INTRODUCTION

Although violence against women by their partners has a long history, it was not until the late 1960s that it received any legal recognition. Domestic violence, as Schneider writes, ‘simply didn’t exist in the legal vocabulary’.1 Over the last three decades, there has been increasing recognition that domestic violence is a considerable social and legal problem and one that needs to be addressed across both government and non-government sectors. A vast and continually expanding body of literature (both within and outside the legal domain) has emerged examining the question of domestic violence. And while it is generally recognised that the legal system is not a panacea, the legal system nevertheless has an important role to play in society’s response to domestic violence.²

The development of an appropriate response to domestic violence has posed a significant challenge to the Australian legal system (as with other western legal systems). My thesis examines an aspect of the relationship between domestic violence and the law that has proved profoundly troubling - the situation where a woman relies upon a history of domestic violence as an explanation for her offending behaviour, particularly in cases where women kill their abusers. Women who use fatal violence challenge deep-seated legally and socially endorsed constructs. Battered women who kill challenge the fundamental dichotomy between ‘victim’ and ‘offender’ and the criminal justice system has struggled to find an appropriate response to ‘offenders’ who are simultaneously ‘victims’. Similarly, battered women who kill conflict with dichotomised constructions of ‘victim’ and ‘agent’:

Women’s victimisation and agency are each understood to exist as the absence of the other – as if one must be either a pure victim or pure agent – when in fact they are profoundly interrelated.³

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2 See W Chan, Women, Murder and Justice, Hampshire: Palgrave, 2001 at 168 – 174. As Lacey says, ‘[a]ll feminist scholars with an interest in law start out from the assumption that law has an important, albeit not a decisive influence in constructing and maintaining social relations. Thus, most feminist legal scholars believe, though to very different degrees, that law plays some part in consolidating, expressing, underpinning and supporting existing power relations in societies, including those between women and men’, N Lacey, ‘Feminist Legal Theory’ (1989) 9 Oxford Journal of Legal Studies 383 at 385.
3 E Schneider, Battered Women and Feminist Lawmaking, above n 1 at 76.
They also counter conventional stereotypes of femininity and the 'normal woman' – the use of violence contradicting accepted views of women as nurturing, passive and non-violent. In other words, women who kill their male partner following a history of domestic violence are out of place in a legal system and out of step with accepted standards of femininity.

The judicial treatment of women who kill their male partners is a topical issue generating considerable debate in many western countries. There exists a considerable body of feminist literature that has considered the complex issue of the legal response when women kill their violent partners. More recently, literature has emerged from a 'backlash' perspective that has argued that battered women are capitalising on perceptions of women as passive and irrational to get away with murder.4 Although much has been written about women who kill their violent partners, my research aims to make an important and distinctive contribution to this ongoing debate.

My thesis is primarily a critical analysis of the written comments made by judges in passing sentence and in appeal cases in spousal homicide cases in Australia between 1980 and 2000. A significant and unique aspect of my analysis is that it is based on an assessment of a relatively large sample of cases, including all relevant decisions of the New South Wales Supreme Court between 1990 and August 1998. While previous Australian commentators have analysed the operation of the defences of provocation and self-defence in the context of battered women who kill, and debated the appropriateness of 'battered woman syndrome' evidence, this assessment of the operation of legal principles has taken place in the context of a relatively small number of selective cases. My thesis seeks to expand upon the insights of this existing research by locating my analysis of the law's response to battered women (and the feminist analysis generally) within a broader empirical framework. My research explores the gendered operation of the criminal law in a practical sense by ascertaining the defences to murder that women

4 See 4.2.3.
are successfully and unsuccessfully relying upon, and within this context critically assessing the operation of the criminal law.\(^5\)

In my research I identified 76 cases between 1980 and 2000 in which a female offender killed her male spouse and the cases proceeded to a Supreme Court. In the same period, I identified 147 cases where men killed their female partners and the case proceeded to a Supreme Court. The cases were identified from three different sources. The first was the Sentencing Information System (SIS) which forms part of the Judicial Information Research System in New South Wales.\(^6\) All murder and manslaughter cases listed on the SIS during the period 1990 to August 1998 were identified. It was not possible to search for offender/victim relationship using SIS, so the next step was to manually examine the sentencing comments identified by the SIS search. This enabled an identification of the spousal homicide cases. The second sample was drawn from a search of Comments on Passing Sentence on the TasInLaw database for cases in the Tasmanian Supreme Court between 1990 and September 1998 for male or female offenders convicted of murder or manslaughter in respect of killing their spouse.\(^7\)

These cases are supplemented by the decisions of Supreme Courts in all Australian jurisdictions, involving appeals against conviction and/or sentence and written comments made by judges in passing sentence in cases of spousal homicide. This sample was sourced from reported decisions and unreported decisions for the period between 1980 and 2000 using standard electronic databases, directly from the relevant court (with assistance from court officials) and from academic articles. While this final sample cannot purport to be exhaustive, it does include all relevant cases found by using the above sources.

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\(^5\) A similar approach is taken in the English context by Chan: see W Chan, above n 2.


\(^7\) TasInLaw is a folio bound database that forms part of the Tasmanian Legal Information Network. It is published by NiuMedia Pacific Pty Ltd.
CAVEATS AND DEFINITIONS

As a preface to my thesis and before I provide an overview of my arguments, I wish to highlight a number of caveats and definitional issues that frame my research.

(1) Research limitations

There are two main limitations with the research method I have adopted. First, it precludes a precise identification of cases in which an accused is acquitted. In my research, in the relevant period, ten cases were identified in which a female offender was acquitted in respect of killing her male partner.8 These cases were not obtained using any systematic research method, and cannot be taken to be exhaustive. However, I argue that my study still has validity, as other Australian research has found that few women are acquitted in respect of killing their male partners.9

A second limitation of my focus on cases that proceeded to a Supreme Court is that it precludes an identification of cases in which the offender died at any point before trial and/or sentence or cases where the prosecution decided not to proceed before the completion of the trial.

(2) Battered women - spouses

My research is limited to discussion of homicide between ‘spouses’ which I have characterised as homicide between legal or defacto spouses (current or former) and in my thesis, the term ‘spouse’ is used interchangeably with ‘partner’. In contrast, other studies have examined homicides between ‘girlfriends/boyfriends’ and ‘lovers’ within the category of intimate homicide.10 My decision to exclude these relationships from my

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8 See 1.4.2.
9 See P Easteal, Killing the Beloved: Homicide Between Adult Sexual Intimates, Canberra: Australian Institute of Criminology, 1993 at 115.
10 See for example, in James and Carach’s study intimate homicide was broadly defined as ‘one where the victim and the offender were either married, divorced, defacto, ex-defacto, girlfriend/boyfriend, ex-girlfriend/boyfriend or in a same-sex relationship’: M James & C Carach, Homicide in Australia 1989 - 1996, Canberra: Australian Institute of Criminology, 1997 at 35. In the study conducted by the New South Wales Judicial Commission the category of ‘sexual partners’ referred to ‘the existence at one time of an
study was based on the lack of clarity in the relationship boundaries described by ‘girlfriend/boyfriend’ or ‘lover’. For example, it would be difficult to know whether to include a case where a woman killed a man whom she had sexual intercourse with on one occasion. My view was that the inclusion of the less permanent and precise relationship categories of ‘girlfriend/boyfriend’ or ‘lover’ would not be useful given that my study aims to assess the criminal justice system’s response to battered women who kill following a history of domestic violence.

In this thesis, the focus of my discussion is upon women who use fatal violence against their male partners. This definition excludes a consideration of the judicial treatment of fatal violence between same-sex couples.\textsuperscript{11} It also excludes a detailed consideration of cases where men kill their female partners. In my thesis, I rely on the cases in which men kill their partners to highlight the gendered operation of the law. In some circumstances, it is useful to examine how the law operates for men as the ‘male’ standard is the usual standard envisaged by the law. Similarly, a comparison of the ‘success rate’ of the various defences for women in contrast to men is included to highlight the gender difference in the outcome of homicide cases. However, it is important that my argument is not misconstrued. My argument should not be understood to be that women ought to be treated like men, rather my argument is that the circumstances in which women kill ought to be more appropriately recognised by the legal system.\textsuperscript{12}

(3) Language of ‘battering’

In this thesis, I rely upon the phrases ‘battered woman’ or ‘battered women’ as a shorthand description for women who have experienced violence from their male spouse. Although my use of language may suggest that the label ‘battered woman’ is

\textsuperscript{11} See for example, C Simone, "'Killer' man was a Battered Wife": The Application of Battered Woman Syndrome to Homosexual Defendants: \textit{The Queen v McEwan} (1997) 19 Sydney Law Review 230.

\textsuperscript{12} See Daly who has signalled caution to those who argue for a gender-neutral ‘equal treatment’ as a means to improve women’s situations as women may end up treated as badly as men, K Daly, \textit{Gender, Crime & Punishment}, USA: Yale University Press, 1994. For a recent consideration of the issue of equality (sameness and difference) in the context of women who kill their male partners: see W Chan, above n 2.
straightforward and unproblematic, I acknowledge that there are many shortcomings in the description. A useful summary of its deficiencies can be found in Schneider's work, where she has commented on the reductive nature of the description 'battered woman',\textsuperscript{13} the reluctance of women who are abused by their partners to describe themselves as 'battered women',\textsuperscript{14} and its negative stereotypes associated with ideas of 'helplessness and defeat rather than survival and resistance'.\textsuperscript{15}

Further, the description of a woman as a 'battered woman' is problematic as it suggests that an essential 'battered woman' exists as a static category — undifferentiated by race, ethnicity and class.\textsuperscript{16} In my thesis, in seeking an improved outcome within the criminal justice system for 'battered women' who kill, I am mindful of the need to recognise the diversity of women, and to recognise that a woman's positioning within her community is highly relevant to her experience of violence. An additional problem with the label 'battered woman' is that it places the focus primarily on the physical violence.\textsuperscript{17} However, as I argue in my thesis, a proper understanding of domestic violence requires an appreciation of the diversity of the abusive behaviours used to maintain control and authority.

**STRUCTURE AND CONTENT**

As I have foreshadowed, the primary aim of my thesis is to examine the treatment of women who kill their male partners within the Australian criminal justice system by considering the circumstances in which women kill their partners and exploring the ability of the criminal law to have proper regard to these circumstances. In cases where women kill following a history of domestic violence, my argument is that both in the substantive criminal law and at the sentencing stage, there needs to be more appropriate

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\textsuperscript{13} This means that the term 'implies the total life experience of the particular woman: a "battered woman" can be no more than a woman who has been battered', E Schneider, above n 1 at 61.

\textsuperscript{14} See 2.6.3.2.

\textsuperscript{15} See E Schneider, above n 1 at 60 - 62.

\textsuperscript{16} Ibid at 62 – 65.

\textsuperscript{17} See Ibid at 65 – 67.
recognition of the motivation/circumstances of the killing and its impact on the accused’s culpability.

In order to achieve this primary aim, there are three subsidiary aims. The first is to critically examine reliance on the various defences to murder (diminished responsibility, provocation, lack of the requisite intent for murder, self-defence, insanity and automatism). The second is to analyse the relationship between the defence of self-defence and the rules of evidence, in particular the ability of a woman to convey the reality of her experience of violence within the current evidentiary framework and to assess the need for a shift in approach. The third is to assess the judicial approach in sentencing women who kill their violent partners.

To pursue the aims of my thesis, it is divided into eight chapters and the following section briefly summarises the structure and content of each chapter.

i) Chapter One

Chapter One provides general information in relation to spousal homicide in Australia. In particular, I address the incidence and circumstances of spousal homicide, including a consideration of gender and cultural/racial factors. This discussion provides a foundation for the arguments developed in subsequent chapters by highlighting the masculinity of spousal homicide and the fundamental difference in the circumstances in which men and women kill in the domestic context.

This chapter also considers the legal outcome in cases of spousal homicide identified in my research. This systematic examination of the cases represents a valuable contribution to the literature in relation to women who kill their partners, as it enables my later analysis of the operation of the defences to murder to be placed within a broader empirical framework.

ii) Chapter Two

Chapter Two provides information about the phenomenon of domestic violence in Australia. Although there is a diverse range of literature addressing the issue of domestic
violence in Australia and internationally, this chapter focuses on three matters that are particularly relevant to the arguments advanced in my thesis. First, this chapter draws on recent Australian studies that have explored the incidence of domestic violence, particularly in the context of gender and race/ethnicity. Secondly, this chapter addresses the nature of domestic violence, and thirdly, I examine research that has investigated women’s responses to domestic violence.

iii) Chapter Three

This chapter provides a structural and theoretical framework for my subsequent consideration of the operation of the criminal law in the context of battered women who kill. It provides an overview of the history and the current structure of the law of homicide and the defences to murder. In addition, the relationship between motive, intention and criminal responsibility is examined. This is relevant to the arguments advanced in Chapter Four. Finally, Chapter Three considers the theoretical framework of the defences, in particular the two main approaches to the defences - the ‘capacity view’ and the ‘reasons view’ - in the context of self-defence and provocation. These insights are relied upon in Chapters Five (provocation) and Six (self-defence).

iv) Chapter Four

The circumstances in which women kill their male partners, and the legal outcome of the cases have been examined in Chapter One. Previous research has critiqued the capacity of the criminal justice system to accommodate the circumstances in which women kill their violent partners within the framework of the defences of provocation and self-defence. However, provocation and self-defence are not the only defences to murder relied upon in the context of spousal homicide, and this chapter will consider the extent of reliance on these other defences about which there has been relative silence in the academic literature in Australia. This chapter builds upon Chapter One by examining in detail the application of the partial defence of diminished responsibility/substantial impairment by

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18 An exception is my article considering the issue of lack of intent in the context of cases decided in New South Wales: see R Bradfield, ‘Women Who Kill: Lack of Intent and Diminished Responsibility as the Other ‘Defences’ to Spousal Homicide’ (2001) 13 Current Issues in Criminal Justice 143.
abnormality of mind, the defence of insanity, reliance on the lack of the necessary intent for murder and automatism in cases where women kill their male partners.

My examination of the application of diminished responsibility/substantial impairment by abnormality of mind and lack of intent provides a unique and significant insight into the judicial system’s treatment of battered women who kill. In this part, I identify and explain the shift from reliance on the defence of diminished responsibility/substantial impairment by battered women to reliance on the lack of the necessary intent for murder. My consideration of lack of the requisite intent for murder concludes that lack of intent appears to be used as a ‘defacto’ defence of domestic violence, and I highlight the implications of this construction of women who kill their partners.

v) Chapter Five

Chapter Five develops the primary aim of my thesis to investigate the judicial treatment of women who kill their violent partners by examining the application of the defence of provocation. While previous literature has examined reliance on provocation by battered women who kill, the chapter provides a valuable contribution by providing a contemporary detailed examination (based on an empirical study) of the extent of reliance on the defence by battered women who kill, and the circumstances in which battered women utilise the provocation defence.

My analysis of the application of the defence of provocation to battered women who kill considers the legal developments that have enabled greater access to the provocation defence by battered women. These changes are evaluated to determine the extent to which they have enabled the law to take account of the circumstances in which women kill their abusive partners. My consideration of the provocation defence ultimately concludes that the gendered character of the defence of provocation is so fundamentally entrenched that the defence must be abolished.

vi) Chapter Six

A pivotal claim in my thesis is that the usual circumstances in which women kill their partners presumptively raises the issue of self-defence. I do not argue that every battered
woman who kills does so in self-defence. However, my argument is that the law of self-
defence should have sufficient flexibility to accommodate the self-defence claims of
some of these women – more than are currently accommodated. Chapter Six develops
this argument by examining the application of the defence of self-defence in the context
of women who kill their violent partners.

This analysis expands the existing literature that has considered the operation of self-
defence and battered women by exploring the extent of reliance on self-defence by
battered women and highlighting the gendered operation of self-defence in a practical
sense. As well as considering the extent of reliance, this chapter examines the current
legal requirements in each Australian jurisdiction that have restricted access to self-
defence for battered women. In this analysis, my argument is that (in most jurisdictions)
it is not the formal legal rules per se, but the informal rules of legitimate self-defence that
sit uncomfortably with women’s claims to self-defence. My analysis of cases where
women have relied on self-defence (successfully or unsuccessfully) reveals the barriers
that women have encountered arguing that their act of self-preservation amounts to an act
of lawful self-defence.

Ultimately this chapter concludes in favour of statutory amendment to the defence of self-
defence to ensure that the defence of self-defence can be sensitively applied to the cases
of battered women who kill.

vii) Chapter Seven

While Chapters Three to Six have addressed the substantive law of homicide and the
defences to murder, Chapter Seven focuses on the procedural rules of evidence. In
particular, this chapter develops my argument that successful reliance on self-defence
depends on conveying to the jury the reality of a woman’s experience of violence. This
chapter examines the way in which the substantive rules of self-defence, the rules of
evidence and practical construction of relevance interact to constrain a battered woman’s
ability to convey her account of violence, danger and necessity to the jury. My analysis
seeks to challenge the traditional way in which evidence of the accused’s personal history
is presented and constructed in cases where battered women kill to make clear the reasonable necessity of their actions.

In elucidating the circumstances that exist in cases where battered women kill, the current approach is reliance on 'battered woman syndrome' (BWS). My critique highlights the deficiencies of BWS evidence and concludes that it is counterproductive as a device by which to educate judges and juries in cases where women kill their violent partners. It works against the efforts of defence counsel to make apparent the reality of the accused’s situation. In attempting to highlight the significance of the accused’s account (and that of other witnesses) of her actions in self-defence, I advocate the use of social framework evidence. This conclusion is shared by many other feminist writers. My analysis, however, has a fundamental difference from much of the previous feminist writing in relation to BWS.

Other feminist writers have critiqued BWS and have identified concerns with reliance on BWS, but there has been a reluctance to advocate its wholesale rejection as the evidentiary model. As a result, feminist efforts have been directed to the manipulation of the BWS model so that evidence of social framework can be admitted under the guise of BWS evidence. In other words, while feminists have recognised the utility of social framework evidence, the conceptual framework relied on for its admissibility remains that of BWS evidence. My approach is quite different. My contention is that there needs to be a shift from reliance on BWS to the reception of social framework evidence in its own right. In advancing this argument, I provide a unique in-depth consideration of the potential to use social framework evidence in cases where battered women kill - separate from BWS evidence.

viii) Chapter Eight

In Chapter Eight, a comprehensive understanding of the criminal justice system’s response to women who kill their violent partners is facilitated by focusing on the exercise of the sentencing discretion in cases where female offenders have been convicted of murder and manslaughter. While the legal outcome (a conviction for murder or manslaughter) provides the parameters for the account of the killing as retold by the
sentencing judge, it is the judge's selection, interpretation and reconstruction of the facts that is telling. My assertion is that judicial attitudes towards women who kill their violent partners, as evidenced in sentencing comments, has considerable relevance to understanding the broader issues connected with the treatment of women who kill their violent partners by the criminal justice system.

This chapter provides a detailed examination of the operation of the sentencing discretion in cases where women kill their violent partners. The analysis provides a unique and valuable insight into the practical operation of the sentencing discretion, there being limited other research in this area. My analysis suggests that the current approach to sentencing battered women who kill is premised on notions of mercy and sympathy to women who can position themselves as an 'appropriate' victim. This analysis reinforces the feminist claim that conformity with appropriate gender stereotypes - pathology, inability to act and domesticity - is fundamental to a woman's claims to sympathy. In order to more appropriately recognise the circumstances in which women kill their violent partner, I recommend a more principled approach based on the acknowledgement the accused's motive for using fatal violence as a response to the history of violence inflicted by the deceased. In addition, I argue for the abolition of mandatory sentencing for murder in order to facilitate reliance on self-defence at trial.

20 In relation to the importance of the analysis of sentencing to the broader feminist project, Lacey's comments that 'a contextualisation of the conceptual framework of criminal law doctrine within the substantive offences is not a sufficient basis for a fully developed feminist analysis of criminal law ... From a feminist point of view, the interpretative and enforcement contexts are also necessary components in any full analysis of the role of criminal law in constituting sexual difference. For the relevant question is not only how sexual difference is represented in doctrinal rules and categories, but how it is enacted in the enforcement of those legal arrangements; how people with male and female bodies or social identities ... are inserted into the relevant doctrinal categories. If we take the question of law's creation of sexed subjects seriously, therefore, we cannot restrict our view to legal doctrine; we also have to look at legal reasoning in actual cases and at evidence about who is prosecuted for what offences, how they and witnesses to alleged offences are treated in court and how they are sentenced and punished', N Lacey, 'General Principles of Criminal Law? A Feminist View', in D Nicolson & L Bibbings (eds), Feminist Perspectives on Criminal Law, London: Cavendish Publishing Limited, 2000 at 98.
Chapter One

SETTING THE SCENE – SPOUSAL HOMICIDE

1.1 INTRODUCTION

An appreciation of the issues raised in my thesis requires a relatively comprehensive understanding of spousal homicide. It is important to appreciate that homicide (as with violence generally) is gendered, and that the judicial treatment of women who kill their male partners needs to be placed in this broader context. This chapter aims to contextualise the actions of women who kill their partners by providing information about the broader context of spousal homicide in Australia, especially the gender and cultural factors revealed in the homicide statistics. Aside from the gender disparity revealed in the incidence of spousal homicide, this chapter highlights the fundamental difference in the circumstances and motivation for women who kill their partners compared to men who kill their partners. Importantly, for the purposes of my thesis, this discussion shows the relationship between domestic violence and spousal homicide.

In this thesis, my interest is to explore the relationship between the circumstances in which women kill and the outcome of their case, so in the final part of this chapter I examine the legal outcomes in cases of spousal homicide. In this context, I outline the findings of previous studies, as well as the legal outcomes of the cases identified in my research. I include the legal outcomes for both male and female offenders to provide a broader perspective for the arguments developed in my thesis. However, the focus of my research remains the treatment of female offenders who kill their male partners.
1.2  INCIDENCE OF SPOUSAL HOMICIDE

Although the prevalence of domestic violence is difficult to determine precisely,¹ homicide between current and former spouses (married or defacto) provides a 'public' face for this 'private' violence. In Australia, homicides between sexual intimates or partners account for approximately one-fifth of all homicides.² The Australian Institute of Criminology (AIC) paper *Homicide between Intimate Partners in Australia*³ provides a comprehensive analysis of homicide incidents in Australia between 1 July 1989 and 30 June 1996, using data held as part of the National Homicide Monitoring Program. During that period, 416 of the 2024 homicide incidents where the offender was known, involved homicide between current or former spouses (legal and defacto).⁴ On average, 68 homicides occur each year where both the victim and offender are current or former spouses (legal or defacto). This amounts to nearly three killings every fortnight.

1.2.1  GENDER

As with homicide generally, homicides committed in a domestic context reflect the fundamental masculinity of homicide. The AIC homicide research provides an overview of the findings from a larger study of the intentional killing of adult women that occurred between 1989 and 1998. The AIC research provides valuable insight into the gendered nature of homicide, as well as the gendered

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¹ See 2.2.
³ C Carcach & M James, *ibid*.

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nature of spousal homicide. In terms of homicide generally, the AIC homicide research found that men are more likely than women to kill or to be killed. The AIC analysis identified 3045 homicide victims – 1125 (37%) of whom were female and 1913 (63%) of whom were male. The gender differentiation of homicide is even more pronounced in the case of homicide offenders. In cases where gender was known, male offenders accounted for 88.6% of all homicide offenders. This research found that women are more likely to be a victim of homicide than the offender. In the small number of cases when women do kill, the victim is usually a family member.

An examination of the relationship between offender and victim reveals the differentiation of the risk of intimate homicide between males and females. The AIC homicide research found that while men are more likely to be killed by a friend or acquaintance (non-intimate) (45%) or by a stranger (45%), almost 60% of women were killed by an intimate partner. It appears that the female is most at risk in the context of spousal homicide in Australia. The AIC homicide research found male offenders killed their female partner in 77.4% of homicides between current or former spouses (married or defacto). This figure confirms the findings of previous research. As Mouzos notes, '[s]tudy after study has confirmed ... that women are most at risk of homicide victimisation by an intimate partner'. In addition, evidence suggests that, within the category of

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4 See ibid at 2 (Table 1).
6 The gender was unknown in seven cases.
8 Ibid at 10.
9 Ibid at 11.
10 See C Carcach & M James, above n 2 at 2 (Table 1). In the United Kingdom, Wells observes that 'women comprise just under one-third of all homicide victims but there are more than twice as many female victims of partner-homicide as male', C Wells, 'Provocation: The Case for Abolition', in A Ashworth & B Mitchell (eds), *Rethinking English Homicide Law*, Oxford: Oxford University Press, 2000 at 93. As Mouzos observes, this pattern is reflected in international research reports. In Canada, 4 out of 5 spousal victims were women, J Mouzos, *Homicidal Encounters A Study of Homicide*, above n 2 at 115.
intimate homicide, the proportion of females killed by their male partner is increasing. Alarmingly, a New South Wales study investigating the homicide incident rate between 1968 and 1992 observed ‘that, while spousal homicides [were] ... not increasing in frequency, the percentage of female victims [was] ... increasing relative to male victims’.12

1.2.2 CULTURAL/RACIAL

Homicides in the intimate context are likely to be of an intra-racial nature.13 Intimate homicide is not culturally/racially specific and occurs between partners of all cultural/racial groups. However, studies have shown that racial appearance is a factor associated with differential homicide mortality. In the AIC homicide studies, the classification of offenders and victims according to racial appearance was based on police records. There are limitations in relying on the data contained in police records. Ethnicity may not be recorded in police records,14 and if recorded, assessments are based on the subjective determination of the police.15 Nevertheless, the findings of the AIC studies conform to other evidence in relation to the extent of domestic violence, and domestic homicide within Indigenous communities.16

The 1998 AIC study found ‘[h]omicide incidents where both the offender and the victim are of Aboriginal or Torres Strait Islander racial appearance are

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13 See J Mouzos, Femicide: The Killing of Women, above n 7 at 20 – 21. Although see the research conducted by Cunneen and Stubbs in relation to the killing of Filipino women: C Cunneen & J Stubbs, Gender, Race and International Relations: Violence Against Filipino Women in Australia, Sydney: Institute of Criminology, 1997.
15 For the purposes of the National Homicide Monitoring Program, the categories used for racial appearance are Caucasian, Aboriginal and Torres Strait Islanders, Asian and Other. Mouzos notes that the categories used for racial appearance used by the National Homicide Monitoring Program ‘are not a perfect measure of ethnicity, or even of race, as they are based on subjective assessments made by police and are not immune from errors or inconsistencies’, J Mouzos, Femicide: The Killing of Women, above n 7 at 19.
16 See 2.4.
almost twice as likely to involve intimate partners as other homicide incidents.17 The AIC 1999 study expands this understanding by showing that the risk of intimate homicide was greater for Aboriginal/Torres Strait Islander women than for Caucasian or Asian women. The 1999 AIC study found that Aboriginal/Torres Strait Islander femicide victims were killed by an intimate partner in 75.4% of cases. In contrast, an intimate partner killed 54.2% of Caucasian and 51% of Asian femicide victims.18 The risk of intimate homicide was also greater for Aboriginal/Torres Strait Islander men who ‘were twice as likely (21.7%) as Caucasian men (10.2%) to be killed by an intimate partner’.19 In cases when Indigenous women killed, ‘just under three-quarters of their victims were male intimate partners’.20 In contrast, only 44% of non-Indigenous female homicide offenders killed their male intimate partner.21 Research suggests that the homicide levels are not constant throughout the Indigenous population: Martin has found that high homicide levels are more concentrated in remote communities.22

There are suggestions in the National Crime Prevention report Violence in Indigenous Communities23 that the extent of Indigenous domestic homicide may be even greater than official statistics reveal. The report suggests that the official statistics exclude deaths following long-term domestic violence by attributing the death to another immediate cause, such as renal or liver failure.24 This

17 C Carceach & M James, above n 2 at 6. There have been several recent reports that have investigated violence in Indigenous communities, including violence against women, see: P Memmott et al, Violence in Indigenous Communities: Report to Crime Prevention Branch of the Attorney-General’s Department Full Report, Canberra: Commonwealth of Australia, 2001; Aboriginal and Torres Strait Islander Women’s Task Force on Violence, Aboriginal and Torres Strait Islander Women’s Task Force on Violence Report, Brisbane: Queensland Government (Department of Aboriginal and Torres Strait Islander Policy and Development), 2000; H Blagg, Crisis Intervention in Aboriginal Family Violence: Summary Report, Canberra: Commonwealth of Australia, 2000.
18 J Mouzos, Femicide: An Overview, above n 5 at 3.
19 Ibid at 4.
21 Ibid.
23 P Memmott et al, above n 17.
24 Ibid at 39.
obscures the ‘a history of long-term violent abuse culminating in death from multiple causes’. 25

In contrast to Aboriginal/Torres Strait Islanders, Australian homicide research suggests that there is not an over-representation of persons identified as Asian as either offenders or victims of homicide. 26 However, research suggests that a disproportionate number of men who kill their wives are drawn from the migrant population. 27 This over-representation did not apply to women who kill their male partners. 28 There is limited Australian research into spousal homicide in the context of specific ethnic groups. An exception is the research undertaken by Cunneen and Stubbs, which suggests that Filipino women residing in Australia are almost six times more likely than other Australian women to be the victim of homicide, and are typically killed by an intimate partner. 29


28 Ibid.

1.3 CIRCUMSTANCES AND MOTIVATION FOR SPOUSAL HOMICIDE

The gendered nature of spousal homicide extends beyond the frequency with which men and women kill. There are clear gendered divisions in the circumstances and motivation for the killings. Australian research shows that four out of five intimate partner homicides occur as a result of a domestic argument.\(^{30}\) However, there is a fundamental difference in the motive for spousal homicide between male and female offenders. Wilson and Daly have observed that, in Western nations, '[m]en kill in response to revelations of wifely infidelity; women almost never respond similarly, although ... [men] are more often adulterous'.\(^{31}\) In contrast, women who kill their male partners usually do so as an act of self-defence.\(^{32}\)

1.3.1 MEN WHO KILL

Men kill their female partners when they challenge the man’s authority, leave (actual or threatened), or form a new relationship (actual or suspected).\(^{33}\) The AIC homicide studies show that approximately 40% of men who killed their female intimate partner were motivated by desertion, termination of a relationship or jealousy.\(^{34}\) This finding supports the findings of an earlier study of spousal homicide conducted in New South Wales between 1968 and 1981 which found that in nearly half of the wife killings ‘the woman had either left or was in the process of leaving her husband when she was killed’.\(^{35}\) It is apparent that separation is a dangerous time for women. The motivation for men to kill their female partner is ‘as an attempt to exert power and control over them, to

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\(^{30}\) J Mouzos, Homicidal Encounters A Study of Homicide, above n 2 at 116.
\(^{32}\) Ibid.
\(^{33}\) Wells comments that male killers in partner-homicide is ‘about possession and pride, about coercion and control’, C Wells, ‘Provocation: The Case for Abolition’, above n 10 at 93.
\(^{34}\) J Mouzos, Femicide: An Overview, above n 5.
\(^{35}\) A Wallace, above n 27 at 99. See also E Hore et al, Domestic Homicide, Victoria: Family Court of Australia, 1996.
prevent them from leaving or as an expression of jealousy’.\textsuperscript{36} As Polk and Ransom have observed, the notion of possession is ‘the dominant thread that runs through intimate homicide cases’.\textsuperscript{37}

Prior physical violence also appears to be common in relationships where men kill their female partners. Although the prevalence of domestic violence as a background factor is difficult to ascertain, research suggests that there is a ‘high likelihood that where a male offender kills his sexual partner, the act that caused her death was not the first act of violence by the offender against the victim’.\textsuperscript{38}

There is considerable research confirming the link between domestic homicide and domestic violence.\textsuperscript{39} In a study conducted in Victoria between 1987 and 1990 by Hore, Gibson and Bordow, it was found from an examination of coronial records and Family court files, that in 49% of the spousal homicide cases there was a prior history of domestic violence. In an in-depth study of Victorian and New South Wales cases between 1988 and 1990, Easteal found that there was a history of violence in 82% of homicides between intimates.\textsuperscript{40} Information recorded in the National Homicide Monitoring Program (from 1996-97 onwards) also enables access to data concerning the existence of a prior history of domestic violence in cases of intimate homicide. The 2000 AIC homicide research reported that in 30% of intimate homicide cases there was documented evidence of a prior history of domestic violence. Although this percentage is not as high as found in other studies,\textsuperscript{41} Mouzos observes that the evidence of the prior history of violence is drawn only from police records, and so the figure is likely to be conservative due to the under-reporting of domestic


\textsuperscript{39} See J Mouzos, Homicidal Encounters A Study of Homicide, above n 2 at 118. See also A Wallace, above n 27; P Easteal, Killing the Beloved, above n 29; E Hore et al, above n 35.

\textsuperscript{40} P Easteal, Killing the Beloved, ibid at 74.

\textsuperscript{41} Refer to references at n 38.
violence.\textsuperscript{42} The 2000 AIC homicide research found that the victim was female in 4 out of 5 of intimate homicide cases where there was evidence of a prior history of domestic violence.\textsuperscript{43}

1.3.2 WOMEN WHO KILL

In contrast to the motivation for male spousal offenders, possession rarely motivates women to kill their male partners.\textsuperscript{44} The motivation for the killing is predominantly self-preservation.\textsuperscript{45} The typical scenario where women kill their male partner is that the killing follows a history of physical abuse by her male partner.\textsuperscript{46} Several studies have found that in a significant proportion of cases where women kill their partner, women have been the victim of a history of violence and/or a physical attack immediately before the killing.\textsuperscript{47} The 2000 AIC homicide research\textsuperscript{48} found that '[t]ypically, when women kill a male intimate partner, they kill someone with which they have experienced a long history of violent conflict'.\textsuperscript{49} Easteal's study found that when a female killed her male partner, 10 out of the 11 women had experienced a history of violence before the homicide.\textsuperscript{50} In Wallace's study, it was found that there was a history of violence in 70% of cases where women killed their husbands, and that over half of the

\textsuperscript{42} J Mouzos, Homicidal Encounters A Study of Homicide, above n 2 at 119. The figure also does not contain evidence of the extent of prior psychological abuse, see J Mouzos, Homicidal Encounters A Study of Homicide, above n 2 at 121 - 122.
\textsuperscript{43} Ibid at 119.
\textsuperscript{44} See K Polk & D Ranson, 'The Role of Gender in Intimate Homicide', above n 37 at 22. See also K Polk & D Ranson, 'Homicide in Victoria', above n 2 at 76-78; K Polk, 'Homicide: Women as Offenders', in P Easteal & S McKillop (eds), Women and the Law, Canberra: Australian Institute of Criminology, 1993 at 159; Wallace, above n 27 at 101.
\textsuperscript{45} K Polk & D Ranson, 'The Role of Gender in Intimate Homicide', ibid at 23.
\textsuperscript{46} Wallace reported that in 70% of cases where women killed their husbands, there was evidence of prior physical abuse by the husband, A Wallace, above n 27 at 97. See W Bacon & R Lansdowne, 'Women who Kill Husbands: the Battered Wife on Trial', in C O'Donnell & J Craney (eds), Family Violence in Australia, Melbourne: Longman Cheshire, 1982 at 71; K Polk, When Men Kill: Scenarios of Masculine Violence, above n 38 at 146.
\textsuperscript{47} See A Wallace, above n 27; K Polk & D Ranson, 'The Role of Gender in Intimate Homicide', above n 37; P Easteal, Killing the Beloved above n 29; W Bacon & R Lansdowne, Women Homicide Offenders in New South Wales: Report for the Feminist Legal Action Group (NSW) 1982; S Tarrant, 'Something is Pushing them to the Side of their own Lives: A Feminist Critique of Law and Laws' (1990) 20 University of Western Australia Law Review 573.
\textsuperscript{48} J Mouzos, Homicidal Encounters A Study of Homicide, above n 2.
\textsuperscript{49} Ibid at 131.
\textsuperscript{50} P Easteal, Killing the Beloved, above n 29 at 74 - 75.
women killed in response to an immediate threat or attack by their male partner.\textsuperscript{51}

The existence of a history of physical violence before the homicide in cases where women kill their male partners is confirmed in my research. As Table 1.1 shows, there was a history of physical violence in 65 out of 76 cases (86\%) identified between 1980 and 2000. In another two cases, there was evidence of physical violence by the woman’s male partner preceding the homicide. However, it was not possible to determine whether this was a ‘once-off’ attack or if it formed part of a history of abusive treatment.\textsuperscript{52} In two further cases there had been a history of emotional abuse, however, there was no evidence provided of physical abuse.\textsuperscript{53}

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
OUTCOME & CASES (no) & HISTORY OF VIOLENCE (no) \\
\hline
Acquittal & 10 & 10\textsuperscript{54} \\
Not guilty by reason of insanity & 1 & 1\textsuperscript{55} \\
Manslaughter - provocation & 22 & 22\textsuperscript{56} \\
Manslaughter - intent & 31 & 23\textsuperscript{57} \\
Manslaughter - diminished responsibility & 2 & 0 \\
Murder & 7 & 6\textsuperscript{58} \\
Other cases & 3 & 3\textsuperscript{59} \\
Total & 76 & 65 \\
\hline
\end{tabular}
\caption{Violence in the relationship before the homicide by legal outcome}
\end{table}

Research also suggests that women who experience repeated domestic violence may not respond violently at the time of the attack\textsuperscript{60} and so may kill in non-confrontational situations.\textsuperscript{61}

\textsuperscript{51} A Wallace, above n 27 at 97.
\textsuperscript{52} Edwards; unreported, CCA NSW, 2 Aug 1995; Sheppard, unreported, SC SA, 26 Aug 1992.
\textsuperscript{53} These cases were both: manslaughter cases based on a finding of lack of intent for murder.
\textsuperscript{55} Gadd; Hickey; Kontinnen; R; Secretary; Stephenson; Stjernqvist; Zyszc; Terare.
\textsuperscript{56} Gonnas.
\textsuperscript{57} Bradley; Chiaey; Collingburn; Cornick; Denney; Franke; Gardner; Gilbert; Hill; King, SC NSW, 1998; M; McIntrye; Morabito; Rabey; Rose; Simington and Saunders; Simon; Spencer; Taylor; Vanders; Whalen; Young.
\textsuperscript{58} Birch; Bobach; Bogumovich; Brauer; Britten; Broadrick; Buzzacott; Coupe; Henschke; Hona; Kennedy, SC NSW, 2000; Kennedy, SC NSW, 1998; Manning; Moore, CCA NSW, 1998; Nichols; Owen; Ratcliffe; Rigney; Roberts; Rogers; Sharpe; Varagnolo; Woolsey.
\textsuperscript{59} Agostinelli; Barrett; Bourke; Merritt; Osland; Seddon.
\textsuperscript{60} Van den Hoek; Falconer; Kina.
1.4 LEGAL OUTCOME IN CASES OF SPOUSAL HOMICIDE

Previous Australian research has shown that women who kill their male partners are most likely to be convicted of manslaughter. In Eastal’s study of homicides between adult sexual intimates in Victoria and New South Wales between 1988 and 1990, it was found that 65% of women were convicted of manslaughter, 15% were found not guilty, 5% were convicted of murder and no bill was filed in 15% of cases. Eastal’s research indicates that convictions for men who kill their female partners appear to be divided fairly evenly between murder and manslaughter. The study found that 41% of men were convicted of murder, 43% convicted of manslaughter, 7% successfully relied on insanity, 5% were found not guilty and no bill was filed in 4% of cases.

The findings of Eastal’s Australian research are supported by English spousal homicide studies. In Chan’s investigation of fifty English spousal homicide cases (25 male offenders and 25 female offenders) 4% of females were found not guilty, 84% were convicted of manslaughter and 12% were convicted of murder. In the cases involving male offenders, 64% were convicted of manslaughter and 36% were convicted of murder.

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63 Wallace found that 48% of the husband killings did not occur in response to ‘an immediate threat or attack by the victim’, A Wallace, above n 27 at 97. However, the converse of this is that 52% did kill in response to ‘an immediate threat or attack by the victim’. In the United States, see C Ewing, Battered Women Who Kill, USA: D A Heath and Company, 1987 at 157 n 27.

64 P Eastal, Killing the Beloved, above n 29 at 115. This study involved 20 female offenders. It is noted that no bill is the same as nolle prosequi. See also H Donnelly et al, above n 38 at 42 – 46. The study conducted by the Judicial Commission of New South Wales found that all nine female offenders convicted in respect of killing their male partner were convicted of manslaughter, H Donnelly et al, above n 38 at 43 – 46.

65 P Eastal, ibid at 115. This study involved 56 male offenders.

66 It is noted that the female offenders were identified between 1986 – 1991 and the male offenders were identified between 1988 – 1991, see W Chan, Women, Murder and Justice, Hampshire: Palgrave, 2001 at 43 – 45. Chan’s sample was obtained by requesting 50 case files (25 male defendants and 25 female defendants) involving homicides between spouse, cohabitants, former spouses or former cohabitants from the Crown Prosecution Service.

67 Ibid at 53. See also C Wells, 'Battered Woman Syndrome and Defences to Homicide: Where Now?' (1994) 14 Legal Studies 266, where Wells notes that ‘of the 200 females charged with murder following a domestic killing between 1984 and 1992, 46 were acquitted altogether, 14 on the grounds of self-defence, and the remainder on unknown or other grounds; 43 were convicted.
Previous research has also considered the basis for the manslaughter conviction in cases where women kill their male partner. The Judicial Commission of New South Wales study of sentenced homicides between 1990 and 1993 found that of the nine female offenders convicted of manslaughter in respect of killing their male partner, five relied on provocation, three on the lack of the necessary intent for murder and one on the defence of diminished responsibility.  

The basis of the manslaughter conviction has also been the subject of investigation in England. In Chan's study, there were 21 female offenders and 16 male offenders convicted of manslaughter in respect of killing their spouse. Diminished responsibility was the defence successfully relied on most frequently for both female and male offenders who were convicted of manslaughter (43% of female offenders and 81% of male offenders). Female offenders successfully relied on provocation in 29% of cases and no intent to kill in 24% of manslaughter cases. Male offenders successfully relied on no intent to kill in 12% of manslaughter cases.

In Lloyd's analysis of the English Home Office statistics between 1983 and 1991, it was found that women who were found guilty of manslaughter in respect of a domestic killing used the defence of diminished responsibility in 33% of cases, the defence of provocation in 34% of cases and 33% of women relied on the lack of the necessary intention for murder. Men who were found guilty of manslaughter in respect of a domestic homicide used the defence of diminished responsibility in 47% of cases, the defence of provocation in 32% of cases and 21% relied on no intention to kill.

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of manslaughter on grounds of diminished responsibility, 29 on provocation and 26 on other (lack of intent) and 55 on grounds unknown at 267 – 268.

66 W Chan, above n 64 at 53.

67 H Donnelly et al, above n 38 at 45 – 46. It is noted that in two of the provocation cases, there was also evidence of diminished responsibility.

68 W Chan, above n 64 at 53. In one further case, the basis of the manslaughter conviction is not clear.

69 Ibid. In one further case, the basis of the manslaughter conviction is not clear. Three male offenders unsuccessfully attempted to rely on the defence of provocation, Ibid at 52.


71 Ibid at 89.
The findings of my research are broadly consistent with previous research. I found that women were most likely to be convicted of manslaughter and men were more likely to be convicted of murder. There were 147 cases identified across my research in which a male killed his female partner, and the case proceeded to a Supreme Court. Table 1.2 shows the outcomes of these cases.\textsuperscript{72} There were 76 cases identified across my research in which a female killed her male partner, and the case proceeded to a Supreme Court.\textsuperscript{73} Table 1.3 shows the outcome of the cases.

1.4.1 MEN WHO KILL

Excluding the six cases in which the ultimate outcome was unknown,\textsuperscript{74} 38% were convicted of manslaughter (54), 61% were convicted of murder (86) and 1% was acquitted on the grounds of insanity (1).\textsuperscript{75} Men who were found guilty of manslaughter in respect of a spousal homicide successfully used the defence of diminished responsibility in 28% of cases, the defence of provocation in 28% of cases and 44% relied on no intention to kill.

\textsuperscript{72} Except for the case of Mansfield, unreported, SC Vic, 5 May, 1994 where the accused successfully relied on automatism, I do not have any information in relation to the male offenders who were acquitted in respect of killing their female partner.

\textsuperscript{73} See Introduction at p 3.


\textsuperscript{75} Kina, unreported, SC NSW, 23 May 1996.
Table 1.2 Outcome of case: male offenders

<table>
<thead>
<tr>
<th>OUTCOME</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plea of guilty - manslaughter (provocation)</td>
<td>7</td>
</tr>
<tr>
<td>Guilty at trial - manslaughter (provocation)</td>
<td>8</td>
</tr>
<tr>
<td>Plea of guilty - manslaughter (intent)</td>
<td>15</td>
</tr>
<tr>
<td>Guilty at trial - manslaughter (intent)</td>
<td>9</td>
</tr>
<tr>
<td>Plea of guilty - manslaughter (diminished responsibility)</td>
<td>11</td>
</tr>
<tr>
<td>Guilty at trial - manslaughter (diminished responsibility)</td>
<td>4</td>
</tr>
<tr>
<td>Plea of guilty - murder</td>
<td>20</td>
</tr>
<tr>
<td>Guilty at trial - murder</td>
<td>64</td>
</tr>
<tr>
<td>Unclear - murder</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
</tr>
</tbody>
</table>

1.4.2 WOMEN WHO KILL

Excluding the two cases where the ultimate outcome is unknown and the case of *Kina*, where the accused’s appeal against her murder conviction was successful on the ground that there had been a miscarriage of justice, 14% of women were acquitted (10), 75% convicted of manslaughter (55), 10% convicted of murder (7) and 1% acquitted on the grounds of insanity (1). My

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76 Button; Foulstone; Godwin; Panizzo; Prasad; Wilson; Wright.
77 Atai; Alexander; Auberson; Crosson; Davies; Do; Khan; Low.
78 Baker; SC SA, 1985; Botriell; Donnelly; Elder; Finn; SC SA, 1992; Harris; Lambadgee; Milera; Nardoni; Pashalay; Peters; Ryan; Smith; Tjami; Wastley.
79 Lapoi; McMillian; Moore; CCA NSW, 1991; Nettles; Olig; Reynolds; Shaw, SC SA, 1987; Sherry; Whiting.
80 Bateman; Bourke; El; Jans; Kable; Kontaxakis; Laurie; McKeen; Nixon; Shephard, CCA NSW, 1991; Sokol.
81 Brown; Bryant; Keeseksi; Miguel.
82 Baker, CCA NSW, 1995; Baker, SC SA, 1985; Barac; Brady; Case; Cheung; Dodd; Donnelly; Gerrard; Humph; Kershow; Lovee; McKeron; Murphy; Shaw, CCA SA, 1996; Strong; Towns; Webb; Wijen; Zubrinich.
83 Anas; Anderson; Arrowsmith; Atik; Audsley; Axfor; Baker, SC Vic, 1988; Baragith; Barnes; Berige; Brescia; Bruederlin; Buitigeng; Capar; Carroll; Chetcuti; Clarke; Cook; Corrigan; Croft; Dundas; Edwards, CCA NSW, 1995; Everett; Fiume; Frawley; Giliard; Glusheki; Hanley; Heor; Hering; Holtscher; Horrell; Hughes; Kalajzich; Keir; King, CCA NSW, 1998; Leadman; Leonard; Light; Lubis; Majdalawi; Manly; Maxwell; Menreal; Obholz; Parsons, CCA Vic, 2000; Parsons, SC ACT, 1985; Perich; Perks; Puchalski; Ritchie; Rosevare; Sadler; Saffrel; Street; Surace; Suitcliffe; Telford; Tumanako; Tuncay; Twala; Van Truong; Walton; Wiridum.
84 Jones.
85 In these cases, there was a successful appeal against a murder conviction: Cheatham; Hutton; Middleton; Robertson; Ritter; Rudownikowsk and Rushton. In Kina, SC NSW, 1996, the accused was found not guilty on the ground of mental illness following a trial by judge alone.
87 Unreported, CA Qld, 29 Nov 1993.
88 It is noted that this figure may be conservative due to the difficulty locating cases where the accused has been acquitted.
89 This includes three cases where the accused was convicted of manslaughter following a successful appeal: Chhay (1994) 72 A Crim R 1; Hill (1981) 3 A Crim R 397; Finn unreported, CA Qld, 4 Feb 1994.
findings differed from English research in terms of the basis for the manslaughter conviction. In contrast to English studies which found that diminished responsibility was the defence most frequently successfully relied upon, I found that women who were found guilty of manslaughter in respect of a spousal homicide successfully used the defence of diminished responsibility in only 4% of cases.90 Women successfully relied on the defence of provocation in 40% of cases and 56% of women relied on no intention to kill.91

Table 1.3 Outcome of case: female offenders

<table>
<thead>
<tr>
<th>OUTCOME</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquittal</td>
<td>10</td>
</tr>
<tr>
<td>Plea of guilty - manslaughter (provocation)</td>
<td>10</td>
</tr>
<tr>
<td>Guilty at trial - manslaughter (provocation)</td>
<td>10</td>
</tr>
<tr>
<td>Plea of guilty - manslaughter (intent)</td>
<td>22</td>
</tr>
<tr>
<td>Guilty at trial - manslaughter (intent)</td>
<td>8</td>
</tr>
<tr>
<td>Plea of guilty - manslaughter (diminished responsibity)</td>
<td>1</td>
</tr>
<tr>
<td>Guilty at trial - manslaughter (diminished responsibility)</td>
<td>1</td>
</tr>
<tr>
<td>Plea of guilty - murder</td>
<td>5</td>
</tr>
<tr>
<td>Guilty at trial - murder</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>7</td>
</tr>
</tbody>
</table>

90 This figure applies to cases in all Australian jurisdictions. However, diminished responsibility is not a defence in all Australian jurisdictions. If manslaughter disposition is examined in those jurisdictions were diminished responsibility is available as a defence (NSW, Qld, ACT and NT), then diminished responsibility was successfully used as a defence in 6% of cases.

91 My analysis of lack of intent cases does not include cases where the basis of the manslaughter conviction was criminal negligence. It is noted that in two cases, where the provocation plea was accepted, there was also reference to diminished responsibility. See Gadd-er, unreported, SC NSW, 27 Mar 1992; Spencer, unreported, SC NSW, 18 Dec 1992.

92 Gadd; Hickey; Kontinnen; Lock; R (this was an appeal concerning the defence of provocation. On the retrial, the jury acquitted the accused even though self-defence was not left to the jury); Secretary; Stephenson; Stjernqvist; Terare; Zysec.

93 Franke; Gardner; King, SC NSW, 1998; M; McIntyre; Simon; Spencer; Taylor; Vålen; Young.

94 Bradley; Collingburn; Cornick; Denney; Gilbert; Morabito; Ruby; Rose; Simington and Saunders; Vandersee.

95 Birch; Bobach; Bogunovich; Brauer; Britten; Broadrick; Edwards, CCA NSW, 1996; Henschke; Hondo; Kennedy, SC NSW, 2000; Kennedy, SC NSW, 1998; Manning; Moore, CCA NSW, 1998; Owen; Rigney; Roberts; Rogers; Sharpe; Sheppard; Varagnolo; Wang; Woolsey.

96 Babsek; Billeby; Buzzacott; Coupe; Goddard; Kelly; Nichols; Ratcliffe.

97 Lalor.

98 Troja.

99 Agostinelli; Barrett; Bourke; Merritt; Seddon.

100 Ostad; Woodruff.

101 Hill; Chhay; Van den Hoek; Gomaas; Falconer; Finn; Kina, CA Qld, 1993.
1.5 CONCLUSION

This chapter provides a comprehensive overview of spousal homicide in Australia. It outlines its incidence, and shows the gendered nature of all homicide, and particularly spousal homicide. The judicial treatment of women who kill their partners needs to be viewed in light of the infrequency with which women kill. Homicide statistics show that men are more likely to kill and to be killed, while women are more likely to be a victim of homicide than an offender. In the small number of cases when women do kill, the victim is usually a family member. In the context of spousal homicide, women are most at risk of fatal violence. Men kill their female partner in 77.4% of homicides between current or former spouses (married or de facto). In contrast, women killed their male partner in 22.6% of homicides between current or former spouses (married or de facto). As well as the clear gender division in spousal homicide, research suggests that racial appearance is a factor associated with differential homicide mortality. Australian research indicates that the incidence of spousal homicide is higher for Indigenous people than the broader Australian community.

There is also a fundamental difference in the motivation and circumstances of spousal homicide apparent between male and female offenders. Australian and overseas studies have shown that men kill their intimate partners in the context of separation, jealousy and infidelity. Men’s fatal violence against their partner is an expression of power and possession. In contrast, women who kill their male partners usually do so as an act of self-preservation. My research confirms previous studies that have shown that the typical scenario in which women kill their male partner is that the killing follows a history of physical abuse by her male partner. I found that there was a history of physical violence by the male partner towards the woman in 86% of cases where women killed their male partner. This discussion provides a factual basis for my consideration of relationship between a history of violence and the assessment of a woman’s criminal responsibility for homicide. In particular, it is relevant to my analysis of the operation of the defence of self-defence in Chapter Six.
This chapter has shown that women are most frequently convicted of manslaughter (rather than murder), with the most common basis for a manslaughter conviction being the lack of the necessary intention for murder (56%). Women were acquitted in 14% of cases. This discussion of legal outcomes provides a broad framework for the development of my arguments in subsequent chapters, where I explore in detail the relationship between the circumstances in which women kill and the legal outcome of their case.