# SUBMISSION IN RESPONSE TO ISSUES PAPER 49:

JUSTICE RESPONSES TO SEXUAL VIOLENCE

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# Submission in response to Issues Paper 49: Justice Responses to Sexual Violence

Dear ALRC Commissioners and Review Team,

Thank you for this opportunity to respond to the Issues Paper produced to inform the Australian Law Reform Commission's Justice Responses to Sexual Violence Inquiry.

This submission has been prepared by Professors Kate Fitz-Gibbon, Sandra Walklate and Silke Meyer. We would welcome the opportunity to discuss any aspects of this submission and our wider program of research on justice system responses to sexual violence with members of the Commission to inform your review.

Kind regards,

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# Submission outline

We welcome the Inquiry's interest in hearing diverse experiences and needs of victim survivors of sexual violence. Drawing on data obtained via our national study, this submission aims to provide insights into the lived experience of the criminal justice system among victim-survivors of sexual violence in the context of coercive control. In drawing on this data, we note that the victim-survivors in our study were likely engaging with the criminal justice system to report a range of abusive behaviours, including sexual violence, in the context of their coercively controlling relationship.

#### Our submission presents data on two key themes:

- 1. Victim-survivors' experiences of reporting to the police, including outcomes sought from the police and the impact of police reporting.
- 2. Victim-survivors' experiences of obtaining an intervention order, including the impacts of an intervention order, as well as reasons for not obtaining an intervention order.

Referring to Figure 1 from the Issues Paper (2024) our submission focuses predominately on the reporting, investigation, and charges laid phase of the criminal justice system's response to sexual violence, with a specific focus on policing.

Improving police responses to sexual violence in the context of intimate partner violence is critical to ensure victim-survivors immediate experiences of effective and safe policing. Further, as our submission highlights, improved responses to sexual violence in the context of coercive control is vital to preventing subsequent, escalating and potentially fatal forms of intimate partner violence.

# About our national coercive control study

This submission draws from data collected as part of our national study on, 'Victim-survivors' views on the criminalisation of coercive control'. The study represented the first in-depth national examination of victim-survivors' views on the benefits, risks and impacts of the criminalisation of coercive control. Here we provide an overview of the scope of that study and the data collected in order to contextualise the data drawn upon throughout this submission (for further findings from this study, see Fitz-Gibbon et al., 2023a, 2023b; Reeves et al., 2023; Walklate et al., 2022).

Our coercive control national study aimed to provide the first detailed national account of victimsurvivors views on their support for the criminalisation of coercive control, what it may achieve in terms of improved safety outcomes for victim-survivors and greater accountability of perpetrators, and the risks of utilising criminal legal system responses to improve outcomes for victim-survivors of intimate partner violence (see further Fitz-Gibbon et al., 2024, forthcoming).

In order to fulfill these aims, data was collected in two phases. In phase one, 1,261 victim-survivors participated in an anonymous online national survey utilising a self-selected convenience sample. The survey included a series of closed and open text questions which collected information on victim-survivors' experiences of coercive control, the impacts of coercive control, their help-seeking behaviours, and their views on the criminalisation of coercive control. Upon completing the survey, participants were offered the opportunity to opt into a one-on-one interview with a member of the research team, by providing their contact information and consent for follow up contact. Over 400 survey respondents agreed to follow-up contact, and of these, 170 completed an interview with a member of the research team.<sup>1</sup>

For the purposes of this submission, we are drawing on the views and experiences of the 243 victimsurvivors who participated in this study and identified that they had experienced sexual violence in the context of coercive control.

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<sup>&</sup>lt;sup>1</sup> The remainder of the survey respondents (n=230) who had agreed to follow up contact either did not reply to the interview invitation or declined to be interviewed.

Sample of victim-survivors who had experienced sexual violence in the context of coercive control

There were 243 victim-survivors who participated in our study and identified that they had experienced sexual violence in the context of coercive control.

# **AGE RANGE (YEARS OLD)**

18-20: 1% 41-50: 41% 21-24: 2% 51-60: 23.5% 25-30: 4.5% 61yrs and over: 3% 31-40: 25.5%



3% identified as Aboriginal and Torres Strait Islander 82% were born in Australia 18% were born overseas



# GENDER IDENTITY



Female: 86.5%



Male: 12%

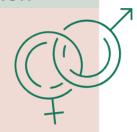
Survey respondents also identified as a trans man (0.5%), and non-binary (0.5%)

# STATE AND TERRITORY BASED IN



# SEXUAL ORIENTATION

Heterosexual 80%
Bisexual 7.5%
Pansexual 3%
Queer 3%
Asexual 1.5%
Lesbian 1%
Questioning 1%
Gay 0.5%



#### HIGHEST DEGREE OF EDUCATION COMPLETED

Less than Year 12 equivalent 9% Year 12 equivalent 12% TAFE degree 23.5% Undergraduate degree 25% Postgraduate degree 28.5% Prefer not to say 2.5%

# AREA LIVED IN



Metropolitan 57% Regional 30% Rural 13%



24% identified as having a disability

86.5% have children



Employed (full & part time) 52% Casual employee 8%

Unemployed 14%

EMPLOYMENT STATUS

Student 6% Retired 3.5%



# Victim-survivors' experiences of reporting to the police

In our sample of 243 victim-survivors of sexual violence in the context of coercive control, *all* victim-survivors had reported their victimisation to the police. In the wider survey sample of 1,261 victim-survivors of coercive control 47 per cent had reported to the police. Focusing here on the 243 victim-survivors of sexual violence in the context of coercive control, we present the responses received to questions examining:

- The outcomes sought by victim-survivors from the police, and
- The impacts of police reporting.

# Outcomes sought from the police

The survey invited victim-survivors to detail the outcome they sought from the police. This is an important aspect to explore. While there has been significant prior research examining the barriers to police reporting, there is less research documenting what victim-survivors who do report to police seek in terms of outcomes. The obvious answer here is increased safety, and this certainly came through in responses from victim-survivors in this study. As three victim-survivors quite simply stated:

*I* wanted to be safe.

I wanted the police to help keep me and my family safe.

I wanted them to protect me and stop him from hurting us.

Notably, there were several victim-survivors who sought help from the police but did not have a specific outcome in mind in terms of how that help would be provided. This is an important finding as often it may be inaccurately assumed that victim-survivors have a clear sense of what outcomes police can provide for them, and how they will be able to support their safety needs. For these victim-survivors 'seeking help' in and of itself was the outcome listed as sought from the police:

I didn't have a specific outcome, just wanted it to stop.

Help, any kind of help.

Help in any form.

I don't know I just wanted some form of help. I wanted him to stop raping me and stalking me.

I needed help and support and didn't know where else to turn at the time.

Building on this, there were several victim-survivors who identified the need for information as driving their initial engagement with police:

I wanted advice on how to leave safely.

I didn't know what could be done.

I wanted to know if what was happening was right or wrong. I wanted advice.

Accessing police as a means through which to gain information on safety, and to engage in safety planning, was a commonly shared experience among victim-survivors and points to the need to ensure that specialist support service information is widely available across the community. The provision of information and safety planning, in and of itself, does not require nor necessitate a policing response. Indeed, it can be argued that such victim-survivors – who are at the information gathering and safety planning stage of their experience – may be better placed accessing specialist domestic, family and sexual violence (DFVS) supports where they may be more likely to receive a trauma- and DFSV-informed response.

The most common outcome sought from police by victim-survivors in this study were intervention orders as well as police charges. Victim-survivors often listed 'intervention order, AVO/DVO' and 'charges laid' with little to no further details, or described that they were seeking information from police on how to obtain an intervention order. In the majority of instances, survey respondents described wanting an intervention order to improve their own safety. There were a small number of respondents who cited reporting to the police as a way in which to protect others from the same abuser and/or as a mechanism through which to build an evidence trail against their abuser, if needed.

Three victim-survivors described being motivated by a desire to regain their agency and ensure the perpetrator was held to account for their abusive behaviours. They described:

I wanted to get some agency back by telling my story and being heard. I wanted him to be held to account in some meaningful way.

I hoped the justice system would firstly believe me and secondly hold the perpetrator to account for his behaviour and actions.

To get some power back, to tell my story and to be believed. For him to be held account, and to be exposed for what he is.

There were other victim-survivors who also described having reported to police to ensure the perpetrator was held to account. Another four victim-survivors commented:

Safety, protection and for the perpetrator to be held accountable for their behaviours. I definitely wanted there to be a justice outcome.

*I hoped he would be held accountable & that justice would prevail.* 

I want to make my perpetrators accountable and let them know it is not ok to what they did to me to others.

I wanted it to stop. I wanted to be free and live my life free from fear and ongoing dv. I wanted him to realise his behaviour is not acceptable and him to be held accountable for his choices.

While perpetrator accountability has been a key policy focus in recent years, these remarks were unique, with few victim-survivors listing accountability as an outcome sought from police reporting. This suggests that police contact is primarily initiated by victim-survivors to obtain information and address immediate safety concerns.

There were a small number of victim-survivors who expressed a lack of trust in the police and indicated that they only reported their victimisation to police as a last resort option. As one victim-survivor recounted:

I didn't trust police at all for many years until the very end when I felt I had no other option. I asked for an AVO.

It is important to note here that this sample comprises only victim-survivors who reported their victimisation to police, suggesting they had some level of confidence in police, at least initially. Wider research, however, reveals that sexual violence is highly underreported with a lack of trust in police identified as one of multiple barriers to police reporting (Zinzow et al., 2021).

# Impact of police reporting

The 243 victim-survivors of sexual violence in the context of coercive control who reported to the police were invited to describe what the impact of that reporting was. The responses were extremely diverse, with some victim-survivors focusing on the immediate impacts following their decision to report to the police, while other reflected on impacts experienced over longer periods of time. There were few victim-survivors who recounted positive impacts of police reporting. For the small number of victim-survivors who did reflect positively on the impacts of police involvement, common among these was the perception that police had validated their fears, and taken action. Two victim-survivors commented:

They took me seriously. They did what I needed, but it shocked me that they took it SO seriously, as I was stikk [stuck] in denial as to the seriousness of what was going on. Then believing me made an impact, and assured me I was doing the right thing.

Domestic violence officers were great, very calming, non-dismissive, reassuring that I'd done the right things.

These two reflections demonstrate the power of the police affirming a victim-survivors experience, imparting a sense of being believed and of taking reassuring action.

For multiple victim-survivors the lack of police action taken in response to their report had the most significant impact upon them, with victim-survivors describing that nothing changed in their lives as

a result of reporting to the police, and that they felt they were dismissed and/or were not believed. As four victim-survivors described:

Trauma, not believed, too hard basket.

No impact at all. Nothing was done.

Nothing - they minimised the experiences.

Made me feel as there was no hope for me and that I didn't matter. That the police didn't even care that this was happening to me so why should I?

In some instances, the police response was further traumatising and was perceived as enacting further harm on them. As three victim-survivors described:

They came and joked with him. They didn't charge him. I lost all faith in the police.

They laughed at me so they were useless.

Further victimised by police, they did not believe me, they swore at me and belittled me and did nothing.

Concerningly, several victim-survivors recounted the ongoing prevalence of myths surrounding domestic, family and sexual violence whereby victim-survivors who were in an intimate partner relationship with their abuser were told to leave or asked by police why they did not leave. Two victim-survivors recounted:

I was told to leave. I was told he was drunk and just need to sleep it off.

Nothing happened. I was asked... why do you stay?

For other victim-survivors the experience of reporting to the police was positioned as further traumatising and compounding the trauma they were already experiencing. As one victim-survivor commented:

Waste of time and further abuse by the system.

Negative impact. Loss of trust and respect for police. I ultimately felt responsible for ensuring my own safety.

Victim-survivor accounts of inaction, dismissal or disrespectful interactions with police are important to recognise and address because such responses deter many victim-survivors from reporting future victimisation experiences (see also Zinzow et al., 2021), placing them at increased risk of isolation and harm.

# Experiences of obtaining an intervention order

Of the 243 victim-survivors of sexual violence, 58 per cent obtained an intervention order after experiencing sexual violence in the context of coercive control (n=138).<sup>2</sup> There has been significant attention paid in recent years in Australia to the failure of intervention orders to support women's safety, particularly in recent months following the killing of a number of women in Australia in cases where the alleged perpetrator was a respondent on an intervention order at the time of the killing. As part of this study, the survey invited those victim-survivors who had obtained an intervention order to describe how it had impacted on their safety and wellbeing.

#### Positive experiences of obtaining an intervention order

There is very little documented in research on positive victim-survivor experiences of obtaining an intervention order. While we acknowledge that it was not the experience of the majority of survey respondents within our study, there were a smaller number of victim-survivors who did share positive outcomes of obtaining an intervention order following their experience of sexual violence in the context of coercive control. In particular, there were a small number of victim-survivors who reflected that the abuse they experienced either reduced or stopped as a result of the intervention order. As three victim-survivors explained:

It set a boundary and reduced the behaviour.

It drew matters to a conclusion.

It made the most massive amount of relief to just live a normal safe day without feeling scared, watched or if he would take the kids.

For other victim-survivors, the intervention order provided the interruption to the abuse required to allow them to put in place their own safety supports, and in some cases to relocate. Two victim-survivor described:

Gave us time to organise ourselves away from him.

*Kept us safe for two years enough time to move away.* 

For other victim-survivors taking out an intervention order, and having this initial engagement with police, provided them with the sense of safety and security they sought. For these victim-survivors their interaction with police instilled a sense of feeling heard and a confidence that the police were there to support them. As three victim-survivors recounted:

It was the first time I felt like someone believed me and believed what my abuser was doing to me was wrong.

<sup>&</sup>lt;sup>2</sup> Intervention orders are a form of civil order, they are also referred to as protection orders and apprehended family violence orders in other state and territory jurisdictions.

It gave me a starting point for protection.

It gave me some peace and I felt better knowing that if he uttered any form of abuse, I could call the police.

These experiences, while not among the majority of those shared across the survey, are important to recognise as they highlight the *potential* and the value of an effective policing response whereby victim-survivors can experience an increased sense of safety and can feel empowered and believed by a key agency of the justice sector. These are significant outcomes, and great work is needed to understand what positive examples of police intervention, and effective uses of intervention orders look like, to inform improved policing practice moving forward. While we recognise there are significant lessons to be learnt from systemic failures, including in relation to police responses and the operation of intervention orders, we also believe learning from and sharing good practice should be a critical component of any wider justice system reform agenda.

# Negative experiences of obtaining an intervention order

Across the experiences shared, positive reflections on the impacts of obtaining an intervention order were infrequent. Rather, most victim-survivors in this study recounted that the intervention order obtained had been ineffective and had failed to improve their safety. Broadly, victim-survivors described a failure of intervention orders to stop their experience of abuse and increased their sense of safety or protection. Three victim-survivors commented:

It enraged our perpetrator; they are a waste of paper and rarely upheld. Perpetrators know how to play the system and the court system ... The Courts fail survivors and victims. It's an horrific system to navigate whilst fighting to stay safe and alive.

It keeps my ex away but it does not stop the control or the abuse ... going through the court processes has been horrific. I have an order that really means nothing. My ex can continue to abuse me and I cannot do anything about it.

I do not feel that I am any safer and know it will not protect me if he decides to harm me.

Other victim-survivors expressed similar sentiments as to the ineffectiveness of intervention orders to improve safety and to prevent future abuse:

Made no difference...except the ex involved more people in stalking me.

Did not help in anyway. Abuser continued behaviour.

It did nothing, the abuse still continued.

It's a piece of paper and stopped nothing. Police will not follow through on breaches.

In particular, views around a lack of effectiveness of intervention orders were associated with perceptions that breaches of the order did not result in any penalties for the offender, and that such inaction undermined the objectives of the order to improve safety. Victim-survivors described:

They never work. Ex always broke them.

I didn't feel safer because my ex could easily breach it. If they want to find you, they will and they don't care about an intervention order. I didn't feel safe until I had moved house, changed my name on social media and got a new job.

I have breached him twice and nothing has happened there were many many more times I could have breached him but the process is honestly terrifying and then police believe him or make me feel like I am wasting their time.

It's worth as much as the paper it's written on, he breaches it but is smart about it and the cops can't do anything.

It made no difference. He breached it all the time. I reported to the police and they made excuses for him, blamed me and did nothing to enforce it.

Did not help. Multiple breaches were reported and not followed up at all, or given a warning at best. Reports were dismissed as not serious enough to take to court, lost or not recorded properly.

For a smaller number of victim-survivors the abuse experienced escalated following the intervention order, with the victim-survivor recounting feeling at greater risk of violence than before. Three victim-survivors described:

This [the intervention order] just made things worse and resulted in stalking and constant phone calls which made me more scared and emotionally drained.

Made him angrier and me less safe, I think.

It triggered him to set fire to the house after being served at the pub late at night.

Ongoing abuse, despite an intervention order being in place, was also experienced in the form of legal systems abuse. The National Domestic and Family Violence Bench Book (2021) defines systems abuse as the abuses of processes that may be used by a perpetrator in the 'course of domestic and family violence related proceedings to reassert this power and control over the victim'. As three victim-survivors recounted:

I am relieved that the DV IVO is in place, however, it does not stop the ongoing coercive control that has continued through his solicitor. He is using legal means to

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<sup>&</sup>lt;sup>3</sup> See further: www.dfvbenchbook.aija.org.au

intimidate and control me. All I can do is attempt to ignore him, but there are days I cannot get out of bed as I am so worried about what he will do.

It made him escalate to using the legal system. He made false reports to child protective services, he sued me for property and custody of the kids. He made false drug reports and it made the whole situation worse.

It resulted in my partner making a report also. The police knew his report was rubbish but they still came and escorted me out of the house. One of the worst experiences of my life. I've never been so scared or humiliated.

For other victim-survivors the issuing of an intervention order led to a temporary de-escalation or halting of the abuse experienced, but often this was not sustained. As two victim-survivors explained:

For 4 weeks everything went quiet around the house. No broken pots, flat tyres or tapping on the window of a night. After this time, it went back to how it had been pre PFVO. Police didn't really care and stated I had to be careful I didn't "cry wolf".

It was a difficult process to go through. When it was over I did feel some relief. But the relief didn't last long. I was still always worried and scared for a long time.

Highlighting the importance of timely responses, for several victim-survivors in this study the time taken between seeking the intervention order and the order being made was viewed as negatively affecting their sense of safety. Several victim-survivors described a period of living in limbo while they waited on the outcome of the order sought. As one victim-survivor explained:

The process was lengthy as my ex contested the order being made for three months. During this time, we couldn't leave the shelter ... Once in place and the kids were named, I felt comfortable to move to a residential home.

#### Reasons for not obtaining an intervention order

For those victim-survivors who did not want to pursue an intervention order or were unable to obtain one (42%, n=101), the survey invited them to describe their reasons and experiences. These responses provided valuable insights into the decision making of victim-survivors who do not pursue civil protection. For victim-survivors the decision not to obtain an intervention order was made due to the fear of retaliation from the perpetrator if they did so. As five victim-survivors remarked:

I was scared it would exacerbate his fury and make him more likely to turn violent. A piece of paper would not stop him if he was going to kill me.

I was afraid it would make him so angry he may get violent. He had already made death threats. I preferred to just hide from him.

Threats about going to court and being killed if I did so.

I was too fearful of his reaction and how it might impact my child.

I did not wish to make him angry or further upset him. I felt he was already highly agitated and I was unsure what action he would take if an Intervention order was served.

In some cases, this fear of retaliation extended to the period after the intervention order with the victim-survivor acutely aware that the order would be in place for a specified time period. One victim-survivor explained:

I thought it would antagonise him further. He would wait the 12 months and the seek his 'revenge'.

These viewpoints highlight the need for greater safety planning with victim-survivors to support personal security in the time immediately prior to, and following, a victim-survivors decision to seek an intervention order.

For other victim-survivors their prior negative engagement with the police informed their decision not to pursue an intervention order. These victim-survivors often described a lack of confidence that police would believe them, that they would receive an effective response, and that it would improve their safety. As two victim-survivors described:

Police wouldn't apply for one on my behalf. They told me that I was wasting their time. That I was making it up.

The police didn't support me in doing so.

Ensuring community confidence in police as the gatekeepers of the criminal justice system is critical, and in particular in Australia in the wake of several high-profile homicide cases involving alleged police inaction and system failures. There is a need to rebuild trust and community confidence in the policing response to domestic, family and sexual violence in the light of these high-profile cases and in the light of the evidence presented here.

# Conclusion

The Issues Paper (2024, p.4) states:

Some victim survivors do not want to engage in the criminal justice process because they do not want the person responsible for sexual violence to go to jail, or because the process does not meet their needs. These factors suggest that many victim survivors do not engage with the justice system at all, and that measures should be implemented that improve access to justice for victim survivors.

We note the number of inquiries and reviews in recent years which have highlighted the importance of trauma-informed and culturally appropriate training for police to improve responses to sexual violence. The findings from this research reiterate the importance of the police as the gatekeepers of the justice system and the need for substantive improvement in police responses to sexual violence. This evidence makes the case for, at a minimum, improved listening skills on the part of the frontline police officer, and importantly, greater awareness and understanding of the role of the police as a key link into appropriate safeguarding services for victim-survivors. The evidence points to the need for, the availability and accessibility of such services, including via clearly communicated information to victim-survivors or direct referral pathways to connect victim-survivors with trauma- and DFSV-informed support mechanisms. The data also highlights the need to facilitate access to the information needed to enable victim-survivors to make informed choices which meet their circumstances with regards to further help-seeking and reporting.

This evidence also points to the need to improve police understandings of and responses to sexual violence in the context of intimate partner violence. Sexual violence has been identified as a high-risk indicator of escalating and potentially fatal violence in the context of coercive control and other forms of intimate partner violence. Improving police responses to sexual violence in the context of intimate partner violence is therefore not only critical with regards to victim-survivors immediate experiences of policing but further with regards to preventing subsequent, escalating and potentially fatal forms of intimate partner violence.

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