

Ensuring a Safe Space: Criminalising Coercive Control

In the lead up to the International Day for the Elimination of Violence Against Women (25 November), this edition of *Just Now* takes a closer look at the pervasive issue of coercive control as a form of domestic abuse. The incidence of domestic and sexual abuse is tragically high. While it affects both men and women, the rates of abuse are much higher for women than for men.

Domestic abuse has a devastating impact not only on victim survivors but also children who observe it. Children who witness domestic violence before the age of 15 are 3 times more likely to experience domestic violence as an adult.

A gap currently exists in the criminal law in several Australian states regarding the protection of women from coercive and controlling behaviour by an intimate partner.



Coercive control is a pattern of behaviour by one person to dominate or control another in a domestic relationship and can include psychological, financial, and emotional abuse. The behaviour can leave the person isolated and feeling powerless. Coercive control is one of the most significant risk factors for death by homicide by an intimate partner. Governments have recognised the need to improve the criminal justice response to this issue.

DOMESTIC VIOLENCE AND CHURCH TEACHING

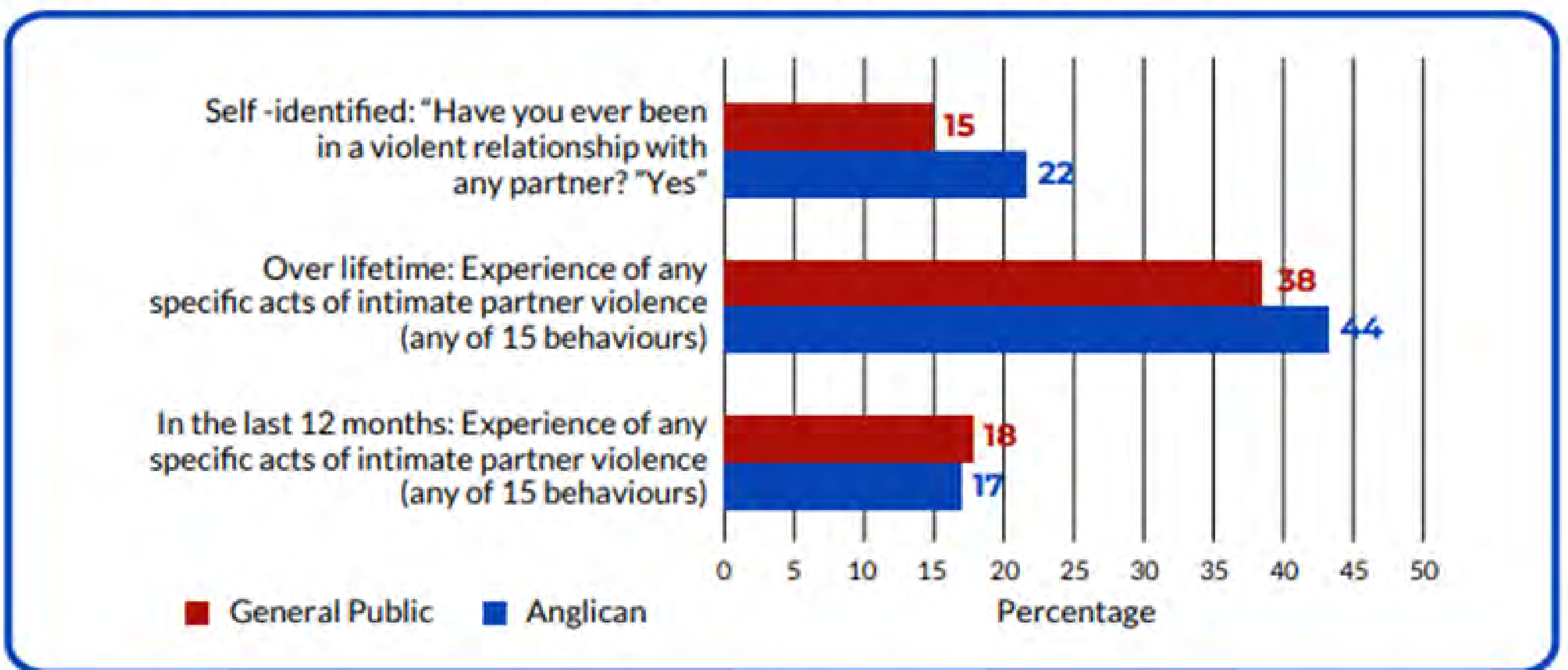


A foundational principle of Catholic Social Teaching is the dignity of the human person. Human beings are relational. Healthy relationships which have love and respect as their foundation are essential to human flourishing. People have an inherent need to feel safe and trust the people with whom they are in relationship. Nowhere is this truer than in marriage. As Pope Francis reminds us in *Amoris Laetitia*, domestic violence contradicts the very nature of married love (n 54).

Marriage is for the well-being of spouses (Canon 1055 §1) and behaviour which causes grave danger to the spouse or children, or makes life unduly difficult, constitutes a lawful reason to leave a marriage (Canon 1153 § 1).

Even though the Catholic Church's Canon Law does not require a person to remain in an abusive relationship, research has found that not only are rates of domestic abuse within Christian families the same or higher than wider society, but that religious beliefs are often cited as reasons for staying in a relationship. There is currently no data on domestic violence available from the Catholic Church, so a report by the Anglican Church has been used here to shed light on this challenging issue.

Figure 1: Three measures of prevalence of IPV: general public & Anglican samples



Source: 2019 NAFVP Prevalence Study. A global item asked respondents to self-identify as having been in a violent relationship. A series of individual acts were listed using items from the Composite Abuse Scale Short Form (CAS-SF), with additional items about spiritual abuse (not shown in chart). Percentages are based on those who indicated they had ever been in an adult intimate relationship (general population n = 949; Anglican n = 765).

A complex interplay of Christian ideas about marriage and forgiveness has contributed to some remaining in an abusive relationship.

These include:

- "Marriage is a lifelong commitment and a covenant that cannot be broken in any circumstances;
- Being the 'perfect wife';
- A man has control in a marriage and a wife must submit to her husband;
- Being faithful involves suffering and total self-giving;
- Forgiveness must be unconditional."

National Anglican Family Violence Research Report, April 2021, NCLS Research, p. 57

"... But when you've sat in church week in, week out, for however many years and there's lots of focus on relationships and the marriage relationship and obedience in that relationship and I'm not sure whether it was - it certainly always felt like obedience in terms of servitude, as opposed to an honouring, obedience in an honouring sense. I wonder what impact that has now on women who are in abusive relationships and where that mindset is."

National Anglican Family Violence Research Report, April 2021, NCLS Research, p. 58



On 28 August 2022, the Australian Catholic Bishops Conference issued its *Social Justice Statement 2022-23* as part of Social Justice Sunday. In this statement, the bishops urge church communities to confront the issue of domestic abuse: "Faith communities can play a powerful role in reducing domestic violence." (p. 11)

"Parish priests and other community leaders are in an ideal position to educate the community, inform and support victims of violence and assist on the ground addressing systemic issues in line with our faith." (p. 11)

"Our faith communities and organisations are among those working in a broad range of ways to support those who experience violence and abuse, and to address the drivers and enablers of violence." (p. 13)

As the bishops affirm, "Whenever a woman or child is subjected to violence, abuse or coercive control, the image of God and the freedom of the children of God is violated." (p. 10)

This is a finding that has been supported by research conducted by organisations outside a church context. The Victorian Royal Commission into Family Violence affirmed the role that faith-based communities can play in supporting victims. Specifically, the Royal Commission identified the following ways such communities can assist:

- “They have an ability to reach and engage people who might not approach formal service providers in the family violence system;
- They are places where people can go to find ‘solace, meaning, comfort and support’, and they can create supportive social networks for their members who are affected by family violence;
- They can provide education to their members about family violence;
- Faith leaders occupy a position of authority in their community and have the ability to influence the behaviour of community members;
- They can sensitively introduce ways of seeing the roles of men and women in society to members of their own communities, without being seen as ‘outsiders’.” (p.132)

The report by the Anglican Church found that church leaders at key moments can “offer alternate perspectives that empower victim-survivors to begin a process of change” (p. 58). Some ideas that were a catalyst for change include:

- “Marriage is a covenant between two parties and requires two parties to uphold it;
- The partners in a marriage are equal and there is no place for one partner controlling the other;
- God is merciful and loving and would support a partner leaving their abusive relationship;
- God doesn’t want vulnerable people to suffer.” (p. 58)



“... And I was just like, huh? I thought I had to forgive, you know, 70 times 7, and all this stuff! And you turn the other cheek, and you press on, he hasn’t hit you, he hasn’t sexually abused you, you’ve got to take the good with the bad. You said you would take him for richer or for poorer, you made that vow. Well the fact that you’ve been poorer for all these years, you know, that’s your lot in life.

That was my attitude. And it was such a revelation when she was like, “uh-uh-uh-uh-uh. Let’s look at these vows, let’s look at marriage at what’s involved there, and that covenant has well and truly been broken and for many years. So what are you hanging on to?” And I had to agree – I don’t know. A fantasy, basically. And as difficult as that was, and as confronting as it was, that’s what I needed.”

National Anglican Family Violence Research Report, April 2021, NCLS Research, pp 58-9

COERCIVE CONTROL – A TYPE OF DOMESTIC ABUSE

Recent domestic homicide cases that attracted media attention have shone a spotlight on the issue of coercive control. As a result, the Queensland and New South Wales governments have taken steps to strengthen the criminal justice response to this issue. Tasmania is the only state that currently has laws that criminalise coercive control.



In October 2020, the Queensland state government committed to legislating against coercive control and in March 2021 established the Women’s Safety and Justice Taskforce. The first report from the Taskforce was released in December 2021 and endorsed criminalising coercive control as part of 89 recommendations requiring system-wide reform.

The New South Wales government also recently agreed to criminalise coercive control and established a Joint Select Committee in October 2020 to examine the issue. The report was released in June 2021. In response, the NSW government issued a public exposure draft Bill in August 2022 for public consultation, which was passed by the Lower House on 19 October 2022

The wide consultation and investigations undertaken by both state governments have resulted in a more nuanced understanding of abusive behaviour. The submission provided to the NSW Joint Select Committee by the Domestic Violence Death Review Team furnished substantial evidence that the presence of coercive control in a relationship is one of the most significant risk factors for being killed by an intimate partner (p. 2).

Indeed, in more than half the domestic homicides that were investigated over the past 18 years, there was no evidence of any physical violence prior to the death. Rather, other forms of coercive and controlling behaviour were present (p. 2). As Associate Professor Kate Gleeson states: “Coercive control is not a “warning” that violence is about to occur. Rather, it is a form of violence implicated in homicide.”

The evidence gathered by both governments also demonstrated the inadequacy of the current legislative framework in responding appropriately. The Domestic Violence Death Review Team identified many examples where police repeatedly attended domestic violence callouts but did not press charges where the complaint related to non-physical forms of violence (p. 5-6).

"But lives just might be saved, if we take the small but significant step of recognising that certain patterns of non-consensual behaviour must be seen together, because very often they are actually a system of entrapment and a siren warning of the potential for preventable and recognisable death by murder.

Our strongly held unanimous Committee view is that implementation of a change to the lens through which we view domestic abuse, by legislating to criminally recognise coercive control as other jurisdictions do, is needed in this term of Parliament, but could only be undertaken with an extensive implementation process, which includes consultation, education, resources and lead-time, if it is to succeed."

The Hon Natalie Ward MLC, Chair, Parliament of New South Wales, Joint Select Committee on Coercive Control, Report 1/57 – June 2021, Coercive Control in Domestic Relationships, Foreword, pp. iv-v

Crimes Legislation Amendment (Coercive Control) Bill (NSW) 2022

The Crimes Legislation Amendment (Coercive Control) Bill (NSW) 2022 creates a stand-alone offence for coercive control. It requires that 5 elements must be established before the offence is found:

1. Behaviour must be engaged in by an adult repeatedly or continuously;
2. It must be abusive and includes violence, threats, intimidation or coercion and control;
3. It must cause the other person to fear violence will be used against them;
4. It is directed against a current or former intimate partner;
5. The offender must intend physical or mental harm.



CRA provided feedback to the NSW Government during the consultation period, supporting the criminalisation of coercive control. In particular, CRA backed the inclusion of an element of intent in the offence, so as to ensure sufficient safeguards existed in the legislation to prevent overreach by the law. In criminalising coercive control, CRA acknowledged the potential for the legislation to misidentify dysfunctional behaviour (such as mental ill health or substance abuse) as criminally coercive behaviour and welcomed the inclusion that the offender must *intend* the physical or mental harm.

National Principles to Address Coercive Control Meeting of Attorneys-General



In August 2022, the Federal Government convened a meeting of State, Territory and Federal Attorney-Generals to discuss a shared national understanding of coercive control.

Following this, a Consultation Draft of the National Principles was released. The Consultation Draft sets out 8 principles which explore:

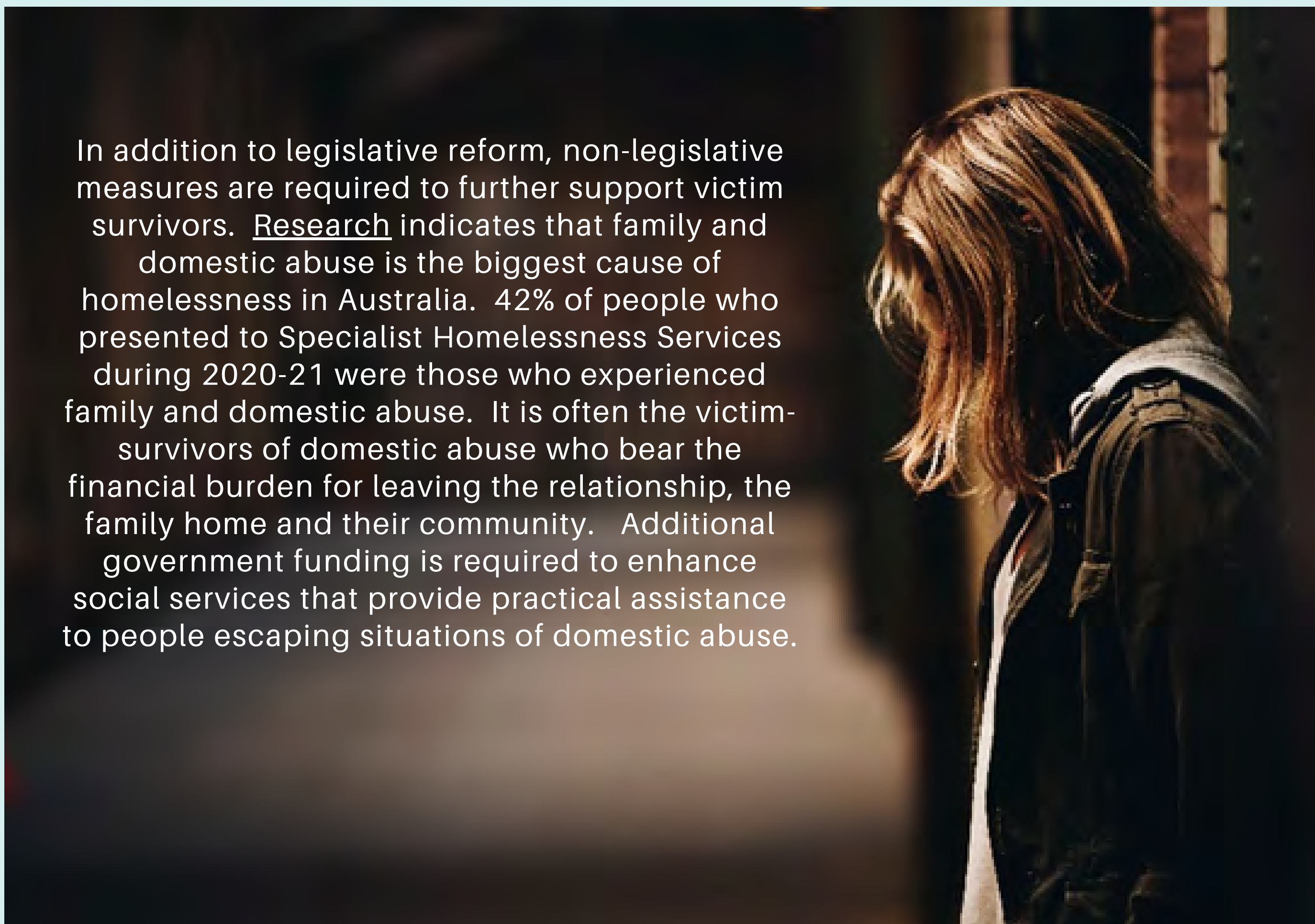
- "a common understanding of coercive control and its impacts (1-3);
- the effects of discrimination and inequality (4);
- systems reform issues (5-6);
- criminalisation (7-8)."

The Federal Government has engaged in a process of community consultation on the draft principles, seeking feedback from key stakeholders such as those with lived experience of coercive control; those subject to discrimination and inequality; service providers; research and advocacy organisations. CRA was invited to participate in a roundtable discussion, which took place in October 2022. The views expressed in the roundtable discussions will be collated by theme and fed back to the government. The purpose of the National Principles is to guide state governments and organisations in dealing with coercive control. It will be for each individual jurisdiction to decide how to use them, but the hope is that creating a shared national understanding will lead to a more consistent approach across jurisdictions and improve the safety of Australians, especially women and children.



DOMESTIC VIOLENCE AND HOMELESSNESS

In addition to legislative reform, non-legislative measures are required to further support victim survivors. Research indicates that family and domestic abuse is the biggest cause of homelessness in Australia. 42% of people who presented to Specialist Homelessness Services during 2020-21 were those who experienced family and domestic abuse. It is often the victim-survivors of domestic abuse who bear the financial burden for leaving the relationship, the family home and their community. Additional government funding is required to enhance social services that provide practical assistance to people escaping situations of domestic abuse.



WHAT CAN YOU DO?

If you encounter situations of domestic abuse, there are important things you can do that can make a difference.

The National Domestic Family and Sexual Violence Counselling Service sets out steps to take:

- “In an emergency or if someone is in danger now, call 000 immediately;
- Believe the person and take their fears seriously. This is important no matter what you think of the person or people who hurt them;
- Listen without interrupting or judging;
- Never blame the person experiencing the violence for what has happened to them. Violence is never OK;
- Don’t make excuses for the person who has hurt them;
- Understand that they may not be ready or it may not be safe to leave. Don’t try to force them to do what you think is best;
- Remember that domestic and family violence is not just physical;
- Help in practical ways, with transport, appointments, child minding, or a place to escape to;
- Help explore options. You or the person you are supporting can call 1800RESPECT or visit the website for more information and support;
- Some people may need the help of an advocacy service to explore options or contact 1800RESPECT.”

