

**Submission  
No 47**

**INQUIRY INTO DOMESTIC VIOLENCE TRENDS AND  
ISSUES IN NSW**

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**Date received:** 23/09/2011

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23 September 2011

The Director  
Standing Committee on Social Issues  
Parliament House  
Macquarie St  
Sydney NSW 2000  
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## **Re: Inquiry into domestic violence trends and issues in NSW**

I welcome the Legislative Council's inquiry into domestic violence trends and issues in NSW.

My submission is focused on the third term of reference: 'The increase in women being proceeded against by police for domestic violence offences'. I do so by providing the Committee with a copy of a recent article in which I examined the related issue of cross applications in NSW Apprehended Domestic Violence Order (ADVO) proceedings (drawing on my doctoral thesis on this issue). In this article I explored key differences in the nature of the violence complained about by men and women and suggest the need for a more complex and nuanced approach to domestic violence that looks beyond discrete incidents as indicators of the presence of domestic violence.

I suggest that the Committee's exploration of this term of reference will be hampered by a general absence of data in this area – much of what we know is based on anecdotes despite concern being raised about the arrest of women since the mid 2000s.<sup>1</sup> There is a strong need for more adequate data capture and data availability, on this issue as well as more generally, from the police and court system – this includes information on the following:

- The gender of applicants and respondents in ADVO proceedings;
- The gender of defendants in domestic violence related criminal proceedings (and the gender of the victim);
- The nature of the relationship between the parties (it is becoming increasingly important to be able to identify what proportion of matters involve intimate partners, and what proportion other types of familial or other domestic relationships<sup>2</sup>);
- The nature of the charges that are laid against women vis-à-vis men;
- The resolution of domestic violence criminal charges against women and men (what are the outcomes, sentence and so on);

A useful example of the type of information that can be garnered from a more thorough approach to data capture is found in recent work from Victoria, where a nine year report on family violence statistics from the courts and police has been compiled.<sup>3</sup> Such information is vital to informed policy and legislative decision making.

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<sup>1</sup> See Rochelle Braaf & Claire Sneddon, *Arresting Practices: Exploring Issues of Dual Arrest for Domestic Violence*, Stakeholder Paper 3, Australian Domestic & Family Violence Clearinghouse (2007); NSW Ombudsman, *Domestic Violence: Improving Police Practice: A Special Report to Parliament under s31 of the Ombudsman Act 1974*, NSW Ombudsman (2006); Australian Law Reform Commission & NSW Law Reform Commission (2010), *Family Violence: A National Legal Response – Final Report*, Vol 1, ALRC Report 114, NSWLRC Report 128.

<sup>2</sup> Here I note that the CLRD in its review of the *Crimes (Domestic and Personal Violence) Act 2007* is asking whether the definition of domestic violence should continue to retain its very broad scope: *Statutory Review of the Crimes (Domestic and Personal Violence) Act 2007: Discussion Paper* (2011), p. 7.

<sup>3</sup> See <http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/Home/Crime/Research+and+Statistics/JUSTICE++Victorian+Family+Violence+Database++Nine+Year+Report++PDF> (accessed 23 September 2011).

There has of course been considerable attention paid to the rate of arrest of women for domestic violence offences in the USA, either on their own or in dual arrests, and I refer the committee to that considerable literature. That literature and my own research on cross applications points to differences in the type of violence exercised by men and women, their motivations for using violence and the circumstances in which they do so.

Please do not hesitate to contact me if you require further information or have any questions about my comments or suggestions.

Yours faithfully

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## GENDER AND INTIMATE PARTNER VIOLENCE: A CASE STUDY FROM NSW

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### I INTRODUCTION

The extent to which gender plays a role in intimate heterosexual partner violence remains one of the most hotly (and continuously) contested issues in the field. Since the problem of intimate partner violence ('IPV')<sup>1</sup> first emerged on the agenda of Australian governments around 30 years ago, a plethora of responses and activities has been put in place that largely conceives of and responds to IPV as a gendered harm – with women being the predominant victims and men the predominant perpetrators. One of the most recent examples of this approach is the work of the National Council to Reduce Violence against Women and their Children which noted that '[t]he biggest risk factor for becoming a victim of sexual assault and/or domestic and family violence is being a woman'.<sup>2</sup> This

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\* Lecturer, Faculty of Law, University of Technology Sydney. Thanks to Professor Julie Stubbs for her guidance and encouragement during the conduct of the PhD thesis on which this article is based. Thanks also to Professor Jenni Millbank and Lesley Townsley who both provided helpful comments, and to the anonymous reviewer who provided important advice and feedback on this article.

1 Many terms (eg, family violence, domestic violence, IPV, spouse abuse, battering, and wife abuse) have been used to describe this problem. While the terms are often used interchangeably they have different meanings and usages, in some instances linked to whether gender is seen as a central issue and whether the concept includes broader familial relationships. In this article, I use the term IPV as I am particularly concerned with this form of family/domestic violence, and it is here where arguments about gender perpetration centre. It is also a term increasingly used in the international arena: Claudia García-Moreno et al, 'WHO Multi-country Study on Women's Health and Domestic Violence against Women: Initial Results on Prevalence, Health Outcomes and Women's Responses' (Report, World Health Organisation, 2005) 13. The term IPV also usefully distinguishes itself from a theoretical grouping of researchers known as 'family violence' researchers (discussed later in this article), which is quite different to the way family violence is used in Australia to better capture the experience of Indigenous peoples. I also focus on violence in heterosexual relationships; this is not to suggest that violence does not occur in same-sex relationships, but rather in recognition that understandings of violence in same-sex relationships may differ from theories about violence in heterosexual relationships.

2 National Council to Reduce Violence against Women and their Children, 'Background Paper to Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children 2009–2021' (Background Paper, Department of Families, Housing, Community Services and Indigenous Affairs, March 2009) 26.

understanding of IPV as a gendered harm is supported by official statistics from the police,<sup>3</sup> courts,<sup>4</sup> health services,<sup>5</sup> and homicide data.<sup>6</sup>

Despite these official statistics, the gendered understanding of IPV has been subject to sustained challenge by various researchers,<sup>7</sup> and by men's groups (invariably relying on that research). For example, the *One In Three* campaign launched in Australia at the end of 2009 seeks to highlight that at least one in three victims of family violence are male ('perhaps as many as one in two') and that up to one in three victims of sexual assault are male.<sup>8</sup>

Community attitudes in Australia also increasingly reflect this view of IPV as a gender neutral phenomenon. While successive surveys have documented progress in people's understandings of what constitutes 'domestic violence',<sup>9</sup> the proportion of respondents who believe that IPV is primarily perpetrated by men against women has decreased. Two national community attitude surveys (one conducted in 1995<sup>10</sup> and the other in 2009)<sup>11</sup> document this negative trend. In 1995, 50 per cent of respondents considered that domestic violence was 'mainly' perpetrated by men, but this decreased to 30 per cent in 2009.<sup>12</sup> In 1995, only nine per cent of respondents stated that men and women were equally likely to perpetrate domestic violence, but this increased to 22 percent in 2009.<sup>13</sup>

These different views of gender and IPV reflect what has been a long-standing, and often acrimonious, debate played out in the sociological literature for over 30 years. In general terms, the debate about gender is characterised by a schism between 'family violence' researchers (who see IPV as symmetrical in its

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3 See Julie People, 'Trends and Patterns in Domestic Violence Assaults' (2005) 89 *Crime and Justice Bulletin* 1, 6, which found that 71.1 per cent of victims were female and 80.4 per cent of offenders were male in its analysis of domestic assaults recorded by New South Wales ('NSW') Police for the period 1997–2004. See also Victorian Government, *A Right to Safety and Justice: Strategic Framework to Guide Continuing Family Violence Reform in Victoria 2010–2020* (2010) 7.

4 Over 70 per cent of NSW ADVO applications are made to protect women: see NSW Local Courts, *Apprehended Violence Statistics: Year 2005*, Table 1.2 (copy on file with author). This figure has remained relatively stable over the last few years.

5 A Western Australian study found that women comprised 85 per cent of hospital admissions resulting from family violence: Arem Gavin and Chris Gillam, 'Hospital Admissions due to Intimate Partner Violence in Western Australia 1994–2003' (Report, Injury Prevention Branch, Western Australia Department of Health, 2005) 1.

6 Intimate partner homicides for the period 2006–07 involved 42 women and 23 men as victims: Jack Dearden and Warwick Jones, 'Homicide in Australia: 2006–07 National Homicide Monitoring Program Annual Report' (Monitoring Report No 1, Australian Institute of Criminology, January 2009) 2.

7 See discussion of family violence research later in this article. For recent Australian research see Emily Tilbrook, Alfred Allan and Greg Dear, 'Intimate Partner Abuse of Men' (Report, Men's Advisory Network, 2010).

8 One In Three Campaign, *Family Violence* (2009) <<http://www.oneinthree.com.au>>.

9 See discussion of this progress in VicHealth, *National Survey on Community Attitudes to Violence Against Women 2009: Changing Cultures, Changing Attitudes – Preventing Violence Against Women: A Summary of Findings* (2010) 7, 23–7. 'Domestic violence' was the term used in this survey.

10 Commonwealth of Australia, Office of the Status of Women, *Community Attitudes to Violence Against Women: Detailed Report* (1995).

11 VicHealth, above n 9.

12 Ibid 34 (Table 5).

13 Ibid.

occurrence, with men and women being equally likely to be perpetrators) and 'violence against women' or feminist researchers (who see IPV as asymmetrical, predominantly perpetrated by men against women).<sup>14</sup> More recently, some researchers have posited that the two groups are studying different types of IPV.<sup>15</sup> The debate about gender reflects differences in the theoretical framework in which questions are asked and how definitions are made operational in research: is IPV defined only by reference to incidents? Or is it important to examine the pattern and use of violence and abuse to exert control over the victim? Do we need to know more than simply 'who did what to whom' before we label violence or abuse as 'IPV'?

This article engages with the issue of gender and its importance in understanding IPV through an examination of the differences in men's and women's complaints for civil protection orders in New South Wales (known as Apprehended Domestic Violence Orders or ADVOs). This research focused on cross applications, that is, cases where the male and the female partner to a relationship are both making allegations that the other has used violence or abuse against them.

The first part of this article explores the division in the sociological literature about gender and IPV, exploring the key conceptual differences between the two strands of research and the implications this has for understanding men's and women's use of violence and their experiences of victimisation. This is followed by the case study on cross applications in New South Wales ('NSW'), which demonstrates the limited picture that is generated if one simply looks at incidents, rather than the context of such acts of violence or abuse. The concluding section draws together key conceptual issues and highlights areas for further research.

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14 See R Emerson Dobash and Russell P Dobash, *Women, Violence and Social Change* (Routledge, 1992) 258–84; Chris Atmore, 'Men as Victims of Domestic Violence: Some Issues to Consider' (Discussion Paper No 2, Domestic Violence and Incest Resource Centre, 2001) 4.

15 See, eg, Michael Johnson, 'Differentiating Among Types of Domestic Violence: Implications for Healthy Marriages' in H Elizabeth Peters and Claire M Kamp Dush (eds), *Marriage and Family: Perspectives and Complexities* (Columbia University Press, 2009) 281; Michael Johnson, *A Typology of Domestic Violence: Intimate Terrorism, Violent Resistance and Situational Couple Violence* (Northeastern University Press, 2008); Joan B Kelly and Michael P Johnson, 'Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions' (2008) 46 *Family Court Review* 476. See also Janet Johnston, 'A Child-Centered Approach to High-Conflict and Domestic-Violence Families: Differential Assessment and Interventions' (2006) 12 *Journal of Family Studies* 15; Suzanne C Swan and David L Snow, 'A Typology of Women's Use of Violence in Intimate Relationships' (2002) 8 *Violence Against Women* 286. For recent applications or interest in typologies see Nancy Ver Steegh and Clare Dalton, 'Report from the Wingspread Conference on Domestic Violence and Family Courts' (2008) 46 *Family Court Review* 454; Lawrie Moloney et al, 'Allegations of Family Violence and Child Abuse in Family Law Children's Proceedings: A Pre-Reform Exploratory Study' (Research Report No 15, Australian Institute of Family Studies, 2007); Michelle Madden Dempsey, 'What Counts as Domestic Violence? A Conceptual Analysis' (2006) 12 *William and Mary Journal of Women and the Law* 301.

## II THE COMPETING SOCIOLOGICAL RESEARCH

### A Family Violence Research: Conflict Theory and Discrete Acts

Since the mid 1970s, there has been a growing body of research referred to as ‘family violence research’ that has consistently found that men and women are equally violent, and, in some cases, women are more violent in their intimate relationships.<sup>16</sup> For example, Murray Straus and Richard Gelles found in the 1985 National Survey (USA) that 12.4 per cent of cohabitating or married women reported using violence<sup>17</sup> against their male partner in the previous year, compared to 11.6 per cent of cohabitating or married men.<sup>18</sup> Furthermore, 4.8 per cent of the women who used violence reported using ‘severe violence’<sup>19</sup> as did 3.4 per cent of the men.<sup>20</sup> Such studies have not only found gender symmetry in the perpetration of violence, but also a high level of mutuality. Jan Stets and Murray Straus, for example, found that, ‘in about half’ of the relationships in which violence occurred, it was perpetrated by both parties.<sup>21</sup>

These two studies, like many others that have reached similar conclusions, rely on a survey tool known as the Conflict Tactics Scale (‘CTS’),<sup>22</sup> or similar act-based instruments.<sup>23</sup> In brief, the CTS asks a person in an intact relationship about their experiences of victimisation and perpetration over the past year. It asks about a range of ‘tactics’ (from discussing issues through to using violence) that a person might use (or have used against them) to resolve ‘conflicts’ in their relationship.<sup>24</sup> To do this it asks behaviourally specific questions (have you twisted your partner’s arm? Have you pushed or shoved your partner?) – this is

16 Over 100 studies had reached this conclusion: Michael Kimmel, ‘“Gender Symmetry” in Domestic Violence: A Substantive and Methodological Research Review’ (2002) 8 *Violence Against Women* 1332, 1333.

17 Defined as ‘an act carried out with the intention or perceived intention of physically hurting another person’: Richard J Gelles, ‘Methodological Issues in the Study of Family Violence’ in Murray A Straus and Richard J Gelles (eds), *Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families* (Transaction Publishers, 1990) 17, 21.

18 Murray A Straus and Richard J Gelles, ‘How Violent Are American Families? Estimates from the National Family Violence Resurvey and Other Studies’ in Straus and Gelles (eds), *Physical Violence in American Families*, above n 17, 95, 97 (Table 6.1).

19 Eg, ‘kicked; bit; punched; hit or tried to hit with an object; beat up; choked; ... threatened with a knife or gun, and used a knife or gun’: Murray A Straus, ‘The National Family Violence Surveys’ in Straus and Gelles (eds), *Physical Violence in American Families*, above n 17, 3, 6.

20 Straus and Gelles, ‘How Violent Are American Families’, above n 18, 97.

21 Jan E Stets and Murray A Straus, ‘Gender Differences in Reporting Marital Violence and Its Medical and Psychological Consequences’ in Straus and Gelles (eds), *Physical Violence in American Families*, above n 17, 95, 151. For a similar finding from Australian research, see Bruce Headey, Dorothy Scott and David de Vaus, ‘Domestic Violence in Australia: Are Men and Women Equally Violent?’ (1999) 2 *Australian Social Monitor* 57.

22 Murray A Straus, ‘Measuring Intrafamily Conflict and Violence: The Conflict Tactics (CT) Scales’ (1979) 41 *Journal of Marriage and the Family* 75.

23 See, eg, the Family Interaction module of the International Social Science Survey Australia (IsssA) used in Headey, Scott and de Vaus, above n 21.

24 The framework of conflict is well-illustrated by the opening paragraph to the administration of the CTS: Murray A Straus et al, ‘The Revised Conflict Tactics Scales (CTS2): Development and Preliminary Psychometric Data’ (1996) 17 *Journal of Family Issues* 283, 310.

both a strength (because it avoids the use of vague or contentious terms such as violence and abuse)<sup>25</sup> and a weakness (because the identification of a discrete act does not reveal anything about the context of that act at that time or within the relationship more broadly).<sup>26</sup>

The CTS remains the most widely used survey tool to measure the prevalence of IPV and other forms of family violence.<sup>27</sup> It is used, in whole or in part, by family violence and feminist researchers alike. Surveys using the CTS, and similar instruments, have played an important role in 'sensitizing the media, government officials, and members of the general public' about the scale and nature of IPV.<sup>28</sup> In this way, the CTS is a valuable tool. It has been shown to be valid and reliable; however, like all measurement tools it has strengths and limitations.

There have been many criticisms of the CTS including concerns about: its basis in conflict theory; its identification of discrete acts of violence/abuse as indicators of the presence of IPV; its failure to ask questions about violence in previous relationships; the way it ranks acts in a hierarchical fashion and makes assumptions about what acts are more serious than others (often devaluing psychological abuse); its failure to take account of the different cultural meanings and consequences acts might have; and its assumptions that men and women provide 'unbiased, reliable accounts of their own violent behaviour and that of their partner'.<sup>29</sup>

While changes have been made to the CTS to address some of these criticisms – for example, expanding it to include questions about sexual coercion, psychological aggression, and about injuries sustained as result of the violence (and hence to some extent taking account of impact)<sup>30</sup> – criticisms remain about the measurement of discrete acts, and the omission of countless acts and

25 Straus et al, above n 24, 284–5; Gelles, 'Methodological Issues', above n 17, 24.

26 See Walter S DeKeseredy and Martin D Schwartz, *Measuring the Extent of Woman Abuse in Intimate Heterosexual Relationships: A Critique of the Conflict Tactics Scales* (February 1998) VAWnet <[http://new.vawnet.org/Assoc\\_Files\\_VAWnet/AR\\_ctscrit.pdf](http://new.vawnet.org/Assoc_Files_VAWnet/AR_ctscrit.pdf)>; Russell P Dobash and R Emerson Dobash, 'Women's Violence to Men in Intimate Relationships: Working on a Puzzle' (2004) 44 *British Journal of Criminology* 324, 329–30.

27 Murray A Straus, 'Conflict Tactics Scales' in Nicky Ali Jackson (ed), *Encyclopedia of Domestic Violence* (Routledge, 2007) 190; Kathleen J Ferraro, *Neither Angels Nor Demons: Women, Crime and Victimization* (Northeastern University Press, 2006) 18.

28 DeKeseredy and Schwartz, above n 26, 1.

29 See Dobash and Dobash, 'Working on a Puzzle', above n 26, 327–30; DeKeseredy and Schwartz, above n 26, 1–4; Kimmel, above n 16, 1350–1; Ferraro, above n 27, 16, 40; Dale Bagshaw and Donna Chung, 'Women, Men and Domestic Violence' (Report, University of South Australia, April 2000) 5–6; Kersti A Yllö, 'Through a Feminist Lens: Gender, Power and Violence' in Richard Gelles and Donileen Loseke (eds), *Current Controversies on Family Violence* (Sage Publications, 1993) 19; Shamita das Dasgupta, 'A Framework for Understanding Women's Use of Nonlethal Violence in Intimate Heterosexual Relationships' (2002) 8 *Violence Against Women* 1364, 1371–2.

30 Straus et al, above n 24, 286, 291. The item previously termed verbal aggression was renamed psychological aggression to take account of the fact that some of the acts nominated were non verbal: at 289.

behaviours that women (and some men) report as part of their experience of IPV.<sup>31</sup>

Similar criticisms have been levelled at other studies that document the prevalence of IPV simply on the basis of the presence of incidents. For example, the Australian Bureau of Statistics, *Personal Safety Survey* ('PSS'), asked men and women about their experiences of physical and sexual violence over the past year.<sup>32</sup> It found that 73 800 women and 21 200 men experienced at least one incident of physical assault by a current or former partner in the year prior to the survey.<sup>33</sup> While this does reveal a gender disparity, it also indicates that a significant number of men have experienced such violence. What are we to make of such findings? Michael Flood in a detailed discussion of this survey points to the difference between incidents and what we think comprises IPV:

these figures do not tell us whether this violence was part of a systematic pattern of physical abuse or an isolated incident, whether it was initiated or in self-defence, whether it was instrumental or reactive, whether it was accompanied by (other) strategies of power and control, or whether it involved fear.<sup>34</sup>

In this way, Flood notes that the PSS, like other act-based instruments, merely measures acts and thus reveals nothing about the context of such acts; he therefore points out:

We can certainly say that every one of the 73 800 women above is a victim of violence ... But to the extent that we use the term 'domestic violence' to refer to women's experience of chronic abuse and subjection by a partner or ex-partner to strategies of power and control, we cannot claim that every woman here is a 'victim of domestic violence'.<sup>35</sup>

The same can be said for the men surveyed. As noted above, studies of this kind are important; they reveal a great deal about the extent of violence perpetrated in intimate relationships. The purpose of this discussion is to emphasise that, when looking at studies like this, we need to be attentive to whether they simply tell us about the *presence* of acts of physical violence (or other forms of violence and abuse) between intimate partners and not whether these acts form part of IPV.

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31 DeKeseredy and Schwartz, above n 26, 2.

32 Australian Bureau of Statistics, 'Personal Safety Survey Australia' (Cat No 4906.0, Australian Bureau of Statistics, 2006).

33 Ibid 9.

34 Michael Flood, 'Violence Against Women and Men in Australia: What the *Personal Safety Survey* Can and Can't Tell Us' (2006) 4 *DVIRC Quarterly* 3, 7.

35 Ibid 8.

### B Feminist Research: A Continuum of Violence and Abuse to Exert Control

In contrast, feminist research has been engaged much more extensively (although not exclusively) with qualitative research methods.<sup>36</sup> This research has highlighted other critical dimensions to the experience of IPV, notably the function of control, the broad range of acts and behaviours involved, and its repetition and frequency. Through this work, feminist researchers have found that women are the predominant victims of domestic violence (a view supported by official statistics), and that women's use of violence is qualitatively and quantitatively different to that of men's.<sup>37</sup> Most critically, feminist(s) definitions of IPV extend beyond a focus on discrete incidents to include the *context* of the use of violence. This has three key dimensions:

1. the repetitive, cumulative, patterned environment in which violence and abuse is exercised;
2. the function of the use of violence and abuse to exert power and control, or coercive control, over the victim; and
3. the broad contextual framework that connects the use of violence and abuse to the positions and privileges of men in comparison to women in society.<sup>38</sup> This does not mean that feminist research fails to take account of intersecting factors such as race, class and sexuality – rather it emphasises the importance of recognising gender in any understanding of IPV.<sup>39</sup>

One device commonly used to depict 'power and control' is the 'wheel' developed by the Domestic Abuse Intervention Program in Duluth, Minnesota USA.<sup>40</sup> It illustrates the range of tactics and behaviours perpetrators use against their current/former partners, including: coercion and threats, intimidation,

36 See discussion about the traditional preference for qualitative methods in feminist research and the increasing use of quantitative methods in Sue Griffiths and Jalna Hanmer, 'Feminist Quantitative Methodology: Evaluating Policing of Domestic Violence' in Tina Skinner, Marianne Hester and Ellen Malos (eds), *Researching Gender Violence: Feminist Methodology in Action* (Willan, 2005) 23.

37 Russell P Dobash et al, 'The Myth of Sexual Symmetry in Marital Violence' (1992) 39 *Social Problems* 71, 72.

38 See, eg, James Ptacek, *Battered Women in the Courtroom: The Power of Judicial Responses* (Northeastern University Press, 1999) 9–10; Susan Schechter, 'A Framework for Understanding and Empowering Battered Women' in Martha B Straus (ed), *Abuse and Victimization Across the Life Span* (Johns Hopkins University Press, 1988) 240, 243; Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford University Press, 2007) 5; R Emerson Dobash and Russell Dobash, *Violence Against Wives: A Case Against the Patriarchy* (Free Press, 1979); Kersti Yllö and Michele Bograd (eds), *Feminist Perspectives on Wife Abuse* (Sage Publications, 1988); Dasgupta, above n 29, 1367–8.

39 Julie Stubbs, 'Introduction' in Julie Stubbs (ed), *Women, Male Violence and the Law* (Institute of Criminology, 1994) 1, 4; Elizabeth M Schneider, *Battered Women and Feminist Lawmaking* (Yale University Press, 2000) 62–5.

40 See Domestic Abuse Intervention Project, 'Power and Control' (2008) <<http://www.duluth-model.org/documents/PhyVio.pdf>>. See also Ellen Pence and Michael Paymar, *Education Groups for Men Who Batter: The Duluth Model* (Springer Publishing, 1993).

economic abuse, male privilege, the use of children, isolation tactics, and emotional abuse. It also includes the way in which perpetrators minimise, deny, and blame others or external factors for their use of violence.<sup>41</sup> Physical and sexual violence, depicted as the rim of the wheel, operate as a powerful binding mechanism. These multiple and varied acts/behaviours are repeated, alone and in combination, to reinforce the coercive power of the perpetrator over the victim. In another way, James Ptacek uses the concept of 'social entrapment' to indicate the processes involved in IPV, and the powerful connections that the use of violence and abuse to control women has on the availability and role of social and community institutions. As Ptacek states, 'social entrapment emphasizes the inescapably social dimension of women's vulnerability to men's violence, women's experience of violence, and women's ability to resist and escape'.<sup>42</sup>

While the work of feminist researchers and advocates has considerably enhanced our understanding of IPV, areas of weakness remain concerning how effectively the centrality of coercive control has been translated into understandings, and measurements, of IPV.<sup>43</sup> Evan Stark has argued that the movement to address IPV has stalled because it emphasised 'violence' and failed to articulate effectively the function of control.<sup>44</sup> So, while control is invariably mentioned in feminist definitions of IPV and, in turn, the definitions adopted by many services and agencies, Stark argues that control has not been translated beyond this definitional stance into research design or appropriate service responses, particularly legal responses. This means that legislation continues to respond to discrete acts of violence, despite often being the result of extensive feminist advocacy. This failure can also be seen in the way that some researchers have failed to make connections between the function of control and the broad range of acts of violence and abuse emphasised by feminists as part of IPV. A good illustration of this problem is provided in Linda Mills' book, *Insult to Injury*, where she adopts a broad definition of IPV which is not connected in any way to how those acts function, thus leading her to conclude that 'we have all experienced domestic violence', that it is 'part of all our lives'.<sup>45</sup> In this way Mills confuses acts that are hurtful and unfortunate, with acts that are part of IPV, and in so doing, blanches meaning from the term. This is not so different to the criticism levelled at family violence research for failing to examine acts of physical violence in context to determine whether they are employed as a tool to effect control, or for some other purpose (self-defence, protection, retaliation or anger).

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41 See also Kate Cavanagh et al, 'Remedial Work: Men's Strategic Responses to Their Violence Against Intimate Female Partners' (2001) 35 *Sociology* 695, 699.

42 Ptacek, above n 38, 10.

43 For recent work on a measurement tool for coercive control, see Mary Anne Dutton, Lisa Goodman and James R Schmidt, 'Development and Validation of a Coercive Control Measure for Intimate Partner Violence: Final Technical Report' (Document No 214438, National Institute of Justice, United States Department of Justice, 30 December 2005).

44 Stark, above n 38, 7-8.

45 Linda G Mills, *Insult to Injury: Rethinking Our Responses to Intimate Abuse* (Princeton University Press, 2003) 23.

Failing to emphasise the function of control has also left the language of ‘abuse’ open to be co-opted to address behaviours that it was never intended to address. This argument has been made in different ways by Russell Dobash and Rebecca Dobash (who point out that we need to be careful about conflating acts of violence and abuse as if they are the same thing with the same consequences),<sup>46</sup> and Michael Flood (who points out that some men have been able to successfully usurp the language of IPV to include hurtful and unfortunate acts, by ‘re-nam[ing] their ... experiences of verbal conflict, name-calling, and stereotypically “nagging” as “verbal and emotional abuse”’).<sup>47</sup>

### C Recent Developments within This Dichotomised Debate – Different Types of IPV?

There is growing interest in the proposition that family violence and feminist researchers are studying different types of IPV as a consequence of differences inherent in the samples that they access (where family violence researchers use large-scale randomised samples, and feminist researchers tend to use small-scale samples obtained via women’s refuges, police, courts, or hospitals) and the different instruments they use to measure violence. Michael Johnson (and colleagues) is one of the most notable commentators working in this area.<sup>48</sup> Johnson argues that family violence researchers are examining ‘situational couple violence’ (a form of IPV that is likely to be isolated, minor, and mutual in its perpetration, does not escalate, and is not used to control the other person), while feminist researchers are examining ‘intimate terrorism’ (that is, the form of violence conjured by the term ‘domestic violence’; this is largely perpetrated by men to exercise control over their female partners, is repetitive and likely to escalate). In addition, Johnson has identified three other types of IPV: violent resistance (this is largely exercised by women in response to intimate terrorism); separation-instigated violence (this describes the situation where violence has only occurred at the time of separation); and mutual violent control (described as a rare situation where both parties use violence to control the other).

A thorough discussion of typologies is beyond this article (and was beyond the data gathered in the case study on cross applications). However, it is important when considering questions about gender and perpetration to consider this current development. I agree with Johnson and others that not all acts of violence perpetrated by an intimate partner are the same;<sup>49</sup> that we need to be more precise about the language we use and the conclusions we draw from data.

46 Dobash and Dobash, ‘Working on a Puzzle’, above n 26, 332, 334.

47 Michael Flood, ‘Deconstructing the Culture of Sexual Assault’ (Paper presented at Practice and Prevention: Contemporary Issues in Adult Sexual Assault in NSW Conference, Sydney, 12–14 February 2003) 13 <[http://pandora.nla.gov.au/pan/39933/20040202-0000/www.lawlink.nsw.gov.au/cpd.nsf/files/flood.pdf/\\$FILE/flood.pdf](http://pandora.nla.gov.au/pan/39933/20040202-0000/www.lawlink.nsw.gov.au/cpd.nsf/files/flood.pdf/$FILE/flood.pdf)>.

48 See above n 15.

49 See also Flood, above n 34; Sue Osthoff, ‘But, Gertrude, I Beg to Differ, a Hit is not a Hit is not a Hit’ (2002) 8 *Violence Against Women* 1521.

However I have a number of concerns with the application of such typologies.<sup>50</sup> Some of these concerns derive from their development as an ‘answer’ to the division in the sociological research, and others relate to the role of the researcher in identifying, valuing, and naming acts as IPV (or as something else) – a criticism also levelled at CTS-based studies. Such approaches ignore the role that the victim and perpetrator play in interpreting, and providing meaning to, acts of violence and abuse. As Cavanagh and colleagues have argued, acts only have the ‘potential’ to be IPV; it is through the interaction and negotiation of the relationship and its history that acts attain their meaning for the victim and the perpetrator.<sup>51</sup> Further, I am not convinced that a formalised typology, which implies some kind of scientific validity, is necessary. In particular, I have concerns about how such typologies might be relied upon in a legal setting where they may inadvertently reinforce myths about IPV and be employed as a tool to manage workloads rather than a tool to assist in more nuanced approaches to the cases that come before various legal arenas (particularly family law).

### III CASE STUDY: CROSS APPLICATIONS

In this section, I present findings from a larger study which examined the use of cross applications in ADVO proceedings involving intimate heterosexual relationships.<sup>52</sup> A cross application takes place when one person in a current/former intimate relationship, usually the woman, applies for an ADVO and sometime afterwards (or at the same time) the defendant in that originating application, usually the man, seeks an ADVO against the first person. This larger study explored a number of related questions: whether there were differences in the types of violence men and women were alleged to have used? Was a cross application indicative of mutual violence? Did the ADVO system focus on incidents rather than the context in which acts and behaviours take place? How did the legal system negotiate and resolve cross applications? And, finally, was a cross application in itself another tool of harassment? In undertaking this research, I sought to provide a practical demonstration of the limits of taking an act-based approach to identifying IPV and to extend the debate about gender perpetration by examining claims about violence in a legal arena.

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50 See Jane Wangmann, ‘Different Types of Intimate Partner Violence? A Comment on the Australian Institute of Family Studies Report Examining Allegations of Family Violence in Child Proceedings under the *Family Law Act 1975* (Cth)’ (2008) 22 *Australian Journal of Family Law* 123.

51 Cavanagh et al, above n 41, 698–9.

52 Jane Wangmann, ‘*She Said...’ ‘He Said...’ : Cross Applications in New South Wales Apprehended Domestic Violence Order Proceedings* (PhD Thesis, University of Sydney, 2009). The field work was undertaken when the ADVO provisions were contained in Part 15A of the *Crimes Act 1900* (NSW). In 2008, a stand-alone Act, the *Crimes (Domestic and Personal Violence) Act 2007*, replaced these provisions. I therefore refer to the law as it was when the fieldwork was conducted and provide a reference to the new provision where required. In general, there was little, if any, substantive change to the provisions that I refer to.

### A An Overview of the Methodology

The study as a whole employed a multi-method approach to collecting and analysing data, incorporating:<sup>53</sup>

- in-depth semi-structured interviews with women involved in cross applications (n=10);
- in-depth semi-structured interviews with various professionals working within the legal system (specialist domestic violence police officers, police prosecutors, magistrates, solicitors, and Women's Domestic Violence Court Assistance Scheme coordinators) (n=27);
- documentary analysis of 12 months of court files from three large metropolitan courts (n=78 cross applications involving 156 single applications); and
- court observations (73 ADVO mentions and two contested hearings).

A key limitation of this research was the absence of interviews with men involved in cross applications; several recruitment methods were attempted, which ultimately proved unsuccessful.<sup>54</sup> However, a picture of men's allegations about the violence and abuse they complained about in their ADVO applications is available through the court files and interviews with professionals.

In this article, I report on the findings from two of these data sources (the in-depth interviews with women, and the quantitative and qualitative data gathered from the court files) in order to explore differences between men's and women's perpetration of violence and experience of victimisation.

#### 1 Interviews with Women

Ten women were interviewed over the period from November 2002 to October 2003. Most women were recruited via Women's Domestic Violence Court Assistance Schemes or through their solicitors. Women self-selected their participation in the research, which means that they are not necessarily representative of all women involved in cross applications. However, self-selection is an appropriate method of recruitment in an area such as this, which is sensitive and raises concerns about safety.<sup>55</sup>

All but one of the interviews were conducted in-person – the other interview was conducted over the telephone. Nine of the interviews were tape-recorded and transcribed in full. Extensive notes were taken during the remaining interview. Interviews took approximately two hours to complete. The interview schedule, amongst other matters, asked about the woman's experience of the violence from

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53 For a detailed discussion of each of these components see Wangmann, above n 52, 61–85.

54 Similar difficulties were encountered in a study of protection orders in Scotland: Clare Connelly and Kate Cavanagh, 'Domestic Abuse, Civil Protection Orders and the "New Criminologies": Is There Any Value in Engaging with the Law?' (2007) 15 *Feminist Legal Studies* 259, 265.

55 Miranda Kaye, Julie Stubbs and Julia Tolmie, 'Negotiating Child Residence and Contact Arrangements Against a Background of Domestic Violence' (Research Report 1, Families, Law and Social Policy Research Unit, Griffith University, June 2003) 15.

her former partner generally, as well as the specific content of her ADVO complaint and the complaint made against her.

The women were between 20 and 50 years of age, with more than half being in their mid 30s. Eight relationships had been long (ranging from 8 to 20 years in duration), while 2 had been for less than 1 year. Seven of the 10 women had children with their former partner. For all women, the relationship had ended.

The transcripts of the interviews were analysed using Word.<sup>56</sup> In this analysis, I was interested in identifying not only the types of violence that the woman experienced and those that she was alleged to have perpetrated, but also the perceived context and motivation for that violence.

## 2 *Documentary Analysis of Court Files*

Court files from three large Sydney Local Courts were analysed over a 12 month period (March 2002 – February 2003). The files were examined to gather quantitative and qualitative data about the nature of cross applications. This involved examining the content of the files for such matters as the gender of the first and second applicant, the type of ADVO (that is, whether the police initiated the ADVO or the person had made their own application),<sup>57</sup> the contents of the complaint (whether there was a history of violence, whether the complaint was confined to a single incident, the types of acts/behaviour alleged, whether the person expressed fears), whether the parties had legal representation, how the applications were dealt with by the court, and whether there were any related legal proceedings.

The most significant part of the content analysis of the court files, for the purposes of this article, was the identification of the types of violence and abuse alleged to have been used by men and women.<sup>58</sup> This was conducted in two stages: the first was a ‘broad brush’ approach that noted whether the complaints alleged any of four main types of violence and abuse: physical, sexual, threats, and other forms of abuse (verbal, emotional or psychological, financial, damage to property, stalking, and harassment). The second stage unpacked these broad categories (where possible) by examining whether there were differences in the form that the violence took – for example, in terms of physical violence, whether

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56 Interviews with the key professionals were analysed using NVivo7, a computer program designed to assist in the analysis of qualitative data. This program was not used for the interviews with women as the sample was small and it was considered that conducting the analysis in Word retained an important element of flexibility and connection with the text rather than the ‘drive’ for coding that can be produced using computer software. On the other hand, the analysis of data across and between professionals interviewed was enhanced by the use of NVivo7.

57 In NSW, it is possible for the police to apply for an ADVO on behalf of a person, and a person may also apply for their own ADVO (often referred to as a private application): *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 48. In NSW, police have a particularly strong obligation to apply for orders where the parties are in a domestic relationship: at the time of the field work *Crimes Act 1900* (NSW) sub-ss 562C(3), (3A), now *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 49.

58 Only acts alleged to have been perpetrated by one partner against the other were recorded. Acts allegedly perpetrated by third parties or towards third parties were excluded.

that involved punching, kicking, hitting, using a weapon, and so on.<sup>59</sup> For both stages, this was a quantitative exercise and simply recorded whether a person complained about a type of violence, not how many times that violence was perpetrated against them, nor its outcome or severity.<sup>60</sup> Furthermore, it is necessarily limited to the matters alleged in the complaint narrative. This is therefore a conservative estimate of people's experiences.

The purpose of this analysis was to ascertain whether there were differences between the complaints made by men vis-à-vis women, and between those who lodged their ADVO first and those who lodged their ADVO second in time. A chi-square analysis for statistical significance was undertaken, however this was only possible between men and women who were first applicants, and between men and women who were second applicants, rather than between first and second applicants, as the latter grouping is a paired observation. As noted below, very few differences identified in the content analysis of the complaint narratives reached statistical significance.

It is important to note that the analysis of the complaint narratives was hampered by the poor quality of many of them; many complaints were overly brief, lacking in detail, focused on a single incident, and contained considerable irrelevant information. This negative assessment of complaint narratives was shared by the professionals interviewed.<sup>61</sup> This not only placed constraints on the research exercise but raises critical questions for the legal process: how is the legal system able to make determinations, and effective and appropriate protection orders, in the context of such paucity of information?<sup>62</sup>

## B General Profile of Cross Applications

Cross applications represent a small number of applications; in this study they represented around 5 to 11 per cent of intimate partner ADVO applications in the court file sample.<sup>63</sup> However, the professionals interviewed all noted that cross applications tend to be more complex and time consuming, with the parties often being involved in other legal proceedings.

Overwhelmingly, women were the first to apply for an ADVO (76.5 per cent of cross applications in the court file sample were made by women and all but one of the women interviewed were first-in-time). First applications, whether by men or women, were much more likely to have been made by the police (70.6

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59 In undertaking this exercise, I relied on (with some adaptations) Linda E Saltzman et al, *Intimate Partner Violence Surveillance: Uniform Definitions and Recommended Data Elements (Version 1.0)* (Centers for Disease Control and Prevention, 2<sup>nd</sup> ed, 2002) 11–12.

60 A similar approach was adopted in R Emerson Dobash and Russell P Dobash, 'The Nature and Antecedents of Violent Events' (1984) 24 *British Journal of Criminology* 269, 275.

61 See discussion in Wangmann, above n 52, 95–9.

62 See similar conclusion regarding allegations of family violence in the family law arena: Moloney et al, above n 15, 119.

63 Studies in Queensland have considerably smaller numbers: see Heather Douglas and Lee Godden, 'The Decriminalisation of Domestic Violence' (Griffith Law School, Socio-Legal Research Centre, 2002); Chris Cunneen, 'Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities' (Report, Queensland Department of Communities, 2010) 66.

per cent of first applications in the court file sample were made by the police, compared to only 11.8 per cent of second applications; similarly for nine of the women interviewed the police had sought the ADVO on their behalf). While who was first-in-time does not necessarily indicate who required protection, when considered in combination with the proportion of police applications, there is a suggestion that these applications were more serious, at least warranting police attention, and this is reinforced by the number of police applications that were in the form of urgent telephone interim orders (30.9 per cent of first applications were TIOs compared to 4.4 per cent of second applications).<sup>64</sup>

### C Counting Incidents – What Does It Reveal?

The quantitative data generated from the analysis of the court file sample revealed few differences between the allegations made by men and women in their applications for an ADVO. Men and women, whether as first or second applicants, made a wide range of allegations across the spectrum of violence and abuse. At least half of all complainants made allegations about physical violence (58.8 per cent), other forms of abuse (52.9 per cent), and threats (50.0 per cent); see Table 1. Sexual violence was, however, notably absent with only two women and one man making an allegation of this kind. While this absence might be explicable for a range of reasons, it is troubling in this, the main legal forum to address IPV in NSW, and requires further research given what we know about the coexistence of different forms of violence and abuse in IPV.<sup>65</sup>

Table 1: Types of Violence Alleged in the Complaint Narratives

	1 <sup>st</sup> applicant (68)			2 <sup>nd</sup> applicant (68)		
	Female (52)	Male (16)	TOTAL	Female (16)	Male (52)	TOTAL
History of violence mentioned in the complaint	32 (61.5% of F 1 <sup>st</sup> )	10 (62.5% of M 1 <sup>st</sup> )	42 (61.8%)	8 (50% of F 2 <sup>nd</sup> )	14 (26.9% M 2 <sup>nd</sup> )	22 (32.4%)
Physical violence	33 (63.5% F 1 <sup>st</sup> )	13 (81.3% M 1 <sup>st</sup> )	46 (67.7%)	12 (75% F 2 <sup>nd</sup> )	22 (42.3% M 2 <sup>nd</sup> )	34 (50%)

64 At the time of this study these urgent orders were known as Telephone Interim Orders (TIOs), they are now known as 'provisional orders' see *Crimes (Domestic and Personal Violence) Act 2007* (NSW) Part 7, which also expanded the circumstances and methods under which the police may apply for such orders.

65 See García-Moreno et al, above n 1, 32; Liz Kelly, *Surviving Sexual Violence* (Polity Press, 1988) 53, 127–32; Rebecca Emerson Dobash and Russell P Dobash, 'Violent Men and Violent Contexts' in R Emerson Dobash and Russell P Dobash (eds), *Rethinking Violence Against Women* (Sage Publications, 1998) 141, 155–6. A similar absence has been noted in research in family law and civil protection order proceedings: Moloney et al, above n 15, Table 5.2, 69; Alesha Durfee, 'The Gendered Paradox of Victimization and Agency in Protection Order Filings' in Venessa Garcia, Janice E Clifford and Roslyn Muraskin (eds), *Female Victims of Crime: Reality Reconsidered* (Prentice Hall, 2010) 243.

Sexual violence	1	--	1	1	1	2
Threats	31 (59.6% F 1 <sup>st</sup> )	7 (43.8% M 1 <sup>st</sup> )	38 (55.9%)	8 (50% F 2 <sup>nd</sup> )	22 (42.3% M 2 <sup>nd</sup> )	30 (44.1%)
Other (verbal, harassment, stalking, damage to property, emotional/ psychological, financial, social)	34 (65.4% F 1 <sup>st</sup> )	12 (75% M 1 <sup>st</sup> )	46 (67.7%)	13* (81.3% F 2 <sup>nd</sup> )	13* (25% M 2 <sup>nd</sup> )	26* (38.2%)

\* Twelve cases were removed from the 'other' category for 2<sup>nd</sup> applicants (1 female and 11 male) as there are questions about the characterisation of the acts as 'abuse' and this was the only 'other' form of abuse alleged. This is discussed later in this article.

None of the differences between men and women who were first applicants reached statistical significance. However, a number of the differences between men and women who were second in time did do so: women second applicants were more likely than male second applicants to make allegations about physical violence ( $\chi^2 = 5.24$ ,  $df = 1$ ,  $p < 0.05$ ) and other forms of abuse ( $\chi^2 = 16.47$ ,  $df = 1$ ,  $p < 0.05$ ).

When the broad categories of violence were further unpacked, for example, to ascertain whether there were differences in the forms of physical violence used by men and women, some differences emerged. These did not reach statistical significance and should be approached with caution given the general lack of detail provided in many complaints. However, it is worth noting that the differences suggested in this analysis bear similarities to research by Heather Melton and Joanne Belknap on men and women charged with misdemeanor domestic violence offences in a large Midwestern city in USA.<sup>66</sup>

Only men alleged that they had been kned in the groin and scratched; acts more likely to be defensive, rather than offensive, in nature.<sup>67</sup> Only men alleged that a weapon/object had been used against them. This included a knife (in two cases), a tomato stake, a shoe, and a stapler and a piece of wood. In turn, only women alleged that they had been spat at, had their hair pulled, were burnt, dragged or pulled along the ground, had their arms twisted, and had been pinned against a wall or door.<sup>68</sup> In addition, women were more likely than men to allege being choked or strangled.

66 Heather C Melton and Joanne Belknap, 'He Hits, She Hits: Assessing Gender Difference and Similarities in Officially Reported Intimate Partner Violence' (2003) 30 *Criminal Justice and Behaviour* 328.

67 See Mary Finn et al, 'Dual Arrest Decisions in Domestic Violence Cases: The Influence of Departmental Policies' (2004) 50 *Crime & Delinquency* 565, 571.

68 See similar findings in Melton and Belknap, above n 66, 339.

Like other studies, this research found that more women than men were alleged to have used weapons.<sup>69</sup> Two of the ‘weapons’ used by women were ‘conventional’ while the others appeared to be ‘what was on hand’. This was also evident in Melton and Belknap’s research which led them to conclude that rather than women’s use of weapons suggesting a greater seriousness in their behaviour, instead it may be ‘a means of “levelling the playing field” once abuse has been perpetrated against them’.<sup>70</sup>

One area which appears to have the potential to illustrate differences in the experiences of men and women is the use of threats and the contexts in which they are issued. The comments in this area are very tentative and require further research with a larger sample, as the number of people who alleged threats was small (see Table 1) and those that provided detail about the nature and context of that threat(s) even smaller. More women in this study alleged threats pre- and post- separation, and more threats that can be described as coercive (that is, threats about ‘what would happen’ if the woman reported him to the police, or left him). While this is very tentative it resonates with research by Melton and Belknap who found that men were more likely than women to make coercive threats.<sup>71</sup> This experience is consistent with an understanding of IPV as an exercise of coercive control. In the present study, four women in the court file sample and no men received coercive threats during their relationship, and another four women reported coercive threats at the time of separation. The only man who could potentially fall in this category made a report that was of an entirely different nature; he alleged that his former spouse threatened to ‘ruin’ him at the time of separation by seeking an ADVO and taking his property. This threat was not aimed at preventing separation, rather it was a consequence of separation. In contrast, three men in the present study made complaints that alleged that women ‘threatened’ to use their legal rights against them (for example, by obtaining an ADVO, or reporting them for a breach of that ADVO), and only men nominated that they were in ‘fear’ that the woman would ‘provoke’

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69 See Melton and Belknap, above n 66, 344; Marianne Hester, ‘Who Does What to Whom? Gender and Domestic Violence Perpetrators’ (Research Project, University of Bristol and the Northern Rock Foundation, June 2009) 8, 18; Kris Henning and Lynette Feder, ‘A Comparison of Men and Women Arrested for Domestic Violence: Who Presents the Greater Threat?’ (2004) 19 *Journal of Family Violence* 69, 74-5; Susan L Miller, ‘The Paradox of Women Arrested for Domestic Violence’ (2001) 7 *Violence Against Women* 1339, 1365; Amy L Busch and Mindy S Rosenberg, ‘Comparing Women and Men Arrested for Domestic Violence: A Preliminary Report’ (2004) 19 *Journal of Family Violence* 49; Debra Houry, Sudha Reddy and Constance Parramore, ‘Characteristics of Victims Coarrested for Intimate Partner Violence’ (2006) 21 *Journal of Interpersonal Violence* 1483, 1489.

70 Melton and Belknap, above n 66, 344. See also Susan L Miller, *Victims as Offenders: The Paradox of Women’s Violence in Relationships* (Rutgers University Press, 2005) 74; Busch and Rosenberg, above n 69, 53. That men tend to use their own bodies and women use weapons is also reflected in homicide data: 80 per cent of women used a knife or similar instrument to kill their partner, in 22 per cent of cases men used their own hands to beat their (former) partner to death, no women killed in the same way: Megan Davies and Jenny Mouzos, ‘Homicide in Australia: 2005–06 National Homicide Monitoring Program Annual Report’ (Research and Public Policy Series No 77, Australian Institute of Criminology, January 2007) 25.

71 Melton and Belknap, above n 66, 341. See also Ptacek, above n 38, 84–5.

them to breach her ADVO. No women made allegations of this kind. The nature and context of threats made by intimate partners is an important area for further investigation as the issuance of threats may be indicative of the presence of a coercive environment.

While this quantitative analysis is suggestive of some areas of difference, the overwhelming conclusion from this exercise is that men and women are alleged to use a wide range of different forms of violence/abuse against each other; it does not tell us whether there were any differences in the nature and context of the acts perpetrated, how each act or behaviour did or did not relate to previous events, or the way the act functioned in the relationship. In this way, it is consistent with the limited picture afforded about the perpetration of IPV presented in other quantitative studies. The issue is whether this is seen as evidence of 'symmetry' or 'mutuality' in the use of violence or whether we need to know more.

#### **D What Does a Contextual Approach Reveal?**

To supplement the limited picture provided by the quantitative data, a qualitative analysis was conducted relying on the in-depth interviews with women and a detailed analysis of the complaint narratives from the court files. At the outset it is worth noting the extent to which the ADVO complaint narratives examined in this research focused on single incidents (for 6 of the 10 women interviewed, their ADVO detailed a single incident, and 43.6 per cent of cases in the court file sample were similarly limited). They therefore failed to capture the multiple and varied experience of violence by either men or women. This also means that they stand in stark contrast to the way in which the women interviewed described their experience of IPV which invariably referred to control and included a broad spectrum of acts of violence and abuse (including many acts that would not be captured within traditional categories used by surveys – for example, being reported to multiple agencies, forcing the woman to read or listen to news stories involving IPV, and continuing unwelcome messages of 'love').

Four key areas of difference emerged between men's and women's cross applications: the presence of criminal charges, whether the person seeking the ADVO was fearful, the questionable characterisation of some acts as 'abuse', and the use of lengthy complaint narratives which engaged in a range of 'remedial' tactics.<sup>72</sup>

##### **1 The Presence of Criminal Charges**

In the court file sample, 22 people (17 men and five women)<sup>73</sup> were charged with criminal offences (involving a total of 62 charges). Most were charged with one offence; however seven men (two of whom were charged with 11 offences)

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<sup>72</sup> See Cavanagh et al, above n 41.

<sup>73</sup> Three of the women were subject to charges at the same time as their current/former partner (ie dual arrest or dual charges).

and four women were charged with multiple offences. Eight men were charged with contravening an ADVO, all second applicants, three of whom were subject to multiple breach charges. No women were charged with this offence. This suggests a different quality to the behaviour of male second applicants; that these men were engaged in a repetitive pattern of behaviour. Research from the USA exploring the difference between men and women arrested for IPV offences also found that men were more likely to have been arrested previously for IPV,<sup>74</sup> including breaching a protection order.<sup>75</sup>

As the main subject of this research was the ADVO application, little is known about these charges, the facts behind them, or their outcome. In only two cases was the charge fact sheet appended to the ADVO court file. In one case, the woman had been charged with malicious damage to property and assault occasioning actual bodily harm<sup>76</sup> at the same time her de facto partner was charged with malicious damage to property, assault occasioning actual bodily harm, two counts of common assault, and contravene ADVO.<sup>77</sup> The more detailed charge fact sheet revealed that the woman's use of violence had been in direct response to her own victimisation – she had been charged because she had kicked and damaged a stereo and scratched the man's back (suggestive of a defensive act) during an incident in which he was verbally abusing her and physically assaulting her to the extent that she was vomiting blood. In the second case, the woman was charged with malicious damage and malicious wounding<sup>78</sup> as a result of an incident in which her de facto partner had been preventing her from leaving him – during this incident the man had taken her wallet and mobile phone, pinned her against a wall and chased her with a knife. This chain of events culminated in the woman being chased into the backyard where she picked up a broken tomato stake, which she eventually used to stab him in the arm. The woman pleaded guilty to these offences at the first opportunity.<sup>79</sup>

This latter case is particularly interesting because, while the woman most certainly used violence against her partner, we need to ask whether her acts should be defined as 'IPV'. In this, I seek to draw a distinction between civil and criminal proceedings (where the civil protection order is concerned with 'who needs protection' or 'who is in fear', and where the criminal proceeding is concerned with whether an offence took place). I suggest that the woman's acts do not warrant the making of an ADVO against her (as a legal action designed to address IPV). However, I suggest that it was appropriate that she was charged

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74 Margaret E Martin, 'Double Your Trouble: Dual Arrest in Family Violence' (1997) 12 *Journal of Family Violence* 139, 150; Busch and Rosenberg, above n 69, 53–4.

75 See Henning and Feder, above n 69, 75.

76 Respectively *Crimes Act 1900* (NSW) ss 195, 59.

77 Respectively *Crimes Act 1900* (NSW) ss 195, 59, 61 and then *Crimes Act 1900* (NSW) s 562I, now *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 14.

78 Respectively *Crimes Act 1900* (NSW) ss 195A, 35A.

79 There is some suggestion in the research that women are more likely to admit to their actions and to 'plead guilty rather than go to trial': M McMahon and E Pence, 'Making Social Change: Reflections on Individual and Institutional Advocacy with Women Arrested for Domestic Violence', *Violence Against Women* (2003) 9 47, 52.

(given the nature and extent of the injury sustained). This was not an appropriate case in which the police might have exercised their discretion about whether to lay a charge, however there are pertinent questions about why her legal representative did not raise self-defence. This returns to the question posed at the outset, that is, whether it is possible for a person to perpetrate an act of violence against an intimate partner and not label it IPV. These cases provide useful examples of violence that might be more properly seen as self-defence, retaliation, or anger in the context of the woman's own victimisation, rather than IPV, since the woman's violence was not characterised by control.

## 2 *The Presence of Fear*

The complaint narratives in the court file sample were examined to see whether men and women expressed fears about the violence that they had experienced. Although this was a quantitative comparison examining whether the person mentioned fear or not, I have reported this finding here because fear goes to the context and impact of other acts of violence and abuse.

To obtain an ADVO the legislation requires that the person seeking the ADVO 'has reasonable grounds to fear and in fact fears' the commission of certain acts and behaviours.<sup>80</sup> That is to say that the making of an ADVO is not simply reliant on the presence of certain acts/behaviours, but that there must be this additional component of fear. In many complaint narratives, fear or apprehension was not specifically mentioned, and, in those where it was, it was often included as a routine way of concluding the complaint.<sup>81</sup> In conducting this analysis, I recognise that many applicants may well still be fearful even when the complaint did not specifically refer to fear, and, in some cases, this might be assumed from the contents of the complaint. As a result, this is a very conservative indication of the presence of fear.

Just over 55 per cent of female first applicants<sup>82</sup> and just over 37 per cent of male first applicants specifically mentioned that they feared the alleged perpetrator in their ADVO complaint. This difference did not reach statistical significance ( $\chi^2 = 1.58$ ,  $df = 1$ ,  $p > 0.05$ ). However the difference between female and male second applicants was statistically significant; here just over 68 per cent of women stated they were fearful compared to just over 34 per cent of men<sup>83</sup> ( $\chi^2 = 5.89$ ,  $df = 1$ ,  $p < 0.05$ ). The presence of fear is particularly important as it implies an experience of IPV characterised by control. It is also consistent with other research that has found gender differences in the extent to which acts of

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80 At the time of the field work *Crimes Act 1900* (NSW) s 562AE, now *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 16.

81 A similar routine approach was often taken in relation to noting 'a history of violence'.

82 In one of these cases, the fear was expressed as the fears the police held for the victim.

83 Two other male second applicants stated they held fears, however these 'fears' were that the woman would cause him to breach the ADVO she obtained against him or otherwise provoke him in some way. These have therefore been excluded from this discussion.

violence generate fear, with women being more fearful.<sup>84</sup> What is worth noting here is that the extent to which male second applicants (who represent 38.2 per cent of the court file sample and most of the men) are beginning to stand out as making particularly different claims when compared to women (first or second applicants) and male first applicants (who represent 11.8 per cent of the court file sample). This suggests that male first applicants may well have a different experience and therefore warrant further research.

It is also worth noting the extent to which the women interviewed volunteered the term 'control' as a way to characterise their relationship (five of the women interviewed specifically used this term; for the remaining five women, it was implied through restrictions on engaging in paid work, restricting contact with friends and family, preventing a woman from using her first language, and being required to seek permission to do things). For example, one woman described her relationship as 'one-sided...as long as I did what I was told I was okay' and that her former spouse had sought to 'isolate me from the world'. By and large, control was not reflected in any of the ADVO complaints sought by the women interviewed or in the court file sample, except to a limited degree where reference had been made to restrictions on work, contact with friends, or limitations on financial independence. This is not surprising given that the ADVO system does not ask about control; however this is an important area for further discussion given developments in legislation in other jurisdictions<sup>85</sup> and in the literature which is increasingly highlighting the importance of recognising coercive control rather than simply violence.<sup>86</sup>

### 3 *Lengthy 'Wounded' Complaint Narratives*

In eight cases men (one first applicant and seven second applicants in the court file sample) lodged complaints that were of a distinctly different kind; these were lengthy complaint narratives in which the man sought to characterise himself as 'wounded' or the 'true' victim. The content and nature of these complaint narratives, engaged in what Cavanagh and colleagues, drawing on the work of Goffman, have characterised as 'remedial work'.<sup>87</sup> Invariably these complaints incorporated denials, shifted blame (particularly onto the woman), downgraded the seriousness of the acts that the man was prepared to admit to, and/or provided a different account of the events alleged in the woman's complaint. In some of these complaints the man also sought to characterise himself as the (calm) victim and the wronged person, in contrast to his former

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84 See, eg, Suzanne C Swan et al, 'A Review of Research on Women's Use of Violence With Male Intimate Partners' (2008) 23 *Violence and Victims* 301, 308; L Kevin Hamberger and Clare E Guse, 'Men's and Women's Use of Intimate Partner Violence in Clinical Samples' (2002) 8 *Violence Against Women* 1301, 1316; Shamita Das Dasgupta, 'Just Like Men? A Critical View of Violence by Women' in Melanie Shepard and Ellen Pence (eds), *Coordinating Community Response to Domestic Violence: Lessons from Duluth and Beyond* (Sage Publications, 1999) 209–210; Henning and Feder, above n 69, 78.

85 See, eg, *Family Violence Protection Act 2008* (Vic) s 5(1)(a).

86 See, eg, Stark, above n 38; the extensive and developing work on distinguishing between different types of domestic violence, see above n 15 and accompanying text.

87 Cavanagh et al, above n 41.

partner who was depicted as hysterical, irrational and in some cases aggressive. For example, one man's complaint included the following features:

- denials: 'I am not an aggressive person', '[I] never intentionally nudged...no[r] ...tried to trip her [over]';
- blame: 'Furthermore, I say that she is an aggressive angry person, particularly at the moment. On one occasion, when I was in our rather narrow kitchen entrance, she did not wait for me to leave but barged past, knocking me off balance';
- minimalisation: 'The incidents [all of which he denied]...have been very isolated'; and
- different accounts of events: the woman alleged that her former husband waved a bread and butter knife under her throat and then proceeded to spread butter on her cheeks, the man counters that the 'PINOP walked right up to the butter knife in a confrontationalist way and stood glaring at me. I moved the butter knife away and in the process the butter accidentally landed on PINOP's cheek. I certainly and emphatically deny smearing butter on both her cheeks'.

Invariably the small number of men's complaints that fell within this category had little connection to the legislative requirements for granting an ADVO – rather they were centred on recasting the allegations made against them as more 'socially acceptable' through a range of remedial measures.

#### 4 *A Questionable Characterisation of Acts as Violence or Abuse*

A small group of complaints, primarily lodged by male second applicants, sought to characterise acts/behaviour as violence or abuse in a questionable manner. These complaints generally sought to characterise certain acts as 'harassment',<sup>88</sup> however these acts appeared to be better characterised as hurtful or unfortunate; they certainly had no connection to 'fear' (the ADVO legislative requirement) or to control. What these cases highlight is the importance of considering acts and behaviours in context – and the risk of adopting broad definitions of IPV without a contextual framework.

An example of this type of questionable characterisation is provided in the following ADVO complaint lodged by a man against his former spouse:

There has been an ongoing dispute between the ... [Person in need of protection ('PINOP') – the man] and the defendant [the woman] in relation to the access arrangements ... to the children .... On [date] the PINOP attended the defendant's residence for the purpose of collecting the children for access. The PINOP had put both children in his car and had secured their seat belts and had locked the car doors. Just as the PINOP was driving away, the defendant has reached through the passenger ... window of the PINOP's vehicle, unlocked the door and tried to jump into the car. Both the PINOP and the defendant have reported this incident to the

88 'Intimidation', one of the grounds on which a person may be granted an ADVO, includes 'harassment' amongst other acts/behaviours: then *Crimes Act 1900* (NSW) s 562D, now *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 7(1)(a). Harassment is not defined.

police. On [date] the defendant has contacted the PINOP by phone, the defendant has said to the PINOP words to the effect of 'Stop your bitterness'. The PINOP has hung up the phone. The defendant has then proceeded to phone the PINOP several more times. The PINOP fears further harassment and interference by the defendant.

This complaint was made at the same time that the woman sought a variation to her existing ADVO to place an exclusion zone around her new residence as a result of alleged stalking by her former spouse. The woman's original complaint alleged a history of violence including physical violence, harassment, verbal, and emotional abuse. She also complained that 'her husband attempts to control her and since separating he is becoming more and more angry towards her'. Differences then are revealed in the duration and nature of the violence/abuse alleged by the man and the woman in this case; the woman's complaint is suggestive of a sustained pattern of behaviour that has been intensified with separation. In the end, the man withdrew his cross application while consenting to the variation sought by the woman.

In a similar vein in another case, a man lodged the following complaint against his former de facto partner:

On [date] the ... PINOP [the man] informed the defendant [the woman] that he had cancelled her mobile phone account. The defendant has then tipped a glass of juice over the PINOP's head and back and said words to the effect of 'Fuck you, as if it's going to worry me'. The PINOP fears further violence and harassment.

In this complaint, it appears that the woman's actions were in direct response to the man's statement that he had cancelled her phone and therefore appear to be angry/retaliatory actions rather than actions intended to control or instil fear. In contrast, the woman's complaint alleged a history of violence (the police had attended the residence in the past), verbal abuse, a threat to kill her made via their teenage daughter, threats to harm her, and a coercive threat because she had called the police: 'this is the second time you have called the cops on me you'll pay this time you won't get away with it, I'll get you...'.

The different nature of cross applications as a data source in the debate on gender perpetration of IPV is highlighted in the cases where men alleged that women were misusing their ADVOS. Three of the women interviewed and four women first applicants were subject to complaints of this kind. For example, the following complaint was lodged against one of the women interviewed:

The defendant has been conducting herself in a manner that is intimidating and harassing towards the complainant. The defendant currently has an ADVO in force against the complainant. The defendant is deliberately difficult when dealing with issues regarding the children of the marriage. The defendant conducts her activities and manner with the sole intention of causing the complainant to feel emotionally and mentally abused. The defendant deliberately declines to inform the complainant of genuine issues regarding the children which in turn encourages the complainant to make contact which is in contravention of the orders. ... The defendant continues to pursue enforcement of the ADVO with ... actions that are either brought on by incitement, emotion and provocation as well as vexatious allegations. The complainant generally believes that the defendant's actions are malicious and the complainant seeks an order for release.

The woman's former husband, represented by a barrister, sought to have this cross application listed at court at the same time as the charge against him (his

third charge of contravene ADVO). In her interview, the woman explained that she saw this as trying to 'mix up' the criminal charge with the cross application by suggesting that the charge was only prosecuted because of her own malicious and vexatious enforcement of her ADVO. Its purpose then was 'to put the blame on me for basically anything he was going to do in the future, by saying this has provoked me'. In the end, the man withdrew his complaint for an ADVO, however it is worth noting that at one stage he was successful in obtaining an interim order on the basis of this complaint.

In another complaint from the court file sample, a man alleged that his former spouse 'has been provoking [him] in breaches of the order, and that the provocation is of itself, harassment' and that she has 'made derogatory comments to [others] about him [including informing others] that she has an AVO against him'. The man's complaint concluded that he feared that 'if an order is not made, the defendant will continue to provoke him, and continue to harass and intimidate him'. The man had lodged this complaint at the same time that the woman had sought to extend her original ADVO which had been granted to her on the basis of a detailed history of IPV, including physical assaults, verbal abuse, and threats to kill. The physical violence included being assaulted 'by grabbing her around the throat and bashing her head against a vehicle'. There appears then to be a substantive difference in the types of matters that the woman and her former husband complained about in their respective applications. On the final day at court both applications were withdrawn.

Cross applications therefore are not only a mechanism through which a person may raise counter allegations about violence (and hence a data source to compare men's and women's allegations); they are also a legal mechanism that appears to be used by some men as a tactic or 'bargaining tool' to bring about a particular resolution (ideally mutual withdrawal – something they are quite effective at with 45.5 per cent of cross applications in the court file sample resulting in mutual withdrawal; 28.6 per cent resulting in mutual orders; 18.2 per cent resulting in the woman being granted an order and not the man; and the remaining 7.8 per cent being resolved by mutual dismissal).<sup>89</sup> Cross applications therefore cannot simply be investigated as potential examples of gender equivalency, or cases of mutual violence, but must also be seen as a possible extension of the violence and abuse itself. Many of the women interviewed saw the cross application lodged by their former partner as harassment, a breach of their ADVO, or another way to hurt them. This was also recognised by some of the professionals interviewed. This dimension poses further questions about how to define and understand IPV; the use of a legal mechanism, a cross application, to generate withdrawal is certainly not an act asked about in standardised research instruments measuring the prevalence of IPV. Indeed, the use of the law against victims of IPV is rarely depicted as part of their continuing experience of

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89 This means that 62.3 per cent of people involved in the cross applications examined in this study did not obtain an ADVO. This does not compare favourably to the resolution of ADVOs generally: in 2002, the year the court file sample was gathered, 49.3 per cent of applicants did not obtain an ADVO: NSW Local Courts, *Apprehended Violence Statistics: Year 2002*, Table 2.4 (copy on file with author).

violence, yet it is seen that way by victims and clearly evidences a type of act that is directed at exerting control (or reasserting control). In this way, some research in the family law arena has characterised multiple vexatious applications as a ‘weapon against women and their children’.<sup>90</sup>

#### IV CONCLUDING DISCUSSION

Cross applications provided a fertile site to directly compare and contrast men’s and women’s accounts of violence from the same relationship setting.<sup>91</sup> This research complements research from other jurisdictions that has looked at differences in men and women charged with criminal offences arising from the use of violence or abuse against their intimate partner,<sup>92</sup> and it is important to note the extent to which similar themes emerge across jurisdictions and legal responses. This study confirmed, and actively demonstrated, the limitations of a purely quantitative approach to comparing men’s and women’s allegations about IPV, and, in turn, illustrated the more complex picture acquired via qualitative analysis.<sup>93</sup> Through the combined quantitative and qualitative data, a picture emerged that suggested some differences between men and women, particularly men who lodged their application for an ADVO after the woman had sought protection – differences in terms of who engaged in repeated behaviour, who sought to identify acts that perhaps were never intended to come under the purview of the term ‘domestic violence’, and who engaged in remedial work. In addition the qualitative analysis revealed that cross applications not only explore debates about gender equivalency in the perpetration of IPV, but also reveal that some men’s allegations fall within a totally different category, a category that seeks to utilise a legal mechanism as a way to challenge women’s claims for safety. That is to say, some men’s claims were not concerned with women’s use of violence, but rather were concerned with women simply doing things men did not like, such as pursuing their legal rights, telling others about the man’s behaviour, calling the men names, swearing at them, and so on. The fact that cross applications were a particularly effective tool in generating mutual withdrawal supports this contention. A number of areas for further research were revealed – the nature of the threats alleged to have been perpetrated by men and women and, most importantly, more research with those men who were first in time (whose complaints appeared to be different to male second applicants).

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90 Australian Law Reform Commission, *For the Sake of the Kids: Complex Contact Cases and the Family Court*, Report No 73 (1995) [2.30]. See also Belinda Paxton, ‘Domestic Violence and Abuse of Process’ (2004) 17 *Australian Family Lawyer* 7, 7, 11–12.

91 Dobash and Dobash emphasise the need to compare men’s and women’s accounts of shared events: Dobash and Dobash, ‘Working on a Puzzle’, above n 26, 332.

92 See above n 69 and accompanying text; above n 70 and accompanying text; Dobash and Dobash, ‘Working on a Puzzle’, above n 26.

93 See Melton and Belknap, above n 66, 343; Claire Renzetti, ‘Editor’s Introduction’ (1997) 3 *Violence Against Women* 459, 459.

The centrality of gender continues to be debated in work on IPV – whether in research or in service (including legal) responses. While this debate about gender has been long-standing, the last decade has seen a resurgence of interest – as a result of the increasing arrest of women for IPV offences either on a dual or sole basis (particularly in the USA,<sup>94</sup> but also in Australia<sup>95</sup> and other jurisdictions).<sup>96</sup> This also has important connections to growing interest in typologies of IPV through the emphasis on being clear about what incidents tell us (and what they don't tell us) about whether a person has experienced (or is perpetrating) violence or abuse against an intimate partner in a particular circumstance, or whether it forms part of IPV and requires a specialist IPV response. It is important to acknowledge that not all acts of violence or abuse perpetrated by an intimate partner are necessarily IPV – we need to know more than simply who did what to whom before such a conclusion can be reached.

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94 See above n 69 and accompanying text; David Hirschel and Eve Buzawa, 'Understanding the Context of Dual Arrest with Directions for Future Research' (2002) 8 *Violence Against Women* 1449; Martin, above n 74.

95 See Redfern Legal Centre Women's Domestic Violence Court Advocacy Service, 'Submission: Domestic Violence Charges – Female Defendants', submission to the Ombudsman and NSW Police Service (2006) (copy on file with author); Jordan Baker, 'Women Pushed to the Brink', *Sydney Morning Herald* (Sydney), 23 February 2008, 31.

96 In the United Kingdom, see Hester, above n 69.