

## Myths and misunderstandings - Key Literature

### Short References

#### **A victim of domestic and family violence will leave the abusive relationship.**

Bruton and Tyson (2017) Yamawaki et al (2012) Douglas & Walsh (2010) Wakefield & Taylor (2015) Meyer (2012)  
Buel (1999)

#### **The domestic and family violence will stop when the victim and perpetrator separate.**

DeKeseredy, Dragiewicz and Schwartz (2017) Wilcox (2006) Douglas & Walsh (2010)

#### **Domestic and family violence involving physical violence is more serious than other controlling behaviours.**

Hunter (2006) Murray & Powell (2009) Ragusa (2012) Stark (2012)

#### **Domestic and family violence only affects particular groups of people.**

ALRC/NSWLRC (2010) Ragusa (2012)

#### **Men and women are equally victims and perpetrators of domestic and family violence.**

Melville & Hunter (2001) Wakefield & Taylor (2015) Murray & Powell (2009) Cox (2016)

#### **Domestic and family violence does not include sexual assault.**

ALRC/NSWLRC (2010) Lievore (2004) Cox (2016)

#### **Women often make false or exaggerated claims of domestic and family violence to obtain a tactical advantage in parenting proceedings.**

Kaspiew et al (2015) Hunter (2006) Melville & Hunter (2001) Chisholm (2009)

#### **Domestic and family violence is a relationship issue; both parties are responsible.**

Hunter (2006) Wakefield & Taylor (2015) Yamawaki et al (2012) Wilcox (2006) Douglas (2008)

**Domestic and family violence is caused by external factors such as alcohol and drug abuse, financial pressure or bias of the family law system.**

Murray & Powell (2009)

**Victims of domestic and family violence are weak, passive and powerless.**

Goodmark (2009) Douglas (2012)

**Mothers who experience domestic and family violence have a duty to keep the family together and to protect the children from violence.**

Douglas & Walsh (2010) Wilcox (2006) Croucher (2014)

## Australia

**Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence – A National Legal Response*, Report 114 (2010).**

- > This report provides a comprehensive overview of Australian law and legislation concerning family violence.
- > p300-04: features of family violence including its gendered nature and occurrence across all areas of society.
- > p1111-14; 1220: outlines myths and misconceptions about women, children and sexual assault, including those held by juries.

**Bruton, Crystal and Danielle Tyson, 'Leaving Violent Men: A Study of Women's Experiences of Separation in Victoria, Australia' (2017) *Australian & New Zealand Journal of Criminology* (onlinefirst).**

This article explores women's experiences of leaving abusive relationships and seeks to combat assumptions about the nature of such relationships through in-depth interviews with 12 women who had separated from their male intimate partners (p 5). While separation is broadly recognised as a key time for increased risk of violence towards women and their children (p 1), studies demonstrate that most people believe women are able to leave violent relationships, and do not understand why they might stay (p 2). Such views place the responsibility for ending the violence on women, but in reality, these relationships often include complex circumstances, and the 'stay/leave binary' is rarely applicable (p 2). The results indicate that women's experiences of coercive control significantly affected their decision-making in the context of separation (p 6):

- > Many women feared leaving because they were aware that separation may provoke retaliatory violence, with some experiencing an escalation of abusive behaviour when they attempted to leave (p 7);
- > Many women were motivated to leave the relationship in order to protect their children, especially where violence became directed towards the children (p 8);
- > Women's attempts to leave their relationships were often hindered by their partner's control over their finances (p 9); and
- > Women adopted strategies to manage their safety both during and following separation (pp 9-10), and many women experienced escalating violence after separation (pp 11-12).

**Chisholm, Richard, *Family Courts Violence Review* (Commonwealth Attorney General's Department, 2009).**

This report discusses the issue of false allegations or statements made by parties to proceedings in relation to family violence

**Cox, Peta, 'Violence against women in Australia: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012' (Australia's National Research Organisation for Women's Safety Horizons, 2016 Rev.ed.).**

*Section one: Violence experienced by women and men (from p20)*

Intro: '... This section begins with an analysis of the prevalence of violence experienced by women and men (including specific forms of violence) and then proceeds to analyse perpetrator demographics, basic incident characteristics and key post-incident actions and impacts.' The higher prevalence of women experiencing violence perpetrated by 'opposite sex perpetrators' is emphasised based on statistical data on pp30-33 including:

- > 'Since the age of 15: 1.5million women [and] 0.45million men have experienced violence by a cohabiting partner.' (p31)
- > 'Most men were victimised by female partners: 427,900 had experienced violence perpetrated by a female partner. This is one in 20 men in Australia (5.1%); ... Almost all women who had experienced violence by a cohabiting partner reported that this violence was perpetrated by a male: 1,470,200 reported violence by a male partner. This is one in six women in Australia (16.8%)' (p31)

*Section three: Women's experiences of partner violence (from p76)*

Abstract: 'Section three of this report provides a detailed examination of the PSS data relating to women's experiences of partner violence. One in six women reported violence by a partner they had lived with (cohabiting partner) and one in four reported violence by a partner they may or may not have lived with (i.e. a combined total for cohabiting partner and boyfriend/girlfriend/date)'. Presents findings such as:

- > 'Close to 2.2 million women have experienced at least one incident of violence by a male intimate partner: this is one in four women (25.1%)' (p79)
- > 'For women who were in a relationship with their violent cohabiting partner at the time of the survey, two thirds had experienced more than one incident of abuse (154,500, 65.1%)' (p82)
- > Section 4.4 Psychological impacts (from p116) also discusses the levels of fear and anxiety experienced by women following violence perpetrated by a current or former cohabiting partner.

Note: this article refers to an old release of the ABS' Personal Safety Survey, but the analysis remains useful. See Australian Personal Safety Survey (PSS) 2016.

**Croucher, Rosalind, 'Family Law: Challenges for Responding to Family Violence in a Federal System' in Hayes, Alan, and Daryl Higgins (eds), *Families, Policies and the Law: Selected Essays on Contemporary Issues for Australia* (Australian Institute of Family Studies, 2014).**

Explores conflicting expectations of mothers concerning parenting orders, child protection and family violence (p210-11).

**Douglas, Heather, 'The Criminal Law's Response to Domestic Violence: What's Going On?' (2008) 30 *Sydney Law Review* 439.**

'The Queensland data discussed in this article demonstrates that the process involved in prosecuting a criminal breach often involves a minimisation of the harm inflicted on women by perpetrators, police and magistrates, a ruthless contest about the facts and numerous court appearances before resolution. Prosecutions of breaches of protection orders often result in no conviction being recorded or in trivialising fines.'

- > Minimisation of harm by police and prosecution (p447-453) – decision to charge the breach in preference to the more serious criminal offences (i.e. stalking, assault or criminal damage).
- > Defendants' minimisation of harm and responsibility (p459) – defendants attempting to shift the blame to another source including via claims of provocation, intoxication or child related matters (p461).
- > Where magistrates recommended relationship counselling on the basis that both parties had accepted blame for the husband's violence of the husband, violence and responsibility of perpetrator are minimised (p463).

**Douglas, Heather, 'A Consideration of the Merits of Specialised Homicide Offences and Defences for Battered Women' (2012) 45 (3) *Australian and New Zealand Journal of Criminology* 367.**

This article reviews the underlying debates relating to the 2005 Victorian offence of 'defensive homicide' and the 2010 Queensland defence titled 'killing for preservation in an abusive domestic relationship' and examines recent case law to consider the application of these two approaches and their effectiveness in light of what they were designed to achieve.

In two of the cases, the author notes that the female killers were perhaps 'benchmark' battered women. Both were smaller than their partners, white, drug-free, monogamous and without a criminal record. They suffered fierce physical abuse over many years, actively protected their children from the abuser and the killing was, apparently, the first time they had physically fought back. Both had attempted to leave the relationship and both had sought assistance from the police in the past. In both cases the abuser had harmed animals and threatened their own children with violence. In comparison, other women's cases reviewed in this article fell short of the benchmark in some way. One was Indigenous, larger than the deceased; she had drug and alcohol issues, a criminal record and had been in a series of violent relationships; and there was evidence she had fought back before. Another was intimidated and harassed by her abuser but there was limited physical assault in the relationship.

While the cases reviewed in this article demonstrate that an individual woman's experience of abuse is now a significant and relevant consideration at trial and in sentencing, the latter cases show that it remains very difficult for battered women to meet the threshold required to succeed in a claim of self-defence. While not all homicide cases where battered women kill should result in an acquittal on the basis of self-defence it

may be that certain stereotypes about battered women continue to inform the choices made by prosecution authorities and juries and sometimes these stereotypes may continue to obscure structural and racial disadvantage (Stubbs and Tolmie, 2008).

**Douglas, Heather, and Tamara Walsh, 'Mothers, Domestic Violence and Child Protection' (2010) 16(5) *Violence Against Women* 489.**

This paper outlines common misunderstandings alleged about child protection workers in relation to the dynamics of domestic violence, for example:

- > Domestic violence is seen as a relationship issue (p492).
- > Mothers are construed as having the responsibility to care for the children, and then blamed for the domestic violence and the consequent failure to protect their children (p493-494).
- > Mothers are given the 'leave ultimatum' – leave the perpetrator or lose the kids. When, "in many cases, women make an assessment that it is safer for both themselves and their children to stay in a violent situation rather than leave ... research has shown that one of the most dangerous times for an abused woman is in the months after separation" (p498).

**Hunter, Rosemary, '[Narratives of Domestic Violence](#)' (2006) 28 *Sydney Law Review* 733.**

This paper identifies judicial knowledge and attitudes about domestic violence in the context of domestic violence protection order and family court proceedings, for example:

- > Tendency to focus on incidents of physical violence, considered more compelling than other forms of abuse. The implication of this limited focus is that magistrates failed to understand why women remained fearful of the perpetrator post separation (p756-7).
- > Failure to appreciate the ongoing psychological impacts of serious assault (p757).
- > A belief that violence is a product of the relationship for which both are parties responsible; assumption that violence would stop post separation (p758).
- > Mutual orders overlook power differentials in the abusive relationship and hence fail to ensure the applicant's safety, in turn reinforcing the respondent's power and control (p761-2).
- > Tendency to minimise the violence and shift the blame (p766).
- > Widespread acceptance of unsubstantiated narrative that women make false allegations of violence and apply for intervention orders to gain a tactical advantage in family law proceedings (p768).
- > Widespread acceptance of cultural stereotypes of ethnic women seeking redress and protection against violence (p771).

Kaspiew, Rae, et al, 'Evaluation of the 2012 Family Violence Amendments' (Synthesis Report, Australian Institute of Family Studies, 2015).

Building on findings of the Survey of Recently Separated Parents 2012, the Longitudinal Study of Separated Families, and the 2009 AIFS Evaluation of the 2006 Family Law Reforms, this report examines the impacts of changes to the *Family Law Act 1975* (Cth) in the area of family law and has three parts:

- > Responding to Family Violence - a survey of family law practices and experiences which primarily involved online surveys of the practices and perspectives of family law system professionals(  $n=653$ )
- > the Experiences of Separated Parents Study (ESPS), which comprised two cross-sectional quantitative surveys - the Survey of Recently Separated Parents [SRSP] 2012 (  $n=6,119$ ) and the Survey of Recently Separated Parents 2014 (  $n=6,079$ ) providing pre-reform and post-reform data on parents' experiences of separation and the family law system; and
- > the Court Outcomes Project (CO Project) involving:
  - > Court Files Study: an examination of quantitative data from 1,892 family law court files providing insight into patterns in orders made by judicial determination and consent made in the Family Court of Australia, the Federal Circuit Court of Australia, and the Family Court of Western Australia, including in relation to parental responsibility and parenting time (pre-reform:  $n=895$ ; post reform  $n=997$ );
  - > an examination of patterns in courts filings based on administrative data from the three family law courts; and
  - > an analysis of published judgments applying to the 2012 family violence amendments.

One of the 'Key messages' from the report is that parents who use family law systems tend to be those affected by complex issues including family violence, mental ill-health, substance abuse and safety concerns for themselves and/or their children. This is discussed in detail in chapter 2. In particular, it was found that each cohort of separated parents studied had similar patterns of family violence (p 10). Around two-thirds of separated parents indicated that they had a history of emotional abuse or physical violence prior to or during separation and this continued for a slightly lower proportion after separation (p 10). It noted the 'prevalence of physical violence diminished after separation, as did the prevalence of emotional abuse, though to a much less significant extent' (p 10). The exposure of children to family violence for each cohort of separated parents is discussed at p 14. Chapter 4 sets out the evaluation findings on whether the 2012 family violence amendments had supported increased disclosure of family violence and child abuse concerns to family law system professionals, the screening and assessment practices and responses to disclosures of family violence and/or child safety concerns.

Lievore, Denise, '[Prosecutorial Decisions in Adult Sexual Assault Cases: An Australian Study](#)' (Report, Australian Institute of Criminology, 2004).

- > Study of the exercise of prosecutorial discretion in adult sexual assault cases across the Australian jurisdictions in which the primary charge was rape or the equivalent penetrative sexual assault offence.
- > Relevant for myths concerning sexual violence as an element of family violence. Cases 'involving strangers and other known defendants were more likely than cases involving intimate or family relationships to proceed through the criminal justice process and to end in conviction'
- > In those that proceeded, the victim was more likely to have been injured, and to have expressed non-consent either in words or through resistance; the assault was more severe in some way (for example, it involved a weapon); additional evidence was available; the defendant used force; the defendant was 'non-Caucasian'; and the defendant was a stranger.

Melville, Angela, and Rosemary Hunter, '["As Everybody Knows": Countering Myths of Gender Bias in Family Law](#)' (2001) 10 *Griffith Law Review* 124.

This paper argues that empirical research does not support the claim that 'everybody knows the family law system is biased against men'. Although dated, this paper raises three common myths that remain relevant today:

- > *Women fabricate allegations of violence and abuse to gain a tactical advantage in family law disputes and deny father's contact to their children.*
  - > This study did not find evidence of this i.e. 54% of family law cases examined contained evidence of DV, of these cases, 38% of these involved cases where a protection order was not obtained, meaning it appeared women were more reluctant to take out a protection order (p128)
  - > Timing of protection orders (contemporaneous with family orders) may reflect the fact that the need for protection escalates at the time of separation.
- > *Rates of DV against women are overrated and DV against men is silenced.*
  - > This claim uses the 'Conflict Tactics Scale', which records violent behaviour but does not rate or discount their relative severity or degree of injury caused.
  - > There is also no distinction between aggression and self-defence – focused on act of violence, not locus of power and control in overall relationship, producing a distorted view of DV.
- > *The system stacked against men*
  - > Contact orders made in 91% of cases; in cases where no contact made there were extenuating circumstances i.e. abuse, mental illness, drug and alcohol abuse.

**Meyer, Silke, 'Why Women Stay: A Theoretical Examination of Rational Choice and Moral Reasoning in the Context of Intimate Partner Violence' (2012) 45(2) *Australian and New Zealand Journal of Criminology* 179.**

'Using data from face-to-face interviews conducted with 29 women in Southeast Queensland who experienced severe forms of intimate partner violence over an extended period, this paper explores the rationale behind the (initial) decision to stay with an abusive partner.' (p179) Children and financial dependence were both salient factors in decision-making.

**Murray, Suellen, and Anastacia Powell, 'What's The Problem? Australian Public Policy Constructions of Domestic and Family Violence' (2009) 15(5) *Violence Against Women* 532.**

- > Examines key Australian domestic violence policies as at November 2006 and how they represent particular values and beliefs about domestic violence.
- > Discusses employing domestic violence within a gendered framework, thus recognising that domestic violence is experienced predominantly by women and perpetuated predominately by men (p539-541)
- > Critics of the gendered analysis instead construct policy in terms of promotion of family harmony and family preservation. Many also suggest that domestic violence is caused by family breakdown and attribute some men's use of violence as a result of bias in the family law system (p541)
- > Discusses definitions of family violence across different jurisdictions and community perceptions of what constitutes family violence (p543-547).

**Noonan, P., A. Taylor and J. Burke, *Links between alcohol consumption and domestic and sexual violence against women: Key findings and future directions* (ANROWS Compass, 08/2017).**

This literature review found that "there is little evidence that alcohol use is a primary cause of violence against women. The paper does, however, identify that there are clear associations, and in some cases, strong correlations between alcohol use and violence against women, including, for instance, in the severity of the violence." The relationship between alcohol and violence against women manifests in three ways:

- > Alcohol use is linked with the perpetration of violence against women.
- > Alcohol use is linked with women's victimisation by violence.
- > Alcohol is used as a coping strategy by women who have experienced violence

**Ragusa, Angela, 'Rural Australian Women's Legal Help Seeking for Intimate Partner Violence: Women Intimate Partner Violence Victim Survivors: Perceptions of Criminal Justice Support Services' (2012) 28(4) *Journal of Interpersonal Violence* 685.**

Study examines legal support access and experiences by intimate partner violence survivors in rural communities, drawing on 36 in-depth face-to-face interviews. Contains numerous useful excerpts from interviews with rural Australian women experiencing domestic violence, for example:

‘When you’re in DV, you don’t have . . . time to get up in the morning and you wouldn’t be allowed to get dressed up. We wouldn’t be allowed to wear makeup and he would be asking where ‘ya going, what ‘ya doing, so it does, it does interfere with your whole life . . . there is a lot of women who work and suffer DV, but there are a lot of us who don’t because we are housebound, where that’s, you know, DV. We’re controlled, and that’s where he can control you. He can’t control us out in the workforce’ (p700).

**Wakefield, Shellee, and Annabel Taylor, ‘Judicial Education on Family Violence: State of Knowledge Paper’ (State of Knowledge Paper 2, Australia’s National Research Organisation for Women’s Safety Landscapes, June 2015).**

This research paper examines the need for judicial education in domestic and family violence, based on the overall views of Victorian and Queensland judicial officers surveyed for the study which demonstrated a lack of understanding of the dynamics of domestic violence.

Findings include:

- 74% of magistrates agreed with the statement that women use domestic violence tactics as a tactic in family law matters (p17);
- Some judicial officers subscribed to the myth that a woman could leave the relationship if she made the choice to do so (p18).

Notes other complexities of domestic violence that are relevant to judicial officers’ responses including:

- The importance of understanding how the demeanour of the victims/perpetrators vary in the courtroom. For instance, perpetrators may appear calm and charming, while victims present as angry and emotional (p18);
- Being aware that ‘Studies have also found that males are more likely to blame the victim for domestic violence’ (p20).

## International

**Buel, Sarah, ‘Fifty Obstacles to Leaving a.k.a. Why Abuse Victims Stay’ (1999) 28(10) *The Colorado Lawyer* 19.**

Sets out the various pressures both external and internal on victims considering or endeavouring to escape

**DeKerseredy, Walter, Molly Dragiewicz and Martin Schwartz, *Abusive endings: Separation and divorce violence against women* (University of California Press, 2017).**

In this American publication the authors analyse sociological research to consider why and how men abuse women during and after a separation or divorce. They define separation violence broadly, as sometimes the separation is emotional distancing rather than physically leaving a shared home. They argue that separation assault is common and show how new technologies increase women's vulnerability to separation assault. They consider the role of the Family Court in keeping women connected to abusive fathers.

**Goodmark, Leigh, '[Reframing Domestic Violence Law and Policy: An Anti-Essentialist Proposal](#)' (2009) 31 *Washington University Journal of Law and Policy* 39.**

- > Provides an in-depth analysis of the construction of a stereotypical victim of domestic violence as white, straight, middle-class, weak, passive, and powerless (pp40; 45).
- > Describes Walker's model of domestic violence – the 'cycle of violence' and how it became entrenched as the benchmark against which other women's claims of DV would be tested (p42).
- > Basing law and policy on theories such as Walker's is problematic as it can exclude or overlook women who do not conform to the profiles envisaged by those theories (p44).
- > Critical to pay attention to the complexities of the lives of individual women rather than reductions of commonly reported domestic violence experiences with DV (p40).

**Stark, Evan, '[Representing Battered Women: Coercive Control and the Defense of Liberty](#)' (Paper presented at *Violence Against Women: Complex Realities and New Issues in a Changing World*, Les Presses de l'Université du Québec, 21 October 2012).**

- > Identifies the shortcomings of domestic violence laws that respond to incident-specific violence in which abuse is defined by discrete episodes of force.
- > Outlines alternative model of 'coercive control' and discusses its prevalence, features, and damaging effects.
- > 'Perpetrators use control tactics to compel obedience indirectly by depriving victims of vital resources and support systems, exploiting them, dictating preferred choices and micro-managing their behavior by establishing "rules" for everyday living' (p11).

**Wilcox, Paula, 'Communities, Care and Domestic Violence' (2006) 26(4) *Critical Social Policy* 722.**

This paper explores informal community-based work as an additional strategy to tackle domestic violence and discusses a number of common misconceptions:

- > The problematic widespread perception of domestic violence as discrete incidents rather than as an ongoing process, quoting Harwin and Barron: “domestic violence is not a ‘one-off event’ or incident but part of an ongoing pattern of controlling behaviour. Often very subtle signals can be extremely threatening: violence does not have to be overt to achieve its ends.” (p724)
- > ‘The internalization and acceptance of mainstream, traditional explanations – for example that male perpetrators are ‘bad apples’, or mentally ill, or have suffered a ‘cycle of violence’ or that some women deserve violence owing to their own behaviour – is not uncommon’ (p729)
- > Common expectation that it is the woman’s role to keep the family together (p731), and individually manage the care of her children (p738). Also discusses the tension experienced by women living with domestic violence between needing to self-care and at the same time not jeopardising their ability to care for their children (p738).
- > Discusses the stigmatized identity and loneliness women experience after leaving an abusive partner (p732) and also the increased risk of abuse, murder and rape after separation (p734).
- > ‘The misleading assumption is that domestic violence occurs between two ‘equal’ individuals, and is often constructed as a problem of intimacy or ‘relationship rivalry’ (p735).

**Yamawaki, Niwako, et al, 'Perceptions of Domestic Violence: The Effects of Domestic Violence Myths, Victim’s Relationship with Her Abuser, and the Decision to Return to Her Abuser' (2012) 27(16) *Journal of Interpersonal Violence* 3195.**

Analyses attitudes towards domestic violence, in particular that a woman can, if she wants, swiftly and successfully end a violent relationship by simply leaving her abuser (p3198). Although many women are motivated to leave their abusive relationships, a myriad of factors stand in their way, making the decision to return to abusers more likely, such as (pp3196-7):

- > the perception that the rewards of the relationship outweigh the costs of separation;
- > when she is unemployed, her combined family income is high, or when she has negative perceptions of herself;
- > lack of financial resources, inadequate help from police or from other formal support systems, lack of a place to go; and
- > difficulties in relocation, legal issues, sharing child custody, termination of the emotional connection with the abuser, and disrupted social networks.
- > ‘One of the most important factors that led women to successfully leave their abusers was the

realization that they had access to resources and support from others' (p3197).