
Chapter 2

Recognising Family Violence

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INTRODUCTION

2.1 In this chapter we describe the broad nature, dynamics and effects of family violence. Although family violence can take various forms, its predominant feature is that it involves the perpetrator exercising power and control over the victim. This has important implications for the way that both the legal system and the community respond to family violence.

2.2 Historically, the legal response to family violence has been inadequate because its particular dynamics and effects have not been well understood. Many people continue to be unaware of the specific characteristics of family violence. It is often seen as covering only physical assault; it may be regarded as something which occurs rarely or as behaviour which is a private family matter and not the business of others. We aim to raise awareness and dispel myths and assumptions about family violence by describing it in this chapter. This description of family violence is also the basis for the recommendations that we make in this report.

WHAT IS FAMILY VIOLENCE?

2.3 People generally confine their understanding of family violence to physical assault, such as hitting, punching, and pushing. Most research, as well as accounts by victims, contradicts this definition. Family violence is now generally recognised as much broader than physical assault,⁹ although there is still some debate about its precise definition.¹⁰

PHYSICAL ASSAULT

2.4 Family violence may take the form of physical assault, such as slapping, punching, pushing, biting, kicking, shaking, choking or hair pulling. It may include the use of a weapon, such as a gun, knife, spear or stick:

9 See, eg, the Victorian Government's Women's Safety Strategy definition of family violence:

'Violent, threatening, coercive or controlling behaviour that occurs in current or past family, domestic or intimate relationships ... This encompasses not only physical injury but direct or indirect threats, sexual assault, emotional and psychological torment, economic control, property damage, social isolation and behaviour which causes a person to live in fear': Office of Women's Policy [Victoria] (2002) above n 5, 20.

10 See, eg, Thérèse McCarthy, *Public Health, Mental Health and Violence Against Women: Report Produced for VicHealth* (2003) 10, and Domestic Violence and Incest Resource Centre, *What's in a Name? Definitions and Domestic Violence*, Discussion Paper No 1 (1998) 2.

I have been hospitalised eleven times. I have sustained many injuries such as a broken jaw, ribs, thumb, nose, cheekbone and toe. My teeth were smashed out and my head has been stitched up twice. Paul has hung me out the car door, my head only centimetres from the ground, whilst he was driving. He has assaulted me with a steering lock and hung me over a cliff. Many times my children and I have been dumped in the middle of nowhere at all hours. A hair dryer was lowered into my bath. Paul was lifting it in and out of the water whilst I was in the bath ... Some of these assaults I have no memory of, but the blood up the walls and the pools of blood on the floor tell me where it had occurred.¹¹

2.5 Physical forms of family violence may also include actions which particularly affect certain people, for example, taking the wheelchair away from a person with a disability:

But the worst thing was I didn't feel safe around them [my family]. I was permanently terrified. Whenever I went out they left me to struggle. I had to crawl backwards down steps; they just left me to manage. I remember one time on holiday they took a picture of me coming backwards down the stairs on a windy day and my dress blew up; they thought it very funny.¹²

PROPERTY DAMAGE

2.6 Property damage may include destroying or harming a person's personal possessions such as clothes, furniture, precious items or housing. One victim told us that her violent partner had destroyed parts of the house they jointly owned with an axe. The act of property damage is violent in its own right, but it can also threaten physical harm to the victim.

SEXUAL ASSAULT

2.7 Family violence may involve sexual assault or sexual abuse of children. Examples of sexual forms of family violence include rape and other non-consensual sexual acts, hurting someone during sex, forcing someone to have unsafe sex (eg without protection against pregnancy or sexually transmitted diseases); forcing people to take their clothes off or remain naked against their will; making someone pose for

11 Debra Parkinson, Kerry Burns and Claire Zara (eds), *A Powerful Journey: Stories of Women Leaving Violent Situations* (2004) 42.

12 Judith Cockram, *Silent Voices: Women with Disabilities and Family and Domestic Violence* (2003) 48.

pornography or in front of others; making someone look at pornography; or forcing them to watch sexual activities.¹³

The second time [I was raped by my ex-husband] my son was present ... They [the children] were out of control when it happened. Their poor little minds just didn't know how to deal with it ... My ex would come into the house and tell me to do what he said or he would wake the kids up and make them watch. By the end of it I just thought a mother does anything for her children, so I would let him do whatever, I would cry the whole time, but let him do it because I just didn't want him to wake my kids, to let them see again.¹⁴

2.8 Accounts of sexual assault reveal that it is not always viewed as a form of family violence. Perpetrators of family violence may believe that they have entitlement to sexual relations with their partners, irrespective of whether it is consensual:

My husband would get angry when I refused to have sex and he would continue to yell at me and grab me until I just gave in to shut him up.¹⁵

SOCIAL ABUSE

2.9 Family violence may take the form of social abuse, where someone restricts and supervises another person's social interactions. Examples of social abuse occur when the victim is not allowed to contact or see family or friends; not allowed to plan or attend social events or move around socially; not able to make telephone calls without permission or supervision; or is prevented from learning or speaking English or other languages. For example:

I had to be home at certain times. For example, he would come home at lunchtime and I had to be there. He would only put a certain amount of petrol in the car so you could only go so far. He'd always check where I was and who I was with. He used to shout whenever I had contact with my brother or my sister or outside contact with anyone.¹⁶

13 Victorian Indigenous Family Violence Task Force, *Final Report* (2003) 125.

14 Interview with Julie, 27 April 2005.

15 Mary Ellen Young et al, 'Prevalence of Abuse of Women with Physical Disabilities' (1997) 78 *Archives of Physical Medicine and Rehabilitation* S34.

16 Keys Young, *Against the Odds: How Women Survive Domestic Violence: The Needs of Women Experiencing Domestic Violence Who Do Not Use Domestic Violence and Related Crisis Services* (1998) 10.

PSYCHOLOGICAL OR EMOTIONAL ABUSE

2.10 Psychological or emotional abuse may involve manipulative behaviour, such as remaining silent for prolonged periods, unfairly blaming a person for adverse events or making them feel they are the problem in a relationship or family. It can include constant comparisons with other peers, which works to lower the victim's confidence, self esteem and self-worth.

I believed everything was my fault because I was such a disgusting sight and that's why Paul hated me. I once caught him masturbating over a 'People' magazine. He kicked me and pushed me back to bed and he said, 'Look at what I have to do because your body's so fucked'.¹⁷

2.11 Some victims have described the profound effects family violence has had on their sense of self:

You're feeling worthless at that point, you've been told you're worth nothing, so you're not going to think of yourself. At that point, you just think it's your lot in life, you must have done something to upset him and so deserve it. A woman in that situation is not thinking: 'Hey, you know what, I'm better than this, bugger off mate'. You are feeling so worthless, and a failure, and guilty, and on top of that with me, I also had the sexual violations, so I also felt dirty and that nobody would want me, that I was used goods. I remember thinking that I didn't care what he did to me, because I was so worthless.¹⁸

2.12 Psychological and emotional abuse may include pet abuse, where a perpetrator harms a pet or animal, or forces a person to harm a pet or animal.

VERBAL ABUSE

2.13 Verbal abuse is related to psychological and emotional abuse. It may involve frequent insulting or humiliating comments, in public or in private, about a person's intelligence, appearance, sexuality, body image, parenting skills or spousal capacity:

She would abuse me, swear, call me names. It would go on for ten or twenty minutes ... She has always told me that I make her like that. It's all my fault. She's not like it with anyone else, only me. She doesn't see that there is a problem with her behaviour. All the time she says she hasn't got a problem.¹⁹

17 Parkinson, Burns and Zara (2004) above n 11, 41.

18 Interview with Julie, 27 April 2005.

19 Rosemary Paterson (ed), *Breaking the Cycle: Six Women Tell Their Stories of Finding Ways to Deal with Adolescent Violence with Courage and Hope* (2001) 35–6.

2.14 Verbal abuse can also include threats to harm or kill someone, children, relatives or pets, or threats to destroy property or possessions, and harassment.

He said, 'I want to destroy your face so no man will ever look at you and I know you will be mine'. He said to me once 'If anyone ever hit you, I'll kill them'. I said 'Who's going to protect me from you?'²⁰

Then he stopped the car and he said to me, 'What are you going to do when you get back? I'll track you down at any domestic violence place, so I may as well kill you now.' He's a locksmith and he was saying to me, 'Any place you go, any refuge, I'll find you.' Then he hit me.²¹

2.15 It is important to note the way fear is evoked and the threat of death in these quotes because they demonstrate the perpetrator exercising ultimate power and control over the victim.

2.16 Another example of verbal abuse was provided by the Victorian Indigenous Family Violence Task Force:

Stupid, brainless, idiot, thick; slut, bitch, big hole, tart, dog; fat, shitface, ugly or expressions like 'you think ya look good', 'what ya tryin to prove?'; useless or 'good for nuthin', 'can't cook', 'can't even look after ya kids'.²²

ECONOMIC ABUSE

2.17 Economic abuse includes the unequal control of money or finances in a relationship or family. It may involve one person having complete control of money and income; preventing family members from accessing their own money or bank accounts; having unrealistic expectations of spending patterns and budgeting; controlling how other family members spend their income; forcefully taking money from family members; or threatening family members for money. For example:

Janine told of her husband's expectation that she provide food for herself and their daughter, Emily, even though she had no independent income: 'A lot of the time I can't afford food so I get help from the Salvation Army ... I don't care about food for myself, I just care about Emily. I often go days and days without food. It doesn't bother me at all. He loves her, don't get me wrong. He is the one that will buy a \$3000 computer for her

20 Parkinson, Burns and Zara (2004), above n 11, 106.

21 Ibid 46.

22 Victorian Indigenous Family Violence Task Force (2003) above n 13, 126.

but not \$10 for food. He says 'you're the mother, you have to look after that' ... He will go and eat at his mum's if there is no food here...²³

During the abuse, I spent little on myself and felt guilty about every cent. I mainly bought clothing, some cosmetics (such as shower gel) and some hobby items (scrap booking mainly). I still rarely spend on me, only recently allowing myself \$20 a fortnight for a massage. My ex-husband spent every cent of his money on himself.²⁴

I never shopped on my own, we always went to the supermarket together. I would want a packet of biscuits or something for the kids and he would make me feel guilty. I just don't think you should have to beg for things.²⁵

In our community, a lot of women try to get some presents and send some money home. The man gives \$20 pocket money a week to pay for them to go to work, and says what is left you can buy cosmetics and send some home. She can't even buy a can of drink with this.²⁶

RECOGNISING THE BROAD NATURE OF FAMILY VIOLENCE

2.18 Recognising the broad nature of family violence is particularly important because it identifies unacceptable behaviour and validates the experiences of victims, who may have experienced many different types of violence. A broad definition of family violence is also important to ensure that people are able to obtain legal protection through an intervention order. In Chapter 4, we make recommendations to expand the definition of family violence for the purposes of intervention orders.

PERPETRATORS AND VICTIMS OF FAMILY VIOLENCE

FAMILY VIOLENCE AND GENDER

2.19 Women are far more often the victims of family violence than men. Family violence is a gendered crime, and gendered power relations in society are a significant factor in its prevalence.

23 Coburg Brunswick Community Legal and Financial Counselling Centre, *His Money or Our Money? Financial Abuse of Women in Intimate Partner Relationships* (2004) 21.

24 Ibid 23.

25 Ibid.

26 Ibid 22.

2.20 The latest Victorian government statistics estimate that family violence affects one in five women,²⁷ while a benchmark Australian study based on a 1996 Australian Bureau of Statistics survey reported that 23% of women who have ever been in a married or de facto relationship had experienced physical violence from a male partner.²⁸ While such statistics are useful to indicate a substantial minority of women in our society are affected, researchers assure us that we will never really know the extent of family violence.²⁹ Some even argue that such data represents only the ‘tip of the iceberg’ in gauging the extent of some forms of family violence.³⁰ A World Health Organisation global report on violence showed that the overwhelming burden of partner violence is borne by women at the hands of men.³¹

2.21 There are several possible reasons for the gendered nature of family violence. One commentator describes such gendered power relations in the following way:

[A] man’s violence towards his female partner must be seen in the context of a set of social arrangements where men as a group have power at the expense of women as a group, and so violence by men in individual relationships can be understood as in various ways assisting the maintenance of the status quo. It is not necessary for individual men to be aware of this, although it is noteworthy how many perpetrators’ violence is not simply a form of expression of rage or frustration over conflict, but is a controlling response to their female partner’s ‘failure’ to be a ‘proper’ wife in dominant patriarchal terms.³²

2.22 Social sanctions often prevent open discussion of family violence and violence against women,³³ and much of the violence occurs in private homes away from the attention of others. A historical, gendered dichotomy between public and private spheres leads some to still consider violence in the home as a private issue, rather than one in which the State should interfere. One woman we spoke to only considered a long-term abusive relationship to be ‘family violence’ when her husband chased her into the frontyard, trying to kill her, as the attack was seen by her neighbours and then the police.

27 Victorian Government, Office of the Premier, ‘A New Approach to Reduce Family Violence’ (Media Release, 27 April 2005).

28 Australian Bureau of Statistics, *Women’s Safety Australia 1996* (1996) 50.

29 Dale Bagshaw and Donna Chung, *Women, Men and Domestic Violence* (April 2000) 2.

30 Denise Lievore, *Non-Reporting and Hidden Recording of Sexual Assault: An International Literature Review* (2003) 26.

31 World Health Organisation, *World Report on Violence and Health* (2002) 89.

32 Domestic Violence and Incest Resource Centre, *Men as Victims of Domestic Violence: Some Issues to Consider*, Discussion Paper No 2 (2001) 45–6.

33 Ibid.

2.23 Even when violence against women does reach the public domain it is often considered less serious than violence that takes place outside the home between acquaintances or strangers. This is one of the reasons why family violence has rarely been prosecuted as a criminal offence. The full extent of violence against women often goes unrecognised. Alternatively, it may be attributed to individual men and not recognised as a social problem.³⁴ These attitudes also reflect wider power relations in society.

CHILDREN AND YOUNG PEOPLE AS VICTIMS OF FAMILY VIOLENCE

2.24 Children and young people may be affected by family violence by being physically and verbally assaulted themselves or by witnessing or being present when their parent is abused. Research is now recognising a connection between family violence and child abuse,³⁵ for example, one study identified the presence of domestic violence in at least 52% of families where children were abused or neglected.³⁶ Even if a child or young person is not a direct victim of family violence, witnessing family violence and living in a household where family violence takes place can be extremely harmful.

[Along with the violence perpetrated against me, my ex-husband] has head butted [my son] Anthony, knocking him clean out. He has also punched and emotionally abused him... Josh [my other son] has been thrown into the wall, hit and also emotionally abused ... There were times when Josh didn't want to go with his father [on access visits], but he knew he didn't have a choice. [His father told him before one access visit] 'Wave to your mother, because you won't see her again'. Josh had looked back at me and I could see him screaming ... Josh didn't want to go [on another access visit] ... [he] wet his pants before going that day.³⁷

2.25 When family violence occurs in a marriage or other intimate partnership, and the couple has had children together, children can become part of the dynamic of power and control in the violent family relationship. Threatened or actual violence towards children can be a way of controlling a child's parent. Children also affect the decisions people make about staying in or leaving a violent relationship. Some victims

34 Jenny Mouzos and Toni Makkai, *Women's Experiences of Male Violence: Findings from the Australian Component of the International Violence against Women Survey* (2004) 7.

35 Adam Tomison, *Exploring Family Violence: Links Between Child Maltreatment and Domestic Violence* (2000).

36 Ibid 6.

37 Parkinson, Burns and Zara (2004) above n 11, 37–8, 42.

report that the impact of the family violence on their children was the reason they decided to leave. Some victims report that their children are one of the reasons they do not want to leave the relationship.

2.26 After separation, conflict about children can become the focus for further violence.³⁸ As Laing puts it: ‘After separation, the children may find that ... they move from the periphery to the centre of the conflict’.³⁹

2.27 Child contact can be a way for the perpetrator to maintain contact with a victim of family violence, where the victim is also the child’s mother. Some perpetrators will harm children on child contact visits as a way of harming their mother. Others may use disputes over child contact as a way of controlling victims, occupying them with legal disputes and threatening them with a lack of child contact.

2.28 Legal and social support systems must take account of issues relating to children to respond adequately to the needs of family violence victims. Research has found that one of the main reasons women fail to report family violence is because they fear their children will be removed.⁴⁰ This is often because they are held accountable for failing to protect their children in a family violence situation, despite the fact that it is the perpetrator who is responsible for the violence and for any harm caused to the children through exposure to the violence.

2.29 Laing suggests that it is more helpful to support women in the actions they are already taking to assist their children, than to ‘pathologise’ them and presume they are ignorant or incompetent because they are abused.⁴¹ It is also important not to separate the needs of children from the needs of mothers who are the victims of family violence. Instead of treating women and children as entities with completely separate interests, the legal and social response to family violence should recognise that ‘the best interests of children in families with domestic violence cannot be separated from the best interests of their mothers’.⁴²

38 We make recommendations for ways that child contact can be restricted and made safer at recommendations 116–122.

39 Lesley Laing, *Children, Young People and Domestic Violence* (2000) 2.

40 Ibid 17.

41 Ibid 6.

42 Ibid 21.

YOUNG PEOPLE AS PERPETRATORS OF VIOLENCE

2.30 Children and young people can also of course be perpetrators of family violence. A recent and growing field of research documents the violence perpetrated against parents by their children, including physical and emotional violence.⁴³ Adolescent children, in particular, can be the perpetrators of family violence towards a parent or parents, or other people in their household.

MEN AS VICTIMS OF FAMILY VIOLENCE

2.31 Over the past few years, there has been growing interest in the topic of men as victims of family violence.⁴⁴ The Lone Fathers Association and other men's groups have been vocal about this topic. Claims have been made that the Australian Bureau of Statistics and the Office for the Status of Women have falsified and suppressed statistics that would otherwise have shown the 'true' extent of female violence towards their male partners.⁴⁵

2.32 Studies conducted in the United States and more recently in Australia have been used to support claims that men and women are equally violent,⁴⁶ and that men are victims of family violence in the same number as women.

2.33 The most common measure used to ascertain rates of violence is the Conflict Tactics Scale.⁴⁷ Studies conducted in the United States during the 1970s and 1980s that examined the incidence of physical aggression in heterosexual relationships showed that men and women perpetrated violence at roughly the same rate.⁴⁸ However, these studies did not consider the degree of severity of the violence, the effect of the violence on the victim, the different motivations of men and women in perpetrating violence, and the use of forms of family violence other than physical (eg marital rape, verbal abuse, threats and intimidation, financial deprivation).⁴⁹ When examined closely, men's and women's violence is not equivalent. Men's violence to women is more severe and more likely to inflict severe injury; women are more likely

43 See, eg, Paterson (2001) above n 19; Natasha Bobic, *Adolescent Violence Towards Parents: Myths and Realities* (2002).

44 Submissions 24 (James Hickey), 56 (Lone Fathers Association (Australia)).

45 Kerrie James, 'Truth or Fiction: Men as Victims of Domestic Violence', in Jan Breckenridge and Lesley Laing (eds), *Challenging Silence: Innovative Responses to Sexual and Domestic Violence* (1999) 153.

46 Bagshaw and Chung (April 2000) above n 29.

47 James (1999) above n 45, 154.

48 Ibid.

49 Ibid 155.

to be killed by current or former male partners than by anyone else; less than 10% of male homicides are carried out by an intimate partner, and when they are, there is a history of the female being a victim of domestic violence in more than 70% of cases.⁵⁰

2.34 Men are far more likely to be harmed by a stranger than by a family member and women's violence towards men is more likely to occur in self-defence. Women's violence has been found to be a response to frustration and stress, whereas men's violence is most often an attempt to dominate and control. Women's violence is often a reflection of dependence, whereas men's violence is a reflection of dominance.

2.35 As one researcher concludes:

Whilst it is true that women can be violent and that women's violence can constitute a problem for their male partners, it is a fiction that their violence is equivalent to men's in intent, frequency, severity or outcome ... The significant differences between men's and women's violence give us much greater cause to be more concerned about men's violence towards women than women's violence towards men, and legitimises current social policy direction and priority.⁵¹

FAMILY VIOLENCE AND DIVERSITY

2.36 Gender is not the only factor in determining who is affected by family violence. Family violence may occur in the context of same-sex and other relationships. Race, ethnicity, age, physical disability and cognitive impairment also contribute to particular groups in society being more often affected than others. This is discussed further at paras 2.76–2.91.

DYNAMICS OF FAMILY VIOLENCE

2.37 In this section, we discuss the dynamics of family violence, focusing on the way it can be used by perpetrators to exercise power and control over other family members. Understanding these dynamics is important in shaping the legal response to family violence. These dynamics help to explain why victims respond in ways that present challenges to the legal system, for example, by exhibiting extreme fear in situations where it does not seem justified to others, by leaving and then returning to the perpetrator, or by maintaining the hope that the violence will not occur again.

50 Bagshaw and Chung (April 2000) above n 29.

51 James (1999) above n 45, 161–2.

PERPETRATORS AND CONTROL

2.38 Repeated coercive and controlling behaviour which limits, directs and shapes a person's thoughts, feelings and actions is a common pattern of family violence. In this way it is different from other types of violent behaviour, which are more likely to take the form of one-off incidents.

2.39 Perpetrators use abusive behaviour to try to dominate, coerce and control other people. Whether they are physically violent, psychologically and emotionally abusive or violent in any other way, many perpetrators use a combination of subtle and unsubtle methods to maintain their control over a victim. They want them to 'act, talk and think' in ways that please them. They also make family members responsible for their own fears and problems. For example:

I use violence because I wasn't getting my own way.⁵²

She would go on and on, I would try to get away, I'd push her.⁵³

My body language says to her 'I am going to get abusive' you can see it (fear) in her eyes.⁵⁴

I punched the wall ... I guess it was a way of releasing, probably two things, releasing some sort of pent up violence in me. This is a physical situation, and when I say I haven't hit my four kids I most certainly have more than once punched out a wall. I slammed a door so hard until it is, you know, virtually broken. Yes, the release of pent up type anger and I think also a way that says, 'Hey, I am the one that's controlling the situation, you're not.'⁵⁵

2.40 Acting in one's best interests, other than attempting to avoid the further violence and control of the perpetrator, can be very difficult indeed. As some victims describe:

When you're in this situation, your identity goes, you're pleasing this person all the time, not doing what you want to do. You start to realise that.⁵⁶

I was charged with driving an unregistered car. He'd forced me to drive it. I remember the police officer saying, 'How can anyone make you do it?' He'd punched me—that's how someone can make you do it.⁵⁷

52 Kerrie James, Beth Seddon and Jac Brown, *Using it' or 'Losing it': Men's Constructions of Their Violence Towards Female Partners* (2002) 4.

53 Ibid 5.

54 Ibid 4.

55 Ibid.

56 Parkinson, Burns and Zara (2004) above n 11, 81.

57 Ibid 45.

2.41 Physical violence, or its threat, is not the only way that perpetrators of family violence achieve control. The following vignettes, taken from a men's behaviour change book, illustrate this point. The first illustrates economic and verbal/psychological abuse as a means of controlling family members; the second illustrates psychological and verbal abuse.

Both John and his wife worked. They had two children at a private school, a big house with a recently added extension and the latest car. They both earned good money, but no-one knew what happened to John's wage. They were deeply in debt and his wife and children were forced to survive on her income as well as meet all the bills and loan repayments. She never had any money left over and had to endure insults about her budgeting abilities and intelligence.⁵⁸

When George came home from work he would systematically go through the house, checking to see that all the cleaning and other work he expected his wife to do had been done. Sometimes he'd wipe his finger along the top of the window frame to find dust, or he'd deliberately mess something up as an excuse to denigrate his wife's ability to keep the house clean. George also had very unrealistic expectations of his son, especially in sports. If his son scored 100 in cricket he'd tell him he should have scored more. In fact, his wife and children could never do anything right. Sometimes he'd threaten to kick both his wife and children out of his house if they didn't do things his way.⁵⁹

BEING IN CONTROL WHEN USING VIOLENCE

2.42 Perpetrators usually have control over their own actions when they are violent but may state that they did not know what they were doing or were 'out of control' when they were violent. Recent research suggests that this is rarely the case. There are only a tiny number of people who, through illness or accident, do have a neurological or mental disorder which interferes with their way of thinking and may result in violence and impulsive behaviour.⁶⁰ Instead: 'The majority of violent or abusive men are just normal people who try to distance themselves from their actions by trying to blame others'.⁶¹

58 Ruth Frances (ed), *Mirrors, Windows and Doors: A Self-Help Book About Violence and Abuse in the Home* (rev ed, 1998) 24.

59 Ibid 22.

60 Ibid 62.

61 Ibid 62.

2.43 George, a perpetrator, describes in his own words the use of this control while performing a violent act:

If someone knocked on the door when I was arguing with my wife, I could stop mid-sentence—I would instantly become MISTER NICE GUY. The second they left it was like turning a tape recorder back on—I could start EXACTLY where I left off.⁶²

2.44 Research has found that some perpetrators view their violence in ‘instrumental’ terms to overtly ‘get their own way’. For example: ‘I know exactly what I am doing, but fuck you woman—I’ll grab you and make you listen’.⁶³

2.45 Perpetrators who ‘knowingly’ use violence to control their partners—the ‘tyrants’, as some academics have called them—are less likely to describe themselves as violent and admit to their violence. Conversely, research suggests that perpetrators who say they ‘lose it’—the ‘exploders’—are more likely to acknowledge they use violence, but blame their partners for provoking them.⁶⁴ Both these explanations by perpetrators reinforce the importance of the law’s role in holding perpetrators accountable for their actions.

2.46 Victims’ accounts of violence also demonstrate the control perpetrators exercise when performing a violent act and how victims are affected by understanding that the perpetrator is in control.

I feel that Susan has got some control over what she does, even though she says she doesn’t know what she’s doing. If she wants to she can sit and talk quietly to someone but then walk out the door and abuse all of us, so she’s got to be able to control it when she wants. It’s probably harder thinking she knows what she’s doing. It’s easier to blame the Tourettes or the other problems she’s got.⁶⁵

He had me up against the pole holding me with his hand on my throat and had the hammer in his other hand. He was banging it and just missing my head. I knew that if I screamed or did the wrong thing he would kill me. All I could think of doing was to look him straight in the eyes and if he loved me, he wouldn’t kill me. The thing was that his mobile phone rang, and he’d answer it. He was really nice as pie on the phone taking business calls. He was holding the door so I couldn’t get out, nice as pie on the phone, and

62 Ibid 63 (emphasis in original).

63 James, Seddon and Brown (2002) above n 52, 4.

64 Ibid 4–5.

65 Paterson (2001) above n 19, 29.

then trying to suffocate me. He was taping the whole thing on a micro cassette recorder like he'd done with his previous partner.⁶⁶

2.47 Understanding that perpetrators have control over their violent behaviour has important implications for the legal and social response to family violence. Not only does it mean that perpetrators must be held accountable for stopping the violence. It also explains why many perpetrators of family violence can appear 'charming', 'personable' or even 'a pillar of the community'. When perpetrators are only violent towards a certain family member or members, but behave non-violently and politely towards other people, it may be difficult to believe victims' accounts of their actions. It is important to recognise that perpetrators can appear perfectly calm and non-violent (such as when the police attend a call at a family home, or at court) but still be perpetrating violence against a family member.

PERPETRATORS AND SITUATIONAL FACTORS

2.48 Some perpetrators are under various forms of pressure. Newly arrived refugees may have suffered terrible trauma in their home country, the fracturing of their extended family and community, and significant loss of their role and status in their new country, causing intense internal confusion and pain. Carers of people with disabilities may be overworked, over-tired, underpaid, and under-appreciated. For Indigenous Australians, the profound and continuing harms of colonisation and structural violence of race relations creates pressures and deep fissures in communities. These must be kept in mind with the high levels of family violence found in Indigenous communities. Family violence is also associated with alcohol and drug use. However, it is a myth that alcohol causes family violence. The use of alcohol may just make it easier to behave in more extreme and thoughtless ways.⁶⁷

2.49 Other social factors and family background can have an impact on perpetrators' behaviour. Gender roles in society and communities, such as ideas of 'manhood' or traditional/patriarchal ideas of how a husband behaves, may have an impact on some male perpetrators.

2.50 All of these factors may contribute to family violence. However, some of these factors are also present in other areas of criminal behaviour and do not excuse perpetrators from liability. Researchers suggest that abusive behaviour is never entirely determined; there is always an element of free choice. As one researcher argues:

66 Parkinson, Burns and Zara (2004) above n 11, 31–2.

67 Ruth Frances (ed) *Mirrors, Windows & Doors: A Self-Help Book for Men About Violence and Abuse in the Home* (Revised by N Belfrage and I Wilson ed) (1998).

For some [men] whose early lives may have been influenced by violence, the choice to eschew violence may be a more difficult choice than for [men] whose early lives were violence free. However, it is still a choice and it could be argued that there is an even greater moral obligation on men who experienced violence early in their lives to be vigilant about their own behaviour.⁶⁸

2.51 Acknowledging the influence of all these factors is very important. But it does not remove the fact that perpetrators are in control of their violent behaviour and they need to take responsibility for making the violence stop. Indeed, the fact that many perpetrators are not violent towards anyone else in the community, other than a particular family member or members, is one way of confirming the choice they make to be violent in some situations.

PATTERNS OF FAMILY VIOLENCE

2.52 Some commentators have described a three-phase cycle of family violence. They describe a first phase, the ‘tension-building’ phase, as being when the perpetrator engages in increasingly abusive behaviour—verbal abuse, constant criticism, harassment, public embarrassment, humiliation and minor physical incidents. The victim may react by withdrawing or avoiding contact with the perpetrator to avoid ‘setting him or her off’. When the tension increases to the second phase, the ‘violent incident’, this may be represented by an act of physical, emotional or sexual violence against the victim, often accompanied by severe verbal abuse. The third phase is called the ‘honeymoon’ phase, where the victim may respond with anger or rejection after the incident, and the perpetrator may respond with apologies, gifts, compliments, promises to change and so on. According to this cycle, phase three then leads back to phase one.

2.53 Many victims describe a situation where the violence begins with verbal and emotional abuse followed by physical assault with increasing degrees of severity.

2.54 Some family violence victims also describe the development of patterns of cruelty in which strategies of abuse become more diverse and severe over time.⁶⁹ Many describe a situation where the violence begins with verbal and emotional abuse followed by physical assault.

68 James, Seddon and Brown (2002) above n 52, 2.

69 Ibid.

2.55 Victims find the unpredictability of family violence particularly difficult to cope with. Perpetrators may control victims by putting them in a situation where they are under a constant threat of attack. As one victim said:

I had a sense of fear. He was extremely explosive. Even if it was only a couple of times a year, it was like a tantrum, throwing things through windows, a real anger within him. I never knew when this would happen.⁷⁰

2.56 Although a particular incident may not seem serious to others, to the victim it may be part of a broader pattern of controlling behaviour which influences what the victim does, and how he or she behaves. As one researcher puts it:

Contrary to popular belief, women who are subjected to assault have perfected the art of behaving just the way their assailants expect them to. After years of repeated assault, they have learned what precipitates violence.⁷¹

2.57 Through violence, perpetrators can begin to control how victims behave and even think, feel and experience their life. As some victims have said:

He controlled what I wore, what I saw, and my money (I worked).⁷²

All this [abuse] made me change my behaviour so I could avoid physical abuse ... I would take the children out and on the way home say 'Just be really good'. I saw this as a way of at least having a chance of avoiding his violence'.⁷³

He taught me from early in the relationship to switch off, because if I laughed, I was laughing at him. If I was sad, I was just an absolute sook. I was never allowed to be sick. There was so much control.⁷⁴

My palsy affects my speech, making it slower than normal and sometimes slurred. I will never forget when he told me not to laugh loudly as I sounded so ridiculous, so for years I never laughed again. I had to be conscious of everything I did.⁷⁵

70 Parkinson, Burns and Zara (2004) above n 11, 26.

71 Women's Policy Co-ordination Unit, *Criminal Assault in the Home: Social and Legal Responses to Domestic Violence* (July 1985) 14.

72 Parkinson, Burns and Zara (2004) above n 11, 105.

73 Cockram (2003) above n 12, 45.

74 Interview with Julie, 27 April 2005.

75 Cockram (2003) above n 12, 45.

MYTHS ABOUT FAMILY VIOLENCE

2.58 Perpetrators can only be made accountable for their actions if myths about family violence are rejected. Historically, theories about family violence tended to locate responsibility and blame for family violence with the victim, who was considered to have provoked or deserved the violence.

2.59 While social and legal attitudes to family violence are gradually changing, there is still a misunderstanding of the reasons why women do not leave violent relationships immediately. The following section examines and tries to explain the difficulties faced by victims leaving violent relationships.

WHY DON'T THEY JUST LEAVE?

2.60 The question 'why don't they just leave?' reveals a fundamental misunderstanding of the position of many family violence victims and the dynamics of family violence. In the section above we discussed the power and control which perpetrators may exercise over victims. As one woman commented:

We remain in these relationships because we have lost faith in ourselves; after all the one person we love and would do anything for makes us believe we are such sorry excuses for life. Our spirit breaks, and subconsciously we believe ourselves to be worthless. We fear failure, and the loneliness we have previously experienced, makes us become dependent upon the one who hurts us.⁷⁶

I couldn't function without thinking of him all the time. That's what it was like. The step away is the most positive move you can make but when you're in the situation you believe there is nothing wrong. He has you believe that. People say, 'Why don't you leave?' You don't. When they say, 'Why do you put up with it?' the answer is, you just do. You love them, and you can't see they're doing anything wrong.⁷⁷

2.61 Sometimes, levels of fear of violence are so acute that, paradoxically, it seems safer to stay in a violent relationship than risk what might happen on leaving. Statistics confirm that the most extreme form of family violence, homicide, occurs more often when a victim has *already left* the abusive relationship. Approximately 58 women in Australia each year are murdered by their male partner or ex-partner. Women are more likely to be killed by current or former partners than by anyone else.⁷⁸ In a

76 Parkinson, Burns and Zara (2004) above n 11, 21.

77 Ibid 77.

78 Jenny Mouzos and Catherine Rushforth, *Family Homicide in Australia*, Trends and Issues in Crime and Criminal Justice No 255 (2003) 3.

comprehensive study of all family homicides in Australia from 1989 to 2002, Mouzos and Rushforth found that the major precipitating events in homicides where men took the lives of their spouses were domestic altercations, separation and jealousy.⁷⁹ Homicide in these cases is often the ultimate attempt of males to exert power and control over their partners/wives.⁸⁰ Some victims are acutely aware of the possibility of the violence escalating if they leave:

The day before [I left] he was really sick and was half out of it, so I asked him if he would let me move out ... He started laughing and said, 'You're not fucking getting your own place, cunt, the only way you're getting out of here is in a body bag'.⁸¹

Towards the end [of the relationship] when I became stronger, that was when he became violent—physically attacking me. It was so scary I can't describe it. It scatters the whole inside of me. Basically I feel people are good. This destroyed my sense of what should be and takes a while to get over.⁸²

He said to me, 'If you leave me and don't come back, I'll get you. But it won't be when you are down. When you're happy, that's when I'll come and get you'.⁸³

Three days after we separated he came back and raped me the first time. The last time was [13 months later].⁸⁴

BARRIERS TO LEAVING

2.62 In addition to the control which may be exercised over the victim, there are other structural factors that may make it difficult to leave a violent relationship, including: inadequate income, lack of information on support services, lack of appropriate support services, lack of access to legal representation, lack of affordable, appropriate housing, and lack of affordable childcare. Ineffective responses from either the legal system or support services can create significant and crucial impediments to moving beyond family violence.

It was hard breaking from that day-to-day routine of normal living. It was hard not having John there, although he wasn't really there even when he was ... It was hard to change after 33 years of being relied on by others. It was difficult to do something different.⁸⁵

79 Ibid 3; Ken Polk, *When Men Kill* (1999) 28.

80 Ibid.

81 Parkinson, Burns and Zara (2004) above n 11, 41.

82 Ibid 26.

83 Ibid 50.

84 Interview with Julie, 27 April 2005.

It's so hard to leave and so easy to stay. About 500 people apply for each house that's available for transitional housing ... I thought [leaving] was a big mistake at first. I had to leave all my friends and support in the city. It was depressing that I had no one and nothing when I got here. I didn't have a bed.⁸⁶

It's hard now because I live with my parents and he lives over the road from us. That's really hard. He's got a jukebox and plays really loud music. Just to annoy me, he used to drive up on his Harley round and round the block and check on what I was doing.⁸⁷

I live independently and have some home help. I don't believe there will be reconciliation with my family. This is often hard, as I don't have anyone else. I don't have anyone to remember my birthday. I now live with a double isolation, my disability and breaking up with my family. And I have to try and come to terms with the years of abuse. My family really didn't have to do much to support me, but withdrawing and ignoring me was so dangerous. I am often astounded that I came out of it in one piece.⁸⁸

2.63 Some victims face other specific barriers to leaving. For instance, if people have disabilities and must rely on others for their care in the home, or have special facilities set up in their home, it may be impossible for them to leave the place where they are living with the abusive person.

2.64 Leaving is often a non-linear process. It is common for family violence victims to attempt to end the violent relationship several times before they finally succeed. Separating often occurs in stages. Perpetrators can use a variety of measures to make leaving as difficult as possible, including threatening the children, threatening legal action and depriving the victim of money. Lack of support from friends and family, or professionals such as court personnel, the police, counsellors, and clergy, may all cause victims to return to the relationship.

I've tried to leave him from six months into the marriage till twelve years later and finally I did it. It takes a long time to leave, but you get there in the end.⁸⁹

The first time I left, I went to a refuge. I had such a need to [procreate] that it pushed me back to him ... I left my ex lots of times and went back. I went interstate. I've done all

85 Parkinson, Burns and Zara (2004) above n 11 56.

86 Ibid 45.

87 Ibid 34.

88 Cockram (2003) above n 12, 48.

89 Parkinson, Burns and Zara (2004) above n 11, 131.

sorts of things ... When I left for good, it was pretty freaky. I'd never rung the police on my ex, but I did that time.⁹⁰

2.65 These patterns create particular challenges for police and courts in dealing with victims. For example, police and prosecutors may find it frustrating to deal with a victim who has sought their assistance but has then returned to a violent partner. Similarly, courts may be sceptical about the seriousness of alleged violence if the victim keeps returning to the alleged perpetrator.

2.66 However, police, courts and family violence support agencies need to recognise the extent of control which a violent person may exercise over the victim and the emotional and practical barriers faced by victims when they attempt to leave a violent relationship. Legal processes should be designed to provide advice and support which may eventually lead to the victim being empowered to leave the violent relationship. They should also allow victims and children to remain in their home if they wish to do so after they have separated from their partner. It should not be seen as a 'failure' of the system or individuals involved when a victim takes many attempts to leave.

2.67 Such legal responses could assist people to move successfully and happily beyond violent relationships. For some people, separating from violence has meant almost literally getting their life back:

I remember after that, driving down the highway crying, feeling happy and sad and thinking, I'm free.⁹¹

There was a time in my life when I was overflowing with happiness, high on life. I was a positive, carefree and contented person. Slowly I am returning back into that person I was, and it is a great feeling ... I like my new life without dramatic scenes, no fear, very few inhibitions and the freedom to be whoever we want to be.⁹²

HOW VICTIMS RESPOND TO FAMILY VIOLENCE

2.68 Despite the power and control which perpetrators exercise through various forms of violence, victims are not completely deprived of their ability to act for themselves and protect their children. Some women exercise this capacity or 'agency' in a violent relationship, to cope with or 'survive' the violence. For example, one victim described how she would wear her running shoes and carry her keys to bed as a

90 Ibid 40–1.

91 Ibid 43.

92 Ibid 21, 24.

way of quickly escaping if things got very bad.⁹³ Another described how she would try to defend herself during a violent incident: ‘It wasn’t like I sat there and let it happen ... he threw me across the kitchen one day and I picked up the pan ... and smacked him over the head with it’.⁹⁴

2.69 Others may exercise it by planning to leave the violent relationship and ultimately doing so. Victims’ agency and exercise of personal power can play an important part in being able to take steps to move beyond or escape violence. For example, as one victim described:

For five or six months prior to this last assault I was trying to plan a way to escape. I had secretly been seeking legal advice, but at the end of the day, I knew it was up to me.⁹⁵

2.70 For some this happened gradually: ‘Getting the intervention order was a huge step in that it was the first time I took control of my life again. It was the first little bit of self esteem that I got back’.⁹⁶ For others, it was sudden.

2.71 Recognising that family violence victims are not completely powerless and have a capacity to act to protect themselves does not mean that they are in any way responsible for the violence they experience. As Laing puts it:

In discussing women’s agency ... it is important that this is not seen as discounting the terror and abuse with which many women live, or as holding the woman accountable in any way for the abuse she experiences.⁹⁷

2.72 Research on family violence now suggests that victims act assertively, logically and creatively in response to the abuse they have experienced. Rather than being passive and defeated, this research finds that they contact a variety of helpful sources, such as friends, relatives, social services and the police. Often these support-seeking strategies have little result because of deficiencies in the services and sources to which the victim appeals. It is important to recognise this in developing appropriate responses by police, courts and support services.

93 Personal story told at the Facing Family Violence workshop at WIRE—Women’s Information, Melbourne, 18 July 2005.

94 Shirley Patton, *Pathways: How Women Leave Violent Men* (2003) 36.

95 Interview with Kate, 21 April 2005.

96 Interview with Julie, 27 April 2005.

97 Lesley Laing, *Working With Women: Exploring Individual and Group Work Approaches*, Australian Domestic and Family Violence Clearinghouse, Issues Paper 4 (2001) 4.

VICTIMS' AGENCY AND THE JUSTICE SYSTEM

2.73 Family violence victims often have a more accurate understanding than others about how the perpetrator is likely to react in certain situations and how to protect their own safety. Police, registrars and magistrates must be prepared to take account of the perceptions and views of victims.

2.74 An effective legal and social response to family violence must also respect the capacity of victims to make choices about what they need. The legal system must be sensitive to different needs at different times. The response which may be appropriate when victims need immediate protection in a crisis may be different from the response needed when they are in the process of moving on from a violent relationship.

2.75 Recommendations made later in this report recognise the capacity of victims to choose a legal remedy which is appropriate to their situation, while still ensuring they are protected against violence.

FAMILY VIOLENCE AND DIVERSITY

INDIGENOUS PEOPLE

2.76 The extent and seriousness of family violence against Indigenous women and children has been well established in research.⁹⁸ Indigenous Victorians are eight times more likely to experience family violence than non-Indigenous Victorians.⁹⁹ The Victorian Indigenous Family Violence Task Force has found that 'one in three Indigenous people are the victim, have a relative who is a victim or witness an act of violence on a daily basis in our communities across Victoria'.¹⁰⁰

2.77 The Victorian Indigenous Family Violence Task Force recognises that from an Indigenous perspective, the causes of this family violence are located in the history and impacts of white settlement, and the structural violence of race relations since then.¹⁰¹

98 Human Rights and Equal Opportunity Commission, *Submission to the Northern Territory Law Reform Committee Inquiry into Aboriginal Customary Law in the Northern Territory* (May 2003) 19 <www.hreoc.gov.au/sex_discrimination/customary_law/submission.html> at 21 December 2005; Victorian Indigenous Family Violence Task Force (2003) above n 13; Pam Greer, 'Aboriginal Women and Domestic Violence in New South Wales' in Julie Stubbs (ed) *Male Violence and the Law*, The Institute of Criminology Monograph Series, No 6; Partnerships Against Domestic Violence, *Indigenous Family Violence*, Phase 1 Meta-Evaluation Report (2004).

99 Victorian Indigenous Family Violence Task Force (2003) above n 13, 4.

100 Ibid.

101 Victorian Indigenous Family Violence Task Force (2003) above n 13, 133–6.

Such 'structural violence' includes: dispossession of land and traditional culture, breakdown of family kinship systems and Aboriginal lore, economic exclusion and entrenched poverty, alcohol and drug abuse, the effects of institutionalism and child removal policies, inherited grief and trauma, and the loss of traditional gender roles and status.¹⁰²

2.78 Such wider structural and social issues also affect the way family violence in Indigenous communities is recognised. There is a significant under-reporting of family violence against Indigenous women, especially the rape and assault of women by men. Again, this is often linked to structural factors. As one report put it, 'the lack of trust between Aboriginal people and the police means that violence and sexual abuse within Aboriginal communities is vastly underreported'.¹⁰³

2.79 Because of the wider patterns of kinship and family relations in Indigenous communities, the nature of violent family relationships may also be different. For example, wider family networks may become involved in a particular family violence situation, so that a women feels threatened not only by an immediate partner, but by members of his family as well. Or, people may have a violent relationship with a member of their extended family, rather than an intimate partner. This diversity has implications for appropriate legal recourse, and also how we define 'family member' in the context of family violence.

FAMILY VIOLENCE AND DIVERSE COMMUNITIES

2.80 Differences also exist in the violence and family relationships in some immigrant communities. There has been no comprehensive statistical research into the levels of family violence experienced by women from non-English speaking backgrounds at a national or regional level, though some research has been done with specific cultural and language groups.¹⁰⁴ Some research has indicated it occurs at lower or the same levels as in English-speaking backgrounds. However, it has also been pointed out that there are factors which may result in an understatement of its extent in immigrant communities, including the reluctance of women to report violence to the police and their perceptions of what violent behaviour is.¹⁰⁵ One study has reported

102 Ibid.

103 Human Rights and Equal Opportunity Commission (May 2003) above n 98, 11.

104 Women's Service Network, *Domestic Violence in Regional Australia: A Literature Review* (2000) 9.

105 Jenny Mouzos and Toni Makkai, *Women's Experiences of Male Violence: Findings of the Australian Component of the International Violence Against Women Survey* (2004) 32.

a 'strong indication that marital homicide and battering may take place among the overseas-born at a rate disproportionate to the population size'.¹⁰⁶

2.81 Ethnicity and family violence has been seen by researchers as controversial because such findings could be used to substantiate stereotypes and existing prejudices. Some researchers have identified particular women, such as Asian women who marry through networks and Muslim women in arranged marriages, as particularly at risk.¹⁰⁷ The lack of good information on this information is perhaps indicative of the difficulties for non-English-speaking women in accessing appropriate support and services.

2.82 It is also important to point out that cultural differences can mean that family violence may have been dealt with in different ways in countries of origin and in specific communities. For example, newly arrived immigrants from Sudan explained to us that family violence in their home country was dealt with partly by extended family members, partly by the community, and partly by State and tribal justice systems. When the extended family, community and tribal systems no longer exist (because of fragmentation due to immigration), these measures to deal with family violence also no longer exist. Migrants may come from countries where violence in the family is seen as acceptable by authorities or is not penalised by the criminal law. For example, the United Nations (UN) has found that only three African countries and three Asian countries have specific laws that make family violence a criminal offence.¹⁰⁸

FAMILY VIOLENCE AND PEOPLE WITH DISABILITIES

2.83 Research suggests that women with disabilities are assaulted, raped and abused at between twice and twelve times the rate of other women.¹⁰⁹ As well as being more vulnerable to abuse, people with disabilities experience it from different sources and in different forms. This may require different responses to those which are appropriate for people without disabilities.

106 Patricia Easteal, 'Multiculturalism and the Law: Marital Violence Among the Overseas-Born' (Paper delivered at the Criminal Justice System in a Multi-cultural Society Conference, Melbourne, 4–6 May 1993) 23.

107 Ibid 1.

108 United Nations Development Fund for Women, *Not a Minute More: Ending Violence Against Women* (2003).

109 Carolyn Frohmader, *Violence against Women with Disabilities: A Report from the National Women with Disabilities and Violence Workshop* (February 1998) 10.

2.84 People with disabilities can be more vulnerable to family violence because of the care they may require, placing them in potential situations of powerlessness and dependence. This may make them vulnerable to violence, not only by their intimate partners or members of their immediate and extended family, but also by the people who are employed or volunteer to care for them. The very nature of some of this care—for example, washing and assistance using the toilet and sanitary products—can occur in the context of a close live-in relationship, requiring a degree of trust and skill which is sometimes exploited. Some researchers have concluded that this makes people with physical and mental disabilities ‘easy targets’ for abuse.¹¹⁰

2.85 People with disabilities can also be more vulnerable to violence because of problematic, disrespectful social norms about their bodies, their sexuality, their emotions and their minds. Researchers point out that it is not the disability itself that creates a vulnerability to violence, but rather the social and political reaction to the disability.¹¹¹ People with disabilities experience forms of violence which are not only often condoned, but to a certain extent institutionalised in our society. This includes being forced into dependent living situations and the denial of sexual relationships and participation in family planning decisions.¹¹² These are not usually defined as forms of violence, nor considered criminal, yet such common treatment of people with disabilities can set up a social norm which can further increase their vulnerability to more commonly recognised forms of family violence.

2.86 The tolerance of violence against people with disabilities is high and often one of the greatest difficulties people with disabilities face is the reluctance of others to recognise and believe that such abuse has taken place. What is commonly seen as ‘challenging behaviour’ (in the carer’s terms) could in fact be the result of abuse:

I believe the big difference for a woman with a disability experiencing domestic violence is that people just don’t believe you. They still have this underlying assumption that the able bodied partner is wonderful taking on a person with a disability. In my case it fed his ego. I was astounded by people who didn’t believe my fear when I eventually told them. They believed I was overacting. I remember the disbelief of some of my neighbours and one

110 Kay McInnes, ‘Easy Targets’, (Paper delivered at the Disability and the Criminal Justice System: Achievements and Challenges conference, Melbourne, 13–15 July 2005).

111 Women with Disabilities Australia, *More than Just a Ramp—A Guide for Women’s Refuge to Develop Disability Act Action Plans* <www.wwda.org.au/cnts.htm> at 20 December 2005.

112 Ibid.

saying he wouldn't do that, he has done so much for you for so many years. All the lifestyle improvements I advocated for myself, but the perception was he had done it all.¹¹³

FAMILY VIOLENCE AND AGE

YOUNGER WOMEN

2.87 Younger women are more at risk of violence than older women—19% of women aged 18–24 had experienced one or more incidents of violence in a 12 month period compared to 6.8% of women aged 35–44 and 1.2% of women aged 55 and over.¹¹⁴ Women can be particularly vulnerable to violence during pregnancy. A significant proportion of family violence in intimate partner relationships begins when the woman first experiences pregnancy. The *Women's Safety Survey* found that 20% of women who disclosed violence from a previous partner and had been pregnant at some stage of the relationship stated that the onset of violence occurred during pregnancy.¹¹⁵

ELDERLY PEOPLE

2.88 Another form of family violence is elder abuse, where elderly people are abused by younger family members, most often children and grandchildren, and also by carers. Elder abuse can take many forms. Economic abuse occurs when children sell elderly people's homes because 'they don't need it anymore', leaving them dependent on others for their housing. Elder abuse can also be physical, verbal, emotional, spiritual, social, sexual and so on. Many elderly people are particularly vulnerable to abuse because of physical frailty and mental impairment.

FAMILY VIOLENCE AND SEXUALITY

2.89 Family violence is also a factor in some lesbian and gay relationships. While types of abuse in gay and lesbian relationships take the same form as other family violence, there are also forms of abuse specific to gay and lesbian relationships.

2.90 'Sexuality abuse' can take the form of deriding a victim's sexuality. 'Outing' or threatening to out a homosexual person to friends, family, employers, the church, police and others in the community is also a form of abuse. Abusers can rely on the

113 Cockram (2003) above n 12, 46.

114 W McLenna, *Women's Safety Australia*, Catalogue No 4128.0 (1996) 10.

115 Ibid 8.

pervasiveness of heterosexism in our society to convince partners the abuse is ‘normal’, to hide the abuse, and increase the power and control over their partner.

My abuse came from non consensual S/M [sadomasochistic sexual behaviour]—who would ever believe me, let alone take action. I didn’t agree to her tying me up and leaving me by myself for two days. I thought I was going to die, but who would believe that—certainly not the coppers.¹¹⁶

2.91 Historically homosexuality was punished by the criminal law. The criminalisation of homosexuality and the perception that some police are homophobic may make it particularly difficult for homosexuals to approach the police for assistance if they are affected by family violence.

INDIVIDUAL AND SOCIAL IMPACTS OF FAMILY VIOLENCE

2.92 The effects of family violence on individuals include physical, mental, psychological and economic harms. They are widespread, often severe, and sometimes fatal.

2.93 Family violence can also have a profound impact on a victim’s sense of self and ability to make choices. Victims may feel responsible for and ashamed about their experiences, not only because perpetrators blame them for the violent behaviour, but also because friends, family and wider society do not attribute responsibility for the violence to the perpetrator.

2.94 As well as having a severe impact on individuals, family violence affects the whole community. Overall, it is the leading contributor of death, disability and illness in women in Victoria aged 15 to 44 years.¹¹⁷ It is responsible for more disease burden than the well-known and more recognised risk factors of high blood pressure and obesity.¹¹⁸

2.95 A recent Access Economics report found that family violence costs Australia about \$8 billion a year nationally and \$2 billion a year in Victoria, a substantial proportion of which is borne by the victims themselves.¹¹⁹ It constitutes a profound

116 Jude Irwin, ‘Lesbian Domestic Violence: Unseen, Unheard and Discounted’ (Paper presented at Second Australasian Women and Policy Conference, Emmanuel College, University of Queensland, 7–9 July 1999) 3.

117 VicHealth, *The Health Costs of Violence: Measuring the Burden of Disease Caused by Intimate Partner Violence: A Summary of Findings* (2004) 10.

118 Ibid.

119 Access Economics, *The Cost of Domestic Violence to the Australian Economy: Part 1* (October 2004) 63.

cause of disadvantage handed from one generation to the next and its effects on children can be devastating. One-quarter of all Australian children have witnessed violent behaviour towards their mother or stepmother,¹²⁰ which a growing body of research suggests may be a form of child abuse in its own right.¹²¹ These statistics highlight the effects family violence can have on the health and economic wellbeing of society.

FAMILY VIOLENCE AND LAW REFORM

2.96 In this chapter we have discussed the nature, dynamics and effects of family violence. Family violence involves the use of different forms of abuse to control, coerce and dominate another person. It follows that the purpose of the law should be to empower victims, to hold perpetrators accountable and to take appropriate measures to eliminate and prevent violence. An effective response to family violence must recognise the power imbalances which exist in our community, including the power imbalances which affect women in their relations with men, Indigenous women, women from CALD backgrounds and people with disabilities.

2.97 Our approach in the remainder of this report reflects the understanding of family violence we have described. First, it recognises that family violence involves a fundamental oppression of and disrespect for the experience and opinions of its victims. This can also happen within the social and legal contexts that seek to deal with family violence. The legal response to family violence recommended in this report seeks to challenge the imbalance of power which is manifested in family violence.

2.98 Secondly, we have taken an approach which attempts, as far as possible, to put the perspectives and experiences of those who have been affected by family violence at its centre. The purpose of any laws that seek to address family violence are, first and foremost, to serve those who are or have been affected by family violence, as well as the community as a whole. The experiences and perspectives of people affected by family violence are particularly useful in guiding our analysis of the principles, contents and implementation of any family violence law reform.

120 David Indermaur, *Young Australians and Domestic Violence* (2001) 1.

121 Partnerships Against Domestic Violence, *Children, Young People and Domestic Violence*, Phase 1 Meta-Evaluation Report (2003) 42, 44; John Fantuzzo and Wanda Mohr, 'Prevalence and Effects of Child Exposure to Domestic Violence' (1999) 9(3) *The Future of Children* 21, 26–8; Joy Osofsky, 'The Impact of Violence on Children' (1999) 9(3) *The Future of Children* 33; World Health Organisation, *World Report on Violence and Health* (2002) 103.

2.99 The following provides a summary of the description in this chapter, for the purpose of education, awareness raising and training.



SUMMARY

Family violence involves perpetrators exercising power and control over victims through the use of diverse and multiple forms of violence.

Women, children, and people with disabilities are most likely to be affected by family violence.

Family violence affects victims in a diverse range of family relationships: including intimate partnerships, in both heterosexual and homosexual families, between adults and their children, and between people and their carers.

People from Indigenous minorities and some racial and ethnic groups may face particular barriers in seeking remedies for family violence.

Family violence is particularly prevalent in our society.

Family violence can cause catastrophic harm to individual victims and also affects society as a whole.

Family violence is perpetuated and upheld by problematic social norms and by inadequate legal and social responses to family violence.

When seeking to understand family violence it is important to:

- listen particularly carefully to victims and other people who are directly affected by it;
- take into account the wider social factors and factors relating to legal and support services which have an important impact upon its prevalence and perpetuation.