

The Law of Equality and Justice: Evaluating Domestic Violence Outcomes for Aboriginal Women in New South Wales

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**The Law of Equality and Justice:
Evaluating Domestic Violence Outcomes for
Aboriginal Women in New South Wales**

Belinda Jan Russon
BA, LLB, LLM, Grad Cert Legal Practice

A thesis submitted in fulfilment of the requirements for the degree of
Doctor of Juridical Science

THE UNIVERSITY OF
NEW SOUTH WALES



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2014

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Abstract

The ubiquitous nature of domestic violence in Australia prompted the development of civil legal protection orders to better protect victims of domestic violence from current or future violence. For victims of domestic violence in New South Wales (NSW), Apprehended Domestic Violence Orders (ADVOs) are the most commonly utilised legal protection available. Despite the overwhelming research available on domestic and family violence, little is known about Aboriginal women's perception of domestic violence and ADVOs, and the effectiveness of this legal instrument in protecting them.

This study examines and evaluates the effectiveness of ADVOs for Aboriginal women living in NSW and analyses their perceptions of domestic violence. Consideration is given to how a lack of understanding of what constitutes domestic violence and a lack of knowledge and means to report a breach of an ADVO, can ultimately impede a victim's access to the legal system, subsequent reporting of violence to the police and the effectiveness of the ADVO. Using semi-structured interviews, the perceptions of 33 Aboriginal women regarding domestic violence and their understanding of ADVOs were gathered. The participants all resided in NSW, were of Aboriginal or Torres Strait Islander descent and had experienced domestic violence that had ultimately led them to obtain an ADVO.

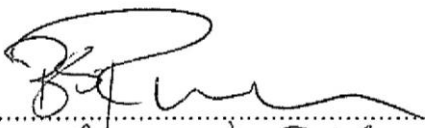
The interviews provide data on Aboriginal women's experience of domestic violence and the legal system. These interviews point to a number of barriers that Aboriginal women face when attempting to report violence when there is a current ADVO. It is argued that an ADVO does not work effectively for Aboriginal victims of violence if the orders do not come with culturally appropriate mechanisms for better police responses, education as to how the order operates, advice on enforcing it and ongoing community support that is culturally specific.

The results of this study affirm that Aboriginal women who are victims of domestic violence in NSW need to be better informed, supported and protected. A multifaceted, multidisciplinary approach to domestic violence in Aboriginal communities is imperative.

Recommendations for how this may be achieved are discussed, which is a small step along the path of providing Indigenous women with both equality and justice.

Originality Statement

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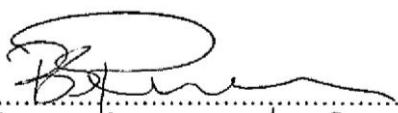
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Artwork



By Taralinn Healey

Artist's Statement

The painter states:

‘This artwork represents every strong woman I have known or who has had an influence on my life. This picture in particular was sort of my interpretation of my personal journey, the different strands are the women that I shared the class with and also the women that shaped the person I am today. The colour lines with the dots represent the women and the different colours are to show that they come from all different areas such as the desert, or coastal areas, the mountains and the city. The faded ancestral figures are my ancestors, my grandmothers and great grandmothers and aunties.

On my grandfather's side (my great-great grandmother) was the last of her tribe after they had been wiped out by settlers and I think my strength comes from knowing that when I look at how big and how individual and strong my family and extended family are now it's amazing that it all started with just one woman who not just survived but fought to survive.

The women in my life have so much knowledge and experience and not once ever hesitate to share that knowledge and I feel that in the future it is because of the strength of women that knowledge will continue to be passed down and not left to be forgotten but shared.

The stars represent the possibilities that are available to me because of the women throughout history that have fought for the rights of all women across the world. And the women form the tree because I believe that the spirit of the trees mirrors the spirit of a woman, it can be flexible but also hard, determined and always standing its ground.’

Dedication

This thesis is dedicated to my beloved grandparents, Harry and Dorothy, and to my wonderful family.

Acknowledgements

It is very important to me to thank the amazing women that agreed to be interviewed for my research. When I think of the time I spent with each one of you, how you shared your pain, your struggles and your triumphs with me, I think about a quotation from the poet Kahlil Gibran when he says ‘yesterday is but today’s memory and tomorrow is today’s dream’. I truly hope that your dreams are realised and happiness finds you. A heartfelt thankyou from me to you.

To my supervisors Professor Chris Cunneen and Professor Alex Steel. A thousand thanks for your constructive feedback, good advice and valuable guidance in the development of this thesis.

I am also grateful to the Staff at UNSW Australian Domestic and Family Violence Clearinghouse, Jenny Jarrett in the Law Faculty, and other colleagues who assisted me along the way. Fiona Allison, Krista Christensen, Lyndal Gowland, Kate Munro and my students at Tranby and UWS including Shailyn, Lisa, Pauline and Gail.

Fiona Starr who has travelled this path before, your guidance was most welcomed.

Anna-Maree Yip, for motivating me and brainstorming with me when I needed it most.

Liz Green for providing me with inspiration to write when it was desperately needed.

Amma and Pop, who were always there for me to help with the kids and provide support.

Mum and Dad, I know this seemed long and never ending at times, but I’m truly appreciative of everything you have done for me over the years. You’ve made me into the person I am today.

Krishnan, you drew up a study timetable for me as you knew how important this was to me and were always ready to help because, as you said, ‘I know how important this is Mum’.

Sachin, who famously gave me the advice, ‘Mum, make sure your thesis is really good’. I really hope I have made you both proud.

To my baby Raj, it is such a pleasure to watch you learn and grow and to listen to all your new little words. You bring us so much joy.

To my wonderful husband Vin, your patience and unwavering support was invaluable and I know I absolutely could not have achieved this without you by my side. Thank you for listening to me, loving me and feeding me when I needed it most!

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List of Acronyms

ABS	Australian Bureau of Statistics
ACLO	Aboriginal Community Liaison Officer
ADVO	Apprehended Domestic Violence Order
AIC	Australian Institute of Criminology
ALRC	Australian Law Reform Commission
ALS	Aboriginal Legal Service
APVO	Apprehended Personal Violence Order
AVO	Apprehended Violence Order
BOCSAR	Bureau of Crime Statistics and Research
COPS	Computerised Operational Policing System
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DoCS	Department of Community Services
DV	domestic violence
DVICM	Domestic Violence Intervention Court Model
DVLO	Domestic Violence Liaison Officer
FVPLS	Family Violence Prevention Legal Service
GLBTI	Gay, Lesbian, Bisexual, Transgender and Intersex
IFSP	Indigenous Family Safety Program
IVAWS	International Violence against Women Survey
LAC	local area command
LGA	local government area
NSW	New South Wales
NSWLRC	New South Wales Law Reform Commission
PADV	Partnerships against Domestic Violence
PSS	Personal Safety Survey
RRMA	rural, remote and metropolitan areas
TIO	Telephone Interim Order
UN	United Nations
UNIFEM	United Nations Development Fund for Women

UNSW	University of New South Wales
WBAWLC	Wurringa Baiya Aboriginal Women's Legal Centre
WDVCAP	Women's Domestic Violence Court Advocacy Program
WDVCAS	Women's Domestic Violence Court Advocacy Service
WHO	World Health Organization

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Preface

This research is influenced by my experience working for approximately seven years as a solicitor with Wirringa Baiya Aboriginal Women's Legal Centre (WBAWLC)¹ in NSW. There is an apparent lack of funding for Indigenous-specific services and WBAWLC operated for many years with one full-time solicitor and one part-time solicitor to service the civil law needs of Aboriginal women and children in the whole of NSW.

While working at WBAWLC, I frequently acted as a duty solicitor at both Redfern and Newtown local courts as part of the Women's Domestic Violence Court Assistance Scheme (the Scheme). The scheme's clients were both Aboriginal and non-Aboriginal. For each client the scheme represented, an Apprehended Domestic Violence Order (ADVO) was the usual outcome and this was considered the best possible legal outcome for women who have been victims of domestic violence. The number of Aboriginal women who thought quite the contrary intrigued me. For many Aboriginal women, it was not the 'successful outcome' I had anticipated but an outcome full of angst, ongoing legal responsibility and emotional burden.

Working with Aboriginal women who are or have been victims of domestic violence is both a challenging and rewarding role. Clients are often appreciative of the effort put into their matter but are disillusioned and frustrated with the legal system and the legal outcomes. Hence, my professional experiences inform my commitment to this research and the matters of social justice and inequality as experienced by Aboriginal women.

¹ Wirringa Baiya exists to provide Aboriginal and Torres Strait Islander women, children and youth in NSW with a gender-specific service that is sensitive to their culturally diverse needs, and to provide Aboriginal and Torres Strait Islander women who are victims of violence with access to appropriate legal representation, advice and referral. The service is managed by Aboriginal women is not for profit and pays special attention to the needs of economically and socially disadvantaged women and children: <www.wirringabaiya.org.au/about>.

Chapter One: Introduction

1.1 Introduction to this Study

It is just a bit of paper (the Apprehended Domestic Violence Order [ADVO]), it means absolutely nothing, I know the police won't come straight out and I have rung them before when the ADVO has been in place and they don't come straight out, basically the paper means nothing to me. When I got it I just threw it in the drawer, it doesn't prove to me that I'm protected or that my kids are protected, it doesn't prove anything (SYD 3).

Domestic violence penetrates all sectors of Australian society, affecting both women and men, regardless of sexual orientation, socio-economic status, religion and demographic conditions. The exact nature of domestic violence and how it exists in the community will never accurately be reported, identified and quantified because the rates of such violence may be significantly higher than published in official government reports, academic papers and independent surveys. Studies in Australia show that the rates of domestic violence differ among communities and are more common among specific groups. In particular, rates of domestic violence are higher for females, with Aboriginal females falling into the most highly vulnerable category. Violence in the Aboriginal community has been identified as a 'multi-dimensional problem, which manifests itself in a range of health and related social outcomes',² and compared to non-Aboriginal women, Aboriginal women in NSW are six times more likely than non-Aboriginal women to experience domestic violence related assault.³ Thus, this area of law is exceedingly complex due to the dynamic nature of violence, the myriad of factors attributed to it and its impact upon individuals, communities and other relevant stakeholders.

Aboriginal people have experienced a brutal history under colonial rule. It is a history that has been shaped by government policies seeking to control and eliminate the

² I Anderson, 'Understanding Indigenous Violence' (2002) 26 *Australian and New Zealand Journal of Public Health* 408.

³ Ibid.

distinctiveness of Aboriginal society and culture.⁴ Inherent distrust of police and many government services is a fundamental hurdle for Aboriginal people that is difficult to overcome when attempting to assert one's legal rights. Aboriginal deaths in custody and the harrowing effects of the removal of generations of Aboriginal children from their families⁵ (the Stolen Generations) compound this distrust of police, as do previous negative interactions with government and legal services.

In the last decade, research undertaken in relation to violence in Aboriginal communities in Australia largely pertains to Aboriginal women as victims of domestic violence.⁶ An over-representation of domestic violence within Aboriginal communities is evident. It is often accepted that negative historical experiences and a lack of culturally appropriate services have exacerbated contributing factors of domestic violence within Indigenous communities. Legislative and policy reforms have sought to reduce the rate of domestic violence within communities. Yet, despite this insight and recent reforms, reported incidents of domestic violence remains disproportionately high.⁷

For domestic violence research in this area to be pertinent, it must take into account the experiences, beliefs and attitudes of Aboriginal women who are victims, which is the primary purpose of this thesis. A number of research papers have been undertaken evaluating the effectiveness of protection orders for women in NSW,⁸ yet little research has examined the impact on or understanding of protection orders by Aboriginal women in NSW. This thesis is intended to fill this research gap.

⁴ J White 1997, *It's Not Love, It's Violence* (1997) Domestic Violence Advocacy Service and NSW Women's Refuge and Resource Centre Information and Resource Kit, 1, 56
<<http://www.wrrc.org.au/resources/dvkitfull.doc>>.

⁵ HREOC, *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* (1997) <<http://www.hreoc.gov.au>>.

⁶ F Al-Yaman, M Van Doeland and M Wallis, 'Family Violence among Aboriginal and Torres Strait Islander Peoples' (Cat. No IHW 17, Australian Institute of Health and Welfare, 2006); P Memmott et al, 'Violence in Indigenous Communities' (Commonwealth Attorney General's Department, 2001).

⁷ M Willis, 'Non-Disclosure of Violence in Australian Aboriginal Communities' (Australian Institute of Criminology, Trends and Issues Paper, January 2011) 1, 1.

⁸ NSW Law Reform Commission, *Apprehended Violence Orders* (Report 103, October 2003) 16 <<http://www.lawlink.nsw.gov.au/lrc.nsf/pages/r103toc>>; L Trimboli and T Bonney, NSW Bureau of Crime Statistics and Research, *An Evaluation of the NSW Apprehended Violence Order Scheme* (1997); J Stubbs and D Powell, 'Domestic Violence: Impact of Legal Reform in NSW' (NSW Bureau of Crime Statistics and Research, 1989); NSW Attorney General's Department, 'A Review of the Law Pertaining to Apprehended Violence Orders as Contained in Part 15a of the Crimes Act 1900 (NSW)', (Discussion Paper, 1995); S Egger and J Stubbs, *The Effectiveness of Protection Orders in Australian Jurisdictions* (Australian Government Publishing Services, 1993).

At present, an Apprehended Domestic Violence Order (ADVO) is the most utilised civil option offered by the judicial system to protect victims of violence and prevent future instances of domestic violence. An ADVO is a court order, applied for by the victim of domestic violence, which places restrictions on the violent or abusive behaviour of the perpetrator using mandatory orders. Mandatory orders that appear on an ADVO seek to prevent the perpetrator of violence from assaulting, molesting, threatening, intimidating and stalking their victim.⁹ A breach of the order enables victims to begin criminal proceedings against the perpetrator by reporting the breach to the police.

Perpetrators of domestic violence who breach the ADVO can thus be subject to criminal penalties, offering victims enforceable protective measures from perpetrators within the judicial system. Moreover, because of the pre-emptive nature of such orders, it is considered that penalties associated for a breach act as deterrent of violent behaviours. Thus, an ADVO exists as a legal instrument to both prevent and protect victims of domestic violence.

While the concept of the ADVO has been widely accepted within the Australian judicial system and accessed by victims of domestic violence across Australia since its inception,¹⁰ the mechanisms have been criticised for the ease of their availability and their misuse.¹¹ ADVOs in NSW have undergone extensive legislative change in an attempt to ensure better protection for victims of domestic violence.¹² In addition to this, the legislation further empowers victims to request, or courts to specify, particular behaviours that should appear on the order in line with both the victims and offenders personal situation. Such restrictions may include firearm restrictions and/or drug and alcohol restrictions. Thus, the ADVO is made more responsive to the needs of victims of domestic violence.

Pivotal to the effectiveness of an ADVO is the accurate and consistent legal understanding of domestic violence by those who create, use and enforce the order. While this may be argued for any legal instrument, this is particularly important to the effectiveness of an ADVO, as mandatory orders may specifically relate to behaviours that are often complex

⁹ *Crimes (Domestic and Personal Violence) Act 2007* Section 36.

¹⁰ Trimboli and Bonney, above n 8.

¹¹ T Nyman, 'Apprehended Violence: Industry or Disease?' (1999) 37(11) *Law Society Journal* 52; M McMillan, 'Should We Be More Apprehensive about Apprehended Violence Orders?' (1999) 37(11) *Law Society Journal* 48.

¹² Introduction of the *Crimes (Domestic and Personal Violence) Act 2007*.

and masked by circumstances. Moreover, the enforceability of these mandatory orders is dependent upon the victim's capacity to demonstrate or communicate the instance of a breach. Therefore, an ADVO's ability to prevent and protect victims of domestic violence is dependent on a victim's perception of their experience, their ability to communicate this and the consistency of their perceptions of domestic violence in relation to its legal definition.

Considering that domestic violence against Aboriginal women in NSW remains disproportionately high, it must be asked whether or not an ADVO is an appropriate instrument for prevention and protection for all types of domestic violence. The thesis engages with this problem through interviews with Indigenous women who have sought protection through the use of ADVOs.

1.2 Theoretical Framework

Before addressing the questions and aims of this research, it is important to describe the theoretical position used in this research and the context in which this theoretical position is developed. A theoretical framework provides a particular perspective through which a topic can be examined. Academics have implored that social research is no longer a uniform body of theory, but has become a diverse body of approaches, with diverse theoretical backgrounds and assumptions and diverse methods and techniques, all of which may be equally valid and legitimate.¹³

All policy and action to address the issue of domestic violence takes place within a context of beliefs and assumptions about the nature of that violence, and hence the most appropriate means of addressing it.¹⁴ Assumptions and beliefs also include the role of gender, race and the place of law in regulating and controlling behaviour. Below, I have explored the key theoretical frameworks that inform this research; such theories provide important perspectives to be considered and explored in relation to the qualitative data collected and analysed in the later chapters.

¹³ S Sarantakos, *Social Research* (Palgrave Macmillan, 3rd ed, 2005) 4–6.

¹⁴ A. Kirsner and Strategic Partners. 'Working Together Against Violence: The First Three Years of Partnerships Against Domestic Violence' (Office of the Status of Women for Partnerships Against Domestic Violence, August 2011) 8.

It is, however, useful to note that it is only in the past 20 years that debate and theory-making has really occurred regarding how family violence arises and continues at such disproportionately high levels in Indigenous communities.¹⁵ Memmott states that a decided lack of empirical evidence has limited explanatory models and definitions of the complex underlying situational factors relating to Indigenous violence in Australian communities.¹⁶ In Australia, as in other developed nations, new ways of understanding and therefore approaching this issue are only just beginning to emerge. Academics suggest that a lack of empirical evidence has limited explanatory models and definitions of the complex underlying situational factors relating to Indigenous violence in Australian communities.¹⁷ New theoretical explanations need to be developed that take into account situational and contextual factors.¹⁸

Feminism

This thesis is written by an Aboriginal woman, and involves researching and interviewing Aboriginal women. It is ultimately aimed at improving women's access and equity to the legal system and to change social injustice to women.

The term feminism can be used to describe the cultural, political or economic movement aimed at establishing equal rights and legal protections for women. Feminism has applied a socio-political framework to understanding domestic violence, a vastly different perspective from the then prevailing medical model that saw the causes of domestic violence as lying within the pathology of the individuals involved.¹⁹ A socio-political approach to understanding domestic violence seeks answers at a social or group level rather than at the level of the individual man.²⁰ Thus, it could be said that feminists seek to understand why men in general use physical force against their partners, while considering the social conditions that support such acts.

¹⁵ P Memmott et al, 'Good Practice in Indigenous Family Violence Prevention: Designing and Evaluating Successful Programs' (Australian Domestic and Family Violence Clearinghouse, UNSW, 2006) 7.

¹⁶ Memmott et al, above n 6, 2, 7.

¹⁷ Ibid.

¹⁸ Ibid 8.

¹⁹ L Laing, 'Responding to Men who Perpetrate Domestic Violence: Controversies, Interventions and Challenges' (Issues Paper No 7, Australian Domestic and Family Violence Clearinghouse, 2002) 1, 2.
<http://www.adfvc.unsw.edu.au/PDF%20files/Issues_paper_7.pdf>.

²⁰ Ibid.

Feminist theory in domestic violence emphasises gender and power inequality in opposite-sex relationships. The feminist approach considers power imbalances that create and perpetuate violence towards women. The feminist paradigm supports the notion that domestic violence is primarily a culturally supported male enterprise where female victims are considered to respond to such violence reactively and in self-defence rather than being instigators of violence.²¹ Historically, feminists are responsible for making domestic violence a public issue rather than the ‘behind closed door’ phenomenon it once was. Feminists advocated for laws to protect victims and make defendants responsible for their behaviour.²²

Feminist theories and movements have vehemently demonstrated that knowledge cannot be considered neutral or objective. Traditionally, researchers have engendered knowledge on the basis of the dominant perspective of, and behaviour in, society, which were male and androcentric. As a consequence, knowledge has been blind to the specific historical, political, social and personal conditions on which it was reported, making gender differences invisible.

Mason and Stubbs note that for theoretical, epistemological and political reasons, feminist research has emphasised women’s experiences as a subject of research and a source of knowledge.²³ This research emphasises the experiences that women have been through in relation to domestic violence and aims to give a voice to Aboriginal women, thus offering a more universal criminological account of domestic violence through individual perspectives.

Within this broad framework, this research can be considered feminist,²⁴ as feminist research is concerned with how sex/gender organises social relations and with bringing about change in these social structures in the interests of women.²⁵ As a feminist researcher, I have attempted to ask ‘new’ questions that place Aboriginal women’s

²¹ D Dutton and T Nicholls, (2005) 10 *Aggression and Violent Behavior* 680, 683 <<http://www.amen.ie/reports/28004.pdf>>.

²² R Hunter, ‘Narratives of Domestic Violence’ 28 *Sydney Law Review* 733, 733–734 <http://sydney.edu.au/law/slr/slr28_4/Hunter.pdf>.

²³ G Mason and J Stubbs, ‘Feminist Approaches to Criminological Research’ (Legal Studies Research Paper 10/36, Sydney Law School, April 2010) 8 <<http://ssrn.com/abstract=1597469>>.

²⁴ Sarantakos, above n 13, 54.

²⁵ L Bartels and K Richards (eds), *Qualitative Criminology: Stories from the Field* (Federation Press, 2011) 155–156.

experiences at the centre of social inquiry. Feminist research is also commonly seen as having political utility, informing social change and social justice,²⁶ which is what this research specifically hopes to achieve.

It is recognised that male dominance and patriarchy were imposed during colonisation of Aboriginal societies in Australia, and thus feminist analysis is useful in understanding the history and unique challenges Aboriginal women have experienced. However, the awkward relationship between Aboriginal women and the largely white feminist movement within Australia due to different priorities and perspectives must be acknowledged as well.²⁷ My feminist research framework compliments and respectfully recognises the approach of Aboriginal academic Moreton-Robinson, who states that an Aboriginal woman's standpoint is informed by social worlds imbued with meaning grounded in knowledge of different realities from those of white²⁸ women.²⁹ Aboriginal women share the common experience of living in a society that deprecates them and their standpoint is ultimately shaped by a legacy of dispossession, racism and sexism.³⁰

Pam Greer,³¹ a leading Aboriginal women's advocate, speaks openly about her view of feminism, stating that she always felt that feminism was for '...white women, middle class, and certainly not for women that I was mixing with'.³² Greer espouses her idea that she is more comfortable being considered a 'womanist', meaning a woman working for and caring for women.³³ Greer recognises that in many Aboriginal communities in which she works, feminism might get her into trouble, but the term 'womanist' 'lets me get in a lot of doors'.³⁴ Greer also recognises that it has taken a great deal of courage for Aboriginal

²⁶ Mason and Stubbs, above n 23, 9.

²⁷ P Andrews, 'Violence against Aboriginal Women in Australia: Possibilities for Redress within the International Human Rights Framework' (1997) 60 *Albany Law Review* 917, 920.

²⁸ Moreton-Robinson uses the term 'white' as she believes that skin colour is the marker for objectifying difference in the social constructions of 'race'.

²⁹ A Moreton-Robinson, *Talkin' Up to the White Woman: Indigenous Women and White Feminism* (University of Queensland Press, 2002) xvi.

³⁰ Ibid.

³¹ Pam Greer is a passionate Aboriginal activist and mentor in the field of family violence in Indigenous communities. Ms Greer currently delivers the core domestic violence training and adult and child sexual assault training workshops across NSW as a consultant to the Education Centre Against Violence (ECAV). Ms Greer is the recipient of the 2008 'Hall of Fame' Award for Aboriginal Health at the NSW Health—Aboriginal Health Awards.

³² Australian Domestic and Family Violence Clearinghouse, 'Pathways to Safety: An Interview about Indigenous Family Violence with Pam Greer, Indigenous Training and Development Consultant' (Issues Paper 5, UNSW, 2001) 1, 6.

³³ Ibid 6.

³⁴ Ibid.

women to begin talking about the violence they and their children have been experiencing, and it has caused some controversy within Aboriginal communities.³⁵ Greer's work emphasises that Indigenous women have a complex relationship with feminist approaches (see also Moreton-Robinson, Huggins and Fredericks).³⁶

The feminist movement further isolates Aboriginal women and fractures Aboriginal families by asking Aboriginal women to stand apart from Aboriginal men, believing that the white women's feminist movement was, perhaps unconsciously, repeating attempts made over decades by welfare administrations to separate Aboriginal women and use them against their families.³⁷ The researcher agrees with the notion that mainstream western feminist perspectives do not provide adequate analysis of the post-colonial context and the relationships between Aboriginal and non-Aboriginal people that significantly contribute to Aboriginal family violence.³⁸

Research has identified that Aboriginal women insist upon three points that are absent from white feminist theorising about domestic violence. Firstly, they argue that Indigenous family violence is not a result of patriarchal domination, since Aboriginal women were not and are not economically, politically or socially subordinate to men within their families and communities.³⁹ The contention is that violence against Aboriginal women must be considered within the broader context of colonisation, dispossession and racial discrimination experienced by Aboriginal and Torres Strait Islander people, which has resulted in transgenerational cycles of trauma and violence.

Secondly, while mainstream feminist analysis sees men's abuse of alcohol as an excuse for violence, Aboriginal women see alcohol abuse as a symptom of and response to the rage, pain and despair engendered by the effects of colonisation, which has become a major cause of violence in Indigenous communities.⁴⁰ Hunter states that some accounts of

³⁵ J Stubbs (ed), *Women, Male Violence and the Law* (Institute of Criminology, 1994) 66.

³⁶ Moreton-Robinson, above n 29; J Huggins 'A Contemporary View of Aboriginal Women's Relationship to the White Women's Movement' in N Grieve and A Burns (eds), *Australian Women: Contemporary Feminist Thought* (Oxford University Press, 1994); B Fredericks, 'Re-empowering Ourselves: Australian Aboriginal Women' 2010 35(3)*Signs: Journal of Women in Culture and Society* 546<<http://eprints.qut.edu.au/31352/>>.

³⁷ Huggins above n 37, 70.

³⁸ Brian Cheers et al, 'Family Violence: An Australian Indigenous Community Tells Its Story' (2006) 49(1) *International Social Work* 51, 51.

³⁹ R Hunter, above n 22, 748.

⁴⁰ *Ibid* 748–749.

domestic family violence in Aboriginal communities refer to ‘alcohol violence’ as a separate category of violence.⁴¹ Overall, feminist analysis seems to reject the idea that alcohol is an adequate or acceptable excuse for domestic violence.

Thirdly, due to their shared history of racial oppression, Indigenous women are concerned with standing alongside rather than in opposition to Indigenous men in the struggle for basic rights, including efforts to end family violence. Indigenous men suffer high levels of unemployment, have access to few services and have seen their position in the family and the community eroded. Combating violence involves helping men heal and reviving and reuniting extended families and communities.⁴²

These points are further highlighted given that the legislative response to domestic violence certainly reflects a more mainstream feminist position than one inflected by understandings of difference, including the cultural and social differences experienced by Aboriginal women.

Although feminist theories can provide a general understanding of women and domestic violence, according to the Queensland Women’s Taskforce report, using feminism as a theoretical tool to understanding family violence in Indigenous communities may only serve ‘to ignore the colonial conditions that also create a sense of powerlessness for Aboriginal and Torres Strait Islander men as well as women’.⁴³ Therefore, feminism alone cannot account for black women’s experiences of violence. There is a need for an Indigenous socio-political theorised account as well as one informed by feminist socio-political theory.⁴⁴

In conclusion, neither a feminist analysis nor anti-racist discourse alone can offer adequate understanding of the specific context or life experiences of an Aboriginal woman.⁴⁵ Considering one of the most prevailing social theories around domestic violence is feminist theory, which sees violence as an inevitable result of women's subordination in a

⁴¹ Ibid 749.

⁴² Ibid.

⁴³ The Queensland Government Department of Aboriginal and Torres Strait Islander Policy and Development, ‘The Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report’ (1999) 1, 69 <<http://www.communities.qld.gov.au/women/resources/indigenous-women>>.

⁴⁴ M Keel, ‘Family Violence and Sexual Assault in Indigenous Communities’ (Briefing No 4, Australian Centre for the Study of Sexual Assault, 2004) 1, 29.

⁴⁵ Stubbs, above n 35, 212

patriarchal world where men are conditioned to dominate and women are objectified, it is necessary to consider this from an Aboriginal woman's perspective. Non-Aboriginal feminists will state that domestic violence is seen as a man's attempt to maintain power and control over women in an intimate relationship. Aboriginal women, however, will conversely argue that for them, that violence they experience must be seen in the context of colonisation, dispossession and racism, as feminist work often fails to pay sufficient attention to the different experiences of Aboriginal women.⁴⁶

Post-Colonialism

Historically, it can be argued that Aboriginal women fall into the gap between feminist theory, which focuses on the experiences of white women, and race-based theory, which focuses on the perspective of Aboriginal men. An examination of domestic violence against Aboriginal women cannot be made without first positioning colonisation at the centre of such analysis.

The overarching theoretical framework for this thesis uses a colonial paradigm to develop, explore and answer the research questions posed. The colonial paradigm is the underlying belief system that provides a space within which Aboriginal difference can be explored and upon which its unique experiences can be reflected.⁴⁷

As Australian Indigenous people have been colonised, social problems such as violence can only be explored using the colonial context. The imported European culture and the legacy of colonisation that have contributed to increased levels of violence and victimisation experienced by Aboriginal people and the Western legal system that provides the structure and determines the outcomes. Therefore, the problem considered in this thesis must be viewed through a colonial paradigm. Other researchers have even considered how the criminal justice system has been used as an instrument of Aboriginal peoples' colonisation.⁴⁸

⁴⁶ L Behrendt, 'Aboriginal Women and the White Lies of Feminism: Implications for Aboriginal Women in Rights Discourse' (1993) 1 *Australian Feminist Law Journal* 27.

⁴⁷ T Anthony and C Cunneen (eds), *The Critical Criminology Companion*, (Hawkins Press, 2008) 134.

⁴⁸ H Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (Hawkins Press, 2008); C Cunneen, 'Indigenous Incarceration: The Violence of Colonial Law and Justice' in P Scraton and J McCulloch (eds) *The Violence of Incarceration* (Routledge Taylor and Francis Group, 2009) 209.

It is accepted that a colonial framework does not necessarily provide adequate analysis of an Aboriginal social problem, but it is unavoidable in a post-colonial society. Although this dilemma must be accepted, new approaches to analysing the issues attempt to explore and solve the problem from a grass roots level and an Aboriginal perspective. This thesis is an example of such an approach, using Aboriginal perspectives from its research interviews.

To further support the approach above, it is argued that there is no recognised post-colonial period or state in the Australian context, but that colonialism continues as an ongoing oppression in the lives of Indigenous Australians, who remain dominated and marginalised on land stolen from them by the British.⁴⁹ White's study has identified how colonialism continues to play a significant role in the lives of Indigenous Australian women and identifies the effect that Aboriginal women's self-worth has experienced in Aboriginal communities, arguing that the situation has occurred where colonised people take on the mindset of the colonisers and begin to oppress each other.⁵⁰ White also recognises that 'turning the pain inwards' or towards those closest occurs as a result of having no recourse, grieving or healing processes to deal with oppression, and this oppression perpetuated against Indigenous women by Indigenous men often takes the form of domestic violence.⁵¹ White's work gives a thorough explanation of such historical oppression.

The approach I have taken in this research is similar to that of Hovane, who states that violence against Aboriginal women must be understood from a historical perspective of colonisation and dispossession.⁵² Sokoloff and Dupont expand on this, stating that violence against women must be understood in terms of oppression and the intersectionality of race, gender and class.⁵³ The authors further argue the importance of addressing how different communities' cultural experiences of violence are mediated through structural forms of oppression, such as racism and colonialism.⁵⁴

⁴⁹ Nereda White, 'Indigenous Australian Women's Leadership: Stayin' Strong against the Post-Colonial Tide' 2010 (13)1 *International Journal of Leadership in Education* 10 <<http://tgrajales.net/Womensleadership.pdf>>.

⁵⁰ Ibid 12.

⁵¹ Ibid 13.

⁵² Victoria Hovane, 'White Privilege and the Fiction of Colour Blindness: Implication for Best Practice Standards for Aboriginal Victims of Family Violence' (Australian Domestic and Family Violence Clearinghouse, Newsletter 8, 2007) 11 <<http://www.austdvclearinghouse.unsw.edu.au/home.html>>.

⁵³ Natalie J Sokoloff and Ida Dupont, 'Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities' (2005) 11(1) *Violence Against Women* 38, 43.

⁵⁴ Ibid.

By intersectionality, I refer to the connection between aspects of identity, particularly race and gender. An intersectional approach asserts that aspects of identity are indivisible and that speaking about race and gender in isolation from each other results in concrete disadvantage. In Australia, race and gender intersectionality includes the experiences of Indigenous women.⁵⁵

The idea of ‘intersectionality’ seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, and economic disadvantage and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create burdens that flow amongst these intersecting axes contributing effectively to create a dynamic of disempowerment.⁵⁶

From this it is evident that without recognising the intersection of race, class and gender, Indigenous women have been left with the invidious choice between politics and practices that represent their race but ignore their gender or the converse.⁵⁷ As such, some Aboriginal women do not necessarily see the criminal justice system as providing answers to family violence, and, indeed, view the criminal justice system as another tool of oppression that perpetuates further violence against them and their communities.⁵⁸

Lucashenko⁵⁹ and Atkinson,⁶⁰ both Aboriginal women, have also conducted research and published findings regarding the complex interactions between family violence and the

⁵⁵ Australian Human Rights Commission, ‘Gender and Race Intersectionality’, Issues Paper prepared for consultations for the World Conference against Racism (2001) <http://www.humanrights.gov.au/racial_discrimination/consultations/national_consultations/gender.html>.

⁵⁶ ‘Gender and Racial Discrimination’ (paper presented at Report of the Expert Group Meeting, Zagreb, Croatia, 21–24 November 2000).

⁵⁷ Stubbs and Powell, above n 8.

⁵⁸ H Nancarrow, *In Search of Justice for Domestic and Family Violence* (Thesis, 2003) 55 <http://www.griffith.edu.au/__data/assets/pdf_file/0015/50271/nancarrow_pt2_paper5.pdf>.

⁵⁹ M Lucashenko, ‘Violence Against Indigenous Women: Public and Private Dimensions’ in S Cook and J Bessant (eds), *Women’s Encounters with violence: Australian Experiences*. (Sage Publications, 1997) 147.

⁶⁰ Judy Atkinson, ‘Intimate Partner Abuse and Indigenous Peoples’ in G Roberts, K Hegarty & G Feder (eds), *Intimate Partner Abuse and Health Professionals: New Approaches to Domestic Violence* (2006); Judy Atkinson, ‘Violence in Aboriginal Australia: Colonisation and its Impact on Gender’ *The Aboriginal and Islander Health Journal* (June/September).

history of dispossession. Indigenous academic Kylie Cripps further contextualises Indigenous family violence by discussing a multitude of interrelated factors attributable to family violence in Indigenous communities. These factors are divided into two groups: group one factors include colonisation, policies and practices, dispossession and cultural dislocation and dislocation of families through removal.⁶¹ Group two factors include marginalisation as a minority, direct and indirect racism and unemployment, welfare dependency, past history of abuse, poverty, destructive coping behaviours, addictions, health and mental health issues, low self-esteem and a sense of powerlessness.⁶² Factors such as these will be explored later in the thesis.

Cunneen considers the notion of post-colonial perspectives, stating that post-colonial perspectives require a particular focus on the construction of race and the way race is constituted and given meaning through various discursive practices.⁶³ He believes that a post-colonial perspective shows that marginalised peoples have less capacity to use legal protections and that principles of fairness and equality seem remarkably absent when the marginalised are being criminalised, and that crime and justice are experienced within particular socio-cultural and historical frameworks.⁶⁴ This belief is further evidenced in the research presented in later qualitative chapters, as is the notion that Aboriginal women generally do not show a preference for the Anglo-Australian criminal justice system as a response to domestic and family violence, since the legal system fails at the symbolic level and was irrelevant to Aboriginal people because they had no ownership of the institution.⁶⁵

As a result of this, a post-colonial perspective might require us to radically rethink why mainstream policies, programs or initiatives are not taken up, are less effective or simply do not work with particular marginalised and racialised communities.⁶⁶ This is explored later in the research and discussed in Hovane's research into Aboriginal women's access and use of 'mainstream' services. Hovane states that the practice of mainstreaming victims' services via the fiction of colour-blindness and colour-blind practices based on

⁶¹ K Cripps, 'Indigenous Family Violence: From Emergency Measures to Committed Long Term Action' (2007) 11(2) Australian Indigenous Law Review 6, 8.

⁶² Ibid.

⁶³ Chris Cunneen, 'Postcolonial Perspectives for Criminology' (Working Paper 6, University of New South Wales Faculty of Law Research Series, January 2011) 10 <<http://law.bepress.com/unswwps-flrps11/art6>>.

⁶⁴ Ibid 12

⁶⁵ Ibid 10.

⁶⁶ Ibid.

formal equality is discriminatory.⁶⁷ Where service delivery agencies cater to the dominant, majority group, people who are different may miss out on essential services. Therefore, it is necessary to treat people differently because people have different needs.⁶⁸ Colour-blind services and practices that are not experienced as being safe and relevant by Aboriginal victims are not 'accessible' and consequently Aboriginal victims do not have fair and equitable access to them.⁶⁹ This theme is identified in the qualitative section of this thesis.

To better frame this research, Blagg's work is relied upon to further argue that fully understanding the extraordinary levels of Aboriginal over-representation as offenders in the criminal justice system and the extraordinary rates of Aboriginal victimisation requires a highly nuanced and variegated analysis. It should situate these phenomena within an historical framework formed by processes of colonial dispossession, genocide and assimilation, and forms of resistance to these processes.⁷⁰ Within this context, Blagg highlights that Aboriginal women view domestic violence differently to non-Aboriginal women by arguing the following:

- There is a rejection of criminalisation as the main strategy to deal with family violence.
- There is greater stress on the effect of colonialism, trauma, family dysfunction and alcoholism as primary causes of violence.
- Male violence is seen as less an expression of patriarchal power than as a compensation for lack of status, esteem and value.
- There is greater emphasis on the impact of family violence on the family as a whole.
- There is greater emphasis on a range of potential perpetrators including husbands, sons, grandsons, and other male kin.
- There is a great emphasis on healing and re-integrating the offender.⁷¹

Thus, it is important to understand the history and context of colonisation in Australia in order to understand the structural and other barriers Aboriginal women face as victims of

⁶⁷ Hovane above n 52, 10.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Blagg, above n 48, 2.

⁷¹ H Blagg, 'Crisis Intervention in Aboriginal Family Violence: Summary Report' (Crime Research Centre, University of Western Australia, 2000) 3.

domestic violence and how perpetuating such practices still affects the lives of Aboriginal women today. This systemic racism resulted in the discrimination and marginalisation of Aboriginal women. Thus, throughout this thesis, there is an underlying theoretical framework that builds on both a colonial paradigm and a feminist approach to understanding violence against Indigenous women.

In conclusion, the theoretical frameworks discussed in depth above will assist in advancing this research by identifying the interrelated concepts regarding Aboriginal women and domestic violence that guides this research. Such frameworks assist in understanding the meaning of Aboriginal women's experiences historically, the context in which such experiences exist, the identification of links and influences and the development of causal explanations. Within the theoretical framework outlined above, a number of issues are illuminated that will be discussed further in the analysis of the qualitative research.

1.3 Research Questions

Aboriginal women in NSW experience domestic violence at six times the NSW average, and are three times more likely to be sexually assaulted than women in general.⁷² No state-wide evaluation has been completed on Aboriginal women's usage of and engagement with the legal system in relation to domestic violence outcomes and Apprehended Violence Orders (AVOs) and therefore no comprehensive research exists on Aboriginal women's usage of the NSW AVO scheme. Obtaining an ADVO may provide a certain level of legal protection for victims of domestic violence, but the ADVO cannot work effectively for Aboriginal victims if the orders do not come with culturally appropriate mechanisms for better police responses, education as to how to understand the order and how to properly enforce it, and ongoing community support.

Considering this, the main research question is:

How do Aboriginal women perceive the function of an ADVO in terms of its capacity to prevent and protect them from domestic violence?

⁷² NSW Department of Aboriginal Affairs, *Two Ways Together: NSW Aboriginal Affairs Plan (2003–2012)* 1, 2 <<http://www.daa.nsw.gov.au/publications/>>.

Other subsidiary research aims to be addressed in this thesis include:

1. How do Aboriginal women understand the phenomenon of domestic violence and its causes and how their experiences differ from non-Aboriginal women?
2. What are the barriers they identify when accessing the legal system?
3. How do they understand the language that appears on a standard ADVO?
4. What impact does domestic violence have on their lives?

1.4 Research Aims

There are several aims of this study. Firstly, this thesis aims to examine Aboriginal women's lived experience of domestic violence and in addition, to comprehend Aboriginal women's understanding of domestic violence in their own lives and in their community and its related causes. This thesis aims to consider how Aboriginal women's experiences of domestic violence are unique and differ significantly from those of their non-Aboriginal counterparts.

Secondly, this research aims to determine the barriers that Aboriginal women in NSW are confronted with when reporting violence, escaping violence and navigating the legal system. This can be done by an examination of the effects of the invasion, assimilation policies and the oppression and marginalisation of Aboriginal people. The thesis considers the importance of the history of colonialism extensively in its theoretical framework. Considering the unique barriers Aboriginal women face when identifying and reporting violence is important. Thus, this thesis can contribute directly to positive changes around the understanding, interpretation and enforcement of ADVOs and more broadly can help to engage and empower Aboriginal women in NSW.

Thirdly, this thesis aims to examine whether Aboriginal women who are victims of domestic violence in NSW have a good working knowledge of the definitions and terms appearing on an ADVO and those used by the judicial system. Upon obtaining an ADVO to protect them from domestic violence, victims are expected to identify subsequent violent behaviours and notify the police to report behaviour that contravenes the ADVO. Attention will be given as to whether a 'one size fits all' legal and policy approach is appropriate. The study will also attempt to highlight how disengaging, disempowering and

disadvantageous the current legal approach can be for many Aboriginal women, particularly for those interviewed for this thesis. Thus, is our current legal system less likely to be successful in providing Aboriginal women with a level of protection they consider to be adequate?

Finally, it is also my intention to acknowledge the tenacity, strength and resolve of Aboriginal women I interviewed whose lives are affected by domestic violence and understand the effect domestic violence has had on their lives.

1.5 Significance of the Research

This thesis explains and responds to the way in which violence against Aboriginal women is defined, how it is understood and the effect it has on the community. This research is significant due to the urgent need for evaluation of ADVOs as an appropriate response to violence perpetrated against Aboriginal women. Local courts in NSW experience a large number of Aboriginal women seeking ADVOs against their partners or other family member; however, previous research suggests that Aboriginal women acknowledge the limitations of ADVOs and recognise the need for culturally appropriate programs on family violence awareness.⁷³ The thesis examines this contradiction.

Through interviews with Aboriginal women in NSW who are or have been victims of domestic violence and sought legal intervention, this study explores the cultural differences in perception, knowledge and attitudes towards domestic violence and the impact these have upon the perceived capacity of an ADVO to prevent and protect them from domestic violence. Academics have argued that a shift in the direction of domestic violence policy and service research from what *prevents* women from leaving a male partner who assaults them to what *enables* them to do so is much needed.⁷⁴

There are a number of other reasons why this particular study is significant. Firstly, it expands on the everyday legal and procedural challenges Aboriginal women face as victims of domestic violence.

⁷³ L Kelly, 'Indigenous Women's Stories Speak for Themselves: The Policing of Apprehended Violence Orders' (1999) 89 *Indigenous Law Bulletin* 4, 7.

⁷⁴ S Patton, 'Pathways: How Women Leave Violent Men' (Government of Tasmania Report, 2003) <http://www.dpac.tas.gov.au/.../pathways_how_women_leave_violent_men>.

Secondly, while some qualitative research has been completed in relation to small-scale evaluations of ADVOs in NSW,⁷⁵ further studies based on systematic interviews with Aboriginal women are absent from the literature.

Finally, there is little published work on the actual use of ADVOs and this study will therefore be of interest to lawyers, the judiciary, policy makers in general and those working in the field. Outcomes of this study will provide greater insight into the complexities that surround domestic violence in Indigenous communities and the barriers that exist in preventing violence and protecting victims.

Thus, the practical significance of this thesis lies in the need to see positive changes in this area that will benefit Aboriginal women experiencing violence in the community, focusing attention onto this issue and resulting in proactive policy and procedural changes that can better respond to and protect women who most need it.

1.6 Summary of the Study's Methodology

This is a qualitative study that investigates how Aboriginal women experience and understand domestic violence and ADVOs, and examines their interactions while seeking assistance. By using a qualitative design, experiences are explored that would be difficult to assess quantitatively. This study also seeks to examine the similarities and differences between the participants' experiences and outcomes.

Legal and policy analysis is also undertaken to further understand how this human rights issue is responded to at both an international and domestic level. Australia's human rights obligations under various international treaties are considered, as are the legislative provisions and policy and programme initiatives introduced in NSW. The methodology will be further discussed in Chapter Two.

⁷⁵ H Katzen, 'How Do I Prove I Saw His Shadow?' Responses to Breaches of Apprehended Violence Orders: A Consultation with Women and Police in the Richmond Local Area Command of NSW', 1–332; E Moore 'Not Just Court: Family Violence in Rural NSW—Aboriginal Women Speak Out' (Centre for Rural Social Research, Charles Sturt University, 2002).

1.7 Definition of Key Terms

1.7.1 Aboriginality

In this thesis, I use the terms ‘Aboriginal’ and ‘Indigenous’ interchangeably. A vast amount of research refers to the Indigenous community, which makes reference to all Indigenous Australians including Torres Strait Islanders. However, research conducted within NSW generally uses the term ‘Aboriginal’ rather than ‘Indigenous’. Of the women participating in this research, none identified themselves as Torres Strait Islanders and of the women I have interviewed, all refer to themselves as Aboriginal.

For the purposes of this research, I refer to the other party in the ADVO proceedings as either the defendant or the perpetrator. The partners or ex-partners of the participants in this research are both Aboriginal and non-Aboriginal men and it is not my intention to consider characteristics, racial or otherwise, of the defendants.

1.7.2 Distinguishing Between Domestic Violence and Family Violence

Defining violence in any context is difficult. Definitions vary between international organisations, countries, cultures and jurisdictions because violence is classified in countless ways. There has been an increasing preference in Indigenous communities around the world to define violence that centres on family relationships as ‘family violence’.

Aboriginal concepts of violence are far more encompassing than mainstream definitions of domestic violence. The term ‘family violence’ is used by Indigenous people worldwide to describe interpersonal violence that adults or children may experience in their intimate, kinship or dependent relationships.

The Aboriginal and Torres Strait Islander Social Justice Commission provide the following definition of family violence:

Family violence involves any use of force, be it physical or non-physical, which is aimed at controlling another family or community member and which undermines that person’s wellbeing. It can be directed towards an individual, family, community or particular group. Family violence is not limited to physical

forms of abuse, and also includes cultural and spiritual abuse. There are interconnecting and trans-generational experiences of violence within Indigenous families and communities.⁷⁶

In studies undertaken in Australia, family violence has been broadly defined to encapsulate not only the extended nature of Indigenous families, but also the context of a range of violence, occurring frequently between kinspeople in Indigenous communities.⁷⁷ Atkinson argues that using the term ‘family violence’ in preference to ‘domestic violence’ provides a greater contextual understanding of the interlinking and intergenerational impacts of violence as its effects flow into and out of our families.⁷⁸

In many forums, the terms ‘domestic violence’ and ‘family violence’ are used interchangeably. In this thesis, my intention is to focus solely on violence between a male and a female person who are or have been involved in a relationship of an intimate nature. It is noted that in previous studies, researchers writing in relation to violence experienced among Aboriginal people use the term ‘family violence’ while most reports and papers relating to non-Aboriginal people prefer the term ‘domestic violence’.

For the purposes of this research, the term ‘domestic violence’ will be used throughout this study and it is my intention that it encompass any violence or abuse that is experienced by Aboriginal women that was present during their intimate relationship and has either ceased or continued once that relationship ended. Thus, it is more specific in its coverage than family violence. Another reason for the continued use of the term ‘domestic violence’ is that it became increasingly obvious from the Aboriginal communities that I travelled to in NSW that the term ‘domestic violence’ is used by community members, community workers and by victims themselves to describe what they have previously experienced or are currently experiencing at the hands of their partners (or ex-partners). Thus, the decision to use the term ‘domestic violence’ was largely informed by the communities I travelled to and the victims I interviewed.⁷⁹

⁷⁶Aboriginal and Torres Strait Islander Social Justice Commissioner, *Aboriginal and Torres Strait Islander Communities – Key Issues* (2006) Paper prepared for the Australian Human Rights Commission, 1, 6 <http://www.humanrights.gov.au/pdf/social_justice/family_violence2006.pdf>.

⁷⁷Memmott et al, above n 6, 1.

⁷⁸J Atkinson, ‘A Nation is Not Conquered’ (1996) 3(80) *Aboriginal Law Bulletin* 4, 5.

⁷⁹The current NSW legislation—the Crimes (Domestic and Personal Violence) Act 2007—also relies heavily on the term ‘domestic violence’.

Greer, a respected Aboriginal woman who has worked for the past 20 years to provide education and information about domestic violence, adult and child sexual assault to Aboriginal communities across Australia, has also noted her preference for using the term ‘domestic violence’ stating that ‘a lot of Indigenous women that I’m around call it domestic violence ... and there is no confusion with it’.⁸⁰

However, I do acknowledge that the term ‘family violence’ will be more culturally appropriate in particular contexts. If this research involved interviewing both male and female Aboriginal community members about violence and connected issues such as child sexual assault and child protection, then the term ‘family violence’ would be fitting.

1.8 Overview of the Thesis

This thesis comprises a preface and nine other chapters. The preface has contextualised the research by outlining my interest and involvement in this area, and describes my experiences working as a solicitor representing both Aboriginal and non-Aboriginal women who are victims of domestic violence. The law is current as at 1 July 2012.

Chapter One outlines the introduction to this study and describes the aims and questions of the research as well as its significance.

Chapter Two describes the research methodology including participant interview structure, ethical considerations and the research limitations and strengths.

Chapter Three is the literature review, which examines existing research pertaining to domestic violence at both a national and an international level and considers international and Australian research in relation to the reduction and prevention of domestic violence at a local, national and international level.

Chapter Four introduces the topic of domestic violence as it relates to Aboriginal women both internationally and in Australia. This chapter continues a review of the literature in

⁸⁰ Australian Domestic and Family Violence Clearinghouse, above n 33, 13–14.

this area and identifies gaps that exist within the current literature in relation to the needs of Aboriginal women.

Chapter Five outlines legislation that exists in NSW to protect women from domestic violence and considers ADVOs as legal tools and the process and policing of such orders.

Chapter Six introduces the experiences of the women who participated in the interviews and describes the abuse they experienced at the hands of their intimate partners. It considers the effect the violence has had on the women and their children and ultimately what led participants to leave the violence or seek help.

Chapter Seven explores the participants' experiences of the legal system and the process they followed to obtain legal protection in the form of an ADVO against the perpetrator. It also examines how the participants understand the contents, definitions and meaning of ADVOs.

Chapter Eight considers the experiences of women after the ADVO has been obtained, reporting breaches of the order, enforcement of the order and the lasting effects of violence.

Chapter Nine explores and discusses the major themes and findings of the research, and in particular identifies some key policy issues for reform.

Chapter Two: Methodology

2.1 Introduction

This study focuses on domestic violence outcomes for Aboriginal and Torres Strait Islander women who have been victims of domestic violence at the hands of their intimate partners in NSW by examining the opinions, beliefs and experiences of Aboriginal women. Further, the underlying aim of this study is to challenge the notion that ADVOs provide adequate protection for Aboriginal women experiencing violence. This chapter describes the research methods used in the study.

This is a qualitative study and the findings are based on the information provided by 33 Aboriginal women who participated across NSW. All women interviewed were Aboriginal, resided in NSW when the violence was happening and each of them had been a victim of domestic violence. All had obtained an ADVO against their male partner or ex-partner to protect them from such violence.

The research aims were outlined in Chapter One and a qualitative approach allows the topics to be explored and described. This study provides a way for current policy and practice in relation to domestic violence and Aboriginal women to be viewed in a different way, one that examines the impact of such legislation, policy and discourse on the lives of Aboriginal victims of violence. No other similar research exists in NSW that specifically focuses on Aboriginal women's understanding of violence and ADVOs.

Chapters Six, Seven and Eight provide analysis and interpretation of the interviews to further understand the Aboriginal women's experiences with the court system and the police and thus, their overall impression of and interactions with the legal system.

2.1.1 Participant Information

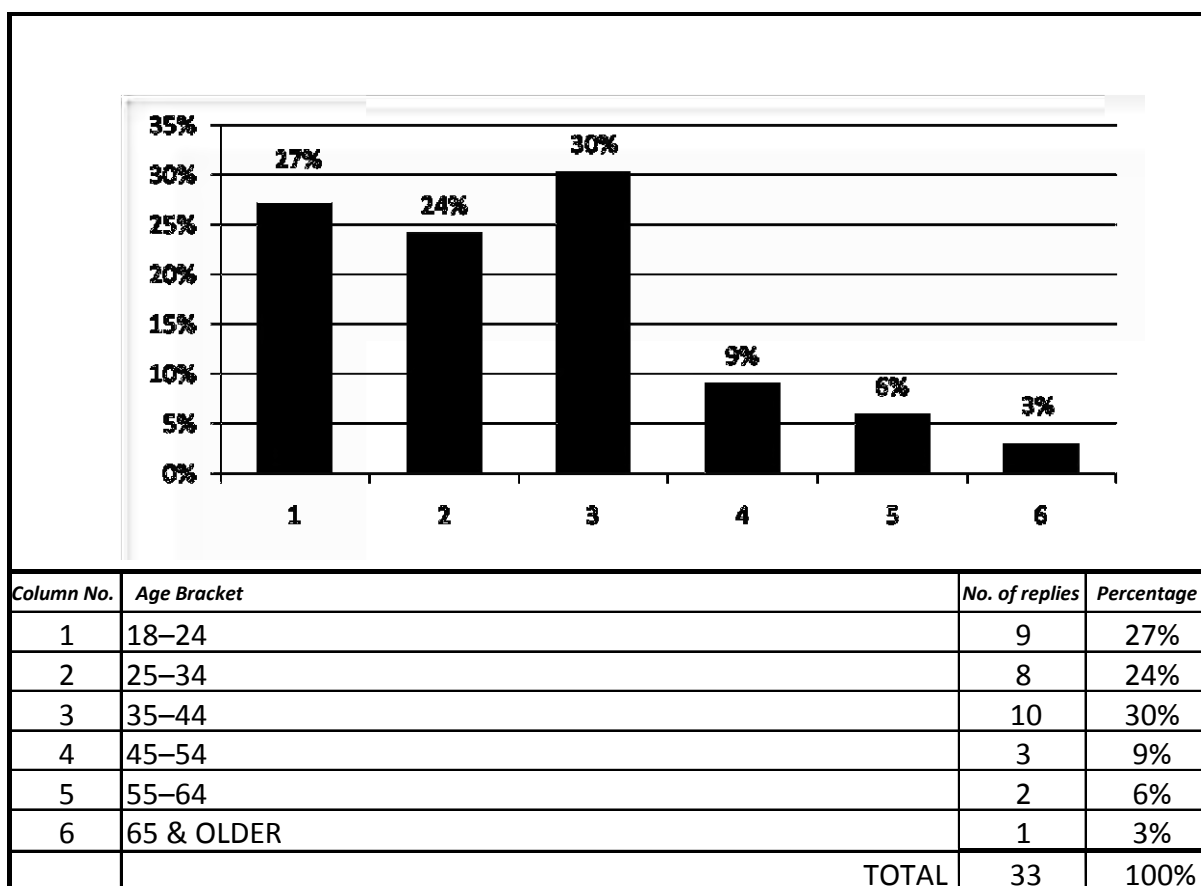
Seventeen of the women interviewed were aged between 18 and 34 years old, ten were aged between 35 and 44, five were aged between 45 and 64, and one was over 65. This information is contained in Table 2.1.

Interviews ranged from 30 minutes to over 100 minutes in duration and included many women who had experienced difficulties obtaining an ADVO, faced obstacles enforcing the ADVO and those who received only provisional police support when reporting a breach to the police by the perpetrator.

Aboriginal women were selected by Aboriginal referring agencies and this is discussed in depth in section 2.5.

Table 2.1: Reported Age of Interviewees

(N=33)



2.1.2 Locale of the Study

NSW was chosen as the jurisdiction to be researched as the researcher had previously worked with urban, rural and remote Aboriginal communities around the State and had developed a number of connections within these communities. A number of locations were chosen across NSW where the qualitative research would take place. These locations had to vary in classification from rural, remote and metropolitan areas and were chosen for their geographical distribution around the state. Locations also needed to be relatively accessible for the researcher. Contact with Aboriginal services and community organisations were made in all the areas visited to ensure that such services would be willing and able to assist in the research process.

Once the locations were selected, the Rural, Remote and Metropolitan Areas (RRMA) classification system was used to determine the remoteness of a geographic area. The Australian government uses RRMA to determine eligibility for certain government programmes.

There are seven RRMA categories:⁸¹

- RRMA1: Capital Cities
- RRMA 2: Other Metropolitan Centres
- RRMA 3: Large Rural Centres
- RRMA 4: Small Rural Centres
- RRMA 5: Other Rural Areas
- RRMA 6: Remote Centres
- RRMA 7: Other Remote Areas

Figure 2.1 outlines the residency of the participants in this research. Eight of the women interviewed resided in the capital city, Sydney and four lived in a metropolitan centre. Eighteen lived in rural areas and three lived in Moree, which is classified as both a rural

⁸¹ Information on the RRMA classification system accessed from
<<http://www.nswrdn.com.au/site/index.cfm?display=57889#13. What is a Rural Remote Metropolitan Area>>.

and remote area.⁸² The variation of location of interviewees provides a cross-section of the Aboriginal community from across NSW.

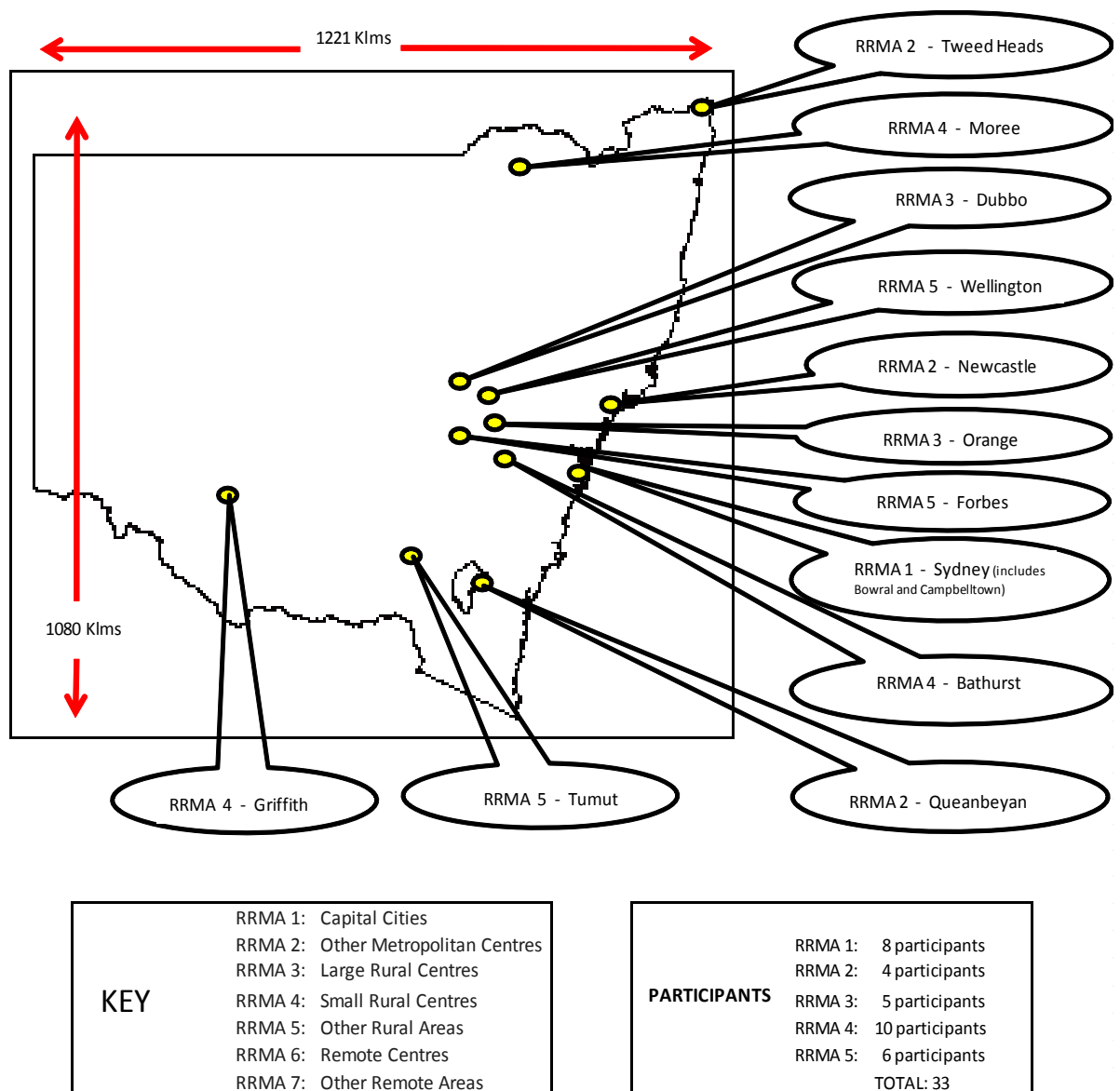


Figure 2.1: Residency Areas of Study Participants

⁸² The Department of Aboriginal Affairs NSW classifies the township of Moree on the Moree Plains of NSW as a rural remote town (<<http://www.daa.nsw.gov.au/communitydevelopment/feb05/MoreeFeb05.pdf>>) and Moree itself as an Indigenous population of 19.4 per cent (<<http://www.mpssc.nsw.gov.au/>>). The NSW Department of Health identifies that 13 per cent of the Moree Plains area is classified as remote (<http://www.health.nsw.gov.au/publichealth/chorep/rur/rur_pop_aria_atasi.asp>).

2.2 Rationale for Method

2.2.1 A Qualitative Approach

Qualitative researchers are interested in understanding how people interpret their experiences, how they construct their worlds and what meaning they attribute to their experiences.⁸³ This type of research allows the meaning of a phenomenon for those involved to be uncovered. It is useful in considering the experiences of Aboriginal women as a minority group and the barriers they face when reporting violence.

If research is conducted with the purpose of adding to the knowledge base, making information accessible to others, and to solve problems, then qualitative research allows the researcher to explore and understand the meaning that individuals or groups ascribe to a certain social or human problem.⁸⁴ Creswell states:

The process of qualitative research involves emerging questions and procedures, data typically collected in the participants' setting, data analysis inductively building from particulars to general themes, and the researcher making interpretations of the meaning of the data.⁸⁵

The objective of the study was to identify victims' experiences of violence, police intervention and the court process through the collection and interpretation of personal narratives from Aboriginal women who have obtained ADVOs to protect them from domestic violence. The narratives are extremely useful in highlighting ways that the participants understood their experiences of safety after police intervention, court orders and other enacted protective mechanisms.

A qualitative approach was used in this research to explore issues and obtain information. It allows the researcher to develop an understanding of Aboriginal women's experience of the court system, their experiences in dealing with the police to report domestic violence incidences and breaches and also the factors that result in women eschewing such services. Detailed interviews were necessary to obtain information-rich data that could be analysed.

⁸³ Sharan Merriam, *Qualitative Research: A Guide to Design and Implementation* (Jossey Bass: Higher and Adult Education Series, 2009) 1, 5.

⁸⁴ John Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (Sage Publications, 2009) 4.

⁸⁵ Ibid.

One of the major aims of the current study is to develop an understanding of the victims' experiences and of their understanding of definitions of both violence and ADVOs. Speaking to Aboriginal women in NSW who have lived through these experiences best achieves this. Yet, before undertaking such research in the community, I thought it necessary to further familiarise myself with acceptable cultural protocol and practices to ensure research that I conducted was in line with major publications and reports relating to Indigenous consultation. These reports included 'Our Culture, Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights',⁸⁶ 'Research of Interest to Aboriginal and Torres Strait Islander Peoples',⁸⁷ and 'Guidelines for Ethical Research in Indigenous Studies'.⁸⁸ The NSW Department of Community Services (DoCS) produced a practice resource on working with Aboriginal people and communities.⁸⁹ These resources provided useful information and practice tips to ensure that my conduct was culturally appropriate and it improved my own understanding of the cultural dynamics of the communities I visited. Respect and sensitivity were used when speaking to the Aboriginal participants. I was also mindful of community issues such as 'sorry business' when there had been a death in the community. Aboriginal English was used as often as possible when communicating and the use of silence by participants was respected.

2.2.2 Research Considerations

As a researcher, my task was to encourage participants to share their stories, the good, the bad, the ugly, and the horrendously violent. As difficult as it was for many women to share such private moments, it is also hard for the researcher to hear. Having spent many years working as a lawyer, working in the field of family violence and family law, I had anticipated the emotional nature of the research and put into place certain mechanisms to

⁸⁶ T Janke, 'Our Culture, Our Future: Report on Australian Indigenous Cultural and Intellectual Property Rights' (Australian Institute of Aboriginal and Torres Strait Islander Studies and the Aboriginal and Torres Strait Islander Commission, 1998) <<http://apo.org.au/research/our-culture-our-future-report-australian-indigenous-cultural-and-intellectual-property-right>>.

⁸⁷ Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Research of Interest to Aboriginal and Torres Strait Islander Peoples' (Commissioned Report No 59, 1999) <http://www.arc.gov.au/pdf/99_02.pdf>.

⁸⁸ Australian Institute of Aboriginal and Torres Strait Islander Studies, *Guidelines for Ethical Research in Indigenous Studies* (1999) <<http://www.aiatsis.gov.au/research/docs/ethics.pdf>>.

⁸⁹ NSW Department of Community Services, *Working with Aboriginal Peoples and Communities: A Practice Resource* (2009) <http://www.community.nsw.gov.au/docswr/_assets/main/documents/working_with_aboriginal.pdf>.

ensure my own wellbeing. This included regularly debriefing with a number of colleagues and ensuring that the interviews were staggered, which allowed me time to process the interviews.

Establishing a rapport with research participants is imperative in eliciting the experiences, perceptions and opinions of those being interviewed. To ensure that women felt comfortable in my presence, I spoke at length about the work that I have been doing over the past decade in the area of human rights and social justice with Aboriginal women and children. I also answered personal questions about my life when participants asked. These questions did not involve disclosing personal or identifying information but covered broad topics such as where I grew up and went to school. This was done so that participants felt more comfortable with me, by allowing me to share some of my story with them first. My interviews have reinforced to me the importance of listening as a communication tool and also the value of empathy when hearing the story of a survivor of domestic violence. At all times, I was sensitive to the needs and requirements of the participants, and also sensitive to the feelings they had from speaking about the violence they had experienced.

In qualitative research, there is always the possibility of psychological harm to the participants.⁹⁰ Lee identified that research which intrudes into private spheres and delves into deeply personal experiences can be potentially distressing and emotive for some.⁹¹ In this research, during several interviews, the participants spoke about particular experiences that left them emotionally distressed. All wanted to continue with the interview and I felt privileged that these women trusted me with their stories and returned to a place albeit briefly that they had spent most of their time trying to forget. Certainly at the end of each interview, once the recording device was off, I spoke frankly with the women about their hopes and their dreams for the future and we always finished on a positive note with my appreciation explicit and genuine. I thought it necessary and meaningful to spend time speaking with participants at the end of each interview and I used this time to reinforce all the positive things that participants had told me. I gave legal information on the best way to approach victim's compensation, made many referrals to community legal centres and community services and also spoke to many participants about educational opportunities

⁹⁰ Murphy and Dingwall et al, *Qualitative Research Methods in Health Technology Assessment: A Review of the Literature* (2001) <<http://www.hta.ac.uk/fullmono/mon216.pdf>>.

⁹¹ R Lee, *Doing Research on Sensitive Topics* (Sage Publications, 1993).

that are available at Tranby Aboriginal College and University programmes specifically targeted at the Aboriginal community.

2.2.3 Semi-Structured Interviews

The use of semi-structured, in-depth interviews with participants proved most valuable in obtaining data rich information that enabled me to thematically analyse them. The advantage of using semi-structured interviews in qualitative research was discussed by Hitchcock and Hughes who described a semi-structured interview as one:

Which allows depth to be achieved by providing the opportunity on the part of the interviewer to probe and expand the interviewee's responses....some kind of balance between the interviewer and the interviewee can develop which can provide room for negotiation, discussion, and expansion of the interviewee's responses.⁹²

I was sure to encourage conversation to enable participants the opportunity to raise topics or incidences that had not been discussed, ask questions and also talk of events significant to them. This enabled women to share their stories both spontaneously and in response to the questions I had posed. It also allowed for many women to elaborate further on points that had come up in the interview and all of them were happy to answer further questions when asked.

2.2.4 Participatory Action Research Approach—Aims of the Research

A duty of a researcher is to state how the study aims to further the interests of the group studied. A key focus of this research is to encourage law reform in the area, striking up policy and procedural discussions relating to this area and generally giving a voice to the concerns Aboriginal women have in relation to domestic violence and navigating the legal system.

I utilised a participatory action research approach. Participatory action research is a method of research where creating a positive social change is the predominant driving force and

⁹² G Hitchcock and D Hughes, *Research and the Teacher: A Qualitative Introduction to School Based Research* (Routledge, 1989) 83.

allows community members to be involved in and empowered by change and action to their circumstances.⁹³ A prospective outcome for this research is that it will contribute to the law reform process, raise the profile of Aboriginal victims of violence and result in policy and procedural changes. Participatory action research is emerging as a self-conscious way of empowering people to take effective action towards improving conditions in their own lives,⁹⁴ a goal foremost in my mind.

This research is participatory action research. It discusses the experiences of Aboriginal victims of violence in NSW, to reflect on the meaning of these experiences and confidentially share the story with others, to give victims a voice and deepen their involvement in the research. It aims to empower Aboriginal women to take effective action towards improving conditions in their own lives.

Further, this research fits within a participatory action research approach as it is a useful and effective tool for reviewing and improving practice and will help to develop positive outcomes for victims of domestic violence.⁹⁵

2.3 Ethics Approval

Prior to undertaking fieldwork I was required to submit an ethics application to the University of New South Wales Human Research Ethics Committee for approval. This process is necessary for research involving human subjects. The committee required detailed submissions in relation to the nature of the research to be undertaken, the participants and the recruitment process, privacy issues and addressing other ethical concerns raised by research into the lives of human subjects.

Details were provided to the committee on how participant confidentiality was to be maintained. Copies of participant information statements, consent forms and revocation

⁹³ K Seymour-Rolls and I Hughes, *Participatory Action Research: Getting the Job Done* (2000) Action Research e-Reports <<http://www2.fhs.usyd.edu.au/arow/arer/004.htm>>.

⁹⁴ P Park 'Knowledge and Participatory Research' in P Reason and H Bradbury (eds), *Handbook of Action Research* (Sage Publications, 2000) 81, 81.

⁹⁵ M Boyle, *Research in Action: A Guide to Best Practice in Participatory Action Research* (2012) 2 <http://www.fahcsia.gov.au/sites/default/files/documents/06_2012/research_in_action.pdf>.

forms were submitted for perusal.⁹⁶ Final approval for the project was granted on 3 June 2008.

2.4 Pilot Study

Based on the problems identified in existing research and in consultation with the Australian Domestic and Family Violence Clearinghouse at the University of New South Wales⁹⁷ and WBAWLC,⁹⁸ a total number of 55 questions were proposed to be covered in the interviews. To ensure that participants would understand the questions and that the questions were culturally appropriate and not ambiguous, the questions were piloted in August 2008 with seven Aboriginal and Torres Strait Islander women from Tranby Aboriginal College taking part. These women voluntarily agreed to read the questions and provide constructive feedback to the researcher on the validity, reliability and continuity of the questions. Along with the feedback received from WBAWLC and the Clearinghouse, a number of questions were excluded and some rewritten, bringing the total number of questions to 50. Although this research is of a qualitative nature and not a quantitative one, I thought it was important to use semi-structured interviews that allowed me to follow identical interview direction with each participant thus ensuring no questions were omitted.⁹⁹ A risk with an unstructured interview format is that participants would not address the key research questions central to the research. Having a number of questions, both in an open and closed format, enabled the interview to cover the key research questions while still allowing participants to ‘tell their stories’.¹⁰⁰

⁹⁶ See Appendix 2.

⁹⁷ The Australian Domestic and Family Violence Clearinghouse at UNSW is a national resource on issues of domestic violence and family violence. It provides a central point for the collection and dissemination of Australian domestic and family violence policy, practice and research. See <<http://www.austdvclearinghouse.unsw.edu.au/>>.

⁹⁸ Consulting with a key Aboriginal women’s legal service in NSW is in line with the recommendations made in the AIATSIS paper ‘Guidelines for Ethical Research in Indigenous Studies’, which promotes respect, recognition and involvement of Indigenous stakeholders, see <<http://www.wirringabaiya.org.au/>>.

⁹⁹ Sarantakos, above n 13, 268–69.

¹⁰⁰ J Jasinski and L Williams, *Partner Violence: A Comprehensive Review of 20 Years of Research* (Sage, 1998) 50. Jasinski and William emphasise that a complete understanding of women’s victimization must include qualitative analyses of accounts in their own words’.

2.5 Target Population and Methods

Participants for the study were recruited in negotiation with a number of agencies and through discussions with colleagues of the researcher, who work with Aboriginal clients or for Aboriginal legal organisations. The selection criteria for participants were must be an Aboriginal and/or Torres Strait Islander woman; living in NSW when the violence occurred; aged over 18 years old; and currently have or have had in the past an ADVOs against their male intimate partner.

Consideration as to the location of participants was influenced by the release of NSW Recorded Crime Statistics by BOCSAR,¹⁰¹ which gives a breakdown of domestic violence incidences occurring in each local government area (LGA) around the state. This data was then cross-referenced with the material on Indigenous populations in NSW released by the NSW Department of Health, which provides an overview of the Aboriginal population in NSW by LGA.¹⁰² Statistical information obtained from the above data indicated the areas with the greatest levels of reported domestic violence by Aboriginal women. These areas were targeted as more likely to provide sufficient numbers of participants.

This selection criteria was made available to a number of Aboriginal services located in the earmarked LGAs in NSW including WBAWLC, Binaal Billa Family Violence Legal Service, a number of Aboriginal Legal Services, Family Violence Prevention Services and a number of Women's Domestic Violence Court Assistance Schemes in NSW.

The aim of the recruitment of potential participants was to select participants with the help of the referring agencies who would best answer the research questions and felt comfortable doing so. Ensuring agencies referred the participant, created a valuable professional link and increased the likelihood of a successful interview. It also ensured that women who may be further traumatised or adversely affected by speaking of the violence they had experienced were not considered, on the suggestion of the referring agencies.

¹⁰¹ NSW Bureau of Crime Statistics and Research. *Top 50 Local Government Areas for Domestic Violence. January 2007–December 2007*

<http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_crime_stats>.

¹⁰² NSW Department of Health, *Distribution of Population by Aboriginality by Local Government Area* (2006) <http://www.health.nsw.gov.au/publichealth/chorep/atsi/atsi_popatsi_lgamap.asp>.

The research draws upon the geographical area of NSW and encompassed participants from rural and urban regions of NSW. The researcher travelled within NSW to a number of regions to conduct interviews with participants. These areas included Dubbo, Wellington, Forbes, Orange, Griffith, Bowral, Bega and the greater metropolitan areas of Sydney.

Collaborating with a number of Indigenous agencies allowed for the safety of the participants involved in the research to be assessed by staff at the time the invitations were made. It also allowed for agency staff to liaise with participants to determine a convenient time and location for the interview to be completed and their attitudinal responses to being involved.

I was approached by several women who had heard about the research through mutual acquaintances and had then indicated their willingness to be involved. One woman entered the study by chance because she had been speaking about writing poetry on domestic violence and I mentioned that I was currently researching in that area and she immediately volunteered to be interviewed.

2.5.1 Process

Prior to each interview, I personally discussed with each participant what my research was about and what I was hoping to achieve by completing it. Any questions relating to the research were answered carefully and completely. Once the research was explained, the information statement about the research was read by the participant, or if needed, read to the participant (see Appendix 3). This statement provided information about the study with my name and contact details, the title of the project and the purpose of the study. The statement also contained a number of contacts that participants might find useful if they wished to speak to someone about domestic violence after the interview. The numbers included WBAWLC, the 24-hour Domestic Violence Helpline, the 24-hour Victims Support Line, and the number for Lifeline. The information statement also contained details of the University of New South Wales and a number that participants could contact if they had concerns about the conduct of the research project. The interview then proceeded with the researcher reading the questions to all participants.

2.5.2 Informed Consent

A consent form was also provided to participants and they were asked to initial or sign the consent form (see Appendix 3). On the consent form, there was room for my signature as witness to their consent. Participants were asked to circle their compliance with having the interview recorded as well. I began each interview by explaining how the participants' privacy is protected, that their identities would be concealed and reassured them that if the conversation or questions veered to a topic or incident that the participant did not wish to discuss that I respected their wishes. Finally, before we began, I reiterated that the participant could withdraw from the interview at any stage without ramifications. It was important at all stages of the process that all the participants felt free to ask questions, understood the process and knew what was expected of them to ensure there was no confusion or deception.

2.5.3 Environment

Interviews were conducted in a safe, private environment with only the researcher and the participant present. The advantage of face-to-face interviews is that it allows the participant to tell their story with minimal interruptions. When talking about legislation or the failure of the police to act in certain incidences I was careful to use neutral, non-judgemental comments to minimise the bias of the information received. Some phone interviews were also undertaken when a participant was referred to me from an agency and lived outside the Sydney metropolitan area. After making phone contact with the participant to explain the interview, a copy of the participant information statement, consent forms, revocation forms and a stamped self-addressed envelope was sent to potential participants. Once I received the consent form signed in the mail, the interview would be conducted and subsequently recorded over the phone.

Phone interviews proceeded and were conducted in a semi-structured way, and no particular differences were identified between interviewing face-to-face or over the phone. I used several open questions at the end of the interview and asked women to expand on events that had significantly impacted their lives while they were experiencing violence. I then finished with a thought provoking question of what assistance could have helped them when they were experiencing violence. I encouraged and gently prompted participants to

elaborate on certain areas where I felt clarification or more information was needed. These prompts were gentle and in the form of ‘tell me more’ or ‘is there anything else you’d like to add’.

Interviews were then transcribed verbatim. Written notes that I had taken while the interviews were taking place were also transcribed as these notes recorded my thoughts, ideas and reflections.

Given the nature and subject of the research, I knew that only one opportunity would be given to interview the participant and given the transient and challenging lives of the participants, no further follow-up interviews would be possible. Nor was it feasible to send participants a completed written transcript of their interview because many were in unstable accommodation, fearful of their safety and literacy was an issue for some. Being aware of all these factors, I was sure to obtain as much information as possible at first instance.

2.5.4 A Small Thank You Gift

Sharing intimate experiences is like opening a window and allowing a view to your soul, and it is not something that should be expected nor undervalued by any researcher. To every participant, a box of chocolates and a card was given as a token of my appreciation for giving their time and their energy to take part. While this may seem like a small gesture, it is difficult to explain how much joy this gesture brought to so many women who participated. In fact, on a number of occasions, I was overwhelmed by their genuine delight at receiving such a gift. The most common responses once given the chocolates were ‘I can’t wait to share these with the kids’, ‘I’m going to save these for a special occasion’ or ‘no-one’s ever given me chocolates before’.

2.6 Interviewee Questionnaires

Appendix 5 presents the questionnaire and the list of questions each of the 33 participants were required to answer. Professor Mick Dodson has stated that 30 per cent of Aboriginal

adults lack basic literacy skills.¹⁰³ When undertaking this research, it was important to acknowledge that literacy might be an issue with participants. As such, participants were not given copies of the questionnaire (unless they requested one) and all questions were read out by the interviewer. This also allowed the interviewer to ask further questions when the need arose and to clarify and expand on the question if needed and to avoid any potential embarrassment participants might feel if they were unable to understand the written questions.

The set questions were used as the main guide but participants were encouraged to elaborate on their answers and supply further information if they could.

2.7 Ethical Considerations in Intimate Violence Research

A number of issues arise when undertaking research on domestic violence in the community. Consideration must be given to participant safety and this was an unequivocal priority of the research.

Steps to minimise any risks faced by participants contributing to the research were taken in the following ways:

1. No identifying details were given by the participants. All participants were asked to sign a consent form, which they did. To ensure their privacy was maintained, many chose to initial the forms to protect their identity. Once a woman agreed to take part in the research, she was allocated a number to maintain confidentiality.
2. Each participant was required to understand an information statement provided to them, which outlined the nature of the research and how their privacy would be protected. Once this was done, they were required to sign a consent form agreeing to be interviewed.
3. A Revocation of Consent form was attached to the consent form and all participants were made acutely aware that their consent to participate in the research could be withdrawn at any time. It was also made verbally clear to all participants that they were free to do this at any time without any ramifications. Participants were made aware that revoking consent would not harm any relations with Aboriginal

¹⁰³ *The Koori Mail*, 22 April 2009, 449.

community services or other services they accessed or the University of New South Wales.

4. Each participant was given the option to have the interview recorded. Only one participant declined to have the interview recorded for privacy reasons.
5. Participants heard about the research through friends, colleagues, various legal services and community services. Discussions with these people and agencies in regards to a participant's suitability to take part were had to ensure the participant was not currently at extreme risk and was both mentally and psychologically able to discuss the events that had transpired without further psychological injury.
6. Safe and familiar spaces chosen by the participants were used to conduct the interviews. This allowed participants to feel comfortable and ensured that privacy obligations were met. Interviews were conducted in a range of environments including Aboriginal Legal Service offices, Aboriginal cultural centres, the homes of participants, in my workplace, community organisations, Aboriginal Medical Services and also over the phone.
7. Follow-up support and advice was offered by refuge workers, solicitors in the local area and community workers from a number of agencies to ensure the participants' legal and non-legal needs were addressed. Referrals were made by the researcher to these agencies after the interview was completed.
8. The nature of the interviews and the subject matter is sensitive and evocative. Information was conveyed and a range of referrals were given to participants to ensure their sound emotional and psychological wellbeing. These included but were not limited to:
 - Counselling services
 - Legal advice and information contacts
 - Victims compensation information
 - Health Centre details
 - Women's support agencies and services in the local area
 - Toll-free telephone numbers for urgent situations
 - Information about further study opportunities available.

2.8 Data Analysis

The recorded interviews were transcribed and then analysed thematically. This allowed the emergence of themes from the data and enabled me to categorise the research into three distinct chapters: Aboriginal women's experience of domestic violence prior to an ADVO; Aboriginal women's experiences of legal intervention as victims of domestic violence; and after court—enforcing ADVOs.

Such thematic analysis allows for the comparison of data against the existing literature and enabled the research to support pre-existing research and also discover new themes and issues. The Seidel model¹⁰⁴ for analysing qualitative data was followed. This process consists of three main parts: noticing, collecting and thinking. It has the following characteristics:

1. Iterative and progressive: it is iterative and progressive as it is a cycle that keeps repeating.
2. Recursive: it is recursive as one part can call you back to a previous part.
3. Holographic: it is holographic as each step in the process contains the entire process.¹⁰⁵

For this research, meaningful phenomena were identified, grouped and coded. Themes were further sorted, broken down and considered. Data was then analysed and the thinking stage begun, with the researcher looking for relationships and discoveries to make sense of the data value.

Files were established for each woman interviewed. Confidentiality was maintained through allocating a number to each participant to protect her identity and ensure privacy. All relevant documents including the consent form, my hand-written notes and the interview transcription were kept in the file. Once the interview transcripts were thematically analysed, notes on the various categories and highlighted quotations were kept in the files as well.

¹⁰⁴ Seidel, *Qualitative Data Analysis* (1998) 1
<http://www.quarc.de/fileadmin/downloads/Qualitative%20Data%20Analysis_the%20N-C-T%20Modell.pdf>.

¹⁰⁵ Ibid 2.

To ensure that data analysis of the interviews was successfully undertaken, it was necessary to read the interview transcripts a number of times to ensure that all the information is elicited and that understanding of participants' experiences, feelings and language was achieved.

2.9 Research Limitations and Strengths

This current study is not without a number of limitations. Thirty-three women from rural, remote and metropolitan areas of NSW were interviewed for this study and the sample size was reflective of the type of information required. This may have limited the representation of the findings. This research covered the state of NSW only and would need to be replicated in other states. This was not a quantitative study but one that required in-depth interviews to provide an insight and better understanding into the experience of obtaining an ADVO.

It could be argued that there was some selection bias because the participants were referred by support and legal organisations, as they may not be truly representative of all Aboriginal women experiencing violence or obtaining ADVOS in NSW. However, the purpose of this research was not to focus on all Aboriginal women experiencing domestic violence, but rather those who had sought assistance and obtained an ADVO through the court process.

It must be noted that this research is based on the accounts of only one group: Aboriginal women in NSW. One of the limitations also recognised was how the interviewees chose to depict themselves when being interviewed. There will always be limitations to participants' accounts and Dingwall identifies that data produced by interviews can be viewed as socially constructed and such data cannot offer us literal descriptions of the respondents' reality.¹⁰⁶ However, interviews can be analysed for what they can say about the kinds of accounts that are treated as legitimate in a particular setting.¹⁰⁷

¹⁰⁶R Dingwall and G Miller (eds) *Context and Method in Qualitative Research*. (Sage Publications, 2007) 59–60.

¹⁰⁷ Ibid 60.

One limitation of the study was the exclusion of information about perpetrators of violence. It was considered in the initial stages of the research to question women as to whether the perpetrators of the violence were Aboriginal or non-Aboriginal men. It was concluded that this information was not relevant to this particular study. However, it is evident that further research could be undertaken to fully investigate such perspectives. Another limitation of the study was that access to a car or having a driver's licence was only considered after participants began raising it as a barrier to leaving violence, and thus, related questions were not able to be asked of all the participants.

Whetstone identifies the difficulties around victims of domestic violence actually participating in one-on-one interviews with researchers and notes it as an issue other investigators also had discovered.¹⁰⁸ Small difficulties were encountered when recruiting Aboriginal women for these qualitative interviews. A number of women had agreed to participate, then at the last minute were not able to attend the interview due to a change in their circumstances. These changes included their partner being released from gaol and other pressing issues concerning their children.

NSW Local Courts and NSW Attorney General's Department were approached in an attempt to obtain data about the number of Aboriginal women who had sought ADVOs against their partners from 2008–2011. Unfortunately, information regarding Aboriginality is not kept by Local Courts or the NSW Attorney General's department and no statistical information is available at all in relation to Aboriginal women and ADVOs. The only statistics available on ADVOs taken out during that period is through the Bureau of Crime Statistics and Research (BOCSAR) and those statistics do not distinguish between Aboriginality and non-Aboriginality because such information is not supplied by the NSW Local Courts. It would have been useful information to have, allowing the researcher to consider increases or decreases in applications for ADVOs by Aboriginal women in NSW.

One strength of the thesis is that Aboriginal women were involved at all stages of the planning and the interview process. Hopefully as a result of this, there is a sense of ownership that Aboriginal women can assert over this research. The research gave Aboriginal women in NSW a voice and the opportunity to be heard about serious issues

¹⁰⁸ T Whetstone, 'Measuring the Impact of a Domestic Violence Co-ordinated Response Team' (2001) 24 *Policing: An International Journal of Police Strategies and Management* 1, 13.

impacting their lives. The narrative approach provided in-depth descriptions and rich information relating to women's experiences of both violence and ADVOs.

Aboriginal family, friends, colleagues, professionals and interview participants were consulted on a wide range of issues ranging from appropriate LGAs to undertake research in, interview question content, themes and issues to be addressed and also potential problems or issues that the researcher may confront.

A major strength of this study is its applicability and relevance. At the end of this process, it is envisaged that an informational tool such as a DVD be created specifically to inform Aboriginal women about how an ADVO operates and how it can be enforced.

Future research in this area could examine the link between high rates of domestic violence in certain LGAs and the pre-existence of reserves and missions and the link to poverty and limited access to not only health and social services but legal services as well. Implementing proactive policing policies¹⁰⁹ in NSW may have impacted the way domestic violence is policed but more research in the area is needed to determine whether Aboriginal women in particular are benefiting as possibly the larger issue is the regulation and implementation of breaches of ADVOs.

Another potential area for reform is to focus on the need for continuing research to identify the most effective way for Aboriginal women to interact and engage with police and other agencies around legal issues and other social justice matters.

2.10 Conclusion

This chapter provides a comprehensive overview of the methodology used in this study and provides information regarding the population targeted, locale of study, ethical considerations and the research strengths and limitations that are identified.

¹⁰⁹ NSW Police Force Code of Practice, *NSW Police Force Response to Domestic and Family Violence* (2009) 6

<http://www.police.nsw.gov.au/_data/assets/pdf_file/0016/165202/Response_to_Domestic_and_Family_Violence_Code_of_Practice_-_Updated_April_13.pdf>.

A qualitative approach was adopted with semi-structured interviews of 33 Aboriginal women. This research design allowed for the interviews to be conducted in a way that sufficiently covered specific areas of interest, while also allowing the stories and views of the participants to come through. An important feature of this research comes from adopting a qualitative approach, as the interviews offer a unique and telling insight into the violence experienced by Aboriginal women in NSW and the barriers they are faced with once they interact with the judicial system seeking a legal remedy. This research method enabled a small number of interviews to provide information-rich data that allowed the researcher to grasp the cultural, social and historical issues that impact on the legal needs and use of services by the participants. Insights were also gained into the attitudes and experiences of the participants towards the services and processes.

A lack of quantitative data available from NSW Local Courts in relation to the number of Aboriginal women who gained final ADVOs was disappointing. However, this does not detract from the significance of the qualitative information.

The methodology allowed the major research question to be appropriately investigated and answered. The process of interviewing the women and allowing them to tell their stories highlighted the severe, endemic violence many had experienced in their lifetime. With time spent researching as well as working in this area, one is easily desensitised to the abhorrent violence and mistreatment that occurs. This leaves one wondering if the court and police officers involved in domestic violence matters experience similar desensitisation and if so how that could potentially impact on service delivery and protection.

The underlying aim of this study is to challenge the notion that ADVOs provide adequate protection for Aboriginal women experiencing violence in NSW. To achieve this successfully, the research is underpinned by a colonial and feminist framework to ensure that issues are illuminated from the standpoint of women, with the primary focus on Aboriginal women's voices being heard.

Chapter Three: Prevalence and Approaches to Reducing and Preventing Family Violence

The purpose of this chapter is to examine how domestic violence affects women, and to consider definitions and explanations of domestic violence and its prevalence at both an international and domestic level. Domestic violence is a topic of immense public concern. A broad body of literature analyses domestic violence at both a global and domestic level and this chapter provides an overall view of how such violence impacts the lives of women socially, economically and medically in Australia and elsewhere.

There has been a shift in international public and legal policy towards domestic violence prevention in the last two decades. This shift reflects new trends in defining domestic violence as a broader social issue and as a result domestic violence has become a public matter rather than a private one. Government intervention in the form of policy, legislation and preventative measures have raised awareness of the issue of violence in the home. This chapter provides an overview of the Australian government's responses and prevention strategies, to further highlight and understand the impact domestic violence has.

This chapter also considers the views relating to domestic violence that exist both domestically and internationally, as the intention of this study is also to identify how domestic violence is defined within societies at both an international level, at a domestic level and by the Aboriginal community. Later in this thesis, the research interviews will highlight the importance of defining domestic violence and associated behaviours. These definitions are vital, as within Australia, divergence in definitions of what constitutes domestic violence can result in Aboriginal women in particular not being afforded the level of legal protection they need or require.

The research question framing this study is how do Aboriginal women in NSW perceive the function of an ADVO in terms of its capacity to prevent and protect them from domestic violence? To achieve this, an examination of definitions of domestic violence is imperative to better understand how the phenomenon is classified for legal, policy and community reasons. In the past, definitions of violence have not adequately reflected the

complexity of the relationships that exists and disparity between what was happening in a relationship and what the law defined as violence was inconsistent. The better defined domestic violence is, the easier it becomes for community members to identify violent behaviours. Interventions can then be more appropriately conceived.

3.1. Defining Domestic Violence

When undertaking a search of the literature, it is evident that domestic violence is known by many other names, whether it is referred to as intimate partner violence, gender-based violence, spousal abuse, interpersonal violence or domestic battery. Definitions of such violence provide an important mechanism to allow identification and response to the issue. Meyersfeld supports this by arguing that if domestic violence is properly defined to reflect the divergence of harm committed against women, it may become easier to identify effective, appropriate, and direct tools to minimise this phenomenon.¹¹⁰

For the purposes of this research, a variety of published definitions of domestic violence was considered. This variety is unfortunate because of the lack of agreement about the nature of domestic violence can make case identification difficult.¹¹¹ Lack of definitional consistency can be a barrier as well for victims of violence who report only physical abuse and it is recognised that domestic violence as a health issue remains under-identified due to poor disclosure.¹¹² Such ambiguity is problematic for Aboriginal women when identifying and reporting domestic violence.

From a health perspective, doctors and health practitioners are at the front line and diagnosing domestic violence is acknowledged as an important challenge in clinical practice.¹¹³ Consequently, the Australian Medical Association issued a position statement on domestic violence deploring all forms of domestic violence and acknowledging the high

¹¹⁰ Bonita Meyersfeld, *Reconceptualizing Domestic Violence in International Law* (2003) 67 *Albany Law Review Journal*, 371, 374.

¹¹¹ *Ibid* 363.

¹¹² K Hegarty and R Bush, 'Prevalence and Associations of Partner Abuse in Women Attending General Practice: A Cross-sectional Survey' (2002) 26(5) *The Australian and New Zealand Journal of Public Health* 437, 437.

¹¹³ K Hegarty, E Hindmarsh and M Gilles, 'Domestic Violence in Australia: Definition, Prevalence and Nature of Presentation in Clinical Practice' 2000 (173) *Medical Journal of Australia* 363, 366.

prevalence rates making it a major social problem in Australia.¹¹⁴ That statement defines it as ‘the domination, coercion, intimidation, and victimisation of one person by another, by physical, sexual or emotional means within intimate relationships’.¹¹⁵ This definition is quoted frequently as a succinct and accurate representation of the phenomenon.

By contrast, the United Nations (UN) Framework for model legislation on domestic violence is quite detailed and is far more expansive in its definition of domestic violence, stating:

All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed ‘domestic violence’.¹¹⁶

It is also necessary for the purposes of this research to briefly define the individual behavioural elements of domestic violence. The Australian Bureau of Statistics (ABS) classifies domestic violence into the following eight categories as shown in Table 3.1.¹¹⁷

¹¹⁴ Australian Medical Association, *Position Statement on Domestic Violence* (1998) <<http://www.ama.com.au/node/452>>.

¹¹⁵ Ibid.

¹¹⁶ Radhika Coomaraswamy, ‘A Framework for Model Legislation on Domestic Violence’ (Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, 2 February 1996) <<http://www.unhchr.ch/huridocda/huridoca.nsf/0/0a7aa1c3f8de6f9a802566d700530914?OpenDocument>>.

¹¹⁷ Australian Bureau of Statistics, *Conceptual Framework for Family and Domestic Violence* (2009) 1, 7 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyCatalogue/8C64ED549D55DFAFCA2575B70011CEAD>>. This comprehensive set of behaviours is often used to measure the rates of incidence and prevalence of domestic violence in the community.

Table 3.1: Definitions of Types of Abuse

<i>Physical abuse</i>	Actual or threatened, causing pain and injury; denial of sleep, warmth or nutrition; denial of needed medical or personal care; disablement; murder;
<i>Sexual abuse</i>	Actual or threatened, including sexual assault or sexual abuse of children; non-consensual sexual acts; forcing a person to have unsafe sex; forcing a person to take their clothes off or remain naked against their will; making a person pose for pornography; or forcing a person to watch pornography or sexual activities;
<i>Psychological or emotional abuse</i>	Actual or threatened, involving manipulative behaviour; unfairly blaming a person for adverse events or making them feel they are a problem; or constant comparisons with other people, which work to lower confidence and self-worth;
<i>Verbal abuse</i>	Actual or threatened, in private or in public, designed to humiliate, degrade, demean, intimidate, or subjugate, including the threat of physical violence;
<i>Economic abuse</i>	Actual or threatened, including deprivation of basic necessities; seizure of income or assets; withholding or controlling against a person's will their access to money, food, clothes and personal items such as car keys or bankbook; unreasonable denial of the means necessary for participation in social life; and coercion;
<i>Social abuse</i>	Actual or threatened, through forced isolation from family or friends; control of all social activity; deprivation of liberty; and deliberate creation of unreasonable dependence;
<i>Property damage</i>	Actual or threatened, including damage to a person's personal property and violence towards pets;

An understanding of the direct and indirect behavioural elements mentioned above is important in considering the research results on how Aboriginal women in NSW perceive domestic violence and how they recognise these behaviours. In later chapters, my conjecture is that often Aboriginal women understand these terms differently to the legal and social policy definitions and this apparent lack of understanding can potentially be detrimental to their protection.

Such classifications of domestic violence, as given above, should be considered in conjunction with the NSW legislative in relation to domestic violence. NSW domestic violence legislation does not define domestic violence *per se*, but rather defines ‘domestic violence offences’ by referring specifically to 55 ‘personal violence’ offences in the *Crimes Act 1900* (NSW) where those offences are committed by persons in defined domestic relationships against other persons.¹¹⁸

3.2 Domestic Violence at an International Level

International reports and studies document the phenomenon of violence against women in both developed and developing countries. The United Nations Development Fund for Women (UNIFEM) acknowledges that violence against women is a universal problem that has reached epidemic proportions and is perhaps the most pervasive human rights violation that we know today.¹¹⁹ The World Health Organization (WHO) estimates that globally 520000 people die each year as a result of interpersonal violence, which is approximately 1400 deaths every day.¹²⁰ This is a strong acknowledgement that the phenomenon of violence against women, which includes violence in both a public or private sphere, affects the lives, and causes the deaths of so many women from around the world.

¹¹⁸ *Crimes (Domestic and Personal Violence) Act 2007* Section 4.

¹¹⁹ UNIFEM, *UN Trust Fund to Eliminate Violence against Women*, Facts and Figures on Violence against Women <http://www.unifem.org/gender_issues/violence_against_women/facts_figures.php>. See also UN General Assembly, *In-depth Study on All Forms of Violence against Women: Report of the Secretary-General*, A/61/122/Add.1 (6 July 2006) 1, 9 <<http://www.un.org/womenwatch/daw/vaw/v-sg-study.htm>>.

¹²⁰ A Butchart et al, Department of Injuries and Violence Prevention, World Health Organization, *Preventing Violence: A Guide to Implementing the Recommendations of the World Report on Violence and Health* (2004) 1, 11 <<http://www.who.int/publications/2004/9241592079.pdf>>.

As of 2006, 89 member States of the UN had legislative provisions that specifically address domestic violence.¹²¹ There are 102 States that are not known to have any specific legal provisions on domestic violence, demonstrating the lack of attention that violence against women receives in many parts of the world.¹²² Accordingly, advocating for victims of violence and implementing programmes to end or even reduce violence may be futile when many countries have no legal provisions to protect and provide justice to victims.

The WHO Report on Violence and Health notes the pervasiveness of violence in people's lives, quoting Nelson Mandela that:

The twentieth century will be remembered as a century marked by violence. Less visible, but even more widespread, is the legacy of day-to-day, individual suffering. It is the pain of children who are abused by people who should protect them, women injured or humiliated by violent partners, a legacy that reproduces itself.¹²³

What is clear from the WHO report is that domestic violence is experienced by a large percentage of women around the world irrespective of social, economic, religious or cultural groups. Domestic violence permeates all aspects of society and community and has extensive responsibility for a decline in the status of victim's health and the resulting emanating economic impact that is seen. This is particularly true for Indigenous women in Australia who are one of the most victimised racial groups in Australia.¹²⁴

Violence against women is a universal human rights issue. Outlining the pervasiveness of violence against women around the world moves the issue away from being a hidden issue in society to a prominent issue. It is evident that some states do not have legislative mechanisms in place to provide protection for women against such violence and therefore violence is recognised as a personal issue not an issue for the state. Considering that violence against women has now been described as reaching epidemic proportions this lack

¹²¹ Ibid 89.

¹²² Ibid.

¹²³ EG Krug et al (eds), 'World Report on Violence and Health' (World Health Organization, 2002) 1 <http://www.who.int/violence_injury_prevention/violence/world_report/en/>.

¹²⁴ International Indigenous Women's Forum, *Mairin Iwanka Raya—Indigenous Women stand against Violence* (2006) 1, 27 <<http://www.indigenouswomensforum.org/vaiwreport06.pdf>>. See also World Health Organization, WHO Multi-country Study on Women's Health and Domestic Violence against Women Initial Results on Prevalence, Health Outcomes and Women's Responses (2005) 1, 7 <http://www.who.int/gender/violence/who_multicountry_study/en/>.

of state awareness and involvement provides women who are victims of domestic violence with little or no protection at all. This shift in social policy and social responsibility now places the onus of responsibility on states to protect their citizens and prevent future violence, for those citizens residing in UN member States with legal provisions addressing domestic violence.

3.3 International Approaches to Reducing and Preventing Domestic Violence

3.3.1 Prevention on a Global Scale

Research indicates that violence against women feeds off discrimination and reinforces discrimination.¹²⁵ The failure of a state to ensure that women have equal opportunities for education, shelter, food, employment and access to formal state power is another form of discrimination and one facet of the state's responsibility for abuses of women. With the failure of a state to ensure such opportunities and concede responsibility, preventative measures to eradicate violence against women are nugatory.

The continuing empowerment of women and girls is an important step in resolving and preventing domestic violence. In 1993, the UN issued the Declaration on the Elimination of Violence against Women in response to the increasing recognition of domestic violence as a global human rights issue. The Declaration sets forth appropriate mechanisms for domestic governments to address, consider and prevent all forms of violence against women. The Declaration on the Elimination of Violence against Women strengthens and supplements the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Cultural and Social Rights and the Convention against Torture and other Inhuman, Degrading Treatment or Punishment. These international instruments compel nation states to address issues of violence against women.

The WHO released the 2002 'World Report on Violence and Health'¹²⁶ with the issue of prevention of violence being the universal goal. The report was followed up in 2004 with

¹²⁵ S Dauer and A Kozma, 'Domestic Violence as Torture: Integrating a Human Rights Framework into the Domestic Violence Movement' (2001) 13(11) *Off Our Backs* 28–31.

¹²⁶ WHO, above n 123.

report ‘Preventing Violence: A Guide to Implementing the Recommendations of the *World Report on Violence and Health*’.¹²⁷ The latter report supports the introduction of prevention programmes at a young age to modify or eliminate factors that can lead to violence in the future. By doing this, there are significant prospects for preventing the problem. Preventative measures encompass a range of proactive methods that include limiting exposure to violence on television, early intervention for young victims of violence, school-based dating violence prevention programmes, family therapy and mentoring programmes.¹²⁸

Academics have argued for the re-conceptualisation of extreme forms of domestic violence as private torture under international standards and to view the problem within the framework of the mainstream human rights treaties.¹²⁹ These arguments rely heavily on domestic governments being responsible under international law to prohibit acts of violence against women and failing to do so constitutes a failure of state protection. While the Australian federal government has ratified a number of international treaties to address issues of violence against women, the state governments ultimately have responsibility for legislating against violence.

3.3.2 Response and Elimination

In 1995, the Beijing Declaration of Indigenous Women was declared at the UN Fourth World Conference on Women. This conference produced the Beijing Platform for Action,¹³⁰ which outlined 12 critical areas of concern for women, one of which was violence against women. The Platform for Action document comprehensively outlines and lists action to be taken by member states to condemn violence against women; provide victims both support

¹²⁷ Butchart et al, above n 120.

¹²⁸ Butchart et al, above n 52, 36–7.

¹²⁹ Meyersfeld, above n 110, 375; L O’Hanlon and C Benninger-Budel, ‘Expanding the Definition of Torture: Violence against Women’ (2003) 2(10) *Human Rights Dialogue* 1, 14 <http://www.carnegiecouncil.org/media/1061_hrd2-10.pdf>. See also The European Court of Human Rights recent decision in *Opuz v Turkey* (no 33401/02) Chamber hearing of Tuesday 7 October 2008 <<http://www.echr.coe.int/echr/en/header/press/multimedia/webcasts+of+public+hearings/webcasts2008.htm>> and *Broken Bodies, Shattered Minds: Torture and Ill-treatment of Women* (Amnesty International Publications, 2001) <<http://www.amnesty.org/en/library/info/ACT40/001/2001>>. See also C Humphreys et al *The Justice System as an Arena for the Protection of Human Rights for Women and Children Experiencing Violence and Abuse* (Co-ordination Action on Human Rights Violations, 2006) 1, 4–5.

¹³⁰ *Beijing Declaration and Platform for Action* (September 1995) The United Nations Fourth World Conference on Women, Beijing, China, 1, 48–56 <<http://www.un.org/womenwatch/daw/beijing/platform/>>.

and access to justice; enact and enforce legislation relating to domestic violence; formulate and implement plans of action to eliminate domestic violence; create, improve or develop training programmes relating to domestic violence and allocate adequate resources to implement plans of action to respond to domestic violence.¹³¹

Many governments around the world have subsequently developed National Plans of Actions and favour a multi-sectoral approach in eliminating all forms of violence against women by intimate partners. The WHO's main recommendations for action to eliminate violence against women by intimate partners include:

- Encouraging governments to invest more in research of intimate partner violence
- Putting programmes in place to enable families and communities to deal with the problem of intimate partner violence
- Integrating programmes on partner violence with other programmes such as substance abuse and teenage pregnancies
- Ensuring programmes should focus more on the primary prevention of intimate partner violence.¹³²

Burton, Duvvury and Varia state that universal action is needed in addressing domestic violence. Responses could include incorporating domestic violence sensitisation and training into government, health care, police and legal organisations; co-ordinating the activities of different sectors (e.g. health, police, judicial, social services, community institutions) responding to the multiple aspects of domestic violence and centre each centre's intervention around the needs of the victim; devising and implementing programmes for perpetrators; and increasing public awareness of domestic violence and human rights through education and the media.¹³³

The current deputy Secretary-General of the UN, Dr Asha-Rose Migiro, previously stated that she believes the empowerment of women is one of the central objectives in her assignment within the UN.¹³⁴ Dr Migiro has urged greater efforts directed to the

¹³¹ Ibid 51–55.

¹³² WHO, above n 123, 111–12.

¹³³ B Burton, N Duvvury and N Varia, 'Justice, Change, and Human Rights: International Research and Responses to Domestic Violence' (International Center for Research on Women, 2000) 1, 6
<<http://www.icrw.org/docs/domesticviolencesynthesis.pdf>>.

¹³⁴ Interview with Dr Asha-Rose Migiro (Mondiaal Nieuws)
<http://www.mo.be/index.php?id=340&no_cache=1&tx_uwnews_pi2%5Bart_id%5D=27008>.

monumental challenge of ending violence against women, especially domestic violence, which she has described as ‘particularly evil’.¹³⁵

3.3.3 Australia’s Response and Obligations

In 2008, the Australian government became a party to the Optional Protocol to CEDAW and Australian women can now use the Optional Protocol to seek redress for alleged violations of their rights in the UN CEDAW.¹³⁶ Women can also seek redress for alleged violations of their human rights by the Australian government, which are guaranteed in treaties other than CEDAW, through other international complaint mechanisms that exist.¹³⁷

Australia’s accession to the Optional Protocol to CEDAW in 2008 now provides women with an additional tool to address the inequality and disadvantage they experience, and to advance their human rights.¹³⁸ Thus, Australia has a duty to exercise due diligence in ensuring that the provisions of various international documents are upheld.¹³⁹

Since 1993, the definitions of domestic violence and the policies and procedures associated with domestic violence have been extensively revised and developed. Gender inequalities and the promotion of women’s rights and interests are now a priority for many governments and non-government organisations around the world. These international developments heavily influence the changes to policies and interventions that we see domestically.

¹³⁵ Dr Asha-Rose Magiro, ‘Breaking the Silence—United against Domestic Violence in Norway’ (speech given at the 29th Council of Europe Conference of Ministers of Justice, 2009) <<http://www.un.org/apps/news/story.asp?NewsID=31211&Cr=violence+against+women&Cr1>>.

¹³⁶ Australian Human Rights Commission, *Mechanisms for Advancing Women’s Human Rights: A Guide to Using the Optional Protocol to CEDAW and Other International Complaint Mechanisms* (2011) Australian Human Rights Commission, 1. <http://www.hreoc.gov.au/sex_discrimination/publication/mechanisms/index.html>.

¹³⁷ Ibid. Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Optional Protocol to the International Covenant on Civil and Political Rights, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

¹³⁸ Ibid 3.

¹³⁹ Z Craven, ‘Human Rights and Domestic Violence’ (Australian Domestic and Family Violence Clearinghouse, 2003) 5 <http://www.adfvc.unsw.edu.au/PDF%20files/human_rights.pdf>.

3.4 Domestic Violence in Australia

Although this research centres on domestic violence in NSW, it is necessary to put the phenomenon of violence in context and consider violence as it affects women in Australia. From the information discussed earlier in this chapter, it is important to focus briefly on the attention and recognition that domestic violence receives at both an international and a domestic level. From the data discussed below, the way in which domestic violence permeates Australian society is reinforced, as is the likelihood of victims of domestic violence being women.

Domestic violence statistics confirm that women make up the majority of victims in domestic violence matters. Access Economics reported that it was estimated that 87 per cent of victims of domestic violence in Australia were women while 98 per cent of perpetrators were male.¹⁴⁰ This is not to suggest that domestic violence perpetrated by women against men does not exist, but it is important to acknowledge that the purpose of this research is to look at domestic violence from the perspective of women who are or have been victims.¹⁴¹

3.4.1 The ABS Women's Safety Survey 1996

First conducted in 1996, information was collected from over 6 300 female participants over the age of 18 about their safety at home and in the community.¹⁴² The survey focused on the nature and extent of the violence that participants had experienced. The survey found that 7.1 per cent of women interviewed had experienced some form of violence in

¹⁴⁰ Access Economics Pty Ltd, 'The Cost of Domestic Violence to the Australian Economy' (Australian Government Office of the Status of Woman, 2004) vi. See also A Morgan and H Chadwick, *Key Issues in Domestic Violence* (Australian Institute of Criminology, Research in Practice, No 7, 2009) 1 <<http://www.aic.gov.au/publications/current%20series/rip/1-10/07.aspx>>.

¹⁴¹ It is also pertinent to note the reported increase in levels of domestic violence among people in same-sex relationships and the growing concern that it is for the gay, lesbian, bisexual and transgender communities. See M Pitts et al 'Private Lives: A Report on the Health and Well-being of GLBTI Australians' (Monograph Series No 57, Australian Research Centre in Sex, Health and Society, La Trobe University Melbourne, 2006) 1, 12 <http://www.glhv.org.au/files/private_lives_report_1_0.pdf>. See also L Bartels, *Emerging Issues in Domestic/Family Violence Research* (AIC Report No 10, 2010) <http://www.aic.gov.au/documents/B/7/2/%7BB720C47B-56F2-4C4D-AA2C-57A2278FD87E%7Drip10_001.pdf>.

¹⁴² ABS *Women's Safety Australia* (Catalogue Number 4122.0) 1996. <http://www.abs.gov.au/Ausstats/abs@.nsf/lookupMF/46EA7C5B824D2940CA256BD0002840DF>

the 12 months prior to the survey, and 5.9 per cent of women surveyed had experienced physical violence.¹⁴³

The Women's Safety Survey is unable to provide reliable information about the levels of violence experienced by Indigenous women at the time, because the number of Indigenous women in the sample was small.

From the Women's Safety Survey, data was collected on service use and professional help sought after violence. From the results, it was estimated that only 20 per cent of women who were physically assaulted by a man sought professional help.¹⁴⁴

3.4.2 The Australian Component of the IVAWS

The IVAW telephone survey was conducted across Australia between December 2002 and June 2003 with a total of 6 677 women participating and providing information about their experiences of physical, psychological and sexual violence. The report provided estimates of the nature and extent of violence experienced by a sample of Australian women.¹⁴⁵ Only 91 of the women surveyed indicated they were Aboriginal and/or Torres Strait Islander. Although the IVAWS survey was conducted Australia-wide, an adequate breakdown of statistics state by state is not given.

The survey highlighted the high rates of domestic violence in Australia, where over 57 per cent of the women surveyed reported experiencing at least one form of physical violence during their lifetime.¹⁴⁶ In relation to Aboriginal and Torres Strait Islander women in Australia, the survey acknowledges the high levels of violence in Indigenous communities. The survey notes that a lack of access to telephones and/or permanent residential addresses compounded the difficulties associated with examining non-lethal violence against Aboriginal women. It is worth noting that of the Aboriginal women surveyed, higher levels

¹⁴³ Ibid 2

¹⁴⁴ Al-Yaman, Van Doeland and Wallis, above n 6, 29.

¹⁴⁵ J Mouzos and T Makkai, 'Women's Experiences of Male Violence, Findings from the Australian Component of the International Violence against Women Survey (IVAWS)' (Research and Public Policy Series No 56, Australian Institute of Criminology, Canberra, 2004) <<http://www.aic.gov.au/documents/5/8/D/%7B58D8592E-CEF7-4005-AB11-B7A8B4842399%7DRPP56.pdf>>.

¹⁴⁶ Ibid 2.

of physical, sexual and any violence during the 12 months preceding the IVAWS¹⁴⁷ were reported than by non-Aboriginal women. Overall, IVAWS is useful in highlighting that although Aboriginal women may be underrepresented in statistics relating to domestic violence in Australia, there is sufficient evidence to demonstrate the disproportionate occurrence of domestic violence against Aboriginal women.¹⁴⁸

3.4.3 ABS Personal Safety Survey 2006

The Personal Safety Survey (PSS) was conducted by the ABS from August to December 2005 in interviews that were conducted both face-to-face and over the telephone. The significance of the PSS is that it provides information on people's safety at home and in the community, and in particular on the nature and extent of violence against men and women in Australia. The PSS highlighted the ubiquitous nature of partner violence in Australia, with an estimated 1.3 million women having experienced some form of partner violence since the age of 15 in 2005.¹⁴⁹

The PSS found that 5.8 per cent of the Australian women that participated had experienced violence in the last 12 months, with 4.7 per cent stating this was physical violence.¹⁵⁰

Indigenous status was recorded in the survey; however, the sample was not designed specifically to enumerate Indigenous populations, and the resulting number of Indigenous women in the survey was too small to produce reliable estimates for this group.¹⁵¹ Moreover, there is no specific information given in the survey results on the experiences of violence by Aboriginal and Torres Strait Islander women, as the Aboriginal sample size was too small for Aboriginal status to be reported.

¹⁴⁷ Ibid 48.

¹⁴⁸ Ibid 30.

¹⁴⁹ ABS, *Women's Experience of Partner Violence* (Australian Social Trends, 2007) 6
<[http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/61292430E027131DCA25732F001CA53A/\\$File/41020_Women's%20experience%20of%20partner%20violence_2007.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/61292430E027131DCA25732F001CA53A/$File/41020_Women's%20experience%20of%20partner%20violence_2007.pdf)>.

¹⁵⁰ Ibid 2

¹⁵¹ Ibid

3.4.4 Time for Action Report

The National Council to Reduce Violence against Women and their Children reviewed all relevant Australian literature focusing on the nature and extent of violence against women for their 2009 ‘Time for Action Report’.¹⁵² The report outlines and advocates a new approach to reducing violence against women with investment in primary prevention and the justice system that will create respectful relationships, fair and just outcomes for all and safer communities.¹⁵³

From reviewing data relating to the prevalence of violence, it becomes apparent that domestic violence offences are grossly under-reported to police by victims for reasons ranging from the fact the victim did not consider the incident serious enough; is fearful of the offender and because the victim is of the impression that the police would not or could not do anything about it.¹⁵⁴ The Plan of Action outlined in the report sets an agenda for actions to be implemented by 2021,¹⁵⁵ and outlines key interventional approaches to reduce domestic violence in Indigenous communities suggesting specific initiatives for Aboriginal and Torres Strait Islander people that acknowledge key risk factors and issues specific to these communities.¹⁵⁶

3.4.5 Australian Law Reform Commission—Family Violence Enquiry

The ‘Time for Action’ report completed by the National Council to Reduce Violence against Women and their Children, proposed a number of strategies for action to improve the law’s capacity to provide just responses for women and children.¹⁵⁷ Action 4.1.2 encourages the establishment of a reference for the Australian Law Reform Commission (ALRC) to develop national guiding principles to conform a consistent interpretation of the

¹⁵² NCRVAWC, *Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021*(2009)
<http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/national_plan/Pages/default.aspx>.

¹⁵³ For a review of the report. Australian Domestic and Family Violence Clearinghouse, UNSW, Newsletter 37, Winter 2009, 1, 8–10 <<http://www.austdvclearinghouse.unsw.edu.au/newsletters.htm>>.

¹⁵⁴ Mouzos and Makkai, above n 142, 105.

¹⁵⁵ NCRVAWC, above n 148, 22.

¹⁵⁶ NCRVAWC, *Background Paper to Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children, 2009–2021*(2009) 9
<http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/background/Pages/default.aspx>.

¹⁵⁷ Ibid 119.

law relating to family violence.¹⁵⁸ Action 4.2.1 encouraged the ALRC to examine present state/territory domestic and family violence, child protection legislation and federal family law, and propose solutions to ensure that the inter-relationship in the application of these laws works to protect women and children from violence.¹⁵⁹ Such a reference was forthcoming, and the ALRC released the Family Violence Enquiry Report¹⁶⁰ on 11 November 2010. A review of the terms of reference and the scope of the report acknowledges and specifically recognises the vulnerability and experiences of Aboriginal women as victims of family violence.¹⁶¹ The report recognised that many Aboriginal women who are victims of violence struggle with the legal definitions of domestic violence and the apparent lack of examples¹⁶² of types of abusive behaviours appearing in the legislation.¹⁶³ Also identified in the report was the cultural and linguistic problems that arise when discussing emotional and psychological injury with Aboriginal women, particularly those who live in rural or remote areas with limited access to counsellors or psychologists.¹⁶⁴

The Australian enquiries demonstrate that solution and protection strategies for women and children who are victims of domestic violence are dynamic and complex and need to further investigate the vulnerabilities that Aboriginal women experience.

3.5 Social and Health Costs

While domestic violence has long been identified as a growing human rights concern,¹⁶⁵ it is now increasingly seen as an important public health issue on a global scale with the profound impact on women's health now widely acknowledged. Violence can result in

¹⁵⁸ Ibid.

¹⁵⁹ Ibid 120.

¹⁶⁰ Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence—A National Legal Response* (ALRC Report 114, 2010 NSWLRC Report 128) <<http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>>.

¹⁶¹ Ibid 67.

¹⁶² Ibid 246. Recommendation 5–2 in the report recommends that state and territory family violence legislation should include examples of emotional and psychological abuse or intimidation and harassment that illustrate such conduct that may affect Indigenous persons.

¹⁶³ Ibid 218.

¹⁶⁴ Ibid 222.

¹⁶⁵ K Morgaine, 'Domestic Violence and Human Rights: Local Challenges to a Universal Framework' (2007) 34(1) *Journal of Sociology and Social Welfare* 109 <<http://www.thefreelibrary.com/Domestic+violence+and+human+rights:+local+challenges+to+a+universa...-a0160228610>>; Humphreys et al, above n 129.

direct health consequences such as injuries and can also increase a woman's risk of ill-health in the future and impede her ability to participate in the world.¹⁶⁶ Domestic violence in Australia is considered as the single biggest health risk to Australian women aged 15–44 years.¹⁶⁷

Thus, considerable strain is put on our health system by women accessing medical care for injuries both physical and psychological, received as a result of domestic violence. Mental health services, accident and emergency units, child and family services, baby health centres, surgical units, general practitioners and sexual assault services respond to women on a daily basis who have been physically, sexually and emotionally abused by an intimate partner.¹⁶⁸

A number of recent reports¹⁶⁹ have emphasised the importance of 'preventative health'. That is, investing money to reduce the prevalence of particular health issues and chronic diseases that result from domestic violence. Research on health and economic costs of domestic violence provides information to strengthen the rationale for prioritising this issue and provide a basis for making informed decisions on the allocations of resources to intervene in this issue.¹⁷⁰

Women suffer innumerable health consequences as victims of domestic violence. In relation to physical health consequences, victims may experience severe medical conditions such as chronic pain syndrome, fractures, disability and reduced physical functioning. At a sexual and reproductive level, victims may suffer from infertility, sexual dysfunction, unwanted pregnancy, and sexually transmitted diseases including HIV/AIDS. Psychological and behavioural issues can manifest in a number of ways including

¹⁶⁶ WHO, above n 123, 100.

¹⁶⁷ Access Economics Pty Ltd, above n 140, 25.

¹⁶⁸ NSW Domestic Violence Committee, 'NSW Domestic Violence Strategic Plan' (Discussion Paper, November 1991) 1, 19.

¹⁶⁹ Vic Health, 'The Health and Economic Benefits of Reducing Disease Risk Factors' (Research Report, July 2009) <<http://www.deakin.edu.au/dro/view/DU:30020085>>; L Mueleners, D Hendrie and A Lee 'Measuring the Burden of Interpersonal Violence Victimization in Western Australia', *Trends and Issues in Crime and Criminal Justice No 352* (Australian Institute of Criminology) 2008, 1–6 <<http://www.aic.gov.au/documents/D/2/4/%7BD244CE0F-C737-49C1-8F6E-9C0D6BBA32EF%7Dtandi352.pdf>>.

¹⁷⁰ Vic Health Report, above n 165, 2.

depression and anxiety, alcohol and drug abuse, eating and sleep disorders, phobias and panic disorders, and suicidal behaviours and self-harm.¹⁷¹

In 2010, the NSW state government announced a domestic violence homicide review panel to investigate homicides resulting from domestic violence to better understand ways to strengthen the system for victims. The new panel may assist in the reduction of Indigenous women's deaths. Research relating to domestic violence homicides in the Indigenous community has highlighted dramatically different statistics in the Indigenous community compared to domestic violence homicides in the non-Indigenous community.¹⁷² Mouzos and Rushford report that despite Indigenous people making up a little over two per cent of the population, they account for just under a quarter of the domestic violence homicides as both victims and offenders, with alcohol considered a contributing factor.¹⁷³

3.6 Economic Impact

Domestic violence against women in Australia has a recognised economic impact. Domestic violence places an enormous economic burden on societies in terms of lost

¹⁷¹ WHO above n 123, 101. These health consequences are condensed from a table appearing in the report. The table draws on the scientific literature to summarise the health consequences that have been associated with domestic violence. Routine screening for domestic violence has been introduced by NSW Health antenatal services. Evidence suggests that women are often abused for the first time during their pregnancy and may be at increased risk of domestic violence during their pregnancy. See NSW Department of Health, *Routine Screening for Domestic Violence Program* (2005) Snapshot Report 3 and 4 <http://www.health.nsw.gov.au/pubs/2007/pdf/dom_voile_snap.pdf>; K Fraser, 'Domestic Violence and Women's Physical Health' (Topic Paper, Australian Domestic Violence Clearinghouse, 2003) 7. The following research provides a good overview of the nature of domestic violence experienced during pregnancy: J Mulrone, *Australian Statistics on Domestic Violence* (Australian Domestic Violence Clearinghouse Topic Paper, UNSW, 2003) 9–10. <http://www.austdvclearinghouse.unsw.edu.au/topic_papers.htm>; D Walsh, 'The Hidden Experience of Violence during Pregnancy: A Study of 400 Pregnant Australian Women' (2008) 14(1) *The Australian Journal of Primary Health* 97; ABS, *Personal Safety Survey, Australia 2005* (2006) 11 <[http://www.ausstats.abs.gov.au/ausstats/.../49060_2005%20\(reissue\).pdf](http://www.ausstats.abs.gov.au/ausstats/.../49060_2005%20(reissue).pdf)>

¹⁷² See Law Reform Commission of Western Australia, *The Review of the Law of Homicide—Final Report* (1997) <<http://www.lrc.justice.wa.gov.au/2publications/reports/homicide/P97-ch06.pdf>>; M Davies and J Mouzos, 'Homicide in Australia: 2005–2006 National Homicide Monitoring Program Annual Report' (Research and Public Policy Series No 77, Australian Institute of Criminology, 2007) <<http://www.aic.gov.au/publications/current%20series/rpp/61-80/rpp77.aspx>>; J Mouzos and M Segrave, 'Homicide in Australia: 2002–2003, National Homicide Monitoring Program Annual Report (Australian Institute of Criminology, 2004) <http://www.aic.gov.au/documents/C/C/2/%7BCC2E473C-5DC0-4459-8D00-CC5B0FF82DD0%7DRPP55.pdf>>; C Ringland and L Rodwell, 'Domestic Homicide in NSW, January 2003–June 2008' (Issues Paper No 42, NSW Bureau of Crime Statistics and Research, October 2009) <http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_mr_bb42>.

¹⁷³ J Mouzos and C Rushford, 'Family Homicide in Australia' (No 255, Australian Institute of Criminology, 2003) 2 <<http://www.aic.gov.au/publications/current%20series/tandi/241-260/tandi255.aspx>>.

productivity and increased use of social services.¹⁷⁴ Victims of violence sustain injuries that manifest differently. They may be physical, emotional, psychological or financial, all of which affect a woman's ability to raise her family, complete paid work responsibilities and be a contributing member of the community she lives in. In 2009, violence against women and their children in Australia was estimated to cost the Australian economy \$13.6 billion.¹⁷⁵ This figure has increased dramatically from 2004 when it was reported that the estimated cost of domestic violence was \$8.1 billion a year.¹⁷⁶ Laing¹⁷⁷ divides the extensive costs to the community into direct/tangible costs such as those associated with the provision of services, facilities and resources and indirect/intangible costs, which refer to the 'pain, fear and suffering incurred by women and children who live with domestic violence'.¹⁷⁸ Of particular interest in Laing's research is the consideration of 'opportunity costs', which are defined as 'the costs of opportunities which the participant has lost as a result of being in or leaving the violent relationship'.¹⁷⁹

No specific studies relating to economic impact on Aboriginal women have been conducted, given many Aboriginal women's socio-economic position we would expect the effects to be more profound. Braaf and Barrett Meyering conducted research in 2011 and one of the limitations to the research they acknowledge was the lack of participation by Indigenous women and the difficulty of then gaining a clear picture as to the economic consequences of domestic violence for Aboriginal women.¹⁸⁰ However, the research did identify a number of financial barriers for many Aboriginal women, including finding suitable and affordable housing to accommodate larger families¹⁸¹ and discrimination from

¹⁷⁴ The National Council to Reduce Violence against Women and their Children, 'The Cost of Violence against Women and Their Children' (2009) 26
http://www.fahcsia.gov.au/sa/women/pubs/violence/np_time_for_action/economic_costs/Pages/default.aspx.

¹⁷⁵ Ibid 34.

¹⁷⁶ Access Economics Pty Ltd, above n 140, vii.

¹⁷⁷ L Laing, 'Australian Studies of the Economic Costs of Domestic Violence' (Topic Paper, Australian Domestic and Family Violence Clearinghouse, 2001)
http://www.adfvc.unsw.edu.au/PDF%20files/eco_costs_final.pdf. See also L Laing and N Bobic, 'Literature Review: Economic Costs of Domestic Violence' (Topic Paper, Australian Domestic and Family Violence Clearinghouse, UNSW, 2002)
http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Economic_costs_of_DV.pdf.

¹⁷⁸ Ibid 2.

¹⁷⁹ Laing, above n 115, 3.

¹⁸⁰ R Braaf and I Barrett Meyering, 'Seeking Security: Promoting Women's Economic Wellbeing Following Domestic Violence' (Paper 1, Australian Domestic and Family Violence Clearinghouse, UNSW, 2011) 23
http://www.adfvc.unsw.edu.au/PDF%20files/Seeking_Security_Report_WEB.pdf. This paper conducted interviews with 57 victims of domestic violence with only 2 of those victims identifying as Aboriginal.

¹⁸¹ Ibid 44.

real estate agents that Aboriginal women experience when trying to access the private rental market.¹⁸²

These barriers are heightened by the federal government's passing of the 2010 legislation *The Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Act 2010*, which further extended compulsory income management for many Aboriginal communities. The result for Aboriginal women who are escaping violence translated into less freedom of choice around managing their finances and difficulties meeting other financial obligations associated with leaving a violent relationship, which may include relocation expenses, legal expenses and childcare obligations.¹⁸³

Domestic violence has been identified as one of the most common causes of homelessness in Australia.¹⁸⁴ The report 'Women, Domestic and Family Violence and Homelessness: A Synthesis Report'¹⁸⁵ identifies the growing problem of homelessness in Australia and of particular concern are the 'invisible' homeless population in Australia made up of women and children directly resulting from domestic and family violence. The report reiterates the findings of previous research and recommendations in relation to victims of domestic violence and homelessness,¹⁸⁶ and highlights the importance of an adequate supply of social housing for domestic violence victims.¹⁸⁷

3.7 Australian Responses to Domestic Violence: Law and Policy

In the early 1970s, the term 'domestic violence' began to be used in Australia to describe violence against women in their homes by their partner. Limited research exists documenting responses to violence experienced by women in their home by intimate

¹⁸² Ibid 47.

¹⁸³ Ibid 100.

¹⁸⁴ L Days, 'Family Violence and Homelessness in Aboriginal and Torres Strait Islander Communities' (Human Rights Now, December 2011) <<http://www.rightnow.org.au/topics/family-violence-and-homelessness-in-aboriginal-torres-strait-islander-communities/>>.

¹⁸⁵ 'Women, Domestic and Family Violence and Homelessness: A Synthesis Report' (Flinders University, 2008) <<http://www.fahcsia.gov.au/our-responsibilities/women/publications-articles/reducing-violence/women-domestic-and-family-violence-and-homelessness-a-synthesis-report>>.

¹⁸⁶ See D Chung et al, 'Home Safe Home: The Link between Domestic and Family Violence and Women's Homelessness' (Social Policy Research Group, University of South Australia, 2000)

¹⁸⁷ Ibid 63.

partners before the 1960s. The early 1970s, society saw a significant shift in thinking in relation to violence against women at the hands of their partners and in 1974 the first women's refuge in Australia was established at Glebe in NSW.¹⁸⁸

Legal reform was seen as a way to initiate change in the area of domestic violence law and policy. Laing defines the two key aims of this reform:

1. The first was to make the criminal law more effective at dealing with criminal assaults occurring within the privacy of the home; and
2. The second aim was to provide protection from future violence and harassment through the creation of protection orders.¹⁸⁹

Over the next decade, legal reforms were made to state and territory legislation, community legal education programmes were introduced, and responses to violence became better coordinated as health and welfare agencies built relationships and worked together to identify and respond to domestic violence.

Currently, the rights of women and children to live their lives in safety and with dignity, free from fear of violence or abuse, is well recognised in international law.¹⁹⁰ Despite this, many Australian women and children continue to experience violence, particularly domestic or family violence, as an everyday reality.¹⁹¹

The Australian government recognises the need for legislative responses to domestic violence to be dynamic, progressive and evolving. In 2011, the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 was passed through the

¹⁸⁸ L Laing, 'Progress, Trends and Challenges in Australian Responses to Domestic Violence' (Issues Paper 1, Australian Domestic & Family Violence Clearinghouse, 2000) 11. The Elsie Refuge in Glebe, NSW was established by a group of feminists who set up the refuge in response to a lack of services for women experiencing domestic violence. Although crisis accommodation existed, the Elsie refuge was the first refuge founded on an explicitly feminist philosophy.

¹⁸⁹ Ibid 4.

¹⁹⁰ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), Articles 1, 2; *Committee on the Status of Women—General Recommendation No 19* (11th session, 1992); *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Article 19

¹⁹¹ Australian Human Rights Commission Submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011. Introduction, Part 2
<http://www.hreoc.gov.au/legal/submissions/2011/20110729_family_law.html#fnB1>.

Federal Parliament.¹⁹² The Bill aims to provide better protection for children and families at risk of violence and abuse while also introducing expanded definitions of ‘family violence’.¹⁹³

In June 2012, the changes to the *Family Law Act 1975* (Cth) took effect and the *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011* became part of the government’s agenda to improve the family law system’s response to family violence and abuse. The new Act updates the definitions of family violence and child abuse, more clearly outlining what behaviours are unacceptable and encouraging appropriate action to be taken to prioritise the safety of children in family law disputes.¹⁹⁴

3.7.1 Commonwealth Government Approaches to Reducing Violence

The Commonwealth government’s Partnerships against Domestic Violence (PADV) strategy was launched in 1997 through to 2001. The strategy committed over \$25 million aimed at preventing domestic violence occurring, and educating the community about breaking the cycle whereby child victims later become adult offenders.¹⁹⁵ The initiative was designed to encourage the commonwealth, states and territories to work together on various priority themes relating to domestic violence.¹⁹⁶

The PADV strategy was later replaced by a significantly larger initiative the ‘Women’s Safety Agenda’, which committed over \$75 million to decrease the impact of domestic violence over four years. The initiative aimed to address four main themes: prevention, health, justice and services. The aim was to decrease the impact of domestic violence and sexual assault in the community and build upon the groundwork laid by the PADV strategy.

¹⁹² On 24 November 2011.

¹⁹³ Legal and Constitutional Affairs Legislation Committee. 2011 Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011 [Provisions]. Commonwealth of Australia 2011, 7. <http://www.aph.gov.au/senate/committee/legcon_ctte/family_law_familyviolence/report/index.htm>.

¹⁹⁴ *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*, <<http://www.comlaw.gov.au/Details/C2011A00189>>.

¹⁹⁵ Parliament of Australia, ‘Partnerships against Domestic Violence Strategy launched at the National Domestic Violence Summit’ (Prime Minister’s Press Release, November 1997) <[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=\(Id:media/pressrel/psm30\);rec=0](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=(Id:media/pressrel/psm30);rec=0)>.

¹⁹⁶ K Carrington and J Phillips, ‘Domestic Violence in Australia—An Overview of the Issues’ (Parliament of Australia, 2003) <http://www.aph.gov.au/library/intguide/sp/Dom_violence.htm>.

3.7.2 National Council to Reduce Violence against Women and Their Children

There is much professional discussion about the importance of both legal and policy responses to domestic violence and the most appropriate way to intervene and assist. In May 2008, the Australian government established an 11 member National Council to Reduce Violence against Women and their Children. The National Council to Reduce Violence against Women and their Children released the National Plan to Reduce Violence against Women and their Children,¹⁹⁷ outlining the Council's task in providing the government with advice on the development of an evidence-based National Plan to Reduce Violence against Women. While it is acknowledged that the National Plan exists to support all women experiencing domestic violence, it recognises that some Indigenous communities need extra assistance to address particular factors and disadvantaged that contribute to higher rates of family violence and sexual assault among Indigenous people.¹⁹⁸ Thus, the National Plan builds on the Closing the Gap¹⁹⁹ framework, which is working to help close the gap in life expectancy and life opportunities between Indigenous and non-Indigenous Australians.²⁰⁰

The Indigenous Family Safety Program²⁰¹ (IFSP) with a supporting Agenda was launched in 2010. Priorities under the Agenda are to work with Aboriginal communities to develop innovative approaches to address alcohol abuse, more effective police protection in remote communities, support for community led initiatives that heal trauma and change attitudes, and improve the coordination of services to victims, including children.²⁰²

National Outcome 3 in the National plan is focused exclusively on strengthening Indigenous communities. The strategy encompasses plans to foster the leadership of

¹⁹⁷ NCRVWC, *The National Plan to Reduce Violence against Women* (2009) http://www.facs.gov.au/sa/women/progserv/violence/nationalplan/Pages/default_new.aspx.

¹⁹⁸ Ibid 7.

¹⁹⁹ Closing the Gap (CTG) is a commitment by all Australian governments to improve the lives of Indigenous Australians, and in particular, provide a better future for Indigenous children. More information can be found at <http://www.fahcsia.gov.au/sa/indigenous/progserv/ctg/Pages/default.aspx> or <http://www.healthinfonet.ecu.edu.au/closing-the-gap>

²⁰⁰ NCRVWC, above n 134, 7.

²⁰¹ More information on the IFSP can be found at http://www.facs.gov.au/sa/indigenous/pubs/families/Pages/indig_fam_safety_agenda.aspx

²⁰² NCRVWC, above n 134, 7.

Aboriginal women within communities and broader Australian society, to build community capacity at the local level and to improve access to appropriate services.²⁰³

A key principle of the National Plan to Reduce Violence against Women and Their Children 2010–2022 (the National Plan) is the recognition that everyone in the community is responsible for reducing violence against women and their children. The National Plan directly supports other Australian human rights obligations under international laws and human rights instruments.²⁰⁴

The National Plan brings together the efforts of governments across the nation to make a real and sustained reduction in the levels of violence against women. This plan shows Australia's commitment to upholding the human rights of Australian women and it is the first plan to coordinate action across jurisdictions.²⁰⁵

The shift in language from 'prevention' to 'reduction'²⁰⁶ used by the government illustrates the ongoing struggle to address the issue of violence against women. The National Plan to Reduce Violence against Women identifies the prevalence of domestic violence against women in Australia and acknowledges that approaches to reducing violence against women varies widely across jurisdictions, with funding and variance in service provision differing.²⁰⁷ Also apparent is the diversity in legislative responses state to state. The report considers options for tackling the issue of violence against women and proclaims that an integrated, coordinated and collaborative approach between, and across, governments, communities and individuals is necessary to address contributors, and determinants of violence.²⁰⁸

²⁰³ Ibid 20–21.

²⁰⁴ These human rights instruments include the Universal Declaration of Human Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the Declaration on the Elimination of Violence against Women; the Vienna Declaration and Program of Action of the World Conference on Human Rights; the Millennium Development Goals; the UN Convention on the Rights of Persons with Disabilities; the Beijing Platform for Action; and the Campaign UNITE to End Violence against Women 2008–2015.

²⁰⁵ E Lloyd, 'New Directions in Australia – Building on the Evidence Base: A National Plan to Reduce Violence against Women and their Children' (Presentation at Regional Seminar for Asian Parliaments Preventing and Responding to Violence against Women and Girls: From Legislation to Effective Law Enforcement. New Delhi, 15-17 September 2011) 3 <<http://www.ipu.org/splz-e/newdelhi11/lloyd.pdf>>.

²⁰⁶ B Pease, 'Engaging Men in Men's Violence Prevention: Exploring the Tensions, Dilemmas and Possibilities' (Issues Paper 17, Australian Domestic and Family Violence Clearinghouse, 2008) 6 <http://www.adfvc.unsw.edu.au/PDF%20files/Issues%20Paper_17.pdf>.

²⁰⁷ NCRVWC, above n 134, 6.

²⁰⁸ Ibid 48.

3.8 Conclusion

The intention of this chapter has been to explore the phenomenon of domestic violence and analyse the vast impact socially, economically and health wise, it has on women both internationally and in Australia. Research has clearly quantified the impacts in terms of health and economic loss that both the victim experiences at a personal level and the state experiences in terms of economic costs related to medical care and loss of productivity. With significant morbidity and mortality rates, domestic violence is shown as a major public health issue.

This chapter briefly outlined the contemporary legal and social policies in place designed to protect women from violence and considers international²⁰⁹ and domestic preventative measures. Many countries have some type of legislation protecting women from violence at home; however, 102 UN member countries that are signatories to conventions aimed at protecting women from violence and discrimination provide no legal protection or options to women experiencing domestic violence.²¹⁰ The high incidences of domestic violence experienced by women around the world are acknowledged by organisations like the UN, are the complexities in defining such violence and describing behavioural components.

While Australia does have a solid legislative framework and intent to protect all women from domestic violence, it must be considered whether these measures are appropriate and effective for Aboriginal women given that research suggests they are far more likely to be victims of both domestic violence and domestic violence related homicides.

The definition of violence and the education of women around the world regarding domestic violence are important for reporting but also for the purpose of understanding and researching domestic violence, and ultimately preventing and reducing it, which has implications for both policy and legislative formation.

²⁰⁹ In addition to the CEDAW, the 1993 Vienna Declaration on Human Rights and the 1995 Declaration of the Fourth World Conference on Women in Beijing specified actions to protect women from discrimination and violence.

²¹⁰ UN General Assembly, above n 119, 89.

In relation to the research, this chapter acknowledges domestic violence as a universal human rights issue affecting all women and highlights the importance of countries working both individually and together, as was done in developing ‘The Beijing Platform for Action’ to design comprehensive strategies to prevent and reduce domestic violence. As a result of legislation and preventative strategies, there is more of an expectation on states and their legal systems to provide protection to women experiencing violence. Outlining the responsibilities and the role of the state in preventing violence and protecting women from violence, provides a framework for evaluating the effectiveness of legal tools such as ADVOs.

The next chapter moves to a specific analysis of the contextual and community factors relating to domestic violence in NSW and how they affect Aboriginal women, with Chapter Five providing an overview of legislative provisions.

Chapter Four: Indigenous Women and Family Violence

Most of the existing research pertaining to domestic violence in Australia is not Indigenous-specific and is focused on surveying the prevalence of domestic violence in the community, types of violence, the economic costs of violence to the community and appropriate responses. Little research has been conducted on domestic violence as it affects Aboriginal women in NSW and from a review of the literature, even less is known about Aboriginal women's concepts of and attitudes towards such violence and the resulting judicial intervention. This chapter provides an analysis of the literature. It is not meant to be exhaustive, but lays the framework for establishing the context of the research questions and issues.

This chapter begins by identifying the nature and prevalence of violence against Indigenous women internationally and within Australia. This chapter also explores the historical and contemporary barriers and issues that confront Aboriginal women who are victims of domestic violence. A range of government and non-government responses, strategies and plans are considered and discussed with a particular focus on New South Wales (NSW), and Indigenous-specific responses.

4.1 Family Violence and Indigenous Women Internationally

It is evident that internationally, Indigenous women face alarmingly high rates of violence at the hands of their intimate partners. In New Zealand, higher rates of family violence experienced among the Maori population have been reported. In 2006, it was reported that the proportion of women that had been abused or threatened with violence by a partner at some time during their adult life was markedly higher for Maori women. For Maori women, the risk of being assaulted or threatened by a partner was three times the average.²¹¹

The Canadian Centre for Justice Statistics published a report in 2006 that looked at victimisation and offending among the Aboriginal population. The report considered male

²¹¹ New Zealand Ministry of Social Development, *The Social Report and Regional Indicators* (2009) 107 <<http://www.socialreport.msd.govt.nz/2006/introduction/index.html>>.

violence against Aboriginal women and found that in 2004, nearly one-quarter of Aboriginal females suffered some form of domestic violence in the five years preceding the survey and that this proportion is about three and a half times greater than that for non-Aboriginal females.²¹² Similar outcomes are seen among First Nations women in the United States, and according to the National Violence against Women Survey, higher rates of domestic violence are experienced by American Indians and Alaskan Native women.²¹³ Native American women also experience the highest rates of violence compared to any other group in the United States.²¹⁴

The International Indigenous Women's Forum aims to bridge the gaps between the global women's movement and the international Indigenous women's movement to develop effective strategies to combat violence against Indigenous women.²¹⁵ Their 2006 report suggests methods towards an Indigenous women's approach to reducing and preventing gender-based violence. With consideration of the high rates of violence, that Indigenous women around the world experience, it is useful for the purposes of this research to highlight that such high levels of violence experienced by Indigenous women are not unique to Aboriginal women in Australia. This also suggests that there could be contemporary social problems in Indigenous communities, such as domestic violence, which have at least some roots within a common experience of the effects of colonisation.

4.2 Indigenous Women in Australia and Violence

To provide an overview and a better understanding of the way domestic and family violence affects Aboriginal women in the Australian community, it is necessary to consider the

²¹² J Brzozowski, A Taylor-Butts and S Johnson, 'Victimization and Offending among the Aboriginal Population in Canada' (Cat No 85-002-XIE, Canadian Centre for Justice Statistics, 2006) 26(3) 1 <<http://www.statcan.gc.ca/pub/85-002-x/85-002-x2006003-eng.pdf>>.

²¹³ P Tjaden and N Thoennes, *Extent, Nature and Consequences of Intimate Partner Violence: Findings from the National violence against Women Survey* (2000) 22–3 <<http://www.cdc.gov/ViolencePrevention/intimatepartnerviolence/datasources.html>>.

²¹⁴ For further information, see Amnesty International, 'Maze of Injustice—The Failure to Protect Indigenous Women from Sexual Violence in the USA' (2000) <<http://www.amnesty.org/en/library/info/AMR51/035/2007>>; R et al, *Violence against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known* <<http://www.instituteformativejustice.org/resources.html>>; *The US Department of Health and Human Services—Indian Health Service, Violence against Native Women Resources* <<http://www.ihs.gov/MedicalPrograms/MCH/sitemap.cfm?CFID=5961766&CFTOKEN=97014369>>.

²¹⁵ International Indigenous Women's Forum, above n 124, 8.

statistics around domestic violence, the cultural history of Aboriginal people, relevant social justice issues, and other pressing problems such as homelessness, and how they impact on Aboriginal women's lives particularly in the context of domestic violence.

The relevance of this discussion for the thesis is that it identifies the gaps that currently exist in contemporary research. Specifically, the review of this literature demonstrates the lack of research focusing on the impact of violence on Aboriginal women, and their understanding of violence, identification of violence and perceptions of the legal system and associated instruments.

4.2.1 The Australian Indigenous Population

The ABS report that as at 30 June 2001, the Aboriginal and Torres Strait Islander population in Australia was approximately 458 500 and thus, Indigenous people made up approximately 2.4 per cent of the population.²¹⁶ In 2006, the ABS found the total number of Indigenous Australians was 517 174.²¹⁷ Australia's Indigenous population was projected to rise to approximately 528 600 persons in 2009.²¹⁸ This data shows a steady growth in Australia's Indigenous population

Thus, a steady growth in the Indigenous population and the notion that the population characteristics of Aboriginal people are distinctly different from non-Aboriginal people means that culturally appropriate and culturally specific service provision must be considered for the expanding Aboriginal population.

4.2.2 Indigenous Women and Domestic Violence in Australia

It is widely acknowledged in the literature that family violence is a serious issue for Aboriginal and Torres Strait Islander Peoples in Australia.²¹⁹ High rates of domestic violence

²¹⁶ ABS, *Experimental Projections of the Aboriginal and Torres Strait Islander Population, 1996 to 2006* (Cat. No 3231.0)
3<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyReleaseDate/7B8E83A5E4FFADCCCA25762A001CFB79?OpenDocument>>.

²¹⁷ ABS, *Population Distribution, Aboriginal and Torres Strait Islander Australians* (Cat. No 4705.0, 2006)
Table 1 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4705.02006?OpenDocument>>.

²¹⁸ ABS, above n 212, 8.

²¹⁹ See Strategic Partners Firm, 'Indigenous Family Violence: Phase 1 Meta-evaluation Report' (the Office of the Status of Women, 2003); Memmott et al, above n 6.

in Indigenous communities have long been identified.²²⁰ Research undertaken in Western Australia in 1996 revealed the alarming statistic that Aboriginal women were 45 times more likely to be a victim of domestic violence than non-Aboriginal women.²²¹

In 2000, the Queensland Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report²²² was released. The taskforce was initially formed when it was recognised that the degree of suffering in many Indigenous communities had reached crisis point²²³ and violence was becoming a part of everyday life.²²⁴ The report was particularly significant as one of the first major reports into the forms of Indigenous violence, the causes of violence and recommendations for change. The report recognises that Indigenous people have endured decades of oppression and neglect²²⁵ and acknowledges dispossession, cultural fragmentation and marginalisation as contributors to the current high levels of violence in the community.²²⁶

The Australian component of the International Violence against Women Survey (IVAWS) completed in 2004 also enabled some analysis of the violence Aboriginal and Torres Strait Islander women experience in Australia. While only 1.4 per cent of the survey participants²²⁷ were Aboriginal or Torres Strait Islander, a limited analysis of Indigenous women's experiences found that in the 12 months prior to the survey, 20 per cent of Indigenous women reported physical violence and 66 per cent of Indigenous women reported experiencing physical violence in their lifetime.²²⁸

The most comprehensive review of issues around domestic and family violence and how they affect Aboriginal and Torres Strait Islander people is the detailed Human Rights and Equal Opportunity Commission report released in 2006.²²⁹ The report looks at all the data

²²⁰ Memmott et al, above n 6.

²²¹ Ferrante et al, *Measuring the Extent of Domestic Violence* (Hawkins Press) 37.

²²² The Queensland Government, above n 43.

²²³ Ibid 9.

²²⁴ Ibid.

²²⁵ Ibid 12.

²²⁶ Ibid.

²²⁷ A total of 6 677 women participated in the IVAWS survey and approximately 93 of those women identified as Aboriginal, Torres Strait Islander or both. Mouzos and Makkai, above n 84, 2.

²²⁸ Ibid 31.

²²⁹ Human Rights and Equal Opportunity Commission, *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities—Key Issues* (Australian Human Rights Commission, Overview Paper of Research and Findings, 2001–2006)
<http://www.hreoc.gov.au/social_justice/familyviolence/index.html>.

currently available in relation to family violence and the Indigenous community in Australia and discusses the high rates of violence, gaps in existing information and strategies for improvement.

Little research exists that focuses on the high rates of domestic violence many women living in rural and remote Australia experience. In the report for the Commonwealth Department of Transport and Regional Services researchers studied the extent of domestic violence in rural and remote areas making particular reference to the extremely high rates of domestic violence experienced by Indigenous women in rural and remote areas of Australia.²³⁰

The Australian Institute of Health and Welfare produced a report in 2006²³¹ that detailed the prevalence of domestic and family violence against Indigenous women in Australia. The report acknowledged the high levels of domestic and family violence in Indigenous communities and looked at the context in which violence in the Indigenous population occurs; namely, colonisation, disadvantage, oppression and marginalisation.²³² It was found that this context significantly increased the prevalence of violence in Indigenous communities, beyond that in the community generally. By way of demonstrating that level of violence the report found that in relation to hospitalisation of victims of domestic violence, Indigenous females were 35 times as likely to be hospitalised due to family violence related assault as other Australian females.²³³ As such, the severity and type of violence that Aboriginal women are experiencing must be extreme to result in them being 35 times more likely to be hospitalised than a non-Aboriginal woman.

Quantification of data relating to Indigenous women in Australia who are or have been victims of domestic violence will always be difficult.²³⁴ Domestic violence offences against Aboriginal women are not always reported,²³⁵ and are often only reported to the

²³⁰ Women's Services Network, 'Domestic Violence in Regional Australia: A Literature Review' (Report for the Commonwealth Department of Transport and Regional Services, 2000) 8–9.

²³¹ Al-Yaman, Van Doeland and Wallis, above n 6.

²³² Ibid 2.

²³³ Ibid 32.

²³⁴ For discussion relating to data collection issues concerning Indigenous Australians, see Steering Committee for the Review of Government Service Provision (SCRGSP), *The Report on Government Services 2009: Indigenous Compendium* (9 April 2009) 14–16 <<http://www.pc.gov.au/gsp/reports/rogs/compendium2009>>.

²³⁵ C Cunneen, 'Criminology, Criminal Justice and Indigenous People: A Dysfunctional Relationship?' (2009) 20 *Current Issues in Criminal Justice* 323.

police if they involve a physical assault. This leads to a genuine under-reporting of domestic incidences to the police. Historically, there has been a lack of appropriate screening services available to victims of violence as well and those that are available may not be culturally appropriate. The Australian Institute of Health and Welfare report recognises the incomplete identification of Indigenous people in many data sets and problems of comparability of existing data when trying to determine the prevalence of domestic violence in Indigenous communities.²³⁶ While other research notes that the National Crime and Safety Survey, the Women's Safety Australia survey, and the PSS all:

Failed to report the experience of Aboriginal and Torres Strait Islander peoples as often they did not identify Indigenous status or the number of Indigenous people included in the data collection was too small to allow reliable estimates for Aboriginal and Torres Strait Islander populations.²³⁷

These statistics are important to this research as they provide a conceptual framework and thus a particular perspective on the prevalence and nature of violence in Indigenous communities in Australia. The lack of appropriate research into Aboriginal women's experiences of violence will hinder future preventative and reduction programmes as funding will be difficult to obtain without reflective statistics. The true nature of the impact such violence has on Aboriginal women's lives will never be fully comprehended or addressed.

4.3 Indigenous Women in Australia as Homicide Victims

Research indicates that rarely is an Aboriginal woman murdered by a stranger and data shows that 61 per cent of Indigenous homicides involve family members.²³⁸ Despite the fact that the Aboriginal and Torres Strait Islander population accounts for approximately 2.4 per

²³⁶ Al-Yaman, Van Doeland and Wallis, above n 6, x.

²³⁷ J Scmider and H Nancarrow, Queensland Centre for Domestic and Family Violence Research, Central Queensland University, *Aboriginal and Torres Strait Islander Family Violence: Facts and Figures* (2007) 4 <<http://www.noviolence.com.au/public/factsheets/indigenousfactsheet.pdf>>.

²³⁸ J Mouzos, 'Indigenous and non-Indigenous Homicides in Australia: A Comparative Analysis', *Trends and Issues in Crime and Criminal Justice No 210* (Australian Institute of Criminology) 2001, 4 <<http://www.aic.gov.au/documents/C/0/B/%7BC0BBDBB3-5D3F-461F-B9D2-E4CD0AD58EC1%7Dti210.pdf>>.

cent of the population, over 15 per cent of all homicide victims in Australia are Indigenous.²³⁹

Academics have argued that while Aboriginal homicides in Australia are similar in many ways to homicides occurring in non-Aboriginal society, they are profoundly dissimilar in others.²⁴⁰ As alcohol influence is strongly related to homicidal violence and research indicates that homicides involving one or more Indigenous victims were six times more likely to have involved alcohol than those homicides not involving an Indigenous victim.²⁴¹ The strong correlation between alcohol and homicide in Indigenous communities is supported by research that found that over 87 per cent of intimate partner homicides among the Indigenous population were alcohol related.²⁴² These statistics highlight the nature of homicide experienced by victims of violence and emphasises why homicide must be considered as a potential major concern for all Aboriginal women experiencing domestic violence.

4.4 The NSW Aboriginal Population and Domestic Violence in NSW

Available data supports the current pervasive nature of domestic violence as an area of major social concern for Aboriginal women, and of particular relevance to this research, Aboriginal women living in NSW.

In NSW in 2006, there were an estimated 148 178 Aboriginal and Torres Strait Islander people living in NSW comprising over 2.2 per cent of the total NSW population.²⁴³ In 2009, the Aboriginal population in NSW is projected to increase by 14 per cent to 153 454.²⁴⁴ The ABS have released Indigenous population estimates as at 30 June 2006, the

²³⁹ Ibid 2.

²⁴⁰ For further discussion on the phenomenon of Indigenous homicide, see David Martin, 'Aboriginal and Non-Aboriginal Homicide: Same but Different' (Proceedings of Australian Institute of Criminology Conference, 12–14 May 1993, Canberra) <http://www.aic.gov.au/en/publications/previous%20series/proceedings/1-27/17.aspx>.

²⁴¹ J Dearden and J Payne, 'Alcohol and Homicide in Australia', *Trends and Issues in Crime and Criminal Justice* No 372 (Australian Institute of Criminology) July 2009, 4 http://www.aic.gov.au/documents/6/F/F/%7B6FF03CB5-1EF7-43EE-84FC-F0997C5C84C9%7Dtandi372_001.pdf.

²⁴² Ibid 5.

²⁴³ NSW Department of Aboriginal Affairs, above n 72, Chapter 3—Demographic Profile of the Aboriginal Population of NSW, 1, 12 <http://www.daa.nsw.gov.au/publications/49.html>.

²⁴⁴ NSW Chief Health Officer, 'Aboriginal and Torres Strait Islanders peoples: Aboriginal Population, Summary Report' (2006) http://www.health.nsw.gov.au/public-health/chorep/atsi/atsi_pop_agesex_atsi.htm.

number of Indigenous females over the age of 15 in NSW was around 46 721, with the median age being 21.8 years.²⁴⁵ Appropriate services must adequately reflect a young population.

The most comprehensive data collection on domestic violence trends and patterns in NSW has been undertaken by NSW BOCSAR. The research used data recorded during 1997–2004 by the NSW police force on the recorded number of domestic violence assaults reported. The research shows that the number and rate of all types of assaults rose steadily during the period.²⁴⁶ This research supports the view that women are more likely to be the victims of a domestic violence offence²⁴⁷ while also concluding that Indigenous women were more likely to be the victims of domestic assaults.²⁴⁸

Debate has frequently raged about the incidence and impact of alcohol as a contributing factor to domestic violence. In 2004 in NSW, there were 25 761 domestic assault incidents reported to the police. Of these, 36.2 per cent were flagged by police as alcohol related.²⁴⁹ The metropolitan regions of Sydney had fewer alcohol related domestic assaults in 2004 than other parts of NSW.²⁵⁰ The BOCSAR research showed that most victims of domestic violence in NSW were aged between 20 and 39 with the risk of domestic assaults increasing rapidly until the mid-thirties and then slowly declining.²⁵¹ The areas of Bourke and Walgett were recorded as having the highest rates of domestic assaults in NSW with Campbelltown and Blacktown recording the highest rates of domestic violence in the Sydney metropolitan region.²⁵² The report also identified that domestic violence remains highly under-reported. The reasons for women not reporting domestic violence offences to the police will be discussed later in this thesis.

²⁴⁵ ABS, *NSW State and Regional Indicators* (2008)

<[http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/D82A60B34926D47CCA2575430014E6F6/\\$File/13381do001_200812.xls](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/D82A60B34926D47CCA2575430014E6F6/$File/13381do001_200812.xls)>.

²⁴⁶ J People, *Trends and Patterns in Domestic Violence Assaults* (Crime and Justice Bulletin No 89, NSW Bureau of Crime Statistics and Research, October 2005) 3

<[http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB89.pdf/\\$file/CJB89.pdf](http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/CJB89.pdf/$file/CJB89.pdf)>.

²⁴⁷ Ibid 6.

²⁴⁸ Ibid 8.

²⁴⁹ Ibid 6. However, it must be recognised that prior to 2004, a consistent method of flagging alcohol-related assaults was not used in data recording.

²⁵⁰ People, above n 241, 11.

²⁵¹ Ibid.

²⁵² Ibid. The NSW Ombudsman has reported higher rates of domestic violence in NSW in areas with higher proportions of Aboriginal residents, young sole parents, higher rates of public housing, male unemployment and residential instability. NSW Ombudsman, 'Domestic Violence: Improving Police Practice' (2006) 6 <<http://www.ombo.nsw.gov.au/show.asp?id=448>>.

Relying on police-reported data, BOCSAR has reported that approximately 25 870 domestic violence assaults occurred in NSW in 2005.²⁵³ Further research suggests that approximately 19 439 ADVOs were taken out in NSW in 2005. In NSW, the Sydney area of Blacktown reported the highest incidences of reported domestic violence in the Sydney area and the highest number of ADVOs granted (see Table 4.1).

By September 2009, BOCSAR found that domestic violence related assaults had increased marginally to 26 042 in the previous 12-month period.²⁵⁴ In 2008, the number of ADVO granted by NSW Local Courts was 22684.²⁵⁵ A 2008 BOCSAR report noted that during January 2007–December 2008, there was no statistically significant upward or downward trend in the monthly numbers of recorded criminal incidents for domestic violence related assaults.²⁵⁶ These statistics indicate that domestic violence assaults reported to the police in NSW remain stable.

In 2011, BOCSAR released another report that highlighted the rate of domestic assault victims by gender and Indigenous status in NSW. It found that the 2010 rate of domestic assault for Indigenous women was six times higher than that for non-Indigenous women.²⁵⁷

BOCSAR do not keep any statistics on the number of final ADVOs Aboriginal women have obtained from the NSW Local Court. NSW Local Courts do not record Aboriginality as a statistic related to ADVOs. Therefore, while NSW Local Courts can supply BOCSAR with data on the number of final ADVOs granted in Local Courts in NSW, they are unable to determine the number of Aboriginal women who sought final orders. Records are also not kept on the cultural background of the defendant. Further gaps and limitations in the NSW Local Court data relating to ADVOs is the lack of data on the gender of victim and

²⁵³ BOCSAR, *Recorded Criminal Incidents, 2003–2005: Statistical Division. Assault–Domestic Violence Related* (2005)

<[http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/RCS05,%20Table%204-2a.pdf/\\$file/RCS05,%20Table%204-2a.pdf](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/RCS05,%20Table%204-2a.pdf/$file/RCS05,%20Table%204-2a.pdf)>.

²⁵⁴ Ibid.

²⁵⁵ BOCSAR, *Apprehended Violence Orders Granted 1996–2008*(2009)

<http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_court_stats>.

²⁵⁶ D Goh and S Moffat, *New South Wales Criminal Court Statistics 2007*(2008) NSW BOCSAR, 6

<http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_mr_ccs07>.

²⁵⁷ K Grech and M Burgess, *BOCSAR Trends and Patterns in Domestic Violence Assaults* (2011)

<<http://www.bocsar.nsw.gov.au/agdbasev7wr/bocsar/documents/pdf/bb61.pdf>>.

perpetrator and the fact that no information about relationship type is obtained. Without sufficient statistics, the task of developing informed policies in this area is challenging.²⁵⁸

4.5 Aboriginal Women as Victims of Domestic Violence in NSW

This research builds on a colonial paradigm and is underpinned with a feminist approach that informs this work. Violence against Aboriginal women must be understood from a historical perspective of colonisation and dispossession, it must be understood in terms of oppression and the intersectionality of race, gender and class, as we cannot generalise about all Aboriginal women's experiences.²⁵⁹

Significant literature exists addressing the incidence of domestic violence in NSW. However, after an extensive review little was found that addresses Aboriginal victims' understanding of domestic violence and ADVOs and the specific policy implications for Aboriginal people in NSW. There is also a lack of literature that places Aboriginal women's experience of violence in NSW within a specific understanding of the effects of colonialism. As the focus of this thesis is specifically on Aboriginal women in NSW's perceptions of the function of an ADVO and their understanding of its capacity to prevent and protect them from domestic violence in the future, it is therefore useful to this research to provide a framework that encompasses Aboriginal women's lived experiences of domestic violence in NSW.

The lack of a need for specific discussion around the needs of Aboriginal females who are victims of domestic violence has long been a problem. This is despite attempts to raise the issue. In the 1990s in NSW, there were a number of initiatives including the Aboriginal Women's Conference, the Women Out West Project and the Aboriginal Women and the Law Project run by the NSW Government Women's Coordination Unit.²⁶⁰ Yet in 2001,

²⁵⁸ More extensive data in relation to protection orders is kept in other jurisdictions. In Victoria, gender of the victim and perpetrator and relationship status is recorded. See 'Victorian Family Violence Database Volume 5', Eleven Year Trend Analysis, Key Findings, 1, 18
<https://assets.justice.vic.gov.au/voc/resources/64c1a03d-a6cd-4d16-9158-97e7043e772e/fvdb_1999_2010_keyfindings.pdf>.

²⁵⁹ Hovane, above n 52, 11.

²⁶⁰ C Thomas and J Selfe, 'Aboriginal Women and the Law' (Paper presented at the Workshop on Aboriginal Justice Issues, Australian Institute of Criminology Conference, 23–25 June 1993, Cairns) 1, 8
<<http://aic.gov.au/search.html?cx=003994814163306808870%3Agpltxcnyczew&cof=FORID%3A10%3BNB%3A1&ie=UTF-8&q=thomas+self>>.

Pam Greer, Aboriginal community advocate on domestic violence and leader of the Women Out West Project, reported that she continued to face many challenges in going into Aboriginal communities as an Aboriginal trainer discussing domestic violence. Communities were often suspicious and there was little support for Aboriginal women who were victims of domestic violence. Lack of information and understanding about the legal process and poor relationships with the police were identified by Greer as major issues for Aboriginal women when accessing the legal system.²⁶¹ Poor data collection in relation to Aboriginal women as victims of violence also meant a lack of allocated funding for culturally specific services.²⁶²

It is not unusual for statistics on the prevalence of domestic violence in Aboriginal communities not to be reflected in mainstream literature or research. For example, Simpson²⁶³ considers the incidence of domestic violence in NSW and its regulation and policing and looks briefly at data that support the claim that ADVOs are effective in protecting women from violence in NSW. However, the report provides no research or data on Aboriginal women's experience of domestic violence in NSW.

After the launch of the Aboriginal Strategic Direction Policy in 2003 by the NSW police force and the later release of the Human Rights and Equal Opportunity Commission's *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities: Key Issues*, by the Aboriginal and Torres Strait Islander Social Justice Commissioner in 2006, the problem of Indigenous family violence was much harder to overlook.

The 2005 BOCSAR report found that between 1997 and 2004, the recorded rate of domestic assault in NSW increased by about 40 per cent in the Sydney Statistical Division and more than 50 per cent in the rest of NSW.²⁶⁴ Of particular importance are the high rates of domestic violence in remote areas of NSW. BOCSAR released statistics relating to domestic violence assaults for 2008 and the majority of the LGAs where the assaults occur are in remote or rural areas with a concentrated Aboriginal population (see Table 4.1),

²⁶¹ Greer above n 32, 9

²⁶² Ibid

²⁶³ R Simpson, 'Incidence and Regulation of Domestic Violence in NSW' (Briefing Paper No 4, 2000) <<http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/ResearchBf042000>>.

²⁶⁴ J People, *NSW Bureau of Crime Research and Statistics (BOCSAR) 2005*, Trends and Patterns in Domestic Violence. Sydney, NSW, 3
<http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_mr_cjb89>.

Table 4.1: Assault—Domestic Violence Related

Rank	LGA	Offences 2008	in Population	Rate Per 100 000 Population
1	Bourke	120	3 091	3 882.2
2	Walgett	166	7 078	2 345.3
3	Moree Plains	245	14 300	1 713.3
4	Kempsey	296	28 566	1 036.2
5	Wentworth	70	7 149	979.2
6	Broken Hill	181	20 074	901.7
7	Coonamble	32	4 263	750.6
8	Lachlan	51	6 814	748.5
9	Richmond Valley	164	22 471	729.8
10	Narrandera	45	6 166	729.8
11	Wellington	60	8 250	727.3
12	Dubbo	286	39 787	718.8
13	Tenterfield	48	6 834	702.4
14	Narromine	46	6 717	684.8
15	Cobar	35	5 143	680.5
16	Campbelltown	998	147 460	676.8
17	Kyogle	65	9 686	671.1
18	Forbes	65	9 727	668.2
19	Inverell	108	16 246	664.8
20	Tumut Shire	74	11 238	658.5

NSW Recorded Crime Statistics: January 2008 to December 2008

Top 50 LGAs ranked by rate of recorded criminal incidents

LGAs with population under 3000, Sydney LGA and LGAs without the offence have been excluded.

Having considered the information relating to the number of domestic assaults and location of domestic assaults in NSW, it is relevant to further reflect on the location of a number of Aboriginal missions and reserves previously in existence in NSW. A detailed list of missions and reserves that were home to generations of Aboriginal families in NSW over the years

was researched by the NSW DoCS.²⁶⁵ Of the top ten LGAs that recorded high incidences of domestic assaults, all had Aboriginal missions and reserves in operation at one time in the past.

It is argued that the deliberate disempowerment of Aboriginal elders and respected community members by mission and reserve managers saw the erosion of power and the undermining of authority of elders in the Aboriginal community.²⁶⁶ This disempowerment was achieved through mechanisms such as banning ceremonies, traditional marriages, languages and the undermining of Indigenous religions and cultural practices.²⁶⁷

The following table is indicative of previous reserves or missions in the top ten LGAs, with highest incidences of domestic assaults in NSW.²⁶⁸

²⁶⁵ Department of Community Services, 'Appendix 4: Brief History of Aboriginal Reserves in New South Wales' in *Connecting Kin—Guide to Records: A Guide to Help People Separated from Their Families Search for Their Records* (1998) 341–75
<http://www.community.nsw.gov.au/DOCS/STANDARD/PC_100855.htm>.

²⁶⁶ Memmott et al, above n 6, 12

²⁶⁷ Ibid.

²⁶⁸ Department of Community Services, above n 198, 341–75.

Table 4.2: Reserves and Missions Previously in Operation in NSW where the Highest Incidences of Domestic Violence Currently Occur

Ranking—Highest Incidences of Domestic Assaults in NSW	LGA in NSW	Number of Reserves/ Missions Previously in Operation
<i>1</i>	<i>Bourke</i>	<i>4</i>
<i>2</i>	<i>Walgett</i>	<i>5</i>
<i>3</i>	<i>Moree Plains</i>	<i>3</i>
<i>4</i>	<i>Kempsey²⁶⁹</i>	<i>13</i>
<i>5</i>	<i>Wentworth</i>	<i>2</i>
<i>6</i>	<i>Broken Hill</i>	<i>1</i>
<i>7</i>	<i>Coonamble</i>	<i>4</i>
<i>8</i>	<i>Lachlan</i>	<i>3</i>
<i>9</i>	<i>Richmond</i>	<i>3</i>
<i>10</i>	<i>Narrandera</i>	<i>4</i>

From this table, we can conclude that the LGAs in NSW with the highest incidences of domestic violence have all had mission and reserves operating within their boundaries in the past. A high population of Aboriginal people in those areas is also evident²⁷⁰ with the NSW Department of Aboriginal Affairs stating that Western NSW has the highest proportion of Aboriginal people of all the areas in NSW, with the New England and Mid-Western NSW regions also having significant proportions of Aboriginal residents. The Western NSW zone is known as the ‘Murdi Paaki’ region and covers LGAs of Bourke, Brewarrina, Broken Hill, Walgett, Coonamble and Wentworth. The New England Region includes the Moree Plains and the Mid-Western Zone includes the Lachlan area.²⁷¹

²⁶⁹ The Aboriginal Boys Training Home operated at Kinchella, and it is believed that over 600 Aboriginal boys were ‘locked up’ at Kinchella from 1924 to 1970. Kinchella Boys Home was used by the government to house Aboriginal children forcibly removed from their families under the stringent child removal policies, with victims known as the ‘Stolen Generation’. Kinchella has been remembered by survivors as a brutal, oppressive place where they were denied their Aboriginal culture and heritage. Further information on the Stolen Generations and Kinchella: <http://www.creativespirits.info/aboriginalculture/politics/stolen-generations.html> and <http://www.abc.net.au/news/stories/2009/10/28/2725899.htm>

²⁷⁰ NSW Department of Aboriginal Affairs, above n 72, ‘Chapter 3: Demographic Profile of the Aboriginal Population of New South Wales’.

²⁷¹ S Schindeler et al, *Rural Health Information Project: Rural Health Classification Systems* (2006) NSW Department of Health, 23–4
<http://www.ircst.health.nsw.gov.au/.../Remoteness_ClassificationsV5.pdf>.

The disempowerment experienced by the Aboriginal community from life on missions and reserves, the consistent undermining of cultural practices and choices gives a historical framework to violence existing in these once forcibly controlled and dominated places. This is supported by Memmott who states:

Contributing factors such as undermining the authority of elders, banning ceremonies and traditional life and languages etc., have occurred over the last 100 years or more and are responsible for the loss of social [and family] control stemming from the erosion of values concerning traditional social structures, their underpinning ideologies, leadership qualities and the desirability of social control.²⁷²

4.6 Causal Attribution of Violence in Aboriginal Communities

A lack of understanding of the history of oppression and marginalisation Aboriginal people have experienced is widely apparent in many mainstream reports and publications relating to domestic violence.²⁷³ Dispossession, lack of autonomy and racism has marred Aboriginal life from the time of colonisation and arguably, it has inhibited attempts to develop a just legal system. Developing a legal system that acknowledges and gives due consideration to such cultural anomalies is challenging.

With the acknowledgement that Aboriginal communities are more vulnerable to violence and more likely to be victims of violence than any other section of Australian society,²⁷⁴ there has been more inclusive research to ensure Aboriginal women's views are represented when it comes to domestic violence issues in Australia. Cripps and Davis outline the existence of Aboriginal family violence programs that have been evaluated in the prevention of violence in Aboriginal communities and their research centres around the multitudes of interrelated factors that contribute to the occurrence of domestic violence in Aboriginal communities.²⁷⁵

²⁷² P Memmott, 'Queensland Aboriginal Cultures and the Deaths in Custody Victims', chapter for the Queensland Regional Report of the Royal Commission into Aboriginal Deaths in Custody (1990) 25, in Memmott et al, above n 6, 12.

²⁷³ Keel, above n 44, 5.

²⁷⁴ K Cripps and M Davis, 'Communities Working to Reduce Indigenous Family Violence' (Indigenous Justice Clearinghouse Research Brief 12, June 2012) 1, 1.
<http://www.indigenousjustice.gov.au/briefs/brief012.pdf>

²⁷⁵ Ibid.

When considering the underlying factors of violence present in Aboriginal communities it is necessary to give regard to factors that contribute to and cause violence. It has been previously argued that the high incidence of violent crime in some Indigenous communities, particularly in rural and remote regions, is exacerbated by factors not present in the broader Australian community.²⁷⁶ Memmott et al divide the causes of violence in Indigenous communities into three categories:

1. Underlying factors—the historical circumstances of Aboriginal and Torres Strait Islander people, which make them vulnerable to enacting, or becoming a victim of violent behaviour.
2. Situational factors—circumstances in the social environment of the antagonists.
3. Precipitating causes—particular events that precede and trigger a violent episode by a perpetrator.²⁷⁷

4.6.1 Underlying Factors

Aboriginal people have experienced a brutal history under colonial rule. It is a history that has been shaped by government policies seeking to control and eliminate the distinctiveness of Aboriginal society and culture.²⁷⁸ Inherent distrust of police and many government services is a fundamental hurdle for Aboriginal people, a difficult hurdle to overcome when attempting to assert one's legal rights. Aboriginal deaths in custody and the harrowing effects of the removal of generations of Aboriginal children from their families²⁷⁹ (the Stolen Generations), compound this distrust of police, as do previous negative interactions with government and legal services.

The Queensland Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report pointed out that Indigenous people generally have been profoundly affected by the erosion of their cultural and spiritual identity and the disintegration of family and community that has traditionally sustained relationships and obligations and maintained

²⁷⁶ Memmott et al, above n 6, 26.

²⁷⁷ Ibid 11.

²⁷⁸ Domestic Violence Advocacy Service and NSW Women's Refuge and Resource Centre, 'It's Not Love, It's Violence', *Information and Resource Kit* (1996) 56.

²⁷⁹ See Human Rights and Equal Opportunity Commission, above n 5.

social order and control.²⁸⁰ Marginalisation and dispossession are both underlying factors ever-present in the lives of Indigenous Australians.

4.6.2 Situational Factors

Situational factors are best described as factors that contribute to incidents of violence, but are not the direct cause. Attitudes in the community towards violence can be influential, as often violence is intergenerational and research indicates that it is the intergenerational transmission of violence that perpetuates the cycle of violence and continues to adversely impact the family unit.²⁸¹

Other important situational factors cannot be ignored. High unemployment rates,²⁸² a lack of available resources for counselling, violence programmes or recreational activities,²⁸³ and socio-economic disadvantage such as overcrowded housing and homelessness greatly contribute to the stresses placed on Aboriginal families and communities.²⁸⁴

4.6.3 Precipitating Factors

Precipitating causes of violence may be defined as a social event or issue that triggers an episode of violence²⁸⁵ most commonly alcohol abuse, drug abuse and petrol sniffing.²⁸⁶ Other precipitating factors that may contribute include poor anger management, paranoia, jealousy, active involvement in feuding, payback behaviour, debts or money issues, stress and/or stress associated with a death in custody.²⁸⁷

²⁸⁰ B Robertson, 'Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report' (Queensland Government Department of Aboriginal and Torres Strait Islander Policy and Development, 2008) ix.

²⁸¹ NCRVWC, above n 89, 145.

²⁸² The 2006 Census found that the unemployment rate for Indigenous people in Australia was 16 per cent compared to 5 per cent for the non-Indigenous population. Accessed at ABS, <<http://www.abs.gov.au/websitedbs/cashome.nsf/4a256353001af3ed4b2562bb00121564/3fa8ec177831c470ca25758b001232d2!OpenDocument>>.

²⁸³ Secretariat for the National Aboriginal and Islander Child Care, *Proposed Plan of Action for the Prevention of Child Abuse and Neglect in Aboriginal Communities*, 6 <<http://www.snaicc.asn.au/tools-resources/fx-list-resources.cfm?loadref=5&txnid=100&txnctype=resource&txncstype=document>>.

²⁸⁴ Ibid 2.

²⁸⁵ Memmott et al, above n 6, 21.

²⁸⁶ Alcohol and drug abuse is seen as a major contributor to violence in Indigenous communities, see The Queensland Government, above n 43, 65–70.

²⁸⁷ A Allan and D Dawson, 'Developing a Unique Risk of Violence Tool for Australian Indigenous Offenders' (Criminology Research Council Report 6/00-01, 2002) 65 <<http://www.criminologyresearchcouncil.gov.au/reports/200001-06.pdf>>.

In 1999, Blagg produced a meta-analysis of the literature on Indigenous family violence to identify multi-causal factors for high rates of violence in the Indigenous community, which included both the effects of marginalisation and dispossession and institutionalisation and removal policies.²⁸⁸ Other causation factors include loss of land and traditional culture; breakdown of community kinship systems and Aboriginal law; entrenched poverty; racism; alcohol and drug abuse; and the effects of the redundancy of the traditional Aboriginal male role and status.²⁸⁹ Such historical violence allows us to put violence in the community into context and to consider the dissatisfaction that Indigenous people will always feel for the introduced legal system where laws were imposed to control Aboriginal people, dispossess them of their lands, to discriminate against them and, in some cases, to exterminate them.²⁹⁰

4.6.4 Historical Factors

Given the history of race relations in Australia, another observation to be added to this framework is the evidence of brutal massacres of Aboriginal people in NSW. In Wentworth Shire, the massacre site of Rufus Creek commemorates the brutal killing of 30 Aboriginal people in 1841. The Myall Creek massacre, which occurred not far from Moree in 1838, resulted in the vicious slaughter of 28 Aboriginal men, women and children. Violence like massacres in the Aboriginal community will always be remembered. Considering this, Indigenous and non-Indigenous academics²⁹¹ believe that recognising and conceding violence that was committed against Aboriginal people in the name of colonisation is necessary. Quayle argues the need to acknowledge that the violence witnessed today is a product of the past, before we can move on.²⁹²

²⁸⁸ H Blagg, 'Intervening with Adolescents to Prevent Domestic Violence: Phase 2: The Indigenous Rural Model' (1999) National Crime Prevention, 5–6
<[http://www.consumer.vic.gov.au/legalchannel/DOJFileLib.nsf/0/235980233cc7fcc0ca2573f60018c765/\\$FILE/FV_Aboriginal_Family_Violence_blagg_1st_report.pdf](http://www.consumer.vic.gov.au/legalchannel/DOJFileLib.nsf/0/235980233cc7fcc0ca2573f60018c765/$FILE/FV_Aboriginal_Family_Violence_blagg_1st_report.pdf)>.

²⁸⁹ Ibid.

²⁹⁰ C Quayle 'Breaking the Silence: Putting the Violence into Context. Family Violence in Indigenous Communities: Breaking the Silence? 2002 Forum' (2002) 8(1) *UNSW Law Journal* 2.

²⁹¹ Henry Reynolds estimates that over 20 000 Indigenous people lost their lives as a result of frontier violence, Henry Reynolds, *Why Weren't We Told?* (Penguin Group Publishing, 2000) 188.

²⁹² Quayle, above n 281, 4.

These factors associated with the increased victimisation of Aboriginal women and the causal attribution of violence in Indigenous communities are multi-dimensional, and have resulted in significantly higher levels of homicide and domestic violence.

4.7 Identified Barriers to Aboriginal Women Reporting Violence

This thesis highlights the over-representation of Aboriginal women as victims of domestic violence, and relies heavily upon other research and police statistics to identify this. However, violent crime statistics drawn from police data do not show the level of violent crime and victimisation that is never disclosed to the police.²⁹³ The high levels of violence experienced by Aboriginal women have long been recognised. Noting that much of the violence against both Aboriginal and non-Aboriginal women goes unreported, it is therefore difficult to measure the extent to which domestic violence against Aboriginal women also goes unreported.²⁹⁴

Aboriginal victims of domestic violence might choose not to report domestic violence for any or all of the reasons the broader Australian community does not report.²⁹⁵ These may include the belief that the incident was too minor, they wanted to keep the matter private or chose to deal with the incident themselves.²⁹⁶ However, Aboriginal women who are victims of domestic violence experience additional and distinctive barriers that arise.²⁹⁷ These might include cultural barriers such as the fear of hostile treatment from family or the police and increased fear of child removal.²⁹⁸

From the literature, it is possible to identify and summarise the major reasons Aboriginal women have for not disclosing violence to the police. These may include concern of repercussion and consequences after reporting violence; fear and distrust of justice systems

²⁹³ Willis, above n 7, 1.

²⁹⁴ Willis, above n 7, 4; K Cripps 'Indigenous Family Violence: A Statistical Challenge' (2008) 39(5) *Injury: International Journal of the Care of the Injured* 25–35.

²⁹⁵ Willis, above n 7, 2.

²⁹⁶ IVAWS, above n 142, 106.

²⁹⁷ Willis, above n 7, 2–3.

²⁹⁸ S Murray and A Powell, *Domestic Violence: Australian Public Policy* (Australian Scholarly Press, 2011) 60.

and other agencies; cultural considerations and coercion and lack of awareness and access to services.²⁹⁹

Cunneen has previously identified a number of barriers for Aboriginal women when reporting domestic violence and breaches of ADVOs such as fear of the perpetrator; family and kinship issues; nature of Indigenous relationships; fear of child removal; the unavailability of community support and services; lack of police presence and police responses; and empathy for the perpetrator.³⁰⁰

In the 'Mabourah Dubay'³⁰¹ report, Aboriginal victims of domestic violence living on the north coast of NSW discuss the high levels of violence within the community, disadvantages they face, and the shame that Aboriginal women in particular face in relation to discussing their private matters in a public forum such as a court. The under-reporting of domestic violence offences is often associated with fear experienced by the victim. This fear can present as a fear of authority, as many women can recount stories of loss, trauma and invasion associated with police, magistrates and child protection workers;³⁰² and a fear of community intervention, that once the police are involved they may lose their children if the DoCS become involved. Not as prevalent in the non-Aboriginal community is the fear that their partner, once incarcerated for the domestic violence offences, may die in custody.³⁰³ Another reported fear is fear of being outcast from the community and repercussions from the offender's family members that may prevent a victim coming forward and reporting violence.³⁰⁴

Evidenced from research in this area is the lack of culturally appropriate services for Aboriginal women in rural areas. A lack of basic services such as working public phones, available transport and housing are barriers for women attempting or planning to leave a violent relationship. Moore notes in her paper about Indigenous family violence in rural

²⁹⁹ Willis, above n 7, 4–8.

³⁰⁰ C Cunneen, *Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities* (Queensland Government, Department of Communities, 2010) 111–12 <<http://www.parliament.qld.gov.au/view/legislativeAssembly/tableOffice/documents/TabledPapers/2010/5310T1801.pdf>>.

³⁰¹ NSW Department for Women, 'Mabourah Dubay: North Coast Aboriginal Women's Access to Law Report' (Northern Rivers Community Legal Centre, December 1998) 1–30.

³⁰² Ibid 19.

³⁰³ Ibid.

³⁰⁴ Ibid 26.

NSW that women in rural towns lack adequate access to services, information and the informal and formal social supports that they need.³⁰⁵ Therefore, there is little incentive or encouragement for many Aboriginal women residing in these areas to leave violent relationships as often this involves not only leaving their violent partners but leaving their communities as well.

Reporting domestic violence is often difficult for victims for a multitude of reasons, but research would suggest that it is far more difficult for Aboriginal victims of violence. NSW Magistrate Pat O'Shane argues that Aboriginal victims of violence do not perceive the criminal justice system as a place where they might seek justice and relief from the daily attacks upon their personal and physical integrity.³⁰⁶

Indigenous academic Judy Atkinson has written and researched extensively on violence and healing in Aboriginal communities. Atkinson writes about the 'multiple intergenerational traumatisation's that comprise the colonising impacts 'and questions whether the current legal profession and government have the will and commitment for justice reform allowing Indigenous families to heal and rebuild their lives.'³⁰⁷

4.7.1 Current Strategies for Overcoming Reporting Barriers

A source of frustration for many Aboriginal women is the perception that police are unwilling, unprepared or unlikely to intervene in domestic violence matters involving Aboriginal victims and/or offenders.³⁰⁸ This can result in an under-reporting of domestic violence incidences due to an Aboriginal victim's mistrust of the police. A number of strategies have been employed around the state to respond to and minimise domestic violence involving Aboriginal victims. Policing in Aboriginal communities presents a number of challenges. Cunneen argues that:

³⁰⁵ Moore, above n 24, 7.

³⁰⁶ Pat O'Shane is an Aboriginal woman born in Queensland. Ms O'Shane was appointed as a NSW Magistrate in 1986. Her paper 'Corroding the Soul of the Nation' was published by *UNSW Law Journal* (2002) 25(1) 212, 213.

³⁰⁷ Atkinson, above n 27. Atkinson is also the author of the book *Trauma Trails. Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press, 2002).

³⁰⁸ Katzen, above n 75, 308; NSW Department for Women, above n 292, 19.

Policing in Indigenous communities is an issue that demands attention to a range of broad political, socio-economic, cultural and historical contexts as well as the more mundane matters of police operational concern.³⁰⁹

In 2005, the NSW Ombudsman's Office released a report³¹⁰ outlining ways for police to develop strong relationships with local communities to facilitate better police relations with Aboriginal victims of violence and to ensure cultural factors are taken into account and a consistent approach employed when policing domestic violence incidences. The report makes note of the constructive benefits of informal and positive interactions between frontline police and the broader Aboriginal community.³¹¹ Such positive interactions will build trust in the community and evidence suggests that an Aboriginal community is more inclined to like and trust police and senior police officers who make an effort to engage with the community and interact and socialise with them.³¹²

The development of the *Aboriginal Strategic Direction*³¹³ in NSW, also endeavours to build better relationships and reduce crime and Aboriginal people's contact with the criminal justice system by the identification of seven main objectives that aim to improve communication and understanding between police and Aboriginal people; improve community safety and reduce fear of crime; seek innovation in the provision of Aboriginal Cultural Awareness and Aboriginal recruitment and retention; divert Aboriginal youth from crime and anti-social behaviour; establish an integrated approach to managing Aboriginal family violence; develop a strategic response to Aboriginal substance abuse; and reduce offending and over-representation of Aboriginal people in the criminal justice system.³¹⁴

Implementation of the above objectives can be achieved with some consistency with the employment of simple actions recommended by the strategic plan, including improving the

³⁰⁹ C Cunneen, 'Policing in Indigenous Communities' in M Mitchell and J Casey (eds), *Police Leadership and Management* (Federation Press, 2007) 231, 231 <<http://ssrn.com/abstract=1333989>>.

³¹⁰ NSW Ombudsman, *Working with Local Aboriginal Communities* (2005) <<http://www.ombo.nsw.gov.au/publication/PDF/specialreport/AboriginalCommunitiesSpecialReport.pdf>>.

³¹¹ Ibid 6.

³¹² The report notes that Aboriginal people want to see police getting involved and living in their communities. This sort of community policing approach needs to be promoted and encouraged by local area commanders. Ibid 7.

³¹³ NSW Police Force *Aboriginal Strategic Direction 2007–2011* (2007) <http://www.police.nsw.gov.au/_data/assets/pdf_file/0004/105178/aboriginal_strategic_direction2007-2011.pdf>.

³¹⁴ Ibid 18.

recording of Aboriginal status in the Computerised Operational Policing System; actively engaging in interagency projects and programmes in family violence in Aboriginal communities; employing more female Aboriginal Community Liaison Officers (ACLOs) and Aboriginal family violence workers and training them in family violence; and developing Aboriginal-specific standard operating practices to improve police management of domestic violence.³¹⁵ Employing these actions will build trust and confidence with many Aboriginal communities and Aboriginal people, in relation to identifying, responding to and reducing domestic violence. It may also lead to higher reporting rates of violence.

4.8 Indigenous Family Violence Prevention in Australia

The effectiveness of family violence preventative programmes in Indigenous communities is often contingent on the communities' acceptance, involvement and autonomy in relation to the shape the programme takes. Identified family violence prevention strategies are developed and managed by communities themselves. Programmes that come from the 'grassroots' are intrinsically culturally appropriate and in tune with the communities thoughts, and expectations are more likely to be accessed and subsequently considered successful.

Programmes run by non-Aboriginal organisations with Aboriginal staff have also proven successful in many locations.³¹⁶ However, what is evident is the need for cultural competency in mainstream service delivery, the importance of which has been identified and discussed in a great deal of the literature.³¹⁷

Challenges have been identified relating to the development, implementation and evaluation of Indigenous-based domestic violence projects due to a lack of good practice guidelines and the lack of published evaluation studies of such projects and programmes

³¹⁵ Ibid 36–9.

³¹⁶ The Women's Domestic Violence Court Assistance Scheme operates in NSW and employs some Aboriginal staff. In Queensland, the Education for Schools Project is a community education project that teaches young people about domestic violence. The NSW 'Staying Home, Leaving Violence' campaign piloted initially in Bega but now operates in other parts of NSW.

³¹⁷ See B Lumby and T Farrelly, 'Family Violence, Help-Seeking & the Close-Knit Aboriginal Community: Lessons for Mainstream Service Provisions' (Issues Paper No 19, Australian Domestic and Family Violence Clearinghouse, 2009) <http://www.adfvc.unsw.edu.au/PDF%20files/Issues%20Paper_19.pdf>; *Aboriginal Cultural Competence Framework* (2008) Victorian Government, Department of Human Services <<http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/plans-and-strategies/children,-youth-and-family-services/aboriginal-cultural-competence-framework-2008>>.

conducted among Indigenous Australians.³¹⁸ The past decade has seen an increased emphasis on restorative justice mechanisms for addressing criminal behaviour in Indigenous communities as well as to make the system more meaningful to offenders.³¹⁹ Many of these new initiatives have been limited to dealing with non-violent offences in the past. Aboriginal agencies have advocated the use of restorative justice approaches when dealing with family violence arguing that it would provide an alternative model to address the serious matter of family violence in Aboriginal communities.³²⁰ It has been suggested that difficulties arise and special challenges exist when using restorative justice for domestic violence matters, and that some alleged virtues of restorative justice do not apply in domestic violence matters.³²¹

Southwell argues that despite the increase in restorative justice practices in our legal system, criticism of using restorative justice techniques in domestic violence matters stems from the understanding that restorative justice models invest considerable value in an apology and/or reconciliation. This is arguably another facet of manipulative behaviour exhibited by the perpetrator.³²² Such models also assume that domestic violence victims and perpetrators will have equal capacity to speak and be heard in such forums. This is quite often not the case with victims feeling intimidated and still fearful of their abuser.³²³

Aboriginal models of responding to domestic violence—known as healing approaches—have taken family reconciliation as their goal because of the significance of family,

³¹⁸ Memmott, above n 15.

³¹⁹ HREOC, 2006 above n 166, 41. See also CJ Charles, 'Restorative Justice, the Criminal Courts and Remote Aboriginal Communities' (Paper presented at the Australasian Institute of Judicial Administration Conference on Indigenous Courts in Mildura, Victoria September 2007) <<http://www.aija.org.au/Ind%20Courts%20Conf%2007/Papers/Charles.pdf>>. For further information about Circle Sentencing in NSW, see *Judicial Commission of NSW, Circle Sentencing in NSW (2009) Education DVD* <<http://www.judcom.nsw.gov.au/publications/education-dvds/circle-sentencing-in-nsw>>, and a further evaluation of the NSW Circle Sentencing Program for the NSW Attorney-General's Department by the Cultural and Indigenous Research Centre of Australia, *Evaluation of Circle Sentencing Program Report* <[http://www.crimeprevention.nsw.gov.au/lawlink/cpd/ll_cpdiv.nsf/vwFiles/EvaluationOfCircleSentencing_REPORT.pdf/\\$file/EvaluationOfCircleSentencing_REPORT.pdf](http://www.crimeprevention.nsw.gov.au/lawlink/cpd/ll_cpdiv.nsf/vwFiles/EvaluationOfCircleSentencing_REPORT.pdf/$file/EvaluationOfCircleSentencing_REPORT.pdf)>.

³²⁰ R Lawrie and W Matthews, 'Holistic Community Justice: A Proposed Response to Aboriginal Family Violence' (2001) 11 <<http://www.austlii.edu.au/au/journals/UNSWLJ/2002/14.txt/cgi-bin/download.cgi/download/au/journals/UNSWLJ/2002/14.rtf>>.

³²¹ J Stubbs, 'Restorative Justice, Domestic Violence and Family Violence' (Issues Paper 9, Australian Domestic and Family Violence Clearinghouse, 2004) 6–7 <http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issues_Paper_9.pdf>.

³²² J Southwell, 'Restorative Justice and Family Violence: Debating Paradigms of Justice for Family Violence' (Spring 2003) *Domestic Violence and Incest Resource Centre Newsletter* 5 <<http://www.austdvclearinghouse.unsw.edu.au/>>.

³²³ Ibid.

community and place to Aboriginal people, and the related effects of child removal policies and other forms of intergenerational trauma.³²⁴

4.8.1 Commonwealth Indigenous Family Violence Reduction

The Australian government currently funds a number of Indigenous Family Violence Prevention Legal Services (FVPLS) in Australia, predominately in rural and remote areas of need. FVPLS units provide services to Indigenous people who are victims of, or who are at immediate risk of, family violence and/or sexual assault. Services provided by the units include legal assistance, crisis counselling, court support, information, referrals, outreach services and community education.³²⁵

Violence prevention, cultural support and healing programmes aimed at victims and some perpetrators of domestic violence in Indigenous communities operate in many locations around Australia. Indigenous family violence programmes are categorised into nine main areas outlined in Appendix 1.³²⁶

From the literature in this area,³²⁷ it is evident that the success of many Indigenous domestic violence prevention, education and response programmes is dependent on being community-based, culturally sensitive and focused, and find acceptance from the community because of this. Funding of these programmes has dramatically increased in the last decade and funding can be achieved from a variety of state and federal government sources and community sector funding from not-for-profit organisations. What has not been immediately evident is a decrease in violence in the community. Aboriginal women, despite the above-mentioned family violence programmes in operation, still face many barriers to disclosing violence particularly in small, interconnected and isolated communities.³²⁸ Increased community education and training programmes made available

³²⁴ Murray and Powell, above n 289, 65.

³²⁵ Attorney-General's Department, *Report of the Family Violence Prevention Legal Services Conference Cairns, October 2006*(2006) 1
<[http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(756EDFD270AD704EF00C15CF396D6111\)~FVP+LS+National+Conference+2006+-+Cairns+-+Conference+report.pdf/\\$file/FVPLS+National+Conference+2006+-+Cairns+-+Conference+report.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(756EDFD270AD704EF00C15CF396D6111)~FVP+LS+National+Conference+2006+-+Cairns+-+Conference+report.pdf/$file/FVPLS+National+Conference+2006+-+Cairns+-+Conference+report.pdf)>.

³²⁶ Indigenous family violence programs are categorised into nine main areas, see Memmott et al, above n 6, 64–74, in Appendix 1. See also Blagg, above n 48, 136–53; Willis, above n 7.

³²⁷ See for example, Blagg, above n 251; Willis, above n 7.

³²⁸ Willis, above n 7, 4.

before, during or after violence are essential in encouraging and supporting victims of violence to speak out against the atrocities they experience and to have the confidence to access the judicial system as needed.

4.9 NSW State Government Responses to Domestic Violence

It is the states, not the Commonwealth, that have the law enforcement responsibilities in relation to policing and prosecuting instances of domestic violence. However, each state has its own laws and policies for responding to domestic violence.

Over the past 25 years, NSW state governments have implemented a number of programmes and projects aimed at improving responses to domestic violence. In the last decade, responding to and reducing domestic violence has been a key priority of the NSW state government, with a variety of resources utilised and strategies employed in addressing it.

In 1981, the NSW Taskforce on Domestic Violence was appointed by the then Premier of NSW and later issued a report suggesting a number of legislative changes in relation to domestic violence offences. In response to the Taskforce report recommendations ADVOs under s547AA of the Crimes Act 1900 were introduced. Several years later in 1987, s547AA of the Crimes Act 1900 was replaced with Part 15A, which extended both the definition of domestic violence and domestic relationships.

Prior to the introduction of section 547AA of the Crimes Act in 1982, little protection³²⁹ existed for women who were victims of violence and feared that the violence was ongoing as the criminal law operated only after violence had occurred, and a conviction could only be secured if the offence was proven beyond a reasonable doubt.³³⁰

Given the closed-door phenomenon of domestic violence, women reporting incidences of violence was uncommon, charges laid against a domestic partner perpetrating violence unlikely and securing convictions for such a crime legally difficult given the evidentiary

³²⁹The Crimes Act did provide for a civil 'keep the peace' order, but this could not be tailored to include specific conditions, and breach of the order was not a criminal offence. Hence, that procedure was widely criticised at the time for being inflexible, unenforceable and ineffective. S 547A has been repealed.

³³⁰Law Reform Commission Report 103, 2003.

burden. Harassment and stalking offences were not considered criminal and no legal protection was afforded to victims.

By the early 1990s, there were changes to policies and programmes operating in NSW to ensure not only immediate safety and positive outcomes for women and children who are, or are at risk of becoming victims of domestic violence but also to ultimately prevent the occurrence of domestic violence in the community.³³¹ A National Strategy on Violence against Women was launched in 1992 with NSW and other states expected to work towards a universal intolerance of the use of violence in Australian society, to achieve more just and equitable responses by the criminal justice system to violence and also to ensure women escaping violence have immediate access to police intervention and legal protection. The NSW Strategy to Reduce Violence against Women³³² was established in 1997, and outlines the multifaceted approach by the state government during the 1990s³³³. It divides the aim to prevent and respond to domestic violence into three distinct approaches: a preventative approach; a systematic approach broadly focused on all forms of violence; and, importantly, a partnership approach between government departments and community-based services. Vernon³³⁴ argues that this three-pronged approach was not without significant challenges with the development of functional collaborative partnerships difficult and fraught with problems. In order for partnerships to be effective, each member of the partnership needs to identify the bounds of its own authority in order to operate effectively within it.³³⁵ This proved a difficult challenge at a state level for the various stakeholders involved in developing such partnerships.

³³¹ ARTD Consultants, *Coordinating NSW Government Action against Domestic and Family Violence: Final Report NSW* (2007) Department Premier and Cabinet, 5 <<http://www.healthinfonet.ecu.edu.au/key-resources/bibliography?lid=954>>.

³³² For further information, see

<http://www.lawlink.nsw.gov.au/lawlink/vaw/ll_vaw.nsf/vwPrint1/vaw_aboutus>.

³³³ The NSW Strategy to Reduce Violence against Women is no longer in operation.

³³⁴ C Vernon, 'NSW Strategy to Reduce Violence against Women' (Paper presented at the Partnerships in Crime Conference, Australian Institute of Criminology, February 1998) 5

<<http://www.aic.gov.au/en/events/aic%20upcoming%20events/1998/partnership.aspx>>.

³³⁵ J Fisher, 'Species of Partnerships—Local and National' (Paper presented at the Partnerships in Crime Conference, Australian Institute of Criminology, February 1998) 4

<http://www.aic.gov.au/events/aic%20upcoming%20events/1998/~/_media/conferences/partnership/fisher.ashx>.

In 2003, the Domestic Violence Interagency Guidelines³³⁶ were developed with the intention to further strengthen, and ‘provide one tool in the many strategies for reducing domestic violence and enhancing the coordination between agencies and services, with the strategy underpinned by agreed principles; legislation; interagency collaboration; and knowledgeable and skilled workers’.³³⁷

A search of the literature highlights the shift towards domestic violence matters being dealt with by specialist courts both internationally and locally. There is a variety of court models that exist and many such specialist courts take either an interventionist or integrated approach.³³⁸ Specialist domestic violence courts are often underpinned by the principle of therapeutic justice, which focuses on the perpetrators accountability and rehabilitation. While the concept of restorative justice overlaps, it typically focuses on the offender, the community and the victim.³³⁹

The NSW Domestic Violence Intervention Court Model (DVICM) was established to trial an integrated criminal justice and social welfare response to domestic violence in Wagga Wagga and Campbelltown in NSW. The court model was established with the aim of improving safety for victims of domestic violence in contact with the criminal justice system; and to ensure perpetrators who are charged with domestic violence offences are held accountable for their actions.³⁴⁰ Both courts began operating in mid-2005 with the support of the project partners: Department of Justice and Attorney General, NSW Police, Department of Corrective Services, NSW Legal Aid Commission and NSW DoCS in an attempt to provide a coordinated and integrated response to domestic violence offences. The pilot was evaluated by the NSW BOCSAR in 2008,³⁴¹ which found that the majority of victims reported that they were satisfied with the police response and support that they

³³⁶ NSW Strategy to Reduce Violence against Women, *Domestic Violence Interagency Guidelines* <http://www.community.nsw.gov.au/DOCSWR/_assets/main/documents/DV_guidelines.pdf>.

³³⁷ Ibid 17.

³³⁸ J Stewart, *Specialist Domestic/Family Violence Courts within the Australian Context*, (Australian Domestic and Family Violence Clearinghouse, Issues Paper 10, 2005) 4–5 <http://www.adfvc.unsw.edu.au/PDF%20files/Issuespaper_10.pdf>; J Stewart, ‘Specialist Domestic Courts: What We Know Now—How Far Have Australian Jurisdictions Progressed? 2010’ 1–16, from ADFVC.

³³⁹ Ibid. Stewart.2010.5.

³⁴⁰ L Rodwell and N Smith, *An Evaluation of the NSW Domestic Violence Intervention Court Model* (2008) NSW Bureau of Crime Statistics and Research, vii <http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_pub_dtch#domestic_violence>.

³⁴¹ Ibid.

received from the advocates and key stakeholders interviewed believed that pilot was a success and that the model should be continued.³⁴²

The Wagga Wagga DVICM was reviewed by Moore³⁴³ who notes the pilot model court is not referred to as a specialised domestic violence court but as an ‘integrated criminal justice and social welfare response’ and suggests a significant shortcoming of the pilot is the omission of a risk assessment process or tool to assist in determining the immediate and ongoing safety of the victim.³⁴⁴

In 2010, a commitment was made by the NSW state government of \$8.1 million over three years to fund the *Staying Home Leaving Violence* campaign in 18 communities around NSW. The programme aims to prevent women and children who are victims of domestic violence from becoming homeless by obtaining an ADVO to exclude the violent person from the home.³⁴⁵ This programme was developed and initiated following the 2004 report ‘Staying Home Leaving Violence: Promoting Choices for Women Leaving Abusive Partners’, which highlighted the need for women who are victims of domestic violence to be able to stay in their homes with the violent offender being removed rather than the victim and children being forced to leave. To complement the research, it was suggested that similar research be conducted by an Aboriginal women’s organisation.³⁴⁶

In 2011, Edwards interviewed 17 women who had participated in the Staying Home Leaving Violence programme as part of her research. Only one woman identified as Aboriginal and the report notes that despite attempts to recruit Aboriginal woman, only one participated. The research also identified that future studies will need to have a longer timeframe and different methodologies, in order to include the voices and experiences of Aboriginal women and their communities.³⁴⁷

³⁴² Rodwell and Smith, above n 331, viii.

³⁴³ E Moore, ‘The Pilot Domestic Violence Court Intervention Model: Toward Evidence-led Practice in Wagga Wagga in Rural Australia’ (2009) 8(1) *Currents: New Scholarship in the Human Services* 13–29 <<http://currents.synergiesprairies.ca/currents/index.php/currents/article/view/5>>.

³⁴⁴ Ibid 21.

³⁴⁵ For more information on this initiative, see R Edwards, ‘Staying Home Leaving Violence: Interim Findings’ (Research Project of the Australian Domestic and Family Violence Clearinghouse, UNSW, 2003) <http://www.adfvc.unsw.edu.au/RR_docs/RobynEdwardsInterim.pdf>.

³⁴⁶ R Edwards, ‘Staying Home Leaving Violence—Promoting Choices for Women Leaving Abusive Partners’ (Australian Domestic and Family Violence Clearinghouse, UNSW, 2004) 15 <<http://www.adfvc.unsw.edu.au/PDF%20files/SHLV.pdf>>.

³⁴⁷ Edwards, above n 337, 12

The *Aboriginal Family Health Strategy 2011–2016: Responding to Family Violence in Aboriginal Communities*³⁴⁸ initiative illustrates NSW Health’s commitment to reducing the incidence and effect of family violence by working in partnership with Aboriginal people and their communities by using a model built on the foundation of a healing approach. The strategy informs NSW Health’s planned response to family violence in Aboriginal communities.

In June 2013, the NSW State Government announced new reforms to improve the response to domestic and family violence. Previous domestic violence policies implemented in NSW have been criticised for being ad hoc and lacking long-term vision.³⁴⁹

More than 300 domestic and family violence experts from more than 50 non-government and government agencies have worked together to design these new reforms.³⁵⁰ The new focus is on violence prevention to address beliefs and attitudes that allow violence to occur in the first place. The current *NSW Domestic Violence Justice Strategy*³⁵¹ includes targeted strategies to meet the needs of Aboriginal victims and offenders. This will be achieved by justice agencies developing strategies to improve Aboriginal victims’ access to justice.

It is apparent from the programmes and campaigns mentioned above that a number of issues present in relation to the lack of identification and inclusion of Aboriginal women in mainstream violence preventative initiatives. Previously, there has been very little focus by the NSW state government to consider the needs and experiences of Aboriginal women enduring violence when formulating and planning mainstream preventative programme.

³⁴⁸ NSW Department of Health, ‘NSW Health Aboriginal Family Health Strategy’ (Centre for Aboriginal Health, 2011) <http://www0.health.nsw.gov.au/pubs/2011/pdf/aboriginal_family_health_.pdf>.

³⁴⁹ NSW Parliament Legislative Council Standing Committee on Social Issues, *Domestic Violence Trends and Issues in NSW* (2012) Stubbs, 46 <[http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/2340acad17f1e8c4ca257a6700149efd/\\$FILE/120827%20Final%20report.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/2340acad17f1e8c4ca257a6700149efd/$FILE/120827%20Final%20report.pdf)>.

³⁵⁰ NSW State Government, ‘It Stops Here: Standing Together to End Domestic and Family Violence’ (Media Release) <http://www.adhc.nsw.gov.au/about_us/media_releases/ministerial/it_stops_here_united_effort_to_end_domestic_and_family_violence_in_nsw#sthash.TGOJtO08.dpuf>.

³⁵¹ NSW Attorney General and Justice, *The NSW Domestic Violence Justice Strategy: Improving the NSW Criminal Justice System’s Response to Domestic Violence 2013–2017* <http://www.domesticviolence.lawlink.nsw.gov.au/agdbasev7wr/_assets/domesticviolence/m42200112/jag2391_dv_strategy_book_online.pdf>.

Aboriginal women in NSW must be consulted, engaged with and communicated with. This gap identified in the literature motivates my particular focus of enquiry.

4.10 Indigenous-specific Responses to Domestic Violence in NSW

Responding to domestic violence in Aboriginal communities needs to be culturally appropriate, inclusive, preventative and responsive. Moore states that prevention requires community education that addresses cultural loss and healing.³⁵² Considering the historical impact of colonisation, such as forced integration, forced segregation, oppression, and disempowerment, responses to domestic violence in Aboriginal communities need to be creative, dynamic and consultative.

In 2001, Cunneen considered the common themes in evaluations of successful family violence prevention programmes in Indigenous communities, these included:

The need for holistic approaches, the utilisation of community development models which emphasise self-determination and community ownership, the provision of culturally sensitive treatment which respects traditional law and customs and involves existing structures of authority such as elders, including women.³⁵³

In the discussion paper released by the Aboriginal Justice Advisory Council in 2001, in proposing responses to Aboriginal family violence the need for culturally appropriate solutions is further identified and encouraged:

Given the inherent problems of (under) reporting of family violence by Aboriginal communities and the general lack of confidence and trust in both service providers and the criminal justice system, there is an urgent need to examine new solutions that are controlled by Aboriginal communities.³⁵⁴

³⁵² Moore, above n 24, 10.

³⁵³ C Cunneen, 'The Impact of Crime Prevention on Aboriginal Communities—A Literature Review on Crime Prevention Policies and Programs Focusing on Crimes Committed by or against Aboriginal People' NSW Crime Prevention Division and Aboriginal Justice Advisory Council, 2001) 9 <http://www.lawlink.nsw.gov.au/lawlink/cpd/ll_cpd.nsf/pages/CPD_pamphlets>.

³⁵⁴ Lawrie and Matthews, above n 311, 229 <<http://www.austlii.edu.au/au/journals/UNSWLJ/2002/14.html>>.

In the last decade, NSW Aboriginal communities have seen community-based responses to domestic violence created and piloted in many areas, with an increasingly large emphasis on community created and controlled solutions.

In 1999, the Broken Hill and Menindee Rural Crisis Intervention Projects in NSW was developed by the NSW Government and received funding from the PADV, Commonwealth government initiative. The primary aim of the project was to develop a Model of Best Practice for addressing family violence in local Aboriginal communities. Each project that was established was supported and guided by a reference group of Indigenous community women and service providers from within the area.³⁵⁵ The final report released in 2001 provided an overview and an evaluation of the Project that concluded that for Aboriginal communities it is crucial that a whole-of-life, holistic approach is taken when dealing with Aboriginal family violence.³⁵⁶ The proposed responses to eliminate and prevent family violence aims to create a holistic approach that includes an understanding and commitment to a social view of health and wellbeing, which encompasses the physical, emotional, cultural and spiritual wellbeing of individuals and communities.³⁵⁷ Interestingly, the models of best practice reiterate the importance of culturally appropriate practices in the community, the need for community involvement and ownership of the project and the best ways to achieve an interagency collaborative approach to domestic violence to find community solutions to Aboriginal family violence.

In Bourke, a remote community in NSW with a large Aboriginal population, \$3.4 million was allocated in 2005 to establish the Bourke Aboriginal Intensive Family Based Service to support Aboriginal families whose children have been reported to DoCS because of concerns about their safety and wellbeing. The service works with families coping with issues such as domestic violence, mental illness and parental alcohol and drug abuse. In 2009, a further \$15 million was committed to this service over five years, as the government recognised the importance of 'its family group conferencing approach to

³⁵⁵ Broken Hill and Menindee Rural Crisis Intervention Projects, *Community Solutions to Aboriginal Family Violence. Final Report and Model of Best Practice* (Department for Women, Commonwealth Government, 2001) 11.

³⁵⁶ Ibid 8.

³⁵⁷ Ibid.

engage families in decision making and to comply with the Aboriginal self-determination and participation principles'.³⁵⁸

Community-based programmes endeavour to re-empower the community to enable community members to steer and influence the projects in order to ensure the project is utilised, respected and effective in the prevention of domestic violence. In an attempt to eliminate and prevent domestic violence, Aboriginal communities in NSW have encouraged the inclusion of alternative sentencing processes, rehabilitation and healing programmes targeted at Aboriginal offenders. Aboriginal offenders of domestic violence should be dealt with in a way that is rehabilitative and restorative and establishes a formal link with the Aboriginal community.³⁵⁹ Increasingly, many Aboriginal family violence programmes are aimed at challenging the violent behaviour of Aboriginal male perpetrators of domestic violence and such programmes are 'developing new approaches and models derived from strengthening Indigenous family life and culture'.³⁶⁰

4.11 Conclusion

This chapter has explored both historical and contemporary barriers and issues faced by Aboriginal women who are victims of domestic violence in Australia. It focused on the prevalence of domestic violence experienced by Aboriginal women in Australia. Evidence suggests from research and reported hospitalisations that the type of violence experienced by Aboriginal victims is more severe, dangerous and far more likely to require hospitalisation than that experienced by non-Aboriginal women.

The causal attribution of violence in Aboriginal communities was explored and situational, precipitating, underlying and historical causes of violence were considered. Many of these issues are unique to Indigenous communities including the precipitating factors that may trigger violence such as a death in custody, or the underlying factors of dispossession and marginalisation. These highlight the differing experiences that Aboriginal women and communities have in relation to violence in the community and the cultural barriers and

³⁵⁸ Media Release for the Hon. Linda Burney MP. *Successful Program Expanded to Keep Aboriginal Children Safe* (2009) <<http://www.acwa.asn.au/email/downloads91/KAS.pdf>>.

³⁵⁹ Lawrie et al 2001, 10.

³⁶⁰ C Cunneen, 'Preventing Violence against Indigenous Women through Programs which Target Men' (2002) 8(1) *University of New South Wales Law Journal* 242, 249.

factors that affect their decisions to leave the violence or to pursue a legal remedy. The particular causes of domestic violence in Aboriginal communities, and the specific relationship between Aboriginal women and the criminal justice system also further highlight the importance of an understanding of the long-term impacts of colonisation. Expressed another way, it is not possible to understand the Indigenous experience of domestic violence outside of a colonial paradigm.

The literature identifies that accurate statistics on the prevalence of domestic violence in the community is unavailable as much of the violence Aboriginal women experience is unreported. This makes preventative and reduction programmes more difficult to implement, fund and support, without adequate statistics as to the full extent of the problem. A major impediment is the lack of court data on ADVOs from NSW Local Courts. Aboriginality is not recorded as a statistic, even though research shows that Aboriginal women experience higher rates of domestic violence. In NSW, we are unable to determine the number of Aboriginal women who take out ADVOs in response to such violence. Having such a statistic would have enabled the research to better understand the frequency at which Aboriginal women were seeking legal remedies for domestic violence.

The literature review uncovered no large-scale research specifically considering Aboriginal women's understanding of or utilisation of ADVOs. While two academics³⁶¹ in NSW write about Aboriginal women's experience of the legal system and include ADVOs in their research, their research focuses on two rural areas rather than NSW entirely. Lack of available research and interest in this area highlights the need for further research into improving responses to domestic violence and access to the justice system in Aboriginal communities across NSW.

This chapter concluded with a brief overview of both Commonwealth and state approaches to reducing domestic violence that are Indigenous-specific and culturally sensitive. A range of government and non-government responses, strategies and plans were considered and discussed with a particular focus on NSW and Indigenous-specific responses. A need for further research around domestic violence prevention and reduction programmes is identified that make a contribution to the health, wellbeing and safety of Aboriginal women. Holistic

³⁶¹Moore, above n 24; Katzen, above n 75.

programmes that are community driven will re-empower the community, and prevent and protect Aboriginal women from future violence.

The next chapter moves to a more specific legal analysis of the nature of ADVOs. The chapter considers the legal process of applying for an order, the court process and contraventions and criticisms of ADVOs.

Chapter Five: Protecting Victims of Domestic Violence in NSW

This chapter will examine legislation that exists in NSW in relation to protecting women from domestic violence. It will take an in-depth look at ADVOs, applying for an order, the court process, enforcement of the order and policing of orders. Lastly, it will briefly assess the effectiveness of such orders in protecting Aboriginal women from domestic violence by considering current research in this area.

As explored in previous chapters, family violence and abuse is causing significant damage to Aboriginal Australians and has an alarming effect on quality of life, culture and communities. A variety of research exists examining family and domestic violence in Aboriginal communities, best practice models and other culturally specific violence reduction programmes. The aim of this chapter is to identify gaps in existing knowledge, particularly around how Aboriginal women understand and utilise ADVOs, thus highlighting both the need and importance of this research. Little research has been done on the value of ADVOs for Aboriginal women and the necessary protection Aboriginal women desperately need. Thus, this chapter contributes to an understanding of the gap between academic research and what the practitioners in the field experience.

5.1 Apprehended Violence Orders in NSW

Victims of domestic violence in NSW rely upon the justice system for protection from such violence. Protection is provided to individuals through both the criminal and/or civil jurisdictions of the court and more specifically in the form of an ADVO.

Provisions regarding ADVOs are contained in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (the Act). This recent piece of legislation commenced on 10 March 2008 and aims at strengthening the law in relation to domestic violence and promoting better access to justice for victims. Matters pertaining to domestic violence and

protection orders are encapsulated in this Act, which provides a legislative instrument for victims, lawyers, magistrates, police and prosecutors.³⁶²

The objects of the Act in relation to domestic violence and for the making of ADVOs are:

- (a) to ensure the safety and protection of all persons, including children, who experience or witness domestic violence
- (b) to reduce and prevent violence by a person against another person where a domestic relationship exists between those persons
- (c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women
- (d) to enact provisions that are consistent with the UN Convention on the Rights of the Child.

Part 2, section 9 (2) of the *Crimes (Domestic and Personal Violence) Act 2007* speaks to how the above objectives are to be achieved, specifically, by empowering courts to make ADVOs to protect people from domestic violence, intimidation, harassment and stalking, and also ensuring that access to court is safe, speedy, inexpensive and simple as is consistent with justice. Crawford and Neville state:

An apprehended violence order is a court order that aims to prevent a person from doing specified things. Apprehended violence orders are based on the protected person's fear of experiencing unwanted conduct from the defendant in the future-conduct such as physical violence, intimidation, stalking, harassment or threats.³⁶³

The purpose of the order is to provide protection for the victim and to place certain restrictions on the defendant. The intention of an ADVO is not to instruct a person to undertake treatment but to restrain them from behaving in a particular way. The order is determined on the civil standard of proof, which is on the balance of probabilities. The magistrate must be satisfied that the applicant has reasonable grounds to fear or in fact

³⁶²NSW Department of Premier and Cabinet, 'Discussion Paper on NSW Domestic and Family Violence Strategic Framework' (2008) 36<www.women.nsw.gov.au>.

³⁶³Crawford, V and Neville, M. *Domestic Violence* (Legal Information Access Centre, 2004) 7.

fears that the defendant will commit a personal violence offence, or fears harassment, molestation, intimidation or stalking.³⁶⁴

There are two categories of AVOs available in NSW, and the type of order applied for is distinguished by the type of relationship the person seeking protection and the defendant have.

An apprehended personal violence order (APVO) is applied for when the parties are not involved in a domestic relationship, have never resided together and are not related. Those who experience violence when not in a domestic relationship are referred to as victims of personal violence. Personal violence can exist between neighbours, work colleagues, classmates, strangers and ex-partners who have never resided with the victim.

An ADVO is for the protection of persons in a domestic relationship. Part 1, Section 5 of the Act outlines the meaning of a 'domestic relationship'. A person has a domestic relationship with another person if the person:

- (a) is or has been married to the other person, or
- (b) has or has had a de facto relationship, within the meaning of the Property (Relationships) Act 1984, with the other person, or
- (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) is living or has lived in the same household as the other person, or
- (e) is living or has lived as a long-term resident in the same residential facility as the other person (not a correctional centre or a detention centre), or
- (f) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
- (g) is or has been a relative of the other person, or
- (h) in the case of an Aboriginal person or Torres Strait Islander, it or has been part of the extended family or kin of the other person according to the Indigenous kinship system of the person's culture.

³⁶⁴*Crimes (Domestic and Personal Violence) Act 2007* Section 16 (1).

The legislation clearly defines the meaning of the term ‘relative’ if the person is:

- (i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or
- (ii) a son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law, or
- (iii) a brother, sister, half-brother, half-sister, step-brother, step-sister, brother-in-law or sister-in-law, or
- (iv) an uncle or aunt, uncle-in-law or aunt-in-law, or
- (v) a nephew or niece, or
- (vi) a cousin.³⁶⁵

Protection orders that aim to prevent future violence, abuse and harassment are imperative in offering women who are victims of domestic violence, protection from violence whether they choose to stay in the relationship and/or reside with their partner or not. This is an important consideration for many Aboriginal women who may choose to stay in the relationship and continue living with the perpetrator for a number of reasons including limited available housing in the community, community pressure, shame and fear of being ostracised by the community.³⁶⁶

Kelly³⁶⁷ discusses the incidence of Aboriginal women reconciling with their partner, despite a history of violence, once the ADVO has been made. Flexibility in the way the ADVO protects a victim is paramount and residing with the offender is an option that is not precluded. ADVOs can be tailored to individual circumstances to provide the best and most appropriate protection for the victim.

5.2 Applying for an ADVO

A victim of domestic violence can obtain an ADVO in NSW by way of a private application through the Local Court Chamber Registrar, or, police may make an application on behalf of the victim.

³⁶⁵ *Crimes (Domestic and Personal Violence) Act 2007* Section 6.

³⁶⁶ Willis, above n 7, 4.

³⁶⁷ Kelly, above n 73, 3.

5.2.1 Private Applications

A victim of violence can initiate ADVO proceedings with the chamber registrar at any Local Court in NSW if they are over the age of 16. This is known as a ‘private application’ and it is the Chamber Registrar who will prepare the application for the victim.

In her research, Kelly found that many of the Aboriginal women in NSW that she interviewed who had experienced domestic violence have an inherent distrust of the police and would ‘prefer to ask the local magistrate to initiate process rather than the police’ as the Chamber Registrar would ‘explain how the ADVO works and gives you a copy of the ADVO ... the police don’t do that’.³⁶⁸

Once a complaint has been made to the Chamber Registrar, an application for immediate protection known as an interim order can be made to protect the victim until the matter is next before the court.³⁶⁹

If a private application for an ADVO is made then a victim has several options in relation to court representation. The victim could represent herself but this option is more unusual in applications for ADVOS and more common in applications for APVOs.

There is the option of employing a solicitor at cost to themselves or applying for Legal Aid. However, in NSW the Women’s Domestic Violence Court Advocacy Service (WDVCAS), which was established in 1996, provides a duty solicitor to represent women seeking an ADVO in a number of courts around NSW. The service is not means tested and the duty solicitor interviews the client at court on the day the matter is set down for mention before the magistrate and represents the victim.

5.2.2 Women’s Domestic Violence Court Advocacy Program

Currently, there are 28 WDVCAS operating across rural and metropolitan NSW and the programme services 108 Local Courts throughout NSW.³⁷⁰ The aim of the service is to

³⁶⁸ Ibid 6.

³⁶⁹ *Crimes (Domestic and Personal Violence) Act 2007* Section 22.

provide free legal representation, support and information to assist women and children experiencing violence to obtain legal protection through an ADVO. A pivotal part of the service is the provision of referrals onto services that may assist women who are or have been victims of violence, with matters relating to housing, counselling and material aid.

The programme is funded by the State Government with the Legal Aid Commission of NSW administering funding for the programme. In 1996, 26 WDVCASs were established to provide services to 37 Local Courts throughout NSW.³⁷¹ Between 1999 and 2004, the number of women and children accessing WDVCAS services increased by 68 per cent. In response to the increase in women using the service, the NSW Government announced an increase in funding of \$2.6 million in 2009/2010 to expand the service ensuring that the programme reaches more courts in rural and remote areas of the state.³⁷²

The WDVCAS policy document produced by Legal Aid NSW states that the programme is founded on a human rights approach to the provision of services to people in domestic violence matters and acknowledges the disproportionate impact of domestic violence on women who are already disadvantaged, particularly Aboriginal women.

The overall role of the WDVCAS in relation to providing women who are victims of domestic violence with a service is to: facilitate the client's access to the court system to obtain effective legal protection; ensure clients are referred to the WDVCAS before court and at court, by police, Local Courts staff and other service providers; and provide clients with legal information about the court process and their options in relation to the process before court, at court and after court. WDVCAS staff do not provide legal advice but ensure appropriate early referral to legal practitioners for advice and representation; assess, at each stage of the process the client's needs for legal and social/welfare assistance and facilitate her access to services that can assist with these; ensure that the WDVCAS clients in private ADVO applications receive legal advice and legal representation; ensure that the conditions of the client's ADVO (provisional, interim and final) are appropriate and workable in the client's circumstances; ensure where possible that final ADVOS are made without

³⁷⁰ Legal Aid Commission of NSW, 'Women's Domestic Violence Court Assistance Program: Principles, Policies and Standards' (2009) 5 <<http://www.legalaid.nsw.gov.au/what-we-do/community-partnerships/womens-domestic-violence-court-advocacy-program>>, up-to-date court services available.

³⁷¹ Ibid 5.

³⁷² Ibid.

unnecessary delay; ensure that clients receive support to feel safe throughout the court process as far as possible; work co-operatively and collaboratively with police, Local Courts staff, solicitors and local services to improve court outcomes for clients.³⁷³

Where practical, Local Courts around NSW have created safe rooms located within the court buildings to protect women seeking ADVOs from harassment and intimidation by the defendant and/or their family. The WDVCAS uses the secure environment of the safe rooms to interview women before providing court representation. This is in line with the principles that underpin the programme, maintaining that the safety of women and workers are a priority and that women accessing the service are to be treated with both dignity and respect in a supportive and non-judgemental environment. Legal representation is usually provided through a roster of solicitors that is coordinated by the WDVCAS, is not limited to a client's first appearance and may involve defending an application for an ADVO at a hearing. The roster is made up of private solicitors, Legal Aid solicitors and Community Legal Centre solicitors and these solicitors provide legal representation to women who are victims of domestic violence who have initiated their complaints through the Chamber Registrar at the Local Court.

Of benefit to Aboriginal women in NSW is that the WDVCAS employs a number of specialist Aboriginal workers in areas with a high percentage of Aboriginal people.³⁷⁴ Aboriginality is a genuine occupational qualification for the job and the position aims at assisting Aboriginal women who are applying for an ADVO, with information, referral and court advocacy. The Scheme endeavours to make the legal system more accessible for Aboriginal women who are victims of violence. This service of representation by a duty Solicitor from the WDVCAS is not available to women when the police have taken out an ADVO on their behalf, as they will be represented by the police prosecutor. There may be situations where they could negotiate assistance from specialist workers. Women must already know this service exists to be able to request it and many Aboriginal women are not aware of it.

³⁷³ Ibid 29.

³⁷⁴ Ibid 11. NSW Legal Aid could not provide information relating to WDVCAS workers who identified as Aboriginal and did not have data relating to identified positions in NSW.

5.2.3 Police Applications

Section 25 of the *Crimes (Domestic and Personal Violence) Act 2007* outlines the powers that a police officer is granted in relation to applying for interim ADVOs by way of telephone, facsimile or other communication device. Formerly known as telephone interim orders (TIOs) under the previous legislation they are referred to in the Act as ‘provisional orders’.

An application for a provisional order may be made at the request of the protected person or on the police officer’s own initiative. For an application for a provisional order to meet the legislative criteria, the police officer must have good reason to believe that a provisional order needs to be made immediately to ensure the safety and protection of the person who would be protected by the provisional order.³⁷⁵ However, under Section 27 of the legislation, police officers are obligated to apply for provisional orders in certain circumstances. These include, but are not limited to:

- (a) When a police officer investigating the incident believes that a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made.
- (b) The police officer has good reason to believe that an order needs to be made immediately to ensure the safety and protection of the person who would be protected by the order or to prevent substantial damage to any property of that person.

A provisional order is only temporary and in force until the application goes to court. It is for a maximum period of 28 days.

If an application for an ADVO is made by a police officer, the police prosecutor represents the victim when the matter is before the magistrate. The Domestic Violence Liaison Officer (DVLO) provides support to the victim and liaises between the victim and the prosecutor to ensure that the matter proceeds in a timely and efficient manner. The DVLO is a specialist police office, trained in the dynamics of domestic and family violence, child protection procedures, victim support and court ADVO processes required for the protection of victims of family violence. NSW Police website outlines the role of a DVLO as: providing advice to

³⁷⁵ Ibid Section 26 (1) (b).

police and victims; assisting in making referrals to appropriate support agencies; maintaining close working relationships with all support agencies; reviewing all domestic and family violence reports and cases; assisting victims through the court process for ADVOs; and monitoring repeat victims and perpetrators.³⁷⁶

In NSW, the state is divided into 80 Local Area Commands (LACs). Each LAC has at least one DVLO usually located at the major police stations in the area. Currently, in NSW, there are around 115 DVLOs.³⁷⁷

The previous chapter noted a number of barriers for Aboriginal women when reporting violence to the police. Willis identified a lack of confidence in the justice system to deliver positive results for Aboriginal women as a major barrier Aboriginal women face.³⁷⁸ Others include reluctance to approach and confide in police due to a lack of trust, racism and trauma previously experienced by the police, and past ill-treatment by the police.³⁷⁹ Further police interactions are analysed and discussed in the research interviews in chapters six to eight.

5.3 The Court Process

The standard of proof necessary for the making of an ADVO is less than the criminal standard of ‘beyond a reasonable doubt’. A court may make an ADVOs if it is satisfied on the balance of probabilities that a person who has or has had a domestic relationship with another person has reasonable grounds to fear and in fact fears the following:

- (a) The commission by the other person of a personal violence offence against the person, or
- (b) The engagement of the other person in conduct in which the other person:
 - (i) intimidates the person or a person with whom the person has a domestic relationship, or
 - (ii) stalks the person.³⁸⁰

³⁷⁶For more information, see NSW Police Service website at http://www.police.nsw.gov.au/community_issues/domestic_and_family_violence/introduction.

³⁷⁷ARTD Consultants, above n 235, 24.

³⁷⁸Willis, above n 7, 3.

³⁷⁹Ibid.

³⁸⁰Crimes (Domestic and Personal Violence) Act 2007 Section 16(1).

An application for an ADVO is a civil proceeding that does not in itself result in a criminal record. It is a breach of the ADVO that may result in criminal charges and these must be proven beyond a reasonable doubt.

Before the matter comes before the court, the defendant must be ‘served’ with a copy of the order and a summons to appear in court. Police have limited powers to arrest or detain a person for the purposes of serving an ADVO. Critics argue that defendants can delay court proceedings by going to significant efforts to avoid being served with the court documents and NSW Police have identified that some defendants go to great lengths to avoid being served.³⁸¹ This results in a reduced ability of police to serve orders on the defendant and can add extensive delays to the legal process.³⁸²

The first time that the matter is before the court is referred to as the ‘first return date’ and the matter is only ‘mentioned’ before the court. If both parties to the proceedings are present at court and the person in need of protection fears violence or harassment from the other party the magistrate may be satisfied that the protected person does hold fears. The defendant would then be questioned as to their willingness to consent to an order without admissions. If the defendant chooses to consent to an order being made then the court can make an ADVO without making a decision regarding the factual background of the initial complaint supporting the application. Final orders would be made and the defendant would have consented without admissions thus not admitting to any of the allegations made by the victim.³⁸³

A defendant may refuse to consent to the orders but agree to make undertakings to the court in terms consistent with the orders sought in the ADVO. An undertaking is only a ‘promise’ to the court not to do certain things and is not legally enforceable and therefore does not provide the same protection as an ADVO.³⁸⁴

If the defendant does not consent to the orders and does not make undertakings, the matter would be set down for a hearing at a later date. Each party to the complaint would attend

³⁸¹ Law Reform Commission Report 103.2003.11.47–11.56.

³⁸² Police Association of NSW, ‘Apprehended Domestic Violence Orders—Review of the Role of Police in the Application and Enforcement of ADVOs’ (2008) 4.

³⁸³ *Crimes (Domestic and Personal Violence) Act 2007*, Section 78.

³⁸⁴ Australia Law Reform Commission, *Family Violence and Commonwealth Laws—Improving Legal Frameworks* (ALRC Report 117, 2012) Section 18.156 <<http://www.alrc.gov.au/publications>>.

court and give evidence, together with anyone they wish to call as witnesses. An interim order will often be made or it is likely that an existing interim order is extended until the matter is back before the court.³⁸⁵

In proceedings for APVOs where the allegations do not involve harassment or physical violence, a magistrate would be inclined to refer the matter to mediation at a community justice centre.³⁸⁶ However, it is argued that referral of a complaint that involves domestic violence offences to a community justice centre for mediation is inappropriate and ineffective.³⁸⁷ Disputes where there is a fear of violence, prohibits the parties from negotiating freely about the complaint and therefore such matters are generally considered unsuitable for mediation. The use and threat of violence can create a power imbalance between the perpetrator and the woman, making genuine negotiation impossible.³⁸⁸

If the defendant does not appear at court the magistrate may adjourn the proceedings either with or without an interim ADVO. This step is often taken by magistrates if the defendant has not been served with the court papers and is unaware of proceedings.³⁸⁹ If the defendant has been served and has not appeared in court, the magistrate has the option to make final orders.³⁹⁰

5.4 Local Court Magistrates and Apprehended Violence Orders

At present, 157 Local Courts operate within NSW³⁹¹ with magistrates having the power to make interim and final ADVOS if they are satisfied, on the balance of probabilities, that the person seeking the protection order has reasonable grounds to fear and in fact fears that the defendant will commit violence against them.³⁹²

³⁸⁵ *Crimes (Domestic and Personal Violence) Act 2007*, Section 22.

³⁸⁶ *Apprehended Violence Orders* (13 July 2007) The Shopfront Youth Legal Centre, 4
<<http://www.theshopfront.org/>>.

³⁸⁷ The Community Justice Centre's website provides information on matters of suitability for mediation, http://www.cjc.nsw.gov.au/lawlink/Community_Justice_Centres/ll_cjc.nsf/pages/CJC_index

³⁸⁸ Hilary Astor, 'Position Paper on Mediation' (National Committee on Violence against Women, AGPS, 1991).

³⁸⁹ *Crimes (Domestic and Personal Violence Act 2007*, Section 24.

³⁹⁰ *Ibid.*

³⁹¹ For more information on NSW local courts, see

<http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/pages/lc_aboutus>.

³⁹² *Crimes (Domestic and Personal Violence) Act 2007*, Section 16.

In August 1999, the Judicial Commission invited all NSW magistrates to participate in an anonymous survey on ADVOs. The overall response rate was only 56 per cent, with the final report offering an interesting insight into the views and understanding of family violence by magistrates in NSW.³⁹³ Remarkably, four respondents participating in the survey thought that Domestic Violence Orders were of ‘limited use’, but acknowledged that the process was a valid one,³⁹⁴ and seven respondents stated that they believed domestic violence was no different from other type of violence.³⁹⁵ The remaining respondents did recognise the ‘ingrained, long lasting and insidious nature’ of domestic violence and identified several factors that they felt made domestic violence different to other types of violence.³⁹⁶

Thirty-five per cent of the participating magistrates answered that they felt that the procedures associated with ADVOs were not fair to men, with one respondent believing that ‘a system that provides police prosecutor and facilitates support groups for complainants, the majority of whom are women, should provide legal assistance to men as a matter of fairness’. Alarming, a number of respondents thought women could be held to blame for provoking violence. One magistrate made their understanding of domestic violence clear:

Women cause a lot of problems by nagging, bitching and emotionally hurting men. Men cannot bitch back, for hormonal reasons, and often have no recourse but violence.³⁹⁷

In relation to changes they would like to see, one magistrate suggested the following, which supports the hypothesis of this research: that complainants find ADVOs difficult to understand and often have no understanding of the terms as they appear on the order:

These ADVO and interim orders are so confusing to people of low and average education with vague words like ‘harass’, ‘molest’ that even I don’t know what they mean—people should get orders and applications in simpler terms saying

³⁹³ J Hickey and S Cumines, *Apprehended Violence Orders: A Survey of Magistrates*, Judicial Commission of New South Wales (1999) vii.

³⁹⁴ Ibid 25.

³⁹⁵ Ibid 49.

³⁹⁶ Ibid.

³⁹⁷ Ibid 61.

which is being sought, what it is they are supposed to have done—and what they are prohibited from doing.³⁹⁸

5.4.1 Defended Apprehended Violence Order Applications

At a hearing, both parties are required to give evidence before the court. The victim's evidence is intended to substantiate the complaint, while the defendant's evidence is intended to refute the allegations made by the victim in the complaint before the court. If the defendant has any witnesses, the Police prosecutor or the victim's lawyer will be given the opportunity to cross-examine them. If the victim has witnesses, then the defendant or the defendant's lawyer is given the opportunity to cross-examine them. Evidence is presented to the court to support the victim's case, which could include medical records, phone records, emails and letters.³⁹⁹

5.4.2 Final Orders

In deciding whether a final ADVO will be granted, the court must consider the safety and protection of the protected person and any child directly or indirectly affected by the conduct of the defendant alleged in the application for the order.⁴⁰⁰ A necessary consideration for the court to consider is any hardship that might be caused by making or not making the order to the protected person and any children. A final ADVO can be made for as long as necessary to ensure the safety and protection of the victim.⁴⁰¹

5.5 Conditions of ADVOs

Conditions that are the basis of an ADVO must be well considered and appropriate to the victim's circumstances and their inclusion must be necessary to protect the victim.

³⁹⁸ Ibid 80.

³⁹⁹ *Crimes (Domestic and Personal Violence) Act 2007*, Section 70.

⁴⁰⁰ Ibid Section 17.

⁴⁰¹ Ibid Section 79.

Unlike some jurisdictions in Australia,⁴⁰² an ADVO made in NSW can allow a couple involved in a violent relationship to have the option of still residing together and being able to see each other within the restraints of the order. The benefit of having an ADVO is that the relationship can continue but the victim is still protected from further violence because of the threat of criminal charges if the ADVO is breached. Alternatively, conditions of an ADVO may take into consideration that the victim may no longer want any further contact with the defendant and a defendant can be restricted from contacting the victim, unless in accordance with other written agreements such as a parenting plan or family law orders.

Once an ADVO is granted, there are several standard conditions that are automatically included in all ADVOS unless the court orders otherwise. These conditions prohibit the defendant from:

- assaulting, molesting, harassing, threatening or otherwise interfering with the protected person or anyone who has a domestic relationship with them;
- intimidating the protected person or anyone who has a domestic relationship with them;
- stalking the protected person or anyone who has a domestic relationship with them.⁴⁰³

ADVOS are created with the intent of considering the victims' individual circumstances and catering the order to their specific needs. Any additional conditions attached to the ADVO need to take into consideration as to the best possible method to protect the victim from the defendant. This may include conditions in the order that the defendant must not:

- reside at the premises at which the protected person(s) may from time to time reside, or other specified premises;
- enter the premises at which the protected person(s) may from time to time reside or work or other specified premises;
- go within a certain distance of the above premises;
- approach, contact or telephone the protected person(s) except as agreed in writing for the purpose of arranging access to children etc.;

⁴⁰² In Western Australia, orders made by the court that protect women from violence exclude their partner from living with them. For more information, see *Restraining Orders Act 1997 (WA)*

<<http://www.austlii.edu.au/>>.

⁴⁰³ *Crimes (Domestic and Personal Violence) Act 2007* Section 36.

- approach the person within 12 hours of consuming alcohol or illicit drugs;
- possess firearms;
- destroy or deliberately damage or interfere with the protected person's property;
- engage in specified behaviour that might affect the protected person.⁴⁰⁴

Little is known about the effectiveness of these conditions for Aboriginal women as there is a lack of available research relating to these conditions. Aboriginal women, who participated in the research for this thesis, raised concerns about the wording of these optional conditions and their enforcement. These issues are discussed more fully in Chapter Seven.

5.6 Contravening an ADVO

Once a final ADVO has been granted by the court, it is the police and also the victim who is responsible for the enforcement of the order. If the defendant contravenes the order this is widely referred to as a 'breach'.⁴⁰⁵ If the defendant has breached conditions of the ADVO the victim must report the breach to the police in order for the police to respond to the breach. Police can initiate criminal proceedings for a breach or an alleged breach of the order if they have been summoned to a domestic violence incident but this usually is contingent on the victim notifying the police at first instance that a breach of the order has occurred by the defendant.

Section 14 (1) of the *Crimes (Domestic and Personal Violence) Act* enacts an offence of contravening an ADVO stating that a person who knowingly contravenes a prohibition or restriction specified in an apprehended violence order made against the person is guilty of an offence with the maximum penalty being two years imprisonment or 50 penalty units, which equates to a fine of \$5500.⁴⁰⁶

When sentencing a person for a breach of an order that involves an act of violence against the person in need of protection, then unless the court otherwise orders, the person must be

⁴⁰⁴ Ibid Section 35.

⁴⁰⁵ Ibid Section 14.

⁴⁰⁶ *Crimes (Sentencing Procedure) Act 1999*, Section 17 defines a penalty unit as 'an amount of money equal to the amount obtained by multiplying \$110 by that number of penalty units'.

sentenced to a term of imprisonment and if the court determines not to impose a sentence of imprisonment, it must give its reasons for not doing so.⁴⁰⁷

The legislation obligates police officers to charge or summons the defendant or to make a written record of the reasons for:

- (a) A decision by a police officer not to initiate criminal proceedings against a person for an alleged contravention.
- (b) A decision by a police officer not to proceed with criminal proceedings against a person for an alleged contravention.⁴⁰⁸

The Act states that a person must knowingly commit the offence, that being, they must have been previously been served with a copy of the order or have been present in court when the order was made.⁴⁰⁹

The aim of an ADVO is to have a deterrent effect but as Stubbs and Powell⁴¹⁰ noted it is difficult to quantify the extent to which ADVOs are breached as not all breaches are reported to the police and thus, not all defendants are deterred by ADVOs.

Once an ADVO has been made, if the victim and defendant wish to reconcile and continue their relationship they may do so providing it is not in conflict with the conditions outlined in the order. If the order explicitly states that the defendant must not come within 50 metres of the victim and they decide to reconcile and move in together, then the defendant can be charged with breaching the order. Consent by the victim is not a defence to the breach of the order. An ADVO must be either varied or revoked if circumstances relating to the relationship change.⁴¹¹ A variation is a relatively simple matter and involves changing the conditions in the ADVO to ensure they are still appropriate to the dynamic personal relationship. This can be done in court by the victim and it is not necessary for the victim to be represented when seeking a variation to an ADVO. Police officers or the defendant may also apply to the court to have an order varied in the following ways:

- (a) by extending or reducing the period during which the order is to remain in force,

⁴⁰⁷*Crimes (Domestic and Personal Violence) Act 2007*, Section 14 (4).

⁴⁰⁸

⁴⁰⁹ Ibid Section 14 (2).

⁴¹⁰ Stubbs and Powell, above n 8.

⁴¹¹ Ibid Section 72.

- (b) by amending or deleting any prohibitions or restrictions specified in the order,
- (c) by specifying additional prohibitions or restrictions in the order.⁴¹²

If the defendant initiates proceedings to revoke a final ADVO, the application to revoke the order must have been served on each protected person first. However, if the victim lodges an application to extend the final ADVO before the order has expired, there is no requirement under the law to serve the relevant application on the defendant.⁴¹³

5.7 Policing of ADVO and Domestic Violence Offences

The policing of domestic violence offences has undergone a shift with recent changes to the approach NSW police take when attending reported domestic incidents. The Australian Institute of Criminology (AIC) identified four particular barriers to effective policing of domestic violence matters; Inconsistent procedures within the court and police standard operating procedures; lack of training for field officers and the command hierarchy including police prosecutors; continued low status of DVLOs; and inadequate services for Indigenous women.⁴¹⁴

The Australasian Police Commissioners released a Leadership Statement and Policing Strategy in 2008, outlining their commitment to reducing and preventing family violence through strong, consistent and compassionate responses. The statement reiterates that the reduction of family violence is an Australasian policing priority, and their commitment to implement strategies that reduce and prevent family violence at all levels.⁴¹⁵

Statements and strategies produced by NSW Police Force reinforce a pro victim support response to domestic and family violence attempts to ensure appropriate protective measures are taken to keep victims safe and prevent further violence against them.

⁴¹² Ibid Section 73 (7).

⁴¹³ Ibid Section 72 (2).

⁴¹⁴ Australian Institute of Criminology, *Policing Domestic Violence: Barriers and Good Practice* (2007) No 53, 1 <<http://www.aic.gov.au/documents/7/3/0/%7B73008422-78A5-4C82-8889-7EA0DFE354B9%7Dcrm053.pdf>>.

⁴¹⁵ *Prevention and Reduction of Family Violence: An Australasian Policing Strategy* (2008) 1 <http://www.police.nsw.gov.au/_data/assets/pdf_file/0003/145434/australasian_policing_strategy_prevention_reduction_family_violence.pdf>.

The NSW Police Force published their 'Domestic and Family Violence Policy' (the Policy) in November 2008 in an effort to clarify the role of the police force when responding to domestic violence incidences. The Policy states its purpose is to:

Inform police personnel and the wider community of the police priorities and principles of providing comprehensive services in responding to victims of domestic and family violence, and to reduce rates of violent crime.⁴¹⁶

The Policy broadly outlines the role of police in responding to domestic and family violence, identifying five key roles that police have in relation to domestic violence:

1. Investigate incidents of domestic and family violence.
2. Provide safety and support to victims.
3. Bring offenders before the court.
4. Be proactive in preventing domestic and family violence.
5. Work with local service providers to reduce incidents of domestic and family violence.⁴¹⁷

For the ADVO to have any deterrent effect, it is important that the order be seen to be enforced and therefore instil confidence in victims. Police play a critical role in responding to domestic violence. Substantial research suggests that many breaches of ADVOs that are reported have not been acted on by police and that there has been a delay in police response to complaints of violence against women.⁴¹⁸ The Police Association of NSW recently released their submission to the Standing Committee on Social Issues Inquiry into Domestic Violence Trends and Issues in New South Wales. The submission noted that many of the members of the police association felt frustrated with the leniency of existing penalties in relation to breaching an ADVO:⁴¹⁹

I am the full time DVLO. I find that breaches to ADVOs result in the DV [domestic violence] offender receiving some light sentencing or just a slap on the wrist. Offenders continue to breach ADVOs but victims do not have faith in the

⁴¹⁶ NSW Police Force, *Domestic and Family Violence Policy* (2009) 4
<http://www.police.nsw.gov.au/_data/assets/pdf_file/0006/145428/domestic_family_violence_policy.pdf>

⁴¹⁷ Ibid 8.

⁴¹⁸ Moore, above n 24, 47; NSW Department for Women, above n 227, 25.

⁴¹⁹ Police Association of New South Wales, *Domestic Violence: Trends and Issues in New South Wales* (September 2011) Submission to the Standing Committee on Social Issues Inquiry into Domestic Violence¹⁷ <<http://www.pansw.org.au/public/latest-news/pansw-police-resources-audit-submission>>.

court system so the continued minor breaches are not reported and the offender gets away with it. Police would support heavier penalties.⁴²⁰

Yet, for police to be able to effectively respond to incidences of domestic violence, the violence itself must be reported. In Aboriginal communities there has been a lack of reporting of domestic violence not just in NSW but in Australia as a whole.

In a recent Parliamentary inquiry report on domestic violence, it was acknowledged that police practices had improved significantly in recent years, assisted by active commitment on the part of the NSW Police Force as well as by legislative reform and policy changes.⁴²¹ However, many inquiry participants voiced concerns about some police responses in three key areas: the consistency of responses; responses to breaches; and responses in rural and remote areas.⁴²²

Research conducted in NSW indicates that the use of the criminal justice system as a means for dealing with breaches of ADVOs is far more complex for Aboriginal women than for non-Aboriginal women.⁴²³ It has also been reported that police response times to domestic violence incidences are inadequate and this gives the defendant the opportunity to abscond before police arrive.⁴²⁴ If the system has been identified to be complex and it is recognised that Aboriginal women face many barriers when reporting violence, there should be a greater focus on services addressing these specialised needs.

In the PSS, research suggested that of the small percentage of women who reported a domestic offence to the police (37 per cent) almost two-thirds of those women reported that their partner was not charged.⁴²⁵ In 2005, only 34 per cent of the women participating in the ABS Public Safety Survey said that a violence order had been issued against their partner.⁴²⁶ Police in NSW currently have no powers to issue ADVOs ‘on-the-spot’ if the defendant is still present at the scene where the domestic incident occurred. However, they

⁴²⁰ Ibid 18.

⁴²¹ NSW Legislative’s Inquiry—Domestic Violence in NSW at xxxiii.

⁴²² Ibid.

⁴²³ NSW Department for Women, above n 227, 16.

⁴²⁴ NSW Ombudsman, above n 187, 17.

⁴²⁵ ABS, above n 167, 5.

⁴²⁶ Ibid.

can arrest and seek a TIO.⁴²⁷The NSW Police Association has proposed that police be given the powers to issue an immediate ADVO to the offender, resulting in the victim only being required to attend court if the offender challenges the ADVO.⁴²⁸

Previous research has also acknowledged victim disappointment with police responses when an ADVO is reported as having been breached. Both Katzen and Moore⁴²⁹ discussed police inaction to breaches of Domestic Violence Orders and the impact it had on victims. This lack of police response to reported breaches will be further canvassed in later chapters.

Police attitudes towards ADVOs have been documented in the literature with police officers indicating that they do not see domestic abuse as ‘real’ police work.⁴³⁰ While other police officers expressed the view that women should leave their relationships and sort out their own lives without reliance on the system.⁴³¹ For Aboriginal women experiencing violence, these attitudes further explain their reluctance to report the violence due to a lack of confidence in the police.

5.8 Aboriginal Women in NSW and ADVOs

Little research is written on the intersection of Aboriginal women and the obtainment and enforcement of ADVOs. As discussed earlier, consistent records are not kept on the numbers of Aboriginal women applying for ADVOs through the NSW Local Courts or the types of conditions that appear on the victims final ADVO. Current issues and disincentives of ADVOs described in the literature fail to address the difficulties Aboriginal women specifically experience. A lack of culturally appropriate support services to assist Aboriginal women navigating the court system may result in less Aboriginal women pursuing legal outcomes.

⁴²⁷ *Crimes (Domestic and Personal Violence) Act 2007*, Section 25.

⁴²⁸ Police Association of NSW, above n 301, 4. One of the recommendations from this review was advocating for Police Officers of or above the rank of Inspector being able to approve an ADVO for a period not exceeding 12 months.

⁴²⁹ Moore, above n 24, 9; Katzen, above n 75, 8.

⁴³⁰ NSW Ombudsman, above n 187, 23; Katzen, above n 75, 15.

⁴³¹ Katzen, above n 75, 15.

Inherent delays involved in obtaining a final ADVO are problematic for Aboriginal women wanting to completely sever ties with the defendant and their community. Problems involved with serving the defendant with the summons to appear in court and deliberate delay tactics used by defendants make the legal process more arduous and prolonged than intended.

The NSW Ombudsman's Report identified a lack of police understanding of issues for Aboriginal victims of domestic violence and noted that police officers may be influenced by misleading and inaccurate cultural stereotypes such as that violence is an inherent part of Aboriginal culture.⁴³² In her 1999 research on the Policing of Apprehended Violence Orders Kelly found that all of the women she interviewed commented that at some stage of the policing of ADVO breaches, they were disappointed by police responses.⁴³³

Kelly's research raises the issue of Indigenous women being more inclined to reconcile with their partner after a report of domestic violence.⁴³⁴ The nature of protection orders allow the defendant and the victim to have contact, reside together and choose to continue their relationship if the victim has made a private application for the order and agrees and requests those conditions. Women experiencing violence may attend the Local Court Chamber Registrar and make an application for an ADVO. It is not uncommon for Aboriginal women to request the standard orders only apply, which merely state that the defendant is prohibited from doing any of the following: assaulting, molesting, harassing, threatening or otherwise interfering with the [protected person](#) or a person with whom the [protected person](#) has a [domestic relationship](#); engaging in any other conduct that intimidates the [protected person](#) or a person with whom the [protected person](#) has a [domestic relationship](#); [stalking](#) the [protected person](#) or a person with whom the [protected person](#) has a [domestic relationship](#).⁴³⁵

Research suggests that much violence against Aboriginal women is unreported.⁴³⁶ When women report domestic violence and breaches of ADVOs to the police, despite an ongoing and brutal history of violence, violent events may be considered in isolation and not as a

⁴³² NSW Ombudsman, above n 187, 65.

⁴³³ Kelly, above n 75, 6.

⁴³⁴ Ibid.

⁴³⁵ *Crimes (Domestic and Personal Violence) Act 2007*, Section 36.

⁴³⁶ Willis, above n 7, 4.

pattern of serious abuse. In discussing the research conducted by Katzen and Kelly, Bird acknowledged that there is clear evidence that ADVO breaches reported by Aboriginal women are often dismissed and that there is a perception among Indigenous women that the police are less likely to respond to their complaints of family violence than they are to those of white women.⁴³⁷

Due to a lack of data available relating to Aboriginal women and ADVOS, it is difficult to quantify the exact number of Aboriginal women in NSW seeking ADVOS for protection as this statistic is not kept by NSW Local Courts. BOCSAR and NSW Local Courts do keep statistics on the number of ADVOS taken out in NSW each year.⁴³⁸

The Women's Domestic Violence Court Advocacy Program (WDVCAP) keeps statistics on the number of women in NSW who access the WDVCAP. While the numbers relating to Aboriginal women who obtained final ADVOS are not kept, the number of Aboriginal women the service assists in NSW are.

Table 5.1 shows the number of Aboriginal women who used the service from 2009–2011. In 2010, the service assisted 19 789 clients across NSW. Of those clients, 2250 identified as either Aboriginal and/or Torres Strait Islander. From the table below a total number of 24 378 ADVOS were granted in NSW Local Courts in 2010. A total of 10 201 were through the WDVCAP so it can be assumed the remainder were police applications.

Census data for 2006 indicates that there were 70 027 Aboriginal women in NSW; 2.1 per cent of the total population of 3 320 726 women.⁴³⁹ However, Table 5.1 shows that 10 per cent of applications assisted by the service are by Aboriginal women—five times the population ratio.

⁴³⁷ G Bird, 'How do I Prove I Saw His Shadow? A Review Essay Presenting Katzen and Kelly's Research' (2002) 11 *Women against Violence: An Australian Feminist Journal* 48.

⁴³⁸ Private conversation with the Director's Office at NSW Local Courts, NSW Attorney General's Department in June 2010 and follow-up conversation February 2012.

⁴³⁹ ABS 2006 *Census Community Profile Series—New South Wales* (2006)
<<http://www.censusdata.abs.gov.au/>>.

Table 5.1: Women's Domestic Violence Court Advocacy Program Client Statistics

Year	Number of ADVOs granted	Number of WDVCAP clients in total	Aboriginal clients	Percentage
2009	8 220	17 219	1 732	10
2010	10 201	19 789	2 070	10.4
2011	10 807	21 401	2 285	10.6

In NSW in 2008, the BOCSAR reported that 23 806 ADVOs were taken out in Local Courts in NSW, a small increase from 23 180 in 2007.⁴⁴⁰ In 2009, 24 304 ADVOs were taken out and in 2010 that number remained stable with 24 378 orders granted in NSW Local Courts.⁴⁴¹

However, from an analysis of Table 5.2 of the Statistical Divisions for Residence of Person of Interest, for apprehended violence orders granted, it is evident that the majority of those areas listed have a high Indigenous population based on correlating information from the ABS.⁴⁴²

⁴⁴⁰ BOCSAR. *Table of Apprehended Violence Orders Granted from 1996–2010*
<http://www.bocsar.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/pages/bocsar_pub_atoc#avo>.

⁴⁴¹ Ibid.

⁴⁴² See Chapter Four.

Table 5.2: Apprehended Violence Orders Granted—Statistical Division of Residence of Person of Interest (POI (a)) (NSW Local Courts 2010)

Statistical Division of Residence of POI (a)	ADVOs Granted	
	No.	Rate per 100,000 population
Sydney:		
Inner Sydney	1 027	293.1
Eastern Suburbs	395	154.7
St George–Sutherland	988	214.9
Canterbury–Bankstown	902	274.0
Fairfield–Liverpool	1 345	356.9
Outer South Western Sydney	1 150	458.8
Inner Western Sydney	336	178.1
Central Western Sydney	1 096	318.5
Outer Western Sydney	1 061	325.5
Blacktown	1 355	452.0
Lower Northern Sydney	309	98.4
Central Northern Sydney	358	79.5
Northern Beaches	267	109.5
Central Coast	1 104	349.4
Hunter	2 320	360.1
Illawarra	1 613	374.1
RichmondTweed	910	376.1
Mid–North Coast	1 399	451.9
Northern	1 171	633.6
North Western	920	776.1
Central West	898	490.3
South Eastern	811	374.4
Murrumbidgee	887	559.3
Murray	550	464.0
Far West	299	1 315.4
NSW	24 378	341.7

Little research exists that evaluates the effectiveness or appropriateness of ADVOs for Aboriginal women or why ADVOs may not be used to their full capacity by Aboriginal women.⁴⁴³

Kelly⁴⁴⁴ suggests that the use of the criminal justice system as a means for dealing with breaches of ADVOs is far more complex for Indigenous women than for non-Indigenous women. Research shows that some Aboriginal women were of the belief that having an ADVO made no difference to the way police dealt with their situation.⁴⁴⁵ This, along with poor police relations, racism and a lack of respect for victims of domestic violence results in Indigenous women being less likely to report violence⁴⁴⁶ and therefore less likely to seek a legal remedy for the violence they are or have been experiencing.

Moore recognises that Aboriginal women are typically ambivalent about seeking help through the police and courts and that the need for help is countered by an unwillingness to contribute to the criminalisation of a male partner.⁴⁴⁷

Douglas⁴⁴⁸ research in Queensland illustrates that domestic violence is rarely treated as a crime. Research indicates that although there has been a rise in the number of civil protection orders taken out, there has not been a corresponding increase in criminal prosecutions for assault. This research highlights that domestic violence is often not recognised as criminal behaviour and is still being dealt with outside the boundaries of criminal law.⁴⁴⁹ This may well also be the case in NSW. Only 10 participants in the research in this thesis reported any follow up criminal proceedings in the aftermath of serious personal violence.

⁴⁴³ C Thomas and J Selfe, 'Aboriginal Women and the Law' (Paper presented at the Workshop on Aboriginal Justice Issues, Australian Institute of Criminology Conference, 23–25 June 1993, Cairns) 1, 8 <<http://aic.gov.au/search.html?cx=003994814163306808870%3Agpltxcnysz&cof=FORID%3A10%3BNB%3A1&ie=UTF-8&q=thomas+self>>.

⁴⁴⁴ Kelly, above n 12, 1.

⁴⁴⁵ Ibid.

⁴⁴⁶ Al-Yaman, Van Doeland and Wallis, above n 6, 18; C Bryant and M Willis 'Risk Factors in Indigenous violent victimization' (2008)30 *Australian Institute of Criminology Report* 1, 18; Mouzos and Makkai, above n 84, 100–1.

⁴⁴⁷ Moore, above n 24, 8.

⁴⁴⁸ H Douglas and LC Godden, 'The Decriminalisation of Domestic Violence: Examining the Interaction between the Criminal Law and Domestic Violence' (2003) 27(1) *Criminal Law Journal* 32; University of Queensland TC Beirne School of Law Research Paper No 07–15; University of Melbourne Legal Studies Research Paper No 263. <<http://ssrn.com/abstract=1014282>>.

⁴⁴⁹ Ibid.

While the success of protection orders requiring the victim to be the enforcer is itself contentious, they may work for non-Aboriginal people; however, protection orders for Aboriginal women who have experienced a fractured and challenging history of colonisation, marginalisation and deaths in custody present many issues.

Evidence suggests that ADVOs and the court process leave Aboriginal women confused, overwhelmed and lacking considerable culturally specific support options.⁴⁵⁰ In the past, lack of police action to respond to domestic violence and a failure of police to initiate ADVO proceedings or lay criminal charges when attending incidences of domestic violence undermine the victim's confidence in both the police and the justice system.⁴⁵¹

Aboriginal women also perceive a lack of action on the part of police in response to ADVO breaches.⁴⁵² The police crisis response to family violence is often marked with misunderstanding, discrimination and mutual hostility.⁴⁵³ It is difficult to quantify the percentage of Aboriginal women who choose not to take out a protection order based on the factors above but consideration will be given to these issues in my research findings.

Few researchers have considered the usage, perceived functions and legal/social issues surrounding ADVOs experienced by Aboriginal women. Once the victim seeks legal intervention and obtains an ADVO, their educational background, social justice issues they may face, and other pressing issues such as health problems and drug and alcohol addiction are largely ignored. Thus, the effectiveness of ADVOs for Aboriginal women is equivocal.

Increased knowledge of Aboriginal women's ability to understand the legal process surrounding ADVOs and the contents of the order, along with the barriers victims face enforcing ADVOs, will allow judicial, legal and other service providers to optimise the attention their clients receive. This can be achieved through proper explanation of the contents of the order, the provision of general assistance in relation to the meaning of the order and conducting appropriate follow-up and referrals to Aboriginal-specific service providers.

⁴⁵⁰ See NSW Department for Women, above n 227; Moore, above n 24.

⁴⁵¹ Moore, above n 24, 37.

⁴⁵² Katzen, above n 75, 15; NSW Ombudsman, above n 187, 59; NSW Department for Women, above n 227, 19.

⁴⁵³ Moore, above n 24, 8.

5.9 Disincentives with the ADVO Process and Frustrations with ADVOs

5.9.1 Obtaining an ADVO

Victims of domestic violence have expressed their concerns with the ADVO process and have questioned whether the order itself is more than just ‘a piece of paper’.⁴⁵⁴ The court process can be a long and drawn out series of court dates. Perpetrators of domestic violence who have a history of violence and have come into contact with the system on previous occasions, become increasingly familiar with the way the ADVO system works and how to best take advantage of the system. This enables them to use delay tactics to avoid being served with the orders and frequently seeking to gain adjournments, which is overwhelmingly frustrating and emotionally tiring for the victim.⁴⁵⁵

A lack of current research in this area is problematic. McMillan⁴⁵⁶ and Nyman⁴⁵⁷ both note that ADVOs are not without their legal shortcomings and argue that an ADVO impacts negatively on the defendant’s rights with proceedings being referred to as ‘criminal in nature’. In communities with endemic violence, such concerns are misplaced. The very nature of ADVOs is that they are not criminal proceedings or convictions in any way, but a civil proceeding that affords protection to those experiencing violence. There are no criminal consequences arising from the order unless the defendant breaches it. However, Aboriginal women are well aware that a breach may lead to the matter escalating from the civil jurisdiction to the criminal one as the significant worry that their partner could be assaulted or die in custody is ever present.⁴⁵⁸

Katzen reported that in the NSW LAC of Richmond, many women in the area found ADVOs to be of little use ‘until it is breached’.⁴⁵⁹ The Local Court system in NSW has also been accused of ‘churning out orders at an astonishing rate despite the legislation’s anti-

⁴⁵⁴ Ibid 9.

⁴⁵⁵ NSW Ombudsman, *Policing Domestic Violence in NSW: A Special Report to Parliament under s31 of the Ombudsman Act* (1999) 4

<<http://www.ombo.nsw.gov.au/publication/PDF/specialreport/Dom%20Violence.pdf>>.

⁴⁵⁶ McMillan, above n 11, 48.

⁴⁵⁷ Nyman, above n 11, 54.

⁴⁵⁸ NSW Department for Women, above n 227, 19; Moore, above n 24, 9.

⁴⁵⁹ Katzen, above n 75, vii.

abuse mechanisms'.⁴⁶⁰ However, as canvassed later, BOCSAR statistics show that there is little change in the number of ADVOs taken out in NSW Local Courts from year to year.

5.9.2 Enforcing an ADVO

The ability to enforce an ADVO is a fundamental component of the efficacy of the order. This burden falls upon the victim who has an ADVO to notify the police as soon as the order has been breached. Situations may arise where a neighbour or witness calls the police but in the majority of cases, it is the protected person enforcing the order. Women are often reluctant to 'dob' their partners in and therefore choose not to report incidences they feel the police won't respond to as they feel the breaches may have been trivial. It is not unusual for Aboriginal women not to report any breaches to the police that do not involve physical abuse as they are of the belief that the police are powerless to act.⁴⁶¹ Victims in NSW have reported feeling frustrated after reporting a breach of the ADVO to the police, and no action was taken as the victim was unable to provide evidence to support her allegations.⁴⁶² It is also not unusual for Aboriginal women not to report violence due to a fear that if the perpetrator is charged and locked up he may die in custody.⁴⁶³ In some Aboriginal communities, a death in custody may be regarded as the victims fault.⁴⁶⁴

Victims identify that when breaches go before the court, it is often a different magistrate unfamiliar with the history of the case and a different Police prosecutor. Aboriginal women find this particularly difficult as the shame associated with telling their story many times is played out in front of a public courtroom on several occasions. This notion of 'secondary victimisation' is a common complaint for Aboriginal women.⁴⁶⁵

Women who have survived abusive relationship often form the belief that they themselves are 'worthless' and believe to an extent that they are not worthy of protection from the police. In particular, when police have been called to domestic incidents or breaches of ADVO and have chosen not to take further action. Distrust between the victim of domestic

⁴⁶⁰ McMillan, above n 11, 54.

⁴⁶¹ NSW Ombudsman, above n 187, 17; Katzen, above n 75, 13.

⁴⁶² Katzen, above n 75, 13.

⁴⁶³ Willis, above n 7, 6.

⁴⁶⁴ T Fitzgerald, *Cape York Justice Study* (2001) Queensland Department of the Premier and Cabinet, Vol2 of 3 <<http://pandora.nla.gov.au/pan/24611/20020516-0000/www.premiers.qld.gov.au/about/community/capeyorkreport.htm>>.

⁴⁶⁵ Willis, above n 7, 3.

violence and the police is recognised as a barrier many times in the effective operation of protection orders in the literature.⁴⁶⁶

Women seeking to obtain an ADVO have to overcome the initial hurdle that exists with police often not taking complaints of domestic violence seriously enough. Statistical evidence such as this highlights the difficulties that then must exist in seeking an ADVO for protection. Lack of police action to domestic violence could result in victims choosing not to report domestic violence. This is supported by research undertaken by Mouzos and Makkai⁴⁶⁷ that found high levels of under-reporting of domestic violence with only 14 per cent of women reporting the most recent incident to the police.

Of those who did not report the violence:

- Forty-two per cent said the incident was too minor to report to the police.
- Twenty-seven per cent said they dealt with it themselves.
- Nine per cent wanted to keep their incident private.
- Seven per cent were afraid of the offender, which stopped them reporting the incident.
- Five per cent thought the police would not or could not do anything.⁴⁶⁸

5.9.3 False Complaints

The NSW Ombudsman report recognised that ADVOs are often taken out purely to enact revenge on a partner or ex-partner or even to annoy them.⁴⁶⁹ It has been argued earlier that the threshold for obtaining an ADVO is too low and this therefore results in a high number of orders being made that are frivolous or vexatious.

Service providers have previously been concerned about the police questioning the authenticity of an ADVO application where there are current family law proceedings, as such orders will be considered as part of proceedings.⁴⁷⁰ The review of Apprehended Violence Orders completed by the Criminal Law Review Division found that it is not

⁴⁶⁶ NSW Ombudsman, above n 187, V; Moore, above n 24, 23.

⁴⁶⁷ Mouzos and Makkai, above n 84, 104.

⁴⁶⁸ Ibid 105–6.

⁴⁶⁹ NSW Ombudsman, above n 187, 22.

⁴⁷⁰ Katzen, above n 75, 23

unusual for ADVO applications to be made at the same time as for a family law order application, and it does not mean that the former is made to gain advantage in the latter.⁴⁷¹ The report also found that it makes sense for the two applications to be made associated, as violence will often escalate during the time of separation.⁴⁷²

The *Family Law Act 1975* includes a provision of false allegations and statements about violence, but the court must be satisfied that the allegations are false. Ultimately, the court will decide whether there is a false allegation of violence.

5.9.4 Assisted Breaches

It has previously been reported that victims of domestic violence who have obtained an ADVO have ‘allowed’ or ‘encouraged’ the defendant to commit a breach.⁴⁷³ For example, where a woman has an order in place preventing her partner from coming within 50 metres of her premises and they temporarily resolve their dispute and invites her partner to her premises. Police officers interviewed on the subject have argued that the victim should therefore be charged with the offence of ‘aid and abet’ alternatively, it is argued that the responsibility for complying with the order rests with the defendant and thus the actions of the victims are irrelevant and should not be considered.⁴⁷⁴

This can be problematic for Aboriginal women who have either an interim order or a final ADVO in place. If the victim does not comprehend the conditions and restrictions of the ADVO, they may resume living with the perpetrator. The NSW Law Reform Commission have recommended against charging victims for whose benefit a protection order has been obtained for aiding and abetting a breach of such an order⁴⁷⁵ as previously this has been an issue of concern for Aboriginal women in NSW.⁴⁷⁶ The new legislation states ‘that a person is not guilty of an offence aiding, abetting, counselling or procuring the commission of an offence if they are the person in need of protection.’⁴⁷⁷

⁴⁷¹ NSW Criminal Law Review Division, ‘Apprehended Violence Orders: A Review of the Law’ (CLR Discussion Paper, 1999) 8.

⁴⁷² Ibid.

⁴⁷³ Katzen, above n 75, 23

⁴⁷⁴ Ibid.

⁴⁷⁵ Australian Law Reform Commission, above n 156, Provision 12.7.

⁴⁷⁶ Kelly, above n 73, 4–5.

⁴⁷⁷ *Crimes (Domestic and Personal Violence) Act 2007*, Section 14 (7).

5.10 Conclusion

This chapter explains the formal legal process and services available when Aboriginal women seek legal protection through the Local Court system. Both the legislation and court process is explained and problems identified. For this group of highly victimised women using this system, what is apparent from this chapter is the lack of information and research that exists that records Aboriginal women's interaction with the police and the judicial system. However, we do know from some of the data such as WDVCAP that Aboriginal women are certainly seeking orders at a rate higher than their relative proportion in the population.

An ADVO is the most common civil legal outcome for a victim of violence, to provide protection from future violence. A number of shortcomings exist that make it difficult for Aboriginal women to obtain an order and notify police when experiencing violence. Such shortcomings and other barriers have been identified as prohibitive for Aboriginal women in particular, when seeking an ADVO to protect them from violence. These range from inherent distrust of police, a lack of confidence in the judicial system, difficulties comprehending legal documents and a lack of knowledge of support services available to them to not understanding their role in making the ADVO an effective tool and not having access to a phone to notify the police of a breach of the ADVO.

The focus on ADVO research to date has been around Aboriginal women's access to justice, as seen in Katzen's research and the report Mabourah Dubay, and the policing of orders. The effectiveness of the ADVO as a legal tool is dependent on the victim understanding and being in a position to notify the police of any behaviour that contravenes the ADVO.

There is an assumption by the court that Aboriginal women will understand the complexities of the legal document and the court assumes that Aboriginal women, on social and cultural grounds, will be willing and able to notify the police about violent behaviour they are experiencing. The legislation relating to the issuance of ADVOS requires the court to explain the order, but in practice, this may not be conscientiously followed in Local Court probably due to time limitations.

Chapter Six: Research Interviews—Aboriginal Women’s Experiences of Domestic Violence

6.1 Introduction

Chapters Six, Seven and Eight are divided to reflect three themes that emerged from the participants’ interviews. Chapter Six looks at before the victim obtained an ADVO, Chapter Seven, the process of obtaining the order and Chapter Eight considers after the ADVO was granted and enforcing the ADVO. Figure 6.1 outlines themes and sub-themes discussed in this chapter and the following two chapters.

This chapter summarises the findings of the 33 interviews that were conducted and transcribed in relation to participants’ lived experience of domestic violence, prior to obtaining an ADVO. Direct quotations are used from the participants to highlight themes that emerged during the interviews. To protect the participants’ identities, all participants have been allocated a code, to ensure privacy.

It has been reported that in NSW, Indigenous females are six times as likely to be recorded by police as a victim of domestic violence compared to non-Indigenous females.⁴⁷⁸ However, exact quantification of data relating to Indigenous women in Australia who are or have been victims of domestic violence will always be difficult.⁴⁷⁹

It is also widely acknowledged that many victims of domestic violence experience several incidents of violence before the violence is reported to police. This chapter reflects upon the lived experiences of Aboriginal women living in NSW and the violence that they have experienced from their intimate partners and barriers they faced when reporting such violence.

⁴⁷⁸ Al-Yaman, Van Doeland and Wallis, above n 6, 109.

⁴⁷⁹ For discussion relating to data collection issues concerning Indigenous Australians, see Steering Committee for the Review of Government Service Provision (SCRGSP), *The Report on Government Services 2009: Indigenous Compendium* (9 April 2009) 14–16
<<http://www.pc.gov.au/gsp/reports/rogs/compendium2009>>.

Information obtained from the interviews was examined and analysed to identify emerging themes. From these major themes, it became possible to classify a range of sub-themes. Thematic analysis is generally the most commonly used method of analysis in qualitative research. It is useful for capturing the complexities of meaning within a textual data set.⁴⁸⁰ The primary goal of thematic analysis is to describe and understand how people think, feel, and behave within a particular context relative to a specific research question.⁴⁸¹

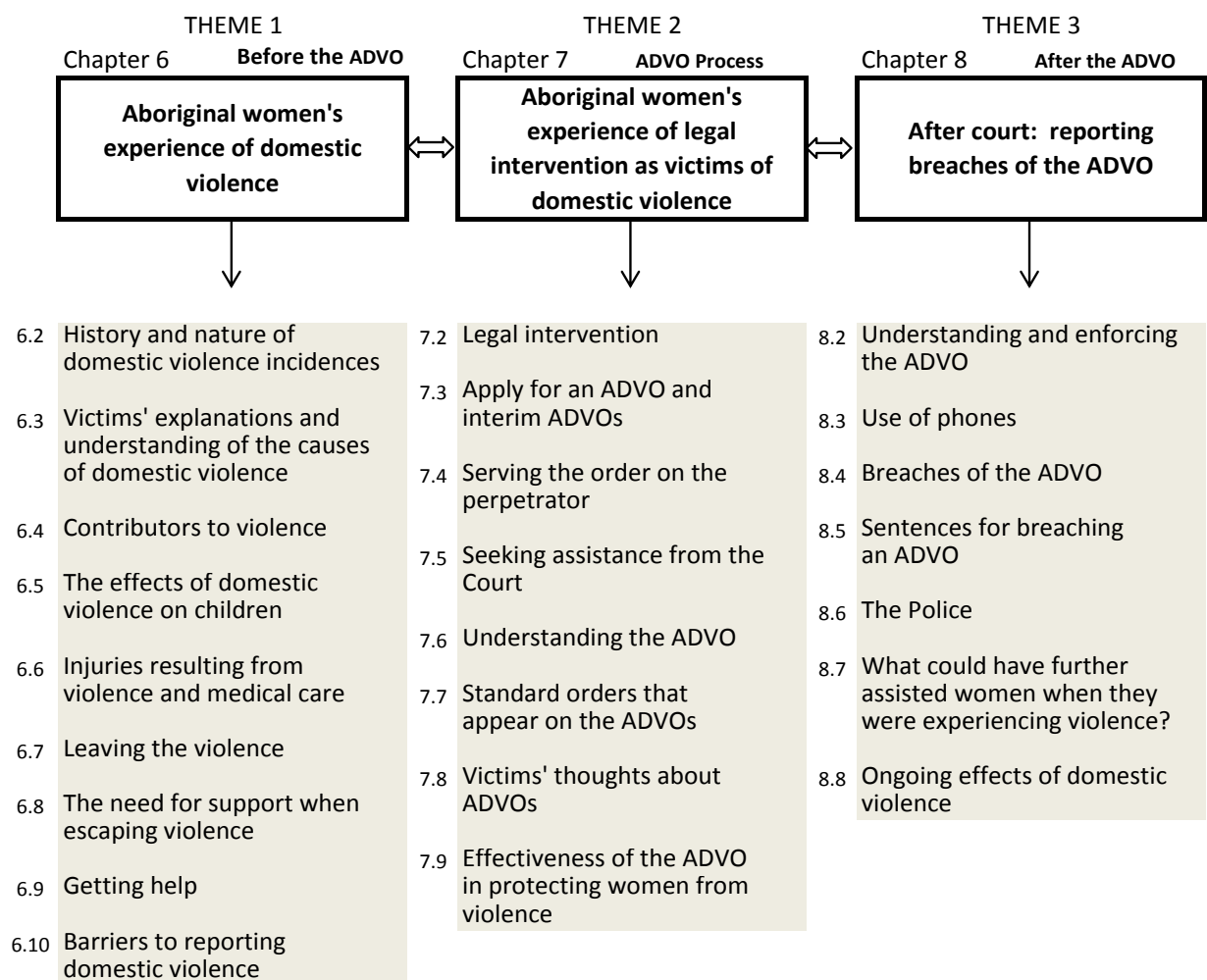


Figure 6.1: Major Themes and Sub-Themes Relating to Domestic Violence against Indigenous Women in NSW

⁴⁸⁰ G Guest, *Applied Thematic Analysis* (Sage Publications) 10.

⁴⁸¹ Ibid 13.

The research undertaken in these chapters was organised around the research aim stated in Chapter One of the thesis. This research aim being:

1. To investigate Aboriginal women's lived experience of domestic violence and how their experiences might differ from those of non-Aboriginal women. The thesis aims to evaluate whether a uniform 'across the board' legal and policy approach is problematic and if it is likely to be less successful in providing Aboriginal women with a level of protection they consider adequate.

Consideration will be given to the impact of the invasion, assimilation policies and the oppression and marginalisation of Aboriginal people, history cannot be ignored. This thesis will also consider the subsequent challenges of these unique historical experiences and will give perspective to issues of violence within the Aboriginal community.

6.2 Before the ADVO

6.2.1 A History and Nature of Domestic Violence Incidences

The research in earlier chapters illustrates an over-representation of domestic violence within Aboriginal communities. Compared to non-Aboriginal women, Aboriginal women in NSW are six times more likely than non-Aboriginal women to experience domestic violence-related assault.⁴⁸² Legislative and policy reforms have sought to reduce the rate of domestic violence within communities. Yet despite this insight and recent reforms, reported incidents of domestic violence remain disproportionately high.⁴⁸³

It is often accepted that negative historical experiences and a lack of culturally appropriate services have exacerbated contributing factors of domestic violence within Indigenous communities.

Interviews revealed that before obtaining an ADVO or leaving the violence, participants had experienced a long history of violence. Many women kept the violence to themselves until it became known, often as a result of police or family intervention. Willis acknowledges that rates of non-disclosure are higher in Indigenous than in non-Indigenous communities, with

⁴⁸² Ibid.

⁴⁸³ Willis, above n 7, 1.

studies indicating that around 90 per cent of violence against Indigenous women is not disclosed.⁴⁸⁴

Domestic violence endured for many years by the participants is evidenced below.

Length of Time and Nature of the Relationship

All women who participated in this research reported a history of violence prior to obtaining an ADVO. The only types of relationships in which participants were involved were de-facto, married or boyfriend and girlfriend. Relationships mentioned by the participants varied in length of time, but for some women, the violence was constant and continued over a number of years:

[The violence went on for] ... about 17 years because I keep telling myself 'I need him for my kids' until he started hitting my kids and then I thought 'oh I don't need him now' (BW 1).

Well it went on for 15 years, [we've] been separated for the last 13 years and I have had ADVOs ongoing (NC 1).

The length of time women experience violence and their reluctance to leave was discussed in the interviews. As in the instance of BW 1, women might feel that their children will miss out on a father figure if they decide to escape the violence, so they stay and put up with it. Few participants were married and most lived in de-facto relationships, but many stayed in these relationships for many years despite the violence.

Physical Violence

The interviews revealed a significant emphasis on the experience of physical violence, including horrific assaults with a weapon. Previous research highlights that domestic violence has been identified as a growing human rights concern⁴⁸⁵ and is now increasingly

⁴⁸⁴ Willis, above n 7, 1.

⁴⁸⁵ K Morgaine, 'Domestic Violence and Human Rights: Local Challenges to a Universal Framework' (2007) 34 (1) *Journal of Sociology and Social Welfare* 109
<<http://www.thefreelibrary.com/Domestic+violence+and+human+rights:+local+challenges+to+a+universa...-a0160228610>>; Humphreys et al, above n 129.

seen as an important public health issue on a global scale. Domestic violence can result in direct health consequences such as injuries and can also increase a woman's risk of future illhealth and impede on her ability to participate in the world.⁴⁸⁶ Domestic violence in Australia is considered the single biggest health risk to Australian women aged 15–44 years,⁴⁸⁷ with physical injuries as a result of violence a serious concern.

Most participants interviewed spoke about the physical violence they had experienced. Participants could recount numerous stories of violence of during open-ended questions spoke honestly about the physical violence they had suffered:

The physical stuff is just starting ... punching, pushing and I had marks all over my neck when he tried to choke me (GF 5).

He tried to choke me and scratched my neck ... he also had a knife to my daughter (GF 6).

One time he came home at 5am in the morning, blind drunk and assaulted me, ripped me out of bed and pulled out chunks of hair, broken nose, displaced jaw, two black eyes, bruises everywhere ... I was a mess (SYD 3).

Extreme physical violence is a major concern for Aboriginal women, as research informs us that although Aboriginal people make up approximately two per cent of the population, they make up over 25 per cent of victims who have been murdered by their intimate partner.⁴⁸⁸ Therefore, the violence that Aboriginal women experience could be argued to be more dangerous and threatening than violence experienced by non-Aboriginal women, as it is statistically more likely to lead to death.

Overall, the participants' responses to physical violence suggest that the nature of the physical violence that many Aboriginal women experience at the hands of their partner is terrifying and potentially life threatening. The use of weapons such as a knife was also identified.

⁴⁸⁶ WHO, above n 123, 100.

⁴⁸⁷ Access Economics Pty Ltd, above n 140.

⁴⁸⁸ Mouzos and Rushforth, above n 111, 2.

Physical Violence during Pregnancy

NSW Health Services recognises pregnancy as a time of high risk for domestic violence.⁴⁸⁹ Taft's research suggests that Aboriginal women, in particular, are at a greater risk of suffering from abuse during pregnancy or after the baby is born.⁴⁹⁰

A number of participants reported experiencing violence from their partners when they were pregnant:

I have been hit with riding ropes and riding boots and stuff like that, and had black eyes that I couldn't see out. I am lucky to look like I do now because if you can imagine the moon and the sun there was no figuration in the face and it was double the size of my head, he took me down to the tip one time and kicked the crap out of me with the boots on. I was pregnant with my daughter, it was just before she was born, she was born with almost both her eyes bleeding (TR 2).

The violence started not long after I fell pregnant, we had been together about 6–7 months when I fell pregnant, it wasn't really violence and stuff but he started to get pushy, name calling and all that sort of stuff, after I had my little girl he just got worse, that's when he first started getting violent, he was being cruel, like pinching me, bending my fingers back and then he got even worse from there (FB 3).

These participants experienced terrifying and gruesome accounts of domestic violence, even while carrying the perpetrator's child. As FB 3 identifies in the quotation above, the violence seemed to escalate after they had a child.

Emotional Abuse

Physical violence was not the only type of violence participants experienced; they also recognised the damaging effects of verbal and emotional abuse. The idea that the defendant

⁴⁸⁹ J Spangaro and A Zwi, *After the Questions: Impact of Routine Screening for Domestic Violence in NSW Health Services* (2010) 1, 15

<http://www0.health.nsw.gov.au/resources/nswkids/pdf/dvrs_doh_report_after_the.pdf>.

⁴⁹⁰ A Taft, *Violence against Women in Pregnancy and after Childbirth: Current Knowledge and Issues in Health Care Responses*, (Issues Paper 6, Australian Domestic and Family Violence Clearinghouse, 2002) 6 <<http://www.adfvc.unsw.edu.au/documents/Issuespaper6.pdf>>.

‘plays games’ with the victim was discussed in relation to the emotional abuse participants suffered. The idea of still having ‘control’ over the victim was present even when no actual physical violence is happening. Participants identified name-calling and threats as common behaviours in the defendants:

He was on drugs, he was weird ... always abusive for no reason. He’d wake up in the morning and call you names (FB 5).

He played games [with us], when the kids were going to school he’d say ‘say goodbye to your mother because it will be the last time you see her’ (TR 1).

When I’m out with friends, if I don’t get home when he thinks I should he tells me he will stab me (GF 5).

This emotional abuse also overlaps with the psychological abuse many women experienced.

Psychological Abuse

The identification of emotional and psychological abuse by several participants was evident as was the damaging nature of this type of abuse.

For many women, psychological abuse resulted in just as much fear as physical abuse:

He would bash me and get up the next morning and say, ‘What happened to you, how come you’ve got a black eye?’, and I would say, ‘you done it’. He would say, ‘no I didn’t’—‘yes you did’—‘no I didn’t’—and he would argue that he never even hit me. I think he had psychological problems (BW 1).

He went to sleep with my computer under his head, my phone in his pocket so that I couldn’t call anybody (FB 3)

So many things went through my head over the years, he would tell me I was ugly, you’ve got all these kids no other man is going to look at you (NC1).

The quotations above recognise the insidious nature of psychological abuse and its damaging effect on victims. What is also apparent is the direct effect such abuse has had on the lives of

the victims, including the inability to have control over their own things and the way the abuse would affect their decision-making and self-esteem, leaving them vulnerable. Vulnerability and helplessness are further discussed below.

Experiencing such horrific violence clearly affected the participants, and many lived in constant fear of the perpetrator. Participants discussed their violent partner, the violence of which they thought he was capable and the overall effect it had on their lives overall. The frightening stories that the victims told highlighted their distress and sense of helplessness:

He came up to the house one night, manic, but he still came up and he had an axe and he was going to try and kill me with it. We were all locked in the house and he has kicked the door down and everything to get in, the kids rang the police because I didn't have the chance because I was too busy trying to deal with him (TR 1).

He would start for no reason, just over something stupid and trivial, he never knew what made him angry, I would try to please him but it would never work. He wasn't working at the time so he was always there, it was like 'living on the edge' (FB 3).

The theme of helplessness and feelings of vulnerability were expressed by various participants, including those quoted above. According to the reports of several participants, the perpetrator was uncontrollable and menacing; this resulted in victims being hyper-vigilant to prepare themselves for the next attack or outburst.

Financial Abuse

Participants reported suffering from financial abuse, where their partner would deny them access to money. For women with children, this was particularly difficult, as their primary concern was how they were going to feed their children if they were denied access to money.

One woman stated:

I wasn't allowed to have money to spend even for groceries, because he would say 'no, we don't need that'. When I went to hospital to have one of my children I had everything in the house, like you have all the cupboards full and everything, he went to the shop and bought \$67 worth of groceries in one week for four kids

and one adult and when I came home he said, ‘well I did it on \$67—that’s all you need’, so that set the example—anything else that I spent I was wasting, he used to go through the shopping docket, that went on until I left, by which time I had got myself into \$25,000 credit card debt. I had to manage to keep bills paid and food on the table (SYD 2).

Accounts of financial abuse were not as common in the interviews as physical violence, but some participants recognised the effect of the perpetrator controlling finances in their lives. Other participants reported that their partners had forbidden them from getting jobs and made demands of them in relation to their social security payments. Often, the indicators of financial violence were subtle, and the possibility of perpetrators ‘demanding’ access to their partner’s money could have been seen by some victims as just ‘part of the relationship’ and therefore not identified as violence.

Social Abuse

Social abuse and isolation were also identified by the participants, and one woman discussed how she was slowly isolated from her family and friends by the perpetrator:

He was conditioning me that we didn’t need my family, we were better off without them, we were better off not having contact with anybody or coming to our house or having contact with friends or life outside the house (SYD 2).

I didn’t have a social life because I moved in with him at such a young age ... 15 or 16 when I met him. I was never able to have other friends. At home if it wasn’t him I was looking at it was the kids or other family members for my social network, as I got older I wasn’t connected with the community (NC 1).

From the interviews, it was evident that for many participants, their focus was more on the physical violence they experienced rather than other forms of violence. While other forms of violence were identified, from the interviews, the injuries and effects of physical violence were discussed more often.

The quotations in this section highlight the nature of the domestic violence that participants experienced in their relationships. The violence was mostly physical, with women relaying

gruesome and terrifying details of the violent attacks they had experienced. What came from these accounts was the personal toll it took on victims, including low self-esteem, vulnerability and how the violence negatively affected their lives.

In Chapter One, there was discussion around the importance of an intersectional framework for this thesis. From the above research, it is apparent that Aboriginal women are not just victims of domestic violence solely on the basis of their gender; they are also victims because of their cultural heritage and social class.

As previous research has suggested, Aboriginal women are one of the most victimised racial groups in Australia.⁴⁹¹ These interviews highlight that Aboriginal women, as victims of domestic violence, experience severe violence that involves weapons and serious physical assaults that can and do result in the death of the victim. The violence encountered by many of the victims was severe, traumatising and often resulted in serious physical injury. Over time, the Aboriginal community has seen a ‘normalisation’ of such violence that is now considered intergenerational.⁴⁹² How this has been allowed to occur is bound up with broader intersectional issues, suggesting that domestic violence can only be addressed effectively by simultaneously dealing with these wider issues.

6.3 Victims’ Explanations and Understanding of the Causes of Domestic Violence

As discussed in Chapter One, it has been argued that Aboriginal family violence is not a result of patriarchal domination, since Aboriginal women were not and are not economically, politically or socially subordinate to men within their families and communities.⁴⁹³ Consequently, violence experienced by Aboriginal women must be considered within the broader context of colonisation, dispossession and racial discrimination experienced by Aboriginal and Torres Strait Islander people, which has resulted in transgenerational cycles of trauma and violence. An important aspect of this question was, therefore, to see if the women themselves saw the causes of domestic violence in similar terms.

⁴⁹¹ International Indigenous Women’s Forum, above n 124, 27.

⁴⁹² Keel, above n 44, 7.

⁴⁹³ Hunter, above n 22, 748.

Cripps' research in relation to the definitions of family and domestic violence within the Aboriginal community refer to a 'language of minimisation' practice of describing instances of violent behaviour as some every day, innocuous happening.⁴⁹⁴ Cripps argues that there are many reasons for using this language in the community: 'it is about protecting families from unwanted intrusion, it is not confrontational and does not require action unless the victim chooses it, it does not make anyone look bad and it does not aggravate the situation'.⁴⁹⁵ Cripps found that this war on words of words and perceptions contributes to the inaccurate and often under-recording of Indigenous experiences of violence in statistical data collection. This is an important consideration for this current research.

At the beginning of each interview, all 33 participants were asked the following question:

Which of the following do you think is 'domestic violence?'

- a) Physical—like being hit or kicked
- b) Emotional—like being called names
- c) Financial—like having your money taken away
- d) Psychological—like threatening to hurt people you love
- e) Sexual—like being forced to have sex
- f) Stalking—like being followed or watched
- g) Social—like being stopped from seeing your family or friends
- h) All of them

The majority of the women responded by selecting the final answer 'h) All of them', as they believed that all of the factors listed did constitute domestic violence.

One participant wasn't sure whether being forced to have sex constituted domestic violence:

I think it could be (being forced to have sex) (FB 1)

⁴⁹⁴ Cripps and Davis above n 264, 146.

⁴⁹⁵ Ibid.

Several women struggled with the idea of financial abuse, and when asked if they thought it was domestic violence, responded:

No (GF 1 and BW 1)

One woman struggled to identify a number of behaviours stated in the question as violence:

Stalking, social and financial abuse ... no, that isn't domestic violence (GF 1)

All research participants were then asked the question, 'Why do you think domestic violence happens?' Responses ranged from power and anger issues to difficult childhoods. This question was asked to enable the research to be guided by the participants and to allow both the reader and the researcher a better understanding of why victims believe violence happens.

Some participants believed that violence occurred as a result of men wanting to control women and have power over them:

Because men become obsessed with you and they begin to control your life, because you are a lesser, weaker person, being female and not able, you haven't got the same strength as them. They think that they can push you around because you don't have a brain as a female, you are supposed to listen to him, the dominant person, so once you have kids with him, he tries to establish ownership and that's what happened to me he was so obsessed it wasn't funny. I became his label, like a tag (TR 2).

Because some blokes just want to control everything (FB 1).

I really don't know ... to me it's about power or feeling that they have to have control of the situation. My partner couldn't handle me because I was strong and would say no. I never once argued with him or gave him any reason to be violent towards me, but when he saw me be a powerful person and stand there and say 'you leave my home' or stand my ground that's when the assaults took place, so to me it was like an authoritative power figure he had to make me intimidated so that he could manipulate me and tell me what to do with my life (NC 1).

Because it's a power trip, that's all it is, he think because he's a man he's gotta be the boss of everything and it doesn't work like that. I think in a relationship there has got to be give and take (BW 1).

One person likes to be in control, they like to show that they're the boss (SYD 1).

These statements from participants draw attention to the violent behaviours that can be used by a perpetrator to maintain control over his partner. Alone, they might suggest that the causes of domestic violence in Aboriginal communities mirror those in the broader community.

However, many participants also referred to the perpetrator's childhood and the issues they might have faced growing up and trying to understand their violent behaviour:

People can't deal with their own anger issues and things may have happened to them in their childhood and they carry it through, lot of it is learnt stuff eg. This is what my father, this is what my mother did, this is how you treat people (QU 1).

Childhood for him, his childhood was stuff built up and he didn't talk to anyone, he grew up in DoCS⁴⁹⁶ so he's got a lot of built up issues that he hasn't talked to anyone about and when he starts drinking or when he starts thinking about it then he will start drinking and then I start wearing a lot of stuff that his Mum should wear (SYD 3).⁴⁹⁷

These quotations illustrate that many victims of domestic violence are aware of the significance of their partner's difficult and abusive childhood. These women believe that they are being treated the way their partner was when he was a child and that the abuse is learned behaviour. The perpetrator's inability to deal with issues from their childhood was a recurring theme. As such, these women's experience supports the approach in the

⁴⁹⁶ Department of Community Services (DoCS) is known now as NSW Family and Community Services.

⁴⁹⁷ For other participants, their ideas relating to why domestic violence happens were varied:

Sometimes men are sooks and like to get their own way (CL 2).

I don't know (MR 3).

Communication breakdown (TU 1).

Men control their feelings of anger if they are at work, they don't assault their bosses. They take it out on people that they think they can get away with it (OR 1).

literature that sees domestic violence as stemming significantly from issues of colonialism, particularly around issues of power and control due to the erosion of Aboriginal cultural and spiritual identity. The disintegration of family and community in Aboriginal culture that has traditionally sustained relationships and obligations and maintained social order and control is also evident from the interviews. Violence in many Aboriginal communities has shown that the intergenerational transmission of violence perpetuates the cycle of violence and continues to affect the family unit.⁴⁹⁸ Such factors are unique to Aboriginal women and will ultimately inform their perspectives of violence and determine how they address it, escape it and the coping mechanisms they use in order to survive it. The 2000 Queensland Government *Aboriginal and Torres Strait Islander Women's Taskforce on Violence Report*⁴⁹⁹ also recognised that Indigenous people had endured decades of oppression and neglect⁵⁰⁰ and acknowledges dispossession, cultural fragmentation and marginalisation as contributors to the current high levels of violence in the community.⁵⁰¹

It is also clear from the above quotations that many women remained uncertain as to why violence had occurred in their particular situation. The perpetrator's lack of communication, desire to get their own way and targeting of victims based on who they think they can get away with committing acts of violence against is evident. All the quotations above reflect each victim's perception that the perpetrator fails to communicate properly.

6.4 Contributors to Violence

The literature suggests that the main precipitating causes of violence in Aboriginal communities are a social event or an issue that triggers an episode of violence,⁵⁰² most commonly alcohol abuse, drug abuse and petrol sniffing.⁵⁰³ The themes of alcohol and drug abuse are also discussed in relation to domestic violence below.

Participants were asked whether they thought drugs or alcohol caused domestic violence and 84 per cent believed that it did. (See Table 6.1).

⁴⁹⁸ NCRVAWC, above n 89, 145.

⁴⁹⁹ The Queensland Government, above n 43.

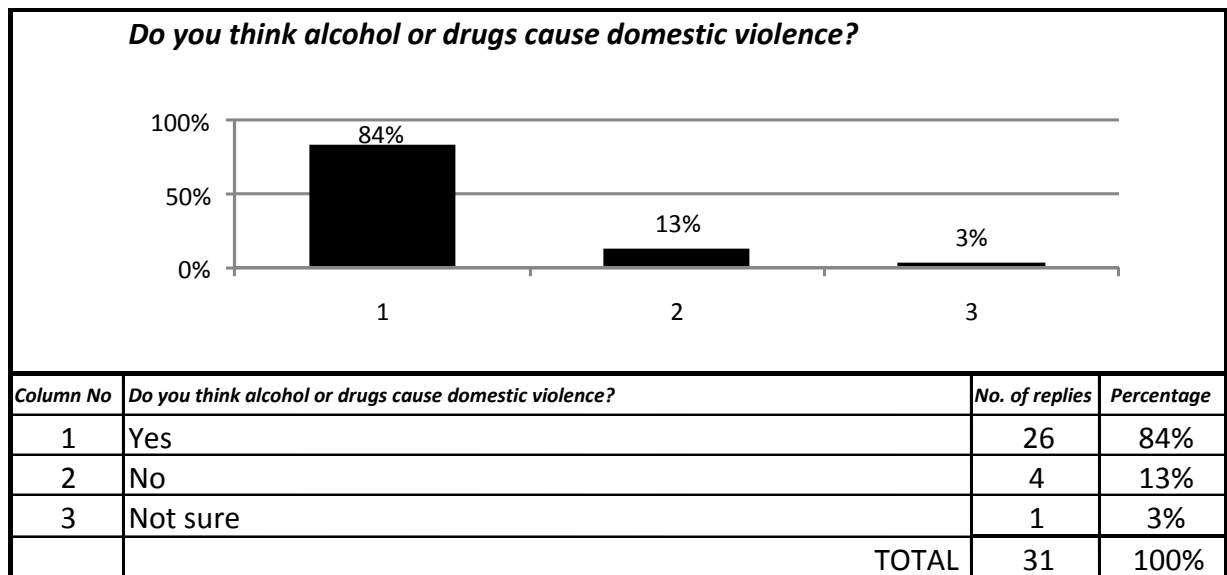
⁵⁰⁰ Ibid 12.

⁵⁰¹ Ibid.

⁵⁰² Memmott et al, above n 6, 21.

⁵⁰³ Alcohol and drug abuse is seen as a major contributor to violence in Indigenous communities; see the Queensland Government, above n 43, 65–70.

Table 6.1: Participants' Opinions about the Link between Violence and Alcohol or Drugs
(N=31) Excludes 2 missing cases



He's a very good Dad, he's a very good worker and a very good provider it's just that he just can't help himself drinking a lot, that was the biggest downfall he would be drunk and then get violent and aggressive, but once he was in trouble he seemed to quieten down a lot (GF 2).

Thirteen per cent did not believe that alcohol or drugs caused the domestic violence they experienced, stating:

Some men are sober, my partner was sober when he done it (OR 1).

Yes [he drank] alcohol, not drugs he didn't take them ... he didn't need anything to fuel his violence he was capable of violence when sober (TR 2).

Perpetrators used drugs or alcohol and women believed that these contributed to the violence. Alcohol and drugs were identified as precipitators of violence:

Alcohol ... he became aggressive (GF 4).

He is really against it [violence], like if the next door neighbour bashed his wife, well he would go over and bash that guy, it's so hypercritical. He says 'no man has a right to touch a woman' and yet his excuse is always 'I was drunk'. When he doesn't drink he is really, really good. You tend to stay because when he's not drinking he's good ... we had five weeks of him not drinking and he was taking an medication and he was messing around with the kids and everything and they all said he was great, but then he just started his drinking, getting into his drugs and everything. I said to him 'I can see that you are getting into the same pattern' and then he was gone (SYD 3).

The survey and above observations thus support earlier research suggesting that the high levels of violence and abuse seen in many Aboriginal communities are closely linked to other problems such as community dysfunction, alcohol and substance abuse and other anti-social behaviours.⁵⁰⁴

In the literature review, alcohol influence was strongly related to homicidal violence, and research indicates that homicides involving one or more Indigenous victims were six times more likely to have involved alcohol than those homicides not involving an Indigenous victim.⁵⁰⁵ The strong correlation between alcohol and homicide in Indigenous communities is supported by research that found over 87 per cent of intimate partner homicides among the Indigenous population were alcohol related.⁵⁰⁶ These statistics highlight the nature of homicide experienced by victims of violence. Given the above accounts, homicide must be considered a potential concern for all Aboriginal women experiencing domestic violence.

Mental illness was also identified as a cause of violence by one participant who stated:

For months before the domestic violence incident, I had been trying to get him help, but nobody would listen. So I believe if I had been able to get him some help, it [DV] would not have happened in the first place if he had been on his medication and everything like that (TR 1).

⁵⁰⁴Memmott et al, above n 6, 3.

⁵⁰⁵Dearden andPayne, above n 236.

⁵⁰⁶Ibid 5.

Women also indicated other members of their family were abused by the perpetrator:

He's hit my Mum... pushed my mum, mum actually called the police on him a couple of times he got locked up that night that he hit my mum. But he's threatened to kill my partner now, but he actually got away with that (FB 1).

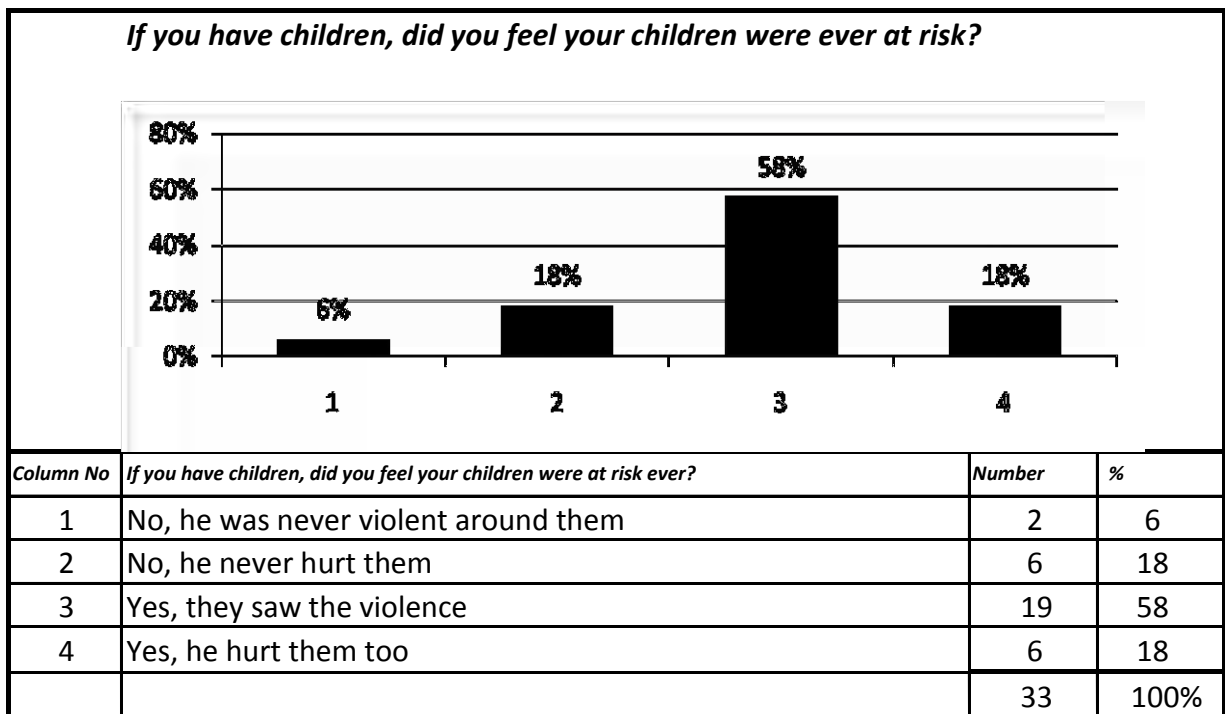
He and my Dad had a fight once, because I spoke to my Dad in the pub (TR 2).

The participants above identified aspects of Indigenous family violence, that being violence is not limited to violence between intimate partners but involves other members of the family or the community. In the above quotations, the parents and partners of the victim were also victimised by the perpetrator. The severity of the violence ranged from assault to threatening to kill someone.

6.5 The Effects of Domestic Violence on Children

Participants reported that they suffered violence and abuse at the hands of the perpetrator, and from the results shown in Table 6.2, 58 per cent of women acknowledged that their children saw the violence and 18 per cent acknowledged that their children were victims as well.

Table 6.2: Participants' Opinions about Whether Their Children Were at Risk because of Domestic Violence (N=33)



The impact on children who observed domestic violence was also identified in the interviews, and many participants stated that they felt that their children were at risk of harm as they saw the violence:

It had a lot of impact on them seeing me belted and I was worried about them blaming me ... he put so much into that hit. He blamed me and he manipulated the kids into believing it was me (MA 1).

My other daughter told me she remembers when we were all kidnapped and I was tied up to a tree at the tip, the kids weren't tied to the tree but they were made to watch me being tied and he put the butchers knot into it and I was left there for over an hour or so and then they told me what happened to them when he took them back to the house and questioned them about me (TR 2).

He threatened he was going to hurt the kids and me (FB 3).

Yes, he did drink and drive with my 15 year old son in the car, he doesn't remember doing it but the police got him for it, my son was meant to make a statement but that many threats come through, that my son didn't make the statement, because he kept saying 'if he goes to court against me, I'll get at him' my son didn't end up going to court ... so then he was let off because there were no witnesses to say that he was driving. My son said he was in full fear of his life (SYD 3).

They still talk about it, they still remember things, they had never seen me violent so for my children the worst thing was seeing me get hurt, what hurts me hurts them, they can't control it, my son has said to me 'I am never going to allow anyone hurt you again' all my kids have been in counselling it traumatised them too much (TR 1).

Victims identified the detrimental effect that witnessing violence had on their children. The perpetrator engaged in violent behaviour intended to manipulate the children, which could psychologically and physically harm them. Witnessing violence and feeling out of control were common themes in these quotations, as was threatening and menacing behaviour to which the children were exposed.

Other participants recognised that their children were at risk as they suffered injury as a direct result of the domestic violence:

He kicked a bottle of Coke and hit my youngest son. He had a big egg on his forehead; he was just going on one year old. The way he squealed I just rushed straight to him and picked him up and put him safely in his bedroom, because I didn't know what else he was going to do. I should of got my son checked ... I wasn't thinking clearly at the time (GF 3).

He never sort of physically hit them. Grabbed onto their arms and pushed them into their rooms. He was verbal against them (SYD 1).

He threatened my daughter and would call her names (QU 1).

Yes on a few occasions, on one occasion he badly assaulted my daughter, only because I was holding her when he was thumping me, because I was holding her the punches that were meant for me. My two-year-old was also injured during that attack so I had to take her to the hospital as well (NC 1).

The quotations above depict the violence that children experienced at the hands of the perpetrator. Head injuries at a young age, threats and name calling as well as pushing and grabbing children were revealed. On occasions, the violence was targeted at the mother, but the children were the secondary victims and were injured when the mother was assaulted.

Research suggests⁵⁰⁷ that children who are the victims of violence on many occasions suffer long lasting and detrimental effects on their health, development and wellbeing. The long-lasting effects of this violence on the children were discussed in detail by two participants:

[The violence affected him] ... mentally I never realised it at the time, he's 18 now but at the time he was only 4, we never fought or argued in front of him, but now that he is older we are good friends and he has mentioned it a few times. He knew that I got my teeth knocked out, it was a week before his birthday he had 40 kids coming for his birthday, and he tells me 'I remember that Mum' (W 1).

My kids hated him in the end... they would just lay and think about ways to kill him ... that's how bad it was (BW 1).

The quotations above reveal that the children who were victims of such violence did not forget the violence once they were adults.

⁵⁰⁷ L Laing, *Children, Young People and Domestic Violence*, (Australian Domestic and Family Violence Clearinghouse, Issues Paper 2, 2000) 2 <<http://www.austdvclearinghouse.unsw.edu.au/.../issuespaper2.pdf>>.

6.6 Injuries Resulting from Violence and Seeking Medical Care

Indigenous females are 35 times as likely to be hospitalised due to family violence related assault as other Australian females. In addition, most hospitalisations for family violence related assault for females were a result of spouse or partner violence (82 per cent).⁵⁰⁸ These statistics highlight the severity of the violence that Aboriginal women often experience, and the participants interviewed suffered debilitating and serious injuries, as the research suggested.

Participants were open when discussing the range and nature of physical injuries they had suffered as victims of violence and the extent of the violence inflicted upon them:

It was like arguing the majority of time; he would grab me around the throat that would be the main thing that he done, it would sometimes leave marks (FB 3).

He was choking my throat and hitting my head into a door frame at the same time. I had a lump on the back of my head and I had my throat choked so I couldn't talk (OR 1).

When he punched it (my jaw), it was swollen and I had to go and have x-rays to make sure there wasn't any fractures or it wasn't broken, but it was just swollen and now I have a permanent kink in my jaw (NC 1).

I got hit in the head with a lead crystal glass and it split my head open and he smashed all the windows out of the house. I rang police for help, they came through the front door and I got capsicum sprayed and so did my little girl. (SYD 3).

There's that scar there and here are some other scars, this one here, he had a knife and I put my hand up to protect myself, he full on booted me in the head, also punches (GF 2).

⁵⁰⁸ Al-Yaman, Van Doeland and Wallis, above n 6, 32.

A broad range of injuries were inflicted by the perpetrator, and victims suffered injuries ranging from bruising to broken bones. Hitting or punching the head or attempting to choke the victims was identified by participants a number of times and the experience would have been harrowing.

The literature review considered the strain on our health system by women accessing medical care for both physical and psychological injuries received as a result of domestic violence. Mental health services, accident and emergency units, child and family services, baby health centres, surgical units, general practitioners and sexual assault services respond on a daily basis to women who have been physically, sexually and emotionally abused by an intimate partner.⁵⁰⁹

Reporting or seeking medical treatment for injuries resulting from violence left victims feeling ashamed and embarrassed. Not all victims felt comfortable seeking medical attention once they had been injured:

I'm a bit ashamed to say it, but there were times when I was badly disfigured, that time I didn't approach the hospital or police I can't explain why I did or didn't.(NC 1).

I just fixed myself up, I was hurt badly enough to go and get help, but I just wouldn't go (GF 2).

I should have gone [to the hospital] but I didn't. He punched me in the ribs, which was the last time he assaulted me. I didn't see if anything was wrong and they hurt for a fair while (MR 1).

The shame and embarrassment of being a victim of domestic violence is evident here. Interestingly, some participants found it difficult to identify exactly why they did not seek medical assistance. One participant discussed her reluctance to seek medical attention due to the fear of having her children removed:

[I got hurt] ... but I didn't go to the doctor because I was worried about my kids (MR 2).

⁵⁰⁹ NSW Domestic Violence Committee, above n 164, 19.

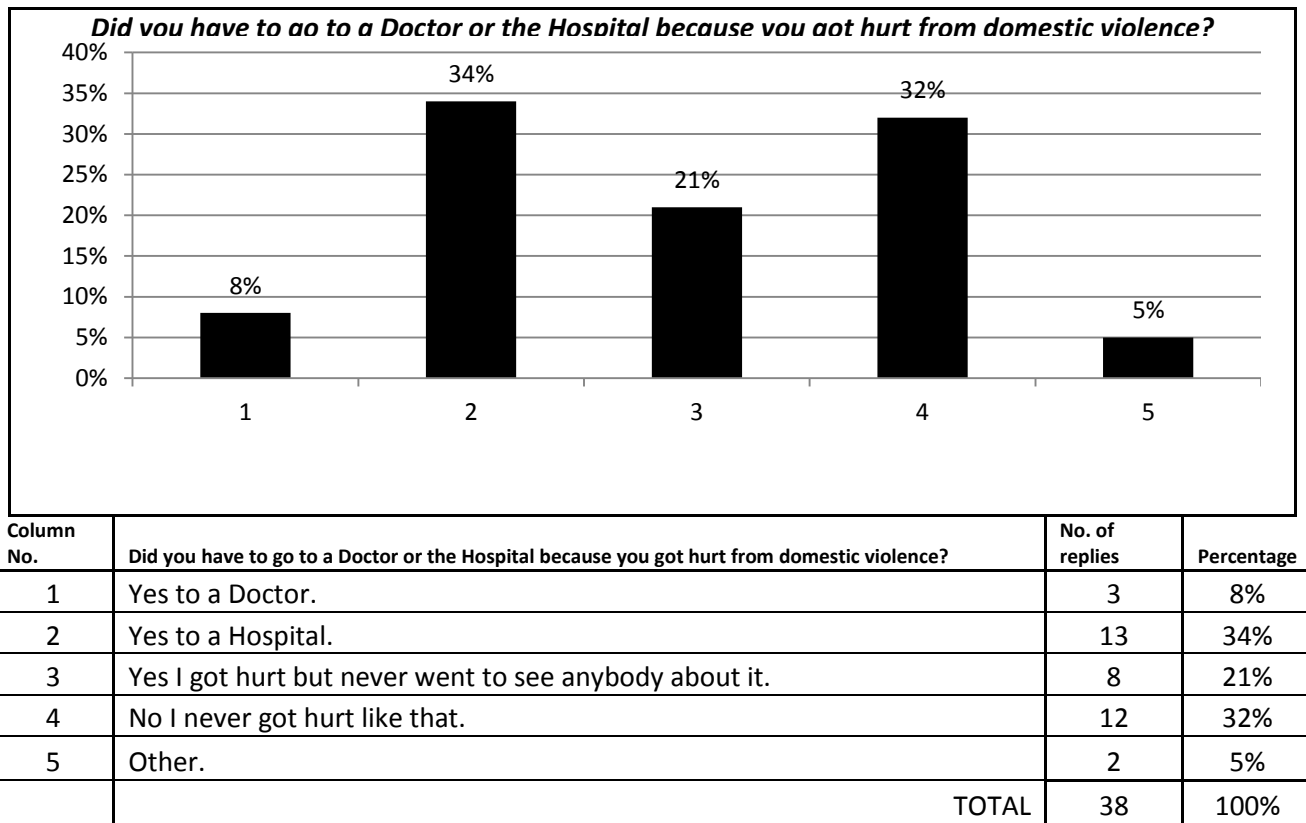
Such reluctance by the victim to seek necessary medical attention can come from the understanding that children might be removed if domestic violence is occurring in the home. Victims prefer to remain silent than to risk involvement (or further involvement) with child protection agencies, as evidenced above.

One participant identified issues with disclosing violence to their local doctor as they were faced with misconceptions about the violence:

I would go to the Doctor's and he would say 'and how drunk was your husband this time when he done it to you' my husband doesn't drink he never drank. They would support me in the end ... but they thought he just done it because he was drunk but he didn't drink. He was always sober (BW 1).

These misconceptions about when and how violence occurs can leave women feeling unsupported and with little option but to stay in the violent relationship. If victims are not accessing or being referred to appropriate services, it will be harder for them to leave the violent situation.

Table 6.3: Domestic Violence Resulting in Medical Treatment
(N=38) Some Aboriginal women provided multiple responses to the question



From Table 6.3, we can see that participants went to hospital to receive medical treatment for a range of injuries:

I went to the hospital several times and was treated for head injuries, cuts and bruises. Also for broken nose and fractured jaw, the hospital staff were very good to me; they arranged services to help me (SYD 1).

Five occasions [I went to the hospital] by ambulance. I am an ongoing patient with a GP because of the injuries I received they are permanent injuries; my children receive a carers' pension to look after me (SYD 3).

I stopped sleeping in the bed with him and this one night I was really tired and I wanted to go into the bed I was sick and he carried on and we ended up that I got a hit across the face and down the side of my face. I had a massive black eye and blue all

down the side of my face at the time I was having my pacemaker put in and I went to hospital and they asked me what happened and I told everyone else I fell over and then the sister said 'what happened really' and I told her and they ordered x-rays and wrote it down and then she said to me 'you may need this one day so I am going to record it' and the specialist said the same and then it happened again the next time, which was quite worse but (SYD 2).

I've had nine admissions...punctured lung, broken ribs, on my death bed in intensive care, black eyes I couldn't see out of (TR 2).

Victims interviewed discussed multiple admissions for a range of violent assaults they had experienced, with one being taken by ambulance to hospital at least five times and another being admitted to hospital nine times. Some of injuries inflicted left victims with permanent damage, and one participant also told of the frightening assault that left her close to death.

It was not unusual for victims to refuse to disclose all the information once they attended hospital to be treated for any injuries they had sustained. Fear of angering or upsetting the perpetrator was among the reasons participants gave for withholding information about the assaults they had experienced:

Yes ... there was one time I had to go to the hospital but it was put down as something else because he didn't want me to tell them. At this stage I was willing to tell them anything just to keep him calm (FB 4).

There were other times when I didn't want to go to Doctor or Hospital ... because I was ashamed and I was scared of him (BT 1).

He broke my wrist he pushed the door shut on my wrist and broke it. When he took me to the hospital, I told them it was an accident because he came when I had to get my plaster on and he came when I had to get it off and every time I went to the Doctor he was there. I did tell them it was the bathroom door but I never said he did it because he was pissed off and when we get home I was worried about what else would happen, he

dropped me off at home and told me he was going to go and kill himself. When I actually told him that my wrist was broken he didn't care after the violence he was always apologetic saying 'I will change, I will change. I'll never do it again... I'm sorry' (FB 1).

Fear of the perpetrator and the shame attached to be a victim of domestic violence was discussed as a barrier to reporting violence to medical professionals, and some victims lied to protect the perpetrator while others felt they had little choice, as he attended hospital with them.

One participant was fearful of the cost of calling an ambulance, so chose not to seek immediate medical attention despite the fact that she sustained a head injury that needed medical treatment:

I never went (to hospital), the police offered to call an ambulance for me and I said 'no' because I thought I would have to pay but then I got told later by someone else that I wouldn't have had to pay the ambulance bill. I wasn't hurt really badly, I had a lump on the back of my head, and I had my throat choked so that I couldn't talk. I did go to the hospital myself either that day or the next day, I don't remember so there is a hospital report about the lump on my head (OR 1).

It is evident from the above quotations from participants that reporting domestic violence to health professionals and seeking treatment for injuries suffered is not without obstacles. Firstly, victims have to be in a position to be able to access treatment, and that may involve them driving, catching public transport or calling an ambulance. Financial hardship may stop many Aboriginal women from seeking medical help such as the costs of an ambulance or transport costs. Thus, the likelihood that Aboriginal women are in a position either financially or socially to leave the violence would be reduced.

6.7 Leaving the Violence

Previous research showed that Aboriginal victims of domestic violence might choose not to report domestic violence for any or all of the reasons the broader Australian community does not

report it.⁵¹⁰ These could include the belief that the incident was too minor, they wanted to keep the matter private or they chose to deal with the incident themselves.⁵¹¹ However, Aboriginal women who are victims of domestic violence experience additional and distinctive barriers that arise.⁵¹² These may include cultural barriers such as the fear of hostile treatment from family or the police and increased fear of child removal.⁵¹³

For Aboriginal women, leaving a violent relationship leads to the fear that their partner, once incarcerated for the domestic violence offences, might die in custody.⁵¹⁴ Another reported fear is being outcast from the community and the repercussions from the offender's family members that could prevent a victim from coming forward and reporting violence.⁵¹⁵ This theme emerged in the later interviews.

Many of these barriers were identified in the interviews with the participants and are revealed below. Escaping a violent relationship or situation was identified by many participants as one of the hardest things they have had to do.

The urgency to get away is apparent in the interviews as is the loneliness that victims felt.

The accounts of escaping violence are fraught with panic and fear:

The only reason I got away from him the first time that I had him charged was because there was a disturbance in the house and I managed to just run, run for my life, as he is a very dangerous man. I grabbed my sons and jumped through the fence and I went over to my neighbours for help, through the hole in the back fence, I grabbed my kids and jumped through and told my neighbour that I wasn't going back there. They never called the police and I rang my Mum, I was too scared to call the police, my Mum didn't call the police either she got her friend to come over, because I didn't have my phone or wallet or anything I just left the house so suddenly, but Mum said she would get a friend to get the car keys and my wallet and all that so that

⁵¹⁰ Willis, above n 7, 2.

⁵¹¹ IVAWS, above n 142, 106.

⁵¹² Willis, above n 7, 2–3.

⁵¹³ Murray and Powell, above n 289, 60.

⁵¹⁴ Ibid.

⁵¹⁵ Ibid 26.

I could leave, but her friend was hopeless, he didn't understand because when I was in the house trying to get my stuff he was blocking me and scaring me and all that ... he wasn't very helpful at all I managed to get my stuff and left and went to a women's refuge (OR 1).

I pretended to stay asleep in bed when he went to work, I had a look through the window to make sure that he did leave and he rang saying that he had just got to work... and that's when I thought yes I'll go, I'm going to piss off out of here. I ran straight next door with my youngest son and showed them what happened and that I needed help and I was shaking bawling my eyes out. I had to go and wake the kids up (GF 3).

I went when he was asleep, he had been drinking, it was the day of my daughter's christening, he was drunk and that's when he started threatening her [daughter] so I said no you're not going to threaten my child. I hid the house keys [because the house was all locked up]so that I could, and left one of the car doors open so that he wouldn't hear me open it and then I quickly packed the car, my daughter was asleep, but she woke up, so I quickly put her in the car, it's a two storey house, steps are a bit noisy so I had to quickly do it all and then, I still didn't get everything I needed but I did get everything that my daughter needed, so that was all good and then I left and then I come [because it was in Parkes] straight to my sister's house, banging on the door, telling her to hurry up, cause he told me that if I ever left he would follow me and so I thought that if I empty the car, get inside then he can't get me (FB 3).

All of these quotations illustrate the panic and the fear that participants felt when desperately trying to escape the violence they were experiencing. Many planned their escape first or even tried to enlist the assistance of others to ensure they could get away.

The fear of leaving the perpetrator, combined with the fear of being found by him frightened many participants. From the interviews, women discuss that it was not unusual for them to make several attempts to leave before they are successful:

For months and months I tried to get away from him, leave him and he just followed me wherever I went and caused a lot of trouble for me. Well things got totally out of hand on one occasion the last time that I had seen him that he bashed me, he assaulted me in front of my daughter and that was the last straw for me, so I walked away and I told somebody and that somebody told my family and then I had no choice but to open up and I told my family they weren't happy to start off with, but then they were there for me, supported me and helped me get through things and also some of the services I went through, they helped me, the Women's DV Court Scheme and the programmes that I do (CB 1).

Because the first time I left him they put me in a refuge in Newcastle, but he knew exactly where we were, because his friend lived in Newcastle, I didn't know he had any friends there, but he [my ex-partner] is a plasterer and he works in different towns and I didn't know that he made friends in different towns as well, so when he rang me he said 'where are you' and I said 'we are living at ... house, and he said 'describe it to me because I'm pretty sure I know this place' I didn't describe it I said 'it's pretty good' and he described it to me over the phone while I was sitting in the bus and he said 'there is a guy behind ya, in the bus, keeping an eye on you, but if I want I can tell him to hurt ya. But he won't ... and that scared the shit out of me. He told me 'either you come home or I come up and get ya. I said 'I don't know, I don't know, he said I'll come up and get you then. But he knew where I was he wasn't just joking about it, that was really scary, it felt like I couldn't run anywhere without him knowing where I was (GF 3).

These quotations explain why participants might feel fearful of the perpetrator when they have finally made the choice to leave the relationship. The quotations illustrate how the violence often escalates and can be followed by further threatening behaviour. For many victims, leaving the violence was not straightforward, and some attempted to leave several times before they were successful.

There are many constraining beliefs women need to overcome including the fear their partner might kill them, fear their children will be adversely affected or harmed. Other structural barriers may include limited information on the legal process and other procedures and lack of transport and available temporary accommodation.

Previous research indicates that Aboriginal women identify a number of financial barriers, including finding suitable and affordable housing to accommodate larger families⁵¹⁶ and facing discrimination from real estate agents when trying to access the private rental market.⁵¹⁷ Some of these themes were evident from the interviews.

The end result for Aboriginal women escaping violence translated to less freedom of choice for managing their finances and difficulties meeting other financial obligations associated with leaving a violent relationship, which might include relocation expenses, legal expenses and childcare obligations.⁵¹⁸

Researchers identify that informal sources of support play a major role in the help-seeking process of women experiencing domestic violence.⁵¹⁹ A lack of available resources and appropriate advice and information may further challenge Aboriginal women wanting to escape violence and this is evidenced below.

6.8 The Need for Support When Escaping Violence

Once a woman has left a violent relationship, support is imperative and with the appropriate support, encouragement and guidance victims are able to seek crisis accommodation in refuges, obtain interim ADVOs and have access to counselling when they most need it. Victims of domestic violence often experience a 'transitional process' whereby they identify their situation as problematic and contemplate their options for leaving and seek informal feedback and

⁵¹⁶ Ibid 44.

⁵¹⁷ Ibid 47.

⁵¹⁸ Ibid 100.

⁵¹⁹ Meyer, 'Responding to Intimate Partner Violence Victimisation: Effective Options for Help-Seeking', 389 *Trends and Issues in Crime and Criminal Justice* No 389 (Australian Institute of Criminology) 2010, 1.

advice.⁵²⁰ The above quotations that discuss the fear of leaving illustrate that victims will often consult family and friends for advice before leaving or starting the leaving process. This often leads to a decision for action and formal support becomes crucial as a means for ending the violence with or without ending the relationship.⁵²¹

They told me a bit about it [the support service], a lady from Family Support came with me to court, both times that I went, she was very good—she is an Aboriginal worker. I have had good support in Moree with Family Support and the Police (MR 1).

As mentioned above, for Aboriginal women escaping violence, having the support of a good family support worker can make the experience of leaving the relationship a positive one.

Many participants relayed their experiences of leaving their partners. Women spoke of the lack of support they received when leaving the violence and during the legal process. Most women identified that they needed more support in some way:

Aboriginal Service [supported me] for a little while, but she left to have a baby and they didn't replace her then. They decided to replace her, but then her job ran out because the other lady was due to come back from maternity leave, but she didn't come back so now there is no support there now—apparently she has to re-apply for her job. This is really hard for someone like me, you just trust someone and then someone new comes and you have to learn to trust that person again (SYD 3).

I wish I could have had more support to help me and the kids at the time (GF 3).

I would have liked more support... like every police station you had the one good coppa, that did support you, would look out for you did try his/her hardest to try and apprehend, but then you also had the arseholes too, like local officers that were outright arrogant, at the end of the day you are just left there crying and not knowing where to turn and fortunately sometimes you have gotta turn to your family and when you turn to your family every week, every month, every year, its ongoing and

⁵²⁰ Ibid 2.

⁵²¹ Ibid.

your family become your support network at the end of the day it's all so frequent but you are running from it (NC 1).

These quotations highlight the importance of support for domestic violence victims, particularly when they are considering leaving the violent relationship.

In the literature review, Greer also recognised that it has taken a great deal of courage for Aboriginal women to begin talking about the violence they and their children have been experiencing, and this has caused some controversy within Aboriginal communities.⁵²² Family support available to non-Aboriginal women might not be experienced by Aboriginal women due to the transgenerational cycles of violence and trauma their immediate family members have experienced themselves.

Trust was identified as an important factor, as was the value of Aboriginal workers. A common theme identified was the need for better support for Aboriginal women when they are experiencing violence and make the decision to escape that violence.

The lack of culturally sensitive support services was raised by several participants, who explained that they would have liked support from an Aboriginal worker or Aboriginal service:

I prefer them [Aboriginal services], they can relate to you better, they can be a bit more helpful, that's just from personal experience, some services you don't feel comfortable with, so therefore you are not going to open up to them (CB 1).

Like I said I had my friends around, but I would have liked to have seen an Aboriginal worker after the police to visit me. But obviously they weren't contacted. I had to go down to the Women's Crisis Centre to find someone to actually help me. It would have been great if they had just come out and seen me, because when you are walking around the streets you don't know if you are going to run into him or not (CL 2).

⁵²² Stubbs, above n 36, 66.

In line with the research in the preceding chapters, participants identified the need for employing more female Aboriginal Community Liaison Officers (ACLOs) and Aboriginal family violence workers and training them in family violence.⁵²³ These actions will build trust and confidence in many Aboriginal communities and Aboriginal people, in relation to identifying, responding to and reducing domestic violence. It may also lead to higher violence reporting rates.

Quayle reported that Aboriginal women escaping domestic violence have experienced dual barriers of racism and sexism when accessing justice and services.⁵²⁴ These barriers are ever present and threaded throughout the above narratives. Participants identified more support services and better violence prevention programmes need to be in place to facilitate Aboriginal women leaving violence. The literature review illuminated the likelihood of violence prevention programmes being more effective in Aboriginal communities if they come from the ‘grassroots’, are intrinsically culturally appropriate and in tune with the communities thoughts and expectations. Having programmes with Aboriginal staff have also proven successful and in the interviews many participants spoke of the importance of Aboriginal workers being available to assist them when they are experiencing domestic violence.

Participants identified the need for better support services that are culturally appropriate for them to access. The theme of trust and understanding re-occurs here again.

Difficulties experienced by women living in rural and remote areas of NSW when escaping violence were also identified by the participants. A lack of basic services such as working public phones, available transport and housing are barriers for women attempting or planning to leave a violent relationship. In her paper about Indigenous family violence in rural NSW, Moore notes that women in rural towns lack adequate access to services, information and the informal and formal social supports that they need.⁵²⁵ Therefore, there is little incentive or encouragement for many Aboriginal women residing in these areas to leave violent relationships, as this often involves not only leaving their violent partners, but leaving their communities as well.

⁵²³ Ibid 36–9.

⁵²⁴ Quayle, above n 281, 210.

⁵²⁵ Moore, above n 24, 7.

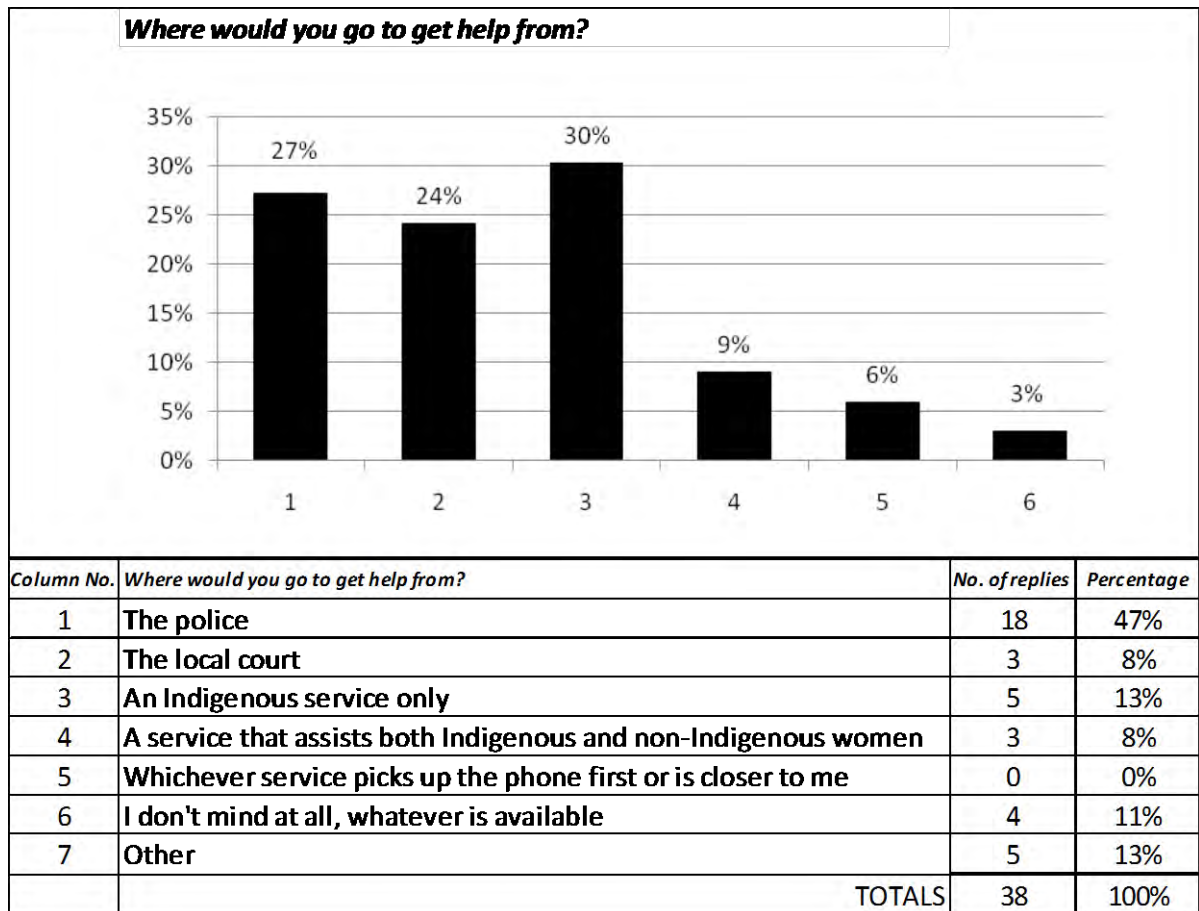
Overall, the quotations in this section have illustrated that Aboriginal women who are victims of domestic violence need support from services when experiencing and attempting to escape from violence.

6.9 Getting Help

Given the barriers identified above, it is no surprise that only 47 per cent of participants said they would seek help from the police if they were experiencing domestic violence. Participants may distrust the police after previous negative experiences or be concerned that their complaint will not be believed.

Table 6.4: Main Sources of Support for Participants who were Victims of Domestic Violence

(N=38) Some Aboriginal women provided multiple responses to the question



Interestingly, only 13 per cent of responses stated that they would go to an Indigenous only service for help, but another 11 per cent of the responses stated they did not mind whether the service exclusively assisted Indigenous women or non-Indigenous women also.

Lack of support resulted in some women remaining unaware of what options were available to them once they had escaped the violence:

I didn't even know there was one around. I thought they were only in the city. I thought 'where do I go' I remember talking to one office, I went down to the police station and he said to me 'well they won't take you with four kids, there's too many' and I just drove around and around and I took them home because I thought I can't leave them in the car. It turned out there was a refuge around the corner (SYD 2).

Some participants left the violence and went into crisis accommodation at women's refuges but found they still did not feel completely safe, and sometimes the violence continued:

Like I took off one time and went to the refuge, he was down there terrorising the people at the refuge and they rang the police (GF 2).

The Aboriginal community is a very close knit tight community and if something happens two minutes later the whole town knows and its either been extended. In my circumstances I have on many occasion had to relocate and escape violence and seek refuge in a women's' shelter in various locations in NSW, It just goes to show in my experience that it doesn't matter what area in NSW that I go to I either come across a past associate of his or mutual friends that we may have had, that have seen me and they let everyone know that they have seen [name removed]. down here you know [name removed]'s women and eventually he found out where I was, it doesn't matter whether it's a community, you are still out there, vulnerable, you are known and that person is known and because of family it can sometimes spread down from Queensland to Victoria you're known, your family is known ... it is not always intentional ... he has on occasions found me that way (NC 1).

The above quotations illustrate that not all women are aware of the support and options available to them. Despite seeking help, women found that that did not always result in the end of the violence with the perpetrator reportedly harassing the refuge staff or using friends to harass or intimidate the victim.

The shame women felt about the violence and the isolation they experienced was a common thread throughout participants' stories:

I felt ashamed, because he was belting me. I didn't want people knowing my business, people tend to run you down if you go back, and I think I'm a bit like that too 'if she goes back. She deserves it' (MA 1).

I felt alone and isolated (FB 3).

[I told] friends ... because I was going over to their house and they said 'meet me at the police station and we will go now' I didn't ring the Aboriginal Women's service because I was really embarrassed, I was so embarrassed, I was so ashamed and I was worried about my children and I ended up in hospital that night, because the stress caused cardiac arrhythmia and they thought I was having a heart attack at the police station, so they called an ambulance and then I went to the hospital (SYD 2).

What is apparent from the above quotations are the feelings of shame, embarrassment and loneliness that women experience in relation to the violence to which they have been subjected. For one, the shame of her situation was so severe it caused her to have actual physical symptoms.

The idea that the relationship would improve and the violence would stop kept one participant in the relationship:

I was pretty soft on him because he had been the victim of DV himself and had a really crap life and I thought he was able to get past it all but I was wrong, it kept happening and happening (OR 1).

One participant felt that the violence was private business and kept it to herself for as long as she could:

It was my business it had nothing to do with anyone else. Maybe if I was been in a situation where my life was threatened and he was out to kill me or something like that ... well yes I would, but it was only just that incident where he breached his ADVO that he came in because he was um. I had my little fella here at work one day, I just brought him along and he wanted to bring the bike to give to my son so that he could ride back across the over there at the park and I said to him you are not supposed to be here and that when he started, but no I wouldn't say that my life is threatened (GF 4).

Another reason for not disclosing the violence was to protect the perpetrator:

When I was living with all the violence, you don't tell anybody, you don't report it, you keep it to yourself, you just bottle it up, it's hard and don't tell anybody, pretty much basically you are protecting the perpetrator, because of the psychological abuse they make you believe that you're in the wrong and you protect them, and in the end you really do believe it is you. You really need to be so strong and have so much willpower to say 'that's it, I am not taking shit no more' and just leave, that's what I did (CB 1).

Before leaving the violence, participants identified that they believed the violence they were experiencing was not anyone else's concern, that they thought the violence would stop and that their relationship would ultimately improve. It was evident from the quotations that participants chose not to report the violence to protect the perpetrator.

Another barrier to getting help that was identified in the quotations was the difficulty for many women of not having family or friends on whom to rely for much needed support.

6.10 Barriers to Reporting Domestic Violence

Research suggests that much of the violence against both Aboriginal and non-Aboriginal women goes unreported. It is therefore difficult to measure the extent to which domestic violence against Aboriginal women goes unreported.⁵²⁶

Aboriginal victims of domestic violence might choose not to report it for any or all of the reasons the broader Australian community does not report it.⁵²⁷ These could include the belief that the incident was too minor, wanting to keep the matter private or choosing to deal with the incident themselves.⁵²⁸ However, Aboriginal women who are victims of domestic violence experience additional and distinctive barriers that arise.⁵²⁹ These may include cultural barriers such as the fear of hostile treatment from family or the police and increased fear of child removal.⁵³⁰

The theme of lack of support from family or hostile treatment from family emerged in the interview with the following participant:

I didn't do anything about it because I was living with his family at the time and they wouldn't support me because he already waiting to go to court on another charge... on bail I think, say I would have gone to hospital with a broken nose, he would have gone straight to gaol, that's why the family wouldn't take me to hospital or support me to get anything done about it (OR 1).

This quotation exemplifies the immediate concerns of an Aboriginal domestic violence victim. This victim did not report the violence or seek medical attention, but stayed silent due to lack of support and pressure from the perpetrator's family, knowing that the perpetrator might face further charges on top of those he already had for other matters.

⁵²⁶ Willis, above n 7, 4.

⁵²⁷ Willis, above n 7, 2.

⁵²⁸ IVAWS, above n 142, 106.

⁵²⁹ Willis, above n 7, 2–3.

⁵³⁰ Murray and Powell, above n 289, 60

Participants were asked to identify barriers that prevented them reporting violence to either the police or other agencies. When participants were asked if there was anything preventing them from calling the police and reporting the violence if they were abused, some stated:

I have a child to him. I don't want charges stopping him from getting a job. Self-harm, he's tried to commit suicide before (TW 1).

I really don't want him to go to gaol because of our little fella (GF 4).

I saw him as my security, I don't know why, I question myself now that I am out of it, I still don't have an answer for myself, but he was my security and there were times when I rang for the police and he's done a real bad assault and I have rung for the police they have taken statements and then he rocks up that night and through intimidation, I guess me wanting him to be there, security wise, because we lived in a pretty bad area a lots of the time when the police report came through I refused to go through with the statement—too frightened— other times he may have assaulted me and he stayed there rather than running off. I was locked in the house a lot of the time, not able to get out (NC 1).

I got hurt, but I was always too scared to get help. I wouldn't tell people because I was scared it would get back to him, he would always know someone, a friend of a friend of a friend (GF 3).

A multitude of barriers were identified by participants regarding why they did not report the violence they were experiencing. The fear of not being able to get a job in the future, lack of family support, risk of the perpetrator committing suicide and fear itself were stated.

One participant raised a fear recognised by many Aboriginal women who are victims of domestic violence, that if they report the violence, their children will be considered 'at risk' and therefore removed from their care by the DoCS. Past experiences of child removal in the

Aboriginal community and the Stolen Generation, has left an indelible stain and discourages women in reporting violence to ‘authorities’ for fear of losing custody of their children.⁵³¹

Inherent distrust of police and many government services is a fundamental hurdle for many Aboriginal women, and this was illustrated in the interviews. Aboriginal deaths in custody and the harrowing effects of removing generations of Aboriginal children from their families⁵³² (the Stolen Generations) compound this distrust of police, as do previous negative interactions with government and legal services. The quotation below illustrates this inherent distrust of the police and lack of faith in the legal system:

I have involved the police, and especially since I have had my kids because the police are mandatory reporters there have been DoCS reports made every time I have reported the domestic violence and had assault charges laid, so I have had three DoCS reports made against me, but every time DoCS contact me instead of the father getting treated like shit because of what he has done, DoCS treat me like shit, trying to make out that I am a bad mother and I say to them ‘what about all the mothers that don’t even report it at all’ but DoCS don’t change their attitude, like they don’t care, they don’t think ‘Oh well we should assist this women to get through this because she is actually trying to do something about it and she is being a good mother’ they don’t care about that and they don’t see the complexities of all the issues, like how full on it is, like dealing with the police, court and how you don’t get treat justly. They don’t seem to have the knowledge or experience or give a shit about all that, they just manage to run a person down. So it’s the person who reports the violence, usually the mother who gets dealt all the shit, when it’s the man. That man should be getting blamed for being a bad father. He is the one who caused it all...it is really hard what women go through (OR 1).

This participant’s quotation exemplifies the ongoing struggle she has had with DoCs, from the poor treatment she has received to the blame she feels from them as a victim of domestic

⁵³¹HREOC, above n 166, 80.

⁵³² See Human Rights and Equal Opportunity Commission, above n 5.

violence. The pressure for victims to be able to ‘solve’ their own problem can, at times, be overwhelming.

Other participants were happy to report any violence they experienced to the police and did not identify any barriers in reporting the violence:

I was happy to call the police if he pushed it too far, because he had never been stopped before (SYD 2).

I had my other four kids kidnapped by him and he was in and out of prison a couple of times, but I don’t think he would win custody; he is the only thing that would stop me from calling the police. He’s grabbed the mobile off me and snapped it in half to stop me from calling the police, but there’s nothing else that would stop me, like I said life is easier when he’s not around, I just can’t get rid of him (SYD 3).

Nothing if he breached the order I was happy to call the cops (MR 2).

Nope it didn’t worry me, nothing would have stopped me. I thought a stint in gaol might have done him the world of good but that never happened anyway (BW 1).

The quotations above highlight the importance of victim’s being in a position to be able to call the police when violence occurs. Many victims were happy to report his abusive behaviours to the police with the only barrier to doing that being the perpetrators actual presence.

Other unexpected barriers in reporting the violence were also identified and discussed. One participant reported the violence and was charged with an offence herself:

He keeps coming to my house, trying to grab me around the throat, like he had me, he grabbed me and just threw me up against the TV cabinet, everything just fell, the kids are there nothing I could do, I couldn’t boot him, I just got up and I just I don’t know what I done I was just wackin’ him, he ran out, he booted, kicked my front door in, cause he got through my window, I kept telling him for about three or four months ... look I don’t want to be with you mate. I had had enough of him and he got

through my window and started carrying on saying that I was sleeping around ... I wasn't sleeping around ... he was the one who was sleeping around and he came in started carrying on bashing me and everything, and he charged me, he went down to the copper, but all he said to them was 'she assaulted me, she started getting into me', but they didn't want to hear my story, they just said you are charged with grievous bodily harm. They charged me (GF 2).

Another feared that the police would not believe her:

I didn't think the police would have believed me; because he was a 'suit' and I just thought there was no way that they would believe me. He used to say to me people will never believe you and I didn't think they would (SYD 2).

A common fear about reporting domestic violence is how the victim believes the perpetrator is perceived in the community:

Everyone thought he was a nice good, quiet, guy (SYD 2).

Misinformation given to women by the police about their legal rights was also an issue:

When I called them to enquire about the night before they told me there was nothing they could do, but then the next morning I came to the Indigenous service and spoke to the solicitor and she took me to the Police to get the ADVO (FB 3).

Not having a drivers licence or car were also issues that many women raised as obstacles to escaping violence and seeking assistance and support:

I didn't have a car when I lived in another town where I was pretty secluded ... (SYD 3).

He made me hand my driver's licence in so I couldn't go out while he was at work, he was very, very cluey, my husband. He was a control-freak. I had a car but when I handed my licence in, he got rid of the car. I used to ride a pushbike down to the shop to buy the bread and milk. He used to drive past the shop everyday on his way

home from work, but I still had to go and get the bread and milk, he wouldn't do it (BW 1).

Women discussed when TIOs would have been appropriate only to find the police would not assist them:

They [the police] wouldn't do a telephone order for me (OR 1).

Others were not aware the option existed with many of the participants stating that they didn't know what a TIO was:

[I had] never heard of it (CB 1).

Such barriers to reporting domestic violence, as depicted in the above quotations, were often unexpected. Women reported being charged by the police when reporting a violent crime, which results in the victim having very little faith in the legal process. Participants also identified a fear of not being believed by the police, particularly if the perpetrator is respected and liked in the wider community. Other participants were not aware that they had legal options; what was apparent from the quotations was the misinformation victims receive in relation to police powers and the legal process.

6.11 Conclusion

In discussing Aboriginal women's experiences and understanding of the causes of domestic violence, it is important to acknowledge and recognise the severity and abhorrent nature of the violence many Aboriginal women experience. The stories shared by the participants in this research have many common characteristics but are still unique and complex.

The previous literature review and Chapter Four, in particular, highlight many of the contemporary barriers and issues Aboriginal women are faced with as victims of violence. Chapter Four considers the causal attribution of violence in Aboriginal communities and discusses the stress and impact colonisation has had on Aboriginal people. From this oppression and marginalisation, other situational factors are present that contribute to the

incidences of violence in the Aboriginal community. These include lack of adequate violence prevention programmes, unemployment and intergenerational violence. Research participants identify all of these situational factors as impacting on their experiences of violence and acknowledge and discuss these factors in the interviews.

Escaping violence was identified by the participants as a significant problem particularly when they are without access to good support systems, a car and drivers licence and a place to go. The needs of Aboriginal women who are victims of domestic violence are often complex because of community, family and cultural ties. Shame, embarrassment and humiliation were feelings raised by Aboriginal women as preventing them from seeking support to leave an abusive relationship and having to discuss the abuse they had experienced with other people. It has long been identified that women from Indigenous communities may have feelings of shame or concerns about racism that are likely to affect their willingness to discuss issues of violence against them with people from outside their communities⁵³³ and this was again evident in this research. Victims reported the shame and humiliation present when disclosing violence to their kin and family raising a number of cultural issues. Often pressure is placed on the victim by their own family or the family of the perpetrator as a result of culturally linked shame or fear. General community attitudes and a tolerance to some forms of violence may also persuade women not to report the abuse to the police.

Racist attitudes perceived by victims from both police and service providers prevent many women escaping violence and historically negative police relations may prevent women reporting such violence. Even in 1995, there were suggestions that domestic violence legislation increases the intervention of a brutalising police force in Aboriginal lives and in fact has resulted in increasing incarceration of both Aboriginal men and women.⁵³⁴ Thus, a lack of trust between Aboriginal victims and the police can result in less reporting of domestic violence and breaches of ADVOs. The lack of trust derives from a much longer colonial process of negative police intervention.

⁵³³ D Bagshaw 'Whose Idea of Fairness? Examining the Impact of Culture on the Mediation Process' in D. Bagshaw (ed), *Mediation and Cultural Diversity* (Conference Proceedings of the Second International Mediation Conference, University of South Australia, Adelaide).

⁵³⁴ J Atkinson 'Aboriginal People, Domestic Violence and the Law: Indigenous Alternatives Justice Strategies, Future Directions' (Proceedings of the Queensland Domestic Violence Conference) 233.

Research by Aboriginal women has identified the lack of access to the justice system that many Aboriginal women experience, the alienation many victims feel from the legal process and the lack of equitable services available to them.⁵³⁵ This chapter demonstrates specific examples of such failings for Aboriginal women who are victims of domestic violence. It also looks at a number of misconceptions that exist within the Aboriginal community in relation to having their children removed from their care by DoCS once the violence is reported and even being charged with violent offences themselves when they are reporting abuse.

The literature and research relating to this area shows us that Aboriginal women's experience of domestic violence is often brutal, impacted by cultural and racial issues and compounded by shame and humiliation. As the research above suggests, Aboriginal women's lived experiences of violence are distinctive, complex and challenging, and legislative tools and responses must reflect this.

⁵³⁵ Thomas et al 1993, 169–70.

Chapter Seven: Research Interviews—Aboriginal Women’s Experiences of Legal Intervention as Victims of Domestic Violence

7.1 Introduction

This chapter focuses on participants’ experiences of the legal system and the process they followed to obtain legal protection in the form of an ADVO against the perpetrator once the violence was disclosed. Participants were asked about their experiences applying for orders, how they understood the orders and their thoughts in relation to the orders capacity to protect them from violence.

The research considers the participants understanding of the wording used in the standard orders of an ADVO and the level of comprehension and understanding victims have of these and later considers how this may affect the victim’s ability to report violent behaviours to the police.

The difference between community definitions and legal definitions of certain terms make understanding many words used in legal documents problematic. Understanding of such ‘words’ will influence how individuals identify, report and respond to violence they experience. This is particularly the case for many Aboriginal women who have literacy problems and therefore cannot rely on their general knowledge to form the basis of their understanding of the ADVO.

Aboriginal people are less likely to complete Year 12 at school than non-Aboriginal people. The National Aboriginal and Torres Strait Islander Social Survey found that in 2008, just over two in ten (21 per cent) Indigenous people aged 15–64 years had completed Year 12, in comparison to more than five in ten (54 per cent) non-Indigenous people. Of Indigenous people aged 20–24 years (which generally excludes people still at secondary school), 31 per cent had completed

Year 12 or equivalent, which is less than half the completion rate of non-Indigenous people (76 per cent).⁵³⁶

In discussing the education achievement rates of Aboriginal people in Australia, it must be reasonable to conclude that Aboriginal people are less likely to have the literacy and numeracy skills of non-Aboriginal people, which is therefore likely to affect their comprehension and understanding of legal documents such as an ADVO.

From this research, it becomes increasingly evident that Aboriginal women require more specialised assistance and support when navigating the complexities of the legal system and that their understanding of the ADVO will vary greatly to that of the wider public.

7.2 Legal Intervention

As demonstrated in the previous chapter, for many participants, leaving the violence is a difficult and time-consuming process laden with fear and misgivings. This can also be said for the following legal process that is endured in order to obtain an ADVO. Participants reported a range of opinions and experiences in relation to their contact with the court, police and other agencies. Participants reported not understanding exactly how an ADVO could protect them and generally feeling they could have used more support during the legal process.

Another theme that emerged in the interviews that was previously identified in the literature as the lack of appropriate information available to victims in relation to the ADVO and its conditions:

There were a couple of ADVOS [in the past] and I couldn't understand why there wasn't certain orders or restrictions in place for him or conditions that weren't added and I couldn't understand with his violent nature why wasn't that ADVO strong, with his repetitive offences and similar behaviours they didn't properly look at the conditions that would have protected my children (NC 1).

⁵³⁶ ABS, *National Aboriginal and Torres Strait Islander Social Survey* (Cat No 4714.0, 2008)
<<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4714.0Main%20Features82008?opendocument&tabname=Summary&prodno=4714.0&issue=2008&num=&view=>>.

The quotation above emphasises the lack of direction and control victims experience over the legal intervention in which they are involved. The previous literature highlighted the likelihood that Aboriginal women will only request the standard orders of the ADVO. Other conditions may be requested, including preventing the defendant from approaching the victim if they have consumed drugs or alcohol and stopping the defendant's access to firearms, both of which could be beneficial to victims. However, unless the person representing the victim 'tailors' the ADVO to their circumstances, the victim can be left with just the standard orders.

After years of being a victim of violence, the court proceedings were the last emotional straw for one participant, who stated:

I am so sick and tired of arguing. I feel so weak now I don't want to stand up and say this is what happened, this is what happened, I am so sick of it. It's like I'm running out of breath, talking to someone but it's not being heard (GF 3).

This quotation illustrates that the process of reporting the violence, facing the defendant in court and dealing with the police can be emotionally exhausting for many Aboriginal women.

7.3 Applying for an ADVO and Interim ADVOs

Interim ADVOs are orders that provide the victims with protection until the matter comes before the court. TIOs or provisional ADVOs as they are also known can be made by the Chamber Registrar or the police can apply to a magistrate to have provisional orders made for 28 days until the matter comes before the Local Court.⁵³⁷

The interim or provisional order provides protection to the victim in the time it takes the matter to come before the court to be heard.

⁵³⁷*Crimes (Domestic and Personal Violence) Act 2007*, Section 32.

Not all women who participated in the research were aware that they had the option to seek an ADVO through the Chamber Magistrate and believed that going to the police was the only option they had.

From the interviews, it was evident that six participants instigated the proceedings for an ADVO from a Chamber Magistrate at the Local Court as opposed to reporting the matter to the police. Reporting the violence to the Chamber Registrar is preferable to some victims of violence rather than involving the police in the initial stages, particularly if there is a history of mistrust and poor police relations.

Kelly also found that many of the NSW Aboriginal women she interviewed about ADVOs who had experienced domestic violence have an inherent distrust of the police and would ‘prefer to ask the local magistrate to initiate process rather than the police’, as the Chamber Registrar would ‘explain how the ADVO works and gives you a copy of the ADVO ... the police don’t do that’.⁵³⁸

Interim orders can be granted by a Chamber Magistrate until the matter next comes before the court. However, participants reported confusion about interim orders. One participant incorrectly believed that she was protected by an interim order that she had obtained and her experiences are summarised as follows:

At first I felt as though I was protected [with an interim ADVO], but then when I found out it wasn’t actually in place until you go to court, well then you are not really protected (GF 6).

This participant was given an interim order but did not fully understand how it could protect her from violence:

[The Local Court Chamber Magistrate] didn’t explain it [the interim ADVO] at all (GF 6).

⁵³⁸Ibid 6.

This recurring theme of lack of ADVO explanation is evident throughout the interviews and the literature.

7.4 Serving the Order on the Perpetrator

An ADVO is not effective until the police ‘serve’ the perpetrator with a copy of the provisional order.⁵³⁹ If the perpetrator attends court and a final ADVO is granted they will be given a copy of the order by court staff. If an order is made ex-parte, in the perpetrator’s absence, the police will again need to serve the final orders.

The Law Reform Commission identified that some defendants often go to great lengths to avoid service,⁵⁴⁰ and failure to serve ADVOS on a defendant emerged in submissions and consultations as one of the major issues hampering the effectiveness of ADVOS.⁵⁴¹

The interviews with participants highlighted this:

It took nearly three weeks for the police to serve the papers [on him] I had nothing to protect me in the meantime (FB 4).

They didn’t know where he was so they couldn’t serve him with it, but he has had a ADVO put on him—he goes walkabout for a fair while if he knows the cops are after him, he has lots of different places to go but then in gaol when he is like looking for release he will always tell them he has nowhere else to go, because he can’t come here, but he has plenty of place to go, he always gets into trouble at them places (SYD 3).

The participants’ responses above illustrate the difficulties police face when serving the defendant with an ADVO. If there is no know location for the perpetrator, it can take weeks, if not months, to finally ‘serve’ the order on the defendant. This can be a stressful time for the victim, as they might feel vulnerable and unprotected, as identified above.

⁵³⁹ Ibid Section 77.

⁵⁴⁰ NSW Law Reform Commission, above n 8, section 11.

⁵⁴¹ Ibid.

As the previous research and interviews suggest, inherent delays involved in obtaining a final ADVO are problematic for Aboriginal women wanting to completely sever ties with the defendant and their community. Problems involved with serving the defendant with the summons to appear in court and deliberate delay tactics used by defendants make the legal process more arduous and prolonged than intended.

7.5 Seeking Assistance from the Court

For many women, attending court to be involved in an application for an ADVO is a difficult and stressful event. It can be the first contact with the formal legal system. The court process often requires the victim to be in the same room as the perpetrator. This brings up feelings of fear and overwhelming anxiety for many victims, as does the presence of the perpetrator's friends or family. The legal system is a complex and challenging environment for Aboriginal women and without proper legal and social support, Aboriginal women are more likely to report that court was a negative or shameful experience rather than an empowering one. Lack of familiarity and knowledge generates fear when dealing with the legal processes and systems.⁵⁴² It has previously been recognised that the experience of going to court, police intervention and legal representation have not been positive and women experience trauma and fear at the possibility of going through the process again.⁵⁴³

When interviewing the women, it was evident that not all the victims had been in a court prior to this civil matter. As the literature shows, participants found the experience difficult:

[I was] embarrassed to be there, it's tough going to court (TW 1).

I felt sick in the stomach ... it can be very emotional, overwhelming (CB 1).

Not knowing what to expect and the complicated nature of the court procedures were an issue for some women:

No one explained the court process (N 1).

⁵⁴² NSW Department for Women, above n 227, 25.

⁵⁴³ Ibid.

They still didn't explain anything to me about what was about to happen. I waited for that letter to come in the mail or for the police officers to hand me the letter telling me when to go to court (GF 4).

I remember being so scared because the judge had me up on the stand for an hour and a half and he [my ex] got up there for about five seconds and got told to get off, because he gave himself away, got himself into more trouble, he [the perpetrator] just turned around and said ' Ohhh you didn't even talk about M*** and how I kicked the bottle of coke on his forehead and I just balled out crying, it's not that I forgot I just didn't want to remember it, it's painful' (GF 3).

When participants were asked how they felt about going to court many were embarrassed and felt ashamed:

Embarrassed ... [I thought] people will judge me, as myself and my family are pretty well known within the community (W 1).

I was scared he was there. It [domestic violence] was out in the public.... everyone knew why you were there because it [the matter] written on the wall why people are at court (MA 1).

I've been to court that many times I don't know, the first couple of years it was pretty scary going into court and facing so many different courts because it happened in a lot of different place, but now I'm back in my home town I have friends for support, that's the only support I have (SYD 3).

The emotions women experienced as victims of domestic violence attending court ranged from feeling scared and confronted to embarrassed and overwhelmed. Knowing that their private business will now be made public was also difficult for some participants, especially if they were well known in their community. Appearing in court was also difficult for women with a disability:

In the court, because I am partially deaf, I couldn't hear what was going on, so I had to rely on my lawyer (MA 1).

Other participants were particularly intimidated and frightened by the perpetrator, who often recruited members of his family or friends to intimidate the victim. Common experiences were intimidation in the courtroom, threats or isolation from family members and community members and a general lack of support. These issues have been identified in other research and cause Aboriginal women distress, confusion, and loss of family support and in some cases resulted in threats of violence from the family:⁵⁴⁴

I would never want to go through the court process again ... yes because of the fear factor, standing in court going against him, just after going through some violent incidents with him, I didn't have the strength to stand in that court, knowing what he had just done to me or feeling fear or intimidation if he was to go there with his family members as his support (NC 1).

I didn't turn up for the first two appearances because it was really bad with his family, they really intimidated me quite a lot and then in the end I thought bugger them all and went anyway there was a whole tribe of them at the courthouse (CL 2).

I was intimidated by him. He sat in court staring at me, trying to intimidate me (GF 6).

For many women, the abuse and intimidation is not relegated just to their home life. Even when they are seeking a legal remedy to the problem, they are faced with further hindrances. Having the perpetrator not show up to court and the proceedings drawing out were raised as issues. The intimidation the perpetrator often engaged in at court, staring at the victims or showing up with many family members are also illustrated in the quotations.

When going to court, similar themes emerged for the Aboriginal women interviewed. Many identified feelings of fear and embarrassment. This fear also related to being unfamiliar with

⁵⁴⁴ Ibid 26.

the court process and not sure what to expect at court. Other women recognised their fear was around confronting the perpetrator in court. In the quotations, words identifying emotions, such as ‘scared’, ‘fearful’ and ‘intimidation’, were commonly used.

7.6 Understanding the ADVO

The integral aim of this research is to examine Aboriginal women’s perceptions of domestic violence and perceptions of ADVOs. Misinformation and an inaccurate understanding of how the criminal justice system operates, can affect the enforcement of ADVOs as violence is not reported.⁵⁴⁵

Magistrates were surveyed in relation to changes they would like to see to ADVOs, and one magistrate suggested the following, which supports the hypothesis of this current research: that complainants find ADVOs difficult to understand and often have no understanding of the terms as they appear on the order:

These ADVO and interim orders are so confusing to people of low and average education with vague words like ‘harass’, ‘molest’ that even I don’t know what they mean—people should get orders and applications in simpler terms saying which is being sought, what it is they are supposed to have done—and what they are prohibited from doing.⁵⁴⁶

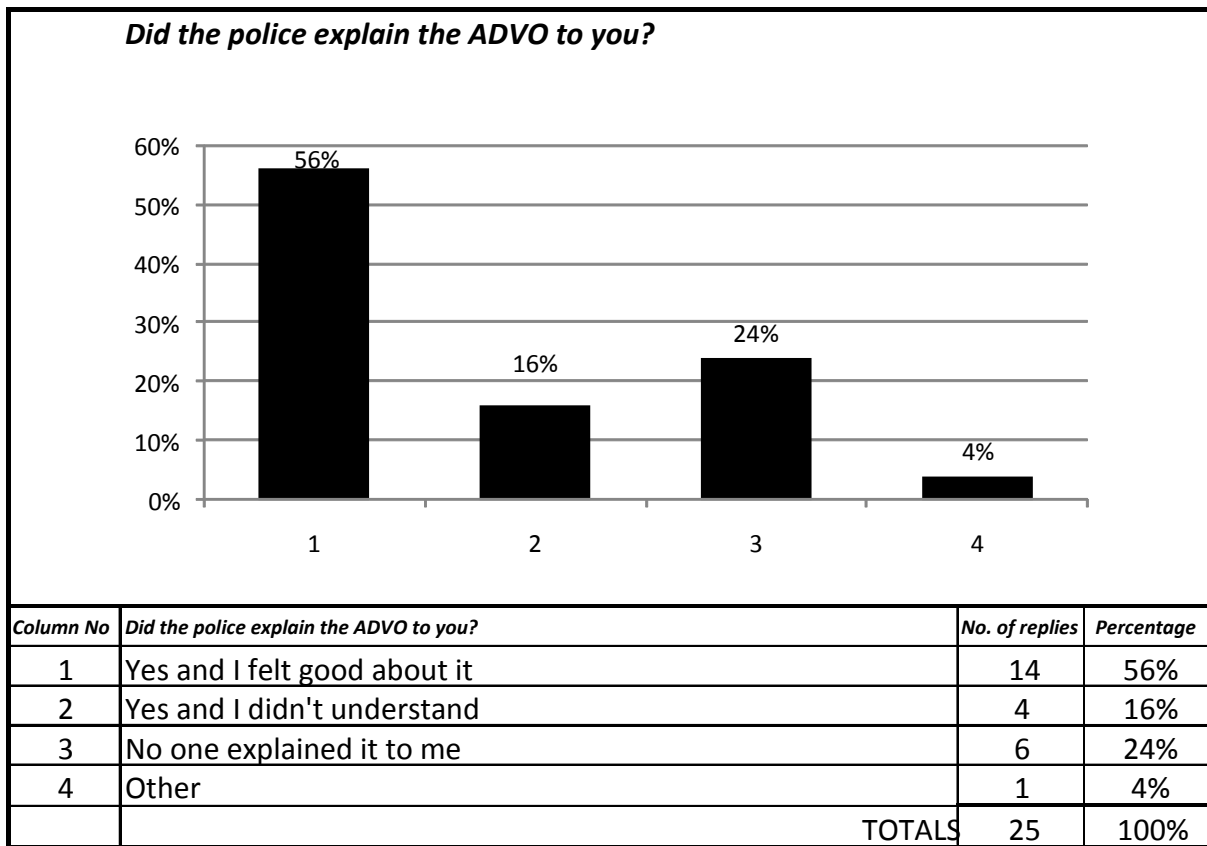
Table 7.1 questions whether the ADVO was explained to the victim by the police for those whose initial orders were taken out by police officers at a police station and not by chamber registrars.

⁵⁴⁵ Katzen, above n 75, 308.

⁵⁴⁶ Hickey and Cumines, above n 384, 80.

Table 7.1: Participants' Understanding of the ADVO

(N=25) Excludes 8 missing cases



Among the research questions this thesis addresses is how Aboriginal women in NSW understand ADVOs and the conditions and wording that appear on the order. Only 56 per cent of participants felt happy with the explanation of the ADVO they received from the police. Twenty-four per cent of the women interviewed stated that the ADVO was never explained to them and a further 16 per cent stated that someone had explained the order to them but they did not feel that they understood the order sufficiently.

This was also evident in the interviews, as participants identified that they did not always understand what the ADVO conditions were and some women felt they were left to understand the order by themselves:

I didn't clearly understand the conditions (TU 1).

They just said this is the ADVO, when I got the ADVO they just said it was for this amount of time... that was it (FB 1).

Apart from what was outlined in the order when you had it in your hand, but had I have been someone who wasn't educated and didn't understand what was put forward to me, I pretty much put it together for myself (NC 1).

A lack of understanding of the order and the protection it affords may ultimately result in women not reporting incidences of violence when they should. This in turn results in fewer breaches by the perpetrator reported to the police and ultimately prolongs the period of harassment and abuse that many women suffer. Katzen's research found that if Aboriginal women report a breach and the police fail to take formal action and provide appropriate customer service, then the enforcement processes results in a significant reduction in the effectiveness of ADVOs.⁵⁴⁷

For one participant, there was much confusion around the ADVO, as she recognised that she did not fully understand it:

They explained it but I didn't fully understand [it], when I went to the police station to take the order in, they were saying that they couldn't help me (GF 3).

The previous literature identified a lack of police understanding of issues for Aboriginal domestic violence victims and noted that police officers might be influenced by misleading and inaccurate cultural stereotypes, such as that violence is an inherent part of Aboriginal culture.⁵⁴⁸ This is highlighted by the above quotation.

Participants identified the need to access more information about ADVO conditions and not just the basic explanation that they felt they often received. Looking at the quotations, some women understood basic content, while others were left feeling they had to work out what the restrictions were by themselves.

⁵⁴⁷ Katzen, above n 75, 308.

⁵⁴⁸ NSW Ombudsman, above n 187, 65.

Participants who reported having adequate support from friends, a women's service or the Women's Domestic Violence Courts Assistance Scheme were more likely to indicate that the order was explained sufficiently to them:

My next door neighbour as well as being a policeman he was also my friend, he fully explained it to me [the ADVO] (W1).

Having access to neighbours, friends or a good support network was identified as beneficial for victims as they had someone to turn to for further support and explanations.

7.7 Standard Orders that Appear on the ADVO

Section 36 of the *Crimes (Domestic and Personal Violence) Act 2007* reads as follows:

Every apprehended violence order is taken to specify that the defendant is prohibited from doing any of the following:

- (a) assaulting, molesting, harassing, threatening or otherwise interfering with the protected person or a person, with whom the protected person has a domestic relationship,
- (b) engaging in any other conduct that intimidates the protected person or a person with whom the protected person has a domestic relationship,
- (c) stalking the protected person or a person with whom the protected person has a domestic relationship.

Such standard orders exist on every ADVO and prohibit the defendant from behaving in a certain manner. This research aimed to learn how these words are understood by the participants interviewed and what these words meant to them as victims of domestic violence. The tables below outline how the participants defined these words when asked what they meant to them. Every participant answered these questions to enable the researcher to identify that gaps exist in explaining the order to victims, and a victims understanding of the terms used.

7.7.1 Molest

Current domestic violence legislation does not include a definition of the word ‘molest’. Following Australian case law, Starke ACJ held that ‘The word “molest” is a very wide one and in my opinion wide enough to include sexual intercourse by force’.⁵⁴⁹

Other case law states that ‘molest’ is to ‘act with the intent to annoy, and to annoy, a person with ordinary and reasonable feeling’.⁵⁵⁰ ‘Pester’ has also been used as a synonym for molest in other jurisdictions.⁵⁵¹

The International Merriam-Webster dictionary defines ‘molest’ as ‘to make annoying sexual advances to’ and ‘to force physical and usually sexual contact on’.⁵⁵² The Australian Macquarie dictionary defines ‘molest’ in two ways: ‘to assault sexually’ and ‘to interfere with annoyingly or injuriously’.⁵⁵³

Below is a table that outlines all the research participants’ understandings and perceptions of the word ‘molest’ as it is used in the standard orders of the ADVO.

⁵⁴⁹ *R v McMinn* (1982) VR 53.

⁵⁵⁰ *In the Marriage of Moio* (1984) FLC 91–575.

⁵⁵¹ M Burton, *Legal Responses to Domestic Violence* (Routledge-Cavendish, 2008) 15.

⁵⁵² *Molest*, Merriam-Webster Dictionary (2013) <<http://www.merriam-webster.com/dictionary/molest>>.

⁵⁵³ *Molest*, Macquarie Dictionary <<http://www.macquariedictionary.com.au>>.

Table 7.2: Participants' Understanding of the Word 'Molest'

(N=33)

Definition	Number of Participants	Example Quotes
Sexual Only	15	Anything sexual TR1 Sexual abuse QU1
Touching	9	Touch sexually in any way DB4 Touching MA1
Physical or sexual	2	Preys on innocent/weak people-physical and sexual things CB1
Relating to children	3	A guy molests a little kid GF1 Children and touching inappropriately CL2
Other	2	Stalking FB4 Feel dirty, scrub everything clean GF3
Don't know	2	Don't know CL3
TOTAL	33	

Participants easily identified the sexual abuse associated with molest, with 15 participants identifying molest as being only sexual. A high number of participants were able to give a correct definition of molest based on the common dictionary meaning and that found in case law.

However, of the 33 total participants, three women thought that molesting solely related to children:

A guy molests a little kid (GF 1).

I always think of it in a bad way like trouble for molesting kids (FB 3).

Two participants struggled defining the word 'molest' and felt that it described:

Stalking (FB4)

Feeling dirty, scrub everything clean (GF3)

These last two definitions given by the participants are particularly problematic when it comes to reporting and identifying domestic violence.

Other participants also had a restricted understanding of the word. Two women responded that they did not know what 'molest' meant at all, while another participant was of the belief that molesting related to not engaging in sexual intercourse:

Not wanting to have sex (NC 1)

While the majority of women understood that 'molest' can have a sexual nature, many also identified that 'molest' can involve touching or annoying.

Previous research also identified that the meaning of the term 'molest' that is contained in the standard orders is unclear.⁵⁵⁴ The ramifications of this lack of understanding are far-reaching. If a woman is being molested by her partner and cannot understand or define the abuse, it is unlikely she will report it to the police. If the abuse is not reported to the police, the ADVO will not be enforced and ultimately the defendant will not be charged with a domestic violence offence or a breach of the order. If victims fail to identify the abuse they experience they are also less likely to access support services and pursue other legal avenues such as claiming for victim's compensation.

Such misunderstanding can also result in the victim making a complaint to the police about an alleged breach when in fact there was no actual breach.⁵⁵⁵

7.7.2 Harass

The *Crimes (Domestic and Personal Violence) Act 2007* does not give a definition or outline what behaviours may constitute harassment. The High Court in *O'Sullivan v Lunnon* has

⁵⁵⁴ NSW Law Reform Commission, above n 8, 3.44.

⁵⁵⁵ Ibid.

described the legal definition of ‘harass’ as ‘to trouble, vex, torment, or confuse, as by continual attack or questioning’.⁵⁵⁶

The International Merriam-Webster dictionary definition of ‘harass’ is ‘to create an unpleasant or hostile situation for or especially by uninvited and unwelcome verbal or physical conduct’,⁵⁵⁷ while the Australian Macquarie dictionary defines ‘harass’ as ‘to disturb persistently; to torment’.⁵⁵⁸ The participants were also questioned as to their understanding of the word ‘harass’.

Table 7.3: Participants’ Understanding of the Word ‘Harass’

(N=33)

Definition	Number of Participants	Example Quotes
Being tormented, annoyed picked on or unwanted contact	11	Being picked on CL1 Being tormented CL3 Contacting us without us wanting contact DB4
Constantly bothering	9	Being a pain, constantly bothering TW1 People don’t leave you alone SYD1
Scare you	2	Make you feel scared, uncomfortable or unsafe OR1
Swearing at you	2	Someone comes and swears and abuses you, when they are not supposed to be there MR2
Harass	2	Someone harasses you GF1 Constantly harassing you N1
I don’t know	1	I don’t know FB3
Other	6	Persistent NC1 Watch you GF5
TOTAL	33	

⁵⁵⁶ *O’Sullivan v Lunnon* (1986) 163 CLR 545.

⁵⁵⁷ *Harass*, Merriam-Webster Dictionary (2013) <<http://www.merriam-webster.com/dictionary/harass>>.

⁵⁵⁸ *Harass*, Macquarie Dictionary <<http://www.macquariedictionary.com.au>>.

Most participants could adequately define the word 'harass', and understood the concept of unwanted attention that is unpleasant, using words to describe it such as 'annoy' and 'torment'. A couple of participants struggled to find another word to define 'harass' and thus used the word harass itself, while one participant responded that they did not know. A number of definitions were particularly interesting, including:

Persistent (NC 1).

Watch you (GF 5).

They are nagging and nagging. They don't leave you alone (GF 2).

The behaviours identified above are broad and might not necessarily meet the legal definition of the word 'harass'. Overall, the last few responses show the lack of understanding of the term 'harass' as it appears on the ADVO.

7.7.3 Assault

A commonly used legal definition of 'assault' is 'any act committed intentionally or possibly recklessly, which causes another person to apprehend immediate and unlawful violence'.⁵⁵⁹

Case law in Australia defines assault as: An act that intentionally or recklessly causes another to apprehend immediate and unlawful personal violence'.⁵⁶⁰ Even 'mere silence', as in silent telephone calls, may constitute an assault.⁵⁶¹

In NSW case law, it has been defined as follows:

A form of the tort of trespass to the person. It consists of an intentional act or threat directly placing the plaintiff in reasonable apprehension of an imminent physical interference with his or her person, or the person of someone under his or her control.

⁵⁵⁹ R Barry (Ed) *The Law Handbook* (Redfern Legal Centre Publishing, 10th ed, 2007)396.

⁵⁶⁰ *Knight* (1988) 35 A Crim R 314.

⁵⁶¹ *RvBurstow; RvIreland* [1998] AC147.

Because the essence of assault is the creation of an apprehension of imminent contact in the plaintiff's mind, it is irrelevant whether or not the defendant has the means to carry out the threat. Words may amount to an assault. Assault is actionable 'per se' (without proof of damage).⁵⁶²

The International Merriam-Webster dictionary definition of 'assault' is 'a violent physical or verbal attack' and 'a threat or attempt to inflict offensive physical contact or bodily harm on a person (as by lifting a fist in a threatening manner) that puts the person in immediate danger of or in apprehension of such harm or contact'.⁵⁶³

The Australian Macquarie Dictionary defines 'assault' as 'an unlawful physical attack upon another; an attempt or offer to do violence to another, with or without a battery, as by holding a stone or club in a threatening manner'.⁵⁶⁴

The table below outlines the participants' understanding of the word 'assault'.

⁵⁶² *Barton v Armstrong* [1969] 2 NSW 451.

⁵⁶³ *Assault*, Merriam-Webster Dictionary (2013) <<http://www.merriam-webster.com/dictionary/assault>>.

⁵⁶⁴ *Assault*, Macquarie Dictionary <<http://www.macquariedictionary.com.au>>.

Table 7.4: Participants' Understanding of the Word 'Assault'

(N=33)

Definition	Number of Participants	Example Quotes
Hit, bash or anything physical	25	Someone hits you CL1 Hit, kick, punch, slap DB4 Anything physical TR1
Physical and verbal	2	Verbal, hitting another person, pushing SYD1
Hurt	1	Hurt someone FB5
Violence	3	Violence N1 When they assault you GF1
Other	2	You feel lonely and sad, you can't reach out to anyone GF3 Disrespect NC1
TOTAL	33	

The majority of participants understood that physical violence could constitute assault and expressed the physical nature of such abuse by giving the example of 'hitting'. Out of the 33 participants, 20 responded by saying 'hitting' is what they define as assault.

Interestingly, 'assault' was also defined in the following unusual ways:

Disrespect (NC 1).

You feel lonely and sad, can't reach out to anyone (GF 3).

Previous reports had indicated that Aboriginal women and communities only view physical violence as family violence.⁵⁶⁵ From the tables in this chapter outlining the participants' understanding of the words that appear on an ADVO, it is evident that the broader definitions of

⁵⁶⁵NSW Law Reform Commission, above n 8, 3.56.

domestic violence encompassing emotional, psychological abuse and harassment are often more challenging for Aboriginal women to define.

It is likely that if victims of domestic violence are only identifying ‘hitting’, ‘bashing’ ‘slapping’ or ‘kicking’ as an assault, then perpetrators are not being breached on other violent or threatening behaviours, despite the breadth of the term at law.

7.7.4 Threaten

The legal meaning of ‘threaten’ is not statutorily defined in the Act.⁵⁶⁶ However, in NSW case law the term ‘threaten’ has been identified as having the following meaning:

A communicated intention to inflict some kind of harm on the person or property of another. A threat may be made with the intention to intimidate another person, to overcome their will, to unsettle their mind, or to restrain their freedom of action. A threat may amount to an actionable assault where it creates in the recipient a reasonable apprehension of imminent violence or danger.⁵⁶⁷

The International Merriam-Webster dictionary’s definition of ‘threaten’ is ‘to utter threats against’ and ‘to cause to feel insecure or anxious’.⁵⁶⁸

The Australian Macquarie dictionary defines ‘threaten’ as ‘to be a menace or source of danger to; to offer (a punishment, injury, etc.) by way of a threat; to utter or use threats; to indicate impending evil or mischief’.⁵⁶⁹

It thus overlaps assault and may explain why the participants saw a distinction between them. Outlined below are participant responses when asked what the word ‘threaten’ means to them.

⁵⁶⁶ *Crimes (Domestic and Personal Violence) Act 2007*. Section 7 of the Act defines the meaning of ‘intimidation’ and Section 8 of the Act defines the meaning of ‘stalking’. No meaning is given for ‘threaten’. Section 4 of the *Crimes (Aviation) Act 1991* (Cth) does give a meaning to threaten that states: ‘a person is taken to threaten to do an act if the person makes any statement or does anything else indicating, or from which it could reasonably be inferred, that it is his or her intention to do that act’.

⁵⁶⁷ *Barton v Armstrong* [1969] 2 NSW 451.

⁵⁶⁸ *Threaten*, Merriam-Webster Dictionary (2013) <<http://www.merriam-webster.com/dictionary/threaten>>.

⁵⁶⁹ *Threaten*, Macquarie Dictionary <<http://www.macquariedictionary.com.au>>.

Table 7.5: Participants' Understanding of the Word 'Threaten'**(N=33)**

Definition	Number of Participants	Example Quotes
Threaten/ make threats	6	Threats CL3
Say they will hurt you	14	Say they are going to do something BT1 Say they will do this or that FB3
Manipulate you	2	Manipulation NC1
Other	10	Verbal TU1 When you're scared GF 1 Anger Qu1 Psychological N1 Just about to hit you TR2 Taking over your territory GF3
I don't know	1	I don't know FB 5
TOTAL	33	

It is evident from the responses above that there is much confusion in the community as to what defines 'threaten' and what they understand the term to mean. Participants described it incorrectly in terms of the legal definition⁵⁷⁰ as:

Stab, hit or bash me (SYD 3).

Anger (QU 1).

Psychological (N 1).

Voicemail or text (MA 1).

⁵⁷⁰ In NSW case law the term 'threaten' has been identified as having the following meaning:

A communicated intention to inflict some kind of harm on the person or property of another. A threat may be made with the intention to intimidate another person, to overcome their will, to unsettle their mind, or to restrain their freedom of action. A threat may amount to an actionable assault where it creates in the recipient a reasonable apprehension of imminent violence or danger.

Take over your territory (GF 3).

One participant stated that they did not know what it meant at all. Again, given the above information it would be difficult for many Aboriginal women who are victims of violence to report threatening behaviour to the police, particularly if they are unable to identify such behaviour themselves.

The apparent attempt to ensure a broad understanding of assault thus appears to have failed.

7.7.5 Stalk

The legal meaning of stalking is defined in Section 8 of the *Crimes (Domestic and Personal Violence) Act 2007* and states:

- (1) In this Act, 'stalking' includes the following of a person about or the watching or frequenting of the vicinity of, or an approach to, a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.
- (2) For the purpose of determining whether a person's conduct amounts to stalking, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

Section 13 of the Act further elaborates on the definition of stalking and states 'causing a person to fear physical or mental harm includes causing the person to fear physical or mental harm to another person with whom he or she has a domestic relationship. And a person intends to cause fear of physical or mental

The International Merriam-Webster's dictionary definition of stalk is 'to pursue obsessively and to the point of harassment'.⁵⁷¹

⁵⁷¹*Stalk*, Merriam-Webster Dictionary (2013) <<http://www.merriam-webster.com/dictionary/stalk>>.

The Australian Macquarie dictionary defines ‘stalk’ as ‘to harass (someone) by persistently and obsessively following them, telephoning them, etc.’⁵⁷²

Dennison and Thomsen⁵⁷³ discuss the varying understandings of the term ‘stalking’ in the wider community and question the understanding that the community has stalking, wondering whether the community defines stalking by the actions alone, the intention to cause fear or harm, the consequences or some combination of these elements.

Once again, participants were asked what the term ‘stalk’ meant to them and their responses are outlined in the table below.

Table 7.6: Participants’ Understanding of the Word ‘Stalk’
(N=33)

Definition	Number of Participants	Example Quotes
Follow, watch or show up constantly	31	Follow you around GF6 Follow you everywhere W1 Constantly being followed and being watched SYD 1 When someone follows your every move FB1 Watch you and everything that you do GF5
Other	2	Harass MR1 Paranoia NC1
TOTAL	33	

⁵⁷² *Stalk*, Macquarie Dictionary <<http://www.macquariedictionary.com.au>>.

⁵⁷³ S Dennison and Thomsen, ‘Is this Stalking? A Comparison between Legal and Community Definitions of Stalking’, (Paper presented at the Stalking: Criminal Justice Responses Conference, Australian Institute of Criminology, Sydney, 7–8 December 2000).

Almost all participants correctly related the word ‘stalking’ to be followed around or watched. Interestingly, many more women are familiar with stalking than harass or threaten. However, the two unusual responses were:

Paranoia (NC 1).

Harass (MR 1).

Overall, ‘stalk’ seemed like the most easily defined out of all the definitions discussed with participants. Most had no problems identifying this type of violent behaviour.

7.7.6 Intimidate

The legal meaning of ‘intimidate’ is outlined in Part 7 of the *Crimes (Domestic and Personal Violence) Act 2007* and states:

(1) For the purposes of this Act, ‘intimidation’ of a person means:

(a) conduct amounting to harassment or molestation of the person, or

(b) an approach made to the person by any means (including by telephone, telephone text messaging, e-mailing and other technologically assisted means) that causes the person to fear for his or her safety, or

(c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.

(2) For the purpose of determining whether a person’s conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person’s behaviour.

There are broader definitions of the legal meaning of ‘intimidate’ that appear in both the Commonwealth and NSW Crimes Acts. The reason for this may be an attempt to capture behaviours not in themselves crimes, but prohibited under ADVOs.⁵⁷⁴

⁵⁷⁴The *Commonwealth Crimes Act 1914*, Section 36A states intimidation is ‘A threat to commit an unlawful act or a threat against a third party which coerces the party to commit an unlawful act. In relation to a witness in judicial proceedings, intimidation includes threatening, restraining, using violence or inflicting an injury upon, causing punishment, damage, or disadvantage to the witness.’ While Section 545B of the *Crimes Act (NSW) 1900* defines intimidate as: ‘Intimidation’ means the causing of a reasonable apprehension of injury to a person or to any member of his family or to any of his dependants, or of violence or damage to any person or property

The International Merriam-Webster dictionary defines ‘intimidate’ as ‘to make timid or fearful’ and ‘to compel or deter by or as if by threats’.⁵⁷⁵ The Australian Macquarie dictionary definition of ‘intimidate’ states ‘to make timid, or inspire with fear; to force into or deter from some action by inducing fear’.⁵⁷⁶ Participants were also asked how they understood the term ‘intimidate’, and their responses are outlined in the table below.

Table 7.7: Participants’ Understanding of the Word ‘Intimidate’
(N=33)

Definition	Number of Participants	Example Quotes
Power or control	9	Have someone scared or nervous FB5 Power NC 1 Use one’s power over another MA1
Put you down	7	Say things- like putting you down CL1
Threats or stand over you	7	Verbally scary BT1 Threaten me all the time BW1 Stand over SYD 2
Other	4	Harassment TW1 Gets you going and says things GF4
I don’t know	6	I don’t know FB 1
TOTAL	33	

⁵⁷⁵*Intimidate*, Merriam-Webster Dictionary (2013) <<http://www.merriam-webster.com/dictionary/intimidate>>.

⁵⁷⁶*Intimidate*, Macquarie Dictionary <<http://www.macquariedictionary.com.au>>.

One participant did not answer the question and alarmingly, six women admitted that they did not know what the word ‘intimidate’ meant. Most women identified that ‘intimidate’ involves making someone feel scared, nervous, frightened and a couple of women related it to being ‘stood over’. Other responses were more varied:

Power (NC 1).

Watch everything you are doing (FB 4).

The word ‘intimidate’ was the word that got the most ‘I don’t know’ responses when participants were asked to define it. This shows a basic lack of understanding of the nature of this behaviour; as a result, it would be unlikely that participants could identify such behaviour without confidently being able to define it.

The tables on the preceding pages outline participants’ responses reflecting their understandings of several important terms appearing on an ADVO. The majority of women understood the terms ‘stalking’ and even ‘harass’. There was confusion around the word ‘intimidate’ with at least six women saying they did not know what this word meant. The word ‘threaten’ seemed reasonably well understood. However, with the assault definitions 14 women stated that it meant ‘hitting’ only. This again is problematic when reporting violence as women may not feel that actions such as choking, kicking or pushing could constitute an assault.

The Judicial Commission of New South Wales distributes Local Court Bench Books⁵⁷⁷ to all magistrates presiding in NSW. The Local Court Bench Book is a comprehensive guide for magistrates for the conduct of civil and criminal practice and procedure in the Local Court of NSW.

Section 76 of the Act states that when the court makes a final apprehended violence order or interim court order, it must be explained to the defendant and the protected person.⁵⁷⁸ This is reinforced in the Local Court Bench Book, which states:

⁵⁷⁷ Accessed from the Judicial Commission of New South Wales website at <http://www.judcom.nsw.gov.au/news/local-court-bench-book>.

⁵⁷⁸ *Crimes (Domestic and Personal Violence) Act 2007*, Section 76 (1).

In making an order, or on the variation of an order, the court is required to explain in language readily understood by the parties:

- the effect of the order
- the consequences that may flow from a contravention
- in the case of an original order, the rights of the defendant and the protected person in relation to the order.

It must be questioned from the research presented above whether such explanations are being given and understood adequately by Aboriginal victims of domestic violence. How does a magistrate ascertain the level of language that is readily understood by the victim or perpetrator? The evidence would suggest that the vast number of Aboriginal women leave court without understanding all the standard orders and terminology appearing on the ADVO.

The participants' experience suggest that both the court and police officers make a number of assumptions relating to Aboriginal women's level of understanding of the ADVO as a legal document. Assumptions exist that victims will be able to identify behaviours exhibited by the perpetrator and subsequently report the violence to the police. The assumption also exists that victims are comfortable with reporting the violence to the police when it does occur. The research shows that all of the assumptions are misplaced.

7.8 Victims' Thoughts about ADVOS

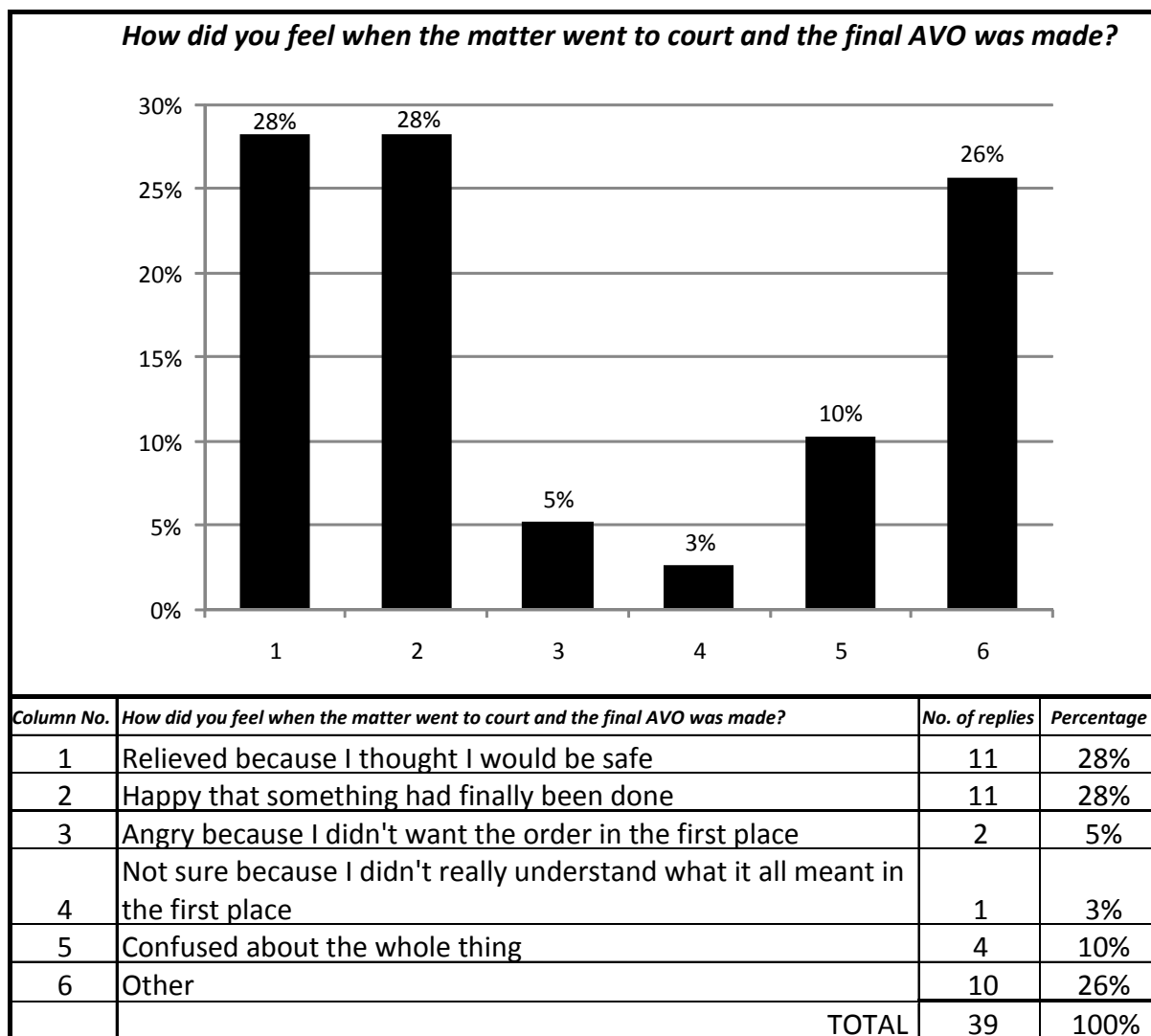
Limited research exists that examines and illustrates Aboriginal women's perceptions and thoughts in relation to an ADVO. What there is suggests that Aboriginal women have difficulty understanding the terminology and the operation of the ADVO. The purpose of the following question was to get a better understanding as to the value Aboriginal women place on ADVOS and an understanding as to their feelings in relation to it being granted.

The literature suggests that ADVOS and the court process leave Aboriginal women confused, overwhelmed and lacking considerable culturally specific support options.⁵⁷⁹ In the past, lack

⁵⁷⁹ See NSW Department for Women, above n 227; Moore, above n 24.

of police action in response to domestic violence and a failure of police to initiate ADVO proceedings or lay criminal charges when attending incidences of domestic violence has undermined the victim's confidence in both the police and the justice system.⁵⁸⁰

Table 7.8: Participants' Reactions to the ADVO
(N=39) Some Aboriginal women provided multiple responses to the question



Participants were asked how they felt once the matter had gone to court and a final ADVO was made. Fifty-six per cent of responses stated they felt relieved or happy to have the ADVO with the remaining responses identifying other negative or prohibitive issues relating to the ADVO.

⁵⁸⁰ Moore, above n 24, 37.

Some participants responded ‘other’ as their experiences were mixed and they considered the ADVO as both a successful and non-successful outcome. Initially, it may have made them feel safer but once time passed, they did not feel it provided them with a level of protection they considered adequate:

Some participants viewed the experience negatively, stating:

No ... I didn’t feel good about it because when I walked out another police officer was standing there and he said something nasty to me. I don’t know exactly ... it was something about a charge from me, but I was there to try and get help of them and when I walked out [of the court] he was talking really nasty ... the way he spoke to me I didn’t like it. I was depressed and down (MR 2).

They [the police] were taking out orders that I didn’t want, I didn’t mind being protected by an order but they refused to listen, I had to speak to the magistrate myself and tell him what had happened, because the police just didn’t want to listen, they knew about his problems but they didn’t expect me to tell the magistrate I was happy to be protected, but I still wanted him to live with me so that I could help my partner. There was no flexibility, they were telling me what the conditions will be, they weren’t taking into consideration his mental health stuff (TR 1).

Several participants thought that the ADVO would make them feel safer but realised that was not actually the case:

I thought I was going to be safe, but that didn’t work out did it? (BW 1).

In my eyes, it [the ADVO] made him angrier. He had already been in gaol so he wasn’t scared of going back there—he knows the system so he’s not frightened of it (GF 6).

Other participants stated that having an ADVO did not make them feel safer and felt it was a waste of time to have the order:

No not safe at all ... not since he came the first time, I thought what's the use of going to court ... it's a waste of time (BW 1).

Many factors contribute to a victim's perception whether their experiences having an ADVO has been a positive or negative one. Respectful and responsive police action, good support at court and effective enforcement contributes to victims feeling safer and developing the view that ADVOS are worthwhile. As evidenced above, not all women feel safe once they have taken out an ADVO, and some believe it made the perpetrator become 'angrier', so were even more scared.

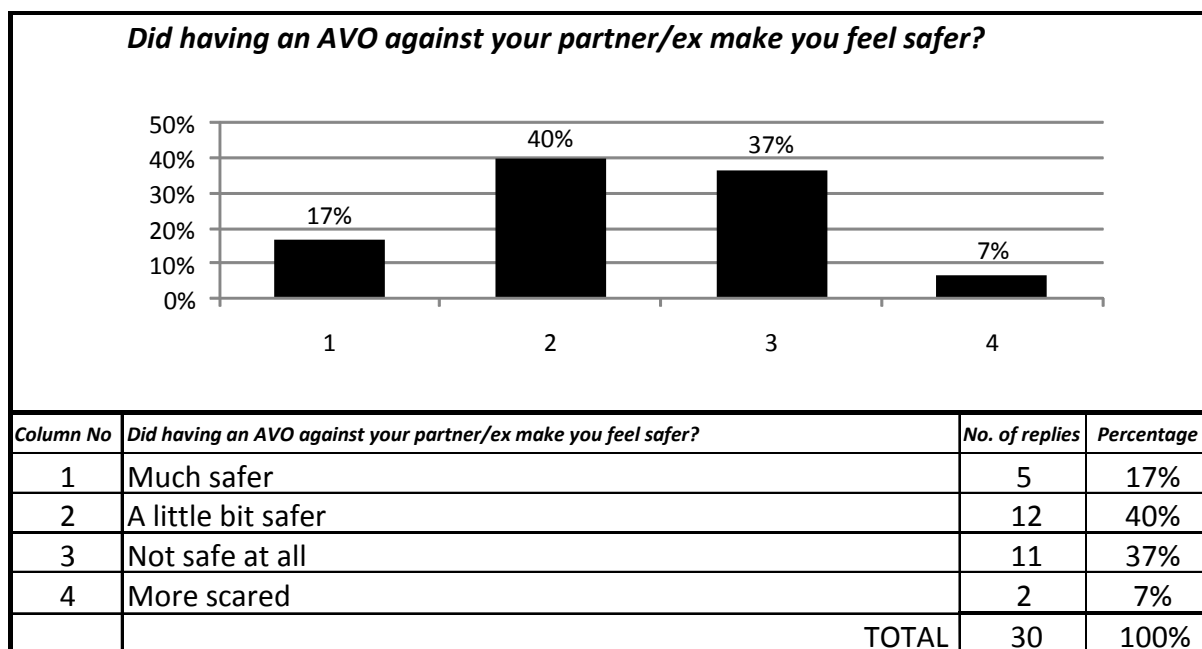
7.9 Effectiveness of the ADVO in Protecting Women from Violence

For the ADVO to have any deterrent effect, it is important that the order is seen to be enforced and can therefore instil confidence in victims.

In Table 7.9, all 33 women who participated in the interviews were asked their opinion on the effectiveness on ADVO in protecting them from violence. For 11 of the women interviewed, having an ADVO against their partner did not make them feel safer from violence, and a further two stated that they felt more scared. Only five women who responded stated that they felt much safer having an ADVO in place.

Table 7.9: Participants' Perceived Level of Safety as a Result of ADVO

(N==30) Excludes 3 missing cases



Participants acknowledged that the ADVO did not always make them feel safer:

ADVOs didn't prevent me from being bashed. It's not worth anything, not worth the paper that its written on they are not strong enough, it's no good having them in your hand, if you are not going to get protected, like coming around to see if you are OK, monitoring the situation and make sure that they follow up (TR 2).

ADVOs don't do shit...they are pointless. An ADVO doesn't stop that person doing anything. I think it is very wrong to promote ADVOs to assist protecting women, because they don't (OR 1).

I got an ADVO, but he was back again the next day. He wasn't to come near the house, he wasn't to contact me in any way but like I said he was there the next day how can you win? I was just worried about my kids (BW 1).

I have had these [ADVOs] on and off over 10 years—11 orders [in total], but he has been in prison more than he has been out ... we have been together 10 years (SYD 3).

The quotations above illustrate that having an ADVO in place when women are experiencing domestic violence does not always bring them a sense of safety or protection. Women stated that regardless of the order, their partners came back the next day or that it actually meant nothing to them:

It is just a bit of paper, it means absolutely nothing, I know the police won't come straight out and I have rung them before when the ADVO has been in place and they don't come straight out, basically the paper means nothing to me. When I got it I just threw it in the drawer, it doesn't prove to me that I'm protected or that my kids are protected, it doesn't prove anything (SYD 3).

As evidenced above, Aboriginal women also perceive a lack of action on the part of police in response to ADVO breaches.⁵⁸¹ The police crisis response to family violence is often characterised by misunderstanding, discrimination and mutual hostility.⁵⁸² An example of which has been shown in the quotation above.

7.10 Conclusion

The aim of this chapter was to investigate how Aboriginal women understand legal definitions and terms and to highlight the unique experiences and barriers Aboriginal women face in relation to domestic violence.

The interviews in this research demonstrate the difficulties that many Aboriginal women have in comprehending and understanding the language used in the ADVO. Table 7.2 shows that four out of ten participants navigating the court process to obtain an ADVO did not understand the content of the order despite some women having the police 'explain' the contents.

⁵⁸¹ Katzen, above n 75, 15; NSW Ombudsman, above n 187, 59; NSW Department for Women, above n 227, 19.

⁵⁸² Moore, above n 24, 8.

The quotations also illustrate the difficulties many participants have with defining and understanding the language used on an ADVO. What was also identified is the failure of many women to feel 'safe' once they have obtained an ADVO.

If Aboriginal victims of violence lack the language and literacy skills to understand the legal document and define violent behaviours, they will be unable to identify such behaviours perpetrated by the other party and will therefore be less likely to report a breach to the police. This is disadvantageous for victims as they are more likely to continue to accept ongoing violence in their relationship. The ADVO is therefore rendered an ineffective legal instrument because the victims lack the capacity to effectively enforce and utilise it.

The multiple effects of ADVOs are evident from the participants' comments in this chapter. It is noticeable from their responses that they recognise the advantages and disadvantages of the ADVO as an instrument of protection. Reactions to the ADVO from those interviewed ranged from empowerment and satisfaction to fear. From the interviews, what is expressed is that the concept and meaning of safety is complicated.

This chapter thus builds on the previous chapters research highlighting that Aboriginal women's lived experiences of the legal system are different to those of non-Aboriginal women due to such complexities as literacy and numeracy issues, social and cultural factors and community perceptions that exist around both domestic violence and justice responses. There is a greater tolerance of domestic violence in Aboriginal communities due to violence being intergenerational and thus normalised. The support many women require from their families or communities is often non-existent with victims instead feeling pressured to stay in the violent relationship by their family or community.

Chapter Eight: Research Interviews—Aboriginal Women's Experiences of the ADVO

8.1 Introduction

After the initial violence had been reported to the police and the police had applied for an ADVO on behalf of the victims, or alternatively the victim had gone to the Chamber Registrar to make an ADVO application, the matter was heard in court. In all of the cases of the women interviewed, a final ADVO was granted by the Local Court.

Once the court grants a final ADVO, the onus is on the victim to report to the police when the defendant breaches any of the conditions listed on the ADVO. For the ADVO to operate effectively, women must be aware of this responsibility, and be willing and able to report the breaches. To do this, they must understand both the legal terminology used and the meaning of the conditions attached to the order

From the 33 interviews below, it is evident that for Aboriginal women in NSW, enforcing the ADVO is not without issues. The data show that some participants did not have access to a phone and therefore were not in a position to report violence to the police, rendering the ADVO ineffectual. One victim was also charged with an offence herself upon reporting the ADVO breach to the police. These types of outcomes evidenced below highlight the restrictive and complex cultural issues with which Aboriginal victims of violence are confronted. Complex kinship or family relationships leave many victims in a position of not wanting to call the police if the perpetrator breaches the order. Victims are concerned that the perpetrator's family may seek retribution or that the perpetrator may die in custody.

This research brings to light the complexities that Aboriginal women face when accessing the legal system. Such complexities are well documented in previous research in this area. Cunneen and Schwartz note:

The legal needs of Indigenous clients are complex, not only involving several areas of law, but also a range of cultural issues that require a multiplicity of skills in the legal service provider.⁵⁸³

The research found that Aboriginal women living in rural and isolated areas had additional barriers when reporting violence and breaches of ADVOs. Recurring themes in this chapter, which build on the previous literature review, are a distrust of police and inadequate legal responses when reporting violence. This was emphasised in the interviews below and is in line with the previous research.

8.2 Understanding and Enforcing the ADVO

In the literature review, a range of research was discussed⁵⁸⁴ that brought to light the lack of awareness and understanding that Aboriginal victims of violence have in relation to ADVOs.

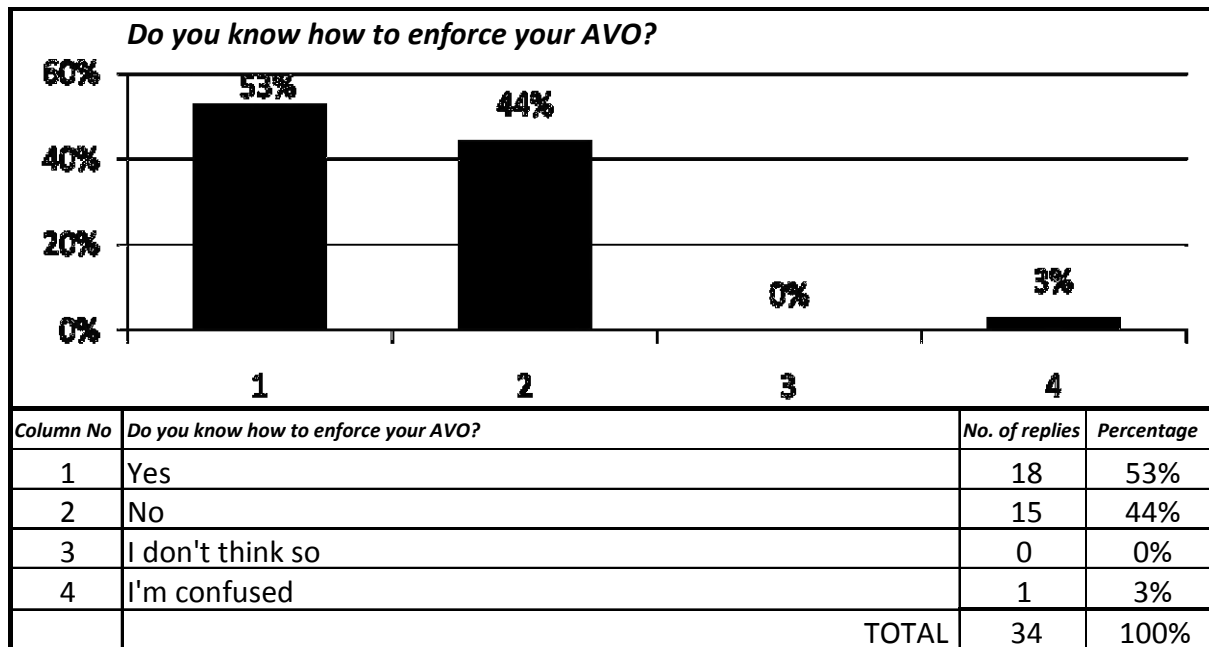
Participants identified barriers to enforcing the order. These barriers may be cultural, including the shame associated with ‘dobbing in their partner’. Other barriers are social or financial such as lack of access to transport or a phone to report the breach.

⁵⁸³ C Cunneen and M Schwartz, ‘Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Access and Equity’ (2008) 32(1) *Criminal Law Journal* 38, 43.

⁵⁸⁴ Katzen, Kelly; Willis.

Table 8.1: Participants' Knowledge of How to Enforce the ADVO

(N=34) Some Aboriginal women provided multiple responses to the question



Interviewees were asked if they knew how to enforce their ADVO. As Table 8.1 suggests, only 53 per cent of Aboriginal women's responses indicated that they were aware of how to enforce their order. Forty-seven per cent of responses indicated that Aboriginal women did not know how to enforce their order, or were confused about it. From this, we can conclude that many Aboriginal women who are victims of domestic violence are not reporting breaches, as they are not confident in how the ADVO operates and provides protection to them as victims. Participants seem unsure of the full extent of the ADVOs capabilities of working as a deterrent and the ramifications and legal process involved, if the defendant has breached the order.

Previous research conducted in NSW indicates that using the criminal justice system as a means for dealing with breaches of ADVOs is far more complex for Aboriginal women than for non-Aboriginal women.⁵⁸⁵ This is apparent from the interviews as well and further barriers to reporting violence were identified below.

⁵⁸⁵NSW Department for Women, above n 227, 16.

Participants identified barriers that had previously prevented them or people they know from enforcing an ADVO. These included not feeling safe, not understanding what the process was and lack of a phone to call the police:

Many Aboriginal women don't report the breach because there is nowhere for them to go and feel safe (N 1).

There has been so many cases, I am not the only one where a victim has had an ADVO and they fear that much for their safety and their children's safety, they feel so intimidated and threatened and scared for their safety, that when the perpetrator does breach the ADVO when they make reports to the police, most the time it doesn't even get dealt with. Most the time in my experience is I have rang up and got event numbers before I have gone to court, other than that it really hasn't been dealt with. I kind of do believe in a way that they [ADVOs] do work in certain ways but in other ways they don't really protect the victim (CB 1).

No I didn't [know how to enforce the order] at the time ... but now I would (W 1).

All I was supposed to do was ring the police, but I thought 'how do I do that, I don't have a phone' (BW 1).

Other researchers have previously identified barriers that prevent Aboriginal women from reporting violence, which include fear of the perpetrator, family and kinship issues, fear of child removal, lack of community support, and lack of police presence and responses.⁵⁸⁶ Several of these barriers were identified in this research, as the quotations illustrate.

Participants in this research also identified other additional barriers to reporting violence. Surprisingly, one victim was herself charged with an offence when she reported a domestic violence incident to the police:

He [partner] was at the front and he was mouthing off at my Mum, and the two girls are screaming, he's out the front screaming out I'm going to kill you and the kids and

⁵⁸⁶ Cunneen, above n 226, 111–12.

this and that and they're his kids, he frightened me when he said things like that ... you know what I mean? I said to Mum come on we've got to pack up we've got to go, we've got to go ... I just wanted to go ... I took off to Condo [Condobolin] over there for about two or three days and then the coppers come around and said 'you're under arrest for the assault on C...', and I was like what? They said 'we won't arrest you now go to Parkes Police Station, and hand yourself in there because they have court sittings there and you will probably get bail there' but they gave me bail at the Police Station (GF 2).

Living in a rural area and being isolated was a barrier to reporting violence. Many victims were vulnerable to the abuse, and could not immediately report the violence they experienced due to isolation and lack of a telephone:

I was living out of town, it was about one hour into town and I didn't have a car (GF 3).

I lived on a farm, I had no phone, he could do what he wanted to. I got the school bus and went to Picton Police Station that was the only transport. My nearest neighbour was one kilometre away and the other one was about half a kilometre away so nobody ever heard what was going on in my house, I think that was the reason why he got a house at Wilton, in the middle of nowhere (BW 1).

No, [I had no phone] he had a mobile, I once used the phone across the road the lady in the shop rang [the police] for me (MA 1).

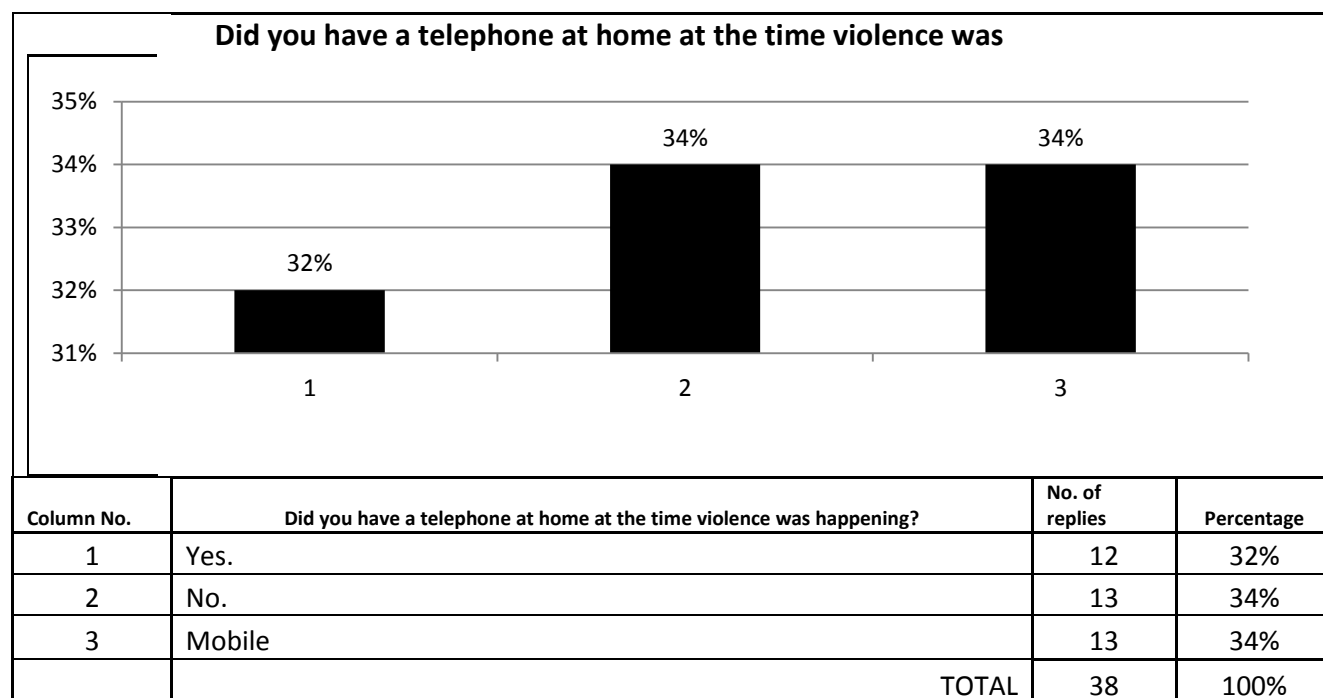
Seclusion and lack of appropriate resources and support services is an ongoing issue for rural Aboriginal women. This research builds on the previous themes identified in the literature relating to these barriers. Issues such as isolation, lack of resources and lack of support are evident from the participants' interviews. These interviews and the literature reinforce the value of resources and support services for rural and remote Aboriginal women in NSW who experience domestic violence.

8.3 Use of Phones

The issue of lack of phone access was consistently broached by research participants throughout the interviews. Considering this, I thought it prudent to question the women about their access to a telephone, since this would determine their ability to report immediately any violence and/or a breach of the ADVO to police. Given that the fundamental nature of an ADVO is that it can only provide legal protection to the victim once enforced, the courts rely on the assumption that victims all have access to a phone to report the violence.

Table 8.2 shows that 66 per cent of responses indicated they had access to a phone to report an alleged breach of an ADVO. This is a large number. The table shows 38 responses in total, as some participants were recorded as answering ‘yes’ to having both a mobile and a home phone. This leaves around one-third of women without any means of immediately reporting violent behaviour to the police despite their safety being at risk.

Table 8.2: Participants’ Access to Telephones
(N=38) Some Aboriginal women provided multiple responses to the question



The participants who were unable to call the police if they were experiencing violence due to lack of access to a phone explained their situation as follows:

I had no phone, no mobile, no home phone and the next door neighbour's weren't home so I had to wait until the next morning. (SYD 1).

We couldn't call the cops, he took the phones and the neighbours didn't do anything, I don't know if they heard anything ... if they did they didn't do anything about it. The first two incidences I was able to use the phone to get help but on the third incident I wasn't able to use the phone as he took the mobile away and took the house phone out of the wall (OR 1).

We had his mobile only, and he'd take that. Luckily my friend was staying with me and when she got home I got her to ring the police for me (TW 1).

We had a landline and mobile ... no access if he got the idea I was going to use the phone, he would do something to it, he would hide it or break it (MR 1).

His phone, at his place [the violence happened at his place]—landline didn't have access to it—he wasn't going to let me use the phone or anything (GF 4).

A lack of basic services such as working public phones, available transport and housing are barriers for women attempting or planning to leave a violent relationship. Moore notes in her paper about Indigenous family violence in rural NSW that women in rural towns lack adequate access to services.⁵⁸⁷ The above interviews identify how working public telephones and mobile phone loan schemes can be crucial for isolated women.

⁵⁸⁷ Moore, above n 24, 7.

8.4 Breaches of the ADVO

An ADVO is intended to act as a deterrent⁵⁸⁸ to the perpetrator in an attempt to prevent future violent acts occurring, and thus, there must be ramifications for breaching the orders made by a court. It is a crime for the defendant to breach the ADVO and the penalties for such breaches were outlined in Chapter Five of this thesis. However, as Stubbs and Powell⁵⁸⁹ note, it is difficult to quantify the extent to which ADVOs are breached, as not all breaches are reported to the police and thus not all defendants are deterred by ADVOs.

If the breach is reported to the police, and the police believe that the defendant has breached the order, then the defendant can be arrested and detained. Any conduct that breaches the ADVO provides the basis for a criminal offence.⁵⁹⁰

Participant responses showed that often perpetrators were not charged, despite the victim reporting that the ADVO had been breached:

Both times the police came out... he didn't get charged (BT 1).

[He breached]...it about three or four times, but was charged by the police only once (GF 1).

He's breached it a couple of times, I called the police once or twice, by the third time I just gave up because [they said] I needed more proof (GF 3).

Table 8.3 shows that 84 per cent of victims believed that their partner or ex-partner breached the ADVO, while, 16 per cent believed their partner never breached the order. Given the participants' lack of understanding of the mandatory orders that appear on an ADVO, as outlined in Chapter Seven, some women may not have been adequately able to identify a breach.

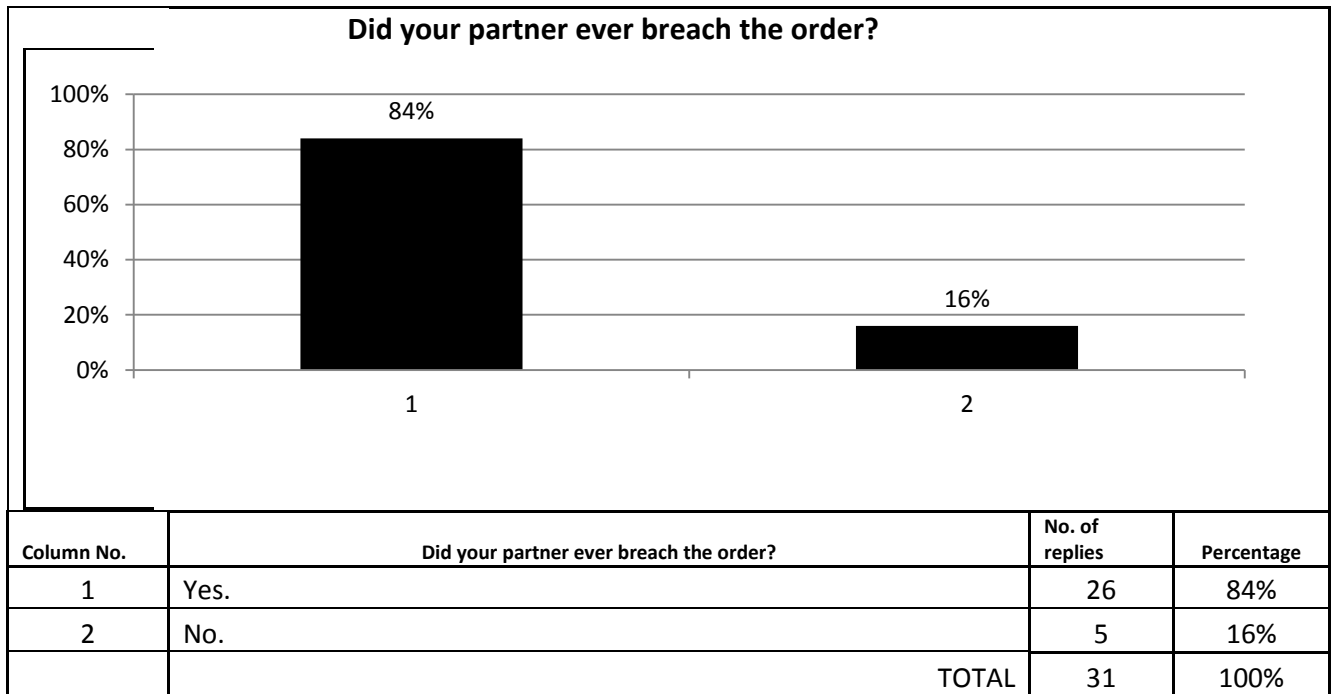
⁵⁸⁸ For further discussion on deterrence as a rationale for the ADVO regime, see H. Douglas. 'The Criminal Law's Response to Domestic Violence: What's Going On?' 30(3) *The Sydney Law Review*, http://sydney.edu.au/law/slr/slr30_3/Douglas.pdf

⁵⁸⁹ Stubbs and Powell, above n 8.

⁵⁹⁰ *Crimes (Domestic and Personal Violence) Act 2007*, Section 14.

Table 8.3: Participants' Partners' Breaches of an ADVO

(N=31) Excludes 2 missing cases



Participants spoke of the serious nature of the breaches they experienced:

The first time I was held hostage in a house ... after breaking up with this man and getting an ADVO he came back in the middle of the night kicked the door down and bashed the living shit out of me and like it was quite a while after I had already broken up with him. I was with the man [who is now the father of my kids] he was there at the house and also got bashed and he also used weapons and broke bottles over us and stuff like that, the whole room was covered in blood and there was big holes in the walls from him kicking us up against the walls they were really smashed up. He told us that he was going to kill us that night. We were so bashed up that we were shaking and vomiting and everything (OR 1).

When his stuff was still in the garage of my house, it was one of them houses where the garage is in the bottom storey of the house and the police gave him permission to come to the house unescorted while there was an ADVO in place so what happened was, he went to the police station to ask for the escort to get his stuff, but they were too

busy to be bothered to do it so they said 'don't worry just go over there and grab your stuff' I am pretty sure it was the Aboriginal Police Liaison Officer who told him that he can get his stuff by himself, but I can't be 100 per cent sure, but I wouldn't be surprised because the police gave him permission to come to my house even though there was an ADVO. I totally freaked out as soon as he came up to the house and I told him to get away and when the police came they treated me like a lunatic ... I could have put in a complaint to the Police or Ombudsman but at the time you are going through so much stress, and trying to survive at that point and complaints just go on and on and on and nothing ever happens with it. Because the police acted as they did, that kind of throws the power of the ADVO out of the window and he also came back to the house a month or so later and kicked in the door in the middle of the night that event happened after the police had given him permission to go to my house unescorted ... so they are making light of their own ADVO... I had no knowledge that he was coming around he just rocked up ... it's not as though the police rang me to tell me that he was coming over to get his stuff ... I had a total freak out, they probably would have thought... I reckon the Aboriginal Liaison Officer would have taken almost joy in the fact that he was allowing this man to freak me out as well. That is how the coppers said they were going to get out of it as a loophole. My Uncle went into the police station with me afterwards and got really angry at them and all that, then they have gone... 'Oh no because he's not a police officer' (OR 1).

Many perpetrators breached the order on more than one occasion:

There were several occasions where he broke the ADVO but the coppers didn't do anything about it. In the ADVO he was not to call us or contact us at all, by letter or by anyone else. He sent me stuff, I took all the letters to the police, many times. I told them the same thing had happened and the police said they couldn't do anything unless I wanted to drag my mother through the court because he gave the letters to her. They did nothing about the breach (FB 4).

Yes [he would breach it]all the time he came back one night about four or five times, the police picked him up out the front and took him away and then the next minute

he's back and they took him away again, but he kept coming back, they never done nothing to him they [police] just kept coming back and he was standing out the front, banging around and I was like saying 'go away, go away' it got that bad that I had to ring my Mum and when my Mum came around he just took off. The police didn't charge him, he's the coppers' little pet' that what the coppers are like in this town (GF 2).

He came to the house and he wasn't allowed there. There were all the other things that I couldn't prove that he did for example, Beer bottles thrown at my house in the middle of the nights, there was the word Slut written in dust on my mailbox, from gaol writing letters to me in blood (TU 1).

As evidenced by the quotations above, participants identified experiencing serious breaches that resulted in them being held hostage, bashed, threatened with death and the defendant trying to kick the door in to gain entry into the victim's house at night.

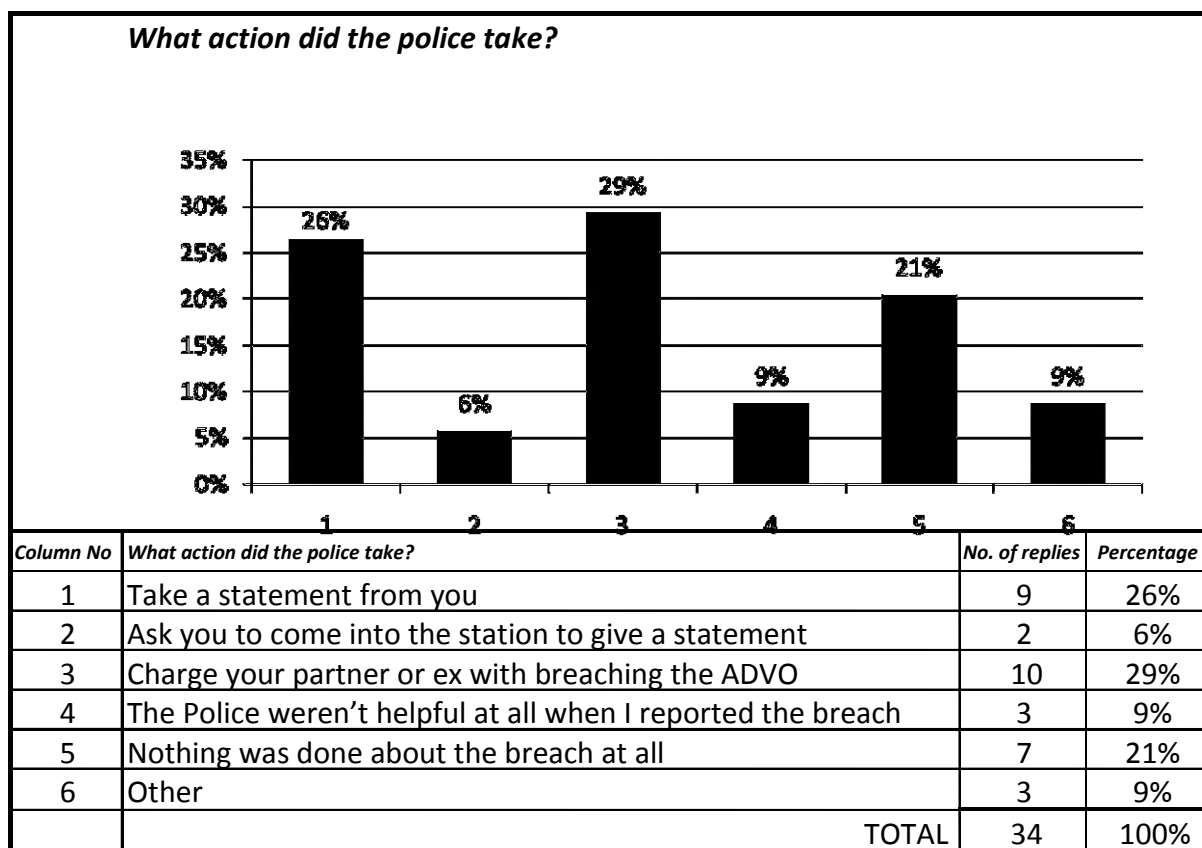
Police play a critical role in responding to domestic violence. Substantial research suggests that police have not acted upon many breaches of ADVOs that are reported and that there has been a delay in police response to complaints of violence against women.⁵⁹¹ The Ombudsman's report identifies the failure of police to investigate incidents of domestic violence adequately, along with their failure to act, as a commonly reported issue. This is further supported by the qualitative data.

Given the frequency of breaches, the respondents were asked to identify the types of responses they received when they reported the breaches to the police. Table 8.4 highlights the lack of adequate police response to the reports.

⁵⁹¹ Moore, above n 24, 47; NSW Department for Women, above n 227, 25.

Table 8.4: Police Action as a Result of Breaches of ADVO

(N=34) Some Aboriginal women provided multiple responses to the question. There were 31 respondents.



Victims often reported the breaches to the police but felt frustrated by the inaction of the police relating to the breaches, with the table above highlighting that 30 per cent of responses that reported breaches complained that either the police were not helpful or that the perpetrator was not charged with a breach despite violence being reported. Participants relayed their frustrations with the lack of action taken and police responses:

Nothing was done, they just said that there were certain things that could/couldn't do and all I could really do was to get event numbers, and just make reports in my diary about what had happened and keep continuously make reports and just try to use it as evidence in court. It didn't work...because the person had already got away with it and he knew he was getting away with, so he continuously was doing it, because they knew nothing was getting done (CB 1).

He knew the game and he knew with the conditions, I needed witness to put him visually there, that's why I say the intimidations, the threats, the stalking was more powerful, because he done it to me, but I was never able—I couldn't see him, but I knew it was him, but how do I prove it, that's what got me stuffed, he had done it for such a long time, there were times that I could prove that he did it and he was charged and convicted, but on many occasions, and I say *many occasions* he got away with it only because the police refused to follow up and really investigate what put him there and they didn't make much effort to try and deal with it, they just thought it was petty, times that he was texting me, times that he was calling me or times that he was stalking me, they said anyone could have had his phone or someone else could be chucking stuff, I said 'well no one else is going to do that' and they said 'you don't know that' so it was hard to prove at lot of the times, although I knew it was him (NC 1).

I already had ADVO out on him, he started abusing me, swearing at me, tried to hit me, so I rang the police and the told me he had breached his ADVO, the police came around looking for him, but couldn't find him, he went as I was ringing the police (MR 2).

Participants emphasised the nature of their frustrations and annoyance with the police. They also recognised that the perpetrator behaved in a manner that made the violence difficult to prove, as no witnesses were present. This qualitative data builds on earlier research showing that Aboriginal women perceive a lack of action on the part of police in response to ADVO breaches,⁵⁹² and that police crisis response to family violence is often marked by misunderstanding, discrimination and mutual hostility.⁵⁹³ As can be seen above, participants allege that the police failed to act and reported that 'Nothing was done', 'The police refused to follow up and fully investigate' and 'They [the police] didn't make much effort to try and deal with it...they just thought it was petty' are just some of the statements made by participants.

⁵⁹² Katzen 2000, above n 75, 15; NSW Ombudsman, above n 187, 59; NSW Department for Women, above n 227, 19.

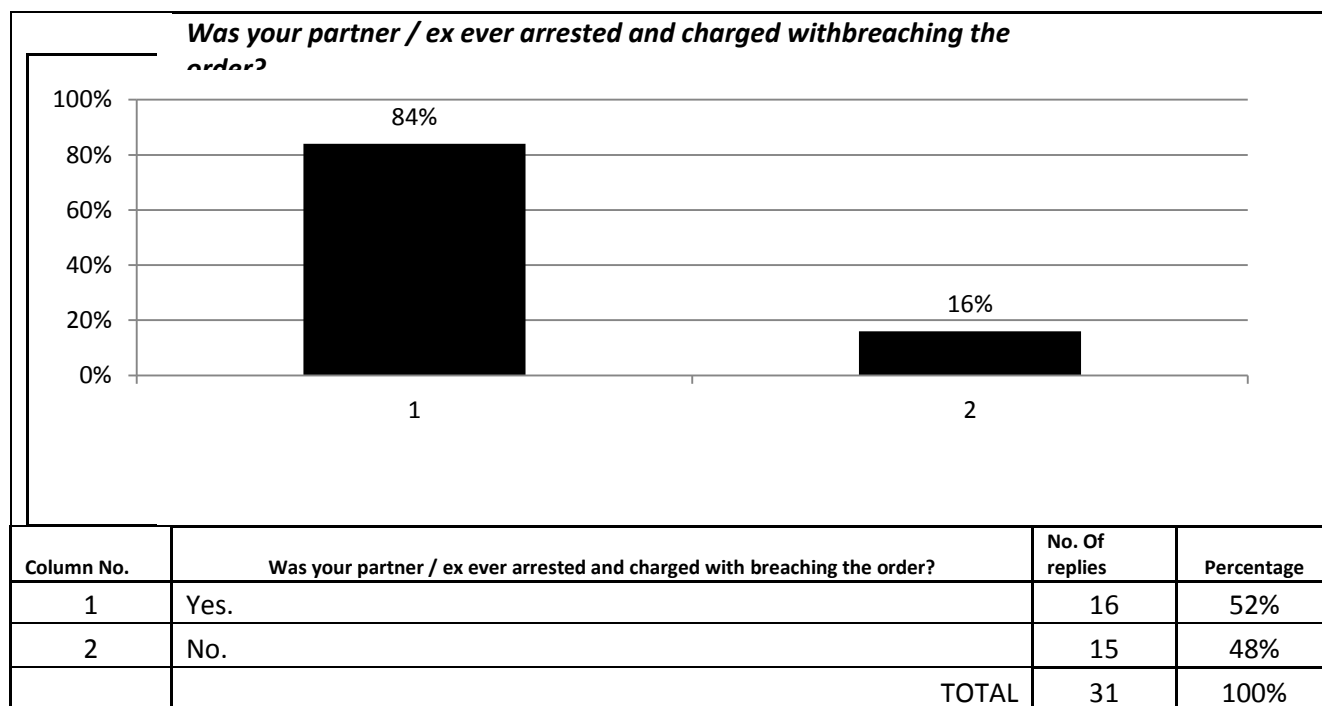
⁵⁹³ Moore, above n 24, 8.

The limitations to the data from the 33 interviews conducted must be recognised, as a number of participants gave answers to the interview questions and recalled events relating to current partners and previous partners, while many gave multiple responses on some occasions. Therefore, the data collected from the interviews does not allow for a conclusive calculation of the proportion of breaches that were acted on by the police.

The ALRC has identified that policing of domestic violence could improve with specially trained police responsible for assuring the quality of police responses to family violence. These police officers would be responsible for ensuring that breaches of protection orders are taken seriously and that, where appropriate, charges for underlying criminal conduct constituting the breach are also laid.⁵⁹⁴

Table 8.5: Arrests as a Result of Breaches of ADVO

(N=31) Excludes 2 missing cases



Although not evident from the question itself, it became clear during the interviews that respondents interpreted this question to only apply to reported breaches. Fifty-two per cent of

⁵⁹⁴ Australian Law Reform Commission, above n 156, 12.119

the perpetrators were charged with a breach of the order by police and were sentenced accordingly:

Yes ... he breached actually a few days before New Year's he came into the office and calling me a black so and so. The police took a statement and charged him with a breach. Yes that was the first time he was then put on a bond (GF 4).

Breaking into the house when I was asleep, actually on the second warrant [for breaking and entering], he got six months gaol, but even when he got out of gaol, he still done it, it never stopped, he even wrote me letters from gaol (W 1).

The first time he assaulted me he was charged with assault, the second time he was charged with assault and breaching the ADVO and the third time they wiped the assault charge off, I think they only charged him with breaching the ADVO. So I suppose if I didn't have the ADVO at all, they might have wiped the assault altogether ... they always wipe charges (OR 1).

He breached his ADVO, the coppers told him he was under arrest and he then said to me 'I love you' ... but I said it's too late (GF 1).

The quotations above illustrate the varying experiences Aboriginal women endure when the perpetrator is charged with a breach of the order. For one participant, the process was straightforward: she was called names, the perpetrator was charged with a breach, the matter went to court and the perpetrator received a bond. For another participant, the perpetrator was sentenced to gaol for breaking into her house, yet she recognised that the ADVO did not act as a deterrent. Another participant discussed her opinion that the police 'always wipe charges', as the perpetrator had assault charges wiped.

Considering the information above, it is evident that despite reporting the breaches, the police fail to act in many situations relating to breaches of ADVOs. The data in Table 8.5 shows the arrests of perpetrators who were reported as breaching the ADVO. Only 52 per cent were arrested or charged with a breach. Despite reporting the breach to police, the police did not pursue charges or arrest the perpetrator in 48 per cent of reported breaches. Reasons for this

could include the police feeling that there was insufficient evidence to act or choosing to ignore the allegations made by the victim. In relation to responding to domestic and family violence matters, the NSW Police Force Code of Practice states:

Regardless of the seriousness of the alleged breach, police must conduct a thorough investigation to identify and locate the offender. When the offender is located, they must be interviewed regarding the alleged breach.⁵⁹⁵

Aboriginal women in NSW are not seeing this direction happen in practice. From the interviews, it can be concluded that if victims are not seeing the appropriate police response and actions to breaches of the ADVO they will be less likely to report a breach in the future.

To conclude, victims are reporting breaches, both minor and major and police fail to follow up or charge the offender with a breach. Research shows that Aboriginal women in NSW are disgruntled with the police response when they have reported ADVO breaches, and women were often led to believe that without proof or evidence of the breach, police action could not be taken.⁵⁹⁶ Thus, as the qualitative data supports, research in NSW shows that Aboriginal women also perceive a lack of action on the part of police in response to ADVO breaches.⁵⁹⁷

8.5 Responding to ADVO breaches

Police play a critical role in responding to domestic violence. Substantial research suggests that police have not acted upon many reported ADVO breaches and that there has been a delay in police response to complaints of violence against women.⁵⁹⁸ The Police Association of NSW recently released their submission to the Standing Committee on Social Issues Inquiry into Domestic Violence Trends and Issues in New South Wales. The submission noted that many police association members felt frustrated with the leniency of existing penalties in relation to breaching an ADVO.⁵⁹⁹

⁵⁹⁵ NSW Police, above n 109, 34.

⁵⁹⁶ Katzen, above n 75, 297.

⁵⁹⁷ Katzen above n 75, 15; NSW Ombudsman, above n 187, 59; NSW Department for Women, above n 227, 19.

⁵⁹⁸ Moore, above n 24, 47; NSW Department for Women, above n 227, 25.

⁵⁹⁹ Police Association of New South Wales, above n 410.

I am the full time DVLO. I find that breaches to ADVOs result in the DV [domestic violence] offender receiving some light sentencing or just a slap on the wrist. Offenders continue to breach ADVOs but victims do not have faith in the court system so the continued minor breaches are not reported and the offender gets away with it. Police would support heavier penalties.⁶⁰⁰

When sentencing a person for a breach of an order that involves an act of violence against the person in need of protection, the legislation states that the person must be sentenced to a term of imprisonment, and if the court determines not to impose a sentence of imprisonment, it must give its reasons for not doing so.⁶⁰¹

Almost 84 per cent of participants reported that the perpetrator breached the ADVO. Only 32 per cent reported making a statement and only 29 per cent stated that their partner was charged with the breach. Opinions relating to the sentences for the breached of the ADVO varied:

He managed to get out of all gaol time, and he had already been charged and found guilty of assaulting me on a previous occasion, that is why I had the ADVO ... and he still got off (OR 1).

Little bit angry because he assaulted me, and they just gave him the order and he didn't do no [sic] gaol time (SYD 1).

Other participants reported that the perpetrator was sentenced to gaol for breaching the ADVO and/or domestic violence offences:

He went to gaol for the breach (MR 3).

When it went to court it was hard, my little girl was missing her Dad but it alright as long as it teaches him and gets him of the drugs and alcohol, his sentence was six months, he is still in Junee Gaol, he's ringing me now and getting counselling and all of that in there, so that's very good. It's a big step in his life, because we have another

⁶⁰⁰ Ibid 18.

⁶⁰¹ *Crimes (Domestic and Personal Violence) Act 2007*, Section 14 (4).

little baby on the way, he is going to think ahead, because I told him if he didn't I would leave him that's it... he just went quiet. I felt that you have to put your foot down because if you don't well they are just going to stamp all over you ... been there, done that (GF 1).

The victim quoted above is using the time her partner spends in gaol to encourage the perpetrator to change his ways and attend counselling. From the interviews, it is clear that gaol is an outcome for some perpetrators convicted of breaching an ADVO. However, it is also apparent that gaol is not always a deterrent for perpetrators. Victims identified that sometimes the offender has been in and out of gaol a number of times:

They usually send him to Goulburn Gaol, he's been in and out of there for 10 years so he's is basically the 'head up' he's the Koori delegate there ... at the moment he is in Bathurst Gaol and before that he was in Long Bay Gaol. (SYD 3).

One offender in particular was no stranger to incarceration with the victim feeling that the perpetrator thought prison was the easy option to escape his problems:

He has lots of family on the inside and he's looked up to in there, he doesn't have to worry, like the time I said to him 'we have a \$300 electricity bill', he got arrested the next day, because it's easier to do that than have to worry about an electricity bill. He doesn't have to worry about any of the responsibilities while he is in there and I think, that in there instead of just letting them do weights and things, they should be teaching them how to do normal life stuff and have women, like victims talk to them about what they have been through (SYD 3).

Programmes that provide the perpetrator with cultural healing, counselling, anger management and tools to reduce harmful behaviour are much needed in the community and in gaols.⁶⁰² Concern from victims that no adequate healing and counselling programs are available to offenders is evidenced both above and below.

⁶⁰² Moore, above n 24, 11; Cunneen, above n 226, 134.

Another participant felt that her ex-partner never received any treatment to deal with his problems/issues:

He was never ordered to have psychiatric evaluation or anything like that—nothing ... I often thought he was autistic because he couldn't feel pain like he burnt his leg on the exhaust of the car and all he did was wrap it up with a bandage ... never went to the doctors. Then he cut his leg open, he was cutting a piece of rubber and the Stanley knife slipped and it was very deep, he wrapped it up and then when we were living in Griffith my son went to visit him and he cut the top of both his fingers off with a saw and just went inside and dressed it himself ... he never felt pain (BW 1).

As evidenced above, and in previous literature, there are a number of social and cultural barriers faced by Aboriginal women when attempting to protect themselves from domestic violence, and there is a reluctance on the part of many Aboriginal women to obtain legal protection, as they may fear the consequences for both themselves and their partner.

This view is further supported by Kelly,⁶⁰³ who suggests that using the criminal justice system as a means for dealing with breaches of ADVOs is far more complex for Aboriginal women than for non-Aboriginal women.

8.6 The Police

Given the historically negative experiences and poor police relations Aboriginal women and communities have had with the police,⁶⁰⁴ it was useful for this research to gauge participants' level of satisfaction in relation to their interactions with the police.

Whether it was reporting a domestic violence offence or a breach of an ADVO women were asked to discuss their experiences. Responses below have been divided into positive and negative experiences

⁶⁰³ Kelly, above n 73, 1.

⁶⁰⁴ Lawrie et al 2001, 2; NSW BOCSAR, 1997, 60.

Positive

The cops were OK, I think ... I really can't remember too much about that day because I had lots of bumps on my head and I can no longer recall that day (MR 2).

I didn't know if it would be good, because they knew who he was, they knew of his past and they knew what kind of a person he was, so they were pretty good to me, although there was only certain people that I felt good talking to, yeah I wouldn't just go in there and talk to just any police officer, but if he wasn't rostered on and something serious had happened I prefer to deal with just one officer I keep going back to him or her, but if something serious had happened I would go and tell another officer (FB 1).

At the beginning they were good—responsive ... at the end—no follow up of help (BT 1).

I walked into the police station and they were brilliant, fantastic (SYD 2).

The police ... I wouldn't say they were supportive, the domestic violence office, she was nice, but no, they [the police] probably did their job and then left it for the court then (GF 4).

Participants were questioned in relation to their level of satisfaction with the interactions they had with the police. Some of the positive quotations above are also tinged with an expectation of better service: 'The cops were ok', 'At the beginning they were good ... at the end no follow up' and 'I wouldn't say they were supportive'.

Negative

Not all women interviewed had a positive experience when interacting with the police:

I wouldn't have approached the police as they have a bad rapport with the Aboriginal community. I have had the experience of walking into a police station, badly assaulted with blood dripping from my lip and they just pretty much told me 'you will run back to him tomorrow' they never acted on anything at that time. It took for me to go through the Aboriginal Legal Service (ALS) with blood pouring from my mouth, for them to escort me across to the police station and having the Sergeant sit down with me and then that police officer came in to apologise to me but I've had experiences with the police so I don't trust them. If it wasn't for the ALS solicitor standing by my side, they {the police} would have just laughed at me (NC 1).

Along with poor police relations, racism and a lack of respect for domestic violence victims results in Indigenous women being less likely to report violence⁶⁰⁵ and therefore less likely to seek a legal remedy for the violence they are or have been experiencing. Lack of trust in the police, poor rapport and lack of faith in their actions is highlighted above.

Another issue identified in the qualitative research by two participants was the belief that the defendant was known to the police and that this was advantageous to him, as the police seemed 'scared' of him:

It seems like the police are scared of him, there are six or more police come out when he is arrested and they won't come straight away they wait until they have the right number of police before they will come out. I don't know ... everyone I know says he's got someone on his side up there because he walks away with so much stuff that should have been, like he has just got charged with assaulting police and resisting arrest and the charge was lessened to 'hinder police's I just don't know how this happens, his charges always seem to get changed. He has never served more than 12 months at any one time and big charges just turn into nothing (SYD 3).

⁶⁰⁵ Al-Yaman, Van Doeland and Wallis, above n 6, 18; C Bryant and M Willis, 'Risk Factors in Indigenous violent victimization' (2008) 30 *Australian Institute of Criminology Report* 1, 18; Mouzos and Makkai, above n 84, 100–1.

The coppers were frightened of him anyway, they were scared because he was a good fighter good on the knuckles, he was a bit of a pug, I will tell you one thing he and another copper were firing shots at one another they had a fight over a pool game there was some sort of rodeo event or something, because he was a rodeo rider himself (TR 2).

In other cases, the police failed to respond when the perpetrator breached the ADVO despite the breach being reported. This is highlighted in Table 8.5, with 48 per cent of participants stating that their partner was not charged after they reported the breach:

[I had the ADVO] so I rang the Sergeant because he [my husband] said to me ‘Don’t go to sleep tonight, because when you go to sleep I am going to come and set the house on fire and burn youse’ [sic] and I rang the Sergeant and he said to me ‘I can’t do nothing [sic] until he actually lights the match’ (BW 1).

They sent me home from Lithgow without pressing any charges and I told them to go and arrest him down at the train station, because he had breached the ADVO, but they just let him go as a consequence he was out of gaol or ... because he wasn’t charged for months and months later and because I told them sexual assault had occurred as well during that time they were using that as an excuse, they were saying ‘No it has to be referred to the detectives’, who couldn’t do anything about it until they [detectives] had spoken to me so because the detectives were tied up in a murder case here they didn’t even do anything for months, it was months before the police even pressed any charges against him and in the end the detectives didn’t even investigate the sexual assault, all they did was to get the regular police to press charges for a breach of ADVO. Which could have been done in the beginning, they could have arrested him for breach of the ADVO straight away and dealt with other charges later. All because I had no physical evidence. It was in the evening and I reckon it was because it was a young male police officer and he didn’t want to be tied up in a long, complicated case where there was no physical evidence (OR 1).

A recurring theme in the qualitative data that the participants identified was the idea that there was not enough physical evidence to report a breach. This was also identified in the previous chapter. The only disclosure of sexual assault from the participants is stated above. Given the high levels of sexual assault that exist in domestic violence matters, particularly the higher rates seen in the Aboriginal community,⁶⁰⁶ it was surprising that more participants did not disclose sexual violence.

Other participants reported slow police response time for attending to domestic violence incidents. Participants experienced this first hand:

Yeah, well it took [the police] an hour the last time I was assaulted badly and I had an ADVO out on him and they had a warrant out for his arrest, it still took them an hour, so after an hour my Mum called the police because my Mum was actually there, it took them an hour, so I went through an hour of hell, when we rang again I was told 'the police are on their way' and I was thinking all the time once they arrive it will all be good and when they finally got there, they [the police] were more worried about his warrant they had, rather than what he had done to me (SYD 3).

[The police] were really not reliable. When I called them they were a bit too slow to react, if anything did happen I had to go down to the station, make a statement and then they would come and see me (SYD 1).

The very nature of the ADVO relies on prompt police responses to alleged assaults or breaches. The NSW Ombudsman's 'Report on Domestic Violence: Improving Police Practice' identified the most common specific complaint that the Ombudsman's office received was in relation to inadequate police response to reported breaches of ADVOs.⁶⁰⁷

Other participants were not provided with the level of support or assistance to which they believed they were entitled:

⁶⁰⁶ For more information relating to this, see Davis et al, 'Sexual Violence and Indigenous Victims: Women, Children and the Criminal Justice System' (Sexual Violence Research Brief No 1, 2010) <http://www.ilc.unsw.edu.au/sites/ilc.unsw.edu.au/files/mdocs/Sexual_Violence_Research_Brief_No1.pdf>.

⁶⁰⁷ NSW Ombudsman, above n 372, 8.

When he kidnapped the kids, that was my two youngest my daughter and my oldest son, he kidnapped them for two days. When we got them back ... I asked the police to drop the us off at motel at Albury ... and they turned around and said ‘what do you think we are a taxi service?’ I thought wait a minute ... I thought you were protecting me! The kids were sick, they were throwing up everywhere because they were saying ‘Daddy had beat them’ I was so angry about it (GF 3).

I needed police support ... had absolutely none. They treated me as a criminal. They arrested me three times. I asked them for help and they never helped me. I needed advice ... they didn’t follow through on what they said (FB 5).

I didn’t want to go back to that house and the Police told me that they wouldn’t get him out of the house, while I was at the refuge I had him charged and I put in for a ADVO and they [the police] wouldn’t have him removed from the house because they said I had said ‘that he could stay there’ but then I said ‘that doesn’t give him permission to assault me’ so when a person assaults me in my house, they no longer have permission to stay there anymore, but the police still wouldn’t remove him, so I had to wait and stay at the refuge until he moved on (OR 1).

I think because at Forbes, so many people get ADVOs they don’t take you seriously as they should because some people just get ADVOs for the fun of it now instead of the actual reason and when its breached and you call the police, they [the police] do nothing about it like charging the person, they just take people for a joke these days (FB 3).

The ALRC considered the need for specialised police training in family violence in their recent report. The Commission believes that specialised police training is a critical measure necessary to address inappropriate police responses to family violence.⁶⁰⁸ Such training would have positive benefits for victims of domestic violence in NSW.

⁶⁰⁸Australian Law Reform Commission, above n 156, 12.119.

A desire to see more police officers who are culturally sensitive was vocalised by participants:

I find that the police are not culturally sensitive although they say they go through cultural awareness, I think it's not only Armidale Police Station it's really all police stations that I have dealt with they are just not sensitive to the matter or they are not serious, like it doesn't come across to them as serious, they don't understand your fears or what you actually get put through when that doors closed (NC 1).

[The police were]very cold and non-supportive and as I said to you before, they didn't treat me in a culturally sensitive way, so at the end of the day the way that they treated with a pigheaded, arrogant attitude it was much the same attitude as the man I was running from (NC 1).

More training around Aboriginal Cultural Competency Training is needed by the police, and this is evident from both the literature and the above quotations. The ALRC also recognises the vital importance of culturally appropriate service provision. The Commission suggests providing cultural awareness education and training for police, prosecutors, the legal profession and judicial officers, and offering victim referral and support services.⁶⁰⁹

8.6.1 Support from the DVLO and ACLO

Only 19 per cent of participants remembered having any contact with the DVLO when they were experiencing domestic violence. Although DVLOs are located at major police stations around NSW and each Local Area Command has one or more DVLOs, 38 per cent of participants had never dealt with them and a further 38 per cent did not know they existed.

One participant affirmed a lack of overall support from the DVLO when they were experiencing violence:

I don't think they [the DVLO] did that much, for me, they come out and seen me and just made sure that I understood that there was an ADVO in place and that I should call the police and they would be out straight away and that they would contact DoCS

⁶⁰⁹ Ibid. at 26.109.

to let them know that the kids are in danger, cause I am living with this person, but like I tried to explain to them, that if I get rid of this person then we're in more danger because then we have to live in fear of when he will show up, because this is what he does, if he leaves we don't know when he is going to show up and if he shows up here, he's usually drunk so it's safer to have him here where I know where he is, than him in Sydney and just getting drunk and saying 'oh I'm going down there' and just appear and me not being prepared for it (SYD 3).

One participant found the DVLO very helpful and made the following comment:

Yes, they were good. The domestic violence officers were very, very good. I have no faults with them (GF 4).

DVLOs are not the only service providers that offer assistance and support to victims of domestic violence. In many Aboriginal Communities, ACLOs are employed by NSW Police to assist with providing advice and support in managing Aboriginal issues in the Local Area Command. ACLOs provide a link between the police and the Aboriginal community.

Only one participant mentioned contact with the ACLO in her small town, and the experience was not a positive one:

I won't deal with ACLO, I don't trust her because ages ago when I was younger I had to go to court and she came and picked me up from my house we were all getting ready and when she came she said 'I will take you now' and she said to Mum and Dad meet us down there and when we got to the police station, they all surrounded me, I got laid more charges, they had me locked up and Mum was looking for me and ever since then I haven't trusted them the community thinks the same (GF 2).

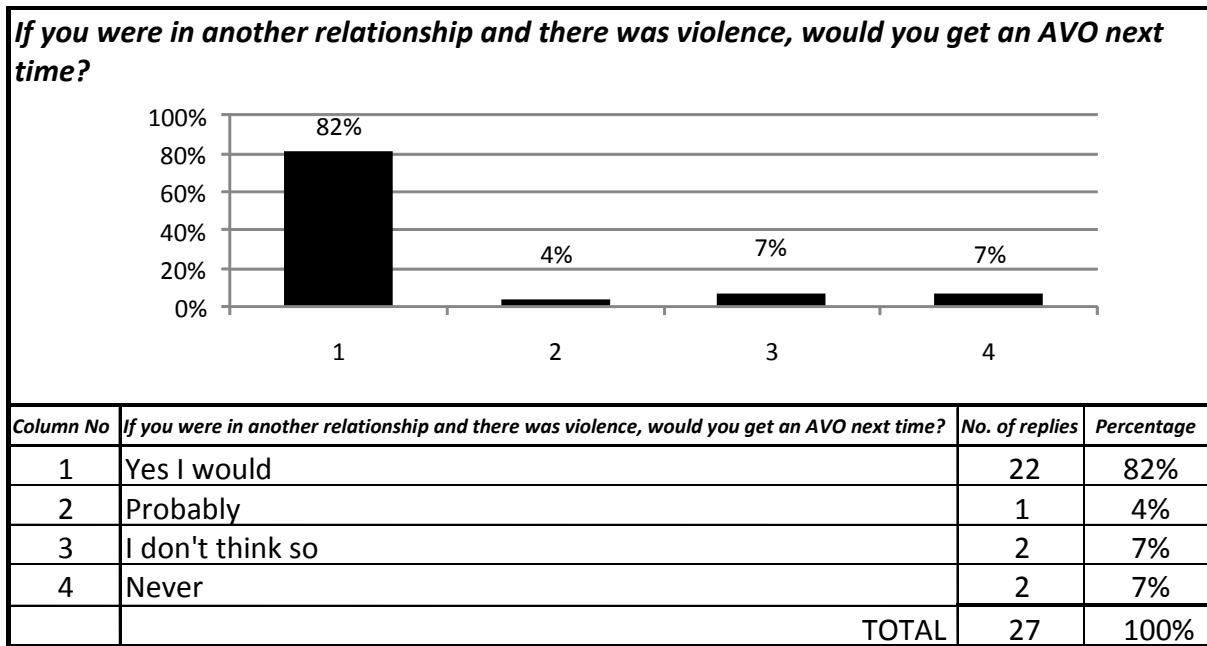
8.6.2 Likelihood of obtaining future ADVOs

Considering the above comments in relation to the police and other service providers, participants were asked the question: 'If you were in another relationship and there was violence, would you get an ADVO next time?' Twenty-two participants replied 'yes', only one

said ‘probably’, two participants said ‘I don’t think so’ and two participants responded that they would ‘never’ obtain an ADVO next time.

Table 8.6: Participants’ Likelihoods of Obtaining Future ADVOs

(N=27) Excludes 6 missing cases



The information contained in Table 8.6 above highlights the complexity of the data. Although many participants stated they were unhappy with the ADVO and the legal process, the large majority would seek an ADVO as protection the next time they experienced violence in a relationship. This underscores the importance to Aboriginal women of having legal protections against violence. Despite the inadequacies, Aboriginal women see some utility in ADVOs; they appear to consider them better than nothing. Legal protection needs to be available to all women in NSW, but for Aboriginal women in particular. There are ways that the process and service provision can be improved to better protect and serve them.

In summary, service providers and adequate support networks play a significant role in affecting whether participants report the violence, leave their violent relationships and feel satisfied with the legal process.

The NSW Ombudsman's *Domestic Violence: Improving Police Practice*⁶¹⁰ report identifies areas of concern for the NSW Police Force when implementing domestic violence strategies. The report recognises how crucial it is for the police force to get the policing response right and focuses on three areas: enhanced support from victims of domestic violence, better cooperation between NSW Police and other agencies with key responsibilities and more effective frontline policing responses.

The Ombudsman's report identifies the failure of police to investigate incidents of domestic violence along with their failure to act as a commonly reported issue. The Ombudsman's report acknowledges the critical role that police play in responding to domestic violence, and further emphasises the need for more ACLOs, particularly female ACLOs, to provide a 'bridge' between police and local Aboriginal community members.⁶¹¹

Providing more Aboriginal ACLOs in communities with large populations of Aboriginal people could result in more violence being reported to the police, as women will have an ACLO to support them and advocate on their behalf. If a victim of violence develops a positive working relationship with the ACLO, it is hoped that more breaches of the ADVO would be reported to the police.

8.7 What Could Have Further Assisted Women When they were Experiencing Violence?

All participants were asked about other 'things' that could have helped them when they were experiencing domestic violence. Some participants wanted more support and better access to services. Table 8.7 outlines the type of support that women believe would have resulted in them being further protected from violence. Twenty three per cent of responses highlighted that Indigenous-specific services could have afforded them with a better level of protection. A

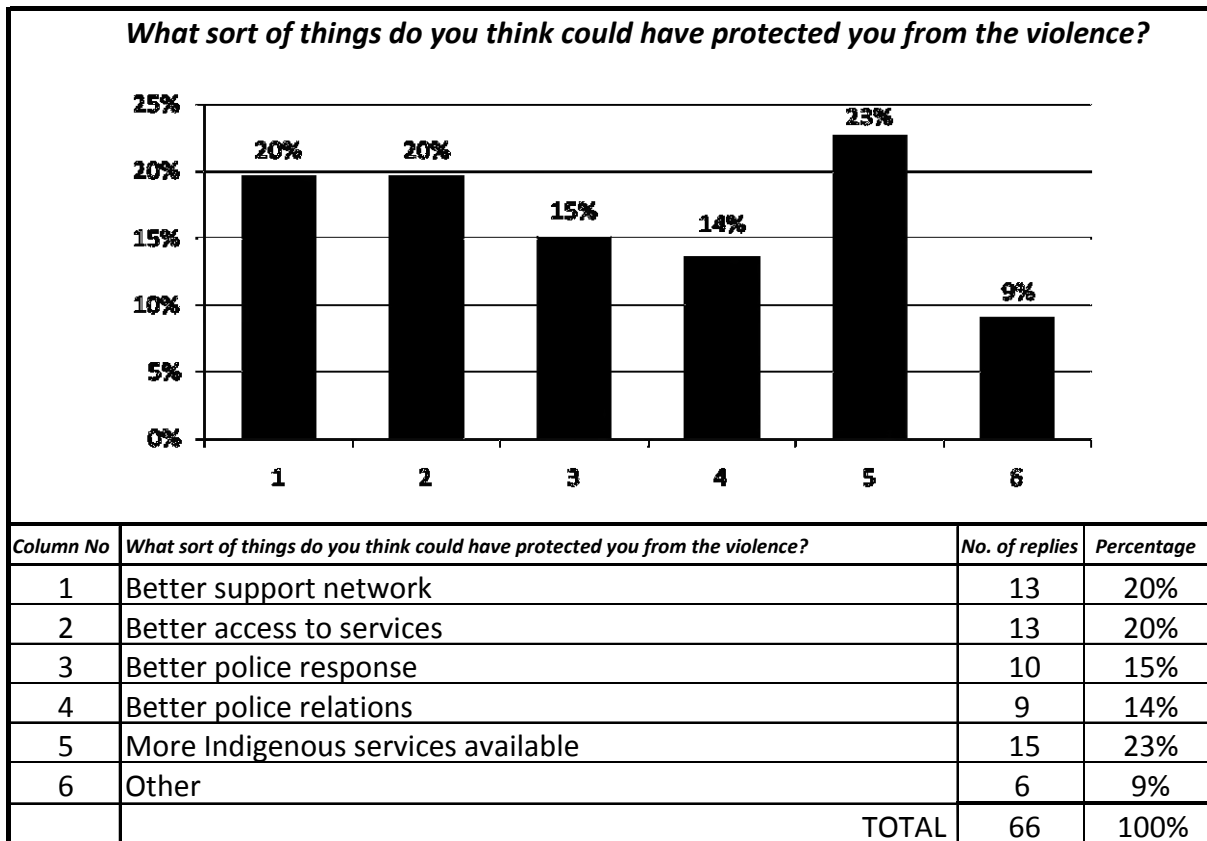
⁶¹⁰ NSW Ombudsman, above n 187, i.

⁶¹¹ Ibid 60.

further 15 per cent believed better police responses would help and 14 per cent were of the opinion that it would have further assisted them to have better police relations.

Table 8.7: Opportunities That Could Have Protected Participants from Violence

(N=66) Some Aboriginal women provided multiple responses to the question



Participants stated that support could have come in many ways for them:

A support person. A phone call after you had the ADVO—all the way through just to say ‘How are things going’ would have helped (TU 1).

More education for both men and women ... you can’t educate one and not the other and more support workers/ services (CL 1).

Another appreciated the assistance of Aboriginal services that are available:

ALS ... I have always utilised Aboriginal services and I know that I can sort of confide in them and I know that really everyone knew that I was in a DV relationship, so I really didn't have anything to be ashamed about or anything to hide because everyone was aware that it was happening, regardless of if I approached Aboriginal Medical Service I went to them for support and they supported me getting out, but it just wasn't as easy as would have wanted over the years (NC 1).

Conflicting ideas of support were confusing for one participant:

We need more support, but I don't exactly know what ... there can be such a thing as too much support also, like I had too much there for a little while, and they were all saying different things, so you were kind of confused about what you were getting and then when he's around it's really hard to have the support, because you can't sit there and talk to someone about how he treats you while he's there (SYD 3).

It is clear from the research that victims of domestic violence need and want support. Better follow up once the ADVO was in place and more community education programs were identified, as was a preference for Aboriginal services, with the participant acknowledging support received from both the ALS and the AMS.

Participants also recognised the value of heavier penalties for ADVO breaches but weren't sure that gaol was the best option:

I don't exactly know what could protect women from violence except the penalties should be stronger. Gaol is not a suitable penalty or rehabilitation but at the moment it's the only option, gaol is the only option at the moment. (OR 1).

I already knew that an ADVO was meaningless, to me all it is, is a piece of paper that says that the perpetrator can have an extra charge added on top of them if they breach it, which in most instances they do (OR 1).

Tougher penalties for domestic violence offences and breaches of ADVOs may prevent perpetrators offending and offer better protection for women. It has been reported that police officers themselves find lenient penalties for domestic violence offences frustrating and inadequate.⁶¹²

Participants indicated that they would like to see better access to counselling and culturally appropriate services available to the perpetrators at all times, as victims feel that prison does not solve or reduce perpetrators' anger issues:

This man had a long history of violent offences, he never got counselling on the outside, they give them counselling on the inside, thinking that it's going to help and a man's only going to do that because he is in there, it's only a short term thing, they don't bother following anything up on the outside a lot of times women have mental illnesses and a lot of the time men participate in Alcohol and narcotics Anonymous. A lot of the times he was into all of that and when you go to gaol on these offences and get picked up, he's not being educated, no one was educating him in what he was doing was wrong or if he wasn't ready to take that in, they look at that and say what he was doing is wrong. I just think the government or the systems fail them as well and fail these women, because when they are released, who are they going to go to when they are released? They come straight home to us. This is where I think it is failing, no one is working along with these men whether it's in gaol, or day release there is no strong support network to get the message across to them (NC 1).

Information and education in schools, why do you have to get to your 30s or 40s before you find this stuff out like, what you can do and where you can go and it can be made so that it fits across male and female, or it can be done as Women's business or men's business stuff, because there are a lot of our men that are battered as well. They need to learn how to change their behaviour (QU 1).

Educate him as well. Educate the entire community to know that violence is wrong. Men start to support men, give them a role in this (W 1).

⁶¹²NSW Ombudsman, above n 187, 22.

Having more government initiatives and things in place for employment, it's that help and things like that with domestic violence with our own Indigenous people in this country, our own people who have grown up and are a part of this land the true custodial owners if they want to help them in any way then try and help patterns with domestic violence situations. You hear of women's refuges, you hear of women, women, women's services but what about the men's groups, men's mental services or what about all these things in place for men. Are men getting educated on all this stuff, if they were educated and they were aware of what they're doing is wrong, well then they might pull up ... they might change their behaviour (NC 1).

Considering the research interviews discussed, it is evident that Aboriginal women want a solution to violence that does not rely solely on criminal justice intervention. Participants speak about perpetrators accessing counselling services and other behaviour changing programmes. Aboriginal researchers Lawrie and Matthews discussed the notion of holistic community justice as a response to family violence in Aboriginal communities.⁶¹³ Their research argues that the current criminal justice process does not meet the needs of the victims of family violence, and to make a real impact on family violence the approach must be restorative and rehabilitative towards offenders.⁶¹⁴ This is based heavily on the principle that family violence affects not just the immediate victims but damages whole communities and needs to be responded to accordingly.⁶¹⁵

These types of family violence preventative programmes in Indigenous communities would be welcomed as a positive solution by many Aboriginal victims. Such programmes are often 'grassroots', intrinsically culturally appropriate and in tune with the communities' thoughts and expectations, are more likely to be accessed and have proven successful in many locations.⁶¹⁶

⁶¹³ Lawrie et al, 2001, 1.

⁶¹⁴ Ibid 2.

⁶¹⁵ Ibid.

⁶¹⁶ The Women's Domestic Violence Court Assistance Scheme operates in NSW and employs some Aboriginal staff. In Queensland, the Education for Schools Project is a community education project that teaches young

Only one participant described how ‘practical’ help, like making their house more secure and devising a safety plan assisted her when she was experiencing violence:

Yes there could have been a lot of things that could have helped me: The Department of Housing or other support networks could have made sure that my house was properly secured with the constant offences where he was breaking into my home, smashing my premises or setting it alight or whatever the offence was it could have prevented a lot of it with security screens, security lights and a security camera, there has to be some sort of support network. I got that towards the end but was after 15 years. DoCS managed to help me to get not everything but they managed to put security lights around my premises, they promised that they would give me, like a secret room built into a wardrobe that I could lock myself and the kids in there if he ever approached the house. They made all these promises and I felt secure and I knew that if I was to move into that premises that I would but all they done was the lights so, if the Department of Housing was to work with all these support networks for women that are going through violence, well there should be funding there to help to given the women proper security, the women can then feel safe in their homes because they then know when that man comes to their door, he’s not going to kick the door in, he’s not going to smash the window, she (the woman) can sit in there calmly and wait patiently for the police. If I had had the proper security I probably would *not* have gone through half the things that I have had to go through (NC 1).

Services ... like family support, where they come and put security on your house. I got security sensor lights out the back and out the front, security screen doors, chains on the front door and bedroom door because I had a plan for a safety room in case he ever came back, I had to have a second room to run into, they put a new chain and a solid door on my bedroom door. Safety Plan—run into room, put chain on, put kids in the cupboard, built ins, I had water, packet of chips or lollies at all times, to keep

people about domestic violence. The NSW ‘Staying Home, Leaving Violence’ campaign piloted initially in Bega, but now operates in other parts of NSW.

them quiet and happy, then I could ring the police. I had a phone in that room (MR 1).

Other women felt that no other outside elements could have provided them with a better level of protection:

I think my kids are my protection, like the boys are older and he seems to be less abusive when the older boys are around, if it was only the two little ones, he'll be himself, but when the older ones are around he doesn't seem to be too aggressive and he wouldn't do half the things that he would do when the young ones are around so that's really my only protection ... The police you can't rely on them, they take an hour or so to come out, you think you can take just that little bit of a beating till they get there but, that hours' worth ... by then you could be dead. That's what everyone keeps saying to me 'look he's going to end up killing you, why don't you just get out' because I have been hit in the head so many times that I have 'short term memory loss' sometimes I don't remember what I did the night before, people just say 'one more hit to the head and you could die, you've gotta get out but it's easier said than done you have got to have the money to get out. If I went back to my mob/family in Bega he would know, there is no safe place for me. I moved away to Queensland and he found me there, he instigated with other bikies as well, you can't go anywhere to get away because he's going to find me. I was in a safe house at Bowral, that 'Brighter Futures' put me in a safe place, but he kept ringing me and telling me he knew I was in Bowral, but he couldn't find exactly where and that's when I said to the police 'I might as well go home' because I knew he was getting close (SYD 3).

Nothing at the time, you're in love, young and naive. I didn't know my options or rights. Even at the beginning, when I look back on it now if we would go to the pub on a Saturday afternoon, he would have to come, it would be all the girls and him and now that I look at it. At the time he must have really wanted to be with me, isn't he sweet? (W 1).

A good f...g knife in the chest, that's the only way to stop it, but you don't want to do that because of your children to think of and its only bringing back more violence that's already happening so it's no good inciting more violence (CL2).

I think you just gotta do it yourself ... I thing you have to get strong enough to get him out of your life (BW 1).

Another participant who lived in a remote area and had limited access to a phone or a car suggested that random police checks on her house would have helped her:

Police checks on victims every now and then—random checks to make sure you are ok. Have a network set up to check on you and if you are not home for them to contact you to make sure that you are you're OK, especially when you have the order out on the person. If you are out and they come to your home, they need to know that you are safe. Or leave a note under the door to say that they have been to check then you can ring them back ... it just to know that someone is looking out for you (TR 2).

The need for more support groups for women was identified by a number of women who are dealing with the effects of domestic violence:

I had left him to actually open up to someone about it. I started a DV Women's support group and I needed to speak to somebody because I can't handle it anymore and then from there I am now in counselling and things like that. We have been going for about 22 months now, we have accomplished a lot, we meet every week in the Women's Health Centre, Campbelltown. At first when you go to a group like that, you don't sort of say too much, but because we have been together this long, we are pretty much a close knit group of girls and if anyone has any problems or needs to talk to someone, we are all there for each other ... it's really good (CB 1).

More support groups for women who are victims (been through it and are going through it) (W 1).

More Aboriginal workers in isolated areas, not so much to sit in the office, just let people know where they are. More shelters, refuges. Services don't need to be Aboriginal specific, as long as they are there, we don't care and someone who is willing to go to the house without hesitation and take them [the victim] to a safe place (MA 1).

The above quotations identify the urgent need for more support for Aboriginal victims of violence. Support groups and more workers and services in communities were identified as a priority. Aboriginal family violence programmes would be useful, as they are aimed at challenging the violent behaviour of Aboriginal male perpetrators of domestic violence. Such programmes are 'developing new approaches and models derived from strengthening Indigenous family life and culture'.⁶¹⁷ This would be very useful for many victims, particularly those who continue their relationship with the perpetrator once they have an ADVO.

8.8 Ongoing Effects of Domestic Violence

Although many women may escape from the violent relationship, the lasting effects of being a victim of domestic violence stays with many of them. Reports in the literature in previous chapters have identified the huge cost to society domestic violence can have. It is not just medical costs to treat injuries but the ongoing cost of counselling, mental health services and other support services to deal with the negative effects domestic violence has on both victims and on the community. Participants spoke about the effect domestic violence had on them:

He ruined my life ... it took me a long time to trust another man and at the moment I am in another relationship with a man and we have had a baby. My ex-partner ruined my life because I am really scared that if my new partner tried to hit me I would probably bash him—like I am an angry person since being with my ex-partner because he pretty much used me as a punching bag whenever he felt like it (FB 1).

I never had anxiety and now I have to put up with it and depression (GF 3).

⁶¹⁷ C Cunneen, 'Preventing Violence against Indigenous Women through Programs which Target Men' (2002) 8(1) *University of New South Wales Law Journal* 242, 249.

The literature and research relating to this area shows that Aboriginal women's experience of domestic violence is often brutal, affected by cultural and racial issues and compounded by shame and humiliation. As evidenced above, the ongoing effects of domestic violence means that many victims are left with anxiety, depression and anger. One participant went as far to say that she believed the offender 'ruined her life'.

Many feel that their previous violent partners affected their chances of having a successful relationship with anyone else:

There won't be another relationship and he has told me that if I start seeing anyone else he would kill them, so I would not put anyone else in that sort of danger. I am happy on my own (SYD 3).

I can't trust another male for a long time, I have been single for two years and seven months, but it's very hard, you need to find your inner self and you need to give yourself time to heal, so that you know that you have certain instincts, like when I was with my ex you have these instincts and certain things telling you in your body and you didn't know what it was, but now that you know, after going through the experience, if you get those instincts next time that you meet somebody, you might think that you like this person, well then you won't go there (CB 1).

I have been out of this relationship for three years and I haven't had a relationship, I don't want another relationship I can't put myself through that again and my daughter. My kids are my life. I might do it when the kids are older and I'm ready but at the moment my kids are my priority. The first three were the ones that were exposed to it, they are the ones that are having a lot of behavioural problems right now, they are the ones I am having trouble with and over the years, with the whole domestic violence these kids have been absorbing it and seeing it, witnessing it and when you find the strength and pull yourself out and deal with it, you don't realise that you have got all these little ones that you have to patch up and fix (NC 1).

The above quotations highlight some victims' reluctance to trust another man and commit to another relationship again after experiencing domestic violence. One participant disclosed that any new partner might be killed and she is reluctant to put anyone in such danger. This illustrates that even after escaping a violent relationship, elements of violence remain and many victims live with these.

8.9 Conclusion

This chapter explored in detail the impact that domestic violence has had on the lives of the participants and ascertains their opinions relating to domestic violence, ADVOs and related issues.

For Aboriginal women in NSW, the repercussions and consequences of disclosing violence and subsequently reporting breaches of ADVOs is often traumatic and with many complications.

The barriers identified by researchers⁶¹⁸ for Aboriginal women when reporting violence and breaches to the police is demonstrated with specific examples discussed by the participants in this chapter. Frequently raised by the women were cultural barriers and community and family relations, which they felt prevented them from calling the police once the ADVO had been breached. Women also reported feelings of shame in relation to disclosing violence and identified the trauma involved with having to 'dob in' their partner.

Participants from rural and isolated areas identified additional barriers when reporting violence including the lack of access to transport. Lack of access to a phone by the victims resulted in 34 per cent of the women not being in a position to report violence to the police and thus, would have to rely on family or friends or escaping the violence and using a public phone and. Such barriers further renders the ADVO ineffectual as the functions of the order are not being used by victims to their full capacity.

⁶¹⁸ Katzen, above n 75; Cunneen and Schwartz, above n 455; Cunneen, above n 226.

For several participants interviewed, the key issues raised was their lack of confidence when navigating the legal system and enforcing their ADVO. Forty-four per cent of the women interviewed stated that they did not know how to enforce their ADVO. Thus, difficulties were highlighted as victims struggle to identify the breach and follow-up and report the breach so that the instrument is used as intended.

When reporting breaches, the women interviewed reported that a lack of adequate police response resulted in the perpetrator not being charged with breaching the order. Once violence was reported to the police, victims reported that in 48 per cent of reported breaches nothing was done. Participants report disappointment and anger when the legal intervention of an ADVO has failed to live up to its stated goals and purpose. This finding is comparative to the research conducted in 1997 by Trimboli and Bonney, which found that 36 per cent of breaches of apprehended violence orders were reported to the police, but that police took no action in response to 73.2 per cent of the breaches reported to them.⁶¹⁹

Recurring themes in this chapter included a distrust of police and the wider legal system, and a lack of access to services that victims consider appropriate. Lack of access, support and intervention will hinder policy and interventional approaches to reducing and preventing domestic violence in Aboriginal families and communities. Improved police responses and police relations are imperative in the better policing of domestic violence offences.

In 1997, the NSW Apprehended Violence Order Scheme was evaluated by the NSW BOCSAR. The report released by BOCSAR indicated that 77 per cent of subjects were satisfied with the service they received from either the Chamber Magistrate or the police when they applied for an ADVO.⁶²⁰ The research also found that 90 per cent of respondents perceived that the ADVO had resulted in benefits such as increased peace of mind and a greater feeling of safety.⁶²¹

⁶¹⁹ Trimboli and Bonney, above n 8, vii

⁶²⁰ Trimboli and Bonney, above n 8, 7 2. Eight per cent of the subjects interviewed for this BOCSAR research identified as Aboriginal or Torres Strait Islander.

⁶²¹ Ibid.

From the interviews above, it is apparent that Aboriginal women are not experiencing high satisfaction rates in relation to the level of protection the ADVO gives them. The difficulties with the 'one size fits all' legal approach are illustrated in this chapter, as is the need for a specialised, more culturally considerate legal system that considers the barriers and problems as identified by the research participants.

The research in this chapter reinforces the findings of research conducted by Wilcox, which found that inequitable access to the legal system, a lack of understanding of cultural diversity, and physical and practical barriers may have limited the value of protection orders for some women, including Indigenous women.⁶²²

For Aboriginal women to be in a position where they are better informed, supported and protected from violence, it was identified that more services, particularly those that are Indigenous-specific, are needed to respond to the high rates of violence Aboriginal women experience in the community.

⁶²² K Wilcox, 'Recent Innovations in Australian Protection Order Law—A Comparative Discussion' (Topic Paper 19, Australian Domestic and Family Violence Clearinghouse, 2010) 1–39, 3.

Chapter Nine: Discussion and Conclusion

9.1 Introduction

This chapter reflects on the original research aims and draws together the findings. The chapter and thesis is completed by consideration of the direction of future research in this area.

The thesis focused on in-depth interviews with 33 Aboriginal women from rural, remote and metropolitan areas of NSW who were victims of domestic violence and had sought an ADVO. The thesis aimed to add to the understanding of the barriers and complexities Aboriginal women experience when reporting domestic violence and accessing the legal system. In addition, this thesis aimed to gain further insights into domestic violence as experienced by Aboriginal women in NSW and how they understand the language that appears on ADVOs. The use of semi-structured, in-depth interviews with participants proved most useful in obtaining data rich information that enabled the key research questions to be answered. This approach was chosen to give Aboriginal women a voice and the opportunity to identify and discuss obstacles that prevent them from accessing the legal system.

The literature review established the extent and nature of domestic violence as a global issue, as well as considering the broad international framework established through the UN in response to domestic violence. The thesis noted the Australian, in particular NSW, legal and policy frameworks that have been developed in response to the problem. The literature review also established the prevalence of violence that Aboriginal women experience, the severity of the violence and the unique complications Aboriginal women endure at the hands of their intimate partners and with the justice system from which they seek remedies. This study builds on the research discussed in the literature review by indicating the need to understand the context in which many Aboriginal women who are victims of violence find themselves. Consideration must be given to the influence of Aboriginal women's cultural background, which include factors commonly identified in the interviews, in particular the significant

barriers of shame and embarrassment when reporting violence and a lack of trust in the police and judicial system that prevents Aboriginal women using the ADVO effectively.

The overarching theoretical framework for this thesis uses the context of colonisation to develop, explore and answer the research questions posed: to better appreciate Aboriginal women's understanding of domestic violence; to better understand Aboriginal women's understanding of ADVOs in NSW; and to determine the availability of research in NSW that focuses on Aboriginal women's understanding of violence and ADVOs. Understanding the intersection between Aboriginal women's understanding of domestic violence and the ADVO, a legal instrument, is paramount in affording better protection and support for this highly victimised group of women.

The colonial paradigm is the underlying belief system that provides a space within which Aboriginal difference can be explored and upon which its unique experiences can be reflected.⁶²³ The theoretical framework of this thesis also incorporates a feminist paradigm to ensure that issues are illuminated from women's standpoint, with the primary focus on Aboriginal women's voices being heard.

The importance of an intersectional framework for this thesis was discussed earlier and an intersectionality approach has been taken to this research to ensure a detailed understanding of Aboriginal women's experiences of violence. Consideration has been given to Morris'⁶²⁴ concept of Intersectional feminist frameworks as a way of thinking about power, who is excluded and why, and who has access to resources and why.

The interviews in this thesis capture Aboriginal women's experience of race and class discrimination and oppression in NSW. Legal scholar and black feminist Kimberle Crenshaw uses the term 'intersectionality' to refer to the multiple interlocking patterns of inequality that women experience, specifically black women.⁶²⁵ In this thesis, Aboriginal women's

⁶²³ Anthony and Cunneen, above n 47, 134.

⁶²⁴ M Morris, *Using Intersectional Feminist Frameworks in Research—A Resource for Embracing the Complexities of Women's Lives in the Stages of Research* (2007) 5–51, at 40.

⁶²⁵ Kimberle Crenshaw is a black legal scholar and feminist who has written extensively on intersectionality and black women. K Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics and Violence against Women of Color' (1991) 43 *Stanford Law Review* 1241–1299

perspectives when interacting with the legal system in relation to domestic violence are analysed and discussed and the patterns of interlocking inequalities experienced are brought to light in the interviews. These broader issues are recognisably connected to the data and highlight the Aboriginal communities' cultural experience of violence in great detail.

9.2 Research Aims and Results

The purpose of this section is to address the research aims and to draw out the overall conclusions that can be made on the basis of the qualitative interviews. It builds on the existing literature, the earlier theoretical arguments and the analysis and discussion provided in Chapters Six, Seven and Eight based on the qualitative research.

This thesis had four research aims, presented in Chapter One. These are discussed below, with consideration given to the aim of the research, the theoretical framework encapsulated in the thesis, the literature review and the qualitative data results. The main research question posed was as follows: How do Aboriginal women perceive the function of an ADVO in terms of its capacity to prevent and protect them from domestic violence? This question will be answered later in this chapter.

The literature review considered data relating to Aboriginal women's experience of violence and noted, in the past, it had been excluded from many research surveys due to language barriers, remoteness and their reliance on phone interviews, which is problematic for many Aboriginal women Australia-wide. It is therefore difficult to obtain a snapshot of the violence Aboriginal women living in urban, rural and remote areas experience. My research addresses that issue, and provides a small sample of Aboriginal women's experiences of violence, demonstrating the importance for future research to be conducted in this area.

The research questions that informed the thesis are addressed below on the basis of the major findings from the qualitative interviews.

<http://socialdifference.columbia.edu/files/socialdiff/projects/Article_Mapping_the_Margins_by_Kimblere_Crenshaw.pdf>.

1. How do Aboriginal women understand the phenomenon of domestic violence and its causes and how their experiences differ from non-Aboriginal women?
2. What are the barriers they identify when accessing the legal system?
3. How do they understand the language that appears on a standard ADVO?
4. What impact does domestic violence have on their lives?

9.2.1 Understanding Aboriginal Women's Lived Experience of Domestic Violence and Understanding its Causes and how their Experiences Differ from Non-Aboriginal Women

One of the primary research aims of this study was to examine Aboriginal women's lived experience of domestic violence in NSW.

The literature review showed very little research has been conducted in NSW in relation to Aboriginal women's understanding of domestic violence and its causes. Both Katzen⁶²⁶ and Moore⁶²⁷ undertook small-scale research in this area, and my research affirms their findings in relation to the difficulties Aboriginal women experience accessing the justice system, attending and understanding court proceedings and enforcing their ADVO as well as the problematic relationship that exists between Aboriginal women and the police. My research further builds on these previous findings by canvassing further issues that previous studies have not examined. The majority of questions asked of participants assisted in capturing data about their experiences of domestic violence. The questions ranged from the type of violence experienced, medical treatment required and the court and legal process. Questions around whether participants told anyone about the violence and what support they needed also provided useful information.

The current literature in this area was discussed in Chapter Four and mainstream policies, programmes and initiatives were identified as having little value or effect in marginalised and racialised communities.⁶²⁸ This illustrates that mainstream programmes that are not culturally

⁶²⁶ Katzen, above n 75.

⁶²⁷ Moore, above n 75.

⁶²⁸ Cunneen, above n 62.

competent will have little effect on reducing and preventing domestic violence. As such, given that Aboriginal women's lived experience of domestic violence is higher than that of their non-Aboriginal counterparts,⁶²⁹ consideration should also be given to the intergenerational nature and severity of domestic violence⁶³⁰ in the NSW Aboriginal community.⁶³¹ This was affirmed in the literature and again in the research interviews, with participants stating that domestic violence is often normalised, tolerated and has become more socially acceptable, thus acknowledging the impact of colonisation on their lives.

My research supports these arguments by providing the space in which Aboriginal difference can be explored and upon which its unique experiences can be reflected. The interviews conducted in this study indicate that a certain level of resignation exists regarding the violence an Aboriginal woman must tolerate in her lifetime. Many participants identified that their mothers, sisters, cousins and grandmothers were also victims of domestic violence. These results were similar to those of other research completed in this area,⁶³² highlighting the impact of the legacy of dispossession, racism and discrimination experienced by Aboriginal women.

In the Aboriginal community, alcohol and drug abuse is seen as a major contributor to violence, which is not necessarily the case in non-Aboriginal communities.⁶³³ This research supported the literature, with 84 per cent of women interviewed for this research believing that drugs and/or alcohol caused the violence.

The violence the participants disclosed in the interviews was of an extremely serious nature. It did not involve insignificant assaults or abuse, but horrendous acts of violence that left many women with permanent physical and psychological conditions. The literature further identified the unique nature of violence that many Aboriginal women experience, particularly at the hands of Aboriginal men, and that such extreme violence results in more injuries among

⁶²⁹ ABS, above n 145; Strategic Partners Firm, above n 214; Ferrante et al, above n 216; Human Rights and Equal Opportunity Commission, above n 224; Women's Services Network, above n 225.

⁶³⁰ Women's Services Network, above n 225; Al-Yaman, Van Doeland and Wallis, above n 227; People, above n 254; Kripps and Davis, above n 264; NCRVAWC, above n 89, 145.

⁶³¹ Keel, above n 44, 7; NCRVAWC, above n 89, 145.

⁶³² Murray and Powell, above n 288; Cunneen, above n 290; NSW Department for Women, above n 291; Willis, above n 7; NSW Attorney General and Justice, above n 341.

⁶³³ Alcohol and drug abuse is seen as a major contributor to violence in Indigenous communities more so than in non-Indigenous communities; see The Queensland Government, above n 16, 65–70.

Aboriginal women.⁶³⁴ The interviews with research participants around the extreme physical violence they experienced and injuries they suffered further supported the literature.

The literature review highlighted the greater likelihood of Aboriginal women being victims of domestic violence, and being murdered by their partners, compared to non-Aboriginal women. The literature also identified that Aboriginal women, in particular, were at greater risk of domestic violence during or after pregnancy. Considered together, the literature discussed earlier in this thesis supports my argument that Aboriginal women are a victimised racial group who are much more likely to be victims of serious violence than other groups. This highlights the cultural and social differences experienced by Aboriginal women and further isolates them from mainstream feminist approaches to domestic violence.

Many of these factors are unique to Aboriginal women's lived experience of domestic violence. A standardised legal and policy approach of preventing violence and protecting women will not be effective unless Aboriginal women's different experiences are given due consideration.

Lastly, acceptance and tolerance of domestic violence, and the intergenerational nature of violence, was made apparent in both the literature and by the women interviewed. The intergenerational nature, severity and community tolerance of violence further illustrates the different unique circumstances that Aboriginal women experience compared to non-Aboriginal women.

9.2.2 Identifying the Barriers Aboriginal Women Face when Accessing the Legal System

As discussed earlier in the literature, violence experienced by Aboriginal women must be considered within the broader context of colonisation, dispossession and racial discrimination experienced by Aboriginal and Torres Strait Islander people, which has led to transgenerational cycles of trauma and violence. The literature acknowledged and identified the disintegration of family and community in Aboriginal culture that has traditionally sustained

⁶³⁴ Women's Services Network, above n 225; Al-Yaman, Van Doeland and Wallis, above n 227.

relationships and obligations and maintained social order and control. The literature further illustrates the importance of seeing domestic violence Aboriginal women experience, through the lens of colonisation, dispossession and racism.⁶³⁵

The interviews in the preceding three chapters demonstrated the ongoing impact of colonisation and the structural and cultural complexities that encapsulate domestic violence law relating to Aboriginal women in NSW. What is gained from this is an Aboriginal context-specific understanding of the barriers to providing services and protection for Aboriginal women. Some of these barriers have been recognised in previous research, but others have not. For example, Aboriginal women interviewed for this research have stated that lack of telephone access, transport and a driver's licence severely affect their ability to report the violence they are experiencing. The problem is compounded by the greater proportion of Aboriginal women (compared to non-Aboriginal women) living in rural and remote areas. This assists in explaining the under-reporting of violence by Aboriginal victims raised in the literature review.⁶³⁶

The results of this study highlight factors unique to Aboriginal women's experiences of violence and will ultimately inform their perspectives of violence and determine how they address and escape it and the coping mechanisms they use to survive it. Pressure from Aboriginal family members to stay in violent relationships was acknowledged, as was distrust of police and the judicial system. Understanding domestic violence from an Aboriginal view, from a historical perspective of colonisation and dispossession, allows the layers of inequality to be revealed when acts and policies created to protect Aboriginal women result in disempowerment and oppression. These are experiences with which non-Aboriginal women are not as familiar and that feminism needs to incorporate into its approach.

This research demonstrated the inter-relating historical and social issues affecting Aboriginal women, by considering the causal attribution of violence in Aboriginal communities and the location of the top ten LGAs that recorded high incidences of domestic assaults, which all had

⁶³⁵ Behrendt, above n 45.

⁶³⁶ NSW Department for Women, above n 227, 26; Mouzos and Makkai, above n 142, 104.

Aboriginal missions and reserves in operation at one time in the past. Their former location as reserves means that historically police had particularly repressive functions in controlling the lives of Aboriginal women, including child removal. These factors all contribute to placing Aboriginal women in NSW in a position of vulnerability and disadvantage when attempting to leave or report violence.

The inherent distrust of police and negative interactions with government and legal services, as a result of colonisation, was a major barrier for many Aboriginal women reporting violence and accessing support.⁶³⁷ This was identified in both the literature and research interviews. Unlike non-Aboriginal women, Aboriginal women have the legacy of the Stolen Generation as part of their histories, and, for many, their own lives, resulting in participants identifying that they have little faith or trust in our current legal system.

The thesis explored the effect and subsequent challenges of these unique historical experiences on issues of violence within the Aboriginal community. The interviews in the preceding chapters brought to light issues identified by Aboriginal victims of domestic violence in relation to developing a legal system that acknowledges and gives due consideration to such cultural anomalies.

The major findings in this study show that better non-legal responses are needed to support Aboriginal women experiencing domestic violence. Increased family services that support and advocate for Aboriginal victims of domestic violence are central to violence reduction and understanding. Non-legal support, information and referrals are vital for Aboriginal women experiencing violence to ensure they are aware of all the options available to them. Exploring restorative justice alternatives in domestic violence cases must also be canvassed. Nancarrow's research in this area concluded that there was consensus 'for an amalgamation of the criminal justice system and restorative justice, conditional on various factors': for Indigenous women this included healing for victims, offenders and the community.⁶³⁸

⁶³⁷ Domestic Violence Advocacy Service and NSW Women's Refuge and Resource Centre, above n 268; Murray and Powell, above n 288; Willis, above n 7; Cunneen, above n 290.

⁶³⁸ Nancarrow above n 57, 71

Cripps and Davis reviewed Indigenous-specific services and programs specifically aimed at Aboriginal women who are victims of domestic violence and Indigenous perpetrators. The authors reviewed the programs endorsed by Memmott in Appendix 1 and reported that effective family violence programs require the involvement of the Indigenous community in defining the problem and its context, and in setting the parameters for how to engage with the issues.⁶³⁹ They further state that interventions can then be developed by and for the community in which they operate so that they recognise and respect Indigenous diversity, embrace Indigenous cultural values and foster community engagement in decision-making processes.⁶⁴⁰

9.2.3 How Aboriginal Women Understand the Terminology that Appears on an ADVO and is a ‘One Size Fits All Approach’ to Domestic Violence Effective?

This research focused on asking participants about their understanding and perception of the ADVO. The research literature specific to Aboriginal women and ADVOs was limited, but what was available suggests that different cultural expectations support the need for an individualised rather than across the board approach to ADVOs in NSW. Considering the unique barriers Aboriginal women face when identifying and reporting violence is important. The literature review identified that previous research has not explicitly examined Aboriginal women’s understanding of ADVOs. This research focused on asking participants about their understanding and perception of these legal instruments. From the qualitative interview analysis, it can be concluded that ADVOs are not properly understood by many Aboriginal women in NSW. No mechanism exists at present to ensure that Aboriginal women obtaining ADVOs through the Local Court have a thorough understanding of the order’s conditions and obligations, and the research shows that 40 per cent of women interviewed felt that they did not properly understand the functions of the order.

It is clear from the interviews that once the ADVO is made, more action is needed to ensure that victims understand the order and know how to make it work effectively. This lack of

⁶³⁹ Cripps and Davis above n 264, 5.

⁶⁴⁰ Ibid.

understanding in relation to the conditions and enforcement of the ADVO will result in victims not being in a position to identify violent or abusive behaviour; therefore, that abuse will not be reported.

The ramifications of not understanding the ADVO, its conditions and its future enforcement are extensive, ranging from under-reporting of violence and the under-identification of actual domestic violence. Not understanding the terms used and the conditions attached to the ADVO can adversely affect how an Aboriginal woman defines and reports domestic violence. Eighteen per cent of participants could not define what the word ‘intimidate’ meant in relation to the ADVO and ‘molest’ was the word appearing on the ADVO that was most misunderstood by the participants, with many believing it related just to abusing children. Understanding the standard terms appearing on the ADVO is fundamental to the order’s effectiveness. These terms are not all defined in the legislation, nor are the definitions provided on the ADVO itself.

When the terms are not explained to victims, they might think that some behaviour does not warrant police interference—for example, behaviour of a non-physical kind, such as intimidation or harassment. Participants clearly identified physical abuse, but were much less clear on non-physical abuse, which could result in victims putting up with behaviours from the perpetrator that is prohibited and thus having a ‘higher tolerance level’ for abusive behaviours.

The findings from this research illustrate that there is a poor understanding of ADVOs among Aboriginal women in NSW; they also show that it is unlikely that perpetrators are in a position to understand the ADVO better when the orders are granted against them. ADVO orders must be competently and thoroughly explained to all parties involved in the proceedings.

For Aboriginal women to better understand the order, an ADVO needs to be written in user-friendly language and plain English, as has been attempted in the Northern Territory. For

Aboriginal women in NSW, that might include Aboriginal English.⁶⁴¹ An additional page could be attached to the order, providing definitions of key words used and describing actual examples of violent and abusive behaviour. Due to the high illiteracy rates in the Aboriginal community, a more appropriate tool for Aboriginal women could be a culturally appropriate DVD watched at the Local Court after the order is made. The DVD would explain the contents of the ADVO, give examples of violent and abusive behaviours and explain how these behaviours can be reported to the police. This would allow women obtaining an ADVO to understand fully the order's benefits and implications.

This thesis directly contributes to positive changes around the understanding, interpretation and enforcement of ADVOs, and, more broadly, can help to engage and empower Aboriginal women in NSW.

9.2.4 The Effect of Domestic Violence on the Lives of Aboriginal Women

From the literature in this area, we know that Aboriginal women in NSW suffer a special disadvantage in seeking access to justice.⁶⁴² The literature established that marginalised people have less capacity to use legal protections⁶⁴³ and that Aboriginal women, specifically, show no ownership of the criminal justice system.⁶⁴⁴ The wider communities' lack of understanding of oppression and marginalisation that Aboriginal people have experienced is evidenced in mainstream reports, as is distrust of police in Aboriginal communities.⁶⁴⁵

What was determined from the qualitative interviews, similar to the existing research, is that the two biggest hurdles Aboriginal women face after obtaining an ADVO are as follows:

- lack of understanding in relation to the legal terms used and the language used as well as lack of solid understanding of the conditions that need to be enforced

⁶⁴¹ Aboriginal English is the first language of many Aboriginal children in NSW and is a recognised form of communication in NSW public schools. Aboriginal English uses words, patterns and rhythms from both English and Aboriginal languages. NSW Department of Aboriginal Affairs, *NSW Aboriginal Languages: Fact Sheet* <<http://www.daa.nsw.gov.au/landandculture/langfacts.html>>.

⁶⁴² L. Schetzer and J Henderson, *Access to Justice and Legal Needs* (The Law and Justice Foundation of NSW, 2003) 16.

⁶⁴³ Cunneen, above n 62.

⁶⁴⁴ Cunneen, above n 62.

⁶⁴⁵ Murray and Powell, above n 288.

- enforcing the order once a breach has been reported to the police is often problematic.

In 2006, the Social Justice Commissioner made the following comments:

In my view, raising awareness among communities, working with communities to send strong messages that violence won't be tolerated, that there are legal obligations and protections and individuals have rights, are critical if we are to stamp out this behaviour for good.⁶⁴⁶

Raising awareness and developing education programmes about violence in Aboriginal communities is imperative to reducing further violence. Aboriginal women must be aware that such programmes are offered and advertising on local Aboriginal radio stations, Aboriginal Medical Services and Land Councils will encourage better attendance and awareness. Participants frequently stressed that support services for male perpetrators are an important part of breaking the cycle of violence in Aboriginal communities.

The research clearly shows that the need exists in the wider Aboriginal community in NSW for culturally appropriate services for Aboriginal women and families experiencing domestic violence. Twenty-three per cent of participants interviewed identified a lack of Indigenous services available for women and families experiencing domestic violence. The Victorian Family Violence Prevention Legal Service proposed the introduction of a national Aboriginal and Torres Strait Islander Women's Legal Service Program in Australia to better respond to critical gender and cultural issues.⁶⁴⁷ An Aboriginal Women's Legal Service Program would broaden and strengthen legal services and provide a structural base for Aboriginal women's voices to be heard at the national, state and territory levels in policy development and legal reform.⁶⁴⁸

⁶⁴⁶ *Social Justice Report* (2006) Social Justice Commissioner's speech, 27 <http://www.humanrights.gov.au/pdf/social_justice/family_violence2006.pdf>.

⁶⁴⁷ *Strengthening Law and Justice Outcomes for Aboriginal and Torres Strait Islander Victims/Survivors of Family Violence and Sexual Assault and Women and Children: National Policy Issues—A Victorian Perspective* (Policy Paper Series, June 2010, Paper 1 of 3, Aboriginal Family Violence and Prevention Legal Service, Victoria) 1–93, 6 <<http://www.fvpls.org/images/files/FVPLS%20Policy%20Paper%201.pdf>>.

⁶⁴⁸ *Ibid*

The Federal Government has funded Family Violence Prevention Services that operate in rural and remote areas of Australia in those communities with high Indigenous populations, yet only a few participants referred to these services in their interviews or discussed seeking advice from them. Participants consistently mentioned a lack of programmes targeted at families experiencing domestic violence, as most are targeted only at perpetrators of violence. Participants explained that often they would be happy to stay in the relationship, despite the violence, if the violence would stop and the family could access appropriate services to facilitate this. Many participants were of the belief that programmes aimed at working with perpetrators and their families in a culturally friendly setting would be more beneficial than an ADVO. Programmes could be made more culturally friendly by involving Aboriginal elders, Indigenous service providers, community members and the victim's and perpetrator's extended family in familiar and accessible locations.

Currently, the *Crimes (Domestic and Personal Violence) Act 2007*⁶⁴⁹ does not allow magistrates to impose conditions on perpetrators that might include counselling or rehabilitation. Perpetrator rehabilitation and family counselling and support should be a priority particularly for families who intend to stay together regardless of the violence.

9.3 Addressing the Major Research Question: How Do Aboriginal Women Perceive the Function of an ADVO in Terms of its Capacity to Prevent and Protect Them from Domestic Violence?

After an extensive review of the literature in this area, further gaps in the field were apparent in relation to the lack of large-scale research that evaluates the effectiveness, benefits and drawbacks of ADVOS for Aboriginal women in NSW. The literature review uncovered a large body of research relating to Aboriginal women and violence, and research and evaluations of the ADVO scheme. However, in the latter, there is no specific reference to Aboriginal women.⁶⁵⁰ This research addresses these gaps by interviewing Aboriginal women to examine their usage and perceptions of both ADVOS and domestic violence.

⁶⁴⁹ *Crime (Domestic and Personal Violence) Act 2007* Section 35.

⁶⁵⁰ Trimboli, above n 8.

ADVOs are often considered the best possible legal outcome for women experiencing domestic violence, yet 44 per cent of participants did not feel any safer having an ADVO. This poses a number of questions, including the following: do victims fully understand the effects of an ADVO; do victims appreciate the effect of civil orders and conditions on the perpetrator; does the victim understand the possible sentencing outcomes if the perpetrator is in breach of the order?

Research participants were asked direct questions in relation to their perceptions of ADVOs. Eighty-two per cent of research participants indicated that they would obtain an ADVO in future if they were experiencing domestic violence. Without an alternative, most participants have enough faith in the ADVO system to obtain another ADVO if they experience violence in a future relationship. The fact that 14 per cent of participants indicated that they would not actively pursue an ADVO if they were experiencing domestic violence in another relationship is noteworthy, as it indicates their lack of faith entirely in the current judicial system. Only four per cent responded that they would 'probably' get an ADVO next time.

The data from the present study has answered the main research question that an ADVO is ineffectual in providing Aboriginal women with the appropriate level of legal protection if they are unable to understand the contents of the order and how the order is meant to be enforced.

Having an ADVO against a violent partner does not provide victims with an automatic level of safety, nor does it necessarily act as a deterrent, considering the number of perpetrators who allegedly breached the orders taken out by the participants.

ADVOs are perceived as complicated, confusing, time-consuming and ineffectual by many Aboriginal women, and this must be addressed by both government and community agencies. This could be achieved by introducing wider education programmes specifically aimed at Aboriginal women around NSW. In particular, television advertisements reinforce the message that domestic violence and violence in general is unacceptable. Television advertisements could

be aimed specifically at Aboriginal women, be culturally and linguistically appropriate and would likely prove a better communication medium if literacy is an issue.

The research interviews highlight a lack of promotion of options for Aboriginal women currently experiencing domestic violence. Many participants believed that calling the police is the only option for pursuing an ADVO and did not realise that an ADVO could also be obtained from their nearest Local Court. Not knowing about services available to victims of violence was also identified in both the literature review and this research. One participant expressed her confusion when asked if she had accessed a refuge at any stage. The participant then asked what a refuge was and how a person could use it.

For Aboriginal women to report violent or abusive behaviour that they are experiencing, an element of trust and understanding must exist. Cultural understanding must be present, otherwise the research tells us that over half of the participants interviewed would not seek help from the police if they were to experience violence again. This lack of trust between Aboriginal women who are victims of domestic violence and members of the police force was evident in the study, with many victims of violence assuming that police officers would not take their side of the story seriously. Only 47 per cent of participants stated they would seek help from the police if they were experiencing domestic violence again.

The research study shows that many participants indicated that obtaining an ADVO does not provide them with a level of protection with which they feel happy, as their partners often breach the order. Eighty-four per cent of participants indicated that they were of the opinion that their partners breached the order, as their current or former partner had behaved in a manner that the victim believed breached the stated ADVO conditions. ADVO enforcement rates indicate that the orders do not necessarily have a deterrent effect on the perpetrator, as the research indicates that the orders were frequently breached. These statistics support the notion that ADVOS can be considered as just 'a piece of paper' and are not as widely respected as the court intends.

The breaches of ADVOs reported by participants indicate that it is not a deterrent against future violence. Participants commented that if the perpetrator had a history of violence and had previously spent time in gaol, there was not much compelling him to abide by the conditions stated in the order, as the prospect of being charged with an offence and sentenced to gaol was not a deterrent. Considering this, Aboriginal women's safety must be taken into account and further research should be conducted to determine how a victim's safety can be prioritised and successfully achieved. One idea could be for the police or Local Court to categorise the severity of the domestic violence a victim has experienced, which could include the number of domestic violence charges against the perpetrator. This could be done when a victim is initially seeking an ADVO or extending a current order. Noting the severity of the violence the victim has previously experienced might influence police response times and prompt further investigation when victims report offences.

Better police relationships with the Aboriginal community was also raised by participants, as women are unlikely to disclose violence to police officers by whom they feel intimidated or those who are disinterested in providing assistance and information to them. Participants stated that a trusting relationship with the police must be fostered and encouraged early on, and programmes such as the Police Citizens Youth Club are beneficial for young children in building good relations with the police to break the existing cycle of mistrust. Other positive interactions with the police were suggested by participants, such as community barbecues and police being invited to Aboriginal community events where appropriate.

Police must be educated and compelled to fully investigate and lay charges where appropriate on reported breaches of ADVOs. Participants suggested the possibility that victims of particularly severe and life-threatening violence could nominate for the police to undertake random checks on them to ensure their safety. Further consideration must be given to the operational procedures that police operate within to make Aboriginal women's safety a community policing priority.

Participants indicated that further funding for Community Legal Educators to visit rural and remote Aboriginal communities and provide programmes, information and legal education for

victims of domestic violence is much needed and wanted. Programmes addressing this special disadvantage and providing community legal education would be beneficial to inform Aboriginal women of their rights and responsibilities in relation to the ADVO, the operation of the legal system and other legal processes.

Despite women reporting breaches of the ADVO to the police, not all perpetrators were charged with a breach. Only 48 per cent of the participants stated that their partner was charged after allegedly breaching the ADVO. More than half the participants indicated that their current or former partner was not charged with breaching the order despite their understanding that the perpetrator had acted in a manner they believed was in breach of the ADVO. These findings were similar to previous research by Katzen,⁶⁵¹ who considered the difficulties women face when reporting breaches of ADVO to the police. Katzen found that protected persons anecdotally indicated that the police do not prosecute offenders in response to the majority of reported breaches, which is further supported by the current research.

Consideration must be given to the notion that both victims and police may interpret incidents differently. This theory was discussed by Katzen⁶⁵² and supported by her research, which found that many police officers interpret breaches as ‘minor’, when the women experience the breach as both serious and terrifying. This thesis adopts Moore’s⁶⁵³ assertion that the police crisis response to domestic violence is often marked by misunderstanding, discrimination and mutual hostility, which was also indicated in the qualitative data.

ADVO are granted to Aboriginal women without many courts and social services being aware of the victims’ limited access to basic services. Thirty-four per cent of victims did not have access to a telephone when the violence occurred. If the courts are making final ADVO to protect women from such violence, it is interesting to look at the statistics from this research, which highlight that many women who have an ADVO are not in a position to enforce it effectively. Lack of telephone access is an example raised in this research of a victim’s inability to protect herself from violence. This is an expectation that both the court and the

⁶⁵¹ Katzen, above n 75, 1–17.

⁶⁵² Ibid 10.

⁶⁵³ Moore, above n 75, 8.

police have of the victim. Over a third of the Aboriginal women interviewed had to rely on a neighbour or someone else to phone the police when they were being assaulted.

The legislation relating to ADVOs in NSW was amended in 2007 with the introduction of the *Crimes (Domestic and Personal Violence) Act NSW*. Small changes to the way ADVOs operate and protect victims were enacted, with amendments including enabling the automatic inclusion of children on an ADVO implemented.⁶⁵⁴ Interestingly, no specific changes that positively benefited Aboriginal women were made. It is evident from the interviews in this research that further changes to the legislation that reflect Aboriginal women's unique experiences of domestic violence are strongly needed to ensure that Aboriginal women receive an appropriate level of protection from violence.⁶⁵⁵ Changes to the legislation could consider the value of healing programmes as a sentencing option for Aboriginal perpetrators, which also involves the victim and the extended family if they choose to participate. Legislative provisions that explore further use of restorative justice techniques in domestic violence matters could also be considered where appropriate,⁶⁵⁶ alongside further explanation of the terms given.

While traversing the legal system as a victim of violence is challenging for many women and all women need support and advocacy to make good use of the law, women affected by multiple, interlocking patterns of inequality require active outreach and assertive support to enable access to the law and other essential resources.⁶⁵⁷ Non-Aboriginal women's experiences navigating the legal system are different to those of Aboriginal women. Laing's research explored a cross-section of women's lived experience of participating in the legal system in seeking protection from domestic violence and discussed the obstacles that culturally and linguistically diverse rural and Aboriginal women faced. The research brought to light the shared challenges faced by women in

⁶⁵⁴ *Crime (Domestic and Personal Violence) Act 2007*, Section 38. Other amendments included automatic interim AVO—where there is a charge of a 'serious offence'—and offences previously committed to be recorded as domestic violence offences.

⁶⁵⁵ The 2009 'Time for Action' report, released by the NCRVAWC, recommended an enquiry into family violence laws in Australia. <http://www.facs.gov.au/sa/women/pubs/...time_for_action/.../The_Plan.pdf>.

⁶⁵⁶ Bartels, above n 83, 6.

⁶⁵⁷ L Laing, *It's Like this Maze that you Have to Make your Way Through.* 'Women's Experiences of Seeking a Domestic Violence Protection Order in NSW' (The Law and Justice Foundation of New South Wales, 2013) 1–78, 72 <<http://ses.library.usyd.edu.au/bitstream/2123/9267/2/It's%20like%20this%20maze.pdf>>.

NSW. The sense of not being heard and feeling unsafe was a universal side-effect of involvement in the legal process.⁶⁵⁸ Another common theme was the strong sense of injustice women felt due to what they perceived as the failure of the legal system to hold to account the men who abused them.⁶⁵⁹ The research also highlighted further obstacles that Aboriginal women specifically had to confront, particularly those relating to the consumption of alcohol, police inaction and racism.⁶⁶⁰ Similar obstacles were canvassed previously in this research and disclosed by the participants in their interviews. This gives further weight to the argument that Aboriginal women have distinctive needs in relation to accessing the justice system.

Finally, as the participants in this qualitative research indicated, ADVOs prove complex and difficult for many Aboriginal women to interpret. Obtaining an ADVO might provide a certain level of legal protection for victims of violence, but the ADVO cannot work effectively for victims if it does not come with culturally friendly mechanisms that endeavour to ensure the legal approach to violence is inclusive, preventative and responsive. This includes ongoing community legal education about domestic violence, culturally specific service provision and violence prevention programmes, education as to how the order works and how to enforce it properly and ongoing community support in line with community thoughts and expectations. In summary, this research found that an ADVO alone is not enough to prevent or respond to the violence Aboriginal women experience.

9.5 Conclusion

This research makes a positive contribution to knowledge in this area and provides a rare insight into the lived experiences of Aboriginal women in NSW who are victims of domestic violence, as well as their experiences with the legal system, their understanding of the nature of domestic violence and ADVOs and the effect that colonisation has had on their lives.

⁶⁵⁸ Ibid 5

⁶⁵⁹ Ibid 72

⁶⁶⁰ Ibid 60

This study provided an avenue for the voices of Aboriginal women to be heard in relation to their experiences of violence, their engagement with the legal system and their interaction with police. Shame was identified as a major issue for Aboriginal women, as was a lack of family and community support when it comes to escaping violence. Participants identified that better support services are needed that are both Indigenous- and non-Indigenous-specific and culturally friendly. More follow-up after ADVOs are issued and better police relations all play a valuable role in helping women leave the violence.

The inadequacy of the NSW legal system responses to provide Aboriginal women with a level of protection from violence they believe is adequate is also identified. The findings of this study point to several challenges in providing assistance to Aboriginal women who are victims of domestic violence. The literature and interviews have highlighted the extent, pervasion and severity of violence Aboriginal women face and the effect it has on the victim, their children, families and communities. The interviews highlight the barriers victims face to leaving the violence and accessing and navigating the legal system. The research interviews provide suggestions to approaches that could be beneficial. For example, regular home visits and monitoring by police were suggested by one interviewed participant.

In evaluating domestic violence outcomes for Aboriginal women in NSW, the research analysed civil justice responses to domestic violence for Aboriginal women. Given the limited research available that examines Aboriginal women's perceptions and experiences of violence and ADVOs, it indicates the lack of priority this issue has been given in the past.

The findings in this research are consistent with earlier research conducted by Katzen and Moore, which found that Aboriginal women are known to be at higher risk of domestic violence, face cultural and social barriers and have less access to justice and social support.⁶⁶¹ For Aboriginal women, further research in this area is urgently needed and requires community consultation about culturally specific and relevant practices that will be effective in both preventing violence and protecting them from violence.

⁶⁶¹ Katzen, above n 75; Moore, above n 75.

This research demonstrates the importance of understanding Aboriginal women's perception of ADVOs, and, accordingly, makes an original contribution to this research area. Aboriginal women are both empowered and disempowered by the ADVO process and achieving an integrated response to domestic violence that is consistent, comprehensive and culturally appropriate is the paramount objective.

The amelioration of Aboriginal women's access to justice has been the central theme throughout this thesis. This thesis has argued that significant gaps exist in the current literature and record keeping of Local Courts of data around Aboriginal women and ADVOs is limited. More elaborate and comprehensive data collection by all service providers is needed, as is a review of the implementation of the law and the associated policies and processes to ensure Aboriginal women's access to equality and justice.

The knowledge gained from this research provides a better understanding of Aboriginal women's perspectives and understanding of both violence and ADVOs, giving the participating Aboriginal woman a voice in the community. Considering how effective ADVOs are for Aboriginal women is not without challenges. From the research, it became evident that unless Aboriginal women understand fully all the definitions of domestic violence, how the order can be enforced and procedures involving reporting a breach, then ADVOs will never be used to their full potential as legally intended by non-Aboriginal law and policy makers.

Finally, the words of one remarkable Aboriginal woman interviewed during this study, who experienced horrific violence at the hands of her partner, reflect the journey on which so many women are forced to embark and the realisation of the enormity of what they lose along the way:

I'm not a material person, because of the lifestyle I lived through this domestic violence I have never been a material person because I have always had to pack up and run and the little material items that I was able to provide for my children, he either sold them or stole them or something. He's taken a lot from me financially, also material items and his children's stuff and with the instability over the whole time, my kids' education, he can't compensate by being a father and doing the father

role to these children because he never was that father role, so the only way that I ... he can compensate ... is by me applying for compensation so that we can establish ourselves and get on top and for me to be able to do things for my children because over the last 13 years he has taken that from us. He's taken my homes because I had to up and run, he's taken all my furniture, it had to be just left there, he may not have personally taken them but he robbed them from me because it was him that I had to run from. He stole a lot from me, he stole my life, and he stole everything from me down to my heart and soul (NC 1).

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Appendix 1: Indigenous Family Violence Programs

<i>Support programs</i>	Support programs can take the form of counselling, supporting the victim with information relating to their rights and providing assistance and advocacy. Examples are crisis support and domestic violence counselling and support programs and services
<i>Strengthening identity programs</i>	These programs are aimed at developing an individual's sense of self-value and self-esteem. These programs aim to divert perpetrators away from violence by the increased provision of sporting, social, cultural, community and educational training. Programs encourage responsibility and personal growth. Often such programs are therapy based and focused on spiritual healing and exploring Aboriginality. Men's support groups also fall into this category.
<i>Behavioural reform programs</i>	These programs attempt to provide an avenue whereby perpetrators may reform their behavioural traits. These services are often run in prisons and teach anger management skills and stress relief techniques. Not all programs are aimed at perpetrators some are aimed at empowering victims.

<i>Community policing and monitoring programmes</i>	<p>These programs often enlist Aboriginal programs community members to police, monitor or intervene in violence in Aboriginal communities. Programs are often aimed at perpetrators and substance abusers and provide an immediate response to violence. Night patrols operate in a number of states with a higher number in the Northern Territory and Western Australia where many night patrols have been operating effectively for a number of years.</p>
<i>Shelter/ protection programs</i>	<p>The aim of these programs is to detain the perpetrators of violence until their own safety and other people's safety can be assured. Sobering up shelters are an example. The primary role of protection programs for victims involves intervention in violence through the provision of a safe retreat space for the victim such as a refuge or women's shelter.</p>
<i>Justice programs</i>	<p>Justice programs are accessed after violence, and offer a longer term culturally appropriate, community based response to violence. Programs often mediate between people in conflict and aim to reduce the rates of recidivism in the community. The operation of community justice panels and circle sentencing falls into this category.</p>

<i>Mediation programs</i>	These programs are aimed at people experiencing violence and often used impartial members of the Indigenous community to facilitate programs where traditional dispute resolution techniques are used to resolve and prevent conflict.
<i>Education and training programs</i>	Community education programs that are culturally appropriate are essential in educating the community and raising awareness of domestic violence. Programs can be accessed before, during or after violence and develop skills within the community to resolve conflicts and identify the need for interventions with perpetrators.
<i>Composite programs</i>	These programs are often holistic programs that employ different methods of combating or preventing violence. Programs within communities are developed in response to the identification of the extent and nature of violence within the community and the subsequent development of a community-based action plan or strategic plan.

Appendix 2: Ethics Approval Letter from the Human Research Ethics Committee at UNSW

5 June 2008

Professor Chris Cunneen
Room 323, Law Faculty F8
UNSW
SYDNEY 2052

THE UNIVERSITY OF
NEW SOUTH WALES



HUMAN RESEARCH ETHICS
COMMITTEE (HREC)

ENTERED ON DATABASE

Dear Professor Cunneen

**The law of equality and justice - Evaluating family violence and domestic violence
outcomes for Aboriginal women in NSW**
(HREC 08100)

Thank you for the email and attachments from Belinda Russon to Mrs Aruna Lobo dated 2 June 2008.

At the Executive Meeting held on 3 June 2008, the Committee provided approval for the above project to proceed. In accordance with the guidelines set out in the National Statement on Ethical Conduct in Research Involving Humans* (NS) and exercising the authority delegated by the Deputy Vice-Chancellor (Research), I give permission for this project to proceed.

Would you please note:-

- approval is valid for five years (from the date of the meeting i.e. 3 June 2008);
- you will be required to provide annual reports on the study's progress and any adverse events to the HREC, as recommended by the National Statement on Ethical Conduct in Research Involving Humans;
- you are required to immediately report anything which might warrant review of ethical approval of the protocol (NS 2.37), including:
 - (a) serious or unexpected adverse effects on participants;
 - (b) proposed changes in the protocol; and
 - (c) unforeseen events that might affect continued ethical acceptability of the project;
- any modifications to the project must have the prior written approval of the Committee;

.. 1 ..

UNSW SYDNEY NSW 2052
A U S T R A L I A
Telephone: +61 (2) 9385 4234
Facsimile: +61 (2) 9385 6648
Email: ethics.sec@unsw.edu.au
Location: Rupert Myers Building
C/o Research Office / Ethics,
Gate 14, Barker Street Kensington
ABN 57 195 873 179

(08100. cont'd)

.. 2 ..

- the Ethics Secretariat should be notified if serious or unexpected outcomes are experienced by research participants or if there are unforeseen events;
- consent forms are to be retained within the archives of the Faculty and made available to the Committee upon request;
- if this approval relates to a clinical trial any serious adverse event arising in the course of the study should be reported promptly using the proforma on the Human Research Ethics website at <http://www.ro.unsw.edu.au/ethics/human/>

Yours sincerely,



A/Professor Michael Grimm
Presiding Member
HREC

* <http://www.nhmrc.gov.au>

Appendix 3: Introduction Letter to Legal and Non-Legal Services

THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF LAW

Hi Everyone

My name is Belinda Russon and I have spent the last 2 years (slowly) writing my doctoral thesis at UNSW. I'm at the stage where I'm hoping to interview more Aboriginal and Torres Strait Islander women about their experiences of domestic violence, ADVOs and the police/court system.

I would appreciate any suggestions as to any women who would be willing to participate. The interview shouldn't take longer than 30–40 minutes. They will be required to sign a consent form approved by UNSW (This research has the approval of the UNSW Ethics Committee). The women must be:

- * Aboriginal and/or Torres Strait Islander
- * Living in NSW when the violence happened
- * Have a current ADVO or have had one in the past against their male partner (Aboriginal or non-Aboriginal)
- * Be over 18 years old

If you know any clients or other women who might be willing to participate I could come out to your service for a day and do the interviews there (if that would be suitable). It's not much but I always give the women a box of chocolates as a gesture of my appreciation and

explain how their experiences may help to shape future changes to the law. All participants remain anonymous in the research (they are allocated a number) and there is no need for any identifying information to be given during the interview.

Please let me know about any other events that you may know about that I could attend to speak to women and possibly organise another time to interview them. Interviewing any Elders who've experienced violence would also be useful.

I've been successful so far in gaining about 18 interviews with some very lovely, strong women and am keen for at least 22 more!

Any assistance/suggestions would be greatly appreciated!

Thanks very much,
Belinda Russon
Doctoral candidate
UNSW

Appendix 4: Participant Information Statement

THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF LAW

EVALUATING DOMESTIC VIOLENCE OUTCOMES FOR ABORIGINAL WOMEN IN NEW SOUTH WALES

PARTICIPANT INFORMATION STATEMENT (Clients)

Hi, my name is Belinda Russon. I'm doing some research at the University of New South Wales in Sydney (show identification). I'm out in the community because I want to talk to Aboriginal women in NSW about their feelings towards ADVOs for victims of domestic violence.

A large number of Aboriginal women who are victims of domestic violence get an ADVO to protect them from their partner who is violent. This research is looking at how good the current ADVO system is and what Aboriginal women think could work better for them. I hope that the results of this study will help all Aboriginal women when they go to court and get an ADVO against their partner.

I've had a yarn to the local Aboriginal organisations who work in the area of domestic violence in your community, and they gave me your name as you have been a client of their service. It would be really great if you could help out with this research within the local

Aboriginal community in your area because you have been a client of one of those services. I would like to invite you to assist in this research by giving some of your time to be interviewed.

The interview shouldn't take any longer than 45 minutes to do. What I'll do is read out a few questions to you and then I'll write down your answers.

I will also have a tape recorder on to record all interviews so that I can go back over them. Do you agree to have the interview taped? **YES**__ **NO** __ (please tick)

All your answers are private and I will make sure that there is no information in my research that can identify you in any way. No information of a personal nature will appear in the final research document at all.

Some of the questions in the interview may make you feel uncomfortable or sad as you remember things that have happened to you before. I just want to know how you got help when you were a victim of domestic violence and you don't have to tell me about all the bad stuff that's happened to you. It's up to you.

I will also ask you to sign a form called a consent form, which just makes sure you understand all the stuff I'm doing in the interview and also what I'll do with the information.

If you don't want to do this interview....that is OK. It won't change the relationship you have with any of the Aboriginal or non-Aboriginal services in your community. If you are happy for me to interview you, you can change your mind at any time and that's OK too.

Ask me any questions that you have anytime.

If you have any questions after the interview, please contact me at belinda.russon@student.unsw.edu.au

Should you have any concerns about the conduct of this research project, please contact the Ethics Secretariat, The University of New South Wales, SYDNEY 2052 AUSTRALIA Tel: (02) 9385 4234, Fax: 02 9385 6648, E-mail: ethics.sec@unsw.edu.au

The stuff we talk about today might be pretty full on. If you need to yarn to someone about it all here are some numbers for you to call:

24hour Domestic Violence Line—1800 65 64 63

Wirringa Baiya Aboriginal Women's Legal Service (Legal Advice)—1800 686 587

24 hour Victims Support Line, NSW Victims Compensation Tribunal—1800 63 3063

Lifeline—13 11 14

Thanks so much for helping me with this really important research!

Belinda Russon

Doctoral Candidate

Faculty of Law

University of New South Wales

Sydney, Australia

Appendix 5: Participant Consent Form

THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF LAW

EVALUATING DOMESTIC VIOLENCE OUTCOMES FOR ABORIGINAL WOMEN IN NEW SOUTH WALES

PARTICIPANT CONSENT FORM (Clients)

You are making a decision whether or not to participate in this research. Your signature indicates that you have read, or have been read, the information on the previous page and have decided that you would like to participate in the research.

.....
Signature of Participant

.....
Signature of Witness

.....
Please PRINT Name

.....
Please PRINT Name

.....
Date

Appendix 6: Revocation of Consent by Participant Form

THE UNIVERSITY OF
NEW SOUTH WALES



FACULTY OF LAW

EVALUATING DOMESTIC VIOLENCE OUTCOMES FOR ABORIGINAL WOMEN IN NEW SOUTH WALES

REVOCATION OF CONSENT BY PARTICIPANT (Clients)

I hereby wish to WITHDRAW my consent to participate in the research proposal described above and understand that such withdrawal WILL NOT harm any future relations with Aboriginal community services in my local area or the University of New South Wales.

.....

Signature of Participant

.....

Date

.....

Please PRINT Name

The section for Revocation of Consent by the participant should be forwarded to Professor Chris Cunneen, Law Faculty, University of New South Wales, Sydney 2052, Australia.

Appendix 7: Research Questions

PARTICIPANT RESEARCH QUESTIONS

1. *How old are you*

- a) 18–24
- b) 25–34
- c) 35–44
- d) 45–54
- e) 55–64
- f) 65& OLDER

2. *Are you*

- a) An Aboriginal woman
- b) A Torres Strait Islander woman
- c) Both

3. *Which of the following do you think is ‘domestic violence’*

- a) Physical—like being hit or kicked
- b) Emotional—like being called names
- c) Financial—like having your money taken away
- d) Psychological—like threatening to hurt people you love
- e) Sexual—like being forced to have sex
- f) Stalking—like being followed or watched
- g) Social—like being stopped from seeing your family or friends
- h) All of them

4. **Has domestic violence happened to you**

- a) Yes
- b) No
- c) Not sure
- d) I think so

5. **Who lived at home with you at the time the violence was happening**

- a) Partner
- b) Ex-partner
- c) Children
- d) Family members
- e) Friends

6. **Did you have a telephone at home at the time violence was happening**

- a) Yes
- b) No
- c) Mobile only
- d) Other

7. **Did any of this stuff happen to you**

- a) Physical—like being hit or kicked
- b) Emotional—like being called names
- c) Financial—like having your money taken away
- d) Psychological—like threatening to hurt people you love
- e) Sexual—like being forced to have sex
- f) Stalking—like being followed or watched
- g) Social—like being stopped from seeing your family or friends

h) Other

8. **Did you have to go to a Doctor or the Hospital because you got hurt from domestic violence**

- a) Yes to a Doctor
- b) Yes to a hospital
- c) Yes I got hurt but never went to see anybody about it
- d) I can't remember
- e) Other

9. **Do you know what an AVO is?**

- a) Yes
- b) No

10. **Have you ever taken out an AVO?**

- a) Yes
- b) No

11. **Did anyone give you advice or information on domestic or AVOs?**

- a) I called the Domestic violence Line
- b) I called Wirringa Baiya Aboriginal Women's' Legal Centre
- c) I called the Indigenous Women's' Advice Line
- d) I called another legal service like the Aboriginal Legal Service
- e) I asked friends
- f) I went to the police
- g) I went to the local court
- h) Other

12. Where would you go to get help from?

- a) The police
- b) The local court
- c) An Indigenous service only
- d) A service that assists both Indigenous and non-Indigenous women
- e) Whichever service picks up the phone first or is closer to me
- f) I don't mind at all, whatever is available
- g) Other

Local Court

13. Did you have to go to the Local Court and see the Chamber Magistrate/ Registrar and apply for an AVO?

- a) Yes
- b) No
- c) Not sure

14. Did the Registrar or another worker from the court explain the AVO and court process to you?

- a) Yes and I understood it
- b) Yes and I didn't understand it
- c) No one explained it to me
- d) I was confused
- e) Other

15. Did the Women's' domestic Violence Court Assistance Scheme act for you in Court?

- a) Yes
- b) No
- c) Not sure

16. Did you feel as though you got enough support from the scheme?

- a) It was OK
- b) I would have liked more support
- c) They were great
- d) Other

17. Did the police take out the AVO for you

- a) Yes
- b) No
- c) Not sure

18. Did the police have to ring up and take out a telephone interim order for you?

- a) Yes
- b) No
- c) Not sure
- d) I don't know what a telephone interim order is

19. Did the police explain the AVO to you?

- a) Yes and I felt good about it
- b) Yes and I didn't understand

- c) No one explained it to me
- d) Other

20. When you were going through violence did you have much contact with the Domestic violence Liaison Officer at the Police Station?

- a) Yes a lot of contact
- b) I tried to contact them but had no luck
- c) I never dealt with them
- d) I didn't know about DVLOs

21. Did you feel as though you received enough support from the police?

- A) They were ok and did their job
- B) They were very supportive
- C) No I would have liked more support
- D) I received no support at all

22. How did you feel when the matter went to court and the final AVO was made?

- a) Relieved because I thought I would be safe
- b) Happy that something had finally been done
- c) Angry because I didn't want the order in the first place
- d) Not sure because I didn't really understand what it all meant in the first place
- e) Confused about the whole thing
- f) Other

23. How did you feel about going to court?

- a) OK as I had good support from everyone
- b) I felt empowered

- c) I was overwhelmed
- d) I felt scared
- e) I didn't like it at all
- f) I would do it all again
- g) I would never want to go through the court process again
- h) Other

A number of words are used in AVOs. I'll ask you what you understand about them. There is no wrong answer, I just want to know what those words mean to you

Harass—

Molest—

Assault—

Threaten—

Stalk—

Intimidate—

Breach—

24. Do you know how to enforce your AVO?

- a) Yes
- b) No
- c) I don't think so
- d) I'm confused

25. Did your partner ever breach the order?

- a) Yes
- b) No
- c) Other

26. When you had an AVO against your partner or ex, for what things would you call the police for?

- a) Called you on the phone all the time
- b) Waited outside you house or work
- c) Followed you around
- d) Called you names
- e) Physically hurt you, like punched you, hit or kicked you
- f) Threatened to hurt you or someone in your family
- g) Other

27. Once you had the AVO, did you ever have to call the police for protection?

- a) No
- b) Yes I have called once since taking out the AVO
- c) Yes I have called twice since taking out the AVO
- d) Yes I have many times since taking out the AVO

28. Did the police come out to you house and:

- a) Take a statement from you
- b) Ask you to come into the station to give a statement
- c) Charge your partner or ex with breaching the AVO
- d) The police weren't helpful at all when I reported the breach
- e) Nothing was done about the breach at all
- f) Other –

29. What would stop you from calling the police if your partner/ex breached the order?

- a) Worried your partner or ex might die in custody
- b) Guilty of getting him locked up
- c) Worried he might hurt the family

- d) Worried about what his family might do
- e) Too frightened to tell the police
- f) Other

30. Was your partner/ex ever arrested and charged for breaching the order?

- a) Yes
- b) No
- c) Not sure

31. Did having an AVO against your partner/ex make you feel safer?

- a) Much safer
- b) A little bit safer
- c) Not safe at all
- d) More scared

32. Once you had the AVO did your partner still live with you?

- a) Yes
- b) No
- c) Sometimes

33. Did the AVO say that he couldn't live with you anymore?

- a) Yes and he stayed away
- b) Yes and he kept living with me
- c) No
- d) Not sure

34. Did you tell anybody about the violence?

- a) Doctor, Nurse or Social Worker
- b) Mum, Dad, Brother or Sister

- c) Friends
- d) His family members
- e) Police
- f) Community Support Group
- g) Solicitor
- h) People you work with
- i) Community Elders
- j) I didn't tell anyone

35. Is there a legal centre or somewhere, where you can get legal advice located near you?

- a) Yes
- b) No
- c) I don't know

36. If you have children, did you feel your children were ever at risk?

- a) No, he was never violent around them]
- b) No, he never hurt them
- c) Yes, they saw the violence
- d) Yes, he hurt them too

37. What sort of things do you think could have protected you from the violence?

- a) Better network support
- b) Better access to services
- c) Better police response
- d) Better police relations
- e) More Indigenous services available
- f) Other

38. If you were in another relationship and there was violence, would you get an AVO next time?

- a) Yes I would
- b) Probably
- c) I don't think so
- d) Never

39. Do you think alcohol or drugs cause domestic violence?

- a) Yes
- b) No
- c) Not sure

40. Why do you think domestic violence happens?

41. Do you think that violence is something that you just have to put up with?

- a) Yes
- b) No
- c) Sometimes

What other stuff could have helped you when you were going through violence?

If AVOs didn't exist, what sort of other things would be better at protecting you from violence?