

CEVAW Conversations Episode 1 Transcript: Does criminalisation prevent violence against women?

Introduction (0:12)

Sian:

Welcome to CEVAW Conversations, a podcast by the ARC Centre of Excellence for the Elimination of Violence Against Women. At CEVAW, we collaborate with a range of partner organisations to build the evidence base on what works to prevent all forms of violence against women. Together, we aim to generate fundamental, interdisciplinary knowledge on the causes, contexts and most effective responses to violence, creating a collective impact toward a safer and more equitable world. I'm Siân Human, and I'll be your host.

In this episode we are exploring the complex and often difficult intersection of law, society and domestic violence. Criminalisation is an obvious go-to when people are seeking solutions to prevent violence, and Australia has seen significant changes in this area with its approach to tackling domestic abuse. With the introduction of new coercive control laws in several states, along with legal reforms addressing non-fatal strangulation and technology-facilitated abuse, the criminalisation of these behaviours clearly signals they are unacceptable.

But while these changes appear helpful, they also raise critical questions: Does criminalising these harmful actions actually protect victims? Are these laws really deterring abusive behaviour, or simply increasing the burden on the justice system? Why is the system so difficult to navigate and what impact does this have on the people caught up in it? What are the alternatives?

Let's speak to the experts to untangle all of this. Please keep in mind that the legal approaches discussed in this episode are specific to certain jurisdictions and they may differ from those in your own region.

Professor Heather Douglas – Introduction (1:51)

Sian:

Professor Heather Douglas is a leading expert in criminalisation and justice responses to violence. As Deputy Director of CEVAW, she leads the responses pillar and the legal responses Workstream. Her recent research focuses on the non-fatal strangulation offence as a response to domestic and family violence, a key area in transforming legal frameworks around abuse.

Thanks for speaking to us, Heather. So, does criminalisation work?

Heather:

I think there are a lot of issues, around this topic, obviously, and in terms of, the role that it plays. I think criminalisation is really important in recognising harm. And obviously the community sees criminalisation as a kind of denunciation of particular forms of behaviour. And I think that's particularly important to survivors of violence that the state is recognising the harms against them.

I guess there are some positive effects in terms of, what that means for how the community understand violence. Maybe it changes community perceptions about what's okay. So in the very long term, it might have effects on community understandings of what bad behaviour is. So there might be an argument that, for example, if we criminalise coercive control, ultimately that will trickle down into the broader community, and the community will see that kind of behaviour as family violence where they might not have if we didn't criminalise it.

So in that sense, criminalisation is really helpful for survivors and their families. One of the things that a lot of survivors asked for in relation to the response to criminalisation is obviously incarceration and imprisonment, and we know that those kinds of forms of responses affect particular communities much more than other communities.

And often survivors, when they talk about wanting things criminalised, they're also saying they want people locked up. And there's a whole lot of problems that are associated with locking people up that really aren't very well recognised, I think, by people who engage in this debate.

Sian

What about challenges in enforcing or prosecuting new laws like coercive control or non-fatal strangulation?

Heather

This is another really big dilemma, I think, in criminal law, because usually what we think of is that people should intend to cause harm to people. It's often very difficult to prove the intention to cause harm. And so if we have an intention to cause harm at the centre of criminal offences, that's going to be really tricky for prosecutors to prove.

So increasingly, what we've seen in the family violence context is moving to a situation where there's no intention required, no what we call in criminal law, mens rea. So basically it's just the action that is criminalised. So you strangle someone or you put pressure on their neck that is a criminal offence and it's a seven-year penalty of imprisonment. Or you coercively control someone regardless of what your intention was in controlling that person, in doing all the things that underpin the coercive control charge was, you're criminalising them.

So that's how we've tried to make it easier to criminalise these kinds of offences. So essentially they don't require, the person who's perpetrating the offence to have any particular intention in their mind. So we don't have to worry about proving that. So that's been a big obstacle to, to proving offences, I think in the past,

Professor Julia Tolmie – Introduction (5:01)

Sian:

Professor Julia Tolmie is from the University of Auckland and an expert in criminal law, family law and feminist legal theory. Her extensive research background has focussed on

how the law constructs and responds to vulnerability, particularly in the lives of women. She's authored criminal law in Aotearoa New Zealand and has been deeply involved in shaping family violence policy, serving as the chair of the Family Violence Death Review Committee and previously as a member of the New Zealand government's Expert Advisory Group on Family Violence, which was established to inform on key policy reforms. She is also a Partner Investigator with CEVAW.

Julia, I'll ask you the same question – does criminalisation work?

Julia:

That's a really hard question to answer, because there's no doubt in my mind that the law and the criminal law in particular has a really important symbolic function, and it affects how we think about social wrongs. I think the way we think about intimate partner violence currently is incorrect. I've called it the bad relationship with incidents of violence model.

And the assumption is that the family violence is the physical assaults and in between victims have effective safety options they could access, if only they chose to. And I think one of the reasons why we have that model is because the criminal law in the past has only criminalised the physical assaults. So, I think it does directly influence how we think about social wrongs.

But whether criminalising coercive control is going to result in the successful prosecution of abusers using coercive control, I think we have to say the answer from overseas jurisdictions seems to be no. These are very difficult cases to prosecute. There are jurisdictions doing better, like, for example, Scotland. They've invested a massive amount of resources into multi-agency responses in relation to this kind of offending and high levels of victim support.

But even if we do successfully prosecute coercive control, is that going to mean an improved response to family violence? The answer, I think, for some victims is perhaps yes. For many, if not most victims, the answer is probably going to be no. Remembering that a criminal justice response is not a family violence safety response.

So, in some cases, a criminal prosecution will make things immeasurably worse and less safe for victims. So, one classic example would be if the police take the person using violence in for questioning and then release them on bail without wrapping any safety support around the victim. Given that we know that family violence is a retaliatory and is about foreclosing future help seeking, that's potentially incredibly dangerous for victims. The outcome of imprisonment: we erode his resources in his capacity to show up for his family. That's not a good safety outcome.

Incarceration and alternative responses (8:01)

Heather:

I think simply criminalisation without thinking about what happens in response to it is oversimplifying the question.

Sian:

This is Heather again

Heather:

We have pretty good evidence about prison that it's bad for recidivism, that it's bad for changing attitudes, that it's terrible for individuals in terms of what happens to them in prison and the results post-prison in life.

If you're a man who's, perpetrated domestic and family violence offences, your community in prison is largely going to be other men who've committed family violence offences. We know that more than half of men in prison have committed family violence offences. So the kind of toxic masculinity and woman blaming that circulates in those prison environments is really quite overwhelming.

The other point to make, too, is that most people who are in prison for family violence offences are in prison for relatively short periods, usually two three months. It's just not long enough for them to get access to programs so people who have got longer prison sentences are preferred for prison programs that might address behaviour change. So I think the risk of this criminalisation incarceration continuum is that these men come out of prison much, much worse and disconnected from the community with less to lose than when they went in. So although they might not attack their previous partner, we know that it doesn't deal with recidivism and they'll come out and attack others.

So I think when we talk about criminalisation as a useful response to family violence, I really think what we really need to be focusing on is how we respond to that criminalisation. What is it we're doing in response to criminalisation? Because if your answer is imprisonment, I think that's an incredibly negative thing. Overall. It might be good in the short term. It might protect that woman for a month or two while he's in prison, and she might be able to make new arrangements for the kids, get safe housing and so on, which are positive things, of course. But then he comes out and he comes out relatively quickly. And as I said, worse than when he went in. So seeing criminalisation connected to that incarceration pathway is incredibly problematic. We get have to get much more creative about what we do in response to criminalisation I think if we're going to use it.

Sian:

What about rehabilitation and alternative responses?

Heather:

I sort of go either way in terms of thinking about prison as a rehabilitative prospect because, there hasn't been lots of success with this, but there are a few programs of, community house programs, which are isolated houses where people get involved in, skills-based things. They run the household, they run the vegetable garden, they learn various skills, they learn literacy. So it's very much a rehabilitative focussed program. There's some success with those in terms of equipping people for life after prison. But they're obviously high intensity and high cost.

I think we've dropped the ball on, community-based programs, probation, community work programs and so on. We've just sapped money out of those programs over years and years. And I don't think there's been an election lately that hasn't been tough on crime and poured more money into, you know, more criminalisation, more prison. And it's not really an election winner to say we're rebuilding our community-based orders program, and we're going to pour a whole lot of money into that to make sure that we are focusing on improving skills, improving life skills for this group of offenders. But I think that's really where our energy would be better spent.

A lot of people who go through the criminal justice process do actually stay with their partners. And, there's been quite good research from the UK about various men's behaviour change programmes tracking those partner's experiences of their violent partner post the intervention. And they've had some kind of positive outcomes in relation to feeling safer and so on.

Sian:

It's great to hear there have been some positive outcomes from those programs. Considering the range of interventions available, what does the evidence tell us about which ones are the most effective?

Heather:

I think the problem is with thinking about interventions is there's not kind of one thing fits all. And different people are coming from different circumstances. So I think to start with the premise that everything is going to work for everyone, obviously we can't start there.

A lot of law reports and reviews say we need to look more closely at restorative justice. They usually recommend that as something we should try. The problem with restorative justice is that there's very few really good long-term reviews of the effects, they're not very good evaluations. They're often really small studies related to very specific programs. We've got an affiliate PhD student in CEVAW, Charlotte Hock, who's looking at restorative justice programs in relation to family violence.

One of the stumbling blocks is an assumption, which is really from the radical feminist, the 70s and 80s, that restorative justice is a bit of second-class justice. So I think we have this assumption that, it's not real justice because it's not having that punitive effect of criminal law. We have good evidence in youth justice around things like shoplifting and minor crime, but we don't really have any around family violence. And whether it works in family violence cases.

I also think that men's behaviour change programs, there's some good evidence that they can work for some people. The evidence suggests that about a third of men improve in their attitudes and reduce their violence after doing one of these programs, about a third of men stay the same. In about a third of men get worse. So it's a bit of a lottery. But there are some programs that do seem to work for some people, so probably identifying who they work for is really important and research that we need to do. But I do think there is some evidence that men's behaviour change programs do work.

In terms of, their integration into prisons and other kind of criminal justice responses, they're not integrated. There's not enough of them. There are queues for those programs that are just, out of control. So people are having a lot of trouble getting into these programs. So there's a real dearth of support in that space as well. So we're very focussed on punishment and not enough focussed on change. And until we get our head around the idea that if we don't change, we're just going to punish again, we're in a real cycle of just extraordinary expense, and that's a real problem.

There's been quite a few good investigations in smaller country towns where there's been a holistic approach taken. I'm thinking about Bourke in Australia, where all of the systems got together and they tried to work together to reduce violence, and there was some success there – small study, evaluated and then not funded any further. We've got currently in Victoria, we've got the Ballarat Saturation model and that's just starting. Respect Victoria is really involved with that. And that'll be interesting to see what happens there. So there's going to be a whole lot of programs thrown into Ballarat. And we're going to be able to

evaluate them over the next four years. It'd be good if we can do that properly and could even continue to evaluate them beyond the four-year time.

Julia:

The problem with family violence, of course, is there's never a one size fits all easy answer.

Sian:

This is Professor Julia Tolmie again

Victim Safety (15:11)

Julia:

Let's start with victim safety. What does she actually need? What would be helpful for her and victim safety at this point in the Sentencing Act is not a mandatory or priority consideration.

So a sentencing judge could legitimately focus on rehabilitation of the offender and ignore victim safety. Victim safety appears, but only under generic community safety, not as a standalone thing. Now this is a form of offending that we know is patterned, and we know who the victim is likely to be. So it seems insane that victim safety isn't a mandatory and priority – the most important sentencing consideration, and the reason why it isn't, is we have got a criminal justice system that's designed for offending. It's not designed for family violence.

I think addressing family violence as a pattern of harm, it's a pattern of coercive control, that takes place within a system that is not designed to respond to it. It's designed to have reactions to one off events. And what we require is a different kind of safety response for victims, where agencies are working with the family holistically over time, addressing the patterns of harm and working with multiple family members. So that, in my opinion, is what family violence requires.

Sian:

And how would criminal law support that kind of safety response?

Julia:

To me, the criminal law should be part of that safety response. I'm not one of those people who advocates not using the criminal law because I think, there is a symbolic power in the criminal law. And I also think the criminal law is one of the few avenues we have to force people to do things that they don't want to do. In other words, it's a system that could be more powerful than the person who's using violence. But to me, rather than tackling the criminal law separately from the issue of safety and focusing on offences, we should be thinking about what kind of safety system can we evolve and how can we use the criminal law as part of that response, as part of that systemic response in the service of victim safety?

So to me, we've done everything all in the wrong order. We started with the family violence legislation. That was the first thing that we did. I wanted to start with the family violence safety system. What would that look like? And then think about what how the legislation could support that. I'd like to think about how could we use the criminal law in the support of

victim safety, and the problem that we have at the moment is when we think of using the criminal law in response to family violence, we just talk about ratcheting up penalties. And I think we need to start being really creative.

The problem is that, of course, no case is the same. We have to have a complex and nuanced response. There is no one size fits all response. So in some cases victim safety might mean curfews. But curfews around, the victim's needs, not the perpetrators needs. So, for example, she's got school aged kids, she needs to pick them up, bring them home and have a period of time as she puts them to bed and she knows that he's not lurking in the bushes outside. He's kind of in his place of curfew. There might be cases where we do want imprisonment. There was certainly one of the death reviews that I did where, the person using violence came up on a very small charge and when I was educating the judges, they were like, well, I couldn't really give a sentence of imprisonment to this man anyway, because if you look at comparable offending, it was very low level. Well, he has committed an offence and if you looked at victim safety, that was a case where actually giving her a period of time where she 100% knew that he was under lock and key, that she could have just a bit of a breather to be free of the terror, was she could start to unravel her life from his and build it separately. That would have been helpful to her.

Sian:

Julia also reflected on how the criminal justice system can have unequal impacts on different communities.

Julia:

Of course, there are all sorts of negative consequences of using the criminal justice system to solve social problems. So, one that isn't so unpredictable, of course, is every time we extend the criminal laws, they land very punitively on Indigenous communities. There have been a number of Aboriginal activists and scholars, who have talked about the fact that we are likely to criminalise Aboriginal victim-survivors. I would say it's a system that doesn't work for all women, but it's particularly bad for women from certain communities.

So obviously women from, migrant and refugee communities, racialized women, but most probably pressingly Indigenous women. And there's some really great work being done in Australia – Kyllie Cripps looking at police responses to Aboriginal woman and the coronial inquiries. Absolutely shocking responses. Hannah McGlade, Stella Tarrant, in New Zealand, we have Denise Wilson, who's an Indigenous researcher looking at the experiences of Maori woman and unsafe relationships. And many of these women that she interviewed said their experiences of the agencies that are supposed to be helping them were worse than the violence they experienced from their abusive partners. So that's a terrible indictment on our system.

Professor Kyllie Cripps (21:44)

Sian:

Professor Kyllie Cripps brings a crucial perspective to this conversation. She's been deeply involved in research on Indigenous experiences with the justice system, particularly how police responses can have unintended and serious consequences.

Kyllie

These situations can be very reactionary very quickly and in those moments that it is about how the police judge that situation. Who they judge as the aggressor and what actions they choose to take in those situations. It can be that sometimes aboriginal women will be identified as the aggressor and misappropriately that it won't be an appropriate determination that they are the aggressor. In these circumstances and they will be arrested they'll be taken into the police station. And when we look at the current laws in some states it means they'll likely get held on remand for a very long time. And you have to think about the ripple affect in the context of if children are involved, they're still at home with dad right? And what are they going to be continue to be exposed to what's that gonna be like for them? Is there gonna be child protection related matters involved in this? For many in indigenous communities we don't get to walk away from this.

A lot of people have different ideas about how to respond to this. In many respects it's about listening to our communities and appreciating that every community across this country there is going to be a different response, and a different response because they were gonna be different and potentially different triggers to what contributes to the problem in particular areas. We need a wraparound response that is responsive to the sets of circumstances that have occurred in that particular community, and at the moment we don't have that we have it on an ad hoc basis and often on a very unpaid basis. In many ways, the reason why we haven't had this kind of responses because we haven't invested as we should in both the evidence so the research in this area but we also haven't invested in the expertise of the community. When I've sat with community, inspired and motivated by their creativity, their innovation and their commitment, their dedication to healing our community to changing the sets of circumstances that exist in our communities, to doing the hard work to make a difference and we don't necessarily see that in other areas, or that's been my experience.

If we actually worked with the people that are affected by the most then we would have different solutions and different approaches. We would be informed by the research, we would know what works and what doesn't, and that would mean we would have better outcomes.

Interconnected systems (25:00)

Sian:

Using criminalisation as a solution to reduce violence against women also affects interconnected systems, such as law enforcement and domestic violence support services. Heather, what is the impact on these resources?

Heather:

So there's a really interesting question to ask around, increasing criminalisation and the role of support services. So we've done some research on the kind of role that support services play when there is increased criminalisation. So for example, when non-fatal strangulation offences are introduced, it's support workers in usually non-government organisations supporting victim-survivors who do a lot of heavy lifting but don't get any extra funding to do that. So what they end up doing is things like trying to advocate for the victim-survivor to get the charge pressed, for example. So they're talking with police, they're trying to encourage them. They're working with the victim-survivor to try to get evidence together. So probably taking them to the GP to get notes about their injuries, perhaps trying to get them a MRI scan or a CAT scan or X-rays or whatever it might be, they're doing that as well. They're often advocating to doctors, so they're often taking information to doctors about the effects of strangulation, and there's groups in the US who've developed little fact sheets for doctors

that these support workers take to the doctor to educate the doctor. So they're doing all this extra work around criminalisation that they really don't get credit for. So I think that's a really important thing. They're very key in that support for victim survivors through that criminal justice process, they're key in terms of giving information for advocating for them through the process, probably for supporting them through the process as well. They're already doing a lot of that work. Yet every time we introduce a new criminal offence, that work increases and, their work increases as a result. So something's got to give there, and that's probably supporting less people. So that's a real concern that that equation's not really stacking up.

The police obviously get training on any new law that's brought in. But they don't have the level of understanding necessarily that DV support workers have been working with these women for, you know, sometimes five, 20 years, you know, long periods of time. And so they've kind of seen the signs and they've maybe had interactions with people in a range of contexts where they've got a bigger picture of, of what's going on and they're seeing people for sometimes over and over again, they're not seeing people on a one off like often police officers are. So sometimes they have a much clearer picture of all of these things. Police do get this training. But the problem is I think that, they don't necessarily spend the time with the victim-survivor to take them through the steps and to help them gather what they need to gather. It's the support workers that get the pressure to do all of that. I find they're pretty good at getting themselves educated. And, there's usually not a lot of formal education. Usually it's shared within the service and the services share between each other. But they're really pretty key in that part of the process, it seems to me. So I think there would be a lot of support workers in New South Wales at the moment, for example, assisting victim-survivors to gather their evidence together about coercive control, to then advocate to the police that that should be charged.

Victim-survivor stories (28:20)

Sarah:

WDV CAS so the women's domestic violence girls they changed my life, the support that they offered. They just get it. They just they understand it and all of them do. I think a big game changer with them too is a lot of them have either been through it themselves or they're heavily educated, so they understand how a perpetrator thinks which I'm not sure everyone that you're involved with along the legal process is aware of how perpetrators think.

Sian:

Sarah has first-hand experience of seeking protection through the legal system. While her case was considered a success, she remains anonymous, and this isn't her voice. For many, even after the system's verdict, safety can still feel elusive.

Sarah:

I had some very mixed experiences with the police. I had some police that were absolutely amazing that I could tell they knew how serious it was and they actually did have good intentions with all of their actions and then I had some police officers that just couldn't care less. And they're creating a bit of a danger zone for the victim really.

I had a long time feeling extremely unsafe. Now I feel safe because I actually, I've you know I had a really good outcome. The DV workers actually told me that I've had one of the better outcomes they've ever seen which to me is really sad given someone could do everything he

did and still walk the streets. He is on an ICO but he should not be walking the streets. After what he has done, so the fact that that is what they see is a good outcome is really scary.

We need to really be going hard nailing these perpetrators and stopping them from reoffending. Otherwise it's just going to become a vicious cycle where we're constantly funding victims to escape and these perpetrators are just reoffending and they don't just do it to one woman. They then move onto the next one and the next one so I think we need to be targeting the source of the problem. I know men like that will forever reoffend. I think they just become more and more calculated about how they get away with things.

And that's where I think we've got a huge problem with the law because I think it's beyond the control of some people within the legal system. They want, they want to put some of these perpetrators behind bars and they can't. I had both police officers and magistrates that knew that my perpetrator was dangerous. The evidence was strong, but we have a huge issue with our law where it is so hard to prove someone guilty beyond reasonable doubt. And even if they are proven guilty the argument that, you know, a good barrister I can put up, you know, you can get off on a technicality. I think it's almost like a game. And I think that's really difficult. You know there's women going in there with black eyes and these men are walking out the door and getting off because there's not enough evidence to show you that they've done it.

The magistrate stood up in court and he said I have the gravest suspicions that the accused is guilty of everything, but it is very difficult to prove someone guilty beyond reasonable doubt and that is when he let him off a few of those, the domestic violence charges, that constantly happen behind closed doors and no one witnessed. And I think it's really sad that even commonsense told the magistrate he was guilty but yet the law said I can't convict this person

It should not be this hard.

Sian:

Unfortunately, this experience is all too common, highlighting just how difficult the system can be to navigate. Joan's story offers another perspective on these challenges.

Joan:

The first police officer clearly didn't even understand the law. Like he was like he didn't even know that stalking was a crime. If they'd even said to me 'hey there's a domestic violence unit in the other police station, literally up the road, you know you'll be more supported there' I would've jumped back in my car and gone there and I would've got better support, you know. The police at that DV unit were more emotionally supportive. They were more understanding and also obviously knew the law inside out and knew immediately what should be prosecuted, what shouldn't. You know they said he should've taken his guns immediately. They should put an AVO on him immediately there was enough evidence there but they didn't you know. So, yeah, it needs to be specialised just like lawyers specialise. I think the police need to specialise, so that when you walk into the police station you get directed to the person who specialises in domestic violence corporate you know crimes, whatever it is I think that that would be the biggest help to their system because it's just massive gap between day-to-day police work the legal system you know that the police just keep getting a bigger workload and they keep throwing new rules and regulations on them and, you know, everything so time-consuming for them and expected to cover such a broad spectrum it seems it seems completely unreasonable.

I was not functioning for about a year and a half after this all happened. I was, it was like I had advanced dementia, my brain wasn't working. Like the trauma, it was incredible. You

know people who have never been victims of something. It's very hard for them to understand what that does to a person, to be you know, tracked, what that does to you as a person, the kind of trauma, it's very hard to understand.

Heather:

Another problem with domestic violence, obviously, is that if survivors have experienced domestic violence over many, many years, sometimes they're less reliable because of precisely the trauma that they've experienced, and they become less credible witnesses. So they might have mental health issues, they might have post-traumatic stress disorder. And we know that some of the things that come from those kinds of experiences are that your narrative is often disconnected, less coherent. You have big gaps in your memory that are often created by, an effort of your brain, essentially, to avoid rethinking that trauma. So they're not great witnesses in many cases. So that can be a problem as well in proving these offences. Courts are getting better at recognising the effects of trauma on giving evidence. So, you know, there are some positive things happening amongst the judiciary here, I think.

Education (34:47)

Sian:

Do you think that's something that's just coming from experience, or is that something that's being trained at law schools?

Heather:

I don't think it's being trained at law schools. It's not a required part of the syllabus. That's a really good point to bring up, because I think that, we don't actually have anywhere in the law school curriculum where we're required to talk about family violence, despite the fact that it's probably present in half the cases that go to court, in crime, evidence, in probably public law, probably tax, family law. So it is a really common feature of clients experiences. And yet we're not required to teach in in law school.

Sian:

Kyllie, how important is education on violence prevention for those working in the legal system?

Kyllie:

I think it does require education. Some would argue that the education is about them understanding domestic violence. In part it's about that, but it's also about them understanding their positionality. It's about understanding that we all come from different places in this world, right? We are influenced by our upbringing. We are influenced by our values. We are influenced by you know where we went to school. What kind of experiences we've had. We're influenced by a whole range of things, and if we haven't had a moment of time to actually reflect on that and unpack that and think about how that then influences how we interact with others. We don't necessarily appreciate that we make judgements, right? Unconscious judgements about whether a person is telling us the truth about a matter. Unconscious judgements about how we are going to treat particular people in particularly sensitive matters and I think that that's, that's the critical issue here it is around how we going to interact with people free of bias or how are we going to control our bias to be able to

interact in a way that appreciates the seriousness of the circumstances were potentially confronting.

Julia:

I think it's more complex than just educating people. There's like competing narratives around what family violence is.

Siân:

This is Julia again.

Julia:

It's part of the complexity of the problem that we're dealing with. Or why it's called a wicked problem. I supported the creation of an offence of strangulation, and I did so in my capacity as Chair of the Family Violence Death Review Committee, and then as expert advisor to the Law Commission. And the reason why I supported an offence of strangulation is because we could see in the death reviews, long histories where perpetrators were using strangulation as a tactic of coercive control, both against their intimate partners and sometimes in relation to their children. And yet it these uses of strangulation were rarely prosecuted and if they were prosecuted, they were prosecuted as male assaults female, which is a very low-level assault, essentially a non-consensual touching. What that meant, because we're talking about patterns of harm, when sentencing judges were sentencing for later offences, and they access the offender's criminal record, they couldn't see that he was a person using strangulation. And therefore, because strangulation is a serious risk indicator for lethal homicide, they didn't see that there was a risk indicator for homicide. So I supported it not as an attempt to stop strangulation assaults per se, but really to make sure we had a better victim safety response to offenders who were using that dangerous behaviour as part of their coercive control.

What I do know, which I think is very positive, that's come out of creating the offence, is that the law has resulted in a lot of education, upskilling amongst the police and judges about the nature and significance of strangulation assaults. I'm not sure that it's resulted in better responses at sentencing, which is really why I supported the offence.

One of my deepest regrets, having stepped down as chair of the Family Violence Deaths Review Committee, is not making a recommendation that victim safety be a mandatory and priority consideration when sentencing family violence offenders. For me, the response to family violence at sentencing should not be, the response that we tend to have is just to ratchet up penalties – if we're going to take family violence seriously, we need stronger, harder penalties. I actually would like to make victim safety the main inquiry at sentencing and be creative about what that might look like. So that it's not just about more serious sentences. To me, that's overly simplistic thinking. I'd like to have strategies for perpetrators at the point of sentencing and perhaps novel forms of sentencing in these kinds of cases.

So, there's a, a men's program men's stopping violence organisation in Australia. They talk a lot about how we can't make, family violence offenders accountable. It's only family violence offenders who can choose to be accountable to their families. And I agree with that, but I think we can have strategies. For example, we can try and put barriers around offending. So to try and stop offending, we can escalate consequences for continued abuse. And we can hold people using violence in spaces where if they choose to be accountable, help is available to them. So I've come to realise that's one of the main advantages of stopping

violence programs, not necessarily to fix offenders, but to keep them connected and in sight, so they're talking to other people.

Sian:

So, what does success look like?

Heather:

I think there's a few things that I would point to, obviously, that, women and children feel safer in the world would be the first thing that we would probably want to point to. And I guess that's intimately connected with the fact that the violence stops. So ending the violence, which is what CEVAW is all about. But I think also, underpinning all of that is, is change in attitude. So, mostly it's men perpetrating violence against women and children. And so mostly we're talking about changes in the attitude of men, but obviously not entirely, but I think change in attitudes. So if we look at men's behaviour change programs, even drug and alcohol programs, anger management programs, all of these programs really, about changing behaviour. But before you get to do that, you have to change attitudes. So how are you going to respond when this happens to you? Think this through - what are you going to do? So attitudes changing attitudes is obviously really important. And there is a National Community Attitudes survey every year in Australia. So I guess what we'd love to see is that there's improvements in that every year with and hopefully they're connected to the kinds of things that we're doing. Obviously, you'd want to see no recidivism. You'd want to see people not going back to prison so that when they go through whatever intervention they've been involved in, they don't do it again.

But obviously these things are really hard to measure. It's really hard to measure the sort of cause and effect. Is it the intervention or is it broader society change, or is it the guy just got older and aged out of offending, which sometimes happens. So it's really difficult to make these connections. But I guess those are the kinds of key things that we'd want to see.

Julia:

We've got a whole lot of systems designed to deal with things other than family violence, which are being cobbled together to create a family violence safety system. We've plonked in some underfunded, disconnected initiatives to deal with family violence in the middle of all of that. And so reforming a complex system isn't a matter of going in and just doing a whole lot of recommendations or changes. The thing about complex systems is that they will reorganise themselves to do the same thing afterwards. Plus there'll be all sorts of unexpected side effects. So when you're dealing with a complex system, you have to get the system involved in its own change and transformation and journey towards where you want to go in relationship with the system. And everybody has to be on the same page and moving at the same time.

Conclusion (43:18)

Sian:

Well, I wasn't really expecting a straightforward answer to this question. We've heard different expert perspectives and stories from people who have experienced the system firsthand, and one thing is clear – it's complicated.

The symbolic power of the law helps shape social norms, but current punishments bring their own set of challenges that may not be delivering the safety or accountability we need.

So, where does that leave us? Maybe the real question isn't just whether criminalisation works, but how it fits into a broader, more effective response to violence against women – one that prioritises prevention, meaningful accountability and survivor safety. We can't rely on one-size-fits-all solutions. If we want real change, we need creative responses that are adaptable, community-driven and backed by evidence.

But tinkering at the edges isn't enough – solving this needs ambitious system-level change. Preventing violence and delivering justice requires reimagining the very systems meant to respond to harm – from policing and courts to housing, social services and community support networks. At the same time, we can't overlook the role of culture and attitudes in driving change. Ending violence against women requires shifting how society as a whole understands power, gender and accountability. Laws and policies matter, but so do the everyday choices we make – in workplaces, communities and homes.

That takes government leadership, serious investment and the courage to rethink the status quo. It also calls for collective effort from all of us.

Here at CEVAW, we'll keep pushing for solutions – exploring the research, the challenges and the opportunities for meaningful reform. We hope this episode has given you some food for thought or sparked ideas about what could make a real difference. Thanks for listening to CEVAW Conversations.

This podcast is recorded on the lands of the Wurundjeri people of the Kulin Nation. We pay our respects to their Elders, past and present, and acknowledge their continuing deep connection to Country. We also recognise the many diverse Traditional Custodians across Australia and extend our respect to all Aboriginal, Torres Strait Islander, and other Indigenous peoples around the world.

The information in this episode is not intended to be legal advice. Please connect with an appropriate service for advice pertaining to your individual situation. We will include some links in the show notes.

This podcast was produced by Siân Human and Greta Robenstone for the ARC Centre of Excellence for the Elimination of Violence Against Women.