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Improving Access to Justice for Women Who Kill Their Abusers: Practitioner Insights and Experiences

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Abstract

Over the past decade, Australia has made significant reforms aimed at improving legal understandings of intimate partner violence, women's use of force and their access to self-defence. While some courts have recognised the cumulative effects of coercive control and social entrapment on women's responses, significant problems remain that deny many women access to justice. This article presents findings from a Victorian pilot study involving interviews with lawyers and experts who work with victim-survivors in these cases. Despite the existence of legislative provisions encouraging decision-makers to utilise the family violence evidence provisions and draw on a broader range of experts with family violence expertise, results revealed that a number of interviewees had limited knowledge of these provisions, and psych- based experts are still being used in the majority of cases. Surprisingly, while psych-based expertise was seen as helpful, interviewees were aware of the limits of this expertise with some seeing this as due to the limited authority afforded family violence experts/expertise by the courts. We conclude with recommendations for building the workforce and capacity of experts to work in this area and targeted training to skill up practitioners to more effectively utilise family violence experts in conjunction with the family violence evidence provisions throughout the whole court process.

Keywords: Women's use of force; self-defence; legal strategy; expert evidence; intimate partner violence; coercive control; social entrapment.

Introduction

Women victimised by domestic, family and/or sexual violence are far more likely to die at the hands of their male abusers than to kill their intimate partners. When women do kill, they are typically responding defensively to the threat of further victimisation (ADFVDRN and ANROWS 2022: 12, 35-36; CWJ 2021). For decades, Australian scholars, defence lawyers and reform bodies have struggled with how to effectively defend women charged with criminal offences including murder where they have killed in response to victimisation from their intimate partners (see, for example, Sheehy, Stubbs and Tolmie 2014; Victorian Law Reform Commission (VLRC) 2004). In response to these concerns, Australia has made significant reforms aimed at improving legal understandings of intimate partner violence (IPV), women's use of force and their access to defences, particularly self-defence (Loughnan 2020). While the laws relating to self-defence differ across the six Australian states and

two territories, reforms have varied and the trend has been to broaden access to self-defence for primary victim-survivor of IPV. Reforms have changed the way the defence is framed, dealt with the admissibility of family violence evidence to explain how IPV could lead defendants to believe their actions were necessary and reasonable within the requirements of self-defence, and introduced new jury directions on the nature and dynamics of family violence (Loughnan and Davidson 2023).

These reforms have resulted in some progress in addressing the obstacles to raising self-defence that have historically faced women who kill their abusers (Nash and Dioso-Villa 2023) and instances of strategic lawyering have helped generate more appropriate outcomes in some cases (*R v Ruddelle (2020); R v Stephen (2018)*; Sheehy, Stubbs and Tolmie 2014; Smith et al. 2024; Tarrant 2023). However, these efforts are piecemeal and inconsistent and significant problems remain that deny these women access to justice (Loughnan and Davidson 2023; Dioso-Villa and Nash 2024). Despite these measures, there has been no significant readiness on the part of legal professionals – lawyers and judicial officers - to recognise women's use of force against their abusers as self-defence (Nash and Dioso-Villa 2023). These deficiencies, which lead to women being unfairly criminalised when they should have been able to rely on self-defence (CWJ 2021; Goodmark 2023), call for a more focused analysis on legal understandings and practice (Loughnan and Davidson 2023; see also McPherson 2023).

This article presents findings from a Victorian pilot study in which interviews were conducted with lawyers and experts who have worked with women in these cases. First, we set out the law of self-defence in Victoria, Australia, and Victorian legislative reforms in the past 20 years designed to address injustices in women's access to self-defence. We then review scholarship and empirical data that suggests that, despite these promising legislative changes, there has been little progress so far. Next, since how the law of self-defence is applied is constrained by decision-makers' implicit conceptualisation of the violence a defendant faced, we review scholarship and case law on how IPV has been conceptualised in the criminal process. These sources show that legal strategy has tended to be based on outdated theories of IPV. We then outline our methodology in the current study, which sought to investigate how key criminal justice actors (defence lawyers and expert witnesses and report-writers) are making decisions 'on the ground'; how they are contextualising immediate offences (homicide) with the history of family violence, and how, or if, the progressive Victorian family violence evidence provisions are being utilised. We present our interview findings and conclude with recommendations. We suggest there is a critical need for a workforce of experts with expertise in family violence and specialised training for prosecutors and judges about family violence and the family violence provisions.

Self-Defence Law Reforms in Victoria, Australia

As in other Australian and international jurisdictions, self-defence in Victoria is available for most crimes of violence and, if successful, results in a complete acquittal (Bronitt and McSherry 2017: 349). Section 322K of the *Crimes Act 1958* (Vic) establishes a two-limb test. In cases of murder, self-defence applies if the accused "believes that the conduct is necessary in self-defence" to protect themselves or another from death or "really serious injury" (a subjective assessment), and the accused's conduct must have been reasonable in the circumstances as perceived by the accused (an objective/subjective assessment). Therefore, consistent with all Australian jurisdictions, self-defence in Victoria requires a person to have believed they needed to defend themselves (rather than avoid a threat by other means than force) and their response was 'reasonable' in the circumstances (Tarrant 2023: 48).

Legislative Changes: Self-defence

The common law of self-defence was abolished in Victoria in 2005 and codified substantially in its current form, as outlined above. At the same time, following recommendations by the Victorian Law Reform Commission (VLRC 2004), Victoria enacted the most progressive changes to self-defence law in Australia. The VLRC found that self-defence was not operating fairly for women defending themselves against ongoing IPV. It found the common law requirements of 'imminence' and 'proportionality' were problematic': the requirements that a physical attack was 'imminent', and a defendant's response 'proportionate' to such an imminent threat, were excluding women's access to the defence (VLRC 2004). A threat of lethal harm may not be imminent in the context of IPV and the use of a weapon by a defendant where their attacker was unarmed, except for their superior physical strength, may be the only way to defend oneself but was automatically determined to be disproportionate. The *Crimes Act 1958* (Vic) was amended to spell out that, where family violence is involved, self-defence may be raised even if the threat a defendant faced was not 'immediate' or the defendant used force 'in excess of the force involved in the harm or threatened harm' (s.322M). Further, 'really serious injury', in defence against which a person is permitted to use lethal force in self- defence, was defined to include 'serious sexual assault' (s322H).

Legislative Changes: Family Violence Evidence

Since the 1980s and 1990s efforts to expand the scope of self-defence in Australia (and internationally) has also taken place through the admissibility of evidence, particularly evidence of battered woman syndrome (BWS) (Sheehy, Stubbs and Tolmie 2012). This evidence 'provided a medicalised basis for admitting evidence relating to histories of abuse' to contextualise women's actions (Loughnan and Davidson 2023: 12) and thereby strengthen women's self-defence claims. As will be discussed, BWS has been discredited for its 'pathologisation' of women, and there has been a shift from understanding IPV as a series of one-off isolated physical incidents to recognizing the broad context of violence and control within which many of these women are living. There has therefore been growing recognition of the need for social framework or context evidence to assist judges and juries to better assess the reasonableness of a defendant's self-defence claim (ALRC/NSWLRC 2010; Tolmie, Smith and Wilson 2024a; VLRC 2004).

Recognising the impact of family violence on women's defensive responses, in 2005 Victoria also introduced the concept of 'social framework evidence' (otherwise known as family violence evidence or provisions) in s 9AH of the *Crimes Act 1958* (Vic). These provisions allow for the introduction of evidence that explains the defendant's actions in the context of family violence, even if the response was not immediate or the force used exceeded the threat. They spell out a non-exhaustive list of forms of family violence evidence that may be relied on and which are therefore by definition potentially relevant. The VLRC in its report noted that legal decision-makers would benefit from the new family violence provisions because they provide for evidence to be given by 'expert witnesses, including social workers, family violence workers and researchers' as well as psychiatrists or psychologists' (2004: 333; 141). These evidence provisions were reframed (but not significantly changed) in 2014 and relocated to s 322J and s 322M.[1] In particular, s 322J retains a very broad definition of what constitutes 'violence' and 'family member.'

Legislative Changes: Jury Directions

Finally, in 2015, reforms were introduced so that judges could guide juries on understanding family violence in self-defence cases (*Jury Directions Act 2015* [Vic]). Judges can now explain to juries that, for example, family violence is not limited to physical abuse, people react differently to family violence, and victims may not report the violence or leave the abusive partner (*Jury Directions Act 2015* [Vic] s 60).

These changes to the substantive criminal law and the introduction of the family violence evidence provisions and jury directions represent a significant development in how self-defence is to be considered in Victoria in cases of family violence. They put beyond doubt that 'self-defence cannot be used in non-confrontational cases and when the threat is not imminent' (Loughnan and Davidson 2023: 14).

The Limited Impact of the Legislative Changes

Recent scholarship and empirical data suggest that the legislative changes in Victoria in 2005, 2014 and 2015 have had little impact (Loughnan and Davidson 2023). There has been little evidence that legal professionals, including prosecution lawyers and judges, are more willing to consider a family violence context when determining whether there are grounds for acquittal (Farrugia 2020: 355; Nash and Dioso-Villa 2023; Sheehy, Stubbs and Tolmie 2015; Tyson et al. 2015). Since the reforms, in only one Victorian case has a woman been acquitted on grounds of self-defence based on a history of family violence (*DPP Reference No 1 of 2017 (2018)*; Farrugia 2020: 257). In that case, the defence presented evidence from a family violence expert, who is also an academic, and from the defendant herself. Due to the weakness in the prosecution's case, the judge issued a *Prasad* direction, inviting the jury to consider an acquittal before the case concluded and mentioned both the family violence evidence provisions (s 322M) and the *Jury Directions Act 2015* (Vic). The accused woman was acquitted after the prosecution's presentation, which included a substantial body of evidence from its witnesses—several of whom were police officers who had received her prior complaints—detailing the severe and ongoing violence the deceased had inflicted on the accused. This case is unusual, as acquittals 'leave little trace in standard modes of legal reporting' (Sheehy, Stubbs and Tolmie 2014: 671; Kim 2013) and so provide limited opportunities for analysis. Some cases in Victoria may have been discontinued due to these reforms, but without data from police or prosecutors, it is difficult to know how often this has been the case (Farrugia 2020; Tarrant 2023; see also Tarrant, McGlade and Bahemia 2024).

Without recognising the context in which they killed as amounting to self-defence, women may be unjustly denied an acquittal. They may be convicted of murder or the lesser offence of manslaughter, both outcomes being effectively a wrongful conviction if self-defence was at issue (Dioso-Villa and Nash, 2024). Most women plead guilty to manslaughter on the ground of an unlawful and dangerous act (Nash and Diosa-Villa 2023; Tyson et al. 2015;). Further, recent research examining 69 cases of abused women prosecuted for killing intimate male partners in Australia from 2010 to 2020 found that Indigenous women

(n=20, 29%) were over-represented in prosecutions, guilty pleas and convictions (Nash and Dioso-Villa 2023: 7; see also Cripps 2023). As Tarrant argues, the low rates of acquittals, 'compromise' verdicts of manslaughter and the high rates of guilty pleas represent 'a failure of justice', a resistance 'to configuring women's responses to lethal danger as *lawful* — as self-defence' (2018: 197).

The small number of acquittals on the ground of self-defence in Victoria may partly be explained by the abolition of the offence of defensive homicide (meaning police no longer had the option of charging this lesser offence) and women's decisions not to go to trial on a murder charge but to offer a plea to manslaughter, in a jurisdiction where there are no 'partial' defences (Nash and Dioso-Villa 2023; cf *R v Silva (2015)*).[2] That is, going to trial where the outcome will be murder or acquittal, with no possibility of a 'half-way' manslaughter conviction, may be seen as too great a risk. Of particular relevance here, defendants who draw on expert evidence remain in the minority, and most experts in these cases are forensic psychologists and psychiatrists rather than specialist family violence experts (Nash and Dioso-Villa 2023; Naylor and Tyson 2017).

Reconceptualising Theories of Intimate Partner Violence in the Context of Self-Defence

A substantial body of research demonstrates that how IPV is understood by decision-makers when primary victim-survivors of IPV are charged with homicide after killing an abusive partner is *crucial* to a defendant's access to, and a successful claim of, self-defence (Tarrant, Tolmie and Giudice 2019: 14). Decision makers in this context include police, lawyers, solicitors, barristers, and other legal professionals, judges and expert witnesses. Tarrant, Tolmie and Giudice explain that whether or not decision-makers are conscious of which theory of IPV they are drawing on, 'the theory of IPV used … predetermines, to some degree, whether self-defence is likely to be successful or not' (2019: 14). It is therefore important that decision-makers draw on contemporary theories of violence and social science evidence as outdated theories of IPV can reinforce gender bias in the law (Tolmie et al. 2018; Tarrant, Tolmie and Giudice 2019).

Looking Beyond Outdated Theories of IPV

In a recent research report for the Australian National Research Organisation for Women's Safety (ANROWS) titled *Transforming legal understandings of intimate partner violence*, Tarrant, Tolmie and Giudice (2019) analyse the Western Australian case, *Western Australia v Liyanage (2016)* in which Chamari Liyanage claimed to have acted in self-defence after killing her husband, Dinendra Liyanage. She had struck him on the head twice with a heavy metal mallet, probably as he lay sleeping. Chamari Liyanage suffered physical, emotional, and psychological abuse from her husband, who was described as highly controlling. Evidence showed that he subjected her to degrading treatment, including forced participation in non-consensual sexual activities. Chamari was charged with murder and convicted of manslaughter in 2016. Her appeal was rejected in 2017 in *Liyanage v The State of Western Australia.*

The authors' analysis focuses on two theories of violence adopted by decision-makers in this case, theories which they argue are outdated. The first, a 'bad relationship with incidents of violence' theory, was adopted by two of the expert witnesses, and the second, BWS, featured in the prosecution's theory of violence; at times the prosecution drew on both theories (Douglas, Tarrant and Tolmie 2021; Tarrant, Tolmie and Giudice 2019: 14). The authors argue that:

> rather than understanding the abuse in the relationship as a *pattern of harmful behaviour* by the predominant aggressor that is bigger than any acts of physical violence and has a cumulative and compounding effect on the victim/survivor, the abuse is understood as a series of discrete violent incidents (which may amount to crimes), in between which the victim/survivor is free to leave or implement other safety strategies. (Tarrant, Tolmie and Giudice 2019: 15)

Tarrant, Tolmie and Giudice (2019: 15) explain that a 'bad relationship with incidents of violence' approach simply assumes that the current IPV safety options are available and effective – such as calling the police, obtaining an intervention order or fronting up to a women's refuge. It places responsibility for safety on the victim-survivor who has '"chosen" not to engage them.' This view, they argue, is in stark contrast to the extensive literature highlighting the inadequacies of the current family violence safety system. (Australian Human Rights Commission 2022; Commissioner for Victims of Crime 2023; Commonwealth of Australia 2022; NZFVDRC 2016).

The other theory of violence that is still relied on is BWS. The most common application of this defence strategy involves using court reports and/or expert testimony from psychologists or psychiatrists, to explain how the ability of an abused woman to make rational decisions about her safety can be compromised due to the abuse she experienced (Tarrant, Tolmie and Giudice 2019: 15). While courts' acceptance of evidence of BWS has resulted in some merciful outcomes for some women defendants, the concept has been subject to considerable criticism for understanding 'structural disadvantage' as an 'individual deficit or pathology' thereby obscuring gender and racial inequalities (Stubbs and Tolmie 2008: 139, 142-143; Tarrant, Tolmie and

Giudice 2019: 19). Additionally, BWS has been heavily criticised for reinforcing stereotypes about 'benchmark' battered women that are not in all women's interests, particularly Indigenous women who are significantly overrepresented as victims and offenders in homicide cases (Douglas 2012: 377-378). The treatment of BWS 'as a standard to which all battered women must conform', raises questions about whether an accused would 'qualify' if she was 'not sufficiently beaten', or had previously fought back (Butler 2016: 325; Tarrant, Tolmie and Giudice 2019: 17). Indeed, criticisms of BWS include concerns about its validity as a scientific concept (Butler 2016; McMahon 1999).

Despite this, BWS retains a degree of currency with legal professionals, judges and experts who may be more familiar with using it to understand the psychological impact of IPV on women's responses. Increased understanding of childhood experiences of trauma, and their links with post-traumatic stress disorder (PTSD), and the correlation between trauma, offending and mental illness over the past decade has led to an emphasis on trauma-informed justice processes (Jackson et al. 2021). However, 'the reappearance of BWS under the guise of trauma informed practice' (Tolmie, Smith and Wilson 2024a: 57) and 'the characterisation of the [BWS] syndrome as a form of Post-Traumatic Stress Disorder [PTSD]' is also problematic (Tolmie et al. 2018: 204). Tolmie et al. argue that:

> The danger of using a trauma lens to understand IPV is that, like the use of battered woman syndrome, it risks erasing the violence the victim-survivor was responding to and makes their trauma the object of inquiry, decontextualized from the lived reality of their social context. In this rendering, it is all too easy to overlook the danger they were in and, instead, understand the victim-survivor's behaviour as a consequence of their biology or faulty mental functioning. (2024a: 57)

Tarrant, Tolmie and Giudice (2019: 21) argue that both the 'bad relationship with incidents of violence' and BWS model perpetuate a 'one-size-fits-all approach' to understanding IPV. Both models have been heavily criticised as a defence strategy and are largely unsupported in contemporary theories of violence and social science evidence (Hopkins, Carline and Easteal 2018; Tolmie et al. 2018; Tarrant, Tolmie and Giudice 2019: 21). A more comprehensive model is that of social entrapment. The social entrapment framework has been adopted by the New Zealand Family Violence Death Review Committee (NZFVDRC), and offers 'a complex and multi-dimensional framework for realistically analysing the facts of any particular case involving IPV' (Tarrant, Tolmie and Giudice 2019: 21).

Understanding IPV: From Coercive Control to Social Entrapment

As highlighted by Tolmie, Smith and Wilson (2024a), the first element of 'social entrapment' draws on the significant body of research that explains the abuse strategies employed by IPV offenders as forms of coercive control. As discussed earlier, IPV has been understood and responded to as a one-off isolated physical incident or series of assault crimes (Stark 2007). A more recent shift has been the recognition of the centrality of coercive control (Douglas et al. 2020; McMahon and McGorrery 2020). Following the killing of Hannah Clarke and her three young children by her estranged husband, Rowan Baxter, in Brisbane in 2020, the Federal Government committed to 'co-design[ing] national principles to develop a common understanding of coercive control and matters to be considered in relation to potential criminalisation' (Visentin 2022), and national principles have since been implemented (Commonwealth of Australia 2023). Criminalising coercive control has been considered in some Australian states to be essential because this form of violence is a significant 'red flag' for intimate partner homicide (see, for example, NSWDVDRT 2022: 28). This paradigm shift has led three Australian states to enact coercive control offences: New South Wales in 2022 and Queensland and South Australia in 2023. A further state, Western Australia, is considering it (Government of Western Australia 2022).

However, while conceptualising IPV as coercive control is clearly an improvement on past frameworks, some argue it 'does not go far enough' (Tolmie, Smith and Wilson 2024a: 54; see also Tarrant, Tolmie and Giudice 2019). Coercive control has been influential in shifting understandings of the nature and dynamics of IPV (see, for example, Sheehy 2018), and has been incorporated into government policy and legislation, but there is a risk it may not change the current individualistic focus. Tolmie, Smith and Wilson (2024a: 60) find that legal professionals still characterise the problem as one concerned with the victim's mental health and continue to distrust expert testimony in court unless it comes from psychologists or psychiatrists. At the same time, it is significant that Indigenous researchers do not consider coercive control an adequate framing of intimate partner and family violence (Bevan, Lloyd and McGlade 2024; Commissioner of Victims of Crime 2023). Understanding IPV as a form of 'social entrapment' (NZFVDRC, 2016; Tolmie et al. 2018; Wilson et al. 2019) brings into broader focus the victim-survivor's *circumstances* rather than her mental health issues (Tolmie, Smith and Wilson 2024a: 62).

The NZFDRC has been instrumental in the shift to using a social entrapment lens to understand IPV, emphasising the 'need to think *differently* about family violence if we are to have safer *responses* to family violence' (2016: 19).[3] The NZFVDRC (2016: 34-52; Tolmie et al. 2018; Wilson et al. 2019) understands IPV as a form of social entrapment that has three dimensions:

1. the social isolation, fear and coercion that the predominant aggressor's coercive and controlling behaviour creates in the victim's/survivor's life;
2. the lack of effective systemic safety options; and
3. the exacerbation of these previous two dimensions by the structural inequities associated with gender, class, race and disability (NZFVDRC 2016: 39; Tolmie, Smith and Wilson 2024a: 61-62).

A social entrapment lens was used in the campaign following the recent WA case of Aboriginal woman Jody Gore (Douglas et al. 2020: 503). Jody Gore, who was charged and convicted of the murder of her abusive long-time ex-partner and friend, Damian Jones. Jody raised self-defence but was unsuccessful, in a trial that was another stark illustration of what happens when decision-makers draw on outdated theories of IPV to understand a woman's self-defence claim. The jury convicted her of murder and she was sentenced to life imprisonment with a minimum of 12 years (*The State of Western Australia v Gore* 2016). Having faced terrible violence from her partner, when Jody defended herself, 'she became an aggressor against the state, was made an example of drunken Aboriginal violence, and left to finish her life in a prison' (McGlade and Tarrant 2021: 121-122).

Following Jody's conviction, human rights lawyer Hannah McGlade, along with Jody's family, led a campaign supported by sustained media coverage (e.g., Baird and Gleeson 2019; Hennessey 2019). In light of Jody's history of severe domestic abuse, Western Australia's Attorney General, John Quigley, ultimately exercised the Royal Prerogative of Mercy and Jody was released on 26 September 2019, after serving four years in prison. Her sentence was commuted but her murder conviction stands (Douglas et al. 2020, 489, 497; McGlade 2019, McGlade and Tarrant 2021, 107). Jody's case led to the introduction of 'social context evidence' provisions in Western Australia in 2020, based on the Victorian legislation discussed above and incorporating social entrapment principles.

To sum up the discussion so far, the legislative changes to self-defence in Victoria, family violence provisions and new jury directions are a positive step forward in ensuring decision-makers (police, lawyers, judges and juries) more accurately understand IPV, so they can more fairly assess women's claims of self-defence. However, legislative reform on its own is unlikely to change legal practice and attitudes significantly (Tarrant, Tolmie and Giudice 2019; Tyson et al. 2015), particularly while outdated theories of IPV remain unchallenged. This highlights the need to examine the practical application of these reforms by those working within the legal system.

The next step in reforming legal responses to intimate partner violence is understanding and responding to the experiences and needs of practicing lawyers and experts on the ground (see, for example, Tolmie, Smith and Wilson 2024b). Significant gaps remain in our understanding of how defence lawyers contextualise the immediate offence (a homicide) with the history of family violence; how they select experts to provide that context; and how expert witnesses conceptualise their role in providing expert evidence about IPV. Related to this, there is a gap in our understanding of how, or if, the family violence evidence provisions are being utilised with respect to these issues. The next section therefore discusses the authors' pilot research with these central criminal justice actors.

Conceptualising IPV and Homicide: The Experience of Defence Lawyers and Experts

To address these gaps, this study investigates the perspectives and practices of defence lawyers and experts as they navigate the intersection of homicide, IPV, and recent legal reforms. The authors carried out a pilot study to explore how the reforms to Victorian homicide law, particularly the family violence evidence provisions, are working in practice for lawyers and experts (professionals providing expert reports or giving expert testimony) in their work with women charged with homicide after killing their abusive partner?

Methodology

We used purposive recruitment to actively seek out participants who could provide valuable insights to address these research questions. As this was a pilot study, the sample size was limited. This allowed for a more tailored approach, ensuring that the interviews would be likely to yield relevant and rich data that could address the research objectives effectively. Potential participants were identified from cases and media reports, and approached either directly via their publicly available email addresses or their organisation; some were also identified during the course of the research. We invited participants on the basis of their firsthand knowledge of working in a professional or supportive capacity with women who have been prosecuted for murder or manslaughter for killing an abusive partner. Ultimately, we included three participants who had only worked with women who had been charged with lesser criminal offences: their insights were also valuable in the context of a study on how a background of IPV may be contextualised in criminal proceedings and in relation to self-defence.

We conducted semi-structured interviews with five practicing criminal lawyers, one former solicitor, one senior community lawyer, one neuropsychologist and two forensic psychiatrists. Interview participation was voluntary, and data was de-identified to preserve the anonymity of interviewees. Interviews were conducted between February 2023 and March 2024. The interview questions were designed as prompts to explore key themes. These question-themes included barriers to disclosures of abuse; strategies used to obtain a complete contextual history of the abuse experienced by women defendants; difficulties victim-survivors encounter recognising their actions as self-defence; factors influencing a client's willingness to plead guilty or go to trial; challenges in locating and using experts with the appropriate knowledge of abuse dynamics; and ways to enhance the capacity, skills, and training of professionals to present the best evidence of domestic abuse in court. Interviews lasted between 45 and 60 minutes, and were audio recorded and transcribed for coding and analysis. The study received ethics approval from the Deakin Human Ethics Advisory Group on 15 September 2022 (HAE-22-071).

Data Analysis

The data comprised the written transcripts from nine interviews with 10 interviewees (two interviewees having arranged to be interviewed together). To analyse the interview data, we utilised reflexive thematic analysis (Braun and Clarke 2022). This approach is iterative and flexible, allowing researchers to engage deeply with the data through multiple readings and reflections. It involves six phases: familiarisation with the data, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and producing the final report. Each interview transcript was coded at least twice by different members of the research team and the coding schedule was refined as we carried out this process. In this way, the process encouraged reflexivity, where the researchers critically considered their own perspectives and influences throughout the analysis, ensuring a nuanced understanding of the data. The themes we identified are discussed in the next section.

Findings

This section describes six key themes that emerged from the interviews, as follows:

1. Challenges obtaining the full picture of family violence to support women's self-defence claims.
2. Challenges accessing and using experts with an understanding of the realities of family violence/coercive control.
3. The limitations of, over-emphasis on, and privileging of psychological or psychiatric disciplinary expertise.
4. The lack of authority afforded to non-psychological and psychiatric experts such as family violence experts and their expertise by the courts.
5. Limited knowledge of the family violence evidence provisions.
6. The need for more training about the realities of family violence and the family violence evidence provisions.

1. Challenges Obtaining the Full Picture of Family Violence to Support Women's Self-Defence Claims

All the criminal lawyers we interviewed had extensive experience working with women charged with criminal offences, including murder, and noted that almost every woman had been a victim of family violence. As Criminal Lawyer 4 explained, 'And that's in a whole range of offences, violence offences but also drug offences and frauds and things like that'. Senior Community Lawyer 1 reflected that 'most of my experience working with women who've used force or violence in the context of them being a victim-survivor themselves I'd say is pretty significant … it's really common.' Clinical Neuropsychologist 1 also noted that virtually every woman in custody has been a victim of domestic violence and Criminal Lawyer 1 noted that:

> [I]n the last six years there have been about 10 women who have been charged with homicide in the first instance, and a number of those would fit the category, almost exclusively but with some exceptions, of someone who presents as a victim of family violence and a complex trauma history and usually sexual violence and all sorts of things. With respect to the person who is then deceased but also often with other people.

All the interviewees highlighted that women's reluctance to report domestic abuse poses significant barriers to their self-defence claims. Criminal Lawyers 1 and 4 noted the difficulties sourcing evidence of abuse or what they referred to as 'contemporaneous records' and 'collateral evidence' when defending women in cases involving family violence. Criminal Lawyer 5 also noted that, 'where they've perhaps not disclosed properly to a doctor, or even had any contact with any family violence workers. Really, the only time these things come to a head I think, is when there's … a neighbour's call to alert police to things going on next door'. Criminal Lawyer 5 went on to explain that 'one of the biggest barriers, I'd say, is to be able to source the behaviours of the abuser'. Where there is no report, or no prosecution or prosecution withdrawn: 'it's almost like that if it's not reported to the police then it's not, it never happened'. They also observed that reporting violence can be used against women. For instance, if a woman says, 'if this doesn't stop, I'll kill him', this can be used against her, as evidence of premeditation, without regard for the dynamics of abuse.

Interviewees observed that Indigenous women face significant consequences talking about their experiences of family violence during interviews with police and having their actions understood as self-defence. This is because they have a well-founded mistrust of police and plenty of experience during police interactions that treat them as 'difficult' and/or because they are possibly substance affected and experience trauma. This was highlighted by Criminal Lawyer 1 who explained that:

> Aboriginal women in my experience, there are significant consequences of reporting family violence. And they will often result in fact I think they will always result in child protection being notified and children being removed … If you're at home even as any parent with a child, somethings happening, if I ring the police, there's a 100% chance even though I've done nothing wrong, that the children would be removed from the house. Why would you ring them? I wouldn't.

Neurospsychologist 1 also noted the extreme nature of physical violence that Aboriginal women face, which can be greater than for non-Aboriginal women. Criminal Lawyer 5 referred to the idea that violence in Aboriginal communities is assumed to be normal, 'Yeah, [it's assumed that Aboriginal women] shouldn't be traumatised at all because that's [just] what happens.' Interviewees highlighted that women's self-defence claims can often fail because lawyers may not take sufficient time to talk with their clients to obtain the full picture of IPV/domestic abuse. Criminal Lawyer 1 explained that:

> I can't in the last five years remember seeing another lawyer at DPFC [Dame Phyllis Frost Centre, woman's prison], maybe longer. I'm not saying that lawyers don't talk to their clients but they'll talk to them on the phone or on a jabber (a video call) … it's alarming I think … the way in which proceedings are explained for really complex clients often with cognitive impairments of some kind, you know trauma histories … to be able to have someone sit down and say, ok, this is the way in which my matter is going to proceed through the courts. …I think the perfect way of doing that is repeated attendances with the person in front of you.

Former Solicitor reflected on the difficulty for women who are unrepresented and explained that:

> [i]t can be difficult if the person doesn't know how to present their case and/or is not particularly articulate or good at … using words to express what happened. They might be cognitively impaired. They might have drug addiction issues. There might be all sorts of reasons why they're not able to express themselves well. … where they've got psychiatric issues, they might not want to be legally represented because they don't trust the system, don't trust lawyers. ... They might come to court unrepresented because of a whole lot of complex reasons.

Interviewees also commented that women often plead guilty due to feeling overwhelmed, assuming they are at fault for defending themselves against their partner's abuse, and because they are experiencing trauma due to grief and loss. Criminal Lawyer 3 noted, in the context of lesser offences, that:

> [m]ost women in that situation actually won't have a lawyer. And … they'll probably have a conviction, but they actually will not be facing, you know, a term of imprisonment, but might feel that they are because it was a horrendous event in their life. The high levels of stress … and they feel like they've committed the worst atrocity. And so, they're given this option of resolving the matter there and then. And even though they realised that they actually are not guilty of that offence, something did happen, and they're not going to jail, so they'll often plead guilty to things that they haven't done.

2. Challenges Accessing and Using Appropriately Qualified Experts With an Understanding of the Realities of Family Violence/Coercive Control

The majority of interviewees reported significant challenges accessing and engaging appropriately qualified experts. Criminal Lawyer 4 noted that:

> I actually don't know who I would engage to obtain a report about the impacts of a history of domestic violence and whether that provides a defence or in some way be relied on in mitigation and defending a woman. … I use a lot of experts in other matters - sexual offending, children offending, children accused and the like. I could not name someone that I would turn to, to provide an expert opinion in relation to a woman that has experienced domestic violence.

Criminal Lawyer 1 also reflected, 'I really do think there is a lack of authority in expertise' and explained that:

> a jury I think would have no issue at all in hearing expert evidence from somebody to say actually this is what family violence looks like in all its guises and this is the impact of family violence on somebody's thinking and the way they might cope and deal with life and then add layers of complexity like Aboriginality or poverty or disadvantage that creates real barriers to changing circumstances for somebody. … I think a jury would actually say that makes perfect sense. I can understand now I can appreciate the framework within which I am to view this event. But those conversations don't happen. Those experts

> aren't around and without it, the law is about words, and it's about stories and narratives and discourse. Without any of that we ask people to consider things in the dark and I think it is palpable in this area, absolutely palpable.

Criminal Lawyer 1 went on to note that expert reports are viewed as very valuable in other kinds of cases but are difficult to source in self-defence cases:

> We've commissioned the report, and a local place [has agreed to provide] us with a report on the impact of the quality of tyres on the way you drive the car and the camber of the road and all of that information. Very easy. We need this report. Here are the people to do it. Get the funding. Wonderful. You could say the same about gun residue you could say the same about all sorts of things, but this [i.e., IPV] is absolutely a bankrupt area.

3. The Limitations of, Over-Emphasis on, and Privileging of Psychological and Psychiatric Disciplinary Expertise

All interviewees noted that the expert knowledge being called upon currently in prosecution processes, including in trials and sentencing, is overwhelmingly psychological or psychiatric (psych-) knowledge. While this may be expected of the experience of interviewees who are psychologists and psychiatrists, it was also true of the lawyer interviewees. Some lawyers and experts saw the usefulness of psych-evidence, but this tended to be in limited ways. Some lawyers noted that expert evidence (e.g., psychological reports) can be crucial in sentencing to highlight the trauma and abuse a woman has experienced. The reports were used in a general way to mitigate the seriousness of the offending (relating to circumstances that arguably should have been considered with respect to guilt rather than sentence). This was noted by Criminal Lawyers 2 and 3, who had often used psychological reports in sentencing hearings (rather than trials) in cases involving women charged with non-fatal serious offences. Criminal Lawyer 3 highlighted the value of 'having a psychologist potentially that will talk about the trauma they've been through.'

Both lawyers had also used non-expert reports, such as letters from counsellors and family violence workers, as supporting evidence in plea hearings to establish the history of family violence and its impacts.

However, the focus on psych-expertise was seen by both experts and lawyers as problematic in that it does not address the central justice questions asked in the circumstances we are concerned with – women using force against an abusive partner and being prosecuted for homicide. Forensic Psychiatrist 1 observed that the role of the forensic psychiatrist witness is to address irrational behaviour by identifying a mental disorder, or where there are issues that might make prison more burdensome. Referring to a recent Victorian case in which they had been asked to provide a report for the defence involving a woman who had been charged with murder for killing her abuser, Forensic Psychiatrist 1 illustrated the dilemma of being faced with a situation where, in their view, the defendant was 'acting rationally':

> I was left scratching my head wondering … why do we need to be having a psychiatrist to explain what went on here? I mean here you've got a woman who you know, all the evidence suggested and I think ultimately the court accepted all of this, was subjected to the most egregious degrees of abuse of various shades and modalities, and obviously profound degrees of coercive control. That had been going on for you know, a decade or so … So, you've got this fundamental problem of why do you need to explain, why do you need psychiatry in the broad sense to explain what is a purely rational act. Which is to save one's own life and also the lives of one's children, who were clearly at risk from this man. You know, not acutely at risk importantly, not imminently at risk but sooner or later she'd formed the rational belief that she was in danger of death and so were one or a number of her children.

Other interviewees also highlighted the limits of psych- expertise given its focus on determining an individual's mental health or illness and whether that condition could explain their behaviour in killing an abuser. Neuropsychologist 1 said that experts must 'stay in their own lane' but pointed out that lawyers often expect psych- experts to 'stray' from their lane. However, lawyers frequently lack an understanding of distinct areas within psych- disciplines. Forensic Psychiatrist 2 noted that lawyers are still asking for opinions about BWS, which is 'ridiculous but they still come with that, and I'm like, no, that's not … a thing that we're going to enter into'. They would decline to give an expert opinion in 'these types of cases.' As argued by Forensic Psychiatrist 2, it is difficult to draw a 'direct link between an experience of abuse, a specific mental health issue … and any idea that the mental health issue was directly contributory, so causative of the offending behaviour' (emphasis added). Forensic Psychiatrist 2 further explained that:

> And I said to them, look, I can provide expertise in the former around mental health and around that kind of stuff. I can't provide expertise in the latter area. I don't have practice experience of the family violence support system, and I don't work with victims of family violence in that sense. So I don't think I'm the right person for that and then, when I looked at it further, I thought, jeez, you know, standing up in a court for the prosecution and making a claim that a person is or isn't, as the case

> may be, their behaviour towards a child was because of some abusive pattern, like I can't, I didn't feel like I could draw those links in a way that I felt confident enough to stand up in that court and say that comfortably. That was probably where I, that's where I decline. I refer them onto someone else.

Forensic Psychiatrist 1 made a similar point:

> Look, I have an approach whereby I put a lot of weight on the importance of the questions that a lawyer puts to an expert. And it's quite common for me to get a request letter and then get on the phone to the lawyer and say 'nah, these questions don't work for me'. And often that's because they stray into areas which is beyond my expertise.

Some experts pointed out that coercive control, like BWS, lacks a scientific basis (unlike the field of psychiatry), and that this was because adequate research has not been conducted on it.

Some interviewees noted that psych- expertise is not actually relevant to the situation we are considering in this study, except in cases where diagnosable conditions have resulted from IPV such as 'adjustment disorder' or 'PTSD'. When asked by the interviewer what psychiatric condition could be used to explain the behaviour, Forensic Psychiatrist 1 said that it is common to use PTSD but, in the case they were discussing, there was no 'post' trauma behaviour – the woman was responding to current behaviour:

> Now, what you've got with [pseudonym] is not that. What you've got is a chronic stress response because the stressors themselves are chronic and ongoing. And I don't think PTSD captures that, I don't think it was designed to capture that and I don't think it works, you know. You could kind of shoehorn it in but it's not really what PTSD is. … it's [her act in killing her abuser] also not a pathological response. It's an understandable, normal chronic stress response which, yeah undoubtedly will take its toll as it would on any of us, if we're subjected to chronic stress. But do we have to pathologize it?

Forensic Psychiatrist 1 went on to note that while they might identify an 'adjustment disorder' because of the violence the woman was experiencing, this concept didn't help explain the conduct. Referring to the same case above, Forensic Psychiatrist 1 said:

> Even if we say that [pseudonym] was diagnosed with an adjustment disorder because of what was happening to her, that wasn't what drove the offending. What drove the offending was the need to survive and keep her kids alive, So, again the classic thing of having this mental illness construct as your mediating explanatory variable, kind of all breaks down.

Despite acknowledging the limits of psych- expertise, some interviewees confirmed that psych- experts are nonetheless highly valued by the courts. As explained by Neuropsychologist 1, psych- expertise is 'highly respected in a medical and legal context' because these experts 'spend so long with one person.'

4. The Need for the Courts to Recognise and Afford Equal Authority to Family Violence Experts and their Expertise

The family violence provisions in the *Crimes Act 1958* (Vic) provide a framework for lay and expert evidence about IPV that is not based on a psych- model but a sociological and feminist understanding of family violence and coercive control. However, interviewees emphasised that the family violence expertise of these professionals is unlikely to be acknowledged and considered authoritative in court. Criminal Lawyer 1 noted that there is a 'lack of authority' afforded these fields of expertise. Criminal Lawyer 3 noted that:

> I have thought about the idea about family violence experts. The thing is that they're not seen as experts in a court context. They are … more just kind of substantiating witnesses like, you know, … just like ordinary witnesses. So, the experts are kind of forensic experts or psychological experts, like psychologists or neuropsychs.

Criminal Lawyer 2 then commented to Criminal Lawyer 3, 'like it, I mean it's so unusual to have a report paid for … from anyone other than a psychiatrist or a neuropsychologist or a psychologist or a medical doctor.' Facilitator 1 asked, 'You wouldn't get a social worker to give evidence?' Criminal Lawyer 3 responded, 'No.'

Reflecting on the use of non-psych- experts such as social workers, Criminal Lawyer 1 said: 'I'll tell you how that will go! … they are marred by this perception of that 1970s … you know, I don't know, but what it is really, it is [seen as] just cuddly, feely . it's not cold and hard and factual it, it's not testable.'

When asked about using experts such as social workers or family violence workers, Criminal lawyer 4 reflected on two cases where they had sought to provide expert opinion in relation to a woman who had experienced domestic violence. They noted that they had used psychiatrists in both cases:

> [T]he pushback [about using non-psych experts] I got was from the court. … there's not the same weight placed on that body of research than there is, in my experience, for example psychiatric illnesses and the impact that that has on offending. The way around that is getting a PTSD diagnosis …'

Some interviewees put this unwillingness to recognise family violence experts/expertise down to a lack of training in these other fields and difficulties non-traditional experts have withstanding the rigours of cross-examination. This was noted by Senior Community Lawyer 1 who explained, '[i]f you're getting a support letter, I'd always ask them to outline their qualifications and their experience just so the prosecution, so the letter is taken more seriously by whoever it's read [by]'. Criminal Lawyer 4 noted that: 'when we're choosing experts you want someone that can stand up to cross-examination.'

Forensic Psychiatrist 1 also attributed this reluctance by the courts to afford authority to experts in domestic and family violence concepts, like coercive control, to the lack of an evidence base and argued that these are:

> relatively new constructs and so consequently there's not much of an evidence base. Yeah … an emerging and growing evidence base but it's not massive. Whereas PTSD is now a relatively old construct, depending on how you date it, you know, arguably over 100 years old or at least, kind of 40 years old. So, it's got a huge evidence base. … but the fact is that PTSD is completely irrelevant to the argument [that IPV was what drove her offending.

The solution, according to Criminal Lawyer 5, was simply to 'ratchet up the [family violence] expertise to where it is an accepted science.'

5. Limited Knowledge of the Family Violence Evidence Provisions

Our findings indicated that some interviewees had limited knowledge of the family violence evidence provisions in the *Crimes Act 1958* (Vic). Recalling the cases studied as a law student, Criminal Lawyer 1 reflected on the extraordinary efforts by the State of Victoria over the last twenty or so years to challenge our thinking in this area. Referring specifically to the family violence legislation, they observed:

> [I]t doesn't seem to be landing in a way that's … whether it was intended or not, the legislation is there. It names family violence; it offers some hope in the legislation to say yes if this occurs here's a section of legislation that calls on decision-makers to include family violence as a consideration. And yet it's absent in that context. … Well, it is in an unusual place in the legislation. … it doesn't follow on in a logical way. … It's almost a lack of language or an [understanding about] where to position that within the framework that we understand and know.

Nearly all the interviewees acknowledged the need for more targeted training about the realities of family violence but only a few mentioned the family violence provisions as a foundation for such training. Criminal Lawyer 1, in particular, lamented this, noting that there is 'no megaphone' on the family violence provisions. They further explained that because these cases are so rare, '[t]here's not necessarily a depth of experience to draw on in terms of numbers,' leaving few opportunities to see 'good defence lawyering' in practice and to learn from peers within the profession.

6. The Need for More Training About the Realities of Family Violence and the Family Violence Evidence Provisions

Interviewees proposed several solutions to address these challenges. Some interviewees (Criminal Lawyers 1 and 4 and Senior Community Lawyer 1) argued for more professional legal training for the judiciary, prosecutors, and lawyers on the realities of family violence, grounded in the family violence evidence provisions. This training would ensure that legal professionals understand the complexities of family violence, including misidentification of woman victims as offenders, and are equipped to obtain detailed histories from their clients. Other lawyers noted that many women they represent are ineligible for legal aid, and that letters or reports from family violence practitioners, at least, could be tendered in court in cases not involving homicides.

Another suggestion was the identification of a landmark case to establish stronger case law around family violence, similar to impactful cases in bail reform. Criminal Lawyer 1 stressed that such a case could create quotable precedents, challenging current legal limitations and giving visibility to the family violence provisions. Interviewees also emphasised the importance of using written reports from organisations like the Victorian Aboriginal Legal Service or adopting practices like Canada's

Gladue reports, which contextualise cases within the broader framework of systemic violence and trauma for sentencing (e.g., Criminal Lawyers 2 and 3; see for example, ALRC 2018).[4] Criminal Lawyer 2 suggested using reports that aren't 'so-called expert reports', 'they're more kind of supporting evidentiary material … letters from a counsellor they've been seeing, or a family violence support worker,' or FOIs (Freedom of Information Requests) from hospitals of records of abuse (Criminal Lawyer 2).

Former Solicitor 1 highlighted the need to explore pre-trial strategies involving police, procedural, and prosecutorial interventions to prevent miscarriages of justice if these cases are not properly run.

Discussion

The participants in this study reported significant dissonances in their professional lives representing women who had used force against family violence. Lawyers observed the difficulty for women of simply having insufficient time with their legal counsel for the complex matters involved in family violence to be disclosed and women's reluctance or inability to convey what had happened because of lack of trust or because they were overwhelmed. A significant barrier to gathering evidence to support a self-defence claim was 'sourcing the behaviour of the abuser' and while the lawyers generally spoke in terms of a wide conceptualisation of family or IPV, the approach in practice depended largely on police records of prior assaults (e.g., 'it's almost like … if it's not reported to police … it never happened'). Consistent with research discussed above, the lawyers' clients had often not reported prior violence or prosecutions had been withdrawn making it difficult to show a basis for self-defence. It is to be noted that, not only does the absence of a police record present an obstacle to demonstrating prior abuse, but the focus on police records as comprising ongoing IPV implies a model of the violence as physical assault – the kind of event police are called for. This reflects the model of IPV as a 'bad relationship with incidents of violence' discussed earlier. Most IPV involves physical violence but no other regular process or inquiry was evident that could have revealed any physical assaults or other conduct as a pattern of coercion or control that a woman could have been subjected to.

The findings strongly suggest an overwhelming preference for psych-based expertise in evaluating women's conduct remains. Lawyers expressed difficulty in finding experts in family violence and both lawyers and experts observed that psych-experts were seen to carry more authority by courts. Lawyers were still asking experts for 'BWS reports'. This confirms the literature suggesting the 'social context evidence' approach in the Victorian family violence provisions and the 'social entrapment' approach to conceptualising IPV has had little traction. What was more surprising, was the level of awareness on the part of the psych- interviewees of the limitations on the relevance of their expertise. In various ways the experts articulated their position that their expertise concerns individual pathology, and that did not encompass knowledge about family violence. Some observations went even further to reflect the concern in the literature that a trauma framing, such as diagnoses of PTSD, can erase ongoing IPV by framing a person's conduct as pathological response to *past* trauma. This raises critical questions about the broader implications of relying on psychological frameworks to explain women's use of force in the context of IPV.

The findings from these interviews with lawyers and experts indicate that using psych- experts does not resolve issues with self-defence. If anything, it maintains the focus on the individual woman's failures or weaknesses, consistent with now-discredited explanatory models such as BWS. The challenge for better implementing the valuable legal reforms outlined earlier can be seen to include overcoming the entrenched authority of psych-professionals amongst lawyers, judges and indeed juries. Instead, greater awareness and targeted training on family violence, the growing body of knowledge on coercive control and social entrapment, and the related family violence legislation are needed. The family violence evidence provisions offer a framework for lay and expert evidence on IPV grounded in sociological and feminist perspectives rather than a psychological model.

Drawing on our interviews, we make two recommendations to strengthen the capacity of legal professionals and experts in this area, as follows.

Establishing a workforce of experts. Defence lawyers need access to professional and academic experts including social workers, family violence workers, psychiatrists and psychologists with extensive experience in working with victims of IPV (McKenzie et al. 2016). Professional bodies could establish panels of experts within their professions, who are trained in the family violence evidence provisions in the *Crimes Act 1958* (Vic) and *Jury Directions Act 2015* (Vic), and in using an IPV social entrapment framework. Fundamental to this would be training and support in presenting their expertise in a court environment. Despite the challenges this work presents, it 'requires building a workforce of experts who have the capacity to undertake this work' (Tolmie, Smith and Wilson 2024b: 656).

Building capacity in prosecutors and judicial officers. A far greater awareness and body of knowledge is required about of the family violence provisions in the *Crimes Act 1958* (Vic) and *Jury Directions Act 2015* (Vic), and how they apply in the prosecution of a woman responding to IPV. Training is required for prosecutors and judges to provide them with a sophisticated understanding of gendered family violence experienced by Indigenous and non-indigenous victim-survivors. Training based on family violence as 'social entrapment' would be appropriate, reflecting current social science research about IPV. This framework would then lead to development of questions that must be asked in each case in a forensic setting to arrive at a full understanding of the experience of a woman who has killed her abusive partner. Understanding IPV as social entrapment is complex. To be effective training should include extended opportunities for prosecutors and judges to grapple with these complexities and to consider in depth how the law of self-defence under Victorian law should operate when a social entrapment framework or lens underpins the legal process. In practice (if a matter proceeds to trial), this may lead, for example, to ground rules discussions between the parties prior to trial about how the family violence provisions should be utilised.

Conclusion

Women who kill an abusive partner will often be acting to defend themselves or others. However, as outlined earlier, it has been difficult for women – in Australia and globally – to have their behaviour seen in this light. Legislative reforms in some Australian jurisdictions have been intended to make self-defence more accessible to women in these circumstances, and also to reframe such killings in their broader social context. There have been hurdles to achieving these changes. For instance, the case law and scholarship discussed above shows continued reliance on out of date explanations of IPV which limit understandings of the scenarios faced by these defendants. This article examines the difficulties faced by women who use force against their abusers and are subsequently charged with murder in Australia, and draws on insights from a small interview study with legal practitioners and experts to propose some pathways to improving women's access to justice. The interview study highlights a series of challenges, in obtaining the full picture of family violence to support women's self-defence claims; in accessing experts with an understanding of the realities of family violence/coercive control; in the privileging of psychological or psychiatric disciplinary expertise; in the lack of authority afforded to non-psychological or psychiatric experts such as family violence experts; in limited knowledge of the family violence evidence provisions; and the need for more training of criminal justice actors about the realities of family violence and the family violence evidence provisions. To take steps towards improving the operation of the legislative reforms, we have recommended the development of a workforce of experts with expertise in family violence, and specialised training for prosecutors and judges about family violence and the family violence provisions to address these challenges. These steps will not solve all the problems identified but will be an important starting point.

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[1] The offence of defensive homicide, introduced in 2005, was abolished (*Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic)).

[2] Defensive homicide was a lesser offence than murder and operated similarly to manslaughter resulting from a 'partial defence' of excessive self-defence. The decision to abolish the offence of defensive homicide was controversial. See, for example, submissions concerning abolition or retention of defensive homicide in Department of Justice, *Defensive Homicide: Proposals for Legislative Reform: A Consultation Paper* (2013) Department of Justice: State of Victoria: 11-15. See also Ulbrick, Flynn and Tyson 2016.

[3] The NZFDRC has also published an important resource, *Social Entrapment,* to guide and support decision-makers with gathering evidence to construct a defence for primary victims who offend (NZFVDRC 2018).

[4] As outlined by the ALRC (2018: Para 6.68), '*Gladue* reports are specialist sentencing reports prepared in some Canadian provinces to facilitate s 718.2(e) of the Criminal Code. … *Gladue* reports are different from pre-sentence reports (PSRs). Although both provide information to a court about an offender, *Gladue* reports are intended to promote a better understanding of the underlying causes of offending, including the historic and cultural context of an offender. These factors may go some way toward addressing the over-representation of Aboriginal and Torres Strait Islander peoples in prison.'

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