Legal Responses to Intimate Partner Violence: 
Gendered Aspirations and Racialised Realities

Heather Rose Nancarrow

BA Social Science (Curtin University)

MA (Hons1) Criminology and Criminal Justice (Griffith University)

School of Criminology and Criminal Justice

Arts, Education and Law

Griffith University

Queensland, Australia

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Abstract

In response to feminist activism inside and outside government, all Australian states and territories enacted civil law responses to domestic and family violence in the early to mid-1980s. These laws were part of a broader feminist agenda to interrupt and, ultimately, dismantle gender inequality. There are legislative differences and similarities amongst the Australian states and territories, but all provide a swift legal restraint on domestic violence perpetrators through a civil court order. There are, however, unintended negative consequences of these laws for women.

My thesis is that the lack of an intersectional policy analysis, specifically the failure to consider race and class as well as gender in the development of the legislation has amplified the unintended negative consequences for Indigenous women. I demonstrate this through a mixed methods research design, drawing on four bodies of theoretical thought to examine: 1) gender and race differences in the application of legislative provisions that reflect specific gendered aspirations; and 2) the kind of violence perpetrated, and the context in which it occurs.

Using passage of the Domestic Violence (Family Protection) Act 1989 (Qld) as a case study, I first conduct a thematic analysis of parliamentary debates on relevant legislative Bills to explicate the gendered aspirations in the civil domestic violence law. I find that despite the Act’s gender-neutral language, its intent is to address a particular kind of violence (an ongoing pattern of coercive control), with a particular kind of victim in mind (a subjugated, powerless woman). Gendered aspirations, expressed through specific legislative provisions, have not been fully realised in practice; worse, and as others have observed, a number of unintended consequences have emerged, including that women who are victims of violence are themselves subject to court-imposed domestic violence orders. I argue that this unintended consequence results from the failure of the law, and law enforcers, to distinguish between coercive controlling violence and fights and the evolution of a formulaic, incident-based approach to making domestic violence orders (DVOs).

I then conduct an analysis of administrative police and court data for a sample of 185 people, all of whom had been charged with at least one breach of a DVO (a summary criminal offence), to identify sex and race differences. I compare the recorded domestic violence histories of Indigenous men and women to those of non-Indigenous men and women, including being named as the perpetrator of the violence on one or more DVOs and, when relevant, their histories of being named the victim of violence on one or more DVOs. I find significant differences in their
experiences of domestic and family violence, and in the application of some legislative provisions. In particular, I find that unintended consequences of police powers under the legislation are more problematic for Indigenous women than the other groups.

I analyse interviews with 12 domestic violence service providers (five Indigenous) and three police prosecutors that explored questions of why Indigenous men and women are over-represented as perpetrators and victims of domestic and family violence, including repeat breaches of DVOs. Finally, I analyse police reports of DVO breaches to identify the different types of violence operating in Indigenous and non-Indigenous men and women’s cases. Here I find that compared to non-Indigenous intimate partner violence, Indigenous intimate partner violence is characterised by fights, more so than coercive control. Some of these fights occur in a context of chaos in the lives of many Aboriginal and Torres Strait Islander people, particularly those living in remote Australian communities. For Indigenous people, formulaic policing of domestic violence sits within historically strained relations between them and the police, and consecutive periods of protectionism manifested as state control over their lives. Failure of Indigenous people to comply with DVOs is partly a result of chaos and perhaps resistance to state authority.

In summary, my research shows that the gendered aspirations of domestic violence laws, particularly police powers, are not effective or appropriate responses for classed and racialised realities of violence. The problems are particularly acute in regional and remote communities. I conclude that for domestic violence law to be useful to women, it must distinguish between coercive controlling behaviour (a pattern of physical and/or non-physical strategies to subvert autonomy, liberty and equality) and fights (physical and non-physical aggression motivated by a range of factors other than coercive control), and victims must have choice about state intervention. Furthermore, we must recognise a particular kind of violence that occurs in the context of the chaos associated with the legacy of colonisation in the lives of some Indigenous people. Just as patriarchal structures generate and reinforce subordination of women, racialised structures generate and reinforce subordination of Indigenous people, expressed through extreme disadvantage in comparison to non-Indigenous Australians and contributing to high levels of violence, including self-harm, lateral violence, and intimate partner and family violence.

My findings have implications for the design and delivery of interventions, including justice mechanisms, in intimate partner violence. I am not optimistic that conventional law and legal systems can achieve feminist objectives and avoid unintended consequences for racialised women.
STATEMENT OF ORIGINALITY

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Signed:

Date 12 / 09 / 2016

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Dedication

This work is dedicated to the memory of my mother, Dorothy, whose life, strength and wisdom have been instrumental in my pursuits and achievements; to the Aboriginal and Torres Strait Islander women who inspired the research; and to my son, Fidel, who gives me immense and constant joy.

Acknowledgements

Over the last decade I have worked closely with a small, dedicated group of people who formed the Aboriginal and Torres Strait Islander Reference Group, and guided my work at the Queensland Centre for Domestic and Family Violence Research (CDFVR), Central Queensland University (CQU) and in this PhD research. They are Dr Jackie Huggins AM, Shirley Slann, Jenny Binsiar, Harold Fatnowna, Charles Passi and Pat Cora. I thank them for their generosity, support and guidance. I also thank Jackie for her friendship and cultural mentoring and I thank Dr Christopher Matthews, Griffith University, who also provided cultural guidance in addressing the ethical concerns in the research process.

I acknowledge and extend my sincere gratitude to my doctoral supervisors, Professor Kathleen (Kathy) Daly and Professor Elena Marchetti, both of whom supervised my MA (Hons) research. They have shown exceptional patience and acceptance of my need to juggle many competing demands and complete this work at a distance. I am grateful for their skilful guidance. I also thank Griffith University’s Human Research Ethics Committee, which approved the research protocol (GU Protocol Number CCJ/27/11/HREC), providing ethical clearance for the period 12/08/2011 to 30/06/2012. I thank staff of the Queensland Department of Justice and Attorney General and the Queensland Police Service who assisted me in accessing administrative data and the police prosecutors and service providers who participated in interviews.

Funding provided by the Queensland Department of Communities, Child Safety and Disability Services and in-kind support from CQU for the Queensland Centre for Domestic and Family Violence Research (CDFVR), enabled me in my role as Director at CDFVR to work on this and other research aimed at influencing domestic and family violence prevention policy and practice. I thank Annie Webster for taking on additional duties in my absence, for her spirit of collegiality, and for her friendship. Many other friends and colleagues assisted in various ways that were important to me. They include Professor
Heather Douglas, whose enthusiasm for my project encouraged me enormously, and Vanessa Swan and Paul Chambers, Karen Struthers and Tanya Modini, and Louise Hicks and Chris Jackson, who gave me idyllic retreats to focus on writing. There were many other friends and colleagues, too numerous to mention individually, who offered support and encouragement.

I sincerely thank each individual and agency referred to above for their contributions to this thesis. However, the thesis cannot be taken to represent their views and, further, I take full and sole responsibility for any errors of omission or commission.
EXPLANATORY NOTES

Reference to Indigenous

Many Aboriginal and Torres Strait Islander Australians oppose the use of the term *Indigenous* as a collective noun for the first peoples of Australia. I respect their wishes and regret that it has not always been possible to avoid the use of the term in this research. Successive State and Federal Government agencies have used it for administrative purposes and because of relatively small numbers of Aboriginal and Torres Strait Islander people appearing in data collections. Therefore, in the administrative court and police records that I use in my analysis, cultural identity for Aboriginal and Torres Strait Islander people is recorded as *Indigenous*. For consistency, I also use this term unless specifically referring to one group or the other. I apologise in advance for any offence caused to Aboriginal and Torres Strait Islander people by my use of this term. I provide further information on this topic in the glossary and explanation of key terms.

Pseudonyms and coding

I use pseudonyms to protect the anonymity of the people charged with breaches of domestic violence protection orders (DVOs) and whose court and police records I used as case studies in this research. This approach compared to alternatives such as coding, raises up their humanity and confers dignity for those whose lived experiences I used to illustrate the racialised realities of legal responses to intimate partner violence. I assure anonymity in those case studies by removing reference to street names and similarly masking any other information that could result in recognition of individuals.

I use coding for the interviewees. I explain the coding protocol in the discussion on data management in Chapter 3.

Referencing style

I have used the American Psychological Association (APA) Style Guide (6th Edition) for referencing, and EndNote (APA) to manage the formatting and insertion of references.

Consistency of Task Force and Taskforce

I use both Task Force and Taskforce for consistency with the respective investigation reports (e.g. Queensland Domestic Violence Task Force and Queensland Premier’s Special Taskforce on Domestic and Family Violence).
Quotes and edits to quotes and inverted commas

I preserve the authors’ spelling and punctuation when quoting directly.

I incorporate quotes of less than 40 words into a paragraph and use double quotation marks. I indent and italicise longer quotes. As much as possible quotes are verbatim to convey a sense of the narrator. Some quotes required minor additions or deletions to provide context or simplify (without changing the meaning). I use square brackets to identify my additions and ellipses for deletions.

Consistent with APA, I use double inverted commas for direct quotes and single quotation marks for quotes within quotes.

Use of italics in general and in Acts of Parliament and legislative Bills

I italicise words I wish to emphasise, those I use ironically, and Latin terms (e.g. *de facto*).

I also use italics at the first mention of key terms (e.g. *domestic violence*) and I explain them in the glossary. I also italicise some terms which are used once only and explained in the thesis (e.g. *woman abuse*), but I do not include those in the glossary.

In accordance with APA and legal convention, Acts of Parliament (legislation) are italicised and Bills are not. The jurisdiction is included at the first mention of an Act or Bill in each chapter and the name of the jurisdiction it is not italicised in either an Act or a Bill (e.g. *Domestic Violence (Family Protection) Act 1989* (Qld) and *Domestic Violence (Family Protection) Bill 1989* (Qld)).

Use of commas and semi-colons in lists

In lists of three or more items, I separate the items with a comma, including a comma before the word “and” preceding the last item in the list. However, if a comma is required within one or more items in a list, I use a semi-colon to separate each item.

Numbers

Unless quoting directly, I write numbers 10 and above as digits and spell out numbers less than 10, except where the number relates to a measure (e.g. 2%, 4 years, 2 hours). I spell out numbers beginning a sentence. I use a comma only in numbers with five or more digits.
**List of Acronyms and Abbreviations**

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<th>Description</th>
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<tr>
<td>ABS</td>
<td>Australian Bureau of Statistics</td>
</tr>
<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
</tr>
<tr>
<td>AIC</td>
<td>Australian Institute of Criminology</td>
</tr>
<tr>
<td>ALRC</td>
<td>Australian Law Reform Commission</td>
</tr>
<tr>
<td>CCTV</td>
<td>Closed circuit television</td>
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<tr>
<td>QCMC</td>
<td>Criminal Justice Commission</td>
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<td>COAG</td>
<td>Council of Australian Governments</td>
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<tr>
<td>Cth</td>
<td>Commonwealth</td>
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<td>CTS</td>
<td>Conflict Tactics Scales (original)</td>
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<td>CTS2</td>
<td>Conflict Tactics Scales (revised)</td>
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<td>DFYCC</td>
<td>Department of Families, Youth and Community Care</td>
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<td>DVO</td>
<td>Domestic violence order</td>
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<td>FASD</td>
<td>Foetal alcohol spectrum disorder</td>
</tr>
<tr>
<td>FLA</td>
<td><em>Family Law Act 1975</em> (Cth)</td>
</tr>
<tr>
<td>IVAWS</td>
<td>International Violence Against Women Survey</td>
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<tr>
<td>NHMP</td>
<td>National Homicide Monitoring Program</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>NSWLRC</td>
<td>New South Wales Law Reform Commission</td>
</tr>
<tr>
<td>VLRC</td>
<td>Victorian Law Reform Commission</td>
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<tr>
<td>QAS</td>
<td>Queensland Ambulance Service</td>
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<tr>
<td>Qld</td>
<td>Queensland</td>
</tr>
<tr>
<td>QDVSN</td>
<td>Queensland Domestic Violence Services Network</td>
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<tr>
<td>QPS</td>
<td>Queensland Police Service</td>
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<tr>
<td>Tas</td>
<td>Tasmania</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>USA</td>
<td>United States of America</td>
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### Glossary and Explanation of Key Terms

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<th>Term</th>
<th>Definition</th>
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<tr>
<td><strong>Aggrieved</strong></td>
<td>The legislative term for the person for whose benefit a court makes a civil law domestic violence protection order (DVO). The term <em>victim</em> is not used in the legislation because of the low standard of proof required for civil law and because the person accused of domestic violence may consent to a DVO, without admitting domestic violence had occurred.</td>
</tr>
<tr>
<td><strong>Authorised person</strong></td>
<td>A person authorised by the aggrieved, or otherwise under the legislation, to make an application for a domestic violence order for the aggrieved.</td>
</tr>
<tr>
<td><strong>Coercive control</strong></td>
<td>A range of strategies used to manipulate, dominate and control the actions of another, with the aim of achieving and maintaining personal power over an intimate partner. I adopt Stark’s (2007) definition of coercive control as an “attack on autonomy, liberty and equality” which may or may not include physical violence. Others’ definitions (e.g. Johnson, 1995, 2008) limit it to physical violence.</td>
</tr>
<tr>
<td><strong>Common couple violence</strong></td>
<td>A term introduced by Michael Johnson (1995) to differentiate between coercive control and other physical violence between current or former couples not motivated by power and control over the life of the other.</td>
</tr>
<tr>
<td><strong>Criminal assault</strong></td>
<td>Section 245 of the <em>Criminal Code Act 1899</em> (Qld) defines assault as “A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, <em>without the other person’s consent</em>” (emphasis added).</td>
</tr>
<tr>
<td><strong>Cross-application</strong></td>
<td>Occurs when one person in a relationship is named as the aggrieved on an application for a domestic violence order and another application (a cross-application) is made naming that person as the respondent and the other person in the relationship</td>
</tr>
</tbody>
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as the aggrieved (see Chapter 1, Cross-applications and mutual orders, for discussion and Figure 3).

<table>
<thead>
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<th>Term</th>
<th>Definition</th>
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</thead>
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<tr>
<td>Cross-order (cross-DVO)</td>
<td>Occurs when the court makes orders based on cross-applications.</td>
</tr>
<tr>
<td>Discrete Indigenous communities</td>
<td>Communities predominantly inhabited by Indigenous people with housing and other infrastructure owned and managed by Indigenous people.</td>
</tr>
<tr>
<td>Domestic relationship</td>
<td>A personal relationship variously defined in domestic violence legislation. The term represents the nature of the relationship, not the residential arrangements. For example, in Queensland law the term includes biological parents of a child who have never lived together and excludes people who are co-tenants but have no other personal relationship (e.g. being family members or intimate partners).</td>
</tr>
<tr>
<td>Domestic violence</td>
<td>Includes a specified range of physical and non-physical actions, or threats within relevant relationships prescribed in Queensland’s domestic violence legislation. Originally synonymous with violence within current or former intimate partner relationships. The legislation defines domestic relations by their nature and context, not location (e.g. shared dwelling).</td>
</tr>
<tr>
<td>Domestic and family violence</td>
<td>As above, but explicitly including violence perpetrated by other family members.</td>
</tr>
<tr>
<td>Domestic violence order</td>
<td>A civil law court order that places restrictions on the behaviour of the respondent. In Queensland, they are called domestic violence orders and have different names (such as family violence order and apprehended domestic violence order) in other jurisdictions. For consistency, I use domestic violence order or its acronym (DVO), except in direct quotes.</td>
</tr>
<tr>
<td>Enmeshed</td>
<td>The actions of one of a couple affect the life and action of the other, whether or not the relationship is current. Legislators used</td>
</tr>
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</table>
this term to limit the scope of the legislation to those who needed legal intervention to carry on their daily lives without problems arising from ongoing enmeshment with the life of an abusive partner.

**Family violence**

Originally used by Aboriginal and Torres Strait Islander people to represent the broader context of family and kin relationships and the types of violence occurring within that context. Also used in several Australian jurisdictions as an alternative to domestic violence to make explicit that family members in addition to current or former intimate partners, are included in the relevant policy framework.

**Fights**

Fights are expressive and focused on resolution to a current conflict. Fights may occur frequently but they are incident-based. They are not an ongoing strategy aimed at achieving and maintaining personal power over an intimate partner. Fights may or may not involve physical violence.

**Foetal alcohol spectrum disorder (FASD)**

An umbrella term for a range of diagnoses related to the effects of excessive alcohol ingestion on the development of a foetus, including impaired brain functioning.

**Gender/gendered**

Gender, like *race*, is a social construct and is relevant to the theoretical framework for the thesis. People and social processes and structures are gendered to reflect and reinforce gender-based power relationships.

**Gender symmetry**

Relates to claims by some researchers that men and women perpetrate intimate partner violence in roughly equal numbers.

**Half-caste**

A term, now considered offensive, used to refer to an Aboriginal person who has one parent who is Aboriginal and one who is not.

**Indigenous Australians**

Indigenous Australians are, broadly, two distinct groups of people: Aboriginal people (a collective term for many pre-colonial “nations”, i.e. language groups) and Torres Strait
Islanders, who are of Melanesian origin and traditionally inhabit the tip of Cape York Peninsula in Queensland and the islands between there and Papua New Guinea.

**Indigenous family violence**

Family violence occurring within and between Indigenous families and communities, and within the broader cultural context of family and kin relationships.

**Informal care**

Necessary personal care provided for a person, on which that person is dependent, by another in a domestic context (i.e. it is not associated with a formal, professional care agency in which case abuse would be subject to other legislation).

**Interpersonal**

Since 2003, the Queensland legislation has grouped three types of relationships under *interpersonal* relationships: spouses (see definition below), engaged couples, and couples who are in a relationship but not engaged or married.

**Interviewees**

Service providers and police prosecutors interviewed for the research.

**Intimate partner/s**

Unless otherwise stated, the terms intimate partner/s, or partner/s, refers to one or both of a couple who are, or were, married; in a *de facto* relationship; the biological parents of a child; or in a dating relationship.

**Intimate partner violence**

Physical, sexual and non-physical forms of abuse by one intimate partner (current or former), against the other. Intimate partner violence is a subset of domestic violence and, at times, I use the terms interchangeably.

**Jealousing**

Used by Aboriginal people as a verb to describe circumstances where one or both parties seek to make the other feel jealous and express their jealousy (and their valuing of the other person) by fighting with them.
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<tr>
<td>Justice reinvestment</td>
<td>A crime prevention strategy whereby funds that would otherwise have been spent on building prisons, or prison capacity, are invested in building strong cohesive communities.</td>
</tr>
<tr>
<td>Lateral violence</td>
<td>“Sideways [violence] … aggressors are your peers, often people in powerless positions” (AHRC, 2011, p. 25)</td>
</tr>
<tr>
<td>Law women and law men</td>
<td>Keepers of traditional, or customary, law with cultural authority. These roles do not translate neatly to western concepts but are broadly similar to law makers and enforcers.</td>
</tr>
<tr>
<td>Mainstream</td>
<td>As distinct from Aboriginal and/or Torres Strait Islander specific (e.g. mainstream services are those designed for the general population).</td>
</tr>
<tr>
<td>No contact</td>
<td>A condition on a court order preventing the respondent from making, or attempting to make, contact (in person, electronically or through a third party) with the aggrieved.</td>
</tr>
<tr>
<td>Non-spousal</td>
<td>Personal relationships that are not current or former intimate partner relationships.</td>
</tr>
<tr>
<td>Murri</td>
<td>Collective name for Aboriginal people of Queensland, generally used within the Aboriginal community itself.</td>
</tr>
<tr>
<td>Ouster condition</td>
<td>A condition on a court order that requires the respondent to vacate the home, enabling the aggrieved to remain (often called an ouster order).</td>
</tr>
<tr>
<td>Payback</td>
<td>An informal social control mechanism in Indigenous communities, which involves retribution for wrongful behaviour. It may involve multiple parties in a fight and is related to Aboriginal dispute resolution.</td>
</tr>
<tr>
<td>Perpetrator</td>
<td>This term refers to those convicted of breaching a DVO. In lay terms, a perpetrator is the person accused of committing domestic violence, whether or not they are subject to, or</td>
</tr>
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convicted of breaching a DVO. That becomes complicated when the perpetrator is also a victim.

**Perpetrator/victim** A person who has been convicted of breaching a DVO and named the aggrieved on one or more DVOs.

**Public** The opposite of private – the *public* site preferred by non-Indigenous women in general for dealing with intimate partner violence is the state, represented by the conventional criminal justice system. Indigenous women have stated a preference for their communities as alternative public sites for dealing with most cases of family violence.

**Race/raced/racialised** Race, like *gender*, is a social construct and one that is relevant to the theoretical framework for the thesis. People and social processes and structures are racialised to reflect and reinforce raced power relationships.

**Relevant relationship** A relationship covered in the domestic violence legislation (e.g. a current or former intimate partner).

**Respondent** The legislative term for the person whose behaviour is the subject of restraint in a DVO. Terms such as *offender* are not used in civil law because of the low standard of proof required and, in the case of civil domestic violence law, the person accused of domestic violence may consent to the order being made without admitting, or being found by the court, to have perpetrated domestic violence.

**Return date** The date set by the court to consider an application for a domestic violence order.

**Served** As in “the police served the DVO on the respondent”, meaning that the police executed the relevant procedure to provide the respondent with a copy of the order, including that the respondent is made aware of the DVO and its conditions.
Service providers  People who provide counselling, court assistance and other support services to women subjected to domestic violence, particularly intimate partner violence, or who provide intervention programs for men who perpetrate domestic violence/intimate partner violence and participated in interviews (interviewees).

Sorry business  Customs associated with bereavement, including obligation to attend a funeral.

Spousal  In Queensland’s civil domestic violence law, *spousal* relationships include current and former marriage and *de facto* marriage relationships and the biological parents of a child. From commencement in 1989, the definition of spouse in the legislation excluded same sex couples until its amendment in 1999.

Sub-group/s  One or more of the four groups (Indigenous men, non-Indigenous men, Indigenous women, and non-Indigenous women) included in the sample of 185 people charged with breaches or DVOs.

Technical breaches  Where no offence other than the breach of the order itself has been committed (Victorian Law Reform Commission (VLRC), 2006) and is used by the police and courts to sort cases, although it is not mentioned in the legislation.

Violence  Consistent with the domestic violence legislation in Queensland, *violence* includes physical and non-physical forms of abuse.
1. THE RESEARCH AND POLICY PROBLEM

THE PROBLEM

Police from the Cairns City Beat attended parkland on the Cairns Esplanade following a disturbance viewed on CCTV. A man and a woman, both Aboriginal, were verbally abusive, swearing and making threats towards each other. At one point, the woman was swinging punches at the man: she on one side of a rubbish bin and he on the other. The verbal abuse, swearing and threats continued as the police approached. Both were taken by the police to the Cairns City Beat. The woman was charged with a breach of a domestic violence order, which had been made and served on her by police, only a few days before this incident. She told the police she was not aware of the order and did not go to court for it, but she remembered being given some papers about domestic violence.

This case is among police reports I analysed for this research. The description refers to one of five occasions on which police charged this woman, whom I call Thelma, with breaching a domestic violence order (DVO). Thelma’s case stands in stark contrast to the scenario imagined in mainstream feminist advocacy of the late 1970s and early 1980s, which led to specific domestic violence laws, under which she had been convicted. It raises the following questions:

1. What was the intention of the civil domestic violence law, that is, what violence did it seek to address?

2. What is the impact of domestic violence laws on Indigenous people, particularly Indigenous women?

3. What explains the greater frequency of Indigenous people as victims and perpetrators of domestic violence?

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1 Australia has two populations of original inhabitants: Aboriginal people and Torres Strait Islanders. They are historically and culturally distinct, although they share similar experiences of colonisation and its continuing impact. Many Aboriginal and Torres Strait Islander people dislike the term Indigenous and I would prefer not to use it; however, these two distinct groups are not distinguished in the administrative court and police data I use for the analysis.
Civil legislation is the primary legal response to intimate partner violence in almost all Australian states and territories.\footnote{2} The questions I am addressing may relate to a peculiarly Australian problem.\footnote{3} Although civil domestic violence laws in Australia broadly operate in the same way (Wilcox, 2010), police and court practice vary between, and within, the six states and two territories. I base my analysis on Queensland’s law and the experiences of people subjected to it, and the experiences of service providers and police prosecutors, in two regional Queensland cities. I am particularly interested in Indigenous Australian women’s experiences with this law, which emanated primarily from advocacy by non-Indigenous women for the benefit of women subjected to violence by a current or former male intimate partner. My interest stems from the results of my previous research (Nancarrow, 2003, 2006) which demonstrated that Indigenous and non-Indigenous Australian women have conflicting views on the role of the state, objectives for justice intervention and preferred models of justice for responding to violence against women. In particular, Indigenous women reported that the community, not the state, should be the primary public site for dealing with family violence; that the police intervention has led to more, not less, violence against them; and that justice objectives should include healing, not just punishment, for perpetrators of violence.

In this chapter I present a demographic overview of Indigenous Australians, with particular reference to Queensland, to contextualise my concern about the experiences of Aboriginal and Torres Strait Islander women with mainstream approaches to legal policy. I then briefly explain how the civil domestic violence order system in Australia operates, to set the scene for a review of key findings from previous research on its implementation and a summary of what my research will contribute. I conclude with an overview of the thesis structure and contents of each chapter.

\footnote{2}{\footnotesize In 2004 Tasmania enacted legislation which constructs family violence as a criminal offence, but also allows the making of a civil domestic violence order. Some jurisdictions (e.g. Victoria and the Australian Capital Territory) have adopted pro-arrest policies to strengthen the use of the criminal law in conjunction with the civil law.}

\footnote{3}{\footnotesize The criminal law is the primary response to domestic violence in the United States of America (USA), Canada and the United Kingdom and women in those jurisdictions may be drawn directly into the criminal justice system through arrests, including dual arrests, for violence.}
INDIGENOUS AUSTRALIANS: A BRIEF OVERVIEW

Indigenous Australians make up less than 3% of the Australian population. More than one-quarter (28%) live in Queensland, but within the Queensland population of approximately 4.7 million, 4% identify as Aboriginal or Torres Strait Islander (Australian Bureau of Statistics (ABS), 2014). Like other Queenslanders, most of the Indigenous population live in or around the capital city, Brisbane, in the south east of the State (34%), or in and around regional cities such as Cairns, Townsville, Mackay and Rockhampton (41.5%) (Office of Economic and Statistical Research (OESR), n.d.). In remote regions, however, Indigenous people make up a higher proportion of the population than non-Indigenous people do; they represent 79% of the population in the Torres Strait Region, 55% in the Cape York Indigenous Region and 22% in the Mount Isa Indigenous Region. More specifically, population data from the 2011 Australian Census show that 10% of the residents of Cairns, and 15% of the residents of Mount Isa identified as Aboriginal and/or Torres Strait Islander.

Indigenous Australians living in remote communities are more likely to speak an Indigenous language at home, compared to those in the rest of the State (7.5%). In the Torres Strait region, 63% speak an Indigenous language at home. An Indigenous language is spoken at home by 51% in Cape York, 8% in Cairns and 3% in Mount Isa (OESR, n.d.). Mount Isa and Cairns are the nearest regional cities and important service centres for communities in the Gulf of Carpentaria and Cape York, respectively. Despite their remoteness and the vast distances (up to 950 kilometres), many Indigenous people travel between their communities and the regional cities.

Data on employment, income, housing, education and health as indicators of wellbeing “show that, as a group, Indigenous Australians have the lowest economic status of all

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4 Of Indigenous Australians, 90% identify as Aboriginal, 6% identify as Torres Strait Islander and 4% identify as Aboriginal and Torres Strait Islander (Steering Committee for the Review of Government Services (SCRGS), 2009).


Australians, without any qualification” (Altman, 2000, p. v). They have lower life expectancy, are three times more likely to be unemployed, and their median income is just over half that of non-Indigenous Australians (Altman, Biddle & Hunter, 2009). The gap between Indigenous and non-Indigenous Australians is the subject of the Council of Australian Governments’ Closing the Gap initiative, which aims to overcome Indigenous disadvantage and create the necessary conditions “for Indigenous Australians to have the same life opportunities as other Australians” (Steering Committee for the Review of Government Services (SCRGS), 2014, p. 2.2). Regardless of where they live, Indigenous Australians have, on average, poorer outcomes on some wellbeing measures but “disadvantage tends to increase with remoteness” (SCRGS, 2014, p. 1.6).

Despite measures aimed at reducing incarceration of Indigenous Australians, the adult imprisonment rate increased 57% between 2000 and 2013. Juvenile detention rates increased between 2000-01 and 2007-08 and, although fluctuating, the rate is currently around 24 times the rate for non-Indigenous youth (SCRGS, 2014). In 2008, 15% of Aboriginal and Torres Strait Islander people aged 15 years and over had been arrested at least once in the last 5 years, with a higher rate (19%) in remote areas, compared to non-remote areas (14%). Half those arrested had been arrested more than once (ABS, 2008).

The circumstances of Aboriginal and Torres Strait Islander people in Australia are attributed to inter-generational trauma (Atkinson, 2002), suffered as a consequence of colonisation, and felt most acutely in remote areas of the country. Their experiences of state intervention, including the civil domestic violence law, are embedded in their experiences, past and present, of the dominant non-Indigenous culture.

**HOW AUSTRALIA’S CIVIL DOMESTIC VIOLENCE LAW IDEALLY WORKS**

Civil domestic violence law focuses on preventing further acts of domestic violence, through a court order imposing restrictions on the perpetrator’s actions; it does not address previous violence other than seeing it as evidence of the need for the court order.\(^8\) The intention is that the police and courts use both the future-focused civil law and the criminal law to prevent further violence and address past acts of criminal violence. Civil domestic violence law aims to address controlling actions in domestic relationships that may not constitute a criminal

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\(^8\) These are called Domestic Violence Protection Orders in Queensland, Apprehended Domestic Violence Orders in New South Wales and Intervention Orders in some other states.
offence, and situations where the prosecution is unlikely to meet the criminal standard of proof required because of the absence of witnesses, other than the victim (Queensland Domestic Violence Task Force (QDVTF), 1988). Key differences in the legislation of each state and territory include definitions of domestic or family violence and the types of relationships covered, but the legislative regimes operate broadly in the same way (Wilcox, 2010). Following is a summary description of the process for making applications and court orders. I then briefly explain what happens following a report of a DVO breach to police.

**Applications and orders**

Figure 1 illustrates the process for applications and court orders under Queensland civil domestic violence legislation. This is sufficient to set the scene for the following discussion. In practice, however, the process is often more circuitous because of difficulties serving a notice of an application, adjournments and multiple interim orders.

Figure 1: Process for making a DVO - civil
First, an application for a DVO may be made by a police officer, an aggrieved person (the alleged victim of domestic violence), or a third party acting on behalf of the aggrieved. The applicant lodges the application with a Magistrates’ Court (the lowest level court in Australian jurisdictions). The court sets a date (the mention date) for the magistrate to consider the application. In cases when immediate intervention is required for the safety of the aggrieved, the magistrate may make a temporary protection order. The police then deliver the application, a notice of the court date and a copy of the temporary order, if relevant, to the respondent (the alleged perpetrator).

On the date the matter is considered by the court the respondent may consent to the order being made. In this case, the magistrate considers the evidence and decides whether to make an order. Alternatively, the respondent may contest the application. In that case, the court will set a return date for the magistrate to hear the matter, giving the respondent time to prepare a case against the making of an order. On the return date, the magistrate considers the evidence and decides whether to make an order. The magistrate decides on the balance of probabilities, from the evidence available, whether to make the order. In Queensland, the standard conditions on a DVO are to be of good behaviour towards the aggrieved, and not commit domestic violence. In addition to the standard conditions, the DVO may also include other conditions, specific to the circumstances of the case. For example, the magistrate may prohibit the respondent from contacting the aggrieved by any means (a no contact condition), entering specified premises, such as the aggrieved person’s workplace, or both. The inclusion of additional conditions are subject to specific requests in the application and the available evidence that they are necessary for the safety of the aggrieved. The duration of a final DVO in Queensland is generally 2 years, but can be shorter or longer if the court considers it appropriate.

**Breaches of DVOs**

Figure 2 illustrates the intended process following a reported breach of a DVO. Breaches may come to the attention of the police because of reports from the aggrieved or someone else and on investigation they find that an order is in place and being breached. A breach of a condition on DVO is a summary criminal offence “a classification reserved for the least

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9 The terms aggrieved, rather than victim; and respondent, rather than perpetrator (or offender) are used in the legislation and court processes because the standard of proof required for civil law matters is “the balance of probabilities” i.e. more likely than not. The terms victim and perpetrator (or offender) are considered more appropriate in reference to criminal law matters, which require proof “beyond reasonable doubt”.
serious offences such as offensive language …” (Douglas & Nancarrow, 2015, p. 81), but it carries a range of possible penalties including imprisonment. Therefore, police prosecutors must have sufficient evidence for the court to determine, beyond reasonable doubt, that the DVO has been breached.

In theory, following a report of a breach of an order, the police are to investigate whether the offence of a breach, and any other criminal offence, have been committed. If, in the opinion of the police, there is not sufficient evidence there will be no further action taken. If there is sufficient evidence of a breach, the police are to prosecute the breach of a DVO. If there is sufficient evidence of a breach and any other criminal matter, the police are to prosecute the breach of the DVO and the other criminal offence or offences.

Figure 2: Breach process - criminal

![Diagram of breach process]

**WHAT WE KNOW ABOUT AUSTRALIA’S DOMESTIC VIOLENCE LAWS**

Neither feminist advocates nor law-makers had anticipated the problems of implementing the new laws designed to provide a tailored legal response to restrain men from perpetrating coercive, controlling abuse of female intimate partners. Seemingly constant law reform began in the 1990s to address the various problems that emerged. There is a vast amount of material produced by, or for, state government agencies in reviewing civil domestic violence legislation. These consultation papers and reports (e.g. Department of Communities, 2011; NSWLRC, 2003) are primarily concerned with administrative, operational and procedural matters. It is beyond the scope of this thesis to discuss all the legislative reviews conducted,
nor can I review all of the published research on civil domestic violence legislation in Australia. Instead, and focusing particularly on the small number of empirical studies that have addressed the implementation of civil DVOs in Australia, I have identified four major themes in the literature: 1) effectiveness of legal responses (DVOs and policing), 2) criminal violence and intimate partner violence, 3) cross-applications and mutual orders, and 4) the limitations of the law and legal procedure as a response to domestic violence. Only one of these studies (Cunneen, 2009) is primarily focused on domestic violence law and Indigenous Australians. Three others (Egger and Stubbs, 1993; Stewart, 2000; and the Queensland Crime and Misconduct Commission (QCMC), 2005) addressed Indigenous people’s experiences in a limited way. Three studies (Wangmann 2009, 2010; and Stewart, 2000) explicitly examined sex differences. All but three (Egger and Stubbs, 1993; Hunter, 2005; and Wangmann 2009, 2010) were Queensland studies.

Effectiveness of legal responses

In the first national analysis of the effectiveness of DVOs, Egger and Stubbs (1993) concluded that for many women court orders provided a range of tangible benefits, such as feeling safer, even though the order was breached. Thus, they argued for the development of effectiveness measures based not only on cessation of violence, but also on the value assigned to DVOs by the women who have them. They also concluded that police intervention was the key determinant in women getting a DVO and that the benefits of DVOs were not equally available to Indigenous women and women from non-English speaking backgrounds, because they did not have equal access to justice.

Like earlier state studies, the data for Egger and Stubbs’s national study were interviews with domestic violence and legal service workers and women who had sought protection orders. In contrast, Young, Byles and Dobson’s (2000) national study of 493 young women subjected to physical violence compared the outcomes for those who used the legal system, and those who did not.

Substantial numbers (72%) had sustained injuries from violence perpetrated by their partners but less than one-third (29%) sought legal intervention. Of those, almost half (48%) sought

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10 A number of scholars had previously conducted state evaluations (Naffine, 1985; Stubbs and Powell, 1989; and Wearing, 1992).

11 From an initial sample of 674 young women, aged 18 to 25 years, 181 reported non-physical abuse only, and were excluded from the analysis.
police intervention only and almost a third (31%) contacted the police and sought a court order (Young et al., 2000).12

For most (93%) women, violence had occurred more than 12 months before the survey; 121 of those had obtained a DVO and 338 had not. At the time of interview, violence had stopped for about 90% of both groups, thus, legal intervention made no difference at all for cases where the last episode of violence had occurred more than 12 months previously. For those who did seek legal intervention, and comparing severity of violence 3 months before intervention with severity after intervention, police intervention combined with a court order was found to be more effective than police intervention alone. This was attributed to the “threat of arrest” represented by a court order (Young et al., 2000, p. 5) and Young et al proposed systematically following up police intervention with court orders.

Improved policing of domestic violence was the subject of research conducted by the Queensland Crime and Misconduct Commission (QCMC, 2005). The research utilised administrative data; focus groups with police; interviews with police, magistrates and domestic violence and women’s legal service workers; and surveys of the police and victims of domestic violence. There were two sources of administrative data: the Queensland Police Service DVIndex, an electronic database for operational purposes, with the sample being those matters entered into the DVIndex between April and September 2003; and court data compiled by the Department of Communities on the number, type and outcome of DVO applications.

The QCMC’s survey of victims of domestic violence revealed dissatisfaction with a number of areas of the police response, including the police not taking the matter seriously and not arresting the offender, even when the victim had suffered assault requiring medical attention and had asked the police to arrest. Only half the victims who responded to the survey were satisfied with the police response. Meyer’s (2011) interviews with 29 women in South-East Queensland, also found high levels of dissatisfaction with the police response. Women reported the police were reluctant to lay criminal assault charges and discouraged them from taking any action at all: “Victims … had the impression that it was too much effort and a waste of time for the police…” (Meyer, 2011, p. 278). The QCMC reported that excessive

12 A few (7%) sought a protection order without involving police. The authors do not state what kind of legal intervention was sought by the remaining 14%.
administrative requirements, dealing with breaches of orders, prosecutor workloads and repeat call outs, were having a negative impact on effective police responses.

During the QCMC’s 6-month study period, there were 12 cases where the police had been called more than 10 times. Five of these cases involved *cross-orders*. In 10 of the 12 cases, the victim was female and the offender male, and in seven cases the aggrieved was Indigenous. The QCMC (2005) also found a higher proportion of DVO breaches for Indigenous than non-Indigenous respondents. The QCMC suggests, as a possible explanation for this finding, that perhaps “more of the Indigenous respondents had previous dealings with the police and there was therefore a protection order in place, or it may be that the nature of the breach was more violent and thus the police had evidence on which to base the breach” (p. 38). The latter part of this statement assumes that the police may not act on *technical breaches*\(^{13}\) (that is, more violence equals more evidence upon which to act), although this point is not explored. The QCMC report does not consider the possibility that Indigenous Australians may be less compliant than others with court orders. In response to its finding on recidivism, the QCMC (2005) proposed a case management strategy to supplement and increase the effectiveness of the civil domestic violence legislation.

Chris Cunneen (2009) examined “whether domestic violence orders are an adequate and effective legal mechanism to respond to violence against Indigenous clients, particularly in rural and remote areas” (p. 20). The Department of Communities commissioned the research, concerned that Indigenous women were not using the domestic violence legislation to the extent expected and that alternative strategies were needed to improve their access to legal protection from domestic violence (Cunneen, 2009, p. 20). Cunneen analysed court data on protection orders, breaches of orders and sentences, and police data on responding to incidents of domestic violence. However, the data were not linked across individual cases. Cunneen supplemented administrative court and police data with interviews of police, magistrates, community service providers and Indigenous women who had used, or would have been eligible to use, the domestic violence legislation.

The major findings were as follows. Indigenous people were nearly six times more likely than non-Indigenous people to be named an aggrieved on a DVO in Queensland, the police were more often the applicant for protection orders involving Indigenous people, violence

\(^{13}\) This terminology is discussed by the VLRC (2006) but is also common parlance in Queensland to refer to cases where police do not act on breaches because no offence other than the breach was committed.
was more serious in Indigenous than non-Indigenous cases, and courts were more likely to grant orders for Indigenous people, and more likely to do so in the absence of the respondent. Very few applications were contested, and the great majority of DVOs for Indigenous people included the two standard conditions only (be of good behaviour towards the aggrieved and not commit domestic violence).

While Egger and Stubbs (1993) speculated that because Aboriginal and Torres Strait Islander women did not have equal access to justice, the benefits of protection orders were not equally available to them, Cunneen (2009) explicitly examined Indigenous women’s satisfaction with the police response. He found similar grievances about the police as those reported by the QCMC (2005), Douglas and Godden (2002) and Meyer (2011); further, he found that Indigenous women were dissatisfied because the police initiated DVOs that the women did not want.

Cunneen found that Indigenous offenders were twice as likely as non-Indigenous offenders to be jailed. Interviews with magistrates and the police revealed that breaches by Indigenous respondents usually involved physical violence. His interviews with police, Indigenous police liaison officers and victims of violence showed that the threat of a jail term did not act as a deterrent.

**Criminal violence and intimate partner violence**

*Criminal histories of respondents to domestic violence orders*

In a ground-breaking study that considered female and male respondents, Anna Stewart (2000) analysed data collected in 1994 for respondents to DVOs made under the *Domestic Violence (Family Protection) Act 1989*. At that time, the Act was limited to heterosexual couples who were, or had been married or in a *de facto* relationship, or were the biological parents of a child.

Stewart’s sample comprised 674 (568 male and 106 female) respondents to DVOs whose matters were addressed in one of four magistrates’ courts (Beenleigh, Southport, Ipswich and Brisbane) in South-East Queensland. Of the total sample, 5% were Indigenous (at the time

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14 The data were initially gathered for a Criminology Research Council project (Bulbeck, Stewart, Kwitko, & Dower, 1997).

15 I discuss the expansion of relationships covered in the legislation in detail in Chapter 4.
the Indigenous population of Brisbane was less than 1%), 64% were below the national mean for socio-economic score, and 63% had some criminal history. The 674 individuals were represented in 890 separate DVO applications (over a period of more than 6 years), and 77% of them resulted in a DVO. The majority of the 890 applications (58%) were made by the aggrieved, followed by the police (41%).

The sample of 674 fell into four groups. Group 1 had 401 individuals who had appeared in only one DVO application. Group 2 had 146 individuals named a respondent on one application, and an aggrieved on another application; that is, it included 73 couples who were the subject of cross-applications. Group 3 had 107 individuals who were respondents to multiple applications for the same aggrieved; and group 4 had 20 individuals (all male) who were respondents to multiple applications for different partners.

Using the results of a manual search of police records, “respondents were classified as having: a) no criminal history, b) no violent criminal history, c) spouse only violent criminal history (including breaches of protection orders), or as d) generally violent (violent convictions against both spouse and non-spouse)” (Stewart, 2000, p. 82). This classification enabled Stewart to investigate if there were differences: in the socio-demographic profiles between respondents of only one application for a protection order and respondents of multiple protection orders; between female and male respondents; and in the likelihood of respondents of one application having a criminal history, compared to respondents of multiple applications. Stewart’s sample also enabled an investigation of whether respondents of multiple orders had a violent criminal history, including non-spousal violence.

Stewart found no significant differences between the Indigenous and non-Indigenous people among the four groups of respondents. There were also no differences for age, socio-economic status, English being spoken at home, or being born overseas. There were significant differences for gender, marital status, and criminal history. Female respondents were more likely to be, or to have been, married “due largely to the females being respondents on cross-applications” (Stewart, 2000, pp. 82-83), and less likely than male

16 Authorised persons made the rest.
17 Here, Stewart references the results of a USA study (Klein, 1996 in Stewart 2000), which found that almost half (49%) of male respondents to restraining orders had within 2 years abused their victims again; Klein’s study, as reported by Stewart, identified three predictors of recidivism: a prior criminal history, age, and the nature of contact provisions in the restraining order.
respondents to have any criminal history. Compared to respondents to a single application (or a cross-application), respondents to multiple applications (for the same or different partners) were more likely to have a criminal history. Males were more likely to have a violent criminal history (including non-spousal and spousal violence) than a non-violent criminal history.

Considerably more of the 73 males (63%) than the 73 females (41%), involved in cross-applications had criminal histories, and nearly twice as many males (34%) as females (18%) had violent criminal histories.

Thus, we see from Stewart’s study that intimate partner violence is often one aspect of a broader pattern of violent offending. This is particularly so for men who repeatedly commit intimate partner violence against the same partner, or are serial offenders against multiple partners. Further, the law appears to have no effect in attempts to control these men’s violent offending.

**Criminal violence and applications for civil domestic violence orders**

Douglas and Godden (2002, p. 1) found that the civil *Domestic and Family Violence Protection Act 1989* had “essentially trumped the operation of the *Criminal Code (Qld)* ... [and] that this approach leaves many violent perpetrators, usually men, subject to minimal public sanctions for their inappropriate and often dangerous behaviour”.

Their study analysed 694 files related to applications for domestic violence protection orders in the Brisbane Magistrates’ Court for the year 2001 and interviews with domestic violence service providers. Of the 694 files, the aggrieved spouse was female in more than three-quarters (78%) of applications and male in 20%. The majority of respondents (79%) were male; 19% were female.

In their analysis of the circumstances leading to each of the 694 applications, Douglas and Godden (2002) mapped the various types of personal violence and property damage recorded on the files against possible criminal law offences. They identified 1414 types of violence or property damage that corresponded to a possible offence in the *Criminal Code Act 1899*

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18 Information on gender was not recorded in the court files for the remaining 2%.

19 The analysis was not able to discern the proportion of cases involving cross-applications.
The most common potential offence was assault, which was reported by 412 (59%) of the aggrieved. Among the range of other possible offences, 138 (20%) of the aggrieved reported wilful damage; 136 (20%), assaults causing bodily harm; and 108 (16%) death threats. In about a quarter of matters (23%), the respondent was alleged to have used weapons, and in 17 (2%), the weapon was a gun. In all cases when the application alleged use of a weapon, the respondent was male.

In spite of this large number of potential criminal offences including “visible injury, such as broken limbs, cuts and bruises, and property damage observed by police” (Douglas & Godden, 2002, p. 8), only seven matters (1%) were identified for possible investigations. In six that were investigated, the respondent was male. Of the seven matters investigated, only three resulted in a prosecution (40% of those investigated and just 2% of the 1414 possible offences). Of the three respondents prosecuted, one was female and one was an Indigenous man. The police gave a reason for not prosecuting in one case only: the female aggrieved did not want to charge her partner under criminal law.

Douglas and Godden concluded that a lack of appropriate law and formal policy could not explain the lack of investigation and prosecution of potential criminal offences. Instead, it appeared that the major contributors to the predominance of civil orders over criminal prosecution were the police practice and beliefs; and women’s fears of retribution and discomfort with the police and court processes.

Service providers said that the police did not see domestic violence as serious and believed that women did not want to pursue criminal charges and would be unreliable or hostile witnesses if the police pursued charges. They also said the police felt that there was not sufficient evidence to pursue criminal charges and that the police did not have the skills or resources to gather evidence effectively.

These findings were subsequently reinforced by the Queensland Crime and Misconduct Commission’s report (QCMC, 2005), and Meyer (2011), which indicated victims’ dissatisfaction with a number of areas of police response: the police not taking the matter seriously and not arresting the offender, even when the victim had suffered assault requiring medical attention and had asked the police to arrest.

In addition, Douglas and Godden (2002) found that the women were frequently unaware, and the police failed to advise them that in addition to an application for a DVO, criminal charges
were an option for various acts of domestic violence. Douglas and Godden (2002) concluded that “data from this research supports the understanding of domestic violence as a gendered issue and as such, efforts to promote formal equality in the law relating to domestic violence are clearly inappropriate and may be misguided” (p. 5). They argued for substantive equality in the application of the law, whereby social issues, such as the prevalence of women as victims and men as perpetrators of domestic violence, are taken into account to achieve equality.

**Criminal violence and breaches of civil domestic violence orders**

Pursuing her interest in an enhanced role for criminal law in domestic violence, Douglas (2008) analysed court files related to prosecutions for breaches of DVOs under Queensland’s *Domestic and Family Violence Protection Act 1989*. A breach of a DVO under that Act is a summary offence. Charges of criminal assault and criminal damage to property attract higher penalties than a breach of a DVO (Douglas, 2008, p. 448). Claimed benefits of making domestic violence a criminal offence, include that it “will improve victim safety and secure community denunciation” (p. 443). Douglas’s key concern is whether it is possible to overcome the difficulties in applying the criminal law in cases of domestic violence and, therefore, whether there should be continued advocacy for using criminal law.

Files for the study were drawn from the Brisbane, Beenleigh and Southport Magistrates’ Courts, supplemented with data from police files to determine the nature of breaches. The data were of matters dealt with in the courts between 1 July and 31 December 2005. There were 645 court files in the sample of breaches, and 88% involved male defendants. When the relationship of the parties was known, the great majority (95%) concerned spousal relationships: couples who were, or had been, married or in a *de facto* relationship.

Of the 645 breach offences, 350 were identified on police files as assault (193), criminal damage (116) or stalking (62). However, the majority (93%) of these matters were charged as breaches only under the *Domestic and Family Violence Protection Act 1989*, rather than offences under the Criminal Code. Only 16 (8%) of the assault matters were charged as assault, resulting in 14 convictions; and just nine (8%) of the criminal damages matters were charged as criminal damages, resulting in seven convictions. There were no charges of stalking. Citing others’ research on the association between stalking and domestic violence-related homicide, Douglas posits that the lack of stalking charges being laid is arguably the
most concerning. Breach convictions do not record the nature of the offence, while criminal convictions do. Therefore, an offender’s history of stalking would not be evident in future prosecutions and sentencing, if he were charged under the domestic violence legislation only.

Reinforcing the results of her earlier study, Douglas found “problems of minimisation of harm, exclusion, misrepresentation, isolation and disempowerment of women in the application of the criminal law.” (2008, p. 446). She asserted that while the imposition of a fine, and no recorded conviction, would generally be the most appropriate penalty for first time offenders, it might be crucial in domestic violence circumstances to record a conviction and impose a penalty other than a fine.

**Cross-applications and mutual orders**

The term *cross-application* is applied in cases where each of two people in a relationship is named the aggrieved and respondent on one application, then named the respondent and aggrieved, respectively, on a second application. Figure 3 illustrates this.

Figure 3: Cross-applications

<table>
<thead>
<tr>
<th>Application</th>
<th>1</th>
<th>2</th>
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</thead>
<tbody>
<tr>
<td>Aggrieved</td>
<td>Person A</td>
<td>Person B</td>
</tr>
<tr>
<td>Respondent</td>
<td>Person B</td>
<td>Person A</td>
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A cross-application may follow several days, weeks, or even months after the first application. In some cases, a cross-application may be made simultaneously. If both applications are successful, the result is cross-orders or, in the idiom of the State of Victoria, mutual orders. As indicated in Figure 1 the respondent on each application may consent to the magistrate making an order, or may contest the matter and require the magistrate to decide

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20 Simultaneous cross-applications are typically the result of police attending a scene of domestic violence and seeing that both parties (in a relationship relevant to the legislation) have acted in ways that constitute domestic violence under the legislation towards each other, so the police make an application against each of the parties at that time.
whether to make the order based on the evidence. The Victorian Law Reform Commission (VLRC) found that while cross-applications may be appropriate in some cases:

*The current use of cross-applications can be inappropriate and often leads to pressure and coercion being placed on people who have experienced family violence. Mutual orders do not promote responsibility and accountability for the perpetrator ... and reinforce a view that family violence is mutual ... rather than an exercise of systematic power and control of one person over another* (2006, p. 282).

The VLRC proposed that the domestic violence legislation require the grounds for mutual orders to have been made by both parties, thereby introducing “a presumption against mutual orders” (2006, p. 282).

**Gender differences in cross-applications**

In Stewart’s (2000) group of 146 individuals (73 heterosexual couples) involved in cross-applications, there were some with more than two applications, resulting in 204 applications for this group. Of the 204 applications, most (58%) respondents were male, supporting the view that women are more often the actual victims in cross-applications. Stewart found that the police were involved in just over half (55%) of all applications for this group. This is 14 percentage points higher than the proportion of police applications (41%) for the total sample of 674. Further, for 22% of the couples, applications for both the male and the female partner were made by the police and were made simultaneously, in half those cases. Thus, when there are cross-applications, they are more likely to be police-initiated.

Wangmann (2009, 2010) analysed gender differences in cross-applications for DVOs. She had three objectives: 1) to determine if men’s and women’s use of intimate partner violence was symmetrical or asymmetrical; 2) to illuminate what motivates men’s and women’s use of domestic violence legislation; and 3) if civil domestic violence legislation could capture the recursive nature of domestic violence and overcome an incident-based focus, as intended. Wangmann used both quantitative and qualitative methods. The quantitative data were court files related to 78 cross-applications (156 single applications). Qualitative data included the claims made by men and women in support of DVO applications, recorded on the court files, observations of court proceedings, and in-depth semi-structured interviews with 10 women involved in cross-applications and 27 key professionals (including magistrates, solicitors,
police Domestic Violence Liaison Officers, prosecutors and coordinators of services assisting women in court proceedings). Half of the women interviewed lived outside Sydney, but all the court files and most professionals interviewed were from Sydney. Wangmann (2009) distinguishes between dual applications,\(^{21}\) which are made at the same time, are related to the same incident and occur infrequently; and cross-applications, which are subsequently made by, or for, a person named as a perpetrator on a previous application. Wangmann (2009, p. 23) calls these “second in time” applications and found that men, more often than women, were the second in time applicant.

Wangmann found evidence of gender differences in claims of men and women in dual and second in time applications, but more so in regard to claims of violence when cross-applications had been made second in time by men. Second applications for men were more likely to be private (rather than police) applications. Further, “male second applicants were less likely than male and female first applicants, and female second applicants, to have alleged a history of domestic violence in their complaints” (2009, p. 257). She observed that claims by men whose applications were second in time rarely expressed the presence of fear or coercive control, characteristic of conventional understandings of domestic violence. Instead, they were using the legal system as a tactic for further control over their partners:

\[\text{some men's claims were not concerned with women's use of violence, but rather were concerned with women simply doing things men did not like, such as pursuing their legal rights, telling others about the man's behaviour, calling the men names, swearing at them and so on} \ (2009, \ p. \ 262)\]

Wangmann concluded that the NSW domestic violence legislation had failed to deliver on its promise to address the recursive nature of domestic violence and to overcome the limited single incident focus in addressing domestic violence matters. This failure was apparent in the frequency of dual police applications and in the gender differences in complaint narratives recorded in applications. Wangmann attributed these failings to prevailing legal culture, through which experiences of domestic violence are translated, and the more fundamental question concerning the potential of law to address the needs of women.

In a Queensland case study, Douglas and Fitzgerald (2013) reported that cross-applications accounted for about 12% of all applications in Queensland for each year between 2004-05

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\(^{21}\) These are frequently referred to as simultaneous cross-applications.
and 2006-07, but were 16% of all applications for subsequent years to 2010-11, when the period for their study concluded. Using 656 court files, and chi-square analyses of statistical significance (at p < .05 level), they analysed DVO applications for 328 couples. They considered allegations and previous DVOs, the lodging authority (police, private or other applicant), and the outcome of applications. They found significantly more women than men alleged assault, verbal harassment and damage to property, although these were the most common allegations made by men and women. Higher proportions of women than men alleged intimidation, harassment, stalking, and attempted murder (strangulation accounted for 90% of alleged attempted murder). Further, significantly more women than men alleged the respondent had breached a prior court order.

The role of the police in cross-applications

One of Douglas and Fitzgerald’s (2013) major findings was the extent of police involvement in cross-applications. The police lodged applications related to 80% of the couples; when the police were involved they lodged 80% of the applications for both parties. When the police make applications for one or both parties, allegations are predominantly assault, followed by damage to property and verbal harassment; however, when both parties make private applications, they (especially the women) significantly more often make allegations of intimidation, threats, stalking and sexual offences (Douglas & Fitzgerald, 2013). This is likely to reflect that the police become involved in circumstances where there is immediate risk to safety or property, and less likely to be involved in applications for women experiencing intimidation, threats, stalking and sexual offences. Either women are not confident in seeking police intervention for such matters, or the police who investigate them do not make an application.

Outcomes for police and private applications were also significantly different. Police applications were more likely to result in a DVO than private applications, particularly when they made applications for both parties, compared to applications made privately for both parties. This finding affirms previous research by Egger and Stubbs (1993) on the significance of police involvement in DVO application outcomes.

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22 They were all heterosexual couples who were or had been married, in a de facto marriage, or other intimate personal relationship and whose matters were heard in the Beenleigh or Brisbane Magistrates’ Court.

23 Most often a Queensland DVO, although such allegations also related to breaches of Family Court orders, interstate domestic violence orders, and others.
Cross-applications and Indigenous communities

Cross-applications were not discernible from the court data available to Cunneen (2009) at the time of his research, but his interview data indicated that cross-applications were rare in cases involving Indigenous people. Only one of the 32 victims of domestic violence interviewed had been named as a respondent on an application for a DVO, which had been made by her former partner after she had obtained a protection order against him. Cunneen (2009, p. 66) quotes from interviews on this point:

As a matter of fact I’m struggling to remember one [cross-application] ... there is so little use of family law so there is no use of cross-applications in that context (Magistrate); and

There are very, very few cross-applications – I was surprised when I came here how few there are (Police/Domestic Violence Liaison Officer).

That cross-applications were rare in cases involving Indigenous people is a surprising finding and one that I pursue in my research.

Limits of law and legal processes

Noting that few analyses of implementing law have concerned the court process, itself, rather than what happens before and after court, Hunter (2005) sought “to determine whether the feminist claim that the criminal law silences women, also pertains in the context of new civil laws specifically designed to respond to women’s experiences” (p. 2). She observed 100 domestic violence protection order applications in nine Local Courts in Melbourne; accessed court files and observed matters in the Family Court (124 files and 20 observations); and interviewed practitioners, lawyers, support workers and women litigants in civil law domestic violence matters. Hunter analysed process, discourse, narratives and culture of the civil courts, and the actors within them. She found that while the civil courts did, in general, deliver the desired legal outcome (a DVO), women subjected to domestic violence “did not experience a supportive and affirming legal process ... feminist law reforms relating to domestic violence have not been implemented as intended” (Hunter, 2005, pp. 300-301). Like Wangmann (2009, 2010), Hunter (2005) saw that the failure to implement law reforms as intended was a result of prevailing legal culture. That is, law is implemented in a culture that privileges a male worldview and reinforces rather than counters non-feminist discourse.
SUMMARY DISCUSSION OF PRIOR RESEARCH

Australian research indicates that civil domestic violence laws are effective in some respects but lacking in others. Women identified tangible benefits, even if the violence did not stop altogether (Egger & Stubbs, 1993). One such benefit is a reduction in the severity of violence (Young et al., 2000), when police intervention is joined with a DVO. Young et al (2000) speculated that the threat of arrest could be a deterrent, yet arrest and imprisonment were found not to deter Indigenous men (Cunneen, 2009) or others, particularly non-Indigenous men with multiple applications and prior violent histories (Stewart, 2000).

Police DVO applications are more successful than private applications, thus the police are the key route to a DVO for women (Egger & Stubbs, 1993). However, most studies (Douglas & Godden, 2002; Douglas, 2008; QCMC, 2005; Cunneen, 2009; Meyer, 2011) found that women were dissatisfied with the police response. The major concerns for Indigenous and non-Indigenous women were failure of the police to take matters seriously, and the police making them feel that they were not worth the paper work involved in making an application, or addressing a breach. Failure to use the criminal law for offences leading to applications for DVOs (Douglas & Godden, 2002) and those resulting only in a breach of the domestic violence legislation (Douglas, 2008) were further areas of policing identified as inadequate, reinforcing the findings that the police minimised women’s experiences of intimate partner violence. Some Indigenous women, however, were concerned with the police making applications despite their objections (Cunneen, 2009).

Cross-applications for DVOs have been a feature of the legal response to domestic violence since at least 1994 (Stewart, 2000) and in Queensland the number of cross-applications, and involvement of the police in cross-applications, have increased. Further, police applications increase the chance of courts making cross-DVOs (Douglas & Fitzgerald, 2013). However, drawing on interviews, not court files, Cunneen (2009) found that cross-applications for Indigenous men and women were rare.24 One explanation for this surprising finding is different interpretations of the term. For example, the interview material cited by Cunneen (2009, p. 66) to suggest an absence of cross-applications, could instead be an absence of what Wangmann (2009) calls dual applications (made at the same time, or in relation to the same

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24 Cunneen was unable to determine cross-applications from the court data because it had been de-identified and there was no way to identify linked cases, so the results on cross-applications came from interview data.
event), rather than cross-applications (one is made subsequent to the other and related to a different event).

More than one-fifth (22%) of cross-applications in Stewart’s (2000) sample, were simultaneous police applications. She concluded that this points to the possibility of *common couple violence*. An alternative, or additional, conclusion would be that the police adopted a formulaic approach to applying the domestic violence legislation, without regard to the meaning attached to the violence or its effect. Indeed, Wangmann showed that the civil domestic violence law had failed to overcome the single-incident approach of the police and courts and ignored the gender differences in claims made by women and men in cross-applications (particularly when men made a cross-application subsequent to that of their female partner). These failings result from prevailing police and court culture and practice, which resides within a liberal legal ideology emphasising objectivity and formal equality (Marchetti, 2008) and, thus, has not grasped the gendered dynamics of domestic violence (Douglas & Godden, 2002; Wangmann, 2009; 2010; Hunter, 2005).

**EXPANDING THE BODY OF KNOWLEDGE**

My research builds upon this body of knowledge, but extends it in four key ways. First, it examines the intent of the legislation to address coercive controlling behaviour perpetrated by men against their current or former female intimate partners; and it focuses on legislative provisions specifically designed to overcome coercive controlling tactics used by perpetrators, which seek to undermine the legal system as well as to control the victim (Chapter 4). Here, I am interested to address the distinction Wangmann (2009, 2010) draws between the nature of violence that legislation aimed to address and the nature of violence being addressed by legal practices.

Second, I consider both gender and race in my analysis by using linked court and police data for 185 individuals in four groups: Indigenous men, Indigenous women, non-Indigenous men and non-Indigenous women. Mine is the first study to compare the DVO histories of Indigenous men and women, and non-Indigenous men and women charged with breaching domestic violence orders, using linked court and police data. My analysis of administrative court data provides a more in-depth examination of the impact of civil domestic law on

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Indigenous people than Cunneen’s (2009) study. In particular, I can establish the relative frequency of cross-applications, and cross-DVOs, for cases involving Indigenous people.

Third, the linked court and police data in my research are of cases prosecuted in regional cities (Mount Isa and Cairns), rather than in densely populated metropolitan areas such as Sydney, Southport and Brisbane. Further, the cases prosecuted in Mount Isa or Cairns often involved people from remote Aboriginal and Torres Strait Islander communities in the Gulf of Carpentaria and Cape York Peninsula. Cunneen’s research also involved non-metropolitan areas of Queensland, however, he was not able to link the court and police data available for his research for individual cases and his analysis did not include gender differences. Finally, I explore the nature and qualities of Indigenous violence, which may be responsible, in part, for their higher statistical presence as perpetrators and victims of domestic violence.

THE STRUCTURE OF THE DISSERTATION

After this introductory chapter, Chapter 2 explains how intimate partner violence has been framed and understood in the research field, including international debates on the gendered nature of intimate partner violence and typologies of violence, all of which have occurred in the absence of racialised perspectives. It considers data on frequencies of violence, and the meanings and uses of violence in Indigenous communities, past and present.

Chapter 3 outlines the research questions, theoretical frameworks used, sources of data, and methods of analysis. Chapters 4, 5, 6, and 7 present the empirical findings. Chapter 4 focuses on the gendered aspirations of Queensland’s civil domestic violence law, with an analysis of parliamentary debates that led to the enactment of Queensland’s domestic violence-specific civil laws. Chapter 5 presents quantitative findings from court administrative data on DVOs and breaches of DVOs, analysing patterns of violence and legal responses for Indigenous and non-Indigenous men and women. Chapter 6 brings forward the views of service providers and police prosecutors on why Indigenous men and women are a high share of domestic violence perpetrators and victims, and the types of violence that may be wrongly subject to police and court attention under the domestic violence law. Chapter 7 calls for a reconceptualisation of domestic violence, which uses an intersectional race/gender

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26 Data from regional courts in South-East Queensland (Beenleigh and Southport), in addition to the Brisbane Central Magistrates’ Court, were analysed for the studies conducted by Stewart (2000), Douglas and Godden (2002), and Douglas (2008).
perspective. It distinguishes between coercive control, violent resistance and fights, their frequency for Indigenous and non-Indigenous men and women, and their character, with examples from the police reports. Chapter 8 discusses the findings, relating them to the literature, and Chapter 9 concludes and traces implications for future advocacy on social and legal responses to domestic violence.
2. FRAMING INTIMATE PARTNER VIOLENCE

In the 1980s I began to observe the gap between mainstream feminist and Indigenous women’s advocacy for responding to domestic and family violence: each group was arguing for different responses to different kinds of violence. Domestic and family violence law, policy and service responses did not fully appreciate or take up this difference. This chapter concerns different ways of conceptualising domestic and family violence and introduces the cultural context of Indigenous family violence.

TERMINOLOGY AND PARAMETERS

Domestic violence came to public attention in the mid-1970s and early 1980s as one element of feminist activism to achieve equality for women and, specifically, to make men’s violence against women a public rather than private matter. Domestic violence was synonymous with men’s abuse of power over their female intimate partners and the word “domestic” referred to the type of relationship, rather than its setting. The intention was to include women who were no longer living with an abusive male partner; it was not intended to include people who shared a domicile but were not in an intimate relationship. The word “violence” was intended to incorporate psychological abuse as well as physical and sexual abuse, it thus expanded and claimed feminist understandings of what counts as violence (Kelly, 1988). This broader conceptualisation of violence has not permeated into the public’s understanding of it. Indeed, some conservative governments in Australia have actively resisted such a conceptualisation (Costello, 2009).

Increasingly, campaigns responding to elder abuse, adolescent to parent abuse and abuse of women with disabilities in institutional care, for example, exploited the lack of specificity in the term domestic violence, and claimed inclusion in domestic violence policy and service responses. Now, when one speaks of domestic violence, some audiences take it to mean any violence within a home environment, or within a personal relationship, even though domestic violence specific service responses and legislation have not expanded to include these groups. Further, some Australian jurisdictions, including the Commonwealth, Tasmania and Victoria use the term family violence instead of domestic violence and others (e.g. Queensland) use domestic and family violence to broaden the scope beyond intimate partner relationships to include other family relationships. Aboriginal and Torres Strait Islander women, many of whom have expressed a preference for dealing with family violence since the early 1990s,
have influenced this change in terminology. This was part of a strategy by Indigenous women to distinguish their experiences of violence from that of white women, to take control of resources and processes directed towards ending violence against women in Indigenous communities, and to recognise heterogeneity among Indigenous Australians (Nancarrow, 2003, pp. 11-12). As explained by Harry Blagg (2008, p. 138), Indigenous family violence is a capacious construct with regional variation. In addition to intimate partner abuse, it can variously include clan and family feuding, *jealousing*, breaches of cultural obligations and practices, alcohol fuelled violence, self-harm and suicide, and sexual abuse and exploitation, regardless of the relationship (Blagg, 2008; Memmott, 2010; Mow, 1992). Some Indigenous women, however, prefer to retain the term domestic violence, emphasising “the need to focus on the violence that Aboriginal women experience from their intimate male partners” (Wangmann, 2009, p. 23).

Because the term domestic violence is no longer synonymous with men’s abuse of their female intimate partners, the term *intimate partner violence* is now more common, although it is often still used interchangeably with domestic violence. It is notable that these terms are all gender-neutral. Gender specific terms such as *wife battering* and *woman abuse*, commonly used in North America, have been given scant attention in Australia. The term wife battering limits too much the nature of the relationship (wife) and the kind of abuse to be addressed (physical assault). Woman abuse overcomes these problems, but advocates in Australia have not embraced this term. This reflects, in part, commitment to a definitional construct inclusive of same sex intimate partner relationships.

This research is concerned primarily with the experiences of Indigenous Australian women as a consequence of legislation generated from a mainstream feminist perspective. I will show that the premise of key legislative provisions was the need for state power to restrain a male partner from exerting coercive control over a presumptively powerless female intimate partner. Therefore, my investigation centres on intimate partner violence, and from here on I will predominantly refer to intimate partner violence, although at times, I use this term and domestic violence interchangeably.

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27 I will discuss this further, later in this chapter.
DEBATES ON THE GENDERED NATURE OF INTIMATE PARTNER VIOLENCE

Despite the early success of feminists in bringing a gendered analysis of intimate partner violence into the public policy realm, the views of various men’s rights groups are taking hold within the broader Australian community (Murray & Powell, 2009, 2012). They frame the problem of intimate partner violence as gender-neutral (gender is not relevant to the perpetration of violence) or gender symmetrical (men and women are equally likely to use violence in intimate partner relationships). The results of the most recent periodic national community attitudes survey (VicHealth, 2014) revealed a significant decline in the percentage of Australians who believe that men mainly, or more often, commit domestic violence. This decline has been statistically significant on both occasions that the survey has been repeated. Similarly, the 2013 survey showed a significant decline since 2009 in the number of Australians who believed that women are more likely than men to suffer physical harm and fear. These shifts in belief may be attributed to a countermovement transmitted in “patriarchal resistant discourse” (Berns, 2001, p. 264), which has manifested in campaigns by various men’s organisations over the past three decades, and the fluid construction of the notion of domestic violence, as noted above. The countermovement and the changing understanding of what constitutes domestic violence are, of course, mutually constructed and regenerating.

Claims of gender symmetry in domestic violence began to emerge in scientific research in the mid-1970s (Straus, 2010), including the first national study on the prevalence of violence in American families, conducted in 1975 (Steinmetz, 1977-78; Straus, 1977-78; Straus, Gelles, & Steinmetz, 1980), which was replicated in 1985 (Straus & Gelles, 1986). Based on the results of the 1975 national survey, Steinmetz (1977-78) published the provocatively titled article “The battered husband syndrome”. It was met with great enthusiasm in the media and an immediate rebuttal (Pleck, Pleck, Grossman, & Bart, 1977-78). So began a continuing international debate

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28 The Australia-wide sample size was 17,517.
29 The survey was first conducted in 1995 and repeated in 2009 and 2013. The difference in the percentage of people who believed domestic violence is committed mostly by men varied significantly (p < .01) between 1995 (86%) and 2009 (74%), and between 2009 and 2013 (71%).
30 86% believed this in 2013, compared to 89% in 2009 (significantly different at p < .01).
31 52% believed this in 2013, compared to 55% in 2009 (significantly different at p < .01).
32 Examples of these in Australia are the Men’s Rights Agency (http://mensrights.com.au) and the One-in-Three campaign (http://www.oneinthree.com.au/).
between two broad groups of researchers on the question of gender symmetry in spousal domestic violence.  

The opposing groups of researchers have been characterised in terms of their subject focus, such as the family violence researchers and the violence against women researchers (Dobash & Dobash, 1992); and in terms of the theoretical perspectives that guide their work, such as conflict theory researchers and feminist theory researchers (White, Smith, Koss, & Figeuredo, 2000). Elements in the two perspectives do overlap (Dobash & Dobash, 2004, p. 326). In addition, some family violence researchers identify as feminists (e.g. Straus, 2007) and many violence against women researchers also research women’s violence against men to explore the claims of gender symmetry in intimate partner violence (e.g. Dasgupta, 2002; Feder & Henning, 2005; Ferraro, 2006; Kernsmith, 2005; Wangmann, 2009, 2010). I distinguish the two groups as conflict theory researchers and feminist theory researchers because the epistemological position of each group informs the way it conceptualises and operationalises intimate partner violence, and these different conceptualisations are at the core of the debate.

Straus (2010) asserted that gender symmetry in rates of perpetration has been demonstrated in over 200 studies. Archer (2000a) concluded from a meta-analysis of 82 such studies that women are actually slightly more likely to use physical aggression towards male partners. Archer (2000a) and Straus (2010) conceded that the effects of domestic violence, however, are asymmetrical with women more likely to be killed, physically and psychologically harmed and to be in fear of their partner, compared to men. Straus, Gelles and Steinmetz had advocated “giving first attention to wives as victims as the focus of social policy” (1980, p. 43, original emphasis) because of this difference. Further, Straus and his colleagues observed a relationship between violence and power: using their terms, there was more husband beating and more wife beating in households dominated by a husband, compared to households where husbands and wives shared power, or where a female dominated the household. The epistemological stance adopted by Straus, and subsequently by other conflict theory researchers, directed attention to

33 The debate on gender symmetry does not equate to claims of such violence being gender-neutral (without gender influence).

34 I focus on the gender symmetry debate here because it provides the context for the development of typologies of violence, a key concern in my thesis. It is interesting, however, that the Australian Bureau of Statistics’ Personal Safety Survey (PSS), discussed later in this chapter, does not find gender symmetry in the experience of intimate partner violence.
similarities and differences in the relative frequency of discrete, de-contextualised acts of violence used as tactics to resolve conflicts.

The conceptualisation of violence as discrete acts in response to conflict, and the consequent failure to recognise that men’s violence against their female partners is part of a broader, systematic pattern of abusive and controlling behaviour is central to feminist critiques of conflict theory researchers’ findings (Dobash & Dobash, 2004; Pence & Paymar, 1993; White et al., 2000). The methods of data collection and analysis used by conflict researchers further obscure the pattern of abuse revealed in feminist informed research. The Conflict Tactics Scales (CTS) (Straus, 1979) and the revised Conflict Tactic Scales (CTS2) (Straus, Hamby, Boney-McCoy, & Sugarman, 1996) are the most widely used instruments for quantitative research on intra-family violence (DeKeseredy & Schwartz, 1998; Dobash & Dobash, 2004; Hegarty & Roberts, 1998; White et al., 2000). The CTS quantifies the use of various tactics, categorised broadly as reasoning, verbal aggression, and physical violence, used by family members to resolve conflicts. The CTS2 added measures for sexual coercion and psychological aggression, and asks about injuries to establish any gender differences in the impact of the violence (Straus et al., 1996). The CTS2 partially responds to feminist critiques of the CTS, but fails to capture adequately the context or meanings of the violence or its psychological effects (Dobash & Dobash, 2004; Osthoff, 2002; White et al., 2000). Analyses of research results based on these quantitative measures consistently show that men and women equally use violence against each other. This has led to conclusions that intimate partner violence is “bidirectional” (Hamberger, 2005, p. 134) and “runs in couples” (Headey, Scott, & de Vaus, 1999, p. 61), and that female, as well as male, partners may exclusively perpetrate intimate partner violence (Hamberger, 2005).

Archer’s (2000a) meta-analysis of 82 studies on gender and violence has been critiqued on these grounds: almost all studies (93%) used the CTS or its variant, CTS2; studies on sex differences in sexual aggression were excluded (White et al., 2000); only a small number of studies involving samples of abused women were included; and about half (42) of the studies concerned college and high school students in dating relationships (O’Leary, 2000; White et al., 2000).

Feminist researchers employing quantitative and qualitative methods consistently show that men, predominantly, perpetrate intimate partner violence against women, and when women do perpetrate intimate partner violence, it is usually as a response to violence against them (Bagshaw & Chung, 2000; DeKeseredy, Saunders, Schwartz, & Alvi, 1997; Dobash & Dobash,
Further, both conflict theory and feminist theory research consistently show that male partner violence against women has significantly more harmful consequences (Archer, 2000a; Feder & Henning, 2005; Hamberger, 2005; O'Keefe, 2005; Straus, 2010; Straus et al., 1980; Tjaden & Thoennes, 2000). Nevertheless, conflict theory research has led to calls for more research on men’s experiences of violence by their intimate female partners (Archer, 2000a, 2000b; Frieze, 2000; O'Leary, 2000). Indeed, there has since been considerably more such research, including numerous articles in three special issues of the journal Violence Against Women (see, for example, Dasgupta, 2002; Hirschel & Buzawa, 2002; Kimmel, 2002; Osthoff, 2002; Swan & Snow, 2002; Worcester, 2002).

Efforts to resolve the gender symmetry debate are partly concerned with the defence of existing theoretical positions, and partly, with ways to create new ones. Conflict theory researchers argue that gender inequality has nothing to do with violence within the family, evidenced by the gender symmetry in the use of physical acts of aggression to resolve conflict (which they call domestic violence). Feminist theory researchers argue that intimate partner violence is a consequence of, and reinforces, gender inequality: specifically, male dominance in patriarchal society. At stake is the right to make a claim for public resources including funding for therapeutic interventions and community education campaigns, and whether that funding should be directed equally to efforts addressing men and women as victims. More fundamentally at stake is the status quo of male superiority in structural inequality, which is better served by analyses that minimise male violence against women.

**Types of violence**

A number of scholars have established typologies to differentiate between:

1. conflict based and control based types of intimate partner violence (e.g. Bancroft, 2002; Dalton, Carbon, & Olesen, 2009; Johnston & Campbell, 1993; Okun, 1986; Pence & Dasgupta, 2006; Schechter, 1982; Stark, 2007);

2. types of male perpetrators (e.g. Gondolf, 1988; Holtzworth-Munroe & Meehan, 2004; Holtzworth-Munroe & Stuart, 1994; Jacobson & Gottman, 1998); and
3. violence perpetrated by women (Hirschel & Buzawa, 2002; Osthoff, 2002; Holtzworth-Munroe, 2005; Swan & Snow (2002)).

Some scholars have tested their own or others’ theories of typologies with results supporting differentiation of types of intimate partner violence (e.g. Frye, Manganello, Campbell, Walton-Moss, & Wilt, 2006; Graham-Kevan & Archer, 2003; Holtzworth-Munroe, Meehan, Herron, Rehman, & Stuart, 2000; Johnson, 2006; 2008). Wangmann (2011) has assessed the literature on typologies of intimate partner violence in detail; thus, I do not repeat it. However, in analysing the way that gender and race operate in legal responses to intimate partner violence, it is important to recognise that intimate partner violence varies in motivation, impact and longer-term consequences. I focus on the work of Johnson (and his colleagues) and Stark (2006, 2007) to do so.

The work of Johnson (1995, 2005, 2006, 2008) and his colleagues (Johnson & Ferraro, 2000; Johnson & Leone, 2005; Kelly & Johnson, 2008) is the most widely known, perhaps because it was initially put forward as a resolution to the long and, at times, acerbic debate on gender symmetry in intimate partner violence. It has been the subject of constructive critique in Australia (Wangmann, 2009, 2011) and internationally (Brownridge, 2010; Dragiewicz & DeKeseredy, 2012; Stark, 2006), and Johnson has been persistent in further developing his theory of typologies and expounding its merits (Johnson, 1995; Johnson & Ferraro, 2000; Johnson & Leone, 2005; Kelly & Johnson, 2008). Johnson’s work is sociological rather than psychological in its orientation and is, therefore, more relevant to my work than others. Further, as Wangmann (2011, p. 5) notes, Pence and Dasgupta’s (2006) classificatory system of types of violence, developed on the basis of their work with men and women involved in intimate partner violence legal proceedings, broadly concurs with Johnson’s typology. Finally, Johnson’s work has been influential in legal responses to intimate partner violence in Australia, although this has been felt primarily in family law (see Rathus, 2013; Wangmann, 2011; Jaffe, Johnston, Crooks, & Bala, 2008), while I am concerned primarily with domestic violence law.

Johnson (1995) concluded that the two camps of scholars debating gender symmetry in intimate partner violence were both right, but dealing with different types of violence. As the conflict theory researchers found, and according to Johnson’s typology, in common couple violence there are no major gender differences in the frequency of perpetration and it does not seem to escalate. Regardless of frequency and escalation, however, women are more at risk of physical
and psychological harm than men. Discrete acts of violence at times of conflict are characteristic of common couple violence and “a product of a violence-prone culture” (Johnson, 1995, p. 286). “Patriarchal terrorism” (Johnson, 1995) is perpetrated almost exclusively by men, and does escalate. It is a strategy to achieve general control over one’s partner using a number of control tactics (Dobash & Dobash, 1998; Dobash & Dobash, 1992; Pence & Dasgupta, 2006; Pence & Paymar, 1993), including social isolation, threats, emotional abuse, economic control, using children and male privilege (Pence & Paymar, 1993). Johnson’s (1995) initial typology (common couple violence and patriarchal terrorism) was revised and expanded to five types of violence by 2008 (Kelly & Johnson, 2008), illustrated in Figure 4. Again, Wangmann (2011) provides a more detailed discussion of this revision than is warranted here, but I wish to draw attention to the following key points: the challenges and risks in using Johnson’s typologies of violence in decision-making, the problem of Johnson’s premise that typologies of violence are embedded in actual physical violence, and the broader socio-political context in which intimate partner violence operates.

Classifying types of intimate partner violence is an imprecise exercise. One of Johnson’s five types of violence, for example, is mutual violent control, despite his statement that mutual domestic violence is a misinterpretation of “intimate terrorism with violent resistance, or situational couple violence in which both partners had been violent” (Johnson, 2008, p. 12). I have long considered the notion of mutual domestic violence (mutual violent control) an impossibility; coercive control requires a subjugator and the subjugated, which are mutually exclusive positions. Cross-DVOS result from notions of mutual domestic violence, and victims are consequently re-victimised by the justice system, which inadvertently colludes with perpetrators in coercive control. Further, Johnson presented stalking and separation-precipitated violence as an appendix in his book because he “simply didn’t know where to put this material; it ‘belongs’ in the chapters on intimate terrorism, on violent resistance, and on situational couple violence” (Johnson, 2008, p. 102). Yet, he acknowledged post-separation violence could be “intimate terrorism that is precipitated entirely by the separation process” (2008, p. 103). Thus, an inaccurate assessment of post-separation violence as situational couple violence, made in the Family Law Court, for example, could put victims of violence and their children at risk of continued and increased levels of violence, including homicide (Mouzos & Rushforth, 2003).
Figure 4: Summary of Johnson’s typology

<table>
<thead>
<tr>
<th>Type of violence</th>
<th>Coercive controlling violence</th>
<th>Violent resistance</th>
<th>Mutual violent control</th>
<th>Situational couple violence</th>
<th>Separation instigated violence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Presence or absence of general control</strong></td>
<td>One partner uses violence and control; the other partner may use violence but not control</td>
<td>One partner uses violence (but not control) to resist violence and control by the other partner.</td>
<td>Both partners use violence and control</td>
<td>One or both partners use violence; no control</td>
<td>One or both partners use violence; no control</td>
</tr>
<tr>
<td><strong>Use by gender</strong></td>
<td>Almost always men</td>
<td>Almost always women</td>
<td>Men and women – very rare</td>
<td>Men and women – quite common</td>
<td>Men and women</td>
</tr>
</tbody>
</table>
Johnson’s notion of “incipient intimate terrorism” (2008, p. 46), that is, coercive controlling behaviour without actual violence, reveals that he conceptualises types of violence as the presence or absence of controlling behaviour embedded in actual physical violence. This premise is a major flaw in Johnson’s analysis (DeKeseredy, 2011; Stark, 2006, 2007; Wangmann, 2009, 2011). The centrality of coercive control within a cluster of physical and non-physical behaviours (Bancroft, 2002, Schechter, 1982) explains why actual violence is often not present; why abuse continues, even escalates, after a relationship ends; why apparently minor abuse has such impact; and “why the incident-specific definition has failed to elicit effective interventions” (Stark, 2006, p. 1021).

Coercive control is “individually willed yet socially constructed” (Schechter, 1982, p. 238), a manifestation of a man’s need, in a patriarchal world, to be in control of his woman/family. Johnson’s typology disregards this broader socio-political context: a landscape of systematic gender inequality, in which coercive control occurs (Stark, 2006). In this landscape, and particularly in regard to the notion of mutual violent control, and situational couple violence, women “typically lack the social facility to impose the comprehensive levels of deprivation, exploitation, and dominance found in coercive control” (Stark, 2006, p. 1024). If typologies are to be useful to women, we must embed them in the presence or absence of coercive control, not physical violence. This is the premise of Stark’s analysis of coercive control and fights.

**Coercive control versus fights**

Stark (2006, 2007) argued for a distinction between *fights*, in which coercive control is absent, and *assaults*, in which coercive control is present. In fights, the victim, the perpetrator and others see force as a legitimate strategy for resolving conflict. Assaults on the other hand are one of a number of strategies used to suppress conflict by asserting male power, legitimated by social structures. In Stark’s conceptualisation, it is not physical violence, but the suppression of “autonomy, liberty and equality” (Stark, 2006, p. 1023) that makes coercive control particularly sinister, and which distinguishes men’s violence from women’s in intimate partner relationships. Assault, said Stark, “differs from *fights* because of its motives, dynamics, and consequences … assaults are initiated to suppress rather than resolve conflict …” (2006, p. 1024, original emphasis). I agree with Stark’s analysis of the difference between fights and assaults. Verbal and physical abuse in the absence of intent to suppress
autonomy, liberty and equality represents verbal and physical *fights*. Suppression of autonomy, liberty and equality, less helpfully expressed by others as power and control (Pence & Paymar, 1986), is the essence of domestic violence, as feminist advocates conceived it. The strategies used to effect that suppression involve a constellation of behaviours that include intimidation, manipulation, isolation and domination; actual physical violence may be, but is not necessarily, involved.

The most important difference between the analysis of Johnson and his colleagues (Kelly & Johnson, 2008) and Stark (2006, 2007) is the role of actual physical violence. Johnson et al’s analysis pivots on the presence or absence of general control as motivating physical violence, while for Stark (2006, 2007) physical violence is not necessarily involved at all in either fights or coercive control. A weakness in Stark’s analysis, as well as Johnson’s, however, is that the gendered nature of non-coercive violence (i.e. fights) is not made apparent. Moreover, neither Stark’s nor Johnson’s typologies have brought the experiences of racialised women into the frame because they have not addressed unequal racial power, or the intersection of gender and racial inequality, which is also constant in the wider socio-political context.

Typology theory is still in its infancy and typologies are imprecise. They pose serious risks to women and their children when decisions are based on erroneous assessments and the more that Johnson and his colleagues have sought to delineate types of violence, the greater the risk of misdiagnosis, with potentially fatal consequences. Moreover, it is a risky proposition to concede the rational arguments for typologies of violence in the face of irrational patriarchal resistant discourse (Berns, 2001; DeKeseredy & Dragiewicz, 2007; Dragiewicz, 2008, 2011; Mann, 2008), which seeks to undermine strategies to free women from male violence and oppression. The failure to distinguish between different types of violence, however, has led to women victims/survivors being subjected to police or private DVO applications, often cross-applications; DVOs, often cross-DVOs; and, sometimes, a criminal charge of breaching a DVO. I will explore this theme in detail in later chapters but provide here a brief summary of the prevalence and nature of intimate partner violence in Australia, and a discussion of the literature on violence in Indigenous Australian communities, to position that exploration.
Prevalence

The Australian Bureau of Statistics has twice conducted the national Personal Safety Survey (PSS) (ABS, 2006b, 2013), involving interviews with 17,000 women and men about their experiences of violence since the age of 15. This is the most comprehensive quantitative study of interpersonal violence in Australia, and the most commonly used in public commentary and policy development. The PSS data show that gender has more effect than any other variable (e.g. age or geographic location)\(^{35}\) on the experience of violence in Australia (Cox, 2015). Using the PSS 2012 data, Cox (2015) revealed that one in four women in Australia had experienced intimate partner violence (including current and former boyfriend/girlfriend and dating relationships, in addition to current and former cohabiting relationships) since the age of 15. Her findings are consistent with those of Mouzos and Makkai (2004), who used the same definition of intimate partner.

Using methods similar\(^{36}\) to the Australian component of the International Violence Against Women Survey (IVAWS) (Mouzos & Makkai, 2004), a regional Queensland study (Nancarrow, Lockie, & Sharma, 2009) and a Queensland-wide study (Nancarrow, Burke, Lockie, Viljoen, & Choudhury, 2011), each found broadly similar rates of violence perpetrated against women by their current, intimate male partner. This is shown in Table 1. Across the three studies, between 10% and 13% of the women had reported physical violence from their current partner, at some time during the relationship; between 3% and 8% had experienced such violence in the past 12 months; and between 33% and 40% of the women had experienced some form of non-physical abuse at some time during the relationship. The inclusion in the IVAWS of non-cohabitating intimate partner relationships, while the Queensland studies included women in a current cohabiting relationship only, may account for the variance between the IVAWS and the Queensland studies.

\(^{35}\) Due to methodological constraints and ethical concerns, statistically valid samples for sub-populations, such as Aboriginal and Torres Strait Islander people, are not available for analysis in the PSS data.

\(^{36}\) The samples in both Queensland studies were limited to women in current, cohabiting de facto or marital relationships while the analysis of violence in current relationships from the IVAWS data (Mouzos & Makkai, 2004) included women in non-cohabiting (e.g. dating) relationships. Further, neither of the Queensland studies had sufficient samples for analysis of sub-populations. Mouzos and Makkai (2004) were able to conduct some analyses for Indigenous Australians, but advised caution in the use of the results due to the small sample size.
Numerous scholars have paid attention to the high levels of violence, including intimate partner violence and homicides, among Indigenous Australians (Al-Yaman, Van Doeland, & Wallis, 2006; Anderson & Wild, 2007; Atkinson, 1990a, 1990b; Bolger, 1991; Ferrante, Morgan, Indermauer, & Harding, 1996; Gordon, Hallahan, & Henry, 2002; Robertson, 2000; Willis, 2011). A 2009 Productivity Commission report found that Indigenous people were hospitalised because of partner violence 34 times more often than non-Indigenous people were. Compared to their non-Indigenous counterparts, Indigenous females were 35 times more often, and Indigenous males 21 times more often, hospitalised due to family violence related assaults (SCRGS, 2009, p. 4.127). In Queensland, Indigenous Australians were 18 times more likely than non-Indigenous people to be a victim of a domestic violence related assault, and the rate of domestic violence for Indigenous women in Queensland was 21 times higher than that for non-Indigenous women (SCRGS, 2009, p. 4.138).

**Impact**

A number of Australian studies have highlighted the impact of violence against women, and domestic violence specifically, on those who are directly victimised, their children and families, and the broader community. The effects of domestic violence are wide ranging and often inter-related. They include homicide, suicide, physical injuries, poor mental health, disruption to social supports, education and employment, and homelessness and poverty.
The latest long-term analysis of data from the National Homicide Monitoring Program (Cussen & Bryant, 2015a) shows that two-fifths (41%) of the 2631 homicides in the 10-year period from 2002 to 2012 were domestic and family violence homicides. More than half (56%) of those were intimate partner homicides. Consistently, women are the majority of the victims of intimate partner homicide (Cussen & Bryant, 2015a, 2015b; Chan & Payne, 2013; Dearden & Jones, 2008; Mouzos, 2005; Mouzos & Rushforth, 2003; Virueda & Payne, 2010), with the latest report (Cussen & Bryant, 2015a) showing that almost three-quarters (75%) of the intimate partner homicide victims were women.

Indigenous homicides (i.e. where both victims and offenders are Aboriginal or Torres Strait Islander) were more likely than other homicides to involve intimate partners or other family members (67%, compared to 44%), to occur in a public rather than a private place (19%, compared to 7%), and to have involved alcohol (70%, compared to 22%) (Cussen & Bryant, 2015b).

Non-fatal physical and mental health impacts of domestic violence are also well documented. Mouzos and Makkai (2004) reported that 40% of the women in their study who had suffered violence by intimate male partners had sustained an injury in the last incident of violence, and 29% of those had injuries serious enough to require medical treatment. Consistent with the international literature on mental health impacts of domestic violence,37 Australian studies have demonstrated that women who suffered physical or non-physical forms of abuse were at greater risk of suffering depression and other severe psychological disorders (Lockie, Nancarrow, & Sharma, 2011; VicHealth, 2004). A systematic review of community surveys on Indigenous mental health (Jorm, Bouchier, Cvetkovski, & Stewart, 2012) found that Indigenous Australian adults have rates of anxiety and depression up to three times higher than non-Indigenous adults, although further research is recommended to understand the antecedents.

Domestic violence is the largest single cause of homelessness among women and their children (Australian Government, 2008), and contributes to difficulties in retaining or pursuing employment; loss of stability in children’s educational, sporting and social

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37 See Taft, 2003 for a review of the literature on mental health impacts of domestic violence.
activities; and loss of, or reduction in, family and community support (National Council to Reduce Violence against Women and their Children (NCRVAWC), 2009a).

Based on reported violence, the economic cost of violence against women and their children in Australia in 2008-09 was estimated to be $13.6 billion annually, increasing to an estimated $15.6 billion annually by 2021-22 (NCRVAWC, 2009b), if the current rate of violence against women continues.

**INDIGENOUS AUSTRALIAN WOMEN AND VIOLENCE**

Concerned that the rate of incarceration of Indigenous women was higher, and rising faster, than the rate for any other group, including Indigenous men, the Aboriginal and Torres Strait Islander Social Justice Commissioner (Human Rights and Equal Opportunity Commission (HREOC), 2003) noted that Indigenous women were more likely than non-Indigenous women to be incarcerated for violence, including assaults. We might hypothesise that the higher rates of assaults by Indigenous women are defensive actions, misconstrued as assaults, reflecting the higher rates of violence perpetrated against them by men. There is ample evidence of high rates of violence against Indigenous women and that Indigenous women are subjected to intimidation, domination and coercive control by Indigenous (and other) men (Gordon et al., 2002; Memmott, Stacy, Chambers, & Keys, 2001; Robertson, 2000). As discussed in Chapter 3, however, the lived experience of women is simultaneously cast in race, class, gender and other factors of identity, and analyses of intimate partner violence that focus solely on gender inequality are inadequate. The prevalence of violence and aggression in the lives of Indigenous Australians warrants a closer examination of its meanings and manifestations; these have implications for feminist strategies aimed at stopping violence in intimate relationships.

There are two aspects of Indigenous Australian women’s lives, in particular, that differ from those of non-Indigenous Australian women, which are relevant to the thesis and discussed here. First, drawing on anthropological research by Indigenous and non-Indigenous people in Australia, I briefly discuss the way in which Aboriginal culture has understood and used aggression. The use and control of aggression in traditional Aboriginal culture involves an

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38 I am not aware of similar research relating to the role of aggression in traditional Torres Strait Island culture.
extraordinarily complex system of social norms and relationships, which I cannot explain in
detail. My purpose instead is to bring historical Aboriginal conceptualisations and
experiences of aggression into the frame, as a point of reference for the discussion that
follows my data analysis. Second, I consider conditions associated with the impact of
colonisation as a context for violence.

Traditional cultural practices

Nancy Williams (1987) and Victoria Katherine Burbank (1994) have documented traditional
dispute resolution practices, including controlled violence by men and women, based on their
independent ethnographic studies in the Northern Territory during the 1970s and 1980s.
Williams (1987) documented the transition period between Aboriginal customary law and the
dominance of white law. This included the Yolngu strategy of retaining customary law by
conceding jurisdiction for matters not essential to the practical execution of customs related
to the values and beliefs of Yolngu society. Yolngu effected this by distinguishing between
big trouble, matters involving serious offences such as murder and serious assault, which
were considered to be within the white law jurisdiction, and little trouble, matters involving
(for example) breaches of traditional family and kinship protocol and which fell within the
jurisdiction of the Yolngu. “Little troubles, family troubles, should be fixed by families, and
leaders and the village council” (a Yolngu Elder, cited in Williams, 1987, p. 149). The type
of weapons involved also distinguished big trouble and little trouble: “If an assault occurred
during a dispute defined as little trouble, people were likely to say the instrument used was
wooden” (Williams, 1987, pp. 128-129).

Burbank provides a detailed exploration of the way anger and aggression are conceptualised
by Aboriginal women and how they are culturally constructed and regulated. She asserts that
physical and verbal aggression in Aboriginal culture are “structured activities, patterned and
predicted by cultural rules” (1994, p. 4), rather than expressions of cultural disintegration, as
may be assumed from a post-colonial Western perspective. Burbank based her analysis of
anger and aggression in Aboriginal Australia on her extensive experience in 1977-78 and

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39 Aboriginal people of North-East Arnhem Land, Northern Territory.
40 As we shall see later, however, cultural disintegration is relevant in the manifestation and consequences of
aggression in contemporary Aboriginal communities.
again in 1988 with Aboriginal women at Mangrove\textsuperscript{41} in the Northern Territory. Following is a summary of her analysis.

The women at Mangrove distinguished between \textit{fights} (physical aggression) and \textit{growling} (verbal abuse), but associated both with anger. Angry people were referred to as \textit{cheeky}, which also meant dangerous. Although both men and women fought, men were generally considered more dangerous because of their superior strength and the type of weapons they used. Women’s fights typically involved \textit{hair fights} or \textit{stick fights}, while men used spears or other more dangerous weapons. Fights were controlled by, for example, blows being restricted to fingers, arms and legs, to avoid damage to vital organs (although blows to the head were not uncommon) and the intervention of kin to ensure no serious injury. Men and women may have become cheeky for a number of reasons including the perceived neglect of gender-defined responsibilities, jealousy, sorcery and death.\textsuperscript{42}

Jealousy could trigger inter-gender fights (e.g. husband and wife) and intra-gender fights (often involving a suspected lover of a husband or wife). Illustrating the link between jealousy and aggression, Burbank (1994) quotes one of the women at Mangrove as saying; “… might be that man doesn’t like that woman because she is growling and growling and jealousing, well he is gonna just leave that woman” (p. 57); and “a young girl is jealous of her husband just because she sees somebody look at him … They are going to fight, jealous each other” (p. 59). In other examples, Burbank explains that jealousy is not always related to relationships, but includes jealousy related to access to resources, such as a particular food, involving a sharing protocol inclusive of close family relations (mother and \textit{close} sister), but not “long way one” (p. 60). Burbank found that women at Mangrove and elsewhere, including Mornington Island in the Gulf of Carpentaria, associated women’s jealousy and aggression with pregnancy: “they sometimes get jealous, they tell their husband not to walk around [after other women]. The baby [foetus] makes them angry” (p. 59).

\textsuperscript{41} Mangrove is a pseudonym Burbank used to provide anonymity for the small coastal community in Arnhem Land where she conducted her fieldwork.

\textsuperscript{42} In his 2009 film \textit{Samson and Delilah}, set in Alice Springs in Central Australia, Aboriginal writer and director, Warwick Thornton, included a scene in which a young Aboriginal woman was severely beaten with a stick by a group of women following the death of the young woman’s grandmother, in spite of the young woman’s dedicated care for her.
A number of scholars (Atkinson, 2002; Langton, 1988; Macdonald, 1988) have documented traditional structured forms of Aboriginal aggression, engaged in by men and women, in Western Australia, New South Wales and Queensland. As in the case of Mangrove, aggression typically involved insults and obscene language to incite a fight; and fights were generally held in public and strictly controlled by the presence of kin who could intervene, if necessary, to avoid serious injury or death. Referring to the languages of Wik Mungkan, spoken by people who now live mostly in Aurukun, and Kuuk Thaayorre, spoken by people who now live mostly in Pormpuraaw, Thompson (in Langton, 1988) documented the use of swearing and obscenity in North Queensland communities on the west coast of Cape York Peninsula in the mid-1930s. Swearing and obscenity was used in a jovial way between people in certain prescribed kin relationships, but they were also used by both sexes during arguments and to provoke a dispute resolution fight. The most vicious insults and obscenities, reserved for provoking fights, could not be ignored and those to whom the obscenities were directed were expected to defend their reputation by fighting. Referring to 1983 research, again conducted in Pormpuraaw, Langton (1988) notes “just how enduring Aboriginal traditions are and how strong is cultural continuity” (p. 209). She summarises the rules of contemporary Aboriginal fighting as follows:

1. *The aggrieved calls a fight by swearing and accusing.*

2. *The event must occur in a public place.*

3. *No-one but particular kin and close friends may interfere.*

4. *Kin must call off the fight if it goes too far.*

5. *Individuals tend not to become extremely violent (unless extremely intoxicated) and finish the fight with threats and boasting about what they could have done* (Langton, 1988, p. 211).

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Post-colonial violence

It is important to distinguish between these forms of controlled violence and “alcoholic violence … and bullshit traditional violence” (Bolger, 1991, p. 50). Memmott et al (2001) note that fighting in contemporary Aboriginal contexts “more commonly occurs in variant forms … [that] … arise due to the presence of alcohol which may result in spontaneous fighting and in any location in a community … [and] … other intoxicated individuals may join in the fight possibly for little reason at all” (p. 47). Excessive use of alcohol is a major concern for the Australian community, in general, with consumption of alcohol at high levels shown to be a significant risk factor for violence (ABS, 2012; Morgan & McAtamney, 2009). Overall, Indigenous Australians are less likely to drink alcohol than non-Indigenous Australians are, but those who do are more likely to consume alcohol at high levels (ABS, 2006a; Australian Indigenous HealthInfoNet, 2014).

In Queensland, South Australia, Western Australia and the Northern Territory, the percentage of Indigenous Australians dying from alcohol-related causes is between five and 19 times higher than the percentage for non-Indigenous Australians (SCRGS, 2009). The majority (87%) of intimate partner homicides involving Indigenous Australians are alcohol related, compared to less than half (44%) of all intimate partner homicides in Australia being alcohol-related (Dearden & Payne, 2009).

Bullshit traditional violence refers to misrepresentations of customary practices to justify violence, particularly rape and sexual violence against Aboriginal women and girls, in criminal law proceedings.

Several authors (Jarrett, 2009, 2013; Kimm, 2004; Nowra, 2007; Sutton, 2001, 2009) have claimed a direct link between cultural practices and current high levels of Aboriginal men’s violence against Aboriginal women in Australia. These accounts are indicative of a “discourse of Indigenous pathology” (Moreton-Robinson, 2009, p. 66), which characterises “Aboriginality as savage or violent and in need of suppression or control [or] as primitive and in need of development or assimilation into the settler world” (Macoun, 2011, p. 523). It bolsters the “stereotype of the barbaric violent bashing native, one that is in need of protection from ‘one’s own kind’” (Watson, 2009, p. 55). The Howard Government deployed this discourse to justify and garner public support for the 2007 Northern Territory Emergency
Response (NTER) to violence against Aboriginal women and children (Macoun, 2011; Moreton-Robinson, 2009; Watson, 2009).

The NTER followed a report on the neglect and abuse of Aboriginal children in the Northern Territory (Anderson & Wild, 2007), which called for Aboriginal child sexual abuse to “be designated as an issue of urgent national significance” (p.7). The report identified that Aboriginal children were sexually abused by Aboriginal and non-Aboriginal men and called for “genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities” (p.7). Instead, the NTER targeted more than 70 Aboriginal communities, used the resources of the Australian Army, scrapped the permit system that enabled Aboriginal people to control access to their communities, and suspended the Racial Discrimination Act 1975 (Cth). It is impossible to imagine an analogous response in non-Indigenous Australia, despite domestic violence campaigners reporting, “domestic violence is at epidemic proportions and has reached the point where it is time to declare a national emergency” (Malone & Phillips, 2014), and a current Royal Commission into Institutional Responses to Child Sexual Abuse.44 The discourse of Indigenous pathology enabled the state to “further regulate and manage the subjugation of Indigenous communities … and the Northern Territory became the new laboratory for an experiment in Indigenous civility” (Moreton-Robinson, 2009, p.68).

Indigenous scholars (Atkinson, 2006; Cripps, 2005) have also directly challenged the premise of women’s subjugation in what Cripps (2005) calls “classical” Aboriginal culture, responding specifically to Kimm’s analysis. Atkinson and Cripps challenge Kimm’s interpretation of a body of literature, which they argue is already flawed and based predominantly on white male observations. I have presented evidence (Burbank, 1994; Langton, 1988, Macdonald, 1988) of controlled fighting, including fighting between men and women, in traditional Aboriginal culture, and which has continued in a modified form beyond the colonial period. I do not argue, however, that it was standard practice for Aboriginal men to subjugate women through violence, in a patriarchal culture.

Indigenous and non-Indigenous scholars challenge the assertion that Aboriginal men subjugated Aboriginal women, and it is contrary to what I have learned from Aboriginal

women over my 35 years of work on violence against women. The archaeological evidence cited by Sutton (2001, 2009) that shows women sustain serious defensive injuries more than men do—and that this indicates extreme violence—seems indisputable. However, it is a bridge too far to claim this unequivocally as evidence that Aboriginal culture condoned subjugation of women. For example, we know that on average over a 2-year period from 2008 to 2010, almost every week a woman in Australia was killed by a current or former intimate male partner (Chan & Payne, 2013), but we would not take this as evidence that such homicides are condoned in contemporary Australian culture.

Moreover, in her accounts of anger and aggression at Mangrove, Burbank (1994) specifically addressed the question of male power over women, constructing her analysis around the concepts of autonomy, subordination and dominance. Burbank observed that intimate partner relationships (including prospective intimate partners) constitute the largest category of relationships in which aggression between men and women occurred at Mangrove. She argued, however, that one cannot determine the role of aggression in gender relations by observations of behaviour; it is the meaning attributed to the behaviour that determines the role. Burbank concluded that “male aggression is relatively ineffectual in changing women’s attitudes and behaviour … because women do not see this as its primary goal … they see it largely as a means by which men display and express anger” (1994, p. 149). Further, Burbank’s analysis of inter-gender fights at Mangrove concluded that women’s attacks on men are not always defensive actions but are expressions of women’s anger towards men. Three intersecting factors facilitate women’s attacks on men, despite men’s greater strength and capacity to inflict more harm. First, community norms permit attacks by women on men (and vice versa). Second, fighting is constrained because it is conducted in public, as expected under community norms; and third, women have well-placed confidence that others will intervene to ensure no serious injury is inflicted on them during such fights (Burbank, 1994, pp. 156-157). As Cripps (2005) says, we may never completely understand the complexities of violence in classical Aboriginal contexts; accounts such as Burbank’s, however, challenge assumptions about cultural acceptance of unfettered violence by men against women at least in recent historical traditions.

Contemporary forms of controlled violence, alcoholic violence and bullshit traditional violence occur within a context of inter-generational trauma (Atkinson, 2002) and “disrupted
sacred and cultural continuity” (Hunter & Milroy, 2006, p. 150). Within an ancient culture that has carried life-affirming song-lines for tens of thousands of years, the overt brutality of early colonialism (Evans, Saunders, & Cronin, 1988; HREOC, 1997; Reynolds, 1987) is a recent, menacing memory with continuing devastating impacts. The impacts include elevated rates of violence, including suicide and offences against the person, evident in Indigenous communities. Indigenous suicide rates in the Queensland population between 1994 and 2007 were more than twice (2.2 times) that for the non-Indigenous population and for children younger than 15 years, the Indigenous suicide rate was more than 10 times higher (De Leo, Sveticic, & Milner, 2011). In Cape York, the rate of offences against the person are four times the rate for Queensland overall (OESR, n.d). Psychiatrists Hunter and Milroy consider the rise of self-harm and suicide in the last few decades, increasingly among young people and children, a consequence of the constant threat to “the continuity of existence as Aboriginal people … Perhaps self-annihilation is genocide by proxy” (2006, p. 150).

At the beginning of this chapter I drew attention to the dissonance between feminist claims and broader public understandings of what constitutes violence in domestic violence and the advocacy by many Indigenous women to deal with family violence in their communities. This was not a preference for one term over another as many seemed to think (see Wangmann, 2009), but a preference to move beyond a focus on intimate partner violence, since it is one of a number of types of relationship violence with roots in inter-generational trauma and interrupted cultural regulation. This was an expression of the lived experience of Indigenous women at the cross-roads of gendered and racialised oppression (Crenshaw 1989). No woman is immune from the threat of men’s violence, but research consistently shows that Indigenous women experience intimate partner violence at greater rates than non-Indigenous women, but Indigenous women are also more often than non-Indigenous women charged and incarcerated for violent offences. Indigenous women have sought to deal with violence against them on their own terms, informed by an analysis of the causes of violence that sets them apart from non-Indigenous women.

Neither domestic violence nor the term family violence expose the gendered or racialised nature of the violence proponents sought to address. The lack of specificity in terminology has enabled the territory staked out by the feminist movement, and Indigenous women, to be

45 I expand on this point in the next chapter, when discussing the theoretical framework for the thesis.
both colonised and disputed. Advocates and governments have unhelpfully conflated violence as an expression of men’s power over women with violence as an expression of anger, trauma and alienation.

In the following chapters I aim to show how this conflation has been detrimental to women, (particularly Indigenous women), and consider how types of violence may be reconceptualised to bring Indigenous women’s intersectional experience to the fore in strategies aimed at ending violence against women. The next chapter explains my approach and methods.
3. EXPLORING RACE AND GENDER IN INTIMATE PARTNER VIOLENCE AND LAW

Understanding and explaining the *raced* and gendered qualities of intimate partner violence, and legal responses to it, requires consideration of four bodies of thought: feminist theory, critical race theory and intersectionality, post-colonial theory, and Indigenous research methods. This body of theoretical work, along with the meanings and uses of violence in Indigenous settings (Chapter 2), informs my research questions and analysis. Figure 5 depicts the interrelationships among the research questions, theories, methods, and data; and it provides a map for the structure of this chapter.

Figure 5: Research questions, theories, methods and data

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**RESEARCH QUESTIONS AND DESIGN**

My research addresses three overarching questions:

1. What was the intention of Queensland's civil domestic violence law; that is, what kind of violence did it seek to address?
2. What is the impact of Queensland’s domestic violence laws on Indigenous people, particularly Indigenous women?

3. What explains the greater frequency of Indigenous people as victims and perpetrators of domestic violence?

Understanding the intention of Queensland’s civil domestic violence law, and how particular legislative provisions effected it, is the aspirational and legal start point of the story. No-one has explicitly addressed question 1 in the literature, previously.

Question 2 examines the impact, and unintended outcomes, of the law’s implementation, through an exploration of race and gender differences in the use of key provisions in the legislation.

For question 3, I intend to explain Indigenous and non-Indigenous differences in the impact and operation of the law.

Concerning question 3, I am specifically interested to determine how service providers and police prosecutors, who deal with victims and perpetrators of intimate partner violence, explain such differences. I also turn to representations of breach events in police reports for this purpose.

I developed a mixed method research design (Creswell & Plano Clark, 2011). Qualitative research methods are used to address question 1 (thematic content analysis of documents) and question 3 (thematic analysis of interview data and police reports). I use quantitative research methods (descriptive and inferential statistics) to address question 2.

The research questions are intrinsically concerned with societal structures and, broadly defined, cultural practices, which result in the unequal distribution of power and resources; and, the relationship between that inequality and intimate partner violence. In spite of efforts to reduce inequality, gender, race and class “remain the foundations for systems of power and inequality that … continue to be among the most significant social facts of people’s lives” (Andersen & Collins, 2009, p. 1). I turn now to a review of the relevant theories.
THEORETICAL FRAMEWORK

Four bodies of thought inform my thesis, and my review orders them as they emerged historically.

Feminist theory

The relationship between feminism\textsuperscript{46} and the state (as articulated through the legal system) is fraught. Two aspects of feminist legal theory inform my theoretical framework: the male-centric nature of the state and its system of justice, resulting in male power in the law; and appropriation of the feminist law reform agenda by conservative governments.

Male power in the law

Law as a site for women’s empowerment has been, and continues to be critiqued by feminist scholars (MacKinnon, 1983, 1987, 1991; West, 1987; Smart, 1989; Hunter, 2006; Wangmann, 2009, 2010) concerned about the male-centric nature of the law and legal processes; and concepts of formal equality (gender neutrality) and substantive equality (special treatment to achieve equality). Each approach measures women against a male standard and, given its relationship to social power, gender inequality has to be understood in terms of a hierarchy of male dominance and female subordination (MacKinnon, 1987, 1991). Rather than failing to recognise women’s equality with men (sameness), the problem is law’s inability to see the differences (West, 1987). Thus, law serves to reinforce, rather than redress gender inequality, and further entrenches male power.

Moreover, law’s fundamentally male structure, reasoning and processes have resulted in the creation of a male-defined ideal victim, disqualifying women’s real experiences in the criminal justice system (Smart, 1989; Ferraro, 2006). Women who conform to the ideal of traditional gender roles (e.g. passive, submissive and chaste) are both exonerated and stigmatised in legal proceedings (Abrams, 1995), and those who do not conform to the gender role expectations are held responsible for offences against them and likely to find little benefit from the intervention of the male-oriented criminal justice system.

\textsuperscript{46} I recognise that there are multiple feminisms. I use the term feminism here as an umbrella term to distinguish between this and other broad theoretical approaches.
Reflecting on the limitations of an analysis that constructs law as male, Smart (1995) proposed an analysis of law as gendered, to avoid problems, such as “vengeful equity” (Chesney-Lind, 2006, p. 18), associated with strategies of gender neutrality or gender equality. This approach will not avoid, however, the problem of racial neutrality or racial equality that operates within the white male-oriented criminal justice system, which also requires fundamental change (Smart, 1995; Stubbs, 1994; Nancarrow, 2006). Thus, general legal principles based on the realities of women’s lives is needed, rather than legal principles based on abstractions such as positivist, liberal or even feminist jurisprudence (Smart, 1989).

**Appropriation of a feminist agenda**

Strategies of increased criminalisation give the appearance of a commitment to ending violence against women but are much cheaper, and politically easier, than the structural change required to give women the economic and social independence required to address their vulnerability to men’s violence (Ferraro, 1996). Such strategies reinforce the status quo. Feminist scholars such as Martin (1998), Snider (1998), Ferraro (1996), and Coker (2001, 2002) pointed out the appropriation of the feminist law reform agenda, particularly increased criminalisation, by conservative governments for their own political purposes. Snider (1998) and Coker (2001, 2002) highlighted that the differential effects of such strategies were particularly detrimental to Indigenous women, immigrant women, and poor women. However, anything other than harsh criminal justice sanctions for violence against women represents leniency and is interpreted as tacit approval for such violence (Daly, 2002; Holder, 2001; Hudson, 1998, 2002; Lewis, Dobash, Dobash, & Cavanagh, 2001; Stubbs, 1994, 2002), or even collusion with perpetrators.

Despite advances in feminist legal theory, it seems little has changed in legal practices. Australian feminist legal scholars have demonstrated that the legal system continues to silence women’s voices (Hunter, 2006; Wangmann, 2009, 2010). Furthermore, in the introduction to the second edition of their book Graycar and Morgan noted that “many of the questions we raised in our first edition about the legal system’s responses to women and about its gendering processes remain as pertinent today as they were in 1990” (2002, p. 7). The male-centric nature of law’s structure and processes and the consequent male power in law is a major concern for white feminists, while black women, including Indigenous
Australian women, are more concerned with white power in the law (Nancarrow, 2006; Potter, 2008; Richie, 2012).

**Critical race theory and intersectionality**

In addition to exposing the continued negation of women’s lived experiences, legal scholars have demonstrated that the legal system continues to negate the intersections of race and gender in women’s lived experiences of discrimination (Cossins, 2003; Richie, 2012).

The lived experience of nearly half the 185 people in the quantitative sample for this research includes the experience of gender inequality; more than half of them experience racial inequality, as a consequence of white colonisation; and one quarter of the sample, the Indigenous women, simultaneously experience gender and racial inequality.

For more than 30 years, critical theorists, particularly in black feminist scholarship (Collins, 1986, 1990; Harris, 1990; hooks, 1981, 1984, 1989; Crenshaw, 1989) have challenged the notion “that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience” (Harris, 1990, p. 585). They argued for centralising, rather than marginalising, black women’s experiences (hooks, 1981, 1984, 1989) and drew attention to the intersections of gender, race and class (Crenshaw, 1989).

Critical race theory holds that racism is not an aberration, it integrates experiential knowledge within its theorists, and it is a critique of liberalism because of its perseverance with the current legal system, despite its inadequacy and focus on incrementalism (Ladson-Billings, 2000, p. 264). Thus, critical race theories are a challenge to every day, covert (indirect) racism that unintentionally pervades non-Indigenous engagement with Indigenous people, and liberal legal ideology that seeks to change, incrementally, that which is normal.

Racist practices can occur although racist beliefs are denied:

*Racism can flourish as a hidden discourse because it hides behind the assertion of equality, which assumes similarity. The law ... and other institutions continue to impact on different groups differently with little critical scrutiny of how this*
occurs ... and discrimination is quite legitimate if on the grounds of behaviour rather than race (Cowlishaw, 1990, p. 51).

Indigenous Australian scholars (Behrendt, 1993; Huggins, 1994, 1998; Lucasenko, 1994, 1997; Moreton-Robinson, 2000) took up the international debates about difference and representation of women, contending that “our oppressions are not interchangeable” (Lucasenko, 1994, p. 21), and calling for racial oppression to be brought to the fore if feminist debates were to be relevant to Indigenous women. Behrendt (1993) challenged the mainstream feminist representation of power struggles between men and women, which puts black men as a subset of all men, and black women as a subset of all women. She said a struggle between white Australia, with white women being subordinate to white men and black Australia, with black women being subordinate to black men, is a more accurate representation of the experience of differential economic, social and political power. In this analysis, black women are at the bottom of a four-tier hierarchy. As Behrendt (1993) illustrated, multiple dimensions of individual experience may include simultaneously experiencing privilege and oppression. Indigenous men, particularly, can simultaneously be victims of violence (at least, but not only in terms of the oppressive state and the dominant culture), and perpetrators of violence against women (and others).

Critiques of essentialism also led non-Indigenous international scholars (e.g. Daly, 1993, 2008; Hunter, 1996; Brusch, 2001; and Marchetti, 2008) to call for attention to the way gender and race are inextricably linked, to avoid reinforcing gender and/or race discrimination in justice practices. In the case of Indigenous Australian women, specifically, Marchetti illustrates how “deep-colonising” practices and liberal legal ideology in legal procedure have “inadvertently worked together to erase the experiences of Indigenous women by making the experiences of the minority group (and, as a result, minority men) paramount” (2008, p. 169). From that perspective, and while Indigenist research requires privileging Indigenous voices (Rigney, 2006), a feminist intersectional approach requires privileging Indigenous women’s voices.

Addressing three sites of contestation in justice practices47 Daly (2008) developed an intersectional framework for doing justice. Noting that “feminist claims for justice have been

47 “Inequality caused by crime: Victims and offenders”; “Social divisions: Race and gender politics”; and “Individual rights and collectivities”.

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equated with women’s individual rights; and anti-racist claims, with collective interests or rights of Indigenous people” (p. 19), her framework is based on positive rights of victims and offenders, “which are not compromised by collectivities” (p. 23). Daly acknowledged this is not easy to accomplish because of the negativity surrounding women’s rights advocacy. She also noted, however, that Indigenous women, in asserting their rights along with those of Indigenous men, avoid perceived antipathy towards men so they can advance the collective without compromising individual women’s rights.

In addition to positive rights, Daly’s framework calls for resources in the form of “offender remorse, knowledge and capacities of victims, offenders, community people and state supports” and the “movement of group-based interests to other positional interests” (2008, p. 22). By way of an example of the movement of group interests, Daly asserts that non-Indigenous women need to recognise the class and racialised interests, as well as male interests, inherent in state apparatus.

Daly (2008) cites Blagg’s (2005) concept of “constructive hybridisation” as a promising way forward. The Indigenous and non-Indigenous women I interviewed for my study on justice models for responding to domestic and family violence (Nancarrow, 2006, 2010) saw value in a hybrid model of justice, incorporating aspects of the formal criminal justice system and restorative justice practices. However, the two groups of women had conflicting views about which of the two models of justice should have primacy, while Blagg (2008) argues for a third space to enhance Indigenous ownership of justice-related practices and overcome the negative effects of colonisation.

**Post-colonial theory**

The history of colonisation, the role of police in enforcing the state’s will over Indigenous people, and Indigenous Australians’ resistance are extensively documented (Altman & Hinkson, 2010; Cunneen, 2001; Evans, Saunders, & Cronin, 1988; HREOC, 1997; Reynolds, 1987). Colonial policies directed towards Indigenous people included dispersal from traditional lands, resulting in Aboriginal Australian diaspora and genocide; Aboriginal protection policy, incorporating segregation of *half-caste* children; and assimilation policy, with expectations of adaptation by Aboriginal people to European culture (Nancarrow, 2010, p. 131). Blagg (2008) argued, “Aboriginal experiences of dispossession were not Diasporic.
They were never new arrivals to a new country” (p. 33). Blagg’s comments relate to social disorganisation theory (Shaw & McKay, 1942) as an explanation of crime among immigrant youth: He notes it “fits well with the experience of Australian migrants” (Blagg, 2008, p. 33), but questions its relevance to Aboriginal Australians. I disagree. Colonial administrators removed many Aboriginal people from their traditional lands and re-located them to the traditional lands of other Aboriginal people, such as the case of people forcibly removed from Cape York Peninsula and re-located to Palm Island and Woorabinda in Queensland in the early 1900s. I concede that the diasporic experience of Aboriginal people did not involve expectations of adaptation to traditional local customs. What was expected and enforced, instead, was adaption to colonial customs that were alien to, and imposed on, the newly arrived people and on the local people who had been there for thousands of years. I agree, however, with Blagg’s central argument that western criminological theories “lack a perspective taking into account the experiences of racism, colonialism and difference” (2008, p. 29, original emphasis), to which I would add the intersections of gender and race as an overarching context for these experiences.

Although the policy of dispersal and its overt brutality gave way to a period of protection-segregation policies, the new laws, enforced by protectors throughout the state, “denied basic citizenship rights to Indigenous people, including freedom of movement, employment, freedom to marry and raise their children, and placed restrictions on other areas of personal autonomy” (Cunneen, 2001, p. 65). The Aboriginals Preservation and Protection Act 1939 (Qld) replaced the original Aborigines Protection and Restriction of the Sale of Opium Act 1897 (Qld), but did nothing to liberate Indigenous people from state control. It retained control by the Chief Protector over Aboriginal lives, including where (on which Aboriginal reserve) they lived, their employment (including the right to withhold their wages), marriage and children. The Aboriginals Preservation and Protection Act 1939 remained in force until 1965. Government policies enabled by this period of protectionism, such as withholding wages and forced removal of children, continue to affect negatively the lives of individuals and the collective in Indigenous communities to the present time.

For most of the 20th century and under consecutive government policy and legislation, Indigenous Australians were indentured labourers, worked for no wages, or were paid wages at less than half the minimum wage for other Australians, and had wages and other payments
withheld (Kidd, 2007; Senate Standing Committees on Legal and Constitutional Affairs, 2006). For some, earnings from labouring as a child through to old age, as well as pensions and child endowment, were held in trust accounts. In theory, the Aborigines’ and Torres Strait Islanders’ Affairs Act 1965 (Qld) liberated Indigenous Queenslanders from the government controls provided under the Aboriginals Preservation and Protection Act 1939. However, residents on reserves, and others deemed by a magistrate to be in need of government assistance, continued to be subject to government control over wages, a practice that continued officially into the 1970s. In many cases, the funds held in trust were never made available to their rightful owners, having been “transferred to public revenue, or disappeared through fraud or negligence along with the many of the records” (Kidd, 2007, p. 8). Kidd reports that for “Queensland alone, it has been estimated that that as much as $500 million in today’s value was lost or stolen from Indigenous families” (2007, p. 9).

In 2002, and for a limited time, the Queensland Government offered payments as “compensation” for loss of wages: for some, payments of as little as $4000 were considered an insult and rejected (Bevan, 2002), while others missed the deadline for applications. The failure of the compensation scheme was acknowledged in an election commitment by the Queensland Labor Party in 2015, which established a Stolen Wages Reparations Taskforce and a Reparations Review Panel to oversee the distribution of $21 million in reparation for stolen wages under a scheme that will remain “open until funds have been exhausted” (Queensland Government, 2016, p. 2). In a campaign to promote the scheme, the Queensland Government “acknowledges the past injustices and pain that these ‘Protection Acts’ have caused Aboriginal and Torres Strait Islander Queenslanders” (Queensland Government, 2016, p. 8). The Government’s response to the Taskforce report does not acknowledge the breach of human rights, in the form of racial discrimination, the crimes of fraud and theft, or the continuing effects of forced dependency on the welfare state, for which Indigenous Australians are now stereotypically vilified.

In addition to stolen wages, the period of protectionism facilitated “stolen generations” (HREOC, 1997). During the period of protectionism, Queensland law provided that the:

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\text{Director shall be the legal guardian of every aboriginal child in the State, while such child is under the age of twenty-one years, notwithstanding that any parent or relative of such child is still living, and may exercise all or any powers of a}
\]

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guardian where in his opinion the parents or relatives are not exercising their own powers in the interests of the child (s.18 (1)).

HREOC (1997), Cunneen (1999) and Cunneen and Libesman (2000) have argued that the forced removal of *half-caste* children from their families from the mid-1940s breached international law, specifically prohibitions on genocide and racial discrimination under the United Nations Declaration on Human Rights. Cunneen demonstrates that “genocide can occur without physical killing…with mixed motives (some of which may be perceived to be beneficial), and it can occur without the complete destruction of the group” (1999, p. 131). Further, legislation and practices for the removal of Indigenous children, which remained in force until the 1960s (1965 in Queensland), “were different from and inferior to those established for non-Indigenous children” (Cunneen & Libesman, 2000, p. 101).

The following recollection captures the enduring trauma for families subjected to forced removal of children:

*The biggest hurt, I think, was having my mum chase the welfare car – I’ll always remember it – we were looking out the window and mum was running behind us and singing out for us. They locked us in the police cell up here and mum was walking up and down outside the police station and crying and screaming out for us. There was 10 of us.* (Confidential evidence 689 in HREOC, 1997).

The effects of forced removal of children beyond trauma include “loss of parenting skills … behavioural problems, violence … depression and mental illness [which] make a parent more susceptible to difficulties in raising their own children and increase the likelihood of further intervention by welfare and juvenile justice departments” (Cunneen & Libesman, 2000, p. 103). These and other social, cultural and economic factors contribute to systemic racial discrimination in child protection practice, although overt racial discrimination has been removed from child protection legislation.
In 1997, Aboriginal and Torres Strait Islander children represented 20% of children in out-of-home care and now represent 35% of children in out-of-home care, nearly 10 times the rate of non-Indigenous children (AIHW, 2016). Most substantiated cases involve emotional abuse or neglect, which are more subjective than physical abuse and determined predominantly by non-Indigenous people (SNAICC & Family Matters, 2016, p. 9). Further, of children who were the subject of substantiated reports of child abuse or neglect, “Indigenous children were far more likely to be from the lowest socio-economic areas – 49%, compared to 33% for non-Indigenous children” (AIHW, 2016, p. 26). As with the vilification of Aboriginal and Torres Strait Islander people for welfare dependency, following state-enforced dependency, Aboriginal and Torres Strait Islander people are held accountable for family dysfunction, defined and created by the state. “[A]ny understanding of how Aboriginal people view child protection, welfare and juvenile justice issues today must be contextualised by the history of colonial intervention aimed at disrupting Indigenous family life (Cunneen & Libesman, 2000, p. 101, original emphasis).

Cunneen (2001) uses the concept neo-colonial to refer to the period between 1937 and 1967, in which colonial practices transformed and Indigenous people effectively became citizens of the Commonwealth of Australia – the nation-state, and the concept of post-colonialism to refer to a future time when the power of the nation state gives way to Indigenous self-determination. For Cunneen the concept of neo-colonialism is:

> a way of bringing together ... continuities of policing in the colonial period with an understanding of the political changes which have occurred in the legal context of citizenship, equality and the rule of law ... [and] ... current levels of criminalisation and the role police play in this process can be understood as an historical moment of neo-colonial relationships (Cunneen, 2001, p, 6).

I have not used the term neo-colonialism, but I am also arguing to some extent that there is continuity in policing and protectionism (state intervention in the lives of Indigenous people purportedly for their protection). Embedded in their past and present experiences of

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48 A range of alternatives to being cared for at home, including residential care, family group homes and the home of a paid or unpaid carer.
the dominant non-Indigenous culture, are their experiences of state intervention, including the civil domestic violence law.

As Daly (2008) noted, Blagg’s model of “constructive hybridisation” proposes a way forward. In Blagg’s model of hybridity (2008, pp. 54-55) new justice practices develop and operate in the liminal spaces between the non-Aboriginal and Aboriginal domains. It illustrates existing justice initiatives adapted from the Aboriginal and non-Aboriginal justice domains by and for Aboriginal people and offers hope of addressing perspectives of racism, colonialism and difference lacking in western criminological theory. Blagg observes that hybrid justice initiatives may be most effective where Aboriginal law and culture are strong. Bringing in a perspective on the intersections of gender and race requires the presence of strong law women, as well as strong law men.

**Indigenous research methods**

Inadvertent racist practices can manifest in the research process. I employ key principles from the work of Indigenous scholars on Indigenous research methods to address this risk. Indigenous methodologies have been developed primarily in response to non-Indigenous inquiry focused on Indigenous culture, history and practices. My research, focused on gender and race in the application of civil domestic violence laws, also requires attention to an Indigenous worldview. As a non-Indigenous woman, I cannot claim to be using an Indigenist approach to the research, although “Indigenist research principles can be drawn upon by non-Indigenous researchers who uphold its principles for Indigenous self-determination” (Rigney, 2006, p. 41). I also do not have the ability to embrace fully Indigenous methodologies, which reflect Indigenous ways of knowing, doing and being (Martin, 2003; Moreton-Robinson & Walter, 2009; Porsanger, 2004). However, my approach is consistent with the theoretical work of Indigenous Australian scholars, particularly Lester-Irabinna Rigney (1997, 2001, 2006), Aileen Moreton-Robinson (in Moreton-Robinson & Walter, 2009) and Karen Martin (2003).

Rigney identifies “three fundamental and interrelated principles” (2006, p. 39) of Indigenist research. First, Indigenist research rejects a portrayal of Indigenous people as victims of racialisation and, instead, acknowledges their resistance and survival. Second, Indigenist research “upholds the political integrity of Indigenous people as sovereign First Nations
Australians” (p. 40). Fundamentally, this involves Indigenous scholars researching matters of significance to, and as identified by Indigenous people. However, Rigney recognises that Indigenous people are heterogeneous, so prospective interviewees may view Indigenous, as well as non-Indigenous researchers as outsiders. Ultimately, upholding political integrity depends on “mutual respect and power sharing” (Rigney, 2006, p. 42). Third, Indigenist research privileges Indigenous voices. Again, this suggests that Indigenous researchers should do research involving Indigenous people but, as Rigney notes, Indigenous heterogeneity presents the same challenge here as it does for upholding political integrity. Indigenist research requires the preservation of Indigenous voices throughout the enterprise.

Moreton-Robinson’s Indigenous women’s standpoint method (in Moreton-Robinson & Walter, 2009) emphasises Indigenous women’s ontology, epistemology and axiology, none of which I can emulate. My research, however, has adhered to the iterative process of Moreton-Robinson’s method, which she summarises as “listening and talking, observing, thinking, clear-sightedness, reading and writing” (2009, p. 7). My interest in justice responses to domestic and family violence in Indigenous contexts emerged over many years of listening to, talking with and observing Aboriginal and Torres Strait Islander women in our mutual work.49 Over several years, I spent a considerable amount of time in deep reflection, immersing myself in what I heard and observed, in order to grasp the meaning fully. Moreton-Robinson looks for signs from her Goenpul epistemology and ontology for affirmation that she is ready to address the identified problem (in Moreton-Robinson & Walter, 2009, p. 8); I looked for signs and sought advice from the Indigenous women who had challenged me and inspired this work.

From my engagement with Indigenous Australian women over the last two decades, I saw that the experience of racialised women is “greater than the sum of racism and sexism” (Crenshaw, 1989, p. 140). Feminist, critical race, and Indigenous epistemologies are central to the analytical framework for this research but they cannot be treated independently or as add-ons. A racially marginalised woman does not experience the barbs of sexism, merely as a

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49 This includes work in community based domestic violence support services in the 1980s; work in Government policy, including administration of Queensland’s domestic violence laws, in the 1990s and early 2000s; and my work with the Aboriginal and Torres Strait Islander Reference Group and participants at the annual Indigenous Family Violence Prevention Forum we initiated and convened together for 10 consecutive years.
woman; nor does she experience the barbs of racism, merely as raced. The shape of the barb and the harm it inflicts are produced within simultaneous multiple factors that are gendered, racialised, and classed and mutually constitute her identity and experiences.

**Research sites, data and methods**

**Selection of research sites**

I selected Cairns and Mount Isa, regional Queensland cities as research sites (see Appendix 1 for geographic locations). Previous studies had drawn samples from capital cities (Brisbane and Sydney) or inner-regional cities (Gold Coast and Ipswich). Courts in Cairns and Mount Isa deal with matters involving people who live in remote parts of the state, as well as in urban areas, providing access to populations not included in any other analysis of matched court and police data. Further, each city’s population has a relatively high proportion of Aboriginal and Torres Strait Islander people, which was important in attaining the desired sample. Indigenous Australians represent approximately 4% of the population in Queensland, 9% of the population of Cairns Local Government Area and 15% of the population in Mount Isa Local Government Area (ABS, 2011). The population in each site is large enough, however, to avoid the risk of identifying individual people in reporting the results.

**Data**

As indicated in Figure 5, sources of data to answer the three overarching research questions varied, as follows.

**Question 1: What was the intention of Queensland's civil domestic violence law; that is, what kind of violence did it seek to address?**

Compiling data to answer question 1 involved a search for key historical documents that informed the drafting of the Domestic Violence (Family Protection) Bill 1989 (Qld), and the parliamentary records on the introduction and debates on the Bill in Parliament. The primary source of data for analysis of the policy context was the report of the Queensland Domestic Violence Task Force (QDVTF, 1988), established by the Queensland Government in 1987. A senior government official chaired it, its secretary was a senior policy officer in the Department of Family Services, and its membership included representatives of the
Department of Justice, the Police Department, the Queensland Marriage Guidance Council and the South East Queensland Combined Women’s Refuge Group. The Task Force report included a review of national and international literature, and the results of extensive consultation with government and non-government agencies and a state-wide Domestic Violence Phone-In survey of women with lived experience of domestic violence. Reports of similar domestic violence investigations conducted in other Australian states (Elliot, 1986; Hopcroft, 1983; New South Wales Task Force on Domestic Violence (NSWTFDV), 1981; Women’s Policy Co-ordination Unit, 1985) and explanatory notes, which accompany the introduction of a Bill, were secondary sources of data for the analysis.

I searched digital records of parliamentary proceedings (Hansard) ⁵⁰ on the Queensland Parliament website to collect data for the thematic analysis of the introductory speech and parliamentary debates on the Domestic Violence (Family Protection) Bill 1989. I collected data for my thesis in 2011 and 2012, so key amendments to the legislation in the years 1992, 1999 and 2002 were relevant and I included these in my search of the digital records. Since Hansard is organised by parliamentary sitting dates, my knowledge of the years and approximate months in which legislation and subsequent legislative amendments were introduced to Parliament narrowed my search. I selected relevant years and months and searched the records for each sitting date until I found the data.

**Question 2: What is the impact of Queensland’s domestic violence laws on Indigenous people, in particular women?**

Following approval from the Griffith University Human Research Ethics Committee on 24 August 2011, I sought administrative court and police data to answer my second question, examining specific legislative provisions aimed at achieving the civil domestic violence law’s intent.

Access to court data was subject to approval from the Department of Justice and Attorney-General and access to police data was subject to approval from the Queensland Police

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Service. Both granted approval in October 2011, following negotiations related to security and access to data, and formal agreements.

**Court data**

Under my guidance, the Queensland Department of Justice and Attorney-General randomly selected records from its electronic records database, within the sample parameters: people who had been charged with breaching a domestic violence protection order related to *spousal* or *interpersonal* relationships, and for whom the charge had been dealt with in the Cairns or the Mount Isa Magistrates’ Court. The records included the complete domestic violence history for each person in the sample. The period of time for the sampling was from the most current data available at the time (between October 2011 and January 2012), to as far back in time as was required to meet the sample size target. I requested the sample include 25 cases in each of four groups, for each of the two research sites, as shown in Table 2.
Table 2: Requested sample distribution

<table>
<thead>
<tr>
<th>Sub-group</th>
<th>Mount Isa</th>
<th>Cairns</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indigenous men</td>
<td>25</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td>Non-Indigenous men</td>
<td>25</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td>Indigenous women</td>
<td>25</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td>Non-Indigenous women</td>
<td>25</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>100</strong></td>
<td><strong>100</strong></td>
<td><strong>200</strong></td>
</tr>
</tbody>
</table>

There was a shortfall of seven in the sub-group of non-Indigenous women for Mount Isa. Only 18 non-Indigenous women had been charged with a breach of DVO and dealt with in the Mount Isa Court since 1 January 2004.\textsuperscript{51} Therefore, a sample of 193 people was possible and provided to me by the Department of Justice and Attorney-General. The overall sample size was reduced by a further eight, however, because of data entry errors. Data had been entered twice for some cases and not at all for others. This reduced the sample size to 185 cases, with some differences in sub-group size (see Table 3).

Table 3: Actual sample distribution

<table>
<thead>
<tr>
<th>Sub-group</th>
<th>Mount Isa</th>
<th>Cairns</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indigenous men</td>
<td>25</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td>Non-Indigenous men</td>
<td>24</td>
<td>23</td>
<td>47</td>
</tr>
<tr>
<td>Indigenous women</td>
<td>23</td>
<td>23</td>
<td>46</td>
</tr>
<tr>
<td>Non-Indigenous women</td>
<td>18</td>
<td>24</td>
<td>42</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>90</strong></td>
<td><strong>95</strong></td>
<td><strong>185</strong></td>
</tr>
</tbody>
</table>

\textsuperscript{51} This is the date from which the Department of Justice and Attorney-General began systematically recording cultural identity.
The Department of Justice and Attorney-General provided the court data in three files.

1. *Domestic violence protection order applications – respondent.* This file contains all details for the sample (people charged with breach of a DVO). It includes age, sex and cultural identity; the type of relationship involved; the lodging authority (police or private application); conditions on the order; and whether the respondent was present in court (ascertained from the provision of the Act under which the charge was laid). This file also includes personal details for the person or persons named as the aggrieved on any protection order related to the respondent, such as their name, date of birth, cultural identity and relationship to the respondent.

2. *Details of all breaches for the sample.* The breach file contains details of the summary offence charges available in the breach provisions of the *Domestic and Family Violence Protection Act 1989* (Qld), and the outcomes at court, for each respondent. The court data do not include details for any charges, such as assault or rape, under the *Criminal Code Act 1899* (Qld) (Criminal Code).

3. *Domestic violence applications - aggrieved.* The aggrieved file provides a list of those in the respondent file (the sample), who were also named as the aggrieved on other order/s; and lists, for example, dates, lodging authority and the respondent/s of those other order/s. This makes it possible to identify cross-applications, as well as respondents who had been victimised by others not included in the sample.

Court data were provided in electronic format on an encrypted (password protected) compact disc, which was handed to me in person. Importantly, the court data included full names, birth dates and cultural identity of the respondent and the aggrieved so that cross-referencing between the complete set of court data was possible. This enabled an examination of cases where a person convicted of breaching a DVO had previously, or subsequently, been named as the aggrieved (victim) on one or more DVOs, the relationship between the parties, and the occurrence of cross-applications and cross-orders. It also enabled matching court files with police files to obtain the relevant police reports on breaches. A condition of access to this court data was that I must not use the information to recruit people for interviews.
**Police data**

Upon receiving the court data, I delivered the encrypted files in person to the office of my contact in the Queensland Police Service. I was given approval to have access to police reports of breaches, matched to the court files, on the basis that relevant files would be extracted and compiled by a Queensland Police Service employee. Further, the employee was to do this work after hours and I was to pay the costs for the employee’s time spent on these tasks.\(^{52}\)

Using identifying information from the court files, the Queensland Police Service representative located the relevant police reports of breaches of orders for each of the respondents in the sample. Copies of the reports describing each event that led to a respondent being charged for breach of a DVO under section 80(1) of the *Domestic and Family Violence Protection Act 1989*, on one or more occasions, were provided in an excel spreadsheet. Further, the excel spreadsheet included, where relevant, information on additional charges made under the provisions of the Criminal Code. Police reports were also provided on an encrypted compact disc. I coded information from police reports as categorical data and used these in the quantitative data analysis for question 2. Initially, the records of police reports linked to the court data were incomplete; however, because I had a specific contact under the formal agreement with the Queensland Police Service, and she was willing and able to collect the data, errors made at the point of data collection were able to be corrected.

**Data for question 3: What explains the greater frequency of Indigenous people as victims and perpetrators of domestic violence?**

I used two sources of data to answer question 3: interviews with a purposive sample of domestic violence service providers and police prosecutors in Cairns and Mount Isa, and the police reports of breach offences and criminal charges. Each of the two research sites are located a considerable distance from Mackay, my base at the time I conducted the interviews. Mount Isa is approximately 1200 kilometres, and Cairns approximately 750 kilometres, from

\(^{52}\) I met these costs with research funds available to me.
Mackay. I was able to carry out two field trips to Cairns and one to Mount Isa, so there was a narrow time frame to recruit and refer interviewees.

I conducted the interviews in December 2011 and January 2012, in accordance with the participant recruitment protocol (Appendix 2.1) and the informed consent process (Appendix 2.2). I audio-recorded interviews with two Indigenous men who were respondents to DVOs, and 15 professionals: 12 service providers who worked in services responding to domestic and family violence; and three police prosecutors, with at least 2 years’ experience with DVO breaches. Five Indigenous people (including one man) were among the 12 service providers. The service providers were managers, counsellors and court support workers who assisted victims and/or perpetrators of domestic violence with matters related to domestic violence and the law. Of the three police prosecutors, two were female. The service providers and the police prosecutors had a minimum of 18 months’ experience in their respective roles, with most having more than 5 years’ experience and some more than 10 years’ experience.

Interviews ranged in length from approximately 45 minutes to 2 hours. I kept interview questions to a minimum, adopting instead a conversational style and accepting that “interviewers and interviewees are always actively engaged in constructing meaning” (Silverman, 2001, p. 87). Among the key questions I asked were these:

1. What are your observations about violence involving Indigenous men and women?

2. Have you seen changes over the years in the way the police and courts deal with domestic and family violence and if so, what are those changes and what do you think is behind them?

3. In your experience, how helpful is mainstream legal policy in addressing domestic and family violence cases involving Indigenous people?

53 I had intended to interview Indigenous men and women who had been charged with breaches of DVOs in the two research sites. I scheduled field trips to coincide with meetings of a Murri (Aboriginal) men’s group and a Murri women’s group to which I had been invited to speak about the research and invite participation. The women’s groups was cancelled due to cultural protocols associated with sorry business (bereavement) and although four men said they wanted to be interviewed, ultimately only two were available. Due to the failure to recruit Indigenous women (the focus of the research), I did not analyse the interviews with the two men.
4. Do you think there are differences in the way the law is applied in those cases and if so, how and why?

I used these questions as prompts to guide discussion while encouraging a narrative-based exploration of the experiences of Indigenous men and women charged with breaching DVOs, from the participant’s perspective.

DATA MANAGEMENT

SPSS file creation

First, I allocated a case number and pseudonym for each of the 185 individuals in the sample. I cross-checked names and dates of offences on the police file with the court files to ensure I had consistently assigned pseudonyms and case numbers in the files. Then, using IBM SPSS Statistics 20, I created a single electronic file with more than 100 variables from the three court files. I cross-referenced names and dates of birth to identify the number of distinct victims, and individuals who were named as the respondent and as the aggrieved on DVOs. I also cross-referenced dates of DVO applications on the respondent and the aggrieved file to identify if the individual had been first the respondent or the aggrieved; and names, dates of birth and dates of DVO applications to identify cross-applications, and whether cross-applications were made simultaneously or consecutively. In some cases, I saw that the respondent was also an aggrieved but I was unable to tell if this involved a cross-application because the other party was not included in the sample (see Appendix 3.1 for further explanation). As variables were created, I recorded them in a data code book (see Appendix 3.2) for the electronic management of the combined data to facilitate later data analysis.

I also created two variables from the written police reports: level of violence used and whether or not there had been charges under the Criminal Code Act 1899. Using the case numbers I had allocated to each of the 185 people in the sample, I added coded data from the police files to the SPSS data file and added the variables and coding details to the code book. The police reports varied in the detail provided, and I could not use some variables I created from the reports for the statistical analysis (e.g. jealousy and presence of alcohol or other drugs), but they are included in the analysis of the police reports in Chapter 7.
Data cleaning

I identified and eliminated the eight cases involving data entry errors at the point of collection (i.e. cases entered twice, and those with no data entered). As data for each case were entered, I checked for accuracy and I checked again when I had entered all the data for all cases. I then ran frequencies for all data and, through a variety of procedures, I identified and corrected errors (see Appendix 3.3 for details).

I also conducted “contingency cleaning” (Neuman, 1997, p. 297), using the SPSS crosstabs function to check for inconsistencies. Then, as suggested by Neuman, I coded “a random sample of the data a second time” (1997, p. 297), creating a second SPSS file, ran frequencies and compared the SPSS output for the two files to ensure no errors remained.

Data recoding

Some of the variables in the data set had a very large number of attributes. For example, the court data file identified 43 court locations in which a magistrate made any DVO related to the sample as respondents, and 28 court locations where a breached DVO related to the sample as respondents had been made. This level of detail may be useful for understanding the mobility of those in the sample, but it is less helpful in comparing four sub-groups. I recoded data for these variables as remote or other court locations, creating a dichotomous variable for analysis. Appendix 1 provides the list of court locations for each of these two attributes.

Some of the variables I created from the police reports were also re-coded. For example, I created a variable from the reports on the level of violence used in breach offences with the following five attributes:

1. **No actual violence** – usually a breach of a no contact condition or entering prohibited premises, but a small number of cases involved a threat of violence.

2. **Low level violence** – includes damage to property; a slap or shove without injury.

3. **Medium level violence** – physical abuse of a limited nature (e.g. one punch to the shoulder; a slap) not causing injury. It may also include significant property damage or other behaviour that would likely cause considerable fear.
4. **High level violence** – more substantial violence or exacerbating circumstances including pregnancy and violence towards children; and in a few cases the respondent’s violence towards self.

5. **Extremely high level violence** – stabbing/multiple blows/kicks causing injury; assault with a weapon; strangulation, rape/attempted rape; suffocation/assault while victim restrained/trapped; risk of death or permanent injury.

There were few cases with no actual violence and few cases with extremely high level violence. Thus, I created three categories: I combined categories one and two as low level violence, I retained the category medium level violence, and I combined categories four and five into high level violence. I later re-coded this variable as a dichotomous variable for conducting statistical tests to compare the four sub-groups. I also dichotomised other variables such as type of penalty and number of distinct DVO breaches.

**Police reports and interviews**

I copied the police reports from the encrypted compact disc to an encrypted electronic excel spreadsheet file on my password protected laptop computer. I had assigned case numbers and pseudonyms to link the police reports with the court files, which was also important for the content analysis to follow.

I transferred the audio-recorded interviews to encrypted files on my laptop. I saved a backup in encrypted files on a compact disc and stored it in a locked filing cabinet. I then deleted the digital recordings. In the following weeks I had the recorded interviews transcribed and I assigned each participant a coded identity. The coding protocol first identifies the participant as a service provider (SP) or a police prosecutor (PP), followed by a number representing the order in which they were interviewed to distinguish them from their counterparts. For example, PP3 is the third police prosecutor to have been interviewed. Five of the service providers I interviewed identified as Indigenous. To add further context to the reflections from service providers, the coding for them includes an additional element to represent Indigenous (I) or non-Indigenous (NI) status. SP/11/I, for example, is an Indigenous person and the eleventh service provider interviewed. I separate each of the three elements with a back slash for clarity. For the sake of anonymity, I do not identify whether the participant was
male or female, nor their location (Cairns or Mount Isa), except for the case of Thelma in the opening paragraph of Chapter 1, where I disclose the location as the Cairns Esplanade. This is a very large public area, where many Indigenous people gather, so anonymity is not at risk.

METHODS OF ANALYSIS

Thematic content analyses

My approach to analysing the data used both deductive and inductive processes. A deductive process begins with an existing theoretical framework to test hypotheses in the data, and an inductive process builds a theoretical framework from the data (Neuman, 1997).

Policy documents and parliamentary debates

My analysis of the policy documents and parliamentary debates focused on the intent of the legislation as set out in the report of the Queensland Domestic Violence Task Force (QDVTF, 1988), which gave rise to the Domestic Violence (Family Protection) Act 1989. I then conducted a line-by-line analysis of the text of relevant introductory speeches and subsequent debates recorded in Hansard to extract evidence of how the intent was to be given effect in the legislation. I also looked for evidence in the Hansard records of expressions of intent that were different to that described in the policy documents. Effectively, I treated the key policy documents and the Hansard records as a set of textual data from which I extracted key concepts (the intent of the legislation) and the themes (expressions of the intent in the parliamentary debates).

Interview data

Reflecting the flexible, semi-structured nature of the interviews, my analysis of the interview data is consistent with constructivist grounded theory, although I have not used this method to inform further data collection. Grounded theory is an evolving and contested method with different positions on coding procedures (Charmaz, 2000; Walker & Myrick, 2006). First, I identified concepts and categories from the data, using colour coding to sort them (open coding). I then identified the relationship between them (axial coding), with attention to context and the research questions, to create core themes.
**Police reports**

I used a deductive approach when analysing the police reports. Drawing on the work of Stark (2006, 2007) and Johnson (2008) I developed a list of elements indicative of coercive control, violent resistance and fights and looked for evidence of each of these types of violence in the data. Based on the results of my analysis of interview data and the work of Burbank (1994), Langton (1988) and Williams (1987), I also developed a list of elements indicative of *chaos* and contemporary expressions of traditional Aboriginal dispute resolution and looked for evidence of these in the police reports.

**Statistical data analysis**

My analysis began with diagnostic tests to confirm there were no significant differences in results for the two research sites that would prevent aggregating the data for analysis. I then ran frequencies and cross-tabulations for each of the four sub-groups, followed by a sex and race comparison to answer Question 2. Using Pearson’s chi-square test of independence with a 2x2 contingency table, I analysed the relationship between sex and culture (race) and four sets of variables: demographics, respondent histories, aggrieved histories, and case complexity. Chi-square analysis calculates the difference between observed and expected values displayed in a contingency table. If the chi-square coefficient is zero, there is no association between the variables. The strength of an association between variables is reflected in the size of the difference between the observed and expected values in the contingency table, with a larger difference showing stronger association. For a 2x2 contingency table (df =1), a coefficient of 3.84, or greater, indicates a statistically significant relationship between the variables. This means I can be 95% (alpha level .05) confident that the association is not a product of the sampling, and can reject the null hypothesis. Chi-square cannot be used if the expected count is less than 5 in any cell, so in those cases I used Fisher’s exact test.

To create the 2x2 contingency tables, I first split the data file by sex, selected the chi-square statistic, expected count, percentages and standardised residual for the output, and ran cross-tabulations for culture and relevant dichotomous variables. I then split the file by culture and ran cross-tabulations for sex and each of the relevant dichotomous variables.
STRENGTHS AND LIMITATIONS

The research design and data have considerable strengths. The quantitative dataset is the first of its kind in describing police and court activities associated with Indigenous and non-Indigenous men’s and women’s breaches of DVOs and the antecedents. The sample draws from two regional cities, which service Indigenous communities that were formerly Aboriginal “missions”; these communities have rarely been included in research on domestic and family violence law. Police reports of the events that resulted in a breach of a DVO offer insight into the particular dynamics and experiences of victims and perpetrators of intimate partner violence, in these cases. Further, the content analysis of the reports has for the first time considered sex and race in differentiating coercive controlling violence from fights.

Despite these strengths, the study is exploratory and, due to the small sizes of the sub-groups, cannot be generalised to a larger population. The police reports enable insights into the experiences of Indigenous and non-Indigenous men and women charged with breaching DVOs, and different types of violence used. However, the police write these reports from a policing perspective for a particular purpose and the reports vary in detail. These constraints affect my findings. The sample comprises people who breached a DVO, so inferences cannot extend to experiences of those named as respondents on civil DVOs who have not been charged with such breaches.

My intention was to document the lived experiences of men and women who had been charged with breaching domestic violence orders. Indigenous voices were represented in the inclusion of five Indigenous service providers, among the 12 service providers interviewed. However, my inability to include Indigenous women with lived experience of a conviction for breaching a domestic violence order is disappointing. This is a consequence of the sensitive nature of the research and, perhaps more so, the practical implications of the recruitment process.
4. GENDERED ASPIRATIONS IN THE LAW

We learned from chapters 2 and 3 that violence is framed differently, depending on the scholar and theoretical perspective; feminist engagement with the state (and law) is a fraught enterprise that can redound against feminist intentions; and intersectional race/gender analyses are required to grasp the meanings of violence and the impact of laws designed to control domestic violence. This chapter aims to unpack the reasoning of early advocates and legislators about domestic violence as it unfolded in the development of Queensland’s domestic violence legislation and to trace what subsequently occurred.

VIOLENCE AGAINST WOMEN AND FEMINIST LAW REFORM

A key strategy of the feminist agenda to stop violence against women has been to shift domestic violence from the private realm to the public realm, represented by the state. A key goal is that the state sanctions men’s violence against their female intimate partners in the same way it would sanction violence against any other victims, which is appropriate penalties delivered through the criminal justice system. The strategy is symbolic and purportedly in the interests of women, in general, as much as it is pragmatic and in the interests of individual women subjected to intimate partner violence, in particular. Feminist analyses of the role of the law in advancing the interests of women have been, however, the subject of critique over several decades within several spheres of competing claims. Critiques have drawn attention to the male character of the law (Smart, 1989), appropriation of a feminist law reform agenda by conservative forces (Coker, 2001), and gender essentialism in feminist perspectives (Crenshaw, 1989; Harris, 1990).

I begin with a brief sketch of the focus on criminal law as the primary response to intimate partner violence in North America, as a point of reference for my discussion on the Australian approach, which addresses physical and non-physical forms of abuse. I then present the results of my analysis of policy documents, parliamentary debates and the provisions of the Domestic Violence (Family Protection) Act 1989 (Qld). It highlights the continual failure to address effectively different types of violence in advocacy for and outcomes of law reform.
Criminal law response to intimate partner violence

By the time Australians began to seriously consider the law’s response to domestic violence in the early 1980s, North American jurisdictions were strengthening their criminal justice response, with pro-arrest policies in most jurisdictions, and in 10 USA states “legislation had been passed making spouse abuse a separate criminal offence” (QDVTF, 1988, p. 177). Moreover, state intervention in intimate partner violence was increasingly made mandatory.

Implementation of mandatory arrest, pro-arrest and no-drop prosecution policies arose from the frustration of activists seeking greater attention from the criminal justice system to the protective needs of women, combined with a conservative law and order agenda and civil action against the state for the police failing to act (Goodmark, 2012). These policies aim to remove or limit the discretion exercised by agents of the criminal justice system when responding to domestic violence cases. They have their origins in The Minneapolis Domestic Violence Experiment (Sherman & Berk, 1984a, 1984b), which showed a reduction of almost 50% in assault, attempted assault and property damage and concluded that arrest has a significant effect as a specific deterrent to domestic violence. Subsequent research, however, highlighted the limitations and unintended consequences of mandatory, pro-arrest, and no-drop prosecutions policies. Arrest worked for those with a “stake in conformity” while, for those who did not (disproportionately unmarried and unemployed black men), arrest escalated the risk of further, more serious, violence (Fagan, 1996; Sherman, 1992; Sherman, Smith, Schmidt, & Rogan, 1992). It seems that formal legal controls require the reinforcement of informal social controls (Fagan, 1996; Sherman et al., 1992). Fagan (1996) noted that “the sources of informal social control of domestic violence may lie either within the individual, in the form of internalized beliefs and social bonds, or may be externally reinforced through normative behaviours within neighborhoods and other social contexts” (p. 26). Similarly, Sherman (1995) applied defiance theory to explain the differential effects of arrest, arguing that sanctions are defied in cases where the perpetrator of domestic violence is weakly bonded to the system applying the sanctions, perceives the sanction as having no legitimacy (or is otherwise unfair), or the perpetrator takes pride in being an outsider.

However, removing the mandatory and pro-arrest policies would appear to be a weakening of commitment to the feminist goal and the conservative law and order agenda.
Focus on physical violence

Stark (2006, 2007) argues that the feminist project on ending male violence against women has stalled and criminal justice intervention has failed because abuse has been reduced to physical violence. He asserts that the way domestic violence is defined results in nobody going to jail for coercive, controlling intimate partner abuse because such abuse is often not accompanied by serious assaults and the criminal justice system responds to “discrete episodes of force designed or likely to hurt or injure a partner” (2006, p. 1019). Similarly, Goodmark (2012) has highlighted the USA’s preoccupation with physical violence, particularly in law, arguing that it fails to assist women whose experience of coercive control does not include physical violence, and access to alternative legal remedies is unattainable for many.

While some are concerned that nobody is legally sanctioned for coercive control, which is perpetrated almost exclusively by men against women (Johnson 2008), others have entirely different concerns. Specifically, they have highlighted increased rates of incarceration of women, especially black, Latino and poor women, through dual arrests as a negative consequence of mandatory, pro-arrest and no-drop prosecutions policies in responding to discrete episodes of physical violence (e.g. Coker, 2001; Hirschel & Buzawa, 2002; and Smith, 2001).

A LAW TO PROTECT WOMEN FROM MEN’S COERCIVE CONTROL

Australian legislators attempted to address non-physical coercive controlling violence in the 1980s, although the potentially negative impact of criminal law on minority group women was not yet in the frame. Using Queensland as a case study, I discuss the key policy considerations documented in the Queensland Domestic Violence Task Force Report (QDVTF, 1988), and the gendered aspirations reflected in the parliamentary debates and resulting legislative provisions.

The Queensland Domestic Violence Task Force 1988

The Queensland Government established the Queensland Domestic Violence Task Force (the Task Force) to investigate the nature and prevalence of spousal domestic violence in Queensland and propose strategies to curtail it. This initiative followed similar investigations in several other Australian jurisdictions, including New South Wales (NSWTFDV, 1981),
Tasmania (Hopcroft, 1983), Victoria, (Women’s Policy Co-ordination Unit, 1985) and Western Australia (Elliott, 1986). As with these investigations, and based on its extensive review of the literature, the 1988 Queensland Domestic Violence Task Force identified that women were much more often the victims, and men the perpetrators, of spousal domestic violence, the focus of its investigation.\textsuperscript{54}

The Task Force made clear that violent behaviour between couples does not always constitute domestic violence, and that the focus of its investigation was a particular kind of violence:

\textit{Couples may occasionally slap or shove one another. Whilst violent behaviour is never desirable, no great harm may accrue in instances where partners regard and experience each other as equals and can give as good as they get ... these sorts of fights are not the kinds of incidents with which this report is concerned ... when the Task Force talks about domestic violence we are talking about one partner, usually the woman, being afraid of and being hurt by the other. Domestic violence like child abuse is about the abuse of unequal power relationships} (QDVTF, 1988, p. 13).

To support its contention, the Task Force discussed at length the “cycle of violence”, a theory proposed by Lenore Walker (1979), which was widely accepted at the time of the Australian domestic violence investigations, but less so now. Further, the Task Force (1988) noted the “the marked need of the perpetrator to control his partner ... [and] difficulty letting his wife be a separate person” (p. 27) as characteristic of domestic violence, distinguishing it from other acts of aggression or fights within relationships. This differentiation of fights from “domestic violence … the abuse of unequal power relationships” (QDVTF, 1988, p. 13), was subsequently expressed more fully and eloquently by Stark (2006, 2007) as an assault on autonomy, liberty and equality, as discussed in Chapter 2.

\textsuperscript{54} The Task Force recommended that the Queensland Government conduct a similar investigation for non-spousal domestic violence.
Limitations of existing civil law remedies

At the time of the Task Force investigation (1987-88) there was, at least in theory, access to two civil law remedies for domestic violence in Queensland: injunctions under the Family Law Act 1975 (Cth) (hereafter the “FLA”) and the Peace and Good Behaviour Act 1982 (Qld). An injunction generally requires the subject of the injunction to refrain from certain acts, although it may also require certain actions. The Task Force deemed neither of these remedies effective for cases of intimate partner violence.

The Family Court could make a FLA injunction to protect the welfare of a child, or to protect a party to a marriage, but they were not available to victims of domestic violence who did not have responsibility for the care of children, or who were not married.55 Even for those who were eligible, the cost and complexity of applying for a FLA injunction, and problems associated with effective enforcement, were (and remain) significant obstacles for women seeking to end domestic violence (Australian Law Reform Commission and New South Wales Law Reform Commission (ALRC & NSWLRC), 2010, p. 800).

The Peace and Good Behaviour Act 1982 was not limited by any particular relationship between the parties and it could extend, in theory, to spousal relationships. However, its provisions were difficult to access and enforce, in general. Moreover, in relation to intimate partner violence specifically, the Task Force highlighted that the application process was not responsive to the urgency with which injunctions were required, the police had no power to arrest a person for breaching an injunction unless they had witnessed the breach, and action on a breach had to be initiated by the victim, or her solicitor (QDVTF, 1988, p. 157). Therefore, the Peace and Good Behaviour Act 1982 could not address the constraints of an abusive and controlling spouse.

Limitations of the criminal law

The Task Force asserted that “the severity of injuries and the suffering caused to the victims, require apprehension of the perpetrator to face society’s condemnation ... in a court of law ... the criminal law is the appropriate course” (QDVTF, 1988, p. 145). It recognised, however, that while the criminal law had always, in principle, been available to women assaulted by their male partners, it had seldom been used in practice. Queensland’s Criminal Code Act

55 The family violence provisions in the FLA have been amended substantially over the years, including a new definition of family violence in 2011. The definition is discussed in Chapter 8.
1899 defines assault as “[a] person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without the other person’s consent” (s. 245(1)). Queensland police argue that the requirement for the prosecution to demonstrate a lack of consent effectively requires the victim to make a formal complaint of assault to police,\(^{56}\) because all criminal law requires the prosecution to prove the facts of a case beyond reasonable doubt and the evidence of the victim on this point becomes critical. The coercive, controlling nature of intimate partner violence, however, means victims may be too scared to make a complaint, or testify; they may be coerced into dropping charges; their testimony may seem weak against that of a coercive controlling perpetrator of violence; and there are often no witnesses, other than the victim, to corroborate the victim’s account (Nancarrow, 2012). Further, many women reported they wanted the violence to stop but they did not want their partner to have a criminal record, or face time in prison (QDVTF, 1988). A further limitation of the criminal law is its inability to deliver an outcome within a short period of time. The higher standard of proof required and the more serious consequences associated with convictions for criminal offences call for legal processes that may take months, even years, before a matter is settled.

**The Queensland Domestic Violence Task Force position**

To address the limitations of existing legal remedies, the Queensland Domestic Violence Task Force (1988) recommended the development of specific civil legislation to provide court ordered protective measures for victims of domestic violence. It was to be “an adjunct to the criminal law in areas where the criminal law has not provided effective protection … and where the conduct complained of does not amount to criminal assault” (p. 160). The Task Force recognised, however, that the legislation it proposed was not strictly in the civil or criminal law category but straddled “both the civil and criminal jurisdictions” (QDVTF, 1988, p. 171).

To overcome the problems of the existing civil law remedies, the Task Force argued for exceptional police powers to enter premises, and detain a person in custody, without an

\(^{56}\) Consent is irrelevant if an assault causes grievous bodily harm, meaning the loss of a distinct part or an organ of the body; serious disfigurement; or any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health; whether or not treatment is or could have been available.
arrest, for several hours. This was to facilitate the police “laying charges where possible” (p. 132) and with a view to “reducing the current onus on the victim to end the violence through her own initiatives ... police should initiate protection order proceedings” (p. 133).

**The Domestic Violence (Family Protection) Bill 1989 (Qld)**

The conservative National Party Government Member for Family Services, Craig Sherrin, introduced the Domestic Violence (Family Protection) Bill to the Queensland Parliament on the 15th March 1989. It incorporated all of the recommendations of the Task Force. In his opening comments Minister Sherrin (1989) stressed that the Bill was an initiative “to support the family unit and, more particularly, to assist in alleviating and curtailing the problem of domestic violence ... the widest possible protection and assistance needs to be given to the family unit and the institution of marriage” (p. 3797). The Bill provided for a Magistrates’ Court to make an order to protect a person from further acts of domestic violence perpetrated by their spouse. The Bill defined spouses as heterosexual couples who were, or had been, married or in a *de facto* relationship, or the biological parents of a child (whether or not they had ever lived together). Importantly, the definition of domestic violence in the Bill included non-physical as well as physical forms of abuse resulting in injury, damage to the spouse’s property, intimidation or harassment of the spouse, indecent behaviour to the spouse without consent, or a threat to commit any of these acts. Inclusion of this range of behaviours in the definition better captures the coercive, controlling nature of domestic violence than definitions limited to physical violence, although the inclusion of non-physical forms of abuse, alone, is not sufficient to capture the nature of coercive control.

The Domestic Violence (Family Protection) Bill 1989 proposed that an application to the court for a domestic violence protection order (DVO) against a perpetrator (the respondent) could be made by the victim of domestic violence (the aggrieved), a person authorised in writing by the aggrieved to make the application (an *authorised person*), or a police officer who had investigated a complaint of domestic violence and reasonably believed that domestic violence had occurred, and was likely to occur again. The Bill gave magistrates the power to make a DVO for a period up to 12 months. The court could make orders by consent of the parties or on the evidence, based on the balance of probabilities (the civil standard of proof) that domestic violence had occurred and was likely to occur again. Suspicion of imminent danger to the aggrieved, or damage to property enjoyed by the aggrieved, was a basis for an interim order application, including a police interim order application to a magistrate by
telephone, facsimile, radio or similar device where time or distance made it impractical to be heard in a Magistrates’ Court. Final protection orders could also be made *ex parte* (in the absence of the respondent) if the court was satisfied that a respondent who failed to appear in court had been given notice and the opportunity to contest an application.

Having in mind the coercive, controlling nature of domestic violence, the Bill did not require a police application to have the consent of the aggrieved and it did not require the aggrieved to be present in court when a police application was heard. The Bill required the police who suspected domestic violence to conduct an investigation and, for that purpose, gave the police the power to enter and remain on premises. Further, if the police reasonably suspected that the aggrieved was in imminent danger, the Bill provided the power for them to take the respondent spouse into custody, “using such reasonable force as is necessary, without further or other authority than this subsection” (s.31). The alleged perpetrator could be held in custody for up to 4 hours during which time the police were required to make an application for a protection order.

The proposed police powers seemed preposterous to many observers in early 1989. As a result of evidence given to a Commission of Inquiry into police corruption (Fitzgerald, 1989) the Commissioner of Police had already been stood down. Just 2 months before the passage of the Domestic Violence (Family Protection) Bill 1989, the Commission’s report was presented to the Premier. It stated:

*The Queensland Police Force is debilitated by misconduct, inefficiency, incompetence, and deficient leadership ... contempt for the criminal justice system, disdain for the law and rejection of its application to police, disregard for the truth, and abuse of authority* (Fitzgerald, 1989, p. 200).

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57 Commissioner Sir Terence Lewis was removed from office on 19 April 1989 just days after the passage of the Domestic Violence (Family Protection) Act 1989. He was subsequently prosecuted and jailed for corruption, along with three Government Ministers, and stripped of his knighthood. The former Police Minister was also charged with corruption but died before his trial came to court. Former Premier, Joh Bjelke-Petersen, was charged with perjury for evidence he gave to the Inquiry but the jury failed to reach a verdict.
The parliamentary debate in 1989

The exceptional police powers evoked the most animated contributions to the debate on the Bill. In his introduction to the Bill, Minister Sherrin had emphasised the range of protections for people affected by those powers, such as the police being required to provide their name, number and rank, having to inform an affected person that they may accompany the police on a search of the premises, and seizure of weapons having to be entered into a register available for inspection. Nevertheless, several members expressed concern about these exceptional police powers (Fraser, 1989; Warner, 1989; White, 1989). White (1989) a member of the Liberal Party, spoke mostly strongly on the subject:

I have grave concerns about certain aspects of this legislation ... provisions in this Bill regarding police involvement represent a major change in police activities and a major intrusion into civil liberties by allowing for detention without arrest in the normal sense, detention without trial and the judicial determination of matters put before a court by telephone, fax machine or police radio, without the verification of a witness before the court ... those are very serious and substantial powers, and with those powers goes the grave risk of abuse ... I raise again the question of how more powers can be given to the police when it is abundantly demonstrated that widespread abuse of police powers takes place today (pp. 4437-4439).

Although sceptical of a civil law response to domestic violence, rather than an improved criminal justice response that dealt with assaults in the home as crimes, Anne Warner (1989), of the Australian Labor Party (ALP), said:

Let us see if a better performance in terms of protection for women can be obtained as a result of giving police additional powers that they say are necessary ... I have no problem with the granting of those powers to effect the protection of women ... (but) Queensland must have very well trained, sympathetic and sensitive police to deal with these incidents (pp. 4421-4422).

Warner (1989) also spoke in support of the police power to make an application without the consent of the victim: “if police require the permission of victims before proceeding ... psychological pressure will be applied to prevent the victim granting that permission ... the respondent ... might say ‘if you give permission for the police to take out this protection
order, I’ll break your bones’” (p. 4423). Members acknowledged that the police powers were exceptional and some members were concerned about them, but they were accepted as necessary in the circumstances. It also seems that members, overall, saw those circumstances as a pressing need to stop men’s violence against their female partners, even though the Bill was drafted in gender-neutral terms.

Unlike Minister Sherrin’s entirely gender-neutral\(^{58}\) introductory speech, other members of the Queensland Parliament, including Government and Opposition members, conveyed an understanding that the Bill was designed primarily to curtail men’s violence against their intimate female partners. National Party member, Judy Gamin (1989), for example, spoke about the escalation, or onset, of violence during pregnancy and said “to be frank ... it is a problem that has been around since ... man first started to take out his frustrations, his worries and his own inadequacies by belting up his wife and children” (p. 4426). Clem Campbell (1989) of the ALP expressed his support for the proposed legislation stating that “at present an order for the protection of a wife cannot be enforced” (p. 4428) and Terry White commented, “even though women may not wish to initiate action, the Bill gives power to the police to take action” (1989, p. 4439). Speaking at length about the need to address prevailing attitudes in addition to legislating against domestic violence, Warner noted that “it is not just magistrates, police, social workers or members of Parliament, but the victims themselves who often reveal attitudes that would indicate a high level of social acceptability of a husband’s violence against his wife” (p. 4419). Warner, Gamin and others also provided statistical information demonstrating that the great majority of victims of domestic violence were women. No Member of Parliament’s contribution to the debate raised the need to protect men from female intimate partners. Members were also silent on the subject of intimate partner violence involving same sex couples and sub-populations, including Indigenous Australians.

\(^{58}\) I use this term here and elsewhere to mean that nouns and pronouns (women, men, he and she, for example) were not used, so gender was invisible in Minister Sherrin’s speech. He did not use these pronouns at all and referred instead to “the family” and “protection and assistance … given to the family unit and the institution of marriage” (Sherrin, 1989, p. 3797).
Amendments to the Domestic Violence (Family Protection) Act 1989 (Qld)

The Domestic Violence (Family Protection) Act 1989 commenced in August 1989 and was subsequently amended in 1992, 1999, and again in 2002. On each occasion, the government introduced amendments mostly to address anomalies or to improve efficiency in the Act’s operation but also, on each occasion, to extend the provisions of the Act to include relationships not already covered. The following discussion focusses on the policy amendments that extended the coverage or increased protection under the Act, rather than the administrative amendments concerned with its efficient operation. This discussion demonstrates the continuing commitment to addressing a particular kind of violence, with a particular kind of victim in mind.

1992: Five measures for greater protection of women

In June 1992, following nearly 3 years of the Act’s operation and monitoring by the Queensland Domestic Violence Council, the Minister for Family Services and Aboriginal and Torres Strait Islander Affairs, Anne Warner, introduced a Bill to amend the Domestic Violence (Family Protection) Act 1989. In her introduction, Warner (1992) said she was seeking five measures in an amended Act that would “provide greater protection to women who have suffered at the hands of their spouse” (p. 5932).

The amendment Bill, like the original, was written in gender-neutral language, and again the discourse of the parliamentary debate accepted that it was primarily aimed at stopping men’s violence against women. Under the proposed measures, protection orders were to include, as standard conditions, that the respondent was to be of good behaviour and desist from domestic violence, and that respondents would be automatically prohibited from the possession of weapons and weapons licenses for the duration of an order. The duration of a protection order was to be extended from a maximum 12 months to a period up to 2 years, or longer in special circumstances, to overcome the need for women to return more frequently to the court seeking an extension of an order. Magistrates were to be given greater discretion in regard to the types of conditions that could be placed on protection orders, including an ouster condition that would enable the aggrieved spouse “to remain in her own home, even if her spouse has a legal or equitable interest in the property” (Warner, 1992, p. 5932). Finally, the Bill proposed that the protection of the Act be extended to relatives and associates of the victim who were also threatened. They were to be named in a protection order made for the
victimised spouse, rather than allowing an independent application and protection order for relatives and associates of the victim. This provision was to overcome a manipulative partner controlling his current or former intimate partner by threatening others she cares about. Members of Parliament unanimously supported the Bill and passed it in August 1992, 3 years after the passage of the original Act.

1999: Removal of a loophole and discrimination

A comprehensive review of the Domestic Violence (Family Protection) Act 1989 commenced in July 1995 (Beanland, 1999, p. 5025). The Queensland Domestic Violence Council’s concerns about a loophole in the breach provisions of the legislation triggered the review. The breach provisions required the prosecution to prove beyond reasonable doubt that a respondent had knowingly breached the DVO. The Council was made aware of a successful appeal against a conviction for breach on the grounds that the respondent did not know the specific conditions of the DVO, even though he had been served a copy of it by the police. The Council also had ample anecdotal information that, following this successful appeal, respondents charged with breaches of protection orders were advised by legal counsel to deny knowledge of the order and thus avoid conviction for breaches. The proposed solution was that a conviction could be made if the breach occurred after the respondent had been present in court when the order was made, or had been served with the order, or had otherwise been advised by a police officer that the order had been made. The final element of the legislative reform solution was to address scenarios where the respondent avoided the DVO being served so that a breach could not be substantiated and penalties, thus, avoided.

As part of the review, the Government released for consultation a report on legislative options for domestic relationships not covered by the Act (Currie, 1996), and commissioned on the recommendation of the Queensland Domestic Violence Task Force (QDVTF, 1988). Currie’s report presented the following three options for consideration:

Option 1 - leave the Domestic Violence (Family Protection) Act 1989 as it is and amend the Peace and Good Behaviour Act 1982 to include all other domestic relationships.

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59 At that time I was manager of the State Government’s Domestic Violence Policy Unit. In that role I was responsible for the review of the Act and I represented the relevant government department on the Queensland Domestic Violence Council. Therefore, I had direct access to information about the review.
Option 2 - extend the Domestic Violence (Family Protection) Act 1989 to include lesbian and gay relationships and dating relationships and amend the Peace and Good Behaviour Act 1982 to include all other domestic relationships.

Option 3 - extend the Domestic Violence (Family Protection) Act 1989 to include all domestic relationships and amend the Peace and Good Behaviour Act 1982 to provide protection to persons who are not in a domestic relationship, or do not wish to disclose that they are (pp. 142 - 146).

Currie noted, in favour of option 1:

_The term domestic violence is synonymous with violence against wives by their husbands. It took commitment, time and resources to make this form of violence visible ... education of the public about this issue appears to have been effective. To turn around and use the term domestic violence to cover a whole range of relationships ... would undermine the work ... done in this regard_ (1996, p. 142).

The rationale for option 2 was that “lesbian and gay relationships are spousal or spouse-like relationships; dating relationships are spousal or spouse-like relationships or embryonic spousal relationships” (Currie, 1996, p. 145). In addition, for option 3, “the most compelling argument against this approach is that the focus is not kept on domestic violence as the term is now commonly understood” (Currie, 1996, p. 149). In the course of her consultation and research, however, advocates persuaded Currie that other domestic relationships also share many of the features of spousal relationships. Shared features included trust and intimacy, commitment to the relationship, involvement of children and fear of further violence or abuse. They argued that the existing legislative remedies were ineffective for the same reasons the Task Force deemed them ineffective for spousal domestic violence, and that non-spousal domestic violence warranted the same level of protection as that for spousal and spouse-like relationships. Currie recommended option 3 because “it treats all victims of domestic violence the same way and because it is the one most likely to ensure adequate protection for victims of non-spousal domestic violence in all their variety” (1996, p. 150).

Except for the inclusion of dating relationships, or “embryonic spousal relationships” (Currie, 1996, p. 145), state funded specialist domestic violence support services operating within feminist frameworks vehemently opposed Currie’s recommendation, primarily for ideological reasons. Represented by the Queensland Domestic Violence Services Network
(QDVSN), they argued that option 3 jeopardised the initial intent of the legislation to address violence against women by their current or former male partners. At the time, and since its establishment in 1994, the QDVSN had been the only state-wide network of specialist domestic violence support services, despite its limited membership, which consisted of managers of 15 specialist domestic violence services. There was no Indigenous-specific service, nor any Indigenous manager included in QDVSN membership, thus Indigenous perspectives were not included, at least not directly, in QDVSN advocacy.

The review process stalled because of the lack of support from the sector for the major reforms and the conservative Government did not proceed with any amendments to the Act, although the loophole that triggered the review still required urgent action. Following the election of the ALP in 1998, 3 years after the initial review began, the incoming Minister responsible for the domestic violence legislation, Anna Bligh, directed her department to prepare an amendment Bill to address the technical amendments identified in the review (including the loophole in the breach provisions). The Minister postponed a decision on the expansion of the coverage of the Act to include non-spousal domestic relationships, and made it the subject of further negotiations to resolve the impasse on legislative protection for non-spousal domestic violence.

In June 1999, Minister Bligh introduced to Parliament an extensive set of proposed technical and procedural amendments. The amendment Bill aimed to “improve the enforcement of the Act; clarify existing provisions; eliminate unnecessary burdens on police and courts; improve the security and protection of women escaping domestic violence; and reflect amendments to the Family Law Act 1975” (Bligh, 1999a, p. 2186). The debate on the Bill commenced on 11 November and adjourned at 12.33am on 12 November. In spite of the length of the debate and some members raising concerns about particular aspects of the amendments, there was generally bi-partisan support for the Bill, subject to any proposed amendments introduced before the motion that the Bill be passed. At that stage, when debate resumed on 12

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60 Membership comprised a state-wide telephone service, a state-wide resource centre, the Immigrant Women’s Support Service, and 12 Regional Domestic Violence Services. Women’s refuges and other service types were excluded. They had their own, mostly regional, networks and did not organise and campaign as the QDVSN did.

61 At this stage in the process of passing a Bill, there is an opportunity for members of parliament from the opposition parties, the Government and independent members to propose amendments in addition to those in the Bill. It would be unusual for a Member of Parliament who had introduced a Bill to add a proposed amendment that represented a significant policy shift, at this final stage. When a Bill is tabled in Parliament after the first reading speech, time is allowed for consideration of the Bill and consultation with constituents before the second reading speech and debate.
November, Minister Bligh (1999b) herself moved an amendment to change the definition of spouse to include “either 1 of 2 persons, whether of the same or the opposite sex, who are residing or have resided together as a couple” (p. 5057). A very lengthy and heated debate ensued with members on the opposition benches ardently opposed either to the inclusion of same sex couples in the coverage of the legislation, the way in which the Minister who introduced the Bill proposed the amendment,\(^\text{62}\) or both. The house divided to vote on the amendments and the result was a draw; 37 ayes and 37 noes. With the temporary Chairperson casting her vote to break the tie and voting with the ayes the Bill, and therefore the Act, were amended to “rectify this ... breach of the Anti-Discrimination Act” (Bligh, 1999b, p. 5058). The amended Act represented a partial implementation of option 2 from Currie’s (1996) report on legislative options for non-spousal domestic violence, with the extension of protection of the Act to lesbian or gay couples who reside, or had resided together.

**2002: Non-spousal domestic violence.**

Two years on, Minister Judy Spence (2001) of the ALP introduced to Parliament a Bill to broaden the coverage of the *Domestic Violence (Family Protection) Act 1989*. The Bill most closely resembled Currie’s (1996) option 3, proposing that the Act be extended to include *enmeshed* dating relationships, family relationships (broadly defined to include Indigenous Australian concepts of family) and *informal care* relationships. The Bill also proposed to change the name of the legislation to the *Domestic and Family Violence Protection Act 1989*. Thus, the Bill retained a focus on men’s violence against female intimate partners, to the extent that it was associated with the term domestic violence; and, it added a focus on family violence, advocated by Indigenous women and advocates working with frail older people and people with disabilities.

In an incongruous alliance with the mainstream domestic violence sector, the conservative National Party also opposed the Bill:

> The opposition agrees with the viewpoint of the domestic violence support groups that further widening of the groups to be covered by this legislation will create more confusion and put greater pressure on the magistracy and the Police Service with no suggestion of increased funding ... [T]he opposition,

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\(^{62}\) That is, in the final stages of the debate when some opposition members had already left the chamber, rather than in the Bill itself.
However, is not yet convinced of the need for parallel legislation to cover the broader areas ... (which) should be protected by the provisions already available in the existing Criminal Code (Copeland, 2002, p. 501).

Rather than protecting an ideological position held by the domestic violence sector, however, the opposition was concerned about the resource implications that Copeland referred to, and seized the opportunity to oppose the Government, with the backing of the domestic violence sector (see Simpson, 2002, pp. 588-590).

There was no specific representation from Indigenous organisations included in the parliamentary debate on the Bill, but Members referred to submissions from those working with frail older people and people with disabilities. Concluding the debate, and in defence of the amendment Bill, Spence (2002) quoted a press release from a sexual assault support service for women with intellectual disabilities:

*Victims of crime have aligned with the disability sector in lobbying long and hard for the proposed changes to the legislation. It is now common for people with disabilities to live in supported accommodation or with family members. There is a high incidence of violence perpetrated against people with disabilities within their domestic settings, and although these may not be spousal relationships, they are nevertheless co-habiting relationships where the same dynamics of gender, power and control exist* (p. 624).

The Minister also quoted a press release from the Australian Pensioners and Superannuants’ League, which had lobbied for 12 years for the inclusion of elder abuse in the *Domestic Violence (Family Protection) Act 1989* and opposed separate legislation to address non-spousal domestic violence. The Pensioners and Superannuants’ League press release expressed surprise and distress at the National Party’s opposition to the Bill. In spite of advocacy from feminist domestic violence services to retain the focus on intimate partner violence in domestic violence legislation, and the National Party’s opposition to the Bill, it passed on 8 March 2002 and commenced on 10 March 2003.
Missed opportunities 1989-2002

The debates on these various amendment Bills failed to articulate two critical elements: the primary intention to provide legislative constraint on coercive, controlling power over women; and that men’s coercive, controlling power over women is not limited to their female intimate partners. More strongly evident in some cultural contexts than others, coercive controlling power is also exercised by men over their mothers, sisters and daughters. To be fair, a constant refrain in the domestic violence sector’s representations to government and members of the opposition was that spousal domestic violence is different from violence in other relationships because it is about “power and control”. It is difficult to argue, however, that abuse of people with disabilities in institutions, for example, is not an expression of power and control over the abused. It is perhaps more difficult to argue that “honour related violence” (Araji, 2000; Kvinnoforum/Foundation of Women's Forum, 2005)—men’s violence against mothers, sisters and daughters—is not gender-based, coercive controlling violence.

Instead of focusing on the kind of violence that Queensland’s domestic violence legislation should address, the public debates surrounding the various amendments to the legislation focused on which kinds of relationships it should cover.63 The result was further entrenchment of a formulaic legislative approach (proscribed action + relevant relationship = domestic violence) and continued application of the law to cases involving women perpetrators not envisaged by feminist advocates and legislators in the law’s design.

SUMMARY AND DISCUSSION

The target of the original Domestic Violence (Family Protection) Act 1989, enacted in August 1989, was coercive, controlling violence (physical and non-physical) against women by their current or former male intimate partners. Subsequent amendments sought to strengthen its provisions and extend them to a broader range of relationships.

The legislative intent to restrain coercive controlling violence is evident in several features of the 1989 law. The definition of domestic violence included non-physical forms of abuse such as intimidation and harassment. The legislation attempted to capture the concept of domestic

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63 Most other Australian jurisdictions had always included a wider range of relationships in their civil domestic violence laws.
violence as an ongoing pattern of power and control, thus attempted to exclude incident-based fights. The court could impose specific conditions, in addition to those that were standard, to restrain the respondent’s particular expressions of power over the aggrieved. In addition, the law provided the police with exceptional powers, although public trust in them was low, to act on behalf of victims and establish a balance of power between the respondent and aggrieved.

The provision for the police to make a DVO application without the consent of the victim removed the ability of the perpetrator to manipulate a decision. Purportedly, it meant that the respondent could not blame the aggrieved for making the application and inflict further violence in retaliation. It also recognised and prevented, to some extent, the power of perpetrators to undermine the legislative system by giving the police power over victims as well as perpetrators in making applications for DVOs.

Perpetrators may attempt to manipulate the system and maintain power over the victim by repeatedly failing to appear in court for a DVO application hearing, or denying knowledge of the conditions placed on him in a DVO. The power of magistrates to make temporary and final orders in the absence of the respondent (ex parte)\(^{64}\) partially prevents this. Further, if the offender was present when the court made the DVO, or the police gave them a copy or informed them of the DVO and its conditions, a conviction for a breach may proceed regardless of the perpetrators claims about knowledge of the DVO. However, these provisions do not prevent perpetrators manipulating victims and the system by seeking multiple court adjournments.

Over the course of 7 years (1992–1999), the Parliament extended legislative provisions aimed at coercive control in three ways. First, it extended protection to others such as family or friends of the primary victim, by including them on the victim’s DVO. This was to thwart a perpetrator’s attempts to control his partner by threatening or abusing others she cares about. Second, Parliament extended the maximum duration of a DVO from 12 months to 2 years to avoid the perpetrator simply waiting for the DVO to expire before starting up the abuse again. It anticipated that a 2-year order would more likely see the perpetrator move on from the relationship. It could also reduce the burden on victims and courts, arising from new applications. Third, provision was made to have the perpetrator removed from the family

\(^{64}\) The court must be satisfied the respondent was aware of the application and had the opportunity to contest it.
home (an ouster order), enabling victims and their children to remain in their home and community. Theoretically, this addresses the perpetrator’s ability to control a victim because of her fear of homelessness, poverty, loss of employment and disruption to children’s education, for example.

Perhaps more than any other provision aimed at addressing coercive control, the provisions for the police to make a DVO application without the consent of the victim, and magistrates to make court orders in the absence of the respondent (and the victim) exemplify the legislative construction of the victim as powerless, submissive and in need of the state to take control. How these and other gendered aspirations, such as tailoring DVOs through the inclusion of specific conditions, feature in the experiences of Indigenous and non-Indigenous men and women charged with breaches of DVOs is considered next, in Chapter 5. There I present the results of my analysis of the histories, as perpetrators and victims, of the 185 Indigenous and non-Indigenous men and women in my study. The sample spans the period June 2004 to June 2012, thus, the analysis focuses on the provisions of the Domestic and Family Violence Protection Act 1989 that sought to address the coercive controlling power of a man against his female intimate partner (e.g. police applications and *ex parte* orders), and as amended between 1992 and 2002.
5. THE IMPACT OF DOMESTIC VIOLENCE LAWS: SEX AND RACE DIFFERENCES

How do the police and courts respond to domestic violence? How do their actions and decisions vary by sex\(^65\) and Indigenous status? What can administrative (police and court) data tell us about differential enmeshment of people in the criminal justice system, as both victims and perpetrators of domestic violence? To address these questions, I profile each of the four sub-groups (Indigenous men, non-Indigenous men, Indigenous women and non-Indigenous women) who were charged with breaching at least one DVO. Then I compare the groups to identify significant sex and race differences.

CODED VARIABLES

Four sets of variables structure the analysis:\(^66\) demographics, respondent history, aggrieved history, and case character.

**Demographics**

This set of variables describes the respondents’ ages, the proportion of cases involving intimate partner and cross-cultural relationships, the proportion involving DVOs made in remote\(^67\) community courts, and the proportion of first breached DVOs made in remote community courts. The remote court variables indicate the number of people from those communities subject to domestic violence laws. Comparing the proportion of first DVOs made in remote communities and first breached DVOs made in those communities indicates the level of compliance with remote court orders.

**Respondent history of DVOs and breaches**

This set of variables taps the histories of DVOs and breaches as respondent. They are:

\(^65\) Sex (male or female) is a variable that I use throughout this chapter in comparing data for the Indigenous and non-Indigenous men and women in the sample. Elsewhere, I use gender because I am referring to the assumed roles for men and women, which underpin the provisions of mainstream legal responses to intimate partner violence.

\(^66\) Appendix 3.2 shows how I coded the data.

\(^67\) I list the locations classified as remote in Appendix 1. They include discrete Indigenous communities other communities with a predominantly Indigenous population, and very small communities located a substantial distance from either of the research sites.
1. One distinct victim only. The original domestic violence law assumed there would be one victim (an intimate partner) and that state intervention would stop further violence.

2. Three or more distinct DVOs. DVOs typically expire after 2 years; therefore, three or more distinct DVOs could represent persistent abuse of one victim, with consecutive DVOs over several years, or DVOs naming two or more distinct victims. In either case, the presence of three or more DVOs indicates that DVOs have not had the desired effect of changing behaviour. In these cases it is likely the DVO is seen as a meaningless piece of paper with little relevance in the life of the respondent.

3. The proportion of first DVOs (DVO1) resulting from police, rather than private, applications.

4. Whether DVO1 included standard conditions only, indicating the parties are not separated or that concerns about safety, intimidation or harassment are low.

5. Whether DVO1 included a no contact condition. This condition prohibits the respondent from contacting, attempting to contact or asking someone else to contact the aggrieved. It is generally an indicator of high risk of violence to the aggrieved after separation.

6. Whether the first breached DVO had been made without the respondent being in court (ex parte). When the court is satisfied that the person named a respondent on a DVO application was given the opportunity to be in court and contest the application, and there is sufficient evidence, the court may make an ex parte DVO. Absence in court when a DVO application is heard indicates a lack of engagement by a respondent/perpetrator with the process and, potentially, lack of awareness of the contents and significance of a DVO.

7. Whether respondents were charged with a DVO breach on three or more separate occasions. Three or more distinct breaches could represent persistent breaching of one or more DVOs, related to the same victim, or multiple victims. In either case, the presence of three or more breach occasions indicates that neither DVOs, nor criminal charges for breaching DVOs have deterred the respondent from committing domestic or family

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68 The first DVO (DVO1) is used for comparisons in the case of variables 3), 4) and 5) because all cases have at least one DVO, and at least one DVO breach, while the number of those with two or three DVOs and breaches vary considerably.

69 Domestic and Family Violence Protection Act 1989 s. 25(3)(d).
violence. Again, this likely reflects a perception of the DVO as a meaningless piece of paper.

8. **High level violence on any breach occasion.**\(^{70}\) Using any, rather than the first, breach event assists in understanding the results for the appearance of a conviction flag (see below).

Three court outcomes related to the first breach were coded: whether the respondent entered a guilty plea, type of penalty (none or sentenced to serve jail), and whether or not a conviction was recorded. For the latter variable, judicial officers have discretion to record (or not record) a conviction, when a respondent pleads guilty. Not recording a conviction is a form of sentence leniency. A fourth variable is whether the person was also subject to a charge under the *Criminal Code Act 1899* (Qld) as a result of the breach event.\(^{71}\) The outcomes of such charges were not available in the police or court data.

This set of variables concludes with the proportion of respondents who were also named the aggrieved on a DVO (respondent also aggrieved). Some cases arise from cross-DVOs involving the same other party. Others are named the aggrieved and respondent on separate DVOs, but in each case the other party is different. Thus, as Figure 6 shows, Person A was the aggrieved on the first breach of a DVO, but then was named as the respondent on a second breach, which involved another person.

Figure 6: Respondent/aggrieved – different other party

<table>
<thead>
<tr>
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<th>1</th>
<th>2</th>
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</thead>
<tbody>
<tr>
<td><strong>Aggrieved</strong></td>
<td>Person A</td>
<td>Person C</td>
</tr>
<tr>
<td><strong>Respondent</strong></td>
<td>Person B</td>
<td>Person A</td>
</tr>
</tbody>
</table>

**Aggrieved history of DVOs**

This set of variables taps respondents’ experiences as the aggrieved on one or more DVOs. It includes whether or not: the first DVOs (DVO1) involved intimate partner relationships, cross-
cultural relationships and police applications; there were two or more, and three or more, distinct perpetrators for each case of respondent/aggrieved; the respondent was first an aggrieved/victim; and cross-DVOs were involved.

Case character

I created the variable, complex case, as a summary way of distinguishing the overall character of cases. A complex case is one in which at least two of the following three characteristics were present: the respondent had three or more DVOs related to distinct other parties, they had been the aggrieved on DVOs against multiple other parties, or the case involved an intimate partner and family members.

SUB-GROUP PROFILES

Indigenous men (N = 50)

Demographics

The Indigenous men’s ages ranged from 19 to 52 years (M = 32.90, SD = 7.96). The modal age range was 31 to 35 years. About one-third (34%) were aged 30 years or less and about a quarter (26%) were 36 years or older. Almost all (95%) of first DVOs involved an intimate partner relationship. A small share (8%) of first DVOs involved cross-cultural (non-Indigenous) relationships. Twenty-eight percent were made in remote courts (as defined in Appendix 1), while fewer (22%) of the first breached DVOs were made in remote courts.

Respondent history of DVOs and breaches

Most (60%) Indigenous men had one victim only, 26% had two victims and 14% had three or more distinct victims.

The total number of distinct DVOs ranged from 1 to 15 (M = 3.88, SD = 2.85). Most men (62%) had three or more distinct DVOs.

The Queensland Police Service was the applicant for 86% of the first DVO breached by the Indigenous men. About three-quarters (74%) of the men had standard conditions only, and a small number (12%) had a no contact condition, on the first DVO. The first breached DVO was made ex parte in 72% of cases.
The total number of separate breach occasions ranged from 1 to 22 (M = 5.00, SD = 3.82). Most (70%) had been charged for breaching DVOs on three or more separate occasions and 72% had used high level violence in at least one breach event.

For outcomes, nearly all the men (96%) pleaded guilty to a first breach charge, and this proportion remained consistent for breach charge 2 and breach charge 3. A third were sentenced to jail for the first breach. Of the 50 men, all but one had a conviction recorded for a DVO breach.

Just over half (52%) of the men were charged with Criminal Code offences related to DVO breaches. About three-quarters of the first offences were assault occasioning bodily harm; the remainder were less serious common assault. Some (22%) were charged with a second Criminal Code offence. Of these, four were charged with assault causing bodily harm, and four with common assault. There was one case of rape, one of serious assault and one of assaulting police.

Twenty-one (42%) of the Indigenous men were named the aggrieved on one or more DVOs.

Aggrieved history of DVOs

In all but one of the 21 cases, the other party was an intimate partner and there were no cross-cultural relationships. A small number (14%) were named the victim of two different people. In all cases, the Queensland Police Service was the applicant for the DVOs. All but one of the cases involved cross-DVOs. Two men had been named the aggrieved before being named the respondent and a further three involved simultaneous cross-DVOs.

Case character – Indigenous men

Over one-third (36%) of cases were complex in that they involved three or more victims, violence by an intimate partner and other family, and/or victimisation by multiple other parties.
Table 4: Indigenous men – respondent/aggrieved history

<table>
<thead>
<tr>
<th>Demographics (N = 50)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aged 30 years or less at time of DVO1</td>
<td>17</td>
<td>34</td>
</tr>
<tr>
<td>Intimate partner DVO1</td>
<td>47</td>
<td>94</td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Remote court DVO1</td>
<td>14</td>
<td>28</td>
</tr>
<tr>
<td>Remote court DVO breach 1</td>
<td>11</td>
<td>22</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Respondent history (N = 50)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 victim only</td>
<td>30</td>
<td>60</td>
</tr>
<tr>
<td>3 or more distinct DVOs</td>
<td>31</td>
<td>62</td>
</tr>
<tr>
<td>Police applications DVO1</td>
<td>43</td>
<td>86</td>
</tr>
<tr>
<td>Standard conditions only DVO1</td>
<td>37</td>
<td>74</td>
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<tr>
<td>No contact condition on DVO1</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Breached DVO1 made <em>ex parte</em></td>
<td>36</td>
<td>72</td>
</tr>
<tr>
<td>Breach occasions (3 or more)</td>
<td>35</td>
<td>70</td>
</tr>
<tr>
<td>High level violence, any breach</td>
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<td>72</td>
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<tr>
<td>Plead guilty, breach 1</td>
<td>48</td>
<td>96</td>
</tr>
<tr>
<td>No penalty, breach 1</td>
<td>7</td>
<td>14</td>
</tr>
<tr>
<td>Penalty jail, breach 1</td>
<td>16</td>
<td>32</td>
</tr>
<tr>
<td>Conviction flag</td>
<td>49</td>
<td>98</td>
</tr>
<tr>
<td>Criminal Code charges (breach 1)</td>
<td>26</td>
<td>52</td>
</tr>
<tr>
<td>Respondent also aggrieved</td>
<td>21</td>
<td>42</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Aggrieved history (N = 21)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intimate partner relationship DVO1</td>
<td>20</td>
<td>95</td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Police applications respondent/aggrieved DVO1</td>
<td>21</td>
<td>100</td>
</tr>
<tr>
<td>Distinct perpetrators (2 or more)</td>
<td>3</td>
<td>14</td>
</tr>
<tr>
<td>Distinct perpetrators (3 or more)</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Respondent was aggrieved first</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Cross-DVOs</td>
<td>20</td>
<td>95</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case character (N = 50)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complex case</td>
<td>18</td>
<td>36</td>
</tr>
</tbody>
</table>
Non-Indigenous men (N = 47)

**Demographics**

The non-Indigenous men’s ages ranged from 20 to 55 years (M = 35.00, SD = 8.39). The modal age range was 31 to 35 years (28%). About one-quarter (34%) were aged 30 years or less and 38% were aged 36 years or more.

About one-fifth (19%) of the first DVOs involved a cross-cultural relationship. In just one case the first breached DVO was made in a remote community. None of the first breached DVOs were made in a remote court.

**Respondent history of DVOs and breaches**

Most men (62%) had one victim only and 23% had two victims. A small number (11%) had three distinct victims and two men had four distinct victims.

The number of distinct DVOs ranged from one to eight (M = 3.26, SD = 1.67). Most (62%) of the men had three or more distinct DVOs. Almost all (94%) of the first DVOs were the result of police applications. More than half (55%) of the men had standard conditions only on the first DVO and about one-third (34%) were ordered to have no contact with the aggrieved. The remainder had various other conditions (such as not to enter specified premises). The first breached DVO was made *ex parte* in 72% of cases.

The number of separate breach occasions ranged from one to nine (M = 3.04, SD = 2.14). Almost half (49%) of the men had been charged with breaching a DVO on three or more separate occasions. Most (64%) had used high level violence in at least one breach event.

For outcomes, nearly all (94%) of the men pleaded guilty to the first breach offence and at least 90% of those charged with second and third breaches pleaded guilty. A small number (13%) were given no penalty for the first breach and an equal number were sentenced to jail.

About one-fifth (19%) of the men were charged with Criminal Code offences related to DVO breaches: five were charged with assault occasioning bodily harm, three with serious assault, and one with common assault. About three-quarters (77%) of the men had a conviction recorded as a result of breaching a DVO.

Twenty (43%) of the non-Indigenous men had also been named the aggrieved on a DVO.
**Aggrieved history of DVOs**

In eight cases (40%), the first DVO involved a cross-cultural intimate partner relationship. In most cases (85%) police were the applicant for the first DVO. A quarter of the men had been named the victim of two or more distinct people, and two were named the victim of three or more distinct perpetrators. In four cases the men had first been named the aggrieved and a further three cases involved simultaneous cross-DVOs.

**Case character - non-Indigenous men**

More than one-third (36%) of these cases were complex, involving three or more victims, intimate partner and family violence and/or victimisation by multiple other parties.

<table>
<thead>
<tr>
<th>Table 5: Non-Indigenous men – respondent/aggrieved history</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demographics (N = 47)</td>
</tr>
<tr>
<td>Aged 30 years or less at time of DVO1</td>
</tr>
<tr>
<td>Intimate partner DVO1</td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
</tr>
<tr>
<td>Remote court DVO1</td>
</tr>
<tr>
<td>Remote court DVO breach 1</td>
</tr>
<tr>
<td>Respondent history (N = 47)</td>
</tr>
<tr>
<td>1 victim only</td>
</tr>
<tr>
<td>3 or more distinct DVOs</td>
</tr>
<tr>
<td>Police applications DVO1</td>
</tr>
<tr>
<td>Standard conditions only DVO1</td>
</tr>
<tr>
<td>No contact condition on DVO1</td>
</tr>
<tr>
<td>Breached DVO1 made <em>ex parte</em></td>
</tr>
<tr>
<td>Breach occasions (3 or more)</td>
</tr>
<tr>
<td>High level violence, any breach</td>
</tr>
<tr>
<td>Plead guilty, breach 1</td>
</tr>
<tr>
<td>No penalty, breach 1</td>
</tr>
<tr>
<td>Penalty jail, breach 1</td>
</tr>
<tr>
<td>Conviction flag</td>
</tr>
<tr>
<td>Criminal Code charges (breach 1)</td>
</tr>
<tr>
<td>Respondent also aggrieved</td>
</tr>
<tr>
<td>Aggrieved history (N = 20)</td>
</tr>
<tr>
<td>-------------------------------------------</td>
</tr>
<tr>
<td>Intimate partner relationship DVO1</td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
</tr>
<tr>
<td>Police applications respondent/agrieved DVO1</td>
</tr>
<tr>
<td>Distinct perpetrators (2 or more)</td>
</tr>
<tr>
<td>Distinct perpetrators (3 or more)</td>
</tr>
<tr>
<td>Respondent was aggrieved first</td>
</tr>
<tr>
<td>Cross-DVOs</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Case character (N = 47)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complex case</td>
<td>16</td>
<td>34</td>
</tr>
</tbody>
</table>

**Indigenous women (N = 46)**

**Demographics**

The Indigenous women’s ages ranged from 20 to 48 years (M = 32.70, SD = 8.73). The modal age range was 36 years or older, however there was an equal number (11) aged less than 25 years and 25 to 30 years. Nearly half (48%) were aged 30 years or less and just more than a third (37%) were 36 years or more.

All but five (89%) of the first DVOs involved an intimate partner relationship and one-fifth involved a cross-cultural relationship. More than one-third (35%) of the first DVOs were made in remote courts. However, in just three cases (7%), the first breached DVO was made in a remote community court.

**Respondent history of DVOs and breaches**

Nearly two-thirds (63%) of the Indigenous women had been named a respondent on orders related to one victim only. Nearly all (96%) had one or two distinct victims only.

The number of distinct DVOs ranged from one to nine (M = 2.17, SD = 1.59). Most women had one distinct victim only, and nearly all had no more than two distinct victims. However, almost one-third (30%) had three or more distinct DVOs. This means that the behaviour leading to DVOs being made against them was persistent over several years.

In all cases, the Queensland Police Service was the applicant for the first DVO against this group of women.
Almost all (91%) had standard conditions only, and none had a no contact condition, on the first DVO. About three-quarters (76%) of the first DVOs breached by the women were made *ex parte*.

The number of separate occasions on which Indigenous women were charged with breaching DVOs ranged from one to seven (M = 2.26, SD = 1.63). Thirteen women (28%) were charged with breaches on three or more separate occasions. More than a third (39%) had used high level violence on at least one breach occasion.

Almost all the Indigenous women (96%) pleaded guilty to the first breach charge. For the first breach, two-fifths (41%) were given no penalty and four were sentenced to jail. As a result of a DVO breach, about three-quarters (76%) of the Indigenous women had a conviction recorded.

Eight women (17%) were also charged with at least one Criminal Code offence (two women were charged on two separate occasions). Of those, two were charged with assault occasioning bodily harm and three-quarters were charged with assault (including five charged with adult wounding).

All but five (89%) of the women were named as the aggrieved on at least one DVO.

**Aggrieved history of DVOs**

Most (86%) involved an intimate partner relationship and 17% involved a cross-cultural intimate partner relationship. In all but one case the Queensland Police Service was the applicant. About half (49%) of the women had been victimised by two or more distinct perpetrators, including about one-third (34%) who had been victimised by three or more distinct perpetrators. More than three-fifths (61%) had been identified as a victim of domestic violence before they were named as a respondent and about one-quarter (24%) of those had been identified as the aggrieved multiple times before being the subject of a DVO against them. A further six women were subjected to simultaneous cross-applications.

**Case character – Indigenous women**

Half (50%) of the Indigenous women’s cases were complex involving multiple victims, intimate partner and family violence or victimisation by multiple other parties.
Table 6: Indigenous women – respondent/aggrieved history

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<tr>
<th>Demographics (N = 46)</th>
<th>N</th>
<th>%</th>
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</thead>
<tbody>
<tr>
<td>Aged 30 years or less at time of DVO1</td>
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<td>48</td>
</tr>
<tr>
<td>Intimate partner DVO1</td>
<td>41</td>
<td>89</td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
<td>9</td>
<td>20</td>
</tr>
<tr>
<td>Remote court DVO1</td>
<td>16</td>
<td>35</td>
</tr>
<tr>
<td>Remote court DVO breach 1</td>
<td>3</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Respondent history</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 victim only</td>
<td>29</td>
<td>63</td>
</tr>
<tr>
<td>3 or more distinct DVOs</td>
<td>14</td>
<td>30</td>
</tr>
<tr>
<td>Police applications DVO1</td>
<td>46</td>
<td>100</td>
</tr>
<tr>
<td>Standard conditions only DVO1</td>
<td>42</td>
<td>91</td>
</tr>
<tr>
<td>No contact condition on DVO1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Breached DVO1 made <em>ex parte</em></td>
<td>35</td>
<td>76</td>
</tr>
<tr>
<td>Breach occasions (3 or more)</td>
<td>13</td>
<td>28</td>
</tr>
<tr>
<td>High level violence, any breach</td>
<td>18</td>
<td>39</td>
</tr>
<tr>
<td>Pleaded guilty, breach 1</td>
<td>44</td>
<td>96</td>
</tr>
<tr>
<td>No penalty, breach 1</td>
<td>19</td>
<td>41</td>
</tr>
<tr>
<td>Penalty jail, breach 1</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>Conviction flag</td>
<td>35</td>
<td>76</td>
</tr>
<tr>
<td>Criminal Code charges (breach 1)</td>
<td>8</td>
<td>17</td>
</tr>
<tr>
<td>Respondent also aggrieved</td>
<td>41</td>
<td>89</td>
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</table>

<table>
<thead>
<tr>
<th>Aggrieved history (N = 41)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intimate partner relationship DVO1</td>
<td>35</td>
<td>86</td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
<td>7</td>
<td>17</td>
</tr>
<tr>
<td>Police applications respondent/aggrieved DVO1</td>
<td>40</td>
<td>97</td>
</tr>
<tr>
<td>Distinct perpetrators (2 or more)</td>
<td>20</td>
<td>49</td>
</tr>
<tr>
<td>Distinct perpetrators (3 or more)</td>
<td>14</td>
<td>34</td>
</tr>
<tr>
<td>Respondent was aggrieved first</td>
<td>25</td>
<td>61</td>
</tr>
<tr>
<td>Cross-DVOs</td>
<td>36</td>
<td>88</td>
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<table>
<thead>
<tr>
<th>Case character (N = 46)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complex case</td>
<td>23</td>
<td>50</td>
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</table>
Non-Indigenous women (N = 42)

**Demographics**

The age of the non-Indigenous women ranged from 18 to 58 years (M = 30.81, SD = 10.79). The modal age range was less than 25 years. Most (57%) were aged 30 years or less and about one-quarter were aged 36 years or more.

Almost all (91%) of these cases involved an intimate partner relationship. Only one case involved a cross-cultural relationship and only one DVO was made in a remote community.

**Respondent history of DVOs and breaches**

The number of distinct victims ranged from one to four (M = 1.31, SD = .715) but the majority (79%) of the women had been named a respondent in relation to one victim only, and 6% had two victims only.

The total number of distinct orders ranged from one to nine (M= 2.00, SD = 1.46). About a quarter (24%) had three or more distinct DVOs. The Queensland Police Service was the applicant for nearly all (91%) of the first DVOs. The majority (69%) had standard conditions only, and six (14%) had a no contact condition on the first DVO. Most (64%) of the women had been charged with one breach only. Five (12%) had been charged with DVO breaches on three or four separate occasions. More than half (62%) of first breached DVOs were made *ex parte*.

All of the women pleaded guilty to the first breach charge. More than one-third (38%) were given no penalty for the first breach and none were sentenced to jail. A conviction was recorded for one-third (33%). Only one woman was charged with a Criminal Code offence (serious assault).

The majority (67%) of the women charged with breaching a DVO had also been named as an aggrieved on at least one DVO.

**Aggrieved history of DVOs**

The Queensland Police Service was the applicant in 79% of these cases. Three-quarters (75%) of them had been victimised by one person, six had been victimised by two people and one woman had been victimised by five different people. In all but three cases the perpetrator was an intimate partner. In about a third (36%) of the cases the women had been named an aggrieved before being named a respondent.

More than three-quarters (86%) were the subject of cross-DVOs and seven were the subject of two or more cross-DVOs. A further six women were the subject of simultaneous cross-DVOs.
**Case character – non-Indigenous women**

About a quarter (24%) of the non-Indigenous women’s cases were complex, involving multiple victims, intimate partner and family violence or victimisation by multiple other parties.

**Table 7: Non-Indigenous women – respondent/aggrieved history**

<table>
<thead>
<tr>
<th>Demographics (N = 42)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aged 30 years or less at time of DVO1</td>
<td>24</td>
<td>57</td>
</tr>
<tr>
<td>Intimate partner DVO1</td>
<td>38</td>
<td>91</td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Remote court DVO1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Remote court DVO breach 1</td>
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<td>0</td>
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<table>
<thead>
<tr>
<th>Respondent history (N = 42)</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 victim only</td>
<td>33</td>
<td>79</td>
</tr>
<tr>
<td>3 or more distinct DVOs</td>
<td>10</td>
<td>24</td>
</tr>
<tr>
<td>Police applications DVO1</td>
<td>38</td>
<td>91</td>
</tr>
<tr>
<td>Standard conditions only DVO1</td>
<td>29</td>
<td>69</td>
</tr>
<tr>
<td>No contact condition on DVO1</td>
<td>6</td>
<td>14</td>
</tr>
<tr>
<td>Breach occasions (3 or more)</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Breached DVO1 made <em>ex parte</em></td>
<td>26</td>
<td>62</td>
</tr>
<tr>
<td>High level violence, any breach</td>
<td>5</td>
<td>12</td>
</tr>
<tr>
<td>Pleaded guilty, breach 1</td>
<td>42</td>
<td>100</td>
</tr>
<tr>
<td>No penalty, breach 1</td>
<td>16</td>
<td>38</td>
</tr>
<tr>
<td>Penalty jail, breach 1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Conviction flag</td>
<td>14</td>
<td>33</td>
</tr>
<tr>
<td>Criminal Code charges (breach 1)</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Respondent also aggrieved</td>
<td>28</td>
<td>67</td>
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</table>

<table>
<thead>
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<th>Aggrieved history (N = 28)</th>
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<th>%</th>
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</thead>
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<tr>
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<td>90</td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Police applications respondent/aggrieved DVO1</td>
<td>22</td>
<td>79</td>
</tr>
<tr>
<td>Distinct perpetrators (2 or more)</td>
<td>7</td>
<td>25</td>
</tr>
<tr>
<td>Distinct perpetrators (3 or more)</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Respondent was aggrieved first</td>
<td>10</td>
<td>36</td>
</tr>
<tr>
<td>Cross-DVOs</td>
<td>24</td>
<td>86</td>
</tr>
</tbody>
</table>
SUB-GROUP COMPARISONS

The sub-group profiles show similarities and differences in the police and court responses to domestic violence, and this part examines them systematically. First, for the 185 cases, I compare demographics and histories as the respondent/perpetrator. Then, for the 110 relevant cases, I compare the demographics and histories of those who were also named the aggrieved/victim on one or more DVOs. The comparison concludes with an analysis of the overall case character. Tables 9, 10 and 11 display the overall results of the statistical analysis. To enhance readability, I present the technical results of the statistical tests in Appendix 4.1.

**Respondent/perpetrator (N = 185)**

**Demographics**

Across the sub-groups, there was one significant age difference: non-Indigenous women were more likely than non-Indigenous men (57% and 34%, respectively) to be aged 30 years or less.

There were no differences in the share of first DVOs involving intimate partner relationships, with 89 to 94% across the four groups. There were, however, sex and race differences for cross-cultural (Indigenous/non-Indigenous) relationships. The first DVO involved a cross-cultural relationship for a higher share of Indigenous women and non-Indigenous men (about 20%) compared to non-Indigenous women (5%) and Indigenous men (8%).

Indigenous men (28%) and women (35%) were significantly more likely to have their DVOs made in remote courts than their non-Indigenous counterparts (0% and 2%, respectively). First breached DVOs were also more often made in remote courts for Indigenous (22%) than non-Indigenous (2%) men, but there were no differences for the women. There were no differences in the share of Indigenous men and women having their first DVO made in remote courts, however, breaches for Indigenous men more often occurred in remote courts. It could be that Indigenous women are more likely than men to leave remote communities after being named a respondent on a DVO, and their breaches more likely to come to the attention of the police in larger towns and regional cities. Alternatively, the women may be more likely to comply with DVOs made in remote communities, where informal or cultural social controls may operate to
regulate behaviour. But what would account for differences between Indigenous men and women in either of these explanations? It may be that Indigenous women behave more ethically than their male counterparts and, therefore, respond to informal or cultural social controls. An unexpected finding in my analysis of police reports (Chapter 7) was that seven DVO respondents reported the breach offences themselves by calling the police or an ambulance to assist their injured partner. In all cases, they were Indigenous women (see Appendix 4.2 for details).

History as respondent

Of the 13 variables tapping histories as respondents, there were no sex or race differences in three. The sub-groups were similar in that 60 to 79% of those in each group had a DVO against one distinct victim only, and nearly all, to all, (94 to 100%) pleaded guilty to the first breach offence. Most first breached DVOs were made ex parte (62 to 76%). Though not statistically significant, the smaller percentage of ex parte DVOs for non-Indigenous (62%) than Indigenous women (76%) likely reflects the availability of mainstream specialised domestic violence services, including court support, for women in Cairns and Mount Isa.

I turn next to comparisons for which there are sex and/or race differences.

Police applications

First DVOs were the result of police applications for a higher share of Indigenous women (100%) than men (86%) and for non-Indigenous women (91%). The proportion of all police applications for DVOs in the research sites is higher than that for the whole state, and it is higher again, in my sample of respondents who had been charged with breaches.

Table 8 shows the percent of all police applications for DVOs for the entire state and in the two research sites during the period 2004 to 2012, the same time frame as that in my sample. The average percentage of police applications was 61% of all applications in the state, but it was 71% for Cairns and 79% for Mount Isa.

The difference in the percent of all police applications in the state and the average\(^2\) share of police applications in my sample, who were charged with breaching a DVO is even greater. Police applications in Cairns (95%) and those in Mount Isa (89%) for those subsequently

\(^2\) This is the average share of police applications (ranging from 95% to 98% for Cairns, and 86% to 90% in Mount Isa) for up to three DVOs that named the people in the sample as the respondent.
charged with a breach of a DVO were 24 and 10 percentage points higher than all police applications in Cairns (71%) and Mount Isa (79%).

Why might DVOs resulting from police applications be more likely breached than DVOs arising from private applications? It may reflect a lack of respondents’ engagement in and understanding of, the legal process and/or a lack of respect for authority in these locations. This question will be explored further in Chapter 6.

Three or more distinct DVOs

Significant sex, but no race, differences were found for respondents with three or more distinct DVOs. More Indigenous and non-Indigenous men (62%) than their female counterparts (30% and 24%, respectively) had three or more DVOs.

Standard conditions only

There were significant sex and race differences for three of the sub-groups. The difference between Indigenous men and women was significant, with women (91%) more likely than men (74%) to have standard conditions only. There was no difference between non-Indigenous men and women. Race differences were evident with Indigenous women and men more likely to have standard conditions only, than their non-Indigenous counterparts (69 and 55%, respectively).

No contact condition

There were significant sex and race differences in first breached DVOs having a no contact condition. None of the Indigenous women had a no contact condition, but 12 to 14% of the Indigenous men and non-Indigenous women did; all three groups were lower than the share of non-Indigenous men (34%) with a no contact condition.
Table 8: All police applications by research sites and Queensland

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications Queensland</th>
<th></th>
<th>Applications Cairns</th>
<th></th>
<th>Applications Mount Isa</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Police</td>
<td>%</td>
<td>Total</td>
<td>Police</td>
<td>%</td>
</tr>
<tr>
<td>2004-05</td>
<td>21,161</td>
<td>12,806</td>
<td>60</td>
<td>884</td>
<td>639</td>
<td>72</td>
</tr>
<tr>
<td>2005-06</td>
<td>20,515</td>
<td>12,661</td>
<td>61</td>
<td>820</td>
<td>572</td>
<td>70</td>
</tr>
<tr>
<td>2006-07</td>
<td>20,774</td>
<td>12,736</td>
<td>61</td>
<td>830</td>
<td>596</td>
<td>72</td>
</tr>
<tr>
<td>2007-08</td>
<td>20,116</td>
<td>12,495</td>
<td>62</td>
<td>892</td>
<td>695</td>
<td>78</td>
</tr>
<tr>
<td>2008-09</td>
<td>21,351</td>
<td>12,610</td>
<td>59</td>
<td>894</td>
<td>571</td>
<td>64</td>
</tr>
<tr>
<td>2009-10</td>
<td>23,056</td>
<td>14,068</td>
<td>61</td>
<td>956</td>
<td>681</td>
<td>71</td>
</tr>
<tr>
<td>2010-11</td>
<td>22,667</td>
<td>13,847</td>
<td>61</td>
<td>917</td>
<td>636</td>
<td>69</td>
</tr>
<tr>
<td>2011-12</td>
<td>22,332</td>
<td>13,837</td>
<td>62</td>
<td>1,006</td>
<td>695</td>
<td>69</td>
</tr>
<tr>
<td>Average p.a.</td>
<td>21,496</td>
<td>13,132</td>
<td>61</td>
<td>900</td>
<td>636</td>
<td>71</td>
</tr>
</tbody>
</table>

Three or more breach occasions

Significant sex and race differences were evident for all sub-group comparisons. A higher share of Indigenous men (70%) compared to any other group had three or more DVOs. Next was non-Indigenous men (49%), then Indigenous (28%) and non-Indigenous women (12%).

High level violence – any breach

Similar proportions of Indigenous men (72%) and non-Indigenous men (64%) used high level violence in at least one breach. However, there were significant differences for Indigenous and non-Indigenous groups, and between Indigenous and non-Indigenous women.

Penalties – breach 1

Sex, but not race differences, were evident for a first breach charge resulting in no penalty. Both Indigenous women (41%) and non-Indigenous women (38%) had no penalty compared to their male counterparts (13% and 16%, respectively). However, Indigenous men were more likely to receive jail time (32%) on their first breach compared to non-Indigenous men (13%), Indigenous women (9%), and non-Indigenous women (0%).

Conviction flag

More than three-quarters of Indigenous and non-Indigenous men and Indigenous women had a conviction recorded for breach of a DVO, compared to one-third of the non-Indigenous women. Race and sex differences were evident. Indigenous men (98%) had a conviction recorded more often than non-Indigenous men (77%) and Indigenous women (76%); and Indigenous women had a conviction recorded more often than non-Indigenous women (33%).

Criminal Code charges – breach 1

More than half (52%) of the Indigenous men were charged with a Criminal Code offence on the first occasion of a DVO breach, which was significantly higher than Indigenous women (17%) and non-Indigenous men (19%). More Indigenous women than non-Indigenous women (17% and 2%, respectively) were charged with a Criminal Code offence on the occasion of a first DVO breach.
Respondent also aggrieved

In the sample of 185 respondents, 110 also appeared in court data as an aggrieved/victim. There were no differences in Indigenous and non-Indigenous men (42% and 43%, respectively) named an aggrieved/victim on a DVO. There were, however, sex and race differences. Significantly more Indigenous and non-Indigenous women (89% and 67%, respectively) were named the victim/aggrieved than their male counterparts (42% and 43%, respectively), and Indigenous women were more likely than the non-Indigenous women to be named the aggrieved/victim on at least one DVO. It is in the following analysis of the aggrieved history that we see the first real evidence that there is something quite different in the experience of Indigenous women charged with DVO breaches.

Respondents as aggrieved (N = 110)

Demographics

Cross-cultural relationships featured for more aggrieved non-Indigenous men (40%) than Indigenous men (0%). In all the non-Indigenous men’s cross-cultural relationships the other party was an Indigenous woman with whom they were in an intimate partner relationship.

History as aggrieved

Cross-DVOs were typical: they occurred in 99 of 110 cases. Only one Indigenous man and one non-Indigenous man had been named a victim on a DVO that was not a cross-DVO, compared to five Indigenous women and four non-Indigenous women. However, for four other variables, there were sex and/or race differences.

Police applications

The proportion of first DVOs as the aggrieved/victim resulting from police applications was higher for Indigenous women (97%) than non-Indigenous women (79%).

Two or more distinct perpetrators

Significantly more Indigenous women (49%) were victimised by two or more distinct perpetrators compared to non-Indigenous women (25%) and Indigenous men (14%).

Three or more distinct perpetrators

Likewise, significantly more Indigenous women (34%) were victimised by three or more perpetrators than non-Indigenous women (4%) and Indigenous men (0%).
Respondent/aggrieved was aggrieved first

Only two Indigenous men and four non-Indigenous men had been named an aggrieved/victim before being named a respondent/perpetrator. However, over one-third (36%) of non-Indigenous women, and 61% of Indigenous women, had been named an aggrieved first. Sex differences between Indigenous people and race differences between Indigenous and non-Indigenous women were significant.

Case character (N = 185)

Significantly more of the Indigenous women’s cases (50%) were complex compared to those of non-Indigenous women (24%), but there were no other differences.

SUMMARY AND DISCUSSION

Here we begin to see how the civil domestic violence laws play out in practice regardless of the intention. In Chapter 4 we learned that Queensland’s Domestic and Family Violence Protection Act 1989 (Qld) primarily intended to subdue a dominating and controlling male perpetrator of violence in defence of a powerless female victim. The analysis of administrative court and police data paints a picture that bears little resemblance to that imagined in 1989.

It does show that the power of the police to apply for DVOs, and for the courts to make them *ex parte*, is being used in attempts to subdue men’s violence against women, and that the facility to tailor DVOs, at least with a no contact condition, is being used to curtail men’s behaviour (particularly non-Indigenous men). However, we also see that the proportion of breached DVOs resulting from police applications is higher, not lower, than the proportion of police applications among all applications in the research sites, so the exceptional police power provided in the civil domestic violence law is not effective in stopping domestic violence. This is also evident in the proportion of cases of men, especially Indigenous men, charged on three or more separate occasions with DVO breaches.

Compared to the whole of the state, domestic violence is more aggressively policed in the research sites. Indigenous women are as likely as non-Indigenous men to be the subject of DVOs resulting from police applications and the DVOs against them more often than any other group have standard conditions only. It appears Indigenous women are coming to the attention of the police because of fights involving high levels of violence, rather than tactics aimed at controlling their partners.
The history as aggrieved brings into focus the redounding effects of the civil domestic violence law for Indigenous women. It mirrors the “landscape of risk” for Indigenous women painted by the Aboriginal and Torres Strait Islander Social Justice Commissioner when considering the rising rates of incarceration and “the over-representation of Indigenous women [which] is occurring in the context of intolerably high levels of family violence, over-policing for selected offences, ill-health, unemployment and poverty” (HREOC, 2003, p. 135). My analysis paints a picture of Indigenous women being brutalised by multiple people – intimate partners and family members– over many years, resulting in multiple DVOs naming them as the aggrieved, nearly always involving police applications and significantly more so compared to non-Indigenous women. Most of these cases (and those for other groups) involved cross-DVOs, but Indigenous women were more often than Indigenous men and non-Indigenous women to have been identified by the police as a victim of violence before the police sought DVOs naming them the perpetrator.

Douglas and Fitzgerald (2013) suggest policing that adopts “a much more complex assessment of the situation including whether there is a history of violence perpetrated by one party against the other, the nature of the injuries sustained by both parties, the likelihood of violence in the future, and whether one person was acting in self-defence” (p. 72). My analysis of administrative court and police data indicates, however, such an approach is unlikely to change the outcome for Indigenous women, and we see this more clearly in the analysis of police reports in Chapter 7.

My analysis of the administrative data also shows that the landscape of risk in which Indigenous women live includes the risk of intimate partner violence involving non-Indigenous, as well as, Indigenous men. This is of particular concern given Indigenous women are the least, and non-Indigenous men the most powerful in the race and gender hierarchy that structures mainstream Australian society and its institutions (Behrendt, 1993).

Here I have shown that people affected by intimate partner violence are ensnared in the criminal justice system, and Indigenous men and women more so. Indigenous women are particularly vulnerable to violence and to police intervention. The following chapters aim to explain the racialised and gendered differences, beginning with perspectives from police prosecutors and service providers with first-hand experience in the research sites.
Table 9: Respondents – sex and race differences

<table>
<thead>
<tr>
<th>Variable</th>
<th>Indig men N = 50 (%)</th>
<th>Non-Indig men N = 47 (%)</th>
<th>Indig women N = 46 (%)</th>
<th>Non-Indig women N = 42 (%)</th>
<th>No diffs</th>
<th>Sex diffs Indig</th>
<th>Sex diffs non-Indig</th>
<th>Race diffs men</th>
<th>Race diffs women</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Demographics</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Aged less than 30 years</td>
<td>34 (68)</td>
<td>34 (70)</td>
<td>48 (83)</td>
<td>57 (83)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intimate partner DVO1</td>
<td>94 (188)</td>
<td>92 (195)</td>
<td>89 (158)</td>
<td>91 (158)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
<td>8 (16)</td>
<td>19 (38)</td>
<td>20 (35)</td>
<td>5 (8)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remote court DVO1</td>
<td>28 (56)</td>
<td>0 (0)</td>
<td>35 (63)</td>
<td>2 (3)</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Remote court DVO breach 1</td>
<td>22 (44)</td>
<td>2 (4)</td>
<td>7 (12)</td>
<td>0 (0)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Respondent history</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 victim only</td>
<td>60 (120)</td>
<td>62 (124)</td>
<td>63 (112)</td>
<td>79 (126)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 or more distinct DVOs</td>
<td>62 (124)</td>
<td>62 (124)</td>
<td>30 (53)</td>
<td>24 (38)</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police applications DVO1</td>
<td>86 (172)</td>
<td>94 (192)</td>
<td>100 (180)</td>
<td>91 (155)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Standard conditions only DVO1</td>
<td>74 (148)</td>
<td>55 (110)</td>
<td>91 (152)</td>
<td>69 (106)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No contact condition on DVO1</td>
<td>12 (24)</td>
<td>34 (68)</td>
<td>0 (0)</td>
<td>14 (22)</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Breached DVO1, <em>ex parte</em></td>
<td>72 (144)</td>
<td>72 (144)</td>
<td>76 (130)</td>
<td>62 (100)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breach occasions (3 or more)</td>
<td>70 (140)</td>
<td>49 (98)</td>
<td>28 (48)</td>
<td>12 (19)</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>High level violence, any breach</td>
<td>72 (144)</td>
<td>64 (128)</td>
<td>39 (68)</td>
<td>12 (19)</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Pleased guilty, breach 1</td>
<td>96 (192)</td>
<td>94 (188)</td>
<td>96 (168)</td>
<td>100 (168)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No penalty, breach 1</td>
<td>14 (28)</td>
<td>13 (27)</td>
<td>41 (70)</td>
<td>38 (60)</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Penalty jail, breach 1</td>
<td>32 (64)</td>
<td>13 (27)</td>
<td>9 (16)</td>
<td>0 (0)</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conviction flag</td>
<td>98 (196)</td>
<td>77 (154)</td>
<td>76 (130)</td>
<td>33 (55)</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Criminal Code charge (breach 1)</td>
<td>52 (104)</td>
<td>19 (38)</td>
<td>17 (31)</td>
<td>2 (3)</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Respondent also aggrieved</td>
<td>42 (84)</td>
<td>43 (86)</td>
<td>89 (158)</td>
<td>67 (108)</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

114
Table 10: Aggrieved – sex and race differences

<table>
<thead>
<tr>
<th>Variable</th>
<th>Indig men</th>
<th>Non-Indig men</th>
<th>Indig women</th>
<th>Non-Indig women</th>
<th>No diffs</th>
<th>Sex diffs Indig</th>
<th>Sex diffs non-Indig</th>
<th>Race diffs men</th>
<th>Race diffs women</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N = 21 (%)</td>
<td>N = 20 (%)</td>
<td>N = 41 (%)</td>
<td>N = 28 (%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Demographics</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intimate partner DVO1</td>
<td>95</td>
<td>90</td>
<td>85</td>
<td>90</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-cultural relationship DVO1</td>
<td>0</td>
<td>40</td>
<td>17</td>
<td>7</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Aggrieved history</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Police applications DVO1</td>
<td>100</td>
<td>85</td>
<td>97</td>
<td>79</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distinct perpetrators (2 or more)</td>
<td>14</td>
<td>25</td>
<td>49</td>
<td>25</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distinct perpetrators (3 or more)</td>
<td>0</td>
<td>10</td>
<td>34</td>
<td>4</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Respondent was aggrieved first</td>
<td>10</td>
<td>20</td>
<td>61</td>
<td>36</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cross-DVOs</td>
<td>95</td>
<td>95</td>
<td>88</td>
<td>86</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 11: Case character – sex and race differences

<table>
<thead>
<tr>
<th>Variable</th>
<th>Indig men</th>
<th>Non-Indig men</th>
<th>Indig women</th>
<th>Non-Indig women</th>
<th>No diffs</th>
<th>Sex diffs Indig</th>
<th>Sex diffs non-Indig</th>
<th>Race diffs men</th>
<th>Race diffs women</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N = 50 (%)</td>
<td>N = 47 (%)</td>
<td>N = 46 (%)</td>
<td>N = 42 (%)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complex case</td>
<td>36</td>
<td>34</td>
<td>50</td>
<td>24</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
6. EXPLAINING INDIGENOUS DOMESTIC VIOLENCE: INTERVIEWEES’ PERSPECTIVES

In the last chapter, we learned that although there is considerable enmeshment in the criminal justice system of Indigenous and non-Indigenous people affected by domestic violence, it is greater for Indigenous men and women. What explains this? Why, in particular, do Indigenous women have a higher vulnerability to violence by different perpetrators as an aggrieved/victim, why are their cases more complex, and why do their respondent histories more often show that they were aggrieved/victims first? Why, more generally, do we see high rates of breached DVOs for Indigenous men, along with higher levels of violence used, convictions recorded, and jail time imposed? I had planned to address these questions by interviewing Indigenous men and women charged with breaching DVOs but I was unable to do so. Instead, I rely on interviews with 15 professionals: 12 service providers (SP), five of whom were Indigenous, and three police prosecutors (PP).

In analysing what the interviewees said, I first identified concepts and major categories of explanation (themes) offered by interviewees when discussing Indigenous men’s and women’s higher levels of violence and non-compliance with DVOs, compared to their non-Indigenous counterparts. The process initially resulted in six categories of ideas: fights, meanings of violence, comprehension, Indigenous disadvantage, incident-based, and race relations. I then combined fights and meanings of violence into one theme (fights) because the interviewees often described the Indigenous women and men’s violence as being different from non-Indigenous domestic violence, that is, not about power and control. I also combined comprehension and Indigenous disadvantage into one theme (chaos violence) because chaos was a word frequently used by the interviewees when speaking about the circumstances of Indigenous violence. I use the term *formulaic policing* for the incident-based theme because, as I explain later in this chapter, it is a more accurate description of what is occurring. That is, interviewees identified that some matters were incident-based violence and others an ongoing pattern of power and control, but in either case the police applied the same formula to assess whether to take action.

73 Appendix 5.1 lists the major categories and associated concepts, which are direct quotes from interviews.
As shown in Table 12, most of those interviewed raised each theme, and all of them raised one theme (*fights*).

**Table 12: Themes in rank order**

<table>
<thead>
<tr>
<th>Theme</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><em>SP</em></td>
</tr>
<tr>
<td></td>
<td>(N = 12)</td>
</tr>
<tr>
<td>1. Fights</td>
<td>12</td>
</tr>
<tr>
<td>2. Chaos</td>
<td>11</td>
</tr>
<tr>
<td>3. Incident-based/formulaic response</td>
<td>10</td>
</tr>
<tr>
<td>4. Race relations</td>
<td>10</td>
</tr>
</tbody>
</table>

Before I turn to the discussion of the themes, I need to make three points. First, the interviews largely focused on the experiences of Indigenous people with violence and DVOs, as observed by interviewees. Second, I wish to emphasise that the majority of Indigenous Australians are not engaged in domestic or family violence, as perpetrators or victims. An interviewee (SP/7/NI) in one of the research sites estimated that less than 30% of the Aboriginal and Torres Strait Islander people engaged in violence. Similarly, a police prosecutor pointed out “we’re really dealing with the minority who are coming to court repeatedly” (PP3). Third, interviewees consistently stated, or implied, that the Indigenous people they had in mind in their discussion were from remote Indigenous communities.

**FIGHTS**

All of the interviewees raised fighting by Indigenous women, with men and/or with other women. The way they described women’s fighting can be characterised in three ways: provoking a fight, resistance to violence and women’s use of violence in general.

Some interviewees described provocation as “going at him” (SP1I) or “coming at him” (SP/2/I). Indigenous service providers (SP/1/I and SP/2/I) who do street-based outreach for the homeless in one of the research sites, recounted several instances of Indigenous men and women fighting. One of those service providers and a colleague who runs a Murri Men’s Group had observed such an incident, described as follows:
I don’t know what they were arguing about, what started it off but…it’s the yelling that catches you to look up. We sort of know some of the history of the violence ... so we sort of took note ... because he was attending the Men’s Group ... and um, yeah she just kept on coming at him. In the end we had to call the police because she would just not let up and we had to let the police know what was happening because ... to me it looked like she was really provoking him but I thought he was pretty good in trying to walk away and she kept on coming. [W]hen the women go for the men, the men hang their head and you can see that they’re ashamed whether they’re drunk or whether they’re sober. If it’s vice versa, the women don’t hang their heads, they come back firing (SP2I).

What it was about, or who or what started the fight is unknown; we do know, however, that the man in this example has a history of violence. Whether this particular woman was a victim of his violence, or not, her actions represent a stark contrast to the passive, submissive victim conceptualised in the making of domestic violence specific laws.

Interviewees generally understood Indigenous women’s physical violence as a form of self-defence, or resistance to violence against them; Indigenous women fight back and they fight hard. The following recollection of one of the street-based support workers, involving a woman who had lost an eye in a fight with her partner, captures this observation: “she would go for him; like, fist fights. She would never back down to him but because he was more overpowering he did more damage to her” (SP/1/I). Service providers and police prosecutors remarked on Indigenous women’s use of weapons in self-defence, including the associated increased likelihood of criminal offence charges, in addition to breach charges. Service providers, such as the one quoted below, also expressed concern that the context of self-defence is often not considered where Indigenous women are charged.

Indigenous women are more likely to be charged with a criminal offence as well as a protection order and more likely to pick up a weapon. Often they are trying to defend themselves after years and years and years of extreme abuse and that context isn’t given (SP/5/NI).

As noted in the quantitative analysis of court data in Chapter 5, the majority of people across all groups in the sample simply pleaded guilty to breach charges, so any context of self-
defence would not have been tendered to the court. It is not possible to draw conclusions from the data about the high percentage of guilty pleas. Further, data on court outcomes for Criminal Code charges were not available for the research.

Interviewees saw Indigenous women’s use of weapons as a way to counter the superior physical strength of a man in self-defence, or in retaliation for violence perpetrated against them. Sometimes the police prosecutors were aware of the context of self-defence, or retaliation for prior violence, as indicated in the following statement:

_It turns out the women often you know, um, the man beats her up, she then gets pissed off, go gets a weapon and then whacks him over the head or gets a knife and stabs him. Aboriginal and Torres Strait Islander women more readily take up weapons, I think, more along the lines of, well he’s stronger than me, I won’t be able to deal with that, maybe if I have a weapon then I can protect myself_ (PP3).

Indigenous interviewees also identified that a small number of Indigenous women use violence in ways other than in self-defence or in retaliation for violence against them.

_I will say there is a small percentage of women that are actually, Indigenous women I’m talking about, and I’m sure non-Indigenous women too, but there are some Aboriginal women that are extremely violent. I think they’ve got a lot of underlying issues. There are other issues there before the violence happens that’s making them lash out I guess. But when I say Aboriginal, it’s probably a certain group of Aboriginal people that are more violent. I can’t say, like I’m Aboriginal and it’s different. It’s probably the ones that are more in the, I don’t think poorer range are the words to use, but you know what I mean. They are the ones that are the biggest issue but they’re a high number and I think it stands out_ (SP/11/I).

This service provider linked women’s violence to jealousy and thought that while there was no intent to dominate or control their partner, it was in effect a form of control. However, this participant and other Indigenous service providers also discussed women’s violence towards other women, usually triggered by some argument over children or jealousy over men: “well you looked over [there] at my man, you’re going to cop it now” (SP/2/I).

Asserting that Indigenous family violence is different to typical non-Indigenous domestic violence, and may involve repeat episodes of incident-based violence, an Indigenous service
provider explained; “it’s just that they’re on equal grounding. It’s not power and control. It’s different … it’s more like a brawl sort of thing” (SP/11/I). Another service provider made a direct comparison with the experience of non-Indigenous people, commenting specifically on the violent milieu in which a significant minority of Indigenous people in the research sites live:

The cycle is in some ways broader than what I would see as white domestic violence. It’s a bit more complicated. People live with a lot of violence in their lives so it’s not just within the family but in the community. A lot of things are handled with physical violence or violent talk; throwing things - men and men, women and women (SP/7/NI).

CHAOS

Lack of comprehension

They don’t see the ramifications … I just don’t see the majority of them understanding (PP2).

Based on explanations from interviewees, the lack of comprehension of DVOs and their implications was a consequence of various factors, including barriers to effective communication. English is not the first, or even second, language of many Indigenous people from remote communities in the Gulf of Carpentaria and Cape York, and language itself may be a barrier to effective communication in the justice system. Considering the challenges of dealing with violence in remote communities, compared to a regional city, one police prosecutor pointed out the difference in communication and understanding like this:

In Cairns they are able to speak English and, I guess, in a Western type way of thinking and the Western way of living; um, I guess … it’s different. Here they’re able to talk to you and they’re able to communicate to you clearly, whereas if you go up to the Cape …” (PP3).

Effective communication may also be hampered by other factors, such as Aboriginal concepts of shame, which may restrict disclosure of certain information that would render the person shamed, thus shaming the family (Mackinlay, Thatcher, & Seldon, 2004). Illiteracy

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74 See Chapter 1, page 3 for statistical details.
and lack of proficiency in spoken English may be another source of shame leading to an Indigenous person minimising, or not disclosing at all, their inability to comprehend court documents. Speaking about the possibility of Indigenous people not understanding the DVO, a police prosecutor asserted that:

*Even if they are illiterate it’s still said to them and if they still don’t understand … well then the person serving the order basically has to take it right down to the nuts and bolts to try and explain it to them* (PP2).

The domestic violence legislation does require the court to explain or have explained to the respondent the meaning and implications of a DVO. It seems unlikely, however, that the police would have sufficient time or skill in working with illiterate people, especially those for whom English is a second or third spoken language, to achieve an adequate comprehension of a DVO and its implications. Moreover, this provision assumes the respondent is willing to wait patiently, and is able to stay focused, while a police officer explains “down to the nuts and bolts” (PP2) the conditions on the DVO, the need to desist from committing proscribed acts against their partner or family, and the legal consequences of failing to comply with the DVO.

*Some of our Indigenous clients have problems concentrating for long periods of time, possibly due to substance abuse, and whatever, and you don’t have the time in the court situation to sit down and explain for an hour to one client* (SP/8/I).

Service providers working with Indigenous people in camps found chronic alcoholism and acquired brain injury resulting from violence were also contributing to some Indigenous people’s inability to comprehend the purpose of the DVO and its implications. As one said, “it’s like it doesn’t register …[because of] alcohol abuse over years and they’ve been hit on the head so many times it’s not funny … and some of them have health problems” (SP/2/I).

No participant specifically mentioned foetal alcohol spectrum disorder (FASD); it is likely, however, that for some of the respondents repeatedly breaching DVOs the factors referred to above are linked to FASD. In a summary of literature on the primary and secondary effects of FASD, Douglas (2010) noted that primary effects include poor judgement, impulse control and memory, and compromised ability to understand consequences for actions; and secondary effects include elevated risk of contact with the criminal justice system. Furthermore, Douglas observed that poor memory and “not understanding cause and effect
may lead to breach of court orders, further enmeshing FASD sufferers in the justice system” (2010, p. 224). Perhaps the reference to health problems by the service provider quoted above, hints at the possibility of FASD among those for whom the existence of a DVO just “doesn’t register” (SP/2/I).

**Disadvantage**

The inability to comprehend consequences was also associated with “impoverished lifestyles” (SP/7/NI) and general *chaos*, a word used frequently by interviewees to describe the lives of Indigenous respondents. An Indigenous service provider in one of the research sites observed that:

They have other things happening in their lives and they’re just doing things without thinking of the consequences for actions until it’s before them, then it’s too late. I’d say they’d be people whose lives are in chaos in general so it’s not just the DV (SP/11/I).

Similarly, a service provider in the other research site noted that “the very fact their day to day life is so chaotic [means] a protection order and going to court is probably the least of their concerns” (SP/8/I). In thinking about the rates of violence among Indigenous people, a police prosecutor linked extreme disadvantage and domestic violence to high rates of offending, in general.

It tends to be a lower socio-economic background, the rate of alcoholism and substance abuse, not just alcohol, cannabis as well, and the lack of education I guess ... no self-esteem ... it’s all those other factors that sit together. It’s not the case that we get Indigenous people who’ve got domestic violence who’ve got no other criminal history and this is all they do - that this is the only thing they get in trouble for. That’s unusual. It’s more likely to be part of all that other stuff (PP3).

A number of interviewees specifically referred to a general lack of boundaries as contributing to high rates of violence and breaches of orders, reflected in statements like, “there’s violence and chaos in general; like there are no rules” (SP/2/I). Others linked the lack of rules to loss of culture; “when it comes to [location] ... [sigh], they’ll say that they’ve got culture ... they’ll say this is my land but they have lost the most important part of culture, which is that traditional ... um ... rules” (SP/1/I). Some interviewees also noted poor mental health as a
factor of disadvantage, and contributing to chaos in people’s lives. Drawing on experience in remote Indigenous communities a police prosecutor identified poor mental health as “a huge issue … a massive issue for Indigenous people” and attributed this health status to an inability “to cope with alcohol abuse or smoking ganga [marijuana]” (PP3).

**INCIDENT-BASED/FORMULAIC RESPONSE**

Interviewees described some police and court practice in ways that indicated the practice was consistent with the original intention of the civil domestic violence legislation; that is, considering context and making a thoughtfully customised response. However, 10 of the 12 service providers and all three of the police prosecutors raised the incident, rather than context-based use of domestic violence legislation by the police and magistrates. Half (6) of the service providers described the approach to using the domestic violence legislation as *slapping* (or, in one case, *whacking*) on an application for a DVO (SP/3/NI; SP/6/NI; SP/7/NI; SP/9/I; SP/11/I; SP/12/I). As one service provider said “it’s just become part of the job and they just slap it on whomever” (SP/3/NI).

From the police perspective, the domestic violence legislation provides a tool to manage violent situations:

> *I’ve heard it said by [older] police that they never had anything that they could use before where they were getting those repeat calls to the same address and then the victim would end up saying “I don’t want to press charges” and they’d get the call again next week and … the police couldn’t do anything. Now at least they’ve got something … because breach of DV can be put on without a complaint or without the aggrieved wanting that to happen and the application can happen without the aggrieved wanting it, as well* (PP3).

Further, police prosecutors advised that it is police policy (at least at the police district level) to apply for a DVO if there appears to be sufficient evidence for the civil standard of proof, and leave it to the court to decide if a DVO is warranted.

> *It’s a district policy. If police see that in fact domestic violence has happened, you take that [DVO] out … the victim has no choice. Whether or not there is enough to proceed with – it’s a question and a matter for the court to make that decision, not for us* (PP2).
The prevalence in the data of cross-DVOs resulting from police applications, therefore, is not surprising given that “the police find it difficult to discern coercive controlling behaviour from fights and defensive behaviour because they are presented with high levels of violence” (SP/3/NI).

Service providers were concerned that magistrates, like police, also take an incident rather than context-based approach when deciding whether to make a DVO. In particular, magistrates spend very little time considering applications, particularly police applications. In one research site where, on average, 48 DVO applications are considered on each domestic violence court day, a service provider lamented; “magistrates think oh it’s a police application; no one [neither respondent nor aggrieved] is here so I’ll just make the order” (SP/5/NI). Noting that the domestic violence court generally starts at 9am, the service provider went on to say:

_We do have one magistrate who [will] be finished by 10:30 at the latest maybe 11:00 if it’s a really big list and if he had a late start. The difficulty with that is people come out and they’ve got no idea what’s happened or what any of it means so they end up really confused_ (SP/5/NI).

In this example, the average amount of time spent considering applications is approximately 2 minutes. Others gave similar examples: “yesterday’s [domestic violence list] was 81 which actually I thought was pretty good. We had a different magistrate yesterday and court ran from 9am to 12.45pm” (SP/6/NI). This takes the average amount of time spent considering an application to approximately 3 minutes.75 In this later discussion, the service provider also noted that approximately 45% of the applications the magistrate considered involved matters for which neither the respondent nor the aggrieved were in court (ex parte), so they “required less time than applications where one or both of the parties were in court” (SP/6/NI).

Nevertheless, and allowing just 1 minute for the magistrate’s consideration and announcement of a decision to be recorded for the estimated 21 (45%) ex parte orders, an average 3.5 minutes would have been given to the remaining 60 applications. The effect of this apparent lack of scrutiny of context for proscribed behaviour by magistrates, following a similar lack of scrutiny by police, would include the conversion of cross-applications to

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75 Jane Wangmann (2009) and Rosemary Hunter (2005) found that applications for DVOs in NSW and Victoria, respectively, were also heard in approximately three minutes due to the volume of cases on court lists.
cross-orders or, perhaps worse, *victims* of violence being solely the subject of court-imposed conditions on *their* behaviour.

Overall, the interview data suggest that the response of the police and magistrates has generally become formulaic. Interviewees used the term incident-based, consistent with prior literature (e.g. Wangmann, 2009, 2010); however, I see from the analysis that what they are highlighting is more fundamental than an incident-based approach. A response to both a single incident and a pattern of repeated violence can either consider context and individual circumstances that can be taken into account in a tailored response, or not. The response described by interviewees is better characterised, in my view, as formulaic; that is, an action that fits within the legislative definition of domestic violence, by one person toward another person with whom they have a relationship covered by the legislation equals domestic violence (proscribed action + relevant relationship = domestic violence).

**RACE RELATIONS**

Two-thirds of the service providers and one of the three police prosecutors interviewed raised the relationship between the police and Indigenous people as a factor relevant to domestic violence. Concerns ranged from under-policing to over-policing, Indigenous people’s mistrust of police, a lack of police awareness of Indigenous culture and bias against Indigenous women.

Under-policing was indicated by a number of interviewees referring to cases where one or both partners had been subjected to violence and police, aware of the violence, took no action. One said “[the police think] it’s in the too-hard basket so the less you do with it … and push it to the side. Just let all the black bastards fucking kill themselves anyway” (SP/12/I).

Some interviewees noted that the police were “weary” (SP/3/NI and SP/6/NI) of domestic violence, although the perceived effect of police weariness varied from being less involved in DVO applications, than previously, to increased police cross-applications:

*Police are very weary of domestic violence - they’re sick and tired of dealing with the DV ... you hear “this is all just bullshit stuff and we hate being at DV court” and things like that. It’s kind of like, “we’ll just slap one [a DVO] on everyone ... and eventually something will come out of it”* (SP/6/NI).
Another indicator of over-policing related to police acting on warrants for other matters, when called to stop family violence.

When the police come to these family violence situations, the first thing they look at ... he’s got a warrant; he’s got a warrant; and he’s got a warrant. They don’t just take the fella [who perpetrated the violence], they take whoever’s got a warrant there as well (SP/12/I).

Service providers and police prosecutors observed mistrust of police, in different ways. Indicators of mistrust ranged from unwillingness to co-operate, to fear of police. One service provider named it specifically: “Aboriginal people are not likely to cooperate with the police to give the evidence to prove the criminal standard - for a whole lot of good reasons there’s a whole lot of mistrust of police by them” (SP/7/NI).

Similarly, a police prosecutor recounted from personal experience that a police officer “can’t just turn up in a community and be there a week and expect people to talk you, it just doesn’t happen ... women want police intervention but they don’t want it to go further than that” (PP3). A service provider also described the role for police, from Indigenous women’s perspective:

A few of the ladies tell us “we just want them taken and put in jail for the night but we don’t want any charges pressed against them.” They just want to be safe until he settles down and sobers up. They don’t want to have anything else go against him because it just builds up ... and they end up doing jail time (SP/10/I).

This police prosecutor gave no particular reasons for fear of the police. It could be that the women have outstanding warrants and are scared of being arrested, or that the fear has its roots in the history of colonisation. As one Indigenous service provider said: “She was so frightened of the police she was hiding behind us – we try to get them involved with the police but it doesn’t work; our mob have been scared of that blue uniform for years” (SP/2/I).

A police prosecutor expressed frustration that “things that happened up there [in the Cape communities] 50 years ago are treated like they happened yesterday – they don’t forget” (PP3). It is likely that what is being remembered here is the forced removal of 11 people from Mapoon, a small Mission community on the western coast of Cape York Peninsula, by the police acting on orders under the Aboriginals Preservation and Protection Act 1939 (Qld), in
November 1963. The police took them by boat to settlements in the north, or on the east coast, of Cape York and burned to the ground a number of their houses at Mapoon; within months the entire community had dispersed and the mission closed (Wharton, 1996). A 2013 newspaper article relates the story of a man who, as a 9-year old boy, was among those forcibly removed and notes that he is “still bitter about what happened and can neither forgive nor forget” (Andersen, 2013).

Aligned to the relationship between the police and Indigenous people, although extending further to the court, some interviewees expressed a view that Indigenous people feel powerless within the criminal justice system.

*Often neither party want an application for an order ... but the police will make an application for one or both sometimes. They don’t even turn up to the court or if they do turn up they don’t contest it, they just go along with it. They don’t know their rights. Anyone in a uniform, this is how ingrained it is, anyone in any uniform is a threat and they’re not going to ask them ... they don’t think they have the right to ask them why, when, how, what for (SP/12/I).*

Drawing attention to the implications of this sense of powerlessness for victims of violence who fight back, another said “there are a lot more police applications, cross-applications with Indigenous respondents and aggrieved and they are more likely to consent. They just go in and get it done” (SP/3/NI).

Several service providers also perceived police bias against Indigenous women. In their accounts, this bias manifested in one of two ways. The police were seen either as being quick to charge Indigenous women, compared to other groups, for minor breaches of DVOs; or being less inclined to intervene on behalf of Indigenous women, who seemed to be seen by the police as undeserving. One participant represented the latter as a police attitude being “you can understand why he has a go at her because she’s bloody hard work” (SP/6/NI).

Most comments on race relations concerned police, but there were also comments about race relations in general. Thinking about why many Indigenous people did not comply with DVOs, and what might make them stop their violence an Indigenous service provider said:

*They’ve got to belong. You respect it if you belong. A lot of these people, they go to a shop to get served and they don’t belong. [White people] get served before
them ... acceptance is critical ... and because these people were taken away and all this historical hatred and all this stuff is in them, they feel they don’t belong (SP/12/I).

SUMMARY

Four major themes (fights, chaos, formulaic application of domestic violence legislation, and race relations) emerged from the interviews. All interviewees identified fights as a feature of violence between Indigenous men and women. Three contexts for women’s violence were identified: provoking a fight, resisting violence (self-defence or retaliation), and use of violence in general, including violence against intimate male partners. Some interviewees, Indigenous and non-Indigenous, noted that fights were not about power and control over the other person, but reflected a broader context in which violence was used by Indigenous men and women to express anger and resolve conflict.

All but two interviewees (87%) described conditions for the significant minority of Indigenous men and women who engaged in violence by using terms associated with disadvantage and chaos, including absence of rules, extreme intoxication, and poor mental health. Consequently, in a day-to-day environment of chaos, they do not understand or give priority to court orders and their implications. The relationship between Indigenous people and authority figures, including police, magistrates and others, was raised by most interviewees including a police prosecutor, using terms such as being fearful, not trusting and feeling powerless, in relation to police.

All of the service providers and police prosecutors identified fights as a feature of violence between Indigenous men and women, and 13 of the 15 interviewees raised a formulaic approach to applying the domestic violence law. That is, the law designed to address coercive control is routinely used for fights that could be addressed by a range of offences under the Criminal Code Act 1899 (Qld), but is dealt with instead by a more immediate, and convenient, legal response. Police prosecutors said it was District Police policy to apply for a DVO if there was evidence of domestic violence between parties in a relevant relationship. Some service providers also cited examples of a formulaic approach by magistrates in determining DVO applications.
Overall, the circumstances leading to high levels of violence between Indigenous couples were described by interviewees as a disintegration of culturally based power, rules and boundaries and associated alienation, poor mental health, alcoholism, and distrust of the police and other authorities. Thus, and apart from the broader range of relationships, some service providers and police prosecutors saw Indigenous couple violence as different from non-Indigenous domestic violence. They observed numerous, successive incidents of violence as characteristic of Indigenous couples fighting, rather than a continuous pattern of domination and coercive control, which they saw as more typical of non-Indigenous intimate partner violence. As we will see in the next chapter, the analysis of police reports partially supports these observations.
7. RECONCEPTUALISING TYPES OF VIOLENCE: AN ANALYSIS OF POLICE REPORTS

The previous chapter suggests a disparity between conceptualisations of perpetrators, victims, and domestic violence, which were the subject of civil domestic violence law, and the actual contexts and dynamics of violence subject to implementation of those laws. The disparity arises, in part, from the fact that the law’s images of intimate partner violence do not have Indigenous people and their uses of violence in mind, and in part, from the fact that the police cannot (or will not) distinguish between incident and context-based types of violence in responding to calls for their assistance. This chapter intends to show the character of the disparity. From my analysis of police reports of breach events, I propose a reconceptualisation of types of violence (coercive control and fights), which brings in the experiences of Indigenous men and women. This reconceptualisation can advance our understanding of police and court responses to intimate partner violence and how they might be improved.

MATERIALS AND METHODS

Police reports of DVO breaches are the evidence that police prosecutors present to a court hearing a DVO breach charge. They vary in details on the nature and circumstances surrounding a breach event. Sometimes the police interview both the alleged perpetrator and the victim at the scene of an offence, and at times the police record statements from other people, including police, who witnessed breaches. Statements from ambulance officers and hospital staff are also included in some reports.

To categorise the breach events, I developed a conceptual framework based on typologies of violence found in Johnson (2008), Schechter (1982), Stark (2006, 2007) and the report of Queensland Domestic Violence Task Force (QDVTF, 1988). For each of the police reports, I looked for evidence of elements of each type of violence. Table 13 shows the types of violence and associated elements.
Table 13: Types of violence and indicative elements

<table>
<thead>
<tr>
<th>Type of violence</th>
<th>Elements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coercive control</td>
<td>• Threat to, or attack on, autonomy, liberty and equality</td>
</tr>
<tr>
<td></td>
<td>• Evidence of fear</td>
</tr>
<tr>
<td></td>
<td>• Kidnapping and/or restraint</td>
</tr>
<tr>
<td></td>
<td>• Cruel taunts/put-downs</td>
</tr>
<tr>
<td>Violent resistance</td>
<td>• Self-defence</td>
</tr>
<tr>
<td></td>
<td>• Retaliation for coercive control</td>
</tr>
<tr>
<td></td>
<td>• Absence of coercive control</td>
</tr>
<tr>
<td>Fights</td>
<td>• Two or more people engaged in physical or verbal altercation; each “giving as good as they get”</td>
</tr>
<tr>
<td></td>
<td>• Absence of coercive control/violent resistance</td>
</tr>
<tr>
<td>Aboriginal dispute resolution</td>
<td>• Aggression shaped by cultural rules/ obligations</td>
</tr>
<tr>
<td></td>
<td>• Absence of coercive control/violent resistance</td>
</tr>
<tr>
<td>Chaos context violence</td>
<td>• Extreme dysfunction/disadvantage</td>
</tr>
<tr>
<td></td>
<td>• Absence of rules</td>
</tr>
<tr>
<td></td>
<td>• Substance addiction</td>
</tr>
<tr>
<td></td>
<td>• Poor mental health</td>
</tr>
<tr>
<td></td>
<td>• Absence of coercive control/violent resistance</td>
</tr>
</tbody>
</table>

The initial sample of 185 was reduced to 145 because there was insufficient information in the police reports to assign a type of violence for 40 cases. Reports for non-Indigenous women accounted for more than half (55%) of those cases that were not included in the analysis.

A factor complicating the analysis was a number of cases had multiple breach events. In reviewing the materials and coding these cases, multiple breach events that related to the same other party were considered together to determine the dominant type of violence operating. In some cases, it was possible to code the type of violence because pertinent information was
available in several reports. Distinguishing between violent resistance and fights was difficult because police reports mostly focus on the actions of the respondent, not the aggrieved, and the nature, rather than the context of the behaviour. There were 13 cases (9%; eight Indigenous women and five non-Indigenous women) that might be categorised as violent resistance, but I erred on the side of caution and assigned this category only to cases in which the violence was unambiguously resistance to coercive control.

The results are presented first as descriptive profiles.

**DESCRIPTIVE PROFILES**

As shown in Table 14, there were very few cases of violent resistance. About half of the cases (48.5%) were coercive controlling violence and the other half (50.5%) were fights.77

<table>
<thead>
<tr>
<th>Group and (N)</th>
<th>Coercive control</th>
<th>Violent resistance</th>
<th>Fights</th>
<th>Total %</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Indigenous men (44)</td>
<td>30</td>
<td>68</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Non-Indigenous men (43)</td>
<td>38</td>
<td>88</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Indigenous women (38)</td>
<td>1</td>
<td>2.5</td>
<td>1</td>
<td>2.5</td>
</tr>
<tr>
<td>Non-Indigenous women (20)</td>
<td>1</td>
<td>5</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Totals</td>
<td>145</td>
<td>70</td>
<td>48.5</td>
<td>2</td>
</tr>
</tbody>
</table>

**Coercive control**

Coercive controlling violence dominated the breaches events of Indigenous (68%) and non-Indigenous (88%) men. Of the women, I assigned coercive control to only two cases. The

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76 Appendix 5.2 details the process for assigning a type of violence to each case.

77 The fights category includes eight cases of Aboriginal dispute resolution (six Indigenous men and two Indigenous women). It also includes 25 cases that I classified as chaos context violence: eight (18%) Indigenous men, 15 (39%) Indigenous women and two (10%) non-Indigenous women. Classifying cases into these subsets of fights was difficult because of varying levels of detail in the police reports, and I have been cautious in reporting these subsets in the analysis.
evidence was somewhat weak, but two police reports for the non-Indigenous woman showed that she had taunted and assaulted the male victim, without provocation, over his jealousy and finances. There was no evidence of other types of violence in the police reports for this case. The case of the Indigenous woman also involved taunts, physical assaults and threats to “kill your baby” by the woman against her partner, but the police reports offered little context.

**Violent resistance**

Violent resistance was evident for women only and although there might have been up to 13 such cases, ultimately I assigned it to just one Indigenous and one non-Indigenous case. I present each of these in the case studies.

**Fights**

There is evidence of fighting in the police reports for all four groups, but more so for the women and for Indigenous men compared to non-Indigenous men. All but two of the Indigenous women (95%) and two of the non-Indigenous women (90%) were engaged in fights when charged with a DVO breach. Fights were involved for about one-third (32%) of the Indigenous men, compared to 12% of the non-Indigenous men when charged with a DVO breach.

I also analysed whether alcohol, jealousy, and chaos, discussed in the interviews; and Aboriginal dispute resolution, discussed in the literature (Burbank, 1994; Langton, 1988; Williams, 987) were present in the police reports. First, I conducted this analysis for all 185 cases in the sample, and then as they appeared in cases of coercive control and fights for the 145 cases for which it was possible to assign a type of violence. For each case, I included in the analysis as many of these four selected characteristics as were evident in the police reports.

I present for each of the selected characteristics the results of the 185 cases, followed by the results for the 143 cases classified as coercive control or fights.

**Alcohol**

The police reports stated that alcohol was involved in the breach events for a higher share of Indigenous men (46%) and Indigenous women (37%) than their non-Indigenous counterparts (17% and 10%, respectively). Reports only for Indigenous women (9%) explicitly noted that

78 Tables provided in Appendix 4.3 display the frequencies.

79 I limited the analysis to the major categories and did not include the two cases of violent resistance.
alcohol was not involved. Similarly, alcohol was involved in a higher share of Indigenous men’s cases of coercive control (60%) and fights (36%), compared to non-Indigenous men’s (21% and 0%, respectively). More than one-third (36%) of the Indigenous women’s fights involved alcohol, compared to 5.5% of non-Indigenous women’s.

Jealousy

Police reports for all four groups mentioned jealousy: Indigenous men (22%), non-Indigenous men (13%), Indigenous women, (15%) and non-Indigenous women (5%). It was present in 13% of non-Indigenous men’s cases of coercive control, and 23% of Indigenous men’s; and in 29% of Indigenous men’s cases of fights, and 20% of Indigenous women’s. Due to statements such as “a verbal argument ensued between the defendant and [aggrieved] in relation to jealousy” (Case # 9, Hilary), it was often not clear which one of the partners was jealous.

Chaos

Related to the presence of alcohol was the proportion of Indigenous women (35%) and Indigenous men (16%), whose circumstances could be described as chaotic, compared to their non-Indigenous counterparts (10% and 0%, respectively). Chaos was evident in 57% of Indigenous men’s, and 46% of Indigenous women’s fights.

Aboriginal dispute resolution

Evidence of Aboriginal dispute resolution appeared in 16% of Indigenous men’s cases and 4% of Indigenous women’s. It was mostly evident in fights, but it was also evident in two cases (7%) of Indigenous men’s coercive control.

SEX AND RACE DIFFERENCES IN THE PROFILES

I carried out an analysis of types of violence and selected characteristics of breach events to identify sex and race differences. I considered differences of at least 20 percentage points significant (see Table 15).

Most men, both non-Indigenous (88%) and Indigenous (68%), had perpetrated coercive controlling violence, while almost all of their female counterparts (90% of non-Indigenous, and 95% of Indigenous women) were engaged in fights when charged with breaching a DVO.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Indig men</th>
<th>Non-Indig men</th>
<th>Indig women</th>
<th>Non-Indig women</th>
<th>No diffs</th>
<th>Sex diffs Indig</th>
<th>Sex diffs non-Indig</th>
<th>Race diffs men</th>
<th>Race diffs women</th>
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<tbody>
<tr>
<td>N=44 (%), N=43 (%), N=38 (%), N=20 (%)</td>
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<tr>
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<td>68</td>
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<td>3</td>
<td>5</td>
<td>X</td>
<td>X</td>
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<tr>
<td>Violent resistance</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>5</td>
<td>X</td>
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<td></td>
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<tr>
<td>Fights</td>
<td>32</td>
<td>12</td>
<td>95</td>
<td>90</td>
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<td></td>
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<tr>
<td>Alcohol</td>
<td>46</td>
<td>17</td>
<td>37</td>
<td>10</td>
<td>X</td>
<td></td>
<td>X</td>
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<tr>
<td>Jealousy</td>
<td>22</td>
<td>13</td>
<td>15</td>
<td>5</td>
<td>X</td>
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<td></td>
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<tr>
<td>Chaos</td>
<td>16</td>
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<td>5</td>
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<tr>
<td>Aboriginal dispute resolution</td>
<td>16</td>
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<td>0</td>
<td>X</td>
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</table>
There were race differences for men for coercive controlling violence, fights, and the recorded presence of alcohol. A higher share of non-Indigenous men (88%) than Indigenous men (68%) were charged with breaches of DVOs related to coercive control. Conversely, a higher share of the Indigenous (32%) than non-Indigenous (12%) men were charged with breaches following fights. A considerably higher share of both Indigenous men (46%) and women (37%), compared to their non-Indigenous counterparts (17% and 10%, respectively) were reported to have been under the influence of alcohol at the time of a breach event.

Coercive controlling violence is the signature type of intimate partner violence for non-Indigenous men. In comparison, fights, along with coercive controlling violence, featured for a substantial number of Indigenous men. Indigenous and non-Indigenous women were almost exclusively engaged in fights when charged with DVO breaches.

The analysis suggests that domestic violence legislation is used appropriately to address coercive controlling violence perpetrated by men, and even more so, non-Indigenous men. It is used inappropriately, however, in two ways: by roping in cases of Indigenous and non-Indigenous women’s violent resistance; and by not distinguishing fights from coercive control.

Fights are relevant for both groups of women and men, though more so for Indigenous than non-Indigenous men. However, there are characteristics that feature more often (alcohol and chaos), or exclusively (Aboriginal dispute resolution) in fights involving Indigenous people.

**RECONCEPTUALISING COERCIVE CONTROL AND FIGHTS**

My analysis of the interviews and police reports shows that a new conceptualisation of domestic violence dynamics is required, which explicitly uses an intersectional analysis of race and gender to distinguish coercive control (and its corollary, violent resistance) and fights. As shown in Figure 7, my conceptualisation situates both coercive control and fights within hierarchical gendered and racialised power (Behrendt, 1993): that is, a context of male power over women, with male power situated in a broader context of racialised power, whereby the dominant cultural group (non-Indigenous) has power over Indigenous men and women.
My conceptualisation, like Johnson’s (2008) and Stark’s (2006, 2007), separates coercive control and violent resistance from fights and, like Stark, it recognises coercive control and fights may not involve actual physical violence. It also recognises that alcohol may or may not be present in coercive control (and by extension, violent resistance) or fights. My analysis adds Aboriginal dispute resolution, which intersects, but only marginally, with coercive control and, to a greater extent, with fights. Based on the literature on payback (e.g. Blagg, 2008), I also show it intersecting with violent resistance; and chaos context violence within fights, in which customary regulation of Aboriginal dispute resolution disintegrates into chaos (Blagg, 2008; Memmott et al, 2001).
Another departure from previous scholars, is the capacity of my model, incorporating elements of chaos and Aboriginal dispute resolution in the conceptualisation of fights, to extend beyond intimate partner violence to broader definitions of Indigenous family violence (Blagg, 2008; Memmott, 2010; Mow, 1992); however, my data has not enabled analysis of such cases.

Results: Case studies of violence

I turn now to case studies of coercive control, violent resistance and fights to demonstrate the distinctiveness of these categories, and how they are expressed in breach events. I present both cases of violent resistance in full. I selected two cases of coercive control by men (one Indigenous and one non-Indigenous), and one of the two women’s cases I classified as coercive control. I selected four cases categorised as fights: one for each of the sub-groups. Cases I selected were typical of the category, rather than the more extreme ones, and that highlighted differences in men’s and women’s and Indigenous and non-Indigenous people’s uses of violence. Such an analysis can wrongly be used to freeze or essentialise violence as a fixed typology, when we know that violent acts are fluid, complex, and difficult to classify. Summarising the events, and using direct quotes from police reports, my aim is to provide context and substance to the categories in ways that help us see the gendered and racialised nature of violence leading to breach charges. The amount of detail in each case study is also typical of the amount of detail in police reports for each sub-group; reports for non-Indigenous women’s breach events provided the least amount of detail. I have drawn the demographic information (e.g. age and cultural identity) from the court files and have included it to provide a clearer picture of the cases. I present the case summaries first, followed by a comparative analysis drawing on the literature and my interviews.

Coercive control

Case study 1: Jimmy (Indigenous man, age 42, case # 153)

Jimmy was the respondent to three DVOs, each the result of police applications naming Sherry, an Indigenous woman, as the aggrieved. Each of the DVOs had standard conditions only. Jimmy was charged with four DVO breaches. On each occasion, Jimmy was under the influence of alcohol, and sometimes he and Sherry had both been drinking. However, only on
the third of the four occasions did the police report state that Jimmy was not formally interviewed because he was too intoxicated.

On the first occasion, Jimmy “verbally abused [Sherry] … then smashed several cups … before picking up a knife and threatening [Sherry] with this. [Jimmy] then put the knife down, and has walked outside.” The second offence occurred when Sherry received a phone call from an ex-boyfriend wishing her a happy birthday and suggesting he join her and Jimmy who were drinking together. Jimmy told the police he “got angry and backhanded her in the mouth because he was jealous about her ex-boyfriend wanting to come over.”

On the third breach occasion, Jimmy and Sherry were walking home after a day of fishing and drinking; on the way, Sherry used the public toilets. When she returned:

[Jimmy] has become angry due to the time taken by [Sherry] and has become verbally abusive towards [her] … [Sherry] sat down on nearby seats where [Jimmy] has stood over her and continued to abuse her. [He] has then hit [Sherry] on the left hand side of her face with an open hand before grabbing a hold of her hair with his right hand and shaking her head. [Jimmy] has let go and then slapped [Sherry] across the right hand side of her face.

The police attended after seeing the assault on CCTV. The report stated that Jimmy admitted to the assault “but could not offer a lawful reason for doing so” and that Sherry was “uncooperative at first but later admitted to being struck [by Jimmy] multiple times because she took too long in the toilets.” The report indicates the police considered assault charges in addition to the breach, noting Sherry said she did not give [Jimmy] permission to assault her but did not wish to make an assault complaint” and that they “could not see any signs of injury as a result of the violence”, which may have allowed criminal charges without a complaint.

The fourth breach involved a similar scenario. Jimmy accused Sherry of being with another man at the hotel where they were drinking after she “took too long in the toilet.” They went home and Jimmy again started “accusing and questioning” Sherry before punching her in the mouth “causing significant swelling to the left side of her top lip.” The police attended in response to a call from Sherry’s teenage daughter, Tina, who witnessed the assault and “was
clearly distressed and concerned for her mother”. Tina told the police that Jimmy “began threatening her while talking to the police [who] could hear the defendant speaking in native tongue but could not understand what he was saying.”

Jimmy admitted hitting Sherry “but described the assault as a quick slap ... [and] stated that [Sherry] was nagging him and he could no longer take this which has caused him to lash out.”

Jimmy’s attempts to control Sherry related to jealous and possessive behaviour and were expressed through actual physical violence. His violence was not void of meaning beyond an expression of anger, as Burbank (1994) observed at Mangrove. He was angry, but his violence was instrumental in seeking to control Sherry’s behaviour (Pence and Paymar, 1993, Stark, 2007). He sought to manipulate the police response by minimising the violence (just a slap), shifting blame to a “nagging” Sherry, and threatening a witness.

Case study 2: Connor (non-Indigenous man, age 34, case # 24)

Over a 10-year period Connor was the respondent on three DVOs, each naming Eliza, his former partner, as the aggrieved. Eliza is also non-Indigenous. They have a daughter, Melanie. The initial DVO, the result of a police application, had standard conditions only and was made in South-East Queensland. Connor breached it “by assaulting [Eliza] by striking her in the mouth with a closed fist causing bleeding and swelling to her lip.” The DVO was subsequently varied to add conditions prohibiting Connor from contacting Eliza, and entering premises where she lived or worked, except for having contact with Melanie as agreed in writing or ordered by the Family Court. The variation also extended the duration of the DVO by a year. It is impossible to know from the police reports if Connor and Eliza had been living together at the time of the first offence, but it is clear they were separated after.

The second DVO, with the same conditions as the variation to the first, was made for the period 2008-2010 in one of my research sites. It too resulted from a police application but on this occasion the police also applied for a DVO against Eliza. As described in the police report, Connor breached this DVO as follows:

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80 Eliza is not included in the sample, so there are no details about the application against her. Given the nature of Connor’s violence, and the formulaic approach to policing domestic violence in the research sites, it is highly likely that Eliza was attempting to defend herself when the cross-application was made and that cross-DVOs are routine practice in the research sites. That Eliza made a private application for the subsequent DVO suggests a lack of trust in police, based on previous experience.
[Connor] observed the aggrieved and a male person standing at the sports bar. [He] walked straight up to [them] and in an aggressive manner has begun to point his finger at them saying “where the fuck is my daughter?”

A “security guard and two managers from the club” intervened, moving Connor away from Eliza and her companion. He was then “escorted off the premises by security, due to his behaviour.” A short time later Connor returned to the club, and parked his vehicle in a threatening manner “near glass doors that are visible to the sportsman’s bar and the surrounding pool tables.”

Connor also breached a third DVO, for which Eliza had made a private application when the second had expired. On this occasion, after Eliza answered a knock on the door:

[Connor] forced his way in, and pushed [Eliza] out of the doorway. [He] started yelling at [her], stating that he needs to warn her that her new boyfriend is a sleaze. [Eliza] then yelled at the respondent to get out of her house, or she would call the police. [Connor said] that if she calls the police, he will break her neck …[he] then grabbed [Eliza] by the arm, and tried to pull the mobile phone out of her hand, [but she] managed to pull away from him. [Their] daughter was on the lounge, watching the incident at the doorway.

Eliza left the house with Melanie. Connor followed them to the car saying “so where do I firebomb you, his place or a motel room?” and tried to get into the car before Eliza managed to drive away. Eliza turned off her mobile phone and left it off until the following day, when she received a call from Connor asking “what the fuck do you think you are doing seeing that new guy?” He also said he would pick their daughter up from school to which Eliza replied “no you won’t” before hanging up and proceeding to the police station to make a complaint. On the way, Connor tried calling 41 times and “sent several threatening text messages.”

Connor had physically assaulted Eliza on at least one occasion but it was his stand-over tactics, persistent harassment and threats that were most indicative of coercive control. The no contact condition on the DVO did not stop him.
The police reports do not capture Eliza’s emotional response to the breach events: however, reference to the “security guard and 2 managers from the club” moving Connor away from her suggests a highly menacing scenario, which others perceived as a significant threat to Eliza and her companion.

Case study 3: Caroline (non-Indigenous woman, age 32, case # 86)

Caroline was charged on one occasion with breaching a DVO naming her partner Bob, a non-Indigenous man, as the aggrieved. The DVO had only the two standard conditions: to be of good behaviour towards Bob, and not commit domestic violence. On the occasion of the breach, Caroline had been drinking at home and began to taunt Bob. This went on for about an hour before Bob attempted to leave the house with their two children. Caroline stood in the doorway to block his exit and continued taunting him. Caroline then...

... held up a business bag containing personal and financial papers and using a pair of scissors has begun to cut the papers up. [Bob] attempted to retrieve the documents but [Caroline] has gone back into the dwelling. A short time later [Bob] has gone back into the house and has sat down at the kitchen table waiting for the defendant to cease her behaviour. [Caroline] has then picked up a tennis racket and begun hitting [Bob], in self-defence [he] has held his hands up to shield his face from the blows which were connecting with him causing pain and discomfort to his arms. The defendant has then picked up a steel handled broom and repeatedly swung it at the informant striking him in the upper body area. [Caroline] has then gone outside onto the patio area and grabbed a brass padlock which she has thrown at the informant striking him on his forehead causing a bleeding cut to the left side of his forehead.

Bob attended the police station to report the incident. When the police arrived at the house to take a statement from Caroline, she did not deny any of Bob’s allegations. She told the police she had seen a photo of Bob with an ex-partner and she had become angry.

Caroline’s case is not as clear-cut as the men’s cases of coercive control. It differs from their cases in several ways. Caroline was subject to one DVO, and one breach, only. She
did not deny or minimise the assault on Bob. Unlike Connor, but like Jimmy, Caroline’s DVO did not prohibit her from contacting Bob. Overall, the evidence for this being a case of coercive control is weak but there is no evidence it was a fight or violent resistance.

**Violent resistance**

**Case study 4: Mabel (Indigenous woman, age 22, case # 105)**

Mabel was charged with one breach of a DVO, which named her partner Stuart, a non-Indigenous man, as the aggrieved. The DVO resulted from a police application and was made *ex parte*. It had standard conditions only. On the day of the offence, the police heard a female shouting and swearing inside the shopping centre where the police beat was located. On investigation, they saw Mabel sitting on a bench with her three small children, and Stuart standing over her. The police separated the couple to take statements. Mabel told the police that she had left home with the children because she could not take any more of Stuart’s “bullying” and she needed to “get away for a while”. Stuart followed Mabel to the shopping centre, “came up behind her, and grabbed their eldest child from her.” Mabel told the police that Stuart “hit [her] in the head knocking her to the ground” before she got up and tried to get her son back.

Stuart told the police that he and Mabel “were walking to [the shopping centre] when they began having a verbal argument.” Stuart said he was carrying the child and Mabel tried to take the child from him, when he “pushed [her] away with an open palm to the shoulder [and Mabel] fell to the ground before standing back up and repeatedly swinging her closed fists at [Stuart’s] head.” In response, Stuart “waved his arm attempting to shield himself and the child from the defendant’s punches and accidentally hit [Mabel] on the left side of the head.” Then, Stuart said, Mabel “lunged at [him] and he used both hands to restrain her.”

Several witnesses gave statements to police: “All witness told the police that [Mabel] behaved in an aggressive manner towards [Stuart] who appeared to be trying to calm the situation.” One witness heard Mabel “yelling at [Stuart] to give her child back” and saw Mabel trying to “physically remove the child” from Stuart. Another witness said they saw Mabel “begin a physical struggle” with Stuart, and another saw Stuart hit Mabel and she
fell to the ground. Subsequently, the police arrested and charged Mabel with breach of a DVO.

What the witnesses saw was a fight between an Indigenous woman and a non-Indigenous man, which Mabel appeared to have instigated. The witnesses did not see what happened before Mabel left to go to the shopping centre, nor what happened on the way. Mabel and Stuart gave the police conflicting accounts about the events that led to the altercation, including those that happened in the absence of witnesses. Mabel’s account of Stuart’s “bullying”, and pursuing her when she attempted to leave, indicates coercive control, while his account framed the altercation as a fight. Their accounts were irrelevant to the breach, however, because witnesses had seen Mabel behaving in an aggressive manner towards Stuart, in breach of the standard conditions on a DVO.

Case study 5: Lilyana (non-Indigenous woman, age 27, case # 177)

Lilyana was charged with two breach offences, both related to a police initiated DVO with standard conditions, naming her de facto, Scott, a non-Indigenous man, as the aggrieved. The brief police report for the first offence stated that Lilyana had damaged property in the house, but “did not assault or injure the informant.” Lilyana admitted she caused the damage but said it was “in retaliation for [Scott’s] actions.” There were no other witnesses and Scott declined to “make a wilful damage complaint at this time.” The police report included “suspect nominated”, meaning Lilyana was identified as the suspect should Scott wish to make a formal complaint at a later date.

On the occasion of the second offence, the police were called by Scott complaining that Lilyana had stabbed him in the neck with a key and damaged property. On arrival, the police “searched the location of the assault in an attempt to locate blood but no blood was located.” Lilyana and Scott had been drinking with another couple, witnesses to the events. The witnesses “stated that the suspect had been given the key back when she left” and she had then driven away. One of the witnesses had been in the bedroom with Scott and Lilyana “observing the argument when the victim was assaulted” but it was too dark for him to see the weapon used. The second witness was in another room at the time but said she heard “a banging in the bedroom that could have been the damage to the wall.”
Scott was “transported to [the hospital] to have his injuries documented.” The hospital reported that the key “did not break the epidermis”.

Lilyana was subsequently located by the police at a nearby hotel, where she had booked in for the night, planning to travel interstate the next day. She said she had used the key to stab Scott in the neck, but this was necessary to escape being strangled during an altercation that resulted in damage to the wall and a computer. The police report noted that “SOC\textsuperscript{81} are required to attend offence location and photograph damage to wall and computer. SOC also required to photograph and swab the key at [named location].”

Since there were no witnesses for the first offence, a court hearing a formal complaint of wilful damage to property would have relied on Scott’s word against Lilyana’s. The police report has an unusual focus on evidence gathering for potential further charges and it does not include any details of Lilyana’s claims about retaliating for Scott’s actions. Such information was irrelevant to the breach charges but could have had bearing on her defence if Scott had pressed criminal charges of property damage. The threat of criminal charges for property damage may have been a strategy of control but there is too little information in this report, alone, to assess Scott’s behaviour. The second report also focuses on gathering evidence for potential criminal charges as well as the breach charge against Lilyana. Again, there are few details of what happened, but sufficient to deduce that Lilyana was attempting to leave, with car keys in hand, when Scott allegedly attacked and attempted to strangle her. Some-one (presumably Scott) removed the key from Lilyana after she stabbed Scott with it, but it was given back to her (perhaps by one of the witnesses) and she was able to leave.

Lilyana breached a DVO that had standard conditions only. She did not deny or minimise her actions and her claims of self-defence were supported to some extent by damage to the wall and the witness who heard banging in the bedroom that would account for the damage (e.g. some-one being thrown against the wall). There could be, however, other explanations for that. There we several factors that led me to conclude this is a case of violent resistance. The key factors are these: Lilyana acknowledged her actions on two separate occasions, and on each occasion she said she had retaliated or defended herself

\textsuperscript{81} SOC means “scenes of crime”, which is a police forensics unit.
against Scott’s behaviour towards her; Scott’s actions, and the focus on forensic evidence gathering although no charges under the Criminal Code were laid, suggests he may have been using the criminal justice system as an instrument of control over Lilyana.

**Fights**

Here I begin with standard fights (case studies 6 – 9). Then I give examples of Aboriginal dispute resolution (case studies 10 and 11) and chaos context violence (case study 12), which are subsets of fights.

**Case study 6: Nigel (Indigenous man, age 33, case # 159)**

Nigel was the respondent on two DVOs naming his partner Sally, an Indigenous woman, as the aggrieved; each had standard conditions only. Nigel was charged with breaches on four occasions over a period of about 11 months.

On three occasions a fight started over jealousy. On the first of these, Nigel and Sally were walking home with Sally’s son, who had just arrived back in the community, when Sally’s ex-partner, the son’s father, approached them. When they arrived home, Nigel “made smart comments to [Sally] regarding jealousy issues surrounding the ex-partner” because Sally “had smiled at him”. Sally responded by pushing Nigel and telling him to leave, but Nigel pushed her back. Sally then picked up an empty milk tin and threw it at Nigel, hitting him on the ear. Nigel picked up the tin and hurled it back at Sally; it struck her, causing a cut to the head. On the second and third occasions involving jealousy, the fight started with Sally accusing Nigel of infidelity, beginning with shouting and swearing and escalating to physical violence, including pushing, slapping and punching. On both occasions Sally suffered minor cuts and bruises, including a bruise to the leg after Nigel picked up a length of wood and hit her just above the knee with it.

Another fight ensued after Nigel refused Sally’s request to take the children to day care.

[Sally] hit [Nigel] on the back with her forearm. [Nigel] then punched [Sally] with a clenched fist to her right cheek. [Sally] has then thrown a plastic rake head at [Nigel], which missed. [Nigel] has then picked up the rake head and swung it at [Sally], who used her hands to block it, and in doing so, sustained a small cut to her
hand. [Sally] then left the house and headed to the Police Station. [Nigel] followed, with both verbally abusing each other. Police observed [Nigel] pick up a handful of dirt and rocks and throw it at [Sally] who was also holding a small child at the time.

The police subsequently arrested Nigel and charged him with the DVO breach.

In this case we also see an assertive aggrieved and the absence of elements of coercive control. Sally was the instigator of three of the four fights, two of which involved jealousy. The level of violence was higher in this case, compared to Andrew’s, with both partners causing minor injuries to the other. Sally was more vulnerable to serious injury because Nigel used more force. However, his violence was spontaneous and reactive, rather than cruel and calculated and he did not attack Sally in ways that resulted in concealed injuries. Sally’s shouting and swearing over infidelity, escalating to a physical altercation and Nigel taking up a length of wood to hit Sally on the leg, is reminiscent of the fight scenarios described by Burbank (1994).

Case study 7: Andrew (non-Indigenous man, age 28, case # 124)

Andrew and his partner, Stacey (also non-Indigenous), are respondents to cross-DVOs. Andrew has been charged with breach offences on two occasions. On the first occasion, Stacey called the police after Andrew had kicked her in the leg and damaged her car. When the police arrived, Stacey told them “she was angry because [Andrew] would not help her look after their son”, so she went to the house to leave the child with him. She gave the child to a third person (who witnessed the events) asking that the child be handed over to Andrew. Stacey then “received a phone call from [Andrew] stating that he was not at the house”. As she returned for her son, Stacey saw Andrew “run into the back yard” and she followed to confront him. A “verbal argument has ensued” and then “[Andrew] kicked [Stacey] in the back of her right leg.” As Stacey picked up the child and moved towards her car in the driveway, Andrew said “if you don’t leave I will smash your car.” Andrew began smashing the side mirrors on the car as Stacey was strapping her son into his car seat, and then proceeded to rip them off the car and throw them to the ground before leaving the scene. Witnesses “confirmed [Stacey’s] version of events.”
Destruction of property was also a key feature of the second offence. On this occasion, Andrew and Stacey had both been drinking when “they had become involved in a heated argument … [Andrew] has picked up an MP3 player and thrown it at the television … now it is unusable.”

Andrew’s violence was low level and directed mostly towards Stacey’s property. These behaviours can be features of coercive control, but the reports of Andrew’s behaviour reflect an irresponsible attitude to parenting and lack of support for Stacey, rather than a desire to dominate and control her. For example, when Stacey attempted to enforce Andrew’s parenting responsibilities by taking their child to his home, Andrew’s response was to run and hide in the back yard, rather than confront her. Andrew did not assert male privilege, minimise or deny his actions or blame Stacey for them.

Case study 8: Thelma (Indigenous woman, age 44, case # 104)

In Chapter 1, Thelma’s first breach offence introduced the gap between the intention of feminist advocates for legislative reform and the lived experience of Aboriginal women. Thelma and Peter, an Indigenous man, were in a de facto relationship and one or both of them had been a respondent to a DVO, including cross-DVOs, for at least 3 years. The police charged Thelma on five separate occasions for a breach of a DVO on which Peter was named the aggrieved. A physical altercation was involved in each event for which Thelma was charged with a DVO breach, with none resulting in “visible injuries.” Both Thelma and Peter were intoxicated on all five breach occasions. On four of the five occasions the police attended after the incident was seen on CCTV; on one occasion the police were called by concerned onlookers. The events on that occasion unfolded as Thelma and Peter were sitting in a circle with a group of six or seven Aboriginal people near barbecue facilities in a recreational park. The police reported:

[Thelma] has staggered away from the group, but she then turned back and walked up to [Peter] and began to hit him with a thong.82 [Peter] has then got up and sized up to her (in a boxing stance), [Thelma] then walked away and came back with a small thin stick and started hitting him. [Peter] then jumped back up and started

82 Casual, open, rubber footwear.
punching her, [Thelma] tried to get away but [Peter] caught up with her and grabbed her. [Peter] then started punching [Thelma] in the head repeatedly. [Thelma] then fell to the ground and [Peter] kicked her three or four times along with punching her in the face and upper body.

Peter left the area with the majority of the group and Thelma followed along after a short time. The police located both Thelma and Peter a short time later, not far from where the fight took place. There were no visible injuries and no injuries were reported. Thelma and Peter were both highly intoxicated and taken to a Diversionary Centre for their safety. Subsequently, Thelma and Peter were both issued with a notice to appear in court for the breaches of the cross-DVOs.

This case resembles the descriptions of traditional and adapted fighting described by Burbank (1994) and Langton (1988), although distorted by intoxication and extreme violence by Peter towards Thelma, and bordering on chaos. It is similar to the case of Nigel and Sally, with both partners using violence, but the men used greater force and the women were thus more vulnerable to serious injury.

Case study 9: Mia (non-Indigenous woman, age 42, case # 95)

Mia was the respondent to two DVOs, including a temporary one, with standard conditions only. The police charged Mia with breaches on two separate occasions. The police reports indicate that Mia and Simon, a non-Indigenous man, had been living together at the time of the first offence but not the second.

On the first occasion, Mia and Simon “were both at home when an argument broke out between them over the recent purchase of an air-conditioning unit.” Mia began shouting abuse at Simon and “then picked up a plate and threw it” at him, striking him on the shoulder before it fell to the floor and smashed. Mia then “threw a number of video cassettes” at Simon and “began pushing other items around.” At this point, Simon asked Mia to leave, which she did. Simon then reported the incident to the police who attended the scene and took his statement. As the police were leaving, Mia began to shout abuse at them from a nearby unit. They approached to take a statement from her. Mia admitted throwing the plate

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83 An alternative to formal custody for intoxicated persons who would otherwise be held at the Watchhouse.
but refused to give a formal statement. She was then arrested and taken to the Watchhouse where she was charged with the breach.

On the second occasion, several months later, Mia went to Simon’s address asking for her laptop. Simon said he would not give it to her until she had paid for damage that she had caused previously in his home. Mia entered the premises and began searching for the laptop. She found an external hard drive in Simon’s bedroom and “threw it over the veranda railing onto the grassed area, causing it to break”. Mia then picked up a number of pot plants and threw them over the railing, “causing them to break” as well. The police were called by a concerned neighbour who “could hear screaming and property being smashed from the neighbouring home.” The police again transported Mia to the Watchhouse and charged her with a second DVO breach.

Mia’s behaviour was abusive and caused damage to property, but it did not have any of the hallmarks of coercive controlling behaviour. On the first occasion, Simon asked Mia to leave the property and she did so. Simon himself reported the incident to police. There was no suggestion in either police report that he was in danger or that he was afraid, or being controlled by Mia. Indeed, Simon withheld Mia’s property in lieu of her paying for damage she previously caused to his property. Simon and Mia were engaged in fights over the purchase of an air-conditioner, then over property, in which Mia, throwing objects and breaking them, was more physical than Simon in the fight.

Case studies 6 - 9 were typical of fights within each of the four sub-groups, but aspects of other cases better illustrate Aboriginal dispute resolution, and chaos context violence, which are subsets of fights. Here I sketch two cases of Aboriginal dispute resolution and one of chaos context violence.

Case study 10: Agatha (Indigenous woman, age 45, case # 113)

In the case of Agatha, the circumstances surrounding the DVO involved her calling on her partner, an Indigenous man, to take up a fight with others on behalf of their daughter:

\[Agatha\] began to yell and scream at the victim over an incident that had occurred over that weekend involving the couple’s daughter. [Agatha] wanted the victim to go and fight persons on behalf of [their daughter]. The victim refused to come outside.
The defendant has then proceeded towards the victim’s car ... and has thrown a steel object at the vehicle’s windscreen causing it to smash. [Agatha] has then located the victim’s acoustic guitar and smashed it by throwing it against the victim’s car. The defendant has then returned to her vehicle and left the scene.

As described by Burbank (1994) an “Aboriginal expectation … that underlies and explains much of the action of people drawn into fights started by others … [w]hen it comes to intervening in aggressive events, women do not stand alone, the mother’s brother and the child’s father are to be held responsible for the child as well” (Burbank, 1994, pp. 76-77).

Case study 11: Trevor (Indigenous man, age 25, case # 50)

Trevor’s case is also illustrative of partnering in an Aboriginal dispute resolution process, to the extent that his sisters accompanied him in the confrontation of his ex-partner and a co-complainant, believed to be his mother in-law:

The complainant has observed [Trevor] and co-offenders approaching the stairs and has felt scared, immediately entered the dwelling and attempted to lock the door to prevent the defendant and co-offenders entering. Shortly after the defendant and others have entered the dwelling. At this time the defendant was calling to the co-complainant to come out and fight the defendant’s sisters who are the co-defendants in this matter. The defendant and others have then walked to the kitchen/dining area of the dwelling and begun to chase the complainant around the table. The defendant has then grabbed the complainant by the shirt front around the shoulder area and has begun to drag the complainant towards the front door. The complainant was not injured in any way as a result of this altercation. The complainant has then broken free of the defendant and has entered the toilet locking herself inside. The complainant’s mother then called the police.

This was the third of three DVO breach charges for Trevor, and likely to represent payback, for turning in “a brother to occupying authorities …” (Coker, 1999, p.72).

Case study 12: Doreen (Indigenous woman, age 46, case # 5)
Doreen’s case illustrates chaos context violence most clearly. Doreen and her partner, Sam, were subject to cross-DVOs. They were homeless and spent much of their time drinking down by the river, or at the homeless shelter. Doreen was charged with DVO breaches on five occasions over a 2-year period, and on two of those occasions she was also charged with offences under the Criminal Code. On every occasion, both Doreen and Sam were heavily intoxicated; on some, Doreen was too drunk for the police to conduct a formal interview with her. The events leading to Doreen’s attacks on Sam typically started with verbal abuse, and quickly escalated to a physical altercation. Doreen used various weapons ranging from a kitchen fork, a pair of scissors, a broom handle, a tree branch and, in the last incident, she used a broken glass during a physical altercation to stab Sam in the neck. Sam also injured Doreen on this and other occasions. When asked why she assaulted Sam, she said “I hit him because he jealous.” Doreen never denied her attacks on Sam. On one occasion, she called the ambulance for Sam after she had injured him in a fight and she pleaded guilty to all charges.

Doreen herself had been victimised over a 10-year period by five different people (three de facto spouses, including Sam, and two family members – one male and one female), all of whom had been subject to DVOs resulting from police applications. Doreen had re-located several times; DVOs against her family members were made in one remote community, and those related to each of the three de facto partners were made in three different communities. In summary, Doreen and Sam engaged in mutual violence in a context of extreme disadvantage, alcoholism and, for Doreen, years of abuse against her by multiple people.

**SUMMARY AND DISCUSSION**

The first two cases of coercive control are, respectively, typical of the non-Indigenous and Indigenous men’s cases in their similarities and differences. These are not fights aimed at resolving conflict, but assaults subjugating autonomy, liberty and equality (Stark, 2007). Both men used non-physical (threats and abuse) and physical violence to control their partners’ actions and interactions with others. Neither woman attacked her partner. Connor predominantly used threats and menacing behaviour, compared to Jimmy’s use of a relatively

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84 Sam, an Indigenous man, is not included in the sample of 185 people charged with breaches of DVOs, so I do not have access to any police records of Sam having been charged for breach offences (see Appendix 3.1 for further explanation).
high level of physical violence. Connor and Eliza were separated and Jimmy and Sherry were not; Eliza actively sought police intervention but Sherry did not; and alcohol did not feature in Connor’s case while it did feature, although not excessively, in Jimmy’s.

These cases show race differences. Contrasting them with Caroline’s case shows gender similarities and differences. Caroline used both non-physical and physical violence towards Bob, but she was not persistent, having been the subject of a single DVO and only one breach of it. Although she initially blocked his exit, Bob was able to leave the house and attend the police station to report the breach. Caroline taunted and assaulted Bob and destroyed his property, but attempts at control appear to have been short-lived.

The fight cases are also typical of the respective sub-group profiles. The violence was reactive and expressive, rather than directed towards general control over the life of the other. They reflect a degree of mutuality, although the women were more vulnerable to serious injury.

The Indigenous couples’ cases are indicative of themes from the interview data: Indigenous women fighting, the nature of violence between Indigenous couple’s is different from intimate partner violence in general, and that the legislation is applied in a formulaic manner with no effect, other than giving the police immediate (but not enduring) power over the perpetrator, and power over the victim. Though not discussed by interviewees, the role of electronic surveillance in bringing Indigenous couples’ fights to the attention of the police did feature in police reports.

The case studies above illustrate my conceptualisation of an intersectional approach to distinguishing types of violence. Drawing on police reports, I have shown that coercive control and fights are gendered and racialised. I have also shown that domestic violence laws are used appropriately for most cases involving non-Indigenous men and to a lesser extent Indigenous men, but inappropriately for women. In the next chapter, I reflect on how it came to be that a thoughtfully crafted law aimed at men’s coercive control of women has been used for other ends, and against women. I then consider the implications of my conceptualisation for a more effective and just response to intimate partner violence.
8. DISCUSSION

In this chapter, I seek to explain two key findings that emerged from my research. First, a set of laws that were designed to stop men’s violence against women resulted in increased criminalisation of women by the police and courts. Second, these negative consequences were more pronounced for Indigenous than non-Indigenous women. How and why did this occur?

A complex set of interrelated reasons explains what occurred. First, formal equality in the law embeds gender and racialised power relationships; second, the formulaic implementation of the law reinforces these relationships to the detriment of women, and in particular, Indigenous women; and third, feminist advocates had not envisioned a more complex set of meanings and motivations for violence in couple relations.

I discuss these in the two sections that follow: law, its implementation, and patriarchal power; and racialised power and intersectionality. My analysis focuses more on the latter, since it is the focus of my thesis and is less often explored in the Australian violence against women literature. I then consider recent legislative changes and proposals for change that have sought to address them. Here I ask: Is it ever possible to use law to hold men accountable for attacks on autonomy, liberty and equality of women, without negative consequences for women?

LAW, IMPLEMENTATION AND PATRIARCHAL POWER

Schechter (1989) wrote “the conditions that create violence against women … suggest the directions in which a movement should proceed to stop it” (1982, p. 209). She and many others (e.g. Dobash and Dobash, 1979; Okun, 1986; Jones and Schechter, 1993; Bancroft, 2002; and Stark, 2006, 2007), including myself, understand coercive control in intimate partner relationships as an extension of patriarchal control in broader social, political and economic domains. Therefore, even though women may use violence in relationships, the lack of social facility (Stark, 2006, p. 1024) for women to attain and exercise power over men
diminishes its impact. Stopping coercive control, then, suggests a movement against patriarchal power.85

My analysis of interviews and police reports showed that categories of intimate partner violence are ordered by gender and race. Like other researchers (e.g. Kelly & Johnson, 2008; Pence & Dasgupta, 2006), I found that coercive controlling violence was almost exclusively perpetrated by men, while men and women engaged in fights. Moreover, non-Indigenous men, who benefit most from dominant patriarchal culture and are most invested in its maintenance, engaged in coercive control more often than fights, compared to Indigenous men.

Stark (2007) argues that the feminist project to end men’s violence against women has stalled because the law has focused on physical violence, which may not be present in coercive control. However, for more than 25 years in Australian law, definitions of domestic violence have included non-physical forms of abuse, such as intimidation and harassment, as well as physical violence. Thus, the intent was always to address coercive controlling violence that may or may not involve physical violence.86 It is, at least partially, the implementation problem (Hunter, 2005) rather than the absence of non-physical violence in the law that has stalled the feminist project in Australia. Specifically, it is the failure to identify context and distinguish between coercive control and fights, regardless of the presence or absence of physical violence. This failure occurs because the police and courts adopt a formulaic approach and because the law itself does not make a clear distinction. Erroneous assumptions, which informed feminist advocacy on legal responses to intimate partner violence, have exacerbated these problems, and resulted in missed opportunities for more effective control of men’s violence against women and a reduction in law’s unintended

85 Gracia and Merlo (2016) recently found a correlation between country-level gender equality and intimate partner violence “but in the opposite direction expected” (p. 28). As they say, further research is needed to explain this surprising finding and they suggest some possible explanations. It is worth noting that the large-scale population based survey they used for their analysis concealed the context and meanings women attributed to the violence. Based on my analysis, it is possible Gracia and Merlo’s findings could be explained by distinguishing between coercive control and fights. That is, coercive controlling violence in personal relationships in Nordic countries could reflect a backlash against perceived loss of public power; fights reflect a more equal level of social power, although they have gendered dimensions and impact.

86 Based on my analysis of police reports and the work of others (e.g. Douglas, 2008), we know that the prosecution of DVO breaches for non-physical violence is rare. However, if police and courts responded to non-physical violence in the same formulaic way as they respond to physical violence, it may be even more problematic for women with coercive controlling partners who manipulate the law for their own ends and re-frame their experiences of verbal conflict as emotional abuse (Flood, 2003; Wangmann, 2009).
consequences. I illustrate these next in my analysis of feminist opposition to extending Queensland’s domestic violence legislation to other relationships.

**Erroneous assumptions**

During the legislative reform debates between 1995 and 2002, feminist advocates vigorously resisted the extension of domestic violence law to non-spousal relationships, arguing it would result in the loss of a gender analysis (men’s power and control over women) and undermine the power of the law to advance feminist goals. The problems with this argument are three-fold. First, it assumed that violence in non-intimate relationships is never coercive control, while we know that women in other family relationships are also subject to patriarchal control (Araji, 2000; Daly and Nancarrow, 2010; House of Commons, 2008; Kvinnoforum/Foundation of Women’s Forum, 2005). Thus, inclusion of other types of family relationships in the legislation would be consistent with advancing the feminist goal of securing women’s autonomy, liberty and equality. Second, it assumed that all violence in intimate partner relationships is coercive control perpetrated by men, or violent resistance by women. In contrast, my analysis of police reports shows that women are almost exclusively, and men are quite often, engaged in fights with intimate partners when charged with breaches of DVOs. In their analyses of law’s implementation, advocates and researchers largely ignored the distinction between coercive control and fights, and that some women’s violence is expressive rather than an instrument to resist violence.87 Likewise, these aspects of violence were absent in debates on subsequent reform of Queensland’s domestic violence law.88 As a result, the unintended consequence of those laws bringing women into the criminal justice system continued. For women, more so than men, a conviction for a DVO breach is likely to be their only criminal offence (Stewart, 2000), but if a conviction is recorded they will bear the burden of a criminal record. In hindsight, it would have been better if advocates had focused on the type of violence, rather than the specific relationships, to be included within domestic violence legislation.

87 Stewart’s (2000) analysis is an exception, but advocates, policy-makers and legislators did not take up her research findings in the reform process.

88 Consideration of the distinction between coercive control and fights, and women’s use of violence, would have been most useful in the analysis and debates on legislative reforms (1995-2002), and may have led to an earlier and better resolution.
Third, advocates assumed that an understanding and intolerance of domestic violence as an expression of men’s power and control over women had permeated police and court culture and practice. The evidence suggests otherwise (Douglas & Godden, 2002; Wangmann, 2009, 2010; Hunter, 2005). Women and men were subject to DVOs, mostly resulting from police applications, as early as 1994 (Stewart, 2000) when the legislation in Queensland was less than 5 years old and included only current or former intimate partner relationships. Further, Douglas and Fitzgerald’s (2013) study suggests that extending the legislation to other family relationships had little effect on police and court culture and practice. The proportion of cross-applications remained the same for 4 years after the legislative changes commenced in 2003 and then increased slightly.  

Although the extension of the legislation to non-spousal relationships did not undermine the power and control analysis, it did nothing to advance it. The legislation still did not make explicit that coercive control was its target and it continued to capture events that had nothing to do with domination and control over the autonomy, liberty or equality of a current or former partner, and which Stark (2006, 2007) and I call fights. Furthermore, it extended the capture of fights within the criminal justice net because the reformed domestic violence laws included a wider range of relationships.

**Formulaic responses**

In my interviews, the police prosecutors said that it was police policy to make a DVO application if there was evidence of a proscribed act and a relevant relationship, so that the police had no discretion. This policy likely evolved because of previous criticisms of the police for not acting in cases of domestic violence, along with research recommendations for court orders to systematically follow police intervention (e.g. Young et al, 2000), and concern about legal action against the police for not acting (Goodmark, 2012). Thus, advocacy has found success in removing police discretion, which negates the risk of bias against victims and asserts police authority over coercive controlling men. The policy also asserts police authority over victims, removing any opportunity for them to exercise their own discretion, considering the context and meanings they attribute to the violence. Further, the police reports I analysed, including the case studies above, and the high share of DVOs made

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89 Cross-applications as a proportion of all applications, had been 12% from 2003-04 until 2006-07, rose to 16% in 2006-07, and remained so until 2010-11 when Douglas and Fitzgerald’s (2013) study concluded.
parte and guilty pleas to breach charges, illustrate the near irrelevance of the aggrieved (and the respondent) in the justice process.

The formulaic response to policing domestic violence has consequences for the courts’ responses too. It makes magistrates the sole gatekeepers for appropriate application of the law and, because it increases the number of applications made, it increases pressure on court time. Consequently, magistrates, as well as police, adopt a formulaic response because of the time available to consider applications. Thus, it appears magistrates in some cases are merely rubber-stamping DVO applications, especially police applications. As we have seen, the majority of applications are police applications across the state of Queensland and more so in the research sites. Attitudes and beliefs of magistrates play a role in the way they handle domestic violence matters (Wakefield & Taylor, 2015), but only more magistrates or fewer applications will provide sufficient time to consider applications properly. This means that the system effectively denies due consideration and a tailored response for women who want appropriate legal intervention, while it pointlessly processes other cases. As illustrated by Goodmark (2012, pp. 160-164) in her discussion of essentialism in contemporary North-American domestic violence legal processes, pointless processing of cases can be detrimental to individual women. To be of real value to women, domestic violence law must be one among a number of resources for women to use in various combinations, or not at all, to address their individual needs for safety and autonomy. Instead, victims (whether male or female) have no choice about when and how to engage the criminal justice system, especially if there is independent evidence such as CCTV footage, police or other witnesses, or injuries requiring treatment.

So far, I have considered the challenges of constructing and effectively implementing legal responses to hierarchical male power, which authorises attacks on women’s autonomy, liberty and equality. I have argued that women have wrongly been roped into the criminal justice system because of formulaic policing and laws that fail to distinguish between two overarching types of violence (coercive control and fights), as originally envisioned by the Queensland Domestic Violence Task Force (QDVTF, 1988).

I turn now to consider the consequences of racialised power which place Indigenous men on the second lowest level, and Indigenous women at the bottom of a four-tier hierarchy of power (Behrendt, 1993).
**RACIALISED POWER AND INTERSECTIONALITY**

The architects of the original *Domestic Violence (Family Protection) Act 1989* (Qld) were acutely aware of their limitations as a predominantly non-Indigenous entity, observing that the way of life of many Indigenous people on communities was vastly different from their own. Portentously, the Taskforce reported: “There is no doubt in our own minds that we will fail to do justice to the experience of domestic violence amongst Aboriginal people and also to the range of very complex issues associated with contemporary Aboriginal affairs (QDVTF, 1988, p. 257). The following discussion focuses on the experiences of Indigenous people when laws are premised on gendered aspirations, with little attention to racialised realities.

There have been two relevant studies in Far North Queensland: mine and Cunneen’s (2009).90 We both found that the police were more often the applicant for DVOs involving Indigenous people, very few applications were contested (most DVOs were made *ex parte*), the great majority of DVOs for Indigenous people included two standard conditions only,91 violence was more serious in Indigenous than non-Indigenous cases, Indigenous people were more often jailed than non-Indigenous people, and the threat of a jail term did not act as a deterrent. Our findings differed only on the prevalence of cross-DVOs naming Indigenous people. Cunneen’s research was unable to establish the frequency of cross-DVOs, but his interviews with police prosecutors and magistrates indicated they were rare in Indigenous cases.92 I found cross-DVOs were common and there was no difference between Indigenous and non-Indigenous men and women in the likelihood of having them.

My research furthers an understanding of Indigenous men and women’s experiences of domestic violence laws in two significant ways. First, it compared sex and race in a variety of dimensions, with a particular interest in foregrounding how Indigenous women compare to the other race and gender groups. That set of findings showed that Indigenous women charged with DVO breaches were particularly vulnerable to victimisation by multiple

90 My results differed from those of Stewart (2000), whose study was conducted in South-East Queensland and found no statistically significant differences for Indigenous and non-Indigenous people.

91 Be of good behaviour toward the aggrieved, and not commit domestic violence.

92 As discussed in Chapter 1, this is likely due to a narrow understanding of cross-applications and cross-DVOs as applications and orders that are made simultaneously. My definition of cross-DVOs is broader than this.
perpetrators; they were more likely to be the subject of police applications, whether as victims or perpetrators; and they were more often named an aggrieved before being named a respondent on a DVO, compared to Indigenous men and non-Indigenous women.

Second, it sought to understand at close range the meanings and context of violence. From this very close reading of police reports and interviews, I produced a reconceptualisation of types of intimate partner violence. Here is what I found.

Indigenous women, like non-Indigenous women, were almost exclusively involved in fights with their male partners when charged with breaching DVOs, and Indigenous men were more often engaged in fights than their non-Indigenous counterparts. Moreover, there are some kinds of fights exclusively or particularly relevant to Indigenous women and men: Aboriginal dispute resolution and chaos context violence. Indigenous women were significantly more often engaged in chaos context violence, compared to Indigenous men and non-Indigenous women. That is, Indigenous women more than any other group are being brought into the criminal justice system for violence related to extreme disadvantage and associated with racialised oppression.

Despite the limitations of this exploratory research, my analysis enables us to understand the circumstances of over-representation of Indigenous men and women as respondents to DVOs (Cunneen, 2009) and implications for more effective legal responses. This is the focus of the next section, in which I consider the racialised nature of the law and legal practice in four inter-related themes identified by the interviewees.

**Fights**

My identification of different kinds of violence does not directly correspond to the “alcoholic violence, traditional violence and bullshit traditional violence” reported by Bolger (1991, p. 50), but there are some similarities.

Bolger’s “alcoholic violence” corresponds most closely to chaos context fights in my characterisation of violence. Traditional violence would include hair fights and stick fights reported by Burbank (1994) and contemporary swearing and fighting dispute resolution rituals reported by Langton (1988), Macdonald (1988) and others. There was some evidence of this kind of aggression by Indigenous women towards their partners in the police reports,
although it was more chaotic than structured in the way that Burbank, Langton and others have described.

Bullshit traditional violence represents an attempt by a man to manipulate the mainstream criminal justice system and, thus, avoid accountability for violence against a woman by claiming entitlement to her body and, accordingly, entitlement to suppress her autonomy, liberty and equality. On that basis, bullshit traditional violence displays the same features as coercive control. Other than police reports for breaches, my research did not include analysis of evidence presented in court, which might have revealed examples of bullshit traditional violence. I did find, however, evidence that the majority of the Indigenous men in my sample engaged in coercive controlling violence. A substantial minority (32%) of the Indigenous men, and almost all the Indigenous women (95%), engaged in fights that resulted in DVO breach charges.

Interviewees frequently spoke of Indigenous women’s use of violence as self-defence, but they were not always referring to self-defence as a response to men’s coercive control. They also saw cases of Indigenous women taking up weapons to defend themselves in fights. The interviewees asserted that Indigenous women’s experiences of violence were different from non-Indigenous women’s experiences of coercive control in intimate partner violence. They did not mean that the violence or its impact was less serious, but that its meaning was different.

**Indigenous advocacy lost in translation**

Law reform and criminal justice practice have not adequately translated Indigenous Australians’ advocacy for culturally sensitive criminal justice responses to this different kind of violence. Consultations for the evaluation of the Tasmanian offence of family violence, for example, revealed Aboriginal people’s “concerns about the capacity of Safe at Home to provide a culturally appropriate response … the police required additional cultural awareness training and support to understand the impact of culture on perceptions and actuality of violence in Aboriginal communities” (SuccessWorks, 2009, p. 41, emphasis added).

Queensland legislators have similarly failed to translate the cultural meanings of aggression to domestic violence laws. The Queensland Domestic Violence Taskforce (1988), which
fashioned the original Queensland domestic violence law, asserted it was concerned with abuse of power rather than fights (p. 13). However, it made no distinction between coercive control and fights in its discussion of domestic violence in Indigenous communities, despite identifying the “erosion of traditional community controls” (QDVTF, 1988, p. 258) used in Aboriginal dispute resolution practices as a major contributor to high rates of violence in those communities. Further, the Task Force made no specific recommendations about demarcation of fights and coercive control. Thus, its stated policy intention of excluding fights did not translate to the domestic violence legislation, or to the police and court practice that followed.

Instead, coercive control and fights in intimate partner relationships were conflated and consequently dealt with in the same way. This conflation has been reinforced at each amendment of Queensland’s domestic violence legislation. For example, the 2002 amendments that extended the legislation’s coverage to family violence, defined family relationships broadly to capture Indigenous understandings of family. However, the report on consultations prior to the Domestic and Family Violence Protection Bill 2012 (Qld) states:

*The current domestic violence legislation ... does not make specific reference to additional requirements ... that may apply to domestic violence involving Aboriginal and Torres Strait Islander people, especially in communities. There were 31 [survey] respondents that considered the current domestic violence definition clearly includes the wider concept of family ... while 30 others believed the definition needed to provide more detail (for example, a reference to kinship principles) and recognise cultural family structures and responsibilities* (Queensland Government, 2011, p. 18).

The reference to “cultural family structures and responsibilities” implies the need for reform that goes beyond types of relationships, but its meaning is lost in the consultation and policy analysis. What happens is a continuing focus on types of relationships rather than types of

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93 The Taskforce discussion on domestic violence in Indigenous communities recognised the disadvantaged position of Indigenous women in urban settings, but focused on “identifiable Aboriginal and Islander communities living in Trust areas [discrete Indigenous communities]” (QDVTF, 1988, p. 257).

94 Unfortunately, the report does not reveal the cultural identity of the survey respondents in either group.
violence, resulting in ill-fitting interventions that are misdirected because of a lack of delineation between coercive control and fights.

In the place of traditional community controls is criminal justice interaction, which may result in more violence, not less, against Indigenous women (Nancarrow, 2006, 2010). This occurs because women are subject to payback for reporting their partners’ violence to authorities; case study 11 revealed this process. However, this may be only part of the payback story from the perspective of those engaged in the dispute. Traditional Aboriginal dispute resolution practices have undergone change as they were incorporated into contemporary Aboriginal culture (Macdonald, 1988; Langton, 1988). However, their meaning is often lost in translation to the dominant culture and its legal paradigm. Langton (1988) observed that:

... swearing and fighting are deemed illegal by Australian law and Aboriginal participants are subject to alarmingly high arrest rates, fines and imprisonment ... Police are not simply arresting and detaining ‘troublemakers’, but intervene in an indigenous social process aimed at conflict resolution. These police intrusions have a two-fold effect. First, they become the subject of social action in the course of the dispute processing mechanism. Second, they aggravate a tense and sometimes violent situation causing more personal insult to the interlocutors as well as other actors. These others may feel called upon to act out the Aboriginal social procedures which call to public redress such behaviour as insult, injury or interference on the part of those without right or authority (p. 219).

Therefore, violence perpetrated by Indigenous people after police intervention may be addressing unfinished business, aggravated by police intervention and interrupted resolution (Langton, 1988). At the same time, the police are criticised for not intervening in fights between Aboriginal people, as reported by journalists Guest, Burke and Briggs (2016) following a series of violent events in Aurukun, an Aboriginal community about 800 kilometres north-west of Cairns.
A follow-up story includes a YouTube video,\textsuperscript{95} showing two women fist fighting in the street, encircled by a large crowd of men, women and children shouting encouragement, or abuse, to one or other of the fighting women. The police watch on. The posture of the police officer next to the vehicle suggests he is ready to intervene, but he takes no action. An older woman in the foreground hovers about the fighters; she is wielding a stick as if in readiness for action, but does not intervene. The video shows another police officer on the other side of the circle, talking to a woman on the sideline. He also takes no action to stop the fight.

Consistent with the traditional practice of “partnering” in a fight (Burbank, 1994), a third woman takes the place of one of the original fighters; she prevails, forcing her opponent to retreat and the fight ends, at least temporarily. Figure 8 is a still shot from the YouTube video.

Figure 8 Aurukun fight (ABC News Online 16 May 2016).

Responding to accusations that the police were condoning “fair fights”, the Assistant Police Commissioner for the area asserted that “officers could not just break them up … [b]ecause of the numbers of people there and because of the delicacy around making sure that they don’t have the crowd turn on them” (ABC News Online, 16 May 2016). That is, the crowd would likely have attacked the police if they had intervened, implying that the police had no cultural authority concerning the fight. This scenario was reported as a fight, but the police, and others, would most likely interpret a similar scenario involving a man and a woman (like Thelma and Peter in case study 8) as intimate partner or family violence. Under district policy, the police would have had no option but to make a cross-application for a DVO, or charge the combatants with a breach of a DVO.

Chaos

Compared to Aboriginal dispute resolution, I found more evidence of the variant forms of traditional violence described by Memmott et al (2001). I call this chaos context violence, which is a subset of fights in my typology of violence. For decades, Indigenous women in Queensland have consistently identified the unacceptable social conditions—including extreme levels of unemployment, poverty, over-crowded housing, and poor health—as substantial contributors to alcohol abuse and high rates of violence in their communities (Bryce, 2015; NCRVAWC, 2009a, 2009c; QDVTF, 1988; Queensland Government, 2011; Robertson, 2000). Judy Atkinson’s (2002) work on inter-generational trauma has drawn a direct line between high levels of violence among Indigenous people and the impact of historical colonisation, including massacres and removal from ancestral lands, disrupted culture and extreme disadvantage. Consequent poor mental health is a major contributor to self-harm (substance abuse and suicide) and violence towards others, including lateral violence, also known as horizontal, intra-racial, and “sideways” (AHRC, 2011, p. 25) violence. Lateral violence is recognised internationally in the United Nations Declaration on the Rights of Indigenous Peoples, and in Australia. A statement from the National Congress of Australia’s First Peoples describes it as the creation of “experiences of powerlessness, and is an end product of the oppressive and discriminatory policies and laws our Peoples have been subjected to for more than two centuries” (2012, p. 1). That is, lateral violence is an expression of internalised oppression (AHRC, 2011) and includes
“gossiping, jealousy, bullying, shaming, social exclusion, family feuding, mental and emotional abuse, organisational conflict, defamatory statements and physical violence” (National Congress of Australia’s First Peoples, 2012, p. 1).

Lateral violence was not raised specifically by those I interviewed, however, several referred to the milieu of violence in which some Indigenous people live. An example is an interviewee’s statement that: “a lot of things are handled with physical violence or violent talk; by throwing things—by men and men, women and women” (SP/7/NI). Interviewees’ references to loss of rules and culture are also likely to have had this broader context of violence in mind.

Indigenous service providers I interviewed also raised brain injury acquired through violence and alcoholism as a contributor to violence and the failure to comply with DVOs. There has been some Australian research on FASD in Indigenous children (Fitzpatrick et al., 2015), but none on FASD in adults. However, as reported by Douglas (2010, p. 227), parents of FASD children often have FASD themselves. Following Canadian colleagues (e.g. Roach and Bailey, 2009), Douglas (2010) is primarily concerned with the interface between FASD sufferers and the criminal law and the development of an effective jurisprudence. While cautioning against stereotyping Aboriginal people, Roach and Bailey (2009, p. 4) suggest that failure to recognise and respond appropriately to FASD “may … contribute to the increasing number of mentally disabled and Aboriginal people who are incarcerated.” Their plea “to evaluate how the criminal law can respond to the challenges of dealing with … FASD” (Roach and Bailey, 2009, p. 4) is also relevant to civil domestic violence law, and its intersection with criminal law. Further research on FASD in the adult population and links to violence, including intimate partner and family violence, is needed to inform appropriate interventions and more effective constraints than DVOs, for example.

In light of my analyses of Indigenous people’s uses of violence, it is difficult to sustain the argument that Indigenous men’s violence against female intimate partners is an expression of patriarchal coercive control, or that Indigenous women’s violence towards male intimate partners is resistance to violence perpetrated against them. But neither can one sustain an argument that it is never coercive control and violent resistance, and I do not make any such claim. Furthermore, men may exploit their greater social and economic status to prevail in a
fight, although this source of power is less available to Indigenous men compared to white Australian men. Of greater concern is that fights, especially chaotic fights, can be dangerous and lethal. Men may use their superior physical strength to prevail in a fight (case study 8), and women use weapons (case study 12). Australian homicide research (Mouzos & Rushforth, 2003; Chan & Payne, 2013; Cussen & Bryant, 2015) consistently shows the over-representation of Indigenous men and women as homicide victims and offenders and, as we saw in Chapter 2, 70% of Indigenous homicides involved alcohol, compared to just one-fifth of non-Indigenous homicides (Cussen & Bryant, 2015). Thus, fights cannot be ignored.

Formulaic response

A formulaic police and court response is not specific to Indigenous people. However, it has a particularly strong impact on Indigenous women because they, more than other groups, are subject to police applications, which magistrates rubber-stamp. Further, some fight scenarios are unique to, or more prevalent among, Indigenous people (Aboriginal dispute resolution and chaos context violence, respectively); and these are subject to a formulaic police response. Rules of Aboriginal dispute resolution, even in its variant forms, dictate the fights be held in public places, and chaos context violence often occurs in public parks or on city streets and captured on CCTV. Therefore, the visibility of Indigenous people involved in fights increases the chances of engaging the criminal justice system through formulaic policing.

Race relations

Nearly three-quarters (73%) of the interviewees identified race relations in explaining the overrepresentation of Indigenous people as respondents to DVOs. An Indigenous service provider (SP/12/I) connected repeated breaches by Indigenous men and women to the daily experience of racism and a lack of a sense of belonging to the community and its rules. Most interviewees, including a police prosecutor, focused on Indigenous people’s fear and mistrust of the police stemming from the historical and continuing role of the police in controlling Indigenous lives. It is, therefore, salient that the all-time high share of police applications, at 65% of total applications for Queensland (Bryce, 2015), is still substantially lower than the average share of police applications for Cairns (71%) and Mount Isa (79%), prior to 2013-2014. Bryce (2015) also shows that the region with the lowest rate of DVO applications is
North Brisbane at 257 per 100,000, while the second highest is Cape York\textsuperscript{96} at 946 per 100,000 and the highest is Mt Isa at 1687 per 100,000 (Bryce, 2015). Thus, where we have a higher share of Indigenous people, there is a higher rate of police applications.

For those living in remote communities, formerly reserves or missions, the idea of the police using legislation to protect Indigenous people, whether or not they want it, is likely to recall the role of the police in other protective legislation. In his review of the role of the police in implementing the \textit{Aborigines Protection and Restriction of the Sale of Opium Act 1897 (Qld)} and \textit{the subsequent Aboriginals Preservation and Protection Act 1939 (Qld)}, Cunneen observed that “[p]rotection legislation was concerned with the control of Aboriginal people” (2001, p. 64). The police exercised such control through intense surveillance and their designated role as guardians. Similarly, in the case of Thelma and Peter, the police arrested Thelma for breaches of DVOs on four separate occasions after viewing their fights on CCTV. They arrested Thelma because she did not comply with a court order purportedly made to protect Peter, although there seemed to be no evidence that Peter was subjugated by Thelma, at risk of serious injury, or otherwise in need or want of state protection.

Of course, Indigenous Australians are not homogeneous regardless of where they live and, as one service provider said, “70\% of Aboriginal people … are living basically a white life” (SP7NI).\textsuperscript{97} There is ample evidence, however, of the devastating disadvantage experienced by many Indigenous people and reflected in the continuing efforts to close the gap on that disadvantage (Holland, 2015). Further, all Indigenous Australians live with the spectre of the racialised context and systemic racism, hence, many of those who live apparently comfortable, middle class lives do not concede legitimacy of the state and its apparatus (Davis, 2009). Indeed, calls for a treaty between the Australian Government and Indigenous Australians to recognise Aboriginal and Torres Strait Islander sovereignty are gathering momentum (Georgatos, 2014; Henderson, 2016).

Self-determination in law and justice is a continuing theme in assertion of sovereignty. The Yolngu delineated \textit{big trouble} and \textit{little trouble}, for example, as a strategy to retain

\textsuperscript{96} Referred to as Far North in the Taskforce report.

\textsuperscript{97} This comment is inherently racist. I understand the participant meant that most of the Aboriginal people in the research site were employed, had homes, and were law-abiding and living relatively comfortable lives, like most other Australians.
jurisdiction over matters that were particular to Yolngu society, such as the regulation of relationships with land, the relationships between kin and those between men and women (Williams, 1987). In 2002, Indigenous women in North Queensland made similar distinctions when discussing the perceived value of the conventional criminal justice system compared to that of alternative, community-controlled justice responses (Nancarrow, 2006, 2010). If compelled to obey white law concerning family troubles, Aboriginal people would “be lost ones, with no law, no culture, just fish swimming in the sea” (Yolngu Elder cited in Williams, 1987, p. 149). The Elder’s words were prophetic, considering the lack of rules and boundaries reported by many of the service providers I interviewed, and evident in police reports, as contributors to chaos context violence.

That “little trouble” equates to “family troubles” seems to minimise the seriousness of offences and, therefore, sits uncomfortably with reference to violence against women and their children. One needs to be careful, though, in assuming Aboriginal English translates directly to English, generally. Nevertheless, by the early 1990s Aboriginal women sought help from external authorities to address what the Yolngu called little trouble and, thus, overcome Aboriginal male control over women (Bolger, 1991; Burbank, 1994). Hence, women do not universally accept expressions of “culture” and culture is not static. At the same time, seeking help from external authorities does not equate with acceptance of the dominant culture and its regulatory systems. Although many Indigenous women want access to the police in communities (Robertson, 2000), they often see the police as an emergency response, and not necessarily a means to engage the criminal justice system fully, but currently they have no choice. Many continue to endorse alternatives to the formal criminal justice system, including restorative justice, healing centres, Indigenous sentencing courts and other innovative justice mechanisms (Blagg et al, 2015; Daly, 2016; Marchetti, 2010, 2015; Nancarrow, 2006, 2010; Queensland Government, 2011; Robertson, 2000). Discussed elsewhere (Nancarrow, 2006, 2010), the model of restorative justice imagined by Indigenous women does not currently exist in practice. That should not mean, however, that we turn away from Indigenous women’s calls for justice mechanisms that respond to their experiences. What that would mean is a set of responses that genuinely holds men accountable for gender-based violence against women, and addresses the racialised conditions that contribute to it and other forms of violence, including fights. The current
domestic violence laws do neither, but they punish women, and some men, for circumstances that have nothing to do with coercive controlling violence.

RECENT DEVELOPMENTS AND PROPOSALS FOR CHANGE

Domestic violence legislation and police and court practice is continually evolving, as domestic violence advocates and legislators seek to address problems in previous laws and implementation. This section begins with recent developments in Queensland law and widens to other jurisdictions.

Changes to civil legislation

In 2012, after I had completed data collection for this research, the Queensland Parliament repealed the Domestic and Family Violence Protection Act 1989 and replaced it with the Domestic and Family Violence Protection Act 2012 (Qld). The new Act is fundamentally the same approach as the previous Queensland legislation and it remains consistent with that in other Australian states and territories. It is different to the previous Queensland legislation, however, in several ways. It has a preamble, which uses a human rights framework and a gender analysis of intimate partner violence. It makes explicit the main objects of the Act and it provides a list of principles to guide decision-makers under the provisions of the Act. These inclusions aim to address the problem identified in this thesis and other research (e.g. Wangmann, 2009, 2010); that is the unintended consequences of cross-applications and cross-DVOs. In a key passage at section 4(2), the principles say that when there is violence between a couple the person most in need of protection should be identified:

In circumstances in which there are conflicting allegations of domestic violence or indications that both persons in a relationship are committing acts of violence, including for their self-protection, the person who is most in need of protection should be identified.
The legislative provisions did not develop this principle further. The legislation placed no restrictions on police making cross-applications and it only suggested ways that a court may curtail the practice of making cross-DVOs.98

The preamble, the objects and the guiding principles in Queensland’s legislation responded to recommendations of the Australian and New South Wales Law Reform Commissions. These resulted from a comprehensive joint review aimed at harmonising relevant state, territory and federal laws (ALRC & NSWLRC, 2010). In addition, the two Commissions recommended that definitions of domestic violence contextualise it as “violent or threatening behaviour, or any other form of behaviour that coerces or controls a family member or causes that family member to be fearful” (2010, p. 246). Contextualising domestic violence in this way includes behavior that might otherwise seem harmless and excludes behavior that may be committed in other contexts and that does not constitute coercive control, nor engenders fear. Therefore, coercive control would be included, and violent resistance and incident-based conflicts, or fights, would be excluded (ALRC & NSWLRC, 2010, p. 235). This has the potential to significantly reduce the number of women, especially Indigenous women, being brought into the criminal justice system through state-based domestic violence laws.

In 2011, the Family Law Act 1975 (Cth) (FLA) adopted the Commissions’ proposed definition as it was drafted. However, Queensland’s Domestic and Family Violence Protection Act 2012 did not. The difference can be seen in Figure 9.

Figure 9: Comparison of legislative definitions of family/domestic violence

<table>
<thead>
<tr>
<th>Family Law Act 1975 (Cth)</th>
<th>Domestic and Family Violence Protection Act 2012 (Qld)</th>
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<tbody>
<tr>
<td>(1) For the purposes of this Act, <em>family violence</em> means violent, threatening or other behaviour by a person that coerces or controls a member of the person’s family (the <em>family member</em>), or causes the family member to be fearful.</td>
<td>(1) Domestic violence means behaviour by a person (the first person) towards another person (the second person) with whom the first person is in a relevant relationship that – a) is physical or sexually abusive; or</td>
</tr>
</tbody>
</table>

98 To identify the person most in need of protection, courts may now consider cross-applications together, even if they were filed initially in different courts; and, if a DVO for one of the parties to a relationship already exists, and there is an application for a cross-DVO for the other party, a court may now consider the records related to the existing order.
Examples of behaviour that may constitute family violence include (but are not limited to):

- an assault; or
- a sexual assault or other sexually abusive behaviour; or
- stalking; or
- repeated derogatory taunts; or
- intentionally damaging or destroying property; or …

The definition in the *Family Law Act 1975* requires coercive control or fear to establish various behaviours as family violence; thus, it *excludes* fights. Queensland’s definition simply includes coercion, domination, control and causing fear in a list of physical and non-physical actions defined as domestic violence; thus, it *includes* fights.99

Nothing has changed in the Queensland definition to overcome the problematic formula; proscribed action + relevant relationship = domestic violence. The list of proscribed behaviours is just longer and the definition continues to capture women’s uses of violence, enabling continued exploitation by coercive controlling men. For these reasons, I was not surprised to learn from domestic violence service providers (QDVSN, 2014) that the *Domestic and Family Violence Protection Act 2012* had failed to overcome the problem of cross-applications and cross-DVOs; its design still responds primarily to incident-based violence irrespective of the context. Further, lists of behaviours such as “verbal, emotional and psychological forms of abuse … allow men to re-name their own experiences of verbal conflict, name-calling, and stereotypically feminine ‘nagging’ as ‘verbal and emotional

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99 Referring specifically to implementation of the *Family Law Act 1975*, Rathus (2013) is concerned that the requirement of a context of coercive control, or fear, represents an unacceptable barrier for women seeking protection for themselves and their children through the Family Law Court. She highlights the irony of a concept (coercive control) developed to *include* experiences of non-physical violence, being used to “*exclude* some family members who need protection” (2013, p. 387 emphasis in original). For me, the irony is that the Commissions’ recommended definition has not been adopted in state-based domestic violence legislation, where the exclusion of fights would be of most benefit to women, but has been adopted in the *Family Law Act 1975*, where it might be detrimental to women as Rathus points out.
abuse’” (Flood, 2003, p. 13). This concern was borne out in Wangmann’s (2009, 2010) analysis, particularly for cross-applications made by men after they were named a respondent.

A set of laws aimed at stopping a particularly disturbing kind of men’s violence will continue to rope in women who fight with men (and other women), for as long as actions devoid of context are included in legislative definitions of violence.

**Proposed domestic violence criminal offences**

There has been sustained interest in the benefits of criminal law over civil law to respond to domestic violence, with recent interest in creating a specific offence of domestic violence (e.g. ALRC & NSWLRC, 2010; Bryce, 2015; Douglas, 2008, 2015). Yet the evidence on Tasmania’s criminal offence of family violence shows that it also has implementation problems relevant to Indigenous women.

In its submission to the Queensland Premier’s Special Taskforce on Domestic and Family Violence, the Queensland Police Union argued that a dedicated criminal offence would offer a more streamlined approach and move domestic violence “into a realm police are extremely familiar and comfortable with … [and]…would constitute a better use of police resources and time” (pp. 3-5). The Special Taskforce considered such an offence, as had the Australian and New South Wales Law Reform Commissions (ALRC & NSWLRC, 2010), but neither pursued this approach because of the lack of consensus on how the offence could be formulated. A key concern was the potential for another legislative scheme failing to effectively respond to coercive controlling violence, to the detriment of women. An evaluation of Tasmania’s Safe at Home strategy, incorporating the *Family Violence Act 2004* (Tas), underscores this concern.

The aim of the Tasmanian legislation is “to provide for an integrated criminal justice response to family violence” (*Family Violence Act 2004* (Tas)). It operates within a pro-arrest policy framework and requires a presumption against bail. Recognising that family violence does not always involve physical violence, its definition includes “threats, coercion,

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100 I was one of eight members of this Taskforce, which also included the Chair (Dame Quentin Bryce), four members of Parliament, one Aboriginal elder from a remote community and the Chief Executive of a major, state-wide, non-government organisation.
intimidation or verbal abuse” among a list of behaviours in the same way, with the same problems, as the Domestic and Family Violence Protection Act 2012 discussed above.\textsuperscript{101}

The most recent evaluation of the Safe at Home strategy (SuccessWorks, 2009) found “almost one-third of Tasmania’s family violence offenders” (p. 63) are women and that in 25% of cases (N = 740) in which women were offenders, their partners were also arrested (i.e. dual arrests), compared to dual arrests in about 8% of cases involving men as offenders. Mutual coercive control is not possible; one is either subjugated or the subjugator. Therefore, in cases of dual arrest, either the couple is engaged in a fight or one partner, most likely the female, is actually the victim of coercive controlling violence. The consequences of arresting victims of coercive control include distrust of police, increased vulnerability to the perpetrator’s manipulation, and a criminal record resulting in loss of rights and opportunities (Braaf & Sneddon, 2007). This affects access to employment and housing, and it exposes women, particularly, to intervention by statutory child protection services (Cripps, 2012). All these consequences also apply to women convicted of breaching a cross-DVO, most of whom, in my sample, had been engaged in a fight with their partner. There are other significant negative implications of cross-DVOs in cases of coercive control and resistance, whether or not the DVO is breached. They include: the justice system’s failure to identify the real perpetrator, the legal system’s indirect collusion with perpetrators in reinforcing his control over her, the aggrieved’s re-victimisation by the justice system, and a practical and symbolic negation of law (Nancarrow, 2012). The real victim may be vulnerable to further and potentially increased violence.

Drawing on Stark’s conceptualisation of coercive control, the United Kingdom’s Home Office (2015) introduced a provision in the Serious Crime Act 2015 (UK) titled “Controlling or coercive behaviour in an intimate or family relationship” (s 76). Douglas (2015, p. 465) identifies two “significant concerns about the application of the provision … it may be

\textsuperscript{101} Sections 8 and 9 of the Act provide specific offences of economic abuse and emotional abuse or intimidation, respectively. They aim to capture the concept of a course of conduct designed to coerce or control an intimate partner. Section 8 prohibits a course of conduct related to finances with “intent to unreasonably control or intimidate his or her spouse or partner or cause …mental harm, apprehension or fear”. Section 9 prohibits a course of conduct by a person that “knows, or ought to know, is likely to have the effect of unreasonably controlling, or intimidating, or causing mental harm, apprehension or fear”. See Douglas (2015) for further discussion of these specific provisions and problems with implementation.
difficult to prove the offence, and … it may capture some behaviours that might … occur in non-abusive relationships”. These comments echo similar concerns held by Rathus (2013), Flood (2003), and myself in this research. Douglas offers, instead, a model provision for an offence of “Cruelty” that could be drafted into Queensland’s Criminal Code Act 1899, with potential for inclusion in other jurisdictions’ legislative frameworks. The proposed provision defines cruelty as meaning, “the infliction of pain or suffering on a person by an act or series of acts done on 1 or more than 1 occasion” (Douglas, 2015, p. 468). Cruelty to a person in a “relevant relationship” (linked to the definition of a relevant relationship in the Domestic and Family Violence Protection Act 2012) would be an aggravating circumstance, resulting in a higher penalty. Comparing her proposed provision to the existing “Torture” provision in the Criminal Code, Douglas notes the offence of cruelty could be dealt with as a summary offence for lower level offending, at the discretion of the court, and that there would be “no requirement for the offender to ‘intend’ to cause severe pain and suffering” (2015, p. 469). The proposed provision overcomes the perceived problem of proving the offence in the UK law although it seems very likely that, like the UK law, it would also “capture some behaviours that might … occur in non-abusive relationships” (Douglas, 2015, p. 465). That is, women engaged in fights, or violent resistance, may be subject to a criminal offence of cruelty, rather than a DVO breach offence, or both.

Douglas (2015) concedes that for some groups, including Indigenous Australians, there are particular risks of her proposed offence of cruelty and its associated emphasis on a criminal response: “it is not always easy for police to identify victims and perpetrators and … criminalisation of women … victims remains a concern” (p. 471).102 This is precisely the concern I have with continued reliance on law, and law reform, to get to the problem of men’s coercive control of women in a culturally diverse and unequal context.

SUMMARY

My research findings corroborate and extend previous research. They emphasise the importance of meaning attached to violence by victims and perpetrators, and the continuing eschewal of Indigenous Australian perspectives in the construction of law and legal

102 Douglas (2015) also asserts a criminal justice process should be seen as just one component of a broader social service response.
processes. Contemporary forms of Aboriginal dispute resolution and the chaos of extreme disadvantage and social exclusion make Indigenous women especially vulnerable. Indigenous women have long sought alternatives to the formal criminal justice system but the mainstream focus on men’s accountability to the state has muffled their calls and they remain beyond the boundary fence.

Legal scholars and legislators are working towards delineating coercive control from fights in law, and feminist advocates and conservative forces (e.g. the Queensland Police Union) continue an unlikely alliance in pursuing criminal law responses to domestic violence, albeit for different reasons. However, current and proposed laws do not overcome fundamental problems for women. Definitions of domestic violence that include fights will continue to unintentionally bring into the criminal justice system women who fight back, or just fight; and definitions that exclude fights, will disadvantage women for whom cases of coercive control cannot be established. There are risks in asking the police and courts to distinguish between coercive control and fights; but failing to make a distinction, combined with the predominantly formulaic police and court responses, compromises the value of domestic violence laws for women, especially for Indigenous women. Conflating coercive control and fights to avoid the potential misdiagnosis of types of violence (and, thus, avoid erroneous exclusion from state sanctions), results in women being subjected to laws designed to protect (white) women. That is, if the law excluded fights, some men who use coercive, controlling violence would evade the power of the law to place conditions on them; but the inclusion of fights to reduce the chances of evasion, results in the entanglement of fighting women in the criminal justice system. Indigenous women are more entangled than others are because of their cultural and post-colonial contexts, and specific legislative provisions designed from the perspectives of non-Indigenous women.

Let us return briefly to the rationale for the police power to make applications without the consent of the victim: “if police require the permission of victims before proceeding ... psychological pressure will be applied to prevent the victim granting that permission” (Warner, 1989, p. 4423). First, the premise of this police power is that it is responsive to cases of coercive control. However, some cases are fights and the police make no distinction between them because the law makes no distinction. Thus, the police have adopted a formulaic response. Second, it assumes that the DVO will stop the violence, while my
research has shown that it is more effective in stopping women’s violence than men’s violence. Distinguishing between coercive control and fights is difficult and potentially dangerous. Further, asking the police to ignore fights would be a retrograde step, risking a return to minimising violence against women, and an attitude that domestic violence is not the real business of policing. We should not discount, however, the feasibility of a different balance of power between the police and victims. Goodmark (2012, pp. 164-167) envisages such a model, in which elements of the criminal justice system are resources for victims. In the concluding chapter, I will consider this and other possible approaches relevant to my research findings.
9. CONCLUSION AND IMPLICATIONS

Based on the findings of this research, along with the relevant literature, I have come to three major conclusions.

1) Gendered aspirations in civil domestic violence law have backfired for many women, particularly Indigenous women, because they fail to recognise racialised realities and do not give victims of violence choice about legal intervention.

2) We must accept the limitations of law to advance women’s interests and establish alternative justice strategies that recognise the differences among women.

3) We need structural reform that addresses gender and racial inequality to enable Indigenous women to live free from violence in safe communities.

In the following discussion, I consider each of these in depth and their implications for policy and practice.

GENDERED ASPIRATIONS AND RACIALISED REALITIES

A centrepiece of the civil domestic violence law’s logic is the need for the state to hold perpetrators accountable and that this requires state control over decision-making. Instead of being a resource for victims of violence, the implementation of the law reconstructs victims as a (potential) resource for the police and courts in prosecuting DVO applications and breaches. The logic is relatively sound in circumstances in which the perpetrator subjects the victim to coercive control, creating an atmosphere of terror, and the victim is thus unable to exercise autonomy. The law’s weakness in these circumstances is its inability to distinguish between coercive control and other forms of violence, which gives coercive controlling men another instrument of power over women.

The logic of state power in civil domestic violence law is unsound in circumstances of Aboriginal dispute resolution, and fights, when victims do not want any intervention of the criminal justice system or want only immediate police intervention. In the case of chaos violence there is no logic at all: it represents an approach that is ineffective and unjust.
The current practice asserts state control over women and men who use violence, regardless of the context. From the perspective of many Indigenous women and men in Queensland, domestic violence laws must seem like a continuation of colonial protectionist laws, which licensed state police to intrude on Indigenous law and culture, and in Indigenous people’s lives. While such an intrusion is justified by the logic associated with coercive controlling violence, it is questionable in relation to fights, and it simply reinforces the conditions that have given rise to chaos context violence.

Nevertheless, we must not expect Indigenous women to put their needs and human rights behind those of the collective (McGillivray & Comaskey, 1999). Strategies must also recognise diversity among Indigenous women, as well as between Indigenous and non-Indigenous women. Indigenous women who are victims of coercive controlling violence (perpetrated by Indigenous or non-Indigenous men), and some of those involved in fights, may want the kind of police and court intervention currently available.

**Implications**

As I have shown here and previously (Nancarrow 2006, 2010), Indigenous women are more concerned about the white character, than the male character of the law. Similarly, Daly (2008) notes that an intersectional way of doing justice requires non-Indigenous women to recognise the class and racialised interests, as well as the male interests, which operate in the state’s apparatus.

If we are to move genuinely to an intersectional justice position, we must meet several conditions. First, Indigenous women must have an equal place at the negotiating table when considering the role of the state and any other strategies directed towards ending violence against women and their children. Next, we must recognise that intimate partner violence is not necessarily coercive control and violent resistance. This represents a major shift in the current domestic violence response paradigm and there are risks associated with it. The current approach, however, negatively affects women and may partially explain the mixed results on effectiveness of perpetrator interventions based on an analysis of power and control. Managing the paradigm shift requires a sound intersectional analysis, giving equal priority to racialised, class and gender interests to avoid co-option by a countermovement. Following from this is the need to enable victim’s choice about state intervention as a
response to violence. This has to be a genuinely free and informed choice, based on assessment of safety risks and the likely consequences of various options in the particular circumstances (e.g. access to economic security, social and family support and children’s well-being). Goodmark (2012) suggests that the police could facilitate this process at the time of intervention. The police should be, and have been, trained to respond more effectively to intimate partner violence, but facilitating informed decision-making requires specialised skills and knowledge of a wider set of social services, which may be unreasonable to expect. Specialisation within the police service, so that some police have higher level training to respond in this way, may go some way to alleviating this concern. However, such a strategy is likely to be of benefit in metropolitan and large urban areas, but not in rural and remote areas of the state where there are fewer police. Further, the process of facilitating informed choice and decision-making is dependent on mutual trust and respect, and many Indigenous people do not trust police.

It is now routine police practice to separate couples at the time of an investigation, and this presents an opportunity for a co-responder to do this work. Collaborating with the police, a co-responder could implement the process of identifying the dynamics and meanings attached to the violence, and work with the victim to consider options and consequences in her specific circumstances, thus facilitating informed choice. In this way, the law and the police become resources for victims. Limits that pertain to choice in criminal assault matters, such as no choice in cases of assault causing grievous bodily harm, could still apply.

Co-responder initiatives already exist in various forms in Australia (Centre for Innovative Justice, 2015), but none appears to involve assessments of the meanings of violence and the appropriate response at the time of police intervention. They are focused on immediate safety and practical needs of the victim and, more recently, referral to Men’s Behaviour Change Programs (Centre for Innovative Justice, 2015). These are necessary and important but they are centred on conventional legal responses. Therefore, a woman who does not want such intervention, may also resist, or find irrelevant, associated non-legal assistance. Enabling a woman to make an informed choice about legal intervention may increase her engagement with resources that can change her material circumstances (Goodmark, 2012).

Within the current parameters of justice responses to domestic violence, genuine informed choice about legal intervention may be interpreted as deciding whether to proceed with a
DVO application, criminal charges, or both. An intersectional justice approach would recognise the right to choose alternative justice responses, as advocated by Indigenous women (Robertson, 2000; Nancarrow, 2006, 2010). This brings me to the second major conclusion.

**ALTERNATIVE JUSTICE STRATEGIES**

Holding perpetrators accountable is a priority goal of the National Plan to Reduce Violence against Women and their Children 2010-2022 (the National Plan) (COAG, 2011). The National Plan does not articulate what accountability means and for whom, nor how to achieve it beyond criminal justice intervention and perpetrator programs. Although the formal criminal justice system is an important symbolic instrument of accountability (Daly, 2002; Hudson, 1998, 2002; Stubbs, 1994, 2002), it faces several challenges in achieving it. As my research has shown, cases may cycle repeatedly through the criminal justice system without engagement of respondents in the process in any meaningful way. Indigenous respondents, particularly, may reject its legitimacy as an accountability mechanism (Fagan, 1996; Sherman, 1995, Marchetti, 2015) and as raised by people I interviewed, some respondents’ capacity to comprehend the meaning and consequences of legal action against them is impaired. Finally, perpetrators of coercive control manipulate the criminal justice system, and their victims are caught up in it instead (Flood, 2003; Wangmann, 2009).

Domestic violence perpetrator programs have operated in some Australian jurisdictions since the 1980s and more recently have been recognised as “an essential part of an effective plan to reduce violence against women and their children” (COAG, 2011, p. 29). Approaches to perpetrator programs vary widely (Mackay et al., 2015). Those funded by governments, however, are subject to state-based practice standards, which prohibit or advise against particular methods, including family therapy, couples counselling (Mackay et al., 2015) and anger management (No To Violence & Red Tree Consulting, 2012). The logic of the standards, like the logic of the domestic violence laws, is predicated on coercive controlling violence, not the kind of fights that Stark (2006, 2007) had in mind, and which feature in my research.

Australian research on perpetrator programs consistently highlights the need to tailor programs for Indigenous men to take account of their racialised circumstances. These include
the complex interaction of post-colonial factors contributing to violence by Indigenous men (Bartels, 2010), distrust of state authorities (Tasmania, Department of Justice, 2009), and the need for a strong foundation in culture and healing (Mosby & Thomsen, 2012). The practice standards referred to above are somewhat inconsistent with the evidence on good practice for interventions with Indigenous people. There are several perpetrator programs for Indigenous men developed with Indigenous contexts at the forefront of practice, but these are rare. They include the Gatharr Weyebe Banabe Program in Central Queensland (Mosby & Thomsen, 2012), Kornar Winmil Yunti in South Australia (Mackay et al., 2015), and Marra’ka Men’s Family Violence Prevention Program in Central Australia (Centre for Innovative Justice, 2015). Further, although perpetrator programs were initially an alternative to the legal system (Mackay et al., 2015) they are increasingly connected to legal intervention (Centre for Innovative Justice, 2015). Nevertheless, putting the broader social justice needs ahead of safety for women and children is untenable, but as Daly (2008) points out advancing both is possible.

Along these lines, Indigenous women in Queensland have called for consideration of restorative justice as an alternative to domestic and family violence (Robertson, 2000). However, current models are not consistent with their concepts of an alternative public site for accountability, community ownership (self-determination) and healing for victims and perpetrators (Kelly, 2002; Nancarrow, 2006, 2010). Further, feminist scholars and advocates have resisted the use of restorative justice for cases of domestic violence, due to concerns that offender and community interests will be prioritised over those of victims (Coker, 2002; Daly & Stubbs, 2006; Stubbs, 2004). Nevertheless, innovative justice continues to inspire, particularly those considering justice models to accommodate racialised interests (Daly, 2016). Further research and development of innovative justice practices for cases of domestic violence (and sexual violence) are underway, planned or recommended internationally (Farmer & Callan, 2012; Respect, 2015) and here in Australia (Centre of Innovative justice, 2015; Mackay et al., 2015).

Meanwhile, findings of research on Indigenous-focused justice strategies responding to partner violence (Marchetti, 2010, 2015; Marchetti & Daly, in press) emphasise the importance of “a re-kindling of Indigenous values” (Marchetti & Daly, in press, p. 17) in processes that seek to hold Indigenous offenders accountable and support desistance from
offending. In considering offenders’ perceptions of justice and procedural fairness, for example, Marchetti (2015) found that what mattered most was the involvement of Elders and the inclusion of cultural values in the process. When this occurs, and Indigenous identity is valued, transformation for Indigenous offenders can begin, although Marchetti and Daly (in press) underscore the circuitous path to desistance. The justice strategies featured in their research are adaptations of the mainstream criminal courts rather than alternative or diversionary processes. These Indigenous-focused justice strategies have the “potential to address and allay the concerns raised by feminist restorative justice scholars” (Marchetti, 2015, p. 103) and they go some way to responding to Indigenous concepts of justice (Behrendt, 2003; Nancarrow, 2006) by including Elders in decision-making. However, since they are adaptations, or extensions of the state apparatus, they do not address the question of sovereignty and the legitimacy of the state (Davis, 2009; Watson, 1997).

Implications

Research and development of innovative justice models and perpetrator interventions must recognise the difference between coercive control and fights, and ensure that strategies for both accommodate gendered and racialised interests. For decades, consultation and advocacy on behalf of Indigenous Australians has in many cases translated to meaningless and ineffective action. Mainstream advocates and policy-developers must support Indigenous women and men to research and develop effective responses to violence that are meaningful to them. This does not necessarily mean making more government funding available, but it does mean giving decision-making power to local Indigenous communities to determine how funding is spent. Local Indigenous people should also control processes and timeframes for decision-making. Local control is important because Indigenous people’s contexts and experiences are diverse and one cannot assume that meaningful innovations in one community will translate to others.

There is increasing recognition of the centrality of Indigenous law and culture in effective violence prevention policy and practice (Blagg, Bluett-Boyd, & Williams, 2015), and the promise of hybrid initiatives in what Blagg (2008, pp. 54-55) calls the liminal space between the Aboriginal and non-Aboriginal domain. Rather than obstructing Indigenous women’s efforts to create innovative justice models sensitive to their intersectionality within that liminal space, non-Indigenous advocates and policy-developers could assist in navigating the
pitfalls through lessons learned from feminist analysis of innovative justice models (Marchetti, 2010, 2015; Marchetti & Daly, in press).

Distinguishing between coercive control and fights can also support the appropriate development of practice standards for perpetrator programs, in which family therapy, couples counselling and anger management may have a legitimate place in models developed by and for Indigenous women and men to address fights.

In traditional Aboriginal dispute resolution, both men and women legitimately express anger through aggression. However, men can exploit physical strength to prevail in fights with women, and fights where alcohol or chaos are involved are particularly dangerous (Cussen & Bryant, 2015b). In considering the broad-based cultural change needed to end violence against women, it is likely that only strong law women and men have the necessary legitimacy to lead an end to fighting as dispute resolution.

Hybrid or innovative justice models (Blagg, 2008; Daly, 2016; Marchetti, 2015; Marchetti & Daly, in press) offer meaningful accountability mechanisms for violence, particularly fights. These types of violence require responses that are more effective. However, in considering new forms of justice for violence against women, Daly and Stubbs (2006) contend that “feminist and anti-racist theories and politics must engage with these developments … [but] we should expect modest gains and seek additional paths to social change” (p. 23). A substantial minority of Indigenous people are living in circumstances of utter chaos, contributing to extreme levels of violence. Engaging Indigenous cultural values in justice processes shows promise; however, the physical and psychological damage wrought by inter-generational trauma, extreme alcoholism, and other social-determinants of violent behaviour may be more effectively dealt with through social-medical responses in the short term, and structural reform that changes their material circumstances in the longer-term.

**STRUCTURAL REFORM FOR VIOLENCE PREVENTION**

Non-Indigenous perspectives put primary emphasis on gender inequality as a driver of violence against women (Our Watch, ANROWS & VicHealth, 2015). However, those I interviewed said that high rates of Indigenous violence and the lack of compliance with court orders were a consequence of extreme disadvantage and chaos for Indigenous people in the
research sites, and the remote communities to which their courts extended. What they said echoes decades of evidence in numerous reports. Far from being an expression of male power and control, much of the violence is better characterised as an expression of (relative) powerlessness and a lack of control for both Indigenous men and women over their own lives. Following Schechter (1989), the movement against high rates of violence against Indigenous women must direct actions to stopping extreme disadvantage and social exclusion of Indigenous people, as well as to increasing gender equality. That is, actions must be directed simultaneously to address both gender and racialised inequality.

The 2016 Prime Minister’s report on Closing the Gap between Indigenous and non-Indigenous Australians shows “mixed levels of success in meeting the targets set by the Council of Australian Governments (COAG) in 2008” (Department of Prime Minister and Cabinet, 2016, p. 5) to reduce Indigenous disadvantage. Of six targets set, two are on track for success: halving the gap in child mortality by 2018 and halving the gap in year 12 attainment by 2020. Targets not on track for success are closing the gap on life expectancy, halving the gap on literacy and numeracy, closing the gap in school attendance, and halving the gap in employment. Thus, closing the gap on Indigenous disadvantage within the life of the National Plan to Reduce Violence against Women and their Children 2010-2022 seems impossible.

Leading into the 2016 Federal election on 2 July, the National Congress of Australia’s First Peoples led 18 Indigenous peak bodies in a call to government action on Indigenous disadvantage in the following areas: meaningful engagement with Indigenous peoples, health, justice, violence prevention, early childhood, and disability (The Redfern Statement, 2016). The Redfern Statement also calls for the Government to “implement the recommendations of the Council for Aboriginal Reconciliation, which includes an agreement making framework (treaty) and constitutional reform in consultation with Aboriginal and Torres Strait Islander peoples and communities” (National Congress of Australia’s First Peoples, 2016, p. 6).

Indigenous leaders (AHRC, 2010) and others (e.g. Brown, Cunneen, Schwartz, Stubbs & Young, 2016; Centre for Innovative Justice, 2015; Schwartz, Brown & Boseley, 2012) hold hope for justice reinvestment as a strategy to overcome Indigenous disadvantage. Briefly, justice reinvestment originated in the USA as a strategy to reduce incarceration rates. It aims to do this by directing funds away from increasing prison capacity and toward supporting
“high risk communities to build crime reducing social infrastructure and enhance social cohesion” (Schwartz et al., 2012).

For Brown et al (2016), justice reinvestment has the potential to encourage and support what they call “Indigenous democracy” in Australia. Local context and commitment to “a process of democratisation and empowerment …” (Brown et al., 2016, p. 103) is critically important in the design and implementation of justice reinvestment in communities. Thus, place-based policy and action, central to justice reinvestment, should mean that “policy priorities, linkages and service delivery models are determined through community decision-making and negotiated with different levels of government” (Brown et al., 2016, p. 95). Brown et al contrast this “bottom-up” approach with the “top-down” government approach to place-based planning, which focuses on geographic boundaries, and cannot harness the local context in the way the community itself can.

Brown et al also point to the need for inclusion of women, people with mental illness or cognitive disability, and racialised groups in justice reinvestment initiatives. Women and people with mental illness or cognitive disability (here I think of FASD) may be marginalised within local Indigenous community leadership, but they have a high risk of imprisonment. The needs of women subjected to men’s violence should also be a primary consideration in justice reinvestment initiatives. It is encouraging that a justice reinvestment trial at Bourke in western New South Wales includes a “building safer communities for women” initiative, funded by the Commonwealth Government and subject to action research. The Bourke trial commenced in 2014, but added the initiative for women’s safety in 2016 so the first action research cycle is not complete.

Finally, Brown et al (2016) warn that governments and other decision-makers should not expect that the substantial and immediate benefits achieved through justice reinvestment in the USA would translate directly to the Australian political and policy context, which is vastly different. Marchetti (in Clear, Marchetti & McNamara, 2016) echoes and extends this concern. She argues that the ability to “convince governments to take a social justice approach to crime and punishment and be the inspiration we need to do things differently” (p. 126) depends on how programs are evaluated. That is, measuring the success of justice

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103 Personal communication with the Senior Action Research Support Officer, 15 August 2016.
reinvestment initiatives must also be “bottom-up” and from “the worldviews and perspectives of the community involved” (Clear, Marchetti & McNamara, 2016, p.127).

Implications

Closing the gender gap may have a positive effect on reducing coercive controlling violence. Fights, however, are not predominantly an expression of men’s power over women so gender equality is unlikely to have any effect on fights, especially in Indigenous communities where fights arise from traditional dispute resolution and the chaos created by inter-generational trauma. Thus, structural reform that advances gender equality but not racial equality risks escalating rates of violence against Indigenous women, compared to non-Indigenous women. Similarly, strategies for addressing Indigenous disadvantage, such as justice reinvestment, must also pay attention to the intersections of gender and race, to avoid advancing the interests of men and boys over women and girls. Finally, governments and mainstream services must support local communities to determine, drive and measure the success of innovative justice mechanisms to advance Indigenous interests in a local context.

Closing Comments

Conducting this research has been a challenging experience, not simply because it is a doctoral thesis, which brings its own particular kind of stress. I found the cases I analysed, especially those of the Indigenous women, distressing, although this is not the first time I have been exposed to, or sought to address, the injustice of colonial, state and men’s violence against Indigenous women. What worries me most is whether it is possible to make the changes required in mainstream feminist analyses of intimate partner violence to accommodate an intersectional analysis without undermining the gains of the feminist movement. In other words, I wonder if it is possible to construct a law and implementation practice that accomplishes these three key objectives:

- recognition of women’s agency in fights,
- victims’ choice in engaging agents of the criminal justice system, and
- unequivocal state sanctions against patriarchal coercive control of women.
If not, we are left with the current situation in which individual male power is replaced with state (white male) power over women’s autonomy, which is especially detrimental to Indigenous women in remote communities.

My focus has been on the legal system’s response to intimate partner violence. However, the paradigm shift I propose has implications for every aspect of the system we have built to stop men’s violence against women. I have shown that civil domestic violence law, the police, and courts make no distinction between coercive control and fights, thus bringing women and men engaged in incident-based fights into the criminal justice system. I have shown that gendered aspirations in law, which give the police exceptional power and remove victim choice, are especially problematic for Indigenous women. I have argued, however, that we must not ignore diversity among Indigenous women and that victims of violence must be supported to make an informed choice about if, when and how to engage agents of the criminal justice system.

Coercive controlling violence is insidious and used almost exclusively by men to control women, including through their manipulation of the legal system. Fear of this kind of control and manipulation has quashed advocacy for alternative justice responses to intimate partner violence. Distinguishing between coercive control and fights can address the unintended negative consequences of legal responses to intimate partner violence and hold men accountable. Doing so effectively relies on sound feminist intersectional analysis and policy development, based on genuine partnerships between Indigenous and non-Indigenous women.
REFERENCES

List of legislation

Aboriginals Preservation and Protection Act 1939 (Qld)

Aborigines Protection and Restriction of the Sale of Opium Act 1897 (Qld)

Crimes (Family Violence) Act 1987 (Vic).

Criminal Code Act 1899 (Qld)

Domestic Violence (Family Protection) Act 1989 (Qld)

Domestic and Family Violence Protection Act 1989 (Qld)

Domestic and Family Violence Protection Act 2012 (Qld)

Family Law Act 1975 (Cth)

Family Violence Act 2004 (Tas)

Peace and Good Behaviour Act 1982 (Qld)

Serious Crime Act 2015 (UK)


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Wangmann, J. (2009). 'She said...' 'he said...': *Cross applications in NSW apprehended domestic violence order proceedings.* (Unpublished doctoral dissertation: Faculty of Law), University of Sydney, New South Wales.


Appendix 1: Location of research sites

Remote communities/courts: Indigenous communities (Yarrabah, Kowanyama, Doomadgee, Bamaga, Aurukun, Thursday Island, Pormpuraaw, Lockhart River); Gulf of Carpentaria (Normanton, Mornington Island, Weipa, Burketown); Far West (Dajarra, Boulia and Camooweal) and Cape York (Cooktown).

Other: Cairns, Mt Isa, Brisbane, Biloela, Mossman, Cloncurry, Atherton, Clermont, Townsville, Ingham, Mareeba, Beenleigh, Emerald, Bundaberg, Rockhampton, Gladstone, Maroochydore, Hughenden, Mackay, Caboolture, Maryborough, Tully, Nanango, Petrie, Holland Park, Redcliffe, Goondiwindi.
Appendix 2: Participant Recruitment

Appendix 2.1: Recruitment protocol

School of Criminology and Criminal Justice
Mt Gravatt Campus Griffith University
176 Messines Ridge Road
Mt Gravatt QLD 4122
Australia

Telephone +61 (0)7 3735 5627
Facsimile +61 (0)7 3735 5608
www.griffith.edu.au

Protocol No: CCJ/27/11/HREC

Research Project:
Aspirations and realities: Aboriginal and Torres Strait Islander women's experiences of mainstream domestic violence legal policy¹

Participant Recruitment Protocol

Who is conducting the research?

Ms Heather Nancarrow
PhD candidate
School of Criminology and Criminal Justice
Mt Gravatt Campus
Griffith University

Email: heather.nancarrow@griffithuni.edu.au

Under supervision of:

Principal supervisor
Professor Kathleen Daly
School of Criminology and Criminal Justice
Griffith University
Tel: (07) 3735 5625
Email: k.daly@griffith.edu.au

Associate supervisor
Professor Elena Marchetti
Faculty of Law
University of Wollongong
Tel: (02) 4221 4632
Email: elenam@uow.edu.au

¹ This was the working title for the thesis. It was changed after all data had been collected.
This document sets out the steps for referring prospective research participants to the researcher. The researcher is seeking to interview adults in the following four groups.

**Group 1:** Aboriginal or Torres Strait Islander people who have experienced intimate partner violence and associated legal intervention, and for whom there is not likely to be an unacceptable risk of distress, or further abuse, by participating in the research.²

**Group 2:** Non-Indigenous people who have experienced intimate partner violence and associated legal intervention, and for whom there is not likely to be an unacceptable risk of distress, or further abuse, by participating in the research.

**Group 3:** Police prosecutors with extensive experience in presenting police applications for DVOs to the Magistrates’ Court and prosecuting DVO breaches.

**Group 4:** Service Providers/Advocates with extensive experience in providing support to and assistance, including assistance with matters before the courts, to Aboriginal or Torres Strait Islander people who have been directly affected by domestic and family violence and who have been the subject of legal intervention.

**Step 1: Identifying and recruiting potential research participants**

*Domestic and family violence service providers/advocates will:*

Identify people within one or more of the four research participant groups who are of sound mind and body, and who may be interested in participating in the research.

Using the relevant Information Sheet, discuss the research project with those people and ask them if they would be willing to talk to the researcher about the possibility of participating in the research through an interview;

Confirm appropriate contact details for those who wish to speak with the researcher (prospective participants).

**Step 2: Facilitating contact between prospective participants and the project team**

*Service providers/advocates will:*

- Provide to the researcher by email or fax (see attached template) the contact details for clients and police prosecutors interested in participating in the project. This will include any particular information regarding prospective participant needs, such as best times to call, and consent of the prospective participant to pass the details on;

- Provide, where possible, access to a meeting room suitable for the conduct of a confidential interview.

*The researcher will:*

- Acknowledge receipt of contact details from the service provider and make contact with the client at the earliest possible opportunity to discuss the project; and

- In consultation with the prospective research participant, arrange a venue to obtain informed consent and conduct the interview.

² If a person is likely to suffer distress or experience further abuse because of participation in the research, please do not invite them to consider participating.
The following person is interested in participating in the above research.

Name: ___________________________________________________________

Contact phone number: ____________________________________________

Best time to contact: _____________________________________________

She/he is in the following research participant group:

Group 1: [ ]  Group 2: [ ]
Aboriginal or Torres Strait Islander people with lived experience  Non-Indigenous people with lived experience

Group 3: [ ]  Group 4: [ ]
Police prosecutors  Service Providers / Advocates
Appendix 2.2: Information and consent forms

School of Criminology and Criminal Justice
Mt Gravatt Campus Griffith University
176 Messines Ridge Road
Mt Gravatt QLD 4122
Australia

Telephone +61 (0)7 3735 5627
Facsimile +61 (0)7 3735 5608
www.griffith.edu.au

Protocol No: CCJ/27/11/HREC

RESEARCH PROJECT:
Aspirations and realities: Aboriginal and Torres Strait Islander women's experiences of mainstream domestic violence legal policy

INFORMATION SHEET AND CONSENT FORM
Aboriginal and Torres Strait Islander people with experience of intimate partner violence and justice system intervention

Who is conducting the research?

Ms Heather Nancarrow
PhD candidate
School of Criminology and Criminal Justice
Mt Gravatt Campus
Griffith University

Email: heather.nancarrow@griffithuni.edu.au

Under the supervision of:

Principal supervisor
Professor Kathleen Daly
School of Criminology and Criminal Justice
Griffith University
Tel: (07) 3735 5625
Email: k.daly@griffith.edu.au

Associate supervisor
Professor Elena Marchetti
Faculty of Law
University of Wollongong
Tel: (02) 4221 4632
Email: elenam@uow.edu.au
INFORMATION SHEET

(Service worker to provide and discuss with prospective participant)

Why is the research being conducted?

Heather Nancarrow is very concerned about domestic and family violence and has a lot of experience working on this. Heather is required to complete original research that provides new knowledge to get her doctorate (a PhD) in Criminology and Criminal Justice at Griffith University. She wants to do this research project to make sure Aboriginal and Torres Strait Islander people get the best possible response from the police and the courts, so that domestic and family violence can be stopped, or significantly reduced. Heather knows that domestic and family violence is a big problem for other Australians too, but the laws against domestic and family violence are made and applied, through the police and courts, mostly by people who are not Aboriginal or Torres Strait Islander. Some people report that this leads to unhelpful responses and may even make problems worse. Heather wants to show how domestic and family violence law is being used for cases involving Aboriginal and Torres Strait Islander people, compared to other Australians; how they experience the police and court process; what happens as a result; and what needs to change, if anything, to make the law, and the police and court response the best they can be for Aboriginal and Torres Strait Islander people affected by domestic and family violence.

How potential participants have been selected

Aboriginal and Torres Strait Islander people who have been involved with police and courts because of domestic or family violence will be first invited to talk to Heather by a support worker. Support workers will only ask some-one to talk to Heather if they are sure the person would not be too distressed by talking about their experience and would not be further abused because they talked to a researcher about it.

Heather will also interview service providers and police prosecutors with a lot of experience in dealing with domestic and family violence. They will be identified by other service providers and police prosecutors in their community.

What you will be asked to do

Heather wants to hear your story about domestic or family violence, especially the way the police and court have been involved, and what has happened since. To help focus on some particular things in your story some questions might be asked, such as:

a) How did the police and courts get involved and what was that like for you?

b) Was that the first time you were involved with the police and courts?

c) Have you been involved with the police and courts for other things before, or since, this one related to domestic or family violence?; and

d) What difference, for better or worse, has going to court made in your life?"

Heather would like to record your story so she doesn’t miss anything you say. The meeting can be held somewhere you feel comfortable and you can have some-one else with you, if you want to. The meeting might last for 45 minutes or an hour. Heather will give you a $20 gift card in appreciation for your contribution.
You will be asked to give your consent to participate in the research before you begin to tell your story. You can give consent by telling Heather you understand what’s involved and that you agree to go ahead. If you give consent, Heather will record this on a consent form.

**The expected benefits of the research**

The research will get important information for developing future changes in domestic and family violence laws, and how they are used by police and courts, to get the best outcomes for Aboriginal and Torres Strait Islander people affected by domestic and family violence.

As individuals and members of Aboriginal and Torres Strait Islander families and communities, research participants will benefit directly and/or indirectly from the collective knowledge gained about the domestic and family violence law and its use. It will help them to tell the government what needs to be done to get better responses to domestic and family violence to help stop it. Stopping, or at least reducing the prevalence of domestic and family violence means safer, healthier and happier people and communities.

**Risks to you**

Some participants may get upset just telling their stories and some people may be at risk of further abuse if a person who has previously abused them becomes aware of their participation in the research. Every effort is being made to avoid these things happening. Heather has asked service providers to take the first step in inviting people to participate in the research because they will know better than she will if some-one is likely to get upset or will be at risk of further violence. Service providers will only invite those people who they are sure will be emotionally and physically safe. But you should also think about the possibility of these things happening to you when you are deciding whether or not to participate in the research. You don’t have to meet with Heather alone. You can have some-one else, like a support worker or a friend or relative, with you if you want. If you ever need to get free, confidential help because of the effects of domestic or family violence, you can call DV Connect on 1800 811 811 or see some-one at a local support service.

**Your participation is voluntary, and confidential**

Your participation in this research is completely up to you and you are free to stop participating at any time. Your personal details will not be shared with any-one and public information from the research will not name any of the participants, or include any other information that might identify any one of them. Your participation is completely confidential unless you say something that suggests you, or some-one else, is at risk of significant harm. In that case, Heather may need to discuss what you said about that with me, or some-one else from the agency, so we can be sure every-one is safe. She will invite you to be part of that discussion. Griffith University’s Privacy Plan can be seen at [http://www.griffith.edu.au/about-griffith/plans-publications/griffith-university-privacy-plan](http://www.griffith.edu.au/about-griffith/plans-publications/griffith-university-privacy-plan) or you can telephone (07) 3735 5585 for information about it.

**The ethical conduct of this research**

Griffith University conducts research in accordance with the National Statement on Ethical Conduct in Human Research. If you have any concerns or complaints about the ethical conduct of the research project you should contact the Senior Manager, Research Ethics and Integrity on (07) 3735 5585 or research-ethics@griffith.edu.au.

**Feedback to you**

The results of the research will be finalised, and presented as Heather’s doctoral (PhD) thesis, sometime in 2012. The research results will be presented in public, such as the annual Indigenous Family Violence Prevention Forum, convened by the Queensland Centre for
Domestic and Family Violence Research (www.noviolence.com.au) and at a public meeting in communities who have assisted the research and wish to have a presentation on the results. Again, no individuals will be identified in the presentations. The research results will also be available in various publications, such as academic journals.

You can also request a plain English summary of the research results. There is a request slip for this attached to the consent form, which Heather will complete before the interview.

Questions / further information

If you have any other questions about this research, please contact Heather Nancarrow by telephone on: (07) 4940 7834 or by email at heather.nancarrow@griffithuni.edu.au.
Aspirations and realities: Aboriginal and Torres Strait Islander women and mainstream family violence justice policy

I, Heather Nancarrow, declare that _______________________________________________

has been provided with the detailed information about the project contained in the Information Sheet for Aboriginal and Torres Strait Islander people and confirms that she/he understands:

- This research is my doctoral research;
- participating in the research will include telling her/his story about involvement with the domestic and family violence laws, police and courts and make take up to 45 minutes or an hour;
- the risks involved;
- she/he may choose to have a support person with them for the story telling;
- participation in the research is completely voluntary and that she/he is free to withdraw at any time, without comment or penalty;
- any information provided will be reported in a general way in the research results and any published materials and public presentations;
- her/his name and other identifying information will be kept confidential, and will not be disclosed in any public documents or presentations from the research;
- if she/he says something that suggests some-one is at risk of serious harm I will discuss it with the person who referred her/him to me;
- her/his story will be recorded and that the recording will be transcribed;
- the recordings will be destroyed after they have been transcribed; and that the transcriptions will be destroyed five years after the completion of the project;
- there will be no direct individual benefit from participating in the research, but a $20 gift voucher will be provided to them to compensate for the time given;
- she/he can contact the Senior Manager, Research Ethics and Integrity on (07) 3735 5585 or research-ethics@griffith.edu.au if she/he has any concerns about the ethical conduct of the project;
- the results of the research will be included in a doctoral thesis, paper(s) in academic journals and other publications, and that the results may also be presented at a number of conferences and seminars, and a community meeting to present the results if the community accepts that offer;
- she/he can request a plain English summary of the findings, to be provided when the research and report writing have been completed.

(insert name) has given her/his oral consent to participate in this research project.

Heather Nancarrow

Signature: ___________________________ Date: / /
Aspirations and realities: Aboriginal and Torres Strait Islander women's experiences of mainstream domestic violence legal policy

Request for a copy of the plain English summary of research findings

Yes, I would like a copy of the summary of findings:

Email to:

Post to:
Name
Address
Appendix 3: DATA MANAGEMENT

Appendix 3.1: Availability of data for respondent and aggrieved cases

In the sample of 185 people charged with breaching a DVO (the respondent/perpetrator), 110 had also been the subject of a DVO naming them as the aggrieved/victim. As discussed in Chapter 3, the Department of Justice and Attorney-General (DJAG) provided a set of court files for the sample, including the following.

DJAG Files for sample

1. Details of all domestic violence order applications for the sample of 185 respondents (people who have been charged with breach of a DVO), including names, dates of birth, lodging authority (police or private application), date of application and outcome of application, including conditions on orders made.

2. Details of all DVO breach charges and outcomes for those in the sample.

3. Details, for the 110 people in the sample who had also been named as the aggrieved (victim) on other order/s, including, for example, dates of applications, lodging authority, the names and dates of birth of respondent/s of those applications, and the application outcomes. This made it possible to identify cross-DVOs and people in the sample who were victimised multiple times, and those victimised by multiple other people.

In some cases of cross-DVOs, the sample of 185 respondents charged with breaching a DVO includes both parties, so I have police reports of breaches for both.

In other cases (such as that of Doreen and Sam, discussed in Chapter 7), only one party to a cross-DVO is included in the sample of 185 respondents, and police reports of breaches are available for that party only. However, in some cases such as Doreen and Sam’s, the police reports refer to cross-DVOs and some refer to an event resulting in breach charges against both parties. If one of those parties (like Sam) is not in the sample, there is no information about their history of DVO applications and breaches.

That is, histories of DVOs and police reports of breaches are only available for both parties to a breach of a DVO, if the pair is included in the sample, as summarised below.

<table>
<thead>
<tr>
<th>Sample (185) Respondents</th>
<th>Respondent also aggrieved (110)</th>
<th>Pair included in sample?</th>
<th>Data available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case 1</td>
<td>No</td>
<td>Not applicable</td>
<td>DJAG files 1 and 2 only</td>
</tr>
<tr>
<td>Case 2</td>
<td>Yes</td>
<td>Yes (with case 3)</td>
<td>DJAG files 1-3 and police reports for both parties</td>
</tr>
<tr>
<td>Case 3</td>
<td>Yes</td>
<td>Yes (with case 2)</td>
<td>DJAG files 1-3 and police reports for both parties</td>
</tr>
<tr>
<td>Case 4</td>
<td>Yes</td>
<td>No</td>
<td>DJAG files 1-3; police reports for Case 4 (one party) only</td>
</tr>
</tbody>
</table>
Appendix 3.2: Data code book

LEGAL RESPONSES TO INTIMATE PARTNER VIOLENCE: GENDERED ASPIRATIONS AND RACIALISED REALITIES

ADMINISTRATIVE DATA CODE BOOK
CONTENTS

CODE BOOK STRUCTURE

VARIABLE SECTIONS

1. Respondents and other parties - demographics
2. Respondents’ records of domestic violence orders
3. Respondents’ records of domestic violence order breaches
4. Respondents’ records of breach-related Criminal Code charges
5. Respondents’ experiences as an aggrieved (victim)
6. Brief overview of cases
CODE BOOK STRUCTURE

Multiple domestic violence orders, breaches of orders (including breaches of ‘temporary orders’ and ‘orders’) and multiple charges under the Criminal Code are possible. All cases in the sample will have been named the respondent on at least one DVO and have been charged with breaching at least one DVO. The Code book allows data entry, for example, for up to three distinct DVOs, and three distinct breaches of DVOs, to be recorded. The last attribute for all variables related to a second or third DVO or breach is “999 not applicable”. Where relevant, the number 998 is used for “unknown”.

The dataset is organised in six sections. Section 1 provides demographic information about the respondents and up to three other parties (distinct victims of the respondents) on domestic violence orders. Section 2 deals with the respondents’ court records of domestic violence orders and section 3 deals with their court records of domestic violence order breach charges. Section 4 concerns charges under the Criminal Code 1899 (Qld) related to breach offences and relevant to some respondents in the sample. Some respondents have also been named the aggrieved (victim) on one or more DVOs and section 5 deals with respondents’ experiences as the aggrieved. Section 6 provides for a brief overview of the cases.

NOTES ON DATA FILES

HN Data sample. Summary of respondents with pseudonym provided and details of breach offences, from police reports.

Department of Justice and Attorney-General data (5 encrypted files on password-protected disc):

1. Domestic violence applications – respondent (the “respondent file”). All details for the sample respondents (people who have been charged with breach of a DVO).

2. Details of all breaches for sample. Details of the DVO breach charges and outcomes. No details for Criminal Code charges available.

3. Domestic violence applications- aggrieved. The “aggrieved file” provides a list of those in the respondent file (the sample) who are also named as the aggrieved (victim) on other order/s; and lists, for example, dates, lodging authority and the respondent/s of those other order/s so it is possible to see cross-applications.

4. Relationship code tables. Codes for relationship type e.g. SPOUS = spousal relationship; INPER = intimate partner relationship. These two categories of relationship are combined in the analysis of intimate partner violence unless otherwise stated.

5. Sample v2. Summary details for each person in the dataset e.g. single person identity number and allocated person identity (e.g. FIM1).

Queensland Police Service data (1 encrypted file): It includes respondent details for cross-checking with court files, QPS text for breaches, whether the respondent was present when the order was made (i.e. if an order was made ex parte), and, as relevant, charge/s under the Criminal Code Act. Outcomes/penalties for Criminal Code charges are not available.
1. **Respondent (perpetrator) and other party demographics**

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<tr>
<th>Field</th>
<th>Description</th>
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<tr>
<td>Pseudo</td>
<td>Respondent pseudonym</td>
<td></td>
</tr>
<tr>
<td>CaseID</td>
<td>Respondent code number</td>
<td></td>
</tr>
<tr>
<td>Sub-sam</td>
<td>Four subsample groups</td>
<td>1: Indigenous women</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2: Non-Indigenous women</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3: Indigenous men</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4: Non-Indigenous men</td>
</tr>
<tr>
<td>Sex</td>
<td>Respondent’s sex</td>
<td>1: Male</td>
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<tr>
<td></td>
<td></td>
<td>2: Female</td>
</tr>
<tr>
<td>Sexop1</td>
<td>Sex of first other party</td>
<td>1: Male</td>
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<tr>
<td></td>
<td></td>
<td>2: Female</td>
</tr>
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<td>Sexop2</td>
<td>Sex of second other party</td>
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<td>2: Female</td>
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<td></td>
<td></td>
<td>999: Not applicable</td>
</tr>
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<td>Sexop3</td>
<td>Sex of third other party</td>
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<td></td>
<td>2: Female</td>
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<td></td>
<td></td>
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<td>2: Non-Indigenous</td>
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<td></td>
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</tr>
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<td>Cultop3</td>
<td>Culture of third other party</td>
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<td></td>
<td></td>
<td>6: Non-Indigenous</td>
</tr>
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<td></td>
<td>7: Unknown</td>
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<td></td>
<td></td>
<td>8: Not applicable</td>
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<tr>
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</tr>
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<td></td>
<td>2: Family</td>
</tr>
<tr>
<td></td>
<td></td>
<td>999: Not applicable</td>
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<td></td>
<td></td>
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999 = Not applicable
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<td>Respondent’s age group at sample offence</td>
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<td>2 Respondents’ records of domestic violence orders</td>
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<td>Total-res</td>
<td>Total times a respondent – distinct victims</td>
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<td>Application 3 lodging authority</td>
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</tr>
<tr>
<td>---------</td>
<td>---------------------------------</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Police application</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Private application</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Other</td>
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<td>Standard condition 1</td>
</tr>
<tr>
<td>2</td>
<td>Standard conditions 1 &amp; 2</td>
</tr>
<tr>
<td>3</td>
<td>Standard condition 1 &amp; no contact</td>
</tr>
<tr>
<td>4</td>
<td>Standard conditions 1 &amp; 2 and no contact</td>
</tr>
<tr>
<td>5</td>
<td>Standard condition 1 &amp; other conditions</td>
</tr>
<tr>
<td>6</td>
<td>Standard condition 1 &amp; 2 &amp; other conditions</td>
</tr>
<tr>
<td>7</td>
<td>Standard 1 &amp; no contact &amp; other condition/s</td>
</tr>
<tr>
<td>8</td>
<td>Standard 1 &amp; 2 &amp; no contact &amp; other condition/s</td>
</tr>
<tr>
<td>9</td>
<td>Struck out – no order made</td>
</tr>
<tr>
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<table>
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</thead>
<tbody>
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</tr>
<tr>
<td>2</td>
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<table>
<thead>
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<tr>
<td>4</td>
<td>Standard conditions 1 &amp; 2 and no contact</td>
</tr>
<tr>
<td>5</td>
<td>Standard condition 1 &amp; other conditions</td>
</tr>
<tr>
<td>6</td>
<td>Standard condition 1 &amp; 2 &amp; other conditions</td>
</tr>
<tr>
<td>7</td>
<td>Standard 1 &amp; no contact &amp; other condition/s</td>
</tr>
<tr>
<td>8</td>
<td>Standard 1 &amp; 2 &amp; no contact &amp; other condition/s</td>
</tr>
<tr>
<td>9</td>
<td>Struck out – no order made</td>
</tr>
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<td>2</td>
<td>Standard conditions 1 &amp; 2</td>
</tr>
<tr>
<td>3</td>
<td>Standard condition 1 &amp; no contact</td>
</tr>
<tr>
<td>4</td>
<td>Standard conditions 1 &amp; 2 and no contact</td>
</tr>
<tr>
<td>5</td>
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<td>7</td>
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### 3 Respondents’ records of DVO breaches

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<th>Total number of separate breach events</th>
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<td>One or two breach events, only</td>
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<td>2 No</td>
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<td>Off_occ2</td>
<td>Three to five breach events</td>
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<tr>
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<td>1 Yes</td>
</tr>
<tr>
<td></td>
<td>2 No</td>
</tr>
<tr>
<td>Off_occ3</td>
<td>More than five breach events</td>
</tr>
<tr>
<td></td>
<td>1 Yes</td>
</tr>
<tr>
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<td>2 No</td>
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<table>
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</thead>
<tbody>
<tr>
<td></td>
<td>1 Remote</td>
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<tr>
<td></td>
<td>2 Other</td>
</tr>
<tr>
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<tbody>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
<td>2 No</td>
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<table>
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<td>2 No</td>
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<tr>
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</tr>
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<th>Sum_bre1</th>
<th>Summary key feature of breach 1</th>
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<td>1 Physical attack</td>
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<tr>
<td></td>
<td>2 Damage to property</td>
</tr>
<tr>
<td></td>
<td>3 Threat to kill</td>
</tr>
<tr>
<td></td>
<td>4 Other (e.g. breach “no contact”)</td>
</tr>
<tr>
<td></td>
<td>998 Unknown</td>
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</table>
Sum_bre2  Summary key feature of breach 2
1 Physical attack
2 Damage to property
3 Threat to kill
4 Other (e.g. breach “no contact”)
998 Unknown
999 Not applicable

Sum_bre3  Summary key feature of breach 3
1 Physical attack
2 Damage to property
3 Threat to kill
4 Other (e.g. breach “no contact”)
998 Unknown
999 Not applicable

Cont_bre1  Summary context for breach 1
1 Jealousy
2 Fight
3 Aggrieved leaving/ending relationship
4 Other
998 Unknown
999 Not applicable

Cont_bre1a Jealousy
1 Yes
2 No

Cont_bre1b Fight
1 Yes
2 No

Cont_bre1c Aggrieved leaving scene/ending relationship
1 Yes
2 No

Cont_bre2  Summary context for breach 2
1 Jealousy
2 Fight
3 Aggrieved leaving/ending relationship
4 Other
998 Unknown
999 Not applicable

Cont_bre3  Summary context for breach 3
1 Jealousy
2 Fight
3 Aggrieved leaving/ending relationship
4 Other
998 Unknown
999 Not applicable

AOD_bre1 Alcohol or drugs involved breach 1
1 Yes
2 No
998 Unknown
AOD_bre2 Alcohol or drugs involved breach 2

1  Yes
2  No
998 Unknown
999 Not applicable

AOD_bre3 Alcohol or drugs involved breach 3

1  Yes
2  No
998 Unknown
999 Not applicable

Lev_viol Level of violence

1  Low level
2  Medium level
3  High level
4  Extremely high
5  No violence (e.g. breached no contact)
998 Unknown

Wep_bre1a Use of weapon in breach 1

1  Yes
2  No
998 Unknown

Wep_bre1b Use of weapon in breach 1 (dichotomous)

1  Yes
2  No

Viol_high High level of violence in any breach event

1  Yes
2  No

Viol_low Low level violence, only, in all breach events

1  Yes
2  No

Viol_pol Violence to police

1  Yes
2  No
998 Unknown

Att_off Respondent attitude at offence

1  Co-operative
2  Resistant
998 Unknown

Self-def1 Evidence of self-defence breach 1

3  Yes
4  No
999 Unknown

Self-def2 Evidence of self-defence breach 2

1  Yes
2  No
998 Unknown
999 Not applicable
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<td>2</td>
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<td>2</td>
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<table>
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</thead>
<tbody>
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</tr>
<tr>
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<td>999</td>
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</tr>
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<td>2</td>
<td>Fine</td>
</tr>
<tr>
<td>3</td>
<td>Probation order</td>
</tr>
<tr>
<td>4</td>
<td>Recognisance (good behaviour)</td>
</tr>
<tr>
<td>5</td>
<td>Imprisonment</td>
</tr>
<tr>
<td>6</td>
<td>Forfeit bail</td>
</tr>
<tr>
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<table>
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<tr>
<td>3</td>
<td>Probation order</td>
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<tr>
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<td>Recognisance (good behaviour)</td>
</tr>
<tr>
<td>5</td>
<td>Imprisonment</td>
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<td>6</td>
<td>Forfeit bail</td>
</tr>
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<td>7</td>
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</tr>
<tr>
<td>8</td>
<td>Intensive correction order</td>
</tr>
<tr>
<td>9</td>
<td>Released absolutely (s19(1)(a)PASA)</td>
</tr>
<tr>
<td>10</td>
<td>Community service order</td>
</tr>
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<td>11</td>
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<td>2</td>
<td>Fine</td>
</tr>
<tr>
<td>3</td>
<td>Probation order</td>
</tr>
<tr>
<td>4</td>
<td>Recognisance (good behaviour)</td>
</tr>
<tr>
<td>5</td>
<td>Imprisonment</td>
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<td>6</td>
<td>Forfeit bail</td>
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</tr>
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<td>8</td>
<td>Intensive correction order</td>
</tr>
<tr>
<td></td>
<td>Released absolutely (s19(1)(a)PASA)</td>
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<td>---</td>
<td>-----------------------------------</td>
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<tr>
<td>10</td>
<td>Community service order</td>
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<tr>
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<td>Remand in custody</td>
</tr>
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### Nil_pen

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</tr>
<tr>
<td>2</td>
<td>No</td>
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### Nil_pen3

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</tr>
<tr>
<td>998</td>
<td>Unknown</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
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### Fine_bre1

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### Fine_bre2

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<td>Unknown</td>
</tr>
<tr>
<td>999</td>
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### Fine_bre3

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<td>2</td>
<td>No</td>
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<tr>
<td>998</td>
<td>Unknown</td>
</tr>
<tr>
<td>999</td>
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### Ord_bre1

<table>
<thead>
<tr>
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</thead>
<tbody>
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<td>1</td>
<td>Yes</td>
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<tr>
<td>2</td>
<td>No</td>
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### Ord_bre2

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<tr>
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</tr>
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<tbody>
<tr>
<td>1</td>
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</tr>
<tr>
<td>2</td>
<td>No</td>
</tr>
</tbody>
</table>

### Ord_bre3

<table>
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<tr>
<th></th>
<th>Probation or other order breach 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
</tr>
</tbody>
</table>

¹ Nil_pen includes no penalty, recognisance, struck out”, and “released absolutely.
² Ord_bre includes probation order, intensive correction order and community service order.
### 4. Respondent’s breach-related Criminal Code charges

**Jail**
- **Jail_bre1** Imprisonment\(^3\) for breach 1
  - 1 Yes
  - 2 No
- **Jail_bre2** Imprisonment for breach 2
  - 1 Yes
  - 2 No
- **Jail_bre3** Imprisonment for breach 3
  - 1 Yes
  - 2 No

**Conv_flag** Conviction flag
- 1 Yes
- 2 No

---

\(^3\) Jail includes imprisonment, forfeit bail, and remand in custody.
<table>
<thead>
<tr>
<th>Cha3</th>
<th>Criminal Code offence 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Assault, common</td>
</tr>
<tr>
<td>2</td>
<td>Assault, serious (other)</td>
</tr>
<tr>
<td>3</td>
<td>Assault occasioning bodily harm</td>
</tr>
<tr>
<td>4</td>
<td>Adult wounding</td>
</tr>
<tr>
<td>5</td>
<td>No (assault police)</td>
</tr>
<tr>
<td>6</td>
<td>Rape</td>
</tr>
<tr>
<td>998</td>
<td>Unknown</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CCC1a</th>
<th>Criminal Code charge 1 assault¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CCC1b</th>
<th>Criminal Code charge 1 serious² assault</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
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</tbody>
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<table>
<thead>
<tr>
<th>CCC2a</th>
<th>Criminal Code charge 2 assault</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
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<tr>
<td>2</td>
<td>No</td>
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<tr>
<td>999</td>
<td>Not applicable</td>
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<table>
<thead>
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<th>CCC2b</th>
<th>Criminal Code charge 2 serious assault</th>
</tr>
</thead>
<tbody>
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<td>1</td>
<td>Yes</td>
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<tr>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
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<table>
<thead>
<tr>
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<th>Criminal Code charge 3 assault</th>
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</thead>
<tbody>
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<td>Yes</td>
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<tr>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
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</tbody>
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<table>
<thead>
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<th>CCC3b</th>
<th>Criminal Code charge 3 serious assault</th>
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</thead>
<tbody>
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<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

---

¹ Assault includes assault, common and adult wounding.
² Serious assault includes assault, serious, assault occasioning bodily harm, and rape.
### 5 Respondent as aggrieved (victim)

<table>
<thead>
<tr>
<th>Res_agg</th>
<th>Respondent also aggrieved</th>
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<tbody>
<tr>
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<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total_agg</th>
<th>Total times aggrieved</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Agg_oth</th>
<th>Respondent also aggrieved x other parties</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes – same other party</td>
</tr>
<tr>
<td>2</td>
<td>Yes – different other party</td>
</tr>
<tr>
<td>3</td>
<td>Yes – 2 or more other parties</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Agg_otha</th>
<th>Respondent victimised by two or more perpetrators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>No</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Agg_othb</th>
<th>Respondent victimised by three or more perpetrators</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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</tr>
<tr>
<td>2</td>
<td>No</td>
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<table>
<thead>
<tr>
<th>Res_time</th>
<th>Respondent/aggrieved first</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Respondent first</td>
</tr>
<tr>
<td>2</td>
<td>Respondent first multiple times</td>
</tr>
<tr>
<td>3</td>
<td>Aggrieved first</td>
</tr>
<tr>
<td>4</td>
<td>Aggrieved first multiple times</td>
</tr>
<tr>
<td>5</td>
<td>Simultaneous cross-applications</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Res_first</th>
<th>Respondent/aggrieved first</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Yes</td>
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<tr>
<td>2</td>
<td>No</td>
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<table>
<thead>
<tr>
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<th>Cross applications</th>
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<tbody>
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</tr>
<tr>
<td>2</td>
<td>No</td>
</tr>
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<table>
<thead>
<tr>
<th>XApps_Mul</th>
<th>2 or more parties for cross applications</th>
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<tr>
<td>2</td>
<td>No</td>
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<tr>
<td>2</td>
<td>No</td>
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<table>
<thead>
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<th>Agg_la1</th>
<th>Lodging authority when named as aggrieved 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Police</td>
</tr>
<tr>
<td>2</td>
<td>Private</td>
</tr>
<tr>
<td>3</td>
<td>Other</td>
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<td>999</td>
<td>Not applicable</td>
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<table>
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<th>Lodging authority when named as aggrieved 2</th>
</tr>
</thead>
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<tr>
<td>1</td>
<td>Police</td>
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<tr>
<td>2</td>
<td>Private</td>
</tr>
<tr>
<td>3</td>
<td>Other</td>
</tr>
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</table>
Below, “perpetrator” refers to the person identified as the “respondent” on an order on which the “aggrieved” is a person included in the sample of 185 respondents charged with breaching a domestic violence order.

<table>
<thead>
<tr>
<th>Cult_pag1</th>
<th>Culture of perpetrator 1</th>
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<tbody>
<tr>
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<td>Indigenous</td>
</tr>
<tr>
<td>2</td>
<td>Non-Indigenous</td>
</tr>
<tr>
<td>998</td>
<td>Unknown</td>
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<tr>
<td>999</td>
<td>Not applicable</td>
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<td>Non-Indigenous</td>
</tr>
<tr>
<td>998</td>
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</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
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</thead>
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<tr>
<td>2</td>
<td>Non-Indigenous</td>
</tr>
<tr>
<td>998</td>
<td>Unknown</td>
</tr>
<tr>
<td>999</td>
<td>Not applicable</td>
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<td>Spouse</td>
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<tr>
<td>2</td>
<td>Interpersonal</td>
</tr>
<tr>
<td>3</td>
<td>Family</td>
</tr>
<tr>
<td>999</td>
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<td>3</td>
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</table>
### Relationship to perpetrator 3

<table>
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<th>Spouse</th>
<th>Interpersonal</th>
<th>Family</th>
<th>Not applicable</th>
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</thead>
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### Brief overview of case

**Comp_case**

**Complex case** (3 or more other parties, respondent/agrieved multiple times, intimate partner and family violence)

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
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<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix 3.3: Data cleaning procedures

I looked for any obvious errors in data entry in the SPSS output frequency tables. There were a number of errors, such as “99” or “9999”, immediately apparent, which should probably have been coded as “999 - not applicable” or “998 - unknown”. I selected the relevant variable in the data view and then sorted the data by selecting “sort descending” so I could quickly find the errors. I was then able to identify the case number and, in some cases, I was able to correct the error based on other information in the data set for that individual. For example, where the erroneous “99” related to the sex of a third distinct victim, and the data file consistently showed only one or two victims for that individual on all other related variables, I replaced the “99” with “999”. In other cases, I went back to the raw data files, and the code book when necessary, to determine the appropriate code and then amend the SPSS data file accordingly.

Following Neuman, (1997, p. 297), I also conducted “contingency cleaning” using the SPSS crosstabs function to check for inconsistencies. When, for example, a crosstab output table identified a non-Indigenous woman as having been charged with assault on a second Criminal Code offence, I could see an error had been made because none of the non-Indigenous women had been charged with more than one offence under the Criminal Code. Again, in some cases, I had to check the raw data to resolve inconsistencies displayed in crosstabs tables.

I created a second SPSS data file with the same set of variables as the first. I then selected every sixth case listed in my first SPSS file until I had 30 cases (slightly more than 15% of the total 185 cases). I entered these case numbers in the second SPSS file and then, from the court and police excel spreadsheets, I entered the data codes for those cases in the second file. I then ran frequencies from the first and the second SPSS files. Comparing the SPSS output for the 30 cases in the two SPSS files revealed no data entry errors so I considered the data clean.
**APPENDIX 4: DETAILS OF RESULTS**

**Appendix 4.1: Technical results - tests of independence**

(* Fisher’s exact 2-tailed test is used where cell counts are less than 5, so requirements for Pearson’s chi-square test of independence are not met)

<table>
<thead>
<tr>
<th>Respondents (185)</th>
<th>Sex differences</th>
<th>Sex differences</th>
<th>Race differences</th>
<th>Race differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Demographics</td>
<td>Indigenous (N = 96)</td>
<td>Non-Indigenous (N = 89)</td>
<td>Men (N = 97)</td>
<td>Women (N = 88)</td>
</tr>
<tr>
<td>Aged less than 30 years</td>
<td>-</td>
<td>$X^2 (1, 89) = 4.783, p &lt; .05$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Intimate partner DVO1</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>X-cultural relationship DVO1</td>
<td>-</td>
<td>$X^2 (1, 89) = 4.238, p &lt; .05$</td>
<td>-</td>
<td>$X^2 (1, 89) = 4.399, p &lt; .05$</td>
</tr>
<tr>
<td>Remote court DVO1</td>
<td>-</td>
<td>$X^2 (1, 97) = 15.380, p &lt; .01$</td>
<td>$X^2 (1, 88) = 14.788, p &lt; .01$</td>
<td>-</td>
</tr>
<tr>
<td>Remote court DVO breach 1</td>
<td>$X^2 (1, 96) = 4.608, p &lt; .05$</td>
<td>-</td>
<td>$X^2 (1, 97) = 8.825, p &lt; .01$</td>
<td>-</td>
</tr>
<tr>
<td>History as respondent</td>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Distinct victims (1 only)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Distinct DVOs (3 or more)</td>
<td>$X^2 (1, 96) = 9.586, p &lt; .01$</td>
<td>$X^2 (1, 89) = 12.936, p &lt; .05$</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Police applications DVO1</td>
<td>P = .008, p &lt; .05*</td>
<td>-</td>
<td>P = .048, p &lt; .05*</td>
<td>-</td>
</tr>
<tr>
<td>Standard conditions only DVO1</td>
<td>$X^2 (1, 96) = 4.923, p &lt; .05$</td>
<td>-</td>
<td>$X^2 (1, 97) = 3.714, p &lt; .05$</td>
<td>$X^2 (1, 97) = 6.978, p &lt; .05$</td>
</tr>
<tr>
<td>No contact condition on DVO1</td>
<td>P = .017, p &lt; .05*</td>
<td>$X^2 (1, 89) = 4.652, p &lt; .05$</td>
<td>$X^2 (1, 97) = 6.712, p &lt; .05$</td>
<td>P = .010, p &lt; .05*</td>
</tr>
<tr>
<td>Breached DVO1, <em>ex parte</em></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Breach occasions (3 or more)</td>
<td>$X^2 (1, 96) = 16.696, p &lt; .01$</td>
<td>$X^2 (1, 89) = 14.106, p &lt; .01$</td>
<td>$X^2 (1, 97) = 4.471, p &lt; .05$</td>
<td>-</td>
</tr>
<tr>
<td>High level violence, any breach</td>
<td>$X^2 (1, 96) = 10.518, p &lt; .01$</td>
<td>$X^2 (1, 89) = 25.063, p &lt; .01$</td>
<td>-</td>
<td>$X^2 (1, 88) = 8.430, p &lt; .01$</td>
</tr>
<tr>
<td>Pleaded guilty, breach 1</td>
<td>No penalty, breach 1</td>
<td>Penalty jail, breach1</td>
<td>Conviction flag</td>
<td>Criminal Code (breach 1)</td>
</tr>
<tr>
<td>-------------------------</td>
<td>----------------------</td>
<td>----------------------</td>
<td>----------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td></td>
<td>$X^2 (1, 96) = 7.589, p &lt; .01$</td>
<td>$X^2 (1, 89) = 7.647, p &lt; .01$</td>
<td>$P = .028, p &lt; .05^*$</td>
<td>$X^2 (1, 97) = 10.518, p &lt; .01$</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>-</td>
<td>$P = .017, p &lt; .05^*$</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>$X^2 (1, 97) = 11.336, p &lt; .01$</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Respondent/aggrieved (110)</strong></th>
<th>Sex differences</th>
<th>Race differences</th>
<th>Race differences</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Demographics</strong></td>
<td>Indigenous (N = 62)</td>
<td>Men (N = 41)</td>
<td>Women (N = 69)</td>
</tr>
<tr>
<td>Intimate partner DVO1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>X-cultural relationship DVO1</td>
<td>$P = .043, p &lt; .05^*$</td>
<td>$P = .001, p &lt; .01^*$</td>
<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>History as aggrieved</strong></th>
<th>Sex differences</th>
<th>Race differences</th>
<th>Race differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police applications DVO1</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Distinct perpetrators (2 or more)</td>
<td>$X^2 (1, 62) = 7.081, p &lt; .01$</td>
<td>-</td>
<td>$X^2 (1, 69) = 3.950, p &lt; .05$</td>
</tr>
<tr>
<td>Distinct perpetrators (3 or more)</td>
<td>$P = .001, p &lt; .01^*$</td>
<td>-</td>
<td>$X^2 (1, 69) = 9.142, p &lt; .05$</td>
</tr>
<tr>
<td>Respondent was aggrieved first</td>
<td>$X^2 (1, 62) = 14.945, p &lt; .01$</td>
<td>-</td>
<td>$X^2 (1, 69) = 4.248, p &lt; .05$</td>
</tr>
<tr>
<td>Cross-DVOS</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Case character (185)</strong></th>
<th>Sex differences</th>
<th>Race differences</th>
<th>Race differences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Complex case</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
Appendix 4.2: Breach event reported by the respondent

Seven DVO respondents reported the breach offences themselves by calling the police or an ambulance. In all cases, they were Indigenous women. Six were involved in “fights” broadly defined, and one in “violent resistance”. In three cases, the police reports indicated that the respondent sought help because of her concern for the victim:

*She phoned the clinic to get help for [aggrieved] and stated over the phone that she had hit him in the head*” (# 5, Doreen);

*Police were called by the defendant to attend [location] after she stated that she had stabbed her partner [name of aggrieved]…defendant stated that she called police because she was worried about the aggrieved (Case # 21, Melanie); and

*Defendant stated that she saw the stainless steel fork [that she had thrown] connect with her boyfriend’s head causing it to bleed. The defendant then contacted the Ambulance for him (# 23, Leesa).*

In the remaining four cases the respondent sought police intervention at least partially for her own protection:

*Police received a phone call from [Janice] who is the respondent and defendant in this matter. The defendant stated that she was having problems with [aggrieved] who is the victim in this matter (# 11, Janice).

*Police communications received a 000 telephone call from a female person …the respondent now before the court. The respondent told police that she had just stabbed her partner … [during] an argument … the aggrieved bit her … and this was the reason that she stabbed the aggrieved (# 18, Primrose).

*Police were flagged down by the aggrieved and respondent … [location] with an obvious commotion between the two persons”* (# 106, Mary).

*The offender hailed down police in their vehicle and stated she had been fighting with the informant. The offender stated that the informant had slapped her in the face and she had retaliated striking him on the side of the face with a belt and buckle”* (# 111, Lillian).

Here we see evidence that the Indigenous women, despite their violence and circumstances, displayed an ethic of care and responsibility for their injured partners. Recalling that very few (12%) non-Indigenous women used high levels of violence in any breach (so their partners were unlikely to have injuries); this finding distinguishes Indigenous women from Indigenous and non-Indigenous men, in particular.
### Appendix 4.3: Types of violence – relevant other factors

#### Selected characteristics (where known) within total sample

<table>
<thead>
<tr>
<th>Characteristics (where known)</th>
<th>Alcohol</th>
<th>Jealousy</th>
<th>Chaos</th>
<th>Aboriginal dispute resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Group (N = 185)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indigenous men (50)</td>
<td>23</td>
<td>46</td>
<td>11</td>
<td>22</td>
</tr>
<tr>
<td>Non-Indigenous men (47)</td>
<td>8</td>
<td>17</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>Indigenous women (46)</td>
<td>17</td>
<td>37</td>
<td>7</td>
<td>15</td>
</tr>
<tr>
<td>Non-Indigenous women (42)</td>
<td>4</td>
<td>10</td>
<td>2</td>
<td>5</td>
</tr>
</tbody>
</table>

#### Selected characteristics (where known) within major types of violence

<table>
<thead>
<tr>
<th>Characteristics (where known)</th>
<th>Alcohol</th>
<th>Jealousy</th>
<th>Chaos</th>
<th>Aboriginal dispute resolution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coercive Control</td>
<td>Fights</td>
<td>Coercive Control</td>
<td>Fights</td>
</tr>
<tr>
<td>Group (N = 143)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indigenous men</td>
<td>18</td>
<td>60</td>
<td>5</td>
<td>36</td>
</tr>
<tr>
<td>Non-Indigenous men</td>
<td>8</td>
<td>21</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Indigenous women</td>
<td>-</td>
<td>-</td>
<td>13</td>
<td>37</td>
</tr>
<tr>
<td>Non-Indigenous women</td>
<td>-</td>
<td>-</td>
<td>1</td>
<td>6</td>
</tr>
</tbody>
</table>

Note: Two cases of violent resistance were not included in the analysis of selected characteristics. As shown in Table 14, the N for each sub-group in this analysis is:


247
## Appendix 5: Analytical Processes

### Appendix 5.1: Major categories – analysis of context for Indigenous intimate partner violence

<table>
<thead>
<tr>
<th>Major categories</th>
<th>Associated concepts (words, phrases – direct quotes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Fights</td>
<td>She fights back; often women pick up a weapon; women don’t hang their heads – they come back firing; my brother is going to get you, my sister is going to get you – a big mob of them after one guy; woman going at him.</td>
</tr>
<tr>
<td>2. Meanings of violence</td>
<td>Relationship violence, group violence … some of them in the middle; alcohol fuelled violence; family feuds in the camps; there’s domestic violence and other violence; violent response usually out of anger; it’s the normal pattern of living in response to life; violence is broader than what I would see as white domestic violence. It’s a bit more complicated; it’s a different kind of violence.</td>
</tr>
<tr>
<td>3. Comprehension</td>
<td>Don’t see the ramifications, problems concentrating for long periods of time, they are illiterate, it doesn’t register, poor mental health, impairment from abuse; they have so little understanding</td>
</tr>
<tr>
<td>4. Indigenous disadvantage</td>
<td>Impoverished lifestyles; lives are in chaos; deprived lives, violence and chaos in general - like there are no rules, they live with no boundaries; lost traditional rules; she lived in camps and moved from pillar to post; no power in their lives; Indigenous men and women violent - people are in survival mode.</td>
</tr>
<tr>
<td>5. Incident-based/formulaic response</td>
<td>not about ending power and control…incident-based; police find it difficult to discern coercive controlling behaviour; too hard to discern what’s going here – let the court deal with it; cross-orders spiralling into criminal convictions; this has happened so we (police) have to go ahead; magistrates think “Oh it’s a police application, I’ll just make an order”; even if it’s a one-off incident they have to make an application; there is no nuance…they don’t look at the context; police think that the solution is that everybody should be slapped with a DVO; police applications are incident controlled so not the systematic abuse.</td>
</tr>
<tr>
<td>6. Race relations</td>
<td>Back to the mission days, decisions being made about their life, she was so frightened of the police she was hiding behind us, our mob have been scared of that blue uniform for years, if you are an Aboriginal woman hooked up with a white man you are going to get an order made against you; won’t cooperate with the police; it’s the hopelessness, despair… not being wanted…it’s rebelling.</td>
</tr>
</tbody>
</table>
Appendix 5.2: Types of violence - analytical process

The police reports were provided in an excel spreadsheet and included: full name, date of birth, QPS crime number, date of offence, text for breach (report), and when relevant, charge 1 (Criminal Code offence), charge 1 text, charge 2, charge 2 text. I added case #, to link police and court data in my SPSS data set. I then created a second file, replacing names with pseudonyms, and removing information not required beyond data linking. I used this file to analyse and code level of violence (see Chapter 3).

From this second file, I created another for the analysis of types of violence. In this one, I removed pseudonyms to reduce the likelihood of bias in my coding, retained only case # and text for breach, and added three columns: key features, type of violence, and notes.

I used the following 5-step process to assign the type of violence (coercive control, violent resistance, and fights) for each case.

1. In each of the reports (text for breach) I identified and highlighted sections that described the violence and reflected elements of different types of violence shown in Table 13: Types of violence and indicative elements.

2. For each report I recorded the key features, adding as many comments (such as “no evidence of coercive control”, “mandatory conditions only”, and drunken public brawl”), as relevant, or “insufficient information” when such comments were not possible.

3. I then recorded the type of violence the key features most closely resembled, or “unknown” if there was insufficient information on which to make an assessment.

4. I then considered the set of reports for each case where there were multiple breaches. In some, I had recorded “unknown” for one report, but not other reports. In other cases, I had identified more than one type of violence among the relevant set of reports.

5. For those cases, I made notes in a new column to determine the predominant type of violence, as illustrated in the following example.

<table>
<thead>
<tr>
<th>Case #</th>
<th>Text for breach</th>
<th>Key features</th>
<th>Type of violence</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>69</td>
<td>1</td>
<td>Physical assault while victim asleep; attempted strangulation; threats to kill</td>
<td>Coercive control</td>
<td>No evidence of the aggrieved fighting back or challenging the respondent, except when the fight was verbal only. Victim was attacked when most vulnerable (asleep); use of male (physical) power is evident. On balance elements point to coercive control</td>
</tr>
<tr>
<td>2</td>
<td>Verbal fight over tobacco; threats to get female family members to bash victim; payback</td>
<td>Fight</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Seriously intoxicated; intimidation; injury to self; strangulation; challenged victim's brother to a fight</td>
<td>Coercive control</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>