Chapter Two

FILLING IN THE PICTURE - THE BACKDROP OF DOMESTIC VIOLENCE

2.1 INTRODUCTION

In view of the relationship between spousal homicide and domestic violence,\(^1\) a study of spousal homicide necessarily requires an appreciation of domestic violence. This chapter aims to provide this information, and the focus of my discussion is on matters relevant to the arguments developed in my thesis.

This chapter provides an overview of the existing literature in relation to the prevalence and nature of domestic violence, including the gender and cultural factors revealed by this literature. My discussion of the nature of domestic violence is particularly important to the arguments advanced in this thesis as the conceptual framework of domestic violence advanced in this chapter informs the arguments advanced in subsequent chapters. In particular, in this thesis, I argue that spousal homicide committed in response to a history of domestic violence is fundamentally different from conduct properly classifiable as 'domestic violence'.

Importantly for the purposes of my research, this chapter then addresses women's responses to domestic violence and considers the barriers associated with women's disclosure of violence and/or leaving a violent partner. This includes consideration of the cultural/racial factors that impact on women's options for dealing with domestic violence. It is important to recognise that while women who experience domestic violence in Australia share some similar experiences, there are particular features that create further difficulties for Indigenous and ethnic women.

\(^1\) See 1.3.
2.2 INCIDENCE OF DOMESTIC VIOLENCE

The extent of domestic violence within Australia is difficult to accurately determine as the violence rarely takes place in public, and it is notoriously under-reported. Despite the difficulty in quantifying the extent of domestic violence, recent Australian studies have used a number of different approaches to attempt to ascertain an estimate of the problem. These include records from police; records from other service providers (for example, hospital or social service data); victim surveys; and crime statistics.

The Women’s Safety Survey, conducted by the Australian Bureau of Statistics (ABS) in 1996, randomly surveyed approximately 6300 women aged 18 or older across Australia about their experiences of physical or sexual violence. The aim of the survey was to provide national data on violence against women, in particular to provide national estimates of the nature and extent of violence experienced by women. Based on the survey results, the ABS found that 23% of women who had ever been married or in a de facto relationship had experienced violence by a partner at some time during their relationship. The ABS indicated that:

2.6% of women who were married or in a de facto relationship ... experienced an incident of violence by their partner in the previous 12 month period, while 8.0% ... reported an incident of violence at some time during their current relationship.

The proportion of women who had experienced an incident of violence during a previous relationship was higher than those who experienced an incident of violence at some time during their current relationship. The ABS found that 42% of women who had been in a previous relationship had experienced an incident of violence in

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5 Ibid at 50.
6 Ibid.
that relationship (compared to 8% of women who reported violence from a current partner during the relationship).\textsuperscript{7}

An examination of police records provides information about the prevalence of domestic violence in the Australian community. In a Western Australia study,\textsuperscript{8} Ferrante et al found that 1,253 spousal violence cases were reported to the police in 1994 (1,145 female victims and 108 male victims). Based on these figures, the annual prevalence rates of reported domestic violence was 183.5 per 100,000 adult females and 17.5 per 100,000 adult males.\textsuperscript{9} Restraint order applications were also used by Ferrante et al as a source of data to assist in estimating the prevalence of domestic violence. An examination was made of the 329 restraining order applications lodged at the Perth Central Law Courts in the October and November 1994, to gain estimates of the number of restraint order applications that related to domestic violence. Of the 188 applications that named females as complainants and males as respondents, 51.6% of the applications related to complainants who had a current or former sexual relationship with the defendant.\textsuperscript{10} This accounted for 29.5% of all restraining order applications lodged in the two month period.\textsuperscript{11}

Hospital records provide a further source of data about the prevalence of domestic violence in our community. In Ferrante et al's study, an examination of hospital records revealed that assaults on women in the home accounted for 80% of female

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\textsuperscript{8} A Ferrante et al, above n 3.

\textsuperscript{9} Ibid at 30. Other studies examining police records include, T Robb, Police Reports of Serious Assault in NSW, Sydney: NSW Bureau of Crime Statistics and Research, 1988; Community Law Reform Committee for the ACT Attorney-General, Domestic Violence Report, 1992; J Gardner, Violence Against Women, South Australia: AG's Department of South Australia, Juststats, 1994; Victorian Ministry for Police and Emergency Services, Study of Serious Assaults on Civilians reported to the Victoria Police, Melbourne: Ministry for Police and Emergency Services, 1989.

\textsuperscript{10} A Ferrante et al, ibid at 81 - 82. This includes spousal, de facto, boy/girlfriend, ex spousal, ex de facto, or ex boy/girlfriend.

\textsuperscript{11} Ibid at 82.
admissions for assault (42% for men) and 32% of adult women admissions for injuries relating to crime (25% for men).\textsuperscript{12}

In summary, estimates of the rates and prevalence of domestic violence in Australia differ between studies depending on the manner in which the research was conducted.\textsuperscript{13} However, the available data (including homicide statistics)\textsuperscript{14} indicates that domestic violence is a significant problem in Australia, and that a significant amount of violence against women is perpetrated by their male partner.

2.3 GENDER

Women are predominantly the victims of domestic violence in Australia. In Ferrante et al’s study, it was found that across most of the data sources women were the victims of domestic violence in between 88% and 92% of cases of domestic violence.\textsuperscript{15} The victimisation survey involved 3,061 individual respondents drawn from randomly selected households (1,511 males and 1,550 females), and only three males were identified who were the victims of a violent incident involving a partner.\textsuperscript{16} Police records of reports of spousal violence indicated that females were victims in 91.4% of cases and males in 8.6% of cases.\textsuperscript{17}

The gendered nature of domestic violence found in Ferrante et al’s study is consistent with findings in other victimology surveys,\textsuperscript{18} as well as the homicide statistics.\textsuperscript{19}

\textsuperscript{12} Ibid at 89. The limitations in the data mean that these figures include injuries caused by partners and ex-partners, other family member and friends in the home. It does not include partner violence that does not occur in the home. Other studies that have used hospital records include, L Bates et al, 'Domestic Violence Experienced by Women Attending an Accident and Emergency Department' (1995) 10 Australian Journal of Public Health 293; G Roberts, 'Domestic Violence Victims in Emergency Departments', in D Chappell & S Egger (eds), Australian Violence: Contemporary Perspectives II, Canberra: Australian Institute of Criminology, 1995; J Sherrard et al, Domestic Violence Patterns and Indicators, Melbourne: Accident Research Centre, Monash University, 1996.

\textsuperscript{13} See discussion in D Bagshaw & D Chung, Women, Men and Domestic Violence: University of South Australia, 2000.

\textsuperscript{14} See 1.2.

\textsuperscript{15} A Ferrante et al, above n 3 at 104.

\textsuperscript{16} Ibid at 63.

\textsuperscript{17} Ibid at 29.

\textsuperscript{18} See Australian Law Reform Commission, Domestic Violence, above n 7 where 98% of callers were women at 7. In the Western Australian Task Force survey, 92% of respondents were women, see: Task Force on Domestic Violence to the Western Australian Government, above n 7 at 215, and the Queensland domestic violence Task Force 94% of respondents were women, see: Queensland Domestic Violence Task Force, above n 7 at 13.

\textsuperscript{19} See 1.2.1.
Research conducted in the Northern Territory that relied on reports of domestic violence made to 28 government and non-government service providers between 1996 and 1999 confirms that women are overwhelmingly the victims of domestic violence, and men are the perpetrators. The majority of victims reporting domestic violence were female (94%-99%) and the majority of offenders are male (91%-97%).

More recently, some researchers have suggested that men and women are equally violent in domestic relationships. Researchers, such as Heady, Scott and de Vaus, operating within the family violence paradigm have used quantitative analysis of surveys using scales such as Conflict Tactics Scale (CTS) to reach their conclusion. The CTS records incidents of violence, on a scale ranging from minor violence to severe violence. However, the CTS has been criticised for its failure to make a distinction between offensive and defensive acts of violence. It has also been criticised because it detaches the violent incident from its context, as well as reducing domestic violence to an examination of the number of violent incidents. In only...

22 B Heady et al, ibid. For a response to Heady et al, see D Bagshaw & D Chung, ‘Gender Politics and Research’ above n 2; K James, ‘Domestic Violence in Australia: Are Women and Men Equally Violent? Review’ (1999) 1 Australian Domestic Violence and Family Violence Clearinghouse Newsletter 7. Researchers in the area of domestic violence between male and female partners can be classified according to the two dominant conceptual frameworks. These are the family violence paradigm and the feminist approach to domestic violence, see D Bagshaw & D Chung, ‘Gender Politics and Research’, above n 2 at 20 – 23.
counting ‘acts’ of violence, these studies fail to evaluate the impact of the violence, including the extent of fear or intimidation experienced and the extent of injury.\(^{25}\)

Although not denying that women are capable of violence, and that some men are the victims of domestic violence, the preponderance of research indicates that men are predominantly the perpetrators of domestic violence and women are overwhelmingly the victims.

### 2.4 CULTURAL/RACIAL

As with spousal homicide, domestic violence exists in all cultural groups in Australia. However, considerable evidence indicates that Indigenous women are more likely than non-Indigenous women to be the victims of domestic violence, and are more likely to sustain injuries that are more serious.\(^{26}\) In some Aboriginal communities, it has been estimated that domestic violence affects 90% of families.\(^{27}\) Research by Ferrante et al found that Aboriginal people are more than 45 times more likely to be a victim of domestic violence than non-Aboriginal people. While Aboriginal people made up only 2% of the adult population in Western Australia, they accounted for 48% of all domestic violence reported to the police in 1994 and Aboriginal women made up 91% of this figure.\(^{28}\) Ferrante et al’s research also found that Aboriginal victims were twice as likely as non-Aboriginal victims to sustain injuries that were more serious from reported domestic violence (23.5% compared with 11.4%).\(^{29}\)

South Australian statistics reveal that the rate of domestic violence among Aboriginal people is ‘likely to be between 7 - 16 times higher than rates among non-Aboriginal people.’\(^{30}\) In the Northern Territory, in cases where the cultural origin was known, 68% of reported incidents of domestic violence involved Indigenous victims and 71%


\(^{27}\) Queensland Domestic Violence Task Force, above n 7 at 256.

\(^{28}\) A Ferrante et al, above n 3 at 34.

\(^{29}\) Ibid at 35.

of reported incidents involved Indigenous offenders. Homicide statistics also support the finding that there is a higher rate of domestic violence within Indigenous populations. There is disagreement as to whether the incidence of domestic violence is higher within migrant communities than within the general Australian community. As with the paucity of research examining intimate homicide in ethnic groups, research investigating the prevalence of domestic violence against women from non-English speaking backgrounds or migrant women has also been limited. Data collections typically do not provide detail about ethnicity/race or country of birth. An exception is the Women’s Safety Survey which recorded the country of birth and found that a similar proportion of women born within Australia (8.3%) and women born overseas (7.2%) reported experiencing violence from a current male partner. Other studies, while not providing comprehensive data in relation to the extent of domestic violence within ethnic groups, provide useful information in relation to the experiences of migrant women in relation to domestic violence.

2.5 NATURE OF DOMESTIC VIOLENCE

An understanding of the nature of domestic violence is crucial to the arguments developed in my thesis. A theme that will be developed in my thesis is that in order to appreciate a woman’s claim to self-defence, it is necessary to appreciate the continuum of abusive and controlling behaviour in the relationship, and to be sensitive to the experience of living in a violent domestic relationship. An

31 R Thompson, above n 20 at 18. It is noted that in 82% of Indigenous offenders were the partners or ex-partner of their victims. The same percentage of incidents involved offenders who were partners or ex-partner of Indigenous victims, at 11.
32 See 1.2.2.
35 Australian Bureau of Statistics, above n 4 at 56.
36 See 2.6.4.
understanding of domestic violence cannot be obtained by counting the incidents of violence. Studies that identify the number of people who experience violence in their intimate relationships are able to provide details of the prevalence of domestic violence but are not able to adequately describe the full experience of victims. In my view, domestic violence must be understood as the complex interaction of a variety of abusive and controlling behaviours, rather than as discrete acts of physical violence, or other abusive conduct. As I will argue more fully in Chapters Six and Seven, an understanding of the nature and dynamics of domestic violence requires an appreciation of the texture, the intricacies and the subtleties of violent relationships.

Domestic violence emerged as an issue in the public arena in the late 1960s and early 1970s. The initial focus of the campaign against domestic violence was on physical assault that took place in the home. There was a call for recognition that physical violence that took place in the home was criminal conduct in the same way as violence that occurred in society at large. Physical abuse remains important to our understanding of domestic violence, but there is now awareness that physical violence is often accompanied by other forms of damaging conduct. These behaviours include sexual, psychological, emotional, financial, social and spiritual abuse.

The diversity of controlling and abusive behaviours and the ‘primary abusive behaviours experienced by women living with men who batter’ is illustrated by the ‘Power and Control Wheel’. (see Figure 1). The ‘Power and Control Wheel’ was developed in 1984 by Ellen Pence and the Duluth Abuse Intervention Project, and it explains the general dynamics of domestic violence and women’s responses to

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domestic violence. This model was based on group interviews with more than 200 women attending educational classes offered by the Duluth battered women’s shelter.\(^{40}\) It describes the general dynamics of domestic violence by recognizing the positioning of violence within a systematic attempt to maintain power and control. This model places physical violence within the broader context of controlling behaviours – the use of intimidation, emotional abuse, isolation, economic abuse, coercion and threats, children and male privilege. The ‘Power and Control’ model ‘illustrates that violence is part of a pattern of behaviours rather than isolated incidents of abuse or cyclical explosions of pent-up anger, frustration, or painful feelings’.\(^{41}\) It also challenges ‘assumptions about why women stay with men who beat them’.\(^{42}\)

Figure 2.1 The power and control wheel\(^{43}\)

\(^{40}\) E Pence & M Paymar, \textit{ibid.}
\(^{41}\) \textit{Ibid.}
\(^{42}\) \textit{Ibid.}
\(^{43}\) \textit{Ibid.}
This conceptual framework of domestic violence has informed the development of a coordinated legal response to domestic violence. It has been used in the development of ‘offender programs’ and policies and response mechanisms to deal with domestic violence in Australia, New Zealand, the United States, Canada, the United Kingdom and Sweden.\(^4\)

The ‘Power and Control’ model of violence conforms to other accounts provided by women who live or have lived with domestic violence. In the South Australian study conducted by Bagshaw et al, women described the diversity of their partner’s abusive behaviour, including a combination of physical, psychological, emotional, social and financial abuse.\(^5\) Bagshaw describes the women’s experiences in the following terms:

95 per cent of respondents reported that they had experienced abuse over a period of years. In many relationships, acts of cruelty were perpetrated on the women, the children in the family (as primary and secondary victims) and on family pets. Humiliation, cruelty, jealousy, isolation from friends and family and the infliction of emotional, sexual or physical pain were common experiences.\(^6\)

Women spoke of the unpredictable nature of the abuse. Physical violence was just one strategy used by their male partner to maintain control within the relationship. Physical violence may only have occurred occasionally, but women described that the ‘threats of physical violence were as powerful in maintaining control over women as the actual incidents of violence themselves’.\(^7\) The potency of the threats of violence was that their partner had shown his willingness to carry them out by his previous


violence. In all the accounts provided by women of their violent relationships, the common theme was their daily experience of living in fear.

2.6 WOMEN’S RESPONSES TO DOMESTIC VIOLENCE

Women’s responses to domestic violence are central to the issues raised in this thesis, as my concern is to explore the judicial treatment of women who have responded to domestic violence by killing their abusive partner. In order to appreciate the legal issues connected with women’s use of fatal violence as a response to domestic violence, the act of killing needs to be placed in the context of the other strategies used by women to attempt to negotiate a solution to their partner’s violence, as well as the limitations or difficulties associated with those strategies.

In the context of women who kill their violent partner, a dominant concern has been the need to explain why women do not leave their violent partner instead of resorting to fatal force, that is the issue of ‘exit’. As will be discussed more fully in Chapters Six and Seven, the legitimacy of women’s responses to their partner’s violence within the legal context, as well as more generally in the community, has tended to be assessed within the dichotomous categories of ‘staying’ and ‘leaving’. Other responses to violence have tended to be discounted.48 The critical importance of the issue of ‘exit’ to the legitimacy of a woman’s self-defence claim can be seen in the reception of psychological evidence of ‘battered woman syndrome’ evidence, which seeks to make a woman’s decision to remain in a violent relationship explicable in terms of her ‘learned helplessness’.49

In reality, women in violent relationships employ a range of formal and informal strategies to cope with, and attempt to change, their situation. Studies show that women who do not permanently leave their violent partner actively seek to end the violence and employ strategies aimed at minimising its impact.50 Further, complex reasons explain a woman’s decision to remain in a violent relationship, reasons that

48 See 6.3.2.3, 7.4.1.2 and 7.4.2.2.
49 See 7.3.
are not dependent on a negative assessment of her psychology (as 'battered women syndrome' entails).\textsuperscript{51}

### 2.6.1 FORMAL STRATEGIES

Women in violent relationships may seek assistance from the police, professional services (for example, legal or medical), or from crisis services. However, research suggests that only a small percentage of women who have experienced domestic violence have sought assistance from the police or crisis services.\textsuperscript{52} The ABS Women's Safety Survey found that women who had experienced violence perpetrated by their current partner were least likely to have reported the incident to the police (5%).\textsuperscript{53} In 1998, Keys Young released its report further investigating the reasons why the majority of women who experience domestic violence do not seek assistance from police or domestic violence and related crisis services.\textsuperscript{54} In the Keys Young research, of the 122 women interviewed who had experienced domestic violence:

- 51 had never used a domestic violence crisis service or the police, at any time;
- 75 had never used a domestic violence crisis service at any time;
- 59 had never had contact with the police at any time in relation to the domestic violence.\textsuperscript{55}

The study found a number of women only made contact with police or domestic violence crisis services after they had separated from their partner. It was found that, while in an abusive relationship, only 20% of the women interviewed had contacted domestic violence crisis services and about 25% had contacted the police.\textsuperscript{56}

### 2.6.2 INFORMAL STRATEGIES

Although women may only infrequently access formal services, women employ a diverse range of informal strategies as a means of dealing with their partner’s

\textsuperscript{51} See 7.3.
\textsuperscript{52} Australian Bureau of Statistics, above n 4.
\textsuperscript{53} Ibid at 20. See also A Ferrante, et al, above n 3 who found that 36% of female domestic violence victims reported at least one domestic violence incidence to the police, at 70.
\textsuperscript{55} Ibid at 8 – 9.
\textsuperscript{56} Ibid at 9.
violence. The 1998 Keys Young study investigated the informal strategies that women use in response to domestic violence. The research found that most of the women employed different strategies at different stages of their relationship to try to deal with the violence, with women only seeking external help after they had attempted to deal with the violence themselves.

2.6.2.1 Conflict avoidance

In the Keys Young study, one of the most common ways that women sought to deal with their partner’s violence was by conflict avoidance. Women may go to great lengths to avoid situations that might cause their partner to respond violently, or women may remove themselves from their home when they fear violence to be likely. Women may try to change their behaviour, so as to avoid the development of a situation in which violence may result. In Bagshaw et al’s study, it was found that:

A common theme among the stories reported by people who had left abusive relationships, and those who had tried to leave, was the extent to which they had made attempts to ‘change; so that the situation would improve, or the abuse would stop.

2.6.2.2 Confrontation and active resistance

Contrary to the myth that women are passive in violent relationships, the Keys Young research supports the assertion that some women confront their violent partner, and actively fight back (either physically or verbally). The effectiveness of resistance as a strategy in stopping or lessening the seriousness of the violence was mixed, with only a few women finding it effective. The findings of this Australian research are similar to a study of couples with a violent husband conducted in the

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57 See ibid.
58 Ibid at 22.
59 See ibid at 14 – 15. See also M Mahoney, ‘Victimization or Oppression’, above n 50 at 77.
63 Keys Young, ibid, at 16 – 17.
United States that found that some women use violence in response to their husband’s violence towards them.64 The American study also supports the view that battered women, despite their history of being beaten, are often not ‘beaten into submission’.65 However, the effectiveness of active resistance as a strategy to stop the violence is questionable, given that the husbands in the American study admitted that ‘once the violence begins, there is nothing that the wife can do to stop it’.66

2.6.2.3 Seeking help from friends and family

Although many women may not have accessed the police or domestic violence crisis services, most women interviewed in the Keys Young research did tell someone about their partner’s violence in an attempt to obtain some help, although ‘it often took quite a long time before they got to this stage’.67 In the research, women had sought assistance from a range of informal sources (family and friends) as well as formal service providers (general practitioners; counsellors; family support services; solicitors; ministers of religion; childcare centres; teachers; hospitals).68 In seeking outside help, it was found that many women were ‘still actively trying to problem-solve ie they were attempting to find and deal with the ‘cause’ of the abuse in order to stop the violence or save their relationship’.69

2.6.2.4 Diversionary tactics

The Keys Young research found that a common strategy employed by women to cope with their partner’s violence was to divert their energies into other activities, such as caring for the children or the home, or work.70 Women also separated themselves from the abusive behaviour by ‘switching off’ mentally from what was taking place.71

65 N Jacobson et al, ibid at 987.
66 ibid at 986.
67 Keys Young, above n 54 at 23.
68 ibid at 19.
69 ibid (emphasis in original).
70 ibid at 15 – 16.
71 ibid at 17 – 18.
use of mental escapism was substituted for some women by the use of drugs and/or alcohol.\textsuperscript{72}

\subsection{2.6.2.5 Leaving}

The categories of 'staying' and 'leaving' presume that women who are still living in a violent relationship have simply 'stayed'. This focus ignores the attempts that many women make to leave a violent relationship. The Family Violence Professional Education Taskforce comments that 'most [women] make repeated attempts to escape the violence, leaving and staying for differing periods of time'.\textsuperscript{73} The Queensland Taskforce found that 80\% of women contacted had attempted to leave their violent partner at some time.\textsuperscript{74} The ABS Women's Safety Survey found that 48.1\% of women who had finally separated from their violent partner had left their partner and then returned, before finally separating.\textsuperscript{75} Of the women who had experienced violence by their current partner, 29.5\% had separated and then returned, and a further 39.9\% wanted to separate.\textsuperscript{76}

\subsection{2.6.3 Barriers to Disclosure and/or Leaving}

Although most women do eventually disclose the existence of their partner's violence to others, barriers exist to the disclosure of domestic violence. This section considers the barriers that discourage or make women reluctant to disclose their partner's violence. These factors may also be relevant to a woman's decision to leave a violent relationship.

\subsubsection{2.6.3.1 Commitment to the relationship/family; shame and embarrassment}

Research indicates that women in violent relationships often have a high level of commitment to the relationship and the socially endorsed view of a 'family'. In Bagshaw et al's study, it was found that women's expectations about marriage, feelings of responsibility for the relationship and the violence meant that generally

\textsuperscript{72} \textit{Ibid} at 18 – 19.
\textsuperscript{73} Family Violence Professional Education Taskforce, above n 38 at 81.
\textsuperscript{75} Australian Bureau of Statistics, above n 4 at 57.
\textsuperscript{76} \textit{Ibid}. 

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‘domestic violence victims had incredibly high levels of commitment to their relationships and nobody left after a few incidents of violence and abuse’.\textsuperscript{77} Shame has also been identified as a major obstacle to the disclosure of domestic violence.\textsuperscript{78}

Women tend to feel a sense of responsibility for the violence, or their inability to prevent it. Women may view the disclosure of domestic violence or leaving a violent relationship as ‘failure’. In their study, Bagshaw et al observed:

Myths about marriage and the family (also subscribed to by the women themselves) lead to women trying to maintain a public image of perfection and ‘normality’. The myth that women must keep the marriage and family together and have a happy family is so powerful that women often feel they are to blame, or that it is their fault if the relationship is not working.\textsuperscript{79}

The study found that some women’s concern to maintain the image of the happy family meant that they did not seek assistance for physical injuries, or if they did contact a doctor, they reported that they were stressed or unable to cope, and so were treated for anxiety or depression. In this way, the ‘symptoms’ of domestic violence rather than the abuse were the focus of the assistance provided.\textsuperscript{80}

A related concern was a ‘strongly held fear that if they told people they would not be believed, particularly where perpetrators were well known and respected in their families and communities’.\textsuperscript{81} This concern is not unfounded. In Bagshaw et al’s study, a ‘common complaint about both services and informal networks was not having their stories of violence and abuse believed by those they told’.\textsuperscript{32}

In addition to pressure to make the marriage succeed,\textsuperscript{83} some women remain in violent relationships because they love their partners.\textsuperscript{84} Bagshaw et al found that women

\textsuperscript{77} D Bagshaw et al, \textit{Reshaping Responses to Domestic Violence: Executive Summary}, University of South Australia, 1999 at 20 – 21.
\textsuperscript{78} Partnerships Against Domestic Violence, \textit{Attitudes to Domestic Violence and Family Violence in the Diverse Australian Community}, Commonwealth of Australia, 2000 at 3; D Bagshaw et al, \textit{Reshaping Responses to Domestic Violence Final Report}, above n 45 at 32.
\textsuperscript{79} D Bagshaw et al, \textit{ibid} at 26.
\textsuperscript{80} \textit{Ibid}.
\textsuperscript{81} \textit{Ibid} at 32.
\textsuperscript{82} \textit{Ibid} at 33.
\textsuperscript{83} \textit{Ibid} at 38.
resisted the classification of the situation as one where their partner was viewed only as a “perpetrator of domestic violence”. In describing their relationships, women focused on the positive aspects of the relationship as well as the violence. Women may love their partner, but want the violence to stop. As Mahoney comments, in the United States context, “[v]iolence and coercion are not committed by someone the woman calls a “batterer”, but by her lover, husband, or partner – often, the father of her children”. Women have often made considerable emotional investments in the relationship, and disclosure and/or leaving is perceived as the abandonment of that commitment, as well as a ‘failure’ to keep the family together.

2.6.3.2 Denial and disbelief

Although outsiders may classify a woman as a ‘battered woman’, there is evidence that women resist that classification in respect of themselves. As Mahoney states:

We resist defining the entire experience of marriage by the episodes of violence that had marked the relationships lowest points. Our understandings of marriage, love, and commitment in our lives – as well as our stereotypes of battered women – shaped our discussion.

Women may not feel comfortable constructing themselves as a ‘victim’. The Keys Young study found that a ‘major issue affecting the women’s ability or willingness to use domestic violence services concerned how they defined and interpreted what was happening to them’. Women may not have classified their situation as being an abusive situation or a situation of domestic violence. Instead, they classified what was happening ‘in terms of marital conflict, or their partner’s drinking, gambling or mental health problem, or their own inadequacies’.

The ‘normalisation’ of domestic violence is another factor that hinders women’s disclosure of the existence of violence in a relationship. In the Keys Young report, it


53 M Mahoney, ‘Victimization or Oppression’, above n 50 at 74.
55 Keys Young, above n 54 at 50.
56 Ibid.
was found that a major factor preventing some women from seeking help for the violence was that the women did not view ‘the situation as “abnormal” or as out of the ordinary’.90 In Bagshaw et al’s study, one of the reasons associated with endurance of violence and abuse for women in their first relationship was uncertainty as to whether violence was “normal” or acceptable”.91 The distinction between a ‘normal’ marriage and a violent marriage may not be easy to make. The boundary is not clearly delineated, and so it can be difficult for a woman to decide that she should seek help or leave her partner. As Mahoney says in reference to the scenario of the male partner smashing furniture, ‘many ... women ... have seen something like that – and called it “marriage” and not “staying”’.92

Aside from not identifying their relationship as abusive, women may also minimise and deny to themselves the violence they have experienced, so as to be able to cope with living in a violent relationship.93 Mahoney comments that she has heard women describe ‘their marriage as “bad or “unhappy” and then [go] on to recount attacks that were almost murderous’.94 Even if women disclose the existence of violence to others, they may censure their disclosure. They may not feel able to reveal the true extent of the violence or alternatively feel that the listener is not able to hear the full account.95 As Sheehy comments, battered women ‘withhold... information that they know we cannot bear, will not believe, or will use against them’.96

2.6.3.3 Fear

The Keys Young report found that fear of violence against themselves and their children was a major factor affecting women’s decision not to tell anyone about the abuse or to delay disclosure or help-seeking.97 A woman’s fear of violence to herself, her children or other family members as a factor which affects a woman’s decision to

90 Ibid at 28 – 29.
91 D Bagshaw et al, Reshaping Responses to Domestic Violence: Executive Summary, above n 77 at 38.
92 M Mahoney, ‘Legal Images of Battered Women’, above n 87 at 16.
94 M Mahoney, ‘Legal Images of Battered Women, above n 87 at 15.
95 Ibid at 18.
96 E Sheehy, above n 93.
97 Keys Young, above n 54 at 23.
remain in a violent relationship is supported by other research and literature. A related issue is the concern for the welfare of the children. Women may be frightened that their partner will obtain custody of the children, and may be violent against the children (without her protection).

This fear of post-separation violence is supported by evidence that indicates the reality of such violence, so much so that Mahoney has labelled the violence ‘separation assault’ in an attempt to make it visible. The Keys Young report found that post-separation abuse was extremely common amongst the women interviewed. The ABS Women’s Safety Survey found that 35% of women who had finally separated from their partner had experienced violence during an earlier temporary separation from their partner. Other studies investigating the connection between homicide and separation have found that ‘leaving or stating an intention to leave is in itself a significant risk factor for women in abusive relationships’.

2.6.3.4 Resources/economic factors

There are external constraints that are particularly relevant to a woman’s decision (or ability) to leave a violent relationship. These include the availability of the resources to leave, such as immediate access to safe housing, financial support, and support from professionals (counsellors, lawyers). The Keys Young study highlighted the practical and financial needs that confront many women upon separation. The women interviewed ‘talked of problems relating to obtaining housing, employment, looking after children on their own, child maintenance, and dealing with custody and access


100 See M Mahoney, ‘Legal Images of Battered Women’, above n 87. See further Chapters Six and Seven for a discussion of the concept of ‘separation assault’.

101 Keys Young, above n 54 at 12.

102 Australian Bureau of Statistics, above n 4 at 52.


104 See D Bagshaw et al, Reshaping Responses to Domestic Violence Final Report, above n 45 for a discussion of the resource needs (as well as other needs) of women who are attempting to leave (or have left) a violence relationship. See also Queensland Domestic Violence Task Force, above n 7 at 68 – 69; Task Force on Domestic Violence to the Western Australian Government, n 7 at 49 – 50; Women’s Coalition Against Family Violence, above n 98 at 55 – 69; Family Violence Professional Education Taskforce, above n 38 at 81 – 82.
issues". These problems are exacerbated for women who are forced to go into hiding in order to escape from their partner. Access to appropriate services may also be exacerbated by a woman’s isolation in rural communities, or by ethnic or racial factors. There are also the longer-term concerns about financial well being, as the financial situation of women following separation can be precarious, with or without responsibility for children.

2.6.4 CULTURAL/RACIAL INTERSECTIONS

At a policy level, there has been a clear recognition that differing responses to domestic violence are needed in response to the special needs and circumstances of particular groups. Research indicates that the structural impediments and cultural barriers to seeking assistance and leaving a violent relationship are compounded for women from non-English speaking backgrounds and Indigenous women.

105 Keys Young, above n 54 at 60.
106 Ibid.
107 See 2.6.4.
109 See Strategic Partners Pty Ltd, Meta Evaluations of the Partnerships Against Domestic Violence Current Perspectives on Domestic Violence, above n 37 at 12.
2.6.4.1 Indigenous women

There are complex reasons why Indigenous women do not report domestic violence or do not leave violent relationships. The attempts of Indigenous women to negotiate solutions to domestic violence need to be understood in the context of their structural and political positioning in Australia, including the racism that exists within the Australian community. Indigenous women’s experiences of family violence need to be viewed in the context of their economic and social disadvantage, for as the Aboriginal and Torres Strait Islander Women’s Task Force states, ‘[o]n every social indicator, Aboriginal people are the most disadvantaged and marginalized group in Australian society’.

Whereas domestic violence has been the subject of community discussion within the broader Australian community for a considerable period of time, the existence of a community dialogue concerning domestic or family violence is only a recent development in Indigenous communities. The private nature of domestic violence in Indigenous communities is highlighted in the 2000 Partnerships Against Domestic Violence (PADV) Report *Attitudes to Domestic and Family Violence in the Diverse Australian Community*. The study found that many Indigenous participants considered that family violence was a private issue and one that cannot easily be made public and discussed. However, the view was expressed that this attitude was changing, and that there was a greater willingness by communities to confront the issue of family violence.

Cultural factors of obligations and loyalty to the extended family and the community exert pressure on Indigenous women to deal with the violence without recourse to

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113 See J Stubbs & J Tolmie, ‘Race, Gender and the Battered Woman Syndrome’, above n 111.


116 Partnerships Against Domestic Violence, *Attitudes to Domestic Violence*, above n 78.

117 See *ibid* at 29.
outside assistance. A 1996 Northern Territory report on Aboriginal family violence found that:

[The] situation is compounded by the fact that cultural obligations make women more vulnerable by existing social mores. The women have very strong ideas of right and wrong in maintaining the family unit and they will put up with the husband's deviance at great cost to themselves. Aboriginal women stated that they also take responsibility for their husband's violent acts and find the community blaming them, which is then internalised.

Strong pressure exists from within the family and the community to remain silent about the violence 'so as not to shame the family or the community'.

In addition, disclosure of domestic violence, and leaving the relationship, may mean that the woman has no practical alternative but to leave the community altogether. If a woman lives in a remote community, the decision to leave her violent partner may mean that the woman must leave her family and community on whom she depends for physical and emotional support.

The reluctance to seek assistance in response to domestic violence reflects a view among Indigenous women that accessing non-Aboriginal services, particularly the police, amounts to a "betrayal". Women are reluctant to use support services due to their concerns about the consequences for the perpetrator once in custody. The negative attitude of Indigenous women towards the police and other 'official' support

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118 See J Stubbs & J Tolmie, 'Race, Gender and the Battered Woman Syndrome', above n 111 and A Bolger, above n 112.
123 A Bolger, above n 112 at 54.
services reflects the historical (and existing) context of the relationships between Indigenous people and government agencies. Bagshaw et al observe that:

The history of intervention in Indigenous families, and the racist attitudes and behaviour of many police officers and welfare officers is well documented and reflected strongly in the writings of Aboriginal women about violence.126

The concerns that Indigenous women have in relation to the police are also apparent in the relationship between Indigenous women and the legal system more generally. As Astor has commented, ‘[t]he law has been an instrument in the oppression of Aboriginal people far more than it has been a resource for them’.127 Indigenous women are poorly informed about the existence of services.128 Even if women had information about legal avenues available as a response to their partner’s violence, there is evidence of their reluctance to pursue legal remedies.129 A further difficulty with accessing appropriate legal services is that many Aboriginal legal services refuse to act if both parties are Aboriginal, so that in the context of domestic violence Aboriginal women ‘have no access to culturally appropriate services, and in isolated areas, often no access to services at all’.130

In addition to difficulties accessing legal services and the criminal justice system, Indigenous women also have difficulty accessing other support services, either through a lack of access to these other services or a lack of access to culturally

128 Australian Law Reform Commission, Equality before the Law, above n 114.
130 J Stubbs & J Tolmie, ‘Race, Gender and the Battered Woman Syndrome’, above n 111 at 139; Australian Law Reform Commission, Equality before the Law, above n 114 at 123.
appropriate services. In Bagshaw et al’s study, the need for improved access to crisis care, protective accommodation services, and the availability of interpreter services offered by persons who understand the language and the culture of a particular Aboriginal community were identified as being necessary for an improved response to family violence in Indigenous communities.

The limited availability of other effective options to protect themselves from their partner’s violence means that Aboriginal women may be placed in the situation of having to fight back. Cunneen and Kerley have argued that ‘[f]or Aboriginal women physical force may be the only resistance to domestic violence available given a range of pressures which militate against the involvement of the police’. There is evidence that Indigenous women are often imprisoned for their resistance to their partner’s violence, in cases where their resistance has caused his death or serious injury. Indigenous women also face charges of disorderly conduct and assault while resisting or trying to stop their partner’s violence. Blagg observed that their consultations found:

Strong anecdotal evidence from within the criminal justice system ... that Aboriginal women charged with assaults, public order offences and murder were often resisting or trying to put a stop to the family violence.

2.6.4.2 Women from particular ethnic backgrounds

The experiences of women with particular ethnic backgrounds or women from non-English speaking backgrounds (NESB) need to be placed in the context of the language, ethnic and cultural factors that impact on their ability to communicate their experience of domestic violence, and also to leave a violent relationship. In discussing these issues, it is recognised that there is diversity between ethnic communities, as

131 Partnerships Against Domestic Violence, Attitudes to Domestic Violence, above n 78 at 31.
132 D Bagshaw et al, Reshaping Responses to Domestic Violence Final Report, above n 45 at 135 – 137.
133 C Cunneen & K Kerley, above n 124 at 81 – 82.
135 H Blagg, ibid at 23 – 29.
136 H Blagg, ibid at 9.
well as within ethnic communities. As with the experiences of Indigenous women, it is not suggested that these women are a homogenous group. In addition, it is important to be aware of the dangers of generalisation. As Cunneen and Stubbs note, there is a need 'to identify the “values of ethnic communities” without ascribing universality to those values, or assuming that a given individual from that community might subscribe to those values'. Nevertheless, several common issues relevant to the responses of women from particular ethnic backgrounds to domestic violence can be identified.

In this context, the reluctance to disclose domestic violence needs to be viewed in the context of specific cultural factors that have operated to stifle open discussion in relation to domestic violence. The PADV research investigating community attitudes to domestic violence found that domestic violence was viewed as a private matter among participants from culturally and linguistically diverse backgrounds. The PADV participants considered that domestic violence was a hidden issue that was not readily discussed.

The secrecy surrounding domestic violence is supported by other research in relation to domestic violence within specific ethnic communities. For example, an education package prepared by the Australian Lebanese Welfare Group identified the hidden nature of domestic violence within Arabic culture: 'Domestic violence is considered a shame for the family and is not discussed even when there are opportunities to discuss it. It is a taboo subject'.

The silence associated with domestic violence is a reflection of cultural values that place great importance on the maintenance of the family unit. In some cultures, there is a strongly held view that marriage is for life, and the threat to the harmony of

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137 D Bagshaw et al, Reshaping Responses to Domestic Violence Final Report, above n 45 at 93.
138 See J Stubbs & J Tolmie, 'Race, Gender and the Battered Woman Syndrome', above n 111.
140 Partnerships Against Domestic Violence, Attitudes to Domestic Violence, above n 78 at 38. There was six groups chosen for the research: Vietnamese, Cantonese, Arabic, Turkish, Tagalog (Filipino) and Bosniac. The report presents a composite of the community responses.
141 Ibid.
143 Partnerships Against Domestic Violence, Attitudes to Domestic Violence, above n 78 at 38.
the family posed by an open acknowledgment of domestic violence serves to discourage open discussion. There is a belief that women are responsible for their partner’s violence, and that women should stay with their husbands no matter what happens. A reluctance to disclose violence reflects a belief that ‘[w]omen who seek help may not be believed, or may be told that they must bear the abuse for the sake of the community’. The shame associated with the disclosure of domestic violence and/or leaving her violent partner reflects not only on the woman, but also on her family and community. The stigma of separation, divorce and single motherhood in the Vietnamese culture is such that it may affect the children’s future prospects.

Women face the prospect of extreme loneliness if they leave their violent partner. The social isolation inherent in the experience of resettling in Australia has consequences for ethnic women contemplating leaving their violent partner. The women may already be experiencing social isolation as a result of their race and ethnicity, and if they disclose violence and/or leave their partner, they may lose contact with their community. This compounds their social isolation within Australia, as they may already have lost contact with extended family as a result of migration.

The women may lack the resources to leave their partner. A woman may face difficulties accessing financial resources to support herself (and her children)

144 D Bagshaw et al, Reshaping Responses to Domestic Violence Final Report, above n 45 at 97.
145 Partnerships Against Domestic Violence, Attitudes to Domestic Violence, above n 78 at 39.
146 D Bagshaw et al, Reshaping Responses to Domestic Violence Final Report, above n 45 at 97.
151 D Bagshaw et al, Reshaping Responses to Domestic Violence Final Report, above n 45 at 98.
following separation due to lack of work skills or language difficulties.\textsuperscript{152} The usual scenario is that the woman is forced to leave the house if she leaves her violent partner, so she must find alternative accommodation.\textsuperscript{153} She may not know where her personal documents (passports, birth and marriage certificates) are kept, as her husband has 'looked after' them.\textsuperscript{154} Her husband may have managed their financial arrangements, such as banking or Social Security.\textsuperscript{155}

There are problems for ethnic women accessing support services and legal services that provide assistance in cases of domestic violence. Although there are general issues associated with women's access to the legal system,\textsuperscript{156} research suggests that ethnic women (or women from NESB or immigrant backgrounds) tend to be further disadvantaged in terms of their ability to access legal assistance in response to domestic violence.\textsuperscript{157} Women 'may be unfamiliar with the language used to discuss domestic violence, and/or they may not realise that such behaviour may constitute a crime in Australia'.\textsuperscript{158} A lack of culturally tailored information means that women may be unaware of their legal rights, or the means to access the available support services.\textsuperscript{159} In addition, the experiences of some women in their country of origin may prompt a genuine fear of the police.\textsuperscript{160} There are also concerns about language

\textsuperscript{152} J Tolmie, 'Pacific-Asian Immigrant and Refugee Women Who Kill their Batterers', above n 110 at 494 – 497; K Dang & C Alcorso, above n 110.
\textsuperscript{153} K Dang & C Alcorso, \textit{ibid} at 20; P Eastal, \textit{Shattered Dreams}, above n 150 at 134.
\textsuperscript{155} \textit{Ibid}.
\textsuperscript{156} Australian Law Reform Commission, \textit{Equality before the Law}, above n 114.
\textsuperscript{158} C Cunneen & J Stubbs, \textit{ibid} Chapter 3. See also M Marginson, above n 147 at 19; Women's Legal Resources Centre, \textit{ibid} at 51; J Tolmie, 'Pacific-Asian Immigrant and Refugee Women Who Kill their Batterers', above n 110 at 497; A Echevarria & A Johar, above n 110.
\textsuperscript{159} J Tolmie, 'Pacific-Asian Immigrant and Refugee Women Who Kill their Batterers', \textit{ibid}.
\textsuperscript{160} The Australian Lebanese Welfare Group, above n 142 at 31; J Tolmie, 'Pacific-Asian Immigrant and Refugee Women Who Kill their Batterers', \textit{ibid} at 478 – 482; Women's Legal Resources Centre, n 110 at 52.
barriers, and a lack of cultural sensitivity by police towards NESB women who seek police assistance.\footnote{Women's Legal Resources Centre, \textit{ibid} at 53 – 54.}

A further barrier to disclosure and/or leaving is the availability (or lack thereof) of culturally appropriate support services.\footnote{See Partnerships Against Domestic Violence, \textit{Attitudes to Domestic Violence}, above n 78 at 40; A Echevarria & A Johar, above n 110; K Dang & C Alcorso, above n 147; D Celermajer, above n 147; C Cunneen & J Stubbs, above n 34; S Hunter & J Parish, \textit{Discussion Paper: Women from Non-English Speaking Backgrounds in Relation to Domestic Violence}, Darwin: Office of Women's Policy, Department of the Chief Minister, 1996.} In the Keys Young research, concerns were raised about the lack of accessible information, the lack of confidentiality about services, and fears and concerns about refuges.\footnote{Keys Young, above n 54 at 71.} NESB women may be reluctant to access support services as the ‘notion of “being cared for” by the government or being the “rightful recipients” of government services is quite foreign to them’.\footnote{A Echevarria & A Johar, above n 110 at 4.} For example, the concept of professional help is foreign to Vietnamese people.\footnote{D Celermajer, above n 147 at 24.} The deficiency of the existing services in addressing the needs of NESB women has been recognised in several recent reports prepared for Government.\footnote{See D Bagshaw et al, \textit{Reshaping Responses to Domestic Violence Final Report}, above n 45; Partnerships Against Domestic Violence, \textit{Attitudes to Domestic Violence}; above n 78; Australian Law Reform Commission, \textit{Multiculturalism and the Law}, above n 157.} In Bagshaw et al’s report, there was general recognition among service providers that the strategies that are used to address domestic violence need to be more culturally appropriate.\footnote{See D Bagshaw et al, \textit{Reshaping Responses to Domestic Violence Final Report}, \textit{ibid} at 103 – 106 for recommendations concerning the needs of women from NESB.}

\section{2.7 CONCLUSION}

This chapter has provided an overview of domestic violence in Australia. It has examined the prevalence of domestic violence in Australia, including the impact of gender and culture/race; the nature of domestic violence; and women’s responses to domestic violence.

This chapter has shown that a proper appreciation of the nature of domestic violence extends beyond merely ‘counting’ acts of physical violence. Domestic violence must be understood as a complex interaction of a variety of behaviours, with physical violence forming only one aspect of the strategies used to maintain power and fear in
a violent relationship. The ‘Power and Control Wheel’ represents this diverse range of behaviours and this model of domestic violence informs the arguments advanced in subsequent chapters.

An assessment of women’s responses to domestic violence has typically been central in the criminal justice system’s treatment of battered women who kill. This chapter has shown that women who live in violent relationships employ a range of formal and informal strategies to cope with, and attempt to change, their situation. Studies show that women who do not permanently leave their violent partner actively seek to end the violence and employ a range of strategies aimed at minimising its impact. Women seek assistance from outside sources, including reporting violence to the police or seeking assistance from professional services. Women also employ a range of informal strategies such as conflict avoidance, confrontation and active resistance, seeking help from family and friends, diverting their energies from their partner’s violence to other aspects of their lives, and temporarily leaving. This diversity of responses challenges the narrow categories of ‘staying’ or ‘leaving’. This chapter has also explored the barriers that discourage or make women reluctant to disclose their partner’s violence and/or leave their partners. These barriers include women’s commitment to the relationship and their family, feelings of shame and embarrassment, denial and disbelief, fear, and a lack of resources.

168 See Chapter Six.