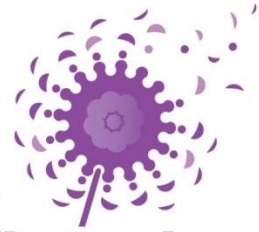


ATTACHMENT "EE-1"

This is the attachment marked "EE-1" referred to in the witness statement of Elizabeth Eltringham dated 17 July 2015.

Domestic Violence Resource Centre Victoria

Preventing violence, promoting respect



Submission to the Royal Commission into Family Violence

Commissioner the Honourable Marcia Neave AO (Chair)
Deputy Commissioner Patricia Faulkner AO
Deputy Commissioner Tony Nicholson
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Introduction

THE DOMESTIC VIOLENCE RESOURCE CENTRE VICTORIA

The Domestic Violence Resource Centre Victoria (DVRCV) aims to prevent violence in intimate and family relationships and promote non-violent and respectful behaviour.

The Centre was established in 1986 and is now the largest provider of family violence resources and training in Victoria.

Our work is informed by the lives of women and children who have experienced family violence. We work within a feminist framework, which is grounded in evidence that demonstrates the gendered nature of family violence. This means that while our work covers the many forms of family violence, we have a particular focus on men's violence towards women and children in intimate and domestic relationships. Our work on primary prevention aims to address the underlying gender inequality that is the most significant predictor of men's violence against women (VicHealth 2007).

DVRCV's work bridges the gap between research and practice. We undertake research and use the available evidence to inform our training programs, publications and advocacy. We work in partnership with other organisations with similar aims.

DVRCV receives core funding from the Victorian Department of Health and Human Services with additional income from fee-for-service training and grants from government, philanthropic organisations and research bodies.

WE PROVIDE

- Training courses for professionals to improve responses to family violence - including primary prevention, intervention and crisis responses, risk assessment and management, and long-term recovery
- Comprehensive online and printed resources with information for:
 - people who have experienced family violence, their friends and family
 - family violence workers, researchers, students and primary prevention practitioners
 - young people
- A magazine on current issues in the family violence field
- Specialist projects to support the development of the family violence service system
- Partners in Prevention, a community of practice for respectful relationships program providers in schools
- Research to identify current evidence and gaps in service delivery
- Advocacy and comment on policy and practice initiatives, media reporting, law reform and best practice frameworks
- Initial support, information and referral to individuals and professionals seeking information on family violence and support services.

DVRCV'S SUBMISSION TO THE ROYAL COMMISSION

DVRCV's work addresses interventions across the continuum - including primary prevention, early intervention, crisis responses, and death reviews. Our submission to the Royal Commission addresses a number of areas in which we have been directly involved over recent years. Our submission highlights the need to:

- strengthen Victoria's integrated service system
- build consistent practice through workforce development
- embed a universal risk assessment and risk management framework
- address risks to children in the context of family violence
- address the abuse of technology by family violence perpetrators
- inform and resource the community
- support community-based family violence research
- improve legal responses to domestic homicides
- build effective strategies to prevent violence against women.

We have taken a broad look at the work that has been done in Victoria, highlighting gaps and challenges and identifying effective practices. Family violence is an endemic problem in our community, and the family violence service system is stretched beyond capacity due to under-resourcing. While there are valid concerns about the shortcomings of Victoria's response to family violence, there are also examples of good practice. We can draw from these examples and initiatives in other jurisdictions to re-shape and strengthen our service system and to build effective approaches to violence prevention.

In our submission we discuss the elements of an effective integrated family violence system and reflect on Victoria's progress in this respect. We identify the need for a sustained, integrated, and comprehensive approach. We need strong leadership, strong governance mechanisms, and consistent evidence-based practices.

The temptation for successive governments is to try to put their own stamp on the system, and promote new program approaches, innovations and fresh ideas. However, fresh stand-alone innovations are not what Victoria now needs. Instead, we need a sustained effort to build on the integration process that was first identified ten years ago. We advocate for the strengthening of the existing system alongside a long-term plan for prevention of family violence - a plan that will be implemented irrespective of the government in power. We ask that the Royal Commission investigates mechanisms, both inside and outside of government, to ensure a long-term bi-partisan approach to responding to and preventing family violence.

DVRCV's Recommendations

STRENGTHEN VICTORIA'S INTEGRATED SERVICE SYSTEM

1. DVRCV recommends that the Victorian Government develops a statewide model for integration of responses to family violence. This would include:
 - 1.1. A comprehensive framework and governance
 - 1.1.1. a clear vision of the goals of the system, and a set of principles for responding to family violence
 - 1.1.2. a governance model and a strong and effective whole-of-government authorising environment
 - 1.1.3. mechanisms for ensuring system wide shared understandings of the causes and the coercive, controlling nature of violence, its effects and dynamics, risk factors and barriers to safety
 - 1.1.4. clearly articulated roles and responsibilities of key stakeholders and service providers, and mechanisms for ensuring consistency of practice throughout Victoria.
 - 1.2. Well-resourced women-centred and specialised family violence services
 - 1.2.1. funding to increase the capacity of women-centred family violence services to meet demand
 - 1.2.2. funding to increase the capacity of specialist family violence services and programs to provide targeted, culturally safe responses
 - 1.3. Strategies to ensure consistent practice
 - 1.3.1. standards and codes of practice for key stakeholders and service providers
 - 1.3.2. protocols to guide inter-agency practice and communications
 - 1.3.3. shared practice frameworks and tools
 - 1.4. Transparent mechanisms for monitoring:
 - 1.4.1. measures of progress and compliance
 - 1.4.2. systems for data collection and tracking effectiveness of responses.

BUILD CONSISTENT PRACTICE THROUGH WORKFORCE DEVELOPMENT

2. DVRCV recommends that the Victorian Government develops an effective, consistent, comprehensive and up-to-date approach to workforce development on family violence. This would include:
 - 2.1. A comprehensive audit of family violence training and education currently being provided for key occupational groups, community services and government agencies (including pre-service training in tertiary institutions, induction training and in-service training)
 - 2.2. Establishing a professional development framework that identifies the core vocational competencies for responding to victims and perpetrators of family violence, and aligns these with roles at the key entry points to the family violence system
 - 2.3. The development of a cross-sector training strategy to support the implementation of the professional development framework in government and community organisations, which includes ongoing training delivered across the state
 - 2.4. Work with tertiary education sector (VET sector, including TAFE and university) industry advisory bodies to ensure family violence is included in the core curriculum of all professional groups that respond to family violence
 - 2.5. Work with professional associations in the health and community services sector to require completion of an approved family violence training course as a condition of membership, and to recognise family violence training for professional development points.

EMBED A UNIVERSAL RISK ASSESSMENT AND RISK MANAGEMENT FRAMEWORK

3. DVRCV recommends the Victorian Government undertake a review of the Family Violence Risk Assessment and Risk Management Framework (CRAF), including:
 - 3.1. An audit of the use of CRAF in Victoria to:
 - 3.1.1. examine current CRAF implementation, and the extent to which CRAF has been embedded into agency and sector policies and practices
 - 3.1.2. consider whether the level of risk assessment is appropriately matched to roles of different professional groups
 - 3.2. Developing family violence risk assessment benchmarks and core vocational competencies required across sectors
 - 3.3. Addressing content gaps and providing additional guidance, by:
 - 3.3.1. integrating tools for assessing risks to children in the context of family violence
 - 3.3.2. providing supplementary tools for assessing perpetrator dangerousness

- 3.3.3. providing expanded guidance about risk management, including information sharing
 - 3.3.4. exploring whether an actuarial tool will assist in assessing level of risk
 - 3.3.5. providing effective guidance to ensure relevance to women and children from diverse communities
 - 3.3.6. including technology-facilitated abuse
 - 3.3.7. incorporating learnings from deaths investigated under Victoria's Systemic Review of Family Violence Deaths
 - 3.3.8. establishing a schedule of regular reviews of the revised CRAF to ensure it remains current and responsive to emerging issues and changing contexts.
- 3.4. Establishing an effective authorising environment to ensure consistent implementation. This would include:
- 3.4.1. mandating all core services in the family violence service system, and others who frequently provide responses to family violence to use a common risk assessment framework and tool and to embed CRAF into their organisational policies and practice
 - 3.4.2. providing training, operational advice and assistance to organisations to help them to embed CRAF into policies and practices, to ensure the consistent use of CRAF, effective information sharing and risk management processes
 - 3.4.3. monitoring the implementation of CRAF across services and settings
 - 3.4.4. providing ongoing funding for the implementation and delivery of full-day training program/s
 - 3.4.5. ensuring consistent state and federal risk assessment approaches by working with COAG to implement the recommendations of the Australian Law Reform Commission & New South Wales Law Reform Commission (2010) report on national legal responses.

ADDRESS RISKS TO CHILDREN IN THE CONTEXT OF FAMILY VIOLENCE

- 4. DVRCV recommends the Victorian Government strengthen service system responses to children affected by family violence, by:
 - 4.1. Funding specialised professional education programs on working with children in the context of family violence, to promote a shared understanding of the causes and dynamics of family violence and its impacts on children, the links between risks to parents and risks to their children, skills in risk assessment and risk management with children, and responses that are culturally appropriate

- 4.2. Mandating this training for Child Protection staff (including all levels of management), magistrates, court staff, police and all those working in the family violence sector
- 4.3. Improving collaboration and information sharing about the safety of child and adult victims of family violence, across services including the family law courts, Magistrates' Courts, police, family violence services and Child Protection
- 4.4. Reviewing Child Protection practices in relation to family violence—including how Child Protection identifies family violence, practice responses and how these responses impact on the outcomes for children who have experienced family violence.
- 4.5. Requiring Child Protection workers to ensure family violence risk assessment is undertaken for children and their mothers affected by family violence.
- 4.6. Repealing the *Crimes Amendment (Protection of Children) Act 2014* (known as the 'failure to protect' legislation)
- 4.7. Reviewing the Common Risk Assessment Framework (CRAF) in relation to the development of a specific tool for assessing family violence risk for children (see recommendation 3.3.1)
- 4.8. Funding specialist family violence services to undertake case management with children
- 4.9. Supporting further research on filicide in the context of family violence.

ADDRESS THE ABUSE OF TECHNOLOGY BY FAMILY VIOLENCE PERPETRATORS

5. DVRCV recommends the government invest in effective practice, policy and legal responses to address the use of technology as a tactic of abuse. This would include:
 - 5.1. Funding for a specialised technology advocacy and advice role, based in a statewide family violence organisation, which would:
 - 5.1.1. work with communities, agencies, and telecommunications and technology companies to address how ongoing and emerging technology impacts the safety, privacy, and accessibility rights of victims.
 - 5.1.2. develop training programs for service providers and legal professionals
 - 5.1.3. provide accessible, up-to-date information resources for victims of violence and professionals
 - 5.2. Ensuring that technology-facilitated stalking and abuse is included in a review of the CRAF framework (see recommendation 3.3.6)
 - 5.3. Ensuring that content regarding technology-facilitated stalking and abuse is included in any core family violence training programs in Victoria
 - 5.4. Supporting further research on technology and abuse, to focus on:

- 5.4.1. legal responses to technology-facilitated abuse
- 5.4.2. the experiences of victims, including the mental health impacts of this abuse and the effectiveness of help-seeking strategies
- 5.4.3. the links between technology-facilitated abuse and other forms of family violence
- 5.4.4. best practice approaches in supporting victims of technology-facilitated abuse and stalking
- 5.4.5. the impact of ‘sexting’ on victims of family violence.

INFORM AND RESOURCE THE COMMUNITY

- 6. DVRCV recommends the Victorian Government funds a comprehensive approach to information provision regarding family violence. This would include:
 - 6.1. Coordinating and funding a state-wide information distribution strategy to ensure that materials on family violence—including resources in community languages and in accessible formats—are developed and made widely available in a range of public settings
 - 6.2. Promoting *The Lookout* website as an online source of information for the community on services and resources available, and as a strategy to support the development of an integrated service system in Victoria.

SUPPORT COMMUNITY-BASED FAMILY VIOLENCE RESEARCH

- 7. DVRCV recommends the Victorian Government recognises the unique role of community organisations in family violence research. This would involve:
 - 7.1. Supporting community organisations to undertake research and to participate in research partnerships.
 - 7.2. Improving the dissemination of research evidence on family violence in Victoria, by funding a statewide community organisation to develop and publish issues papers and research summaries.

IMPROVE LEGAL RESPONSES TO DOMESTIC HOMICIDES

- 8. DVRCV recommends the Victorian Government work with the legal system to improve responses to domestic homicides, by:
 - 8.1. Ensuring any reforms to laws and legal responses are informed by an understanding of the different circumstances in which men and women kill
 - 8.2. Ensuring legal professionals - including prosecuting and defence counsel, judges, expert witnesses and others – have training on family violence and the use of expert family violence evidence
 - 8.3. Ensuring training for legal professionals includes cultural awareness training, which addresses the overrepresentation of Indigenous people in criminal prosecutions, the

- experiences of Indigenous women in the context of high rates of family and sexual violence, and the additional barriers to reporting to police and accessing services
- 8.4. Examining the scope for expert social context evidence to be adduced to provide context in trials where family violence is alleged to have been perpetrated by the accused
 - 8.5. Amending the family violence evidence provisions (s 322J) in line with definition of family violence in the *Family Violence Protection Act 2008* (Vic), including information from the preamble about the gendered nature of family violence and reference to family violence evidence-based risk factors
 - 8.6. Supporting the establishment of a panel of suitably trained and experienced experts who can provide family violence evidence in domestic homicide plea hearings and trials. This panel should include professionals such as social workers and community workers with extensive expertise in family violence
 - 8.7. Commissioning the VLRC to undertake a comprehensive review of defences to homicide relevant to family violence victims who kill, including the issue of reintroducing a partial defence, such as excessive self-defence
 - 8.8. Reviewing charging practices in domestic homicide prosecutions, and considering guidelines to assist Victorian prosecutors to determine the appropriate charge to lay against defendants in circumstances where there is a history of violence towards the defendant
 - 8.9. Formulating principles that govern the circumstances in which provocation should mitigate sentence
 - 8.10. Declaring family violence to be a special area of expertise within homicide law, for example, through the implementation of a domestic homicide unit within the Office of Public Prosecutions and a specialist Magistrates' and Supreme Court domestic homicide list
 - 8.11. Amending the Jury Directions Act to make it mandatory for the trial judge to direct the jury on family violence if it is relevant to the facts in issue
 - 8.12. Establishing a system to monitor the impact of changes in the law, to identify whether reforms are having the intended effects of improving the use of self-defence, improving recognition of family violence, and reducing gender bias in the law.
 - 8.13. Making plea hearing and trial transcripts available free of cost from the Victorian Government Reporting Service for the purpose of research and monitoring.

BUILD EFFECTIVE STRATEGIES TO PREVENT VIOLENCE AGAINST WOMEN

9. DVRCV recommends the Victorian government develops a comprehensive, long-term approach to preventing violence against women, and ensures consistent practice in primary prevention. This would include:
 - 9.1. Developing a strategic framework to address primary prevention of violence against women, which builds on *A Right to Respect: Victoria's Plan to Prevention Violence against Women 2010-2020*. The should be developed with bipartisan support, and should be informed by family violence and women's health organisations.
 - 9.2. Establishing an independent body, with extensive knowledge and expertise in the area of violence against women, to coordinate statewide efforts and to align primary prevention work with tertiary responses to violence against women.
 - 9.3. Funding a workforce development strategy for the primary prevention sector. This would include:
 - 9.3.1. conducting a training needs analysis for the sector
 - 9.3.2. identifying minimum standards for primary prevention practitioners and for primary prevention initiatives
 - 9.3.3. developing a training strategy, which includes introductory prevention training offered on an ongoing basis; enhanced training for primary prevention specialists; training for teachers who deliver respectful relationship education (RRE) programs in schools; and tailored prevention training for other settings
 - 9.3.4. funding a specialist family violence organisation to deliver prevention training across the state
 - 9.3.5. funding to evaluate the effectiveness of primary prevention training, and to enable training to be updated regularly to incorporate new evidence
 - 9.3.6. resourcing regular community of practice sessions for primary prevention specialists.
 - 9.4. Developing an action plan for the delivery of respectful relationships education (RRE) across early childhood, primary and secondary school settings. This would include:
 - 9.4.1. expanding the PiP program to support the delivery of RRE in secondary schools and to enable it to fulfil its potential to support early childhood and primary school interventions
 - 9.4.2. funding research on effective prevention in early childhood and primary school settings, to build on the existing RRE evidence base
 - 9.4.3. developing curriculum for RRE in early childhood and primary school settings, based on the research
 - 9.4.4. providing training for educators and program providers to deliver age-appropriate programs in early childhood, primary school, and secondary school settings (including training to support the delivery of the 2014 *Building Respectful Relationships: Stepping Out Against Gender-Based Violence* curriculum).

Strengthening Victoria's integrated service system

BACKGROUND

A SYSTEM IN DEVELOPMENT

In the drive for reform of Victoria's responses to family violence more than a decade ago, the Statewide Steering Committee to Reduce Family Violence described a vision for an 'integrated' family violence system that connected specialist women's and men's family violence services, police, courts and legal services, to deliver responses that would prioritise the rights of women and their children in Victoria to live free from family violence (Statewide Steering Committee to Reduce Family Violence 2005).

Victoria focused on the need to develop an integrated response to family violence because:

'one of the main advantages ... is its potential to open up domestic violence work to collegial scrutiny and accountability. This not only leads to the development of systems of continuous improvement but also provides a pathway to enhanced safety for individual victims, because responses which jeopardise safety are detected more readily (Wilcox 2008).

The Duluth Abuse Intervention Project (DAIP) is the founding model that most jurisdictions in Australia and internationally have looked to for guidance around the development of integrated responses. Victoria too looked to DAIP in early planning for integration.¹

The DAIP model continues to be recognised as international best practice in addressing family violence.²

The vision for reform and guiding principles established then, which still underpin this work today, are that system responses need to:

- prioritise the safety and wellbeing of those experiencing family violence
- hold perpetrators accountable for their use of violence
- promote the agency of women.

The 'system' that has grown since that time has brought together a range of key players, including specialist family violence services, Victoria Police, court staff and judicial officers, and legal professionals including family violence applicant lawyers. Codes of practice have been developed for

¹ The DAIP core principles of intervention are as follows:

The goal of intervention is to stop the violence. The focus of intervention is to protect the victim

- *Whenever possible, the burden of confronting abusers and placing restrictions on their behaviours should rest with the community, not the victim.*
- *To make fundamental changes in a community's response to violence against women, individual practitioners must work cooperatively, guided by training, job descriptions, and standardized practices that are all oriented toward the desired changes.*
- *Intervention must be responsive to the totality of harm done by the violence rather than be incident or punishment focused.*
- *Protection of the victim must take priority when two intervention goals clash.*
- *Intervention practices must reflect a basic understanding of and a commitment to accountability to the victim, whose life is most impacted by our individual and collective actions.*
- *All interventions must account for the power imbalance between the assailant and the victim. (www.duluth-model.org/daipccr3.html)*

² The Duluth model was recently awarded the World Future Council's 2014 Future Policy Award for ending violence against women and girls - see http://www.worldfuturecouncil.org/fpa_2014.html

some sectors, and frameworks and tools, such as the Family Violence Risk Assessment and Risk Management Framework (CRAF), have been developed as a key tool for integration (Victorian Government 2007).

Governance arrangements to support the development of an integrated response were established. These have changed with successive governments, and again face review via the Royal Commission into Family Violence.

Despite efforts at integration over the past decade, the system has continued to fail many women. The system still operates in separate ‘silos’, women are unable to smoothly navigate the system, women with diverse needs are being left behind by this system, and significant barriers to integration remain.

Successive governments tend to want to re-shape systems and focus on new program approaches, innovations and fresh ideas. However, Victoria does not need stand-alone innovations. Instead, what is needed is a sustained effort to strengthen, expand and embed the integration process that was begun ten years ago.

It is time for Victoria to develop a clear long-term framework for an integrated family violence service system. This framework needs to identify key components of an integrated system, short- and long-term milestones, and mechanisms for monitoring progress. Such a framework needs to be developed with bipartisan support so that it can survive changes in government.

DVRCV’S ROLE IN SUPPORTING INTEGRATION

DVRCV has worked with government and non-government partner agencies over many years on family violence systems reform in Victoria—by lobbying for change, through reform planning processes, and as a participant in various incarnations of governance structures and forums.³

DVRCV led the delegation of women’s domestic violence services that met with Chief Commissioner of Police Christine Nixon in 2001, which happened at a turning point for Victoria. The release of the Womens Safety Strategy in 2002 and the leadership of the new Chief Commissioner led to the establishment of the Statewide Steering Committee to Reduce Family Violence in 2002. DVRCV was a founding member of that committee.

As the work of the committee progressed, DVRCV researched and published Victoria’s first discussion paper on the topic of integration to help inform discussions and debate about what an integrated response needed to consider. That paper examined key elements and principles that needed to underpin any efforts to build an integrated response (DVIRC 2004).

We lobbied for a review of family violence legal responses in Victoria, and were invited to contribute to the Victorian Law Reform Commission (VLRC) review of family violence laws as a member of the VLRC Family Violence Advisory Committee. With our alliance partners, we worked with the Department of Justice Legal Policy Unit to help shape the resulting *Family Violence Protection Act 2008*, which was—and remains—a key piece of work in building shared understandings of family violence in Victoria.

DVRCV also regularly works collaboratively to inform inquiries and consultations, including with our Alliance partners⁴ on a joint submission in 2010 to the Australian Law Reform Commission and New South Wales Law Reform Commission inquiry, *Family Violence: A national legal response*.

³ See No More Deaths Alliance paper on the history of the Alliance, provided to the RCFV Commissioners at a consultation session on 19/5/15

⁴ The No More Deaths Alliance is made up of peak bodies and specialist statewide services that have been working in the area of family violence in Victoria for decades: Domestic Violence Victoria; Federation of Community Legal Centres; No To Violence, Male Family Violence Prevention Association; DVRCV; Women’s Legal Service Victoria; Safe Steps Family Violence Response Centre; Women with Disabilities Victoria; InTouch Multicultural Centre against Family Violence; Aboriginal Family Violence Prevention & Legal Service.

We have worked closely with government on the development and roll-out of a common approach to family violence risk assessment and risk management across sectors and settings in Victoria.

ISSUES, GAPS & CHALLENGES

PROGRESS IN VICTORIA

While the Duluth principles were developed with a heavy focus on justice responses, the principles still apply to Victoria's efforts to build an integrated system.

There has been much progress and significant good will by government and non-government stakeholders in promoting integration. Pockets of good practice have emerged. For example, there have been attempts at improving regional responses, such as the Northern Crisis Advocacy Response (NCARS); and attempts at proactive policing in relation to breaches of intervention orders in the LaTrobe region.⁵ However what we have is still a system in development.

Key elements required for integration have been absent from planning, have met resistance, have been subject to 'siloining', or have been inadequately funded or subject to political whim. Efforts have been stymied by the failure to follow through or embed key principles and elements.⁶

Critical gaps still exist in the lack of shared understandings of family violence as coercive control.

While community awareness of the issue has grown exponentially, there has been unprecedented demand on the system, without investment to meet the escalating demand. Specialist women's services, with the capacity to respond to diverse groups of women, are the bedrock of any integrated family violence system. Inadequate funding remains a significant barrier to integration.⁷

Much of the work to build or progress key components lapsed from 2010-2014 under the Coalition Government. Other components have been absent from planning or met resistance due to costs.⁸

The political will for reform must be supported by mechanisms to ensure that good work is not derailed under future governments.

UNDERSTANDING FAMILY VIOLENCE AS COERCIVE CONTROL

Historically, policy, legal, and criminal justice responses to family violence have been based on a 'violent incident' model. Violence has largely been equated with discrete assaults and physical injury.

In recent years, in both Victoria and internationally, there has been a shift to adopt a more comprehensive understanding of family violence as coercive, controlling behaviour. The experiences of those subjected to family violence have demonstrated that much of the harm does not relate to physical violence or injury. The majority of abused women have been subjected to a range of tactics to degrade, control and isolate them, and the majority of these tactics do not involve physical

5 For example: a) established in 2006, the Northern Crisis Advocacy Response Service (NCARS) in Melbourne's northern region is a partnership between specialist women's domestic violence services and Victoria Police. Women access NCARS via a referral from the WDVCS telephone service or from police. The service provides support and information to enable women to make plans for their safety and accommodation. The service supports women to access the justice and legal system if required. Follow up support is provided for up to 13 weeks. In 2010, NCARS received an Australian Crime and Violence Prevention Award. b) In 2012 the Morwell Police Family Violence Unit started to proactively police recidivist and high-risk offenders and to prosecute all breaches of family violence intervention orders.

6 For example, a major piece of work to develop guidelines for strengthening risk management occurred during 2010. Via a government contract with KPMG, and thousands of worker consultation hours, guidelines were developed to enhance risk management across departmental silos and sectors. A change of government in late 2010 meant that this work vanished from sight.

7 The No More Deaths Alliance campaigned during the 2014 state election on the urgent need for resources to meet demand, and identified 25 priority actions to keep women and children safe and housed; make the justice system safe and supportive; hold violent perpetrators to account; break down service silos; prevent violence against women and children. See <http://www.dvrcv.org.au/knowledge-centre/our-blog/no-more-deaths-election-campaign>

8 For example, the promising early work of the Victorian Systemic Review of Family Violence Deaths begun in 2009 has all but vanished. This has resulted in funding for the Coroners Prevention Unit being cut; the loss of experienced staff; and the delay of promised improvements to processes for reviewing deaths. See the Federation of Community Legal Centres submission to the Royal Commission into Family Violence, which DVRCV endorses.

violence. This has been described as ‘patriarchal or intimate terrorism’ (Johnson 2008) and ‘coercive control’ (Stark 2007). Most of these tactics are not criminal offences and have not been addressed by police or courts.

This pattern of coercive behaviour is gendered—it is based on men’s exploitation of women’s subordinate status to achieve control in the relationship. As Evan Stark has argued, coercive control can be used effectively by men ‘partly ... because many of the control tactics target activities already identified as women’s default responsibilities (such as housework or cooking) or involve areas still viewed as male prerogatives, such as control over money or how women perform sexually’ (Stark 2012, p. 203).

Without such an understanding of the coercive, controlling, and gendered nature of family violence, government policy reforms and interventions cannot adequately address family violence, or prevent it. An approach focused on violent incidents will not improve the long-term safety and wellbeing of victims, nor will it promote women’s equality and freedom.

By examining Victoria’s family violence interventions through the lens of coercive control, it is clear that we have some good foundations in our system. For example, Victoria’s *Family Violence Protection Act 2008* s 5 definition of family violence includes information about the controlling, coercive nature of family violence, economic abuse, and behaviour that ‘causes fear’.

In addition, the CRAF framework acknowledges the coercive nature of family violence, and lists a range of perpetrator tactics and risk factors, including: isolating the victim; stalking; controlling behaviours; obsessive jealousy; and sexual assault. While we have good foundations, we need to embed an understanding of coercive control more comprehensively in our approach to developing an integrated family violence response in Victoria.

THE NEED FOR INCLUSIVE SPECIALISED AND GENERALIST FAMILY VIOLENCE RESPONSES

Women-centred and specialist services are critical

Considering that gender inequality is the major driver of family violence, women-centred services are critical to an integrated system. The capacity of these services needs to be considerably increased through long-term funding, so that they can meet growing demand.

Disadvantage, marginalisation and discrimination also intersect with gender, creating additional barriers for some women and children who experience family violence. This contributes to high rates of family violence for women from particular communities.

Well-resourced, culturally safe specialised family violence services, which are provided by and for women from marginalised communities, are essential parts of an integrated system.⁹ Currently these services are under-resourced.

It is also critical that generalist family violence services provide culturally competent, equitable and accessible responses.

Culturally specific family violence services for Indigenous women

Nationally, Indigenous women experience disproportionately high levels of family and sexual violence (see for example, Cussen and Bryant 2015b). They also endure intergenerational trauma, racial discrimination and high rates of disadvantage. For this reason, Indigenous women are often reluctant to access ‘mainstream’ family violence services (Aboriginal Family Violence Prevention Legal Service 2010).

⁹ These include Aboriginal Family Violence Prevention Legal Service, InTouch, Women with Disabilities Victoria, and Elizabeth Hoffman House

Specialised family violence services for women with disabilities

Women with disabilities experience high rates of violence from many (usually male) perpetrators, and abuse occurs for a longer period of time than for women without disabilities. Gender-based and disability-based discrimination intersect, increasing the risk of violence for women with disabilities. As the *Voices Against Violence*¹⁰ research project found this also creates obstacles that prevent women with disabilities from accessing services. Funding for specialised responses, such as dedicated, intensive case management for women with disabilities experiencing family violence, is essential within the family violence sector.

Culturally specific services for CALD women

Women from migrant and refugee communities also face considerable obstacles if they are subjected to family violence. These include language difficulties, social isolation, cultural differences, intimidating court processes, prejudicial attitudes, and inadequate or culturally inappropriate services (Bhandary & Byrnes 2014).

Accessible and appropriate generalist services for a diverse range of women

Cross-sector partnerships, training and collaborations (for example, between family violence services and culturally-specific organisations) are also critical aspects of an integrated system. All family violence services should know how to respond to the diverse range of victims of family violence, and should therefore be trained in providing services for women with disabilities, members of the LGBTIQ community, and members of Indigenous and CALD communities. In addition, generalist organisations – such as disability services, Aboriginal organisations, and migrant community organisations – should all be trained in responding to family violence.

KEY COMPONENTS OF INTEGRATION REQUIRED

An effective integrated family violence system is only as good as the integrity, implementation and outcomes of its elements and components.

Victoria needs to refocus on building a systems response that is strategic, coherent and evidence based. This requires development of a statewide model for integration of responses to family violence that includes the following key components:

A clear vision of the goals of the system, principles and a framework for responding

Victoria's early work to build an integrated family violence system has lost the momentum and the vision that underpinned reform efforts of the last decade.¹¹ The Victorian Government needs to rebuild the vision and foster partnerships to help design and embed a long-term framework for responding to and preventing family violence.

A governance model and a whole-of-government authorising environment

The early family violence reform work in Victoria was possible because of high-level government commitment and leadership. The Women's Safety Strategy, released in 2002, set the foundations, and established an authorising environment that included annual meetings of ministers on women's

¹⁰ 'Voices Against Violence' was a joint project between Women with Disabilities Victoria (WDV), the Office of the Public Advocate (OPA) and the Domestic Violence Resource Centre Victoria (DVRCV), that explored the impacts of violence against women with disabilities in Victoria, the help-seeking behaviour of these women, and the legal context and social services responses [see Woodlock et al (2014)]. Reports can be accessed from <http://wdv.org.au/>

¹¹ The report, *Reforming the Family Violence System in Victoria, Report of the Statewide Steering Committee to Reduce Family Violence, 2005* (with support of Victorian Government) was the first attempt to provide a shared vision for Victoria. Subsequent efforts to provide leadership and a vision for the system are documented in the previous Labor Government's *A Right to Safety and Justice – Strategic Framework to Guide Continuing Family Violence Reform in Victoria 2010-2020*, and *A Right to Respect – Victoria's Plan to Prevent Violence Against Women 2010-2020*. Both these plans lapsed with a change of government in 2010. The Coalition's Action Plan released in 2012 lacked the vision of previous collaborative work, and thus Victoria lost the momentum and vision that underpinned initial reform planning.

safety, and the establishment of the Statewide Steering Committee to Reduce Family Violence (SSCRFV).

By 2005, a group of five key Ministers met regularly to make family violence a priority. Victoria Police and the Office of Women's Policy jointly convened meetings of the SSCRfV (later the Family Violence Statewide Advisory Committee), which had the role of developing the vision and model for reform.

The Family Violence Coordination Unit that operated out of the Office of Women's Policy provided critical support. Further support was provided by a high-level Inter-departmental Committee with responsibility to oversee and negotiate departmental barriers to effective practice; to help build frameworks and tools for integration; and manage budget bids. Regional governance mechanisms were also established.

While some weaknesses and gaps in these governance arrangements became apparent (such as lack of clear lines of accountability and monitoring between regional and statewide governance bodies), they did provide a strong foundation.

The Victorian Government should re-establish a clear governance model that establishes and oversees an effective whole-of-government authorising environment for implementing family violence systems reform.

We would urge the the Royal Commission to investigate possible governance mechanisms to guarantee bi-partisan support for an integrated system, and to guard against the potential for progress to be derailed by changes of government. This would need to include the authority for independent monitoring of all parts of the system, including government agencies. Ongoing consultation with the family violence sector is essential to the development of the governance model.¹²

Mechanisms for ensuring shared understandings

Consistent, effective and safe responses to victims require shared understandings of family violence across sectors and settings. These understandings include the causes, gendered nature, the centrality of coercive control, common perpetrator tactics, dynamics and effects, risk indicators, and barriers to safety.

The Victorian Government needs to develop and fund a workforce development strategy, as a key part of building a robust integrated system based on shared understandings.¹³

Clearly articulated roles and responsibilities and mechanisms for ensuring consistency

It is DVRCV's view that Government should identify and articulate clear roles and responsibilities of key players in the family violence system,¹⁴ map core vocational competencies in family violence and align these with relevant roles.¹⁵ DVRCV also urges the Victorian Government to find ways to ensure that best practice partnerships and models address jurisdictional gaps, including those that currently exist between state and federal courts and responses.

Well-resourced women-centred and specialised family violence services

As discussed earlier, it is crucial that women-centred family violence services receive increased funding to improve their capacity to meet demand for crisis support, counselling, accommodation, advocacy and legal responses. In addition, funding is needed to ensure specialised family violence services and programs can provide targeted, culturally safe responses.

¹² See also 'Embedding a universal risk assessment and management framework' section of DVRCV's submission for further discussion of the need for a strong authorising environment in relation to CRAF implementation.

¹³ See DVRCV section of this submission '*Building consistent practice through workforce development*' for discussion of this component.

¹⁴ Victoria's early vision for reform described a limited number of agencies as key stakeholders. This needs to be reviewed, with a view to strengthening responses, and include a broader range of agencies as core players, including Child Protection.

¹⁵ See the section of this submission '*Building consistent practice through workforce development*' for further discussion.

Standards and codes of practice for key stakeholders and service providers

Victoria Police, Domestic Violence Victoria (DV Vic), the Federation of Community Legal Centres (FCLC), and No To Violence (NTV) all developed standards or codes of practice in the early years of family violence reform in Victoria. These were intended to be complementary.

Victoria Police updated their *Code of Practice for Responding to Family Violence* in 2014. However, a lack of funding has meant that the DV Vic and FCLC Codes are out of date and urgently require updating. NTV has lacked funding to be able to monitor its members' compliance with their standards.

For effective governance, there should be a schedule of regular reviews of codes of practice, with the requisite funding made available as part of a process of continuous improvement.

Protocols to guide inter-agency practice and communications

Effective inter-agency protocols are essential to guide the ways that agencies work together on family violence, and to hold them accountable to one another.

For example, *The Family violence referral protocol between the Department of Human Services and Victoria Police 2012-14* provides 'guidance on how Victoria Police, the Department of Human Services and the service agencies it funds can work together to strengthen the collective response to family violence...The aim of this protocol is to document effective referral pathways between Victoria Police and family violence services funded by the Department of Human Services so women and children are better protected and family violence is reduced over time'.¹⁶

While it plays a central role in efforts to build effective integrated service responses, a criticism has been that this protocol was developed without input from the funded women's family violence services which are most impacted by the protocol.

A re-visioned integrated system in Victoria needs to ensure that inter-agency protocols are developed collaboratively and with those who will be impacted, and delivering the services required.

'Collaboration is a main ingredient in developing a protocol. Some agencies may find that it is one thing to agree to collaborate, and that it can be much more difficult to agree on how they will work together... It is very important that there is confidence in referrals: victims should be confident that their needs will be met, and agencies should be confident in each other when they are working together. This trust is the foundation of a shared response to family violence' (Yellowknife Family Violence Protocol Development Committee 2010)

Shared practice frameworks and tools

The Victorian Family Violence Risk Assessment and Risk Management Framework (CRAF) has been a critical component of efforts to date to build shared understandings of family violence and of risk.

DVRCV has made a number of recommendations about CRAF in this submission.¹⁷

Transparent mechanisms for monitoring compliance

All components and elements of the integrated system need to be able to be properly assessed against a statewide planning and accountability matrix.

The Safety and Accountability in Families Evidence and Research (SAFER) research team developed a Regional Governance Continuum Matrix of Practice¹⁸ in 2013 as a tool for measuring progress of

¹⁶ <http://www.dhs.vic.gov.au/for-service-providers/children,-youth-and-families/family-violence2>

¹⁷ See 'Embedding a universal risk assessment and risk management framework' section of this submission for further discussion of this Framework.

regional family violence governance, partnerships and practice (see Healey et al 2013). This could provide a useful model for development of a statewide matrix.

Developing and implementing a statewide matrix to measure progress towards integration will help to hold the Victorian system and its parts accountable to a shared vision, to agreed and authorised standards and protocols, and most importantly to women's and children's safety.

Systems for data collection and tracking effectiveness of responses

Data collection is critical in monitoring the system's response to family violence.¹⁹ The Victorian Government's announcement that it planned to create a 'family violence index' is welcome. Fiona Richardson, the Minister for the Prevention of Family Violence announced in mid-May 2015 that:

A family violence index would bring together data from across the fields of crime, justice, health, education and our community to create a single indicator of family violence.

Relevant measures, statistics and data for the Index may include things such as:

- *the reporting rates of instances of crime,*
- *the number of police referrals to family violence services,*
- *the number of perpetrators convicted,*
- *the number of working days lost by employees affected,*
- *the rate of homelessness caused by family violence,*
- *the number of presentations to the justice system,*
- *the variation of community attitudes towards acts of violence,*
- *the number of affected women and children presenting to hospital.²⁰*

The framework for an integrated family violence service system (discussed earlier) should identify how such data will be used to measure progress against goals.

18 This research was part of a wider Australian Research Council Linkage Project with industry partners in the Departments of Human Services, Justice, and Victoria Police. The program of research examined a number of aspects of integrated family violence reform (see SAFER Research Team, 2012).

19 In 2000, with funding from the national Partnerships Against Domestic Violence, the Department of Justice undertook to measure rates of family violence in Victoria. Their most recent report, *'Measuring Family Violence in Victoria; Victorian Family Violence Database, Volume 5; Eleven Year Trend Analysis 1999-2010'* was published in 2012. It is unclear whether further volumes will be published.

Additionally, in 2008 KPMG was contracted to create a benchmark for measuring responses (KPMG 2008).

20 Media release: 'Measuring the Toll: The Family Violence Index' 18 May 2015.

RECOMMENDATIONS

STRENGTHEN VICTORIA'S INTEGRATED SERVICE SYSTEM

1. DVRCV recommends that the Victorian Government develops a statewide model for integration of responses to family violence. This would include:
 - 1.1. A comprehensive framework and governance
 - 1.1.1. a clear vision of the goals of the system, and set of principles for responding to family violence
 - 1.1.2. a governance model and a strong and effective whole-of-government authorising environment
 - 1.1.3. mechanisms for ensuring system wide shared understandings of the causes and the coercive, controlling nature of violence, its effects and dynamics, risk factors and barriers to safety
 - 1.1.4. clearly articulated roles and responsibilities of key stakeholders and service providers, and mechanisms for ensuring consistency of practice throughout Victoria.
 - 1.2. Well-resourced women-centred and specialised family violence services
 - 1.2.1. funding to increase the capacity of women-centred family violence services to meet demand
 - 1.2.2. funding to increase the capacity of specialist family violence services and programs to provide targeted, culturally safe responses
 - 1.3. Strategies to ensure consistent practice
 - 1.3.1. standards and codes of practice for key stakeholders and service providers
 - 1.3.2. protocols to guide inter-agency practice and communications
 - 1.3.3. shared practice frameworks and tools
 - 1.4. Transparent mechanisms for monitoring:
 - 1.4.1. measures of progress and compliance
 - 1.4.2. systems for data collection and tracking effectiveness of responses.

Building consistent practice through workforce development

BACKGROUND

Given the prevalence of family violence, many professional groups in Victoria come into contact with victims and perpetrators of violence. These include statutory bodies, legal services, community health services, homelessness services, community support agencies, hospital staff and education providers. Research indicates that positive service provider responses to initial disclosures of violence are crucial. Responses that are negative or judgemental discourage further help-seeking, which can increase isolation, self-blame and safety risks for victims (Meyer 2010; Lievore 2005).

Research also shows that misunderstandings of family violence are common in the Australian community (VicHealth 2014). Without training, professionals may have inadequate understandings of the causes and dynamics of family violence, an inability to recognise indicators of violence and identify risk factors, a lack of confidence about asking questions about violence, and inappropriate responses to disclosures. This results in missed opportunities for early intervention, poor responses to women and children who experience violence, possible collusion with perpetrators of violence, and a failure to identify and respond to risks of serious harm. It also results in a lack of coordination between services and inconsistent practices, as highlighted in several recent reports (Woodlock 2014; George & Harris 2014; Neilson & Renou 2015).

Any professional who is in a position where they are required to provide a response to family violence must be adequately trained in how to respond.

However, currently in Victoria, professional education in family violence is not consistently provided. For example, very few professionals receive family violence training as part of their pre-service education. Family violence is not currently a core subject in most social work, psychology, law, education, medicine, or nursing degrees.

Many community sector professionals attend training provided by specialist family violence training providers, such as DVRCV and No To Violence (NTV), or in-house induction programs. Apart from the Family Violence Risk Assessment and Risk Management (CRAF)²¹ training program, delivered over the past seven years, there is no overarching approach to building the knowledge of family violence across the Victorian workforce. There are no minimum standards of competency for responding to family violence and no minimum training requirements.

DVRCV'S ROLE AS VICTORIA'S MAJOR TRAINING PROVIDER

DVRCV is the major provider of family violence training in Victoria. Since 1991, DVRCV has provided training for over 20,000 people. Our training expertise is in effective responses to women and children who have experienced family violence. DVRCV is a Registered Training Organisation (RTO) and provides a range of training programs (both accredited and non-accredited) under our funding

²¹ See the section 'Embedding a universal risk assessment and risk management framework' in this submission for more on CRAF.

agreement with the Department of Health and Human Services.²² Our trainers have a professional background in family violence service provision and a Certificate IV in Training and Assessment. We also employ a group of sessional trainers who are currently working in the family violence sector.

DVRCV also provides tailored training on a fee-for-service basis. We have developed tailored programs for many professional groups, including General Practitioners, Maternal and Child Health Nurses, Court Registrars, Community Corrections officers, home detention officers, counsellors and faith leaders.

In 2008, DVRCV developed training for the Victorian Family Violence Risk Assessment and Risk Management Framework (CRAF) and delivered this in partnership with Swinburne University. Over 6,500 people from a range of professional groups across Victoria have now been trained in CRAF (see *'Embedding a universal risk assessment and risk management framework'* section for more details of the CRAF training program).

In conjunction with NTV, DVRCV is developing the training program for core members of the 18 Risk Assessment Management Panels (RAMPS), which are being established throughout Victoria to identify and address serious and imminent risk in family violence cases.²³

DVRCV regularly works in partnership with other organisations in training delivery, including NTV, Women's Legal Service Victoria and CASA House. We have regular collaborations with Victoria Police and the Aboriginal Family Violence Prevention Legal Service, who attend as guest speakers at DVRCV training.

Over recent years, DVRCV has experienced a strong increase in demand for training from a range of organisations and professional groups. Some of the increased demand has been prompted by the CRAF training, which—for many CRAF training participants—was the first family violence training that they had attended. DVRCV staff observed that participants at CRAF training often subsequently registered for other training provided by DVRCV. In 2014, we trained over 2,500 people. This included programs advertised on our training calendar, fee-for-service training and training contracts.²⁴ We are now facing the challenge of meeting this additional demand, and many of our training programs have waiting lists.

Training currently provided by DVRCV

The following training is provided by DVRCV under its funding and service agreement with DHHS. Training is advertised on our training calendar.

Nationally accredited training

- *Introduction to Domestic Violence*
- *Family Violence Hurts Kids Too: Providing support to children affected by family violence*

Other training

- *Recognising and Responding to Family Violence*
- *Adolescent Violence in the Home*
- *SmartSafe: Family violence and mobile technology*
- *Enhanced Family Violence Practice*
- *Case Notes, Domestic Violence and the Law (delivered with Women's Legal Service)*
- *Elder Abuse: Assessing and responding*
- *Preventing Violence Against Women*
- *Walking women through the legal system*
- *Responding to infants and toddlers whose mothers are experiencing family violence*
- *Group work to support victims of family violence*

²² After a successful recent audit, DVRCV's RTO accreditation has been extended until 2020.

²³ Core members of the RAMPs include Victoria Police, specialist women's family violence services, Child Protection, Child First, Office of Housing, clinical mental health, drug and alcohol services, and Community Corrections.

²⁴ For example, 556 people attended training advertised via our public training calendar. These were predominantly workers in community services (169 participants), family violence services (153 participants), housing (67 participants), health (57 participants), local and state government (50 participants), as well as Aboriginal services, police, legal and other services.

ISSUES, GAPS AND CHALLENGES

CURRENT AND PAST WORKFORCE DEVELOPMENT INITIATIVES

Many professionals in Victoria are still inadequately trained in family violence. There is a lack of consistency in training, which is currently provided by a range of services. The following section provides an overview of the major initiatives that have contributed to professional education in family violence in Victoria.

Victorian Government funding for specialist statewide family violence training services

The Victorian Government has demonstrated a high level of commitment to building workforce capacity in relation to family violence for many years. DVRCV, under its funding and service agreement with DHHS, provides family violence training to the homelessness sector and to other welfare services.

This has enabled DVRCV to operate as a Registered Training Organisation; to employ a core team of family violence trainers with skills and knowledge of the family violence sector; develop new training programs in response to the needs of the field; ensure training programs are connected to current practice, and kept updated; and provide tailored training for government and other organisations in a timely manner. The training is affordable, accessible, and regularly delivered in both metro and rural areas.

In addition, NTV has been funded for the past two years by DHHS to provide training on working with men who use family violence. This funding was provided under the previous government's action plan *Victoria's Action Plan to Address Violence Against Women and Children, 2012–2015*.

Other Victorian Government efforts

In an attempt to build consistency, the Victorian Government has supported a number of workforce family violence training and development initiatives. These efforts have considerably increased the skill base of professionals in Victoria to respond to family violence. These include:

Accredited training on integration

In 2006, in an effort to support the development of an integrated service system, DHS funded Swinburne University to develop an accredited 'Family Violence Integrated Pathways' training course that would deliver nine units of competency in the national Community Services Training Package. The training was delivered by Swinburne University and DVRCV. The course is no longer being offered.

Training on the Family Violence Risk Assessment and Risk Management Framework (CRAF)

CRAF was developed to support an integrated family violence system in Victoria, and training rolled out in 2008 to support implementation. The project was undertaken by a consortium made up of DVRCV, Swinburne University and NTV. DVRCV and Swinburne University delivered training between 2008–2010, and 2011–2013, under contract to the Office of Women's Policy. Through a philanthropic grant, DVRCV was able to continue to offer sessions of CRAF training during 2014. DHHS contracted DVRCV to provide 11 sessions between February and May 2015, and has funded another 59 sessions to be delivered during 2015 and 2016.

There have also been efforts to provide contextualised CRAF training that is targeted to particular communities. For example:

- the Office of Aboriginal Affairs was commissioned to enhance the CRAF training material for use with working with Aboriginal/Indigenous people seeking support for family violence—the pilot training was delivered three times
- training on risk assessment with CALD communities was developed by Swinburne University and InTouch, in collaboration with DVRCV—seven half-day sessions were delivered in date 2010.

Working with children experiencing family violence

The Victorian Government has also funded a specific program of training on working with children. In January 2013, the Australian Childhood Foundation (ACF), in partnership with NTV and DVRCV, was funded by the DHS to deliver a training project to support the implementation of the DHS practice guide *Assessing Children and Young People Experiencing Family Violence: A practice guide for family violence practitioners*. The aim of the project was to increase the capacity of family violence practitioners (in both women's and men's services) to assess the needs of, and risks to, children and young people, and to ensure the practice guide was integrated with agency practice in relation to CRAF. Training was delivered throughout Victoria in 2013.

Strengthening hospital responses to family violence

Recently funded by DHHS, this is a joint pilot project of Our Watch, the Royal Women's Hospital and Bendigo Health. The project aims to develop a transferrable model for hospitals to identify and respond to family violence, which can assist other hospitals to strengthen their responses and work more closely with local community services. It includes a professional education component on CRAF. The project will be finalised in mid-2015.

Joint training for family violence and disability services

In 2008, Swinburne University and DVRCV developed and delivered joint training for staff from disability and family violence services across Victoria. The project was initiated under the Disability Services Workforce Development and Learning Strategy for 2007/2008. It was designed to implement cross-program and cross-sectoral learning, which would enhance the capacity of workers in the disability and family violence sectors to support women with a disability who are experiencing family violence. Approximately 20 sessions were held across the state.

Online training

Online training in CRAF is being developed for *The Lookout* website (www.thelookout.org.au). The first eCRAF training module, *Understanding family violence*, is now online. Three more modules reflecting the three levels of risk assessment in the CRAF will soon be available.

Nationally accredited training

Nationally accredited training is an important strategy to promote consistency in practice responses to family violence. The nationally endorsed Community Services Training Package includes family violence units that can be credited towards qualifications in Vocational Education Training (VET) courses. Participants are assessed and, if successful, receive a certificate of competency.²⁵

²⁵ The Community Service Training Package is one of a set of nationally endorsed standards, qualifications and guidelines used to recognise and assess the skills and knowledge people need to perform effectively in the workplace. Training Packages are developed by Industry Skills Councils or by enterprises to meet the training needs of an industry or group of industries. The units that form part of a

Units offered in Victoria include the following:

- *Recognise and respond appropriately to domestic and family violence* (CHCDFV301A) and *Provide crisis intervention and support to those experiencing domestic and family violence* (CHCDFV403C). Successful completion of DVRCV's four-day Introduction to Domestic Violence course gives participants a certificate of attainment for these two units of the Package. Many family violence services now require that new staff complete this training as part of their induction.
- *Provide support to children affected by domestic and family violence* (CHCDFV408C). Training participants who successfully complete DVRCV's three-day training program *Family Violence Hurts Kids Too* are awarded a certificate of attainment for this unit.
- *Manage own professional development in responding to domestic and family violence* (CHCDFV402C). This unit has some content in common with the units mentioned above.
- *Working with users of violence to affect change* (CHCDFV509C). NTV provides a training program to the staff of the Men's Referral Service that provides participants with a certificate of attainment for this unit. The course is delivered in conjunction with Swinburne University of TAFE. This course has been operating since the 1990s.

The accredited units mentioned above are also offered as electives by other VET providers.

Higher education qualifications in family violence work

The *Graduate Certificate in Social Sciences (Male family violence)* program has been delivered by NTV in conjunction with Swinburne University since 2000 and is the only higher education qualification for working with men who use family violence in Australia. This qualification is required for facilitators to meet the NTV standards for men's behaviour change programs and is a requirement for all DHHS-funded programs. NTV is now delivering this training nationally.

CORE SKILLS AND COMPETENCIES REQUIRED FOR EFFECTIVE RESPONSES

Given the evidence about the dangers of inadequate responses to family violence, DVRCV recommends that the government establishes the minimum standards and skills required for different professional groups responding to family violence in Victoria. Based on our extensive experience in providing family violence training, DVRCV considers that professionals who provide a response to family violence should have the following:

- an understanding of the gendered nature of family violence and of the causes of violence against women
- an understanding of the coercive, controlling nature of family violence and tactics used by male perpetrators
- an understanding of how common beliefs about family violence can influence a professional's response
- an ability to identify indicators of family violence
- the knowledge and confidence to ask direct questions about family violence

Training Package can be counted towards a Certificate in the Vocational Education Training (VET) sector. Training Packages can only be delivered by Registered Training Organisations.

- an understanding of key risk indicators, an ability to assess and manage risk and to share information appropriately
- an understanding of the diverse experiences of family violence and the specific needs and concerns of women from CALD backgrounds, Indigenous women, women with disabilities, rural women and women from the LGBTIQ community
- knowledge of the link between violence against women and the risk of violence to children
- knowledge of effective responses to children
- an ability to assist a woman to develop a basic safety plan
- knowledge of referral options and of the role of other services
- an ability to respond to men who use family violence in a manner that holds them responsible for their use of family violence, avoids collusion, and prioritises the safety of women and children.

BUILDING A COMPREHENSIVE AND CONSISTENT APPROACH TO WORKFORCE DEVELOPMENT

As noted above, there has been a number of initiatives by government to build workforce capacity in responding to family violence. However, this training has typically consisted of one-off programs offered over a limited period of time. There is no agreed understanding in Victoria of what the core vocational competencies are in family violence work. Further, there is no clarity regarding what training is being provided and which professional groups are receiving training.

The delivery of CRAF demonstrates the potential for a core program to contribute to workforce development and consistent approaches to family violence in Victoria. The strength of the CRAF training is that a standardised program has been delivered across the state and across various professional groups. Most of the training has been delivered on a cross-sector basis. This has helped to support the development of shared language and common understanding about risk factors and safety planning, and an increased understanding of the respective roles of organisations responding to family violence. In addition, there have been attempts to contextualise the training to target it to particular communities. Another strength is that CRAF has been strongly promoted across government and has become widely known.

However, the delivery of CRAF training is not without its limitations, which are discussed in the *'Embedding a universal risk assessment and risk management framework'* section of this submission.

Based on our considerable experience in delivering CRAF and other family violence training programs, DVRCV recommends that a comprehensive workforce development strategy is now needed in Victoria. This is a crucial step to improving consistency and building Victoria's integrated family violence service system. As discussed next, developing a comprehensive strategy would require:

- an audit of the current delivery of family violence training in Victoria
- the development of a professional development framework to identify key vocational competencies for different sectors and levels of specialisation in family violence work
- the development of a training strategy to identify and develop the core training programs required and a comprehensive roll-out of these training programs across Victoria
- work with the tertiary education sector and professional associations to embed family violence training.

An audit of current family violence training

It is DVRCV's view that the Victorian Government needs to undertake an audit of current family violence training across Victoria in order to discover what is being provided, to whom, by whom, and against what standards.²⁶ An audit would provide important information for the development of a whole-of-government family violence workforce development strategy. The audit should include pre-service training in tertiary institutions, induction training and in-service training.

A professional development framework for family violence responses

As discussed, DVRCV recommends that all professionals who provide a response to family violence should have core skills and knowledge as identified in the previous section. There is also a need for different sectors, and different professionals within each sector, to have additional skills or competencies in particular aspects of family violence work.²⁷

DVRCV recommends the establishment of a professional development framework that identifies core vocational competencies in family violence and aligns these with relevant roles. This will ensure greater quality, consistency and accountability for all professionals engaged in family violence service delivery.

Vocational competencies should be identified for family violence specialist services—including statutory agencies, courts, judiciary and legal services—and other sectors that regularly work with clients experiencing family violence—such as maternal and child health, homelessness services, mental health professionals and hospital staff. Consideration should be given to whether family violence training should be mandated for some professional groups.²⁸

Develop a cross-sector family violence training strategy

DVRCV urges the Victorian Government to develop a whole-of-government plan for family violence training delivery to support effective, safe responses, to build consistency and to meet best practice standards.

Training programs required

A package of training programs to meet the needs of a range of professional groups working with family violence is required. These should address introductory to advanced skills, and be able to be adapted for different workplaces.

A core introductory family violence training program is needed for anyone providing a response to family violence.

This core program should be broader than CRAF, but should incorporate risk assessment. While CRAF was not designed to be a substitute for basic family violence training in Victoria, for many professional groups it has become that by default. However, due to the length of the program, CRAF training is limited in its capacity to build solid understandings of the nature and dynamics of family violence, and of the complexities in responding to different groups.

A core program should be available on an ongoing basis and be offered as both service-specific and cross-sector training.

²⁶ In 2004, the Statewide Steering Committee to Reduce Family Violence commissioned DVRCV to undertake a mapping of family violence training and education being provided at the time to key occupational groups working with family violence. The report (Clancy 2004a) recommended that 'the establishment of policies, protocols and codes of practice on family violence be accompanied by a training strategy'. The project also included a literature review to determine what constitutes high quality education and training in the family violence field and produced guidelines for best practice in the development and delivery of family violence training programs (Clancy 2004b).

²⁷ See the section of this submission 'Embedding a universal risk assessment and risk management framework' for further discussion of this in relation to risk assessment.

²⁸ See section 'Embedding a universal risk assessment and risk management framework', which discusses the need for the use of CRAF to be mandatory

Other programs that will be required include:

- contextualised core training for relevant groups/occupations, including Child Protection, courts, Community Corrections, legal services, and for professionals who work with particular communities that are at a high risk of experiencing family violence and require culturally appropriate responses (such as the Indigenous community)
- advanced training programs for those with a specialist role in family violence work
- modules of the core program that can be incorporated into tertiary courses
- programs on particular issues (for example, the *Family Violence Protection Act 2008*, working with children and young people, adolescent violence in the home, and the abuse of older women).

Some of the existing programs provided by DVRCV and NTV could be incorporated to fulfil the requirements identified. Other programs may need to be developed.

Consideration should also be given to developing an accredited family violence training course on risk assessment, incorporating the elements of (a redesigned) CRAF, that could meet the requirements of the Community Services Training Package unit *Manage domestic and family violence and abuse screening and risk assessment processes (CHCDFV817B)*.²⁹ This unit has not been offered by DVRCV; however, it could provide the accreditation for risk assessment training in Victoria.

Ongoing delivery and roll-out of training

DVRCV also recommends that government continues to fund and expand an ongoing program of family violence training across sectors and settings in Victoria to support the professional development framework. *The Lookout* website can play a central role in advertising available training (www.thelookout.org.au).

Expanded delivery of family violence training could be achieved by increasing the capacity of existing family violence training organisations. In addition, a ‘Train the Trainer’ program could be developed, which would improve the capacity to roll out the core Training Package and specialist modules across Victoria. All trainers should have a background in family violence work.

DVRCV and NTV are well positioned to develop and deliver ongoing training courses and to provide Train the Trainer programs for other organisations.

Core training should be promoted by government and offered free of charge in a similar manner to the current CRAF training. Training should be offered on an ongoing basis to allow for staff turnover and to ensure that the skills of the workforce are maintained.

Training programs should be reviewed on a regular basis to ensure content is up-to-date and the training is meeting the needs of participants.

Online training offers a useful resource that can be used in conjunction with a face-to-face program, either as a prerequisite for training, as online course materials or as a post-training refresher. However, online training should not be regarded as an alternative to face-to-face training. For example, one of the great strengths of the CRAF program has been its cross-sectoral nature. The training sessions provided a valuable opportunity to bring professionals together, which promotes relationship building across sectors and between agencies, and fosters multi-agency approaches. While the eCRAF offers useful practice resources, it cannot replace the benefits of bringing professionals and trainers together face-to-face.

²⁹ DVRCV is considering an application to add this training package unit to our scope as an RTO.

Tertiary education and professional associations

Pre-service training through university and TAFE courses is another important strategy for embedding understandings early in professional careers. A statewide family violence training strategy should also incorporate family violence training in key tertiary courses.

Professional associations can also play a key role in ensuring members have family violence training. Professional associations in the health and community services sector should require completion of an approved family violence training course as a condition of membership.

RECOMMENDATIONS

2. DVRCV recommends that the Victorian Government develops an effective, consistent, comprehensive and up-to-date approach to workforce development on family violence. This would include:
 - 2.1. a comprehensive audit of family violence training and education currently being provided for key occupational groups, community services and government agencies (including pre-service training in tertiary institutions, induction training and in-service training)
 - 2.2. establishing a professional development framework that identifies the core vocational competencies for responding to victims and perpetrators of family violence, and aligns these with roles at the key entry points to the family violence system
 - 2.3. the development of a cross-sector training strategy to support the implementation of the professional development framework in government and community organisations, which includes ongoing training delivered across the state
 - 2.4. work with tertiary education sector (Vocational Education & Training sector, including TAFE and university) industry advisory bodies to ensure family violence is included in the core curriculum of all professional groups that respond to family violence
 - 2.5. work with professional associations in the health and community services sector to require completion of an approved family violence training course as a condition of membership, and to recognise family violence training for professional development points.

Embedding a universal risk assessment and risk management framework

BACKGROUND

RISK ASSESSMENT, RISK MANAGEMENT AND INTERAGENCY COLLABORATION

The Family Violence Risk Assessment and Risk Management Framework (known commonly as the Common Risk Assessment Framework, or 'CRAF') is a central tool for assessing and responding to family violence risk in Victoria.³⁰ Released in 2007 by the Victorian Government's Office for Women's Policy, CRAF serves as one of the most significant pieces of collaborative work in efforts to reduce family violence harm in Victoria. Government and non-government agencies contributed to the development of the Framework. Its purpose was to provide a foundation and guide for consistent approaches to family violence risk assessment and risk management, as well as to support the development of an integrated family violence system in Victoria.³¹ It was primarily designed to assess the risks to women experiencing family violence.

An accompanying training program was also developed and has been rolled out since 2008. Since that time, over 6,500 professionals have attended CRAF training.

The Framework adopts a 'structured professional judgement' approach that combines three elements to determine the level of risk:

- the victim's own assessment of their level of risk
- evidence-based risk indicators
- the practitioner's professional judgement.

While different models of family violence risk assessment operate in different jurisdictions, the evidence-based risk indicators outlined in CRAF are consistent with most other tools and frameworks used elsewhere.

The Framework underwent minor review with Edition 2 being released in April 2012.

Online CRAF training is being developed for *The Lookout* website, provided by DVRCV and DV Vic (www.thelookout.org.au). The first 'eCRAF' module, *Understanding family violence* is now online. Three more modules reflecting the three levels of risk assessment and the three Practice Guides in CRAF are currently under development.

³⁰ See *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1–3*, Victoria Government 2012.

³¹ The Framework comprises six components to guide effective risk assessment and risk management:

- Shared understanding of family violence
- Standardised risk assessment
- Referral pathways and information sharing
- Risk management—continual assessment and case management
- Data collection and analysis
- Quality assurance

The evidence suggests CRAF has had a major impact on practice in Victoria over seven years of implementation. However, while demand for the training has rapidly increased, the plan for ongoing delivery of CRAF training is unclear. There are inconsistencies in the ways in which services use CRAF. Worryingly, key first-response agencies are not clearly mandated to use the Framework. In addition, there is a need for the Framework to be reviewed to keep up-to-date with emerging issues and changes in the sector. DVRCV believes it is time for a comprehensive review of both the content and implementation strategy for risk assessment and management in Victoria.

DVRCV'S ROLE IN TRAINING DELIVERY

DVRCV was contracted by the Victorian Government to develop the CRAF training programs in collaboration with Swinburne University and No To Violence in 2008.

Under that contract, DVRCV developed modules, including training materials to reflect the three levels of risk assessment outlined in the Framework:

Practice Guide 1: Identifying Family Violence – This guide assists mainstream professionals who encounter people they believe to be victims of family violence. It provides a set of possible indicators of family violence and clear advice on how to identify family violence, and suggests questions that should be asked.

Practice Guide 2: Preliminary Assessment – This guide assists professionals who work with victims of family violence and play a role in initial risk assessment, but for whom responses to family violence are not their only core business.

Practice Guide 3: Comprehensive Assessment – This guide assists specialist family violence professionals working with women and children who are victims of family violence. These professionals have very advanced skills in engaging clients around family violence matters, as well as in detailed safety planning and case management.

DVRCV co-delivered training with Swinburne University between 2008–2010, and 2011–2013. The training delivered during these periods included: a one-day program in *Practice Guide 3* for specialist family violence workers; a 4-hour *Practice Guide 2* program for other professionals who come into contact with family violence; and a *Train-the Trainer* program for regional family violence workers who would then go on to deliver training in *Practice Guide 1*.

More than 6,000 Victorian service providers have attended training programs delivered under these contracts, with an additional 500 trained by DVRCV since December 2013. Workers from a wide range of professional groups have been involved in training to date, some on a 'whole sector' basis, but many on an individual, local or ad hoc basis. Participants have come from:

- specialist family violence service providers
- sexual assault services
- Victoria Police
- maternal and child health services
- housing and homelessness services
- community health, mental health services and drug and alcohol services
- Aboriginal Co-ops and other Aboriginal services, including family violence specific services
- specialised services for culturally and linguistically diverse (CALD) communities
- Magistrates' Court staff, including registrars and magistrates

- Community Corrections Officers
- ChildFIRST service providers
- Child Protection
- family support services
- hospital emergency department workers
- disability services,
- counselling and mediation services,
- men's behavioural change programs

ISSUES, GAPS & CHALLENGES

WHAT CRAF HAS ACHIEVED

CRAF has contributed to a growing understanding that early intervention through risk assessment, safety planning and referral can make a significant difference to the lives of women and children affected by family violence. CRAF has become widely known across Victoria. Other states have developed and/ or adapted their own risk assessment frameworks, with acknowledgment to CRAF.³²

An evaluation of the first two years of CRAF training rollout, *Key Findings from the Evaluation of the Statewide Training Program over 2008–2009* found:

- *Extensive coverage ... with 2,491 workers from targeted sectors...*
- *Excellent quality, relevance and usefulness of the training*
- *Dramatic and consistent improvement in participant skills and knowledge of the CRAF ... [and] intended changes to practice ... such as, consistently undertaking risk assessment and increased referral to a broad range of services.*³³

Subsequent training, delivered to an ever-broadening range of sectors, has been evaluated through pre-and post-training evaluation tools. Extensive feedback from participants, as well as trainers, has informed this submission.

With increasing public awareness around family violence, improved media reporting, and a number of high-profile domestic homicides, demand for CRAF training has increased considerably. The broader service sector is now alert to the necessity for workers to be trained in CRAF.

There have been government efforts and short-term contracts to contextualise CRAF to target different communities (for example, by Office of Aboriginal Affairs to enhance the CRAF training to better respond to Indigenous people seeking support for family violence; and by Swinburne University and InTouch in collaboration with DVRCV, for work with CALD communities). However delivery of these training programs was limited - for example, DVRCV co-delivered CRAF training for CALD community organisations over seven half-day sessions in 2009. Neither training program has been incorporated into a broader CRAF training strategy on an ongoing basis.

³² For example, the Western Australian Government Department for Child Protection's *Family and Domestic Violence Common Risk Assessment and Risk Management Framework*

³³ Evaluation by the Family Violence Reform Coordination Unit, Office of Women's Policy in the Department of Planning and Community Development (DPCD) on behalf of the Family Violence Interdepartmental Committee (2010), available online on the DHS website: www.dhs.vic.gov.au

DVRCV has been contracted to deliver a further 59 sessions of CRAF training in the 2015-16 financial year. However, despite growing demand, there is no clear plan for ongoing delivery beyond this period.

THE NEED FOR A COMPREHENSIVE REVIEW OF CRAF IMPLEMENTATION

The Framework and associated training programs have enabled CRAF to provide a means of building shared understandings of family violence and risk across Victoria. However, a number of content gaps have emerged and critical issues around implementation have become evident.

After seven years of CRAF implementation and training roll-out across Victoria, it is crucial that CRAF is comprehensively reviewed. The review of the implementation of CRAF should be part of an overall family violence workforce development strategy (as recommended in the section of our submission '*Building consistent practice through workforce development*').

Audit the use of CRAF and develop benchmarks

DVRCV recommends that the government should audit the current implementation of CRAF: to establish which sectors and agencies are using CRAF; to discover the extent to which CRAF has been embedded into agency and sector policies and practices; and to consider whether the levels of risk assessment outlined in the Framework are appropriately matched to the roles of different professional groups.

As part of this mapping, there is a need to develop family violence risk assessment competency benchmarks. These would identify core vocational competencies required across sectors in relation to the operation of risk assessment, detailing the levels of capability required depending on service or sectors involved, or the nature of service delivery.

Target groups for the benchmarking process should include: family violence specialist services, statutory agencies, courts, judiciary and legal services; and other sectors that regularly work with clients experiencing family violence (for example, maternal and child health, homelessness services, mental health professionals, hospital staff).

Once benchmarks are developed, work to ensure competencies can be assessed should occur. This will ensure greater quality, consistency and accountability for all professionals engaged in family violence service delivery.³⁴

ADDRESS CONTENT GAPS

Feedback and evaluation since 2008 suggest that there also needs to be a review of the Family Violence Risk Assessment and Risk Management Framework content, and of the linked training packages.

Some of the content gaps identified over that time that would benefit from a review include those listed below.

Risk assessment for children

CRAF was developed as a tool for assessing risk to women. It was not developed with consideration of risk indicators for filicide or other serious harm to children, even though the links between family violence, child abuse and filicide are well documented.³⁵

³⁴ For example, the Community Services Training Package includes a unit *Manage domestic and family violence and abuse screening and risk assessment processes* (CHCDFV817B) that could be delivered as an accredited training. See '*Building consistent practice through workforce development*' section of this submission for further discussion of the broader issues related to building workforce capacity in relation to family violence.

³⁵ In 2012, DVRCV released the discussion paper '*Just Say Goodbye: Parents who kill their children in the context of separation*'. The paper examines the motives and background to 'filicide'—the killing of children by a parent— and is available at: www.dvrcv.org.au/knowledge-

There is no validated risk assessment tool in Australia or internationally that measures risk to children in the context of family violence. Guidance within CRAF around risk assessment of children is currently inadequate.

As discussed in the *Addressing risks to children in the context of family violence* section of this submission, research tells us that identifying the level of risk to a mother who is experiencing family violence gives us important information about the potential risk of harm to her children.

'When a mother is at risk for lethality, children should also be considered at risk. It is important to note that children can be directly impacted by domestic homicide in a variety of ways: they can witness or hear the homicide of their mother; they may lose a parent or both parents due to the crime; or they may become homicide victims themselves' (Hamilton, Jaffe, & Campbell 2012).

The more we know about the violence directed at a mother, the more precisely we can apprehend the harm being done to any children in her care. The Framework needs to be reviewed with a view to developing an integrated children's risk assessment/risk management tool. Consideration of potential for filicide should be embedded into the Framework, with better guidance for assessing risk and questioning women about potential risks to children. For example, any escalation in the perpetrator's level of agitation and fear of losing his partner or children, or obsessive jealousy and inability to move on (sometimes months or years) after separation can be indicators or 'red flags' of high risk to children.³⁶ Supporting workers to have conversations with women about these red flags may provide safer outcomes for both women and their children.

While practice guides that reference CRAF have been developed for use by Child Protection and specialist family violence case workers, these are not risk assessment 'tools' in the sense that they do not provide a method of determining and measuring the risk of future harm to a child posed by their exposure to family violence. The 2014 Department of Human Services (DHS) Child Protection Practice Guide *'Working with Families Where an Adult is Violent: Best interests case practice model'* provides advice to practitioners that is well researched and includes comprehensive information. It refers to CRAF as a resource, and includes a copy of the Aide Memoire. However it effectively operates in parallel to CRAF.³⁷

Some of the information contained in this guide expands advice about the risk of filicide and should be considered for integration into CRAF. It is unclear, however, what training Child Protection workers have received around this practice guide, and whether it is mandatory that it be applied in family violence cases.

An earlier DHS Practice Guide, *Assessing Children and Young People Experiencing Family Violence* (Red Tree Consulting 2013) was developed as a tool to support family violence professionals to assess the safety and needs of unborn children, infants, children and young people affected by family violence. The Australian Childhood Foundation (ACF), in partnership with No to Violence (NTV) and DVRCV were funded by DHS to develop and deliver a training project to support the implementation of the practice guide. However, training in the tool was limited (DVRCV co-delivered 16 sessions during 2013), and delivered under a short-term contract. It too operated as a parallel guide, and there was a lack of clarity or follow-through for workers regarding implementation and integration with CRAF risk assessment.

DVRCV recommends a review of CRAF to look at how various risk assessment tools and guidelines for working with children (including those designed for, and used by, Child Protection practitioners) could be integrated into the Family Violence Risk Assessment and Risk Management Framework.

centre/our-publications/discussion-papers/just-say-goodbye. See Kirkwood (2012) and also the section of this submission *'Addressing risks to children in the context of family violence'*

³⁶ The 2014 DHS document *Working with Families Where an Adult is Violent: Best interests case practice model* notes that in many cases of filicide there were indicators of risk that were not understood, or were overlooked.

³⁷ This guide was developed and released in June 2014, several months after Luke Batty was murdered by his father.

There is an opportunity to create an integrated and seamless risk assessment process—a universal tool for assessing family violence risk to both women and their children. This would avoid having risk assessment processes that may be incompatible, that operate in parallel, are ad hoc, or seen as ‘optional’.

Assessing perpetrator dangerousness

Many CRAF training participants indicate that they work with families, and some work mainly with men. Currently the Framework includes a warning that CRAF is designed for use with women, and cautions workers to refer men who may present *as victims* to a specialist men’s family violence service.³⁸

The Aide Memoire in the current CRAF lists risk factors for *perpetrators* (such as suicidal ideation). Professionals may identify indicators of risk through discussions with women about the relationship and the behaviour of the perpetrator. However, for a professional who works with the whole family, and who is concerned about the behaviours or statements made by a perpetrator of violence, the only advice that CRAF can currently offer is to avoid colluding with the perpetrator and to make a referral.

DVRCV recommends expanding the guidance in CRAF for professionals who see families or couples regarding how they can safely deal with perpetrators. While cautions need to remain, and to be explicit, CRAF might be revised to provide expanded or supplementary tools and training for: identifying the primary aggressor; avoiding collusion; and undertaking a basic assessment of dangerousness when working with men in these circumstances.

DVRCV does not, however, believe that such an expansion of CRAF should replace the framework *Men Who Use Violent and Controlling Behaviours: A framework for comprehensive assessment in men’s behaviour change programs*, designed for use by Department of Human Services-funded men’s behaviour change programs operating in Victoria. That framework is for specialised men’s behaviour change practitioners, and was developed to complement the CRAF.

It would be helpful, however for *CRAF* to include an explanation of how the *Men Who Use Violent and Controlling Behaviours: A framework for comprehensive assessment in men’s behaviour change programs* fits in relation to CRAF.

For discussion of how statutory agencies, such as Child Protection, might work more effectively in assessing perpetrator dangerousness, see the *Addressing risks to children in the context of family violence* section of this submission.

Expand and integrate guidance on risk management

Risk assessment first involves identifying the presence of risk factors, then understanding and making an assessment of the level of risk, communicating that to the woman, and then managing or acting on that assessment through risk management strategies.

Risk management strategies can include but are not limited to: safety planning; referral to a woman’s refuge; accompanying a woman to court to apply for or vary an intervention order; working with Victoria Police Family Violence Units to increase support and monitoring; assisting her to access Victims of Crime funding to improve security around her home; or, in cases of imminent or serious risk, making a referral to a high-risk panel.

³⁸ The *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1–3* states: ‘Men who admit to using violence often try to justify or minimise their violence, or to blame their partner—perhaps for ‘provoking’ an attack or giving him ‘no way out’ ... For these reasons, in all circumstances where a man is initially assessed as or claiming to be a victim of family violence in the context of a heterosexual relationship, you should refer him to a men’s family violence service for comprehensive assessment or to the Victims of Crime Helpline.’

Feedback on CRAF training has highlighted that, although CRAF has successfully increased participant skills and confidence in assessing risk and in developing safety plans, it has provided less clear guidance to professionals on determining the *level* of risk and developing risk management strategies.³⁹

There have been a number of initiatives to strengthen risk management over the past couple of years. Strengthening Risk Management (SRM) is a Victorian Government initiative to improve service responses to women and children at serious and imminent risk from family violence. Specialist family violence agencies identify and seek to engage women and children at serious and imminent risk, provide coordinated case management, and enable creative access to relevant programs and flexible use of brokerage and other resources. Risk Assessment Management Panels (RAMPs) are one component of a SRM program in any local area.

These SRM initiatives are, in effect, 'bolted on' to CRAF. The link between existing CRAF tools and the new SRM initiatives is not clearly articulated. While the newer SRM guidelines refer to CRAF for risk assessment advice, CRAF—because of its age—is silent on these new initiatives. For example, with the imminent rollout of a two-part training package to support RAMP implementation there will be three different frameworks and guides that are relevant to assessing and managing risk in Victoria.⁴⁰

1. Family Violence Risk Assessment and Risk Management Framework *Practice Guides 1–3*
2. A handbook developed for the RAMP training program, *Identifying Serious and Imminent Risk in Family Violence Cases*, to support best practice responses to women and children at serious and imminent risk of harm, and in working with RAMPs
3. Guides for key partners in local RAMPs, *Guidelines for the Establishment and Operation of the Strengthening Risk Management Program*.⁴¹

The risk of this piecemeal approach - where guides and tools have been added to sit alongside an existing framework, without a full review - is that advice can become fragmented, contained in documents or programs that have been developed at different times, and rolled out to limited audiences. It is timely to review CRAF to ensure these new initiatives, with accompanying guidelines, assessment tools and templates, are integrated into CRAF. This will avoid further fragmenting the advice to those working with women and children escaping violence.

Given the planned rollout of RAMPs across the state, it now time to review the Framework to provide a clearer articulation of effective processes in assessing risk, determining the level of risk, and strategies for managing risk - including serious and imminent risk.⁴² This includes the need for comprehensive guidelines, policies and resources to support effective risk management strategies amongst core family violence services. The practice knowledge of specialist family violence women's services could be utilised and documented to inform best practice in risk management across sectors.

Guidelines for Information-sharing

The imminent roll-out of RAMPs also raises important considerations for the way that information is shared between agencies. International experiences of high-risk management models have highlighted the potential dangers of multi-agency partnership work:

³⁹ A 2013 evaluation of the Family Violence Strengthening Risk Management demonstration projects in Victoria by Thomson Goodall Associates recommended that risk management needs to be strengthened.

⁴⁰ This is in addition to the range of guides for assessing risk to children, discussed earlier in this section.

⁴¹ DHHS 2015, not yet released

⁴² For a discussion of the elements of risk management models, including RAMPs, see 'Multi-agency responses improve safety' by Catherine Plunkett, *DVRCV Advocate*, Autumn/Winter 2014.

While multi-agency partnership work has been shown to provide benefits to women at high risk of family violence, there are also potential pitfalls. These include victim-blaming, consent, paternalism, [inappropriate] information sharing, referral processes and disregard for cultural safety. In Victoria, some of these issues could be avoided by adopting a feminist and anti-racist survivor-led ethic (Davis 2015).

Improved guidelines and systems for recording and sharing information also require participants to subscribe to survivor-led ethical frameworks to inform responses. This will ensure that only information that is risk relevant is shared in the process of planning risk management responses (Davis 2015).

Consider introducing an actuarial tool

Risk assessment in the human services field has historically fallen into one of two categories: clinical or actuarial. A clinical approach primarily relies on professional opinion or judgment. The professional has complete discretion over what information is considered in risk assessment and there are no constraints on the information that can be used to make a decision. An actuarial approach integrates statistical evidence into the assessment. Scales and matrices are used to record and analyse evidence-based risk factors and produce a risk score.⁴³

CRAF uses a Structured Professional Judgment Approach that strikes a balance between actuarial methods and clinical decision-making. It draws on evidence-based frameworks while also taking account of case-specific situations and contexts that are not considered using a strictly actuarial tool. This approach promotes consistency through an evidence-based framework, but allows the flexibility to encompass the unique characteristics of each case, including the perspective of the victim:

While there is no scientific or completely accurate method of assessing risk to victims of family violence, it is known that a structured professional approach to assessing such risk is more accurate than relying on clinical judgement alone (CRAF 2012).

Since it is not an actuarial tool, the use of CRAF is still very much dependent on the judgment of the individual practitioner. The professional's capacity for sound professional judgement is enhanced by familiarity with the evidence-based risk factors and knowledge of family violence and its dynamics, as well as regular consultation within and across organisations.

However, there has been a noticeable 'CRAF drift' in Victoria, where some key agencies are adapting and adopting CRAF in their own tools or procedures. DVRCV understands from training participants that some family violence services are using shortened or 'rapid risk assessment' processes and tools.

This could be seen to be the result of a highly pressured system, but the potential danger is that the core features of CRAF are being watered down or used in an ad hoc way by a variety of agencies.⁴⁴ A review of CRAF should revisit this issue to ensure that tools are used consistently across agencies as intended.

The 2013 evaluation of the Family Violence Strengthening Risk Management demonstration projects in Victoria, by Thomson Goodall Associates, also recommended that inclusion of an actuarial tool in CRAF be considered for use by specialist family violence services.

⁴³ Under South Australia's *Family Safety Framework*, the Domestic Violence Risk Assessment Form attributes a score to the presence of different risk factors and influences referrals to that state's Family Safety Meetings. This model may provide useful guidance and/or a starting point for comparison and review of CRAF.

⁴⁴ Following Luke Batty's coronial inquest in 2014, DVRCV understands that Victoria Police were exploring whether the use of an actuarial tool might improve the accuracy of risk assessments undertaken by their officers.

In line with this recommendation, a review of CRAF should explore whether an actuarial tool, which attributes a value to each risk factor and produces a risk 'score', when used in conjunction with professional judgment, might be more accurate and produce more consistent results than CRAF in its current form.

Ensure CRAF recognises diversity

Research has identified that women who are disadvantaged or face particular barriers—such as migrant and refugee women, Indigenous women, and women with disabilities—may be at increased risk from family violence.⁴⁵ However, participants in CRAF training have reported that their knowledge about working with a diverse range of clients did not increase significantly after CRAF training.

While contextualised trainings for Aboriginal and CALD communities have been developed to address risks and responses to women from diverse backgrounds and social identities, these training programs have sat alongside the general CRAF training. There has been no funding available to incorporate the learnings from these programs into mainstream CRAF practice guides. In addition, there has been no recognition of the fact that the funded CRAF training program for generalist workers is too brief to incorporate discussion of additional risks for women and children of diverse backgrounds. Participants have consistently provided feedback that CRAF training programs were too brief, and that more time was needed for this training. Less experienced training participants (those not working in family violence services) are able to access only four hours of training in CRAF, which is insufficient given the complexity of the issue.

Longer training programs would allow more time for participants to adequately explore use of the CRAF tool with women and children from Aboriginal communities, from culturally and linguistically diverse backgrounds, and with women with disabilities.

Update content on technology- facilitated abuse

The use of technological devices as a tool for abuse has become a widespread issue for women experiencing family violence. DVRCV's recent national survey on technology-facilitated abuse revealed that victims are now less safe because technology can easily enable perpetrators to monitor and track them.⁴⁶ Given these recent research findings, it is timely to provide information in CRAF on the use of technology as a platform for perpetration of family violence, and how this links with evidence-based risk factors and heightened levels of risk for women.⁴⁷

Incorporate learnings from death reviews

The international research that has identified the common risk factors used in CRAF has been based on evidence relating to family violence deaths. This highlights the need for a strong family violence death review process in Victoria to consistently and comprehensively identify what risks were present, and how the system could address these risks. Without this, Victoria will not be able to consistently and systematically build the evidence on factors that increase a risk of lethal violence, and on how the Victorian service system is responding to these factors.⁴⁸

A comprehensive review of CRAF should also be informed by findings of inquests and investigations of deaths conducted under the Victorian Systemic Review of Family Violence Deaths (VSRFVD). In a number of investigations, the VSRFVD has examined the role of CRAF in service responses prior to the death.

45 See section of this submission '*Improving legal responses to domestic homicides*', which provides evidence that Indigenous women are at higher risk of domestic homicide. See also Woodlock et al (2013) for a discussion of barriers for women with disabilities.

46 See section of this submission '*Addressing the abuse of technology by family violence perpetrators*' for further discussion of this.

47 See also the DVRCV SmartSafe website (www.smartsafe.org.au) for research findings and resources.

48 DVRCV endorses the Federation of Community Legal Centres submission to the Royal Commission on family violence death reviews.

Establish regular reviews

In order to ensure that (a revised version of) CRAF remains current and responsive to emerging issues and changing contexts, we recommend that the Victorian Government establishes a schedule of regular reviews of the Framework. This should be part of a process of continuous improvement of family violence responses in Victoria. In DVRCV's view this should occur no less frequently than five-yearly.

EFFECTIVE IMPLEMENTATION REQUIRES A STRONG AUTHORISING ENVIRONMENT

A fundamental feature of CRAF is that it provides a common or standardised approach to risk assessment, which is essential to ensuring a consistent and equitable response to all families experiencing family violence. CRAF can be applied across all organisations in Victoria that respond to family violence. It can be dangerous for organisations to use different criteria and risk assessment tools in making referrals across agencies. Using the same approach minimises the risk of misunderstandings and important information being lost.

One area in which there are particular inconsistencies in risk assessment is in relation to family law (see later discussion on consistency of state and federal approaches).

Mandate the use of CRAF

In a system that has been working towards integration through building shared understandings of the nature and dynamics of family violence and of risk, CRAF is a critical tool. An effective authorising environment is required to ensure clearer government direction regarding: who should be attending training; who should be using CRAF and when; which level they should be using; and how it should be implemented through organisational policies and practices. This would help drive consistency across the state.

However, it is clear that even first responders in critical sectors, such as Victoria Police and Child Protection, are not consistently trained in CRAF, and are not using it consistently. Evidence presented recently at the Coronial inquest into the death of Luke Batty revealed that Victoria Police were not consistently applying CRAF through their L17s, nor were they being trained in CRAF. For example, operational police officers who worked with Rosie and Luke Batty gave evidence that they didn't understand that suicidal ideation, for example, may indicate an increased risk of serious harm or homicide (see Eltringham 2015). The officers also gave evidence that they had not received training in CRAF, despite Victoria Police being a key player in Victoria's family violence system (Coroners Court Victoria, 2014).

Senior DHS personnel also gave evidence that the use of CRAF and risk assessment is not mandated, but is optional, for Child Protection workers (Coroners Court Victoria, 2014).⁴⁹

All core services in the family violence service system, and others who frequently provide responses to family violence, should be mandated to use a common risk assessment tool (CRAF, or a revised common risk assessment tool or framework), and to embed CRAF into their organisational policies and practice. This includes commitment to sharing risk information with others in Victoria's multi-agency approach.

A revised CRAF that addresses some of the perceived concerns and barriers to statutory agencies using the Framework—including, the lack of content regarding risks to children, a need for more guidance regarding assessing levels of risk, and some contextualised guidance for specific professional groups—should also assist in driving consistency.

⁴⁹ See the section of this submission 'Addressing risks to children in the context of family violence' for more on the role of child protection in risk assessment.

Embed CRAF in organisational policies and practice

In order for effective implementation, Victoria must also provide structural supports to help embed CRAF into organisational practice.

Many organisations send staff to attend CRAF training; however, this is rarely followed up by the organisation developing policies or practices to support its application. Discussions at CRAF training sessions (including among workers and services considered to be part of the ‘family violence system’) indicate that there is considerable variation between service providers in the way that CRAF is understood and applied at an organisational level.

Most of these organisations are not screening for family violence at intake and have no policies about how to respond to disclosures. Until now, CRAF has been designed for and, in the main, delivered to individuals in front-line service positions, making its impact solely dependent on the retention of each trained individual and their level of motivation and skills.

CRAF provides no direction, tools or training for staff supervisors or program managers. Yet the development of processes, policies and procedures to support practice in each organisation is essential to ensure its consistent application and sustainability. Without the support of an organisational framework, each trained practitioner is left to apply what they have learnt in the context of time pressures, a considerable amount of unmet service demand, and the need to respond to clients with complex needs (Plunkett 2014).

DVRCV’s experience demonstrates the effectiveness of developing organisational supports for CRAF. In 2013, DVRCV worked with Community Corrections to develop policy and procedural directions around responding to family violence, as well as templates and explanatory notes, to guide staff from initial assessment through to risk assessment, safety planning, referral, and risk review. The delivery of CRAF training to Community Corrections staff was well received that year because trainers were able to reference the organisation’s policy and procedural directions, which effectively operationalise the use of CRAF.

For the many smaller organisations, the development of written guidelines and training for management personnel would support greater uptake of CRAF across the service system.

Monitor CRAF implementation

As discussed, DVRCV trainers frequently observe that CRAF is not being used appropriately. While professionals may say they do risk assessment, there is no quality control. There needs to be oversight and monitoring.

To ensure effective responses to managing safety risks, Victoria’s integrated service system needs to monitor how CRAF is being used in practice. Governance arrangements at a statewide and regional level should include mechanisms for monitoring.

Fund ongoing delivery of CRAF training program

Both contracts for delivery of CRAF training (2008–10 and 2011–2013) specified the amount of time to be allocated for different professional groups around each practice guide. Since 2008, DVRCV has delivered a one-day *Practice Guide 1* program for specialist family violence workers, and a half-day (4-hour) *Practice Guide 2* program for other professionals who come into contact with family violence, such as those who work in police, child protection, community legal, courts, or housing services.

Feedback from trainers and participants has consistently been that the 4-hour training program for *Practice Guide 2* is too short. Most participants who attend the 4-hour training have had little or no previous training or education in family violence issues. By default, this program has become an introduction to understanding family violence, its nature, effects and dynamics, as well as providing

a preliminary guide to understanding and practicing the CRAF. However, it provides insufficient time for skill development and risk management.

Concerns raised by trainers include that there is insufficient time to explore the nature, dynamics and effects of family violence; barriers to women disclosing violence; why participants should undertake risk assessment; how it relates to their organisation's function and processes; and the roles of other services and sectors. Trainers are constantly frustrated that important discussions are curtailed in order to get through the amount of content that is required.

DVRCV and Swinburne University unsuccessfully advocated to government for a longer program before the second tender was advertised. We have therefore been locked into delivering a program that is too brief and requires review.

Following the completion of the government CRAF contract in December 2013, there was continuing unmet demand for training, and uncertainty about the future rollout of CRAF. In 2014, DVRCV successfully approached a philanthropic fund to pay for additional sessions of CRAF training across rural and metropolitan Victoria. Using this funding we adapted the 4-hour CRAF program and delivered it over 6-hours with the addition of content around the nature and dynamics of family violence. The feedback about the 6-hour program has been extremely positive.

DHHS has contracted DVRCV to deliver another 59 CRAF sessions in 2015-16. However, the current expectation is that DVRCV will continue to deliver the basic CRAF training in its original 4-hour form.

As discussed above, it is DVRCV's view that a review should include the development of capability benchmarks for implementing CRAF. It is also DVRCV's view that a revised CRAF training strategy needs to be developed that takes account of the benchmark skills and knowledge required at each level, targets participants appropriately, and allocates and funds sufficient hours for training to ensure effective implementation of CRAF in workplaces.

Ongoing funding for delivery of CRAF training is also critical to avoid 'stop-start' approaches, and to continue to meet escalating demand.

Ensure consistent state and federal risk assessment approaches

The relationship between state-based risk assessment processes and federal processes is problematic. There is little crossover between Victorian risk assessment tools and the way that family violence risk is assessed in the Federal Circuit and Family Courts. Recent frameworks developed at a national level for application in the federal courts were done without reference to or consultation with state family violence systems or frameworks (McIntosh et al 2012).

The 2010 Australian Law Reform Commission/New South Wales Law Reform Commission (ALRC/NSWLRC) report *Family Violence: A national legal response* identified the need for consistent state and federal approaches to family violence, including family violence risk assessment. DVRCV and its alliance partners made a comprehensive submission to this inquiry. The following recommendations made by ALRC/NSWLRC were in line with that submission:

18.52 The Commissions consider that a common definition of family violence, together with a shared understanding of particular conduct that may comprise family violence, would provide the groundwork for a common approach to risk assessment for family violence. Across all jurisdictions a common approach to risk assessment would mean that the needs of victims of family violence are consistently understood and addressed by all service providers, including specialist family violence services, courts, police, lawyers and mainstream service providers such as education and health care providers ...

18.55 Work is currently underway to develop a national framework to support screening and assessment for family violence across the federal family law system. In order to promote consistency in understanding and identifying family violence across jurisdictions, it would also be desirable if the federal framework currently being developed was consistent with the overarching risk assessment and management frameworks that apply in states and territories (ALRC/NSWLRC 2010).

DVRCV urges the Victorian Government to work with COAG to implement the recommendations of the ALRC/NSWLRC Report.

RECOMMENDATIONS

3. DVRCV recommends the Victorian Government undertake a review of the Family Violence Risk Assessment and Risk Management Framework (CRAF), including:
 - 3.1. An audit of the use of CRAF in Victoria to:
 - 3.1.1. examine current CRAF implementation, and the extent to which CRAF has been embedded into agency and sector policies and practices
 - 3.1.2. consider whether the level of risk assessment is appropriately matched to roles of different professional groups
 - 3.2. Developing family violence risk assessment benchmarks and core vocational competencies required across sectors
 - 3.3. Addressing content gaps and providing additional guidance, by:
 - 3.3.1. integrating tools for assessing risks to children in the context of family violence
 - 3.3.2. providing supplementary tools for assessing perpetrator dangerousness
 - 3.3.3. providing expanded guidance about risk management, including information sharing
 - 3.3.4. exploring whether an actuarial tool will assist in assessing level of risk
 - 3.3.5. providing effective guidance to ensure relevance to women and children from diverse communities
 - 3.3.6. including technology-facilitated abuse
 - 3.3.7. incorporating learnings from deaths investigated under Victoria's Systemic Review of Family Violence Deaths
 - 3.3.8. establishing a schedule of regular reviews of the revised CRAF to ensure it remains current and responsive to emerging issues and changing contexts.
 - 3.4. Establishing an effective authorising environment to ensure consistent implementation. This would include:
 - 3.4.1. mandating all core services in the family violence service system, and others who frequently provide responses to family violence to use a common risk assessment tool and to embed CRAF into their organisational policies and practice

- 3.4.2. providing training, operational advice and assistance to organisations to help them to embed CRAF into policies and practices, and to ensure effective information sharing and risk management processes
- 3.4.3. monitoring the implementation of CRAF across services and settings
- 3.4.4. providing ongoing funding for the implementation and delivery of full-day training program/s
- 3.4.5. ensuring consistent state and federal risk assessment approaches by working with COAG to implement the recommendations of the Australian Law Reform Commission & New South Wales Law Reform Commission's (2010) report on national legal responses.

Addressing risks to children in the context of family violence

BACKGROUND

Thousands of children experience or witness family violence each year in Victoria. Family violence against a mother often coexists with violence against children in the family (DHS 2014). The majority of children in the Child Protection system come from families where they are exposed to family violence (DHS 2005). Children experience a range of harms from family violence, whether or not they are the direct victims of violence, and some children are killed in the context of violence against their mother.

There is general awareness that children are affected by family violence; however, the risks to children's safety and wellbeing are not well understood across the service system. While risks to the safety of adult women may be identified, the risks that the perpetrator poses to children may not be recognised, particularly if the perpetrator has not previously directed violence towards the children.

Effective responses, early intervention and prevention of family violence are vital to ensuring the safety and wellbeing of children in Victoria. Currently, children fall through the gaps in the service system because there is a lack of focus on assessing risks to children in family violence. It is also unclear who has ultimate responsibility for undertaking family violence risk assessment for children in the family violence system, how this information can be shared across services, and how risks to children can be effectively addressed.

Specialist family violence services are primarily funded to work with adult victims and most do not receive dedicated funding for case management of children. Child Protection services, on the other hand, focus on children. However, they generally do not undertake specific family violence risk assessment and risk management for children, nor do they have the specialist knowledge for responding to women and children experiencing family violence. The services focusing on adult clients and those focusing on children do not always share information effectively and work collaboratively. This creates a situation in which the links between risks to children and risks to their mothers in the context of family violence may not be recognised and responded to adequately.

This section of DVRCV's submission, while touching on the general issue of family violence and children, focuses on the risks to children when their mother is at risk. It draws on research about children intentionally killed by their fathers and shows that, in these cases, children are often overlooked, particularly if there has been no prior violence towards them. The deaths of children in the context of family violence, such as Luke Batty who was killed by his father in 2014, were part of what prompted the Royal Commission inquiry into family violence. The potential for children to be harmed, or even killed, in the context of family violence is a critical issue for the Royal Commission to consider.

DVRCV'S ROLE IN RESPONSES TO CHILDREN

DVRCV has a long history of producing research, training and resources to raise awareness about the links between risks to mothers and risks to their children, and the need to recognise the impact of family violence on children.

DVRCV has released two discussion papers on this topic:

- *‘Just Say Goodbye’: Parents who kill their children in the context of separation* (2012), which explored the role of separation and family violence in filicides
- *‘Bad Mothers and Invisible Fathers’: Parenting in the context of domestic violence* (2009)

DVRCV provides professional training programs on children and family violence, including:

- *Family Violence Hurts Kids Too (three-day accredited training)*
- *Adopting Child-led Practices*
- *Infants and Toddlers: Relational trauma, making children’s safety and wellbeing matter*
- *Creative Engagement: Working innovatively with vulnerable children*
- *Assessing Children and Young People Experiencing Family Violence*
- *Safe from the Start: Adolescent violence in the home.*

DVRCV provides information resources addressing the impact of family violence on children, such as:

- the brochure *Family Violence Hurts Kids Too: Information for mothers*
- a comprehensive website for teenagers and young people who are living with family violence, *Bursting the Bubble*.

ISSUES, GAPS & CHALLENGES

THE IMPACT OF FAMILY VIOLENCE ON CHILDREN

Of the 65,000 family violence incidents Victoria Police responded to in 2013–2014, children were recorded as present in over one-third of the incidents.⁵⁰ Children are vulnerable to a range of harms when there is family violence. This includes direct harm, such as injury or trauma, and indirect harm, such as having to leave their home, school and pets because of family violence (DHS 2013, p. 13). This harm may be cumulative, diminishing a child’s sense of safety, stability and wellbeing. Children may also be harmed when the perpetrator deliberately tries to damage their relationship with their mother. Many family violence perpetrators directly or indirectly use children to undermine women in their parenting role (Fish & McKenzie 2009).

The *Family Violence Protection Act 2008* states that a child hearing, witnessing or otherwise being exposed to the effects of family violence constitutes family violence. The *Protecting Victoria’s Vulnerable Children Inquiry* (hereafter referred to as The Vulnerable Children Inquiry) found that witnessing family violence in itself amounts to child abuse (Cummins et al 2012).

Research suggests that children are more likely to witness violence against a parent *after* separation rather than prior to separation (Hotton 2001). After separation, child-related activities may be the only time that former partners have contact with each other, and this is often used as an opportunity to perpetrate abuse (Hardesty & Chung 2006). Separation is a time of heightened risk of lethal violence for adult women (Mouzos & Rushforth 2003) and research shows that parental separation is also a key factor in many cases where a parent kills a child (Brown & Tyson 2014; Alder & Polk 2001).

⁵⁰ Police statistics, outlined by Assistant Commissioner Dean McWhirter on 25 May 2015 on ABC radio 774 with Jon Faine, indicate a higher proportion of cases in which children were present in the last financial year. See also Victoria Police (2014) *Crime Statistics 2013/14*.

FILICIDE AND LINKS WITH FAMILY VIOLENCE

Filicide—the killing of a child by a parent—can be seen as the extreme end of a continuum of harms to children in the context of family violence. Approximately 10 per cent of homicides in Australia involve child victims (Dearden & Jones 2008) and the majority of these children (approximately 60 per cent) are killed by a parent. In Australia, in the decade 2002–2012, 238 children were killed by parents (Cussen & Bryant 2015).

In 2012, DVRCV released a discussion paper on filicide, *'Just Say Goodbye': Parents who kill their children in the context of separation* (Kirkwood 2012). DVRCV undertook this research in response to media reporting of the deaths of children killed by their fathers in Victoria. In the media, these deaths were frequently described as 'inexplicable' and the perpetrators were portrayed as 'loving dads'. Given the dearth of information on this topic, we sought to find some explanations.

Our research examined international literature, Australian case studies and data obtained directly from the National Homicide Monitoring Program at the Australian Institute of Criminology, for the ten-year period July 1997 to June 2008. While we obtained data on all filicides and reviewed the literature broadly, the focus of our research was on intentional filicides that occurred in the context of separation.

Studies show that separation and prior violence towards an intimate partner, which are factors in many intimate partner homicides, are also key factors in many filicides.⁵¹ Some filicides that occur in response to separation from a partner are described as 'retaliatory' filicides.⁵² The gendered patterns of retaliatory filicides are similar to those in intimate partner homicides: they are predominantly perpetrated by men seeking to hurt their female intimate partners. Many are motivated by anger against an intimate partner (Alder & Polk 2001). The children are seen as an extension of the woman, and their death a way of hurting her (Cavanagh et al 2007).

DVRCV's review (Kirkwood 2012) of eight cases of men who intentionally killed children in the context of parental separation found that one or more of the following elements were present:

- violence and controlling behaviour towards the partner before, and after, separation
- anger towards the ex-partner and desire for revenge in relation to separation
- an intention to harm the ex-partner by killing the children.

There was often no indication of prior violence directed towards the children in these cases.

Peter Jaffe, Chair of the Domestic Violence Death Review Committee in Ontario, Canada, says that warning signs in filicides are often overlooked by professionals. While the risk to adult victims of family violence may be identified, the potential risks to children may not be, particularly when there is no history of the perpetrator directly harming the child (Jaffe et al 2014; Jaffe & Joudis 2006).

Warning signs may also be overlooked due to a tendency of professionals to focus on incidents of physical violence rather than patterns of abusive, coercive and controlling behaviour. A UK child homicide study found that controlling behaviour by the perpetrator is a particularly important feature in child homicides (Ferguson 2009). The researcher states, 'It is the extent of control over the whole family rather than the frequency of physical violence that indicates that such fathers are at high risk of killing children' (Ferguson, 2009).

⁵¹ For example, see Mouzos & Rushforth (2003) in relation to family violence and Brown & Tyson (2014) in relation to filicide in the context of separation.

⁵² There are a number of different 'types' of filicide (for further information, see Kirkwood 2012). A significant proportion of filicides are 'fatal abuse' filicides in which children die as a result of a history of child abuse. Fatal abuse filicides are described in the literature as non-intentional because the child dies as a result of abuse but the death was not intended. In fatal abuse filicides, a prior history of intimate partner violence is also common.

In the US, domestic homicide researcher Websdale (2010) has also identified the role of controlling behaviour in filicide:

'If a perpetrator feels that his domination of the family is threatened ... he may resort to homicidal violence in a misguided effort to maintain his control and prevent a complete rupture of the family unit' (Websdale 2010 p. 135).

Recent studies, particularly those drawing on child death reviews, have highlighted a cluster of issues that often coexist in filicides: family violence, mental illness, and substance abuse (Frederico et al 2014). These factors are all important considerations; however, much research on filicide has focused heavily on mental illness, with many studies undertaken in the field of psychiatry. Focusing solely on mental illness may result in a failure to recognise other factors that are more important contributors to violence, such as gender socialisation and inequality (Schwartz et al 2006). The mental state of a filicide perpetrator is influenced by a range of factors. Gendered attitudes towards women, ideas about masculinity and men's roles in families, a sense of their entitlement to have control over women and children in families, and an inability to accept separation may all have an influence on men's perpetration of filicide.

The key point arising from DVRCV's research is that violence against women is a significant contributing factor in many filicides. We share the view put forward by the Women's Aid Federation in the UK:

'If the child's primary carer is facing a potentially lethal level of violence, this should always be recognised as a serious child protection issue and efforts should be made to ensure the safety of both the non-violent parent and the children' (Saunders 2004, p. 17).

A recent Canadian study (Olszowy et al 2013) examined cases of family homicide in which women were killed and cases in which children were killed, and found little difference in risk indicators. The authors therefore argue that if a woman is at high risk of lethal violence from her intimate partner, and children are present within the family, those children could also be considered to be at risk.

The need for services to recognise the risks to children in the context of family violence was clearly highlighted in the recent case of Luke Batty. His death was the subject of a Victorian coronial inquest in late 2014.

Case example: Rosie and Luke Batty

Eleven-year-old Luke Batty was killed by his father, Greg Anderson, in February 2014. In November 2014, evidence was provided at the coronial inquest into his death by his mother Rosie Batty, and by police and other professionals involved in the case.

Had a family violence risk assessment been undertaken to identify risks to his mother, Rosie Batty, and to Luke Batty, the following risk indicators would have been evident (based on the Victorian Risk Assessment and Risk Management Framework [CRAF] Aide Memoire):⁵³

⁵³ The asterisked factors indicate an increased risk of lethal violence (see CRAF framework Aide Memoire). The presence of risk factors listed in this table relates to Rosie Batty as the victim.

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Risk factors for perpetrators	Presence of factor
Use of weapon in most recent event*	Yes
Access to weapons*	Yes
Has ever harmed or threatened to harm victim	Yes
Has ever tried to choke the victim*	
Has ever threatened to kill victim*	Yes
Has ever harmed or threatened to harm or kill children*	Yes
Has ever harmed or threatened to harm or kill other family members	
Has ever harmed or threatened to harm or kill pets or other animals*	Yes
Has ever threatened or tried to commit suicide*	Yes
Stalking of victim*	
Sexual assault of victim*	
Previous or current breach of Intervention Order	Yes
Drug and/or alcohol misuse/abuse*	Yes
Obsession/jealous behaviour toward victim*	Yes
Controlling behaviours*	Yes
Unemployed*	Yes
Depression/mental health issue	Yes
History of violent behaviour (not family violence)	Yes
Relationship factors and victim risk factors	
Recent separation*	Previously separated
Escalation—increase in severity and/or frequency of violence*	Yes
Financial difficulties	Yes
Pregnancy/new birth*	
Depression/mental health issue	
Drug and/or alcohol misuse/abuse	
Verbalised or suicidal ideas or tried to commit suicide	
Isolation	Yes

This list of multiple risk indicators is drawn from information publicly available at the coronial inquest into Luke Batty's death. The list shows a very high number of key risk indicators were present in this case, which suggests a significant level of risk. A comprehensive risk assessment, which involves asking direct questions about the history of violence towards the family, may have elicited further risk indicators. Such an assessment would also take into consideration the victim's own level of fear. In this case, Rosie Batty had expressed a very high level of fear of serious injury or lethal violence from Greg Anderson.

GAPS IN SYSTEM RESPONSES TO CHILDREN LIVING WITH FAMILY VIOLENCE

A fragmented system

The systems and legal responses that are designed to protect children from abuse and violence are disjointed. While Victoria has sought to implement an integrated family violence system, there is still substantial work and resources required to achieve this. While there have been improvements in information sharing and collaboration across some services, this remains variable across regions. Key services responding to women and children experiencing family violence, such as Child Protection and the family law courts, continue to sit outside of the family violence service system. Integration with these services is essential for a fully efficient service system (see the section of this submission '*Strengthening Victoria's integrated service system*' for further discussion).

The difficulties for women and children experiencing family violence in the family law system are well documented.⁵⁴ Family violence advocates continue to observe that, although women and children may obtain an effective response and protection from violence through the Magistrates' Courts, this may be overturned or modified through the family law courts.

The Vulnerable Children Inquiry report highlights that the complex and fragmented interaction between the federal family law system and Victoria's Child Protection system and family violence laws, is detrimental for vulnerable children (Cummins et al 2012).

The inquiry by the Australian and NSW Law Reform Commission's (ALRC/NSWLRC 2010) *Family Violence: A national legal response* also highlighted problems with the intersection and operation of state and federal laws and statutory bodies responding to family violence and child abuse (ALRC/NSWLRC 2010).

The evidence provided at the coronial inquest into the death of Luke Batty demonstrated this lack of communication between parts of the system. A key issue highlighted at the inquest was that Child Protection did not provide any assistance or support for Luke's mother, Rosie Batty, to access the family law courts. In such cases, Child Protection could provide information to the family law courts about the violence and the impact on children, and assist women and children to negotiate family court orders that ensure their safety.

The need for Child Protection to take an active role in assisting family courts to ensure the safety of children was highlighted by the ALRC/NSWLRC (2010):

'Federal, state and territory governments should, as a matter of priority, make arrangements for child protection agencies to provide investigatory and reporting services to family courts in cases involving children's safety. Where such services are not already provided by agreement, urgent consideration should be given to establishing specialist sections within child protection agencies to provide those services' (ALRC Recommendation 19–1).

⁵⁴ For instance, see Bagshaw et al (2010) and Laing (2010).

‘Where a child protection agency investigates child abuse, locates a viable and protective carer and refers that carer to a family court to apply for a parenting order, the agency should, in appropriate cases:

(a) provide written information to a family court about the reasons for the referral;

(b) provide reports and other evidence; or

(c) intervene in the proceedings’ (ALRC Recommendation 19–3).

DVRCV supports this recommendation. DVRCV also support the ALRC/NSWLRC recommendations regarding effective professional education and training for individuals working in the family law, family violence, criminal justice and child protection systems—including judicial officers, lawyers, prosecutors, police, family dispute resolution practitioners and victim support services. For these professionals, a strong understanding of the nature and dynamics of family violence, and the overlapping legal frameworks, is fundamental to ensuring the safety of victims and their families (ALRC 2010).

The need to develop risk assessment tools to include children

A critical limitation with the current approach to family violence risk assessment is that it was developed with adult victims in mind and does not adequately address risk to children. There is currently no specific tool for assessing risk of filicide for children in the context of family violence (Olszowy et al 2013), though some services in international jurisdictions have commenced work in this area in recent years.⁵⁵ This remains a significant gap internationally. There is a need to review and develop the current risk assessment model in Victoria to accommodate children, whose needs are linked, but also separate, to those of their parent (Stanley & Humphreys 2014).

There are some useful and informative resources available for practitioners, such as the DHS guide *Assessing Children and Young People Experiencing Family Violence: A practice guide for family violence practitioners* (Red Tree Consulting 2013); however, it is unclear who is using the resource in practice and how it can be effectively implemented across the service system.

For further discussion of risk assessment and children see the section of this submission *‘Embedding a universal risk assessment and risk management framework’*.

The need for Child Protection to improve risk management practice

In the absence of a specific risk assessment tool, the best approach currently is to work with mothers to ensure a comprehensive family violence risk assessment and to also carefully consider the potential risks that the perpetrator may pose for her children. However, the key Victorian service that is authorised to respond to risks to children—the Department of Human Services Child Protection service—does not routinely undertake specific family violence risk assessments of children. In addition, the department does not routinely undertake risk assessment of mothers affected by family violence.⁵⁶

Where Child Protection services are aware of a high level of risk to the mother, the links to the risks to her child may not be recognised. This became evident during the inquest into the death of Luke Batty.

The evidence at the inquest indicated many of the relevant risk factors in the case—such as Greg Anderson’s prior violence, threats and mental health problems—were known to Child Protection at the time of Luke Batty’s death. Child Protection was aware that Rosie Batty was at risk from her ex-

⁵⁵ See, for instance, Barnardos, in Ireland, which has developed a tool for assessing risk for children (www.barnardos.org.uk/pp_no_7_assessing_the_risks_to_children_from_domestic_violence.pdf).

⁵⁶ See, for instance, evidence provided by Child Protection at the coronial inquest into the death of Luke Batty in 2014.

partner; however, they did not recognise the risk he posed to their son, Luke. This is despite Greg Anderson making a threat to harm his son and himself while holding a knife.

As discussed, this case highlights the need for the development and implementation of comprehensive family violence risk assessment for children, which takes into account risks to their mother. It also highlights that Child Protection has a key role to play in assessing and managing risks posed by perpetrators of family violence. If Child Protection workers do not ensure that comprehensive family violence risk assessment is undertaken for women and children, they will be ill-equipped to intervene to keep women and children safe.

There is a growing body of international literature which demonstrates that Child Protection services need to significantly modify their approach to working with children living with family violence.⁵⁷

In the case of Luke Batty, even if Child Protection had identified the risk to Luke, the question remains: What action would Child Protection have taken to ensure his safety? More generally, how does Child Protection manage the risk to children in the context of violence towards their mother?

Currently the focus of Child Protection is on the capacity of the mother to be 'protective' of the child. In cases of family violence, Child Protection may remove the child from the mother's care if they believe she is not able to ensure the safety of the child. This outcome is likely to contribute significant further trauma to the child.

Women are often fearful to report family violence and the risks this involves for their children, because they are concerned that Child Protection will remove children from their care (Douglas et al 2009; Humphreys 2007). This issue is compounded for Aboriginal women because their communities have experienced a history of government removal of children (Humphreys 2008). Aboriginal children are significantly more likely to have witnessed violence against the mother than non-Aboriginal children (Richards 2011) and are disproportionately represented in Child Protection care and protection orders in Victoria (Cummins et al 2012).

The introduction of 'failure to protect' legislation in Victoria has created a further barrier for victims of family violence. Victoria's *Crimes Amendment (Protection of Children) Act* (effectively 'failure to protect' legislation) was introduced in 2014 despite opposition from DVRCV and allied family violence organisations. 'Failure to protect' laws do not adequately recognise the dynamics and complexities of family violence, and are detrimental to women and their children experiencing family violence. In particular, the legislation fails to take account of the powerful barriers to a woman leaving an abusive relationship or reporting that abuse. Such an approach contradicts a key message underlying family violence reforms in Victoria, which is that perpetrators bear the responsibility for violence, not victims.

The burden of protecting children from a violent father should not be placed on women who are frequently also victims of the abuse (Humphreys 2007). A more effective system response is supporting the mother to enhance strategies for her and her children's safety and wellbeing, and to ensure perpetrator accountability (Mandel 2013; Humphreys 2007). Efforts to improve the safety and wellbeing of the mother will benefit her children and are likely to reduce the risks to both the mother and the children.

Currently, Child Protection has limited engagement with the perpetrator of violence, particularly if he is not living in the home. However, Child Protection workers could increase efforts to engage the perpetrator of violence, to assist him to address his violence via a men's behaviour change program, as well as other programs to address homelessness, mental illness and substance abuse. They could provide information to the perpetrator about the impact of his behaviour on his children. Child Protection could work with other services, such as police and courts, to assess the dangerousness of the perpetrator and to ensure he is held accountable for his violent behaviour.

⁵⁷ See, for example, Mandel (2013) and Stanley & Humphreys (2014).

As discussed, Child Protection could also actively assist women to access the courts, including the family court. Child Protection could provide information to the family court about risks to the mother and child, and assist the mother to seek a no-contact order, or to relocate in cases of very high risk of lethal violence.

Children at risk: Who is responsible for family violence risk assessment?

It is unclear who is responsible for undertaking family violence risk assessment for children in Victoria. As outlined earlier, it appears that the use of CRAF has been discretionary for Child Protection workers. Specialist family violence services could undertake risk assessments of children; however, family violence outreach services are not funded for specialist case management with child clients, and undertaking comprehensive risk assessment for all accompanying children is highly resource intensive.

In Victoria, specialist training and resources on working with children in the context of family violence often occurs as a one-off. For example, training on the use of the guide *Assessing Children and Young People Experiencing Family Violence: A practice guide for family violence practitioners* (Red Tree Consulting 2013) ran over a relatively short period.⁵⁸ Similarly, the *Practice Guidelines for Women and Children's Family Violence Counselling and Support Programs* (Greal et al 2008) was released in 2008 and training on its implementation ceased in 2010. The turnover of staff in the sector means that new workers may not be familiar with the guidelines and resources available to assist in their work with children. Consequently, there are currently workers in the field who are not familiar with either of these resources or the practices recommended in them.

Comprehensive family violence risk assessment requires highly skilled, specialised workers. In addition, it requires specialised knowledge of the needs and experiences of children who have been exposed to, or subjected to, abuse. Ideally, family violence risk assessment of children should be undertaken by specialist workers who have expertise in both family violence and working with children. Professional education and training in both family violence risk assessment and issues relating to children should be provided to those practitioners undertaking this work.

The need for filicide research to inform CRAF development

New research and knowledge about filicide in Australia and internationally has emerged since the development of CRAF. As discussed, there is a need for further developmental work to extend risk assessment frameworks to include information about potential risks for filicide. There is also a need for further research on filicide to increase our knowledge of this issue. The Vulnerable Children Inquiry report made the following recommendation:

'A National Study be undertaken to improve current knowledge and understanding of the causes of filicide and the behavioural signs preceding filicide. Such a study could be undertaken by a research body such as the Australian Institute of Criminology (AIC)' (Recommendation 52, Cummins et al 2012).

The Vulnerable Children Inquiry report states that such a study could draw on research such as that undertaken by DVRCV (Cummins et al 2012, p. 367). We support the recommendation for a national study of filicide. Currently, there are a number of limitations with the way the AIC collects and reports on filicide data (as outlined in our discussion paper, see Kirkwood 2012). In our view, a study of filicide must focus specifically on the role of family violence and parental separation. Existing international filicide research shows that these are key factors in filicide; however, few studies have

⁵⁸ In January 2013, the Australian Childhood Foundation (ACF), in partnership with No to Violence (NTV) and DVRCV, was funded by the DHS to deliver a training project to support the implementation of this DHS practice guide. The aim of the project was to increase the capacity of family violence practitioners in both women's and men's services to assess the needs of, and risks to, children, and to ensure the practice guide's integration within current agency practice in relation to the usage of the CRAF framework. The training was delivered over a period of several months.

provided detailed insights based on a large sample. In order to obtain the necessary insight, the study must include qualitative analysis to enable in-depth understanding of these factors and the impact on family members. Ideally, such a study would require access to police records, coronial files, relevant trial transcripts, child death reviews and—where possible—interviews with surviving family members.

The Vulnerable Children Inquiry report also points out that greater attention needs to be given to the potential to prevent filicide:

‘By analysing a number of cases, nationally and over a period of time, it may be possible to identify common factors and early warning signs that family law practitioners, medical practitioners and others might use to identify risks and help prevent such tragedies’ (Cummins et al 2012, p. 367).

IMPROVING RESPONSES TO CHILDREN EXPERIENCING FAMILY VIOLENCE

Time and time again, government and independent inquiries and reviews, including child death reviews and coronial inquests, point to the need to improve information sharing and collaboration between family violence services, police, state and federal courts, and Child Protection. Despite some efforts to address this situation, it remains a pressing issue. A shared understanding of family violence and its impact on children is lacking.

Providing effective responses to violence against women and their children requires professionals to have a high level of specialist skill. Professional education for all those working in the system is required, as is increased resourcing to ensure that workers have time to undertake the information sharing and collaboration work required.

To improve responses to women and children who experience family violence, services that contribute to safety and wellbeing, as well as resources such as housing, mental health services, and drug and alcohol services should be readily available. Perpetrators should be held accountable for violence, and should be encouraged to change their behaviour. While some progress has been made, the system remains substantially under resourced.

KEY POINTS

- Children are at risk of a range of harms from family violence whether or not they are the direct victims of the violence. Filicides in which children are killed in the context of violence against their mother are the extreme end of a continuum of harms against children.
- Links between family violence risks to mothers and risks to children are well documented; however, they are not effectively recognised and responded to in practice
- CRAF and other risk assessment frameworks and their implementation practices fail to account for risks to children in the context of family violence. Risk assessment practices in Victoria need to be reviewed and further developed to account for risks to children separate to those of their parent.
- Child Protection focuses on risks to children without adequately addressing risks to mothers, and related risks to children, in the context of family violence:
 - Child protection does not consistently undertake family violence risk assessment
 - there are significant barriers to women reporting family violence to Child Protection, including the recently-introduced ‘failure to protect’ legislation

- Children are vulnerable to falling through gaps in the service and legal system’s response to women and children affected by family violence
- There is a lack of funding for case management with children in specialist family violence services
- Family violence risk assessment and management with children requires specialised workers who are trained in risk assessment and in responding to children
- There are some useful resources, such as the DHS guide *Assessing Children and Young People Experiencing Family Violence: A practice guide for family violence practitioners* (Red Tree Consulting 2013); however, there is no ongoing training about these resources and there is a need for clear policies and practices for their application
- The Royal Commission should consider the findings and recommendations of existing inquiries, such as the national ALRC/NSWLRC (2010) inquiry, the VLRC Family Violence Laws review and the Protecting Victoria’s Vulnerable Children Inquiry.

RECOMMENDATIONS

4. DVRCV recommends the Victorian Government strengthen service system responses to children affected by family violence, by
 - 4.1. funding specialised professional education programs on working with children in the context of family violence, to promote a shared understanding of the causes and dynamics of family violence and its impacts on children, the links between risks to parents and risks to their children, skills in risk assessment and risk management with children, and responses that are culturally appropriate.
 - 4.2. mandating this training for Child Protection staff (including all levels of management), magistrates, court staff, police and all those working in the family violence sector
 - 4.3. improving collaboration and information sharing about the safety of child and adult victims of family violence, across services including the family law courts, Magistrates’ Courts, police, family violence services and Child Protection
 - 4.4. reviewing Child Protection practices in relation to family violence—including how Child Protection identifies family violence, practice responses and how these impact on the outcomes for children who have experienced family violence.
 - 4.5. requiring Child Protection workers to ensure family violence risk assessment is undertaken for children and their mothers affected by family violence.
 - 4.6. repealing the *Crimes Amendment (Protection of Children) Act 2014* (known as the ‘failure to protect’ legislation)
 - 4.7. reviewing the Common Risk Assessment Framework (CRAF) in relation to the development of a specific tool for assessing family violence risk for children (see recommendation 3.3.1).
 - 4.8. funding specialist family violence services to undertake case management with children.
 - 4.9. supporting further research on filicide in the context of family violence.

Addressing the abuse of technology by family violence perpetrators

BACKGROUND

The role of technology and its use by perpetrators to control, abuse and intimidate victims has become a rapidly-growing problem in the family violence field. Research shows that technology-facilitated abuse is now widespread in Victoria and elsewhere, and has a detrimental impact on the safety and mental health of victims. However legal and service responses are only beginning to acknowledge this as a serious problem.

Additional research and resourcing is urgently needed to develop effective responses.

DVRCV'S RESEARCH ON TECHNOLOGY-FACILITATED ABUSE

In 2013, DVRCV conducted research examining how technology is being used by perpetrators to stalk and abuse women, as well as how these technologies may be used to improve women's safety, such as by collecting evidence of intervention order breaches. This research, titled *SmartSafe*, is one of the few studies conducted internationally on technology-facilitated stalking and abuse in the context of family violence.

More recently, DVRCV has undertaken a national survey of technology-facilitated abuse drawing on the experience of family violence practitioners across Australia (in collaboration with Women's Legal Services NSW and WESNET) (see Woodlock 2015).

As a result of our research DVRCV has developed a number of resources.

- *SmartSafe: Family violence and mobile technology* is a training program to assist service providers to identify and address technology-facilitated abuse. This program has been delivered for several years.
- The Smartsafe website (www.smartsafe.org.au), launched in 2015, is a national online resource for victims of technology-facilitated abuse and practitioners. It includes legal guides for all states and territories, technology safety toolkits, how-to videos, advice and tip sheets.
- A smartphone app, which will be launched in 2015. It is designed to assist with collecting evidence for family violence intervention orders.

ISSUES, GAPS & CHALLENGES

DVRCV's 2013 *SmartSafe* project included a survey of 152 family violence practitioners and 46 victims in Victoria. It revealed how often and how easily technology—including phones, tablets, computers and social networking websites—is used to stalk and abuse women in the context of family violence. Respondents said women are being 'tethered' by technology.

Our research shows that technology provides perpetrators with easy, accessible, instantaneous and potentially more public methods to control, monitor and shame women. Technology can also make it more difficult to separate from an abusive partner. By using strategies such as constant text messaging and phone location or GPS tracking, a perpetrator can create a sense of omnipresence in his ex-partner's life, making her feel that she can never truly escape him. For example, one survey respondent reported:

'He would constantly text me to check up on me during our relationship. This behaviour escalated when we broke up. I would get over 100 abusive texts a day—I never felt free of him.'

Our research also found that perpetrators are using intimate photos and videos of women (obtained either with or without consent) to threaten women. Also known as 'sexting', perpetrators send these images or videos to women's friends, family and even their children, to humiliate and punish. Contrary to widespread belief that sexting is mainly occurring within a younger demographic, our research revealed that the average age of women experiencing this abuse was 35-years old.

The *SmartSafe* research found that technology-facilitated stalking has a significant impact on the mental health and wellbeing of victims, creating high anxiety and fear. It is often linked to other forms of family violence.

Our survey with victims also suggested that they fear not being believed and may not seek help for technology-facilitated stalking. When victims do seek legal protection by taking out an intervention order, it is not always effective in stopping the abuse. For example, one respondent reported:

'The harassment has continued, especially via online avenues, for years. It seems anything online is much more difficult for the police to prove and take to court. Seems to be not taken as seriously.'

Our national survey in 2015 supported these earlier findings. Practitioners across Australia reported that when women experience technology-facilitated abuse, the response from both police and courts is often inconsistent and unhelpful. Practitioners also identified that technology-facilitated abuse is making it more difficult to protect victims, and that services struggle to know how to advise them. Practitioners stated that the common advice that professionals offer to victims is to simply 'switch off' devices or social media accounts; however, doing so can be counter-productive and create greater isolation for the victim.

DVRCV is one of the few organisations in Australia that provides training on how to respond to technology-facilitated abuse, as well as providing consultation and resources. However, considering that this form of abuse is now widespread, the organisation is unable to keep up with demand. We regularly receive requests to provide training not only in Victoria, but also throughout Australia. We are often contacted by organisations seeking advice about how best to assist victims, and also by telecommunications companies, policy-makers and researchers for guidance on broader strategies and policies.⁵⁹

DVRCV has recently developed an online resource and a phone app that provides support and advice to victims and the community, but has no ongoing funding to maintain these. DVRCV's *SmartSafe* website (www.smartsafe.org.au) was funded by the Australian Communications Consumer Action Network (ACCAN) but this is not ongoing. Further resourcing is urgently needed in order to keep these resources up-to-date and responsive to emerging technologies, and in order to adequately provide advice and resources to the community on best practice responses to this pervasive problem.

⁵⁹ For example, in the last year DVRCV has been contacted by Telstra for advice on protecting women from smartphone abuse, by the Council of Australian Governments (COAG) for advice on interventions, and by the Australian Bureau of Statistics for advice on including technology-facilitated abuse in the national Personal Safety Survey.

RECOMMENDATIONS

5. DVRCV recommends the government invest in effective practice, policy and legal responses to address the use of technology as a tactic of abuse. This would include:
 - 5.1. Funding for a specialised technology advocacy and advice role, based in a statewide family violence organisation, which would:
 - 5.1.1. work with communities, agencies, and telecommunications and technology companies to address how ongoing and emerging technology impacts the safety, privacy, and accessibility rights of victims.
 - 5.1.2. develop training programs for service providers and legal professionals
 - 5.1.3. provide accessible, up-to-date information resources for victims of violence and professionals
 - 5.2. ensuring that technology-facilitated stalking and abuse is included in a review of the CRAF framework (see recommendation 3.3.6)
 - 5.3. ensuring that content regarding technology-facilitated stalking and abuse is included in any core family violence training programs in Victoria
 - 5.4. supporting further research on technology and abuse, to focus on:
 - 5.4.1. legal responses to technology-facilitated abuse
 - 5.4.2. the experiences of victims, including the mental health impacts of this abuse and the effectiveness of help-seeking strategies
 - 5.4.3. the links between technology-facilitated abuse and other forms of family violence
 - 5.4.4. best practice approaches in supporting victims of technology-facilitated abuse and stalking
 - 5.4.5. the impact of 'sexting' on victims of family violence.

Informing and resourcing the community

BACKGROUND

Targeted information resources—both in print and online—play a critical role in supporting victims and informing the community about how to respond to, and prevent, family violence.

However, the evidence suggests that many in the community do not have sufficient information about family violence and the support services available. For example, a recent national community attitudes survey found that just under half of the Australians surveyed would not know where to go to get help for family violence (VicHealth 2014). In fact, this survey showed there has been a decrease in the number of people who know where to get help since an earlier survey in 2009. Further, national research shows that relatively few women subjected to violence seek professional help, and instead they tend to talk to family and friends (ABS 2013).

Currently, information about family violence is not reaching the groups that need it most. For example, recent research by Women with Disabilities Victoria (WDV), DVRCV and the Victorian Office of Public Advocate highlighted that women with disabilities currently do not have adequate information about violence, about the service system, or about their rights (Woodlock et al 2014, p. 25).

Research on the needs of victims of violence,⁶⁰ as well as evaluation and feedback on resources produced by DVRCV, demonstrates that comprehensive information resources about family violence have a real impact. To be effective, these resources should include quotes and stories from those who have experienced violence. Victims report that good resources improve their ability to identify and respond to family violence, and increase their intention to seek help.⁶¹

To improve awareness and help-seeking, information such as posters, pamphlets and websites should be widely available and accessible to all members of the Victorian community. However, a strategic and comprehensive approach, as well as ongoing funding, is needed to ensure these resources are available, and remain current and up-to-date.

DVRCV'S ROLE AS VICTORIA'S RESOURCE PROVIDER

For over 20 years, DVRCV has been Victoria's premier provider of printed and online resources about family violence. DVRCV's comprehensive suite of printed community resources includes eight pamphlets, four booklets, posters, and five websites that have been designed and targeted for different community groups. These include prevention resources for young people, guides for victims of violence, and guides on how family and friends can support victims.⁶² In 2015, we will launch the *SmartSafe* website (www.smartsafe.org.au) and phone app, which aim to assist women subjected to technology-facilitated stalking and abuse.

⁶⁰ For example, see the 1998 Keys Young study *Against the Odds: How women survive domestic violence – The needs of women experiencing domestic violence who do not use domestic violence and related crisis service*, Partnerships Against Domestic Violence, Canberra

⁶¹ For example, see the 2005 independent evaluation report on DVRCV's *Bursting the Bubble* website for young people, by the Centre for Program Evaluation, University of Melbourne (www.dvrcv.org.au/knowledge-centre/our-publications/books-reports/young-peoples-views-designing-effective-websites).

⁶² See our list of publications attached, and our annual report.

DVRCV is a national leader in the provision of information on family violence. In 2013–2014, DVRCV’s suite of websites was visited over 300,000 times. Many of our resources have been reproduced in other states. Our expertise in information and resource development was recognised in 2013 when we received an international Avon Global Communications Award for our booklet for young men, *Sex, Love & Other Stuff*. We have also won two major Australian Violence Prevention Awards for our resources.⁶³

DVRCV, in partnership with Domestic Violence Victoria (DV Vic), was also responsible for developing *The Lookout* for family violence workers in Victoria (www.thelookout.org.au). *The Lookout* was funded by the Victorian Government and launched in December 2013.

ISSUES, GAPS & CHALLENGES

THE NEED FOR A COMPREHENSIVE INFORMATION STRATEGY FOR THE COMMUNITY

As mentioned above, there is a need for easily accessible information on services for those affected by family violence.

DVRCV is Victoria’s major producer of information resources and, to fulfil this role, partly relies on state government funding, as well as grants from philanthropic organisations and sales of printed publications. However, we are not funded to maintain publications once they are developed or printed, and we need to seek philanthropic funding to update, redesign and reprint our resources. In addition, we regularly receive requests for specific information translated in different community languages, or in formats that are accessible for people with disabilities, but have no resources to provide these. We know that our publications do not reach many of the organisations that are in a position to distribute them to women and children affected by family violence.

Victoria would benefit from a comprehensive and planned approach to information provision across the state. An example of a coordinated approach was the 1999 campaign organised by the Family Violence Networkers in conjunction with DVRCV and Women’s Health West. DVRCV developed resources which were then tested by focus groups in local regions with the assistance of the Networkers. The final product was a state-wide resource that could be adapted with regional information—such as listings of local services. Project funding enabled the production of a poster and the booklet *Is Someone You Know Being Abused? A guide for family and friends* (translated in 12 community languages). A project worker coordinated the production of materials, and the promotion and distribution across the state.⁶⁴ This approach meant that effective, tested information resources were available across the Victorian community, and could be used to support state-wide and local community education strategies. That resource continues to be one of the most popular and frequently requested resources from DVRCV; however, funding is needed to ensure it is reprinted and up-to-date.

Clearly, the internet and phone apps are now the mediums through which many in the community search for information, and these can be cost-effective as they can have a wide reach. However, there is also clear demand for printed brochures and posters to be available in Victoria. For example, in 2013–2014, DVRCV distributed more than 50,000 booklets, pamphlets and posters, and regularly received requests for new materials to be developed for specific audiences. Printed material remains important considering that disadvantaged members of the community may not have internet access. Printed products should be available in waiting rooms, courts and public spaces—such as shopping

⁶³ DVRCV was the major winner of the Australian Violence Prevention Award in 2005 (for our *Bursting the Bubble* website, for teenagers living with violence at home) and in 2001 (for our website and *Relationships* booklet for young people experiencing domestic violence).

⁶⁴ See Finucane & Finucane (2004) for more information.

centres, libraries and neighbourhood houses—to prompt members of the community to identify and understand family violence, and to seek support.

Resources should be developed in accessible formats, including in easy English,⁶⁵ and adapted and translated in community languages. Tailored resources specifically designed to address the needs and experiences of victims from marginalised communities are also essential. These should be developed in consultation with members of those communities.

In order to ensure that family violence information is accessible in these locations, funds must be allocated for production, and a state-wide promotion and distribution strategy implemented.

The Lookout website has the potential to be used more widely as a source of online information for women affected by family violence. While the site was originally developed as a resource for workers, it does have useful information on services across Victoria that can assist women experiencing violence. It could be expanded to include women's stories, information on safety planning and links to other sites with resources for women. It could be a first port of call for anyone in the community seeking information on family violence⁶⁶

INFORMING AND RESOURCING SERVICE PROVIDERS

An integrated family violence service system requires service providers to have easy access to:

- information about local, regional and state-wide services
- guides on key practice issues
- updated information on relevant laws and legal responses
- channels for communicating about current practice issues.

The Lookout website was funded by the Victorian Government as a 'one-stop shop' for this information across Victoria. It is intended to be the 'go to' site for workers in the family violence sector, reducing duplication of effort in developing and maintaining resources to keep workers up-to-date with sector developments and news, and supporting integrated service delivery.

It includes a 'community of practice' facility for family violence practitioners to share knowledge and contact with their peers. The community of practice has the potential to encourage discussion and shared learning, as well as debate and discussion about current issues. For example, it can play a valuable role in sharing learning and resources in the development of the Risk Assessment Management Panels (RAMPS).

The Lookout now houses the online e-CRAF learning, which can be used as a prerequisite for face-to-face training programs, as a resource in training, as a post-training refresher, and as a source of information for the broader community.

DVRCV welcomes the Government's recent decision to provide ongoing funding to maintain this cost-effective, comprehensive resource. This will enable regular updating of content, expansion and increased engagement with the community of practice, regular updates on research and practice issues, and information on government initiatives and changes in legislation. DVRCV considers that the site has the capacity to support the development of consistent good practice and shared understandings across the state. *The Lookout* can play an invaluable role in resourcing and supporting the roll-out of the RAMPs.

⁶⁵ Easy English is information that is designed to be easy to read, including simple text, pictures to explain text, and white space. See http://www.informationaccessgroup.com/what_is_easy_english.html

⁶⁶ The 1800RESPECT website also has valuable resources but these are targeted to a national audience, not state-specific.

RECOMMENDATIONS

6. DVRCV recommends the Victorian Government funds a comprehensive approach to information provision regarding family violence. This would include:
 - 6.1. Coordinating and funding a state-wide information distribution strategy to ensure that materials on family violence—including resources in community languages and in accessible formats—are developed and made widely available in a range of public settings
 - 6.2. Promoting *The Lookout* website as an online source of information for the community on services and resources available, and as a strategy to support the development of an integrated service system in Victoria.

Supporting community-based family violence research

BACKGROUND

Research is a vital element in furthering our understanding of family violence, improving practice responses and identifying effective approaches to intervention and prevention.

Specialist women's community organisations have long been at the forefront of developing these key understandings through practice based-knowledge and research. While often unacknowledged, this research has not only contributed to current theoretical understandings of family violence, but has also directly influenced policy and practice.

As the Victorian Government's submission to the Royal Commission notes, the community sector 'remains a principal participant in Victoria's family violence system' and community-led solutions are fundamental (Victorian Government 2015). However, more needs to be done to ensure community organisations can contribute to and access the evidence base on family violence.

Additional resourcing must be provided to enhance the capacity of community organisations, such as DVRCV, to undertake research in family violence. This will help ensure research in the area of family violence produces practical, accessible and relevant outcomes.

DVRCV'S RESEARCH IN FAMILY VIOLENCE

DVRCV has a 20-year history of undertaking research that has directly contributed to improvements in practice, policy and law in Victoria. Our most recent projects have focused on:

- filicide (the killing of children by parents)
- how technology is being used in stalking and family violence
- violence against women with disabilities (in partnership with Women with Disabilities Victoria and the Office of the Public Advocate)
- legal responses to domestic homicide (with Monash University).

Despite the fact that DVRCV currently has only a very small research unit and limited capacity, the research produced by the organisation has been accessible and widely regarded, and has had a significant impact on policy and practice in Victoria.

As a community organisation in the family violence sector, DVRCV and other specialist family violence services are well placed to identify emerging issues which need further research. An understanding of, and connection to, the community sector is also important to enhance the impact and implementation of research evidence.

DVRCV is Victoria's major family violence training and resource provider. This means that we have been able to directly incorporate the findings from our research projects in our education programs for professionals and to use our findings to create new resources for the community and victims of violence. For example, this year we were approached by the Judicial College of Victoria to present training at the Magistrates' Conference on identifying risks to children in the context of family violence, based on our research on filicide. In addition, DVRCV has developed a website, phone app and brochure to improve the safety of victims of violence (see www.smartsafe.org.au), as well as a

training program for professionals, that draws on our research about technology-facilitated violence. Our research on domestic homicide contributed to reforms in 2014 to the Victorian *Crimes Act 1958*.

These examples demonstrate the value of research being undertaken by a statewide community resource and training organisation such as DVRCV, enabling knowledge to be directly transferred into practice.

In addition, DVRCV produces a bi-annual magazine, *DVRCV Advocate*. This comprehensive magazine provides practitioners in the family violence and community sector with up-to-date information about the latest research findings relevant to practice. Many Victorian community organisations undertake small-scale research projects and evaluations of pilot programs, and this information is critical to building best practice and policy reform. *DVRCV Advocate* magazine is a useful avenue for local Victorian community organisations to publish and share learnings from their research projects or pilot programs. The website *The Lookout*, managed by DVRCV and Domestic Violence Victoria, and funded by DHS is also a key channel through which family violence organisations can share research evidence.

ISSUES, GAPS & CHALLENGES

BARRIERS TO KNOWLEDGE TRANSLATION

Knowledge translation, in which the learnings from research can be transformed into action or practice, is essential for achieving social change. However, this is not always easy to achieve and much academic research struggles to bridge the gap between research and practice. The problem of translating research into practice in the area of family violence was highlighted in a 2015 paper developed for Australia's National Research Organisation for Women's Safety (ANROWS) (see Parenting Research Centre 2015). The authors noted that often researchers use 'passive knowledge dissemination' strategies, such as publication in journals, and argued that this is not a sufficient strategy, noting that 'knowledge will not be automatically used simply because it is available'. Further, it states, 'Integrating evidence into policy and practice has proven difficult. Strategies are needed to incorporate research findings into policy and practice to achieve change'.

Academic research is published in journals that most community-based practitioners responding to family violence do not have access to or do not read.⁶⁷ It is also the case that many policy makers and journalists do not read academic journals.

The defunding of the Australian Domestic & Family Violence Clearinghouse has compounded this problem for the family violence sector. A very useful function of the Clearinghouse was that it provided access to journal articles.⁶⁸ Further, the Australian Domestic & Family Violence Clearinghouse provided issue papers and literature summaries that were designed to be short and accessible for busy direct service practitioners in the family violence field. With the demise of the Clearinghouse, these papers are no longer produced.

The establishment of ANROWS has provided a strong leadership role in family violence research, and a comprehensive national research program. ANROWS encourages community organisations to participate in research grant applications, stating that it 'strongly encourages collaborative projects between organisations across academic institutions, NGOs and community organisations, as such projects help to build capacity for all those involved and assist in strengthening the link between researchers and communities'.⁶⁹

⁶⁷ A lack of access to research published in journals is particularly problematic for community organisations, which typically cannot afford expensive journal subscriptions.

⁶⁸ The new national research organisation, ANROWS, can only provide very limited access to academic journals.

⁶⁹ See www.anrows.org.au/research-program/grants/applying-for-grant

However, it can be difficult for community organisations to successfully partner with academic institutions, particularly as equal contributors. Community organisations are under-resourced compared to academic institutions. Community organisations also often have limited time and resources to contribute to research grant applications, and to support and manage participation in research grants. Moreover, the selection criteria for these highly competitive grants strongly favour academic institutions with existing track records in being awarded academic grants. Information sharing and collaboration can be difficult as academics and community workers may operate with different perspectives, approaches and motivations.

Service providers in the community sector regularly identify gaps in knowledge or emerging issues in practice and policy. However, community organisations lack the capacity to undertake research to explore these practice and policy issues. Although philanthropic grants can assist organisations to undertake small-scale research projects or program evaluations, the grants available are often small. Grant application processes take considerable time and resources, which can prevent under-resourced organisations from applying.

RESOURCES ARE NEEDED TO MEET INCREASED DEMAND

With increased research interest in the area of family violence, community organisations are regularly contacted by researchers seeking support for research projects or assistance in recruiting clients to participate in research. As Victoria's statewide resource centre, DVRCV's research expertise is in increasing demand. We regularly receive requests from academics, students and researchers hoping to partner in research studies, or seeking advice on research methodologies. In addition, we regularly receive requests to provide literature reviews or summaries of the research evidence relating to current policy and practice issues. The demand for these has increased since the demise of the Australian Domestic & Family Violence Clearinghouse.

There is also considerable interest in the research DVRCV has produced, and we are frequently contacted by journalists seeking interviews about our findings. We also receive requests to present papers at conferences.

However, DVRCV has only one effective full-time position dedicated to research. Due to limited funding and resources, DVRCV does not have the capacity to respond to many of these requests.

THE UNIQUE ROLE OF COMMUNITY ORGANISATIONS IN KNOWLEDGE TRANSLATION

The recent paper by the Parenting Research Centre found that 'educational interventions' (such as training) and 'patient-mediated interventions' (such as the provision of resources) are frequently-used knowledge translation and exchange (KTE) strategies (Parenting Research Centre 2015).

In Victoria, as the main provider of continuing professional education in family violence, DVRCV is well-placed to implement these KTE strategies. DVRCV is also one of the major providers of print and online resources directly targeting victims of violence and the broader community. Thus, we are in a unique position to develop research that can directly translate knowledge into relevant practical outcomes, such as tailored training programs for professionals, resources for victims of violence, and advocacy in policy and law. Being community based helps to ensure that the research work is guided by the needs of those experiencing violence, as well as service providers throughout the family violence and community sectors.

Through the *DVRCV Advocate* magazine and *The Lookout* website, we also play a key role in publishing and promoting research findings and evidence from studies undertaken by other family violence and community organisations.

Evidence shows that the general public is more likely to listen to, and believe, information about family violence if it is provided by frontline workers, and are less likely to listen to academic experts

on the topic (End Violence Against Women Coalition 2015). As public awareness of family violence increases, evidence-based research, grounded in the experiences of victims of violence and frontline practitioners is critical. Community organisations, able to translate research findings into practice and policy outcomes, through training programs or resources, play an important role. This role requires greater recognition and support.

RECOMMENDATIONS

7. DVRCV recommends the Victorian Government recognises the unique role of community organisations in family violence research. This would involve:
 - 7.1. Supporting community organisations to undertake research and to participate in research partnerships.
 - 7.2. Improving the dissemination of research evidence on family violence in Victoria, by funding a statewide community organisation to develop and publish issues papers and research summaries.

Improving legal responses to domestic homicides

BACKGROUND

Research shows domestic homicides are most often perpetrated by men against female partners, often in the context of family violence. It is therefore essential that legal responses to domestic homicides recognise family violence and address gender-based inequalities and attitudes.

The responses of the law, the judiciary and legal professionals involved in domestic homicide prosecutions are important, not only in relation to ensuring just responses to individuals involved in these killings, but also because they play a critical role in improving community understandings. Domestic homicides are widely reported in the media, and therefore responses to these homicides have the potential to influence community attitudes.

It is also clear that many in the community are concerned about the way in which Victoria's legal system responds to men who perpetrate domestic homicide. This was recently highlighted in the media in relation to men receiving manslaughter convictions in domestic homicide cases—for example, the deaths of Rekia O'Donnell, killed by her partner in 2013, and Kara Doyle, also killed by her partner in 2013.⁷⁰

DVRCV has extensive experience in researching Victorian legal responses to domestic homicides, and this expertise informs our submission to the Royal Commission into Family Violence. Our recent research in partnership with Monash University has identified that, despite reforms to homicide laws over the past decade in Victoria, police investigators, judges and legal practitioners continue to misunderstand the nature of family violence and the experiences of victims.

Further reforms to the law and legal procedures, and training for legal professionals to improve the recognition of family violence in intimate partner homicides, are urgently required.

DVRCV'S DOMESTIC HOMICIDE RESEARCH

Our submission is based on DVRCV's ongoing research and advocacy on responses to domestic homicides.

In 1994, DVRCV was part of the Women's Coalition Against Family Violence (WCAFV) which produced a ground-breaking book, *Blood on Whose Hands? The killing of women and children in domestic homicides*. The book brought together the stories of women and children who had been killed in domestic homicides in Victoria. The accounts demonstrated the failure of the police, legal and support services to recognise and respond to family violence, and to prevent further family violence deaths.

In 2013, in collaboration with Monash University, DVRCV produced the research report *Justice or Judgement? The impact of Victorian homicide law reforms on responses to women who kill intimate*

⁷⁰ See Herald Sun 14 May 2015 (www.heraldsun.com.au/news/law-order/families-of-rekiah-odonnell-and-kara-doyle-call-for-tougher-laws-for-abusive-men-who-kill-partners/story-fni0fee2-1227355697118). The article discusses the case of Rekia O'Donnell, who was killed in October 2013 by her boyfriend Nelson Lai, and the case of Kara Doyle, killed in 2013 by her partner Mehmet Torun. In May 2015, Nelson Lai was convicted of manslaughter, after arguing that he had been using the drug 'ice' and did not realise the gun he fired at Ms O'Donnell was loaded. A similar argument was used by Mehmet Torun, who was also convicted of manslaughter. In both cases, the families of the victims were reported as saying that the histories of abusive behaviour by the men had not been adequately recognised in the legal process.

partners funded by the Victorian Women’s Benevolent Trust.⁷¹ The research examined women defendants who had been convicted of killing an intimate partner since reforms to Victorian laws were introduced in 2005 (paper attached). Based on our findings, DVRCV, along with Monash University, the Federation of Community Legal Centres Victoria and the Victorian Women’s Trust, provided a joint submission in 2013 in response to the Department of Justice consultation paper *Defensive Homicide: Proposals for legislative reform*. This submission was supported by 13 other organisations (submission attached).

In 2014–2015, DVRCV has been continuing our *Legal Responses to Domestic Homicides* study, in partnership with Monash University. The current phase of this research has a focus on Victorian legal responses to men who kill in the context of sexual intimacy.⁷² This phase of our research is funded by the Legal Services Board Grants Program and the findings will be available in late 2015. This submission presents some of the preliminary findings of our research.

ISSUES, GAPS & CHALLENGES

DATA ON DOMESTIC HOMICIDES IN VICTORIA

Intimate partner homicides are most often perpetrated by men against female partners. The preliminary data from the DVRCV/Monash University study of homicides in the context of sexual intimacy in Victoria since 2005 shows a clearly gendered pattern. Of the 57 homicide convictions we have examined, the majority (80 per cent) were perpetrated by a male. National data supports this finding—for example, the most recent 13-year review of domestic/family homicides in Australia found that 77 per cent involved a male killing a female partner (Cussen & Bryant 2015a).

When women kill an intimate partner it is typically in response to violence. Women are far more likely than men to kill in order to protect themselves or their children from their partner’s violence (Polk 1994, Morgan 2002). The preliminary research by DVRCV/Monash University identifies that, of the 11 women defendants convicted of killing an intimate partner in Victoria between 2005–2014, almost all had been subjected to violence or abuse by the deceased.

Men who kill an intimate partner often have a history of perpetrating family violence. The forthcoming DVRCV/Monash University study of homicides in the context of sexual intimacy in Victoria since 2005 indicates that over half (58 per cent) of the male defendants had a history of perpetrating family violence against the deceased. In approximately one-quarter of those cases, there had been police intervention or a prior intervention order. Other research has also identified the relevance of prior family violence by the perpetrator of homicide.⁷³

When men kill an intimate partner, it is often in the context of separation. The preliminary findings of the DVRCV/Monash University study show that, in two-thirds of the cases of male defendants,

71 Kirkwood, D, McKenzie, M & Tyson D (2013) *Justice or Judgement? The impact of Victorian homicide law reforms on responses to women who kill intimate partners*, DVRCV, Melbourne (see attached)

72 The *Legal Responses to Domestic Homicides* project is an ongoing research collaboration between DVRCV and Monash University. It has examined intimate partner homicides that have occurred since the reforms to Victorian laws in 2005, up until 31 December 2014. Data has been sourced from Austlii’s online database of sentencing judgements, and media reports. The research is based on an analysis of the sentencing judgements in each of these cases, as well as a detailed analysis of plea and trial transcripts in selected cases. The findings of the first phase were published in the 2013 paper *Justice or Judgement? The impact of Victorian homicide law reforms on responses to women who kill intimate partners* by Kirkwood, McKenzie & Tyson, published by DVRCV. The findings of that study will also be published in a forthcoming article titled ‘Family Violence in Domestic Homicides: A case study of women who killed intimate partners post-legislative reform in Victoria, Australia’ in the international journal *Violence Against Women*, and as a chapter titled ‘The Effects of the 2005 Reforms on Legal Responses to Women Who Kill Intimate Partners’ in the forthcoming book *Homicide Law Reform in Victoria: Prospect and retrospect*, K. Fitz-Gibbon and A. Freiberg (eds) to be published by The Federation Press.

The findings of the second phase of the *Legal Responses to Domestic Homicide* research study, focusing on men who kill in the context of sexual intimacy, will be available in late 2015. This phase was funded by the Legal Services Board Grants Program. A project information sheet is attached.

73 For example, the most recent review of 13 years of homicide data in Australia found a history of family violence in 44 per cent of intimate partner homicides. See Cussen & Bryant (2015a) and VLRC (2003) p.29

separation or jealousy was a precipitating factor in the homicide. Separation was also identified as an important factor in domestic homicides by men in the earlier Victorian Law Reform Commission (VLRC 2003) study. The findings from these Victorian studies are supported by research from other states and internationally, which also highlight separation as a time of increased risk of fatal violence.⁷⁴

As identified by the VLRC (2003, p.29), 'In order for the law reform process to work most effectively, it should be informed by a clear understanding of the social problem that it is seeking to address'. The above data highlights that any reforms to law and legal responses to homicide in Victoria must take the following into account:

- domestic homicide is gendered—it is mainly perpetrated by men against female partners or ex-partners
- family violence by men against female partners is a key factor that contributes to domestic homicides perpetrated by both men and women
- men frequently kill their partners in the context of separation and control.

Legal responses must recognise the role that gender differences and inequalities play in domestic homicides, and must address gender biases. The law must also recognise the relevance of a history of perpetrating family violence by men who kill intimate partners. In domestic homicide cases, legal responses must affirm women's rights to leave a relationship and reject arguments that enable an accused man to argue that he 'lost control' or was 'provoked' because his partner was leaving.

THE NEED TO IMPROVE LEGAL RESPONSES TO DOMESTIC HOMICIDE

The following discussion draws on the findings of the ongoing research study by DVRCV and Monash University, as well as other studies.

Increase understandings of family violence among legal professionals

Misconceptions about family violence, including gendered stereotypes about victims, remain entrenched among legal professionals. The research by DVRCV and Monash University indicates that family violence and its impact is still not well recognised through legal responses to domestic homicide. In particular, there is a lack of understanding about how prior family violence may affect women's responses to abusive, intimidating or threatening behaviour. For example, the myth that victims can simply leave an abusive partner and the assumption that police and legal responses are effective remedies in stopping abuse continue to be expressed by legal professionals and members of the judiciary. There is a greater likelihood that physical violence will be recognised compared to other forms of family violence such as sexual assault, threats, and coercive and controlling behaviour, and little recognition of the cumulative impact of various forms of family violence.

Gender-based stereotypes continue to influence perceptions of what is a reasonable response to family violence. For women defendants who kill abusive partners, this lack of recognition of the impact of family violence makes it more difficult to successfully argue self-defence (Kirkwood, McKenzie & Tyson 2013).

For male defendants who kill intimate partners, prior abusive or controlling behaviour may not be recognised, particularly if they were not subject to criminal charges for this behaviour. For example, during sentencing, the killing may be described as 'out of character' despite a history of abusive behaviour towards the deceased.

⁷⁴ Separation is a key risk factor identified in the Victorian Risk Assessment and Risk Management Framework (CRAF), (Victorian Government Department of Human Services 2007)

Challenging attitudes about family violence within the culture of the criminal justice system and in the community will require extensive measures that go beyond legislative reform—including ongoing professional legal and community education. The need for family violence training was identified in 2004 by the VLRC (p.194); however, only limited progress appears to have been made. A major implication of the DVRCV/Monash University research is that there is a need for comprehensive family violence training for legal professionals, including prosecuting and defence counsel, judges, expert witnesses, and other legal professionals. This training should include discussion of common myths, the barriers to disclosing family violence and why women may not be able to leave an abusive relationship, and how family violence can contribute to a heightened fear of being seriously injured or killed. The training should also include the use of expert evidence on family violence and how this relates to the elements of homicide offences and defences.

Address barriers for Indigenous defendants

Research shows that Indigenous people are overrepresented as victims and perpetrators of homicides in Australia (Cussen & Bryant 2015b). Reflecting this reality, four of the 11 women defendants in the forthcoming DVRCV/ Monash University research study were Indigenous.

Stereotypes about battered women, combined with discriminatory attitudes towards Indigenous communities, can make it very difficult for Indigenous women who kill abusive partners to meet the threshold required to successfully claim self-defence (Stubbs & Tolmie 2008). Stubbs and Tolmie observed that Indigenous women ‘may be judged adversely against standards based on white, often middle-class stereotypes of women’s behaviour, and may be seen as not entitled to a particular defence or mitigation of sentence’ (2008, p.142). As a result, Indigenous women are more likely to feel pressured to plead guilty to lesser offences, rather than go to trial and risk a conviction for murder.

This was supported by the findings of the DVRCV/Monash University study. All of the Indigenous women identified in the study who killed intimate partners were convicted of manslaughter, primarily via a guilty plea. In three of the cases, an early plea to manslaughter was accepted by the Crown. In the case of Tracey Kerr, the prosecution charged her with murder, and her offer to plead guilty to manslaughter was rejected (*R v Kerr* [2014] VSC 374). Tracey Kerr and the deceased, who was an older white married man, had been having a sexual relationship for several months. Tracey Kerr argued during her trial that she killed in self-defence during a confrontation with the deceased after he attempted to sexually assault her. The defence argued that the deceased had been abusive towards Kerr during their relationship. The jury found her guilty of manslaughter.

Considering the over-representation of Indigenous people in criminal prosecutions, including the high proportion of Indigenous women defendants in domestic homicides in Victoria, training for legal professionals must include cultural awareness training.⁷⁵ This should address the experiences of Indigenous women in the context of high rates of family and sexual violence, and the additional barriers to reporting to police and accessing services.

Improve the use of family violence evidence provisions

Although Victoria’s family violence social context evidence provisions (s 322J of the *Crimes Act 1958*) are potentially valuable to assist juries to better understand family violence, there has been limited use of these provisions to date. The DVRCV/Monash University study found that the majority of the women who have killed intimate partners since the reforms claimed to have done so in response to family violence; however, the family violence evidence provisions have rarely been used. An exception is in the recent case of Angela Williams, who was convicted of defensive homicide in 2014 for killing her partner (*R v Williams* [2014] VSC 304). She gave evidence during her trial that her

⁷⁵ The need for cultural awareness training was a key recommendation made by the Aboriginal Family Violence Prevention and Legal Service Victoria in its 2010 submission to the ALRC and the NSWLRC (see p.382 and p.537)

partner had subjected her to abusive and controlling behaviour during their 23-year relationship. An academic with expertise in family violence provided social context evidence during her trial.⁷⁶ The only other case in which expert family violence evidence has been used is the case of Philip Bracken who was acquitted in February 2014 of killing his partner, after arguing that he did so in self-defence.⁷⁷ The recent use of expert evidence on family violence may provide an indication that this may be improving; however, our research suggests that the provision could be more widely and appropriately used in supporting women's claims to have acted in self-defence.

Though it appears that legal professionals may be starting to engage with these important provisions, further training is needed to ensure they are used appropriately.

In addition, the DVRCV/Monash University research shows that the family violence social context evidence provisions do not appear to be being used by the Crown when they are prosecuting a case in which it is the *accused* who has a history of perpetrating family violence. There should be an examination of whether there is scope for expert evidence to be adduced to provide context in trials where family violence is alleged to have been perpetrated by the accused.

DVRCV also recommends that section 322J of the *Crimes Act* be amended in line with the definition of family violence in the *Family Violence Protection Act 2008* (Vic), and information from the preamble be included regarding the gendered nature of family violence and the exploitation of power imbalances. Section 322J should include reference to family violence evidence-based risk factors that can indicate an increased risk of the victim being killed or seriously injured. This would provide a critical social context for understanding what may trigger a family violence victim's actions that result in the killing of the family violence perpetrator.

Expand the range of expert witnesses in family violence

The VLRC suggested that the range of individuals who can provide expert evidence on family violence should extend beyond psychologists and psychiatrists, to include counsellors, social workers, family violence workers and people who have a specific understanding of particular cultural communities (2004, pp.141-2, 180-88). However, the DVRCV/Monash University research has found that the potential envisioned by the VLRC s has not been realised. There is little indication that a broad range of experts with specific family violence training are being called upon by counsel.

We recommend the establishment of a panel of family violence experts who can be drawn on by counsel to provide evidence in homicide plea hearings and trials. Funding could be provided by government to a relevant organisation to develop a model and a panel of experts. It would be ideal if this organisation also facilitated ongoing training for these professionals.

Reconsider a partial defence

The offence/partial defence of defensive homicide was introduced by the Victorian Government in 2005. It was intended to act as a 'safety net' for women who kill to protect themselves from a partner's violence, but who are unable to demonstrate the objective reasonableness of their actions.

The DVRCV/Monash research shows that, to date, no woman defendant has successfully utilised self-defence. However, women have utilised defensive homicide. Since it was introduced, four women were convicted of defensive homicide after killing an abusive partner—two women pleaded guilty (*R v Black* [2011] VSC 152 and *R v Edwards* [2012] VSC 138), and two were convicted at trial (*R v Creamer* [2011] VSC 196 and *R v Williams* [2014] VSC 304). In this sense, the offence/partial defence was working as intended.

The case of Angela Williams who was sentenced in the Supreme Court in June 2014 for defensive homicide provides a clear example of the value of a partial defence (*R v Williams* (2014) VSC 304). In

⁷⁶ Angela Williams' case is also discussed later in this section.

⁷⁷ See <http://www.theage.com.au/victoria/forklift-driver-found-not-guilty-of-murdering-defacto-20140228-33qpe.html>

2008, Ms Williams killed Douglas Kally by hitting him multiple times with a pick-axe. She gave evidence that she had been the victim of repeated emotional, physical and sexual abuse during her relationship with Mr Kally. The killing occurred during a confrontation with Douglas Kally, in which she was pushed, punched and shouted at. The couple's children told the court that they had lived in fear of their father. However, Angela Williams was unsuccessful in arguing that she had reasonable grounds for her belief that she needed to act in self-defence. The jury found her not guilty of murder, but guilty of the alternative offence of defensive homicide. Without this 'halfway house' partial defence, Angela Williams may have been convicted of murder.

However, in 2014 defensive homicide was abolished by the Victorian Government through the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic). The abolition was primarily in response to community concern that men who kill other men were inappropriately relying on defensive homicide.⁷⁸

In response, DVRCV, Monash University, the Federation of Community Legal Centres Victoria and the Victorian Women's Trust argued against the abolition of defensive homicide in our submission to the Department of Justice in 2013. Our submission was supported 13 other organisations. We remain concerned that currently, without this partial defence, a woman who kills an abusive partner faces the 'all or nothing' choice in risking a murder conviction if she tries to argue that she killed an abusive partner in self-defence. A guilty plea to manslaughter may not be accepted in cases involving women who kill in response to family violence where there is evidence of an intention to kill.

Like other members of the community, jury members tend to have limited understandings of family violence, and as a result may not understand the actions of a victim of violence or why it may be difficult to leave an abusive relationship.⁷⁹ Even if additional measures are used in a trial to assist juries to understand family violence - such as jury directions or social context evidence - community attitudes are entrenched and difficult to shift.

The recent law reforms introduced in 2014 were intended to improve self-defence.⁸⁰ These may assist, but will not address all of the difficulties women may have in arguing self-defence. The DVRCV/Monash University research shows there are other reasons why women's self-defence claims are likely to be unsuccessful. These include entrenched gender biases and misconceptions about the nature and impact of family violence, and inadequate use of the family violence provisions under section 332J of the *Crimes Act*.

Until there is a better understanding of the complexities of family violence among legal professionals and the broader community, there remains a need for a partial defence that women defendants can raise as an alternative to the full defence of self-defence. It is important that there are a variety of defences available to adequately respond to the different circumstances in which both women and men kill, rather than aiming for a 'one-size-fits-all model'. We acknowledge that not all women who kill intimate partners do so in self-defence. However, a partial defence is an important measure that will assist in preventing a situation where a woman who kills in response to abuse is inappropriately convicted of murder.

It is over ten years since the last review of homicide defences by the Victorian Law Reform Commission (VLRC) in 2004. Following this extensive review, a comprehensive suite of reforms was introduced in 2005. In 2013 (and in 2010) there was a limited review of defensive homicide by the Victorian Department of Justice. As a result, in 2014, piecemeal reforms were introduced, including the abolition of defensive homicide, amendments to jury directions, and reforms to self-defence.

⁷⁸ See, for example, Department of Justice (2013) *Defensive Homicide: Proposals for Legislative Reform - Consultation Paper*

⁷⁹ For example, VicHealth's national survey of attitudes about family violence shows that victim-blaming attitudes remain strongly embedded in the Australian community - see VicHealth (2014) *Australians' attitudes to violence against women: findings from the 2013 National Community Attitudes towards Violence Against Women Survey (NCAS)*. Victorian Health Promotion Foundation (VicHealth), Melbourne. Available from: https://www.vichealth.vic.gov.au/~media/resourcecentre/publicationsandresources/pvaw/ncas/ncas-stakeholderreport_2014.ashx.

⁸⁰ See s322K Crimes Act 1958.

However, there has been no comprehensive review to assess whether the intentions of the original reforms have been realised.

The DVRCV/Monash research suggests that there is no evidence that the reforms since 2005 have been effective in improving self-defence for women who kill abusive partners. Considering this, we recommend that it is timely for the Victorian Law Reform Commission (VLRC) to undertake a review of defences to homicide relevant to family violence victims who kill, including the issue of re-introducing a partial defence, such as excessive self-defence. The need for such reviews to occur five years after provisions have been in force was identified by the Australian Law Reform Commission and the New South Wales Law Reform Commission (ALRC/NSWLRC) in 2010:

Such reviews should: (a) cover defences specific to victims of family violence as well as those of general application that may apply to victims of family violence; (b) cover both complete and partial defences; (c) be conducted as soon as practicable after the relevant provisions have been in force for five years; (d) include investigations of the following matters: (i) how the relevant defences are being used—including in charge negotiations—by whom, and with what results; and (ii) the impact of rules of evidence and sentencing laws and policies on the operation of defences; and (e) report publicly on their findings (Recommendation 14–2, p.55)

We strongly support the ALRC/NSWLRC's recommendation. This should include a comprehensive review of defences to homicide, including the possible reintroduction of a partial defence (such as excessive self-defence). A review by the VLRC could carefully consider the complex issue of how to prevent men who kill other men from inappropriately relying on such a partial defence.

Reduce 'overcharging' by prosecutors

In the 2013 DVRCV/Monash University research, all of the women who killed their intimate partners were charged with murder (Kirkwood et al 2013). In most cases, the Crown was willing to accept a plea of guilty to a lesser offence of manslaughter or defensive homicide. This situation has been described as one of women who kill intimate partners being 'overcharged' (New South Wales Select Committee on the Partial Defence of Provocation [NSWSCPDP] 2013 p.157). In some cases, where there are defensive elements or where the intent is less than is required for murder, manslaughter may be a more appropriate charge (NSWSCPDP 2013 p.166).

However, when women are facing a murder charge, they are under pressure to plead guilty to lesser offences rather than risking a murder conviction (NSWSCPDP 2013 p.166). This means that in cases where there may be good grounds on which to argue self-defence, the new provisions are not being adequately tested at trial.

This could be avoided if there was consultation between police and prosecutors about the most appropriate charge to lay (NSWSCPDP 2013 p.167). As noted by Stubbs and Tolmie, women defendants may be more willing to go to trial and argue self-defence if they are charged with a lesser offence, such as manslaughter (cited in NSWSCPDP 2013 p.167).

The ALRC/NSWLRC identified charging practices as one of the issues requiring review by states (2010 p.55). We support this recommendation. A review could consider introducing guidelines to assist Victorian prosecutors to determine the appropriate charge to lay against defendants in circumstances where there is a history of violence towards the defendant.

LIMIT THE USE OF PROVOCATION IN SENTENCING

Two-thirds of domestic homicides by male defendants in Victoria since 2005 have occurred in the context of separation, according to the preliminary findings of the DVRCV/Monash University research. These killings were often a response to sexual jealousy or to the female partner trying to leave the relationship. In several of these cases, the defence relied on psychological or psychiatric

evidence—such as a diagnosis of a depressive disorder by a forensic psychiatrist or psychologist—to explain why the defendant ‘lost control’ and killed in response to his partner’s desire to leave the relationship. This evidence was often raised by the defence in mitigation of sentence. The preliminary findings of the DVRCV/Monash University study show that, in some cases, the judge accepted these arguments. However, in other cases, the argument was rejected by the judge, who instead affirmed the rights of women to leave a relationship and emphasised the deterrent and denunciatory aspects of the sentence.

Psychological explanations for the behaviour of male defendants who ‘lose control’ and kill in the context of separation need to be viewed critically and carefully in the sentencing process. These killings should be understood in the light of the prevalence of separation killings of women by men, as well as the prevalence of community attitudes that justify male violence against women.

We support the argument of the Sentencing Advisory Council for the formulation of principles that govern the circumstances in which provocation should mitigate sentence (see Stewart & Freiberg 2009). In particular, these principles should make clear that ‘provocation should only mitigate an offender’s sentence if a reduction in the offender’s culpability for the offence is justified by the nature and degree of the provocation’ (Stewart & Freiberg 2009, p.93). As Stewart and Freiberg argue, ‘Conduct that arises out of the victim exercising his or her right to equality, such as the right to personal autonomy (including the right to form relationships, work and otherwise assert his or her independence), should not provide justification for an offender’s aggrievement’ (2009, p.94). The authors pointed out that ‘although the personal characteristics of an offender will generally be relevant to assessing the nature and degree of provocation and whether it justified the offender’s aggrievement, this assessment should be consistent with equality rights’ (2009, p.94).

Establish a specialist homicide list for courts

Considering that family violence is a factor in many homicides in Victoria, we recommend that family violence be declared a special area of expertise within homicide law. The need for court specialisation in family violence—for example, via specialised prosecutors and/or a specialised court list with dedicated judges—is also supported by the ALRC/NSWLRC’s national review of the legal response to family violence. The ALRC/NSWLRC argue that specialisation can operate to promote attitudinal change across the legal system, improve consistency and efficiency in the interpretation and application of laws, promote best practice, and can make the system more efficient as a whole (2010, p.34).

Acknowledging domestic homicide as an area of expertise would require judges and magistrates presiding over such cases to have particular training and expertise in this area, including an understanding of the gendered nature of family violence and domestic homicide. This specialisation could be achieved with the implementation of a domestic homicide unit within the Office of Public Prosecutions and a specialist Magistrates’ and Supreme Court domestic homicide list.

Further reform jury directions

The recent changes to the *Jury Directions Act 2013* allow defence counsel to request that the trial judge direct the jury on family violence. This is a valuable step in assisting juries to understand family violence. However, the reforms may only have a limited impact. The onus rests on the defence to request the judge to direct the jury on family violence, which relies on the defence being sufficiently aware of family violence and raising it at an early stage. Our research suggests that many legal professionals are not adequately aware of family violence and therefore may not request jury directions.

In addition, family violence is a relevant and important issue for juries to understand when the *accused* has a history of perpetrating abuse towards the deceased. An amendment that makes it

mandatory for the trial judge to direct the jury on family violence if it is *relevant to the facts in issue* may have a greater impact and should be considered.

Monitor homicide cases to review the impact of reforms

We recommend that the changes to the law that have been introduced in Victoria over the past ten years be monitored. This would help to identify whether law reforms are having the intended effect of improving the use of self-defence and reducing gender bias in the law. The need for regular reviews and monitoring by states and territories was also identified by the ALRC/NSWLRC (2010, recommendation 14-2).

Monitoring the implementation of reforms would involve collecting quantitative data on domestic homicides, the use of defences and outcomes in domestic homicide prosecutions. It should also involve an in-depth qualitative data analysis on how legal responses are operating in practice. Analysing legal cases, plea and trial transcripts and sentencing judgements takes considerable time and needs to be adequately resourced.

Currently in Victoria the cost of accessing plea hearing and trial transcripts is prohibitive. Transcripts are provided by the Victorian Government Reporting Service at a cost of over a dollar per page. Many transcripts are over a thousand pages long because homicide trials can be heard over a number of weeks. This means that the transcript of a single trial can cost between \$1000-2000. The costs may have been justified when copies were in printed format, however, they are now electronic files that can be emailed to researchers. Trials are public events and access to transcripts is vital for research and monitoring. We recommend that the Victorian Government make trial transcripts available free of charge, or at a substantially reduced cost.

The DVRCV/Monash University domestic homicide research team have established systems of case monitoring and analysis. Our current examination of domestic homicide cases from 2005–2014 has been funded by the Legal Services Board Grants Program and will be completed this year. The DVRCV/Monash University team is in a strong position to continue this monitoring and review, but would require continued resourcing to do so.

RECOMMENDATIONS

8. DVRCV recommends the Victorian Government work with the legal system to improve responses to domestic homicides, by:
 - 8.1. Ensuring any reforms to laws and legal responses are informed by an understanding of the different circumstances in which men and women kill
 - 8.2. Ensuring legal professionals - including prosecuting and defence counsel, judges, expert witnesses and others – have training on family violence and the use of expert family violence evidence.
 - 8.3. Ensuring training for legal professionals includes cultural awareness training, which addresses the overrepresentation of Indigenous people in criminal prosecutions, the experiences of Indigenous women in the context of high rates of family and sexual violence, and the additional barriers to reporting to police and accessing services.
 - 8.4. Examining the scope for expert social context evidence to be adduced to provide context in trials where family violence is alleged to have been perpetrated by the accused.
 - 8.5. Amending the family violence evidence provisions (s 322J) in line with definition of family violence in the *Family Violence Protection Act 2008* (Vic), including

information from the preamble about the gendered nature of family violence and reference to family violence evidence-based risk factors

- 8.6. Supporting the establishment of a panel of suitably trained and experienced experts who can provide family violence evidence in domestic homicide plea hearings and trials. This panel should include professionals such as social workers and community workers with extensive expertise in family violence.
- 8.7. Commissioning the VLRC to undertake a comprehensive review of defences to homicide relevant to family violence victims who kill, including the issue of reintroducing a partial defence, such as excessive self-defence.
- 8.8. Reviewing charging practices in domestic homicide prosecutions, and considering guidelines to assist Victorian prosecutors to determine the appropriate charge to lay against defendants in circumstances where there is a history of violence towards the defendant
- 8.9. Formulating principles that govern the circumstances in which provocation should mitigate sentence
- 8.10. Declaring family violence to be a special area of expertise within homicide law, for example, through the implementation of a domestic homicide unit within the Office of Public Prosecutions and a specialist Magistrates' and Supreme Court domestic homicide list
- 8.11. Amending the *Jury Directions Act* to make it mandatory for the trial judge to direct the jury on family violence if it is relevant to the facts in issue
- 8.12. Establishing a system to monitor the impact of changes in the law, to identify whether reforms are having the intended effects of improving the use of self-defence, improving recognition of family violence, and reducing gender bias in the law.
- 8.13. Making plea hearing and trial transcripts available free of cost from the Victorian Government Reporting Service for the purpose of research and monitoring.

Building effective strategies to prevent violence against women

BACKGROUND

Violence against women and children not only threatens the safety and damages the wellbeing of those affected, but it also has immense social and economic costs for the community. It is only by lowering the incidence of violence against women and children, by both preventing violence before it occurs, and responding effectively to existing violence, that the overall costs of violence to the economy will be reduced (National Council to Reduce Violence Against Women and their Children 2009). Prevention of violence is possible, and is essential for the social and economic advancement of Australia (National Council to Reduce Violence Against Women and their Children 2009).

While the family violence response sector has been funded by the government since the early 1980s, government funding for the primary prevention of violence against women has only been available in a meaningful way since 2007, when VicHealth released *Preventing Violence Before It Occurs: A framework for the primary prevention of violence against women*. This framework asserts that to prevent violence against women, we must address the underlying causes—unequal access to power and resources between men and women (or gender inequity), and rigid gender norms.

The Victorian Labor Government's ten-year prevention policy, *A Right to Respect: Victoria's plan to prevent violence against women 2010–2020*, and VicHealth's leadership in primary prevention, has supported Victoria to take a social determinants of health approach, which identifies that preventing violence 'upstream' will reduce the burden of violence on the community. At a national level, these efforts have been supported by the *National Plan to Prevent Violence Against Women and Their Children 2010–2022*.

Victoria has made considerable progress in developing evidence-based programs that prevent violence against women and children by challenging violence-supportive attitudes, norms and beliefs. The projects funded by VicHealth's *Respect, Responsibility and Equity* program are testament to this.⁸¹ Each of these projects was rigorously evaluated. Such projects have built upon the evidence base, detailing effective program models that promote gender equity and healthy relationships.

The projects highlighted the importance of whole-of-community models of primary prevention—that is, engaging gender equity projects in multiple settings within a community, rather than just targeting a single setting, such as a school. The evidence also demonstrated the importance of engaging mainstream sectors that have not traditionally regarded gender equity and prevention of violence against women as their business.

⁸¹ The projects were: DVRCV's Partners in Prevention network; the Working Together Against Violence project of Women's Health Victoria; the Baby Makes 3 project of Whitehorse Community Health; Maribyrnong Respect and Equity Project: Preventing Violence Against Women at Maribyrnong City Council; the Northern Interfaith Respectful Relationships project by Darebin City Council; and the Local Government Networking and Capacity Building Project by Darebin City Council and VicHealth.

Under the former Liberal Government a commitment to expanding the evidence base to prevent violence against women was described in *Victoria's Action Plan to Address Violence Against Women and Children 2012–2015*.⁸²

The future direction of primary prevention efforts remains a critical issue for the Victorian Government and requires strong leadership, vision and an ongoing commitment. There is now a need to reassess and plan for the further development of primary prevention work.

DVRCV'S ROLE IN PRIMARY PREVENTION

For more than twenty years, DVRCV has advocated for a whole-of-government approach to preventing violence against women and children, and has played a key role in the development of prevention policy and reform. In 2004, DVRCV published *101 Ways Great and Small to Prevent Family Violence*, a government-funded resource kit for community-based education projects to end family violence.⁸³ DVRCV participated in the VicHealth reference group for preventing violence against women, and the statewide advisory committee during the development of the Labor Government's ten-year prevention plan, *A Right to Respect: Victoria's plan to prevent violence against women 2010–2020*.

DVRCV's *Partners in Prevention (PiP) network* has also played a significant statewide leadership role over the past seven years. Established in 2007, PiP is a community of practice for respectful relationship educators, including primary and high school teachers, health promotion practitioners, local councils, academics, youth workers, and community organisations. Ongoing evaluation of the PiP program clearly indicates that it has been successful in building the professional capacity of the youth-focused primary prevention sector in Victoria. (The PiP program will be discussed in greater detail in later in this submission).

Some of DVRCV's other notable pieces of work in the primary prevention of violence against women include the following:

- ***Love: The good the bad and the ugly (2010)***: a website that was redeveloped from DVRCV's award winning website *When Love Hurts (1998)*. This website was a world-first—and many other organisations around the world used it as a model for their own sites for young people. It promoted respectful relationships and included a quiz on the warning signs of abuse, advice, and stories from young women.⁸⁴ The site was redeveloped in 2010 to include new material and video stories about the development of respectful relationships.
- ***Relationships: A booklet for young women (2000)***: written in consultation with students, teachers and community organisations, the booklet assisted young people to identify the differences between respectful and abusive relationships. The booklet continues to be widely distributed throughout secondary schools in Victoria and has been reproduced in other states.
- ***Sex, Love and Other Stuff: A booklet for young men (2011)***: this booklet on relationships, identity and sex was developed with, and for, young men and won a Global Avon Communications award in 2014.

⁸² Projects funded under this plan included: Respectful Relationship Education in Schools Project; DVRCV's Partners in Prevention; and the Prevention of Violence against Women and their Children in Culturally Linguistically Diverse Communities project.

⁸³ The kit *101 Ways Great and Small to Prevent Family Violence (2004)* had a focus on the work of Victoria's 30 Family Violence Prevention Networks, and documented a diversity of community-based prevention activities around Victoria. The kit also includes some notable projects conducted elsewhere in Australia and internationally.

⁸⁴ The site won the major 2001 Australian Violence Prevention award.

- ***Preventing violence against women –turning awareness into action*** (2014): an introductory one-day training session for specialist, mainstream or generalist services to assist workers, volunteers and community representatives to take an active role in preventing men's violence against women. Developed and delivered in partnership with No To Violence, the male family violence prevention association, this training explores opportunities to respond to, and prevent, violence along a continuum from primary prevention to death reviews, looking at essential knowledge, skills and attitudes required to underpin effective prevention work, including bystander action and work towards gender equity.
- ***Early Childhood Respectful Relationship Education (2015–16)***: a research project with the University of Melbourne's Graduate School of Education to pilot gender awareness and equity training across four early childhood centres.

ISSUES, CHALLENGES AND GAPS

THE NEED FOR STRATEGIC LEADERSHIP IN VICTORIA

As discussed, Victoria has made great progress in terms of developing an evidence-base for program that prevent violence against women and children. In recent years, however, Victoria's strategic leadership and vision for this work has waned. Many projects have come to an end when funding has ceased, or have been sustained at a minimal level.

The primary prevention of violence against women requires significant social change to address gender inequality. In order to move forward, there is a need for an overarching vision and commitment from government to address violence against women, and that commitment must be sustained through successive governments.

DVRCV recommends the state government develop a long-term strategic framework to address the primary prevention of violence against women that builds on successful past programs, such as *A Right to Respect: Victoria's plan to prevention violence against women 2010–2020*. This will require workforce development and the investment of resources in evaluated and effective primary prevention programs.

Since 2014 VicHealth has played an important role in resourcing some primary prevention work and supporting the development of best practice in Victoria. With VicHealth now moving away from this role it is unclear how this work might continue. Our Watch is now working in this area, however it primarily has a national rather than a state focus.

What is needed is a mechanism for co-ordinating all primary prevention work in Victoria. DVRCV recommends that an independent body, with extensive knowledge and expertise in the area of violence against women, be resourced to coordinate statewide efforts, and to also align primary prevention work with tertiary responses to violence against women.

Maintaining a gendered focus

To prevent violence against women, policy makers, practitioners and the broader community require a sound understanding of the determinants of violence against women and a critical gender lens. Without this knowledge, primary prevention efforts are at risk of being derailed.

For instance, the VicHealth national community attitudes survey in 2013 showed a 15 per cent decrease in the number of people who believed that 'men mainly or more often commit family violence', compared with the 1995 national survey (VicHealth 2014). Evidence shows that men are overwhelmingly the perpetrators of violence, and this must be recognised and understood by policy makers.

Specialist women’s and family violence organisations play a key role in ensuring a gendered approach to prevention. DVRCV recommends that the strategic framework be informed by women’s health and family violence organisations that have adequate experience in family violence and primary prevention work.

Ensuring consistency in prevention practice

Interest in primary prevention work is growing exponentially, with more and more sectors understanding that they have a role to play in the primary prevention of violence against women. Those involved in delivering programs include specialists whose core work is the primary prevention of violence against women, practitioners in mainstream agencies, and private consultants. There is now a broad range of practitioners from different backgrounds and levels of skill engaged in primary prevention of violence. While the increase in interest is very encouraging, having so many non-specialist individuals and mainstream organisations working in this area also presents a risk. Many individuals and organisations involved lack very basic understandings of violence against women and its underlying causes, and lack basic knowledge of frameworks for preventing violence against women. The content of some programs may not be evidence-based or reflective of best-practice.

This concern was discussed at a recent VicHealth primary prevention community of practice session, *‘Oops, that wasn’t one of our key messages’*. Specialist workers who attended this session noted that there is little consistency in the approach or messages being delivered, varying levels of knowledge about the gendered nature of violence, and a multitude of myths being reinforced in the name of primary prevention. For example, there is inconsistency about the definition of primary prevention, with some practitioners confusing *raising awareness* of family violence with *preventing it by addressing its underlying causes*. Recent community of practice sessions have identified a need to build practitioner skills in focusing ‘upstream’ towards primary prevention and gender equity.⁸⁵

For primary prevention in Victoria to be effective, a more consistent approach to program delivery is needed.

The minimum skills needed for primary prevention

DVRCV considers that professionals who engage in primary prevention initiatives—regardless of which setting they are in—should have a set of core skills and adhere to minimum standards, such as:⁸⁶

- an understanding of how family violence is linked to the broader problem of violence against women
- an understanding of the gendered nature, prevalence and impact of family violence
- an understanding of the common myths about family violence and skills in how to counter dominant myths
- an understanding of the difference between responding to family violence and preventing violence before it occurs
- an understanding of the underlying causes of family violence and violence against women⁸⁷

⁸⁵ Community of practice sessions have been facilitated by VicHealth, and by Women’s Health Victoria, and are attended by prevention specialists.

⁸⁶ This list, developed by DVRCV, draws on the VicHealth Framework, the *DVRCV Primary Prevention of Violence Against Women* training, the VicHealth Primary Prevention Short Course, and evaluations and learning drawn from several major primary prevention initiatives in Victoria.

⁸⁷ As identified in the 2007 paper by VicHealth *Preventing Violence Before it Occurs: A framework and background paper to guide the primary prevention of violence against women in Victoria*.

- an understanding of violence using the ecological model, which identifies the ways in which perpetration of violence is accepted or excused on a societal, community and individual level
- an understanding of methods for addressing the underlying causes of violence—such as gender lensing, gender equity projects, bystander action—and an ability to adapt these in their own professional setting through setting-specific initiatives
- an understanding of how to embed a whole-of-organisation model of prevention of violence against women
- skills in how to deliver key prevention messages in ways that are accessible, evidence-based and relevant to different settings
- skills in how to manage disclosures of violence by students and teachers⁸⁸
- skills in how to effectively evaluate primary prevention initiatives.

The need for a workforce development strategy

Prevention practitioners need training to develop these core skills and understandings. However, currently in Victoria, the training available for those who deliver primary prevention programs is inadequate; it is ad hoc, non-mandated and under-resourced. Many people who work on primary prevention initiatives have never attended basic primary prevention training.

The current training options available for primary prevention practitioners are limited. Recent training includes DVRCV's *Preventing Violence Against Women: turning awareness into action* training, delivered in 2013-2014, and the two-day VicHealth Short Course, which is due to conclude in 2015.

DVRCV recommends that a comprehensive training needs analysis be conducted to identify the needs of the primary prevention workforce, and training courses be made available to enable prevention practitioners to deliver best-practice primary prevention programs.

The suite of training required includes:

- enhanced primary prevention training for prevention specialists, as well as ongoing professional development
- basic introductory training for mainstream or non-specialist workers
- tailored training for specific settings.

Schools are a major setting through which prevention programs are now delivered. As discussed later in this section, many schools are now interested in respectful relationships education (RRE) programs. Training on implementing RRE programs in schools, and guidance on gender equity in the classroom and in the school workplace, is a priority.

Other examples of settings that have signalled that they are ready for specific training include the following:

- Local governments that are implementing Primary Prevention of Violence Against Women Action Plans (a growing number of local councils are adopting these)
- Maternal and Child Health Services, who are interested in training on ways to encourage equitable parenting between mothers and fathers, equitable housework, and ways to

⁸⁸ In the course of their work, primary prevention workers are regularly faced with individuals disclosing personal experiences of current or previous violence.

engage and support fathers in fulfilling their parenting responsibilities. This training could also include skilling staff to challenge gender stereotyping of children by parents.

Ideally, training would be delivered by a specialist family violence organisation.

Ongoing funding for community of practice sessions

In addition to training, primary prevention practitioners benefit from coming together and sharing ideas and learnings with each other with the guidance of a facilitator.

For the past few years, VicHealth has had the capacity to facilitate and fund community of practice sessions. These sessions have built creative and innovative specialised practice in Victoria by enabling practitioners to explore challenges they experience, to share tools and resources they have developed, and to have discussions about directions for the sector. Unfortunately, the funding to deliver these sessions has ended and VicHealth no longer has primary prevention as a priority area.

It is essential that funding be provided to a statewide community organisation to be able to continue community of practice sessions. DVRCV, Women's Health Victoria, or another feminist statewide organisation would be well placed to continue delivering this important component of professional development for specialist primary prevention practitioners.

ENGAGING CHILDREN AND YOUNG PEOPLE IN PREVENTION

From an early age, children are exposed to messages that can foster the development of violence-supportive attitudes and harmful gender stereotypes. Research has shown that children as young as two-and-a-half years learn about gender and sexist values, beliefs and attitudes and relationships (Blaise 2005; Davies 1989; MacNaughton 2000 & 2005; Robinson & Jones Diaz 2006). By the time they are in high school, young people have a degree of tolerance for violence-supportive attitudes (VicHealth 2014). For instance, a recent survey of young adults aged between 12–24 years commissioned by Our Watch found that one in six believe that 'women should know their place', and one in three believe that 'exerting control over someone is not a form of violence' (Our Watch 2015).

International research recognises that engaging with children and young people to help them to develop respectful and non-violent relationships creates a lasting positive impact on their relationships later in life (WHO Global Status Report on Violence Prevention 2014). Schools are ideal sites for prevention of family violence.

DVRCV's PiP network was developed to support the crucial role that schools and early childhood settings play in violence prevention. Since it was established in 2007, PiP has built the capacity of prevention professionals who work with young people by providing information, resources, peer support and networking.

The Victorian Government has also recognised the critical role that schools play and, since the mid-2000s, has focused on promoting good practice in respectful relationships and violence prevention education. This includes:

- The report *Respectful Relationship Education: Violence prevention and respectful relationships education in Victorian secondary schools*, released in 2009 by the Victorian Department of Education and Early Childhood Development (DEECD)
- The curriculum resource *Building Respectful Relationships: Stepping out against gender-based violence ('Stepping Out')* released in 2014 to support schools and educators to develop and deliver RRE as part of a whole-of-school approach. Stepping Out aims to educate young people about the impact of gender-based violence and focuses on the key themes of gender, respect, violence and power, and includes a set of teaching and learning

activities for delivery to students in Years 8 and 9. The package was released as an optional AusVELS curriculum for Victorian secondary schools.⁸⁹

RRE is a relatively new area that has grown steadily since the release of the DEECD report in 2009. It is DVRCV's view that Victoria should continue to invest in mainstreaming RRE across school settings, to encourage the development of consistent, measurable and coordinated RRE programs. In addition, for prevention to be effective, the government should ensure violence prevention programs are delivered early in children's lives.

Current gaps in the delivery of RRE in Victoria

The need for a whole-of-school approach

As identified by the government's (2009) *Respectful Relationship Education* report, a whole-of-school approach to respectful relationships is the single most important criterion for effective programs in schools (Flood et al 2009, p. 27). This approach is supported by a recent global review of school related gender-based violence programs, that recognises that the transformative potential of schools to empower individuals, to champion gender equality and challenge violence against women and girls depends on a school environment that is itself safe and violence free (Leach et al 2014). A whole-of-school approach operates across: curriculum; teaching and learning; school policy and practices; school culture, ethos and environment; and the relationship between school, home and the community.

While this is best practice, schools often do not rollout a whole-of-school approach to RRE. This can be due to a variety of reasons, some of which include insufficient resources, competing health programs (such as those on bullying and healthy eating), and limited understanding and awareness of the impact of gender on women's and men's experiences of violence.

At present, Our Watch has a *Respectful Relationships Education in Schools* program, piloting whole-of-school RRE programs across 28 Victorian schools.⁹⁰ The program aims to build on the evidence of a whole-of-school approach and to develop a toolkit for schools to implement this work. When the project findings are released, significant investment from government will be required to rollout the approach across participating Victorian schools.

Sustained efforts are needed to change school and community structures and practices that foster gender-based violence. In order for RRE to be effective, a whole-of-school approach is essential.

The need to support RRE curriculum initiatives

In 2014, DEECD released the *Building Respectful Relationships: Stepping out against gender-based violence* curriculum ('Stepping Out') as an optional AusVELS curriculum for Victorian secondary schools.

Since the release of the DEECD's 'Stepping Out' curriculum resource in 2014, there has been an increased interest in RRE, and schools are regularly contacting DVRCV's PiP coordinator for assistance in delivering the curriculum. PiP has collected anecdotal evidence that schools are confused by the resource and are frustrated by the limited professional development and training available to support their delivery of the curriculum. This demonstrates that, although there is a strong will to undertake primary prevention work with students, schools are not being adequately supported to deliver these programs.

⁸⁹ The AusVELS website provides the F–10 curriculum for Victorian government and Catholic schools and is available to all independent schools as a model and resource for the effective implementation of the Australian Curriculum. ausvels.vcaa.vic.edu.au

⁹⁰ The Our Watch Respectful Relationships Education in Schools program is funded by the Victorian Department of Health and Human Services under Victoria's Action Plan to Address Violence Against Women and Children 2012–2015. For further information, see www.ourwatch.org.au/What-We-Do-%281%29/Respectful-Relationships-Education-in-Schools-%28Vic

Inconsistent RRE program delivery

As noted earlier, there are now many individuals and organisations engaged in primary prevention. It is positive that many are motivated to do RRE work, and many of these programs make a valuable contribution to violence prevention.

In the RRE sector, a diverse range of providers are currently delivering programs in schools. Program providers have differing levels of education and skill, and some do not have formal education in the area of teaching. The delivery of RRE programs is unregulated and ad hoc.

DVRCV's PiP program coordinator and other PiP members have observed that some programs fail to meet best practice standards outlined in the DEECD's (2009) *Respectful Relationship Education* report. Content and messaging in these programs is inconsistent, rendering them potentially ineffective in preventing violence against women. For instance, research identifies that poorly designed school programs and projects that rely on brief training inputs have little positive impact on students' learning (DEECD 2009). Programs that focus on harm minimisation or protective behaviours can be counterproductive, and may reinforce cultural norms that women are responsible for protecting themselves from violence. Some program providers are unaware of how to respond to disclosures of violence, and lack knowledge of the services that are available to support students or teachers.

Anecdotal evidence suggests that practitioners and educators are uncertain about the meaning of RRE, and as a result programs often have different focuses. For instance, some programs are focused on raising awareness of oppressive gender roles but do not adequately address male violence against women. A clear definition of RRE that draws upon international literature would assist in guiding educators to deliver consistent programs.

DVRCV believes that these inconsistencies demonstrate a need for standardisation of RRE initiatives across Victoria. DVRCV believes that minimum standards for RRE delivery would ensure that programs are effective and based on shared understandings and current evidence.

As outlined in the previous section, primary prevention professionals require a core set of minimum skills. This should be supported by professional training on implementing RRE programs in schools, and guidance on gender equity in the classroom and in the school workplace.

Inadequate teacher training

In order to teach RRE, it is important that educators have a clear understanding of what it is. As Deb Ollis, a prominent researcher in the Australian field of sexuality education states:

'Professional learning is the key to change in this area. Teachers are often scared to address gender-based violence. A lot of violence happens in the home and teachers are often concerned with parental backlash. If you can work with teachers to build their confidence, to build their comfort, to increase their knowledge and also increase their help-seeking behaviour, that's how we get change' (PiP 2014, *'Getting started: gender-based violence prevention education in primary schools'*, Interview, p. 2)

Currently, university teaching degrees do not provide any formal education of the dynamics of gender-based violence and how to prevent it. To understand violence, teachers need to be educated in the social determinants of violence against women, drawing on VicHealth's (2007) *Preventing Violence Before It Occurs: A framework for the primary prevention of violence against women*. Currently, for teachers who want to find out more about gender-based violence and how to prevent it in school settings, there are limited training programs available. Without adequate training, teachers will not be confident to deliver the DEECD's respectful relationships curriculum.

The need to integrate emerging evidence

A key aspect of RRE is an understanding of misogyny and oppressive gender norms. These are played out in different ways through different generations.

For children and young people today, music videos, video games and pornography may contribute to violence-supportive attitudes and norms.⁹¹ This has an impact on young people and their relationships. For example, a large UK study found that pornography impacts on boys' sense of sexual entitlement: 'Boys believe they have absolute entitlement to sex any time, in any place, with whomever they wish ... [and] girls often feel that they have no alternative but to submit to boys demand, regardless of their own wishes' (Office of the Children's Commissioner 2013). Australian research by Flood & Pease (2006) has demonstrated a relationship between tolerance for physical or sexual violence and exposure to particular imagery in pornography, television, film, advertising and electronic games.

This research demonstrates a need to engage with young people, as well as the broader community, to critique these messages about men, women, violence and sex.

For RRE programs to be effective, they need to be regularly reviewed and updated to incorporate emerging issues in violence prevention.

A lack of early childhood interventions

Currently in Victoria, the focus of RRE is on students in secondary school. However, it is widely recognised that we need to intervene early in children's lives to prevent violence against women (Blaise 2005; Davies 1989; MacNaughton 2000 & 2005; Robinson & Jones Diaz 2006; MacNaughton et al 2008). Research shows that RRE is most effective when delivered from early childhood, which is the time when children form their gender identity, and should continue throughout primary and high school education.⁹²

Researchers argue that as children learn about gender, they learn sexist values, beliefs and attitudes and relationships (Blaise 2005; Davies 1989; MacNaughton 2000 & 2005; Robinson & Jones Diaz 2006). MacNaughton's research (2000) suggests that in Australia, by the age of four years, many children have sexist understandings of what it means to be male and female. In another study in 2004, the South Australian Department of Education and Children's Services (DECS) supported three- and four-year-olds to share their views on gender policy in early childhood services (MacNaughton et al 2004). Children reported that gender was a factor in what made kindergarten unfair and unsafe, with girls identifying gender harassment, and both girls and boys reporting on stereotypical performances of gender identity (MacNaughton et al 2008).

Members of DVRCV's PiP network regularly state their frustration that 'we are getting to them too late', and urge a greater focus on gender and respectful relationships education in primary school and, even earlier, in early childhood programs. Currently, RRE has minimal involvement in primary school and early childhood programs in Victoria. There are programs that have been developed such as the Centre for Non-Violence *Solving the Jigsaw* program and NAPCAN's *Growing Respect* program; however, there is little guidance on what constitutes good, age-appropriate practice.

⁹¹ See, for example, Crabbe (2015) and Coy (2014).

⁹² The need to focus on younger children was identified in the federal plan *Time for Action: The National Council's plan for Australia to reduce violence against women and their children 2009–2021*.

In response to this demand, DVRCV's PiP program established the 'primary subgroup' in 2014. This is a community of practice for those interested in or delivering RRE to young children. However, PiP is not currently resourced to continue to facilitate this subgroup.

DVRCV's PiP program is currently working in partnership with the University of Melbourne Graduate School of Education to pilot gender awareness and equity training across four early childhood centres in Victoria. The research project will generate new interdisciplinary knowledge relevant to practice and social policy, and will inform direction for further research and collaboration with government and community organisations. Again, DVRCV's participation is in-kind—DVRCV is not currently funded to undertake this work.

DVRCV recommends an early childhood and primary school RRE curriculum be developed, building on the research underpinning DEECD's (2009) *Respectful Relationship Education* report. This should be integrated into the long-term action plan for prevention in school settings.

Ensuring a coordinated network to support RRE

DVRCV's PiP network began in 2007 and was designed to meet the needs of those delivering RRE to young people. In Victoria, PiP is the central contact point for advice for schools and community workers, and regularly assists educators around their program content, methods, and how to engage with services to aid the delivery of their programs. PiP currently has over 600 members from education, community, health and public service sectors across Victoria and Australia.

PiP plays an important role in supporting Victorian primary prevention activities. It was extensively evaluated at the close of the pilot project in 2011.⁹³ The evaluation found that PiP had successfully created an active community of practice, which resulted in a range of important and tangible changes in the sector, including the following:

- practitioners are better able to situate their work within broader program (partnerships) and policy context
- practitioners are more aware of best practice principles and the importance of evaluation, and feel better equipped to meet these challenges
- PiP has provided a singular, established line of communication between practitioners and stakeholders within the sector, as well as between the sector and government
- PiP is well-known and used as a central hub for the sector for accessing news, information and resources.

DVRCV's Partners in Prevention (PiP) network

PiP supports teachers, community workers, youth workers and other professionals to align with good practice in respectful relationships education. PiP's role is to:

- resource a community of practice to bring professionals together
- create youth- and child-focused respectful relationship resources, such as websites and booklets
- provide professionals with access to national and international resources to support their work, via a monthly e-bulletin and a website
- facilitate regular network meetings to foster communication
- provide annual forums and other good practice events
- provide advice and consultation to support PiP members in running local programs.

⁹³ The findings were published in the evaluation report (2011) *Respect, Responsibility and Equality: Partners in Prevention 2008–2011*. Ongoing evaluations are provided to the Department of Health and Human Services (DHHS).

PiP won the VicHealth 'community development' award in 2009, and the Australian Institute of Criminology Violence Prevention Award Certificate of Merit in 2011.

To meet an increasing demand to include a focus on young children in prevention work, PiP has expanded to include educators in primary and early childhood settings. This is aligned with the evidence base, which recognises that preventing violence against women requires a life course approach, intervening from early childhood to early adulthood.

As PiP has grown in its statewide reach and range of services and projects, it is necessary to plan for the future of the program. Currently the demand for PiP resources, research, consultations and training is disproportionate to the program's resources. This disparity will continue with a growing focus on RRE. Since the release of DEECD's *Stepping Out Against Gender-Based Violence* resource in June 2014, there has been a 27 per cent increase in PiP membership, and a considerable growth in demand for support and information.

Currently PiP is funded by DHHS for one part-time position until June 2016. This level and length of funding is insufficient to develop the program to its full potential to support educators and program leaders across Victoria to implement good practice in RRE.

PiP requires adequate resources to meet demand as a central contact point for schools and program leaders. Ongoing funding will enable PiP to develop training, strengthen the community of practice, undertake research and develop resources for RRE programs. PiP is also well-placed to address the growing demand to develop early childhood and primary school prevention programs—for example, by organising forums for early childhood educators, and developing training packages for delivering RRE in early childhood and primary school settings.

RECOMMENDATIONS

9. DVRCV recommends the Victorian government develops a comprehensive, long-term approach to preventing violence against women, and ensures consistent practice in primary prevention. This would include:
 - 9.1. Developing a strategic framework to address primary prevention of violence against women, which builds on *A Right to Respect: Victoria's Plan to Prevention Violence against Women 2010-2020*. This should be developed with bipartisan support, and should be informed by family violence and women's health organisations.
 - 9.2. Establishing an independent body, with extensive knowledge and expertise in the area of violence against women, to coordinate statewide efforts and to align primary prevention work with tertiary responses to violence against women.
 - 9.3. Funding a workforce development strategy for the primary prevention sector. This would include:
 - 9.3.1. conducting a training needs analysis for the sector
 - 9.3.2. identifying minimum standards for primary prevention practitioners and for primary prevention initiatives
 - 9.3.3. developing a training strategy, which includes introductory prevention training offered on an ongoing basis; enhanced training for primary prevention specialists; training for teachers who deliver respectful relationship education (RRE) programs in schools; and tailored prevention training for other settings
 - 9.3.4. funding a specialist family violence organisation to deliver prevention training across the state
 - 9.3.5. funding to evaluate the effectiveness of primary prevention training, and to enable training to be updated regularly to incorporate new evidence
 - 9.3.6. resourcing regular community of practice sessions for primary prevention specialists.
 - 9.4. Developing an action plan for the delivery of respectful relationships education (RRE) across early childhood, primary and secondary school settings. This would include:
 - 9.4.1. expanding the PiP program to support the delivery of RRE in secondary schools and to enable it to fulfil its potential to support early childhood and primary school interventions
 - 9.4.2. funding research on effective prevention in early childhood and primary school settings, to build on the existing RRE evidence base
 - 9.4.3. developing curriculum for RRE in early childhood and primary school settings, based on the research
 - 9.4.4. providing training for educators and program providers to deliver age-appropriate programs in early childhood, primary school, and secondary school settings (including training to support the delivery of the 2014 *Building Respectful Relationships: Stepping Out Against Gender-Based Violence* curriculum).

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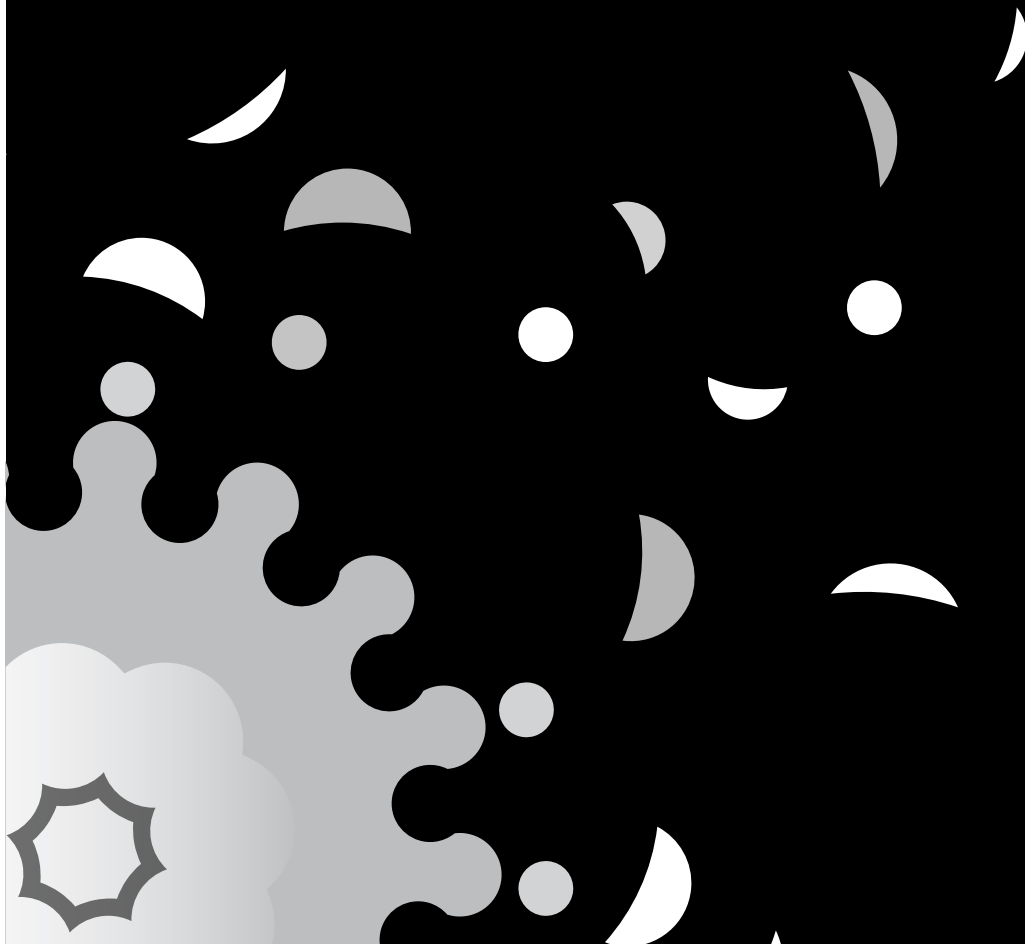
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Just Say Goodbye'

Parents who kill their children
in the context of separation



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Title note: 'Just say goodbye' is a quote from Arthur Freeman whose case is discussed in Chapter 4.

Just Say Goodbye'

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While it is important that we explore the issues raised in this paper, be aware that the material, particularly the case studies in chapters 4 and 5, is distressing.

CHAPTER 1

Introduction

In January 2009, Arthur Freeman stopped his car on the Westgate Bridge and threw his four-year-old daughter, Darcey, over the edge. She died later that day in hospital as a result of the injuries she received from the 60-metre fall. The Westgate Bridge is a highly public landmark in Melbourne and Arthur Freeman's actions, in the midst of early morning peak hour traffic, shocked the community. Widespread grief was felt for the loss of this child. In 2011, Arthur Freeman was convicted of his daughter's murder. Justice Coghlan, in sentencing Arthur Freeman, said 'you brought the broader community into this case in a way that has been rarely, if ever, seen before. It offends our collective conscience.'¹

Arthur Freeman's case transfixed the community and from the time of Darcey's death until the aftermath of the sentencing the media grappled with efforts to explain what happened. The case was described as 'inexplicable'.²

This discussion paper was prompted by the death of Darcey Freeman and other young children in Victoria, killed by their fathers. Those of us working in the family violence sector believe these deaths are not inexplicable. Too often they occur in the context of the parents' separation and are linked to violence against the mother. Often the target of these acts is not the children themselves; rather the intention is to harm the mother. This context is not well understood and has received limited attention by child homicide researchers.

The paper explores the issue of parents who kill their children in the context of separation, in an attempt to demystify this topic. In order to prevent these deaths it is necessary to understand why they happen, what factors precipitate them and how to effectively intervene. It argues that to understand these cases, it is crucial to examine the nature of the relationship between the parents.

¹ *R v Freeman* [2011] VSC 139 (para 17). Justice Coghlan's sentence was broadcast live from the court.

² For instance, see Carlyon & Anderson (2011), 'Explaining the inexplicable: How could Arthur Freeman kill Darcey?' *Herald Sun*, 29 March 2011.

FILICIDE: THE KILLING OF CHILDREN BY PARENTS

Approximately 10 per cent of homicides in Australia involve child victims and the overwhelming majority are killed by a parent (Dearden & Jones 2008). 'Parent' includes biological and non-biological or step-parents. The killing of a child by a parent is referred to as *filicide*. The term 'filicide' is used throughout this paper.

The picture of filicide that emerges from research in Australia is incomplete. The National Homicide Monitoring Program (NHMP) in Australia has found that 'the underlying motives behind incidents of filicide are difficult to explain' (Mouzos & Rushforth 2003).

In reviewing the national and international research literature on filicide, it became apparent that the research on filicide is limited. Filicide research has tended to be undertaken from a psychological perspective and has generally focused on either maternal or paternal filicide rather than comparing the two (Liem & Koenraad 2008). It is a general finding of filicide research that men and women kill children in different circumstances and for different reasons (Alder & Polk 2001). However, there is limited understanding of these gender differences (Bourget & Gange 2005).

This is a complex topic made more complicated by the often contradictory research findings. Differences result from studies undertaken in different jurisdictions, over different time periods, examining children from varying age groups, and obtaining information from different sources. Most studies use incompatible categories for the motives for filicide. A further significant limitation, particularly for the purpose of this paper, is the failure of most studies to investigate the existence and nature of prior family violence and the role of separation in filicides.

THE ROLE OF PARENTAL SEPARATION IN FILICIDES

Research on domestic homicide more broadly has shown that many women and children are killed as a result of men's violence in families. There has been extensive research on intimate partner homicide over recent decades. One of the key risk factors identified for adult victims is separation or ending the relationship. Separation from a partner has been shown to increase the risk of women being killed (Mouzos & Rushforth 2003).

Explanations for filicide tend to focus on child deaths that result from fatal child abuse, in which a child's death may not be intentional but results from abuse or mistreatment, as well as those that occur in the context of the mental illness of the perpetrator. Some filicide researchers have identified that children

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are also killed in situations where the parents are in the process of separating or have already done so. While separation is acknowledged as a factor, there is a gap in the filicide research regarding cases that occur in this context (Johnson 2005, Cavanagh et al. 2007). To address this gap, this discussion paper specifically focuses on the role of separation in filicides while also outlining filicide more broadly.

Some filicides that occur in response to separation from a partner are described in the literature as ‘retaliatory’ filicides. These cases are motivated by an intention to harm the other parent. The research outlined here shows that retaliatory filicides are primarily perpetrated by fathers, directed towards harming mothers. This discussion paper, while exploring gender differences in filicide generally, focuses on this particular subset of filicides that we identify as also being a form of violence against women.

The key questions addressed are: Why do parents kill their children in the context of separation? What role does family violence play?

The discussion paper draws on case examples, mainly from Victoria but also some from other Australian states. Information about the cases was primarily obtained from the media and trial judgments (when available).³ Sources of information about filicides are difficult to obtain – trial transcripts are prohibitively expensive and coronial records difficult to access. The cases outlined in the chapter on paternal filicides were selected because they occurred in the context of separation; they do not form a large or representative sample.

FAMILY VIOLENCE AND LINKS WITH SEPARATION

Family violence, as defined by the *Family Violence Protection Act Victoria (2008)*⁴, is behaviour towards a family member that includes:

- physical or sexual abuse
- emotional or psychological abuse
- economic abuse
- threats
- coercion
- behaviour that in any other way controls or dominates the family member and causes them to feel fear for their safety or wellbeing or that of another person
- behaviour that causes a child to hear or witness, or otherwise be exposed to, the effects of the above behaviours.

³ A number of cases outlined in Chapter 5 are drawn from previous PhD research undertaken by the author. The methodology of that study is discussed in Chapter 5.

⁴ See section 5 of the Act.

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The preamble to the *Family Violence Protection Act (2008)* specifically states that the Victorian Parliament recognises that features of family violence are:

- while anyone can be a victim or perpetrator of family violence, family violence is predominantly committed by men against women and children
- children exposed to the effects of family violence are particularly vulnerable
- exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing (p 2).

A significant feature of family violence is that separation, or attempts to end the relationship, is a key risk factor⁵ (Department of Victorian Communities 2007). Research on family violence shows that for many women violence persists after separation and often escalates⁶ (Hardesty & Chung 2006, Bagshaw et al. 2010). There is evidence that post-separation violence is often a continuation of violence that occurred during the relationship and also that a substantial proportion of such violence occurs for the first time after separation (Brownridge 2006). Women assaulted after separation describe more severe forms of violence compared with those assaulted during a current relationship (Hotton 2001).

DVRCV Discussion Papers

Domestic Violence Resource Centre Victoria (DVRCV) is an organisation which aims to prevent family violence. The purpose of DVRCV's Discussion Paper series is to explore family violence-related topics that are of current interest. The papers outline existing research and theories on the relevant topic, raise questions and highlight issues for further consideration.

While both men and women can perpetrate family violence, the focus of DVRCV's work, and this discussion paper, is violence against women and children, who are the majority of victims.⁷

Terminology

This paper uses the term 'family violence' as defined above. It is primarily used when describing violence towards partners and/or children. The terms 'domestic violence' and 'intimate partner violence' have been used interchangeably, and refer to violence and other controlling behaviour towards an intimate partner or ex-partner.⁸

⁵ Leaving a violent partner can also be a protective factor and clearly reduces future risk in many cases.

⁶ This has not been found to be the case for men who are victims of family violence (Bagshaw et al. 2010).

⁷ For instance see Diemer (2009), Mouzos & Makkai (2004) and ABS (2005).

⁸ When referring to other studies that have not defined their terms, we replicate the terms they use.

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OUTLINE OF THE DISCUSSION PAPER

Filicide is a form of family homicide. **Chapter 2** highlights the gendered patterns in family homicide. These patterns are then explored in relation to filicide specifically in **Chapter 3**, which outlines the national and international literature on filicide. Chapter 3 also includes analysis of filicide data obtained by DVRCV from the National Homicide Monitoring Program at the Australian Institute of Criminology.

Chapter 4 looks at fathers who kill their children in the context of separation. This chapter explores the issues of violence against the children's mother, anger in relation to separation and killing the children as a means to harm the mother.

Chapter 5 considers mothers who kill children in the context of separation. This chapter considers the role of mothers as the primary carers for children and the impact of family violence victimisation and mental illness in filicides by mothers.

Chapter 6 is the conclusion. This chapter explores the implications of the issues raised throughout, particularly for the prevention of 'retaliatory' filicides and for future research on this topic.

CHAPTER 2

Homicide in families: A gendered pattern

A large proportion of homicides in Australia are perpetrated within families. Most victims of family homicides are intimate partners. This chapter briefly outlines research on intimate partner homicide. The gendered pattern of intimate partner homicide is widely recognised. These deaths often represent the extreme end of a continuum of violence against a woman by her male partner (Websdale 1999). In some instances, the children are also killed in the same incident. This chapter will highlight key themes in intimate partner homicides that may assist us to better understand the killing of children by parents.

FAMILY HOMICIDE STATISTICS

Since 1990, the National Homicide Monitoring Program (NHMP) at the Australian Institute of Criminology (AIC) has collected data on homicides in Australia. This data shows that approximately 40 per cent of homicide victims are killed by a family member – an intimate partner, parent, child, sibling or other family member (Mouzos & Rushforth 2003).

The most recent annual report from the NHMP shows that, in 2007/08 in Australia, 60 per cent of domestic homicides were classified as intimate partner homicides (Virueda and Payne 2010).

Of the 134 family homicides in 2007–08:

- 60 per cent were the killing of an intimate partner
- 16 per cent were filicides⁹ – the killing of a child by a parent
- 13 per cent were parricides – where a parent is killed by their child

⁹ This includes 1 per cent of cases that were infanticides – defined by NHMP as the killing of a child under one year of age by their mother (Virueda and Payne 2010).

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- 6 per cent were the killing of other family members (such as aunts, grandparents etc)
- 4 per cent were the killing of siblings (Virueda and Payne 2010).

INTIMATE PARTNER HOMICIDE

The majority of the victims of intimate partner homicide are women. A 13-year review of family homicide in Australia found that approximately 75 per cent of intimate partner homicides are perpetrated by men against their female partners (Mouzos & Rushforth 2003). Indigenous women are overrepresented as victims of intimate partner homicide (Dearden & Jones 2008).

There has been a significant body of research into intimate partner homicides which this paper does not have space to cover. The key finding is that most women are killed by their partners in the context of a history of violence against them (WHO 2002, Mouzos & Houliaras 2006, Adams 2007).¹⁰ In his research on intimate partner homicide, Websdale found that male perpetrators had all used violence as a form of control against their female partners for a considerable period of time before the homicide (1999). In fact, most intimate partner homicides involve violence by the male partner toward the female partner, regardless of which partner is killed (Campbell et al. 2003a). Women who kill partners are often acting in self-defence, to protect themselves or their children from their male partner’s violence (Walker 1989, Browne et al. 1998, Victorian Law Reform Commission 2004, Jones 2009, van Wormer & Roberts 2009).

Polk’s groundbreaking work on men who kill in Victoria found that possessiveness and jealousy are common characteristics of male perpetrators of intimate partner homicide (Polk 1994). More recent studies report similar findings. Adams (2007) interviewed 31 men who killed their wives.¹¹ He found that most of the men were extremely jealous. They believed their partners were having affairs (even when there was evidence they were not) and constantly monitored their whereabouts and behaviour. Adams found that disdain for women was strongly evident, as was distrust. For most of the men who killed their partners, a sense of proprietary ownership was intertwined with jealous anger (Adams 2007). It has also been found that men who kill their partners frequently show a lack of remorse and empathy for the victim (Dobash & Dobash 2009).

¹⁰ It should be noted, however, that some women are at risk of death even where there has been no previous violence against them (Block 2009).

¹¹ As Adams could not interview their victims, he instead interviewed women who had survived serious life-threatening, but not fatal, violence from a partner, to get their perspective as well.

FAMILICIDE – KILLING PARTNERS AND CHILDREN

'Familicide' is the term used to describe the killing of a current or former intimate partner and one or more of their children. International studies show that approximately 93 per cent of familicides are perpetrated by men (Websdale 2010). Recent Australian data from the NHMP (outlined in the following chapter) shows that 82 per cent of homicides involving partners and children as victims were perpetrated by men. Many familicides involve the suicide of the perpetrator (Wilson, Daly & Daniele 1995).

Wilson, Daly and Daniele (1995) outline two types of familicide perpetrator. The first type is angry and accusatory with various grievances against their partners associated with a perception of her sexual infidelity and her desire to leave the relationship (these perpetrators were also likely to have subjected their partner to prior family violence). The second type is the despondent perpetrator (less likely to have been a family violence perpetrator). Both types of perpetrator had a sense of entitlement to kill their victims (Wilson, Daly & Daniele 1995).

A more recent study of familicide in the US by Websdale (2010) also identified two types of familicide perpetrator. He describes the first type as 'livid coercive' – they used violence, hostility and intimidation to control the activities of their partners and children and were violent to their partners before the familicide.

The second type is referred to as 'civil reputable'. The perpetrators in this category were more likely to repress their emotions. According to Websdale, the livid coercive types are generally from working-class backgrounds, while the civil reputable types are mostly middle class. They appear conformist and successful, but they kill themselves and their families to avoid facing disgrace arising from gambling, embezzlement, financial mismanagement or bankruptcy (Websdale 2010). Websdale found that most families affected by familicide were characterised by a traditional sexual division of labour, with the mothers being the primary carers for children and fathers the breadwinners, particularly in the civil reputable cases.

In reviewing the literature on familicide, Johnson¹² (2005) found that key explanations for men's motivations included the desire to retaliate for their wife leaving; separation causing depression which leads to suicide in which they include the children; and men's possessiveness and need to control their family (Johnson 2005).

¹² Johnson's work is discussed further in the following chapter.

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SEPARATION: A KEY RISK FACTOR

Separation is a significant risk factor in intimate partner homicides (Dobash & Dobash 2009). Forty per cent of men who killed their intimate partner in Australia were found to be motivated by the termination of a relationship or jealousy (Mouzos 1999).¹³ A recent US study found that half the women (51 per cent) killed by a male partner were killed as they were trying to leave and approximately half these women were leaving for the first time (Block 2009). One review of domestic homicides in Ontario, Canada, found that 80 per cent involved actual or pending separation (Ontario Domestic Violence Death Review Committee 2004). The risk of homicide appears to escalate most when the man realises his wife will not return to the relationship, rather than when she actually leaves (Johnson 2008). Female partners are typically killed in order to prevent them pursuing a relationship with someone else or in revenge for having done so (Victorian Law Reform Commission 2002).

A GENDERED PHENOMENON

This chapter has shown that research consistently demonstrates that there is a gendered pattern to homicides involving intimate partners. Women comprise the majority of victims, often killed in the context of prior violence against them and/or attempts to leave the relationship. These homicides are primarily by men and result from men's sense of proprietary ownership over their female partners. Men are also the vast majority of perpetrators of familicides involving partners and children. This paper will now turn to the issue of filicide and consider the research that indicates similarly gendered patterns exist when children are killed by their parents. It will explore ways to apply what we know about family violence and intimate partner homicide to our understanding of filicide.

¹³ It is likely that the true incidence of separation as a factor in intimate partner homicide is underestimated as it is often not known if the victim was planning to leave.

CHAPTER 3

What we know about filicide

Filicide appears to be a global phenomenon, although most research has focused on developed countries (Adinkrah 2003).¹⁴ The research suggests that filicide follows similar patterns throughout the western world. This chapter outlines national and international research on filicide. It describes the incidence, characteristics and motives in filicides. The first part outlines national filicide data from the Australian Institute of Criminology's (AIC) National Homicide Monitoring Program (NHMP). This data was prepared by the AIC specifically for DVRCV and at the time of writing was not otherwise publicly available.

The second part describes explanations for why filicide occurs and outlines various categories that have been developed for classifying cases according to motives and other precipitating factors. This chapter also explores what is known about gender differences between fathers and mothers who kill their children.

FILICIDE IN AUSTRALIA: RECENT DATA

When starting research on filicide, DVRCV requested data from the National Homicide Monitoring Program. The NHMP collects data on all homicides in Australia. The following information is drawn from the data provided by the NHMP for filicides, investigated by police in Australia over an 11-year period from 1997/8 to 2007/08.¹⁵

¹⁴ The term 'filicide' should not be confused with the term 'infanticide'. The term infanticide, although used in a number of different ways, refers to the homicide of children under the age of one year, and may encompass all perpetrators – parents and non-parents (Leveille et al 2007). In Victoria, as in some other jurisdictions, infanticide is also a legal defence to homicide, available to mothers who kill children under 12-months old, at a time when the balance of their mind was disturbed owing either to the effects of childbirth or of lactation (VLRC 2003).

¹⁵ Cautionary note: when dealing with small sample sizes and particularly small numbers for some variables, the difference of a few cases can make a large difference in proportions.

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While the focus of this discussion paper is on filicides that occur in the context of separation, it was not possible to determine which cases in the NHMP database involved the parents’ separation. The data therefore includes all types of filicide.

Data was provided in aggregated tables and analysed by DVRCV. The analysis was then reviewed by the AIC. Data tables relating to the analysis are provided in Appendix 1.

The information held in the NHMP database is primarily obtained from police offence reports, provided to the AIC by police departments in each state and territory in Australia annually. Some terms are defined by the AIC and where possible those definitions are provided.

Incidence of filicide

In the 11-year period July 1997 to June 2008, 468 children under 18 years of age were killed in a homicide incident in Australia.¹⁶ The majority of these children (62 per cent) were killed by their parents.

Approximately 27 children are killed by their parents¹⁷ each year in Australia. Between July 1997 and June 2008, there were 239 incidents involving a child killed by one or more of their parents¹⁸. These incidents involved a total of 291 child victims (in 39 incidents there were multiple child victims).

Gender of perpetrators

The vast majority of filicide incidents during the period 1997 to 2008 involved one parent (90 per cent) as a perpetrator.¹⁹ In the remaining 10 per cent of incidents, two parents were involved. Table 1 below shows that 110 filicide incidents were perpetrated by fathers/stepfathers²⁰ and 106 by mothers. Fathers/stepfathers were responsible for the death of 140 children and mothers were responsible for the death of 127 children. Fifty-two per cent of the child victims of filicide were killed by fathers/stepfathers and 48 per cent by mothers.

¹⁶ See Table A1 in Appendix 1.

¹⁷ ‘Parents’ includes ‘custodial’ and ‘non-custodial’ parents and ‘step’ parents. These terms are not defined on the police coding sheet. For the purposes of this paper, it is assumed that ‘custodial parent’ refers to a parent who resides with the child; ‘non-custodial parent’ refers to a parent who does not reside with the child and ‘step-parent’ refers to a non-biological parent who resides with the child.

¹⁸ See Table A2 in Appendix 1.

¹⁹ The data analysis provided in this chapter will primarily focus on the incidents involving one parent only, rather than incidents involving two parents, to enable gender comparisons in relation to perpetrators.

²⁰ The NHMP uses the term ‘step-parent’ which is also described elsewhere as ‘non-biological parent’ or ‘social parent’.

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TABLE 1: PERPETRATORS OF FILICIDE 1997–2008 – GENDER AND PARENTAL STATUS

Perpetrator	Incidents		Victims	
	No.	%	No.	%
Custodial mother	103	43	124	43
Non-custodial mother	3	1	3	1
Total mothers	106	44	127	44
Custodial father	57	23	74	25
Non-custodial father	13	5	22	8
Stepfather	40	17	44	15
Total fathers	110	46	140	48
Multiple parents*	23	10	24	8
Total	239	100	291	100

* When two parents are involved

As shown above, the NHMP data for 1997 to 2008 shows relatively equal proportions of mothers and fathers killing children. This has also been reported in previous Australian studies by Wallace (1986) and Alder and Polk (2001). Many international studies also report similar proportions of mothers and fathers (see for instance, Bourget et al. 2007, who reviewed numerous studies).

However, there is some discrepancy in filicide research in relation to the proportion of mothers and fathers who kill their children²¹ (Bourget & Gagne 2005). Previous Australian data reported by the AIC from the NHMP for the 13-year period from 1989 to 2002, found that fathers were responsible for the majority of filicides – 63 per cent fathers compared to 37 per cent mothers (Mouzos & Rushforth 2003)²². In contrast, some international studies report higher proportions of mothers than fathers killing children (for instance, a study in Finland by Putkonen et al. 2011 found 63 per cent of perpetrators were mothers and 36 per cent were fathers).

These findings are conflicting, but what is clear is that the proportion of female and male perpetrators of filicide is much closer than in any other type of homicide. Men comprise approximately 90 per cent of homicide perpetrators generally, with women more likely to be a victim than a perpetrator of homicide (Davies & Mouzos 2007). The killing of children outside the family is also predominantly a male crime (Mouzos 2000). When women do kill, the victim is often their child (Kirkwood 2003). This is perhaps not surprising given the prevalent role of

²¹ This may be the result of different research jurisdictions and methodologies, and because filicide is a relatively infrequent event, many studies have small sample sizes and therefore small differences in numbers from one study to the next can impact markedly on the figures given as percentages. The difficulties with comparing filicide studies are discussed in more detail later in this chapter.

²² It appears that children over the age of 18 were included which may account for the discrepancy (personal communication with AIC).

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women as the primary carers of children (Adinkrah 2003). Kauppi et al. (2010) note that the high incidence of maternal filicide is because neonaticides (the killing of a baby on the day it is born) are almost always perpetrated by mothers.²³

Parental status of perpetrator

Of the incidents in the NHMP data involving one parent, most (67 per cent) of these were identified by those recording the data as ‘custodial’ parents.²⁴ All the step-parents involved as perpetrators in the filicides were male.²⁵ This is consistent with previous research, which shows that mothers are more likely to be the biological parent of the children they kill than are fathers (Cavanagh et al. 2007). While the numbers of non-custodial parents who killed children are small (n16) they were more likely to be fathers (n13) than mothers (n3).

Age of child victims

The NHMP data shows that younger children are at a higher risk of filicide than older children, with 90 per cent being under the age of ten years at the time they were killed. Seventy-seven per cent were aged five and under. Children less than 12-months old were the most at risk, comprising one-third of the filicide victims.

Previous research shows that mothers are more likely to kill younger children than are fathers (Liem and Koenraadt 2008, Kauppi et al. 2010). In the present data mothers were slightly more likely than fathers to kill children under 12 months of age (52 per cent and 48 per cent respectively). Unexpectedly, fathers were slightly more likely than mothers to kill children aged one to five years. While the numbers are very small (n13), teenage children were much more likely to have been killed by fathers than mothers (85 per cent and 15 per cent respectively).²⁶ Alder and Polk (2001) found that as children approach teenage years, men are almost exclusively the perpetrators.

Gender of child victims

Most research shows that male and female children are killed at relatively equal rates by parents (Mouzos & Rushforth 2003). The present data shows similar proportions of male and female children killed by parents, with male children slightly more likely (57 per cent) to be the victims than female children (43 per cent).²⁷

²³ We were not able to obtain figures from the NHMP on the number of neonaticides that occurred during the period. This would be useful analysis for the AIC to undertake together with the gender breakdown of the perpetrators of neonaticide.

²⁴ See footnote 17.

²⁵ The vast majority of children killed by a step-parent are killed by a stepfather (Alder and Polk 2001).

²⁶ See Table A3 in Appendix 1.

²⁷ More male children were killed than female children during this period. However, we would need to know the gender breakdown of all the children in each family in order to determine if male children were more likely to be targeted as victims than female children.

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Fathers and mothers killed male and female children in similar proportions. Fifty-five per cent of the children killed by mothers were male and 60 per cent of the children killed by fathers were male.

Indigenous status

In the period 1997 to 2008, there were 24 incidents in which Indigenous children were killed by parents (in two incidents, two children were killed). Of the 24 incidents, 22 incidents involved Indigenous parents and two incidents involved non-Indigenous parents. There were a total of 24 Indigenous parents (in two incidents two Indigenous parents were involved). Of these, there were ten Indigenous mothers and 14 Indigenous fathers.

Cause of death

The most common apparent cause of death for child victims of filicide was beating (24 per cent). This was followed by strangulation (16 per cent), poisoning (including carbon monoxide poisoning in cars) (10 per cent), stabbing (10 per cent), shaking (9 per cent) and drowning (9 per cent).²⁸

The most common cause of death in children killed by fathers/stepfathers was beating (35 per cent), followed by strangulation (12 per cent), stabbing and shaking.²⁹ Examining stepfathers alone, the vast majority of the killings were by beating (43 per cent) and shaking (23 per cent). These methods are consistent with fatal abuse (where the death occurs as a result of child abuse and may not be intentional. This type of filicide will be discussed further in the following chapter). Previous research shows a high proportion of stepfathers among the perpetrators of fatal child abuse (Alder & Polk 2001).

The most common cause of death in children killed by mothers was strangulation (24 per cent) followed by poisoning, drowning and stabbing.³⁰ Only 9 per cent of the victims of filicides by mothers were killed by beating.

Multiple child victims

More fathers than mothers were responsible for multiple child deaths in the filicide incidents (58 per cent and 42 per cent respectively).³¹ However, the overall number of incidents involving multiple child victims was relatively small (39 incidents).

²⁸ See Table A4 in Appendix 1.

²⁹ See Table A4 in Appendix 1.

³⁰ See Table A4 in Appendix 1.

³¹ This is calculated as a percentage of the 38 incidents that involved one parent. In one other case both a male and female parent were involved in killing multiple children.

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Killing intimate partners

In 7 per cent of filicides, the perpetrator also killed their intimate partner. The majority (82 per cent) of these incidents of familicide were perpetrated by fathers/stepfathers.

Suicide of perpetrator

In 17 per cent of filicides in the NHMP data, the incident involved the suicide of the parent. Sixty per cent of the parents who committed suicide as part of a filicide were mothers (there were 24 mothers and 16 fathers who committed suicide). Parents who committed suicide were usually custodial parents (90 per cent). No step-parent committed suicide as part of a filicide.

WHY DO PARENTS KILL? UNDERSTANDING REASONS AND MOTIVES

The following section considers reasons, or motives, for why parents kill their children. It will outline the NHMP data on apparent motive and also what we know from the international literature. Before starting this part of the discussion, it is important to consider some of the methodological problems with determining why parents kill their children (some of these are discussed in more detail later in this chapter):

- there are a limited number of studies and small sample sizes (filicide being a relatively infrequent phenomenon)
- different studies use different methodologies and sources of data. For instance, some studies may exclude some types of cases such as infanticides or filicide-suicides or only consider biological parents rather than social (or step) parents.
- there is a lack of a standardised system for the classification of filicide
- there is considerable overlap in categories for motives (Bourget et al. 2007)
- information regarding motive is often procured by police and forensic psychiatrists (Stanton & Simpson 2002)
- there is an emphasis on mental illness for explaining filicide which may obscure the relevance of other contributing factors (Putkonen et al. 2009)
- most studies are quantitative (primarily statistical) and do not involve in-depth analysis of individual perpetrators’ circumstances and motives
- there are difficulties in determining motive because perpetrators may not provide explanations for their actions when they are facing legal consequences, or they may have committed suicide.

While determining motives for filicide is difficult, this work is critical to improve our understanding of filicide, as is aptly depicted in this quote from the NHMP Annual Report 2010.

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Assigning a single reason or motive to a homicide incident is difficult because the reasons, or lack thereof, may be varied and complicated. However, the objective of ascribing motivation is to better understand the factors or situations that are likely to have precipitated a homicide event (Virueda & Payne 2010:16).

Apparent motive for filicide

The NHMP records the apparent motive for filicides, provided by police based on their investigations. The data for the period 1997 to 2008 is shown in Table 2 below. There was 'no apparent motive' or 'unknown motive' for approximately half the filicides. A 'domestic argument' was the most common motive recorded (35 per cent). Four per cent of cases were recorded as the result of the 'termination of a relationship' and a further 4 per cent were classified as 'revenge'.

There are a number of difficulties with interpreting the NHMP data for 'apparent motive'. In addition to the kinds of limitations outlined above that apply to filicide research generally, there are some specific issues in relation to the NHMP data for this variable.

The NHMP database records data for all homicides in Australia. It was not designed specifically to collect data on filicide. The categories used to describe apparent motives are standard for all homicides, most of which involve adult victims. The killing of adults may be motivated by different factors to the killings of children. Categories such as 'revenge' and 'jealousy', when applied to homicides between adults are likely to involve behaviour directed towards the victim of the homicide. For instance, a perpetrator may be motivated by revenge towards a partner, friend or stranger. However, it is unclear if the data for filicide in the category of 'revenge' relates to revenge directed towards the child victim or towards the perpetrator's intimate partner.

It is likely that 'domestic argument' refers to an argument between the parents. However, this is unclear because 'domestic argument' is also used by the NHMP to refer to arguments between other family members. It is also possible that 'domestic argument' describes a preceding event rather than an actual motive or reason for the filicide. The data indicates 35 per cent of the filicides involved a domestic argument. Of the 102 filicide victims whose death was attributed to a domestic argument, 66 per cent were perpetrated by fathers/stepfathers and 23 per cent by mothers (11 per cent involved multiple parents). The precise nature of the 'domestic argument' is unclear, but it could be speculated that some of these cases would have involved domestic violence.

Another difficulty with interpreting the NHMP data, also related to the use of standard homicide categories, is that it does not include the key filicide categories identified in the international literature such as 'fatal child abuse', 'mental illness' and 'unwanted child' (these categories are outlined in the following

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section). Given these limitations, and the large proportion of filicides for which apparent motive is not known,³² the data relating to motive provides limited value for developing an understanding of the motives for filicide in Australia.

TABLE 2: APPARENT MOTIVE FOR KILLING OF CHILDREN BY A PARENT, 1997 TO 2008

Apparent motive	Total no. victims	% of victims	Mothers (n)	Fathers* (n)	Multiple parents (n)
No apparent motive	112	38	57	43	12
Argument of domestic nature	102	35	24	67	11
Unknown	31	11	23	8	0
Desertion/termination	12	4	8	4	0
Revenge	12	4	5	6	1
Apparently delusional	8	3	8	0	0
Money	4	1	1	3	0
Sexual gratification	3	1	0	3	0
Jealousy	2	1	0	2	0
Other argument	2	1	0	2	0
Prevent victim testimony	2	1	0	2	0
Drugs	1	0	1	0	0
Total	291	100	127	140	24

* Includes stepfathers

FILICIDE CATEGORIES

In the international filicide literature, researchers have developed classification systems with various categories to describe different types of filicide. Phillip Resnick, an American psychiatrist, was a pioneering filicide researcher who developed one of the first comprehensive categorisations of filicides, primarily based on apparent motive. Resnick (1969) devised the five categories below. He also developed a separate category for neonaticides (the killing of a newborn baby) (Resnick 1970).

- altruistic – parent kills to protect a child from real or imagined suffering
- acutely psychotic – parent kills the child under the influence of a severe mental illness or psychotic episode

³² The apparent motive is identified by police at the time the data request is made by the AIC. This may be prior to the finalisation of a case and the motive may not yet have been ascertained.

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- unwanted child
- accidental – unintentional deaths usually resulting from child maltreatment
- spouse revenge – child killed to punish partner.

Other filicide researchers have used different classification systems for filicide. For instance, Canadian researchers Bourget and Gagne (2005) devised a classification system that reflects whether the filicides were perpetrated with or without an intention to kill. They proposed the following five categories:

- mentally ill – actions associated with mental illness, psychosis, postpartum disturbance or other mental disturbance (a broader category than Resnick's 'acutely psychotic' category)
- fatal abuse – includes cases of child neglect and abuse (similar to Resnick's 'accidental' category)
- retaliatory – intentional killing as a result of anger or revenge (similar to Resnick's 'spouse revenge')
- mercy filicide – intentional killing when child has a severe and debilitating illness (not as broad as Resnick's 'altruistic' category)
- other/unknown – when there is insufficient information or cases with multiple contributing factors (Bourget and Gagne 2005).

The following sections will review the research relating to the key categories above. It will then consider some of the problems with these categories and explore other factors contributing to filicide that emerge from the filicide research literature.

Fatal abuse

Fatal child abuse results from acts of physical violence or neglect. Many filicide studies have found that fatal abuse is the largest category of filicide (Alder & Polk 2000, Irenyi & Horsfall 2009, Cavanagh et al. 2007, Hatters Friedman & Friedman 2010, Sidebotham et al. 2011). A study of child homicide in NSW from 1991 to 2005 found that fatal child abuse was the most common cause of death of child homicide victims, with approximately 60 per cent of the deaths attributed to this cause (Nielssen et al. 2009). The fatal assaults generally involved being punched, thrown or shaken to death.

In fatal abuse cases, the death of the child is usually not intended but is the result of excessive physical maltreatment (Liem & Koenraadt 2008) often in response to the child's behaviour, particularly their crying (Alder & Polk 2001). One study of child abuse homicides found that where a trigger was known, inconsolable crying and child non-compliance were the most common (Kajese et al. 2011). Fatal abuse filicides often result from unrealistic expectations about children's behaviour and generally involve the person who was responsible for caring for the child at the time (Alder & Polk 2001). Fatal abuse is linked to misattribution of malevolence to children (Stanton & Simpson 2002). Younger

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children are at a greater risk for fatal abuse, while older children are more at risk of intentional or purposeful filicide (Hatters Friedman et al. 2005).

Both men and women perpetrate fatal abuse filicides, but research shows that most fatal abuse filicides are perpetrated by men (Fujiwara et al. 2009, Liem & Koenraadt 2008).

Alder and Polk (2001) undertook a comprehensive study of child homicides in Victoria from 1985 to 1995. They found that approximately 75 per cent of fatal abuse filicides were perpetrated by men (Alder and Polk 2001:123). They also found that a larger proportion of the overall filicides by fathers are fatal assaults (58 per cent) than they are for mothers (23 per cent).³³

Stepfathers are more likely than biological fathers to kill in the context of fatal abuse (Cavanagh 2007). Alder and Polk found that over half the men who perpetrated fatal abuse filicides were stepfathers of the child (2001). A NSW study found that 67 per cent of the perpetrators of fatal abuse filicides were male and 33 per cent were female (Nielssen et al. 2009). In some fatal abuse filicides, mothers are co-accused with the father or stepfather (Nielssen et al. 2009). In some instances mothers may be implicated for failing to protect the child from their partner’s violence (Oberman and Meyer 2008).

Fujiwara et al. note that the ‘preponderance of men’ in the fatal abuse category is ‘striking, given the far greater time that women typically spend caring for infants (2009:214). Wilczynski found that men are more likely than women to kill when disciplining the child, out of jealousy or because they felt rejected by the child (1995b).

Links with intimate partner violence

A common feature of fatal abuse filicides by fathers is that the mother of the child is also a victim of the violence (Alder and Polk 2001). A UK study of fatal abuse filicides by fathers found that violence against the mother was occurring in 71 per cent of the cases (Cavanagh et al. 2007). This is consistent with research on child abuse generally, which shows that where there is abuse of children, it is very likely that there will also be violence against the mother (Grealy et al. 2008). It has also been found that when mothers perpetrate fatal abuse they are also often victims of their partner’s violence (Oberman & Meyer 2008).

Many fatal abuse cases involve a history of abusive behaviour towards the child and have therefore come to the attention of the child protection system before the death. In Victoria, the Victorian Child Death Review Committee (VCDRC) investigates and reports on deaths where the child has been involved

³³ See Table A5 in Appendix. The table also shows that filicides by mothers were most commonly neonaticides (27 per cent) and filicide-suicides (27 per cent).

with the child protection system at the time of their death.³⁴ The VCDRC identifies risk factors and makes recommendations for prevention of child deaths.³⁵ In 2009, they reported that the deaths of children they investigated involved families with high levels of ‘family violence’, substance misuse and mental illness (2009:34). Of the 28 child deaths reviewed by the VCDRC in 2010/11, ‘family violence’ was found to be a parental risk factor in 16 cases (57 per cent) (VCDRC 2011).

International child death reviews also report high levels of ‘domestic violence’. For instance, ‘serious case reviews’ (SCR) are carried out in the UK when a child dies (or is seriously injured) and where abuse and neglect are involved. A study of SCR from 2003 to 2005 found that where information was available, there was evidence that domestic violence was present in 66 per cent of the cases (Brandon et al. 2008).

Mental illness

Studies of filicide show that many perpetrators are mentally ill and that many had contact with mental health professionals before the filicide (Johnson 2005, Bourget et al. 2007). Common forms of mental illness identified in the literature are depressive disorders, schizophrenia or other forms of psychosis. More recently there has been a focus on personality disorders (Liem 2009, Kauppi et al. 2010). Theories regarding the psychological basis for filicide are abundant (Hatters Friedman et al. 2005).

Mental disorders are attributed to both male and female filicide perpetrators. However, many studies report higher rates of mental illness in female perpetrators. Resnick (1969) found 67 per cent of the 88 mothers who perpetrated filicide that he examined were psychotic, and that major depression and schizophrenia were more common in mothers than in fathers who perpetrate filicide. Bourget and Gagne (2002), who examined 27 maternal filicides in Quebec, found that 85 per cent of the mothers had a psychiatric motive and that most of them had received previous treatment for a depressive or psychotic disorder. Bourget and Gange (2005) later examined 77 cases of paternal filicide in Quebec and found that 62 per cent of fathers had a depressive or psychotic disorder at the time of the filicide.

Kauppi et al. (2010) examined two hundred filicides in Finland over a 25-year period. They found that 51 per cent of the maternal cases and 20 per cent of the paternal cases were diagnosed with psychosis or psychotic depression (Kauppi et al. 2010). A study in the Netherlands which looked at 161 perpetrators of attempted and completed filicides found that both maternal and paternal filicide

³⁴ Or up to three months before (VDCRV 2009).

³⁵ They advise the minister responsible for Community Services of the implications of their findings (Irenyi & Horsfall 2009).

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perpetrators were diagnosed with similar levels of depressive disorders but that more women were diagnosed with psychosis than men (Liem & Koenraadt 2008).

Australian research has found that 15 per cent of filicide offenders had a mental disorder immediately before, or at the time of, the incident (Mouzos & Rushforth 2003). In that research, a higher rate of mental illness was found in female filicide perpetrators, with a third experiencing mental illness. This proportion was also found in a NSW study by Lawrence and Fattore (2002).

Nielssen et al.’s NSW study of child homicide found that 17 per cent of the homicides were committed during a psychotic illness, mostly the first episode of psychosis. Most of these perpetrators were female (73 per cent) (Nielssen et al. 2009). By analysing psychiatric reports, the researchers found the symptom most commonly associated with child homicide was a persecutory delusion regarding the child, usually arising from hallucinations. For example, a belief the child was a supernatural threat that endangered the perpetrator.

Mothers who kill children as a result of postpartum depression and postpartum psychosis are likely to be included in the ‘mental illness’ category. Many studies of filicide also classify neonaticides, altruistic filicides and filicide-suicides in the category of mental illness. These types of filicide are described below. There are significant difficulties with the way in which mental illness is identified in filicide perpetrators, and considerable overlap in categories. This is discussed on page 29.

Neonaticide

Neonaticides are a distinct form of filicide that involves the killing of a newborn baby on the first day of life. Studies have found that between 18 per cent and 28 per cent of filicides involve neonaticides (Alder & Polk 2001, Putkonen et al. 2011, Kauppi et al. 2010). Neonaticides are perpetrated almost exclusively by young, unmarried women who did not want to have a baby in their circumstances (Resnick 1969; Meyer and Oberman 2001). Neonaticides are very rarely perpetrated by men (Hatters Friedman & Resnick 2007). Studies have found that, where gender of the neonaticide perpetrator is known, they are all women (for instance see Kauppi et al. 2010 and Alder & Polk 2001). Alder and Polk (2001) found that neonaticides comprise approximately 25 per cent of filicides by mothers in Victoria between 1985 and 1995 (see table A5 in Appendix).

Neonaticide has been described as an ignored pregnancy (Oberman & Meyer 2008) in which women deny they are pregnant and conceal the pregnancy from others (Liem & Koenraadt 2008). The women are often deeply fearful of the repercussions of a pregnancy so they do not acknowledge it to themselves (Alder and Polk 2001). The denial is so profound that it often attenuates the

biological manifestations of pregnancy³⁶ so those around the woman, including her GP, may not realise she is pregnant (Stanton & Simpson 2002). There is a high level of dissociation, particularly when the women give birth to the baby (Stanton & Simpson 2002). The majority of the women give birth on their own at home (Meyer & Oberman 2001). The baby is frequently killed by neglect or suffocation (Putkonen et al. 2007).

While the emphasis in most studies of neonaticide is on the pathology of the mother, it is also important to note that a lack of social support for the pregnant women has been found to be a typical characteristic of neonaticide (Putkonen et al. 2007). Putkonen et al. (2007) examined all cases of neonaticide in Finland from 1980 to 2000 and found that 88 per cent of the women reported the relationship with the father of the child to be unstable or nonexistent. They identified key risk factors as relatively young age, lack of support from the 'father-to-be' and dependency on others (Putkonen et al. 2007:21).

Altruistic

'Altruistic' filicides are characterised by the motive of protecting the child from real or imagined suffering (Stanton & Simpson 2002). This can include relieving the child of anticipated suffering caused by the parent's suicide (McKee 2006). In some instances, a child may have a severe or terminal illness and this type of filicide is referred to as 'mercy killing' by some researchers (D'Orban 1979, Bourget & Gagne 2005). In other cases the perception that the filicide is in the 'child's best interest' is seen to be delusional. These cases are also referred to as 'misguided love' (Kauppi et al. 2010).

Altruistic killings have been found to be primarily perpetrated by women (Wilczynski 1995, Stanton & Simpson 2002) and to be one of the most common motives for filicides by women (Resnick 1969, Hatters Friedman et al. 2005, Kauppi et al. 2010). The women in these cases are generally devoted to their children and strongly invested in being good mothers (Alder & Polk 2001). While others may view their perceptions as delusional, they see their children's death and their own as rational (Stanton & Simpson 2002). The mother may be depressed and struggling to provide for herself and the children and may believe they are all 'better off dead'. These types of filicide are often associated with the suicide of the perpetrator. The concept of 'altruistic' filicide is discussed further in Chapter 5.

Filicide-suicide

Filicides that include the suicide of the perpetrator are often included in the pathology or mental illness category (Bourget & Bradford 1990). The closer

³⁶ For instance, some women may not experience physiological aspects of pregnancy such as morning sickness and weight gain.

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the relationship between the victim and perpetrator in homicide, the greater the likelihood the perpetrator will commit suicide (Carrach & Grabosky 1998). NHMP reports (Mouzos 2002, 2003) show that a quarter of filicides in Australia involve the parent committing suicide³⁷ compared to 6 per cent of other homicides. The NHMP data from 1997 to 2008, provided for this project (as outlined above), shows that 17 per cent of filicidal parents suicide. Alder and Polk (2001) found that the number of cases in which parents killed children as part of a suicide, which often occurs in the context of separation, was almost equal to the number of cases that resulted from fatal child abuse.

Some international studies report that fathers are more likely to suicide after killing their children than mothers (for instance, see Hatters Friedman et al. 2005). In contrast, the data provided by NHMP (outlined earlier) shows that in Australia 60 per cent of filicide-suicides were by mothers, compared to 40 per cent by fathers.

There are some apparent gender differences in filicide-suicides. Mothers who kill their children and suicide are usually the primary caregiver and live with their children at the time, while fathers are rarely so (Hatters Friedman et al. 2005). A Canadian study that compared men and women who kill their children and suicide or attempt suicide found the men were more likely to kill their spouse as well, to kill more victims, to be going through a separation, to have committed violence against their partner, to have threatened suicide and to have threatened to kill their spouse (Leveillee et al. 2007).

In some filicide-suicides the motive is suicide and it is extended to include the children. These parents kill their children as part of a suicide plan, while others kill themselves on realisation of the gravity of their act (Hatters Friedman et al. 2005). Liem and Koenraadt argue that filicide-suicide by men is primarily homicidal and aimed at the spouse, while filicide-suicide by women is primarily suicidal and aimed ‘towards the self’ (2008:173). They found that suicidal men tend to present a pattern of anger and desperation, whereas suicidal women display a pattern of hopelessness and despair (Liem & Koenraadt 2008).

Retaliatory filicides

Retaliatory filicides³⁸ are associated with a specific intention to kill and are committed out of revenge towards an intimate partner (Bourget & Gagne 2005). This type of filicide is also described as ‘spouse revenge’ in which the children are used as tools to punish the partner.

³⁷ There have been similar findings in other jurisdictions; for example, a Canadian study found that 22 per cent of parents who kill their children also suicide (Bourget et al. 2007).

³⁸ While the filicide literature describes the killing of children that is directed towards hurting the other parent as ‘spouse revenge’ or ‘retaliatory’ filicide, it is important to recognize that people have a right to leave relationships and/or form new relationships and this in, and of itself, is not something that warrants retaliation or revenge.

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International research has consistently shown that retaliatory filicides are predominantly committed by men (Daly & Wilson, 1988, Bourget & Bradford 1990, Wilczynski 1997, Liem & Koenraadt 2008). After a comprehensive review of the existing international filicide literature, Bourget et al. found that fathers more often kill in retaliation than mothers and that ‘retaliating maternal filicide is rare’ (2007:5). A study of filicide in the Netherlands between 1953 and 2004 found a quarter of filicidal fathers had killed in retaliation towards a partner in relation to separation, compared to 5 per cent of mothers (Liem & Koenraadt 2008). A range of other studies have found that women rarely perpetrate retaliatory filicide (Resnick 1969, Bourget & Bradford 1990, Alder & Polk 2001, Meyer & Oberman 2001, McKee 2006).

Retaliatory filicide is sometimes referred to as the Medea complex. This refers to an ancient myth in which Medea sought revenge on her unfaithful husband, Jason, by killing their children. This concept is misleading given that it is rare for women to commit retaliatory killings of children in this way (Alder & Polk 2001).

There has been limited research into retaliatory filicides. This may partly be due to the apparently high number of such cases that involve the suicide of the perpetrator. Filicide-suicides are less studied than other types of filicide because of the difficulty in collecting information after the death of the perpetrator (Kauppi et al. 2010). These types of cases are also frequently attributed to mental illness and therefore other motives may not be considered by researchers.

There is little data regarding the proportion of filicides motivated by revenge/retaliation in Australia or regarding the proportion of these cases that are perpetrated by fathers and mothers.³⁹ Nielssen et al. (2009) examined 165 cases of child homicide in NSW between 1991 and 2005.⁴⁰ The study included all child homicides, not only those perpetrated by parents. Nielssen et al. (2009) modified a classification system used by the NSW Child Death Review Team (CDRT). They used the term ‘retaliatory killing’ to replace the category of ‘family breakdown’ (2009:7).

Nielssen et al.’s findings regarding retaliatory killing contradict the findings in the filicide research more generally. They reported that 41 per cent of retaliatory killings were by females; 59 per cent by males (Nielssen et al. 2009). However, the number of overall cases in this category was small (a total of 17: ten by males, seven by females). It should also be noted that the study examined all child homicides, including those perpetrated by non-parents such as strangers and acquaintances. Only 70 per cent of the perpetrators in the study were identified as parents. Therefore it is not clear what proportion of the

³⁹ See discussion on page 20 regarding the limitations with the NHMP data on this issue.

⁴⁰ The research drew on NSW Bureau of Crime Statistics, legal documents, media reports and medical reports.

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male and female perpetrators of retaliatory killings were parents. They included all filicide-suicides in this category because, even though they acknowledge that the motivation in these cases was ‘a matter of speculation’, they state that ‘retaliation seemed the most likely explanation’ (Nielsen et al. 2009).

Meyer & Oberman (2001) highlight an important point made by Scott (1973) in relation to determining retaliation as a motive in filicide: ‘It is extremely difficult to be sure that revenge was the real or only motivation; to find that there is currently a quarrel with the spouse is not sufficient reason for supposing that revenge is predominant’. Some researchers may make an assumption that a filicide is retaliatory because it occurs in the context of separation.

Retaliatory filicides are discussed further in the following chapter.

Problems with filicide categories and determining mental illness

The filicide categories, discussed above, are useful for painting a picture of some of the main forms of filicide. However, there are a number of problems with the existing classification systems. Some filicides may fit into more than one category (Bourget et al. 2007). For instance, some filicide perpetrators with a diagnosed mental illness may also have been motivated by retaliation or have killed their child as a result of fatal abuse.

Unfortunately, the criteria for particular categories are often unspecified, so it is difficult to know which cases are included in which categories. For instance, some researchers may include attempted suicides in the filicide-suicide category and others may only include suicides that resulted in the death of the perpetrator. It is also the case that allocating cases to categories is a subjective process, with researchers often making judgments based on very limited information (Sidebotham et al. 2011).

The mental illness category often appears to cover a broad range of behaviours. Many studies include depression and other types of mental illness such as schizophrenia and psychosis in the one category. If the filicide was accompanied by the suicide of the perpetrator, there appears to be an automatic assumption of mental illness as a causative factor for the filicide. For instance, one group of researchers state ‘psychic imbalance is per definition essential in the complex picture that leads a person to commit murder-suicide’ (Galta et al. 2010).

Many studies of filicide are undertaken by psychologists and psychiatrists who focus on mental illness. There are, however, significant difficulties with the way in which mental illness is identified in filicide perpetrators. Many diagnoses are made after the filicidal event, when the perpetrator’s state of mind is not necessarily indicative of what it was at the time of the event (Hatters Friedman et al. 2005). At this point, the perpetrator is faced with the reality of having killed their child and may be displaying signs of acute distress and mental illness as a consequence of what they have done. In many studies the

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diagnosis of mental illness is made retrospectively, sometimes many years later, based on interpretation of records obtained by others rather than by making an assessment of the person directly.

The focus on mental illness as an explanation for filicide has been questioned by some researchers. Putkonen et al. (2009) who compared filicide offenders with other homicide offenders, found that filicide offenders were not significantly more mentally disordered than other homicide offenders. However, they found that filicide perpetrators exhibited emotional problems and an inability to handle everyday difficulties (Putkonen et al. 2009).

A further study by Putkonen et al. (2011) examined perpetrators' motives in 124 filicides in Finland. They found a range of motives such as anger, economic issues, separation (pending or actual), mental overload, impulsive acts and perceived failure as a parent, that were not reflected in the existing research categories.

Focusing solely on mental illness and an individual's psychology may result in a failure to recognise societal factors that are more important contributors to violence (Bolen 2000). Significant contextual factors such as gender socialisation and inequality, become obscured (Schwartz et al. 2006). Theories about filicide that focus on individual factors such as depression or disrupted attachment (see for example, Johnson 2008)⁴¹ fail to explain why men perpetrate the majority of violent crime and homicide. They also shed little light on some of the gendered patterns in filicide such as why men are the primary perpetrators of retaliatory filicides.

OTHER FACTORS CONTRIBUTING TO FILICIDE

The key filicide categories, described above, are useful for outlining the circumstances and factors that have been found to contribute to filicide. Recently, a number of other contributing factors, outlined below, have also been identified as important to consider.

Intimate partner violence

Prior violence towards an intimate partner appears to be a factor in many filicides (for example, see Leveillee et al. 2007, Kauppi et al. 2010, Johnson 2005). Some

⁴¹ Johnson (2008, 2009) draws on the psychological concept of attachment to explain intimate partner homicide and filicide in the context of separation. Attachment theory posits that children whose parents were unpredictable and inconsistent do not form successful attachment. Johnson (2008) explored childhood trauma in the background of perpetrators. She argues that disrupted attachment results in adult behaviours such as frantic efforts to avoid abandonment, inappropriate and intense anger and a lack of empathy (Johnson 2008). However, attachment theory as an explanation for violence has been widely critiqued; for instance, see Chaffin et al. (2006) who argue that there is no empirical support for the notion that children with attachment problems will grow up to be violent.

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studies show that fathers who perpetrate filicide have often perpetrated violence toward family members including partners, while mothers who perpetrate filicide are often victims of family violence (Kauppi et al. 2010, Putkonen et al. 2011, Hatters Friedman et al. 2005). Bourget and Gagne’s Canadian study of fathers who kill their children found that a history of family violence was conclusive in 40 per cent of cases with inconclusive evidence in many other cases (2005).⁴² As outlined earlier, one study found that in 71 per cent of cases of fatal child abuse filicide the mother of the child was also a victim of the father’s violence (Cavanagh et al. 2007).

Recently, a study of child homicide was undertaken in Britain by *Dispatches*, an investigative current affairs program on Channel 4. They analysed cases of all children killed by parents in Britain over a five-year period (January 2004 to December 2009). There were 163 children killed during that time. The program reported almost half these children were living with domestic violence before their deaths (Ferguson 2009). This was particularly the case for those children who were killed after their parents’ separation. Forty-three children were killed soon after separation or after the decision was made to separate. In two out of every three of these cases, there was a history of domestic violence (Ferguson 2009).

Filicide research is likely to underestimate the incidence of prior violence against intimate partners. This is a hidden phenomenon and researchers may not be aware that violence had previously occurred. Researchers frequently rely on police, court and medical/psychiatric records which may not document prior violence. Police records usually do not contain historical information about the relationship and Family Court records have minimal information in some cases and none in others (Johnson 2005). Such records are also more likely to indicate where there has been physical violence rather than the range of other forms of violence including emotional, financial and controlling behaviour. Furthermore, many studies of filicide are quantitative and may not involve the in-depth analysis that is necessary to obtain information about family violence.

Even when researchers do have information about prior violence they may not recognise its significance. Some filicide researchers describe family violence as ‘domestic disputes’ or ‘quarrels’. For instance, Adinkrah (2003), who undertook a small but important study of paternal filicides in Fiji, found that half the cases occurred as the result of what he describes as ‘domestic quarrels’ between parents. One example of a ‘domestic quarrel’ was a case in which a man killed

⁴² In several studies researchers describe family violence as present before many filicides; however, they do not specify which family members the violence was directed to or perpetrated by. In a personal communication with Dominique Bourget (3 August 2011), she confirmed that in her study ‘family violence’ referred to ‘repeated physical violence perpetrated against either the spouse or children prior to the homicide, most often by the same perpetrator (i.e. father).’ She is in the process of writing another article which will focus in more detail on this issue.

his four children because his wife refused to get up from her sleep to reheat his dinner late in the evening.

Childhood trauma

Some recent studies of paternal filicide and familicide have analysed details about the childhoods of perpetrators. They have found high levels of childhood trauma, abuse and neglect. These are perceived to have long-term effects on behaviour and, some researchers claim, can ultimately lead to filicidal actions as adults (Websdale 2010, Johnson 2009).

Studies of maternal filicide also report high levels of childhood trauma in mothers who kill children (for instance, Oberman & Meyer 2008). Kauppi et al. (2010) found most male and female filicide perpetrators had experienced emotional abuse as children from their parents. Alcohol abuse, domestic violence and mental illness in their parents were also factors in the childhoods of most perpetrators. In their review of the filicide literature, Bourget et al. (2007) found similar numbers of fathers and mothers experienced a history of abuse in childhood.

Life stressors and mental overload

A number of studies have shown that filicide perpetrators experience a range of stressful circumstances in their lives prior to the filicide. Stressors that have been identified for mothers who kill their children include being the primary caregivers for children, unemployment or financial problems, being in an ongoing abusive intimate relationship and having limited social support (Bourget et al. 2007). Stressors for fathers include financial difficulties, pending or actual separation from a partner and a partner having an affair (Bourget et al. 2007).

'Mental overload' is described as a motive by Putkonen et al. (2011), whose research in Austria and Finland is outlined below. The term 'mental overload' is used to describe 'mental exhaustion, or problem-override in the offender's mind, a state of hopelessness, despair, or failure' (2011:321). Mental overload was found to have been reported in almost 40 per cent of filicides (Putkonen et al. 2011). The term 'mental overload' resonates with other studies that report despair, desperation, a sense of failure and an inability to cope in filicide perpetrators.

Separation

A key feature of some filicides, not adequately depicted through the filicide categories outlined above, is that children are often killed in the context of their

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parents’ separation.⁴³ For instance, Bourget and Gagne (2005) found 55 per cent of filicides in the mental illness category followed separation. As stated earlier, placing these cases in the mental illness category may obscure the significance of separation as a contributing factor.

NSW research has shown separation was a precipitating factor in a fifth of filicides (Lawrence & Fattore 2002). A study in Victoria found that when a father kills his children, it is often where the couple is separated or where the man believes separation is likely to occur (Alder & Polk 2001).

International research also shows separation is a significant factor. Bourget and Gagne’s study of fathers who kill their children in Canada found a rupture of the marital relationship had recently occurred in 40 per cent of the cases. A large study in the Netherlands found 25 per cent of fathers killed their children in reaction to threatened separation or divorce (Liem & Koenraadt 2008).⁴⁴ A Canadian study found men who killed their children were more likely to have gone through a separation in the year preceding the offence than women who killed their children (Leveillee et al. 2007). Putkonen et al. (2011) also found that separation was more likely to be a factor in filicides by fathers than filicides by mothers. The study of filicides by *Dispatches* in the UK (see p 31) highlights separation as a dangerous time for children (Ferguson 2009).

There is a lack of clarity about what ‘separation’ means and how it is determined across various filicide studies, so that some studies may be referring to literal separation in which one partner has left the relationship and others may include cases in which separation was pending or a source of conflict in the relationship. It is often difficult to ascertain if separation was simply a circumstance, or a factor which contributed to the perpetrator’s reasons for killing the child. Separation is a recurring theme in filicide literature but it is not adequately examined.

More in-depth qualitative studies that examine familicide or filicides that specifically occur in the context of separation provide useful insight into this issue. For instance, Websdale (2010), whose study of familicide in the US was outlined earlier, found that in 85 per cent of ‘livid coercive’ cases for which he had data, the perpetrator’s partner was leaving or distancing themselves from the relationship. The perpetrators saw this as abandonment and in some instances as betrayal (Websdale 2010).

Australian researcher Carolyn Johnson (2005) examined cases where fathers had killed their children after family breakdown. She undertook in-depth analysis of seven West Australian cases involving the deaths of 15 children. The father committed suicide in six cases and attempted suicide in the remaining

⁴³ Filicides that occur in response to separation are not reflected in the existing classification systems unless they are deemed to be retaliatory. As outlined earlier, it may be difficult for researchers to ascertain retaliation as a motive.

⁴⁴ It was also found that over a third of the men and more than half the women were diagnosed as mentally ill at the time of the killing.

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case. Johnson interviewed surviving family members to try to determine possible explanations for their actions. Johnson found that the men were controlling and possessive of their families and had difficulty accepting the separation from their partner (2005, 2006).

The prospect or experience of separation from an intimate partner may affect mothers and fathers differently. These differences are considered in the following chapters.

COMPARISONS OF MOTHERS AND FATHERS

Some of the gender differences between fathers and mothers who kill their children have been identified in the above discussion of motives and factors contributing to filicide. As outlined earlier, there have been very few studies that directly compare maternal and paternal filicide (Bourget & Gagne 2005). In the last few years a number of international studies have sought to address this gap in understanding. These are outlined below. There remains very little research providing gender comparisons in Australia. To our knowledge, to date there has been no comprehensive Australia-wide research, specifically on filicide, which examines gender differences between perpetrators. There have been several state-based studies that examine child homicide more broadly, of which parents who kill are a large component, such as Alder and Polk's study in Victoria (2001) and Neilssen et al.'s NSW study (2009). The findings from these studies are referred to in this paper.

Turning to the international literature, Putkonen et al. (2011) examined gender differences in all filicide perpetrators in Austria and Finland between 1995 and 2000 (75 mothers and 45 fathers). They found that compared to mothers, fathers had been more violent before the filicide and reported more 'quarrels' with their partner. Separation was often a current threat just before the filicides by fathers (Putkonen et al. 2011). Fathers' motives were more often related to anger, impulsivity, revenge and quarrel than mothers' (Putkonen et al. 2011:325).

Another study in Finland examined two hundred filicide cases over a 25-year period (Kauppi et al. 2010). The researchers found that filicidal mothers had experienced severe stress caused by marital discord and the violence of their spouse, and a lack of support. Mothers tended to kill for altruistic reasons and in association with suicide (Kauppi et al. 2010). Paternal perpetrators, on the other hand, were reported to have been jealous in 50 per cent of cases. Male perpetrators were more likely to have abused alcohol and other substances and been violent toward their partners (Kauppi et al. 2010).

A Canadian study by Leveille et al. (2007) examined gender differences in 75 filicide-suicides in Quebec between 1986 and 1994. They found that

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fathers that perpetrate filicide-suicide were more likely than mothers to be living without their children; to perpetrate the filicide-suicide after separation from a partner; to have been violent toward their partner; to have threatened to kill their partner; to kill their partner also and to have killed the children as a means of reprisal against their partner (Leveille et al. 2007).

Bourget and her colleagues (2007) reviewed the international literature on maternal and paternal filicide and also undertook separate studies of filicide in Canada: one of 60 paternal filicide perpetrators (2005) and one involving 27 maternal filicide perpetrators (2002). Bourget et al. provide a useful overview of the similarities and differences between mothers and fathers who perpetrate filicide. They found the similarities are experiencing depression and/or psychosis; the presence of significant life stressors; social isolation and lack of support; and a history of abuse in childhood (Bourget et al. 2007). The key differences they identify between maternal and paternal filicide are that neonaticides are rarely perpetrated by fathers; retaliatory filicides are rarely perpetrated by mothers; and fathers are more likely to have been violent to the child before the episode which caused their death (Bourget et al. 2007).

Interestingly, Wilczynski, who studied filicide in Australia and England, described the main difference between maternal and paternal filicides as women generally kill children because they have too great a responsibility for their care, while men generally kill children as a result of too little responsibility for their care (1995). This notion will be explored further in the following chapters on fathers and mothers who perpetrate filicide in the context of separation.

SUMMARY OF KEY FILICIDE RESEARCH FINDINGS

While similar numbers of men and women perpetrate filicides, the research consistently highlights some key gender differences, shown below.

Filicidal mothers, when compared to filicidal fathers, are more likely to:

- perpetrate neonaticide
- act for ‘altruistic’ reasons
- be diagnosed with a mental illness
- be the primary carer for the child
- be a victim of domestic violence.

Filicidal fathers, when compared to filicidal mothers, are more likely to:

- perpetrate fatal child abuse
- have previously been violent towards their partner
- act in ‘retaliation’ towards their partner
- kill their partner as well as the children.

CONCLUSION

The research into filicide is complex and at times contradictory. Filicide researchers consistently note the need for further research to improve our understanding of this topic, particularly in relation to gender differences between perpetrators (Leveille et al. 2007, Putkonen et al. 2011, Bourget et al. 2007, Kauppi et al. 2010). While the role of perpetrator gender difference remains unclear, it is nonetheless evident that there are gendered patterns in filicide.

This paper shows that while it is well recognised women are killed by partners who have previously been violent towards them, and often in the context of separation, we have limited understanding of the role of these factors in the killing of children. We do know that in many filicide cases fathers kill children as a result of fatal child abuse and that in many of these cases they have also been violent towards their intimate partner. In retaliatory filicides that occur in the context of separation, some fathers kill children as a means to harm their mothers. Existing research indicates that women rarely kill children in these circumstances.

While the significance of parental separation in some filicides is acknowledged in the research, there does not appear to be a comprehensive understanding of the role it plays in the killing of children by their parents, and particularly the differences in fathers and mothers who perpetrate filicide in this context. The following two chapters will therefore explore cases of filicide by fathers and mothers that occur in the context of separation. They will also highlight the relevance of intimate partner violence in these killings.

CHAPTER 4

‘Suffer for the rest of your life’: Fathers who kill children in the context of separation

Most research on filicide has focused on mothers, with fewer studies investigating filicides by fathers (Bourget & Gagne 2005). This limited understanding of men who kill their children makes it difficult to determine how these deaths may be prevented (Johnson 2009).

Most research has focused on fatal child abuse filicides – the most common type of filicide perpetrated by men. As outlined in the previous chapter, research shows many fathers who kill children in this context have previously been violent towards them. The research also suggests that in many instances there has also been prior violence towards the child’s mother. Fatal abuse cases often involve stepfathers as perpetrators. In contrast, filicides that are not the result of fatal child abuse are more likely to involve biological fathers and to occur in different circumstances.

The review of the filicide research also highlights parental separation as a factor in filicides by fathers. Previous research in Victoria has shown that when biological fathers kill their children, it is most often in a context in which they are separated from the children’s mother or they perceive there is a threat of separation (Alder & Polk 2001). Unlike fatal abuse filicides, these cases may not involve prior violence towards the children and the killing is often intentional rather than accidental or reckless. Many filicides by fathers that occur in the context of parental separation are motivated by anger against an intimate partner displaced on to the child (Alder & Polk 2001). The children are seen as an extension of the woman and their death a way of hurting her (Leveillee et al. 2007). As noted earlier, these cases are described as ‘retaliatory’ filicides.

This chapter examines filicides by fathers that occurred in the context of the parents’ separation. It explores the significance of intimate partner violence, anger about separation and using the children to hurt the mother. It also considers the role of mental illness and family law disputes in filicides by fathers.

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This chapter describes eight cases of fathers who killed their children in the context of separation. It is not intended to provide a comprehensive review of recent cases. Rather, the chapter draws on case examples to explore some of the themes evident in the research on filicides by fathers involving separation. The cases are primarily recent Victorian cases. Some other Australian cases are also included to highlight key themes.

The cases in this chapter were chosen because they fit the criteria of having occurred in the context of separation and there was sufficient information available to obtain insight into factors contributing to the filicide. The information is drawn from public sources – media reports and, where available, sentencing judgments.

We start with a case that powerfully highlights the themes discussed throughout this chapter.

RAMAZAN ACAR

On 17 November 2010, in Greenvale, Victoria, Ramazan Acar (24 years) killed his daughter, Yazmina (two years), by stabbing her multiple times.⁴⁵ Ramazan Acar and Yazmina's mother, Rachelle, began their eight-year on-and-off-again relationship when they were teenagers. Ramazan was violent towards Rachelle during their relationship and there was an intervention order against him at the time he killed Yazmina. Ramazan Acar pleaded guilty to murder and was sentenced to life in prison.⁴⁶

Ramazan and Rachelle separated in September 2010 and an intervention order was obtained by Rachelle on September 16. After a week, Ramazan started breaching the order. Rachelle consistently reported the breaches to police and was advised by police to change her phone number. In November, Ramazan contacted Rachelle (via her mother) and told her that he believed he was going to go to prison in relation to some driving offences and he wanted to see his daughter beforehand. Consequently, Rachelle and Yazmina met him at a shopping centre. In Rachelle's view this meeting went well and she told Ramazan he could see Yazmina fortnightly.⁴⁷

Yazmina stayed overnight with Ramazan on 13 November. A few days later Ramazan began harassing Rachelle again by contacting her several times a day.

On 17 November, he sent Rachelle a text saying 'RIP Ramazan Kerem Acar 1987–2010'. Earlier that day Ramazan had reacted badly when another woman, with whom he was establishing a relationship, told him he was moving too fast.

That afternoon, Ramazan drove to Rachelle's house. He appeared drunk and showed Rachelle where he had slashed his abdomen and arms with a knife. Yazmina, who was happy to see her father, spent 20 minutes playing in the car

⁴⁵ The following information is drawn from the sentencing decision, *R v Acar* [2011] VSC 310.

⁴⁶ Ramazan Acar was sentenced to a minimum of 33 years.

⁴⁷ *R v Acar* [2011] VSC 310 (para 3).

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with him while Rachelle stood close by. Ramazan asked Rachelle if he could take Yazmina to a nearby milk bar for some chocolate, promising he would bring her straight back. Rachelle reluctantly agreed.

Shortly after Ramazan left with Yazmina he began a series of texts and phone calls taunting Rachelle about their whereabouts. He asked Rachelle to go to the police station and withdraw her statements in relation to the intervention order. When she refused, he became angry and ended the phone call.

When Rachelle phoned back, he said: ‘Payback’s a bitch. How does it feel?’ When she pleaded with him to return Yazmina he replied: ‘Guess what baby, you’re not getting her back. I loved you Rachelle, and look what you’ve made me do.’⁴⁸ He then asked her whether he should drive at 120 kilometres an hour into an oncoming car or use the knife and put it through Yazmina’s throat. He told her, ‘I loved you more than her, and that’s why I am doing this’ and then ended the call.

Ramazan then posted a message on his Facebook page: ‘Bout 2 kill ma kid.’ After this he sent Rachelle a text message saying ‘It’s ova I did it’ (although he had not yet killed Yazmina). He then posted a Facebook message: ‘Pay bk u slut’.⁴⁹

By this stage, Rachelle was at the police station and the calls were on speakerphone in the presence of police. Ramazan told Rachelle ‘I’m going to kill her’. Rachelle begged him to return her, to which he replied ‘Do you have any last words for her?’ Yazmina came on the phone and said to her mother, ‘I love you’, and Rachelle, weeping, replied ‘I love you too’.⁵⁰ Ramazan then ended the call.

Shortly after, in another phone call, Ramazan told Rachelle:

*I’ve killed her, she’s just lying there next to me ... All I need to know is should I dump the body somewhere and how much time do you think I am going to get for this? I killed her, man, I killed her. I killed her to get back at you. I don’t care. Even if I go behind bars, I know that you are suffering.*⁵¹

Ramazan continued phoning and texting Rachelle in relation to killing Yazmina until he was arrested later that evening.

At the sentencing hearing, his legal counsel said that on the day of Yazmina’s death Ramazan had been ruminating on his place in his daughter’s life and that he could see himself being ‘squeezed out of it’ and that he was constrained by the intervention order.⁵²

⁴⁸ *R v Acar* [2011] VSC 310 (para 10).

⁴⁹ *R v Acar* [2011] VSC 310 (para 11).

⁵⁰ *R v Acar* [2011] VSC 310 (para 12).

⁵¹ *R v Acar* [2011] VSC 310 (para 13).

⁵² *R v Acar* [2011] VSC 310 (para 35). Counsel also referred to the fact that Rachelle was moving on with her life (she had met another man) as a factor in Ramazan’s ruminations.

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However, Justice Curtain said that even though Ramazan had been violent to Rachele during their relationship, ‘She was fundamentally well disposed towards you. She was cooperating with you and had recently permitted you to have overnight access to Yazmina, and it appears she was prepared to encourage your relationship with her.’⁵³

There are three key intertwined themes evident in Ramazan Acar’s case which are considered below:

- intimate partner violence
- anger towards intimate partner and desire for revenge in relation to separation
- using the child/ren to hurt their mother.

Intimate partner violence

A history of violence towards the intimate partner was documented in Ramazan Acar’s case.⁵⁴ When Ramazan and Rachele separated in September 2010, Rachele obtained an intervention order on the basis that Ramazan had ‘made threats towards her and giving evidence of previous harassment and fears for her safety and that of her daughter’.⁵⁵

Justice Curtain, in sentencing Ramazan Acar, stated that the relationship between him and Rachele was marked by his ‘jealousy, possessiveness, violence and drug use’.⁵⁶ She outlined two incidents in which Ramazan was convicted in relation to assaulting Rachele. The first incident occurred in 2006, when he stabbed himself and threatened Rachele by holding a knife to her throat. Ramazan was convicted of unlawful assault, threat to kill, threatening serious injury and criminal damage in relation to that incident.⁵⁷ In 2009, Ramazan was convicted of recklessly causing injury for an incident in which he hit Rachele.⁵⁸ In 2009, Ramazan participated in a program directed at male family violence.

Anger about separation

Ramazan Acar’s anger towards his ex-partner in relation to their separation is evident in his phone calls and texts to her on the day he killed Yazmina. While in custody, Ramazan told a psychiatrist, Dr Danny Sullivan, that he remembered a feeling of rage when he went towards Yazmina with the knife. Dr Sullivan referred to witness statements which described Ramazan as

⁵³ *R v Acar* [2011] VSC 310 (para 61)

⁵⁴ These incidents were outlined in Ramazan Acar’s sentencing because they are prior convictions the Judge takes into account when sentencing.

⁵⁵ *R v Acar* [2011] VSC 310 (para 2).

⁵⁶ *R v Acar* [2011] VSC 310 (para 2).

⁵⁷ He was sentenced to three months wholly suspended for two years.

⁵⁸ For this offence he was sentenced to two months wholly suspended for 12 months.

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domineering, aggressive and entitled’ in his relationship with Rachele.⁵⁹ At the sentencing hearing, the prosecution described Ramazan as an angry man, consumed with hatred for his former partner and that this hatred had overtaken any thought of the welfare of the child.⁶⁰

Using the child/ren to hurt the mother

It is apparent that Ramazan Acar intended to hurt his ex-partner by killing their child. In sentencing Ramazan Acar, Justice Curtain said ‘You committed this murder for the worst possible motives: revenge and spite. You killed your daughter to get back at her mother. You used your daughter, an innocent victim, as the instrument of your overarching desire to inflict pain on your former partner’.⁶¹

One or more of these three factors – intimate partner violence, anger regarding separation and killing the child/ren to hurt the mother – are evident in each of the following cases in this chapter.

INTIMATE PARTNER VIOLENCE IN FILICIDE

As outlined in Chapter 3, research indicates that violence against an intimate partner is a factor in many filicides. However, few studies have explored the impact and role that prior partner violence plays in filicides. This may be because homicide research generally focuses on the nature of the relationship between the perpetrator and the victim who is killed. It is also the case that filicide studies are often quantitative and rely on information from official records that may be of limited value in relation to the history of intimate partner violence.

Carolyn Johnson’s qualitative research provides valuable insights into the issue of intimate partner violence and the limitations of existing research. Johnson’s (2005) study of fathers who killed their children in the context of separation in Western Australia (outlined in Chapter 3) involved speaking to family survivors of the filicides. Johnson found that a history of violence was a significant factor in all the cases for which she was able to ascertain information about the couple’s relationship before the filicide (2005). In six of the seven cases there was evidence of prior violence against the children’s mother. Most of the women were subject to death threats from their partner and one woman was shot but survived. The relationships were characterised by male dominance and control, and all the men were described

⁵⁹ *R v Acar* [2011] VSC 310 (para 49).

⁶⁰ *R v Acar* [2011] VSC 310 (para 58).

⁶¹ *R v Acar* [2011] VSC 310 (para 61).

as being possessive with their partners and their children (Johnson 2005). Johnson found that the men demonstrated obsessive and irrational jealousy and controlling behaviour, and engineered social isolation for their partners. The men exhibited a proprietary attitude towards their partners and their children, one stating to his partner, 'you're always mine, I'll own you forever' (Johnson 2005:92).

Escalation in violence after separation

Johnson found that, where known, it was the wife who instigated the separation and her partner did not want to accept it (Johnson 2005). The men in her study would not tolerate their partner's leaving, even though in several cases they had reportedly been involved with other women before the separation. The women experienced violence following attempts to leave, often in the presence of the children. Most of the women said the violence worsened after separation and in some cases took new forms. For instance, one woman who had previously experienced primarily economic, social and verbal abuse, was tied up, gagged and beaten when she said she was going to leave. Her husband then left the house for several hours, leaving her tied up with their young child clinging to her in fear. Many of the men made threats to kill their partners and the children if they left the relationship. One woman stated, 'he made it clear that he wouldn't let another man have his kids' (Johnson 2005:67).

Underestimating intimate partner violence in filicide

Johnson's research demonstrates the inadequacy of official records as a source of information about prior violence. She found there was insufficient documented information about previous threats to harm and of actual violence towards the partner in the filicide cases she examined. Violence was generally under-recognised by agencies involved with the case, even when there were clear signs it existed (Johnson 2005).

Johnson also found violence was frequently not identified by the victims themselves and was thus under-reported (Johnson 2005). For instance, some women whose children were killed by their ex-partners did not see his making threats, stalking and breaking into their home as forms of violence. It was not until Johnson undertook in-depth analysis of these cases that the true extent to which violence was a factor in the relationship was revealed.

Information about prior violence against the mother in filicide cases is also frequently absent in media depictions. Neale and Worrell (2010) analysed the media coverage of a familicide in Britain in which a police officer beat his wife and two children to death with a hammer before killing himself. There had been a history of extreme violence which was documented in police and social service records. However, the violence was depicted in

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the media in a neutral way that shifted responsibility away from the perpetrator and the agencies that failed to protect the victims (Neale & Worrell 2010). The violence was rendered invisible and an impression created that the situation was one of 'mutual combat'. This was despite the fact that the wife had never been violent towards her husband. The 'conflicts', 'tensions' and 'difficulties' in the relationship, described in the media, were not acknowledged as being the direct result of the husband's violence (Neale & Worrell 2010).

In describing the case, police were reported to have said, 'there were core tensions and her leaving was probably at a relatively advanced stage. He may have thought he would lose his kids. I guess the factors combined to produce this horrendous case' (*Guardian* 31 August 2001 cited in Neale & Worrell 2010). The victim is inadvertently blamed, as her leaving is seen to be a trigger for violence. This interpretation ignores the alternative explanation, that the man's violence was driving his family away (Neale & Worrell 2010). In this case, the victim was also judged for staying in the relationship, as one media commentator noted, she 'not only stayed with her husband but had three more children with him after the initial violent episode' (*Guardian* 1 September 2010 cited in Neale & Worrell 2010).

It is therefore important to be mindful that the primary sources of information about filicide – police and court records and media reporting – may obscure the significance of a history of violence against the mother. It is highly likely that the extent of such violence in many filicides, including some of those outlined here, is not known.

The following cases highlight the role of violence towards intimate partners in the parents' separation and the events preceding the filicide.

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RAJESH OSBORNE

In April 2010 in Roxburgh Park, Victoria, Rajesh Osborne (37 years) shot his three children, Asia (12 years), Jarius (ten years), and Grace (seven years). He then shot himself. The children were killed in the home they shared with their father and grandmother. The children's father had separated from their mother several years earlier. On the morning of the incident, Rajesh Osborne sent his mother, his current girlfriend (of approximately six months) and her daughter out of the house to go shopping. When they returned they found the children and their father dead.

Rajesh Osborne was depicted in the media as a good man and a good father. For instance, his sister described him as a 'good man' who 'loved his kids' (Dowsley and Harris 2010). Another sister said 'When they [Rajesh and the children's mother] separated, he said he needed his kids. I really can't understand how he could do this' (Dowsley and Harris 2010). It was also reported that Rajesh had 'battled depression, and felt his children could not survive without him'. He had apparently told close friends he would kill his three children and himself, but was not believed (Dowsley and Harris 2010).

A week after the initial media reporting of the case, it emerged that Rajesh Osborne was interviewed by police three days before killing the children and himself. He was charged with a family-related offence and was due to face court in July (Houlihan 2010). It appears that the court matter was related to the breaching of an intervention order that his second wife had against him (this was his previous partner, not the girlfriend he was living with at the time and not the mother of the children) (*Native Affairs*, Maori Television 2010).

It also emerged that his first wife, 'Kaya', the mother of the children, had experienced extensive physical and sexual violence from Rajesh Osborne during their marriage (Houlihan 2010).⁶² Kaya married Rajesh in New Zealand when she was 17. In 2004, the couple moved to Melbourne, where his family lived, to start a new life with their three children. In a television interview with a New Zealand current affairs program, *Native Affairs* (2010), Kaya said:

As soon as we arrived in Melbourne things started changing from bad to worse and he started threatening me, knowing the fact that I couldn't get hold of anyone. There was no one that could come and support me if he did something and that really scared me. It really scared me ... to argue with him everyday, to be beaten up by him, to be sexually abused by him and it just was happening so much that at that point there was no way out for me.

⁶² A pseudonym has been used because the law in Victoria prohibits the identification of sexual assault victims.

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According to Kaya, she regularly called the police to the house when Rajesh hit her. Kaya's mother encouraged her to leave and take the children back to New Zealand. Kaya said she 'couldn't do that 'cause he would follow me. He threatened me so many times, if you ever take the children anywhere I will find you and I will kill you' (*Native Affairs* 2010). She said that she believed that leaving was the only choice and that it would be better for the children if she left.

I was sick of seeing my children grow up in a violent relationship ... I didn't want that to happen to them. I didn't want them to be psychologically damaged because I was ... I had such high dreams for them and I knew in myself that they would get there. But I seriously believed that they would not get there if I still lived with them and they were growing up like the way they were growing up – witnessing everything (*Native Affairs* 2010).

Kaya also told the *Sunday Herald Sun* that 'He [Rajesh] was very violent. Every time we argued and fought my eldest daughter, Asia, would group the other two siblings together and she would hide in the room and cry' (Houlihan 2010).

Kaya said she fled the relationship and lived in a homeless women's shelter before establishing a new life. She said Rajesh Osborne took steps to stop her getting her children back. He did not allow her to have any contact with the children after they separated.

'They weren't even allowed to say my name out loud,' she said. 'I would drive to their school and I would just watch them walking home and as soon as their father would find out he would change schools and residence'. She said she carried on with life by 'putting a rock in my heart' (Houlihan 2010).

Kaya watched her children grow from a distance, secretly communicating with her ex-husband's sister about their progress. 'Whenever there was a birthday or something she would ring me and the children would be in the background. I would just hear their voices,' she said (Houlihan 2010).

Native Affairs reported that Rajesh Osborne left a suicide note to his second wife in which he blamed her for his situation and told her that she was the reason for killing the children. They said there was a suggestion that she was going to 'out' him publicly as a violent and abusive man.

When the children's mother, Kaya, was asked why she thought Rajesh killed his children, she said she believed it was connected to his violence towards her:

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He was a very selfish person. He believed that if he doesn't have the children, I shouldn't have them ... and I think things got really harder for him because part of his history with me was coming out slowly. Things he'd done in the past with me. No matter in which relationship and however many relationships he went into, he repeated the same scenario again and everyone ended up leaving him one by one (Native Affairs 2010).

In this case, Rajesh Osborne had been violent towards the mother of his children for many years, which resulted in their separation. He was also violent to a subsequent partner. His violent behaviour appears to have played a role in his decision to kill his children and suicide.

INADEQUACY OF LEGAL RESPONSES TO VIOLENCE AGAINST WOMEN

In the following case, intimate partner violence was also a key factor leading to the separation of the parents. As in the Ramazan Acar case, the mother had a family violence protection order against the father at the time he killed their children. The cases of Gary Bell and Phithak Kongsom, who also had family violence protection orders against them, are also briefly outlined in this section. These cases further highlight the inadequacy of legal responses to intimate partner violence, and a failure to recognise the risks to children in this context.

JAYSON DALTON

On 25 April 2004, in Brisbane, Queensland, Jayson Dalton (32 years) drugged and suffocated his two children, Jessie (20 months) and Patrick (12 weeks), and then killed himself. Jayson and his wife 'Sonia' ran a business together.^{63,64} Their relationship deteriorated because of Jayson's violence towards Sonia and their business began to fail. Sonia left Jayson and he entered a 12-week counselling program for separated men. Two days after losing a bid for a shared care arrangement for his children, Jayson Dalton killed the children and himself.

An ABC *Four Corners*⁶⁵ program interviewed Sonia and other family members. The program revealed Jayson Dalton's controlling and violent behaviour towards his wife, which began as soon as they were married. He isolated her from friends and family and restricted her activities. It began with verbal abuse and when their first child was six months old, Jayson started hitting Sonia.

⁶³ A pseudonym has been used – see footnote 62.

⁶⁴ Jayson Dalton ran as a One Nation candidate for the federal seat of Kennedy in Queensland in 1998, pushing for changes to the Child Support Agency (CSA) and campaigning on family law reforms (Cameron & Ross 2008).

⁶⁵ *Four Corners*, ABC TV, 16 August 2004. The following information and quotations are from this source.

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Sonia: The first time he did it to me I was just absolutely terrified. I said, ‘Why did you hit me? What did I do to deserve that?’ He said, ‘You didn’t do as you were told. If you had done as you were told, it wouldn’t have happened.’ I said to him, ‘But I didn’t do anything wrong. I just did what I was supposed to.’ He said, ‘You didn’t do it the way I wanted it done.’

The violence escalated and included sexual assault against Sonia. When Jayson Dalton threw a microwave at Sonia and Jessie, she reported the incident to police, who came and took him away. The police obtained a domestic violence order to protect Sonia. One month later, just before Christmas, Jayson punched a hole in the door of their house and threw a broom at Sonia. He took off with Jessie.

Sonia: I was just out of my head with worry about where he’d taken her and what had happened. A police inspector came and he pulled me aside and said, ‘Look, this is escalating, this violence, and you’ve really got to do something.’

Sometime later, after Jayson had returned, Sonia packed her things and left with the children. On the one-and-a-half hour drive to her mother’s, Jayson rang Sonia’s mobile phone 76 times. He followed her and assaulted Sonia’s mother at her house. The police later arrested him for breaching the domestic violence order for the second time and he was held in custody overnight. The police warned Sonia that he would be furious and seek revenge when he was released from custody and that she should go somewhere safe. At this point, Sonia’s mental state deteriorated and she became manic and delusional. She was admitted to the Acute Mental Health Unit at Toowoomba Hospital, with what was described as postnatal psychosis.

While Sonia was in hospital her family cared for the children. However, Jayson went to the Family Court to obtain residence of the children. The court case lasted 14 minutes. Sonia was absent because she was in hospital. There was only one brief reference to the violence against Sonia, when her solicitor informed the judge, ‘there are domestic violence issues’. The judge took the view that while Sonia was unwell, ‘the next most logical person to care for the children ... is the children’s father’ (*Four Corners* 2004).

Several weeks later, the matter went before the Family Court again. Jayson unsuccessfully applied for shared care of the children. Sonia was given primary residence of the children and Jayson was given two weekends per month with the children. However, Sonia never saw her children again because he killed them before returning them to her.

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Sonia: I just couldn't believe that he'd actually done that to me, and taken the kids. He knew that the only thing I cared about were my children. My beautiful children ... were just gone out of my life in that one single moment, that one simple, selfish act.

The history of violence against Sonia was well documented. There had been a domestic violence order which had been breached twice by Jayson Dalton and he had been held in custody for his violence. There were clearly warning signs that Sonia was at risk of serious harm. Unfortunately, this risk was not adequately addressed in the Family Court proceedings.

There also appears to be a lack of awareness of the risk posed to the children in this context. The Chief Justice of the Family Court, Diana Bryant, said, in relation to this case, 'there was nothing to indicate this would happen' (cited in McInnes 2008). However, it is now well recognised that violence against mothers impacts on their children. Children witness 65 per cent of family violence incidents recorded by police in Victoria (Diemer 2009). Research suggests that children who witness violence experience the same level of negative psychosocial outcomes as children who directly experience physical abuse (Kitzmann et al. 2003). Furthermore, Jayson Dalton's violence and abusive behaviour towards his wife had involved the children, as when he threw the microwave at Sonia when she was with Jessie and when, after another violent incident, he took Jessie and disappeared.

There also appears to have been a lack of recognition during the Family Court proceedings of the impact the violence had on Sonia's mental health. Bagshaw et al. (2010) found that most women who experience family violence before separation lived in an ongoing state of fear after separation and this contributed to some becoming mentally ill. However, family law service providers often fail to make the links between family violence and mental illness and mental illness can be used against mothers when parenting decisions are made (Bagshaw et al. 2010).

As stated earlier, Jayson Dalton's case highlights the inadequacy of protection orders for protecting the children of victims. This is further demonstrated in the following two cases.

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GARY BELL

In June 2008, in Bega, NSW, Gary Bell⁶⁶ (44 years), killed his three children Bon (18 months), Maddie (five years) and Jack (seven years), by drugging them, then placing them into a car and filling it with exhaust fumes (causing carbon monoxide poisoning). He also died in the car.

Gary and Karen had been married for 14 years. Gary was seen publicly as a family man, adoring his children, but privately drank heavily, was very jealous and violent to his wife (Narushima et al. 2008). Gary had a history of violence against his wife and there had been three apprehended violence orders (AVOs) against him, including one in place at the time he killed the children. Karen had left the relationship many times. She said she went back because 'he always kept the kids'.⁶⁷

Gary had been charged by police for violence against Karen and was released a few days before killing the children and himself. After another incident of violence, Karen fled the house. In an interview with *Sixty Minutes*, a friend and neighbour, Tracey, said she went to the property and found the bodies of the children and their father. She said that Karen had rung police and asked them to go and check on the children but they wouldn't. She said she also rang the police, who told her they did not want to go and upset Gary.⁶⁸

PHITHAK KONGSOM

In September 2003 in Western Sydney, NSW, Marilyn (four years) and Sebastian (23 months) and the children's grandfather, Peter, were stabbed to death by their father, Phithak Kongsom, who died from stab wounds he inflicted on himself at the scene, after also being shot by police.

'Paula' met Phithak while travelling in Thailand.⁶⁹ They settled in Australia and had two children. They separated in June 2003, after a five-year relationship, because of Phithak's increasingly aggressive behaviour. His violence was the last straw (Poulson 2008). Following the separation, he made threats to harm Paula. Phithak had access visits with the children and one night when Paula went to collect the children he put a knife to his own throat. She managed to wrestle the knife from him. Paula rang 000 to say she feared he would kill himself in front of their daughter and that he had threatened to kill Paula too (Cameron & Ross 2008).

⁶⁶ His name was actually Gary Poxon. He reportedly changed his name to avoid responsibility for another family with several children that he left before marrying his current wife (Narushima et al. 2008).

⁶⁷ *Sixty Minutes* 2008.

⁶⁸ *Sixty Minutes* 2008

⁶⁹ A pseudonym has been used – see footnote 62.

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Three weeks before the filicide, Paula applied for an apprehended violence order (AVO) which Phithak immediately breached by leaving messages on her phone and a handwritten note on the windscreen of her car, warning her he intended to kill both her and himself. The breach was reported by her father but no action was taken by police at that time (Brown & Tyson 2008).

On the night before the killings, Phithak Kongsom broke into Paula's home, tied her to her bed and sexually assaulted her (Poulson 2008). When she was with police reporting the assault, Phithak Kongsom went to the home where the children were being looked after by their grandfather, and killed both the children and their grandfather who tried to protect them (Poulson 2008, Cameron & Ross 2008).

Paula had reported her fears to police on three occasions in the six weeks before the filicide. The coroner found there were a number of shortcomings in the way the police handled the domestic 'incidents' and that the public would have expected police to arrest Phithak Kongsom after the rape (Cameron and Ross 2008).

In the cases of Ramazan Acar, Jayson Dalton, Gary Bell and Phithak Kongsom outlined earlier, the violence against the mother had been reported to police. Steps were taken to protect the mother directly from harm: protection orders were put in place, although the perpetrators continued their violence in breach of the orders. In each of those cases, the children were killed while the order was in place.

Risks to children not recognised

It is evident that legal remedies are available that aim to protect women from harm; however, there appears to be a lack of awareness of the threat of harm posed to children in the context of the violence against their mother. These cases demonstrate that the risk of harm to the mother can extend to a risk of harm to the children.

In the cases of Ramazan Acar, Rajesh Osborne, Jayson Dalton and Gary Bell, there was a history of violence by the father towards the mother. This violence led to the separation. In Rajesh Osborne's case, this pattern of violent behaviour was repeated in a subsequent relationship. Prior to attending court in relation to a family violence matter, he killed his children and himself. In the Phithak Kongsom case, violence also led to the separation and escalated after separation. He threatened to kill himself and his ex-partner and sexually assaulted her. Threats to kill an intimate partner and threats to suicide have been identified as risk factors for intimate partner homicide (Department of Victorian Communities 2007). Phithak Kongsom's case, like the case of Ramazan Acar, indicates that these may also be risk factors for filicides that occur in the context of separation.

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In the following three cases, there was no indication of direct physical violence against the mother prior to the filicide, although in one case (Arthur Freeman) there was evidence of controlling behaviour and in another (Dean Williamson) there was indication of possessive and jealous behaviour towards the ex-partner. In each of the cases there is evidence that the father’s anger towards the mother in relation to their separation was a central factor in the filicide.

ANGER AND REVENGE AFTER SEPARATION

Research suggests that many men who have separated from their partners feel anger towards them, that this anger can last for years and that the blaming of ex-partners intensifies over time (Flood 2010). The following case was extensively reported in the media during the period of writing this discussion paper. The evidence at the trial indicated the father was extremely angry with his ex-partner about their separation and that he killed the children to punish her. This case highlights the role of anger towards an ex-partner as a motive for killing children.

ROBERT FARQUHARSON

On 4 September 2005, near Winchelsea, Victoria, Jai (ten years), Tyler (seven years) and Bailey (two years) drowned after the car their father, Robert Farquharson (36 years), was driving went into a dam. Robert Farquharson freed himself from the car. The boys were trapped inside, and the car sank seven metres to the bottom of the dam. Robert Farquharson was separated from the children’s mother. He had spent the day, Fathers’ Day, with the children and was travelling on the highway towards their mother’s home where he was due to return. After the incident, Robert told police he did not recall driving into the dam. He said he recalled coughing and then found himself under water.⁷⁰ In 2007 Robert Farquharson was convicted of murder and sentenced to life imprisonment.⁷¹

At Robert Farquharson’s trials, his defence counsel argued that he had blacked out as a result of a medical condition known as cough syncope.⁷² The prosecution argued that the incident was not an accident but the result of a conscious, voluntary and deliberate act to punish the children’s mother, Cindy, for the marital break-up. They submitted that he was ‘determined to punish her by

⁷⁰ *R v Farquharson* [2010] VSC 462 (para 28), *R v Farquharson* [2009] VSCA 307 (para 9).

⁷¹ Robert Farquharson appealed his conviction and sentence and was again found guilty at a retrial in 2010. He was sentenced to a minimum of 33 years in prison. In September 2011 he was granted an appeal of his convictions on the basis that the jury at his trial should have been given the option of convicting him of the lesser crime of manslaughter by criminal negligence (ABC News 2011a). At the time of writing a date had not yet been set for the appeal.

⁷² Cough syncope is a condition in which a person coughs to the extent that they lose consciousness.

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making her suffer a loss she would always remember with the date of Fathers' Day chosen for this purpose'.⁷³

The prosecution's case against Robert Farquharson included the unlikelihood of his blacking out from coughing, the engineering and reconstruction evidence relating to the movement of the car, which was inconsistent with him blacking out, and statements made by Robert to his friend Greg King.⁷⁴

Robert and Cindy started a relationship in 1993 and were married in August 2000. The relationship came to an end late in 2004 when Cindy said she did not want the marriage to continue and asked Robert to leave the family home. Later, Robert was told that Cindy had begun a new relationship with another man.⁷⁵

Robert Farquharson found it difficult to cope with the family breakdown.⁷⁶ He was angry and had depression.⁷⁷ He was taking anti-depressants at the time of the incident.⁷⁸ Several witnesses gave evidence about Robert's resentment towards his ex-wife over their separation and her new relationship. According to media reports, Susan Hatty gave evidence that Robert told her he was going to take the children from their mother. He just shrugged his shoulders when she asked if he was going to go for custody (Petrie 2010). It was also reported that Cindy said Robert was upset over the level of child maintenance he had to pay (Kissane 2010).

Greg King, a long-term friend of Robert Farquharson, gave evidence at the trials about a conversation he had with Robert at the Winchelsea fish and chip shop. According to his evidence, as outlined in the Court of Appeal decision (2010), Robert Farquharson told Greg King the following:

'Nobody does that to me and gets away with it, its all her fault'. I said, 'What is?' He said, 'Take that Sports Pack car, I paid \$30,000 for, she wanted it and they are fucking driving it. Look what I'm driving, the fucking shit one'. Now it looks like she wants to marry that fucking dickhead. There is no way I am going to let him and her and the kids fucking live in my house together and I have to pay for it. I also pay fucking maintenance for the kids, no way'. Then he said, 'I'm going to pay her back big time'. I asked him how, he then said, 'I'll take away the most important thing that means to her'. Then I asked him, 'What's that, Robbie?' He then nodded his head towards the fish and chip shop window where the kids were standing with Cindy and my kids. I then said, 'What, the kids?' He said, 'Yes'. I asked him 'What would you do, would you take them away or something?' He then just stared at me in my eyes and said,

⁷³ *R v Farquharson* [2009] VSCA 307 (para 15).

⁷⁴ Petrie (2010); *R v Farquharson* [2009] VSCA 307 (para 16).

⁷⁵ *R v Farquharson* [2009] VSCA 307 (para 10).

⁷⁶ *R v Farquharson* [2010] VSCA 462.

⁷⁷ *R v Farquharson* [2009] VSCA 307 (para 47).

⁷⁸ *DPP v Farquharson* (Ruling No 1) [2010] VSC 163 (para 22).

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'Kill them'. I said, 'Bullshit, that's your own flesh and blood, Robbie'. He said, 'So I hate them'. I said, 'You would go to gaol'. He said, 'No, I won't, I will kill myself before it gets to that'. Then I asked him how, he said 'It would be close by'. I said, 'What'? He said, 'Accident involving a dam where I survive and the kids don't'. He then said it would be on a special day. I asked him what day, he said, 'Something like Fathers' Day so everybody would remember it when it was father's day and I was the last one to have them for the last time, not her. Then every Fathers' Day she would suffer for the rest of her life'.⁷⁹

Robert Farquharson had been separated from his wife for almost a year and killed his children on an access visit (Tyson 2009). There was no evidence of previous violence towards the children. In sentencing Robert at his first trial, Justice Cummins said 'You had love for your children; but it was displaced by vindictiveness towards your estranged wife, which led you to these crimes ... you contemplated it over months ... on the road back to Winchelsea on Father's Day you finally decided to fulfil your contemplation.'⁸⁰ There was no mention of violence towards the mother prior to separation, but there is evidence of jealousy, resentment, anger and hatred towards her after separation.

The following case, also extensively covered in the media during the writing of this discussion paper, is strikingly similar. In this case, the father was also angry with his ex-partner about their separation. He was found at trial to have killed his child to punish his ex-partner.

ARTHUR FREEMAN

On 29 January 2009 in Melbourne, Victoria, Arthur Freeman (36 years) stopped his car on the West Gate Bridge, Melbourne and threw his four-year old daughter Darcey from the bridge. She died later in hospital. That day Arthur Freeman, who lived in Hawthorn, was driving his three children, aged seven, four and two, to school from his parents' place in Aireys Inlet. It was to be Darcey's first day of school. He asked Darcey to climb into the front seat of the car.⁸¹ He pulled her from the car and led her over to the edge of the bridge and threw her over. He then returned to his car.

Shortly before the incident Arthur Freeman spoke to his ex-wife, Peta, on the phone and said 'just say goodbye ... you will never see them again' (Anderson 2011a). After the incident he drove with the two remaining boys to the Commonwealth Law Courts building in the city. Over the previous two days, he had been at the courts to attend proceedings relating to the residence and access arrangements for his children. He broke down in a distressed state in the court foyer and was subsequently arrested in relation to Darcey's death. Arthur Freeman pleaded not guilty on the basis of mental impairment. In April 2011 he was found guilty and sentenced to life in prison.⁸²

⁷⁹ *R v Farquharson* [2009] VSCA 307 (para 44).

⁸⁰ *DPP v Farquharson* [2007] VSC 469 (para 16).

⁸¹ *R v Freeman* [2011] VSC 139 (para 8).

⁸² Arthur Freeman was sentenced to a non-parole period of 32 years.

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Peta instigated separation from Arthur in March 2007. Initially there was a shared care arrangement with both parents spending equal time with the children. The day before Darcey's death, the parents were at the Family Court conducting a case about access and residence of the children.⁸³ The case was concluded and orders were made with the consent of both parties. The arrangements were that Arthur would have three days with the children each second weekend and on the afternoon and early evening of the Thursday in the alternate week.

Arthur Freeman was unhappy about the process at the Family Court and believed that he had been unfairly treated by the court psychologist. The psychologist's report indicated that Arthur Freeman was self-centred⁸⁴ and that he 'tended to be irrational and contradictory and demonstrated ... passive/aggressive traits, and seemed to cause chaos around him' (Carlyon & Anderson 2011).

The children had been staying at Aireys Inlet with their paternal grandparents while the Family Court matter was being negotiated. The evening before Darcey's death, Arthur arrived at his parents' home around midnight. He was distressed about the outcome of the Family Court negotiations and expressed dissatisfaction with the psychologist's assessment in the matter but did not want to talk about the events of the day.⁸⁵ He was still distressed the following morning. His father offered to accompany him on the drive to Melbourne to take the children to school but Arthur Freeman declined the offer.

During the drive to Melbourne, Arthur had a long phone conversation with a friend in England. She gave evidence at the trial that he was upset and crying and that he said he had lost his children. He also said there are a lot of angry women at the Family Court and that he would continue the fight, through the Family Court, in relation to access to the children.⁸⁶

Arthur Freeman told psychologists who assessed him after the incident that he could not remember what happened. He told one psychologist, Dr Walton, that he recalled being very worried that he was running late getting the children to school and that when he was travelling on the West Gate Freeway in the busy traffic he had a feeling of being trapped. Dr Walton said Arthur Freeman described thinking 'We're never going to make it' and 'it seemed like an enormous failure to him that he would not deliver the children on time'. Dr Walton described 'a rising sense of anxiety and hopelessness'.⁸⁷

In a police statement, Peta said that she believed her ex-husband was vengeful enough to kill their children to get back at her over their separation. She

⁸³ *R v Freeman* [2011] VSC 139

⁸⁴ *R v Freeman* [2011] VSC 139 (para 3).

⁸⁵ *R v Freeman* [2011] VSC 139 (para 5).

⁸⁶ *R v Freeman* [2011] VSC 139 (para 6).

⁸⁷ *R v Freeman* [2011] VSC 139 (para 11).

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described him as a man who ‘went from anger and vengefulness to remorse and back again’ (Anderson 2009a). At trial she said her ex-husband had mood swings and anger management issues during their relationship (Carlyon & Anderson 2011). Peta expressed her concerns to a doctor soon after she left her husband. ‘I spoke to him about my fears of Arthur and what he could do to hurt the children’ (Anderson 2009b). She told him she believed he would kill them.

In her police statement, Peta said there was an incident some time after she left the relationship in which she feared Arthur would harm their baby. She said he told her he wanted to see her to talk but he ‘just wanted to berate me for all of the things that I had done wrong’ (Anderson 2009b). She said that as she and her mother went to leave, Arthur grabbed the baby from her. ‘I thought he was going to throw him against the fireplace and kill him’ (Carlyon & Anderson 2011). The police were called. After the trial the *Herald Sun* reported that in November 2008 Freeman told a relative that his ex-wife would ‘regret it’ if he lost ‘custody’ (Carlyon & Anderson 2011).

Arthur Freeman’s defence counsel claimed that he was mentally impaired at the time he killed his daughter. Witnesses described him to police as depressed, paranoid and obsessive in the months before the incident (Carlyon & Anderson 2011). Six psychiatrists assessed him after the incident (Carlyon & Anderson 2011). They agreed he was experiencing some form of depression in the lead up to the incident. However, there was a difference of opinion about the extent of his depression and its impact on his actions. One psychiatrist was of the opinion that he was mentally impaired at the time, to the extent that he did not know what he was doing was wrong. The remaining psychiatrists did not think he was mentally impaired to that extent.⁸⁸

In sentencing Arthur Freeman, Justice Coghlan said, ‘any motive which existed for the killing had nothing to do with the innocent victim. It can only be concluded that you used your daughter in an attempt to hurt your former wife as profoundly as possible’.⁸⁹

Justice Coghlan also said, ‘I accept that your offending was not premeditated, but related to your increasing anger towards your former wife over the Family Court proceedings, exacerbated by your being late for Darcey’s first day at school ... I have no doubt that the resentment you bore your wife had been building up for some time’.⁹⁰

In the case of both Arthur Freeman and Robert Farquharson, there is indication that the men expressed anger and an intention to punish their ex-partner. In the following case, the perpetrator directly expressed his anger and desire to punish his ex-partner in a suicide note.

⁸⁸ *R v Freeman* [2011] VSC 139 (para 43).

⁸⁹ *R v Freeman* [2011] VSC 139 (para 43).

⁹⁰ *R v Freeman* [2011] VSC 139 (para 50).

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DEAN WILLIAMSON

In July 1999, in a motel room in Sale, Victoria, Dean Williamson (30 years) smothered and killed his five-year-old son, Braddon, while he slept.⁹¹ Later, he cut himself with razor blades. He rang an ambulance for himself the next day.

Braddon's mother, Lisa, met Dean Williamson ten years earlier, when she was 18 and he was 20. They began living together but he was jealous and controlling which resulted in her leaving several times. Braddon was born in 1993 and was eight months old when Lisa left the relationship for the final time. Dean Williamson had access to Braddon during this time and when Braddon was old enough he had overnight access. Through solicitors, orders by agreement were eventually made in 1994 that stipulated Lisa had custody of Braddon and Dean had access each alternate weekend from 5 pm Friday to 5 pm Sunday with some other days and parts of holidays. Dean had Braddon for a weekend access visit when he killed him. Dean Williamson was found guilty of murder and sentenced to life imprisonment.⁹²

Dean Williamson resented his financial obligation for child support (\$50 per week) and fell into substantial arrears. He complained to friends that the financial burden was destroying his life. He developed a deep anger towards Braddon's mother for this. He used access visits to manipulate Lisa, told Braddon his mother was a 'bitch' and returned him in an upset state.⁹³

Dean Williamson's sister told the court that he was 'consumed' with thoughts of Lisa and Braddon. Several months before he killed Braddon, Dean Williamson started telling friends and family that he wanted to kill Lisa. Then he changed his focus. He told a friend he had thought of a 'better way to fuck her life': to kill Braddon and himself.⁹⁴

After killing Braddon, Dean Williamson wrote a note to Lisa, in which he stated:

*Well have I got news for you. You're **not** getting Braddon back, and you're not getting any more money from **me!** again. You are a fucking useless bitch ... And you are now going to suffer for the rest of your fucking useless life. I hope you rot in hell for the rest of your miserable rotten lonely life ... I've taken Braddon with me because all he wanted was to be with me...*⁹⁵

The killing of the child in this case may be related to resentment stemming from conflict about access and child support. However, Dean Williamson did not attempt to use avenues that were available to him to obtain greater access with his son. He did not seek legal assistance with this, although he did seek legal assistance to attempt to reduce his child support payments.

⁹¹ The following information is taken from the sentencing decision – *DPP v Williamson* [2000] VSC 115.

⁹² He was given a minimum sentence of 24 years. He killed himself a year later in prison (Berry 2003).

⁹³ *DPP v Williamson* [2000] VSC 115 (para 6).

⁹⁴ *DPP v Williamson* [2000] VSC 115 (para 9).

⁹⁵ *DPP v Williamson* [2000] VSC 115 (para 13).

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It appears that Dean Williamson’s primary motive in killing his child was to punish the mother in relation to their separation. Justice Cummins, in sentencing Dean Williamson, said ‘yours is not a case of a history of violent behaviour; rather it is a history of jealousy, then resentment, and then hate sinking in to the darkness of the intention you ultimately formed’.⁹⁶ He said ‘the crime was committed with full deliberation and because of emotion. The emotion was hate.’⁹⁷

USING CHILDREN TO HURT PARTNERS

In Dean Williamson’s case, as in the cases of Arthur Freeman and Robert Farquharson, above, the perpetrators each allegedly told someone of their intention to hurt the mother. Robert Farquharson and Dean Williamson allegedly told others of their specific intention to kill the children in order to achieve this aim. But the people they told did not appear to believe them.

Ramazan Acar, Dean Williamson and Robert Farquharson each expressed the idea that killing the children would be an optimal way to hurt their mother. Ramazan Acar told his ex-partner ‘I killed her to get back at you ... Even if I go behind bars, I know you are suffering’. Dean Williamson said that killing his child and himself would be a ‘better way to fuck her [his ex-partner’s] life’ than his previous idea of directly killing her. Similarly, Robert Farquharson’s friend said that Robert told him he would pay his ex-wife back by taking what was most important to her and that he wanted her to ‘suffer for the rest of her life’.

The notion that killing the child is a greater punishment than killing the mother herself, was also strikingly evident in a case that occurred in Western Australia in the mid 1990s. Norman O’Neill left a window ajar at his ex-partner’s house when he collected the children for an access visit. That night, he broke into the house through the window and went into the bedroom where the mother was sleeping with her two children. He shot both the children in the chest with a pump-action shotgun. He then shot their mother in the leg and calmly said to her, ‘now you can call the police’. He then shot himself. A police officer investigating the deaths said, ‘He knew when he killed himself that she was still alive. He knew that she was going to live the rest of her life, not only maimed, but without her two children’ (*Australian Story* 2004).

These cases provide support for the contention that the primary target in some filicides by fathers is the ex-partner and the children become ‘pawns in the process’ (Liem & Koenraad 2008:172). In some cases, such as Arthur Freeman

⁹⁶ *DPP v Williamson* [2000] VSC 115 (para 17).

⁹⁷ *DPP v Williamson* [2000] VSC 115 (para 23).

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and Ramazan Acar, the perpetrators taunted their ex-partners by telling them they would never see their children again.

Researchers have identified that it is common for perpetrators of family violence to hurt children as a means to hurt their mother (Fish et al. 2009, Radford & Hester 2006, Humphreys 2007). Perpetrators often undermine or attack the mother–child relationship, involve children in violence and make threats to harm the children (ADVCH 2011).

It has also been found that children are more vulnerable to abuse after separation (Bagshaw et al. 2010) and that post-separation violence is often connected with child contact arrangements (Humphreys & Thiara 2002). Child contact is now being recognised in some jurisdictions as a potential risk factor in the homicides of mothers and/or children by previously violent fathers (Association of Chief Police Officers/Home Office 2006).

DEPRESSION AND SUICIDE

In all the cases outlined in this chapter there was either indication of prior depression (Arthur Freeman, Robert Farquharson) and self-destructive behaviour (Ramazan Acar) or the perpetrator committed suicide (or attempted to) after killing the children (Jayson Dalton, Rajesh Osborne, Phithak Kongsom, Gary Bell and Dean Williamson).

Johnson (2005) found most perpetrators in her study who committed filicide-suicide were depressed, disturbed and erratic in the period leading up to the killing. This raises questions about the role of depression and mental illness in the actions of filicide perpetrators.

The extent and role of mental illness in filicides is difficult to determine, particularly when the perpetrators suicide and are therefore not able to undergo a psychiatric assessment. It can also be difficult to assess retrospectively the perpetrator's mental health at the time of the incident. After the incident, their mental state may reflect their reaction to what they have done. For instance, at Arthur Freeman's trial there were lengthy debates about his mental state at the time of the filicide. In sentencing Arthur Freeman, Justice Coghlan said that he believed his behaviour after the incident was a result of 'realising the enormity and awfulness' of what he had done.⁹⁸

As discussed in Chapter 3, while mental illness is likely to be a factor in many filicides, there is a need for a better understanding of the social and contextual factors that contribute to perpetrators' depression and psychological distress. In many of the cases outlined in this chapter the perpetrators' mental states at

⁹⁸ *R v Freeman* [2011] VSC 139 (para 19).

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the time they killed their children were affected by their perceptions of and their attitudes towards their partners and families, and their responses to separation. Their emotional states appear to be intertwined with, and fuelled by, gendered attitudes towards women, ideas about masculinity and men’s roles in families, and a sense of their entitlement to have control over women and children in families.

FAMILY LAW DISPUTES

Fathers’ rights groups claim that men are driven to the extreme of killing their children and themselves because the family law system discriminates against men and denies them access to their children (Flood 2010). This theme is evident in some of the cases outlined above. Jayson Dalton’s cousin described a number of men attending the funeral saying ‘this all goes back to the father not having equal rights as far as the custody of the children is concerned’.⁹⁹

In response to the death of Darcey Freeman, a spokesperson for the Lone Fathers Association, Barry Williams, said ‘It’s a terrible thing what happened to that poor child ... but the system is to take blame for some of this’ (Anderson 2011b). He said ‘men are treated unfairly by the legal system when it comes to Family Court disputes. Their frustration and despair at not being able to see their children usually drives fathers to harm themselves, but some men, like Arthur Freeman, are driven to harm their children’ (Anderson 2011b). These sentiments dominated the media, in particular talkback programs, the day after Arthur Freeman was sentenced.

Other commentators pointed to the potential of this discourse to provide justification for such violence, thus possibly placing other children at risk of future harm. Danny Blay, manager of No To Violence and the Men’s Referral Service, in a letter to the *Age* said:

Men don’t kill their children out of a sense of frustration. It is another form of power being used where and how it hurts the most, based on a misguided sense of entitlement and rights. Telling men that the system is against them and that they are victims of a conspiracy ... provides no room for men to reflect on their previous behaviour and importantly, on what they can do to be the best man – and best father – they can be by ensuring the safety and wellbeing of their partners, their children and themselves (The Age, Letters, 1 April 2011).

⁹⁹ *Four Corners* 2004.

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The perception that men's 'victimisation' in family law negotiations results in homicide was also evident in a familicide that occurred in Queensland during the writing of the conclusion to this discussion paper. Paul Rodgers killed his ex-partner, a family friend, his five-year-old daughter and himself. A police Acting Superintendent told ABC Radio 'Information we have received in interviewing a number of witnesses is that Mr Rogers understandably was upset and concerned about not having access to his children'.¹⁰⁰

Johnson's research (2005, 2006), outlined earlier, examined cases of filicide-suicide in Western Australia where there had been a dispute about custody or access to children before the filicide. She found the killings were related more to separation than to a custody or access dispute. She argues that 'a dispute about custody and access could possibly be another manifestation of the perpetrator's inability to accept separation from their partner or to relinquish control of his partner and/or children' (Johnson 2006:457). Other research has shown that perpetrators of domestic violence can continue to exercise control over their ex-partners and children through ongoing litigation over parenting (Jaffe et al 2003).

Johnson identifies a number of misconceptions about fathers who kill children after separation which she found were disproved by her research. The misconceptions outlined by Johnson (2005) are that the following factors contribute to men's actions in killing their children.

Disputes in the Family Court

Johnson (2005) found that only one of the seven cases in her study involved a current dispute in the Family Court. Of the cases outlined in this discussion paper, although several appeared to involve conflict or resentment over access to children, only the cases of Jayson Dalton and Arthur Freeman occurred in the context of current Family Court negotiations.

Women exaggerating violence in the Family Court

Rather than being exaggerated, Johnson found that family violence was under-reported to the courts and the police by female victims (2005). This is also evident in Jayson Dalton's case, outlined earlier.

Being denied contact with children

In Johnson's study, the men who killed their children did in fact have contact with them. Six of the seven fathers in her study had contact with their children and killed them during contact. In the remaining case, the father refused to have access visits with his children despite being encouraged and supported

¹⁰⁰ ABC News (2011b).

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to do so by his ex-wife (Johnson 2005). Similarly, in the cases outlined here, with the exception of one case (Phithak Kongsom), the perpetrator killed the children during contact (Ramazan Acar, Dean Williamson, Arthur Freeman, Robert Farquharson) or while they had the children residing with them (Rajesh Osborne and Jayson Dalton).¹⁰¹

Two recent British studies shed further light on this issue. The Women's Aid Federation of England examined the deaths of 29 children from 13 families in England and Wales between 1994 and 2004. These children were killed by their fathers during post-separation contact arrangements. In five of these cases the contact was ordered by the court (Saunders 2004). Domestic violence against the mother was involved in 11 out of the 13 families. In one of the two remaining cases the ex-partner had been obsessively controlling (a characteristic feature of intimate partner violence) and in the other case there were concerns about the child's safety.¹⁰²

The *Dispatches* child homicide study, outlined in Chapter 3, found that 43 of the 163 children killed by parents in England between 2004 and 2009 were killed soon after their parents separated or the decision was made to separate. In two-thirds of these cases there was a prior history of domestic violence. Twenty of the children were killed on access visits following separation (Ferguson 2009).

These studies, and the cases outlined in this chapter, support Johnson's findings and indicate that despite the existence of violence against the children's mother in many cases, fathers who killed their children were having contact with them.

Some fathers expressed dissatisfaction with the level of contact they had. However, few of the fathers in the cases outlined in this chapter were pursuing legal avenues to increase contact. They express anger with their ex-partners over separation and the breakdown of the family, despite the fact that in many cases their violence and controlling behaviour contributed to the separation.

An act of love

Johnson (2005) disputes the perception that the men killed their children as an act of love. While some of the men in her study reportedly demonstrated love for their children and were involved in their care, she found that in most cases they had shown little interest in child-rearing or the day-to-day care of the children before separation (Johnson 2005). In the cases described in this chapter, the fathers' main expressed emotion is anger and resentment towards their partners for leaving them rather than concerns about the welfare of their children.

¹⁰¹ In Jayson Dalton's case, the children had been temporarily residing with him and were killed when the court granted residence to their mother.

¹⁰² Mental illness (including depression and suicide threats or attempts) was mentioned in regard to nine of the 13 fathers who killed their children (Saunders 2004).

ENTITLEMENT AND CONTROL

There are many elements of the filicide cases in this chapter that are consistent with family violence towards intimate partners. The physical violence, threats to kill, threats to suicide, sexual assault and controlling behaviour evident in these cases, are forms of family violence recognised under the *Family Violence Protection Act (2008)* and outlined in Chapter 1.

While physical forms of violence are evident in many cases, it may be that controlling behaviour is a particularly important feature of separation filicides. The *Dispatches* study, outlined above, found that over-controlling behaviour towards the mother and children was more likely to be a key feature in filicides that occur in the context of custody disputes (Ferguson 2009). The research suggests that loss of control over the family after separation may be as significant as the motivation of revenge (Harne 2011). 'It is the extent of control over the whole family rather than the frequency of physical violence that indicates that such fathers are at high risk of killing children' (Ferguson 2009).

In addition to violence and controlling behaviour, the following factors, evident in many of the cases, are also common aspects of intimate partner violence:

- **Negative attitudes towards women:** The men's anger towards their partners, evident in many of the cases outlined in this paper, appears to reflect strong negative attitudes towards women. For example, Ramazan Acar told his ex-partner the killing was 'Pay bk u slut'; Dean Williamson said 'you are a fucking useless bitch'. In relation to assaulting his wife, Jayson Dalton said, 'If you had done as you were told, it wouldn't have happened'.
- **Blaming women for their actions:** Some perpetrators blamed the mothers for the breakdown of the relationship and justified the killing of the children with the idea that their partners drove them to it – by leaving them, by re-partnering, by making them pay child support, by restricting their contact with their children. For example, Ramazan Acar said 'look what you've made me do'; Rajesh Osborne told his second wife that she was the reason for killing the children; Robert Farquharson said in relation to his circumstances after the separation, 'Nobody does that to me and gets away with it, it's all her fault'.

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CONCLUSION: THE KILLING OF CHILDREN AS A FORM OF VIOLENCE AGAINST WOMEN

I left him and the children have paid'.¹⁰³

The cases explored in this chapter show that some filicides by fathers can also be a form of violence against women. In many of these cases, separation appears to be a key triggering factor in the events that led to the children's deaths. Several fathers express anger towards their ex-partners about the separation, and a desire for revenge, to punish them for leaving and for breaking up the family. In this context the children are used to hurt their mothers.

Regardless of whether or not it was preceded by a history of intimate partner violence, the killing of the children could be seen to constitute an act of intimate partner violence when the intention is to harm the mother.

In most of these cases there was no indication of prior violence against the children. In most cases there *was* prior violence or controlling behaviour towards the mother. While the mother may fear for the safety of her children, there appears to be a lack of awareness by professionals and agencies involved in these cases that the children are at risk in this context. The link between violence against women and risks to children does not appear to be adequately recognised.

¹⁰³ A quote from the mother whose children were killed by Phithak Kongsom (Poulson 2008). See the case outlined in this chapter.

CHAPTER 5

‘Better off dead’: Women who kill children in the context of separation

The previous chapter identified a distinct group of filicides, intentionally perpetrated by fathers, which occur in the context of separation. The common features identified in many of those cases were violence and controlling behaviour towards partners, anger in relation to separation and killing the children to hurt their ex-partner. These factors are consistent with gendered patterns of family violence.

In order to develop further insight into gendered patterns in filicide, it is useful to provide some comparison to women who kill their children in the context of separation. The filicide research, outlined in Chapter 3, indicates that mothers kill their children in similar proportions to fathers but that they do so in different circumstances and for different reasons. Looking at filicides generally, the research shows that neonaticides, where a baby is killed on the first day of life, are almost always perpetrated by mothers; retaliatory killings to punish an ex-partner are rarely perpetrated by mothers; mothers are more likely than fathers to perpetrate ‘altruistic’ filicide, in which the parent believes they are protecting the children from future suffering; and mental illness is seen to play a greater role in filicides by mothers.

This chapter explores the role of separation in filicides by mothers. It considers issues raised in the research literature such as women’s role as primary carers for children, family violence victimisation, suicide and mental illness.

This chapter draws on the findings of previous PhD research undertaken by the author (Kirkwood 2000).¹⁰⁴ As part of that research, Kirkwood examined six cases in Victoria in which women intentionally killed their children in the context of separation. As with the previous chapter on men who kill their children, we sought to draw on recent Victorian case examples of mothers who kill their children. However, there was only one case, that of Donna Fitchett,

¹⁰⁴ The research by Kirkwood (2000) used pseudonyms (which was part of the agreement with the agencies providing the data). Other cases discussed in this paper, including the case of Donna Fitchett outlined in this chapter, are drawn from publicly available sources and include actual names.

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that fits the criteria of having occurred in the context of separation and for which there was sufficient information about the circumstances and reasons for the filicide.¹⁰⁵ The information used here about that case is drawn from media reports and Supreme Court sentencing judgments.

FILICIDES BY MOTHERS IN VICTORIA 1985–1995

Kirkwood (2000) studied female-perpetrated homicide in Victoria between 1985 and 1995.¹⁰⁶ Of the 77 cases examined, 16 involved women who killed their children.¹⁰⁷ In six of the filicide cases, the children were killed as part of a suicide plan (Kirkwood 2000). These cases will be discussed in this chapter because they were intentional killings which occurred in the context of the parents’ separation; in each of the cases, the relationship with the intimate partner was either breaking down to the point at which separation was believed to be inevitable, or had ended. These women all killed their children as part of a suicide plan (five women died and one survived). The motivations or reason for the filicides are difficult to ascertain in most of the cases because the women died. In one case the woman survived and gave statements to police and in two other cases the women left suicide notes that provide some insight into the filicide. These three cases are outlined below.

The women’s apparent primary motive in the filicide-suicide cases examined by Kirkwood was to kill themselves. They appear to have killed the children also, because they perceived that they could not leave their children without a mother. They believed no one else would be able to adequately care for the children. Some of the women expressed a belief that they and their children would be ‘better off dead’.

Kirkwood (2000) found that while several of the women showed some anger towards their partner for contributing to their circumstances, this did not appear to be the primary motive for their actions. There is little indication that their actions were directed at harming or punishing their partners. (The concept of revenge as a motive for women to kill children is discussed later in this chapter).

¹⁰⁵ It is not clear why this is the case. It may be because many mothers who kill their children in the context of separation also commit suicide, and these cases are rarely reported in the media. It may also be that there are similar cases that involve suicides by father that were not reported in the media. Until recently journalists were advised not to report on suicides because of concerns about contagion (the notion that other people will copy the suicide). In August 2011, the Australian Press Council (APC) revised its standards in relation to suicide and journalists are now encouraged to report on suicides in a responsible manner. The APC standards on reporting suicide can be viewed at www.presscouncil.org.au/document-search/standard-suicide-reporting/

¹⁰⁶ The primary data source was coronial files, which contain a variety of information such as autopsy reports, witness statements and police records of interview with perpetrators.

¹⁰⁷ In two of these cases the male partner was also investigated as a perpetrator. However, those cases involved fatal child abuse and are not included in the six cases considered here.

PROVIDING FOR CHILDREN AFTER SEPARATION

In all six filicide-suicide cases, the women's role as mother was central to their lives. Unlike most of the fathers in the previous chapter, the women in these cases, with the exception of one, were the primary carers for their children. Research shows that this is a common pattern. A large-scale national study of parents who had separated undertaken by the Australian Institute of Family Studies found that approximately 80 per cent of children spent most nights in the care of their mothers, with one-third spending all nights with her (Weston et al. 2011).

In their study of filicides in Victoria, Alder and Polk (2001) found that in all the filicide-suicide cases involving mothers, 'the mother's understandings and feelings regarding her relationships with her children and the nature of her responsibilities for them play a significant part in the unfolding of events' (2001:47). They also found that women's concerns about their children's wellbeing formed part of their own unhappiness (Alder & Polk 2001).

In several of the cases studied by Kirkwood (2001), women expressed concern about how they would provide for their children after separation from their partner. This theme is evident in the following case.

'CATHY'

Cathy (33 years) was the mother of three children under the age of 12 years.¹⁰⁸ Cathy strangled and killed one of her children. She intended to kill the other two children but one alerted neighbours, who called the police. Cathy proceeded to cut her own wrists, in an attempt to kill herself. When an ambulance arrived she resisted medical treatment, stating that she wanted to die. She survived. Cathy was found not guilty by reason of insanity and detained in a psychiatric institution at her Majesty's pleasure.

Cathy's marriage to the children's father, 'Derek', had ended three years earlier. Cathy told psychiatrists who assessed her after the filicide that Derek had been violent towards her during their marriage and that she left because he threatened to kill her.¹⁰⁹ She also said that Derek had little contact with the children before their deaths and was substantially behind in child support payments.

Derek, in a police statement, said that at one stage after separation, when Cathy was having difficulty coping with the three children, he was contacted by government personnel and asked if he would assume custody of the children, the alternative being they would become wards of the state. He declined. In

¹⁰⁸ The information about 'Cathy' is drawn from Coronial records as part of the research undertaken by Kirkwood 2000.

¹⁰⁹ Cathy also told police that Derek had been violent during their relationship and that he had also been violent towards the children.

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the event, he said the situation resolved itself and the children were not made wards.

Cathy formed a relationship with ‘Phillip’, who offered to support her and her children. After a couple of years the relationship deteriorated and Phillip suggested they separate. Cathy was distressed at the prospect of rebuilding her life all over again.

A week before the incident, Cathy contacted social services and told them she was not coping and that she planned to kill herself and her children. Psychiatric crisis workers from the Psychiatric Assessment Crisis Team (PACT) attended the house regularly that week. Cathy gave them sedatives and razor blades which she had obtained to kill them all. Cathy and her partner Phillip gave evidence at the Coronial hearing that Cathy had asked the PACT workers to place the children in care because she could not cope with them. However, this did not eventuate. PACT noted that the children were well cared for.

In relation to killing her child, Cathy told police that her primary objective was to kill herself. She said that ‘life was too hard’ and she ‘could not cope’. However, she was worried about the impact her suicide would have on her children. She said ‘my major dilemma in all of this is that I want to die. If I died my children would be left on their own. And then they would wonder why their mum had to die. Would they blame themselves?’ Cathy believed that if she were to die, the children would have no one to care for them and they would be better dead.¹¹⁰ She later told a psychiatrist that she did not think the children should be in their father’s care because he had physically abused her and the children.

During the police interview, Cathy said she believed she could not manage to financially support her children on her own:

I love them very, very dearly and I just could not provide for them. I could never ever have given to them and it would have broken my heart to always have to say, I’m sorry, we can’t or I can’t do that. I can’t send you to uni or I can’t give you a future. There’s nothing the CSA (Child Support Agency) can do to get money out of him and I’ve tried working and I can’t get a job and I just don’t believe I have the capacity, and I believe too if they all had’ve died they’re dead, they don’t know any different.

She also indicated that she believed she had tried all available avenues to secure financial support from the children’s father:

The only way I can see it now is that all the doors were shut. I had explored many avenues to try and gain financial support from him [children’s father].

¹¹⁰ Taken from a psychiatrist’s report of the PACT teams involvement in Cathy’s management.

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*I'd been back to the Family Court to try and have those orders enforced ...
had explored many avenues of trying.*

In her police interview, Cathy stated that she saw herself as failing in her role as mother of her children. She said that there was no way she could have provided for the children physically, mentally, emotionally and financially on her own.

Cathy's perception that she would fail to provide for the children is consistent with previous research that has shown social expectations of women to be 'good' mothers play a crucial role in maternal filicides (Wilczynski 1995). Oberman and Meyer (2008) found that mothers who killed their children struggled to be good mothers under exceedingly difficult circumstances.

While mothers and fathers may have similar emotional responses to separation – loss, failure, despair, anger – there are some practical differences in the impact of separation. While both parents may face financial difficulties, mothers are particularly disadvantaged after separation. Women continue to face gender inequality in economic opportunities (Cassells et al. 2009). Studies show that separation often has a greater negative financial impact on women than men, resulting in poorer living conditions and lifestyles. A recent study that used longitudinal data to examine and compare women's and men's financial living standards following separation found that it has a significant negative impact on women's household incomes compared with those of men (de Vaus et al. 2009).

Cathy was assessed in the week before the filicide by a psychiatrist and psychiatric nurses with the Psychiatric Assessment Crisis Team (PACT). The psychiatrist diagnosed her problems as the result of a 'situational crisis', an 'adjustment disorder with depressed mood' and a 'maladaptive reaction to identifiable psychosocial stressors'. After the filicide, Cathy was diagnosed by six psychiatrists as suffering clinical depression, which they identified as a mental illness. One psychiatrist described her as 'grossly depressed' and probably 'psychotic'. In another case, a psychologist equated the mother's 'irrational belief' that both she and her children would be 'better off dead' with 'schizophrenia'.

In the following case, the mother also expressed a perception that she and her children were 'better off dead'.

'Just Say Goodbye'

'SAMANTHA'

Samantha (24 years) was the mother of 'Dale' (five years) and 'Kirsten' (two years). She killed both the children and herself with carbon monoxide poisoning by connecting the vacuum cleaner hose to the exhaust and placing it in the window of the car.¹¹¹

Samantha and her husband, 'Martin', had been under stress and financial hardship as a result of their son's condition. Dale suffered severe brain damage from a car accident when he was four months old. Both parents experienced depression. Samantha complained of insufficient help from her husband in looking after their son. Their relationship began to break down, with frequent arguments including an incident in which Martin hit Samantha.¹¹² Samantha made several suicide attempts. She told a psychiatrist that she intended to kill herself and her children and was treated in a psychiatric institution. Martin eventually moved out of the house. Three days later Samantha and her two children were found dead in the back seat of her car.

In a suicide letter to her parents Samantha said:

I don't feel I am murdering my children but saving them from sorrow and pain without their father ... I'm sorry to take them away from you but it's the only way out ... all I ever wanted in life was a happy marriage, with happy, healthy children. I can't have any of this ... I have tried very hard in my marriage and with my children who I love very much. I suppose some people and the police will say I murdered the children. But I would never hurt them, they mean the world to me ... I felt very sad tonight because Martin didn't ring. So upset that he didn't ring about the kids or me. It pushed me over the edge. I cannot leave my children behind, who would take care of them and love them like I do? No body could. Where would Dale go, into a home? No way. Would Kirsten hate me? At least with God there will be peace and happiness and no pain. So I will take them where they will be happy and I will be there to care for them.

Samantha, like Cathy above, reportedly sought to provide well for her children. She had high expectations of herself as a mother and was perceived by others to be a 'good' mother. She experienced pressure and difficulties in providing for her children, one of whom had a severe brain injury. Like Cathy, Samantha appears to have believed that she could not cope as a mother in her circumstances and became depressed and suicidal.

Samantha's husband, in his police statement, said 'I think she did what she did because she felt rejected and she took the kids with her because she loved them so much and wanted them with her all the time. I know she loved me

¹¹¹ The information about 'Samantha' is drawn from Coronial records as part of the research undertaken by Kirkwood 2000.

¹¹² This incident was mentioned in Martin's statement to police.

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very much and just couldn't bear the two of us being apart'. Martin's statement provides an interesting insight into Samantha's actions. He indicates the separation contributed to her decision to suicide and she killed the children as well because she could not conceive of them being without her. There is no indication he believed Samantha killed the children in order to make him suffer. Samantha, like Cathy, did not think anyone else could care for the children the way she did. Both women believed death was the best option for them all.

'Altruistic' filicide

The cases of Cathy and Samantha, above, appear to be consistent with the category of 'altruistic' filicide, outlined in Chapter 3. 'Altruistic' filicide is used in the literature to describe cases in which parents, predominantly mothers, believe they are saving their children from real or imagined suffering by killing them. The women's belief is seen to be irrational. For this reason, the women's actions are often described as 'delusional' or 'misguided' and linked with mental illness (Alder & Polk 2001).

The term 'altruistic' is problematic given that the children are killed; however, it captures a key difference between these types of filicides and 'retaliation' filicides. In discussions with others before the killings, and in suicide notes, the women in these cases focused their concerns on their children's welfare and on the negative impact their own suicide would have on them.

The filicide literature indicates that, although rare, it is also possible for fathers to perpetrate 'altruistic' filicides. It appears that such cases are often familicides in which some fathers kill their intimate partner and their children because they do not want them to suffer the consequences of their own suicide (Websdale 2010). These sorts of cases may be more likely to occur while the relationship is intact rather than in the context of separation.

VIOLENCE AND ABUSE BY EX-PARTNERS

As outlined in Chapter 3, research shows that many fathers who kill children have previously been violent towards their intimate partner. This is not the case for women who kill their children. In contrast, research shows that often women who kill their children have been victims of violence from their male partners (Oberman & Meyer 2008).

There was indication of violence from women's partners or ex-partners in four of the six filicide-suicide cases studied by Kirkwood (including the cases of Cathy and Samantha discussed above).¹¹³ In a further case, a mother believed

¹¹³ As discussed earlier, the presence of family violence is not always evident from police and coronial records.

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her ex-partner was sexually abusing their daughter on access visits. In the following case a young woman experienced ongoing violence from her partner before the filicide-suicide.

‘RACHEL’

Rachel (18 years) jumped from a high rise building with her two-year-old daughter, ‘Jessica’, killing them both instantly. She was seven months pregnant at the time. Rachel was separated from Jessica’s father. Her current partner¹¹⁴ ‘Paul’ (38), with whom she had become pregnant, was frequently violent towards her.¹¹⁵ Rachel attempted suicide and indicated in a note that she had thought of killing Jessica as well but could not bring herself to do it. Consequently, Community Services Victoria (CSV, now known as Child Protection Victoria) became involved and court proceedings ensued for custody of Jessica. The maternal and paternal grandparents sought custody. The paternal grandparents were granted custody. Rachel was permitted to see her daughter once a week under supervision.

While seeking to get her daughter back Rachel became pregnant. During this time she was constantly covered in bruises and was forced to leave her home after assaults from Paul. On these occasions she stayed with her parents and also went to a women’s refuge. Rachel was aware that the violence she experienced meant that it was unlikely she would be allowed to resume custody of her daughter. Rachel became suicidal again.¹¹⁶

When Rachel was seven months pregnant she was punched and kicked repeatedly by Paul. She went to her mother’s house in a distressed state with bruising, stomach pains and uterine bleeding. That night she said to her mother, ‘I’m not going to get my baby back am I?’ The next day during an access visit she took Jessica to a high rise building. She threw Jessica off and then jumped.

Rachel was experiencing violence from her partner and had lost custody of her daughter. Distress in relation to the loss of custody of children was also evident in some of the cases of fathers who kill their children, discussed in the previous chapter. In this case, in contrast to many of the cases involving fathers, there is no indication that Rachel was seeking to hurt the father of her child, or her current partner, by her actions.

¹¹⁴ He was not the biological father of the child, Jessica.

¹¹⁵ The violent relationship and injuries to Rachel are mentioned in the Coroner’s record of investigation into the death.

¹¹⁶ She made two other suicide attempts (which did not involve Jessica) before the filicide-suicide.

MENTAL ILLNESS AND MOTHERHOOD

In most of the filicide-suicide cases examined by Kirkwood (2000) there was evidence that the women were depressed for some time before the filicide. Three of the women had made previous suicide attempts in which they harmed themselves (but did not attempt to harm the children). In these cases and in one other case, the women eventually told others they intended to kill the children as part of a suicide plan. In three cases, mental health professionals were aware of the women's intentions and in the other case (Rachel's), Child Protection were aware of her thoughts of killing herself and her child.¹¹⁷

The women's behaviour in the period leading up to the filicide-suicides was described by relatives, friends, police officers and psychologists as 'strange', 'bizarre' and 'irrational'. After the incidents professionals attributed their actions to mental illness.

While it appears that mental illness plays a significant role in many of these cases, it is important to consider what factors contributed to the women's mental state and their decision to suicide and kill their children. As stated earlier, violence from a partner was evident in four of the six cases. Research shows that family violence has a detrimental impact on women's mental health (VicHealth 2004). Having primary responsibility for children post-separation also appears to place women under significant pressure.

Many feminist psychologists and researchers have argued there are links between the social construction of what it means to be a 'good' mother and depression. For instance, Lafrance found that women's narratives of depression often contain references to 'feeling overwhelmed by the demands and circumstances of their lives as mothers, while at the same time feeling as though they should be able to manage with unflinching patience, kindness and caring concern' (2009:35).

Meyer and Oberman (2008), who have undertaken in-depth research on women who kill children in the US, found signs of mental illness in women who killed children often emerged in response to their unstable environments. They suggest most cases of filicide cannot be explained by mental illness alone and they highlight the significance of socio-cultural and economic influences combined with the pressures of motherhood (Meyer & Oberman 2008). For instance, they found that culture and ethnicity can play a significant role in some filicides, particularly as they relate to immigrant women who may experience problems of acculturation or assimilation, as well as language barriers (Oberman & Meyer 2008). Two of the six women in the filicide-suicides examined by Kirkwood had migrated to Australia (one from Fiji and

¹¹⁷ Child protection had removed Rachel's child from her custody.

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one from Japan). They were isolated and did not have a network of friends and family for support.

The question of mental illness becomes central in trials of parents charged with killing their children. In most of the cases discussed above, the mother committed suicide and therefore did not go to trial. In the following case, a mother who killed her children survived her suicide attempt. This recent Victorian case was of a filicide that occurred in the context of separation, and was reported extensively in the media during the period of writing this discussion paper.

DONNA FITCHETT

On 6 September 2005, at her home in Balwyn, former nurse Donna Fitchett (46 years), gave her two sons, Thomas (11 years) and Matthew (ten years), an overdose of medication. When they started to wake and she realised they had not succumbed to the drugs, she strangled one and suffocated the other. She then cut her arm, neck and groin with a knife and ingested Rohypnol tablets. Later, after her husband came home and an ambulance arrived, she refused medical treatment stating ‘I don’t want to go to hospital. I’ve killed my boys. I just want to die’. Donna Fitchett survived her suicide attempt. She was charged with murder and pleaded not guilty on the grounds of insanity. In July 2008 she was found guilty of murder and sentenced to 24 years.¹¹⁸ At a retrial in 2010, she was again found guilty and sentenced to 27 years.

Similar evidence was introduced at both of Donna Fitchett’s trials. However, at the first trial the prosecution argued that her motivation for killing the children was spouse revenge, but this was not raised as a motive in the second trial. At both trials, the defence counsel argued that Donna was mentally impaired at the time she killed her children.

At the time of the filicide, Donna’s marriage was failing. She told her husband, David, she was leaving the relationship and they discussed the financial implications of separating. David gave evidence that in the days before the killing, Donna had told him that she believed he was not capable of caring for the children (Gregory 2008). She also told him she had been seeing a psychologist, and had come to the conclusion that he was a ‘passive aggressive’ person and she was not going to live with him any more (Gregory 2008). Evidence at the first trial suggested that Donna Fitchett believed her husband spent too much time away from home and too little time with her and

¹¹⁸ Donna Fitchett was given a hospital security order at her first trial and a non-parole period of 18 years (*R v Fitchett* [2008] VSC 258). She was not given a hospital security order at her second trial and also received a non-parole period of 18 years (*R v Fitchett* [2010] VSC 393).

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the boys.¹¹⁹ During counselling sessions she had developed the view that he was a selfish person and a bad father who would never change.¹²⁰

In discussions about separating in the days before the filicide, David said to Donna that, in the circumstances, it would have been better if they had never had the boys.¹²¹ He suggested that rather than she move out, he would move out and she and the boys could stay in the house. That night, Donna decided that she could not go on with life as a single parent and therefore would commit suicide.¹²² She also decided that she would rather kill the boys than leave them behind with their father.¹²³

In a suicide note to her psychologist, she indicated that she believed the boys would be ‘better off dead’ than living without their mother: ‘they would not be able to get over it and it would be too cruel to them’.¹²⁴ She also wrote:

*Sadly I am too broken to go on. Today the boys will be given an overdose as I cannot and wouldn't ever abandon them. If I had real support from somewhere from someone who really cared it may have been different ... Thomas and Matthew have had a wonderful childhood to date and I won't let anyone hurt them ever ... I'm not a coward nor am I crazy. I see this as my greatest act of love ... I know I was beyond help ... now want peace forever.*¹²⁵

Donna also wrote a suicide note to her husband in which she said:

*I'm so so sorry for your pain upon the discovery of what I've done. I didn't do it because I'm angry with you. I forgive you for whatever hurt you caused me. You can't help it. I just couldn't abandon our beautiful boys. I've been dead for a few days and I just wanted peace ... I pray I do not live through this ... I hope you find the strength to go on without us.*¹²⁶

Evidence provided at Donna Fitchett's trials showed that she was depressed at the time of the filicide and had a history of depression, including postnatal depression following the births of both her children and a period of taking antidepressants from 2002 to 2004.¹²⁷ She had been seeing a psychologist for over a year before killing the children. Her sister, who saw her on the day before

¹¹⁹ *R v Fitchett* [2008] VSC 258 (para 5).

¹²⁰ *R v Fitchett* [2008] VSC 258 (para 6).

¹²¹ *R v Fitchett* [2008] VSC 258 (para 9).

¹²² *R v Fitchett* [2008] VSC 258 (para 6).

¹²³ *R v Fitchett* [2008] VSC 258 (para 10).

¹²⁴ *R v Fitchett* [2008] VSC 258 (para 10).

¹²⁵ *R v Fitchett* [2008] VSC 258 (para 14).

¹²⁶ *R v Fitchett* [2008] VSC 258 (para 18).

¹²⁷ *R v Fitchett* [2008] VSC 258, *R v Fitchett* [2010] VSC 393. Evidence also showed that Donna Fitchett suffered from Hashimoto's thyroiditis and menopausal hormonal imbalances for which she received medication (*R v Fitchett* [2008] VSC 258).

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the incident, said she was irrational, distraught and crying, and saying that her marriage was over. She made a number of ‘bizarre’ and ‘irrational’ statements.¹²⁸

Professor Mullen, Emeritus Professor of Forensic Psychiatry at Monash University, and Dr Sullivan, Assistant Clinical Director at the Victorian Institute of Forensic Mental Health, who both undertook a psychiatric examination of Donna Fitchett, gave evidence at her trials that she was suffering a major depressive illness when she killed her children and she could not reason that her conduct was wrong. Justice Curtain outlined Professor Mullen’s description of Donna Fitchett’s case as one of extended suicide, ‘where a mother with a close relationship to her children decides that for her to die the children must die as well because she cannot conceive either of leaving them or of the children being able to survive without her’.¹²⁹

However, Dr Yvonne Skinner, a consultant psychiatrist in private practice in Sydney, gave converse evidence. Dr Skinner was not able to undertake a psychiatric examination of Donna Fitchett. Relying on transcripts of the trial, statements and medical reports, she could see no evidence that Donna was suffering from anything more than mild depression before the killings.¹³⁰ At the first trial, Dr Skinner also gave evidence that what Donna said in her letters to her counsellor and husband suggested the killings were motivated by spousal revenge.¹³¹

Justice Nettle, in sentencing Donna Fitchett at her first trial, said that it was possible that she killed the children because she was upset that when she told her husband she was going to leave him, her son Thomas said he wanted to stay with his father. Justice Nettle also pointed to a ‘further possibility’ that Donna Fitchett wanted to punish her husband for saying it would be better if she had not had children or for ‘not being the sort of husband and father she thought he should have been’.¹³²

Justice Curtain, in sentencing Donna Fitchett at her second trial, said that he accepted that her mild to moderate depression was causally linked to her actions but that did not operate to reduce her moral culpability for the crimes to a significant degree. Justice Curtain said that in the second trial ‘no evidence was led as to the motive being spousal revenge ... the only possible motive put forward was that you wanted to take your children into death with you, otherwise these are motiveless crimes’.¹³³

¹²⁸ According to her sister, on the day before the killing Donna Fitchett was ‘a shattered mess’ and quoted conspiracy theories such as the Howard Government put Martin Bryant up to the Port Arthur killings and a BHP employee murdered former prime minister Harold Holt (Gregory 2008).

¹²⁹ *R v Fitchett* [2010] VSC 393 (para 13).

¹³⁰ *R v Fitchett* [2008] VSC 258 (para 27).

¹³¹ *R v Fitchett* [2008] VSC 258 (para 27). It is not clear from the sentencing documents why this evidence was not given at the second trial.

¹³² *R v Fitchett* [2008] VSC 258 (para 10).

¹³³ *R v Fitchett* [2010] VSC 393 (para 27).

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At both trials Donna Fitchett was found guilty by the jury, which indicates the jury did not accept the psychiatric evidence that she was mentally impaired to the extent that she did not know that what she was doing was wrong.

Donna Fitchett's case shares some similarities with the cases of Cathy and Samantha, outlined above. She was the primary carer for her children and believed she had little support in that role. She was described as a loving mother, whose sons were the priority in her life. She was depressed for some time before the filicide. She was unhappy about the breakdown of her marriage and this appears to have contributed to her becoming suicidal. Her stated reason for killing the children was also similar: she said she did not want to leave her children without a mother. She expressed a belief that if she killed herself, she would be 'abandoning' her children.

ANGER AND REVENGE IN FILICIDES BY MOTHERS?

The evidence that Donna Fitchett's case was one of 'spouse revenge' or 'retaliation' is less clear than in the cases of paternal filicide discussed in Chapter 4. In her suicide letter to her husband, Donna Fitchett apologised for her actions. This contrasts with the sentiments of anger and revenge expressed by some fathers in the cases outlined in Chapter 4.

In contrast to the cases in which mothers killed their children, in discussions with family and friends, and in suicide notes prior to the killings, the fathers expressed little direct concern about their children's welfare. Their focus was often anger at their ex-partners and a perceived loss of their own rights to significant contact with their children and the financial assets of the family. In these cases, filicide aimed at hurting their ex-partner appears to be the primary motive, even when suicide also occurs.

Kirkwood (2000) found that some of the women in the filicide-suicides she examined expressed some anger and disappointment with their ex-partners. For instance, Cathy, discussed earlier, cut up her partner's clothes. Women's anger appears to stem from the difficulties they faced as mothers after separation and their perception of their partner's lack of care for them and their children. It is possible that women may be motivated by anger and may seek to hurt their partners by killing the children. But retaliation or revenge does not appear to be a key motive in these cases. As outlined in the research in Chapter 3, women make up only a small proportion of the perpetrators of retaliation filicides. This is consistent with women forming only a small proportion of the perpetrators of intimate partner homicide and an even smaller proportion of the perpetrators of familicide (the killing of partners as well as the children).

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The patterns of intimate partner violence – controlling, jealous and possessive behaviour – exhibited in many of the cases in which fathers killed their children are not evident in the research on maternal filicide, nor are they evident in the cases reviewed here. In none of the cases outlined above was there indication that the women had previously been violent towards their partner.

CONCLUSION

This chapter has explored some Victorian case studies of mothers who intentionally killed their children in the context of separation. It confirms the findings of the filicide literature that shows factors contributing to maternal filicide include being the primary carers of their children, limited support, financial difficulties and experiencing family violence (Bourget et al. 2007, Kauppi et al. 2010).

Separation, or the prospect of it, has a significant impact on mothers as the primary carers for children. Culturally and socially women are viewed as ultimately responsible for the welfare of their children. In the cases outlined in this chapter, the women who were primary carers for their children faced difficulties providing for them post-separation and were worried about the welfare of the children in those circumstances. The women became depressed and suicidal because they believed they could not cope alone as mothers after separation.

The primary motive in many cases in which women kill their children in the context of separation appears to be suicide. However, the cases outlined in this paper show that the women did not want to 'abandon' their children and leave them without their mother and so they killed the children as well as themselves. The women appear to believe the children's fathers were uninterested in, or not capable of, caring for the children. Social expectations in relation to the responsibilities of women for children and mothers' perceptions that children could not survive without them may be important considerations for understanding maternal filicides.

Warning signs are evident when mothers kill their children in the context of separation. Many of the women discussed above, experienced depression and expressed suicidal thoughts or made suicide attempts. Some women told others they intended to kill themselves and to include their children in their suicide. The women also expressed concern about their ability to cope as mothers after separation from their partner. It follows that in terms of prevention, support related to mental health and practical support in providing for children post-separation may reduce risks to women and children in these circumstances.

CHAPTER 6

Conclusion: Shining some light in the dark

This discussion paper has outlined international research and case examples of parents who kill their children in the context of parental separation. It has explored the motives, and other contributing factors, in these filicides. While the research shows that separation is a central element in many filicides, there is a limited understanding of the impact and role it plays in filicide. We have sought to contribute to the understanding of intentional filicide in the context of separation in order to stimulate further research and discussion, which is necessary to develop effective prevention strategies.

The paper argues that intentional filicides that occur in the context of separation differ to other types of filicide and therefore require a different approach to explanation and prevention. It also shows there are gender differences between fathers and mothers who perpetrate these filicides, which also need to be considered. The paper highlights a distinct type of separation filicide, primarily perpetrated by fathers, in which the children are killed to harm the other parent. This final chapter focuses on such filicides, described in the literature as ‘revenge’ or ‘retaliation’ filicides. As an organisation that aims to prevent family violence, this is the area in which we are most likely to be able to make a contribution.

The first part of this chapter highlights the importance of recognising the significance of separation in some filicides, the gendered patterns in filicide occurring in this context and the role and impact of intimate partner violence. The second part considers issues relevant to the prevention of these filicides. It considers ideas for improving legal, mental health and social service responses, and for assessing risks to children. This chapter also provides some suggestions for future research and data collection in Australia.

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RECOGNISING THE SIGNIFICANCE OF PARENTAL SEPARATION

This discussion paper has suggested that parental separation (or the prospect of it) is a central feature in many intentional filicides. These cases differ to the common filicide category of fatal abuse, in which a child is killed (often unintentionally) as a result of ongoing abuse and/or neglect. There is often no indication of prior physical violence towards the child(ren).

To understand why children are killed in the context of their parents’ separation, it is necessary to examine the nature of the relationship between the child’s parents. This contrasts with the approach taken in most homicide research, which is to examine the nature of the relationship between the filicide victim and the perpetrator. This paper has shown that in many filicide cases, where the parents have separated (or separation is pending), the nature of the relationship between the parents is more critical for understanding the reasons for the filicide than the relationship between the child victim and perpetrator.

Looking beyond ‘mental illness’

Many filicides by mothers and fathers that occur in the context of separation involve the perpetrators’ depression and/or suicide. Consequently, many researchers have categorised these incidents as being the result of mental illness. This has drawn attention away from the significance of separation for understanding the perpetrators’ actions. Mental health is clearly an important contributing factor in many filicides. However, it is necessary to consider the social, cultural and structural factors that contribute to the perpetrators’ mental state and to their decision to kill their children. To concentrate solely on individual mental health obscures the gendered patterns that are evident in the motivations for many filicides.

There is a need for a clearer understanding of the role depression plays, but also consideration of the broader socio-cultural factors relating to separation. Some questions that may be useful to consider are: What factors led to the separation? Was there a history of violence or controlling behaviour? Did the perpetrator’s response to separation contribute to their depression? How did socio-cultural expectations and attitudes about families and the roles of mothers and fathers impact on the perpetrator’s state of mind?

To understand the impact of separation and its role in filicide cases, it is necessary, too, to consider social and cultural expectations about relationships, notions of marriage and the family and the gendered roles of mothers and fathers. For instance, societal pressure to marry and stay with a partner, particularly when children are involved, may mean separation is viewed as a personal failure that may contribute to depression and suicidal ideation. It may also be the case that some men have a social expectation of entitlement

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to control over their families and this may be used to justify their anger and revenge towards female partners for instigating separation.

GENDER DIFFERENCES, DOMESTIC VIOLENCE AND RETALIATORY FILICIDE

Existing research and the cases outlined here show that both fathers and mothers kill their children in the context of separation from their intimate partner. This paper has highlighted some important gender differences in circumstances and motives.

Separation filicides by fathers are more likely to involve one or more of the following contributing elements:

- violence and controlling behaviour towards their partner before, and after, separation
- anger towards their ex-partner and desire for revenge in relation to the separation
- an intention to harm the ex-partner by killing the children.

In some of the filicides discussed here, fathers had previously used physical violence to maintain control during the relationship. In other cases, other forms of controlling and threatening behaviour were evident. In some instances, there was no indication of prior violence or controlling behaviour. However, in such cases outlined here, the children were killed by fathers as a means of harming ex-partners after separation. In the filicide literature these cases are described as 'retaliatory' or 'spouse revenge' filicides. While the children are the direct victims, this type of filicide can also be seen as a form of violence against women, as the perpetrators' primary goal is to punish the mother for leaving the relationship. Recent research, outlined in this paper, has found perpetrators of intimate partner violence often use children to hurt their female partners. In some of the cases discussed here, perpetrators saw killing their children as the optimum way of punishing their ex-partners.

The gendered patterns of retaliatory filicides are similar to those found in intimate partner homicide: they are predominantly perpetrated by men seeking to hurt their intimate partners. Both these types of killings occur when the female partner attempts to leave the relationship.

There was no indication in the cases outlined in this paper that the women who perpetrated filicide in the context of separation had previously been violent towards their ex-partner. There was also little indication that the primary motive of the mothers who killed their children was to harm their partner. We acknowledge that women can be perpetrators of violence against intimate partners, can experience anger towards partners and may kill children to retaliate against a partner. The research and the cases outlined in this paper, however, show these forms of violence are predominantly perpetrated by men.

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In contrast to fathers who killed their children in the context of separation, mothers were usually the primary carer for the children they killed. Mothers appear to be focused on the difficulties they experienced providing for their children on their own after separation. In the cases examined, the women’s primary motive appeared to be suicide. The women were not able to conceive of leaving their children without their mother and consequently killed them, as well as themselves.

IMPROVING SYSTEM RESPONSES

Recognising risks to children

For the past two years various authorities have been made aware of our fears for the safety of the children and unfortunately no one would listen. We feel the judicial system has failed our family and will continue to fail other families until someone in authority starts to take action (Darcey Freeman’s uncle, statement to police).¹³⁴

In most of the cases outlined here, the parents who killed their children had prior contact with police, courts, mental health services, social services (such as men’s behaviour change programs) and general practitioners in relation to family violence, separation, disputes relating to children or mental health issues. These contacts are opportunities for intervention and prevention. There is a need to improve responses to ensure service providers can adequately recognise warning signs and know, in particular, that risks to the safety of a parent can be linked to risks to the safety of their children.

The research indicates that there may be some specific warning signs for the risks of retaliatory filicide. They include a history of intimate partner violence, controlling behaviour towards family members, extreme anger towards the other parent in relation to the separation and any threats or indication of an intention to harm the children in order to punish an ex-partner.

The cases in this paper show that violence and/or threats towards the mother may be a warning sign of the child’s risk of being intentionally killed by their father, even where there has been no previous violence against the children. This should be considered as an important aspect of risk assessment in relation to family violence (discussed further below). Other possible warning signs are threats to suicide or attempts to suicide.

The research on filicide undertaken by the Women’s Aid Federation in the UK (outlined in Chapter 4) highlights the failure of agencies in contact with

¹³⁴ *Mornings with Jon Faine* (2009), ABC local radio Melbourne 5 February.

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families in England and Wales to identify risks to children when the mother is a victim of domestic violence. They found that when domestic violence was identified it was not deemed to be relevant to child protection concerns (Saunders 2004). In several filicide cases, statutory agencies¹³⁵ knew the mother was experiencing domestic violence, but the children were not viewed as being at risk of ‘significant harm’ even when their mother was facing potentially lethal violence. The Women’s Aid Federation recommend that all workers with child protection responsibilities receive training to enable them to understand the dynamics of domestic violence and its links with child protection, and to recognise significant risk indicators. They state that:

if the child’s primary carer is facing a potentially lethal level of violence, this should always be recognized as a serious child protection issue and efforts should be made to ensure the safety of both the non-violent parent and the children (Saunders 2004:17).

The Women’s Aid Federation argues that if allegations of abuse of a parent are made, they should be investigated. This investigation should involve separately assessing both parents and the children. The assessment of the children should occur in a child-friendly environment using child-friendly techniques over several weeks to establish the child’s perspective, to assess whether the child is at risk and to make appropriate recommendations for the child’s welfare (Saunders 2004). The Women’s Aid Federation also recommend that research be undertaken to identify significant risk indicators for children in cases of domestic violence, specifically where there are contact or residence proceedings or arrangements.

The material outlined in this discussion paper indicates that these recommendations are relevant in an Australian context. It also indicates that fears for the safety of children should also be investigated. The implications for risk assessment are discussed below.

It is beyond the scope of this paper to examine in detail the potential role of the child protection system in filicides that occur in the context of separation. In most of the cases explored in this paper, child protection services did not appear to be involved.¹³⁶ There is currently a review of child protection in Victoria which will investigate the child protection system and ways to improve it. This Inquiry will report its findings in early 2012.¹³⁷

¹³⁵ Examples of statutory services in Australia are police, courts, child protection services and state mental health services.

¹³⁶ In the case of Kongsom, outlined in Chapter 4, the Department of Community Services (responsible for child protection services in NSW) had been notified and had closed the case days prior to the children being killed (Cameron and Ross 2008); in the case of Rachel, outlined in Chapter 5, Child Protection in Victoria were involved with the family at the time the child was killed.

¹³⁷ *Protecting Victoria’s Vulnerable Children Inquiry* – for further information see www.childprotectioninquiry.vic.gov.au.

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Legal responses

In several cases outlined here, children were killed by their fathers while there was a family violence protection order in place to protect their mother. It is not known if these orders also included the children, but it is clear that they did not protect the children, or the mothers from the harm caused by the loss of their children. These cases highlight the importance of including children in family violence protection orders where there is a risk to the safety of their mother and in responding to breaches of the orders. They also highlight the importance of state and federal agencies (such as police and family courts) sharing information about family violence and working together to prevent violence against children.

In many of the cases outlined in Chapter 4, fathers killed their children during access visits which had been negotiated through informal or formal family law agreements. Only one case appeared to involve a Family Court hearing (Jayson Dalton's case). In the case of Arthur Freeman, orders had been made the day before, but they were consented to by both parties by negotiations between their lawyers rather than contested through a hearing before a family court justice. Nevertheless, research shows that the Family Court regularly gives fathers access to children where there is violence against the mother but not against the children (Alexander 2010). Hart and Bagshaw (2008) undertook an in-depth analysis of twenty Family Court of Australia judgments in cases involving allegations of domestic violence. They found that in most of these cases the father's history of domestic violence or child abuse was ignored. The judgments placed greater emphasis on the harm to children caused by being deprived of contact with fathers, than on the harm to children from exposure to violence (Hart & Bagshaw 2008). The interconnection of abuse against women and children presents a challenge to a legal system that assumes the interests of women and children in this context can be disaggregated (Kaspiew 2005).

McInnes (2008) argues the Family Court must take a greater role in preventing access to children at risk of harm. She points out that the 'family law system has responsibility for allocating children between parents but has no capacity to investigate or assess the ability of parents to provide safe or appropriate care, nor the capacity to monitor what happens to the children whose best interests are supposed to have been serviced once the arrangements are made' (McInnes 2008).

There is a substantial amount of literature on systems' responses to family violence and there have been significant reforms at the state level to police and Magistrates Court responses to family violence. At the federal level there have recently been a number of reviews of family law that directly address the issue of family violence and the safety of children. Reviews have been undertaken by Chisholm (2009), the Family Law Council (2009), the Australian Institute of Family Studies (2009) and the Australian Law Reform Commission (2010).

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The Australian Law Reform Commission's review examined the intersection between child protection systems and family law where violence is present in families. They found that where children are concerned there is a particularly fragmented system with unclear jurisdictional boundaries and inadequate communication and information sharing between the courts and child protection agencies (ALRC 2010).

The ALRC report contains recommendations for reform to improve safety for women and children, including greater recognition of the impact of intimate partner violence on children, and the risks of harm to children when there has been violence against the mother and/or where the mother holds fears for the safety of her children. The report also recommended the safety of children and their parents be prioritised in decisions about parenting arrangements.

The Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 was introduced into Federal Parliament in March 2011. This bill proposed amendments to the *Family Law Act* to protect children and families at risk of violence or abuse. It did this in a number of ways, such as prioritising the safety of children in parenting matters; including harmful behaviour in the definitions of 'abuse' and 'family violence'; requiring family consultants, family counsellors, family dispute resolution practitioners and legal practitioners to prioritise the safety of children; and placing additional reporting requirements on certain parties to provide evidence to courts. The bill, which has been subject to a Senate inquiry, was passed in Parliament in November 2011. It is hoped that the new legislation will bring about positive changes to family law in Australia.

Social, medical and mental health services

Many perpetrators of filicide experience depression and therefore may come into contact with general practitioners or mental health services. Brown and Tyson (2011), who recently commenced research on filicide in Victoria¹³⁸, found that almost all perpetrators of filicide had contact with community services and that the most common service was GPs. They found that warning signs were present but were not passed on to relevant agencies (Brown and Tyson 2011).

Given that separation is a key factor in many filicides, it also follows that services coming into contact with separating parents (such as relationships' advice services, men's support services and family mediation services) may play an important role in identifying families at risk and providing appropriate supports and/or intervention.

¹³⁸ Thea Brown and Danielle Tyson from Monash University have commenced research on filicide in the context of parental separation. They have obtained access to coronial records in Victoria and were in the process of analysing their data at the time this discussion paper was being finalised.

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It is important for parents experiencing difficulties with separation to be able to access appropriate services; it is also important those service providers are adequately trained to detect warning signs of risk to family members’ safety and are able to undertake effective risk management (discussed further below).

Services should challenge any beliefs that may be used to justify family violence such as beliefs about men’s entitlement to relationships and that women are to blame for separation. Service providers can help clients address their anger and blame, accept the separation and focus on building healthy relationships. Michael Flood (2008) suggests that responses to separated fathers be father-friendly, accountable and oriented toward encouraging positive and ongoing involvement in their children’s lives. He has pointed to the ‘potential to foster men’s positive and non-violent involvement in parenting and families’ (Flood 2008). Encouraging parents to focus on their children’s needs is also clearly important.

Contact details for services providing support to parents experiencing difficulties with separation are provided in Appendix 2.

Risk assessment

Workers coming into contact with families in which there are concerns about the safety of family members, or conflict in relation to separation, require skills (and tools) for effective risk assessment. Research indicates that despite ‘certain limitations’, risk assessment frameworks and tools can ‘with some reliability, identify women who may be at risk of being killed by an intimate partner’ (Campbell et al. 2003b).

Risk assessment is likely to be most effective when implemented as a whole system approach based on a shared understanding, which includes appropriate referral pathways. It is important that risk assessment frameworks be aligned across sectors and jurisdictions.¹³⁹

The Victorian Family Violence Risk Assessment and Risk Management Framework (Department of Victorian Communities 2007) involves considering the following three elements when assessing risk:

- the victim’s assessment of their own safety
- evidence based risk factors
- professional judgment.

It is well documented that the victim’s own level of fear and views about the likelihood of future violence is a critical determinant of the level of risk of harm (Roehl 2005, Gondolf 2001). This discussion paper suggests this may need to be extended to include fear about harm to children.

¹³⁹ The Commonwealth Attorney General’s Department is planning to develop a standardised framework for screening safety risks across the family law sector. The project aims to create a shared understanding across the family law system about the predictors of risks to safety and how they can be effectively identified and managed.

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Current risk assessment frameworks focus on risks to the victim of family violence. The material outlined here indicates that where a parent is the victim of violence from a partner, it is important to extend risk assessment to the safety of the children. This is important while the relationship is intact, but also after separation.

FAMILY VIOLENCE DEATH REVIEW PROCESS

Women's organisations have lobbied governments to implement family violence death review committees in Australia and internationally. Family violence death review committees have now been established in the USA, Canada, UK and, more recently, in Australia (Taylor 2008).

In Australia, the first family violence death review process began in Victoria in 2009.¹⁴⁰ The Victorian Systemic Review of Family Violence Deaths (VSRFVD) examines family violence-related deaths investigated by Victorian coroners to inform future interventions and assist in protecting children and adults from violence (Coroners Court of Victoria (CCOV) 2010). The VSRFVD has five main aims, which are to:

- examine the context in which family violence deaths occur
- identify associated risk and contributory factors
- identify trends or patterns in family violence-related deaths
- consider systemic responses to family violence
- provide an evidence base to support the formulation of prevention focused coronial recommendations aimed at reducing both fatal and non-fatal forms of family violence.

All family violence-related deaths identified from 1 January 2009, including those of children killed by family members, are subject to review (CCOV 2010).

The VSRFVD is led by the State Coroner of Victoria and assisted by the Coroners Prevention Unit (CPU) situated within the Coroners Court of Victoria. A reference group has been established to advise on systemic issues and opportunities for prevention within the family violence service system.

The VSRFVD is a valuable development and has the potential to contribute to our understanding of filicide, and to make recommendations for systemic changes which may prevent further deaths from occurring. The Coroners Court of Victoria has access to substantial information about these deaths, including post-mortem reports, medical records and police interviews with perpetrators and witnesses. It also has the power to conduct further investigations and to hold inquests into these deaths.

¹⁴⁰ The Victorian Law Reform Commission made a recommendation to implement a Family Violence Death Review Committee in their Family Violence Review (2006).

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The VSRFVD has the capacity to collect information on a large number of cases and to identify trends and patterns which will contribute to our understanding of why the deaths of children and other family members occur. The VSRFVD is a relatively new process, and at the time of writing the extent to which information and data collected as part of the review will be made publicly available has not yet been determined.

There are two key reasons it is important that information about family violence deaths be shared. First, from a research perspective it is currently very difficult to obtain information about family violence deaths, particularly where the perpetrator dies by suicide and no further criminal justice proceedings occur. Research is also important for developing our knowledge of the phenomenon of homicides involving family members; particularly filicides, for which there is a very limited amount of information available. This understanding is crucial for informing effective prevention strategies.

Second, from a policy perspective the VSRFVD has the potential to directly contribute to knowledge and prevention strategies relating to family violence deaths in the community. For this to happen, the process needs to be comprehensive, transparent and accountable. This is more likely if detailed findings are publicly available, ideally including access to coronial files and transcripts of coronial hearings.

It is important that death reviews have access to all relevant information about family violence deaths. Information from federal organisations, such as Family Court proceedings, should be made available to state death review processes. The Women's Aid Federation in the UK specifically points to the need for death review processes to have the power to investigate Family Court decisions in filicides (Saunders 2004). If federal organisations are not included, there is not only a significant gap in knowledge but those agencies cannot be held accountable, which impedes opportunities for reform. In addition, Websdale (2010), former Director of the National Domestic Violence Fatality Review Initiative in the US, points to the importance of death review committees speaking directly to surviving family members and friends to gain insight into family homicides. This is not currently a feature of family violence death reviews underway in Australia.

It is essential for family violence death reviews to be established in each state and territory in Australia with a nationally consistent approach. A centralised national database of family violence deaths should be established to inform prevention policy and research. It is also crucial that all family violence death reviews include the deaths of children in families and explore the link between adult domestic violence and the killing of children (Websdale 1999).

FUTURE DIRECTIONS FOR RESEARCH AND IMPROVING DATA COLLECTION

This discussion paper has relied on previous research and information available on specific cases through media sources and the internet. There are many gaps in the literature, and methodological limitations with the available data sources. Many filicide researchers continue to highlight the need for further research into the motives and factors contributing to filicide, in particular into gender differences between perpetrators (Putkonen et al. 2011, Liem & Koenraadt 2008, Leveillee et al. 2007, Bourget & Gagne 2005, Hatters Friedman et al. 2005). Lack of knowledge makes prevention difficult (Hatters Friedman et al. 2005). In undertaking this discussion paper there was difficulty obtaining access to data and information about filicide cases.

There is a need for further research, particularly with more rigorous methods and more in-depth analysis of a larger sample of cases. A comprehensive Australia-wide study of filicide, which pays close attention to the issues of separation and family violence, is necessary for developing a better understanding of filicide. A key question to be asked is: what has been the nature and dynamics of the relationship between the parents prior to the filicide?

Research should draw on administrative records, sources such as coronial files and trial transcripts but also involve speaking to family members and friends (where this is appropriate and can be undertaken with sensitivity). This is particularly important because official records have limited information about the nature and extent of prior family violence.

National Homicide Monitoring Program

The Australian Institute of Criminology (AIC), a commonwealth statutory authority, produces the National Homicide Monitoring Program (NHMP), outlined in Chapter 3. The program provides analysis of homicide trends as the basis for implementing public policy on the prevention and control of violence. The NHMP database is a unique resource and the analysis provided in AIC reports provides valuable information about homicide in Australia. The AIC produces annual reports on the NHMP and Trends and Issues papers on specific homicide topics. Unfortunately, at the time of writing the NHMP has not produced a Trends and Issues paper on child homicide since 1996 (Strang) or on family homicide since 2003 (Mouzos & Rushforth). The AIC is planning to release a Trends and Issues Paper on filicide in the near future.¹⁴¹

While the NHMP annual reports provide some useful information, there is inconsistency in what they report from one year to the next which makes comparisons over time difficult. The reports do not currently provide information

¹⁴¹ Personal communication with AIC.

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about what proportion of mothers and fathers perpetrate different types of filicide such as neonaticide and fatal abuse filicides and what proportion of mothers and fathers suicide as part of the filicide.

DVRCV requested filicide data from the NHMP which has been valuable for this paper. However, as discussed in Chapter 3, the data only provided a limited amount of information about the reasons or motives for filicide and did not use categories consistent with the international literature. Improvements to the data collection to include specific filicide categories and to clarify the nature of categories such as ‘revenge’, ‘jealousy’ and ‘domestic argument’ may assist in reducing the high number of cases in which the motive is not recorded and would help develop a better understanding of filicide in Australia. It would also be useful to be able to identify which cases involved separation as a factor in the filicide and in which cases there had been prior family violence towards partners and/or children.

Without accurate and regularly reported statistics it is not possible to get a thorough understanding of the patterns of filicide or to measure changes that may occur as the result of policy developments (such as changes to family law) and the implementation of prevention strategies.

CHANGING COMMUNITY ATTITUDES

In many of the cases outlined in this discussion paper, perpetrators of filicide told someone what they planned to do and were not taken seriously. Some told professionals and others told friends or family members. International research also shows that many parents who killed their children talked about filicidal ideation with a professional, friend or family member before the incident (Putkonen et al. 2011). This is a key warning sign that is not being heeded. There is a need for an awareness campaign so early detection and intervention is improved (San Diego DV Fatality Review Team 2008). Such a campaign should target professionals but also the wider community. People should be supported to share any information they may have about risks of harm to children with appropriate agencies without negative repercussions for themselves (Humphreys 2010). Recent work on developing approaches to bystander action on family violence may be useful to explore in relation to preventing filicide.¹⁴²

It is also important that those working in the media are informed about filicide and its links with violence against women. Media reports of parents who kill their children attract a great deal of attention. The way these cases are reported

¹⁴² See for instance, the review of bystander approaches to preventing violence against women by VicHealth (Powell 2011).

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shapes public discourse on the subject and the way people understand the events (Bullock & Cubert 2002, Neale & Worrell 2010). But media depictions of child homicide are very inconsistent and journalists are often looking for ways to explain what has happened without success.

There has been extensive activism across Australia and internationally around the issue of women and children killed by men in their families. One of the early campaigns by the Women's Coalition Against Family Violence resulted in a book *Blood on Whose Hands?*, which documented the deaths of women and children in Victoria (1994). This raised awareness about this issue with the community, media, policy makers, police and the judiciary.

As these deaths continue to occur, there is a need for ongoing awareness raising and community education. Current campaigns and initiatives at the state and federal level that seek to challenge the social attitudes that underlie family violence are critical. It is important such campaigns challenge ideas that are used to justify violence, including the misconceptions about family law outlined in Chapter 4 – in particular, the notion parents are driven to violence because they are not able to see their children after separation. Parents should be encouraged to seek help and strive to form positive, respectful relationships in the best interests of their children. We also need to challenge the sense of entitlement that some men continue to have in relation to their families, an entitlement that leads them to believe their partner has no right to leave them and no right to form a new relationship, and that punishing her is justified because of the suffering they experience.

This paper shows intimate partner violence against women is a key factor in many filicides and retaliatory filicides are also a form of violence against women. Initiatives aimed at responding to, and preventing, these forms of violence are likely to be important for preventing future deaths of children that occur in the context of their parents' separation. Ongoing state and federal initiatives are critical. The National Plan to Reduce Violence Against Women and their Children, developed by the National Council to Reduce Violence Against Women and their Children (NCRVWC) includes important strategies such as advancing gender equality and improving services to meet the needs of women and their children experiencing violence (NCRVWC 2011).

At the state level, the continuation of initiatives outlined in *A Right to Respect: Victoria's Plan to Prevent Violence Against Women 2010–2020* (Office of Women's Policy 2009) and *A Right to Safety and Justice: Strategic Framework to Guide Continuing Family Violence Reform in Victoria 2010–2020* (Office of Women's Policy 2010) would be likely to contribute to the prevention of filicides in Victoria.

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SUMMARY OF KEY POINTS IN CHAPTER

There is a need for:

- comprehensive Australia-wide research on filicide which examines the role of separation and the presence and impact of prior family violence
- improved national data collection and reporting on filicide
- family violence risk assessment frameworks that include assessing children's safety when there are risks to the safety of a parent
- a requirement that all professionals who come into contact with perpetrators or victims of family violence, and with separating parents – police, magistrates, family court personnel, family dispute resolution services, mental health practitioners, general practitioners, child protection etc – receive training in the dynamics of family violence and in risk assessment, and that they implement risk assessment processes
- continued community education campaigns about family violence, particularly highlighting the potential risks to children when there is violence towards a parent
- continuing statewide and federal initiatives to reduce family violence.

CONCLUSION

This discussion paper has considered a difficult and complex topic. It demonstrates that filicides that occur in the context of parental separation are not always inexplicable, although they are frequently depicted as such in the media. It shows there are factors related to separation and parents' responses to it that can explain why some children are killed in this context.

The paper also highlights the role of family violence in filicides. The research and case studies outlined show that violence towards an intimate partner is a factor in many filicides that occur in the context of separation. In some instances the filicide is directed towards harming the ex-partner. These cases are primarily perpetrated by fathers and often appear to be the extreme end of a continuum of intimate partner violence.

For every case in which a child is killed there are likely to be many other children who have had their lives threatened or who have been harmed by a parent. We need to continue to develop our understanding of these filicides so that we can find effective ways to identify children at risk, to intervene and prevent the future harm and deaths of children. It is hoped that this paper will stimulate further discussion and research.

APPENDIX 1

Data tables

TABLE A1: TOTAL VICTIMS AGED UNDER 18 KILLED BY PARENTS AND OTHERS

Year	Number of victims killed by a parent	Number of victims killed by others
1997/98	21	22
1998/99	19	26
1999/00	34	17
2000/01	14	16
2001/02	39	13
2002/03	32	14
2003/04	25	16
2004/05	26	11
2005/06	31	15
2006/07	22	15
2007/08	28	12
Total	291	177

Source: NHMP 1997–2008

TABLE A2: PARENT PERPETRATORS AND NUMBER OF CHILD VICTIMS KILLED

	Number of incidents	%
One parent – one child	178	74
Two parents – one child	22	9
One parent – multiple children	38	16
Two parents – multiple children	1	0
Total	239	100

Source: NHMP 1997–2008

APPENDICES

TABLE A3: GENDER AND AGE OF CHILD VICTIMS KILLED BY A PARENT (VICTIMS N = 291)

Age of child	Custodial parent		Non-custodial		Step-parent		Total	
	Male child	Female child	Male child	Female child	Male child	Female child	Male child	Female child
0	43	39	2	1	6	4	51	44
1	16	10	1	2	9	3	26	15
2	12	6	3	0	5	1	20	7
3	6	9	3	0	1	3	10	12
4	6	10	2	0	1	3	9	13
5	9	2	1	0	2	1	12	3
6	4	5	3	0	0	0	7	5
7	7	4	0	1	1	0	8	5
8	5	1	2	0	0	0	7	1
9	1	1	2	0	0	1	3	2
10	3	4	0	1	0	0	3	5
11	4	3	1	0	0	0	5	3
12	0	1	0	0	0	0	0	1
13	1	1	0	0	0	0	1	1
14	0	2	0	0	0	1	0	3
15	0	0	0	0	1	1	1	1
16	1	0	0	0	0	1	1	1
17	1	1	0	0	1	1	2	2
Total	119	99	20	5	27	20	166	124

Source: NHMP 1997–2008

Note: Excludes one case where the child's gender was unknown.

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TABLE A4: APPARENT CAUSE OF DEATH – PERCENTAGE OF MOTHERS AND FATHERS

Method	% of mothers	% of fathers*	% of all perpetrators
Beating	9	35	24
Strangulation	24	12	16
Poisoning (incl. carbon monoxide in cars)	14	7	10
Stab wound	13	9	10
Shaking	3	14	9
Drowning	13	6	9
Gun Shot	2	6	4
Smoke inhalation/burns	7	2	4
Drug overdose	5	1	3
Criminal neglect	2	1	3
Other eg hit by car, hang	5	6	5
Unknown	3	1	2
Total	100	100	100

Source: Calculated from data provided by NHMP 1997–2008

*includes stepfathers

Note: Table excludes multiple perpetrators.

TABLE A5: VARIOUS TYPES OF FILICIDE AND GENDER OF PERPETRATORS, VICTORIA 1989–1999

Type of filicide	Victims		Perpetrators			
			Mothers		Fathers	
	No.	%	No.	%	No.	%
Neonaticides	11	19	6	27	0	0
Fatal assault*	19	33	5	23	14	58
Filicide-suicide	18	31	6	27	7	29
Extreme psychiatric disturbance	6	10	3	14	1	4
Other	4	7	2	9	2	8
Total	58	100	22	100	24	100

Source: Alder and Polk 2001

* Alder and Polk (2001) use the term 'fatal assault' in the same way as the term 'fatal abuse' is used by other researchers, as outlined in Chapter 3.

APPENDIX 2

Referral information

NATIONAL SERVICES**National Sexual Assault, Family & Domestic Violence Counselling Line:****Toll Free 1800 737 732 (1800 RESPECT)**

For any person who has experienced, or is at risk of, family and domestic violence and/or sexual assault. Available 24 hours, 7 days a week.

MensLine: Toll Free 1300 78 99 78

A telephone support, information and referral service, helping men to deal with relationship problems. Available 24 hours, 7 days a week.

Lifeline: Toll Free 13 11 14

Lifeline provides access to crisis support, suicide prevention and mental health support. Available 24 hours, 7 days a week.

Family Relationships Advice Line: Toll Free 1800 050 321

Assists families affected by relationship or separation issues. Available 8am – 8pm Mon-Fri and 10am – 4pm Saturday (local time), except national public holidays.

Legal Aid

Assists people to obtain legal services. For links to the Legal Aid Program in your state, go to website: www.ag.gov.au/www/agd/agd.nsf/Page/Legalaid_LegalAidProgram

VICTORIAN SERVICES**Women's Domestic Violence Crisis Service: 9322 3555 or Toll Free 1800 015 188**

Statewide service for women experiencing violence or abuse from a partner or ex-partner, another family member or someone else they are close to. Available 24 hours, 7 days a week.

Men's Referral Service Victoria: 9428 2899 or Toll Free 1800 065 973

Anonymous and confidential state-wide telephone service for men who want to stop their violent or abusive behaviour towards family members. Also assists men who have experienced family violence. Available 9am – 9pm Monday to Friday.

Victoria Legal Aid: 9269 0120 or Toll Free 1800 677 402

Provides free legal services including information over the phone, legal advice, duty lawyers at many courts and tribunals. Available 8.45am – 5.15pm Monday to Friday.

Women's Legal Service Victoria: 9642 0877 or Toll Free 1800 133 302

Statewide legal service for women, specialising in relationship breakdown and violence against women. Available 9am – 5pm Monday to Friday.

Department of Human Services Child Protection

To report or discuss concerns about the safety of children, contact the After Hours Emergency Service 13 1278 or for regional contacts in Victoria during business hours go to website: www.cyf.vic.gov.au/child-protection-family-services/library/contacts.

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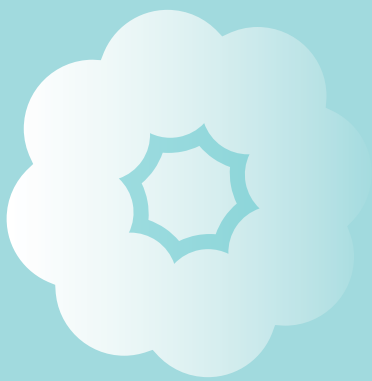
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CHAPTER 1

Introduction

Over the past decade in Australia, reviews of homicide laws have been undertaken in most jurisdictions with the aim of addressing concerns about legal responses to intimate partner homicides. In Victoria, problems were identified with the application of the partial defence of provocation, particularly in the case of men who kill their female intimate partners, while self-defence has been seen to be failing women who kill to protect themselves from their male partner's violence. In both contexts there has been a systemic failure to recognise the nature and impact of family violence.

Significant changes to homicide laws were enacted in Victoria in 2005 which have been held up as a 'trendsetting' example of feminist-inspired reforms to remediate gender imbalances in legal responses (Ramsey 2010; Forell 2006). The rationale for key aspects of the reforms was to better accommodate the experiences of victims who kill violent family members (Victorian Law Reform Commission [VLRC] 2002¹; Australian Law Reform Commission [ALRC] and New South Wales Law Reform Commission [NSWLRC] 2010, p. 622).

This discussion paper examines legal outcomes in the cases of women who have killed their intimate partners in the eight years since the reforms were implemented in Victoria. The focus of this paper is on whether, and to what extent, the reforms have improved the recognition of family violence and legal understandings of the circumstances in which women kill in response to violence by an intimate partner.

¹ The VLRC set out to address the concerns raised by the case of Heather Osland (2002, pp. 7–8), who was convicted of murder for the killing of her violent husband in 1996. The case highlighted gender bias in homicide laws and the inability of these laws to accommodate the experiences of victims of family violence. At Heather Osland's trial, both self-defence and provocation were raised unsuccessfully.

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OVERVIEW OF THE DISCUSSION PAPER

This chapter outlines the specific reforms designed to improve legal responses in cases of domestic homicide in Victoria.

Chapter 2 provides an overview of the outcomes of intimate partner homicide cases between 23 November 2005 and 1 October 2013.² A snapshot of cases resulting in a conviction for defensive homicide during that period is also included to provide a background context for our discussion of defensive homicide. We then provide a summary of key factors in cases of women who killed their intimate partners during that period.

Chapter 3 provides a detailed analysis of seven cases involving women who killed an intimate partner following the implementation of the 2005 reforms to the law of homicide in Victoria.

Chapter 4 identifies common themes in the cases and in legal responses to women who kill. It discusses the impacts of the reforms, and considers what further steps need to be taken to ensure that family violence is adequately recognised in legal responses to women who kill.

BACKGROUND

In 1994, the Women's Coalition Against Family Violence (WCAFV) produced a ground-breaking book, *Blood on whose hands? The killing of women and children in domestic homicides*. The Victorian Women's Trust (VWT) provided the funds to carry out the project and publish the book. It brought together the stories of women and children who had been killed in domestic homicides in Victoria. The accounts demonstrated the failure of the police, legal and support services to recognise and respond to family violence, and to prevent further family violence deaths. The book had a wide-reaching impact on the community and was used as an advocacy tool to raise awareness about the need for legal and social change in how we respond to domestic homicides.

The project underpinning this paper, also funded by the VWT, has been undertaken by the Domestic Violence Resource Centre Victoria (DVRCV), one of the key agencies originally involved in the Women's Coalition Against Family Violence, in collaboration with Monash University Criminology Department. It sought to build on earlier work that has explored the criminal justice system's response to women who kill their intimate partners and the understanding and awareness of the impact of family violence in those cases.

FAMILY VIOLENCE

For the purposes of this paper, we adopt the definition of family violence provided in the Victorian *Family Violence Protection Act 2008*. According to the Act, family violence is behaviour that controls or dominates a family member in any way, and causes them to feel fear for their own, or another family member's, safety or wellbeing. It can include physical, sexual, psychological, emotional or economic abuse, as well as any behaviour that causes a child to hear, witness or otherwise be exposed to the effects of that behaviour.

² The analysis for this paper was finalised in October 2013.

*Justice or Judgement?***DOMESTIC HOMICIDE IN AUSTRALIA**

Approximately a quarter of all homicides in Australia involve intimate partners (Chan & Payne 2013; Mouzos & Rushforth 2003). The majority of these homicides involve men killing female partners (Chan & Payne 2013). For example, a 13-year review of family homicides in Australia found that 75 per cent involved males killing their female partners (Mouzos & Rushforth 2003). In most cases when men kill their female intimate partners, this is part of a continuum of ongoing violence against the partner (Mouzos & Houliaras 2006; World Health Organization [WHO] 2002).

In contrast, when women kill they almost never kill their intimate partners for the same reasons as men do (Wallace 1986). When women kill an intimate partner, they are far more likely to do so in order to protect themselves or their children from their partner's violence (Polk 1994; Morgan 2002; VLRC 2002).

Indigenous Australians are overrepresented as victims of homicide. For example, between 2008 and 2010, Indigenous women were five times more likely to be victims of homicide than were non-Indigenous women (Chan & Payne 2013, p. 30). The majority of Indigenous homicides were domestic homicides, with intimate partner homicides being the main sub-category. Between 2008 and 2010, approximately 20 per cent of victims of intimate partner homicides were Indigenous (Chan & Payne 2013).³

THE REFORMS IN VICTORIA

In Victoria, over recent decades, there has been a growing body of research and community campaigning in the area of gender bias in legal responses to intimate partner homicides.⁴ Specifically, this work has focused on the law's inability to recognise the nature and impact of family violence and its role in intimate partner homicide, whether in the case of a man who kills as part of a pattern of family violence or a woman who kills in response to violence.

The two key strands of concern have focused on:

- men utilising the partial defence of provocation to excuse their actions in killing their intimate partners (Cleary 2002, 2005; Howe 1994, 1999, 2002, 2010; Scutt 1997; WCAFFV 1994; Morgan 2002; VLRC 2002; Department of Justice, Victoria [DOJ] 2010; Tyson 1999, 2013)
- women who kill to protect themselves from serious harm or death in the context of ongoing family violence not being able to successfully raise self-defence (Tolmie 1991; Kirkwood 2006; Sheehy, Stubbs & Tolmie 2012). (The most significant recent campaign in Victoria was in relation to the case of Heather Osland, who was sentenced in 1996 to 14 and a half years in prison for killing her abusive husband.)

After a lengthy process of consultation undertaken by the VLRC, as outlined in its *Defences to homicide: final report* (VLRC 2004), the Victorian legislature implemented a comprehensive package of reforms through the *Crimes (Homicide) Act 2005* (Vic).

³ Chan and Payne do not give a gender breakdown for this figure. However, Mouzos reports that Indigenous women are significantly more likely than non-Indigenous women to be both victims and perpetrators in homicides (Mouzos 2001).

⁴ It is beyond the scope of this paper to outline all of the issues of concern that have been raised in regard to defences to homicide in Australian jurisdictions (for further information see, for example, Morgan 2002; VLRC 2002; Tyson, Capper & Kirkwood 2010; Tyson 2011; Douglas 2012; Fitz-Gibbon & Stubbs 2012; Morgan 2012; Sheehy, Stubbs & Tolmie 2012; Tyson 2013).

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The amendments included:

- repealing the controversial partial defence of provocation
- codification of self-defence to clarify the requirements of the defence and to better accommodate the experiences of abused women who kill in ‘non-confrontational’ circumstances (s 9AC)
- the recognition of excessive self-defence through the creation of a new offence of defensive homicide (s 9AD)
- clarifying the laws of evidence so that relevant evidence about family violence can be admitted (s 9AH).

Self-defence

The reforms recommended by the VLRC were intended to address the barriers women face in establishing their actions as self-defence. Notions of self-defence have traditionally been based on conceptualisations of immediate confrontations between men of relatively equal strength. Research undertaken by the VLRC (2003) on homicide prosecutions in Victoria from 1996 to 2001 demonstrated that self-defence was most frequently and successfully argued by men when they killed in the context of a spontaneous violent fight with another man – usually a friend, acquaintance or stranger (VLRC 2003, p. 112). However, women rarely kill in these circumstances; they are far more likely to kill to protect themselves from a violent intimate partner. In intimate partner homicides committed by women where the woman has previously been subjected to family violence, her actions may not be a response to an immediate attack but rather to ongoing violence or the threat of violence. As women are often smaller and physically weaker than their male partners, women may kill their abusive partners when they are asleep or have their guard down (VLRC 2004, p. 62). In intimate partner homicides, women typically use a weapon, such as a knife, where men may use their bare hands. Therefore, the actions of a woman in killing an abusive partner may appear ‘disproportionate’ to the threat, and consequently ‘unreasonable’. However, this understanding reflects a fundamental ‘failure to recognise the nature of violent relationships’ (VLRC 2003, p. xix).

Under the new legislation, the statutory definition of self-defence provides that:

[a] person is not guilty of murder if he or she carries out the conduct that would otherwise constitute murder while believing the conduct to be necessary to defend himself or herself or another person from the infliction of death or really serious injury. (s 9AC)

The most significant amendment to the common law is that the test (s 9AC) is entirely subjective. However, if the jury accepts that a defendant held a subjective belief that their conduct was necessary, an acquittal will not automatically result. The jury still needs to consider whether that person’s subjective belief was reasonable, under s 9AD. If the jury concludes that the belief was reasonable, that person must be acquitted; but if it concludes that the belief was not reasonable, the defendant may be found guilty of the offence of defensive homicide (discussed below).⁵ The 2005 amendments also make it clear that, in cases of family violence, self-defence may be raised even if the accused person is responding to a harm that is not immediate, or his or her response involves the use of force in excess of the force involved in the harm or threatened harm (see discussion of family violence evidence [s 9AH] below).

⁵ Alternatively, the jury may find the defendant guilty of the lesser offence of manslaughter by unlawful and dangerous act.

*Justice or Judgement?***Defensive homicide**

The VLRC recommended the introduction of a partial defence of excessive self-defence to 'give women and others who kill in response to family violence a possible partial defence, should they be unable to successfully argue self-defence' (2004, p. 102). The new offence of defensive homicide was intended to fulfil this role. In introducing defensive homicide in parliament, then Attorney-General, Rob Hulls, commented that both self-defence and provocation had 'evolved from a bygone era when the law was concerned with violent confrontations between two males of roughly equal strength where a threat of death or serious injury was immediate' (Office of the Attorney-General Victoria, Media Release, 4 October 2005).

Section 9AD of the *Crimes Act 1958* (Vic) provides that defensive homicide is relevant where:

A person who, by his or her conduct, kills another person in circumstances that, but for section 9AC, would constitute murder, is guilty of an indictable offence (defensive homicide) and liable to level 3 imprisonment (20 years maximum) if he or she did not have reasonable grounds for the belief referred to in that section.⁶

Thus, where a defendant can demonstrate that they had a *genuine belief* in the need to kill in self-defence, but is found to have had no reasonable grounds for that belief, they may be acquitted of murder and found guilty of defensive homicide. The new offence was intended to apply to situations where 'a killing occurs in the context of family violence' and where the accused person genuinely held the subjective belief that their actions taken in self-defence were necessary, but where that belief was ultimately *unreasonable* (Office of the Attorney-General Victoria, Media Release, 4 October 2005). Defensive homicide operates not only as an alternative verdict to murder, but also as an offence in itself. The maximum term of imprisonment for defensive homicide is 20 years.

Family violence evidence

A key new provision in the homicide legislation is s 9AH which provides for the admission of evidence highlighting the relationship and social context of family violence to be admitted in cases of homicide. Section 9AH provides that:

Without limiting section 9AC, 9AD or 9AE, for the purposes of murder, defensive homicide or manslaughter, in circumstances where family violence is alleged a person may believe, and may have reasonable grounds for believing, that his or her conduct is necessary

- (a) to defend himself or herself or another person; or*
- (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person –*
even if –
- (c) he or she is responding to a harm that is not immediate; or*
- (d) his or her response involves the use of force in excess of the force involved in the harm or threatened harm.*

⁶ See s 9AH as to the reasonable grounds for the belief in circumstances where family violence is alleged.

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The definition of family violence includes physical, sexual or psychological abuse (which need not involve actual or threatened physical or sexual abuse), and intimidation, harassment, damage to property, or threats of any of those forms of abuse (s 9AH[4]). Prior to the introduction of s 9AH, the evidence that could be admitted was narrower and did not include a discussion of the broader social context of family violence. Under the new definition, the evidence that may be admitted relates to the history of the relationship between the accused person and a family member, the nature and dynamics of violent relationships generally, and the effects of family violence. These effects may include the possible consequences of separation from the abuser, the psychological impact of violence on people who are or have been in a relationship affected by family violence, and social or economic factors that impact on people who are or have been in a relationship affected by family violence (s 9AH[3]).

The reforms were specifically intended to recognise the potentially cumulative effect of family violence on an individual and the particular dynamics of abusive relationships (Crimes Act, s 9AH; Douglas 2008, pp. 55–6; Douglas 2012, p. 369). Family violence evidence can assist a jury to understand why a woman may subjectively believe it to be necessary to kill her partner to defend herself in the context of ongoing family violence, even if the threat of violence is not immediate. However, as explained above, ‘satisfaction of the subjective test does not necessarily result in an acquittal because the jury still has to consider s 9AD, which creates the offence of defensive homicide’ (Toole 2012, p. 264).

Social context evidence, which provides a broader understanding of the context of family violence and challenges common misconceptions, was developed in response to concerns over the widespread use of pathologising legal narratives in explanations of the behaviour of women who kill violent partners (Morrissey 2003; Nicolson 1995; Rollinson 2000; Sheehy, Stubbs & Tolmie 1992; Stubbs 1992; Stubbs & Tolmie 1999, 2005, 2008; Wells 2000). In particular, the use of ‘battered women syndrome’, which stereotypes female defendants as helpless, has resulted in a focus on women’s psychology rather than on the social and economic forces that prevent women from leaving violent partners (Randall 2004; see also Ramsey 2010).

The VLRC saw this evidence as necessary to build as complete a picture as possible of the situation of the accused prior to the homicide. To overcome the potential problem caused by judges and jurors relying on their own knowledge and understanding of violent relationships to assess what ‘normal’ behaviour might be for a victim of abuse, the VLRC recommended that the evidence be supplemented wherever possible with expert evidence on family violence, including case-specific expert evidence (2004, p. 160). The VLRC was of the view that arguments put to the judge and jury about the situation of the accused and his or her reactions should be informed by current expert knowledge about the nature and dynamics of family violence (2004, p. 141). The VLRC also pointed out that expert evidence is useful not only during trials, but also in sentencing: ‘judges may benefit from receiving information that will assist them to make sense of what has occurred when deciding on what sentence should be imposed’ (VLRC 2004, p. 187).

This chapter has outlined the changes to homicide laws in Victoria which were intended to improve legal responses to women who kill in the context of family violence. The key reforms were amendments to self-defence, the creation of the new offence of defensive homicide and the introduction of specific family violence social context evidence provisions. The following chapter gives an overview of intimate partner homicide cases that have occurred since the reforms were implemented and the numbers of men and women utilising defensive homicide. It also outlines the circumstances and outcomes of cases involving women who killed their intimate partners during this period.

CHAPTER 2

Homicides in Victoria 2005–13

This chapter provides a brief overview the approach we took in researching homicide cases for this discussion paper. It then provides a summary of homicides in Victoria that occurred after the homicide law reforms were implemented, including:

- domestic homicide prosecutions in Victoria
- defensive homicide cases
- cases of women who killed intimate partners.

RESEARCH APPROACH

The *Crimes (Homicide) Act 2005* (Vic) was introduced in Victoria to improve legal responses to family violence homicides.⁷ This discussion paper examines the extent to which family violence is being recognised in legal responses through an analysis of intimate partner homicide cases between 23 November 2005 and 1 October 2013. This period was selected in order to explore the ways in which the 2005 reforms are operating in practice. Our research for this paper draws on all cases (n=61) that we have been able to locate using media reports, sentencing judgments and transcripts of plea hearings and trials, and provides a snapshot of outcomes in these cases.

To develop a broader picture of how the reforms are working in practice, we examined all cases of intimate partner homicide by men and women since the reforms were implemented, and

⁷ The Act came into effect on 23 November 2005.

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the outcomes in these cases⁸ (see Appendix). We also identified all cases of defensive homicide (whether intimate partner killings or not), to provide background contextual information for our analysis of women's use of defensive homicide post-reform (see Table 1).

We identified eight cases involving women who killed an intimate partner since the implementation of the 2005 reforms to the laws of homicide in Victoria.⁹ These cases are outlined in Table 2. Of these, detailed case studies of seven cases involving women who went to trial or pleaded guilty in relation to the killing are provided (see Chapter 3).¹⁰ Our focus is on whether and in what ways family violence was recognised and discussed in these cases, whether gendered stereotypes were apparent, what defences were relied upon, what the outcomes were, and what factors were seen as relevant to the sentencing of women who kill their intimate partners in the context of family violence.¹¹

DOMESTIC HOMICIDE PROSECUTIONS IN VICTORIA

Consistent with Australian and international research, we found that the majority of intimate partner homicides in Victoria in the period we examined were committed by males against female partners. At the time of writing, we identified a total of 31 men who were prosecuted for killing an intimate partner or ex-partner.

Of the men who killed intimate partners:

- 14 were sentenced for murder based on a guilty plea
- 10 were sentenced for murder after a trial
- four were sentenced for manslaughter after a trial
- two were sentenced for manslaughter as the result of a guilty plea
- one was sentenced for defensive homicide after a trial.

A list of these cases is provided in the Appendix. A summary of cases of women who killed their intimate partners during this period is provided in Table 2 on page 14.

⁸ On 4 March 2006, Claire MacDonald was acquitted of the murder of her husband. The killing occurred in September 2004. Claire MacDonald suffered physical, psychological and sexual abuse during her 17-year marriage to Warren MacDonald (Gregory 2006). The case was widely reported in the media. Cases such as that of Claire MacDonald were not included because the offence was committed prior to 23 November 2005; therefore, the reforms did not apply. The case of *R v Charles* [2013] VSC 470 was also not included in our analysis as the killing occurred in 2002 when the reforms did not apply. However, her plea hearing occurred in August 2013.

⁹ Ethics clearance for this research was granted by the Monash University Human Research Ethics Committee (Reference Number CF12/0758 – 2012000334) on 21 May 2012. Access to transcripts was facilitated by the Office of Public Prosecutions, Melbourne, Victoria, and the Victorian Government Reporting Service.

¹⁰ The case of Freda Dimitrovski was excluded from our detailed analysis because the case was dismissed and did not proceed beyond the committal stage of the Magistrates' Court hearing. There was insufficient information available because there was no transcript of plea or trial. The case is briefly discussed on page 13.

¹¹ Our analysis of family violence in these cases is limited to the information that was contained in the transcripts of legal proceedings. Given the hidden nature of family violence, it is likely that other forms and instances of family violence occurred in these cases.

*Justice or Judgement?***DEFENSIVE HOMICIDE CASES**

As previously discussed, defensive homicide was introduced primarily to provide a partial defence for women who are charged with murdering their abusive intimate partners. Table 1 on page 11 summarises the cases of defensive homicide since the defence was introduced in 2005 up until 1 October 2013, revealing that it is predominantly men who are being convicted of this offence. Only three women have been convicted of defensive homicide since the reforms – two as the result of a guilty plea (see *R v Edwards* and *R v Black*, discussed in Chapter 3) and one after a trial (see *R v Creamer*, discussed in Chapter 3).

Since the *Crimes (Homicide) Act 2005* (Vic) was implemented (and at the time of writing this paper), there have been 22 cases involving male defendants who have been sentenced on the basis of defensive homicide for killing a male victim, 16 of which were the result of a decision by the Office of Public Prosecutions (OPP) to accept a plea of guilty (see Table 1 below).¹²

TABLE 1

SUMMARY OF CASES RESULTING IN A CONVICTION FOR DEFENSIVE HOMICIDE, VICTORIA 2005–13

	Gender of defendant	
	Male	Female
Gender of victim		
Male	22	3
Female	1	0
Total	23	3
Relationship		
Stranger	3	0
Friend	4	0
Acquaintance	9	0
Prison inmate	1	0
Family member	4	0
Intimate partner	1	3
Outcomes		
Plea	16	2
Verdict	7	1

As shown in Table 1, of the 23 men convicted of defensive homicide, 22 involved men killing other men. The most common type of relationship between the defendant and victim in these cases is that they were young men who were strangers (three out of 22), friends (four out of 22) or acquaintances (nine out of 22) in one-on-one, 'spontaneous', violent confrontations. Most of the men convicted of defensive homicide also had a history of drug use and prior convictions for either

¹² See Appendix at the end of the paper.

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drug offences or violent crimes (DOJ 2010, pp. 5, 10). These cases involved violent confrontations between males of approximately equal strength, reflecting the traditional understanding of self-defence, rather than contexts of deaths following a history of family violence committed by the defendant against the victim (DOJ 2010, pp. 36–7).¹³

There is only one case to date in which a man has been convicted of defensive homicide after killing a female intimate partner (*R v Middendorp*). While there has been some community concern about the decisions of the Director of Public Prosecutions (DPP) to accept guilty pleas to defensive homicides (see, for example, Evans 2010; Fyfe 2010; MacDonald 2010), the case of *R v Middendorp*¹⁴ provoked widespread expressions of outrage in response to a Victorian Supreme Court jury's decision to find the defendant not guilty of murder but guilty of defensive homicide (Anderson 2010; Capper & Crooks 2010; Howe 2010; Murphy 2010). There was evidence that Luke Middendorp had a prior history of violence against his partner and that he stabbed her in the back by reaching over her shoulder. Family members and some commentators have argued in the media that the outcome in this case was unjust and that defensive homicide had been used by the defendant as a 'provocation-style defence' (Capper & Crooks 2010; Howe 2010). These claims led to a review of defensive homicide by the Department of Justice (DOJ 2010). A consultation paper which proposes the abolition of defensive homicide was released by DOJ during the writing of this paper (DOJ 2013).¹⁵

WOMEN WHO KILLED THEIR INTIMATE PARTNERS

Since the reforms were implemented, eight women have been charged with murder for killing an intimate partner (or ex-partner). Table 2 gives a summary of the cases. Chapter 3 provides a detailed analysis of seven of these cases.¹⁶

Our study focuses on women who kill intimate partners and does not include cases of women who kill other family members and who might have raised family violence issues to support a defence – such as the case of 'SB' who killed her stepfather in 2008 after he had sexually abused her, and another case (details have been suppressed) in which a woman killed her father who had sexually abused her child (his grandchild). 'SB' was the first case involving a female defendant to which the new legislation applied. She was an 18-year-old woman who shot her 34-year-old stepfather in the back of the head after he threatened her with a shotgun and forced her to perform a sexual act. He had sexually abused her, sometimes daily, from the age of 14.¹⁷ At the committal hearing in 2009, the DPP, Jeremy Rapke, QC, entered a *nolle prosequi*¹⁸ before trial, on the basis that there was no reasonable prospect that a jury would convict the defendant of any offence.

¹³ Alternatively, in the past these situations may have been dealt with as provocation manslaughter cases (Tyson 2011, p. 212).

¹⁴ [2010] VSC 202.

¹⁵ A discussion paper on defensive homicide was released by DOJ in 2010. There was a change of government shortly after the paper was released. The department then conducted a further review, and released a consultation paper seeking submissions by 27 November 2013 (DOJ 2013). A submission to the consultation paper is being prepared by the authors of this report in collaboration with a range of women's and community legal organisations.

¹⁶ As outlined earlier in the research approach section, we undertook detailed analysis of the seven cases that proceeded beyond the committal hearing.

¹⁷ The evidence included 10,000 photographic images of the abuse of the teenager, taken by her stepfather on a digital camera and seized by police at the time of the young woman's arrest (DOJ 2010, p. 30).

¹⁸ Prosecution did not proceed.

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Following this verdict, the defendant's defence lawyer said outside the court: '[t]he legal defence in these cases have always taken the view that a jury would find this to be a legally justifiable homicide' (Johnson 2009a).

The first case under the new laws of a woman who killed an intimate partner was that of Freda Dimitrovski, a 57-year-old woman from regional Victoria who killed her abusive male partner in July 2008. This case, like that of 'SB', did not proceed beyond committal proceedings (Johnson 2009b, 2009c). Freda Dimitrovski stabbed and killed her husband Sava Dimitrovski in response to an immediate, violent attack. Her husband hit her in the face and knocked her to the ground in the presence of her daughter and grandson. He then attempted to attack her daughter. In response, Freda Dimitrovski stabbed her husband with a pocket knife. At the committal hearing in May 2009, evidence was submitted regarding the 30-year history of family violence to which Freda Dimitrovski had been subjected by her husband. The magistrate concluded that the evidence 'overwhelmingly' supported a history of family violence (Stevens 2009). In support of Freda Dimitrovski's claim to self-defence, and with respect to the reforms introduced by the *Crimes (Homicide) Act* (2005) (Vic), her defence counsel, in his closing submissions, said that:

the provisions in the (Crimes) Act make it plain a wife is entitled to defend herself, even if she's responding to harm that's not immediate ... in the context of family violence, the accused is not required to wait until an attack is in progress, as long as the accused believes it necessary to protect themselves or a family member. (DOJ 2010, p. 31)

Magistrate Hawkins discharged Freda Dimitrovski, stating that she was not satisfied that there was sufficient evidence to negate the issue of self-defence, or for a jury to convict Freda Dimitrovski of murder or of the lesser charges of defensive homicide or manslaughter (Stevens 2009).

In the course of its review of defensive homicide in 2010, DOJ was optimistic about what the decisions not to proceed to trial in the cases of 'SB' and Freda Dimitrovski demonstrated about the capacity of the reforms to lead to significant improvement in legal responses to women who kill in response to long-term family violence (DOJ 2010, p. 32).

Arguably, the reason why these two cases did not proceed to trial is that both occurred shortly after the reforms were implemented, when decision-makers in the legal process were particularly aware of the intentions behind the reforms and the significance of family violence for understanding women's self-defensive actions.

As shown in Table 2 on the following page, eight women were charged with murder of an intimate partner in the post-reform period. As outlined above, one case was dismissed (Freda Dimitrovski). In the remaining seven cases, two of the women (Karen Black and Jemma Edwards) pleaded guilty to defensive homicide¹⁹, and three (Melissa Kulla Kulla, Elizabeth Downie and Veronica Hudson) pleaded guilty to manslaughter.²⁰ One woman (Eileen Creamer) was found guilty at trial of defensive homicide and another (Jade Kells) was found guilty of manslaughter (by unlawful and dangerous act) at trial.²¹

In the next chapter we will consider in detail the cases of these seven women to gain insight into how family violence is being recognised in cases that proceeded to a plea hearing or trial since the implementation of the new legislation.

¹⁹ *R v Black* [2011] VSC 152; *R v Edwards* [2012] VSC 138.

²⁰ *R v Kulla Kulla* [2010] VSC 60; *R v Downie* [2012] VSC 27; *R v Hudson* [2013] VSC 184.

²¹ *R v Creamer* [2011] VSC 196; *R v Kells* [2012] VSC 53.

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TABLE 2

CASES OF WOMEN WHO HAVE KILLED THEIR INTIMATE PARTNERS, 2005–13

Case citation	Plea/trial	Immediate circumstances of killing
<i>DPP v Freda Dimitrovski</i> (2009)	N/A	Deceased physically attacked the defendant and her daughter, in the presence of her four-year-old grandson.
<i>R v Kulla Kulla Melissa</i> [2010] VSC 60	Plea to manslaughter by an unlawful and dangerous act (UDA)	Deceased made threats to kill, threw an oven tray and picked up a kitchen knife.
<i>R v Black Karen</i> [2011] VSC 152	Plea to defensive homicide	Verbal argument, deceased cornered defendant in kitchen and repeatedly jabbed her with his finger. Defendant said that she believed deceased was going to sexually assault her.
<i>R v Creamer Eileen</i> [2011] VSC 196	Trial – found guilty defensive homicide	Verbal argument, defendant believed the deceased was arranging for her to have sex with other men in his presence. Defendant also alleged the deceased verbally abused her, hit her vagina with a stick and threatened her with a knife; however, the accuracy of this account was questioned by sentencing judge.
<i>R v Downie Elizabeth</i> [2012] VSC 27	Plea to manslaughter UDA	Defendant organised two men to assault her ex-husband, in response to him allegedly indecently assaulting her daughter. Defendant was present during the killing.
<i>R v Kells Jade</i> [2012] VSC 53	Trial – found guilty manslaughter UDA	Verbal argument over mobile phone and money allegedly stolen by deceased. Defendant also alleged the deceased had earlier pushed her against a wall and choked her.
<i>R v Edwards Jemma</i> [2012] VSC 138	Plea to defensive homicide	Deceased made threats to kill and disfigure. Defendant also alleged the deceased attacked her with a knife; however, the accuracy of this account was questioned by sentencing judge.
<i>R v Hudson Veronica</i> [2013] VSC 184	Plea to manslaughter UDA	Verbal argument. Deceased accused defendant of sleeping with other men.

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Relationship context	Method of killing	History of family violence	Result/sentence
Married	Stabbed with pocket knife	A 30-year history of physical and psychological abuse by the deceased.	Magistrate dismissed the charges in May 2009
De facto relationship (four months)	Stabbed once with kitchen knife	Deceased had previously been observed acting in a threatening manner towards the defendant.	6 yrs with non-parole of 3 yrs
De facto relationship (five years)	Stabbed twice with kitchen knife	Defendant described a history of sexual demands, intimidation and threats by the deceased.	9 yrs/6 yrs. Appeal in 2012 – dismissed
Married (10 years)	Struck multiple times with stick and stabbed with knife	Defendant described prior sexual coercion, rape and psychological abuse by the deceased.	Guilty Defensive homicide 11 yrs/7 yrs Appeal in 2012 – dismissed
Ex-partners (divorced five years prior to killing)	Co-accused male stabbed deceased multiple times	Prior intervention orders against each other. Defendant described the deceased as 'intimidating and controlling'.	6 years/4 years
De facto relationship (five months)	Stabbed once with kitchen knife	Defendant described history of verbal and physical violence by the deceased (according to prosecution, violence was mutual).	Guilty Manslaughter 8 yrs/5 yrs
Married (12 years)	Stabbed more than 30 times with kitchen knife. Minor wound also inflicted by spear gun.	Lengthy and well-documented history of the deceased's physical violence from 1999 onwards. Police called to intervene multiple times. Deceased also violent towards his daughter and mother. Intervention order in June 2010 to protect defendant against deceased. Defendant had one prior conviction for violence towards deceased in 2005 (pleaded guilty to assault).	7 yrs/4 yrs 9 mths
De facto relationship (six years)	Stabbed once with knife	History of threats, repeated physical violence and controlling behaviour by the deceased. In 2006, a domestic violence order was taken out against the deceased. He seriously assaulted the defendant in breach of the order, and was sentenced to five years' imprisonment for causing grievous bodily harm.	6 yrs/3 yrs

CHAPTER 3

The recognition of family violence in cases of women who kill

This chapter examines the cases of seven women who killed their partners or ex-partners between 23 November 2005 and 1 October 2013. It considers whether and in what ways family violence was identified, whether gendered stereotypes were apparent, what defences were relied upon, and what the outcomes were in these cases.

In the first two cases, Karen Black (2009) and Jemma Edwards (2011) pleaded guilty to the new offence of defensive homicide. In both cases the women had experienced forms of violence from their partners during the relationship and stated that they were responding to threatening behaviour at the time of the killing. Both women used a knife to kill their partner.

KAREN BLACK

On 30 October 2009, Karen Black (53 years) stabbed and killed her de facto partner Wayne Clarke in their home in Corio, near Geelong in Victoria. On the morning of that day, Karen Black had returned home from working a night shift. She and Wayne Clarke went shopping and to a hotel. He repeatedly criticised her and was ‘niggling ... with respect to the prospect of sexual intimacy on the weekend’ (*R v Black* [2011] VSC 152, para 17). After they returned home, they argued and he followed her into the kitchen, sticking his chest out and pinning her into a corner.

She said she grabbed a kitchen knife, while he continued to corner her and ‘egg her on’ (*R v Black* [2011] VSC 152, para 3). She then stabbed Wayne Clarke twice in the chest. She went to her son who was also at home. He put Mr Clarke in his car and drove him to Geelong Hospital, calling ‘000’ on his phone on the way. However, Wayne Clarke died before he reached the hospital.

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Meanwhile, Karen Black went to the police station and confessed to the killing. She initially told police that she did not mean to kill Wayne Clarke, but later in the same interview said that, during the incident, 'I wanted to kill him' (*R v Black* [2011] VSC 152, para 6).

In an interview with a clinical and forensic psychologist, she said:

He was then coming closer and closer to me and was pointing his finger at me, and I was thinking because he was so drunk he would probably want to force himself on me sexually and I was just thinking well what else could he do to me. Would he just stick his finger into my forehead.

R v Black [2011] VSC 152, para 18

She went on to say that this situation reminded her of being sexually abused by her father (*R v Black* [2011] VSC 152, para 18).

Karen Black was charged with murder, but the Crown later accepted her plea of guilty of defensive homicide. On 12 April 2011, she was sentenced to nine years with a non-custodial period of six years, a sentence which was described by the sentencing judge as in the 'middle of the range' for defensive homicide (*R v Black* [2011] VSC 152, para 3). Her defence counsel later appealed against the sentence on the grounds that it was manifestly excessive and that inadequate weight was given to the impact of family violence; however, the appeal was dismissed (see *Black v The Queen* [2012] VSCA 75).

Recognition of family violence

The prosecuting counsel accepted that Karen Black was subjected to prior family violence (as defined by s 9AH of the *Crimes Act 1958* (Vic)). However, he submitted that the level of family violence she had experienced, both in the past and on the night of the killing, was 'limited to threats, intimidation, harassment and jabbing and prodding' (Transcript of plea, p. 5). Therefore, the prosecutor held that her belief that 'the knife could've been turned on her or that she had to get him first or was herself at risk of really serious harm' was unreasonable (Transcript of plea, p. 5).

In contrast, Karen Black's defence counsel affirmed that the difference between the prosecution and the defence was not about the 'factual matrix' of it, but 'what the implications of it are' (Transcript of plea, p. 30). Her defence accepted that Karen Black's 'subjective belief' that it was necessary to defend herself during the confrontation with Wayne Clarke was unreasonable, but argued that it was triggered by a 'serious background' of family violence (Transcript of plea, p. 35). This reduced her moral culpability and meant that her offending lay at the 'lower end of the spectrum' for this type of offence (Transcript of plea, p. 46).

Karen Black told a clinical and forensic psychologist:

He was never physically violent towards me, but he'd poke me with his finger and he'd point at me and jab me in the chest and on the forehead. He would sometimes force himself upon me sexually. The thing is I got to the stage where I wasn't sure what he'd do to me. When he got past that point with his drinking, I'd just go and lock myself in my room.

R v Black [2011] VSC 152, para 12

Karen Black had also described to the psychologist an incident that occurred about a year prior to the killing, when she found a gold coin and knife placed on her pillow after she had been out with

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a girlfriend (*R v Black* [2011] VSC 152, para 14). Wayne Clarke did not explain what he meant by leaving these items on her pillow, but after that time she did not go out without him, and did not feel able to bring friends to the house (Transcript of plea, p. 27).

Her son's deposition supported his mother's account. He said that when Wayne Clarke was drinking he treated his mother 'like shit' and was 'like a tormentor' (*R v Black* [2011] VSC 152, para 7). Her son also described occasions when he had to intervene to stop Wayne Clarke 'because it was getting a bit out of hand. I don't know what he would've done. I've never seen him hit her but I have seen bruises on her' (*R v Black* [2011] VSC 152, para 7).

The defence argued that Karen Black had 'downplayed' the level of violence she had experienced because she found it difficult to talk about (Transcript of plea, p. 27). Further, the sexual abuse to which she had been subjected as a child 'dovetailed with the abuse in the more recent relationship' and was relevant to an assessment of her moral culpability (Transcript of plea, p. 66).

Reasonableness

Although the sentencing judge, Justice Curtain, accepted that Karen Black had been subjected to family violence (pursuant to s 9AH), she stated that the level of violence Karen Black had been subjected to in the past, and on the night of the killing, was 'limited' and not sufficiently serious to warrant stabbing Wayne Clarke. Justice Curtain said that, although Wayne Clarke had cornered Karen Black and was verbally intimidating her, 'he was not armed, and ... to have stabbed him twice may be said to be disproportionate to the threat he then posed to you' (*R v Black* [2011] VSC 152, para 22). The majority judgment supported this assessment in Karen Black's appeal (*Black v The Queen* [2012] VSCA 75, para 29).

However, the fact that Wayne Clarke had 'sexually forced himself upon her' in the past, and that Karen Black feared that he would do so again on the night of the killing, was not disputed by the judge when sentencing. Referring to her record of interview with the police, Justice Curtain recounted how Wayne Clarke had pinned Karen Black in the corner of the kitchen (*Black v The Queen* [2012] VSCA 75, para 2), and that he was 'a lot taller' than she was (*R v Black* [2011] VSC 152, para 2). She said that he was 'coming closer and closer' to her and 'was pointing his finger' at her, and that she was 'just thinking well what else could he do to me' (*Black v The Queen* [2012] VSCA 75, para 18). In the context of Wayne Clarke's prior implied threat to kill her, his repeated use of physical and verbal intimidation, and the fact that she was cornered in the kitchen and afraid that she might be seriously physically harmed or sexually assaulted by him, we contend that Karen Black's response in stabbing Wayne Clarke could be seen as 'reasonable' (we note that this argument is also made by Toole 2012).

Yet it would appear that, in Karen Black's case, being forced into sex was not conceived as rape; indeed, the word 'rape' was not used during the plea hearing (Transcript of plea, p. 55). The sentencing judge and the majority judgment in her appeal noted that she would 'give in' to Wayne Clarke's demands (*R v Black* [2011] VSC, para 13; *Black v The Queen* [2012] VSCA 75, para 8).

Being physically intimidated or forced into sex by a partner is often not seen as 'real rape' (see, for example, Ehrlich 2001). Yet research shows that the experience of sexual violence by an intimate partner may have greater negative psychological effects than physical violence alone (Parkinson 2008; Taft et al. 2007; Bennice et al. 2003). Many women are also physically injured during rape (Tjaden & Thoennes 2000). However, the impact of rape as a serious psychological – and potentially physical – injury did not appear to be recognised in Karen Black's case.

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Section 9AC of the Crimes Act states that a person is not guilty of murder if they kill while believing that it is necessary to do so to defend themselves from death or ‘really serious injury’. The *Victorian Criminal Charge Book* (which provides guidance to Victorian judges and legal practitioners) notes that the Act does not define ‘really serious injury’. However, the bench book states that:

Although it has not been determined, it seems likely that it can include psychological injuries as well as physical injuries. It will be for the jury to decide whether what the accused was threatened with was an ‘injury’, as well as whether that threatened injury was ‘really serious’.

8.9.2.1 – line 21, *Bench Notes: Statutory Self-Defence and Defensive Homicide*²²

At the trial of Eileen Creamer, discussed later, which occurred around the same time that Karen Black was sentenced, the sentencing judge appears to have accepted that being coerced or forced into group sex may be considered a ‘really serious injury’ under the Act. After being prompted by Eileen Creamer’s defence counsel, Justice Coghlan directed the jury that the definition could include psychological injuries, leaving it open for the jury to decide.²³

In Karen Black’s case, the implications of the failure to recognise the serious nature of the sexual violence that she had experienced were that her belief in the necessity of her defensive response was perceived to be unreasonable, and her stabbing him twice as ‘disproportionate to the threat’ (*R v Black* [2011] VSC 152, para 22).

In this regard, we concur with Toole’s assessment of this case: that the reasoning was ‘reminiscent of the pathologising arguments involving battered women syndrome’ (2012, p. 278). The dominant narrative mobilised at sentencing was one based on the assumption that, because of the ‘cumulative impact’ of prior abuse (as described by the forensic psychologist, Transcript of plea, p. 52), Karen Black had ‘overreacted’ when she was cornered by Wayne Clarke in the kitchen.

It is conceivable that, had the case gone to trial, Karen Black’s defence counsel could have argued on the basis of the provisions in ss 9AC and 9AH that their client had formed a reasonable fear for her safety. It could also have been argued that Karen Black had reasonable grounds to believe that she would be raped by her partner, and that a jury should consider rape to be a ‘really serious injury’.²⁴

In the case outlined next, Jemma Edwards was subjected to physical assaults and threats by her husband over many years that were well documented and readily understood as ‘serious’ family violence. However, like Karen Black, she pleaded guilty to defensive homicide. As in the case of Karen Black, Jemma Edwards’s actions were perceived by the sentencing judge to be ‘disproportionate’ to the threat she faced.

²² Online at <http://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#19107.htm>.

²³ The jury convicted Eileen Creamer of defensive homicide. She was sentenced in the Supreme Court one week after the trial of Karen Black (*R v Creamer* [2011] VSC 196, discussed on pages 24–29).

²⁴ It appears that the sexual violence inflicted by Wayne Clarke was not spoken about until Karen Black met with a forensic psychologist in the weeks before the plea hearing (Transcript of plea, p. 51). It is unclear whether this evidence was available to the defence or prosecution before the plea bargain was struck.

*Justice or Judgement?***JEMMA EDWARDS**

On 18 January 2011, Jemma Edwards (aged 44 years) killed her husband James Edwards by stabbing him multiple times at their home in Highett, Victoria. She initially told police that he had been killed by two male offenders. Jemma Edwards was assessed as being unfit for interview and was taken to a psychiatric unit as an involuntary patient. When interviewed by police after her release two weeks later, she confessed to the killing, but said that she had acted in self-defence. She said that, on the night before he died, James Edwards had been up all night drinking and making threats towards her. She recalled: ‘this has been going on for – really badly for the last few months. He ... strangled me and kicked me and ... punched me’ (*R v Edwards* [2012] VSC 138, para 28). Jemma Edwards told them that over ‘the last couple of nights he’s been saying a lot that he’s going to kill me’. She stated that when she woke up in the morning, he was still drunk and punched, pushed and kicked her. She said:

*first he said he was going to cut my eyes out and cut my ears off. And disfigure me.
And then he said he was going to get some petrol from out the back and he was going
to set me on fire and ruin my pretty face so no-one would ever look at me ever again.
And I panicked.*

R v Edwards [2012] VSC 138, para 28

Jemma Edwards claimed that it was at this point that she grabbed the spear gun, which he had fired at her in the past, and shot it at him to ‘stop him, because I was so petrified’. She further claimed that the spear bounced off. She said:

*he got really wild and angry so he grabbed a kitchen knife and came towards me with it,
and I struggled with him, and he lost his balance and fell. And I grabbed the knife and
I stabbed him ‘cos I was so – I was so frightened ... I’m sorry it happened, but I was really
afraid for my life ... it was self-defence ‘cos I was really, really terrified of him.*

R v Edwards [2012] VSC 138, para 28

Jemma Edwards was charged with murder. She offered to plead guilty to defensive homicide, which was accepted by the prosecution. The Crown acknowledged, and the sentencing judge agreed, that Jemma Edwards’s culpability was less than in the case of Karen Black (*R v Edwards* [2012] VSC 138, para 48). In April 2012, she was sentenced to seven years with a non-parole period of four and a half years.

Recognition of family violence

Both the prosecution and defence conceded that there had been a well-documented history of James Edwards being physically violent towards Jemma Edwards. It was also accepted that Jemma Edwards had made repeated disclosures of her experiences of this violence ‘to police, friends, family and medical practitioners between 2000 and 18 January 2011’ (Transcript of plea, p. 5). The prosecution also noted that police had been called several times to intervene, and in 2010 an intervention order was taken out against James Edwards, prohibiting him from committing an act of family violence against her. James Edwards had also been violent towards his mother and his daughter (*R v Edwards* [2012] VSC 138, para 11).

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Although it was accepted that Jemma Edwards's relationship with James Edwards was characterised by 'a lengthy history' of abuse, we would argue that in this case family violence social context evidence could have been used to show that she had reasonable grounds for believing that she was at risk of really serious injury on the day of the killing.²⁵

Credibility

The prosecution argued that Jemma Edwards's account of the killing was inconsistent with the forensic evidence. For example, it was contended by the prosecution that she had initially lied to police, in saying that James Edwards had been killed by two men. Further, there was limited forensic evidence to support her later account of having struggled with James Edwards prior to stabbing him (*R v Edwards* [2012] VSC 138, para 31). The prosecution concluded that there had been no struggle and that she should be sentenced on the basis that she had 'apprehended an attack' upon her based on threats James Edwards had made that morning and the night before, and also based on his past conduct towards her. The prosecution claimed that she stabbed him during a non-confrontational moment, possibly while he was asleep at the table (Transcript of plea, p. 15). It was on this basis that the prosecuting counsel accepted the plea of defensive homicide.

In contrast, Jemma Edwards's defence counsel submitted that Justice Weinberg should sentence on the basis that what Jemma Edwards told police in her record of interview 'was basically truthful and accurate' (*R v Edwards* [2012] VSC 138, para 30). In particular, the defence submitted that although she believed her actions were necessary to defend herself from death or really serious injury, it was conceded (on the basis of her having pleaded guilty to defensive homicide) that there were 'no reasonable grounds for any such belief' (*R v Edwards* [2012] VSC 138, para 30).

The defence also noted that, since 2005, Jemma Edwards had suffered from psychiatric illnesses, including anxiety, depression and bipolar disorder, which had led her to be involuntarily admitted to psychiatric institutions on several occasions (Transcript of plea, p. 40). However, the defence did not submit that her mental state at the time of the killing would require a consideration of the principles set out in *R v Verdins* (2007) 16 VR 269, in relation to sentencing offenders with impaired mental functioning (Transcript of plea, p. 38).

Justice Weinberg expressed the view that, like the prosecution, he was uncertain as to 'the question whether the deceased attacked [her] with the knife before [she] turned it upon him' and whether this involved a 'mitigating factor ... at least in the ordinary sense of the term' (*R v Edwards* [2012] VSC 138, para 34). He also stated that 'he had serious reservations about the accuracy of the account she gave in her record of interview' (*R v Edwards* [2012] VSC 138, para 35). He reasoned: 'Your account of having been attacked by the deceased whilst he was armed with a knife, and having disarmed him in the way you described, itself strikes me as somewhat improbable, at least in the circumstances of this case' (*R v Edwards* [2012] VSC 138, para 35). Justice Weinberg nevertheless sentenced her on the basis that she genuinely believed that she was in danger of being killed or seriously injured when she stabbed James Edwards to death (*R v Edwards* [2012] VSC 138, para 36).

The issue of Jemma Edwards's credibility was also raised in the court proceedings in relation to an earlier incident. Jemma Edwards had one prior conviction for an incident involving violence that occurred in September 2005, when she was living with James Edwards in NSW. On this occasion, Jemma Edwards received a suspended sentence after pleading guilty to stabbing her husband with a corkscrew knife. She alleged at the time that he had attacked and threatened her,

²⁵ The potential use of expert evidence in Jemma Edwards's case is further discussed in Chapter 4.

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and so she had stabbed him in self-defence. However, the police did not believe her account that she had been repeatedly punched over a period of some 30 minutes as she had no visible injuries of any kind. Reflecting on this prior incident, Justice Weinberg said that he, too, regarded ‘that particular claim as far-fetched’ (*R v Edwards* [2012] VSC 138, para 13). Describing this account as ‘fanciful’, Justice Weinberg referred to this incident as one of the matters identified in the Crown summary ‘as casting doubt’ upon what Jemma Edwards told police in relation to her account of the killing of James Edwards (*R v Edwards* [2012] VSC 138, para 31).

Reasonableness

The implication of Jemma Edwards pleading guilty to defensive homicide was that, although she believed that she was under threat of death or really serious injury, she accepted that her actions in killing James Edwards were objectively not reasonable (Transcript of plea, pp. 17–18). Her defence counsel argued that on the day of the killing James Edwards had threatened Jemma with a knife, but had dropped the knife during a struggle between them. Her defence stated that ‘once he was disarmed’ there was then ‘no reasonable basis’ for her belief that she needed to defend herself (Transcript of plea, p. 24). This was followed by a discussion between the defence counsel and Justice Weinberg as to the question of whether her belief that she was under threat of death or really serious injury was caused by a knife being ‘presented’ to her (Transcript of plea, defence counsel, p. 18), by ‘threats’ or by ‘something less than that’ (Transcript of plea, p. 19). In order to assist Justice Weinberg to determine ‘precisely how unreasonable her belief was’, defence counsel submitted that not only should she be sentenced on the basis that James Edwards posed ‘a particularly high level of threat’ to Jemma Edwards (Transcript of plea, p. 34), but also that she should therefore be sentenced at the ‘lower end of the scale of defensive homicide’ (Transcript of plea, p. 35). Justice Weinberg then asked whether defence counsel was inviting him to conclude that Jemma Edwards happened to fit the profile of a ‘battered’ woman, to which the defence counsel responded that, although he ‘didn’t want to throw that word around as a diagnosis so easily’ (Transcript of plea, p. 38), this was basically the thrust of a report by a psychiatrist who had interviewed her, and this is ‘essentially the concept we are talking about here’ (Transcript of plea, p. 39). The defence counsel further argued that, while defensive homicide was intended to fit such cases, ‘we do have a very well documented history of domestic violence that fits precisely the circumstances in which it was perceived this offence would apply’. Justice Weinberg agreed, adding: ‘I hesitate to use the term “battered woman” or “battered woman syndrome”, but it’s the first case, it seems to me, of its kind under this legislation’ (Transcript of plea, p. 45).

It is interesting to note Jemma Edwards’s defence counsel’s reasoning here. He submitted that, as a battered woman, Jemma Edwards was ‘deeply entrained in the alternative reality of an abusive relationship’ and this affected her capacity to make ‘what appears to the outside to be objectively rational decisions’ (Transcript of plea, p. 39).²⁶ It appears that, according to her defence counsel, the ‘rational’ decision for Jemma Edwards was to leave her abusive husband. The perception here appears to be that the reason why she had failed to leave her husband, and why she was unreasonably fearful for her life and had retaliated with violence on the day of the killing, was that the history of abuse had adversely affected her judgement.

²⁶ Her defence counsel explained that she did not possess the ‘strength of character or health that one might think was required to objectively recognise the situation she was in and take action about it’ (Transcript of plea, p. 39), though it was noted that she had tried to leave on at least two previous occasions, once staying in a women’s refuge (Transcript of plea, p. 39).

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According to the report of a psychiatrist, this history of abuse:

is likely to have impaired her judgment and prevented her from thinking clearly or making calm or rational choices. People who stay in violent or abusive relationships may tolerate abuse for long periods of time before retaliating with violence. At the time of the alleged offence it is possible, although not clearly made out, that intoxication was somewhat dis-inhibiting to her.

Transcript of plea, p. 38

In agreement with this assessment, her defence counsel argued that the fact that Jemma Edwards said that ‘90 per cent of the relationship was okay’ apart from those times when her husband was drinking was ‘telling’ because it suggested that:

she tolerated matters within this relationship that were simply intolerable and that it’s in that context that Your Honour can view her as being a sick and vulnerable person who is to some extent emotionally, [and] through her own actions financially, dependent upon someone of such deep flaws as Mr Edwards.

Transcript of plea, p. 40

Jemma Edwards’s perceived irrationality as a ‘battered woman’ obscured the alternative perspective on this case: that her belief on the day of the killing that she might be seriously injured or killed by her husband was reasonable in the context of the family violence to which she had been subjected. She stated that his violence and threats were escalating, and the intervention order that was meant to protect her from further violence appears to have had no effect on James Edwards’s behaviour. In the weeks prior to the killing, she appears to have been increasingly distressed and had left twice to stay with her mother, who noticed bruises on her.

In the case outlined in the section below, Eileen Creamer also offered to plead guilty to defensive homicide. However, unlike the cases of Karen Black and Jemma Edwards, her offer was rejected by the prosecution and the case went to trial.

EILEEN CREAMER

In February 2008, Eileen Creamer (aged 51 years) killed her husband David Creamer²⁷ at their home in Moe, by beating him repeatedly with a stick and stabbing him once in the abdomen. Eileen Creamer denied killing her husband until shortly before her trial in 2011. According to the evidence she provided during the trial, she arrived at her home on Saturday, after spending the previous evening with a lover, to find two men talking to David Creamer and she believed that he was organising group sex between the men and herself. She said that when she told her husband that she was not going to have group sex, he became ‘nasty’ and started ‘abusing’ and ‘swearing’ at her, calling her a ‘drunken whore’, a ‘bitch’ and a ‘cunt’, pinching her and smacking her across the face (Transcript of trial, p. 1224). Eileen Creamer stated that she later woke to find her husband hitting her vagina with a stick. He asked her to smell his semen-stained sheets and followed her around the house, telling her about the women he slept with, and accusing her of sleeping with

²⁷ Eileen and David Creamer migrated from South Africa to New Zealand and then to Australia.

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his brother. She tried to leave the house but he ‘grabbed the purse from me and said I wasn’t going anywhere’ (Transcript of trial, p. 1229). David Creamer swore at her and called her a ‘half-caste white bastard’ (Transcript of trial, p. 1229). She said that she saw the stick and ‘snapped’ and started hitting him (Transcript of trial, p. 1229). She claimed that her husband became extremely angry with her for striking him. She ran out of the room and he chased her and dragged her back inside where he grabbed a knife from the kitchen. They struggled, and he tried to put his penis in her mouth and urinated on her. She told the court that he then threatened to ‘finish me off’ (Transcript of trial, p. 1230). She stabbed him and ran and hid in the school opposite the house. She said that when she returned she initially thought he was asleep, but found him dead the next morning.

Eileen Creamer offered to plead guilty to manslaughter but this offer was rejected by the prosecution. She was subsequently found guilty of defensive homicide at trial and sentenced to 11 years, with a non-parole period of seven years.²⁸ An appeal against the sentence on the ground that it was manifestly excessive was unsuccessful.²⁹

Prosecution case at trial

Eileen and David Creamer had an open relationship, each engaging in sexual relationships outside the marriage. The prosecution argued that David Creamer had told his wife that he was going to leave the marriage and resume a relationship with his ex-wife. On a visit to South Africa in December 2007, David Creamer met with his ex-wife and their two sons from whom he had been estranged for many years, and made a commitment to his ex-wife to reunite with her and the boys.

In its opening address, the prosecution claimed that Eileen Creamer’s motive in killing her husband was to stop him from leaving her. ‘Her attitude was if she could not have him nobody could’ (Transcript of trial, p. 1423). The prosecution claimed that she was jealous of the other women with whom he had affairs, and noted that she had previously sent abusive emails and a used condom to ‘warn off’ women with whom he was having relationships. In the weeks prior to the killing, Eileen Creamer sent an email to a psychic asking for a spell to stop her husband from going back to his first wife.

The prosecution also argued that the ‘lies’ Eileen Creamer told in denying that she had killed her husband demonstrated that she ‘really had no excuse for killing him’ (Transcript of trial, p. 196). Moreover, they submitted that she attempted to cover up and minimise her involvement in the murder by washing and hiding her bloodstained clothes and disposing of the weapons. The prosecution said that this was not a case of self-defence or defensive homicide, and that there was no domestic violence in the relationship (Transcript of trial, p. 199) – ‘it had nothing to do with domestic violence and had everything to do with her obsession to keep David Creamer living with her’ (Transcript of trial, p. 1435).

The prosecution pointed to inconsistencies in Eileen Creamer’s evidence and disputed her claim that she was afraid of her husband. It also argued that the forensic evidence did not entirely match her version of the events that preceded the death of her husband.

Defence case at trial

Eileen Creamer’s defence was that her actions were a direct response to her husband’s abuse and her fear about being forced into unwanted sexual activity with strangers. David Creamer was sexually abusive towards his wife. He used her to live out his sexual fantasies (Transcript of trial, p. 1508):

²⁸ *R v Creamer* [2011] VSC 196.

²⁹ *Creamer v The Queen* [2012] VSCA 182.

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'he used sex as a way of maintaining control and power in the relationship' (Transcript of trial, p. 1507). He forced her into sexual acts she did not want to engage in. On one occasion, at a time when Eileen Creamer was living in New Zealand, David Creamer came over from Australia, broke into her home and anally raped her. He encouraged her to have sexual relationships with other men and wanted her to tell him about the details of her sexual encounters for his own 'titillation' (Transcript of trial, p. 211). He constantly pressured her to have sex with other men in his presence. He had been attempting to organise group sex through an online service. While this had not taken place, Eileen Creamer believed that it might happen at any time. In the week leading up to the killing, he had placed a photo of her on an adult dating website without her consent. Evidence showed that David Creamer had attempted to make bookings for them at a group sex party that was cancelled due to an insufficient number of women attending (Transcript of trial, p. 1198).

The defence pointed to the 'deep psychological damage' (Transcript of trial, p. 1505) that Eileen Creamer experienced in her relationship with David Creamer. Throughout their marriage he had affairs with a number of women. He boasted about the details of his sexual encounters to his wife, comparing her to the other women and telling her that she was 'boring' in comparison (Transcript of trial, pp. 1168, 1164). In the weeks preceding his death, he left Eileen each weekend in an isolated rural town to be with his lover. According to the defence, he also caused psychological 'damage' to his first wife and to a number of his lovers (Transcript of trial, p. 1505). David Creamer's first wife separated from him because of his affairs with other women and he physically assaulted her during an argument after their separation. He also failed to pay the child support required for his two children, moving overseas to avoid this obligation.

The defence highlighted that Eileen Creamer was a hard-working woman and a good mother who was afraid of her husband's sexual demands on her – 'he held the threat of leaving her over her head ... to sexually coerce her ... it was frightening to her, what he wanted of her ... in her mind his plans for her' (Transcript of trial, p. 1523). In relation to the constant demands for group sex she said, 'I couldn't control it. I had no control over the situation. The more I told David how I felt it didn't seem to bother him' (Transcript of trial, p. 1196).

According to her defence counsel, Eileen Creamer lost control and attacked her husband in a 'violent outpouring of anger and grief and shame and despair ... She had no plan, she just lost it ... she lost control of her senses' (Transcript of trial, p. 1508). While acknowledging that she did attack him with a stick, the defence said that she then became engaged in a struggle in which she became afraid for her life. As noted in the defence counsel's opening address, 'She was very fearful of her husband in the end ... and particularly fearful of him in respect of his desire to get her to have sex with other men in his presence' (Transcript of trial, p. 220). Eileen Creamer told the court:

I didn't intend to hurt David. I don't know what happened. I can't explain it. But I just wasn't going to get another hiding. David kept on threatening me. I don't know what happened. I snapped. I just lost control.

Transcript of trial, p. 1233

The defence case was that Eileen Creamer should be convicted of manslaughter or defensive homicide. The case was not run on the basis of self-defence³⁰ (Transcript of trial, pp. 1560).

³⁰ In a discussion of the matters the judge should take into account when formulating his charge to the jury, Eileen Creamer's defence counsel affirmed that the case was not being run on the basis of self-defence. This discussion took place in the absence of the jury.

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Transcript of trial, p. 1240

There was substantial debate throughout Eileen Creamer's trial about whether or not she was a victim of family violence. This discussion was linked to consideration of the relevance of s 9AH of the Crimes Act. The presiding judge, Justice Coghlan, stated: 'at the end the real divide is going to be about the question really of the existence of family violence as it's defined' (Transcript of trial, p. 61).

When giving evidence, Eileen Creamer described being subjected to a range of abusive behaviours by the deceased towards her over a number of years, including rape, being forced into unwanted sexual acts, pinching, hitting with a stick, slapping, degradation, being called abusive names, taunting about sexual relationships with other women, and pressure to engage in group sex.

The defence, drawing on Eileen Creamer's evidence and the evidence of a psychologist, Mr Cummins, who assessed Eileen Creamer, described her as a victim of family violence, highlighting in particular the psychological and sexual abuse she suffered. Eileen Creamer told the psychologist, 'I couldn't stand up to David. David was always in control. If I ever stood up to David and said no, there were always consequences, he would get angry with me, he wouldn't talk to me for days, some days he would just pretend I wasn't even there' (Transcript of trial, p. 1198). The psychologist's report stated that David Creamer used threats to leave his wife as a way of manipulating her (Transcript of trial, pp. 1338–76).

Eileen Creamer's defence counsel pointed out that she did not recognise herself as a victim of family violence – she thought that was only when you got 'beaten up' (Transcript of trial, p. 1334). Her defence counsel said: 'Like all victims she blamed herself. She blamed herself for not being able to please him sexually' (Transcript of trial, p. 1510).

The defence argued that the trigger for the fatal episode was the tension in the relationship and the domestic violence 'interpreted in the widest context ... which includes sexual intimidation and some physical abuse ... and some psychological and emotional abuse' (Transcript of trial, p. 28). Her defence counsel also argued that being coerced into group sex could be considered a 'really serious injury' under s 9AC of the Crimes Act (Transcript of trial, p. 1651).

A significant problem for the defence was that some of the evidence of abuse was not corroborated or was seen to conflict with some of the facts of the case. For example, Justice Coghlan stated that he did not accept Eileen Creamer's evidence of her husband breaking into her home in New Zealand and anally raping her because she did not tell anyone about it at the time and she still chose to live with her husband in Australia several weeks later (*R v Creamer* [2011] VSC 176, para 32). However, research on sexual assault and family violence reveals that victims often do not tell others because of a deep sense of shame and self-blame (see, for example, Enander 2010). Indeed, Eileen Creamer explained at the trial that she was too ashamed to tell anyone about what went on in the relationship (Transcript of trial, p. 1167). Research also demonstrates that there are a range of reasons why women stay in relationships with abusive partners (for instance see Meyer 2012). In Eileen Creamer's case, she said that she loved her husband and hoped that their marriage would improve (Transcript of trial, p. 1351). She also commented that, 'as much as I would say no, David would say that I was still his wife and I had to provide whatever sex he wanted' (Transcript of trial, p. 1281).

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Misconceptions and confusion around family violence were evident throughout the trial. There appeared to be a lack of understanding about how psychological manipulation, sexual degradation and coercive control (see, for example, Stark 2007) are forms of family violence. David Creamer's encouragement of his wife to have affairs was seen as an indication that she was not a victim of family violence. For instance, Justice Coghlan said, 'the ability to have with the consent of your husband ... extramarital relationships would not be regarded by ordinary people as a feature of control' (Transcript of trial, p. 1665). However, David Creamer's encouragement of his wife's affairs could be understood to be an aspect of his control over her. Eileen Creamer spoke of how he posted photos of her online without her consent, and pressured her to have affairs to 'prove' her worth and attractiveness. She described how he also appeared to have found pleasure in hearing about the sexual details – 'he always said to me that I must talk openly about it because it would make him horny' (Transcript of trial, p. 1163).

The prosecution disputed whether Eileen Creamer was a victim of domestic violence because 'she had enough control not to accede to group sex. She had a job, money, friends to mix with, others outside the marriage' (Transcript of trials, p. 1491). To support this claim, they drew on the evidence of a psychiatrist, Dr Ruth Vine, who also assessed Eileen Creamer:

Mrs Creamer was free to have associations with whomsoever she pleased and almost encouraged to have associations with whomsoever she pleased. It also appeared that Mrs Creamer had access to her own money ... had freedom of movement and of association ... She did not describe feeling helpless or unable to leave the house or the relationship.

Transcript of trial, p. 1058

Eileen Creamer's credibility was questioned during her trial. Inconsistencies in her evidence were used to demonstrate that she was a liar and that the jury should not rely on her evidence. It was argued that because her evidence in court differed from her statement to the police and to the evidence provided by the two expert witnesses (psychologist Dr Cummins and psychiatrist Dr Vine) who interviewed her it was not reliable (Transcript of trial, pp. 1439, 1462). However, Eileen Creamer said that she originally denied her involvement in the killing because she panicked and was scared of what she had done. As stated by her defence: 'she tried to disassociate herself from any possible motive for killing him' (Transcript of trial, p. 18). It is therefore not surprising that she did not initially disclose to police exactly what happened or the extent of abuse in the relationship. She did, however, tell the police that her husband 'treated her like a dog' (Transcript of trial, p. 150).

While the prosecution cast doubt over much of Eileen Creamer's evidence, in our view there was consistency between her evidence at the trial and what she told the police and expert witnesses about her fear that, in the face of his constant psychological coercion, she would be unable to stand up to her husband to prevent the group sex from occurring.

Legal commentator Kellie Toole (2012) agrees with the assessment of the prosecution in this case that the general features that characterise family violence cases that warrant lethal violence were clearly absent from the Creamer marriage. She points to the 'freedom of movement and a significant support person, being located a significant distance away from the matrimonial home, with her lover, only the day before the homicide' as indication of this (Toole 2012, p. 283). According to Toole's analysis, rather than being obsessive, jealous and controlling, David Creamer encouraged and facilitated Eileen Creamer's affairs (2012, p. 283). Describing Eileen Creamer's conviction for defensive homicide and 11-year sentence as a generous outcome, Toole argues that it was one

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based on traditional stereotypical conceptions of female subservience, emotional lability and lack of coping skills (2012, p. 285). For Toole, a conviction for murder would have been appropriate in this case.

However, we argue that this characterisation fails to take into account the dynamics of coercive control in abusive relationships (see, for example, Hanna 2009). While the definition of family violence in the new legislation includes psychological abuse, Eileen Creamer's case was still seen to be at the 'lowest end of the spectrum'.³¹ As noted by Justice Weinberg in Eileen Creamer's appeal, this was '[so] much so that the defence, in this trial, "did not even try to convince the jury" that the appellant might reasonably have believed that she needed to do what she did because she was at risk of being seriously injured or worse' (*Creamer v The Queen* [2012] VSCA 182, para 41).

In the case analysed below, Jade Kells also offered to plead guilty to manslaughter, although at a later stage in the proceedings. Like Eileen Creamer, her plea was rejected by the Crown and she went to trial. At the trial she was found guilty of manslaughter.

JADE KELLS

In the early morning of 26 January 2010, Jade Kells (aged 28 years) stabbed her de facto partner, Dean Pye, once in the chest in the doorway of a bedroom in their home in Tootgarook, in Victoria. The neighbours reported hearing loud and violent arguments between Jade Kells and Dean Pye the previous night. During the night, numerous calls were made by the neighbours, as well as by Dean Pye and Jade Kells to '000' and several police officers attended the house and vicinity, on a number of occasions to investigate. The dispute centred on Jade Kells's concern that Dean Pye had stolen \$1000 and some mobile phones from her and had refused to return them. During the course of the argument, she threw one or more objects including a plant pot through a large front window of the house, smashing it. She left the house in the early hours of the following morning, to stay at a friend's house in Rye. She returned between 6:00am and 7:00am. Dean Pye was not at the house when she returned, but arrived shortly after. Jade Kells claimed that they resumed arguing about the money and the mobile phones. She then called '000' and told the operator that Dean Pye would not give her 'stuff back', that he had been smashing windows and that he had choked her and pushed her up against a wall.

Jade Kells said that, when she returned home between 6:00am and 7:00am, she started cleaning up all the glass from the window. She claimed that when Dean Pye returned home he started pushing her around again. She said that he came into the bedroom and, fearing that he was going to really seriously injure or even kill her, she armed herself with a knife from the kitchen. She claimed that she pushed open the door of the bedroom, and was unexpectedly confronted by Dean Pye, who was coming at her. She said that it was at this point that she thrust at him once with the knife to the chest. Upon stabbing Dean Pye, she immediately called '000', telling the operator that she had stabbed her partner in the chest. Dean Pye died at the scene.

Jade Kells was charged with murder. During her record of interview with the police, when accused of murder, she said: 'It's more like manslaughter, I didn't mean to hurt him.' At the committal proceeding, she pleaded not guilty to murder. She later offered to plead guilty to manslaughter. The offer was refused by the prosecution and she defended the murder charge before a jury on the basis that she should either be acquitted on the ground of self-defence or be found guilty of defensive

³¹ *Creamer v The Queen* [2012] VSCA 182, para 41.

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homicide or manslaughter.³² The jury convicted Jade Kells of manslaughter by an unlawful and dangerous act. She was sentenced to eight years' imprisonment, with a non-parole period of five years.³³ She later lodged an appeal on the ground that the sentence was manifestly excessive; but the appeal was dismissed.³⁴

Prosecution case at trial

Jade Kells and Dean Pye had been in a relationship for approximately five months before the fatal stabbing. The prosecution relied on evidence of the nature of their relationship to show that it was 'a fractious one', characterised by 'frequent arguments', 'aggression' and violence (Transcript of trial, p. 49). The prosecution also led 'evidence of the accused woman's tendency to act aggressively and to resort to the use of weapons when confronted by, or angry with, partners'. It was contended on this basis that the violence between them was 'mutual' and that she was the 'aggressor' on the night in question. According to the toxicology report, Dean Pye had various sedatives in his system, and was described by the prosecuting counsel as 'a sitting duck' who was trying to defend himself (Transcript of trial, pp. 58–9, 502, 508, 510, 568). Specifically, the prosecution relied on testimony from a former intimate partner to demonstrate that Jade Kells 'had a tendency to become violent and use weapons during domestic arguments' (Transcript of trial, p. 82). Further, throughout the night of the killing she exhibited a similar pattern of behaviour to that she had displayed on numerous occasions with previous partners. The prosecution case was that, on the night of Dean Pye's death, Jade Kells was 'angry' and 'agitated' (Transcript of trial, p. 54) and 'ranting' and 'raving' about 'the phone and the money' (Transcript of trial, pp. 52, 516), but was 'determined to sort things out' with Dean Pye (Transcript of trial, pp. 53, 504). The prosecution also drew on evidence to show that 'there wasn't just a single stab wound in this case' (Transcript of trial, p. 544). Rather, it was a 'pattern of erratic, violent, aggressive behaviour' (Transcript of trial, p. 499). Jade Kells had gone into the house and inflicted approximately 30 superficial injuries to Dean Pye 'in the course of a violent assault that preceded his death' (Transcript of trial, p. 544). The prosecution contended that 'the remarkable lack of injuries or serious injuries' on Jade Kells supported the prosecution case that she was exaggerating and fabricating events in claiming that Dean Pye had assaulted her (Transcript of trial, p. 535). The prosecution argued that it could be concluded from all of the evidence 'that the stab wound was inflicted by Ms Kells in [an] angry, violent response to a domestic argument' (Transcript of trial, p. 76). In her closing address, the prosecuting counsel submitted to the judge and jury that: 'we say to you very clearly that this is a very strong case of murder ... That the evidence when you look at it, and analyse it properly, [is] that she was erratic all night, violent and aggressive' (Transcript of trial, p. 552).

Defence case at trial

Jade Kells's version of events was that she stabbed Dean Pye once in the chest after a struggle during which he had physically assaulted her (pushed her up against a wall by her throat) (Transcript of trial, p. 589). She agreed that the relationship was characterised by frequent arguments and mutual abuse. She told a psychologist that she and Dean Pye had 'fought most days' and that these fights regularly included physical violence. She told the police, in her record of interview, that she and Dean Pye had threatened to stab one another 'millions of times'. The couple had separated on

³² *R v Kells* [2012] VSC 53, para 19-20.

³³ *R v Kells* [2012] VSC 53.

³⁴ *Kells v The Queen* [2013] VSCA 7.

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several occasions but had always managed to reconcile (*R v Kells* [2012] VSC 53, para 44). The defence case was that Jade Kells's 'persistent' and overriding concern throughout the night was to retrieve the money and mobile phones Dean Pye had stolen from her. He not only had a history of telling 'various untruths' (Transcript of trial, p. 566), but also a prior criminal history of quite serious violent offences which revealed that it was he, not she, who was the aggressor on the morning in question (Transcript of trial, p. 569). Dean Pye also had a history of being verbally abusive and aggressive, and was acting in an aggressive manner when he was seen by a neighbour earlier on the night of his death (Transcript of trial, p. 592).

The defence also relied on the evidence provided by a friend of Jade Kells to demonstrate that Dean Pye had previously been verbally abusive towards Jade Kells, had previously threatened to kill her and other people, and was very controlling and possessive of her, objecting to her having friends and telling her what to wear. This witness also testified that she saw visible injuries on Jade Kells and that Jade had previously told her that she feared what Dean Pye might do to her, her friend and her friend's son if he got angry or did not know where she was (Transcript of trial, pp. 569–70, 592, 596).³⁵ There were other witnesses who testified that they heard Jade Kells saying, 'Get off me, leave me alone, someone help me' in the early hours of the morning (Transcript of trial, pp. 570–1). It was under these 'hyper-stressful circumstances' (Transcript of trial, p. 564), the defence argued, that 'when she resorted to using the knife, she believed her action was necessary to defend herself from being really seriously injured or even perhaps killed' (Transcript of trial, p. 82). The defence concluded 'that the confrontation was one in which Ms Kells was acting purely defensively; that her actions were solely for the purpose of what the law calls self-defence' (Transcript of trial, pp. 82–3, 610).

Recognition of family violence

There was limited reference to 'family violence' or the 'family violence provision' (s 9AH) in this case. The prosecution ran the case on the basis that the violence between the couple was 'mutual', that Jade Kells had a tendency to become angry and aggressive in domestic disputes and that she was the aggressor on the night in question. It was not until the ninth day of the trial that a reference to 'family violence' and s 9AH was made by the defence counsel. However, by then, presentation of the evidence had concluded, and both the prosecution and defence had completed their closing addresses to the jury. In the absence of the jury, the defence submitted to the sentencing judge, Justice Macaulay, that although neither counsel had 'actually discussed s 9AH of the *Crimes Act*', he 'assumed' that 'it applied in the case' and that he should include a reference to the provision in his charge to the jury (Transcript of trial, p. 666).

Justice Macaulay was initially reluctant to mention the family violence provision because he said that it tended to 'introduce a measure of complexity in these sorts of cases' (Transcript of trial, p. 667). The prosecuting counsel also complained on the basis that 'the case hadn't been run that way' and if it had she 'would've run the case a different way' (Transcript of trial, p. 667). Further, the prosecution argued that the history of the relationship was one in which both sides had been

³⁵ According to the testimony of a friend of Jade Kells (Transcript of trial, pp. 423–31), Dean Pye was verbally abusive towards Jade during their relationship. The friend gave evidence about a particular incident that occurred on November 2009 which resulted in the police being called, when Dean Pye was threatening to kill people with knives, and threatening her and Jade's life and also her son's. She also gave evidence that she heard Dean Pye threatening Jade Kells with a knife over the phone and that Jade Kells frequently told her that she was frightened of Dean Pye. She described his behaviour in the relationship as controlling in that he did not like Jade Kells to leave the house, and raised objections at times to her having friends and to the sort of clothes she wore. And during the two-month period when Jade Kells was living with her, she saw visible injuries on Jade Kells.

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'fractious' and was therefore not such that Ms Kells was 'the victim of family violence' (Transcript of trial, p. 669). Justice Macaulay concurred, and then clarified that if he were going to deal with family violence in this case he would 'probably need to deal with it' in the context of defensive homicide (Transcript of trial, p. 671). Justice Macaulay then decided to give a direction in relation to s 9AH (Transcript of trial, p. 672). He stated that although family violence had not previously been raised in this case, this did not relieve him of the obligation to consider it. Justice Macaulay reflected:

It seems to me that in the circumstances of the case, the definition of 'family member', 'family violence' and 'violence' which all appear in s. 9A(H) can be satisfied. Whether it is contentious or not that Ms Kells was the target of family violence or might've been the other way around, or both, that is a matter for the jury.

Transcript of trial, p. 672

In ruling on the matter, Justice Macaulay argued that while it was 'true that the defence response does not ... use the terminology "family violence" ... it does say this: "[t]he accused does not dispute that her relationship with Dean Pye was characterised by frequent argument and acts of aggression. The accused says that Dean Pye had threatened and assaulted her on many occasions during the course of their relationship"' (*R v Kells* (Ruling) [2011] VSC 679, para 24). Accordingly, Justice Macaulay resolved that '[t]he response also squarely raises the defence of lawful self-defence' (*R v Kells* (Ruling) [2011] VSC 679, para 25).

The jury found Jade Kells guilty of manslaughter by a deliberate, dangerous and unlawful act. In sentencing Jade Kells, Justice Macaulay noted that the verdict demonstrates that the jury rejected her claim that she had reasonable grounds to believe that stabbing Dean Pye was necessary to defend herself (*R v Kells* [2012] VSC 53, para 7). Accordingly, Justice Macaulay held that while the stabbing incident:

occurred after a long night of frustration and angry conflict, and was possibly attended ... by intense emotional feeling, sleep deprivation and, possibly, a weakened physical state ... the evidence also demonstrated that there were options available to [her] to escape the confrontation, options [she] did not pursue.

R v Kells [2012] VSC 53, para 11³⁶

It appears in this case that violence and threats had previously been made by both Jade Kells and Dean Pye. Jade Kells's admission that the violence between her and Dean Pye was 'mutual' was used by the prosecution to discount her claim to have been acting in self-defence. The defence, however, argued that she was a victim of family violence, and led evidence by witnesses that Pye had been controlling and threatening towards her in the past.

There is now a significant body of research that cautions against making simple determinations of 'mutual abuse' based on the existence of acts of physical violence perpetrated by both partners in a relationship (Kelly & Johnson 2008; Stark 2007; Wangmann 2008, 2010, 2011). This research

³⁶ This is a reiteration of the argument put by the prosecution: 'Now, when you're thinking about self-defence, what options did she have? She had many. She had the option not to go into the house in the first place. She had the option to leave, not pick up the knife. She had the option to ring the police again; in other words, leave the house altogether, ring them. She had many options. The option she picked was to go and get the knife and stab him' (Transcript of trial, p. 534).

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highlights that determining whether violence is mutual or one-sided is a complex matter, and requires an understanding of the context and impacts of violence, and a focus on processes and power in relationships, rather than on incidents. For example, Wangmann (2010) examined cases of apparently ‘mutual abuse’ in NSW courts, where women and men had made cross-applications for domestic violence protection orders against each other. This in-depth study found that the context, meaning, motivation and impact of violence are different for women and men. Women tended to describe a context of ongoing, controlling, abusive behaviours by their male partners, but this was rarely described by men in relation to their female partners (Wangmann 2010). An understanding of the broader social context of gender-based inequality, as well as an acknowledgement of the size and strength disparities between men and women, is critical in recognising the impact of violence in intimate relationships.

In the case of Jade Kells, regardless of whether the previous violence in the relationship was mutual or not, the fact remains that, based on Dean Pye’s prior violence and abuse, Jade Kells had reason to fear being harmed by him as he came towards her. Even if he were unarmed, his greater size may have meant that he posed a danger to her. She told police that earlier that day he had attempted to choke her and had pushed her against a wall. However, her reaction by stabbing him was determined by Justice Macaulay when sentencing to be ‘out of any reasonable proportion to that threat’ posed by Pye (*R v Kells* [2012] VSC 53, para 14).

In the three cases discussed next, the women also received manslaughter convictions; however, unlike Jade Kells, the prosecution accepted these women’s guilty pleas and the cases did not go to trial. The first two cases involved Indigenous women who had been subjected to severe violence from multiple partners throughout their lives. In the third case, the woman was involved in the killing of her ex-partner after he had allegedly committed a sexual act in front of one of their daughters. Two men were also involved in the killing.

MELISSA KULLA KULLA

On the morning of 10 September 2008, in Reservoir, Victoria, Melissa Kulla Kulla (aged 23 years) killed Hussein Mumin by stabbing him once in the chest. They had been in an on-and-off relationship for the past few months. The killing occurred in the kitchen of his supported accommodation unit, where she was living with him at the time. After the stabbing, she flagged down assistance from passers-by who were on the street outside the unit.

Initially Melissa Kulla Kulla told the police that Hussein Mumin had committed suicide. However, she later admitted that she had stabbed him during an argument. She and Hussein Mumin had been drinking all through the previous night. The next morning, when she was cooking in the kitchen, he started to argue with her. He threw the oven tray at her and threatened to kill her. She said that he was pushing her around, and then picked up a kitchen knife and said that he would kill her. She claimed that she then attempted to disarm him and, during the ensuing struggle, the knife plunged into his chest. Melissa Kulla Kulla pleaded guilty to manslaughter. On 9 April 2010, she was sentenced to six years in prison, with a non-parole period of three years.³⁷

³⁷ *R v Kulla Kulla* [2010] VSC 60. Note: we were unable to obtain the transcript of the plea hearing in this case.

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Recognition of family violence

Melissa Kulla Kulla is an Indigenous woman from Far North Queensland.³⁸ She was the daughter of an Aboriginal mother and a Torres Strait Islander father. She was homeless in Melbourne when she met Hussein Mumin. She moved in with him to a supported accommodation unit, and cooked and cleaned for him.

Hussein Mumin migrated to Australia from Somalia as a teenager. He suffered from a mild intellectual disability, as well as an alcohol-related brain injury. According to the support staff who cared for him, in the week before the killing his behaviour had become increasingly 'erratic, threatening and intimidatory' towards the carers. The sentencing judge noted that on one occasion a carer observed him chase Melissa Kulla Kulla in a 'threatening manner, whereupon he grabbed you and pulled off all your clothes' (*R v Kulla Kulla* [2010] VSC 60, para 16). The police were called, and initially Melissa Kulla Kulla packed her bags, but then later changed her mind and stayed.

In this case, although Melissa Kulla Kulla's history of violent domestic relationships was discussed and taken into account in sentencing, her relationship with Hussein Mumin appears to have been essentially perceived as one in which there was mutual abuse. The prosecution argued that 'these were two very troubled people both with disabilities' (*R v Kulla Kulla* [2010] VSC 60, para 32). When sentencing, Justice King stated that both Hussein Mumin and Melissa Kulla Kulla had significant problems with alcohol, and 'violent fights would occur between you both' when drinking (*R v Kulla Kulla* [2010] VSC 60, para 15). Justice King said, 'It was clearly a highly dysfunctional, threatening and damaging relationship to both you and Mr Mumin' (*R v Kulla Kulla* [2010] VSC 60, para 16). The judge noted, however, that while Hussein Mumin had the support of a range of services, Melissa Kulla Kulla 'had no such support from anyone – a matter which is really quite significant and of some concern' (*R v Kulla Kulla* [2010] VSC 60, para 16).

In sentencing Melissa Kulla Kulla, Justice King took into account the fact that she was a youthful offender, had a 'significant cognitive impairment ... an exceedingly deprived background ... and a lengthy alcohol and drug abuse history' (*R v Kulla Kulla* [2010] VSC 60, para 64). As a child, Melissa had lived in northern Queensland, but was removed from her mother's care due to 'severe neglect' (*R v Kulla Kulla* [2010] VSC 60, para 38). Justice King commented that Melissa Kulla Kulla had suffered abuse 'virtually from the time you were born' (*R v Kulla Kulla* [2010] VSC 60, para 35), including neglect, sexual assaults and multiple other assaults. As a teenager she made repeated suicide attempts. Justice King also took into account that she had been subjected to domestic violence from multiple men:

Your life has been a tragedy, nothing less than a tragedy. In relation to various men in your life, you seem to have been a consistent victim of domestic abuse. You have been stabbed in the chest. You have been stabbed elsewhere, with a screwdriver. You have been assaulted with a hammer. You have been abducted and beaten with a stock whip, on a very regular basis, by the man who abducted you. You had a star picket crashed into your hand, and every time you escaped from this man, he tracked you down, and took you back. You have scars all over your body from the various injuries inflicted upon you, by men, over these years.

R v Kulla Kulla [2010] VSC 60, para 54

³⁸ Her 'native lands are Lama Lama' (*R v Kulla Kulla* [2010] VSC 60, para 33).

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In her final remarks, Justice King stated that:

[I]t is exceedingly distressing that in this country, where we pride ourselves on quality, tolerance and fairness, you could be so neglected, so abused and yet we, as a society, did nothing to stop it. When you were living with a 40 year old man in a park at the age of 12, we as a society did not stop that, we did not come in and protect you, which clearly we should have done ... This is not about your Aboriginality, this is about your childhood, which was taken from you, while we, as a society, did not make any of the difficult decisions that may have prevented this terrible harm, that was done to you.

R v Kulla Kulla [2010] VSC 60, para 51

The case of Veronica Hudson discussed below was compared to that of Melissa Kulla Kulla by Justice King, who observed that ‘your tragedies are remarkably similar’ (Hudson [2013] VSC 184, para 40).

VERONICA HUDSON

On 26 December 2011, Veronica Hudson (aged 41 years) killed her partner Edward ‘Woody’ Heron by stabbing him at a caravan park in Bendigo. She and Edward Heron had been living in a makeshift tent in the caravan park. They had both been drinking all day, and were arguing that afternoon because he had accused her of sleeping with other men.³⁹ Witnesses saw her push him and he fell to the ground. Veronica Hudson then jumped on top of him and stabbed him once in the chest.⁴⁰ Witnesses said that she became ‘frantic’ and said, ‘I’ve killed him and I want him to live’.⁴¹ She called ‘000’. She was too distraught to be interviewed by the police that day.

The Crown initially charged Veronica Hudson with murder, and later accepted her plea of guilty to manslaughter. On 26 April 2013, Justice Betty King sentenced her to six years’ imprisonment, to become eligible for parole after three years.⁴²

Recognition of family violence

The prosecution readily accepted that Veronica Hudson had been subjected to family violence. Veronica Hudson and Edward Heron began their relationship in 2005 in Alice Springs. During the plea hearing the prosecutor described Edward Heron as a ‘jealous man’ who was ‘controlling of the accused’ (Transcript of plea, p. 3). The prosecuting counsel outlined multiple violent incidents perpetrated by Edward Heron against Veronica Hudson, including a serious assault in 2006, in which Heron hit her several times, kicked her on the ground, deliberately bit her above her breast, then stomped on her head, back and face. For this assault he was sentenced to five years’ imprisonment. The defence noted that this assault was in fact a breach of a domestic violence order that was in place at the time. After being released from gaol, he tracked her down and they resumed the relationship.

³⁹ As described by her defence counsel (Transcript of plea, p. 17).

⁴⁰ As noted by Justice Betty King during the plea hearing, when Veronica Hudson was being assessed as to whether she was fit to be interviewed, she had said that Edward Heron originally had the knife that afternoon (Transcript of plea, p. 17). However, the defence claimed that it was ‘hard to know’ what to make of that because they were both very drunk (Transcript of plea, p. 17).

⁴¹ *R v Hudson* [2013] VSC 184, para 10.

⁴² *R v Hudson* [2013] VSC 184.

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The prosecuting counsel said that after this time he ‘continued to threaten, intimidate and assault’ her, and that there was an allegation of rape; however, none of these incidents were reported to the police (Transcript of plea, pp. 3–4).

Edward Heron’s violence towards Veronica Hudson was well known among members of her family and his own family. It was also well known to those who lived near the couple in the caravan park. Family members stated that Edward Heron would not permit Veronica Hudson to look at another man (Transcript of plea, p. 11) and they believed that ‘something like this’ was bound to happen (Transcript of plea, p. 11). Veronica Hudson’s son stated that Edward Heron’s ‘obsessive jealousy’ was ‘a problem every day’ and he was ‘100 per cent sure’ that Edward Heron would kill his mother eventually (*R v Hudson* [2013] VSC 184, para 29).

Three days before the killing, Veronica Hudson had been taken to Bendigo Hospital with her throat ‘cut from ear to ear, although not deeply’ (*R v Hudson* [2013] VSC 184, para 24). Justice King noted that ‘it would appear that the deceased man may have been responsible for the infliction of that injury’ (*R v Hudson* [2013] VSC 184, para 25). Veronica Hudson initially told the hospital that it was a self-inflicted injury and was transferred to a psychiatric hospital. However, at a later time when Edward Heron and the police were not present, she told the hospital staff that Edward was responsible for cutting her throat. Veronica Hudson was released into his care the day before his death.

According to the defence, in the days prior to the killing, Veronica Hudson told staff at a local support service that she felt imprisoned by Edward Heron and that she was ‘never allowed to be alone for more than 10 minutes’. For example, often he did not let her go to the toilet. He took her phone and she was ‘terrified that he would slit her throat again’ (Transcript of plea, p. 18). She stated that she felt she could never get away from him (Transcript of plea, p. 18). Those living nearby in the caravan park witnessed his violence but were so afraid of him that they did not want to get involved (Transcript of plea, p. 18). Veronica Hudson, according to her defence counsel, was ‘basically being held hostage’ in the tent in which they lived (Transcript of plea, p. 16).

According to the prosecution, several days after the killing, Veronica Hudson told her sister that she ‘didn’t mean to kill the deceased and that the deceased was bashing her all the time and sticking things inside her and abusing her’ (Transcript of plea, p. 6).

It was accepted by the sentencing judge that Veronica Hudson had been subjected to severe violence and abuse by Edward Heron. Justice King stated that Heron was ‘appallingly violent’ towards her: ‘You described him as cutting your arms, hand, throat, pulling your teeth out with pliers, that he was incredibly jealous, very suspicious, always believed you were having sex with any male you met, including your son, your son’s friends, or any male in the area ... The more he drank the worse the jealousy was’ (*R v Hudson* [2013] VSC 184, para 19). When he tracked her down after his release from gaol for assaulting her, Veronica Hudson returned to him ‘out of a combination of love, fear, lack of choices and hopelessness’ (*R v Hudson* [2013] VSC 184, para 23).

Justice King commented that Veronica Hudson had endured over 40 years of sexual, physical and emotional abuse which society appeared powerless to have stopped. As a child she was removed from her family and became a ward of the state. By the age of 13, she was living as a sex worker in Kings Cross, Sydney. Veronica Hudson had been sexually abused by several people, and all of her relationships had been characterised by severe violence. A previous partner had pushed her in front of a four-wheel drive, resulting in her spending 16 months in hospital and having to learn to walk again. Justice King said: ‘Your life clearly has been one where you have lacked the power to do much to make it better or worth living’ (*R v Hudson* [2013] VSC 184, para 31). She further stated:

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‘You came to accept that you deserved to be punished by Edward Heron as well as the other men in your life ... You accepted punishment was appropriate because you made them angry, or upset them. In relation to Mr Heron, you believed to a large degree he protected you and this was just one of the prices you paid for that protection’ (*R v Hudson* [2013] VSC 184, para 28).

Justice King noted that Veronica Hudson identified as an Indigenous woman.⁴³ During the plea hearing, family violence was discussed as a particular problem within Indigenous communities in Australia. The prosecutor, defence counsel and sentencing judge all noted the high levels of violence within Indigenous communities. Justice King commented: ‘We cannot let this continue as a society. We must stop this appalling violence being inflicted one upon the other by members of the indigenous community. Whilst there have been so many attempts to alleviate these problems, we have had, as a community, such limited success’ (*R v Hudson* [2013] VSC 184, para 32). She further reflected that: ‘I certainly don’t know the answer and I doubt if anyone really does at this point. But as a community it is horrific that this goes on within our caring, egalitarian society’ (*R v Hudson* [2013] VSC 184, para 33).

The description of the violence in Veronica Hudson’s case as ‘being inflicted one upon the other by members of the indigenous community’ (*R v Hudson* [2013] VSC 184, para 32), obscures the gendered nature of family violence whereby women and children are the primary victims, as well as the systemic factors that contribute to family violence in Indigenous communities (McGlade 2012). While Justice King’s comments acknowledge that family violence is a significant problem in Indigenous communities, it should also be noted that family violence is prevalent across the broader Australian community.

The family violence in the case of Veronica Hudson was ongoing, severe and undisputed by the Crown. Multiple witnesses clearly described Edward Heron’s violence, and he had served a five-year sentence for a previous severe assault upon Veronica Hudson. There was evidence that Veronica Hudson was being constantly monitored by Edward Heron, and that he was extremely possessive and jealous. Given that she faced an ongoing risk of severe violence, it is unclear why the case was not dismissed on the grounds of self-defence (as in the case of Freda Dimitrovski) or defended at trial on the grounds of self-defence.

It is possible that Veronica Hudson pleaded guilty because she felt extremely guilty and responsible for what she had done (as noted by her defence counsel). Indeed, she was suicidal after the incident (Transcript of plea, p. 45). However, during the plea hearing, it was implied that she somehow contributed to the abuse, as someone who was caught in a ‘cycle’ of making ‘poor choices’ in Indigenous men (Transcript of plea, p. 41). It was noted several times that Veronica Hudson said that she still loved Edward Heron, and went back to him ‘even’ after he had severely assaulted her (see, for example, Transcript of plea, p. 45). Justice King described her as ‘a hostage to herself and a hostage to him, it’s a hostage to a lifestyle’ (Transcript of plea, p. 17), and wondered ‘how do you give someone safe accommodation who becomes willingly involved in relationships that are ... deleterious?’ (Transcript of plea, p. 38). Justice King reflected that, with support, Veronica Hudson could reduce her ‘dependency on violent, aggressive, exploitative men’ (*R v Hudson* [2013] VSC 184, para 37).

The case discussed below differs from those outlined above in that the killing occurred in response to behaviour allegedly directed towards a child rather than towards the woman, and it is the only case in which others were directly involved in the killing.

⁴³ When sentencing Veronica Hudson, Justice King noted: ‘Your father was Pintinjarra with a South Australian background and your mother’s mother, your Nan, was also Pintinjarra’ (*R v Hudson* [2013] VSC 184, para 22).

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ELIZABETH DOWNIE

On 30 August 2010, Elizabeth Downie (aged 36) went to the house of her ex-husband, Martin Dick, with two other men, Dean Maes and Callum Fitton. The two men pushed open the door, and punched and kicked Martin Dick. After he ran outside to the front of the house, Dean Maes stabbed him several times with a knife. Elizabeth Downie kicked him as he lay on the ground in the front yard. She later threw the knife down a drain. ‘Elizabeth Downie was initially charged with murder. The prosecution later accepted her plea of guilty to manslaughter. She was sentenced to six years, with a non-parole period of four years.⁴⁴ Her co-accused, Dean Maes, pleaded guilty to murder and received a sentence of 18 years, with a non-parole period of 14 years and six months.⁴⁵ Callum Fitton pleaded guilty to manslaughter and was sentenced to five years, with a non-parole period of three years.⁴⁶

In her opening remarks in sentencing, Justice Betty King described the attack as a ‘vigilante killing’ (*R v Downie* [2012] VSC 27, para 38). Martin Dick and Elizabeth Downie had six children together, before they divorced in 2005. Elizabeth Downie stated that she believed that several months before the killing Martin Dick had masturbated in front of their daughter. She had reported this to the police, who were investigating the incident and had interviewed Martin Dick, yet no charges had been laid by the time of his death. Apparently ‘furious’ about his alleged actions, Elizabeth Downie asked a number of people to take action against him (*R v Downie* [2012] VSC 27, para 6). She told a friend that she was going to get Dean Maes to ‘run through that child molester’s house’ as punishment (*R v Downie* [2012] VSC 27, para 8), and said she ‘wanted him dead’ (*R v Downie* [2012] VSC 27, para 9). Dean Maes was an ex-partner and had previously been violent towards her, but she had maintained ‘some sort of friendship’ with him (*R v Downie* [2012] VSC 27, para 30). On the day of the killing, she met with Dean Maes and Callum Fitton, and they agreed to go together to Martin Dick’s house.

According to the prosecution, she did not intend to have Martin Dick killed:

It was her intention that Dick be injured or beaten up. She assisted Maes and Fitton in the assault on Dick even though she may not have been aware of Maes having at the relevant time possession of the knife. Downie acted in concert with Maes and Fitton in an assault on Dick by Maes and Fitton and the death was caused by Maes.

R v Downie [2012] VSC 27, para 16

Recognition of family violence

Elizabeth Downie told police that, during the relationship, Martin Dick had been ‘intimidating and controlling in that he was violent by way of smashing things in the house and ... [they] ... constantly fought’ (*R v Downie* [2012] VSC 27, para 25). Noting that after the divorce both parties had taken out ‘various intervention orders against each other’, Justice King described them as having behaved ‘badly towards the other’ (*R v Downie* [2012] VSC 27, para 4). Elizabeth Downie lost custody of her children in 2004 due to her substance abuse problems. Her children returned to live with Mr Dick. Elizabeth Downie said in her police interview that the Department of Human

⁴⁴ *R v Downie* [2012] VSC 27.

⁴⁵ *R v Maes* [2012] VSC 161.

⁴⁶ *R v Fitton* [2011] VSC 671.

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Services had taken four of her children out of Martin Dick's care after the report was made of him masturbating in front of one of them, and that they were living with her at the time of the killing (Transcript of plea, p. 12).

After separating from Martin Dick, Elizabeth Downie had relationships with other men, and had been subjected to family violence by these men. One of the men with whom she had a relationship was Dean Maes, and 'after a particularly bad beating' she took out an intervention order against him (*R v Downie* [2102] VSC 27, para 30). Referring to Elizabeth Downie's past history of family violence, Justice King observed that she had 'a history of exceedingly poor choices in male companions' (*R v Downie* [2012] VSC 27, para 31). She also stated that by being involved in his killing, Elizabeth Downie had deprived her children of their father. Justice King said that 'Even if he had been found to have committed the indecent act in the presence of one of the children, it would not necessarily have followed that he could and would not have been a good father to the other children' (*R v Downie* [2012] VSC 27, para 18).⁴⁷

CONCLUSION

This chapter has explored seven case studies of women who have killed intimate partners since the implementation of the homicide law reforms in Victoria. Our analysis indicates that family violence was discussed in the majority of cases during plea hearings or trials. However, understandings of family violence among the judiciary and legal professionals remain limited. There continues to be a focus on physical forms of violence, and a lack of understanding of the serious impact of non-physical forms of intimate partner violence, such as psychological coercion and intimidation, and of sexual violence. The cumulative impact of various forms of family violence and how this contributes to women's perceptions of the level of danger they are facing is still not well understood among legal professionals.

There are still misunderstandings of why women remain in abusive relationships. In several cases, legal professionals struggled to understand women's reasons for not having left violent partners. Further, gender-based stereotypes based on traditional understandings of self-defence appear to persist despite legislative efforts to ameliorate them through the codification of self-defence.

The next chapter considers the implications of these findings, and whether, and to what extent, the intentions of the law reforms in Victoria have been realised.

⁴⁷ This comment that he may remain a 'good father' to the other children suggests that a father's sexual abuse of one child in a family will have little impact on the other children. However, research shows that this is not the case. The effects on siblings of a child who has been sexually abused include significant psychological distress, stigma and disruption of family dynamics (Baker et al. 2001; Tavkar & Hansen 2011).

CHAPTER 4

Discussion: Legal responses to women who kill

The findings of our analysis of cases of women who killed their intimate partners between 2005 and 2013 are consistent with existing empirical research on women who kill, which shows that women generally kill in response to violence from their intimate partner (see, for example, VLRC 2003; Easta 1993; Mouzos & Rushforth 2003). In the cases we examined:

- Each of the women described repeated prior physical, psychological or sexual violence, or coercive, controlling behaviour by the deceased.
- According to the women's accounts, the killing occurred during an immediate confrontation between them and the deceased (except in the case of Elizabeth Downie where the killing was a response to a perceived harm towards her children).
- A weapon was used in the killing – in each case a knife or a stick.⁴⁸

In this section we discuss the outcomes of these cases, the ways in which the new legislation has impacted on the recognition of family violence, and the perception of the 'reasonableness' of the women's actions. We consider whether the spirit of the legislative reforms, in terms of responding more effectively to women who kill in the context of intimate partner violence, is being realised.

⁴⁸ In the case of *R v Downie* [2012] VSC 27, a weapon was used by one of the two males involved in the killing.

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OUTCOMES AND PLEA BARGAINING

All of the women in this study were charged with murder. Of the seven women whose prosecutions proceeded⁴⁹, all attempted to plead guilty to the lesser offences of manslaughter or defensive homicide. Three manslaughter pleas (Elizabeth Downie, Melissa Kulla Kulla and Veronica Hudson) and two defensive homicide pleas (Karen Black and Jemma Edwards) were accepted by the OPP. Two women (Jade Kells and Eileen Creamer) had their pleas rejected and proceeded to trial, where one (Jade Kells) was found guilty of manslaughter and the other (Eileen Creamer) of defensive homicide. The sentences for those women who pleaded guilty to manslaughter or were found guilty of manslaughter after a trial were comparatively shorter than those received by women who pleaded guilty to defensive homicide or were found guilty of defensive homicide after a trial.⁵⁰

It is unclear why, since the introduction of these reforms, most cases have involved plea outcomes and not proceeded to trial. The determination of guilt in the majority of these cases was settled privately via plea bargaining, which, as several authors have pointed out, is a flawed process due to a perceived lack of transparency (Stubbs & Tolmie 2008; Flynn & Fitz-Gibbon 2011; Tyson 2011) – plea bargaining effectively ‘privatises justice’ (Stubbs & Tolmie 2008, p. 149).

For this reason it is also difficult to know what features of the cases led to the different outcomes of defensive homicide and manslaughter. It may be that in some cases it is harder to obtain a manslaughter verdict when there is indication of an intention to kill or inflict serious injury. For example, in the cases of Jemma Edwards and Eileen Creamer there were multiple wounds inflicted on the deceased, and in Karen Black’s case an intention to kill was expressed to police.

It may be that the women defendants in our study were motivated to plead guilty to lesser offences out of a sense of shame and remorse about their actions. For example, Karen Black appears to have been so ashamed of what she had done that she was prepared to plead guilty to defensive homicide – she told a psychologist, ‘I deserve what I get, I’m so ashamed. I want to face what I’ve done ... The fact that they’ve accepted defensive homicide doesn’t erase the thought. I’ve taken someone’s life’ (Transcript of plea, p. 20). In her interview with the police, Karen Black appears to have blamed herself for reacting to her partner’s abuse, telling them that she should not have let it get to her (para 7). However, it must be recognised that many women victims blame themselves in the context of prevailing community attitudes that excuse men’s violence (Enander 2010). As Enander points out, ‘feeling stupid for allowing oneself to be mistreated and for staying in the abusive relationship’ is a dominant theme in women’s own accounts of abusive relationships, ‘feeling – and labelling oneself – stupid is an expression of gendered shame’ (2010, p. 5). Moreover, as Toole emphasises, this may reflect ‘a distorted sense of self-blame rather than a reasoned assessment of ... criminal liability’ (2012, p. 275).

Family violence victims also face significant barriers in establishing themselves as credible witnesses. Abuse commonly occurs in private, and many victims do not tell anyone about the abuse because they fear not being believed (VLRC 2004). Without independent witnesses to verify the abuse they have experienced, women’s credibility may be called into question during trials and plea

⁴⁹ Beyond the committal hearing. Only one case (Freda Dimitrovski) did not proceed.

⁵⁰ The lowest sentences were for manslaughter pleas: Veronica Hudson and Melissa Kulla Kulla both received six years’ imprisonment with three years non-parole; and Elizabeth Downie received six years’ imprisonment with four years non-parole. Jade Kells pleaded guilty to manslaughter at trial and was sentenced to eight years’ imprisonment, with five years non-parole. Those women who pleaded guilty to defensive homicide received longer sentences: Karen Black – nine years’ imprisonment, with six years non-parole; and Jemma Edwards – seven years’ imprisonment, with four years and nine months non-parole. Eileen Creamer, who was found guilty of defensive homicide at trial, received the longest sentence: 11 years’ imprisonment with seven years non-parole.

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hearings. These difficulties are compounded for women who have a prior criminal history, are drug or alcohol dependent, or otherwise depart from the norms of femininity (Carlen & Worrall 2004, cited in Stubbs & Tolmie 2008, p. 150). It is worth noting that, since the reforms were introduced, in the only case of a woman who killed an intimate partner in which the charges were dismissed on the grounds of self-defence (Freda Dimitrovski), there appear to have been other family members present who witnessed the deceased violently attacking the defendant immediately prior to his death. In most of the other cases we analysed, no witnesses were present to support the women's accounts of what happened.

Indigenous women face additional pressures to plea bargain. Two of the eight women in this study were identified by the sentencing judge as Indigenous (Melissa Kulla Kulla and Veronica Hudson). As Stubbs and Tolmie point out, Indigenous communities commonly express distrust of the legal system, and may face greater levels of trauma and risk (of conviction) in going to trial (2008, p. 150). Moreover, Indigenous women experience the combined effects of poverty, violence, alcohol and substance abuse, gender and race discrimination, and a historical context that includes colonisation, dispossession and the disruption of family life through the government removal of children (Stubbs & Tolmie 2008, p. 141). Furthermore, Indigenous women may be fearful of the justice system, find it hard to access good legal advice and experience barriers in communication; and there may be cultural traditions that make it inappropriate to speak about a deceased person, or certain matters publicly (Stubbs & Tolmie 2008, p. 150).

As outlined above, in all of the cases we reviewed, the women were charged with murder. However, in most cases the Crown was willing to accept a plea of guilty to a lesser offence of manslaughter or defensive homicide. This situation has been described as one of women who kill intimate partners being 'overcharged' (NSW Select Committee on the Partial Defence of Provocation (NSWSCPDP) 2013, p. 157). Women facing murder charges are under pressure to plead guilty to lesser offences to avoid risking a murder conviction at trial in circumstances where there are defensive elements or where the intent is less than is required for murder (NSWSCPDP 2013, p. 166). This means that in cases where there may be good grounds on which to argue self-defence, the new provisions are not being adequately tested at trial. As a consequence, 'the case law on self-defence is not [being] given the opportunity to develop so that it can accommodate the circumstances of battered defendants in an appropriate way' (Tolmie 2005, p. 40).

Women who plead guilty to lesser offences may be deprived of potentially valid claims to an acquittal on the basis of self-defence (Sheehy, Stubbs & Tolmie 2012). This could be avoided if there were consultation between police and prosecutors about the most appropriate charge to lay (Stubbs & Tolmie, cited in NSWSCPDP 2013, p. 167). As noted by Stubbs and Tolmie, women defendants may be more willing to go to trial and argue self-defence if they are charged with a lesser offence of manslaughter or defensive homicide (NSWSCPDP 2013, p. 167). The committee that recently undertook a review of homicide laws in NSW was in agreement with this proposition, having formed the view that specific guidelines are required to assist prosecutors to determine the appropriate charge to lay against defendants in circumstances where there is a history of violence towards the defendant (NSWSCPDP 2013, p. 167). Such guidelines could also be developed for the Victorian context.

Given the limited recognition of family violence and its impact on victims evident in the cases we examined, individual women defendants who plead guilty to defensive homicide or manslaughter may be making a wise decision in not going to trial. There is certainly little precedent to suggest that they might be acquitted on the basis of self-defence. Furthermore, the sentences they receive

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when they plead guilty to a lesser offence are likely to be lower than the sentence they would receive were they to go to trial and be found guilty of that offence (due to plea discounting). There is also the risk that they may be found guilty of murder at trial which attracts a higher sentence than manslaughter or defensive homicide.

SELF-DEFENCE VS. DEFENSIVE HOMICIDE: WHAT IS 'REASONABLE'?

Defensive homicide is based on whether it was in self-defence but the basis of it was not on reasonable grounds.

Transcript of trial, *Creamer*, Justice Coghlan at p. 31

All of the women who have killed their intimate partners since the 2005 reforms have done so in the context of family violence. While it may not always be the case that women who kill in response to family violence acted in self-defence, it is concerning that none of the seven women whose cases we analysed were acquitted on the basis of self-defence. Based on her review of several cases in Victoria and Queensland⁵¹, Heather Douglas concludes that, despite the introduction of specialised offences and defences for battered women who kill their abusers in these jurisdictions, 'it remains very difficult for battered women to meet the threshold required to succeed in a claim of self-defence' (2012, p. 377). Douglas describes the few women who have been acquitted on the grounds of self-defence as 'benchmark battered women' (2012, p. 377). These women were 'smaller than their partners, white, drug-free, monogamous and without a criminal record', and 'suffered fierce physical abuse over many years ... had attempted to leave the relationship and ... had sought assistance from the police'. In these cases, the killing was the first time they had physically fought back (Douglas 2012, p. 377). Our findings are consistent with Douglas's analysis. In the cases that we analysed, none of the women's circumstances met this benchmark, and none successfully argued self-defence.

The introduction of defensive homicide in Victoria was intended to act as a 'halfway house' for women who kill their violent partners (VLRC 2004, p. 102). The VLRC hoped that having a partial defence as a back-up option would encourage more women defendants to go to trial and argue self-defence, giving juries an option of convicting them of a lesser offence in cases where they did not assess the woman's self-defence claims as reasonable. Our analysis suggests that in some cases defensive homicide may be viewed as the most appropriate outcome for women who kill an abusive partner because it was specifically introduced with family violence cases in mind. However, it was intended to be a 'backstop' alternative offence (akin to the partial defence of 'excessive self-defence') and should not preclude consideration of a full acquittal on the basis of self-defence.

A crucial difference between the full defence of self-defence and the offence of defensive homicide under the new provisions relates to whether the defendant's fear is understood to be 'reasonable' or 'unreasonable'. It has been well established by feminist legal commentators that women who have been subjected to family violence are often perceived to be inherently 'unreasonable' because they remained in an abusive relationship (Anderson & Saunders 2003; Davis 2002; Enander & Holmberg 2008; Kirkwood 2000, 2003). However, as decades of feminist research has also shown, the perception of what is 'reasonable' behaviour on the part of a woman in the context of family

⁵¹ In 2010, Queensland introduced a new defence titled 'killing for preservation in an abusive domestic relationship'. If successful, this defence results in a conviction for manslaughter.

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violence is often shaped by stereotypes about family violence (Nicolson 1995; Randall 2004; Stubbs & Tolmie 1999, 2005, 2008; Toole 2012).

In the new legislation, s 9AH states that evidence of family violence may be relevant for determining whether the accused person's actions were 'necessary' to defend themselves or another person, or whether they had 'reasonable' grounds for believing that their conduct was necessary (2 a and b). In the cases we analysed, current interpretations of the legislation appear to lead into a debate about whether the family violence was sufficiently 'serious' to warrant the response of the accused and whether the accused's actions were a reasonable response to the family violence.

For example, at Eileen Creamer's trial there was discussion between the parties and the trial judge about whether Eileen Creamer's actions could be seen as 'reasonable' self-defence or 'unreasonable' self-defence⁵² (and thus defensive homicide), and this discussion was linked to whether or not, and to what extent, she was a victim of family violence. The rationale appeared to be that if she was a victim of *serious* family violence her actions would seem more *reasonable*; and if not, her actions were deemed to be unreasonable and therefore to more appropriately fit with defensive homicide.

As the offence of defensive homicide is based on the notion that a defendant's belief in the need for self-defence was 'unreasonable', the way it is currently operating may perpetuate an emphasis on abused women's actions being irrational and 'unreasonable'. This situation might be avoided if defensive homicide were run alongside self-defence and if the emphasis were placed on the woman's defensive actions as 'reasonable' in the context of the family violence she experienced.

In the case of Jemma Edwards, the defence counsel and presiding judge were in agreement that defensive homicide was intended to fit cases such as hers (Transcript of plea, p. 45). Although the family violence experienced by Jemma Edwards was clearly perceived as significant, the defence counsel's view was that the violence had affected her ability to 'think clearly' and make 'calm or rational choices' (Transcript of plea, p. 38). The implication was that, had she been acting in a rational manner, she would have left her abusive husband. However, as a 'battered woman' (Transcript of plea, p. 45) who remained with her husband and 'tolerated' the abuse (Transcript of plea, p. 40), her judgment was described as 'impaired' (Transcript of plea, p. 38). Therefore, the acceptance of a lack of rationality and reasonableness in relation to Jemma Edwards's belief that it was necessary to kill illustrates the perpetuation, rather than cessation, of long-established stereotypes of women and family violence.

The women in the cases we examined were variously described by counsel and the presiding judges as helpless, dependent and irrational, or as unstable and angry. For example, Karen Black was described as 'unassertive and timid' (Transcript of plea, p. 56); Jemma Edwards as 'sick', dependent, having 'impaired' judgment and lacking 'strength of character' (Transcript of plea, pp. 38–40); Eileen Creamer as 'a rather gullible woman, a rather foolish woman, a rather dependent sort of person' (Transcript of plea, p. 1552); and Veronica Hudson as a 'very dependent person' (Transcript of plea, p. 14). Several of the women were described as being caught in a 'cycle' of making 'poor choices' in partners (see, for example, *Hudson*, Transcript of plea, p. 41; *R v Downie* [2012] VSC 27, para 31). Kells was characterised as angry, aggressive and vengeful, and Downie was presented as 'unstable' and angry⁵³ (*R v Downie* [2012] VSC 27, para 32). Consequently, none of the women

⁵² Creamer, Transcript of trial, pp. 1540–65.

⁵³ Women's rage and anger at their abusive partners is seen to be incompatible with traditional conceptions of femininity that characterise women as passive, helpless and fearful (Nicolson 1995). Radford has argued that anger on the part of women experiencing family violence is 'deemed illegitimate, supposedly "proving" that their attacks on their abusers were solely revenge-motivated' (Radford 1993, pp. 195–6, cited in Morrissey 2003, p. 98). This denies conceptions of women as 'active, human subjects' (Morrissey 2003, p. 17).

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were perceived as rational actors who killed their violent partners based on a reasonable belief that it was necessary to defend themselves against the risk of death or really serious injury.

Given that it has been almost eight years since the reforms were introduced, it is disappointing that none of the women who killed their intimate partners in the context of family violence successfully utilised the full defence of self-defence.⁵⁴ We note that not all cases of women who kill abusive intimate partners should result in an acquittal on the basis of self-defence (Tolmie 2005; Burke 2002). However, our reading of the available material suggests that at least some of the women whose cases we have examined appear to have strong cases for arguing a complete acquittal based on self-defence, given the context of the history of threats and abuse to which they had been subjected, as well as the imminent danger they faced from the deceased. We do agree with Douglas that it is a concern that stereotypes about women and family violence continue to inform the choices made by legal professionals and juries in homicide cases (2012, p. 377; see also Toole 2012, p. 278). In most cases, such stereotypes appear to be undermining women's potential claims that they acted in self-defence.

PROPORTIONALITY

The 2005 reforms included changes that were designed to shift the traditional notion that legitimate self-defence requires a proportional response to an immediate threat, and to recognise that the size and strength disparities between men and women mean that women may resort to the use of weapons to protect themselves from a violent partner. Thus, arguments put to a judge and/or jury under s 9AH (d) do not require proportionality. The provisions under s 9AH provide that a person subjected to family violence may have reasonable grounds for believing that conduct in self-defence is necessary, even if 'his or her response involves the use of force in excess of the force involved in the harm or threatened harm'.

However, our analysis shows that legal professionals are not utilising s 9AH to its full potential to assist judges and juries to better understand the dynamics of family violence. For instance, in the cases of Jemma Edwards, Karen Black, Jade Kells and Eileen Creamer, kitchen knives were used, and the stabbings were described by sentencing or appeal judges as 'disproportionate' to the threat posed by the deceased (*R v Edwards* [2012] VSC 138, para 49; *R v Black* [2011] VSC 152, para 22; *R v Kells* [2012] VSC 53, para 14; *Creamer v The Queen* [2012] VSCA 182, para 51).

EXPERT WITNESS EVIDENCE

As outlined above, the 2005 provisions specify that expert evidence regarding the 'general nature and dynamics' of family violence and the 'cumulative effect' of such violence can be admitted to demonstrate that the defendant had reasonable grounds for a belief that they were in danger of being killed or suffering really serious injury (s 9AH). The VLRC intended that such evidence may include both 'general expert evidence about the nature and effects of family violence' and 'case-

⁵⁴ The exception was the case of Freda Dimitrovski. As noted earlier, this case was heard immediately after the reforms were implemented. In addition, there were other family members (Freda Dimitrovski's adult daughter and four-year-old grandson) present who witnessed the violent attack by the deceased, and who were themselves attacked. It appears that the killing was a response to the deceased's attempt to attack Ms Dimitrovski's daughter. Freda Dimitrovski had been subjected to 30 years of physical and psychological abuse (DOJ 2010, p. 31).

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specific' expert evidence, which would place the situation of the accused within the framework of current knowledge on family violence (2004, p. 141). Expert evidence about family violence has the potential to shift the focus away from a narrow one on the psychopathology of female defendants towards an approach that challenges gender-based stereotypes around self-defence, immediacy and proportionality.

Typically in Australian courts, the experts being admitted in cases where women have killed their violent partners have been confined to psychologists and psychiatrists giving evidence on battered woman syndrome (VLRC 2004, para 4.115). The VLRC sought to encourage the courts to accept a 'broad range' of experts, including family violence workers, stating that 'people best qualified to give expert evidence on family violence are likely to include those with direct experience of working with people who have experienced family violence and with knowledge of current research in the field' (VLRC 2004, para 4.131).⁵⁵ The VLRC further recommended that if the accused is Indigenous or of a particular cultural background, experts should include professionals who have direct experience in working with those communities.

Our analysis shows that the potential envisioned by the VLRC in relation to the use of expert evidence has not been realised. There was little, if any, indication in our study that a broad range of experts with specific family violence training is being called upon by legal counsel. Rather, we found that in these cases expert evidence was confined to that provided by forensic psychiatrists and psychologists who undertook psychological assessments of the women and did not appear to provide evidence relating to the broader social context of family violence.

If we consider hypothetically that in the case of Jemma Edwards, her murder charge was contested at a trial rather than by her pleading guilty to defensive homicide, an expert who had extensive practice or research experience in family violence could have identified the evidence-based risk factors present in her case in support of an argument that her assessment of the danger she faced was reasonable under the circumstances. For example, factors that indicate a high risk of lethal violence, according to widely used family violence risk assessment frameworks (such as the *Victorian family violence risk assessment and risk management framework* launched by the Victorian Government in 2007), include the perpetrator escalating his violence, making threats to kill, misusing drugs or alcohol, breaching a protection order or harming other family members (Department of Human Services 2012). Each of these risk factors was present in Jemma Edwards's case.

An expert witness could have also linked Jemma Edwards's case to social context evidence regarding the cumulative impact of family violence on mental health, and the social and economic factors relevant to understanding why women stay in abusive relationships. During the relationship, Jemma Edwards had left her job, become 'disassociated from her family and friends' (Transcript of plea, p. 2), and developed anxiety and depression. Her husband had apparently used her poor mental health as a further reason to abuse her – according to her mother, James Edwards had threatened to 'have her locked away' (Transcript of plea, p. 8). Broader social framework evidence could have emphasised that these impacts are common in cases of family violence (see, for example, Rees et al. 2011) and are often directly related to the abusive tactics adopted by the perpetrator. This could have shifted the focus away from Jemma Edwards's personal characteristics and psychopathology.

⁵⁵ We note that the *Family Violence Protection Act* (2008) (Vic) (s 73) which applies to family violence matters such as intervention orders in Victoria allows for expert evidence to be given about family violence. The Act states that an expert witness refers to a witness with relevant qualifications, training or expertise in family violence. However, the 2005 changes to the laws of homicide in Victoria do not provide explicit guidance about the need for expert witnesses who give evidence in cases of intimate partner homicide to have family violence training.

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Although we acknowledge there are concerns about the reliance on ‘experts’ to validate women’s stories and experiences (see, for example, Douglas 2008), women who kill are still in need of a ‘new legal narrative’ that can ‘uphold their claims of self-defence’, and which ‘would base representation upon a concept of determined agency’ (Morrissey 2003, p. 102). As Morrissey has asserted, it is in this way that women’s act of killing their abusers can more appropriately be understood as ‘a rational choice’ and the result of being ‘coerced into that decision through lack of societal support and recognition of their situation’ (2003, p. 102).

SHIFTING LEGAL CULTURES: FAMILY VIOLENCE AWARENESS AND EDUCATION

Research on attitudes towards victims of family violence in Victoria continues to highlight misconceptions among members of the general community (Victorian Health Promotion Foundation 2009). Juries and legal professionals require greater understanding of family violence to ensure improved responses to women who kill abusive partners. As Douglas points out, we need ‘more than statute reform’ to change women’s experiences of justice (2012, p. 378). The effectiveness of reforms depends on ‘how the legal profession interprets and applies’ them (Stubbs in NSWSCPDP 2013, p. 188) and how it does this will depend on legal professionals’ level of understanding of the dynamics of family violence.

The VLRC recommended family violence training for police, legal practitioners and judges (2004, p. 194). Such training should include discussion of common myths, barriers to disclosing family violence, and how the use of expert evidence may assist in supporting a plea of self-defence. There have been some important steps in this direction. For example, in 2011, the Victorian DPP introduced a policy for the OPP to identify and respond to family violence (DPP 2010). The policy provides direction on best practice for OPP solicitors and counsel in preparing and prosecuting family violence matters. OPP solicitors also undertook training in family violence (OPP 2011).

Our analysis highlights the need for training to be ongoing, comprehensive and consistent; to be provided to prosecuting and defence counsel, judges, expert witnesses and other legal professionals; and to include cultural awareness training.⁵⁶ The ALRC and NSWLRC made an explicit recommendation for ‘training for judicial officers, lawyers, prosecutors, police and victim support services specifically in relation to the nature and dynamics of sexual assault as a form of family violence’ (Recommendation 26-3 ALRC and NSWLRC 2010, p. 39). They also recommended a national audit on family violence training provided by government and non-government agencies, and that such an audit should include criminal law training, including in relation to homicide defences and criminal defences more generally (ALRC and NSWLRC 2010, p. 651).

⁵⁶ The need for police to have cultural awareness training was a key recommendation made by the Aboriginal Family Violence Prevention and Legal Service Victoria in its submission to the ALRC and the NSWLRC (2010, p. 382 fn 98; see also p. 537).

CONCERNS ABOUT DEFENSIVE HOMICIDE

Since the reforms were implemented, concerns have been expressed about whether defensive homicide has given any effect to the underlying rationale for the reforms (see, for example, Weinberg 2011, p. 14; see also Douglas 2012, p. 372; Capper & Crooks 2010). Others have commented specifically on the complexity of and confusion surrounding the new laws (Fitz-Gibbon & Pickering 2012). These concerns have led to calls for the abolition of defensive homicide.

Further impetus for reforming or abolishing defensive homicide was inspired by the controversial case of Middendorp (discussed on page 12), who was sentenced for defensive homicide in May 2010.⁵⁷ It is important to note that since the Middendorp case, there have been no other cases in which men who killed an intimate partner have been convicted of defensive homicide.

The consultation paper recently released by DOJ proposes that defensive homicide be abolished and no other partial defence introduced to replace it (DOJ 2013). The paper points to the high proportion of men using defensive homicide to defend themselves on murder charges in which they have killed other men (most of these cases do not involve family members or family violence).

The findings of our research, however, give some cause to be concerned about the proposal to abolish defensive homicide. There is little evidence, if any, to suggest that the 2005 changes to the new statutory defence of self-defence can be utilised successfully by women defendants at trial. We are of the view that until we can ascertain the impacts of both the provisions that codify self-defence (s 9AC) and those that permit greater understanding of the dynamics of family violence in trials and plea hearings for domestic homicides (s 9AH), removing defensive homicide may result in negative outcomes for women defendants. If there is, for example, no alternative such as defensive homicide, and women who kill their partners are not able to plead guilty to manslaughter, then they may be more likely to receive a murder conviction and consequently a longer prison sentence.

For example, in the absence of a partial defence, Karen Black would have likely faced a decision to go to trial and attempt to defend herself on the grounds of self-defence or to offer to plead guilty to murder and receive a discounted sentence. Considering the court's perception that the violence she had previously been subjected to and faced on the night was 'limited', it is difficult to feel confident that a claim of self-defence would have been successful in this case.⁵⁸ Consequently, a murder conviction may have resulted.

It could be argued that if women are found guilty of murder for killing in response to family violence, judges can take the family violence into consideration in sentencing such women. The ALRC and NSWLRC recommend that the dynamics of family violence be taken into account in the sentencing of defendants who are found guilty or who plead guilty to crimes that have occurred in circumstances of family violence (2010, p. 594). While we support this contention, our analysis indicates that judges may still have misconceptions about the dynamics of family violence and therefore may not adequately take the issues related to family violence into account when sentencing women who kill in this context. There is also pressure on judges to fit sentences within a particular range. Currently the average sentence for murder is approximately 20 years in Victoria (Sentencing Advisory Council 2013).⁵⁹ If sentences for murder are perceived to be low there may

⁵⁷ *R v Middendorp* [2010] VSC 202.

⁵⁸ This view is shared by Heather Douglas, who stated that, arguably, defensive homicide delivered a merciful outcome for Karen Black, considering how difficult it is for women to meet the threshold to succeed in a claim of self-defence (2012, p. 377).

⁵⁹ In 2011-12, the average length of imprisonment term imposed on people sentenced for murder was 20 years and 1 month (Sentencing Advisory Council 2013, p.4).

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be public outrage and pressure for higher sentences. In addition, there is a stigma attached to the label of ‘murder’ (NSWSCPDP 2013, p. 87). Regardless of whether or not women who are convicted of murder receive a reduced sentence after family violence is taken into account, they will have to live with the public shame of being labelled a ‘murderer’, and the family violence they experienced may be obscured.

Our view is that, should defensive homicide be abolished and no other partial defence be established to replace it, it is conceivable that some women who kill in the context of family violence will receive harsher outcomes than is currently the case. The outcomes in the cases we have examined highlight what Douglas has noted as ‘the importance of the “halfway house” provided by defensive homicide’ (2012, p. 371). Other jurisdictions have recognised the need to maintain partial defences, particularly for female defendants (see, for example, NSWSCPDP 2013). Sheehy, Stubbs and Tolmie also remain concerned about the impact of abolishing partial defences on female defendants (2012, pp. 11–12).⁶⁰

It has been argued that abolishing defensive homicide would encourage more women to pursue self-defence at trial (DOJ 2013). While this is an appealing prospect there is no evidence to support it. It may be that more women will offer to plead guilty (to manslaughter or murder) rather than risk going to trial and being found guilty of murder. The proposal to abolish defensive homicide is likely to result in an experiment that in all likelihood would place women defendants in a precarious situation, at least in the interim, until we have evidence that the new self-defence provisions are accommodating responses to family violence. The ongoing limited recognition of family violence and its practical realities for women, evident in the cases we examined, gives us little confidence that women will, in the current climate, have an equitable chance of a successful claim of self-defence and being acquitted at trial. In the current legal context, we consider that the most appropriate option is for defence counsel to link arguments about the reasonableness of the woman’s belief in the need for lethal violence more explicitly to the self-defence provisions and the evidence in relation to family violence and social context. If self-defence is unsuccessful then women can rely on the ‘halfway house’ of defensive homicide.

As discussed above, we would also be likely to see more women proceeding to trial on the basis of self-defence if they were charged with manslaughter or defensive homicide from the outset rather than murder.⁶¹ The issue of how prosecutors determine the appropriate charge in cases where there is a history of family violence towards the defendant is one which requires further examination.

⁶⁰ New Zealand abolished the partial defence of provocation in 2008 and did not implement an alternative partial defence to murder. In a recent study of cases involving battered women defendants from 2000 to 2010 in Australia, Canada and New Zealand, Sheehy, Stubbs and Tolmie found that although New Zealand’s small number of cases made it difficult to generalise, overall trends appear to be different from those observed in Australia and Canada in both the high proportion of cases proceeding to trial and those resulting in a conviction for murder. Consequently, they conclude that there is a need to further examine prosecutorial practices of proceeding to trial on murder rather than manslaughter charges, even when manslaughter would be ultimately satisfactory to the prosecution, and of accepting guilty pleas to manslaughter verdicts in circumstances where the battered woman appears to have a strong self-defence case.

⁶¹ See s 9AE of the Crimes Act regarding self-defence to manslaughter.

CONCLUSION

Our analysis of legal responses to women who have killed their intimate partners in the eight years since the homicide law reforms were implemented in Victoria suggests that the potential for the reforms to improve outcomes for women defendants has not been realised. The key rationales for the reforms were to shift the focus away from the individual psychology of the female defendant, to challenge the gendered stereotypes that have traditionally informed the law of self-defence, and to expand and deepen understandings of family violence.

Our findings show that there is limited recognition of the nature, dynamics and impact of family violence on victims. In particular there remains:

- a failure to understand how prior family violence may affect women's responses to abusive, intimidating or threatening behaviour
- a lack of understanding of why victims may remain in abusive relationships
- a greater likelihood of recognising physical violence than other forms of family violence such as sexual assault, threats, and coercive and controlling behaviour
- little recognition of the cumulative impact of various forms of family violence
- gender-based stereotypes which influence perceptions of what is a reasonable and proportional response
- an inadequate use of the family violence social context evidence provisions.

On a more positive note, it may be that, without the new provisions, family violence would not have been recognised at all in some of these cases. The new provisions make it more likely that family violence will be considered and linked, albeit in a limited way, to arguments about the accused person's actions.

We face a double bind in that, until women victims of family violence can be seen to be successfully raising self-defence, we are not able to support the abolition of defensive homicide. However, if defensive homicide continues to serve as a default option for women who kill their violent partners in response to a history of violence, it may be unlikely that self-defence will be tested in the near future. For this to happen, we would need to see further shifts in the legal profession and culture around the recognition of family violence and women's responses to it. At present, there is no evidence that women's prospects of raising self-defence successfully have improved.

Several authors have noted the limits of formal legal change in achieving justice for women who kill (see, for example, Graycar & Morgan 2005; Douglas 2012, p. 378). Specialised training for legal professionals and increased use of expert witnesses who can provide family violence evidence and clearly link it to the elements of the relevant defences are important steps that would help to ensure that women's claims that they acted in self-defence are more comprehensively assessed by legal counsel, judges and juries.

The need for law reform to ensure justice for women who kill violent partners has been well established for some decades. Victoria has led the way for other Australian jurisdictions in its commitment to bringing about more positive changes for women defendants. We need to continue our efforts to develop the law in a way that adequately recognises the impact of family violence on women's lives, but also to work with the legal profession to improve the applications of the law so that the spirit and potential of legislative reform can be effectively realised.

APPENDIX

Cases since 2005

The following lists the relevant cases we identified in relation to:

- Women who killed their intimate partners or ex-partners (8)
- Men who killed their intimate partners or ex-partners (31)
- Men who killed other men sentenced on the basis of defensive homicide (22)

(Total cases = 61)

WOMEN WHO KILLED THEIR INTIMATE PARTNERS OR EX-PARTNERS (8)

Did not proceed to trial

- *DPP v Dimitrovski* [2009] – Magistrate dismissed charges. Killing occurred in response to an immediate violent attack, but in the context of long-term family violence. Argued self-defence.

Manslaughter

Plea – manslaughter (3)

- *R v Kulla Kulla* [2010] VSC 60– pleaded guilty to manslaughter.
- *R v Hudson* [2013] VSC 184 – pleaded guilty to manslaughter.
- *R v Downie* [2012] VSC 27 – pleaded guilty to manslaughter. Co-accused with two other men.

Trial – verdict – manslaughter (1)

- *R v Kells* [2011] VSC 53 – pleaded not guilty to murder, raised self-defence. Found guilty of manslaughter.

*Justice or Judgement?***Defensive homicide****Plea – defensive homicide (2)**

- *R v Black* [2011] VSC 152 – pleaded guilty to defensive homicide.
- *R v Edwards* [2012] VSC 138 – pleaded guilty to defensive homicide.

Trial – verdict – defensive homicide (1)

- *R v Creamer* [2011] VSC 196 – pleaded not guilty to murder, found guilty of defensive homicide.

MEN WHO KILLED THEIR FEMALE INTIMATE PARTNERS OR EX-PARTNERS (31)**Murder****Plea – murder (14)**

- *DPP v Lam* [2007] VSC 307
- *R v Diver* [2008] VSC 399
- *R v Piper* [2008] VSC 569
- *R v Foster* [2009] VSC 124
- *R v Dutton* [2010] VSC 107
- *R v Felicite* [2010] VSC 245
- *R v Singh* [2010] VSC 299
- *R v Bayram* [2011] VSC 10
- *R v Mamour* [2011] VSC 113
- *R v Penglase* [2011] VSC 356
- *R v Hopkins* [2011] VSC 517
- *R v Caroulus* [2011] VSC 583
- *R v Mulhall* [2012] VSC 471
- *R v Delich* [2013] VSC 309

Trial – verdict – murder (10)

- *R v Brooks* [2008] VSC 70
- *R v Ellis* [2008] VSC 372
- *R v Baxter* [2009] VSC 180
- *R v Chalmers* [2009] VSC 251
- *R v Robinson* [2010] VSC 10
- *R v Azizi* [2010] VSC 112
- *R v Caruso* [2010] VSC 254
- *R v Wilson* [2011] VSC 123
- *R v McDonald* [2011] VSC 235
- *R v Weaven* [2011] VSC 508

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Manslaughter**Trial – verdict – manslaughter (4)**

- *DPP v Pennisi* [2008] VSC 498 – pleaded not guilty to murder; found guilty of manslaughter UDA
- *DPP v Sherna* [2009] VSC 526 – pleaded not guilty to murder; found not guilty of defensive homicide but guilty of manslaughter UDA
- *R v Reid* [2009] VSC 326 – pleaded not guilty to manslaughter and recklessly causing injury, found guilty of manslaughter by criminal negligence and recklessly causing injury
- *R v Lubik* [2010] VSC 465 – pleaded not guilty to murder; found guilty of manslaughter UDA

Plea – manslaughter (2)

- *R v Drummond* [2012] VSC 505
- *R v Ahmadi* [2013] VSC 293

Defensive homicide**Trial – verdict – defensive homicide (1)**

- *R v Middendorp* [2010] VSC 202 – acquitted of murder; found guilty of defensive homicide.

MEN WHO KILLED OTHER MEN (22)**Trial – verdict – defensive homicide (6)**

- *R v Croxford/Doubleday* [2009] VSC 516
- *R v Parr* [2009] VSC 468
- *R v Svetina* [2011] VSC 392
- *DPP v (McEwan, Robb and) Dambitis* [2012] VSC 417
- *DPP v Chen* [2013] VSC 296
- *The Queen v Kassab & Anor* [2013] VSC 379

Plea – defensive homicide (16)

- *R v Smith (Michael Paul)* [2008] VSC 87
- *R v Edwards* [2008] VSC 297
- *R v Giammona* [2008] VSC 376
- *R v Smith (Callum-Zane)* [2008] VSC 617
- *R v Taiba* [2008] VSC 589
- *R v Baxter* [2009] VSC 178
- *R v Trezise* [2009] VSC 520
- *R v Spark* [2009] VSC 374
- *R v Wilson* [2009] VSC 431
- *R v Evans* [2009] VSC 593
- *R v Ghazlan* [2011] VSC 178
- *R v Martin* [2011] VSC 217
- *R v Jewell* [2011] VSC 483
- *R v Monks* [2011] VSC 626
- *R v Talatonu* [2012] VSC 270
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Submission on the Department of Justice's *Defensive Homicide: Proposals for Legislative Reform - Consultation Paper (2013)*

This is a joint submission prepared by: Dr Debbie Kirkwood, Mandy McKenzie and Libby Eltringham (Domestic Violence Resource Centre Victoria); Dr Danielle Tyson (Department of Criminology, School of Political & Social Inquiry, Monash University); Associate Professor Bronwyn Naylor (Faculty of Law, Monash University); Dr Chris Atmore (Federation of Community Legal Centres); and Sarah Capper (Victorian Women's Trust).

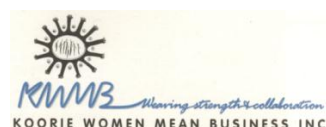
The submission is endorsed by:

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- Domestic Violence Victoria
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- No To Violence
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- Peninsula Community Legal Centre

27 November 2013.



MONASH University



Summary of key points in this submission

A specific partial defence to murder should be retained in the interests of women charged with murder for killing an intimate partner. Therefore, we recommend that:

- Defensive homicide should not be abolished.
- If defensive homicide is abolished, excessive self-defence should be reintroduced.
- If excessive self-defence is not reintroduced, a family violence-specific partial defence, such as that introduced in Queensland, should be considered as a possible option. A family violence-specific defence is not ideal but would be preferable to having no other partial defence.
- Further steps should be taken to improve the likelihood that women who kill in response to family violence will successfully be able to raise self-defence.
- A sustained effort is needed to shift gender-stereotypes and misconceptions about family violence. Recent research has demonstrated that these misconceptions continue to impact on the recognition of the nature and impact of family violence in legal responses to women who kill intimate partners. Indigenous women are particularly disadvantaged in accessing justice.
- Specialised family violence training and cultural awareness education is essential for legal professionals including prosecutors, defence counsel and judges. Such training should include the relevance of family violence evidence to elements of self-defence and defensive homicide legislation.
- Steps could be taken to reduce the overcharging of female defendants. In some cases in which women kill to defend themselves from family violence, the OPP could consider charging the defendant with defensive homicide or manslaughter from the outset rather than murder (if it is not feasible to dismiss). Charging women with manslaughter or defensive homicide may make it more likely that they would go to trial on the basis of self-defence.
- Improvements should be made to the family violence evidence provisions.
- Legal professionals should be prompted to use expert evidence about family violence, and to use a broader range of experts to provide this evidence – in particular, those who have an extensive, specialised knowledge of family violence.
- A specialist list for homicide cases involving family violence should be established.

The proposal to abolish defensive homicide without introducing any other partial defence is a controversial step when compared with other jurisdictions in Australia and overseas. It would leave Victoria as the only other Australian state, along with Tasmania, that has no partial defence to murder. Other states have a range of partial defences such as diminished responsibility, excessive self-defence and provocation. While there may be problems with the operation of each of these defences in some cases, it would be far more problematic to have no partial defence for women who kill in the context of family violence

The Department of Justice's arguments in the Consultation Paper are based on a perception that family violence is currently well recognised in homicide cases. This perception is not supported by recent research by DVRCV and Monash University (Kirkwood, McKenzie & Tyson 2013).

Our starting point is that women who kill to protect themselves from family violence should have access to a full acquittal on the grounds of self-defence. However, based on recent research that examined in detail cases of women who have killed partners since the 2005 reforms, we do not yet have sufficient evidence to show that self-defence can readily be raised by female defendants at trial (Kirkwood, McKenzie & Tyson 2013).

We acknowledge that there are problems with defensive homicide in that it creates a focus on women's defensive actions as unreasonable. However, in the current context we believe it remains necessary to maintain a partial defence so that women who kill abusive intimate partners have an alternative or 'back-up' option rather than facing the prospect of a murder conviction.

Proposal 1: Defensive homicide should be abolished

We do not support this proposal.

While we acknowledge that there are problems with defensive homicide, we recommend it be retained in the interests of women who kill abusive intimate partners.

We believe that the push for its abolition is partly driven by recent press coverage (eg. Petrie: ‘Murder “deals” under fire’ *The Age* June 25, 2012; Michael: ‘Deals could let potential murderers off hook in Victoria’ *Herald Sun* June 25, 2012; Clark: ‘Giving a stronger voice to crime victims’ *Herald Sun Law Blog* June 20, 2012).

To argue for the abolition of defensive homicide on the basis that men who kill other men are inappropriately using it ignores the fact that men who kill other men have routinely pleaded guilty to, or been found guilty of, manslaughter by an unlawful and dangerous act.

Abolishing defensive homicide without replacing it with any other partial defence will be detrimental for women who kill male partners in the context of family violence. If the government is seriously committed to addressing the impact of family violence on women who kill their abusers, it should retain the partial defence of defensive homicide.

Defensive homicide was introduced for sound reasons

The Victorian Law Reform Commission (VLRC) undertook a comprehensive review of defences to homicide (VLRC 2002, 2003, 2004). A primary reason for the review was to address the inadequate legal responses to women who kill abusive partners (VLRC 2002, p.7).

A gender bias in the law’s responses to men and women who kill partners was well documented by the VLRC, as it has been by many others in jurisdictions across Australia and internationally (Scutt 1997, Howe 1994, 1997, Tyson 1999, 2013, Bradfield 2000, Kirkwood 2003, Cleary 2002, 2005, Hubble 1997, Morgan 1997, 2002, Easteal 1993, Stubbs 1992, Stubbs and Tolmie 1994, 1999, 2008, Sheehy, Stubbs and Tolmie 1992). This research shows that women defendants are highly disadvantaged due to misconceptions about the gendered dynamics of family violence.

After a lengthy research, consultation and submission process, the VLRC recommended a partial defence be introduced to act as a ‘halfway house’ for women who kill violent partners. The VLRC saw this as necessary in light of the proposed abolition of the partial defence of provocation.

Recent research shows a partial defence remains necessary for female defendants who kill abusive partners

A recent research paper by DVRCV and Monash University provides a comprehensive analysis of the reforms as they relate to women who kill intimate partners in Victoria (Kirkwood, McKenzie & Tyson 2013). The study examines all cases of women who killed partners since the introduction of the reforms in 2005. This report is available on the DVRCV website.¹

¹ See www.dvrcv.org.au

The study identified eight cases of women who have killed their intimate partners or ex-partners since the reforms. Of these cases, more than half (5 of 8) were resolved by guilty pleas:

- one case was dismissed based on the argument that the killing was in self defence (*DPP v Dimitrovski* 2009)
- two women pleaded guilty to defensive homicide (*R v Edwards* [2012] VSC 138 and *R v Black* [2011] VSC 152)
- one woman was convicted of defensive homicide at trial (*R v Creamer* [2011] VSC 196)
- three women pleaded guilty to manslaughter (*R v Downie* [2012] VSC 27, *R v Hudson* [2013] VSC 184 and *R v Kulla Kulla* [2010] VSC 60)
- one woman was convicted of manslaughter at trial (*R v Kells* [2012] VSC 53).

The study shows that:

- Gender-based stereotypes continue to influence perceptions of what is a reasonable and proportional response.
- Family violence and its impact on women who kill their abusers is not well recognised through the legal responses to women defendants
- Family violence evidence is not being clearly linked to elements of the defences in the way it was envisioned by the VLRC. There is little recognition of the cumulative impact of family violence, and limited understanding of the impact of sexual violence or non-physical forms of violence (such as threats, psychological abuse and coercive, controlling behaviour).

The study found that there is no evidence that self-defence can be effectively utilised by women defendants at trial. To date there is only one case of woman who killed an intimate partner being dismissed on the basis of self-defence (Freda Dimitrovski). The case occurred soon after the reforms were implemented – at a time when legal professionals’ awareness of issues relating to family violence and defences to homicide was high.

There were also particular factors in this case that may have contributed to the outcome. Freda Dimitrovski’s defensive actions in stabbing her husband were a response to an immediate physical assault on her and her adult daughter, in the presence of her four-year-old grandchild. Her daughter appears to have been a direct witness to the killing. Freda Dimitrovski had been subjected to physical and psychological abuse over thirty years. Heather Douglas’s (2012) analysis of cases in Queensland and Victoria demonstrates that some battered women meet the ‘benchmark’ for a claim of self-defence better than others. Those acquitted had suffered physical abuse over many years, and their children had also been threatened by the abuser (2012, p.377). These circumstances appear to have applied in the case of Freda Dimitrovski. Although the dismissal in this case was an encouraging sign, no other case since then has resulted in an acquittal.

The DOJ Consultation Paper argues that for women who kill, ‘while the risk of conviction for murder based on misconceptions and outdated or stereotypical views about family violence cannot be ignored, it is unlikely’ (p.33). However, as the research by DVRCV and Monash University found, there is no evidence to support such a claim. Rather, this research found that stereotypes about family violence and about women who are victims of violence are entrenched in our society (Kirkwood, McKenzie & Tyson 2013). Despite the 2005 Victorian reforms, these misconceptions also persist in legal proceedings and a sustained effort is still required to shift them.

Considering this, we have little confidence that women who kill abusive partners will be able to successfully claim self-defence in homicide trials. There remains a need for a partial defence as a 'safety net' for such women.

In the almost eight years since the reforms, three women who killed an intimate partner have utilised defensive homicide and four women have relied on manslaughter. The majority of women have pleaded guilty rather than proceed to trial.

There is no certainty that, in the absence of defensive homicide, these women would have proceeded to trial arguing for an acquittal based on self-defence. They may have pleaded guilty to murder in order to receive a discounted sentence, rather than risk a murder conviction and longer sentence at trial.

While defensive homicide is not an ideal defence as it creates a focus on women's defensive actions as unreasonable, in the current context, defensive homicide is preferable to having no partial defence.

If there is no partial defence, the bargaining capacity of defence counsel in plea negotiations may also be significantly reduced. This may disadvantage not only those women relying on defensive homicide, but potentially those women who have relied on manslaughter.

Removing defensive homicide will not improve women's ability to successfully argue self-defence.

The DOJ Consultation Paper argues that the existence of defensive homicide is 'counter productive' (p. 26) because it has shifted the focus away from the adequacy of self-defence for women who kill abusive partners.

However, there is little evidence to support the idea that self-defence would become more accessible to these women if defensive homicide were removed.

The DVRCV/Monash University research shows that there are other reasons why women's self-defence claims are likely to be unsuccessful (Kirkwood, McKenzie & Tyson 2013). These include entrenched gender biases and misconceptions about the nature and impact of family violence, and inadequate use of the family violence provisions (s 9AH *Crimes Act 1958*).

The case of Karen Black demonstrates the relevance of defensive homicide in this context. Karen Black stabbed her partner twice while he had cornered her in the kitchen. She stated that she feared he would 'force himself on me sexually' and was 'thinking well what else could he do to me' (*R v Black* [2011] VSC 152, para 18). Karen Black appears to be the person that the Consultation Paper is referring to when it says 'another woman potentially had a good case for self-defence but pleaded guilty to defensive homicide instead' (p.viii).

However, the DVRCV/Monash research suggests that in Karen Black's case, had defensive homicide not been available, a murder conviction could have been the likely result. This is because of a perception that the violence Karen Black was subjected to by her partner was 'limited' (see *R v Black* [2011] VSC 152 para 22; *Black v The Queen* [2012] VSCA 75, para 29). This perception was based on an inadequate understanding of the impact on Karen Black of a history of threats and intimidation, and the serious harm of sexual violence. Further, the description of the stabbing as 'disproportionate' to the threat posed by her partner because he was unarmed (*R v Black* [2011] VSC 152, para 22) reflects a limited recognition of

gender-based disparities in size and strength. The killing occurred when Karen Black was cornered in the kitchen by her partner, who was 'a lot taller' than she was (*R v Black* [2011] VSC 152 para 2).

The DOJ Consultation Paper argues that if defensive homicide were abolished, women who kill abusive partners may be able to plead guilty to manslaughter (or be convicted of it at trial). The Consultation Paper also suggests that manslaughter applies to a variety of cases, including killings that appear to involve an intention to cause death, because of 'jury verdict, a technical issue or a guilty plea to the lesser offence' (p.32). However, there are clearly differences in the elements of the offences of manslaughter and defensive homicide - as the Paper notes, manslaughter does not apply where a person intends to kill or cause serious injury towards another person (p.32). In the case of Karen Black, because in her interview with police she expressed an intention to kill her partner (*R v Black* [2011] VSC 152, para 6), this may have reduced the likelihood that a manslaughter plea would be accepted.

The DOJ Consultation Paper further argues that if a woman who killed in response to family violence was convicted of murder, her situation could be taken into account at sentencing (p.32). While a judge may be able to exercise discretion in imposing a sentence, average sentences for murder remain high in Victoria at 20 years (Sentencing Advisory Council 2013). There is a stigma attached to the label of 'murder' (New South Wales Select Committee on the Partial Defence of Provocation [NSWSCPDP] 2013, p.87). To label a woman who kills out of fear of an abusive partner as a 'murderer' is also unjust and obscures the family violence to which she has been subjected.

Heather Douglas has argued that defensive homicide was a 'merciful outcome' for Karen Black, considering that 'certain stereotypes about battered women continue to inform the choices made by prosecution authorities and juries' (2012, p. 377). The limited recognition of the nature and impact of family violence in the case of Karen Black, and in the other cases examined in the research by Kirkwood, McKenzie & Tyson (2013), leads us to conclude that it is currently unlikely that such women would successfully be able to claim self defence (even if the test for self defence was amended along the lines proposed by the DOJ: see pp. 36-46). More extensive measures to address stereotypes and misunderstandings about women and family violence are required for women's self-defence claims to be successful. Challenging these entrenched attitudes within the culture of the criminal justice system will take a sustained effort over a considerable period of time, and requires additional measures beyond legislative reform. In the meantime we believe that a partial defence remains necessary.

There are additional barriers to justice for Indigenous women

In the DVRCV/Monash University study of cases of women who killed intimate partners in Victoria (Kirkwood, McKenzie & Tyson 2013), two of the eight women were identified by the sentencing judge as Indigenous (Melissa Kulla Kulla and Veronica Hudson).² Both had suffered repeated family violence from previous partners. In both cases there was evidence of prior family violence from the deceased, and in both cases the killing occurred in the context of an immediate confrontation with the deceased.

In Veronica Hudson's case, her partner had been 'appallingly violent' towards her, according to the sentencing judge (*R v Hudson* [2013] VSC 184, para 19). Five years earlier, in breach of a domestic violence protection order, he had severely assaulted her, for which he served a five-year prison sentence. After his release from prison he tracked her down and his violence towards her continued. Witnesses said he was

² *R v Kulla Kulla* [2010] VSC 60; *R v Hudson* [2013] VSC 184

constantly monitoring her, and family members expressed a fear that she would eventually be killed (*R v Hudson* [2013] VSC 184, para 29). The sentencing judge also noted that three days before killing her partner, Veronica Hudson's throat had been cut 'from ear to ear', and stated: 'it would appear that the deceased man may have been responsible for the infliction of that injury' (*R v Hudson* [2013] VSC 184, para 25). No case was made for self-defence. Veronica Hudson pleaded guilty to manslaughter and received a six-year sentence. This was the same outcome in Melissa Kulla Kulla's case.

As Stubbs and Tolmie point out, there are significant barriers to justice for Indigenous women, and additional pressures to plea bargain. Indigenous communities commonly express distrust of the legal system, and may face greater levels of trauma and risk (of conviction) in going to trial (2008, p. 150). Moreover, Indigenous women may experience the combined effects of poverty, violence, alcohol and substance abuse, gender and race discrimination, and a historical context that includes colonisation, dispossession and the disruption of family life through the government removal of children (Stubbs & Tolmie 2008, p. 141). In this context, Indigenous women may understandably be fearful of the justice system. They may find it hard to access good legal advice and experience barriers in communication; and there may be cultural traditions that make it inappropriate to speak about a deceased person or certain matters publicly (Stubbs & Tolmie 2008, p. 150).

Sheehy, Stubbs and Tolmie's (2012) study of trends in homicide cases found that in Australia, as in other countries, Indigenous women 'are even more over-represented among those women who forego their trial rights' and instead resolve their cases by guilty pleas (p.396). This raises the question of 'whether they receive equal access to justice' (2012, p.396). Indigenous women may be particularly disadvantaged by the abolition of defensive homicide, which would further limit the range of legal options available.

There is only one case in which a male who killed an intimate partner relied on defensive homicide

The abolition of provocation appears to have had its intended impact on the legal responses to men who kill an intimate partner. In her review of cases since the 2005 Victorian reforms, Tyson found that in the majority of cases where women have been killed by an intimate male partner or ex-partner, 'most of these male defendants have not successfully relied on a 'sexed excuse' for their crime. Rather, the majority of these male defendants have pleaded guilty to murder' (Tyson 2013, p. 130-131).

The DVRCV/Monash University research also identified that, of 31 cases of men who have killed an intimate partner between 2005-2013, the majority (24) was convicted of murder (a total of 14 pleas, 10 verdicts). Six received a manslaughter conviction - four at trial and two the result of guilty pleas (Kirkwood, McKenzie & Tyson 2013).

To date only one man has successfully used defensive homicide after killing an intimate partner (*R v Middendorp* [2010] VSC 202). We are concerned about the outcome of defensive homicide in this case, as outlined in our previous submission (Tyson, Capper and Kirkwood 2010). However, of the total of 31 cases of men who killed an intimate partner, this was the only case in which defensive homicide was the outcome. The publicity surrounding the use of defensive homicide in the *Middendorp* case appears to have created a widespread impression that defensive homicide is frequently being misused by violent men who kill female partners. However the data discussed above shows that this is not the case.

There is no evidence that defensive homicide is a particular defence that works to the advantage of violent men. The reliance on partial defences or manslaughter by men who kill other men is nothing new – men

have always relied on these forms of reduced culpability. However, abolishing it would work to women's disadvantage.

We do not believe that the benefits of abolishing defensive homicide would outweigh the potential costs to women defendants.

It is apparent that the key concern of the Department of Justice is not about men killing women and utilising defensive homicide, but rather that of men killing other men (eg. p.viii, ix, 29). Our concern is with intimate partner killings and family violence - the issues that the reforms were designed to address. We therefore do not concur with the Consultation Paper's claim that defensive homicide should be abolished due to men using it as a partial defence when killing other men. The fact that defensive homicide is 'only ... relevant in a small number of cases in which a women kills a man' (Consultation Paper p.30) does not negate its value in those cases. It is unjust to remove a safety net for women who have suffered long-term family violence because of a perception that male offenders are inappropriately using it.

Separate consideration should be given to measures to improve legal responses for women who kill abusive partners, and to measures to reduce the number of cases in which men are perceived to be inappropriately excused for killing other men. For instance, in relation to male offender defensive homicides, as outlined in the DOJ Consultation Paper, 17 of the 25 cases were guilty pleas. This strongly indicates that if the Department wants to address what it deems as an inappropriate reliance by men on defensive homicide, the Department should focus on the issue of plea negotiations. Clearly the latter is more of a problem than the issue of jury decision making, as most of these cases are not going to trial (see, for example, Flynn and Fitz-Gibbon 2011 cited in DOJ 2013, p.2; see also Tyson 2013, p. 130).

Abolishing defensive homicide at this stage would be a simplistic and limited response to a complex issue. We believe that it is essential to prioritise family violence law reform and to find other ways to address any identified problems with the use of defences by men who kill other men. This may mean coming up with reforms that accommodate both concerns, but must not result in simply throwing the baby out with the bathwater.

Abolishing defensive homicide would be out of step with current thinking in Australian jurisdictions

If Victoria abolishes defensive homicide, it will be the only state, apart from Tasmania, to have no other partial defence to murder. Such a step would leave Victoria in an exceptional situation. Other states have retained a range of partial defences such as diminished responsibility, excessive self-defence and provocation.

In her submission to the New South Wales Select Committee on the Partial Defence of Provocation (NSWSCPDP), Professor Julie Stubbs advocated for the retention of a partial defence for women (NSWSCPDP 2013, p. 70). This recommendation drew on the findings of research by Sheehy, Stubbs and Tolmie that raised legitimate concerns about the impact of abolishing partial defences on female defendants. This research examined cases in Australia, Canada and New Zealand between 2000-2010. The study showed that overall trends in New Zealand- a jurisdiction that abolished the partial defence of provocation in 2008 and did not introduce an alternative partial defence - showed a higher proportion of such cases proceeding to trial and resulting in a conviction for murder (2012, p. 11-12).

It is significant, therefore, that the recent review of provocation in NSW by the New South Wales Select Committee on the Partial Defence of Provocation (NSWSCPDP) made a strong case for the retention of a

partial defence for women who kill abusive intimate partners (2013, p.87). Abolishing defensive homicide in Victoria would be a controversial and problematic change that would be out of step with current views within the legal community concerning the continued need for a partial defence for women who kill in the context of family violence.

Further review by the Victorian Law Reform Commission is required

According to the report by the NSW Select Committee on the Partial Defence of Provocation, '[a] number of Inquiry participants ... noted the complexity of, and interrelationships between, the law of homicide and defences to homicide' (p.82). This was 'put forward as a reason to refer the issue of the partial defence of provocation, and the law of homicide and defences to homicide more broadly, to the Law Reform Commission'.

For example, the NSW Select Committee cited Professor Julie Stubbs, who stated:

"The laws of homicide defences, partial defences, sentencing and the rules of evidence intersect and change in one area is likely to have implications for other areas. The issues before the Committee are complex and reforms in other jurisdictions have taken diverse directions, and the emerging evidence suggests that they have not always achieved their objectives. This reinforces the fact that achieving effective law reform in this area is challenging. Because of that complexity, I have recommended ... that the matters be referred to the New South Wales Law Reform Commission for a comprehensive review." (p. 82-3).'

Given that the Department of Justice is proposing controversial and potentially complex changes to the laws of homicide defences in Victoria, we recommend that the Department refer the issue of defensive homicide, together with the defence of self-defence more broadly, to the Victorian Law Reform Commission.

Proposal 2: Excessive self-defence should not be introduced

We do not support this proposal.

If Proposal 1 is accepted and defensive homicide is abolished, there is a need for a partial defence that women defendants can raise as an alternative to the full defence of self-defence. It is important that there are a variety of defences available to adequately respond to the different circumstances in which both women and men kill, rather than aiming for a one-size-fits-all model. **We therefore propose that if defensive homicide is abolished, the partial defence of excessive self-defence should be reintroduced.**

Defensive homicide was established in Victoria as a result of the VLRC's recommendation to reintroduce excessive self-defence. We support, in principle, the approach taken by the VLRC in relation to the elements of excessive self-defence. We also support, in principle, the proposal laid out in the DOJ Consultation Paper on page 20, as follows:

Defence to murder (self-defence)

- (1) Subject to sub-section (2), a person (A) is not guilty of the offence of murder if:
 - (a) A believes that his or her conduct is necessary to defend himself or herself or another person; and
 - (b) A's conduct is a reasonable response in the circumstances as A perceives them.
- (2) If the prosecution:
 - (a) does not prove that A did not believe that his or her conduct was necessary to defend himself or herself or another person; and
 - (b) does prove that A's conduct was not a reasonable response in the circumstances as A perceived them,

then A is guilty of manslaughter by excessive self-defence and liable to level 3 imprisonment (20 years maximum).

We believe that in cases where women have killed in a context of family violence victimisation, these provisions would assist in emphasising to defence counsel and prosecutors that women's primary trial avenue or plea negotiating starting point should be self-defence. This approach is also consistent with the 'safety net' recommendation of the Victorian Law Reform Commission's *Defences to Homicide: Final Report* (2004).

We have some concerns about excessive self-defence replacing defensive homicide. For instance, excessive self-defence is a defence only, whereas defensive homicide is an offence as well as a (partial) defence. As an offence, there is the possibility of women being charged with the lesser offence of defensive homicide rather than murder (as discussed on page 21 of this submission). This would not be possible with excessive self-defence which is not a separate offence.

However, these issues are complex and we believe that they require further consideration. As noted above, we recommend that the development of excessive self-defence legislation be returned to the VLRC to review.

We recognise that the Department of Justice is concerned that the above model of excessive self-defence would open the floodgates for men who kill other men to receive more lenient outcomes. As noted previously, this is not our primary concern. However, to reduce the likelihood of this happening, the Department of Justice could consider mandating a jury direction that the absence of reasonable grounds for the belief means that the accused is less likely to hold a belief that action is necessary.³ This would however need to be linked with some jury directions about the impact of family violence on a person's perceptions of why their actions are necessary to defend themselves in relevant cases.

If the Department remains unwilling to reintroduce excessive self-defence as above due to concerns about it being inappropriately used by male defendants, then they could consider adopting a narrower approach to excessive self-defence as follows:

³ See discussion in DOJ Consultation Paper 2013, p.40.

Defence to murder (self-defence)

(1) Subject to (2), a person (A) is not guilty of murder if:

(a) A believes that his or her conduct is necessary to defend himself or herself or another person from the infliction of death or really serious injury; and

(b) A's conduct is a reasonable response in the circumstances as A perceives them.

(2) If the prosecution:

(a) does not prove that A did not believe that his or her conduct was necessary to defend himself or herself or another person from the infliction of death or really serious injury; and

(b) does prove that A's conduct was not a reasonable response in the circumstances as A perceived them,

Then A is guilty of manslaughter by excessive self-defence.

This model narrows the first limb of self defence to be defending from 'death or really serious injury'. We prefer the broader approach but would rather the above than no partial defence.

A family violence-specific defence?

We believe the introduction of a family violence-specific defence is not ideal, however it is preferable to having no other partial defence for women who kill their abusive partners.

The DOJ Consultation Paper points out that in a previous submission we did not support limiting defensive homicide to situations involving family violence (Tyson, Capper and Kirkwood 2010 cited in DOJ 2013, p. 11). It notes: 'Tyson, Capper and Kirkwood also indicate that limiting the defence to family violence would risk discouraging women who kill in response to family violence from going to trial and relying on self-defence for a complete acquittal. If the offence is only used for family violence cases, it may be mislabelled as 'the family violence defence' (p.12). We still have reservations about introducing circumstance-specific defences. However, in the event that defensive homicide is abolished and excessive self-defence is not reintroduced in either of the forms we suggest, we would support the introduction of a family violence-specific defence such as that introduced in Queensland. However, we would like to be consulted further about the format of such legislation if this course of action was adopted in Victoria. We recommend that this be referred to the VLRC to review the models of family violence-specific defences and determine the most appropriate legislation for Victoria.

In February 2010, the Queensland government introduced a new separate partial defence of 'killing for preservation in an abusive domestic relationship'. Section 304B of the Queensland Criminal Code provides that:

an accused person killed the deceased under circumstances that would ordinarily constitute murder; the deceased has committed acts of serious domestic violence against the accused in the course of their abusive domestic relationship and, at the time of the killing the accused believes it is necessary for the person's preservation from death or grievous bodily harm to do the act or make the omission that causes the death. There must also be reasonable grounds for the accused's belief having regard to the abusive domestic relationship and all the circumstances of the case (Exp. Notes, 2002: 2 cited in Douglas 2012, p. 373).

If a jury is not satisfied, beyond reasonable doubt, that the preservation defence has been disproved by the Crown, the accused would be found not guilty of murder, but guilty of manslaughter. What distinguishes this defence from existing defences of self-defence and provocation in Queensland is that the preservation defence does not rely on the accused person responding to a specific assault or imminent threat from the deceased person and there is no emphasis on the timeframe between the actions of the deceased and the killing by the accused person (Exp. Notes, 2009: 9 cited in Douglas 2012, p. 374).

So far there have been very few cases which have used this new partial defence. In a review by Heather Douglas of the cases considering the new partial defence, self-defence was used successfully in both *R v Falls* (2010) and *R v Irslinger* (2012), and in *R v Ney* (2012), the defendant pleaded guilty to manslaughter, based on diminished responsibility (2012, p. 375). One reason Douglas gives to explain the positive outcomes in *Falls* and *Irslinger* is that expert evidence about the experience of living in an abusive relationship has been relevant to self-defence in Queensland for some time (2012, p. 375). Moreover, Douglas notes that in *Falls* the judge's 'summing up to the jury was particularly significant' because 'it confronted two of the key problems associated with battered women in Queensland in attempting to apply self-defence to their circumstances.' The trial judge in this case emphasised that 'the mere endurance of a threat can become a form of violence and that this might give rise to legitimate use of force in self-defence ... the threat could continue regardless of the fact that the deceased was temporarily unable to carry out the threat (i.e., asleep)' (2012, p. 376-377). Moreover, Douglas observed that in *Irslinger* 'self-defence was the focus of the defence case, and the preservation defence was raised as a "fall-back" option' (2012, p. 375). This led her to conclude that while the preservation defence may have limited application in Queensland law when the dynamics of family violence are adequately explained to both the jury and jury (in the event of a trial), women's self-defence claims are more likely to be recognised and lead to an acquittal (as they did in these two cases).

Noting the concerns about family violence-specific defences that we expressed in our previous submission in 2010 (see DOJ 2013 p.12), the DOJ consultation paper suggests that the same kind of concerns would also exist with defensive homicide: '... defensive homicide itself may distort defences and detract from a claim of full self-defence. There is a much greater risk of distortion of defences and this takes away from what should be the primary focus, namely the complete defence of self-defence' (DOJ 2013, p. 12).

As discussed, we are concerned about the risk of detracting from a focus on the complete defence of self-defence. However, we believe a family violence-specific defence is more likely to be labelled 'the family violence defence' – and to become the default defence for women who kill abusive partners than other more general, less circumstance specific defences. Whether the broader framework of defensive homicide or excessive self-defence also detracts from a claim of full self-defence depends on how this law operates in practice. As Kirkwood, McKenzie and Tyson's (2013) research also shows, additional steps are needed to improve understandings of family violence so that we can see the change in legal culture that the reforms promised to deliver.

Proposal 3: The first limb of common law self-defence should be reinstated

We support this proposal.

The first limb of the common law of self-defence is broader than the new codified law of self-defence. A broader test is likely to be beneficial to women defendants.

The wording could be:

A believes that his or her conduct is necessary to defend himself or herself or another person

The common law test confirmed in *Zecevic's* case, which specified that the defence of self defence was made out where 'the accused person believe on reasonable grounds that it was necessary in self-defence to do what he or she did', had been regarded by the courts as extending to (at least potentially) threats of sexual violence and prolonged incarceration (see discussions in *Viro*, and *Zecevic* both in the High Court of Australia). We propose that this broader definition of the first limb be reinstated.

We believe that in cases where women have killed in a context of family violence victimisation, this restructure of the relevant provisions would assist defence counsel and prosecutors in highlighting that women's primary trial avenue or plea negotiation starting point should be self-defence.

Question 1: What should the second limb of the test for self-defence be?

The second limb of the self-defence test – A's conduct is a reasonable response in the circumstances perceived by them - was the VLRC's recommended test. We support this approach.

The reason why this change is preferable is demonstrated by the recent DVRCV/Monash University research (Kirkwood, McKenzie & Tyson 2013). The limited understandings of women's actions in the context of family violence indicates that a more subjective test that considers why the woman perceived their actions as necessary in their circumstances is preferable to a more objective test.

For example, Karen Black's conduct was described as unreasonable in the context of her being subjected to what was viewed as 'limited' family violence, and that being a victim of violence had caused her to 'over-react' when cornered by her partner. In the case of Melissa Kulla Kulla, who pleaded guilty to manslaughter, the sentencing judge took into account her significant cognitive impairment, exceedingly deprived background and lengthy alcohol and drug abuse history. The judge commented that Melissa Kulla Kulla had suffered abuse virtually from the time she was born, and that she had been subjected to repeated domestic violence from multiple men, including stabbings and other injuries which had left scars all over her body. Given that the deceased had picked up a kitchen knife and threatened to kill Melissa Kulla Kulla, a test that entailed assessing the reasonableness of belief from Melissa Kulla Kulla's perspective would be more accommodating of her experiences.

Proposal 4: There should be a consistent test for self-defence for all offences

We support this proposal.

Where possible, self-defence should be defined consistently and be available as a defence to both fatal and non-fatal offences.

Proposal 6: Social context evidentiary laws should be extended to all claims of self-defence

We support this proposal.

Family violence social context evidence should apply to all offences where self-defence is argued, not only to homicide.

However, as we discuss above, the more significant issue to address is the limited extent to which social context evidence is being used now, and the need to amend the *Crimes Act* 1958 s 9AH along with policy change. We propose other changes to strengthen the use of s 9AH and of understandings of family violence, to make self-defence more likely as a route of argument at trial – see final section of this submission.

Question 2: Should new evidence laws be introduced to prohibit improper questions about homicide victims?

We support this proposition.

New evidence laws should prohibit questions that, if the victim were alive, would be offensive, humiliating, disrespectful, or purely based on a stereotype. However, it may require more than is proposed here to tackle the culture of aggressive, demeaning and intrusive questioning of witnesses that currently occurs in Victorian courts.

We support the proposal for potential reforms that ‘are designed to strike an appropriate balance between the ability of a person to conduct their defence and ensuring that the proceeding is conducted fairly and with respect to the victim and their family’ (p. 52-3). We also agree with the proposal that the proposed restrictions not limit the evidence which may be adduced under section 9AH of the Crimes Act (the social context evidence provisions) (p. 53).

4.3 Evidence in rebuttal about homicide victims

The primary rationale for the Department’s proposals to reform ‘how evidence laws work in homicide trials where questions are asked about homicide victims’ are motivated by long-held concerns about the problem of ‘victim-blaming’ in homicide cases (2013 p. ii). While it is acknowledged that such concerns have largely been addressed by the abolition of provocation (p. ii), the paper reproduces a quote from Tyson’s book, *Sex, Culpability and the Defence of Provocation*, in which she argues that:

What the discussion of the *Middendorp* and *Sherna* decisions has also shown is that the characters of dead women who have been killed by their intimate partners or ex-partners are still being put on trial (Tyson 2013, p.140 cited in DOJ 2013, p.54).

We are in agreement that more is required to tackle the ongoing problem and culture of disingenuous questioning tactics used by defence counsel. Typically, such tactics construct the victim in homicide cases as to blame for her own death, or construct the victim in rape cases as ‘asking for it’. Aggressive and denigrating tactics are often used to discredit and break down witnesses when giving evidence in court (as was noted in our previous submission to DOJ 2010 in relation to the questioning of Dawn Waite at the second trial of Robert Farquharson [Tyson, Capper and Kirkwood 2010, p.20]).

However, for the DOJ consultation paper to then claim that ‘similar narratives of victim blame are emerging through the offence of defensive homicide’ (p. 49) is misleading because it gives the impression that defensive homicide is being used by men who have killed women to avoid culpability for murder.

If we follow this logic, then one could arguably make a case for the abolition of manslaughter by unlawful and dangerous act given that this was the outcome in the case of *Sherna*. But as Tyson (2013) also pointed out in relation to this case:

Although the jury determined that it did not accept the male defendant’s subjective but unreasonable belief that he did what was necessary to defend himself (thus, they found him not guilty of defensive homicide), their decision to return a conviction of manslaughter by an unlawful and dangerous act shows how provocation-type arguments are being mobilised in the guise of other offences (eg the problem of victim blame in the context of provocation ends up being a problem in another context, which is manslaughter), an area that, to date, has not received much critical attention from provocation’s critics (on this point see Stewart and Freiberg 2009: vii).

It is important therefore to ensure that law reformers have access to a sophisticated evidence base upon which to make recommendations. It is presently unclear how the 2005 Victorian reforms are impacting on cases involving men who kill their intimate female partners. What is certain is that we need an understanding that is based on more than a cataloguing of outcomes in such cases.

DVRCV along with Monash University Criminology and Law has received funding from the Legal Services Board to continue their research on the impact of domestic homicide law reform. This will enable them to focus on cases of men who kill a female partner, as well as to continue their analysis of cases of women who kill men. Through an in-depth analysis of transcripts of criminal trials, plea hearings and sentences, the research team will examine understandings of family violence, defences used, sentencing outcomes, the use of expert witness evidence, indications of gender stereotyping and the use of provocation-type narratives. The final report of this research will be published in 2015.

In the meantime and as we have already noted above, of the 31 men who have killed intimate partners since the abolition of provocation in 2005, the majority have been sentenced on the basis of murder (14 after pleading guilty to murder and 10 after being found guilty of murder after a trial). Arguably, one could conclude from this that the abolition of provocation has been a successful development.

Of the remaining seven men who did have their culpability for murder reduced, two pleaded guilty to manslaughter, three were convicted of manslaughter by an unlawful and dangerous act after a trial, one was found guilty of manslaughter by criminal negligence and recklessly causing injury after a trial, and only one was found guilty of defensive homicide after a trial (*Middendorp*) (see Kirkwood, McKenzie & Tyson 2013, p.54).

We remain very concerned about the use of defensive homicide in the *Middendorp* case. We are also supportive, therefore, of the Department’s proposal for modification of the laws regulating character evidence to allow the prosecution to adduce evidence in rebuttal about the victim’s character to counter the continuation of damaging myths and stereotypes about victims in homicide trials.

However, the laws governing the admissibility of evidence (relationship or otherwise) are complex. We would reiterate that proposals to further reform the laws governing evidence should be reviewed by the Victorian Law Reform Commission.

Question 3: Should new evidence laws be introduced to allow rebuttal evidence about the character of homicide victims?

We support this proposition.

New evidence laws should be introduced to allow rebuttal evidence about the character of homicide victims. But we also note that '[t]he rules governing hearsay, opinion, tendency and credibility evidence would not apply to this evidence' (DOJ 2013 p. xii).

Tyson's (2013) research shows that the issues of victim-blaming in homicide trials are complex and cannot be confined to the use of one particular form of evidence, for example, about the character of homicide victims. A key issue raised in relation to the *Middendorp* case, for example, concerned the use of evidence of the relationship which was introduced into the trial to show that both parties had previously been violent towards one another and engaged in frequent fights and arguments (Tyson 2013, p. 122). In our previous submission, we expressed concern about the way in which the killing was represented by the presiding judge as the inevitable culmination of a 'tempestuous, even violent relationship' (Tyson, Capper and Kirkwood 2010). In particular, we took issue with the way this misrepresented the family violence in this case as 'mutual', as if both parties were equally culpable for the violence and as 'bad' as each other. As the recent DVRCV/Monash research has also shown, this misperception about the dynamics of family violence was also present in some of the cases they analysed (Kirkwood, McKenzie & Tyson 2013, p.33).

However, it appears unlikely that the complex issues surrounding the impacts of different forms of evidence on constructions of both the victim and the relationship between the victim and offender in homicide trials will be given the attention they clearly deserve. This is to be inferred from the point made on p. 49 of the Department's Consultation Paper where it 'notes the current complexity of this area of law, and that there are strong reasons for not changing the laws governing admissibility of relationship evidence in the context of only homicide cases'. While we agree in principle with the Department's proposal to introduce new evidence laws to allow rebuttal evidence about the character of victims, we argue that the problem of victim-blame is unlikely to be addressed by this alone, and note the need for future research examining the impacts of the introduction of relationship evidence in homicide trials.

Proposal 7: These reforms should be reviewed after five years

We support the proposition to review changes to the law.

If any of the proposals outlined in the DOJ Consultation Paper are enacted by the Government, we agree that there should be a review of these changes. We recommend the review involve ongoing monitoring from the date the changes are made particularly if defensive homicide is abolished because it is highly likely that women will fall through the gaps. If the monitoring identifies problems with the application of the new legislation, then it may be necessary to have a review sooner than five years.

A key reason that Victoria has progressed reform of homicide laws further than any other Australian jurisdiction is due to the careful, considered and lengthy consultation process undertaken by the VLRC (2002, 2003, 2004). Our view is that if further significant reform is required to the law of homicide in Victoria, that the government consider referring the issue to the Victorian Law Reform Commission so that a public consultation process can take place.

Is there any other aspect of the *Defensive Homicide: Proposals for Legislative Reform Consultation Paper* that you would like to comment on?

Additional measures are needed to improve responses to family violence homicides

Victoria has been held up as a model for other Australian jurisdictions in its introduction of family violence evidence (for example, NSWSCPDP 2013). Section 9AH was introduced with the intention to expand understandings of the nature, dynamics and impact of family violence. It was also to be used by counsel and experts to highlight the social and economic context which, for many women, limits their ability to leave abusive relationships. However, according to the DVRCV/Monash research, which examined the seven cases of women prosecuted for killing intimate partners since the 2005 reforms to homicide laws, understandings remain limited and s 9AH is being used in only a minimal way.

The research found that in several cases, family violence as defined in s 9AH was identified and discussed (for example, it was directly discussed in the case of Karen Black, Jemma Edwards, Eileen Creamer, Jade Kells, and Veronica Hudson). However, despite the identification of family violence, it was only linked in a limited way to arguments about the defensive nature of the accused women's actions.

The DVRCV/Monash research shows that understandings of family violence remain narrow. In particular:

- while physical forms of family violence are recognised and seen as 'serious', non-physical forms of family violence (such as threats, psychological abuse, and coercive and controlling behaviour) are not perceived as 'serious'
- sexual violence within relationships is not well recognised (for example, in the cases of Karen Black and Eileen Creamer).

The research also demonstrates that the impact of prior family violence on women's responses to abusive, intimidating or threatening behaviour is not well recognised. For example, as discussed, in Karen Black's case, although she stated that her partner had never been physically violent towards her, she said she had been subjected to intimidating and threatening behaviour and sexual violence. Her son had witnessed intimidating and abusive behaviour. Her partner had left a knife and a gold coin on her pillow when she went out with a girlfriend which led her to restrict her contact with friends and family because she feared his reaction. According to established family violence risk assessment frameworks (such as Victoria's widely-used *Family Violence Risk Assessment and Risk Management framework* – see Appendix) these factors would be assessed as indicating that Karen Black faced an elevated risk of lethal violence. However, the sentencing and appeal judges in this case regarded the violence she had been subjected to as 'limited' and did not recognise that Karen Black may genuinely have feared serious harm or injury on the night of the killing.

The reasons why women may remain in abusive relationships are not well understood, and women who remain with abusive partners tend to be perceived as making unreasonable or irrational choices. For example, in many cases examined in the DVRCV/Monash research, the women were described as irrational for staying (see previous discussion of Jemma Edwards's case – her ability to 'make calm or rational choices' was said to be 'impaired' by the abuse) (Kirkwood, McKenzie & Tyson, 2013, p.45). Several women were described as 'dependent' on their partners or as having repeatedly made 'poor choices' of partners (for example, Jemma Edwards, Veronica Hudson and Eileen Creamer were all described in this way). The ability to call expert evidence about family violence was introduced to shift the focus away from a narrow emphasis on the psychopathology of female defendants towards an understanding of the impact of family

violence, and the social and economic factors that prevent women from leaving abusive partners. However, such evidence did not appear to be used in the cases examined in the DVRCV/Monash research.

This research demonstrates that a range of additional measures and reforms are needed if the potential of Victoria's changes to family violence evidence laws is to be realised.

Some relevant measures are:

- Amendments to s 9AH
- Aligning s 9AH with the preamble in the *Family Violence Protection Act 2008* (Vic)
- Utilising appropriate family violence expert witnesses
- Ongoing professional development for legal professionals
- Reducing 'overcharging' by prosecutors
- Documenting plea negotiations
- Mandatory jury directions
- A family violence homicide specialist list

These are discussed below.

Amendments to s 9AH

We recommend that s 9AH be amended in line with the *Family Violence Protection Act 2008* (Vic). In particular, s 9AH should be aligned with the definition of family violence in the *Family Violence Protection Act 2008* (Vic), and information from the Preamble about the gendered nature of family violence and the exploitation of power imbalances should be included. For example:

Section 9AH(3), in addition to the current provisions, should include information about the following features of family violence (from the *Family Violence Protection Act 2008*, Preamble):

- that while anyone can be a victim or perpetrator of family violence, **family violence is predominantly committed by men against women, children and other vulnerable persons;**
- that children who are exposed to the effects of family violence are particularly vulnerable and exposure to family violence may have a serious impact on children's current and future physical, psychological and emotional wellbeing;
- that family violence—
 - i. affects the entire community; and
 - ii. occurs in all areas of society, regardless of location, socioeconomic and health status, age, culture, gender, sexual identity, ability, ethnicity or religion;
- that family violence extends beyond physical and sexual violence and may involve emotional or psychological abuse and economic abuse;
- that **family violence may involve overt or subtle exploitation of power imbalances** and may consist of isolated incidents or patterns of abuse over a period of time.

Section 9AH(3) needs to encompass the range of experiences of women subjected to family violence.

For example, family violence evidence could include:

- The impact of having been abused in the past (see, for example, the discussion of the cases of Melissa Kulla Kulla, Veronica Hudson and Karen Black in the DVRCV/Monash research - these women had experienced a history of childhood abuse or domestic violence from multiple partners)
- that apparently 'mutual' violence or evidence of past violence from the accused does not necessarily negate a claim to self defence (see the cases of Jemma Edwards, Jade Kells, and Melissa Kulla Kulla, discussed in the DVRCV/Monash research)
- a sense of self-blame and shame is common among victims of family violence. Victims typically feel responsible for the violence perpetrated against them, and this may impact on their assessment of their criminal liability (see the discussion of Karen Black's case p.42 in the DVRCV/Monash research)
- cultural, social and personal barriers that prevent women from seeking assistance (see the cases of Melissa Kulla Kulla and Veronica Hudson, discussed in the DVRCV/Monash research)

Section 9AH(4) should be aligned with the *Family Violence Protection Act 2008* s 5 definition of family violence. This includes information about the controlling coercive nature of family violence, economic abuse, and behaviour that 'causes fear':

Family Violence Protection Act 2008:

s 5: Meaning of family violence

For the purposes of this Act, ***family violence*** is—

- behaviour by a person towards a family member of that person if that behaviour—
 - i. is physically or sexually abusive; or
 - ii. is emotionally or psychologically abusive; or
 - iii. is economically abusive; or
 - iv. is threatening; or
 - v. is coercive; or
 - vi. **in any other way controls or dominates** the family member and **causes that family member to feel fear for the safety or wellbeing** of that family member or another person; or
- behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).

Section 9AH(5) should include reference to family violence evidence-based risk factors that can indicate an increased risk of the victim being killed or seriously injured, to provide critical social context for what may trigger a family violence victim's action that results in the killing of the family violence perpetrator.

See the Appendix of this submission for a list of risk indicators from the *Victorian Family Violence Risk Assessment and Risk Management* framework. This risk assessment tool developed by the Department of Human Services was introduced in 2007 and is widely used by service providers across legal and community sectors in Victoria. This could be included as a Schedule to the *Crimes Act 1958*.

Reducing ‘overcharging’ by prosecutors

According to the DVRCV/Monash research (Kirkwood, McKenzie & Tyson 2013), all of the women who killed their intimate partners were charged with murder. The research found that in most cases the Crown was willing to accept a plea of guilty to a lesser offence of manslaughter or defensive homicide (Kirkwood, McKenzie & Tyson 2013). This situation has been described as one of women who kill intimate partners being ‘overcharged’ (NSW Select Committee on the Partial Defence of Provocation (NSWSCPDP) 2013, p. 157). Women facing murder charges are under pressure to plead guilty to lesser offences to avoid risking a murder conviction at trial in circumstances where there are defensive elements or where the intent is less than is required for murder (NSWSCPDP 2013, p. 166). This means that in cases where there may be good grounds on which to argue self-defence, the new provisions are not being adequately tested at trial. As a consequence, ‘the case law on self-defence is not [being] given the opportunity to develop so that it can accommodate the circumstances of battered defendants in an appropriate way’ (Tolmie 2005, p. 40).

Women who plead guilty to lesser offences may be deprived of potentially valid claims to an acquittal on the basis of self-defence (Sheehy, Stubbs & Tolmie 2012). This could be avoided if there were consultation between police and prosecutors about the most appropriate charge to lay (Stubbs & Tolmie, cited in NSWSCPDP 2013, p. 167). As noted by Stubbs and Tolmie, women defendants may be more willing to go to trial and argue self-defence if they are charged with a lesser offence of manslaughter or defensive homicide (NSWSCPDP 2013, p. 167). In agreement with this proposition, the NSW Committee formed the view that specific guidelines are required to assist prosecutors to determine the appropriate charge to lay against defendants in circumstances where there is a history of violence towards the defendant (2013, p. 167). Such guidelines could also be developed for the Victorian context.

The Victorian OPP should review its policies and consider adding guidelines regarding considerations where women have killed abusive partners.

According to the current *Director’s Policy: The Prosecutorial Discretion Policy 2* (Director of Public Prosecutions Victoria, 27 July 2013), particular attention should be given to prosecutions for certain categories of offenders and offences:

‘2.8 Exercise of the prosecutorial discretion in specific factual circumstances

2.8.1 The general prosecutorial criteria, as set out above, are applicable to all potential prosecutions, regardless of the circumstances of individual cases. However it is recognized that matters regularly arise involving certain categories of offences, or categories of offenders, in which particular attention needs to be given to the prosecutorial criteria, and in particular the “public interest” test, before a decision is made to commence or continue a prosecution’ (p.15)⁴

We urge the OPP to consider including family violence as a specific factual circumstance in its prosecutorial policies. The OPP has already developed a family violence policy (see Director of Public Prosecutions Victoria *Director’s Policy – Family violence*, 2 April 2010). This could be a useful starting point in developing

⁴ Online at: <http://www.opp.vic.gov.au/getattachment/c19fca74-1629-41df-a13c-9e017aabd79d/2-The-Prosecutorial-Discretion.aspx>

prosecutorial policies that recognise the impact of family violence on women who kill abusive intimate partners.

Documenting plea negotiations

According to the DVRCV/Monash research (Kirkwood, McKenzie & Tyson 2013), of the seven women whose prosecutions proceeded, all attempted to plead guilty to the lesser offences of manslaughter or defensive homicide. It is unclear why, since the introduction of the reforms, most cases have involved plea outcomes and not proceeded to trial. The OPP also appears to have accepted guilty pleas to defensive homicide in a large number of cases of men who have killed other men. According to the DVRCV/Monash research, of the 22 cases of men who killed other men, guilty pleas were accepted in most cases (a total of 16 cases).

It is difficult to ascertain the rationale behind the determination of guilt in the majority of these cases as they are settled privately via plea bargaining, which, as several authors have argued is a flawed process due to a perceived lack of transparency (Stubbs & Tolmie 2008; Flynn & Fitz-Gibbon 2011; Flynn 2012; Tyson 2011) – plea bargaining effectively ‘privatises justice’ (Stubbs & Tolmie 2008, p. 149).

Prior to the introduction of the reforms to homicide laws, the VLRC (2004, pp.108-10) recommended that the OPP develop guidelines requiring the documentation of plea negotiations in homicide cases. We are not aware of the current status of this, but believe this could be an important step in making plea negotiations more transparent.

Broadening the range of expert witnesses who can provide evidence about family violence

The VLRC (pp. 141-2, 180-88) suggests that the range of experts who can provide expert evidence on family violence should extend beyond psychologists/psychiatrists and include counsellors, social workers, family violence workers and people who have a specific understanding of particular cultural communities.

The DVRCV/Monash research found that the potential envisioned by the VLRC in relation to greater reliance on a broader range of experts with specific expertise about family violence has not been realised. There is little indication that a broad range of experts with specific family violence training are being called upon by counsel. Expert evidence continues to be confined to that provided by forensic psychiatrists and psychologists who undertake psychological assessments of the defendants and does not appear to provide evidence relating to the broader social context of family violence.

We recommend the establishment of a panel of family violence experts who can be drawn on by defence counsel to provide evidence in homicide plea hearings and trials. Funding could be provided by government to a relevant organisation to develop a model and establish a panel of suitably trained and experienced experts. It would be ideal if this organisation also facilitated ongoing training for these professionals.

Ongoing professional development for legal professionals about family violence

The DVRCV/Monash research (Kirkwood, McKenzie & Tyson 2013) demonstrates that at present, in cases of women who kill abusive partners, there is inadequate use of evidence of family violence and reference to s 9AH factors.

The findings demonstrate the need for education and training for legal professionals in relation to family violence. Such training should be ongoing, comprehensive and consistent; it should be provided to prosecuting and defence counsel, judges, expert witnesses and other legal professionals; and it should include cultural awareness training. As the VLRC recommended in 2004, this training should include

discussion of common myths, barriers to disclosing family violence, and how the use of expert evidence may assist in supporting a plea of self-defence (VLRC 2004, p.194). The training should also include how family violence relates to the elements of defences to homicide.

A family violence homicide specialist list for courts

We recommend that family violence be declared a special area of expertise within homicide law. This could be achieved with the implementation of a specialist domestic homicide unit within the Office of Public Prosecutions and a specialist Magistrates and Supreme Court domestic homicide list.

Considering that family violence is a factor in many homicides, a specialist list would be a valuable development. New Victorian Police data released just this week showed that 29 people have been killed in family violence related deaths just in the past year, a ‘worrying rise on the 13 people killed in family violence situations the previous year’ (as quoted in the *Herald Sun*, Ellen Whinnett, 25 November 2013).

Our 2010 submission provided some examples of cases in which the specialisation and experience of the presiding judge appeared to have made a difference in the recognition of family violence (Tyson, Capper & Kirkwood 2010, p.18).

Acknowledging domestic homicides as an area of expertise would require judges and magistrates presiding over such cases to have particular training and expertise in this area, including an understanding of the gendered nature of family violence and domestic homicides (Tyson, Capper and Kirkwood, 2010).

Jury Directions

Although the judge is not permitted to provide the jury with arguments not raised by counsel, there should be greater efforts to ensure that s 9AH is raised clearly and thoroughly by judges when the defence has provided at least some relevant evidence of family violence, whether or not the defence specifically draws attention to s 9AH factors.

Currently, if evidence that falls into the category of s 9AH(3) is given during the trial, judges should explain to the jury the relevance of that to the facts at issue.⁵ However, specific jury directions about this are not mandatory.

Mandatory jury directions might assist judges to better direct juries when family violence evidence is led, when the implications of the evidence are not spelled out by the defence, or when the evidence is used to argue for reduced culpability rather than an acquittal. Introducing mandatory directions would also have an educative value for judiciary and legal practitioners.

The VLRC has recommended in its *Jury Directions: Final Report* (2009) that:

the nature and extent of a trial judge’s obligation to direct the jury about the elements of the offences, the facts in issue and the evidence so that it may properly consider its verdict should be set out in the legislation. (VLRC Recommendations 22 & 23)

We further note that jury directions are statutorily mandated in sexual assault trials (although they are currently complicated and in the process of being simplified – but, importantly, not abolished).⁶ As

⁵ *Victorian Criminal Charge Book* 8.9.2.1-8.9.2.4.

inspiration, s 37AAA(d)-(e) of the *Crimes Act 1958* (Vic) may offer a useful direction for how a mandatory direction(s) concerning s 9AH might be developed.

We therefore propose some mandatory directions, which draw on examples and principles regarding family violence as relevant to the evidence led. For example, there should be a requirement to remind the jury that just because the accused had previously used violence towards the deceased or did not leave when they apparently had the chance does not mean that they were not a victim of family violence. The Women Who Kill in Self-Defence Campaign's submission to the Model Criminal Code Officers' Committee Review of Fatal Offences Against the Person provides further examples of the type of information that could be included in directions.⁷

We also recommend that judges be encouraged to not only make verbal directions but also provide their directions in written form, together with jury guides (which contain a list of questions of fact designed to guide jurors to their verdict ie. to help to make the decision-making process clearer for jurors).⁸ This was recommended by the VLRC⁹ and is permitted under the *Criminal Procedure Act 2009* (Vic) s 223.¹⁰

Conclusion

Law reform concerning defences to homicide is complex. Our key point is that we do not support the abolition of defensive homicide because it would disadvantage women who kill abusive partners. This would therefore defeat the key purpose of the comprehensive review undertaken by the VLRC in 2002 – 2005.

Abolishing defensive homicide would be a radical step that would leave Victoria without a partial defence to murder. If any such change is to occur we strongly encourage the Department of Justice to refer this matter to the VLRC for further consideration.

⁶ *Crimes Act 1958* (Vic) s 37.

⁷ Available at <http://www.nwjc.org.au/mccode.htm>

⁸ For examples, see VLRC, *Jury Directions: Final Report* (2009), pp 166-83.

⁹ VLRC, *Jury Directions: Final Report* (2009) Recommendations 41-43.

¹⁰ For further support, see *Victorian Criminal Charge Book 2.2.1 – Bench Notes: Providing Documents to the Jury*. The VLRC noted in 2004 that written directions had been used in South Australia to assist the jury to understand the test for self-defence (*Defences to Homicide: Final Report*, 2004, p.95).

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Appendix 1

Family Violence Risk Assessment and Risk Management Framework - Aide memoire

Risk factors for victims	Yes	No	C
Pregnancy/new birth*			
Depression/ mental health issue			
Drug and/or alcohol misuse/abuse			
Has ever verbalised or had suicidal ideas or tried to commit suicide			
Isolation			
Risk factors for perpetrators			
Use of weapon in most recent event*			
Access to weapons*			
Has ever harmed or threatened to harm victim			
Has ever tried to choke the victim*			
Has ever threatened to kill victim*			
Has ever harmed or threatened to harm or kill children*			
Has ever harmed or threatened to harm or kill other family members			
Has ever harmed or threatened to harm or kill pets or other animals*			
Has ever threatened or tried to commit suicide*			
Stalking of victim*			
Sexual assault of victim*			
Previous or current breach of Intervention Order			
Drug and/or alcohol misuse/abuse*			
Obsession/jealous behaviour toward victim*			
Controlling behaviours*			
Unemployed*			
Depression/mental health issue			
History of violent behaviour (not family violence)			
Relationship factors			
Recent separation*			
Escalation—increase in severity and/or frequency of violence*			
Financial difficulties			

* **May indicate an increased risk of the victim being killed or almost killed**

From the *Family Violence Risk Assessment and Risk Management Framework and Practice Guides 1-3 (edition 2)*, published by the Department of Human Services, Melbourne 2012

LEGAL RESPONSES TO DOMESTIC HOMICIDE IN VICTORIA

Project information Sheet



A new research project funded by the Legal Services Board Grants Program aims to improve legal responses to domestic homicides in Victoria.

Background

This project is part of an ongoing research partnership between DVRCV and Monash University. The research examines the impact of reforms to homicide laws in Victoria in 2005 [*Crimes (Homicide) Act 2005*]. The first phase of the project, funded by the Victorian Women's Trust, examined cases of women who killed their intimate partners since the reforms were implemented. The research, detailed in the 2013 Discussion Paper *Justice or Judgement? The impact of Victorian homicide law reforms on responses to women who kill intimate partners*, found that there is still limited understanding of the nature and dynamics of family violence by legal professionals in homicide cases, and limits to the application of the new family violence evidence provisions.

About the project

The project will evaluate the effectiveness of the homicide law reforms implemented in Victoria in 2005, particularly in relation to whether they have led to improved responses to homicides in the context of family violence. It will have a particular focus on cases of men who kill intimate partners.

The objectives are to:

1. identify and evaluate the ways in which family violence has been recognised and responded to in domestic homicides in Victoria since 2005, through
 - a qualitative analysis of homicide trial, plea and sentencing transcripts
 - an analysis of trends in sentencing outcomes
 - interviews with legal professionals
2. increase the capacity of laws to respond appropriately to domestic homicides, by developing a set of evidence-based recommendations for law reform and legal practice
3. improve the practice of legal professionals involved in family violence homicide cases through community education sessions and targeted dissemination of research findings.

This project has been funded by the Legal Services Board Grants Program, and will be completed mid-2015. The project will be guided by an Advisory Group of key stakeholders.

For more information

Domestic Violence Resource Centre Victoria (DVRCV)

- Dr Deborah Kirkwood [redacted]; or phone [redacted]; or
- Mandy McKenzie [redacted] or phone [redacted]

Monash University

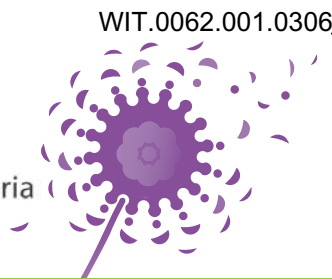
- Associate Professor Bronwyn Naylor,
Faculty of Law [redacted] r phone [redacted]
- Dr Danielle Tyson, School of Social Sciences,
[redacted] or phone [redacted]

Project partners

The Domestic Violence Resource Centre Victoria (DVRCV) has a 27-year history of advocating for improved legal and service responses to family violence. DVRCV is the primary provider of family violence training in Victoria, and produces an extensive range of publications and research.

Associate Professor Bronwyn Naylor from the Faculty of Law at Monash University has taught, researched and written extensively on criminal law and gender, particularly on homicide laws.

Dr Danielle Tyson is a Lecturer in Criminology in the Faculty of Arts at Monash University. Her research interests include intimate partner homicide, filicide, family violence, feminist legal theory and criminological theory.



DVRCV training aims to improve services to women and their children who experience family violence

Recognising and responding to family violence - including risk assessment

This introductory course is for workers with no specific family violence training. It covers the effects of family violence on adults and children, and provides an overview of legal responses, resources and referrals. The program explores ways of asking about violence and responding to disclosures, and includes a component on risk assessment and safety planning based on the Common Risk Assessment Framework (CRAF).

Date: Thursday, 19 FEBRUARY
Course Code: RRFV215
Location: Vic Uni, Melbourne CBD
Time: 9.30am - 4.30pm
Cost: \$95 SHS*; \$250 non-SHS funded workers

Introduction to domestic violence

This four-day accredited course provides the basic skills, knowledge and understanding to work effectively with women and their children affected by family violence. It is suitable for new workers in family violence services and workers in community, health or legal services who have limited experience responding to family violence. On successful completion of assessment tasks, participants will receive a Statement of Attainment for national units: CHCDFV301A - Recognise and respond appropriately to domestic and family violence; CHCDFV403C - Provide crisis intervention and support to those experiencing domestic and family violence.

Dates: Wednesdays & Thursdays - 11, 12 & 18, 19 MARCH
Course Code: IDV315
Location: Century Inn, TRARALGON

Dates: Wednesdays & Thursdays - 6, 7 & 13, 14 MAY
Course Code: IDV515
Location: Vic Uni, Melbourne CBD
Times: 9.30am - 4.30pm each day
Cost: \$380 SHS*; \$750 non-SHS funded workers

Adopting child-led practice

Adopting 'child-led' practices challenges ideas of ownership in families where there is violence. This two-day workshop on 'child-led' interventions with groups, families and individuals affected by family violence is presented by Wendy Bunston & Tara Pavlidis. See more information on DVRCV website.

Date: Monday 16 & Tuesday 17 MARCH
Course Code: ACLP315
Location: Vic Uni, Melbourne CBD
Time: 9.30am - 4.30pm each day
Cost: \$220 SHS*; \$500 non-SHS funded workers

Adolescent violence in the home

This training is designed to equip practitioners with knowledge and skills to feel confident to respond to adolescents who use violence or aggression against family members. Participants will learn how to work with adolescents and parents to restore family safety and wellbeing. The workshop is developed and delivered by Jo Howard who has extensive experience working with aggression and violence in adolescents and combines theory and best practice to enhance the skills of participants.

Date: Wednesday 25 & Thursday 26 MARCH
Course Code: AVITH315
Location: Telstra Conference Centre, Melbourne CBD
Time: 9.30am - 4.30pm each day
Cost: \$175 SHS*; \$500 non-SHS funded workers

SmartSafe: family violence and mobile technology

Based on Victorian research, this one-day program explores how mobile phones and other technologies can be used both as a tool of abuse and to support women's safety. Workers will learn how to identify and implement mobile technology-related safety planning for women.

Date: Thursday, 16 APRIL
Course Code: SS415
Location: Vic Uni, Melbourne CBD
Time: 9.30am - 4.30pm
Cost: \$95 SHS*; \$250 non-SHS funded workers

see our website for forums,
more training opportunities,
and further information and resources...
www.dvrcv.org.au

Family violence hurts kids too

This three-day accredited training provides practitioners with the knowledge and skills to support children and young people who have experienced family violence, and strategies to strengthen relationships between mothers and children. On successful completion of assessment tasks, participants receive a Statement of Attainment for the national unit: CHCDFV408C - Provide support to children affected by domestic and family violence.

Date: Tuesday 21, Wednesday 22 & Wednesday 29 APRIL
Course Code: CDV415
Location: Vic Uni, Melbourne CBD
Time: 9.30am - 4.30pm each day
Cost: \$295 SHS*; \$650 non-SHS funded workers

Groupwork: 'why does it keep happening to me?'

This workshop will look at challenging the assumptions and changing the outlook for women who have experienced family violence. It will provide an understanding of the response-based practice model, used in a group work context, and focus on the experiences of women survivors of family violence who participated in a response-based support group. It offers skills for practitioners to use the model in their own support group work. Presented by Kristen Sheridan

Date: Wednesday, 13 MAY
Course Code: GW515
Location: Telstra Conference Centre, Melbourne CBD
Time: 9.30am - 4.30pm
Cost: \$95 SHS*; \$250 non-SHS funded workers

Case notes, family violence and the law

This two-day program explains the importance of case notes in day-to-day family violence practice and legal processes. The course includes models for taking case notes, writing style, and content, legal issues, privacy and confidentiality, responding to subpoena, being a witness and writing reports for court.

Date: Tuesday 26 & Wednesday 27 MAY
Course Code: CNDVL515
Location: Telstra Conference Centre, Melbourne CBD
Time: 9.30am - 4.30pm each day
Cost: \$175 SHS*; \$500 non-SHS funded workers

Enhanced family violence practice

DVRCV has developed this two-day training program to extend and enhance the practice skills of workers who have completed introductory and specialist courses and have gained experience in service delivery, through applied learning. Using the DV Vic code of practice as a framework, participants will address areas that challenge individual service provision, including advocacy, work with child protection and diversity. The course will assist workers to generate positive outcomes for clients.

Date: Wednesday 3 & Thursday 4 JUNE
Course Code: ADVL615
Location: Telstra Conference Centre, Melbourne CBD
Time: 9.30am - 4.30pm each day
Cost: \$175 SHS*; \$500 non-SHS funded workers

Walking women through the legal system

A two-day training course for advocates and support workers who assist women using legal remedies for family violence. This course is packed full of information about relevant legislation and legal processes, with an emphasis on developing strong advocacy skills to work for the best outcome for women and their children.

Date: Wednesday 17 & Thursday 18 JUNE
Course Code: WWLS615
Location: Telstra Conference Centre, Melbourne CBD
Time: 9.30am - 4.30pm each day
Cost: \$175 SHS*; \$500 non-SHS funded workers

New specialist trainings in 2015...

Empowering women to negotiate after separation

Thursday, 4 March
Time: 9.30am - 1.30pm
Venue: Melbourne Family Relationship Centre, Melbourne CBD
Cost: \$65
Presented by a team from family law practitioners Farrar, Gesini, Dunn.
Registration: www.dvrcv.org.au/training/specialist-workshops
For more specialist training sessions in 2015 see www.dvrcv.org.au/training/specialist-workshops

january

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Registration Information

- For registration visit our website: www.dvrcv.org.au or contact us on 9486 9866 or at dvrcv@dvrcv.org.au
- SHS* funded training is open to all workers; SHS funded workers receive priority
- For more information on our courses go to dvrcv.org.au/training
- Participants will receive confirmation of registration via email once **payment is received**
- DVRCV requires 3 days notice of cancellation of registration or a refund cannot be granted
- DVRCV is committed to accessibility. If you have any special needs please let us know at dvrcv@dvrcv.org.au
- DVRCV complies with federal/state Privacy legislation in the collection, storage and dissemination of personal information
- For information on, and personal bio's of our guest presenters and specialist practitioners, please check training information on our website.

* SHS stands for Specialist Homelessness Services. Most domestic violence and housing/homelessness services are funded under the SHS Program, Department of Human Services.