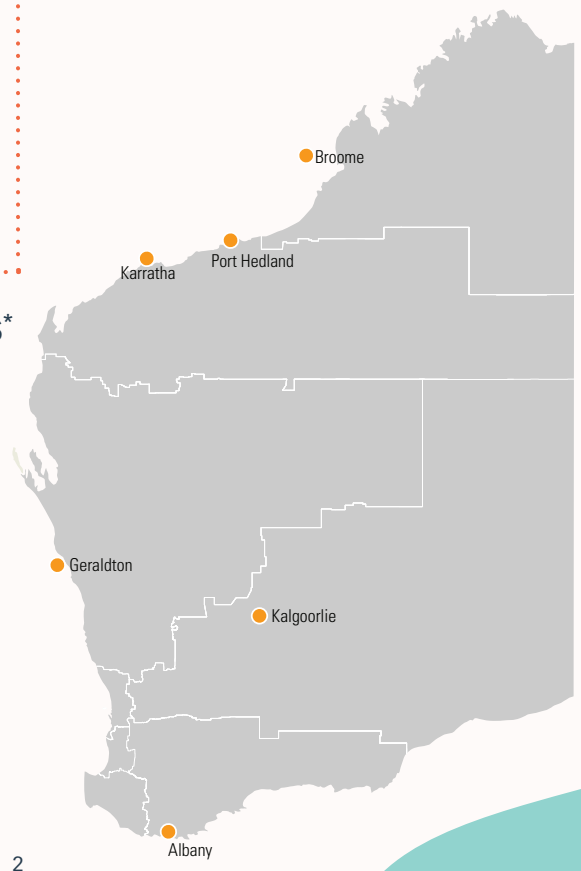
I experienced coercive control*	221
I am a family member or friend of a person who has experienced coercive control	43
I work with people experiencing coercive control	18
I am an interested member of the public	11

*Many people selected more than one type of online submission, which reflects the complexity of the issue. Many people who experience coercive control will also support others.

Regional consultation events*

- Albany
- Geraldton
- Kalgoorlie
- Broome
- Port Hedland
- Karratha

*The events were a mixture of in-person and online.



Chapter 3: Policy context

Preventing, reducing and responding to family and domestic violence is a significant policy concern in Australia, which the Australian Government is addressing on a national level, in addition to work undertaken in each state and territory. Coercive control is defined or acknowledged in state and national policies, strategies and legislation that contribute to WA's family violence policy context. For example, in *Path to Safety: Western Australia's Strategy to Reduce Family and Domestic Violence 2020–2030*, family and domestic violence is defined as 'an ongoing pattern of behaviours intended to coerce, control or create fear within a family or intimate relationship'.[3]

Addressing coercive control in the context of family and domestic violence has also been the focus of inquiry and reform processes in most Australian jurisdictions, and particularly the question of whether jurisdictions should introduce specific offences criminalising coercive control. This chapter of the report summarises background information we used when considering the consultation outcomes and making recommendations for reform.

3.1 The National Principles to Address Coercive Control

While work has progressed in the states and territories, the Australian Government has been developing a set of National Principles to Address Coercive Control in Family and Domestic Violence (National Principles) for use by state, territory and national governments. The National Principles focus on a shared understanding of coercive control and its impacts, the effects of discrimination and inequality, systems reform issues and criminalisation. The Australian Government completed an Australia-wide consultation process in developing the National Principles.

The consultation process for this report did not seek to define coercive control because the National Principles focus on a shared understanding of coercive control to be used by all states and territories. This report refers to the National Principles when making recommendations because WA's legislation and policy should be underpinned by an understanding of coercive control that is used Australia-wide. The National Principles were endorsed by the Standing Council of Attorneys-General on 22 September 2023 and they are now published on: Coercive Control | Attorney-General's Department (ag.gov.au)

3.2 Coercive control reform in states and territories

3.2.1 Northern Territory

In the Northern Territory, the Department of the Attorney-General and Justice released a *Review of Legislation and the Justice Responses to Domestic and Family Violence in the Northern Territory*[4] for consultation in August 2022. The review considered a range of legislative and systems reforms, including whether criminalising coercive control is likely to contribute to improved responses to domestic and family violence (DFV) in the Northern Territory. Submissions closed 12 October 2022. At the time of writing, an exposure draft Justice Legislation Amendment (Domestic and Family Violence) Bill is open for public consultation. The Bill modernises, restructures and strengthens the *Domestic and Family Violence Act 2017* (NT) and inserts a definition of coercive control.

3.2.2 Queensland

The Queensland Women's Safety and Justice Taskforce examined the need for a specific standalone criminal offence of coercive control but also explored wider systemic reform to the criminal justice system. The Taskforce made 89 recommendations for using a staged approach to reform in their report, *Hear Her Voice: Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* (*Hear Her Voice)*.[5] The Queensland Government supported or supported in principle all 89 recommendations.[6]
Supported recommendations include:

- progressing amendments to the definition of domestic violence in s 8 of the *Domestic and Family Violence Protection Act 2012* (Qld) to clarify that domestic violence includes coercive control and can be a series or combination of acts, omissions or circumstances over time in the context of the relationship as a whole
- progressing amendments to the *Domestic and Family Violence Protection Act 2012* (Qld) to ensure applications and cross-applications for a domestic violence order (DVO) are considered together, and that courts should make only one DVO favouring the person most in need of protection (unless exceptional circumstances apply)
- progressing amendments to the *Domestic and Family Violence Protection Act 2012* (Qld) to specify that the court may order costs where a party has intentionally used proceedings to perpetrate domestic violence
- progressing amendments to the *Domestic and Family Violence Protection Act 2012* (Qld) to introduce a new facilitation offence to stop a person facilitating domestic abuse on behalf of a perpetrator against a person named as aggrieved on a DVO
- progressing amendments to the *Criminal Code Act 1899* (Qld) to criminalise coercive control, ensuring legislation is introduced by 2023.

In February 2023, the first round of legislative reforms based on the Taskforce's recommendations were introduced into the Queensland Parliament. The *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (Qld) contains amendments to prepare Queensland's legislative framework for the introduction of a coercive control offence. The amendments included broadening the definition of domestic and family violence to refer to a pattern of behaviour.[7]

3.2.3 New South Wales

On 21 October 2020, the New South Wales Government appointed a Joint Select Committee on Coercive Control to inquire into and report on coercive control in domestic relationships. The Committee recommended introducing a new criminal offence of coercive control and a program of education, training and consultation to occur prior to commencement, with implementation to be assisted through a multi-agency taskforce.[8] The New South Wales Government supported this recommendation and supported in full, part or principle 17 of the Committee's 23 recommendations. In July 2022, the New South Wales Government released a public exposure draft of the Crimes Legislation Amendment (Coercive Control) Bill 2022, and by November 2022 the Bill had passed Parliament.[9] The *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW) introduced the offence of 'abusive behaviour towards current or former partners'. Family and domestic violence advocates have raised concerns about the drafting, timing and implementation of the Bill, which are discussed in Chapter 8 of this report (see section 8.5).

3.2.4 Tasmania

While economic abuse and emotional abuse or intimidation are not labelled a coercive control offence in Tasmania, the offences have been previously criminalised there under ss 8 and 9 of the *Family Violence Act 2004* (Tas). Section 9 of the Act sets out that 'a person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner'.

3.2.5 South Australia

In September and October 2021, the South Australian Government ran a public consultation about a proposed coercive control offence. A further round of consultation concluded in April 2022, which focused on implementation considerations should coercive control be criminalised in South Australia. The South Australian Government has committed to criminalising coercive control, and at the time of writing was continuing targeted consultation about implementation.[10]

3.2.6 Western Australia

In WA, previous family and domestic violence inquiries that have made recommendations related to issues raised in our consultation process include:

- Project 104 – *Enhancing Family and Domestic Violence Laws* by the Law Reform Commission of Western Australia (2014)
- Report 8 – *Opening Doors to Justice: Supporting Victims by Improving the Management of Family and Domestic Violence Matters in the Magistrates Court of Western Australia* by the Community Development and Justice Standing Committee, Legislative Assembly Western Australia (2020)
- *Investigation into Family and Domestic Violence and Suicide* by the Ombudsman Western Australia (2022).

3.3 Coercive control in the context of gender-based violence

On 17 October 2022, the Australian federal, state and territory governments released the *National Plan to End Violence against Women and Children 2022–2023: Ending Gender-Based Violence in One Generation* (the *National Plan*).[11] The *National Plan* is the overarching national policy framework that will guide actions towards ending violence against women and children over the next 10 years. The *National Plan's* definition of violence against women aligns with the *United Nations Declaration on the Elimination of Violence against Women*,[12] which focuses on the gendered causes and impacts of violence against women. In the *National Plan*, the terms 'violence against women' and 'gender-based violence' are described as encompassing a broader range of violence than the term 'family, domestic and sexual violence', and they include both one-off incidents of violence (e.g. an incident of sexual harassment in the street or online) and ongoing patterns of behaviour (e.g. coercive control).[13]

In the lead up to the release of the National Plan, the Wiyi Yani U Thangani First Nations Women's Safety Policy Forum reminded us that Australia, through ratifying and endorsing human rights frameworks such as the *Convention on the Elimination of All Forms of Discrimination Against Women*[14] and the *United Nations Declaration on the Rights of Indigenous Peoples*[15] has an obligation to uphold and protect the rights of all women, children and families to be 'safe and free from all forms of violence including family, domestic and sexual violence, racial violence, and institutional discrimination'.[16]

The *National Plan* describes gender-based violence as

> **rooted in gender-based power inequalities, rigid gender norms and gender-based discrimination. While people of all genders can experience gender-based violence, the term is most often used to describe violence against women and girls, because most gender-based violence is perpetrated by heterosexual, cisgender men against women, because they are women.[17]**

The *National Plan* identifies coercive control as a key area of focus for addressing gender-based violence in Australia and describes it as

> **often a significant part of a victim-survivor's experience of family and domestic violence … characterised by a pattern of behaviours used by a perpetrator over time that has the effect of creating and maintaining power and dominance over another person or persons.[18]**

Focusing on gender-based violence aligns with the experiences of many women in Australia, including the experiences of women who participated in this consultation process. The Western Australian women who have been subject to coercive control and who have generously and passionately participated in consultation provided invaluable insights into how coercive control works and how we can begin to address it more effectively. Their words are included throughout this report.

We also heard from respondents that speaking only about gender-based violence and men in heterosexual relationships who use coercive control to abuse their intimate (ex-)partners can cause some people to feel excluded from discussions about how to acknowledge and respond to coercive control. We heard from respondents that we need to understand that coercive control occurs—but may look different—in some cultural groups, within LGBTQIA+ relationships, in relationships between older people and their children, and in relationships between people living with disability and the people in their lives. The purpose of this acknowledgement is not to diminish the impact of gender-based violence on women, but rather to deepen our understanding of family violence and include other victim-survivors in the discussion, as encapsulated by the following submission to this consultation process:

> **a strong evidence base demonstrates the gendered nature of FDV [family and domestic violence] and that the overwhelming majority of violence experienced in the home is perpetrated by men against women and children … FDV does, however, impact people across a diversity of gender identities, social and cultural contexts, and within various intimate, family and family-like relationships.**

As part of this consultation process, we heard that our understanding of family, family violence and coercive control is sometimes too narrow. In later chapters of this report, we discuss the experiences of people who do not see themselves in the gendered descriptions and definitions of family violence, or even sometimes in the descriptions of family, that are commonly used when discussing family violence.

3.4 Understanding family and domestic violence beyond physical abuse

The recent policy focus on coercive control has acknowledged that many of our early responses to family violence were based on physical abuse experienced by victim-survivors. In early findings based on the 2016 Personal Safety Survey, it was found that 1 in 6 women and 1 in 17 men had experienced physical and/or sexual violence by a partner since the age of 15.[19] Family violence does have serious, and sometimes fatal, physical consequences. In 2018–2019, 21% of all homicides and 62% of all domestic homicides across Australia were intimate partner homicides.[20] In WA, 42 intimate partner violence (IPV) homicide incidents were identified between 2010 and 2018; at a rate of two IPV homicides per 100,000 people, WA has the second highest rate of IPV homicides among Australian jurisdictions for this period (second to the Northern Territory).[21] In 2021 in WA, 25% of homicides were family and domestic violence–related,[22] and of all recorded victims of assault, 63% were victims of family and domestic violence–related assault.[23] Nationally, experimental data released by the Australian Bureau of Statistics indicates that 22% of offenders proceeded against by the police were charged with family and domestic violence–related offences (2020–2021 period).[24]

The available range of legal responses for people who use physical violence against victim-survivors has increased over time as our understanding of the impact of physical abuse on victims has increased. However, policymakers are now considering how legal systems can provide adequate responses to the impact of non-physical abuse on victim-survivors. Recent work by the Australian Institute of Criminology found that 11% of their study group of respondents had experienced coercive control in the three months prior to the survey.[25] Coercive control behaviours were found to fall into consistent themes of jealousy, monitoring of movements, financial abuse, social restriction, and emotional abuse or threatening behaviours 'likely to co-occur and form a pattern of behaviour over time'.[26] Coercive control is often experienced alongside physical abuse, non-fatal strangulation and sexual violence, and it has been closely linked to intimate partner homicide.[27]

It is also essential to note that family violence victimisation has been linked to suicide: the Office of the Ombudsman Western Australia found that '56 per cent of the women who died by suicide in 2017 in WA, had been recorded as a victim of family and domestic violence by a state government department or authority prior to their death'.[28] In Chapters 7 and 8 of this report, we discuss findings about current and future legal responses to coercive control.

Chapter 4: I am afraid: The experience and impact of coercive control

Coercive control 'describes the context for, and intent of' abusive behaviours in relationships characterised by family and domestic violence.[29] It is 'a course of conduct by perpetrators that remove[s] their partner's liberty and autonomy' and 'an insidious and unrelenting form of violence that has a lasting and cumulative impact on families, women and children'. Abusers use tactics to instil fear and undermine their victim's autonomy, which impedes their ability to escape abuse.

A key reason for undertaking the consultation process was to understand coercive control in the Western Australian context. The state has particular geographic and demographic features; therefore, it is essential that reform considers the specific needs of people living in WA. In this chapter of the report, we summarise the consultation findings about the experience and impact of coercive control in WA. We draw on the responses we received from victim-survivors and organisations, to demonstrate the subtle and highly contextual nature of the abuse.

We heard from respondents that coercive control must be viewed as a process and as a pattern of abuse, and that each person's experience must be understood within the context of their own circumstances. This chapter summarises what respondents told us about the experience of coercive control for Aboriginal women, people with disability, older persons, women from culturally and linguistically diverse communities, and people in the LGBTQIA+ communities. However, it is important to note that these groups are not homogenous. While commonalities exist, each person's experience of coercive control is different. What is consistent is that people exercising coercive control cause their victims significant pain, fear and trauma.

4.1 The process and consequences of coercive control

Coercive control is an active process in which one person uses a range of abusive behaviours over time to control and cause harm to another person. We heard that 'coercive and controlling behaviour is at the core of family, domestic and sexual violence' and that 'it is a dynamic process where the victim suffers for failing to comply with the perpetrator's demands'. Respondents described a pattern of abuse that causes significant pain, fear and trauma, but which can be hard to identify because the abusive behaviours may not be obvious to an outside observer; as one respondent put it,

> **a key to recognising and understanding coercive control is that it comprises patterns of seemingly trivial or innocuous behaviours. Any single act may appear trivial or benign but, cumulatively, they enable pervasive and all-encompassing control of daily life.**

For example, another respondent provided the case study of a man leaving the house for work and taking the car keys even though he takes the train to work. It is a regular workday and he leaves his wife at home with the children. The act of taking the keys might on face value appear trivial or benign, but the man knows his wife is planning to drive one of their children to a specialist appointment that day, which they had booked months in advance. She had reminded him the previous night and again in the morning, but he took the car keys anyway. He also controls the finances and has not given her enough money to pay for that specialist appointment. The wife must cancel the specialist appointment. Later, the husband will berate and demean her for cancelling the appointment.

Abusive behaviours take a variety of forms, such as:

- isolating a person from family and friends
- preventing a person from leaving the home
- controlling movements
- withholding access to resources

- stalking or following
- forcing someone to manage their reproductive health in a certain way (e.g. use of contraceptives, avoidance of contraceptives, termination of pregnancy, forcing pregnancy)
- using sexual violence
- using physical violence
- making threats.

However, providing lists of discrete behaviours does not adequately capture the process and pattern of coercive control or behaviours that appear insignificant or non-abusive to those outside an abusive relationship. This is because coercive control creates an environment that affects all action, thought, feeling and way of being for a victim-survivor. Behaviour that might seem helpful in an ordinary relationship, such as giving a gift or using tracking apps to keep the family safe, can coerce and control in the context of an abusive relationship.

All abusive behaviours are harmful to the person experiencing them. The critical point is the outcome of the behaviours, which is to control the person, erode their autonomy and instil fear. One respondent noted that this contextual understanding 'shifts the focus from individual acts and behaviours to the way in which they function together as a patterned, cumulative environment that serves to instil fear, limiting a woman's freedom and space for action'. The phrase 'coercive control' describes both the process and the outcome of abuse.

One of the primary outcomes of coercive control is fear. As one respondent described,

> **being abused in a domestic setting … shapes the nature of the immediate fear during violent incidents. It also leads to chronic fear which builds up over the long term and can lead to significant trauma and negative effects on health and wellbeing. The social and physical entrapment and isolation which often accompanies abuse reinforces these fears and makes help-seeking more difficult. Fear is often a key reason for not leaving, and this fear is rational and justified …The psychological and emotional control that result from fear are a key way in which domestic and family violence 'works': keeping another person in a state of chronic fear does not require physical violence to be used all of the time, or at all.**

A victim-survivor described themselves as living 'in a constant state of uncertainty and fear every single day, from morning to night. I believe he will never stop trying to kill me or hurt our children'.

Coercive control is debilitating, and it can leave victim-survivors feeling weary and overcome by the persistent nature of the abuse. As described by one victim-survivor, 'it's physically and emotionally exhausting. It's scary and lonely'. Another said,

> **the most damaging part of FDV and intimate partner violence is not the bruises left on the skin but the bruises left inside and in the mind where the victim is left questioning their own reality, thoughts, feeling anxious and depressed and have difficulties rationalising and making decisions.**

Another key outcome of coercive control is loss of autonomy and sense of self. One respondent said, 'when you have been living like this for so long, there is such a web around you and you don't even know where to start to unravel it. To find your own thoughts, your own feelings, your bodily autonomy, your life without this'. Another explained, 'ultimately it took my entire sense of self away, and I became a shell of the woman I once was, too embarrassed to admit how I had got there to anyone else'.

Respondents also spoke about the significant long-term impacts of coercive control, and how recovery takes a long time. Long-term impacts are as harmful as physical abuse and delay the victim-survivor's ability to rehabilitate and build a new life. One respondent described how 'it took me years to overcome the trauma inflicted on me', while another stated the following:

> **[C]oercive control has a significant and pervasive impact on the mental health of survivors. It increases the likelihood of major depressive illness and substance abuse, alongside post-traumatic stress, anxiety, eating and panic disorders. Survivors of coercive control require psychological as well as legal support.**

Coercive control may also have significant financial and legal impacts, and it can continue for years beyond the end of the relationship. Financial abuse is one of the most challenging forms of coercive control women face post-separation, as one respondent explained: 'Even though none of what happened to myself and my daughter is caused from our actions we pay the price financially, emotionally and psychologically'. Financial (or economic) abuse is very common, generally continues after a victim-survivor leaves a relationship, has significant and ongoing impacts and is one of the most common reasons victim-survivors remain with or return to abusive partners.

4.2 The contextual nature of coercive control

A point raised consistently throughout the consultation process was that coercive control is contextual. This term describes the internal workings of individual relationships and how abusive behaviours differ depending on the relationship considered.

One respondent said that 'coercive and controlling behaviour often involves subtle cues and messages held between perpetrator and victim-survivor. These covert messages are deeply weighted to the victim-survivor but invisible to the onlooker'. Another respondent stated that

> **using and playing on fear is common by abusers, and is made possible because of their intimate knowledge of the person they are abusing. Abusers tell powerful stories about the abuse to the person they are abusing, often saying it is the fault of the person being abused.**

This variation in behaviour is one of the factors that renders coercive control so difficult to define, identify and respond to.

However, what became clear through consultation is that coercive control must also be considered in the context of the culture, community and individual characteristics of both the victim-survivor and the person using violence. These differences add further layers of complexity to how coercive control is perpetrated and experienced, the impact it has and how different systems respond. One respondent stated that coercive control

> **occurs within the context of social and cultural norms, with behaviours based upon vulnerabilities experienced by the victim. It is for this reason (at least in part) that coercive control is difficult to detect: it involves the manipulation and exploitation of pre-existing stereotypes and norms within our community, including in relation to gender.**

One conceptual lens for considering contextual differences is intersectionality, which considers how different forms of inequality operate together: it is 'a way of thinking about identity and its relationship to power'.[30] Intersectionality means examining not just gender inequality but also any combination of social identities through which people experience oppression or discrimination, both individually and systemically (e.g. race, class, disability, sexuality, parental status and health).[31] This framework is useful because it helps us to observe a person's identity and understand how family violence might appear different in different lives, and how experiences of discrimination and marginalisation can exacerbate family violence and hinder attempts to seek help.

Another conceptual lens for considering contextual differences is the social entrapment framework. This framework is particularly effective because it enables us to observe a person's whole situation: their experience of coercive control, how they seek help and the response they receive. Applying a social entrapment framework means exploring the following three elements within the context of each individual victim-survivor's life:

- the coercive and controlling behaviours used by the perpetrator and how these limit the victim-survivor's ability to be self-determining over time
- how informal social networks or formal support services respond to the victim-survivor's attempt(s) to seek help
- how intersecting structural inequalities (e.g. those produced by colonisation, disability, poverty) exacerbate the first two elements.[32]

The social entrapment framework encourages us to study all aspects of a victim-survivor's life and focus on the perpetrator's behaviour, systemic responses to help seeking and other issues rather than on the actions of the victim-survivor. This focus shifts the responsibility to address the harm away from the victim-survivor and discourages victim-blaming as part of a more nuanced understanding of coercive control. A social entrapment framework was considered when developing legislative changes in the *Family Violence Legislation Reform Act 2020* (WA). We considered both conceptual lenses described here to write this report and when forming recommendations for reform.

4.3 Coercive control experienced by specific groups of people

Throughout the consultation process, we heard that cultural, community and individual characteristics can add complexity to how coercive control is perpetrated and experienced for specific groups, particularly Aboriginal people, people with disability, older people, refugee and migrant families and the LGBTQIA+ community. Many of the people we talked to for this consultation wanted us to understand that they (or the people they knew or worked with) experienced family violence differently because of their context. We heard that it is vital for us to understand and acknowledge these extra layers of complexity when talking about coercive control and how to respond in WA. And we heard that the concerns of people in our communities who are most vulnerable should be prioritised.

4.3.1 Aboriginal women

We received submissions from victim-survivors and organisations about the nature and impact of family violence in Aboriginal communities, including the drivers of family violence. We heard that coercive control is not always a familiar or useful concept for some Aboriginal people and communities. One respondent said that Aboriginal victim-survivors appear to have poorer understanding of coercive control and are often unable to identify coercive control behaviours—including sexual coercion—as abuse in its own right because of the historical focus on physical violence when defining family and domestic violence in legislation, policy and awareness campaigns. We heard that there are aspects of control in abusive relationships for Aboriginal people; one respondent stated that control is present in most of the Aboriginal families that come to them for help. We heard that humbugging (demanding money or belongings) and requests to 'help me with everything'

can be abusive, because, while perpetrators might have their own money, they use it for something else but ask for money to cover bills and food. We also heard that sometimes control may be exercised through cultural practices.

We heard that for Aboriginal families in regional areas some family violence is severe and frequent and has significant impacts on victim-survivors. Women are afraid; one worker told us about a client who had recently said, 'next time I could end up dead … I've been bashed up that many times in the head I could be killed next time'. We heard that family violence intersects with substance abuse, mental health, disability and poverty. One respondent in a regional area noted, 'victims are living in dire circumstances up here with lifetime systemic disadvantage'. We also heard that Aboriginal women work hard to keep themselves and their children safe, and even risk their own safety to de-escalate a violent situation. For example, a woman may act in a way that she knows from experience her partner will respond to with physical violence, simply to 'get it over and done with', because acting early is safer for her and her children than waiting. Yet, in this scenario, both parties may be identified by responders as 'they are both perpetrators, they are fighting together, they have a pattern of fighting together', when in fact the woman is taking proactive steps to protect herself and her children.

We heard from respondents that while some Aboriginal people experience coercive control in their relationships, this was less relevant for them than the risk of violence arising from social barriers and intersecting forms of oppression, discrimination and marginalisation. One respondent stated that

> **many Aboriginal people, researchers and agencies view the causes of family violence for their communities as being different than for non-Indigenous communities and relating to the ongoing impacts of colonialism and intergenerational trauma, rather than gender inequality.**

Many submissions shared this view. For instance, another respondent noted that 'systemic disadvantage, forced removal of children, cultural dislocation, gender and racial discrimination, oppression and intergenerational impacts of trauma shape the experiences of family violence in Aboriginal and Torres Strait Islander communities'.

The *Aboriginal Empowerment Strategy: Western Australia 2021–2029* encourages speaking truthfully about colonisation, dispossession, racism, discrimination and the undermining of culture; about Aboriginal people's survival and endurance; and about the richness, value and diversity of Aboriginal cultures.[33] Most discussions of family violence focus on gender inequality and patriarchy as the drivers of family violence. However, this focus can hide or erase the impact of colonialism within Aboriginal communities: as noted by Blagg et al in their article on law, culture and decolonisation, 'family violence needs to be understood within an historical framework traversed by colonialism, systemic disadvantage, cultural dislocation, forced removal of children and the intergenerational impacts of trauma'.[34]

As discussed earlier in this chapter (see 4.1), coercive control creates a climate of fear and constraint within a relationship or family. We heard that gendered drivers do not resonate with many Aboriginal people because the effects of colonisation create a broader culture of fear and constraint. Some Aboriginal women know they will feel fear and experience aggression, control and constraint in many contexts, including in public and from people they are expected to call on for protection, and they may not seek protection outside the relationship or use measures such as family violence restraining orders, police reports and other support to find safety.

4.3.2 People with disability

People with disability who need support from, or depend on, other persons for their daily needs and care can be especially vulnerable to that person perpetrating coercive and controlling behaviours. Respondents described behaviour such as:

- restricting or denying victim-survivors' access to transport, medication or other means of disability support
- failing to provide adequate care
- denying access to a communication device
- interfering with reproductive health, including medical interventions to control fertility
- restricting and violating sexual and reproductive rights
- controlling sexual and gender identity
- acting as a gatekeeper to attempts to disclose the violence and seek assistance from support services.

We heard that when people with a disability or impairment disclose their experiences of abuse, they are less likely to be believed, and fear of prejudicial assessment or discrimination may discourage them from accessing support services or engaging with police or judicial processes. Recognising violence towards people with disability requires attention to individual, environmental and institutional factors.

Respondents wanted us to know that while coercive control is often considered primarily in the context of intimate partner relationships, other situations exist in which a close family member may assume control of aspects of a person's life, such as within the framework of the *Guardianship and Administration Act 1990* (WA). Both formal and informal substitute decision-makers are in positions that present the potential for abusive behaviour. We heard that people born with disability may be 'enculturated into powerlessness' because they are viewed as 'lesser', and that therefore we must recognise and address these assumptions to reduce the risk of abuse occurring. For example, respondents told us that some people with intellectual disabilities are socialised to be compliant because of their reliance on others for daily living, which leads to a consistent power imbalance in their lives and increases their vulnerability to controlling abuse.

4.3.3 Older people

We heard that for many victim-survivors, but especially for people with disability and older people, control and abuse is disguised as care. Similarly to how people with disability are wrongly assumed to lack capacity because of their disability, older people can be assumed to lack capacity because of their age, or they may have their independence and autonomy curtailed during temporary periods of incapacity. For example, one respondent told us that an older person might be coerced into signing an Enduring Power of Attorney (EPA) or an Enduring Power of Guardianship (EPG) during a period of illness. We heard about an older person who underwent surgery and, following a period of recovery and temporary decision-making incapacity, found themself in a residential aged care facility, their house on the market and facing a fight to have an EPA revoked.

Older people experience a range of abusive behaviours, including monitoring, isolation and denial of access to services. For example, an adult child moves back into the house with the older person and isolates them from other family members and friends by turning down the older person's phone ring volume so it is not audible and being verbally abusive when visitors are present. An older person who can no longer drive might not have independent social support but relies on a family member to take them to appointments; however, that family member refuses to take them, or only allows them to talk to a general practitioner when the family member is also in the room, so the older person never has time alone with their general practitioner. Focusing on intimate partner relationships can obscure the experiences of older people, who experience family violence not just

within intimate partnerships but also within immediate and broader family relationships and in care settings. One respondent said, 'the majority of elder abuse is actually family violence. That gets lost. Because people don't want to recognise that elderly people are being abused, particularly by their family. And focusing on intimate partner abuse means you lose the reality of what's happening'.

4.3.4 Women with culturally and linguistically diverse backgrounds

For women with diverse cultural and linguistic backgrounds, such as refugee and migrant women, abuse can be hidden from the public eye. We heard from one respondent about a woman who had been so heavily controlled that she was captive for 30 years in her home in WA. We heard that women with diverse cultural and linguistic backgrounds have vastly different lived experiences, which influence how they understand coercive control, engage in society and access support. For example, a first or second-generation migrant will have a different experience from a refugee who has fled a conflict.

Women can experience significant restriction of their movements; for example, they may live their whole lives within a single suburb, moving only between home and the shops. While some women have strong, enriching and important ties to community and culture that provide support in adapting to an unfamiliar new country, others have limited social networks and connections. We heard that community influence can be extraordinarily strong, and members of the community may deny or exacerbate the impact of coercive control on the victim-survivor through gossip, pressure, slander and shame.

Coercive behaviours may be specific to cultural or religious practice. For example, women may be coerced to return to their home country, and support services are then unable to act once the women have left the country. Alternatively, as reported by respondents, women might leave their abusive partners in WA, and in response their fathers or other family members are killed back in their country of origin.

4.3.5 LGBTQIA+ people

Coercive control can present differently for LGBTQIA+ people. For example, respondents told us that a perpetrator might:

- withhold hormone treatment from someone
- disclose (out) somebody's gender identity, sexuality or health status
- misgender someone to cause them harm
- maliciously damage someone's reputation
- isolate someone from other members of the community.

As noted by one respondent,

> **lesbian, gay, bisexual, transgender, intersex, queer and gender diverse people may experience distinct differences in the forms of abuse and violence used by perpetrators. These may include threatening to out or outing the victim in terms of their sexuality or HIV status, withholding hormone treatments, preventing participation in LGBTIQ+ events, personal degradation and public humiliation.**

The impact of coercive control can also be more severe because individuals may not have other types of support; for example, they may experience abuse both within their family of origin and within an intimate partner relationship. We heard that LGBTQIA+ people do not see themselves included in policy and media

discussions of coercive control and family violence more broadly, or in community awareness-raising efforts, because these discussions generally centre on the experiences of cisgender, heterosexual people (i.e. coercive control experienced by women who are in intimate partner relationships with men). This may affect the ability of LGBTQIA+ people to recognise that they are experiencing coercive control and to find appropriate support. However, 'overall, existing research on family violence experienced by LGBTIQ communities does not currently address a wide range of research questions that are key to understanding the predictors, drivers or correlates of this violence'.[35]

4.4 Children are victims in their own right

Throughout the consultation process, we heard that children should be acknowledged as victims of coercive control in their own right. Many submissions discussed the serious impact of coercive control on children and young people, both as witnesses to family and domestic violence and as direct victim-survivors of family and domestic violence.

One respondent said, 'in my experience as a child growing up in a coercive-control-drenched environment, I learned from a young age that arguments were normal, abuse was normal, fear was normal, hiding was normal. And no one could or would save us'. Another explained that children exposed to family violence are at greater risk of experiencing family violence in the future and have an increased likelihood of experiencing mental health issues, poor cognitive functioning, behavioural issues, alcohol and substance abuse issues, homelessness and unemployment.

However, many respondents stated it was crucial to discuss the impact not only of exposure to coercive control but also of experiencing coercive control directly. One respondent said that children are often characterised as 'silent, forgotten, invisible, and/or secondary victims or witnesses of family violence' rather than understood as victim-survivors in their own right. Another respondent said,

> **concern for children is central to the fears of many people who experience domestic and family violence: children are sometimes victimised by the abusive parent, and frequently witness abuse. Children are sometimes deliberately used in one parent's abuse of another … [I]n a family where coercive control is utilised children are not simply witness to acts of physical violence directed at their mother. They experience the rules, threats, control and fear and are victimised by these. Children and young people are victim-survivors in their own right.**

Children also experience behaviour such as control of time and movement within the home, deprivation of resources and isolation from friends, family and the local community. We heard that one parent may use children to control or hurt the other parent in family law disputes, and that the impact of that behaviour on children (beyond how it affects their contact with the other parent) generally remains unacknowledged. Additionally, we heard that coercive control behaviours targeted at one parent by the other might not be considered 'high risk' to the children, although they have significant detrimental impacts on the children.

We also note the recommendation of one respondent to 'commission research about how children experience coercive control, to inform ongoing policy development that is inclusive of children's agency and needs, at all points of the policy, legislative, implementation and evaluation processes'. While commissioning such research was beyond the scope of this consultation process, it is important to consider how policy development and legislative reform is responsive to children's agency and needs. In a systematic review of inter-parental coercive control and child and family outcomes, Xyrakis et al. found 'broad and devastating impacts of interparental

coercive control on children across multiple domains'.[36] Their review demonstrated 'comprehensive evidence of adverse impacts of coercive control on child and family dynamics, child psychopathology, and physical and social-emotional development'.[37] The authors recommended that helping professionals be given access to training and education on recognising and supporting families exposed to coercive control.[38]

In relation to this, one respondent suggested that proposed policy and legislative projects responding to family violence should include a child impact assessment to consider the impact of projects on children and young people. Children are often included in conversations about coercive control and family violence as parties who observe or witness coercive control and are affected by it as secondary victims. However, children are both affected by violence done to their parents and victims themselves in need of protection.

4.5 Awareness and understanding of coercive control

Many victim-survivors who participated in the consultation process discussed widespread lack of awareness and understanding of coercive control. They described not understanding what was happening to them until they were already entrapped, and slowly coming to understand after the abuse had stopped, or after they had left the abusive relationship (the end of abuse and the end of relationship do not necessarily coincide, since coercive control often continues after a relationship ends). One victim-survivor said, 'at the time I was completely unaware [of] what I was going through'. Another explained,

> **it is very hard for a person unknown to a situation … to determine if a person is actually being coercively controlled. It is actually very hard to determine that even when it is you who are being coercively controlled. For me, this was a pattern of abuse which developed over a number of years in subtle ways and because of my increasing isolation and the psychological toll of the abuse I was unaware of the extent of my own abuse and largely unable to communicate about it.**

We also heard that a person experiencing coercive control may normalise abusive behaviour because they have sustained abuse from multiple partners, or have been victims since childhood, and are particularly vulnerable.

If victim-survivors are not aware that what they are experiencing is abusive behaviour, they are unlikely to have the language and agency to tell somebody about it and convey the extent of control occurring in their life. A respondent stated, 'in my experience, I didn't even understand what was happening to me, until it had spiralled well out of control and I felt my life was in danger. By which stage I'd already lost my entire sense of self and had been isolated from my support network'.

It is critical to increase awareness and understanding of coercive control to support victim-survivors to recognise abuse and seek help. According to one respondent, it is also empowering for victim-survivors to be able to identify coercive control because 'understanding that a perpetrator's behaviours are deliberate and designed to confuse, intimidate and control allows a victim-survivor to recognise that the fault lies with the perpetrator, not with them'. It is equally essential to increase responders' understanding of coercive control so they can ask the right questions and identify what is happening. Another respondent said that improving overall community understanding of power and control tactics will ease the way for response teams to ask the right questions, for victim-survivors to report abuse, for the court system to respond appropriately to evidence of it and for perpetrators to reflect on their behaviour.

Awareness and understanding of coercive control have been steadily increasing; as we heard from one respondent, 'conceptualisations of family violence continue to evolve, guided by experts and those with lived experience … [C]oercive control is an important component of contemporary understandings of family violence'.

We heard that the concept of coercive control is widely established, particularly within the academic and family violence sector, and that it is important not to present coercive control as a new concept because 'there is in fact an extensive body of work that emphasises that family and domestic violence is rarely a single incident, rather, it is a pattern of behaviour that is cumulative and ongoing'. One respondent said that the language of coercive control 'is effective in that it starts to describe the function of the behaviours and the intent of perpetrators to control or subjugate the other'.

Although awareness of the conceptual language of coercive control is growing, we heard that as a term it 'requires significant unpacking'. One respondent described it as 'a concept that is complex and difficult to define, due to the range of behaviours potentially relevant, and cultural, social and community norms which modify its context. These difficulties are exacerbated by inconsistencies in legislative approaches to dealing with family violence in Australia'. Respondents said that people do not understand the word 'coercive', and that it is easier to talk about 'different ways to control' and to use concrete, simple language (e.g. instead of talking about 'isolation', talk about 'stopping you from seeing people you love'). Respondents also commented on the ongoing use of the word 'violence', stating that for many people 'violence' still implies physical violence. Some suggested that using the word 'abuse' might be easier for people to understand (e.g. family abuse, or family and domestic violence and abuse).

Some respondents felt that we should use language consistent with that used across Australian jurisdictions to avoid confusion. For example, given that the National Principles will establish a shared understanding of coercive control, one respondent said, 'it would be counterproductive for the Western Australian Government to use a different concept to understand and describe the nature of family and domestic violence'.

Whatever language is used, we heard that producing relatable examples for different audiences with appropriate wording is necessary. We also heard that work must be done to develop a commonly shared understanding that is sensitive to diverse individual histories and contexts. However, while there was support for a consistent language, submissions noted that different situations may require the use of different languages. An example we were offered was that in some instances of people with disability, the perpetrator might not always intend to cause harm, but could instead have outdated views on the capacity of a person in their care (e.g. ageing parents who are caring for an adult with a decision-making disability). In this context, it may be unhelpful to refer to someone's behaviour as 'abuse' or 'violence'. Other useful language options could be 'unintended controlling behaviours' or 'historically acceptable behaviours'.

The need for more awareness-raising work in the community was a strong theme and key concern in most submissions, many of which mentioned awareness, education and training as priorities for action. For example, one respondent commented that 'we are a long way off as a community being able to articulate and understand what coercive control means'. Another stated that 'whatever term is adopted, it must be broadly socialised in the community as part of an awareness campaign to ensure a common understanding of the concept'. Respondents also noted that education and awareness raising need to be consistent, iterative, and repeated or long term. The need for ongoing awareness-raising efforts and campaigns that address community attitudes was highlighted by the release of findings from the 2021 *National Community Attitudes towards Violence against Women Survey (NCAS)*, which reports on interviews with over 19,000 Australians aged 16 years or over. The 2021 NCAS demonstrated that 41% of respondents believed that family violence is equally committed by men and women, and only 47% of respondents agreed that family violence is a problem in their own suburb or town.[39]

4.6 The person who creates the fear and causes the harm

In many submissions, respondents told us that the perpetrator should be more visible in discussions about coercive control. While it is vital to acknowledge the harm caused by coercive control, equally we should understand that the victim-survivor does not cause the harm and should not bear the weight of public scrutiny in discussions about options for responding to coercive control. We heard that we need to engage in more nuanced discussions about perpetrator behaviour, accountability, responsibility and responses. For example, one respondent stressed, 'we need to stop the system blaming victims and shift the focus onto why is the perpetrator perpetrating'. However, people who use abusive behaviours can be invisible to an observer on the outside of a relationship. A respondent told us: 'perpetrators will recruit professionals, family members and community and identifying this behaviour is difficult even for professionals. Only the victim-survivor may understand the threats, triggers, and indicators of escalation and risk'.

Some respondents highlighted the importance of recognising the intent of perpetrators in creating an environment of fear with their abusive behaviour. A victim-survivor told us 'I was made aware in no uncertain terms what the ramifications would be if I didn't comply with my abuser'. One respondent stated that there is a high level of sophistication in family violence offending, which can render coercive control difficult for professionals to identify. Another mentioned that 'perpetrators are masters of manipulation'. One victim-survivor described her fear caused by the perpetrator and said, 'when I started to cry he laughed at me'.

We heard that abuse is often disguised as caring and can be misinterpreted by others as care instead of harm. One respondent explained, 'there was no violence, just rules and restrictions and my confidence was eroded over time. Most people just believed I was suffering with depression and was lucky as I was "looked after". If a victim-survivor is a child, older person or person with disability, challenging abusive behaviours can result in the perpetrator withdrawing or threatening to withdraw care.

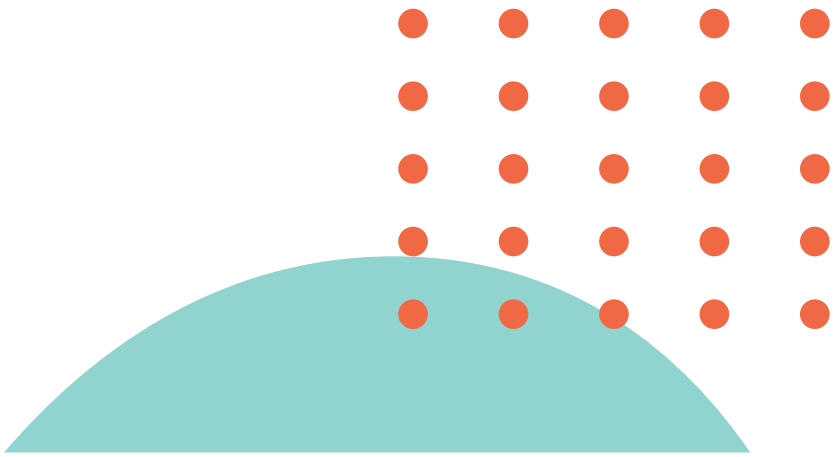
Perpetrators may not recognise their own behaviours as abusive. For example, young people could be navigating a first relationship and have not yet learned the characteristics of a healthy relationship. One respondent told us that many abusers say they are not family and domestic violence perpetrators because they do not hit their partners—they do not understand that behaviour like financial abuse is a form of coercive control and therefore constitutes 'violence'. Some perpetrators understand the impact of their behaviour but do not regard their abuse as behaviour for which they will be held accountable (in contrast to physical violence, for example). A victim-survivor described to us how '[o]ne of the times I was held against my will he kept repeating "I haven't touched you yet" and in his mind there is absolutely nothing wrong with trying to control everything I did'.

It is important to remember that the perpetrators' behaviour also has a context, and perpetrators may have experienced harm themselves (e.g. intergenerational trauma). Increasing the accountability, responsibility and appropriate behaviour of perpetrators is not a simple action. An appropriate response for some perpetrators may focus on cultural safety and healing for the individual, which is essential for working with Aboriginal and Torres Strait Islander people who use violence. Tension exists between providing, on the one hand, safety and healing for a person who uses violence, and on the other, justice for a victim-survivor who has suffered harm themselves and is seeking acknowledgement of that harm. The tension reinforces the need for responses to coercive control to emphasise victim-survivor agency and choice.

4.7 Recommendations

We make the following recommendations to the Western Australian Government:

1	Commission community education campaigns about coercive control within existing Western Australian Government mechanisms as part of the state's family and domestic violence prevention work. Community education campaigns and education materials should be informed by and align with the National Principles, represent a diverse range of experiences, extend beyond intimate partner relationships (e.g. to include older people experiencing elder abuse) and be community-led where possible.
2	Acknowledge children as victims in their own right within policy and legislative reforms addressing family and domestic violence.
3	Implement consistent, shared language about coercive control across all government responses (legislation, policy, projects, programs and service delivery) and community sector responses where practicable to increase understanding of coercive control and minimise confusion. This shared language should reference the National Principles.



Chapter 5: I need help: Help-seeking behaviour and responses

The focus of this report is on legislative responses to coercive control, and we discuss restraining orders, criminal law and family law responses in more detail in Chapters 6 and 7. However, legislative responses to coercive control do not operate in isolation. They form part of a much larger response network that incorporates both formal and informal sources of assistance. Formal assistance describes health, social and legal support such as doctors, refuges, counselling services and police. Informal assistance describes family, friends and the wider community. People experiencing coercive control seek help from many sources, both informal and formal.

In this chapter, we outline the consultation findings concerning the barriers victim-survivors face when seeking help for coercive control. The findings highlight the complex interplay of social and systemic factors in WA that impact on a woman's ability to seek help. Addressing these social and systemic factors requires a coordinated and integrated response. However, we heard in consultation that, instead, women seeking help must navigate multiple systems offered through different government and non-government agencies, including those of health, housing, child protection, police, and civil, criminal and family law. We heard that the systems may exacerbate the trauma and suffering of victim-survivors and that perpetrators will use these systems to continue their control and abuse.

A substantial amount of work is required to develop a coordinated response across the multiple systems operating in WA. Much of that work is beyond the scope of this report, but many organisations and victim-survivors made suggestions for reform, and we capture their views in this chapter. A shared understanding of coercive control must underpin the work, and we recommend using the National Principles as a basis for that collective understanding. An increase in funding and resourcing should also accompany the work. As one respondent commented, with a point echoed in many submissions, '[a]ny legislative changes will inevitably increase demand for family and domestic violence specialist services … The service system must be bolstered to meet this demand'.

5.1 Barriers victim-survivors face when seeking help

Recent research found that the most common barriers preventing women experiencing coercive control from seeking help were feeling ashamed, lack of awareness about a service that could help and concerns about confidentiality.[40] In section 4.2, we discussed the intersectional conceptual lens, and it is also relevant here to help understand the social and systemic factors that create barriers to help seeking. For example, we were told that the 'lack of understanding and sensitivity to issues specific to LGBTIQ+ people in mainstream services, discrimination and homophobic attitudes by police officers, or fear of discrimination within judicial systems act as barriers to LGBTIQ+ people seeking help from and using support services and the criminal justice system'.

5.1.1 Women with culturally and linguistically diverse backgrounds

Women with culturally and linguistically diverse backgrounds may face additional barriers to seeking formal assistance. A respondent working with women with culturally and linguistically diverse backgrounds highlighted the following challenges facing these women:

- alienation from their entire community
- social isolation and lack of informal support networks
- less awareness of support services available
- less awareness of the legal processes or the requirement for evidence
- difficulty obtaining an interpreter or translator.

The same respondent told us that women with culturally and linguistically diverse backgrounds rely on their communities and that separation from the perpetrator can mean alienation from the entire community, leaving the woman isolated, vulnerable and without support for essentials like housing. Many women will seek help to stop the behaviour but want to preserve the family unit. One respondent told us, '[c]ulturally and linguistically diverse women may hold religious or cultural beliefs about gender roles and behaviours, particularly within marriage, that are inconsistent with speaking out and seeking help from police about violence perpetrated against them and their children'.

We heard from several respondents that coercive control is linked to visa status for women from culturally and linguistically diverse backgrounds, and their residency status acts as a significant barrier to seeking formal assistance for the abuse. The perpetrator will coerce silence through threats of visa cancellation or retaliation in the woman's home country. Women will not report abuse because they may view their dilemma as a choice between remaining with the perpetrator and their children or returning to their home country without their children. While the *Migration Act 1958* (Cth) provides mechanisms to seek protection from family violence, these are complex and difficult to navigate. One migration law specialist told us that there is not much knowledge in the community or the wider legal sector that people on certain visas can apply for permanent residency on the grounds of family violence. Circle Green Community Legal is the only community legal centre in WA that provides specialist migration advice.

5.1.2 Older people

Respondents told us that older people face a range of additional barriers to seeking formal assistance, including diminished cognitive or physical capacity, restricted mobility, social isolation, dependence on the perpetrator, stigma and shame. A community legal centre stated in its submission,

> **Help seeking was not a majority response on the part of older people who experience elder abuse, with 6 in 10 people who experienced elder abuse not seeking help. However, 8 in 10 older people did state that they took action to stop the abuse, mainly speaking directly to the perpetrator themselves. Most commonly, avenues for help and advice were informal and mainly involved family and friends.**

Another respondent noted in their submission that many older people are reluctant to seek formal assistance for abuse or coercive control for numerous reasons, including fear of disrupting family or care relationships. This can lead to ongoing abuse, which exacerbates mental health issues, neglect and social isolation.

5.1.3 Aboriginal women

In their submission, the Western Australian Council of Social Service (WACOSS) stated that Aboriginal women 'are substantially less likely than non-Aboriginal women to call police due to experiences of colonisation, dispossession, ongoing racism and discrimination, fear about authorities removing their children or about Black deaths in custody'. Policing and the criminal justice system can contribute to the problems in family violence matters in Aboriginal communities.[41] Family violence can be perpetrated or exacerbated by poor and discriminatory system responses to Aboriginal people experiencing family violence, for example, by police, child protection and mainstream agencies.[42] One respondent told us that 'Aboriginal women have also mentioned to our staff that there is a lack of culturally appropriate family violence services that enable victim-survivors to safely disclose and build trust'.

We heard from one regional service provider that sometimes Aboriginal women do not want to use its service because of shame. This is especially true within the historical context of white settlement and colonisation and the continuing impacts of loss of traditional roles and status within communities. In one consultation event we heard that

> **Aboriginal and Torres Strait Islander women may not seek help or report violence because they fear isolation from community and family connections, racism and lack of understanding from support services in their region….the whole community can be affected by family violence and a shared sense of shame can reinforce the unspoken rule to keep silent.**

Another respondent told us that to seek help or escape the abuse, women may have to leave the community and their spiritual connections to the land, creating trauma for both women and their children. Due to this sense of loss of community, land and family, many women leave family violence services and return to unsafe and violent relationships.

5.1.4 Women in rural, regional and remote communities

WA has small, interconnected and isolated communities in which reporting may lead to heightened risk and escalation of violence. Smaller towns and less populated communities can render disclosure more difficult and risky for victim-survivors. One respondent explained: 'It is our experience that there are currently few family and domestic violence services available in rural and regional WA. This means that victim-survivors often have to travel great distances to access a women's shelter, financial service, or health or legal centre'.

WACOSS noted in their submission that women in small communities in regional and rural areas might perceive a lack of confidentiality, privacy and anonymity. In Geraldton, we heard that women are reluctant to visit the police station, given its prominent location on a busy street and their concern about being seen entering or leaving the building. Lengthy wait times at smaller police stations discourage people from reporting because being absent from home or a workplace for extended periods might not be possible.

5.2 System responses to help seeking

System responses play a role in the decision-making of victim-survivors. The response someone receives will affect their willingness to continue seeking help. An overarching theme from the consultation was that legal and service systems are not responding to family and domestic violence in a way that adequately acknowledges coercive control. Submissions emphasised the need for increased capacity of the family and domestic violence service sector, training for all frontline responders, improved risk assessment and information sharing, culturally safe and community-based responses and early intervention for perpetrators.

5.2.1 Financial assistance and housing

We heard from many victim-survivors that lack of financial resources or housing presented a significant barrier to their continued safety or recovery. As one victim-survivor told us:

> **As he was violent, I eventually got the courage to leave with our 6 year-old daughter, only to be told by Centrelink that I wasn't entitled to benefits because I had left the marital home. Had I stayed I would have been financially assisted. Not a great help when I was dealing with a violent husband who tried to set me on fire.**

In their submission, the Women's Legal Service WA recognised that victim-survivors' decision to respond to controlling relationships is highly complex, inherently risky and will likely carry economic hardship. In *The choice: Violence or poverty*, Anne Summers reported that many women separated from violent partners several times before they were able to make the final break, and, in many cases, the reason they had returned was lack of finances to support themselves.[43] The Women's Legal Service WA referenced Summers, noting that current systems are failing to provide adequate social and economic support, leaving women in a position whereby they must accept poverty to escape violence. Summers confirmed that in 2016, 48.1% of single women with children under 18 years lived on a gross equalised household income of between $0–$480 per week.[44] This is the lowest quintile in Australia.

A regional FDV network told us that 'there are very limited services for people who use violence "up here". There is no transitional housing and going to [a] refuge is like respite. Refuge is a respite model not a resolution'. The network also noted specific issues for victim-survivors from culturally and linguistically diverse backgrounds who become homeless when leaving an abusive relationship because the perpetrator owns the home or the perpetrator's employment provides it.

One respondent told us that refuges and emergency housing services in particular, along with other specialist domestic violence services, are facing greater demand than they can meet, thereby reducing the options for victim-survivors attempting to leave a dangerous situation. Another respondent highlighted issues with access to housing, particularly in smaller regional communities. Victim-survivors are returning to relationships because leaving is too hard. The refuges are full, and victim-survivors with older male children struggle to be accepted. In their submission, WACOSS explained that

> **reducing levels of harm and death arising from family violence also requires addressing the barriers women and children face in seeking to escape abusive and controlling relationships. This includes better access to adequate income support, safe and secure housing, and immediate, accessible financial support to exit abusive situations.**

A full discussion of financial assistance and housing is beyond the scope of this report, but we acknowledge the ongoing work in WA to prioritise the ability of victim-survivors to stay in their home. This includes initiatives

such as Safe at Home, mobile outreach funding and flexible payment packages.[45] We also note the recent announcements of the Western Australian Government's Rapid Rehousing Pilot to help women and children leaving refuges secure a home in the private rental market.[46]

5.2.2 Police responses

The Western Australia Police Force (WA Police) noted in their submission that given the complexities existing in how coercive control manifests, challenges are associated with recognising coercive control, both for those experiencing it and those frontline officers responding to it. We received several submissions from victim-survivors who told us they received excellent support from the police in responding to coercive control. However, we also received responses which described difficulties with police responses. One victim-survivor told us, '[w]hen I approached police with small parts of the whole such as intimidating, sometimes silent phone calls, diversion of my mail, denigration and isolation, I was told that nothing could be done until he actually did something'. When dealing with coercive control a key issue is that although the perpetrator has already taken direct, intentional action to cause harm to the victim-survivor, the police may not view these actions as meeting a threshold to warrant intervention, whether in the form of a police order, breach of family violence restraining order or other criminal offence charge. For example, one respondent observed that '[t]he willingness and/or capacity of police to respond to incidents in the absence of a criminal act (or imminent danger) appears, with respect, to be significantly lacking'.

Many submissions noted perceived inconsistencies in responses across different police stations and regions, including how breaches of restraining orders are dealt with, victim misidentification, and whether victims are charged with offences that arise out of self-defence in family and domestic violence situations. WACOSS commented, 'Experiences of discrimination discourage members of those communities from seeking assistance through that system again … improved training alone will not resolve this. Enhanced accountability and transparency measures for police are necessary to improve the relationship between police and the community'.

The recent report from the Ombudsman Western Australia, *Investigation into Family and Domestic Violence and Suicide (Ombudsman Report)* referenced research demonstrating that perpetrators of family and domestic violence will take steps to avoid being held accountable for their behaviour, including instances where perpetrators may present the violence as mutual or joint, both to avoid responsibility and to shift responsibility to the victim.[47] This includes instances of perpetrators describing violence as an 'argument' or 'retaliation'.[48] One respondent explained how

> **[t]here are many instances that the police are called in only when the affected person 'snaps', after having been taunted and tormented for extended periods of time. Once an argument erupts, and without deeper investigation and appropriately targeted questioning, the highly emotional victim may in fact be seen as the cause of the problem while the persistent bully sits unnoticed.**

WA Police is currently revising all training related to family violence in alignment with the Australian New Zealand Policing Advisory Agency (ANZPAA) Education and Training Guidelines for Family and Domestic Violence (2017), which is considered national best practice, to ensure their employees have comprehensive and relevant training. The WA Police expect to complete the revision in September 2023.

The *Ombudsman Report* recommended that WA Police implement the policy and practice reform proposed by Australia's National Research Organisation for Women's Safety (ANROWS) in its report, *Accurately Identifying*

the 'Person Most in Need of Protection' in Domestic and Family Violence Law, including the development of guidance on:

- distinguishing between coercive controlling violence (physical and non-physical) and violence used in response to ongoing abuse;
- identifying patterns of coercive control;
- identifying the person most in need of protection in ambiguous circumstances; and
- determining whether a police order is necessary or desirable.[49]

WA Police has a framework in place to address family violence, including a Family Violence Code of Practice, the Family Violence Policy, and a suite of family violence procedures. In a submission, WA Police told us that when considering models and approaches from other jurisdictions, they assess their applicability to WA's legislation, policy framework and WA Police's Investigative Doctrine.

5.2.3 Risk assessment and information sharing

To prevent misidentification of victim-survivors and improve police responses, respondents emphasised the need for a strong focus on risk assessment and information sharing across all services operating in the family violence sector. For example, WA Police and Family and Domestic Violence Response Teams (FDVRT) currently collect information and evidence for family violence incident reports. Since coercive control manifests as a pattern of behaviour over time, it is rarely recognised, recorded and acted on as a result of these family violence incident reports. Even extreme coercive control may never lead to an incident that results in a police call out.

WA Police include nine behaviours in family violence incident reports that are aimed at identifying and documenting coercive control. All family violence incident reports are shared with FDVRT for review and appropriate action. The FDVRT staff collect information from family violence incident reports and analyse the reports using the Family Violence History Assist Tool (FVHAT) to identify ongoing patterns of behaviour and provide insights for effective risk identification and management. For these tools to be effective, it is critical that first responders, who are often police, understand and identify the coercive control behaviour indicators that can be recorded.

Some respondents strongly recommended specialist training for police officers, family and domestic violence workers, health care workers, housing officers, educators, finance advisors and child protection staff to identify the patterns of abuse that characterise coercive control. The Department of Communities is working with WA Police to co-design training for the FDVRT to be delivered by Department of Communities. The FDVRT is a partnership between the Department of Communities, WA Police and community sector family and domestic violence services. The collaborative approach of the FDVRT model includes:

- joint risk assessments using a common framework informed by police, child protection and specialist family violence workers
- responses targeted to client need, identified risk and unique case circumstances
- supported and streamlined client pathways through the service system
- coordinated responses between partner agencies.[50]

One model to consider for developing specialist training and knowledge sharing across the government and non-government family violence sector in WA is a coercive control community of practice. A community of practice is a group of people who share an interest in a topic or set of problems who come together to meet common goals. There are three key elements for a community of practice:

- the topic that leads to a community of practice being formed and a collective understanding of that topic
- the group of people and their set of shared values
- the output or practice representing the compilation of work and approaches on the topic discussed by the group.[51]

Communities of practice often focus on sharing practices, experiences, policies and reforms, and creating knowledge to advance best practice in a field. The concept of specialist family violence communities of practice is gaining traction in Australia and there are examples in other states and territories.[52] Our Watch is establishing national communities of practice on Change the Story, Local Government and Men in Focus.[53] The output from communities of practice can inform government policies and frameworks.

Another repeated suggestion from respondents was to adopt a 'family violence multi-agency risk assessment and management framework' that can support agencies to identify and respond to the highly nuanced and contextualised nature of coercive control. One respondent commented:

> **[C]apturing coercive control requires the ability to map perpetrators across time and across relationships, requires staff who can work across agencies and have the capacity to review family history, are trained to ask the right questions, help people record what has happened in the relationship, and educate v/s [victim-survivors] and perpetrators about what coercive control is.**

An FDV service provider also recommended adopting a family violence multi-agency risk assessment and management framework to ensure services effectively identify, assess and manage family violence risk and additionally advised that WA consult the Victorian model[54] as an example of best practice.

In WA, government agencies and community sector services may use the Family and Domestic Violence Common Risk Assessment and Risk Management Framework (CRARMF). First released in 2011 and revised for a second edition in 2016, the CRARMF includes guidance on screening, and the assessment, management and monitoring of risk information including exchange and referrals. In 2022, The Department of Communities committed to reviewing and refreshing CRARMF to ensure it remains up-to-date with best practice principles, resources and evidence. The current review of CRARMF presents an opportunity to embed a collective understanding of coercive control into risk assessment processes.

Data gathered in FVHAT relies on information available in family violence incident reports and victim-survivor answers to questions derived from CRARMF. WA Police told us that victim-survivor responses to CRARMF and family violence incident reports can be challenging to substantiate with evidence to support applications for restraining orders or criminal charges. WA Police suggested a possible model that could bridge the gap between collected information and its presentation in court. The model requires courts to recognise specific persons as expert witnesses. The expert witnesses could provide reports that articulate patterns of family violence based on the information contained in the FVHAT. This approach would provide the court with professional insights based on specialised knowledge of coercive control as an underpinning dynamic of family violence.

In this report we discuss the importance of systemic reform to address coercive control. Using the example of risk assessment and information sharing, the following steps show how a cooperative approach to systemic reform could work:

1. Community education and awareness helps victim-survivors articulate their experience of abuse to police and other responders, which is recorded in tools such as family violence incident reports and CRARMF.
2. Family violence tools reflect a collective understanding of coercive control that references the National Principles.
3. A community of practice develops specialist training for responders and best practice resources for using family violence tools.
4. Police and other responders (such as child protection, health and non-government organisations) receive specialist training to correctly identify perpetrators of coercive control and record their patterns of abuse in family violence tools.
5. Information collected in family violence tools can used as a basis for expert reports that may be presented in court to support applications for restraining orders or criminal charges.

5.2.4 Child protection responses

WACOSS highlighted a strong need for coordination, information sharing and cross-referral between child protection and family violence services, and for services to take a more nuanced and supportive approach to women and children who are victims of coercive control in child protection assessments. Women and children fleeing family violence can find that the combination of their lack of secure housing and the exposure of their children as witnesses to family violence become grounds for child removal. Fear of child removal is a significant barrier for women seeking safety and support.

Many submissions from victim-survivors spoke about the child protection system being used to perpetrate abuse. The Department of Communities receives thousands of reports of concern each year about the safety and wellbeing of children. Some of these reports are lodged vexatiously by perpetrators of family violence against their former partner (usually the mother of their children) as a way to further harm or increase access to the victim-survivor.

The Department of Communities advised that emotional abuse is the most investigated and substantiated type of child abuse, the leading reason that children are brought into care and a key determinant of the over-representation of Aboriginal children in the child protection system. We were told that improved understanding about family violence among workers, systems and legal responses would significantly enhance children's safety in the WA community. An improved understanding of coercive control would also support child protection workers to identify vexatious reports and would limit opportunities for child protection processes to be appropriated to enable further abuse. The Department of Communities recommended workforce development about coercive control for the following key elements of practice:

- informing child safety investigations and associated responses to children exposed to family and domestic violence
- dealing with systems-based abuse including vexatious reports of child abuse.

5.2.5 Culturally safe and community-led responses

Many respondents called for culturally safe and community-led responses to coercive control to support victim-survivors who face barriers accessing mainstream services. One respondent we spoke to advocated strongly for more support for victim-survivors from culturally and linguistically diverse backgrounds to feel safe talking about the abuse and seek help. Another respondent commented that mainstream services do not often reflect the life experience and reality for young people from culturally and linguistically diverse backgrounds. Respondents supporting people from culturally and linguistically diverse backgrounds emphasised the huge diversity within that cohort. They spoke of the need for community-led responses that would be able to contextualise coercive control within their own attitude and belief systems and use the language appropriate to their own community.

An ANROWS report found that access to a bilingual, bicultural family violence worker or support group was rare but life changing because it reduced isolation, established cultural safety and provided women with information needed to make informed decisions.[55] However, respondents also advocated for cultural diversity training across the board for police and service providers so that all organisations are culturally responsive and flexible because some women may not wish to access specific multicultural services. The same ANROWS report recommended providing options for women to access mainstream as well as specialist multicultural family violence services.[56]

Culture is the core of Aboriginal society and provides the foundations for community life in Aboriginal Australia.[57] One respondent said, 'we still practice lore and culture and know our place in that'. Aboriginal law and culture have a primary and positive role in addressing family violence.[58] As expressed in WA's *Aboriginal Empowerment Strategy: Western Australia 2021–2029*, to support and promote culture, government agencies are to value, recognise and celebrate Aboriginal peoples' cultures, languages, relationships to country, knowledge and heritage.[59] A significant amount of work, including community consultation, has been completed to develop the *Aboriginal Family Safety Strategy 2022–2032 (AFSS)*, which sets out an integrated and coordinated approach to Aboriginal family safety, which focuses on culturally safe and community-led responses.

5.2.6 Early intervention for perpetrators

Submissions consistently raised the need to engage more and earlier with perpetrators. We also heard that early intervention with perpetrators is an underdeveloped area in WA. The only options currently are men's behaviour change programs, and these are small in number. Entry to such programs is generally limited to perpetrators who are physically violent or who have been charged with family and domestic violence offences. No avenue exists to identify and support perpetrators who engage in coercive control but who are not physically violent.

We heard that perpetrators need access to longer-term, wraparound services, incorporating casework to address factors such as drugs and alcohol, homelessness, loss and grief, mental health and learning about healthy relationships. One respondent mentioned that 'unless perpetrators have the opportunity to practice new skills and the support to implement new strategies, they will soon forget what was learned and revert to more familiar behaviours'. Some respondents commented that participation in a behaviour change program must be mandated since it is unlikely that perpetrators would self-elect to attend, for example: 'Men don't engage in MBCPs (mens behaviour change programs) unless forced but are not in the best space to change when they are forced to participate … but it can be the start of the process'.

A regional FDV network recommended a Victorian program called Alexis. The Alexis program includes the casework approach for perpetrators, which focuses on the behaviour but also on support provided to those leaving the home or on issues that are driving the violence. Social workers are stationed with the police and are allocated to support both the perpetrator and victim-survivors. The program is not a behaviour change program, but participants can be referred into a behaviour change program.

5.3 Recommendations

We make the following recommendations to the Western Australian Government:

4	Establish a community of practice or similar network group to enable the government and non-government family violence sector to share expertise on responding to coercive control, and implement a mechanism for this network to feed into government initiatives.
5	Provide ongoing practical training for police officers at the local level about what coercive control is and how to identify and consider the personal, cultural and community factors involved for individual victim-survivors and perpetrators, in order that police officers can identify the warning signs.
6	Embed collective understanding of coercive control that aligns with the National Principles in the Collective Risk Assessment and Risk Management Framework.
7	Review how coercive control presents and how it affects victim-survivors in all data collection and information-sharing models to promote consistency across agencies.
8	Undertake further policy work on using family violence expert witnesses and reports in court proceedings.

Chapter 6: I seek protection: Coercive control and family violence restraining orders

The most commonly used legal response to family and domestic violence is a family violence restraining order (FVRO). The purpose of an FVRO is to 'restrain people from committing family violence … by imposing restraints on their behaviour and activities'.[60] As one respondent succinctly put it, the FVRO is the main 'legal mechanism aimed at ensuring a victim-survivor's immediate and ongoing safety'.

Applications for FVROs are made under the *Restraining Orders Act 1997* (WA) (the *RO Act*). Therefore, as part of this consultation process, we asked whether the *RO Act* adequately addresses the nature and impact of coercive control, and whether FVROs adequately capture patterns of harm in their application (through the granting of orders and the prosecution of breaches). We received many responses about experiences of attempting to seek protection through applying for an FVRO or supporting someone else to apply for an order. We address these submissions below under the topics of the provisions of the *RO Act*, the process of applying for an FVRO, the role of the police in this process and the responses of perpetrators to FVROs.

6.1 The *Restraining Orders Act 1997* (WA) provisions

The term 'family violence' is defined in s 5A of the *RO Act*. Section 5A also provides a non-exhaustive list of behaviours that may constitute family violence, some of which are examples of behaviours often provided when discussing coercive control, such as denying a family member financial autonomy, withholding financial support and preventing a family member from making or keeping connections. The definition largely aligns with the definition of family violence within the *Family Law Act 1975* (Cth) and is intended to capture a more contemporary understanding of family violence as a pattern of abuse.[61]

Other specific provisions of the *RO Act* mentioned in submissions included ss 10B to 10H in pt 1B. Section 10B provides principles to observe when performing functions related to FVROs; these are guiding principles that set out how family violence should be understood and responded to through the FVRO process. They include statements such as:

- Perpetrators of family violence are solely responsible for that violence and its impact on others and should be held accountable accordingly.
- Complex emotional factors arising from coercion, control and fear often makes it difficult for victims of family violence to report the violence or leave a family relationship in which family violence is being committed.
- Factors such as culture (including Aboriginal and Torres Strait Islander culture), language, sexual orientation, gender identity, age, disability and remoteness of location also impact a victim's decision to report family violence or leave a family relationship in which family violence is being committed.
- Perpetrators of family violence might seek to misuse the protections available under this Act to further their violence, and there is a need to prevent that misuse.

Section 10D of the *RO Act* sets out when the court may issue FVROs. This section refers to the definition of 'family violence' and states that the court can make an FVRO if satisfied that the respondent has committed family violence and is likely to do so again in the future. Some respondents suggested that s 10D should refer explicitly to coercive control or to a pattern of behaviour. Section 10F sets out matters to be considered by the court generally, including accommodation needs and previous criminal convictions; it also covers the need to ensure protection for victim-survivors and the wellbeing of children. Additionally, it sets out 'the need to prevent behaviour that could reasonably be expected to cause the person seeking to be protected to apprehend that they will have family violence committed against them'. One respondent noted that this section places 'a positive obligation upon the court to act protectively'.

Some respondents said that the principles for consideration in ss 10B to 10H of the *RO Act*, in combination with the definition set out in s 5A, do provide the court with power to address coercive control. While some respondents were satisfied with the current scope of the *RO Act,* most agreed that in its current form, the legislation 'does not adequately reflect that coercive control is an overall pervasive course of conduct', and that it is therefore limited in being able to address the nature and impact of coercive control. We heard that missing from the language and provisions of the *RO Act* is 'an explicit reference to the patterned nature of coercive control and its damaging impacts on victim-survivors'. Legal Aid Western Australia suggested including a 'specific provision referring to the patterned nature of family violence'. A key recommendation made by many respondents was that the *RO Act* should be amended to include a definition of coercive control and provide examples of relevant behaviours, such as reproductive control, surveillance and monitoring, and depriving someone of access to medications or medical aids.

The views we heard are similar to those expressed by the Women's Safety and Justice Taskforce in Queensland. One of the findings in *Hear Her Voice* was that more could be done within the *Domestic and Family Violence Protection Act 2012* (Qld) (the equivalent of WA's *RO Act*) to consider the context of the relationship as a whole, identify power and control, and recognise the cumulative impact of patterns of behaviour over time.[62] No single agreed legal definition of coercive control exists, but any new definition of coercive control within the *RO Act* should have regard to the National Principles, especially National Principle 1: Common Features. ANROWS notes that responding to coercive control effectively requires a consistent definition of family violence across legislative and policy settings, Australia-wide.[63]

We also heard that some respondents would prefer broader and perhaps more explicit definitions of the terms 'family relationship' and 'family member' than currently set out in s 4 of the *RO Act*. We heard that coercive control is common in contexts outside those of recognised family relationships, such as a person with disability's formal and informal care arrangements, and refugee and migrant women's experiences of coercive control within their community. Thinking about the scope of terms such as 'family relationship' and 'family member' is essential for people whose family relationships do not align with colonial, heteronormative constructions of family. For example, Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse backgrounds have many different types of relationship and family structures. LGBTQIA+ people may have closer and more interdependent relationships with their chosen family members, who may replace their family of origin in providing emotional connection, regular communication and support.

6.2 The family violence restraining order process

Respondents to this consultation said that many issues for victim-survivors seeking protection centre on the FVRO process—as opposed to the legislation—including applying for an order, having an order granted by the court, or having a breach of the order recognised by police. One respondent explained that 'whilst amendments may assist … they are not likely to have a major impact in practice, in the absence of a range of other strategies'.

6.2.1 Navigating the system

We heard that just the act of making an application places significant pressure on the victim-survivor. One respondent said that

> **taking such action relies on the victim to be mentally strong and capable enough to show up to court to make an application and go before a judge. The lived experience of this is incredibly traumatic, yet without the FVRO in place, the police are powerless to stop the behaviour … there needs to be another way of intervention without relying on the victim, often in the middle of an abuse cycle, to have enough self-confidence to take action.**

Respondents also told us that the process of applying for an FVRO may not be culturally appropriate, especially for Aboriginal women 'who suffer discrimination both for being Indigenous and for being a woman' and who do not view courts as a safe place for them to attend.

In addition to issuing a police order, WA Police may apply for an FVRO on behalf of a person seeking protection through an FVRO.[64] In practice, WA Police apply for few restraining orders. In 2018–2019, WA Police filed only 43 applications, accounting for approximately 0.35% of all FVRO applications.[65] The Law Reform Commission of Western Australia in its 2014 report recommended sufficient funding to WA Police to ensure police officers can make applications actively and regularly for family and domestic violence protection orders (equivalent to FVROs) on behalf of a person seeking to be protected.[66] In its 2020 report *Opening Doors to Justice*, the Community Development and Justice Standing Committee of the Western Australian Parliament further recommended that WA Police actively seek instructions from a victim of family and domestic violence to make an FVRO application on a victim's behalf when attending a family and domestic violence incident.[67] The Committee also recommended that WA Police are appropriately trained and sufficiently resourced to take on this role.[68]

The *RO Act* also provides that a person may apply on behalf of another person in circumstances set out in the regulations.[69] To date, no regulations have been enacted through the Restraining Orders Regulations 1997 (WA). However, as part of changes introduced in 2020, persons seeking protection can apply for an FVRO online through an approved legal assistance provider. This measure enables victim-survivors to apply for an FVRO without attending court, while also ensuring victim-survivors receive legal assistance and the possibility of warm referrals to other support services as needed.

Respondents told us that FVRO processes need to be explained more clearly to applicants, and that the application forms could be improved to support victim-survivors to seek protection after experiencing coercive control. For example, we heard that the application and affidavit forms do not support identifying a pattern of behaviour: '[T]here are no questions that seek to explore patterns of behaviour, or their impacts on applicants, or that would otherwise facilitate the disclosure and unpacking of coercive control'. Section 28 of the *RO Act* allows (but does not require) an applicant to submit an affidavit in support of their application. The affidavit template records individual incidents or specific acts of violence rather than the relationship as a whole. We heard that because the affidavit template asks applicants to set out the last three *incidents* of violence they have experienced, victim-survivors may be unable to articulate the extent of the conduct experienced and the reality of their situation.

Once an applicant lodges their FVRO application, they must face appearing before a magistrate and explaining that they have in fact experienced family violence and need protection. We heard that while the *RO Act* provides scope for courts to make an order for coercive control, 'there can be widely divergent outcomes in practice for applications made on these grounds'. As discussed in Chapter 4 of this report, victim-survivors are often unable to recognise and articulate what has happened to them. We heard that for a court to identify coercive control as a family violence behaviour under the *RO Act*, there is some reliance on 'the victim's capacity to recognise their abuser's controlling tactics and narrate it to the police and the courts'.

Pressure is placed on victim-survivors to provide the right kind of information to substantiate their application. We heard that 'adequately documenting a perpetrator's pattern of behaviour and use of coercive control requires time and engagement with a skilled practitioner'. One victim-survivor said, 'I doubt even today, with the clarity I now have born of maturity and insight that I could effectively convince members of the justice system that I was a victim of cruel abuse because this type of abuse by nature is easy to refute, explain or excuse'. An application will be dismissed if the magistrate does not find any merit in the application, so a victim-survivor risks not obtaining an order if they cannot adequately articulate their experience. Because of the subjective and contextual nature of coercive control, it is important to focus on the harm caused to the victim, rather than on the behaviour itself. Some behaviour, seen as an isolated incident outside the context of a pattern of behaviour, may seem trivial or inconsequential, or be difficult to identify as family violence. We also heard that coercive control can be hard to identify when there are mutual applications for FVROs.

6.2.2 FVRO conditions

Respondents reported that the ability for FVROs to respond adequately to coercive control could be improved by considering the types of conditions imposed. For example, standard conditions restricting contact and proximity may not adequately address financial control and social restriction. One respondent maintained that 'the terms of an FVRO, as set by a court, do not generally restrict behaviours that could amount to being coercive control. Rather, they are reliant on restricting communication or distancing the victim from the perpetrator, thereby impeding opportunity for coercion or control'.

A suggested alternative approach is to prohibit coercive control (coercive and controlling behaviours) as a default term of a restraining order, so any behaviour constituting coercive control could result in a breach. However, WA Police have said that this type of condition may present challenges for police because these behaviours are contextual and may vary between relationships, and perceptions of what constitutes these behaviours may also vary. Other relevant terms that are more specific and possibly more straightforward to enforce could include terms that prevent the removal of money or assets, terms that prohibit posting about family law or parenting issues on social media, or terms that address gaslighting behaviours.

Respondents raised concerns about how conduct agreement orders are granted in some circumstances. Section 10H of the *RO Act* provides that a respondent may agree to a conduct agreement order at any stage of FVRO proceedings. A conduct agreement order does not constitute an admission by the respondent, and the court can grant one without being satisfied there are grounds for making an FVRO. We heard that granting a conduct agreement order can operate against the interests of the person seeking protection and remove their ability to seek unique and tailored orders at a final hearing. We also heard that conduct agreement orders may be granted in circumstances where the applicant does not consent to the order or have an opportunity to proceed to a final hearing. An order may be granted at directions and mentions hearings, in which case the victim-survivor does not have the opportunity to introduce evidence or present an application about their safety needs.

Several respondents noted circumstances in which the perpetrator offers one and the victim-survivor or their legal representative raises strong objections, but the magistrate grants the order in line with the respondent's proposal anyway. In some cases, we heard that perpetrators had proposed a conduct agreement order for a short period (e.g. 10 months) when an FVRO might have been made for a longer period (e.g. two years). Respondents suggested that conduct agreement orders should only be granted if there is agreement by all parties, both to the order being made and to the terms of the order, including its length. Some suggested that conduct agreement orders should be made for a minimum period of two years.

6.2.3 Legal and specialist support

A number of respondents stressed the need for applicants to receive legal assistance and support. We heard that it was difficult for victim-survivors to provide enough evidence, particularly when they are self-represented. The Chief Magistrate noted that for the justice system to be able to respond adequately to all circumstances of coercive control, applicants really need the support of a lawyer:

> **[A]n applicant seeking an ex-parte interim order [without the respondent in attendance] based solely on subtle forms of coercive control, may not come to court with the appropriate evidence to establish family violence on an ex-parte basis. For the justice system to be able to respond adequately to all circumstances of coercive control, applicants really need the support of a lawyer and time to prepare sufficient evidence in order to obtain an order.**

Time pressure exists for victim-survivors who are making applications, court staff, support services and judicial officers, resulting in 'very limited/insufficient time to allow patterns of coercive control, which are usually highly contextual and occur over multiple incidents and lengthy time periods, to be disclosed, recorded and explored through the FVRO process'.

In contrast, FVROs are more easily obtained in instances of physical violence or the threat of physical violence. A victim-survivor told us 'I feel I could turn to the police/courts if I was being physically abused but feel that I would be laughed at for all other abuse that I claim I endure'. Another said they felt that 'abuse beyond the physical is largely unrecognised in Australia's justice system'. Respondents described the focus on physical harm as a 'hierarchy' of family violence that prioritises physical violence. We heard that currently it would be difficult for an applicant to obtain an FVRO based solely on experiencing coercive control. For example, one respondent explained, 'it is not normally the case that an application is based solely on coercive control. Most are based on physical harm or an apprehension of physical harm even though this may be part of the coercive control'. Another said, 'We heard that it can still be difficult in some situations for victim-survivors to make a successful application for an FVRO even when they have experienced physical harm, and that the difficulty increases when the application is based solely on coercive control'. Moreover, one respondent put it that 'where there is no physical violence and there is an allegation of coercive control, some magistrates find it difficult to find there is "*family violence*" within the current law'.

6.2.4 The role of the magistrate

We heard from respondents, about the experiences of their clients (who were victim-survivors) 'receiving a grilling' from the magistrate or having their applications for an FVRO based on coercive control dismissed. For example, in a case study provided by a respondent, the presiding magistrate commented to the victim-survivor that 'disagreements are common … in the usual course of marriage'. In another case study, a person who had entered an arranged marriage and whose husband had threatened to kill her was asked, 'your husband is saying he's going to divorce you, why do you need the FVRO? The relationship is ending, why do you need an FVRO?' One victim-survivor described the following:

> **The Magistrate reduced me to tears having to explain why I was afraid, when my ex-husband had not shown physical violence to me. I cried as I explained he had been threatening me, and I was scared of what he could do. The Magistrate said, "I could get hit by a bus tomorrow but it doesn't mean I won't go outside.**

Another respondent acknowledged that while victim-survivors may understand that to obtain an FVRO they must demonstrate that they are fearful, they cannot always 'prove why they are fearful in a way that fits traditional definitions of family violence, or within the scope of the examples provided in the Act [the *RO Act*]'.

It must be acknowledged that magistrates are highly skilled and review many hundreds of FVRO applications. They face significant resourcing pressures and high caseloads and must apply the legislation to the applications they are presented in court. Through the consultation, we heard about magistrates who were understanding and sensitive to the victim-survivor's story and needs, demonstrating a clear understanding of the nature of coercive control and various contextual considerations, such as the applicant's cultural background. However, we also heard that misunderstanding remains among the judiciary regarding what comprises coercive control, how it presents and how risk intensifies when a victim-survivor leaves a relationship or seeks protection.

6.2.5 Tools and training

In hearings for FVROs the magistrate may inform themself on any matter in a manner they consider appropriate.[70] However, the Chief Magistrate noted that, as a general rule, it is much harder to establish coercive control because it can be a far more subtle form of family violence. One respondent suggested the

> **development of a tool to assist in documenting coercive control across the spectrum, from known covert indicators through to risks and short, medium and long-term impacts on victim-survivors, would assist in substantiating abuse and presenting information in a concise manner appropriate for courts and FVRO applications.**

During consultation, we heard of one victim-survivor using a perpetrator pattern mapping tool she had prepared with a family violence service provider in an interim FVRO hearing to assist her present information on her experience of coercive control to the magistrate. The tool helped the victim-survivor explain the pattern of abuse, and she received the interim FVRO. In section 5.2.3 we talk about how risk assessment and information sharing tools may work to document patterns of abuse. Consideration should be given about how such tools can be adapted to support victim-survivors in legal settings. We note that tools to document perpetrators patterns of abuse, such as the Safe and Together model are being used by organisations who support victim-survivors in WA. Further consideration should be given to how information gathered using such tools can be adapted to assist victim-survivors collect information for use in legal settings.

For any such tool to work at a system-wide level requires shared understanding from all participants on how coercive control presents and its impacts on victim-survivors. The Centre for Women's Safety and Wellbeing recommended 'ongoing and compulsory education for all people working in the justice system (civil and criminal)—including developing an understanding of the centrality of coercive control to domestic and family violence—so they can identify and safely respond to domestic and family violence'. The Australian Institute for Judicial Administration (AIJA) recently received funding from the Commonwealth Attorney-General's Department to undertake consultation and promotion of the *National Domestic and Family Violence Bench Book*[71] in relation to content on coercive control. The AIJA has also produced resources to facilitate judicial education about coercive control.[72] In WA, Legal Aid Western Australia has considerable experience and materials to support training for legal professionals on coercive control and family violence more generally. Training should not be limited to the court and judicial sector. The Centre for Women's Safety and Wellbeing also noted 'that improved understanding of coercive control across the domestic and family violence response system would better enable those working in the justice system to implement and enforce existing legislation more effectively'.

6.3 Breaches of family violence restraining orders

Police play a significant role in the restraining orders process, since they are often the interface between a victim-survivor and their interactions with the legal system, including applications for and breaches of family violence restraining orders. We heard that some victim-survivors have positive experiences with police. One said 'I will say that WAPOL [WA Police] have been fabulous though. The police took the incident very seriously and urged my mother to apply for a FVRO'. Other respondents felt that misunderstandings remained regarding the dynamics of coercive control, which have led to missed opportunities to intervene, as explained in one submission:

> **[C]urrent gaps in understanding of coercive control among police responders means that this type of behaviour is either not captured, or it is minimised. It is not uncommon for an incident which does not result in physical violence to be dismissed as 'just a domestic' with no targeted questioning or further investigation into contributing factors that could reveal a deeply rooted, insidious pattern of abusive behaviour.**

Section 62A of the *RO Act* requires police officers to investigate whether family violence is being committed if they suspect that a person has committed a criminal offence or has put the safety of a person at risk. Respondents were concerned that in the absence of observable physical harm or serious criminal offence, police were less likely to investigate. A respondent said, '[the] attitudes of police are reported as variable, with some survivors describing lack of empathy toward their situations particularly where there is no physical violence'. One respondent described the ramifications of s 62A: 'a police officer's protective obligations arise only when a reasonable suspicion is formed regarding a criminal act or immediate/imminent danger … [and that] focus remains upon the immediate situation, rather than the inherent pattern of behaviours that occurs in coercive control'.

An area of concern for many respondents was how police manage breaches of FVROs. According to one respondent, 'police nowadays are generally more sensitive to the needs of domestic and family violence victim-survivors, however, the enforcement of FVROs remains incomplete and problematic'. Key issues raised were the timeliness of police when following up reports of breaches and how police charge breaches. We heard that reports of breaches are not always followed up within an appropriate timeframe, particularly if the breaches are not related to the use of physical violence or property damage. In the instance that a victim-survivor has obtained an FVRO with general terms—such as the perpetrator being ordered 'not to behave in an intimidating, offensive or emotionally abusive manner'—we heard that it may be difficult for police to act and lay charges because what is considered intimidating, offensive or emotionally abusive 'can be highly contextual and dependent on an individual person's situation and circumstances', and the police would have to examine the specific acts in the context of the whole relationship. We heard that because of this, victim-survivors may be deterred from reporting a breach of an FVRO, because 'they may not feel believed or may feel less safe in doing so'.

Several respondents told us that police may not charge an alleged breach because it is not viewed as a 'serious' breach. This may happen because incident-based policing tends to view incidents 'in isolation from the broader pattern of coercive control'. A respondent reported that when the response to FVRO breaches is inadequate, 'the lack of consequences for breaching what should be a significant order emboldens perpetrators to continue their cycle of violence against the victim and they resort to more coercive and manipulative forms'.

We heard that victim-survivors experience inconsistent approaches to dealing with multiple breaches. Victim-survivors may present with complaints about two or three breaches, or hundreds of breaches. The police can charge for each breach or lay a single charge, no matter how many breaches occurred, or lay a small number of charges to represent a larger number of individual breaches (as a 'representative sample'). If the courts are hearing only one or two breach charges, then courts may not view the behaviour as serious, harmful or indicative of risk. Respondents submitted that it was common for multiple breaches of an FVRO to be collapsed into one charge, indicating that 'the pattern of coercive and controlling behaviours is not as visible and/or the criminal history of some perpetrators is misleading'.

Some victim-survivors had positive experiences of how police handle breaches, especially when police recognised the serious nature of coercive control. Victim-survivors felt empowered by police actions 'particularly when they held the perpetrators accountable and made it clear that they viewed breaches as serious even when they did not involve physical violence'. Respondents suggested developing guidance for police about how to treat multiple breaches and patterns of behaviour by introducing specific policies.

A point of friction revealed in the submissions is the difference between the response a victim-survivor may need from the police to feel that their experiences and the harm they have suffered is understood and the response required to prosecute criminal charges. We heard that police may immediately charge a respondent with breaching an FVRO if they attend the incident as it happens, but if a breach is reported after the incident, investigating and laying charges can take time.

One respondent commented that

> **a criminal investigation for a breach of a FVRO is commenced when a respondent violates a restricted condition and the protected person alerts police. At the point of criminal prosecution, police provide material facts to meet the elements of the offence rather than defining the impact on the individual.**

Victim-survivors may feel that their voice and experience become lost in criminal proceedings that focus on the elements of a charge, evidence rules and meeting the burden of proof, rather than on how it feels and what it looks like to live with coercive control. One respondent stated that 'challenges arise from the tensions between a criminal justice system that requires procedural fairness and proof beyond reasonable doubt of individual acts, and the nature of family violence and coercive control, which require a holistic, contextual and pattern-based approach to acts'.

6.4 How perpetrators respond to family violence restraining orders

It is important to acknowledge that obtaining an FVRO does not always guarantee safety for victim-survivors. We heard that while an FVRO can curtail family violence in some circumstances, in other cases the violence may increase. One respondent said, 'where violence continues after an FVRO has been made, it is likely to escalate both in severity and risk to the protected person'. A victim-survivor recounted their experience, in which 'there were threats made [by the perpetrator] that the restraining order was just a piece of paper, and he could hurt me at any time'.

The person using violence may not accept that they have engaged in family violence, even after an order has been granted. One respondent mentioned that 'many people who shout at their partner and intimidate them so they are fearful to exercise their own thoughts and actions do not believe that they are engaging in family violence'. Some people who use violence may respond to FVROs by moving to technology-facilitated violence, legal systems abuse and financial abuse (for example, draining joint bank accounts or mortgage redraw facilities). Other people who use violence also use the family violence order scheme itself to harm victim-survivors further.

We heard that while an FVRO itself places conditions on the respondent, it 'does not hold a perpetrator of any forms of family violence to account for their actions, or for the effects that their behaviours have had on the victim'. In contrast, the FVRO *process*, which involves interactions between people who use violence and people who respond to violence, presents an opportunity for police and judicial officers to speak to perpetrators directly about their behaviour, including what constitutes family violence and coercive control and how they play a part in it. This opportunity to tell the individual their behaviour is inappropriate could encourage them to take responsibility for their behaviour. One submission suggested that once an objection to an FVRO has been filed, a magistrate could explain to the respondent what family violence is and what coercive control is, so they understand that even in the absence of physical violence it is possible for a court to find that family violence has occurred. Another respondent said that even if the victim-survivor leaves the relationship and is protected by a restraining order, the person who used violence is not held accountable for their actions unless they breach the order. FVROs thus offer an opportunity for accountability; however, currently, some people who use violence are emboldened by the lack of consequences for their actions, particularly if breaches are not prosecuted.

Finally, it must also be acknowledged that not everyone who experiences family violence wants their relationship to end, nor does leaving a relationship necessarily equal an end to experiencing violence. We heard that many people wish to remain in their relationship but want the violence to stop. We also heard from some respondents that solutions encouraging separation, or punishing people who stay together, are not helpful for building healthy relationships. For some people, separating from their partner may also create an untenable separation from their family or community. For others, the person using violence may be a member of their family or community, rather than their partner. One respondent asserted how 'existing family violence legislation is largely predicated on separation … and a punitive criminal justice response. This approach may not be culturally safe or appropriate for many Aboriginal and culturally and linguistically diverse (CALD) people'.

6.5 Recommendations

We make the following recommendations to the Western Australian Government:

9	Amend s 5A of the *Restraining Orders Act 1997* (WA) to reflect the patterned nature of coercive control and its cumulative effect on victim-survivors. Amendments should align with the National Principles.
10	Review definitions of the terms 'family relationship' and 'family member' in s 4 of the *Restraining Orders Act 1997* (WA) to broaden the range of relationships included.
11	Consider how the powers granted in s 24A of the *Restraining Orders Act 1997* (WA) could be applied more effectively in practice (e.g. police and other support persons applying more regularly for family violence restraining orders on behalf of victim-survivors).
12	Develop standard conditions on family violence restraining orders that specifically target coercive control.
13	Use a co-design process to review the family violence restraining order application form and accompanying affidavit to support applications for restraining orders better on the basis of coercive control.
14	Provide resourcing and support to Court and Tribunal Services (Department of Justice) to train administrative staff on family violence.
15	Provide resourcing to judicial bodies so judicial officers can participate in ongoing training about identifying and responding to coercive control in trauma-informed ways.
16	Develop a tool to document coercive control that victim-survivors and support persons can use to collect information for all family violence–related legal processes, including, family violence restraining order applications. Provide resourcing to the family violence service sector and other responders for training on how to use the shared tool. Consider how any tool interacts with risk assessment and information sharing tools used by government agencies.
17	Resource the family violence service sector to develop workforce understanding of restraining order processes.
18	Review police guidelines for investigating family violence callouts applying for family violence restraining orders, serving family violence restraining orders, following up on breaches and charging of breaches, including how to classify and charge individual breaches in the context of coercive control.
19	Undertake further policy work on the *Restraining Orders Act 1997* (WA) to develop a legislative framework for managing breaches of restraining orders that reflect patterns of abuse.

Chapter 7: I want justice: Coercive control in the legal system

Many victim-survivors spoke about their desire for justice and for the person who caused them harm to be held responsible for their actions. An expectation exists in the community that our legal system will provide safety to those who have been harmed and ensure accountability for those who have caused harm. Victim-survivors feel disheartened by legal processes that do not provide the acknowledgement or outcome they expect and that are difficult to navigate. In relation to the legal system appropriately identifying and responding to coercive control, an overarching theme from the consultation is that the most significant challenges are 'not the state legislative provisions, but the level of understanding and awareness of coercive control (and family violence more generally) of key participants in the legal/justice system, and the need for supporting training, resources and systems'. In this chapter, we discuss the criminal law system, the family law system and how perpetrators use both systems to continue their control and abuse.

7.1 The criminal law system

Victim-survivors expressed frustration at how different kinds of violence (e.g. violence committed against strangers, rather than family members) can receive a different responses: 'I was told … in no uncertain terms, that without me in the marriage/home there would be no more violence yet my husband's violence continued towards me, towards the children, towards his new partner and towards strangers'. A victim-survivor told us,

> **I truly can't explain how discouraging and defeating it is to see someone who isolated you from everything you know, physically and mentally abused you so extremely, to simply walk out of the court room with minimal consequence and back into the community as though you weren't important and your life didn't matter. Only to reoffend and abuse another woman.**

The Western Australian Government has implemented several legislative reforms to improve responses to family violence within the criminal law system. The *Family Violence Legislation Reform Act 2020* amended the *Criminal Code*, *Evidence Act 1906*, *Sentencing Act 1995*, *Sentence Administration Act 2003*, *Bail Act 1982* and *Police Act 1892* to 'increase responsiveness of the justice system by making it easier and less traumatic for victims to obtain protection from violence'.[73] Key reforms include:

- introducing a new criminal offence of 'suffocation and strangulation' (s 298 *Criminal Code*)
- introducing a new criminal offence of 'persistent family violence' (s 300, *Criminal Code*)
- introducing penalties for threats committed in circumstances of aggravation
- enabling the court to declare someone a serial family violence offender
- requiring police officers and other police staff to record every alleged incident of family violence
- enabling evidence of family violence to be introduced in criminal proceedings when relevant to issues before the court
- enabling judicial directions to be given about family violence in criminal proceedings.

As part of our consultation process, we asked respondents to consider the persistent family violence offence, the criminal offences more generally and the *Evidence Act 1906* (WA) reforms. We heard mostly positive feedback about the reforms resulting from the *Family Violence Legislation Reform Act 2020* (WA) during consultation. However, respondents felt that the patterned nature of coercive control is still inadequately recognised in criminal law responses to family violence.

7.1.1 'Persistent family violence' and other criminal offences

The offence of 'persistent family violence' (*Criminal Code* s 300) applies when three or more family violence offences have been committed against a single victim within a 10-year period. The offence captures acts of family violence committed against someone with whom the offender is in a 'designated family relationship'. The Explanatory Memorandum tabled in the Western Australian Parliament stated:

> **The offence is punishable by a maximum of 14 years' imprisonment if prosecuted on indictment, and 3 years' imprisonment if dealt with in a summary court. The offence is designed to recognise that family violence often forms a pattern of offending against a victim, and that the persistent nature of the offending means the victim may find it difficult to recall specific details of each individual act of violence perpetrated against them, or to provide corroborating evidence to assist in particularising the dates and circumstances of this offending.[74]**

The offence records diverse types of conduct, ranging from minor to serious, where the conduct is persistent. Specific offences are defined as family violence offences in s 300 and include:

- *Criminal Code* –
    - 221BD Distribution of an intimate image
    - 298 Suffocation and strangulation
    - 301 Wounding and similar acts
    - 304(1) Act or omission causing bodily harm or danger
    - 313 Common assault
    - 317 Assault causing bodily harm
    - 317A Assault with intent
    - 323 Indecent assault
    - 324 Aggravated indecent assault
    - 338B Threats
    - 338C Statement or act creating false apprehension as to existence of threat or danger
    - 338E Stalking
    - 441(1)(b) Acts injuring property, when unlawful etc
- *Restraining Orders Act 1997* –
    - s 61(1) or (1A) breach of restraining order.

Respondents told us that the ability of the persistent family violence offence to respond to coercive control is limited for two key reasons: the types of relationships it covers and the types of behaviours it captures. The offence captures acts of family violence committed against someone with whom the offender is in a 'designated family relationship'.

Section 299(1) of the *Criminal Code* provides a definition of the term 'designated family relationship' for the purposes of the persistent family violence offence, that being a relationship between two people who:

- are, or were, married to each other, or
- are, or were, in a de facto relationship with each other, or
- have, or had, an intimate personal relationship with each other.

Section 299(2) of the *Criminal Code* further defines 'intimate personal relationship' as two people who:

- are engaged to be married, including betrothal under cultural or religious tradition, or
- date each other, or have a romantic involvement, whether or not a sexual relationship exists.

The offence can therefore only be applied to categories of relationships equivalent to intimate partner relationships. The definition of family relationship is also not as broad in scope as the definition of 'family relationship' in the *RO Act*. As discussed in section 6.1, respondents have expressed that we must widen our understanding of family relationships in which coercive control occurs for our systems to provide appropriate responses.

The *Family Violence Legislation Reform Act 2020* (WA) inserted the same definition of 'designated family relationship' and 'intimate personal relationship' into s 4 of the *Sentencing Act 1995* (WA), s 4 of the *Sentence Administration Act 2003* (WA) and s 3 of the *Bail Act 1982* (WA). It was intended that the new definitions of 'designated family relationship' and 'intimate personal relationship' would provide consistency across each of these Acts, thereby supporting implementation of a range of reforms, including electronic monitoring reforms. However, pt 13 div 4 of the *Sentencing Act 1995* (WA) defines 'family relationship' as having the meaning given in the *RO Act* s 4(1), which is broader than the meaning of 'designated family relationship' discussed in this section of the report. This creates inconsistency regarding what relationships are included for distinct functions under the *Sentencing Act 1995* (WA).

Respondents also provided feedback about the range of offences captured under the persistent family violence offence. The offence does not capture all family violence behaviours—it is designed to cover a range of existing offences that are committed over time. The prescribed offences capture some of the behaviours and harm that may be seen in a relationship characterised by coercive control. However, we heard that the offence remains focused on physical violence and associated harm, for which evidence is easier to provide. Some respondents felt that the offence does go some way towards recognising that family violence involves a course of conduct, but that the offence does not specifically target coercive control behaviours and is based on a small number of incidents rather than a pattern of behaviours.

One respondent told us that charging the persistent family violence offence 'does not target coercive control behaviours' because the charge could comprise, for example, three assaults occasioning bodily harm or any other combination of the prescribed offences. They stated that 'while coercive control behaviours may be present in the background to the perpetration of family violence, the 'acts of family violence' included as 'prescribed offences' in the section 300 offence are limited to offences already recognised in the *Criminal Code*'.

Respondents told us more generally that existing criminal justice system responses to coercive control are not adequate because family violence is dealt with as discrete incidents rather than as a pattern, limited understanding exists of victim-survivor's experiences of coercive control and no consensus has been reached regarding what constitutes coercive control. We heard that the persistent family violence offence cannot necessarily identify patterns of harm any more effectively than other criminal offences. One respondent observed,

> **while the persistent family violence offence recognises the cumulative effect of physical and threatening acts of violence, it relies on prescribed offences which predominantly fall within the 'violent incident model' of police response. This model links harm to physical acts of violence instead of psychological harm, which is more aligned with coercive control. There is no evidence to suggest the acts which may be alleged as offences collectively to be persistent FV [family violence] are identifying patterns of harm in any greater degree than other FV offences if identified, or prosecuted independent of each other.**

We received many submissions that mentioned how using an incident-based approach does not support identification of or response to coercive control. Some respondents also told us that existing pattern-based offences are more challenging to prosecute and can be underused—particularly the offences of stalking and threats, which respondents felt could be used more often in family violence situations. We heard that some respondents perceive these offences to be limited, as 'demonstrated by the very low charge and conviction rate for existing "pattern-based" offences, such as stalking offences'. One respondent described the following issues in successfully using pattern-based offences such as stalking:

- lack of awareness of the offence in the general community, including among family violence victim-survivors and workers
- lack of awareness of the offence by police
- low charge rates by the police
- low rates of matters that proceed to conviction in the courts
- difficulties in achieving convictions considered beyond reasonable doubt
- preferences to charge for individual offences rather than general stalking offences, particularly individual incidents that can potentially be proved beyond reasonable doubt.

7.1.2 Additional criminal offences related to coercive control

Apart from the persistent family violence offence, other existing offences in the *Criminal Code* capture behaviours that may be seen in relationships characterised by coercive control. For example, offences related to suffocation and strangulation (s 298), common assault (s 313), deprivation of liberty (s 333), stalking (s 338E), and threats (section 338B), among others. However, existing offences tend to address physical acts of violence, with or without physical harm or injury. Respondents told us that the justice system is limited in its ability to respond to non-physical violence, and therefore limited in its ability to hold people who use violence accountable for the harm they cause. One respondent said,

> **the victim-survivors I work with often feel as though they need to experience physical violence, and some have even remarked that the violence needs to be severe enough for there to be a response from police and the justice system. The victim-survivors do not feel supported by the system and often live in fear as they believe nothing can be done.**

One of the reforms included in the *Family Violence Legislation Reform Act 2020* (WA) is increased penalties for some offences in the *Criminal Code*—such as deprivation of liberty (s 333), suffocation and strangulation (s 298), threat with intent to gain (s 338A), and threat to kill (s 338A)—if they are committed in circumstances of aggravation. Section 221 (pt V) of the *Criminal Code* defines 'circumstances of aggravation' as circumstances in which (where the offender is an adult):

a) the offender is in a family relationship with the victim of the offence
b) a child was present when the offence was committed.

Where applicable, this provides greater statutory penalties if the offence is committed in a family violence context, and it may help to provide some measure of accountability for offenders who commit these specific offences.

Respondents felt that criminal law does not adequately recognise coercive control. One respondent noted that 'the many different forms and manifestations of family violence are insufficiently recognised within the criminal justice system'. We heard from respondents that introducing a new offence designed to capture patterns of behaviour is one way that coercive control could be more effectively recognised in criminal law. This option is discussed in Chapter 8. We also heard that systemic change is required to improve the criminal law's response to coercive control: 'improvements in recognition and responses to patterns of violence, rather than incidents of violence, will only be made by systemic and social cultural change, driven by clear policy, education and information to all persons engaged in the criminal justice system'.

7.1.3 The *Evidence Act 1906* (WA) provisions

The *Family Violence Legislation Reform Act 2020* (WA) introduced significant reforms to the *Evidence Act 1906* (WA) *(Evidence Act)* to allow evidence of family violence to be introduced in criminal proceedings, including where self-defence against family violence is a relevant issue (i.e. when a long-term survivor of family violence defends themselves against the perpetrator, causes serious injury to the perpetrator and then faces criminal charges). The reforms were intended to help provide evidence to the court of the context and dynamics of abusive relationships. The reforms are based on the social entrapment framework discussed in Chapter 4 (see 4.2 The contextual nature of coercive control).

The following statement accompanied the introduction of the reforms:

> **[W]hile community awareness and knowledge about family violence is improving, there is still widespread misunderstanding about the nature and dynamics of abusive relationships and their impacts. In this context, expert evidence given by, for example, researchers, family violence workers and others with expertise in this area, can be particularly vital for the judicial officer or jury to properly understand the issues at trial. This evidence can also work to dispel any misconceptions that the judicial officer or jurors may have about the nature and dynamics of family violence that may impact on their assessment of a case.**[75]

Sections 39C–39E of the *Evidence Act* enable the trial judge to provide directions designed to proactively address stereotypes, myths and misconceptions about family violence that the jury might hold. The trial judge may include a direction that family violence 'may consist of separate acts that form part of a pattern of behaviour which can amount to abuse even though some or all of those acts may, when viewed in isolation, appear to be minor or trivial.'[76]

Through our consultation process we received supportive and positive feedback about these reforms. For example, we heard that the reforms provide 'a clear, explicit framework for all parties within the justice system to understand family violence'. We also heard that cases exist in which an expert's evidence concerning the incidence of family violence 'has proved to have been of significant probative value, particularly to protect the interests of the victim-survivor'. Moreover, one respondent raised the importance of a well-informed jury with the comment, 'the pool from which juries are drawn is the community. If the community remains ill-informed, the likelihood of the jury to do its job is compromised'.

The new provisions have also been addressed in a Supreme Court of Western Australia decision, which considered when magistrates must consider the relevant sections in their decision-making when they are presiding over a case in the Magistrates Court of Western Australia without a jury (see case study: *Kritskikh v DPP [2022] WASC 130*). We heard that this was 'a significant development as most family violence criminal proceedings are heard in the Magistrates Court'. Our sense is that the *Evidence Act* reforms have been effective because they address the experiences of the victim-survivor in moving through the criminal legal process, increase understanding of family violence for jury members and judiciary, and draw attention to non-physical aspects of family violence experiences (including recognition of patterned behaviour, the impact of family violence, differing responses to family violence and how victim-survivors may protect themselves).

Case study: Kritskikh v DPP [2022] WASC 130

Kritskikh was convicted of aggravated assault causing bodily harm and unlawful damage after a trial in the Magistrates Court. The charges arose from an altercation between Kritskikh and her partner, Williams. Her case was that she was acting in self-defence in the context of family violence. She claimed she was defending herself against an attack on her by Williams, in the context of previous abuse perpetrated by Williams. The trial magistrate made the decision that Kritskikh had committed the offences as alleged, that she was the perpetrator as alleged by the prosecution and that Williams was the victim. Kritskikh appealed the decision on a number of grounds, including that the magistrate did not direct himself in accordance with ss 39F(1)(b)(ii)–(iv), 39F(1)(c) and 39E of the Evidence Act.

Justice Hall allowed the appeal, finding that the magistrate had erred in failing to inform himself of the matters contained in the directions. He stated that the effect of the evidence provisions is that 'where self-defence in response to family violence is an issue in a trial and directions … are requested by the accused or their lawyer, those directions must be given unless there are good reasons not to do so … where family violence is an issue in a trial in some other way and directions … are requested by the accused or their lawyer, those directions must be given unless there are good reasons not to do so'.[77]

Justice Hall said that 'the existence of s 39G allows for the possibility that judges and magistrates may also, consciously or unconsciously, hold such misconceptions and need to guard against the use of them in their reasoning'.[78] *Justice Hall stated that to comply with s 39G, a magistrate must:*

1. *Determine whether family violence is in issue in the case (either to self-defence or in some other way);*
2. *Determine whether in the circumstances of the case a jury would be directed pursuant to s 39E and/or s 39F (either because the parties would request directions or because the interests of justice would require it);*
3. *Determine what the content of those directions would be (that is, what parts of s 39E and/or s 39F are relevant in the particular case); and*
4. *Ensure that the reasons for decision are consistent with those directions (that is, that they are compatible with those directions and do not contradict them).*[79]

The reforms to the *Evidence Act* are relatively new, having commenced on 1 October 2020, and are due to be reviewed three years after becoming operational. Further reforms to the *Evidence Act* are underway, and we heard that digitally recorded evidence-in-chief statements from victim-survivors is in development, which could reduce hearing times and allow victim-survivors to tell their stories in their own words. Since 1 January 2022, the use of body-worn cameras by WA Police has been mandated at all family violence incidents. Respondents suggested that reforms to allow—with informed consent from the victim—the use of body-worn cameras to capture evidence-in-chief could support victims who are too traumatised to give evidence, who fear for their safety should they provide evidence, or who are unable to reconstruct the version of events previously given owing to memory issues or pressure from the perpetrator.

7.2 The family law system

Many victim-survivors told us about their complex legal needs. The community legal centres we spoke to discussed how their clients must navigate multiple legal and government processes. While the consultation focused on the criminal justice system and associated legislative responses, we received multiple submissions that detailed challenges with the family law system. It is well established in the academic literature that family violence persists after separation, and many respondents talked about the detrimental impact of family law proceedings following their separation. A submission stated:

> **We note that it is already widely documented, and our own anecdotal work alongside victim-survivors tells us, that the family law system, and in some respects the child protection system, consistently fails to respond appropriately to allegations of FDV, operating on gendered assumptions about mothering and fathering and serving as a key source of secondary victimisation for victim-survivors seeking to use the law to gain protections for themselves and their children.**

In this section we discuss what we heard about the family law system in WA. However, during the writing of this report, the Australian Government introduced two sets of amendments to the *Family Law Act* to the Parliament of Australia under the Information Sharing Amendment Bill 2023 (Cth) (Information Sharing Bill) and the Family Law Amendment Bill 2023 (Cth) (Family Law Amendment Bill). At the time of writing, both Bills are awaiting debate in the Senate of the Parliament of Australia. In section 7.6 we outline the proposed reforms to the *Family Law Act*.

Family law proceedings in WA are heard in the Family Court of Western Australia (Family Court). The Family Court exercises federal jurisdiction vested in it by *Family Law Act* and non-federal jurisdiction as specified under the *Family Court Act 1997* (WA) *(Family Court Act)*. In relation to parenting matters, the *Family Law Act* applies to children born to parents who are married and the *Family Court Act* applies to children who are born to parents who are unmarried. This legislative arrangement exists because Western Australia, unlike other states, has not referred its legislative power to the Parliament of Australia. Successive Western Australian Parliaments have enacted legislation relating to ex-nuptial children under the *Family Court Act*, which, closely corresponds with Commonwealth laws relating to children of marriage under the *Family Law Act*.

The Family Court received 5,804 divorce applications in 2021 and finalised 6,057 divorce applications.[80] In many of these cases, disputes were settled either out of court or by consent orders. However, the Family Court may be asked to determine financial or parenting arrangements through applications for final orders and related applications for interim orders. Applications for final parenting orders are the most resource-intensive application types and represent 61% of applications for final orders.[81] The number of parenting-only cases has significantly increased over the past 10 years, and the complexity of these cases has also increased as a result of family violence and other risk factors.[82] An increase of nearly 134% has occurred in the lodgement of Notices of Family Violence / Child Abuse (or Risk) over the past 10 years: from 380 in 2011 to 889 in 2020.[83]

We heard from respondents that the process of obtaining parenting orders in the Family Court can be time consuming, expensive and traumatic. The process is open to continued abuse from people who used violence in the relationship. One respondent told us,

> **I have been subjected to false child abuse allegations, threats, stalking, psychological, emotional, financial and legal abuse (via the Family Court WA). In less than 5 years my ex has had me in court 49 times, and put in over 31 applications, some letters and request for hearings have not been accepted and therefore are not included in this number.**

7.2.1 The presumption of equal shared parental responsibility

Parenting orders are determined under pt VII of the *Family Law Act* and pt 5 of the *Family Court Act*. The paramount consideration in deciding a parenting order is the best interests of the child.[84] Both Acts also set out a decision-making framework to determine what is in the best interests of the child. The Family Court must consider two primary concerns: the benefit to the child of having a meaningful relationship with both of the child's parents and the need to protect the child from physical or psychological harm as a result of being subjected to, or exposed to, abuse, neglect or family violence.[85] Of the two concerns, the court gives greater weight to protecting the child from harm.[86] The Family Court must also consider a list of 13 additional factors.[87]

The Full Court of the Family Court in *Goode & Goode*[88] held that when a final or interim parenting order is sought, the starting point for the decision-making framework is the application of a presumption that it is in the best interests of the child that the child's parents have equal shared parental responsibility. This presumption does not apply if there are reasonable grounds to believe that a parent of the child (or a person who lives with the parent of the child) has engaged in child abuse or family violence.[89]

The presumption of equal shared parental responsibility has received much criticism from stakeholders, academics and the legal community, most of it centred on the position that the presumption does not adequately consider or prioritise a child's safety. We heard the same concerns from respondents, for example, '[j]udicial decisions may privilege the right for children to enjoy a meaningful relationship with the abusive father over the safety of the child and the mother.' Another respondent called for reform to the *Family Law Act* to prevent perpetrators from obtaining access to children: 'An abuser is not a good parent, nor a positive influence in a child's life. This needs to be reflected to take precedence above an abuser's parental rights to children. Exposing children to this unsupervised and ordered by the family court is completely unacceptable'.

The ALRC discussed the presumption of equal shared parental responsibility at length in their 2019 review of the family law system.[90] The ALRC recommended the *Family Law Act* be amended to replace the presumption of equal shared parental responsibility with a presumption of joint decision-making about long-term issues.[91] The House of Representatives Standing Committee on Social Policy and Legal Affairs (SPLA Committee) 2018 report on family violence noted that

> **[s]uccessive governments have sought to prioritise the safety of children when introducing amendments to the *Family Law Act*. Significantly however, independent evaluations of those amendments have found that they have not achieved their desired outcome. Indeed, despite amendments in 2006 and again in 2012, the safety of children is not prioritised either because of:**
>
> - **the structural design of a presumption, an exception, and a subsequent requirement for the Court to consider equal time; and/or**
> - **the skills and expertise of the Court with respect to family violence'.[92]**

The SPLA Committee recommended that consideration be given to removing the presumption of equal shared parenting responsibility. While the presumption does not apply in family violence matters, the SPLA Committee was concerned that the presumption was not being properly applied to many cases involving family violence.[93]

7.2.2 The definition of 'family violence' in family law

Both the *Family Law Act* and the *Family Court Act* seek to recognise the concept of coercive control as a form of family violence. Each Act uses the same definition of family violence, as follows: 'For the purposes of this Act, family violence means violent, threatening or other behaviour by a person that coerces or controls a member of the person's family (the family member), or causes the family member to be fearful'.[94]

The new definition was introduced in 2012 and was intended to reflect contemporary understandings of family violence and to include non-physical abuse. The *Family Law Act* and the *Family Court Act* also provide a non-exhaustive list of examples of behaviours that may constitute family violence.[95] We heard from respondents that the Family Court does not always consider coercive and controlling behaviours as evidence of family violence and that judicial officers fail to consider the pattern of behaviour inherent in coercive control. For example, one victim-survivor emphasised that 'trying to make a court believe emotional damage caused in abusive relationships is almost impossible and even if we are believed, we are then labelled insane and lose custody of our children'. Another stated, 'My experience in the Family Court has been that not once has the term coercive control been used, rather depending on a series of events/incidences to put our case. Patterns of behaviour is a concept not considered'.

A regional community legal centre recommended that s 5A of the *Family Court Act* expand the definition of family violence (and coercive control) to capture the insidious and often indirect nature of coercive control and acknowledge that coercive control is sometimes more easily identified by the effect on the victim-survivor than by the characteristics of behaviour.

7.2.3 Intersection of parenting orders and family violence restraining orders

A small number of respondents spoke of family law orders or proceedings being incompatible with FVROs. As one respondent told us,

> **I've been advised, by police, CPFS [child protection], and two lawyers that I qualify for a restraining order against my ex-husband who uses coercive control. Each advised immediately after that having one was pointless, because we have kids together. And the law [parenting orders granted in the Family Court] permits him to contact me, as long as the children are the topic. Essentially, it's a lot of stuffing around mentally and emotionally to not receive the results you need.**

The *Family Law Act* outlines how the domestic violence (restraining) orders and family law orders interact. Orders made under the family law system (as federal orders) override state-based restraining orders to the extent of any inconsistency between them. Magistrates courts consider family law orders, and family courts consider the presence of restraining orders when making their decisions.[96] This arrangement is intended to promote consistency between orders. A victim-survivor may also request non-denigration terms within their family law orders with specific wording that restricts the perpetrator from acting in a threatening, abusive or intimidatory manner towards the protected person. However, one respondent noted the difficulty of enforcing non-denigration orders. WA Police also highlighted the challenges inherent in enforcing non-denigration family law orders. The orders present a challenge for police because the behaviours are contextual and may vary between relationships and perceptions of what constitutes these behaviours.[97]

A small number of respondents expressed concern that FVROs were less likely to be made for the protection of children if shared parenting arrangements were in place. This view was reinforced by other submissions, which suggested that children exposed to family and domestic violence are not adequately viewed as victims of family violence in their own right, despite research establishing the association of inter-parental conflict and family violence with a range of negative consequences for parents and children.[98] One victim-survivor told us,

> **There needs to be support in the family court system with emotional and psychological abuse recognised and protection given that extends to children. The thought that they do it to the partner and not the kids is rubbish. When the partner is not there to protect the kids the kids get it, perpetrators do not discriminate.**

We did not consult directly with children exposed to coercive control, but we did receive a small number of submissions from adults detailing their experience of exposure to coercive control as a child. Their submissions correspond to the growing evidence on the impacts of domestic and family violence on children.[99] Children become vulnerable to developing complex trauma from sustained and severe exposure to violence in their formative years.[100]

Kaspiew et al noted that an analysis of the *Longitudinal Study of Australian Children (LSAC)*[101] data demonstrated that interpersonal conflict (IPC) is associated with mothers reporting that children have greater difficulty settling after contact visits with their father (40% compared with 16% when no IPC is reported) and children becoming more critical of the mother and other family members after spending time with their father (32% compared with 12% when no IPC is reported).[102]

Victim-survivors of coercive and controlling behaviour may want to resist contact between the children and the perpetrator, even if it can be made safe, or they may wish to relocate a great distance away from the perpetrator.[103] The experience of family violence is linked with lower levels of workability in relation to parenting orders, in part because of the association between the poorer quality of inter-parental relationships and safety concerns.[104] As one respondent noted,

> **[T]o feel safe the contact between me and my ex had to end. But instead, there was a family law system that insisted that contact continue. As a result, that contact was used to continue the coercive control and to make it harder for me to go on and live a productive life.**

7.3 Systems abuse

Systems abuse has been recognised within the Australian and international legal systems as an 'abuse of processes that may be used by perpetrators in the court of domestic and family violence related proceedings to reassert their power and control over the victim'.[105] Judicial officers have highlighted the vengeful use of authorities, also referred to as systems abuse or legal abuse, as one of the most common indicators of coercive control.[106] One victim-survivor asserted:

> **[A]busers use the legal system. Abusers are allowed to self-represent and draft the other party into court. I've experienced this. It cost me $30k for my abuser to then pull out of court 1 week prior. After asking for costs, I received $3k. The judge advised him numerous times that he didn't have grounds to be in court.**

Systems abuse may present as behaviours designed to prolong litigation or court proceedings. For example:

- failing repeatedly and consistently to properly disclose financial assets
- refusing to engage in proceedings
- attending hearings without filing documents, or filing documents at the last minute before hearings so they cannot proceed
- requesting multiple extensions of time so matters drag out for multiple years
- making counter applications without merit.[107]

Legal responses can be used as weapons or tools of manipulation by people who use violence, to the point where victim-survivors do not feel safe to seek assistance or will act contrary to their own safety requirements. As one respondent put it,

> **[r]estraining orders [are] often used as a weapon, particularly when family court proceedings are underway … my ex put one on me for losing my temper after years of abuse and intimidation and manipulation … the police encouraged me to contest it but I didn't because my ex loves seeing me stressed in a court room.**

Other concerns raised by respondents in relation to systems abuse in restraining order proceedings included aggressive cross-examination by the respondent or their legal representative and requiring victim-survivors to attend court repeatedly if the respondent objects to the application or requests an adjournment. As one respondent explained, 'this "procedural abuse" is used by the respondent to intimidate, exert control, cause fear, and maintain/assert power'. Another respondent stated that legal systems abuse occurs through respondents applying for counter orders, making applications for variation or appeal, adding relatives as parties, making complaints against lawyers and judges, and firing and hiring lawyers to extend proceedings.

Legal systems abuse will present differently for each victim-survivor, and legal systems are abused in a highly contextual way, as one respondent explained: 'My problem is that even after 5.5 years of separation and now divorce, he continues to control my life; roadblocks my holidays with our children'. As one respondent explained it may be vital for a victim-survivor's wellbeing and connection to family that they travel back to their own country. However, they must seek their ex-partner's permission according to the terms of a parenting order.

Older persons, persons with a disability and persons with a mental illness are also vulnerable to legal systems abuse. A community legal centre we spoke to noted that enduring powers of attorney, guardianship orders and wills can be used as weapons of coercive control. Further, a service supporting older persons told us about instances in which older persons have been coerced into signing power of attorney documentation during a period of illness or following surgery when arguably they do not have capacity, and consequently they find their house on the market a few weeks later.

One respondent explained that 'women with mental health concerns who have been subjected to gender-based violence can be harmed by institutions tasked with helping them. Women experiencing mental health concerns are particularly vulnerable to being misidentified as an aggressor of violence'. Mental ill health can be a compounding factor, a barrier and an outcome of violence against women, and it can be weaponised by perpetrators for coercive control, through tactics such as gaslighting or using a woman's mental illness to seek to deny her child contact.

For people with disability, the systems abuse can commence at very young age. We heard the example of a person using parenting orders through the Family Court to control a child with disability. When the child reached the age of 18, the person made numerous applications to the State Administrative Tribunal for guardianship orders to maintain their level of control. We also heard that some family law specialists will have trouble distinguishing between family law and guardianship issues.

Respondents told us that shared decision-making and agency is essential to preventing systems abuse and that people must be supported to access information and communicate their wishes. One advocacy organisation we spoke to emphasised that having access to a communication device such as a tablet should not be considered an 'optional extra'; it recommended ensuring forms and fact sheets in easy read formats are available in courts. Another respondent recommended that all vulnerable people, including people with disability, have access to a witness intermediary to help facilitate their participation in legal proceedings relating to family violence.

7.4 Legal representation and the challenges of self-representation

Legal representation is a key component of preventing legal systems abuse and ensuring that people experiencing coercive control can present their experience of family violence in court. Yet, victim-survivors spoke of the challenges they faced when they could not afford legal representation for legal proceedings. For example, one victim-survivor told us, '[f]or now I have primary care of my son, work fulltime, study part time and have become my own lawyer due to costs even going so far as to study a certificate in Family Law to try and help my situation'.

An FDV service provider told us that victim-survivors are often forced to leave their family home and wealth. While they wait for the court process to complete, they are covering childcare and other child-rearing costs (including child counselling and psychological reports) and paying legal fees. While some legal aid is available, it is not available to all, and victim-survivors must either obtain money for legal advice and representation or resort to self-representation. This requires time, as well as cognitive and emotional capacity to research effectively and understand the legal options and proceedings sufficiently to put forth a viable case.[108] The *National Domestic and Family Violence Bench Book* (a key resource for judicial officers) produced by the AIJA notes that it is more likely that victims of family violence will be reluctant to raise allegations for fear of having their motives questioned and that a parent may be even less likely to disclose domestic and family violence if they are self-represented and unfamiliar with the family law provisions.[109]

Numerous participants at the Family Court are self-represented litigants. For example, in 2021, 39% of litigants were self-represented in parenting orders.[110] Lack of legal representation can cause difficulties in understanding court processes, which can lead to delay and additional complications.[111] We heard that delay in the Family Court prolonged the abuse for many respondents. For example, one victim-survivor told us,

> **[t]his constant abuse is now affecting my employment due to the constant court hearings I need to take time off to attend. We are back in court next month and I am once again not sure why or what the outcome will be but I am scared he will continue to try and take my son from me and gain primary care which is certainly not in his best interest given his father has spoken about killing me, me dying and going to heaven among other things.**

Victim-survivors may be financially compromised, inequitably represented and unable to demonstrate the extent and impact of coercive control that is recognised in court. A recent ANROWS report found that self-represented litigants who are victim-survivors of family violence want to talk about their experience of family violence and its impacts.[112] One respondent we spoke to was deeply concerned that the Family Court had failed to consider his daughter's full story of family violence, including photographs of badly maintained property, which he considered to be of vital importance.

However, all courts are constrained by the law and procedural rules.[113] Many self-represented litigants do not know the law, rules or possible outcomes, and they lack the multiple skills required for their matter.[114] There is a distinction between information and evidence, which is information that can be admitted in court hearings. A judicial officer working in family courts observed that a general misunderstanding exists in the community that every problem can be cured by obtaining more information, but cases are only as good as the evidence.[115] The rules of evidence, which govern what information can be presented in court, are complex and, in many cases, difficult for self-represented litigants to understand and apply. The Centre for Women's Safety and Wellbeing recommended that the Western Australian Government provide additional funding and resources in order that victim-survivors have access to free legal advice, information and representation so they can make informed decisions about their safety.

7.5 Training for all participants in the legal system

When cases in the legal system rely on evidence, all participants and professionals in the legal system must be able to understand and articulate the nature of coercive control and how it presents. Some respondents told us that their lawyers neither possessed a good understanding of coercive control nor provided appropriate advice or representation. One respondent told us that her daughter left her abusive relationship and moved closer to family support. The ex-partner filed an urgent recovery order for his new-born child with the Family Court. The daughter's lawyer was able neither to identify the coercive control and abuse in the relationship nor argue the matter effectively in court, with the result that the court granted the recovery order, to the great detriment of the daughter's safety and wellbeing.

The AIJA recently undertook consultation and promotion regarding the *National Domestic and Family Violence Bench Book* in relation to coercive control.[116] Judicial officers consulted suggested updating the Bench Book information on coercive control to:

- reflect the diversity of relationships that may include coercive control
- include specific examples to illustrate behaviours associated with coercive control
- highlight more prominently the particular vulnerabilities that are commonly observed when victim-survivors experience coercive control
- explain that judicial officers should look for patterns of behaviour and/or view behaviours collectively.[117]

In its submission, HopgoodGanim Lawyers recommended better training and education for the legal profession, and that the Western Australian Government commit to family violence training, including (but not limited to):

- working with WA universities and law colleges to explore mandatory and consistent DFV legal subjects (that include coercive control) for undergraduate law students and as part of practical legal training;
- working with the Law Council of Australia and the Law Society of WA to explore:
    - mandatory continuing professional development (CPD) units for all practitioners on DFV legal issues; and
    - the establishment of a specialist, comprehensive and consistent accreditation program for both DFV law practitioners and pro bono lawyers seeking to support DFV law practitioners.
- working with other Australian jurisdictions to ensure further legal education and training is unified, transparent and consistent.[118]

HopgoodGanim's submission echoed recommendations in the Queensland *Hear Her Voice* report, which included:

- Recommendation 39, that all lawyers have a current understanding of the nature and impact of domestic and family violence, including coercive control, the substantive and procedural law, and how to refer clients to services and supports.
- Recommendation 42, that specialist accreditation schemes for criminal law and family law include a requirement for lawyers to have specialist understanding of the nature and impact of domestic and family violence.[119]

Submissions to the SPLA Committee's family violence report recommended that the Australian Government develop a comprehensive training program for family law professionals—namely court staff, family consultants, independent children's lawyers and family dispute resolution practitioners—on the nature and dynamics of family violence, working with vulnerable clients, cultural competency and trauma-informed practice.[120] The Australian Government has announced funding to support a nationally coordinated approach to education and training on family, domestic and sexual violence. This funding included $0.9 million over four years to develop and deliver continuing professional development (CPD) training for legal practitioners on coercive control.[121]

7.6 Reforms to the *Family Law Act 1975* (Cth)

The Family Law Amendment Bill 2023 was developed to address recommendations made in the ALRC's 2019 review of the family law system[122] and elements of the Government Response to the Joint Select Committee on Australia's Family Law System. The primary objective of the Family Law Amendment Bill 2023 is to amend the *Family Law Act* to ensure that the best interests of children are prioritised and placed at the centre of the family law system. It is expected that the *Family Court Act* will be amended on similar terms to ensure the law applies equally in parenting matters involving ex-nuptial children and children of marriage under WA's family law system. The Family Law Amendment Bill consists of nine schedules consisting of the following reforms:

- amendments to the legislative framework for making parenting orders, including repealing the presumption of equal shared parental responsibility and the mandatory consideration of certain time arrangements
- redefining the concept of 'family' so that it is more inclusive of Aboriginal and Torres Strait Islander culture and traditions
- amendments to provisions about Independent Children's Lawyers to enhance the voice of children in family law proceedings
- introducing harmful proceedings orders to protect a respondent and/or children who are the subject of family law proceedings from the harmful impact of frequent and unnecessary applications filed by an applicant
- introducing a new regulatory power to set standards and requirements to be met by professionals who prepare family reports.[123]

The explanatory memorandum for the Family Law Amendment Bill 2023 states:

> **The repeal of the presumption will ensure that the law focuses on the child's needs, especially in matters involving allegations of family violence or other complex issues. It will also ensure that the purpose of the parenting framework is clearer, assisting parents settling their matters outside of court to more accurately and easily navigate the law. The changes will help to ensure out-of-court settlements place the best interests of the child at the forefront, and that decisions about parenting arrangements are not influenced by misunderstandings about parental rights and responsibilities.[124]**

7.7 Recommendations

It is beyond the scope of this report to recommend changes to family law. The *Family Law Act* is Commonwealth legislation, and the *Family Court Act* should, as far as is practicable, contain mirror provisions. We agree with the comment made in the *Hear Her Voice* report:

> **There is an urgent need for faster, less expensive, more effective, cohesive, and consistent responses to domestic and family violence from the federal and state family law and domestic and family violence systems to ensure victims, including children, are safe and perpetrators are held to account.**[125]

We also make a recommendation in Chapter 6 in relation to training for the judiciary (recommendation 15). We do not repeat that recommendation here.

We make the following recommendations to the Western Australian Government.

20	Undertake further policy work to investigate how existing offences in the *Criminal Code Act Compilation Act 1913* (WA) may effectively capture patterns of abuse.
21	Undertake further policy work to investigate how aggravating circumstances in the *Sentencing Act 1995* (WA) may capture patterns of abuse.
22	Develop training for lawyers about coercive control.

Chapter 8: I want people to know this isn't okay: Criminalising coercive control

How to address coercive control through policy and legal responses is a significant question for governments around Australia. This consultation process focused on legislative responses to coercive control in WA. One possible response, which has been the subject of substantial public debate, is to criminalise coercive control by creating a new standalone criminal offence. Criminalisation is not the only legislative response, and we have discussed the range of responses in Chapters 6 and 7 of this report. However, whether the Western Australian Government should introduce a new criminal offence of coercive control was a key concern for respondents throughout the consultation process.

As a potential legislative response, questions about criminalisation provoked a significant amount of discussion and a range of comments from respondents. The majority of submissions we received from victim-survivors supported the introduction of a new offence of coercive control. One victim-survivor told us,'[m]aking it a criminal offence would mean that the perpetrators are brought to justice and publicly accountable for the abuse they have inflicted.' Another victim-survivor said,

> **Perpetrators need to know that they do not have the right to torment others emotionally, psychologically or create fear and intimidation among families. If we do not legislate that this is wrong then perpetrators will not believe it is wrong. And therefore have no motivation to change their ways. Myself and my children should not be condemned to a lifetime of torment and abuse. We have a right to life of free of fear, intimidation and manipulation.**

We also received many submissions that raised concerns about the effectiveness of a new criminal offence and the unintended but harmful impacts a new offence may have on victim-survivors and vulnerable communities.

This chapter reports on feedback from respondents discussing the potential reasons for and risks of criminalisation, systemic issues complicating reform, the construction and implementation of a new offence and next steps.

8.1 Reasons for introducing a coercive control offence

This section reports on the key reasons respondents raised for introducing a coercive control offence, namely, increased safety for victim-survivors, increased accountability for perpetrators, improved ability of legislation to recognise coercive control patterns and improved community awareness about coercive control.

8.1.1 Increased safety for victim-survivors

Respondents felt that criminalisation of coercive control would increase the safety of victim-survivors, thereby protecting victim-survivors and preventing family violence–related deaths and serious assaults. One respondent stated that not criminalising coercive control could lead to missed opportunities to intervene early and improve the safety and wellbeing of women and children. Other respondents argued that criminalisation would act as a deterrent to people who use violence—that it would provide an opportunity to intervene before perpetrator behaviour escalates to causing serious physical injury or death to the victim-survivor. We heard from respondents about the emerging research demonstrating that coercive control can be a predictive factor in family violence homicides. One respondent noted, 'the risk of facing a criminal offence by engaging in coercive behaviour could be a sufficiently powerful deterrent for some potential perpetrators'.

Other respondents felt that criminalisation without implementing significant supportive measures, such as training for professionals and community education, would not lead to increased safety for victim-survivors because legal processes would not support effective application of a new criminal offence. A respondent explained that 'further legislation to criminalise coercive control will not necessarily deliver increased safety for women and children on its own … other non-legislative responses should be considered in tandem with legislative changes or as standalone responses'. Another said,

> **the criminalisation of coercive control without significant re-education will do little to protect victim-survivors and could in fact embed further trauma and disadvantage. This is particularly so for First Nations communities and culturally diverse minorities who face inherent complications and increased vulnerabilities with seeking protection from, and redress, in the law.**

8.1.2 Increased accountability for perpetrators

Similarly, many respondents to the consultation believed in the potential for criminalisation to provide the means to hold perpetrators accountable for their behaviour and the harm they cause. Respondents felt that people who use violence (including coercive control) should face consequences for their choices and actions. One respondent said, 'victims of coercive control suffer enormously. They may not have physical scars, but the emotional scars run deep. Perpetrators need to be held accountable'. Some respondents felt that prosecuting a coercive control charge through the criminal court system would provide justice by ensuring perpetrators face consequences for their actions. Respondents also noted that implementing a chargeable offence would provide the police with a stronger position to question a perpetrator because criminal charges could apply to a wider range of circumstances and lead to a conviction.

Some submissions mentioned that a criminal justice response currently provides a consequence for a specific act or incident but does not provide accountability for a pattern of behaviour built upon a set of beliefs. For example, a person who has used violence in an intimate relationship may face a criminal charge and trial for a physical assault, and if they are found guilty, they will be sentenced. The criminal process provides a consequence for the physical assault. However, if that physical assault is part of an ongoing pattern of coercive control, the perpetrator would not necessarily be held accountable by the criminal justice system for that pattern of behaviour.

A new criminal offence of coercive control may be able to hold the perpetrator to account for their pattern of abusive behaviour. Respondents felt that criminalisation would ensure legislative and legal system responses that reflect coercive control as a pattern of behaviour rather than discrete incidents of family violence. One respondent observed,

> **criminalisation signifies a move away from incident specific framing of gender-based violence towards a legal system which recognises patterns of violence and looks at the history of a relationship … criminalisation will be a big step forward in ensuring that the criminal law adequately captures all forms of violence, both physical and non-physical.**

Other respondents felt that criminal convictions do not always support perpetrators to take accountability and that this requires a different approach. One victim-survivor stated that criminal justice consequences such as 'prison stays, fines and criminal records don't have an effect to change behaviour as with personalities like my ex it's everyone else's fault, he is not taking responsibility'. We heard from respondents that there is a difference between consequence (e.g. fines, periods of imprisonment) and accountability, and that the distinction is neither well understood nor acknowledged. Respondents talked to us about the lack of a comprehensive understanding across systems regarding the meaning of perpetrator accountability.

Respondents told us that court-ordered consequences do not necessarily lead to behaviour change or prevent further family violence from occurring. Respondents made comments such as 'research clearly demonstrates that punitive measures (imprisonment) do not necessarily lead to a decrease in aggressive behaviour or changes to perpetrator attitudes towards domestic violence' and 'there is little evidence to suggest that increasing incarceration is effective in making our communities safer or for rehabilitating people'. One victim-survivor said that 'a prison sentence for a DV [domestic violence] offender will not help to save lives as that person will be released at some point and being in prison will only have fuelled their need for vengeance'. Another respondent explained how

> **simply tweaking the legislation will not, in and of itself, contribute to changing behaviours, and whilst it may assist victim-survivors and their advocates to seek and receive justice, by making clearer what is a criminal act, it does not necessarily lead to changed behaviour in perpetrators, who may continue to have their views that such behaviour is normal minimized and reinforced in most other facets of their lives, especially if sentencing is lenient.**

8.1.3 Acknowledgement of harm

The inability of current legislative responses to acknowledge and respond to coercive control was a point commonly raised by respondents, who felt that criminalisation would more effectively acknowledge coercive control as causing serious harm to victim-survivors. Victim-survivors (and respondents who worked with victim-survivors) were concerned that the harm caused by coercive control was not considered equal to physical harm and could not be dealt with equally under current legislative responses. One commented,

> **coercive control is a serious form of abuse … Western Australian criminal law recognises other behaviours that may be used by a family violence perpetrator, such as physical violence, threats, stalking and deprivation of liberty, but does not provide for an offence that captures the whole pervasive regime of coercive controlling behaviour.**

Another believed that not introducing a criminal offence would send a message that loss of dignity, liberty and personhood is not serious or 'injurious' enough for a legal system response; a new offence would 'give public voice to the wrongfulness of coercive control as a domestic abuse crime that extends beyond only physical injury to also include crimes of dignity, liberty, and personhood (autonomy) against women'. Respondents argued that a new offence may be able to capture more effectively 'the totality of an abuser's behaviour' and provide validation for a victim-survivor's whole experience of family violence, rather than just parts (e.g. incidents of physical violence).

8.1.4 Improved community awareness about coercive control

A key issue raised by many respondents was that criminalisation would form an integral part of increasing the community's awareness of, and response to, coercive control. They felt that criminalisation would raise awareness within the community about coercive control and signal emphatically that it is unacceptable. As one respondent stated, 'it's powerful to have a cultural statement: to name what it is and to say it is wrong'. This sentiment was echoed by another, who said, 'criminalisation will send an important message to perpetrators and the wider community that coercive and controlling behaviour will not be tolerated'. Respondents felt that the Western Australian Government should take the lead on responding to coercive control because 'we cannot expect our community to challenge such a difficult issue if it is not clear that our government is determined to do likewise'.

Some respondents felt that the potential educative, protective and deterrent effects of criminalisation would make such a legislative response worthwhile, whether or not prosecutions were successful. One noted,

> **criminalisation is an important and necessary legislative response to coercive control but not necessarily for the sole purpose of prosecution in as much as for the purposes of public awareness, education, and accountability. In other words, criminalising coercive control by 'having the law' can act as an effective protective, deterrent, and rehabilitative mechanism as much, if not more than, prosecuting coercive control.**

During discussions, the victim and family violence sector in the United Kingdom noted that despite the small number of successful prosecutions of the coercive control offence, criminalisation has raised the community's understanding of the depth and breadth of the behaviours that constitute coercion and control. [126]

8.2 Risks of a criminalisation approach

In this section we report on some key risks of immediately introducing a coercive control offence raised by respondents. We discuss the impact of criminal justice processes on victim-survivors, the potential misidentification of the person in need of protection, and the over-representation of Aboriginal people in the criminal justice system. We then describe overarching systemic issues discussed by respondents as they considered the possibility of criminalisation.

8.2.1 Impact of criminal justice processes on victim-survivors

Prosecuting a coercive control offence would generally necessitate the involvement of the victim-survivor. Some respondents had concerns about the possible impact and outcomes of criminal court proceedings for victim-survivors. For example, we heard about the challenges for criminal proceedings if the victim or a witness is an older person who might have problems with memory or capacity, which can lead to poor outcomes for the older person. One respondent compared elder abuse matters to coercive control matters, saying,

> **the difficulties of bringing an observed case of elder abuse to an appropriate conclusion in a court of law is often related to the inability to obtain reliable evidence from the victim-survivor, thereby making criminalisation less effective as a means of dealing with such abuse.**

We heard that for victim-survivors, navigating any court process is confusing, stressful, distressing and potentially extremely expensive; moreover, it can be re-traumatising. The experience of cross-examination for victim-survivors can be particularly traumatic.[127] One respondent said, 'from a legal perspective, cross-examination is fundamental to the tenant of a "fair trial". For many victim-survivors, however, confronting their perpetrator in the courtroom is often perceived as an extension of the violence'. We heard that 'the experience of women in criminal court settings is often described as lonely and isolated with very little support'.

Respondents raised concerns about the effect of failed prosecutions on victim-survivors. We discussed in Chapter 6 how distressing it can be for victim-survivors involved in FVRO application processes to feel unheard or disbelieved regarding their experiences. Similarly, respondents were concerned about victim-survivors experiencing stressful, traumatic and protracted court processes that do not result in a conviction for the perpetrator, causing some victim-survivors to believe that their experiences of abuse are insufficient to secure the justice outcome they are seeking. Introducing a new offence when coercive control is not well understood may result in a lack of charges, failure to obtain convictions and increased risk of serious harm, which could 'shatter confidence in the legal/justice system and deter those affected and others from accessing help and utilising the legal/justice system'.

We heard that ineffective justice responses not only lead to victim-survivors losing trust in the justice system but may also empower perpetrators to continue or escalate their abuse because they believe there will be no consequences for their actions. One respondent stated, 'if prosecutions are unsuccessful then the legislation risks either being regarded as mere window dressing or even as establishing that conduct, that is coercive control for the purposes of the *Restraining Orders Act [1997]*, is not an offence'. Another said,

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

A respondent told us about challenges that older persons may face pursuing a criminal justice response to elder abuse,

> **Given that the perpetrator could be the victim-survivor's only available family member or caregiver, there could be a reluctance to raise any concerns of abuse due to the risk of losing that care or having to move to a residential care facility and further losing contact with that family member. There is a significant risk that due to the lack of credible evidence, such as the victim-survivor's loss of memory, no meaningful outcome could be achieved. Depending on the mental state of the victim-survivor, a drawn-out court appearance could be significantly traumatic for them and if a conviction were to follow, the outcome of that could require significant additional support for the individual. It is well documented that because the onus in WA is on the victim to report elder abuse, many are reluctant to report abuse or coercive behaviour for many reasons, including fear of disrupting family or care relationships. This can lead to ongoing abuse, which exacerbates mental health issues, neglect, and social isolation.**

8.2.2 Potential misidentification of the person in need of protection

We heard that misidentification can occur unintentionally, such as when individuals apply problematic assumptions and stereotypes to how victim-survivors should react to violence; however, misidentification can also occur intentionally, for example, when someone using coercive control misrepresents the victim-survivor as a perpetrator, including through legal processes (e.g. by calling the police first to make a report, or making applications in family law matters). One respondent explained:

> **[M]isidentification can be the result of deliberate actions by perpetrators, such as making false reports, manufacturing evidence, or coercing victims to engage in particular actions, as well as incorrect decisions made by police (which can be based on not recognising self-defence, discrimination, and failures to engage interpreters when necessary).**

We heard that misidentification is particularly an issue for Aboriginal women, culturally and linguistically diverse women, and women with disability, and that 'the over-policing of Aboriginal and Torres Strait Islander women and their misidentification as perpetrators or primary aggressors of family and domestic violence are inherently connected'. One respondent stated that 'the experiences of Tamica Mullaley and Ted Mullaley[*] graphically illustrate the risk that Aboriginal victim-survivors of even the most extreme family violence may end up being subject to criminal charges'.

When a victim-survivor is misidentified as the perpetrator, they are not only denied the opportunity to access measures designed to provide safety and protection but also may face further serious consequences. Once a person in need of protection has been incorrectly identified as the perpetrator of violence, it can be difficult to extract the victim-survivor from the legal and social ramifications. Considering the possibility of criminalising coercive control, one respondent said that

> **family and domestic violence service providers—particularly Aboriginal Community Controlled Organisations—are deeply concerned with the significant risk of victim-survivors being misidentified as the primary aggressor. Misidentifying victim-survivors as the perpetrator of violence creates safety risks and can lead to a series of cascading adverse consequences: loss of housing, child protection intervention, loss of income support, complex and protracted court proceedings, and considerable psycho-social and wellbeing difficulties over time.**

Some respondents raised concerns about a new criminal offence increasing the risk of perpetrators 'weaponising' the legal system—using the law to their advantage to exert more control over a victim-survivor—just as some perpetrators already use legal responses such as FVROs, child protection, the Family Court, police reports, child support and migration.

A whole-of-system effort is required to reduce misidentification of victim-survivors, particularly in situations where coercive control is present and it may be more difficult for responders to identify the person in need of protection.

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* *This note contains information that may be distressing, including the names of people who have passed away. This information is publicly available in news media sources.* In 2013, Tamica Mullaley was attacked by her abusive partner, Mervyn Bell, in Broome. When the police arrived, Tamica was arrested, along with her father, Ted Mullaley, who had arrived at the scene to help. Tamica's injuries included a broken collar bone, broken ribs and damage to her spleen and kidney. Tamica was charged with assaulting a public officer and obstructing police. While Tamica and Ted were in custody, Mervyn Bell took Tamica's baby from family friends and tortured then killed him. In 2014, Bell was convicted of the murder and sexual assault of Tamica's baby son. In 2015, Tamica was convicted of the offences she had been charged with and given a suspended sentence. In 2022, the Western Australian Attorney General the Hon John Quigley MLA made an official apology to Tamica and Ted Mullaley and pardoned their convictions, acknowledging that Tamica was not treated as a victim of family violence by police at the scene.

8.2.3 Over-representation of Aboriginal people in the criminal justice system

To consider a new criminal offence we must also consider the prospect of sentencing and prison time for perpetrators. Many respondents raised concerns about potential overincarceration of Aboriginal people and other marginalised groups. Aboriginal and Torres Strait Islander people constitute 3.3% of WA's population—approximately 89,000 people out of WA's population of 2.7 million.[128] In the June quarter 2022, the Aboriginal and Torres Strait Islander imprisonment rate in WA was 3,547 per 100,000 Aboriginal and Torres Strait Islander adults compared with the general imprisonment rate in WA of 293 per 100,000 adults.[129] For the June quarter in 2022, WA had the highest Aboriginal and Torres Strait Islander imprisonment rate of all states and territories.[130]

Through our consultation, we heard that Aboriginal people and other marginalised people are more likely to come to the attention of the police and face criminal proceedings, particularly if alleged offending is happening in public spaces. We were told that Aboriginal people are already overrepresented in criminal justice processes and that introducing a coercive control offence is likely to exacerbate this issue. For example, and as a comparison, we heard that in the 12-month period from February 2022 to January 2023, 72% of people declared as 'serial family violence offenders' under s 124E of the *Sentencing Act 1995* (WA) identified as Aboriginal or Torres Strait Islander people. One respondent said that there is

> **currently little evidence to indicate how new criminal offences would impact communities who are already subject to systemic harm and marginalisation by the justice system, such as Aboriginal and Torres Strait Islander people, people who are culturally and linguistically diverse, and people living with disability.**

Another explained, 'the issue of criminal law has often presented more of a risk than a protective measure in relation to Australia's most vulnerable groups'.

It is important to consider how criminalisation as a response to coercive control aligns with other Western Australian Government priorities, particularly in the context of work to support Aboriginal family safety and reduce rates of incarceration. The Western Australian Government has developed or signed on to several strategic plans that guide the government's approach to family violence and community empowerment, and these are described in the paragraphs below.

Path to Safety is WA's strategy to reduce family and domestic violence, and its purpose is to 'guide a whole-of-community response to family and domestic violence in Western Australia from 2020–2030'.[131] The *Path to Safety* framework for change includes four focus areas:

1. Work with Aboriginal people to strengthen Aboriginal family safety.
2. Act now to keep people safe and hold perpetrators to account.
3. Grow primary prevention to stop family and domestic violence.
4. Reform systems to prioritise safety, accountability and collaboration.[132]

The *Path to Safety* strategy identifies Aboriginal family safety as a priority 'in recognition of the disproportionate impact of family violence on Aboriginal women, children, families and communities and the need to respond to the different drivers of violence experienced by Aboriginal people'.[133]

In December 2022, the Western Australian Government's *Aboriginal Family Safety Strategy 2022–2032* was launched.[134] The *Aboriginal Family Safety Strategy 2022–2032* also 'forms one of the State Government's four key actions in the *Closing the Gap Jurisdictional Implementation Plan* for Western Australia to respond to Outcome 13—that Aboriginal and Torres Strait Islander families and households are safe'.[135] The purpose of the *Aboriginal Family Safety Strategy 2022–2032* is 'to guide a whole of community, Aboriginal-led, collaborative approach that is flexible, responsive, and place-based to prevent and reduce family violence impacting families and communities'.[136]

The strategy calls for an empowerment and strengths-based approach, which, for policy development, 'requires a shift in mainstream thinking and practice, beginning with recognition that different cultural groups place different emphasis on what constitutes safety, success, and effective caregiving'.[137] It notes that Aboriginal communities have been advocating for solutions to family violence that acknowledge the intersection of family violence with issues such as inadequate housing, unemployment and high rates of imprisonment.[138] The *Aboriginal Family Safety Strategy 2022–2032* sets out the values of self-determination, shared responsibility, culture and identity, cultural leaders and Elders, respect, and safety and empowerment.

The Department of Justice is currently developing its own Aboriginal Family Safety Strategy, which will seek to render the justice system more responsive to the needs of Aboriginal families experiencing violence and reduce the number of Aboriginal people in the criminal justice system for family violence–related offences. This strategy will also focus on strengthening Aboriginal safety through holistic, culturally safe, community-led approaches.

One of the underpinning frameworks for WA's state government policies, plans, initiatives and programs is the *Aboriginal Empowerment Strategy: Western Australia 2021–2029 (Aboriginal Empowerment Strategy)*, which directs the Western Australian Government to consider how its work will affect 'a future in which all Aboriginal people, families and communities are empowered to live good lives and choose their own futures from a secure foundation'.[139] The strategy encourages increased investment in prevention and intervention measures and more integrated service experiences. Further, it aligns with the Western Australian Government's first *Closing the Gap Jurisdictional Implementation Plan*,[140] which forms part of the government's commitment to reform and action under the *National Agreement on Closing the Gap*.[141] Outcome 10 of the *Closing the Gap Jurisdictional Implementation Plan* is that Aboriginal and Torres Strait Islander people are not overrepresented in the criminal justice system. Under Outcome 10 are a range of strategies and actions aimed at reducing the over-representation of Aboriginal people in WA's justice system.

Key themes running through all these strategies are the urgency of ensuring cultural safety and family safety, and implementing tailored programs run by and for Aboriginal communities. A respondent told us there must be an approach that 'recognises people with cultural authority, knowledge and research expertise about Western Australia's unique cultural circumstances for Aboriginal peoples, as the best placed to inform the right future responses to coercive control in Western Australia'.

8.3 Systemic barriers to immediate criminalisation

Some respondents to the consultation felt it was impossible to implement an offence appropriately within the context of current systemic issues. One respondent said, 'criminalisation can be symbolically appealing, but due to the severity of the possible unintended consequences, it must be carefully considered whether such an approach would in fact be effective or appropriate'.

For example, as discussed in Chapter 6, issues that arise as part of the FVRO process, from application to prosecution of breaches (i.e. knowledge and understanding of coercive control, time and resourcing pressures, lack of appropriate processes to analyse patterns of behaviour, prioritising physical violence, using an incident-based approach), have significant adverse impacts on outcomes for victim-survivors who seek protection. Without systemic reform, these issues are also likely to affect outcomes for victim-survivors who seek justice through any new criminal justice response. We were told that if people working in the legal system do not have an adequate understanding of coercive control there is no assurance of consistent, appropriate outcomes for coercive control matters. As stated by a respondent, 'parts of the system can presently struggle to respond effectively to even more overt, and less nuanced and contextual, acts of violence'. Another mentioned that without other system reforms 'it would be unwise, harmful and potentially dangerous to introduce new legislation that criminalises coercive control in WA'.

Respondents raised points about the relative newness of criminalisation as a legislative response to coercive control. One respondent mentioned, 'legislative mechanisms to criminalise coercive control are new with

limited public available evaluation or impact data, so there is limited information available to guide evidence-based decision making'. We heard that key differences are apparent between WA's demographics and those of the international jurisdictions that have introduced a specific coercive control offence, and that, 'significantly, those jurisdictions do not have First Nations people, with all of the attendant complexities and risks that the introduction of a more punitive approach to family violence poses'.

Some respondents felt that these challenges should not deter us from action: '[W]hilst valid concerns have been raised regarding the risks of criminalisation, in my view it is not sufficient for us to simply sit idle as a result'. Other respondents from across the consultation process told us that attempting to criminalise coercive control prematurely could be ineffective and harmful. One respondent stated that 'whilst there may be benefits in codifying coercive control, questions remain about the readiness of the legal system and broader social systems to do so'.

8.4 Construction and implementation of a new offence

The consultation process asked respondents to consider whether the Western Australian Government should introduce a new offence to criminalise coercive control but we did not ask specific questions about how a new criminal offence could be developed and implemented. Even so, we received submissions that addressed not just criminalisation but also the construction and implementation of a new offence. Many stakeholders expressed concern that a new offence would be developed without further consultation. We heard strong, explicit feedback that further consultation as part of an 'iterative and collaborative approach' would be required to draft any legislation. One respondent stated that 'any proposed legislative change should be preceded by extensive consultation, particularly with Aboriginal and Torres Strait Islander communities'. Respondents wanted to view the details of proposed legislative options and consider the practical application and likely outcomes from legislative change.

It was evident through submissions that respondents had concerns about how to define coercive control for the purposes of a criminal offence, what the elements of an offence would be and where the threshold for behaviour considered criminal might sit. We noted apprehension about the risks of creating new legislation for behaviour that is difficult to identify without significant, specialised training, particularly about the 'difficulty of breaking down patterns of behaviour into elements of an offence, especially behaviour that may not be visible outside of the relationship'. We heard concerns about avoiding uncertainty, since processes for investigating and prosecuting an offence depend on how the charge is worded and structured; elements to consider included whether intent would be an element, whether acts would need to be repeated or continuous, the level of harm to the victim that would require proving (if any) and what relationships would be captured. Some existing coercive control offences include a reasonable person element (generally, in relation to the effect or harm caused by the behaviour) or defence, or both.[142] Some respondents noted that what is considered reasonable behaviour in intimate relationships may vary across communities of different cultures.

Many respondents were concerned about how a coercive control offence would be evidenced—how responders could collect evidence that would be accepted by a court, and what kind and level of evidence would be required to secure a prosecution. One victim-survivor supported criminalisation but compared it with the difficulties involved in charging and prosecuting sexual offences, saying,

> **yes, but how do you police it / judge it / enforce it? Will this just be another thing we can't actually prove and have to relive in court for another person to just walk away and we are left picking up our hollow pieces again? Like sexual assault?**

Respondents were concerned about the complex and contextual nature of coercive control and the burden that collecting adequate evidence would place on already vulnerable victim-survivors. One respondent suggested,

> **the less tangible elements of coercive control may challenge police and the justice system seeking to evidence, through the testimonies from victims, actions which may largely be suggestive or psychological in nature. This challenge is exacerbated when there is no evidence of verbal abuse, or when the offence has not been witnessed by a third party.**

Respondents noted that physical assaults are easier to evidence, especially where a victim-survivor may be unable to remember specific dates, and that producing evidence to support a course of conduct offence that includes non-physical abuse would be a significant challenge for police. For example, we heard that approaches such as collecting statements from a variety of people who may have witnessed the pattern of behaviour or collecting digital evidence from a mobile phone are more time consuming. Police officers typically investigate individual offences rather than patterns of behaviour and would need extra support to investigate a coercive control offence. As explained by one respondent,

> **the difficulty is that to recognise and respond to those patterns requires evidence of matters over a long period … there is a need to analyse the evidence that establishes that pattern. On the other hand, where there is an incident of violence, it is much easier to respond quickly as little evidence is required.**

Submissions raised concerns about whether a new offence would be used. Respondents questioned whether coercive control would be recognised as a risk warranting further action from police. They also questioned whether a new offence would be charged when problems already exist concerning police not charging breaches of FVROs or supervised orders for coercive control behaviours.

Several respondents raise the question of how to distinguish between behaviour that is characteristic of an unhappy or unhealthy relationship and behaviour that is criminal and can be prosecuted. For example, we heard that an offence should criminalise conduct including a wide range of behaviours that present a pattern of conduct but should avoid capturing common relationship behaviour that may be temporary or resolved through other measures. One respondent stated that an offence should 'target cases where there is evidence that the behaviour/s have caused a major impact on a victim's exercise of autonomy and the controlling behaviours have been exercised repeatedly and continuously'.

Respondents provided the following examples of contexts for consideration in developing the policy framework to support a new offence:

- Intentionality and motivation exists on the part of the perpetrator to control or subjugate the victim.
- Non-compliance with the perpetrator's control would be met with a negative consequence.
- The perpetrator's ability to maintain control is linked to a credible threat of a meaningful negative impact for the victim.
- An impact or perceived impact of the controlling and threatening behaviour on the victim is evident.

Respondents also suggested a range of sentencing options, including cautions, conditional suspended imprisonment orders, community-based orders, intense supervision orders, mandates to attend behaviour change programs, fines and custodial sentences.

Respondents provided feedback about the need for an implementation plan to be developed concurrently to the drafting of any new offence. Support provided by respondents for a new offence was often conditional upon effective implementation. We heard that a significant amount of implementation work would be required for a new offence to have the desired effect, including extended consultation to ensure implementation measures

are considered and appropriate. Some respondents stated an implementation strategy should include training, perpetrator interventions, community awareness raising, funding for specialist services, and updated policies, guidelines and resources. One respondent noted,

> **if legislation is to be effective, it must be supported by a comprehensive implementation strategy that includes targeted messaging to perpetrators about their controlling behaviour; information about where to seek help for changing their behaviour; capacity and capability building for both the justice and broader service sector; and funding for specialist services to meet the demands of new referrals as the result of new legislation.**

Many respondents focused on training as an essential measure to implement new legislation with less risk, identifying officers from WA Police, police prosecutors and staff from the Office of the Director of Public Prosecutions for Western Australia as important stakeholders for training. Finally, we heard that any new policy or legislative response to coercive control should be monitored and evaluated.

8.5 Criminalisation in Queensland, New South Wales and Tasmania

The governments of Queensland and New South Wales have taken significant steps towards introducing coercive control offences, while Tasmania has had offences in place that deal with economic abuse, and emotional abuse and intimidation since 2004. In Queensland, the Women's Safety and Justice Taskforce report (*Hear Her Voice*) made 89 recommendations to improve responses to family violence, including the creation of a new offence to criminalise coercive control.[143] The Taskforce recommended a staged approach and a program of systemic reform to be undertaken prior to the introduction of an offence.[144]

The Queensland Government supported (or supported in principle) all the Taskforce's recommendations and has commenced work to implement them. The Queensland Government introduced its first round of legislative reforms in October 2022 with the Domestic and Family Violence Protection (Combating Coercive Control) and other Legislation Amendment Bill 2022. The Bill included amendments to change the meaning of the term 'domestic violence' in the *Domestic and Family Violence Protection Act 2012* (Qld) to encompass a pattern of behaviour that may occur over time, has a cumulative affect and should be considered in the context of the relationship.

The Taskforce recommended that the Queensland Government use the framework of a four-phase implementation plan to support a program of reform. The suggested implementation plan included the following phases and action items (not an exhaustive list)[145]:

- Phase 1 (2021–2022): Setting the foundations for reform. Phase 1 includes establishing governance arrangements; appointing an implementation supervisor; agreeing outcomes and an evaluation plan; co-design of strategy to reduce over-representation; development of a communications strategy and primary prevention strategy; development of a risk assessment framework; development of a training, education and safety planning framework; planning a state-wide network of perpetrator-intervention programs.
- Phase 2 (2022–2023): First-stage legislative and systemic reforms against coercive control. Phase 2 includes implementing first-stage legislative reforms with consultation; implementing a communications strategy; implementing a primary prevention strategy; commencing rollout of training, education and change management across service and justice system, including for police and lawyers; commencing the rollout of a state-wide network of perpetrator-intervention programs; preparing second-stage legislative reforms (including a new criminal offence); and consulting on draft legislation.
- Phase 3 (2023–2024): Preparing for the criminalisation of coercive control. Phase 3 includes introducing second-stage legislative reforms and continuing implementation of Phase 2 measures.
- Phase 4 (2024 and ongoing): Criminalising coercive control and monitoring impacts and outcomes. Phase 4 includes commencing second-stage legislative reforms; ensuring ongoing training, monitoring and evaluation; and five-year review of legislative reforms.

The Taskforce's phased approach aims to deliver comprehensive reform with time built in for adequate planning, consultation, training, funding and evaluation. The *Hear Her Voice* report was released in December 2021. The Taskforce recommended that the new criminal offence be introduced into the Queensland Parliament in 2023 and commence in 2024, 'at least 15 months after debate and passage to enable implementation activities to be undertaken and enable sufficient services and supports to be in place before commencement'.[146] The Taskforce also recommended a minimum of three months' targeted stakeholder consultation. It stated,

> **the Taskforce strongly believes that the success of the new offence will hinge on there being sufficient leadup time prior to commencement … this will ensure that there is adequate time for comprehensive community-wide education and training and system reform tailored to Queensland's unique population including Aboriginal and Torres Strait Islander peoples and culturally and linguistically diverse communities.'[147]**

The Queensland Government introduced legislation to create a new standalone offence of coercive control on 11 October 2023. At this stage, the offence is not expected to come into effect until 2025.

In New South Wales, the Joint Select Committee on Coercive Control released its report *Coercive Control in Domestic Relationships* in June 2021. The Committee recommended introducing a new coercive control offence with the aid of an implementation taskforce, who should consult on an exposure draft as well as education and training. In its report, the Committee stated that it:

> **strongly believes that a careful and considered approach with a long lead-in time is needed to effectively implement an offence. This will enable many of the systemic reforms that are needed alongside criminalisation to be implemented, in order to optimise the effectiveness and preventative intention of the offence.[148]**

In July 2022, the New South Wales Government released a public exposure draft of the Crimes Legislation Amendment (Coercive Control) Bill 2022, and on 19 October 2022 the Bill passed the Lower House.[149]

The New South Wales Government stated that they had undertaken 'at least seven rounds of consultation in the last two and a half years alone, including a discussion paper, parliamentary inquiry and public exposure draft bill'.[150] However, family and domestic violence advocates raised concerns about the Bill and its preparation, including through an open letter in August 2022 co-signed by over 200 representatives. The letter noted concerns regarding:[151]

- the Bill's definition of coercive control (defined as 'domestic abuse' in the Bill) and consistency of definitions across different legislation
- the Bill's limitation of the new criminal offence to intimate partner relationships only
- prior to drafting the exposure Bill, the Government's failure to establish an implementation taskforce.

Advocates also raised concerns about an element of the offence requiring proof of specific intent to coerce or control.[152] Moreover, they felt that the offence would be too difficult to prosecute and would disappoint, or give 'false hope' to, victim-survivors. The Domestic Violence NSW CEO commented,

> **you have to show that someone intended to cause that harm but in intimate relationships there can be misguided beliefs … someone may feel they have a right to control finances for example … but they don't believe that intentionally causes harm … if the bill were to pass in its current form, we are concerned at best it would be under-utilised and not really help the people it is set up to help. At its worst, it could create issues of misidentification and not provide support to those who really deserve it.[153]**

The New South Wales Government responded by stating, 'differences of drafting opinion are not justification for further delay … there is obviously a divergence of views about just exactly how this legislation should be drafted but every day we wait risks another life being lost. We have to get on with it'.[154]

In November 2022, the New South Wales Government announced it had established a taskforce to oversee implementation of the new coercive control laws. The Queensland Government has established an Office of the Independent Implementation Supervisor. In terms of funding support for coercive control responses, the Queensland Government has committed $363 million over five years for their reform agenda, and the NSW Government has committed $5.6 million to implementation.[155] In both states, advocates continue to hold mixed views about the desirability and effectiveness of criminalisation as a response to coercive control. For example, as the Queensland Government was introducing its first round of legislative amendments, concerns were still being raised about how well equipped the police are to respond to coercive control, particularly after the release of findings from the *Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence*.[156] The CEO of Sisters Inside stated,

> **police don't charge appropriately now. So, they definitely are not going to charge [appropriately] in relation to coercive control … it may bring some safety to some white women, privileged women. But the reality is … First Nations women are dismissed. They are invisible, they are disappeared, and deemed not worthy by the violence of policing.[157]**

In 2004, the Tasmanian Government introduced two new family violence offences in the *Family Violence Act 2004*. They focus on economic abuse and emotional abuse and intimidation.

8. Economic abuse

A person must not, with intent to unreasonably control or intimidate his or her spouse or partner or cause his or her spouse or partner mental harm, apprehension or fear, pursue a course of conduct made up of one or more of the following actions:

(a) coercing his or her spouse or partner to relinquish control over assets or income;

(b) disposing of property owned –

(i) jointly by the person and his or her spouse or partner; or

(ii) by his or her spouse or partner; or

(iii) by an affected child –

without the consent of the spouse or partner or affected child;

(c) preventing his or her spouse or partner from participating in decisions over household expenditure or the disposition of joint property;

(d) preventing his or her spouse or partner from accessing joint financial assets for the purposes of meeting normal household expenses;

(e) withholding, or threatening to withhold, the financial support reasonably necessary for the maintenance of his or her spouse or partner or an affected child.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.

9. Emotional abuse or intimidation

(1) A person must not pursue a course of conduct that he or she knows, or ought to know, is likely to have the effect of unreasonably controlling or intimidating, or causing mental harm, apprehension or fear in, his or her spouse or partner.

Penalty: Fine not exceeding 40 penalty units or imprisonment for a term not exceeding 2 years.

(2) In this section –

a course of conduct includes limiting the freedom of movement of a person's spouse or partner by means of threats or intimidation.

The offences came into force on 30 March 2005. By the end of 2017, after 12 years in operation, 73 complaints had been finalised for the new offences.[158] In an analysis of the prosecutions to 2017, Barwick et al found patterns of behaviour in the conduct of convicted offenders that fell into three categories: social isolation, degradation and intimidation.[159] Moreover,

> **many of these cases also involved extremely degrading conduct that was confronting for police to hear and difficult for the complainant to come forward and talk about. The difficulties in speaking about degrading conduct are further exacerbated in the court process, as giving evidence about it in public and in front of the defendant forces a complainant to relive it, which is humiliating in itself.[160]**

Barwick et al suggested the following reasons for the low number of prosecutions of the Tasmanian offences:

- antipathy from key members of the legal profession to the new offences
- offences that often include acts committed with no witnesses
- delayed reporting
- victims and witnesses who are reluctant to participate in court processes
- lack of community awareness about non-physical abuse
- deficiencies in police training and investigative practices
- a restrictive statutory time limit on filing charges.[161]

Initially, the time limit for initiating proceedings was six months; consequently, charges could only include conduct committed in the six months prior to the defendant being charged. In 2015, this was amended so that the most recent act of abuse must have occurred within the 12 months prior to the charge (but other, older conduct may also be included).[162] Barwick et al argued that one of the benefits of introducing these offences is allowing for prosecution where 'exploitation of vulnerability' is the larger offence.[163] They also suggested that 'while it is true that the number of prosecutions has been very small, much has been learned and it is possible that the full potential of these offences is only just beginning to emerge'.[164]

8.6 Next steps

Whether to introduce a new criminal offence addressing coercive control is ultimately a decision for the Western Australian Government. What is clear from our consultation though is that if the Western Australian Government commits to introducing a new criminal offence addressing coercive control, systemic reform is needed first. The recommendations contained in this report are intended to work together to drive the required systemic reform.

Across consultation, respondents suggested a broad range of measures that collectively constitute the systemic reform needed to adequately respond to coercive control and support the introduction of a new criminal offence. Although we have discussed many of them in preceeding chapters, we list them briefly again here.

Community awareness and community intervention

- Increase opportunities for healthy relationships education for children, young people and adults.
- Strengthen community-based prevention programming and community-based programs, particularly for Aboriginal communities.
- Build in non-punitive accountability for perpetrators in intervention and prevention programs.

- Introduce independent Aboriginal family advocates who provide impartial referrals and support to work with families rather than individuals.

Education and training for participants in the criminal justice system

- Support cultural reform within the police force and judiciary and focus on more effectively understanding, identifying and responding to family violence and coercive control.
- Increase investment in ongoing education and training for police and judicial officers about family violence and coercive control.

Legal reforms

- Introduction of a definition of coercive control in the *RO Act* which reflects the patterned nature of coercive control and its cumulative effect on victim-survivors. These amendments should align with the National Principles.
- Ensure that the definition of coercive control accounts for the range of relationships in which the behaviour occurs.
- Increase effective use of existing criminal charges such as threat to kill and stalking.
- Increase the number of police application family violence restraining orders.
- Introduce a review process to facilitate withdrawal of criminal charges in cases where misidentification has occurred.
- Introduce aggravating factors to existing criminal offences.
- Expand s 63 of the *RO Act* for the court to consider the imposition of a family violence restraining order in all matters where there is family and domestic violence.
- Provide direct support pathways for perpetrators after trial or sentencing to encourage behaviour change.
- Undertake the statutory review of the Family Violence Legislation Reform Bill 2020

Increased support for victim-survivors

- Improve support for people who report experiences of coercive control to police.
- Strengthen the ability of support services to respond to intersectionality; provide cultural safety and appropriate support to victim-survivors from various marginalised backgrounds.
- Provide co-located legal support for victim-survivors who attend police stations to report coercive control.
- Increase funding to specialist family and domestic violence sector and community and women's legal services.
- Consider restorative justice approaches to encourage self-determination for victim-survivors.
- Increase access to crisis and short-term and long-term accommodation.
- Provide long-term trauma specialist counselling for victim-survivors (after crisis stage).

We discussed in section 8.5 the phased approach to criminalising coercive control recommended in *Hear Her Voice* and since adopted by the Queensland Government. We consider that such a model, tailored to the WA context would be useful. The phased approach allows for educating, planning, consulting, training, funding and evaluating reform. Chair of the Queensland Women's Safety and Justice Taskforce, the Hon Margaret McMurdo, said on the release of *Hear Her Voice*:

> **Domestic violence involving coercive control is usually not a one-off incident but a pattern of abusive behaviour that occurs over time. It needs to be viewed in the context of the whole relationship. It is important that urgent reform is put in place to shift the system's focus to better understand the nature and impact of domestic and family violence. This shift needs to happen right across the system irrespective of whether there is any change to the law – certainly it needs to happen before any new offence commences.**[165]

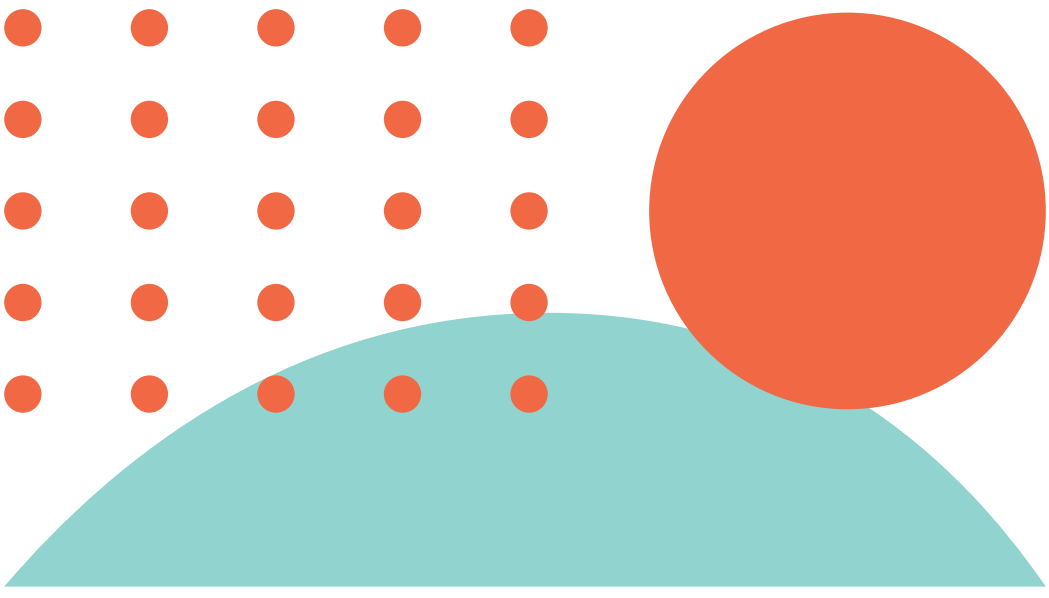
The National Principles set out guiding considerations to inform effective responses to coercive control. National Principle 6 relates to coordinating and designing approaches across prevention, early intervention, response and recovery and healing. This principle recognises that a whole-of-society approach is needed to address coercive control. Governments, the family and domestic violence sector, community or sporting organisations, places of worship, businesses, workplaces, health services, media, academic institutions, communities and families all have roles to play to support the safety of victim-survivors and hold perpetrators to account.[166] Should the Western Australian Government commit to a phased approach to systemic reform and the introduction of a new criminal offence, oversight should be referred to the newly established Family Violence Taskforce.

National Principle 5 relates to embedding lived experience and recognises that engaging with lived experience victim-survivors is essential to inform policies and initiatives to address coercive control.[167] We note the recent commitment from the Western Australian Government to establish a lived experience advisory group to provide an ongoing voice for those with lived experience to help shape policies relating to family and domestic violence.[168]

8.7 Recommendations

We make the following recommendations to the Western Australian Government.

23	Consider the introduction of a new criminal offence addressing coercive control in Western Australia.
24	Adopt the phased approach contained in *Hear Her Voice: Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland* as a best practice model for legislative development and implementation in Western Australia.



Chapter 9: Conclusion

The purpose of this consultation was to consider existing and future legislative responses to coercive control. We asked our stakeholders and the community to provide feedback about whether current legislative responses to coercive control in WA are adequate and, if not, what the gaps are and how they may best be addressed. That is to say, we asked what is working well and what can be improved.

We opened consultation to victim-survivors, academics, advocates, the general community and people working in the justice system, family and domestic violence sector, legal sector and social services. We heard about the impact of coercive control in the community and the effectiveness of our legal system to respond.

We received hundreds of responses. We extend our deep respect and gratitude to the people who shared their thoughts and experiences with us throughout the consultation process. We especially thank and acknowledge those who have experienced coercive control. We also thank and acknowledge those who work tirelessly to support victim-survivors and hold perpetrators accountable.

Respondents contributed their views on a wide range of topics related to experiences of coercive control and how coercive control should be addressed. Respondents expressed different views and perspectives based on their lived experience and professional experience. Some people had experienced positive and affirming interactions with support services and legal system professionals (including police, lawyers and judicial staff); others had not. All respondents agreed that change was necessary. We have made recommendations that are shaped by consultation feedback, evidence-based and aligned where appropriate with the state and national policy landscape.

A strong overarching message through all consultation feedback was the need for urgent systemic reform. We cannot overstate the seriousness of the issues raised in this consultation nor the urgency of the need for reform. The impact of coercive control on individuals, communities and our systems must be acknowledged.

Experiencing coercive control is life changing for victim-survivors and continues to cause harm long after a relationship ends. It erodes victim-survivors' sense of self, ability to make decisions and, in some cases, their financial independence. It is vital for the Western Australian Government to acknowledge and state that coercive control is wrong; that perpetrators cause significant harm; that victim-survivors are not to blame for the abuse, nor for the consequences of that abuse; and that perpetrators will be held accountable. It was clarified throughout consultation that we must keep talking about the perpetrator. In a family violence context, someone causes harm, and it is important to consider how to respond to that person and how to enable more engaged early intervention practices.

It can be challenging for people outside the relationship—including professionals—to identify coercive control because the abuse may take different forms within different relationships, depending on the individual's specific circumstances. The widespread lack of awareness and understanding of coercive control affects victim-survivors' ability to recognise abuse in their life. Many respondents called for increased action to raise community awareness. Misunderstandings of coercive control can also have grave consequences when victim-survivors seek help.

When victim-survivors seek help, they must be able to find it. Whether they are from a family violence service, police, child protection service or court, professionals who work as part of our response system need to understand coercive control and receive training in how to identify it. We talked to and heard stories about many passionate, supportive and committed professionals who have worked hard to support victim-survivors. However, the dedication of individuals does not fill the gaps in a system that is not set up to respond to coercive control. It is essential to provide tools that professionals across social, policing and legal support services can use to build a picture of the behaviour patterns that form coercive control. It is equally important to increase resourcing to develop the workforce and meet increased demand for services from victim-survivors—demand that should flow from better community recognition of coercive control. A poor response not only misses opportunities to provide safety and support but also potentially leads to misidentification of the person in need of protection, further risk for victim-survivors and lack of accountability for perpetrators.

While WA's law recognises coercive control to some extent, the legislation is not able to respond adequately to behaviour that represents a pattern rather than a one-off incident. Key recommendations made in this report include changes to legislation to enable more effective acknowledgement and response to patterns of behaviour. This includes changes to the definition of 'family violence' in the *RO Act* and the need to review existing offences in the *Criminal Code* to capture patterns of abuse.

People who participated in this consultation process expressed different opinions about whether the Western Australian Government should pursue criminalisation. People who supported criminalisation wanted criminal justice system processes to provide acknowledgement of the harm caused to victim-survivors, accountability for perpetrators and greater access to justice. Criminalisation of coercive control is ultimately a decision for the Western Australian Government but we recommend the Western Australian Government consider the introduction of new criminal offence following systemic reform. This does not preclude the government from committing to such an action but would ensure that the development of effective legislation occurs in the context of the wider systemic changes.

As we have mentioned throughout this report, the overarching theme of our consultation findings and recommendations is systemic reform. Without this reform, a new offence would not be effective—the same systemic issues would prevent victim-survivors from obtaining the safety, protection and justice they need. As we entered consultation, a key consideration was how to recommend reform that prioritises the safety of victim-survivors without creating adverse impacts or further marginalisation.

Our vision for reform is a systemic response to coercive control that offers support, safety and protection to victim-survivors, and accountability to perpetrators, at whatever point they interact with professionals on their help-seeking journey. This must start with a consistent national understanding of coercive control that is echoed in Western Australian legislation, embedded in our risk assessment and evidentiary collection tools, built upon in materials used across the family and domestic violence sector, and used in public awareness campaigns. We need a system that works comprehensively to identify patterns of abuse because victim-survivors and perpetrators have potential contact with many different parts of our system. A substantial amount of work remains to be undertaken, but the recommendations we put forward should work together to begin the urgent reforms required to improve outcomes for victim-survivors.

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Appendix 1

The following list represents the stakeholders who provided a written submission or attended online and in-person consultation sessions. We acknowledge that people who attended the consultation sessions expressed their views based on their professional experience and knowledge but their views may not reflect the views of everyone in their organisation.

Advocare
Albany Community Legal Centre
Anglicare
Arlig Law
Australian Association of Social Workers
Australian Psychological Society
Centre for Women's Economic Safety
Centre for Womens Safety and Wellbeing
Centrecare
Chief Magistrate Heath
Circle Green Community Legal
Commissioner for Children and Young People
Communicare
Community Legal WA
Connection and Wellbeing Australia
Consumer Credit Legal Centre (WA) Inc
Cottesloe Counselling Centre
Council on the Aging Western Australia
Defence Member and Family Support
Department of Communities
Department of Justice - Corrective Services
Department of Justice - Family Violence Service
Department of Justice - Strategic Reform
Department of Justice - Victim-Offender Mediation Unit
Desert Blue Connect
Developmental Disability WA
Ethnic Communities Council WA
Explorability Inc
Family Court of Western Australia
Family Inclusion Network of WA
Family Law Practitioners' Association of Western Australia
FDV Network Pilbara
Full Stop Australia
Goldfields Community Legal Centre
Hope Community Services
Hopgood Ganim
Ishar Mulitcultural Services
Lavan Legal
Law Society of Western Australia
Legal Aid Western Australia
Mackillop Family Services - Indigenous Healing Services
Marna Jarndu Women's Refuge - Broome
Mens Outreach Service Mamabulanjin Aboriginal Corporation - Broome
Midlas
Multicultural Futures
Naala Djookan Healing Service
Nardine Wimmins Refuge
No to Violence
Northern Suburbs Community Legal
OARS Community Transitions
Office of the Public Advocate
Our Watch
Ovis Community Services
Partners of Veterans Association WA
Peel Community Legal Services Inc
People with Disabilities WA
Pilbara Community Legal Service Inc
Preventing Violence Against Women
Regional Alliance West
Relationships Australia
Royal Australian and New Zealand College of Psychiatrists
Ruah Community Services
Scales Community Legal Centre
Sexual Assault Resource Centre
Sexual Health Quarters
South West Community Legal Centre
Stopping Family Violence
Sussex Street Community Law Centre
The Salvation Army
WACOSS
Welfare Rights and Advocacy Service
Western Australia Council of Social Services
Western Australia Police Force
Women Lawyers of WA
Women's Legal Service WA
YourToolkit.com
Youth Legal Service
Zonta House Refuge Association