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Gender-Based Violence and Carceral Feminism in Australia: Towards Decarceral Approaches

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Abstract

This article explores the limitations of criminal legal responses to gender-based violence in Australia, specifically sexual assault law reforms and the criminalisation of coercive control. We demonstrate that carceral horizons deployed to address gender-based violence cause further harm to survivors and overshadow diverse perceptions and practices of justice. We suggest that such an approach is inappropriate and dangerous in the Australian context, given the historical and enduring harms of colonisation and the extent to which the actors within and the structure of the criminal legal system perpetrate violence towards Indigenous survivors of gender-based violence. Drawing on insights from research on survivors' justice needs, survivors' experiences in the criminal legal system, and abolitionist, transformative, and Indigenous scholarship, we discuss the potential for alternative ways of conceptualising justice responses in the Australian context that move beyond and avoid further perpetuating the harms arising from criminal legal responses to gender-based violence.

Keywords Gender-based violence · Carceral feminism · Indigenous women · Justice · Decarceration · Australia

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Introduction

Over the last decade, there has been a renaissance of feminist activism in Australia seeking to draw attention to the prevalence of gender-based violence and the continued failings in law and policy reform to address the harms of gender-based violence (Ailwood et al. 2023). By law and policy reforms addressing 'gender-based violence', we are referring to inquiries investigating responses to domestic and family violence[1], rape and sexual assault, and sexual harassment in adulthood.[2] The recent gender-based violence law and policy reforms have been driven by several factors, including the high-profile murders of mostly white Australian women by their current or former partners, activism driven by survivors, and global social movements (e.g., #MeToo). These recent inquiries also build on decades of feminist-led activism and reform, seeking to draw attention to the prevalence and lack of support to address and prevent gender-based violence in Australia (Ailwood et al. 2023).

The symbolic power of criminal-legal recognition of gender-based violence is invaluable; however, these long-standing efforts to use law and criminal justice reform as a mechanism for addressing gender-based violence in Australia have persistently failed to adequately listen to survivors, advocates and activists about what gender-based violence is, and how it can be responded to and prevented (Ailwood et al. 2023). Moreover, they fail to interrogate and challenge neocolonial attitudes and violence when it comes to justice (Deslandes et al. 2022; Cunneen et al. 2023; Cripps 2023). Non-criminal legal responses to gender-based violence, such as the use of restorative justice for domestic and family violence and sexual assault, have been considered as potential alternatives to addressing harm since the late 1990s, with strong support from Indigenous services and communities (Nancarrow 2006). However, non-Indigenous women and stakeholders – who shape the criminal justice and legal landscape's responses to gender-based violence – have been less supportive of restorative justice pathways (Nancarrow 2006). Indigenous scholars have described the emphasis on law and criminal justice reforms in Australia as further marginalising community groups by strengthening punitive criminal justice measures that continue to over-incarcerate Indigenous communities (Cunneen and Porter 2017; Deslandes et al. 2022; Tauri 2023).

Yet Indigenous scholars, activists and advocacy organisations are regularly silenced, overlooked and ignored in public debate about avenues for addressing gender-based violence (Moreton Robinson 2000; ALRC 2017; McGlade 2019; Carlson 2021; Deslandes et al. 2022; Cripps 2023). Recent law reform commissions, such as the 2017 Australian Law Reform Commission's (ALRC) "Pathways to Justice" Inquiry and the 2020 Victorian Law Reform Commission's (VLRC) inquiry into

[1] In Australia, the term "domestic and family violence" is preferred to "domestic violence" as it accounts for a range of harmful and violent behaviours in broader family and kinship networks rather than only violence that occurs between current or former domestic partners.

[2] Gender-based violence is a broad umbrella term used to collectively refer to specific harms, abuse and violence, such as domestic and family violence, sexual assault, rape and sexual harassment. Throughout the article, we use the term "gender-based violence" experienced by adults to describe law and policy reform in broad terms, however, we also examine law reform inquiries focussed on specific types of gender-based violence. When referring to these inquiries, we use the specific terms associated with them.

improving the justice system's responses to sexual offences (2021), raised the question of the potential for innovative responses to gender-based violence. The Wiyi Yani U Thangani Report (AHRC 2020) similarly calls for alternatives to carceral responses to ensure Indigenous women's safety, such as justice reinvestment. However, there appears to be little appetite for alternative or innovative options within mainstream law and policy responses, despite significant support predicated on an evidence base for community-controlled solutions, restorative, and transformative justice options developed by Indigenous advocacy groups (ALRC 2017; Deslandes et al. 2022). Indeed, initial responses from the Victorian Government to the VLRC Inquiry have centred on legislative reforms, such as enshrining affirmative consent in law, rather than introducing innovative and alternative responses outside of the remit of the criminal legal system (Kolovos 2022). In preparing this manuscript for publication, the ALRC released its Terms of Reference for an inquiry into sexual violence. Although the Terms of Reference mention a desire to investigate transformative justice approaches, the ALRC is interpreting transformative approaches in carceral terms as all alternative avenues mentioned are criminal legal system adjacent (e.g., restorative justice, alternative disputes resolutions and specialist courts), not community-led non-carceral approaches (Loney-Howes and Fileborn 2024).

This article challenges the continued emphasis on criminal legal responses to address gender-based violence in Australia within public and political spheres. Instead, we advocate for decarceral and decolonial modes of justice. We contend that the prominent activist and politico-legal and neocolonial responses to gender-based violence in Australia undermine visions for reimaging justice and opportunities to listen to Indigenous expertise in shaping responses to gender-based violence. In developing this position, we begin by investigating the relationship between feminist activism and criminal legal reform for addressing the harms of gender-based violence, drawing attention to how carceral politics frame and influence policy, programs and law reform in the Australian context. From there, we examine the limitations of the criminal legal system as a site of justice for survivors before considering the potential for non-criminal legal avenues for seeking justice operating in Australia. In doing so, we reflect on the potential of alternative justice pathways to address the harms of gender-based violence. By way of conclusion, we offer some tentative reflections on how we might move forward as scholars and activists to address the broad justice needs of survivors of gender-based violence by shifting towards decarceral approaches to justice.

Gender-Based Violence, Feminism, and The Criminal Legal System

The last ten years have seen significant legal and policy attention given to gender-based violence in Australia. While this has been driven by the publicisation of high rates of violence and murder profiled in the media, alongside activism by survivors and global social movements such as #MeToo, recent and current criminal legal reforms are part of a much longer trajectory of feminist activism and advocacy spanning several decades. *Whitestream feminist activism* (Gruber 2023b) that emerged in the 1970s put gender-based violence, including rape, sexual assault and domestic vio-

lence, on the public agenda through consciousness-raising and survivor speak-outs and was subsequently successful in obtaining funding to formalise support services (including shelters and rape crisis support) and establishing a foothold within criminal justice efforts to reform laws in Australia (Eisenstein 1996; Murray and Powell 2011; Goodmark 2018; Nancarrow 2019). For example, whitestream feminist activism and advocacy pushed for the criminalisation of domestic and family violence, the recent laws around coercive control, and there was (and remains) a concerted focus on strengthening police powers to intervene and escalate criminal penalties for perpetrators to protect survivors (Goodmark 2018; Nancarrow 2019). In relation to rape and sexual assault (treated as separate offences in some states and territories in Australia), the focus has been primarily on criminal justice law reform initially recognising marital rape as a criminal offence (Eisenstein 1996), with efforts since the 1980s focused on improving legal definitions of consent (Burgin 2019).

While these efforts were unprecedented and significant, it is important to highlight that the relationship between the criminal legal system and whitestream feminist activism on gender-based violence is highly paradoxical (Serisier 2018). On the one hand, feminist activists are highly critical of the law and the criminal legal system to deliver justice to survivors, their families, and communities. Through these critiques, activism and advocacy feminists have exposed the legal fictions sounding the law's ability and capacity to judge the "truth" of gendered violence (Serisier 2018, 48). On the other hand, some feminists remain strong advocates for reforms within the criminal legal system to better support survivors, increase reporting options and processes, and address the high attrition rates and lenient sentences given to offenders.

Although there have been important and successful energies poured into reforming laws to address the "justice gap" for victims and survivors of gender-based violence, there have also been problematic consequences, meaning the intersectional socio-political conditions and vulnerabilities that enable gender-based violence to manifest remain unaddressed (Nancarrow 2019). Critics have argued that whitestream feminist-inspired law reforms have been complicit (perhaps unintentionally) in the expansion of state power, taking a neoliberal law-and-order approach to tackling crime and offering (individual) therapeutic solutions to "large-scale cultural problems" (Corrigan 2013, 3; see also Bumiller 2008; Nancarrow 2019; Kim 2020; Gruber 2021). However, these calls for tighter laws impact specific community groups, such as Indigenous women who experience violence but fight back (Douglas et al. 2020; Douglas et al. 2021). For instance, in Australia, Indigenous women are significantly over-represented within prisons across the country, and evidence shows criminal legal interventions designed to protect women can and do misidentify those requiring protection; where an Indigenous woman might fight back, the likelihood of incarceration is much higher, resulting in a ripple affect where Indigenous children are removed from the family and placed into state care (AHRC 2020; Douglas et al. 2020; Deslandes et al. 2022).

Whitestream feminist efforts focused on criminal justice responses to gender-based violence are increasingly called "carceral feminism" (Gruber 2023a, b); a label given to scholars, advocates and activists who actively promote criminalisation and imprisonment as responses to gender-based violence by those who disagree with their approach. Writing in 2012, Elisabeth Bernstein defined carceral feminism as "a cul-

tural and political formation in which previous generations' justice and liberation strategies are recast in carceral terms" (Bernstein 2012). In this sense, "carceral feminism" is a discourse predicated on popular penal, neoliberal, neoconservative and neocolonial crime-and-punishment agendas (Phillips and Chagnon 2020). Carceral feminism shifts away from the welfare state to the criminal legal system and law as the apparatus to materialise feminist struggles (Gruber 2021). As such, carceral feminist efforts are entangled in a problematic alliance with the state and are complicit in the use of punitive measures to respond to domestic violence and sexual assault or the extended reach of the state in regulating gender-based violence in ways that cause more harm (Bumiller 2008; Bernstein 2012; Deslandes et al. 2022). While the definition of carceral feminism above describes the active promotion of incarceration as the remedy to social and political problems, we stipulate this extends to what Brown (1995) has described as wounded attachments, whereby (colonial, sexist) state and legal apparatuses are called upon to confer recognition and validate survivors of violence. In this sense, carceral feminism operates as a carceral horizon spanning calls for new laws or tougher sentences for gender-based violence to the use of legal and political avenues for substantiating claims of harm and victimisation.

While no one would necessarily identify themselves or their activism as "carceral feminism", the discourse, born from liberal feminist and traditional notions of justice (Phillips and Chagnon 2020, 51) arguably dominates popular mainstream gender-based violence activism and advocacy in Australia, reproducing rather than remedying patriarchal, colonial, racist, heterosexist and ableist systems, structures and institutions – such as the criminal legal system (Terwiel 2020; Gruber 2021; Deslandes et al. 2022; and see Keddie et al. 2023 more generally in relation to the emphasis on gendered inequality in responses to gender-based violence).

Whitestream Carceral Feminism and Indigenous Women in Australia

In Australia, there has been very little feminist scholarship grappling with the articulations of carceral responses to gender-based violence and how this work may (inadvertently or deliberately) reproduce carceral logics that cause more harm than progress (cf. Deslandes et al. 2022). Of course, feminist advocates call for a range of supports for survivors and educational responses, but these are almost always accompanied by calls for law reform and 'better' criminal legal responses and an increase in state resources. For example, while the Rape and Sexual Assault Research and Advocacy (RASARA) in Australia call for supporting survivors and improving education around sex and consent, these are underscored by improving criminal legal responses to sexual violence – as stated on their website. While RASARA has developed important educational tools for teaching young people about consent, their impact has been in the push for and presence at the many rape and sexual offences law reform inquiries since 2017.[3]

Despite the term 'carceral feminism' being considered pejorative to those given the label, it is vital to interrogate how carceral logics in relation to feminist con-

[3] RASARA https://www.rasara.org/.

cerns manifest and operate in Australia where the relationship between white settler women (and feminists) – including activists, advocates and academics involved in the trajectory of the (white) women's liberation movement – and Indigenous women is contentious. Since colonisation, white women have routinely spoken for, about, and on behalf of Indigenous women and their (presumed) oppressions, including gender-based violence (Behrendt 1993; Moreton-Robinson 2000; Smallacombe 2004). Furthermore, white settler women have been complicit in the violence inflicted upon Indigenous women (Moreton-Robinson 2000). Indigenous scholars have expressed white women in Australia have different priorities to Indigenous women and that feminism and the women's liberation movement are irrelevant to their specific interests and needs (Huggins 1987; Behrendt 1993). These tensions came to a head in the early 1990s, now known as the 'Huggins-Bell debate', where research published by white feminist anthropologist Diane Bell claimed that addressing rape in Indigenous communities was "everyone's business." However, the ensuing debate led by Dr Jackie Huggins argued these understandings reinforce white settler woman speaking positions, while at the same time, Bell's response overstepped cultural laws regarding information sharing without proper consultation and failed to acknowledge the systems Indigenous communities have in place for addressing such violence. Moreover, such a claim positioned Bell herself to be the authoritative knowledge barer and speaker on the topic, which not only amplified her voice over the community's but *invited* intervention from white, colonial authorities (Stringer 2012) and positioned the voices of Indigenous scholars and advocates responding to Bell, such as Moreton-Robinson and Huggins, as angry black women (Griffin 2012). In her seminal text *Talkin' Up to the White Woman*, Distinguished Professor Moreton-Robinson argued that Bell's position exemplified the blindness inherent in white Australian feminism to the issues and needs of Indigenous women and the continued failure of white women to acknowledge their power and privilege (Moreton-Robinson 2000, 2003).

The Huggins-Bell debate provides an example of how colonial-speaking positions manifest between Indigenous women and white settler women and how the carceral agenda of white settler women inflicts further harm to Indigenous communities. As we demonstrate later in this article, in more recent times, similar speaking positions have been rearticulated in calls to criminalise coercive control where Indigenous women's voices have been spoken over by white women. Moreover, there is a general failure to acknowledge Indigenous women as victims and survivors in public advocacy on a range of forms of gender-based violence, including sexual violence and missing and murdered women, as identified in an open letter led by McGlade and Longbottom to Our Watch in 2021 (McGlade et al. 2021. See also Carlson 2021).

In thinking through the arguments mentioned above about carceral feminism, the tensions between white feminist activism and Indigenous women in Australia, and addressing the harms of gender-based violence, it is, of course, important to acknowledge concerns that turning away from the criminal legal system may re-privatise gender-based violence and detract attention from the serious and systemic nature of such violence (Gotell 2015). Moreover, the rejection of law reform as a viable political and social project for feminists has not occurred in a vacuum; feminist gains through law reform are also a product of the appropriation and manipulation of feminist dis-

courses by the neoliberal state, which is focused on regulating individual behaviour rather than generating structural change (Gotell 2008, 2010, 2015; Nancarrow 2019). In addition, the state rewards compliance with its neoliberal carceral agenda, recognising engagement with law reform as the acceptable strategy for change (Bumiller 2008) and providing funding for recreating existent institutional structures to respond to gender-based violence through a gendered lens, such as women-only police stations (Deslandes et al. 2022). Thus, we acknowledge the bind (conscious or unconscious) feminist activists, advocates, and survivors find themselves in when efforts to reform legal systems collide with neoliberal policies. Given these complexities, Terwiel (2020, 425) warns against treating carceral vs. non-carceral feminism in a binary manner, which may "inadvertently limit the development of abolitionist feminist approaches", arguing instead for a decarceration approach that involves a spectrum of action including reforms that seek to delimit the power and harm of the state. Further, Masson (2020) argues that the erasure of nuance in debates about carceral feminism fuels backlash culture and fears that in a neoliberal climate wherein social justice and welfare projects are already weakened by austerity, non-carceral perspectives may only further cuts to public spending.

Continuum thinking (Boyle 2019) is thus useful in relation to unsettling binaries around justice practices and needs associated with addressing gender-based violence and the potential this holds for attending to complexity and providing survivors with a suite of options that are not limited to either a criminal justice response or nothing at all (McGlynn 2022). Yet continuum thinking does not get us beyond the cultural and political fascination and centring of criminal legal systems as the solution to addressing the harms of gender-based violence. Moreover, carceral approaches (particularly those that seek to expand rather than delimit state power) can and do reduce the scope for critical thinking around justice for survivors of gender-based violence and their communities in the context of the colonial settler state of Australia and the impact criminal legal responses to gender-based violence have on Indigenous women. As Indigenous women academics and advocates in Australia have long highlighted, the criminal legal system and other state-controlled systems are spaces of violence for Indigenous women and their children (McGlade and Tarrant 2021; Cripps 2023). This includes the fact that the State and prisons are themselves sites of gender-based violence and other harms, such as in the context of strip-searching in prisons and other forms of abuse in institutional contexts (Terwiel 2020; McGlade and Tarrant 2021; Kilroy et al. 2022; Longbottom 2022). In addition, as previously mentioned, police routinely dismiss or fail to respond to calls for help and minimise or even misidentify Indigenous women as perpetrators of violence (Cripps 2023).

These problems reflect the enduring legacies of colonisation wherein rape and other forms of gender-based violence, alongside the police and other state-controlled entities, were actively used by colonisers to control and eliminate Indigenous people (Behrendt 2000). Sexual and other forms of gendered violence were/are a key tool of colonisation, with Indigenous women positioned as unrapable and, thus, unworthy of state protection, recognition or recourse (Behrendt 2000; Ryan 2019; Kern 2020; Deslandes et al. 2022). The Senate Inquiry into missing and murdered First Nations women and children, ongoing at the time of writing, indicates systemic cover-ups and failures to investigate and take seriously their

protection and recognition as victims worthy of justice. In other cases, sexual violence and child sexual abuse have provided the impetus for violent state intervention in the name of *protection*, perhaps most infamously in the Northern Territory Intervention, which revived facets of the Huggins-Bell debate mentioned previously (Stringer 2012). Throughout these interventions, white women were often (and remain) complicit if not actively involved in sanctioning such acts of trauma and violence (Moreton-Robinson 2000). Resultantly, Indigenous women are unlikely to report to or access the criminal legal system, and the system is often actively harmful to those who do engage with it (Deslandes et al. 2022; Cripps 2023). Solutions to improve the engagement of Indigenous survivors with the criminal legal system, such as women-only police stations, have been criticised by some Indigenous academics and advocates, citing the inability and unsuitability of a policing response that is steeped in carceral colonial violence to keep Indigenous women safe (Deslandes et al. 2022).

The geo-political context in Australia, underscored by colonial and neocolonial violence perpetrated by criminal legal institutions, means there are serious implications for our continued engagement with and advocacy for criminal legal responses to gender-based violence in Australia. The illegal invasion, stealing of land and subsequent occupation and colonisation of Australia requires scholars and activists to understand the significance of land confiscation, the loss of sovereignty, and the (continued) role of white settler women – and the 'feminist movement' – in perpetuating racial superiority in law, policy, education, and everyday life whereby Indigenous women's voices have been silenced, ignored, and denied a seat at the table (Behrendt 1993). We move on now to consider the implications of this in the context of recent criminal justice reforms relating to gender-based violence in the Australian context.

Gender-Based Violence and Criminal Justice Reforms in Australia

As mentioned in the introduction, Australia has witnessed a renaissance of law and policy reforms as well as public inquiries seeking to investigate and address the harms of gender-based violence (Ailwood et al. 2023). These include the Victorian Royal Commission into Domestic and Family Violence, and in 2014, the State of Victoria reformed the definition of consent within the Crimes Amendment Act. The Queensland Government also recently undertook a review of consent laws and the excuse of mistake of fact (2017–2020). The New South Wales government revised consent laws in 2007 and 2021. At a federal level, in January 2024, the Australia Law Reform Commission released Terms of Reference investigating responses to sexual violence (ALRC 2024). Since 2010, Australia has also had a *National Plan to End Violence Against Women and Children*; in 2022, this plan was revised after an extensive consultation period with the development of a separate First Nations Plan following advocacy by First Nations women to support better and address the needs of Indigenous survivors in Australia (Commonwealth Government Australia 2023). In terms of addressing the limitations and harms of the criminal legal system on Indigenous women, the First Nations Plan advocates for greater acknowledgement of the harms of the judicial sys-

tem on Indigenous survivors of gender-based violence and improving police responses to and knowledge about the impact of colonisation is suggested as a solution (Commonwealth Government Australia 2023, 35). Both National Plans refer to restorative justice as an alternative to criminal legal interventions, and the mainstream National Plan also speaks – albeit less prominently – to addressing criminal legal responses to gender-based violence, including police interventions, reforms to laws, and improvements to supporting survivors through the criminal legal system (Commonwealth Government Australia 2022).

The aforementioned law and policy reforms and public inquiries build on a long legacy of law reform on gender-based violence in Australia (Ailwood et al. 2023). We contend these recent law reform efforts have emboldened survivors, activists and advocates to publicly push for criminal legal reforms that invoke or implicitly centre on a carceral agenda drawing on the scope of the carceral horizon, limiting the nature and scope for justice as well as perpetuating harms towards Indigenous survivors and communities. Key examples of these calls for reform include changes to laws permitting survivors of sexual violence to speak publicly, sexual assault consent laws and calls to criminalise coercive control in various states and territories across Australia, which we will now briefly discuss.

One example of recent activism centring the law as a site of redress in Australia is the #LetHerSpeak campaign, which initially sought to change Section 194k of the Evidence Act in the State of Tasmania prohibiting survivors from publicly discussing their experiences without court approval. Activists driving the campaign argued that preventing survivors from speaking publicly (if they wished) denied them control and agency over their narrative and their capacity to contribute to criminal legal and policy reforms.[4] On October 20th, 2019, the Tasmanian government announced that changes would be made to the legislation enabling survivors over the age of 18 years to share their stories provided they have written authorisation from the court to do so (Blackwood 2019). Following the reforms to the Tasmanian laws, similar changes to the law were advocated for in the state of Victoria and the Northern Territory, where survivors could have been jailed or fined for breaching the gag laws. [5] Since the campaign's launch, 17 survivors impacted by the gag laws have received legal assistance, and there have been four legislative reforms across three jurisdictions (Tasmania, Northern Territory and Victoria).

A further example of carceral law reform are recent changes to consent laws in New South Wales driven by survivor Saxon Mullins, in response to the criminal legal system's failure to validate her experience of sexual assault after the first conviction was successfully appealed by the accused, as well as advocates seeking reforms due to the shortcomings of the 2007 changes to consent laws (Quilter 2020). Mullins and advocates had success in NSW when new affirmative consent laws came into effect on June 1st 2022, and in 2023, a Senate Inquiry was held to examine existing consent laws across Australia to consider the potential for consistency.

[4] #LetHerSpeak https://www.letusspeak.com.au/.

[5] *Supra* n 5.

A final and further example of the emphasis on criminal justice reform as a response to gender-based violence in Australia is the push to criminalise coercive control[6] – a facet of domestic and family violence – in NSW, QLD, and South Australia following the introduction of such offences in the United Kingdom (Wangmann 2022), and the high profile and violent murder of Hannah Clarke and her three children in 2020.[7] Journalist Jess Hill further popularised the push to criminalise coercive control across all states and territories via her award-winning book *See What You Made Me Do: Power Control and Domestic Abuse* (2019), which ignited public discussion on coercive control as a tactic used in the context of domestic violence and was subsequently turned into a controversial documentary series. The book was turned into a TV series on SBS, presenting a problematic view of coercive control that failed to adequately represent Indigenous communities' experiences and concerns appropriately. The live panel discussion, which aired after the final episode of the series, featured Hill speaking over Noongar academic expert, lawyer and head of the National Aboriginal and Torres Strait Islander legal services, Associate Professor Hannah McGlade, challenging her claim that Indigenous women are fearful of contacting police.[8]

Critiquing the Carceral Reform Agenda

The examples outlined in the previous section reflect the carceral horizon of responses to gender-based violence in Australia. Regarding policy reforms, while it is pleasing to see alternatives to formal justice and prison pathways being discussed in government-led policy responses to gender-based violence (such as the new National Plan and First Nations Plan, and the Terms of Reference in the 2024 ALRC inquiry), practices such as restorative justice are still tied to the criminal legal system whereby an accused person or harm-doer has to plead guilty to be eligible for a restorative approach (Tauri 2023). This means survivors must still engage (the colonial) police and the legal system to access mediation, conferencing, Indigenous courts or community courts. Moreover, restorative justice is not widely available in states and territories across Australia. Despite the recommendation of restorative justice options for survivors in recent law reform inquiries, its proximity to the criminal legal system seems a hardly radical departure in addressing the justice needs of survivors or tackling the structural cases of gender-based violence.

[6] Coercive control is conceptualised as a range and pattern of non-physical abusive behaviours, including psychological abuse, intimidation, threats, destruction of personal property, imposing limits on liberty, finances, and social interactions that result in the entrapment of women in abusive relationships (Stark 2009).

[7] The Commonwealth Government released National Principles to address coercive control across all states and territories (https://www.ag.gov.au/families-and-marriage/families/family-violence/coercive-control#:~:text=The%20Australian%20Government%20recognises%20coercive,Violence%20(the%20National%20Principles).

[8] See SBS DOMESTIC VIOLENCE Discussion with Jell HIll (after #SeeWhatYouMadeMeDo screened 19may2021) https://www.youtube.com/watch?v=Y2FzEogZ1f4 19:18-20:33 min.

Conversely, community-led programs responding to gender-based violence and improving safety have long been identified as providing tailored responses for survivors and communities that seek to challenge the structural conditions enabling violence (see, for example, The State of Queensland 1999; Cheers et al. 2006; ACT Victims of Crime Coordinator 2009; Andrews 2020; Australian Human Rights Commission 2020; Blagg et al. 2020; Carlson et al. 2021; Change the Record 2021). Community-based behavioural change programs working with Indigenous men who have caused harm also show potential to reduce violence and improve community safety (Day et al. 2012; Keddie et al. 2023). However, community-based programs – while acknowledged as meaningful ways forward – are poorly funded (often as pilot programs) limiting capacity for long-term change (ALRC 2017). Moreover, criminal legal services (which we acknowledge are also underfunded) receive significantly more resources (ALRC 2017), resulting in a tiered policy response to gender-based violence.

It is important to acknowledge that some of these activist campaigns, such as #LetHerSpeak, can also be understood as victim-centred reforms that work to afford survivors' control over their experiences. Given that survivors previously risked criminal sanction for speaking out without judicial approval, this campaign could also be viewed as decarceral in some respects as it removes the potential for survivors to be criminalised for speaking out. Clearly, a campaign such as #LetHerSpeak is open to multiple readings, and we do not suggest securing survivors' right to talk publicly about their experiences is inherently problematic. Rather, we raise #LetHerSpeak as an example of a highly publicised campaign that continues to centre the legal system as a sight of redress, and is thus part of a broader carceral horizon. Given very few survivors formally report sexual assault and rape to police, let alone proceed to an investigation and trial (ABS 2023), legislative reforms like #LetHerSpeak serve a small number of survivors who have chosen a criminal legal pathway to seek justice – and, importantly, secured a conviction. While we agree that the law should not silence survivors, the focus of mainstream activist efforts on criminal legal reforms does little to expand access to justice for survivors or attend to the broad range of survivors' justice needs.

Likewise, affirmative consent reforms may play a vital symbolic role in expressing community standards for sexual interaction and curtailing some of the more egregious defense arguments that the accused held a *reasonable* belief in consent – something two authors have argued in their own submissions to law reform bodies. We raise these examples not so much out of concern for the nature of the reforms in and of themselves but rather to highlight the continued emphasis on the criminal legal system as *the* site of justice to gendered violence in mainstream activism and advocacy work, particularly in the absence of concomitant work focusing on the development of alternative sites of justice. There are, of course, also questions here regarding *why* it is that these campaigns have gained significant political and popular traction, especially given that some of these activists/advocates agitate for a range of responses to gender-based violence, not all of which involve the criminal legal system. It is important to acknowledge the role of institutions such as media and government in selectively engaging with and amplifying feminist causes that align with state interests whilst ignoring calls for more radical change. Nonetheless, we

must ask what outcomes are expected from such reforms and whether these will lead to substantive changes. For instance, it is unlikely that law reforms initiated by recent activism will result in substantive improvements to the reporting of gender-based violence. Indeed, it has been suggested that coercive control laws may lead to fewer reports of domestic and family violence due to fears of causing further harm or a lack of substantive outcomes (Walklate and Fitz-Gibbon 2019). Moreover, Indigenous advocates have argued that the concept 'coercive control' is problematic given Indigenous people are in a coercively controlling relationship with the State (Douglas et al. 2020; Change the Record 2021). Instead, a more appropriate term may be 'social or systemic entrapment' which also captures the systems and institutions that have failed to intervene – and even contributed – the perpetration of gender-based violence (Tolmie et al. 2024). While shifts in legal recognition are illustrative of the symbolic power of the law to make statements signalling support for (some) survivors and, by extension, feminist claims-making, they merely bolster penal attitudes that centre the conviction of offenders as the measure of success in law reform strategies and maintain conservative, colonial laws and systems as the yardstick of social change.

We must also remain attentive to the silences in such activism and advocacy. While recent law and policy reform efforts have boosted social, political and legal interest in gender-based violence, in Australia, public, political, and legal attention has emerged in response to violence experienced by (mostly) young, white women. Many Indigenous activists and academics have heavily critiqued the failure of white feminists, politicians and the news media to listen to and incorporate their perspectives and concerns (Ryan 2019; Cripps 2021; McGlade et al. 2021; Deslandes et al. 2022). For example, when asking the law to #LetUsSpeak/#LetHerSpeak, there is an implicit assumption that survivors can equally speak and be heard. Requesting permission to speak may hold limited value for those who cannot safely access the legal system to seek redress in the first place, and there is evidence of white settler women continuing to reify their speaking positions over Indigenous women similar to the Bell-Huggins debate previously discussed – such as the televised panel discussion with Jess Hill refuting claims by Associate Professor Hannah McGlade regarding coercive control mentioned earlier.

In addition, there remains an enduring *refusal to listen* to survivors in criminal justice reforms in Australia, particularly to Indigenous survivors' perspectives (Ailwood et al. 2023; Cripps 2023), evident in the above-mentioned criminalisation of coercive control in NSW. In June 2021, the Joint Select Committee on Coercive Control issued a report unanimously recommending that coercive control be criminalised in NSW, and in October 2022, new coercive control laws were ratified in the NSW parliament (NSW Government 2022). NSW is the first Australian state or territory to have a stand-alone coercive control offence. This law came into effect despite the acknowledged criticism within the final report published by the NSW government that the implemented laws advance a view of coercive control that does not sufficiently address Indigenous women's voices, concerns and experiences, particularly regarding this routine misidentification as aggressors by police (Parliament of New South Wales 2021, 22). A solution touted to address this was women-only or another specialist police service (Parliament of New South Wales 2021, 168); some-

thing many Indigenous scholars have heavily critiqued as a form of carceral feminism (Deslandes et al. 2022).

While the criminalisation of coercive control might send a particular message to the public about acceptable and unacceptable behaviour in relationships, these criminal justice reforms do little to overcome the difficulties survivors have long encountered in accessing justice, with research indicating police have little understanding of what coercive control is, routinely misidentify the perpetrator, and perpetrate violence themselves (Walklate and Fitz-Gibbon 2019). Moreover, criminal legal reforms to coercive control do not account for how the over-policing of Indigenous women and their communities will be addressed, why they are often mispositioned as the perpetrators of violence, and the high rates of their children being removed after experiencing domestic violence (Walklate and Fitz-Gibbon 2019; Davis and Buxton-Namisnyk 2021; Longbottom and Porter 2021; Buxton-Namisnky 2022). Nor do they address the social and systematic forms of violence that contribute to, perpetrate and actively fail to intervene or prevent various forms of gender-based violence (Tolmie et al. 2024). Lastly, coercive control laws are unlikely to improve reporting rates; many survivors just want the violence to stop rather than have the person who caused harm to be incarcerated (Goodmark 2018).

The amplification of white women's experiences, voices, and interests in place of and over Indigenous women in criminal justice reforms has been a long-standing problem in Australia, positioning Indigenous women as not worthy of support and safety (Behrendt 1993; Moreton-Robinson 2003; Smallacombe 2004; Cripps 2021; Longbottom and Porter 2021; McGlade and Tarrant 2021). Research demonstrates that racism, sexism and colonialism converge in public discussions of Indigenous victims of gender-based violence, undermining public and political recognition of Indigenous survivors (Ryan 2019; Cripps 2021). This lack of recognition persists despite Indigenous women in Australia being thirty five times more likely than non-Indigenous women to be subjected to violence perpetrated by a current or former partner and 11 times more likely to die from intimate partner-perpetrated violence (AIHW 2018). Across the board, there has been very little attempt to deeply listen to Indigenous voices in national discussions about gender-based violence (cf. AHRC 2020). Indigenous women have had to call national bodies and agencies to account for the lack of inclusion of their perspectives and the community's justice needs (McGlade et al. 2021). Thus, some Indigenous scholars argue that a carceral-colonial feminist agenda drives the response to gender-based violence in Australia through calls to expand police powers, bolster punitive solutions, and centring the interests of white settler women in law and policy reform (Deslandes et al. 2022), with very few survivors actually benefiting from such a system of dominance. Given this powerful position and Australia's specific socio and geopolitical context, it is essential to consider the scope and potential for innovation in providing justice for survivors of gender-based violence and their communities beyond criminal legal options.

Centring Survivors' Justice Interests Beyond Criminal Justice Reforms

Despite decades of (in some cases progressive) criminal justice reform on gender-based violence in Australia, most survivors do not report to police, and for those who do, the vast majority do not proceed to trial or achieve an outcome in the form of a conviction (Daly and Bohours 2010; Millsteed and McDonald 2017). Survivors routinely report that engaging with the criminal legal system is re-traumatising (VLRC 2021); rape myths and misconceptions continue to underpin defense narratives in criminal trials (Burgin 2019). As discussed earlier, significant issues have also been identified in relation to domestic and family violence, particularly for Indigenous survivors. Given the ongoing failure of the criminal legal system to listen to diverse perspectives and provide meaningful justice for gender-based violence, we must ask why we continue to return to this system and expect it to operate differently. Is it still strategic to engage with the law – particularly criminal law – as a site of social change for gender-based violence when there is abundant evidence of the harm caused by the system and its reticence to change (Smart 1995)?

Recent scholarship on survivors' justice interests[9] further brings into question whether criminal legal system reforms will achieve a sense of justice for survivors of gender-based violence, their families, and communities. In saying this, it is important to recognise that some survivors *do* invest in a criminal justice response and place value in the symbolic power of the state in recognising the harm committed against them (McGlynn 2022). Likewise, some survivors do value punishment or having the individual who caused harm removed from the community, particularly if this prevents them from harming others (Clark 2010; McGlynn 2022). While we have outlined reasons why many Indigenous scholars, activists and survivors do not consider criminal legal responses adequate or appropriate, some advocate for improved laws, particularly relating to strangulation or choking in family violence context and accounting for prior convictions in sentencing for family violence (see Langton et al. 2020). However, criminal justice responses to gender-based violence for many survivors, but particularly Indigenous women in Australia, regularly led to further harm perpetrated by police and other state institutions. Moreover, survivors hold a much broader range of justice interests, many of which cannot or will not be fulfilled by the criminal legal system. Commonly identified justice interests include (Clark 2010; 2015; McGlynn 2011; McGlynn et al. 2012; Daly 2014, 2015, 2017):

- Voice: to express their experience in their own words, in a way that is meaningful to them, and in a context where what they say is *heard* by others.
- Control: to have meaningful input into decision-making about any responses to their experience.
- Belief and Validation: to have their experiences believed and taken seriously by others.

[9] The literature describes both "justice needs" (Clark 2010, 2015) and "justice interests" (Daly 2014, 2015, 2017). Daly (2017) prefers to use justice interests rather than needs to illustrate a political relationship that victims as citizens have in pursuing justice in the aftermath of a crime. Needs, she suggests, refer to survival elements, whereas interests refer to a more rights-based approach to justice that goes beyond the individual and speaks to the broader social structures in which an offence has occurred.

- Accountability: for the person who has caused harm to be held to account and experience consequences for their actions. This is not necessarily the same as punitive punishment (Kaba 2020).
- Community protection: to ensure that others do not experience the same harms in the future.

The work of Clare McGlynn, Julia Downes and Nicole Westmarland (2017) demonstrates that survivors' justice interests are *kaleidoscopic* in nature. That is, they are fluid, and shift and change over time, and in relation to new experiences. Thus, there is not necessarily one coherent set of justice interests that apply to all survivors at all times, and what survivors may require to feel a sense of justice has been achieved is constantly evolving. Instead, this work suggests the need to develop a continuum of responses that recognise and account for the diversity of justice interests grounded in understanding intersectionality (Boyle 2019; Kim 2020; McGlynn 2022). As indicated earlier, the solution since the early 2000s has been restorative justice, with important evidence indicating this approach is meaningful for some Indigenous survivors of domestic and family violence (Marchetti 2010, 2015). However, this approach is still closely aligned with the criminal legal system, and there is little funding or wide availability for these initiatives. In addition, strict conditions surround who is eligible for restorative justice, and it is often understood in very narrow terms (Nancarrow 2006). The potential for creative, non-criminal legal interventions to respond to and potentially prevent gender-based violence remain untapped in Australia. More recently, transformative justice approaches have been developed in Canada, the USA and Australia, with groups such as Transforming Justice, *the Cicada Project* and *Under Current Victoria*, providing non-criminal legal approaches to addressing the harms of sexual violence. However, these approaches are far from mainstream or even well-known, and rely on donations to sustain their work.[10] Non-criminal, Indigenous community-based responses, such as justice reinvestment, receive funding for pilot programs with no commitment for ongoing funding from the state – despite evidence of their success in reducing violence in communities as well as providing more appropriate interventions and support (ALRC 2017; AHRC 2020; Change the Record 2021). While there are a variety of alternative and innovative approaches to addressing and responding to gender-based violence in Australia, the lack of political and financial investment in non-criminal legal responses to gender-based violence reinforces the centrality of carceral, criminal legal solutions.

In the Australian context, *listening* to survivors and communities should be at the forefront of activism and advocacy (Ailwood et al. 2023), with justice interests for Indigenous survivors explicitly foregrounded in self-determination with criminal legal and policy reforms centred on creating, sustaining, and engaging with community-controlled organisations (ALRC 2017; AHRC 2020; Change the Record 2021; Cullen et al. 2022). We must also create culturally safe and trauma-informed responses that account for the enduring harms of colonisation and the extent to which colonial systems and processes may cause further harm in the aftermath of violence (ALRC 2017; Change the Record 2021; Cullen et al. 2022). However, as we have

[10] The Cicada Project and Undercurrent Victoria were no longer operational at the time of writing.

demonstrated throughout this article, there has been very little critical attention paid by feminist scholars and activists to incorporate these justice interests beyond criminal legal reforms in Australia. The failure to hear and incorporate Indigenous survivors' justice interests is indicative of the glaring void in whitestream feminist activism and advocacy that ultimately perpetuates the colonial and punitive foundations of the Australian state that has actively persecuted Indigenous peoples through a variety of policy and legal reforms.

Conclusion: Towards Decarceral Responses to Gender-Based Violence in Australia

Considering the substantive limitations of criminal legal reforms and the effects of carceral feminism in Australia, we must ask how we might begin to think differently and to create new and genuinely innovative responses to gender-based violence. The response from anti-carceral feminist scholars has been to push for an abolitionist perspective that seeks to utilise alternative, transformative, and reinvestment justice practices within the community and without the involvement of police or other criminal legal apparatuses (see ALRC 2017; Taylor 2018; AHRC 2020; Kaba 2020). As outlined previously, community-based organisations in Australia have been using transformative justice and justice reinvestment responses for some time. While these remain on the margins of how justice is dominantly understood, they nonetheless offer some vision and hope for how we might begin to respond differently. In closing, we would like to outline some initial, tentative implications and areas for consideration. We preface this by saying that the issues outlined in this article are ones we are actively grappling with ourselves, where we continue to reflect on and evolve our practices and politics as scholars and activists. In Australia, this can only be done through genuine collaboration, whereby we listen to and learn from Indigenous survivors and advocates, as well as queer and other marginalised survivors/scholars/activists whom we have not had the space to discuss in this article. In doing so, we can begin the process of ceding the various forms of power we are afforded based on our privileges and work towards a truly emancipatory agenda for addressing gender-based violence foregrounded in intersectional, decolonial thinking.

Our discussion raises questions about our responsibilities as researchers in the field in relation to the responses that we advocate for (Mortimer et al. 2021). We argue that there is an ethical imperative not to advocate for carceral responses that directly harm some survivors and marginalised communities – such as introducing women-only police stations or criminalising coercive control - as these approaches fail to critically understand how Indigenous women are subjected to further harm by such interventions (see Longbottom 2022). However, this is complicated because some advocates and survivors *do* want criminal legal responses, and we do not wish to be seen as advocating for decriminalising gender-based violence. So, how do we balance the need to respectfully engage with the harms of criminalisation without dismissing survivors' perspectives and knowledge?

Abolitionist work is helpful here – as activists such as Kaba (2020) make clear, calls for abolition are focused on a critique of the system and not the choices of indi-

vidual survivors, particularly when the criminal legal system is often the *only* course of redress available to them, and signals the importance of a "spectrum" approach to decarceration emphasised by Kim (2020) and Terwiel (2020). We must not lose sight of how survivors' choices are shaped and limited by the dominant frame of the criminal legal system as the site of justice in popular culture and mainstream feminist activism. As a participant in Hayley Clark's (2010, 30) Australian research on survivors' justice desires astutely observed: "It's very hard to think outside the system when the system is what you've got". Survivor's perspectives are vital in informing the development of justice responses; however, it is simultaneously important to recognise that survivor perspectives on how justice may be achieved can themselves be delimited by the reification of the criminal legal system as the legitimate site of redress. It is also arguably challenging to imagine how justice interests could be served through modes of response that, in some cases, are yet to be brought into existence. In this sense, we concur with Terwiel (2020), who argues that we need to critically consider how criminal legal responses can:

> (E)nable a rethinking of punishment, justice, and citizenship in their gendered and racialized complexity… That includes considering transformative justice initiatives not simply as feminist abolitionist *solutions* to harm but also as efforts of *problematization* that radically question what justice might be (Terwiel 2020, 436-7).

In line with Terwiel's (2020) conceptualisation of decarceration as a continuum, system reform may still be a desirable avenue where it helps move towards decarceral goals. In the Australian context, Cullen et al. (2020, 18), argue that decarceral, Indigenous-led, and community-controlled approaches are needed to address "racism and trauma within complex health and social systems", including the criminal legal system, to prevent further harm to those survivors their families and communities. This requires undoing relationships of power and hierarchy through collaboration between Indigenous and non-Indigenous people in supporting survivors, utilising a trauma and culturally informed approach that accounts for the wide-ranging impacts of enduring and historical settler-colonialism in addition to the harms caused by gender-based violence (see also Lowitja Institute 2019).

As we intimated earlier, there is a need to commit to a process of reflexivity regarding our positionality. We, as scholars, must acknowledge and be reflexive about our own epistemic, ontological, and axiological positions that generate power relations and knowledge hierarchies (Moreton-Robinson 2000). Without critically acknowledging these, we will continue reproducing these systems rather than being open to new knowledge and dialogue to witness a broader range of perspectives and working collectively to imagine something different. These aims require a fundamental shift in academic and research culture. Humility and a willingness to admit when we have got it 'wrong' in our past scholarship are called for. Many reading this may have advocated for carceral or otherwise harmful responses (perhaps inadvertently), ourselves included. How do we create and foster an academic culture that supports us to evolve, move on, and grow in our thinking? Part of the answer to this involves challenging the masculine, colonial, individualist notions of leaving an academic

legacy as individual scholars to emphasise instead the *outcomes* of our work in supporting survivors and value a process of research that upholds collaboration, shared knowledge, deep listening, ethical practice, community support, and growth. Sitting with discomfort and being brave in decision-making is what survivors are calling for (Commonwealth Government Australia 2022, 9; Cullen et al. 2022). This requires an emphatic shift towards acknowledging and embracing the discomfort that we may feel in aspects of our work – something all authors have experienced in respective projects involving collaboration with facets of the criminal legal system– and considering how we can harness this discomfort as a way of opening possibilities for other ways of thinking, knowing, and practising.

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