‘And the system fails us all the time’: Responses to domestic violence against First Nations women in Australia and the case for an integrated rights-based approach founded in self-determination

Emma Buxton-Namisnyk

Kellogg College, University of Oxford

Thesis Submission

DPhil in Continuing Education

Trinity Term 2022

103351 words (excluding bibliography)

Abstract

First Nations women in Australia experience domestic violence disproportionately compared to Australia's 'settler' population. Prior research suggests that domestic violence responses developed with the 'settler' population in mind may be problematic for First Nations women, but to date no studies have examined First Nations women's domestic violence service interactions prior to fatal violence. I accordingly review a whole-of-population sample of domestic violence-related homicide cases from several Australian jurisdictions, alongside findings from yarning and interviews with First Nations Elders, specialist domestic violence workers and survivors, to examine and analyse First Nations women's service contact histories preceding fatal violence. Viewing findings from a postcolonial, intersectional perspective attuned to Australia's history of invasion/colonisation and the ongoing violence of 'settler' occupation, I argue the domestic violence response system—comprising criminal justice and specialist service responses—is an expression of colonising state power.

I then ask how responses to domestic violence against First Nations women can be improved. While Australia's domestic violence response system reflects current international standards, my findings suggest that these standards may be problematic for First Nations women in the Australian 'settler' context. I review United Nations ('UN') guidance to ascertain how, and to what extent, First Nations women's right to self-determination has been considered relevant to First Nations women's rights to be safe and free from violence. I conclude that, to date, UN standards and state monitoring of Australia has been insufficiently attentive to the interaction of these rights. I propose enhanced rights-integration (normative integration) as a way to support improved state responses to domestic violence against First Nations

women, however I remain cautious about the UN’s ability to transcend its state-centric focus and support meaningful self-determination in its most fulsome sense.

Acknowledgements

I am thankful for the time, trust and support of the incredible First Nations women and men who participated in this study and those who assisted in scoping work. This research would not have been possible without you.

I am also grateful for the support of my kind, brilliant and generous supervisors, Professor Nazila Ghanea and Professor Rachel Condry.

Special thanks to the Clarendon Fund and Kellogg College whose scholarship assistance and pastoral support has made completing this DPhil possible. Thank you also to the Department of Continuing Education for your support, especially Dr Idalina Baptista and Dr Adrian Stokes.

Thank you also to those who have provided mentorship and feedback throughout this process: Emeritus Professor Patrick Thornberry, Dr Alpa Parmar, Associate Professor Shreya Atrey and Professor Carolyn Hoyle during my transfer and confirmation examinations; Professor Thalia Anthony during my visiting studentship at UTS; and Peta MacGillivray for being an ongoing, honest, critical and kind sounding board over the past few years. Big thanks also to Professor Megan Davis at the Indigenous Law Centre, UNSW for your support and guidance. Thank you to Emma Maple-Brown, Dr Holly Doel-Mackaway, Dr Althea Gibson, Anna Butler, Mum and Alex for your generous and expert proof-reading assistance. Thank you to Dr Lauren Nishimura and Penny Ehrhardt for your collegial assistance at key thesis milestones. Thank you Kat Crossley for your flowchart assistance.

Thank you to DFVDR personnel and State Coroners, especially Anna Butler and State Coroner Teresa O'Sullivan, as well as Heidi, Kate, Susan, Travis, Mick, Victor and Jeremy.

Thank you to my brilliant colleague Charmaigne Weldon for the beautiful artwork you created for this study. I am endlessly inspired by you and am so grateful for your trust and support on this journey.

This thesis could not have been possible without the support of my parents, Louise and John. I don’t even know where to begin with thanking you for all that you have done for me.

Finally, thank you to my partner Alex. Ever since we were in law school together you have supported me to be the best I could be. I am so grateful for your endless encouragement. And to Felix, I hope one day you read this and understand why mumma was working so much!

Table of Contents

Figure List

Table of Abbreviations

ACLO	Aboriginal Community Liaison Officer
ACT	Australian Capital Territory
ADFVDRN	Australian Domestic and Family Violence Death Review Network
AIC	Australian Institute of Criminology
ANROWS	Australia's National Research Organisation for Women's Safety
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIWTFV	Aboriginal and Torres Strait Islander Women's Task Force on Violence
CAT	Committee Against Torture
CEDAW	Convention on the Elimination of Discrimination Against Women
CEDAW Committee	Committee on the Elimination of Discrimination Against Women
CERD Committee	Committee on the Elimination of Racial Discrimination
CNI	Central Names Index
CTG	Closing the Gap
DFVDR	Domestic and Family Violence Death Review
DVEC	Domestic Violence Evidence in Chief
DVO	Domestic Violence Order
GR	General Recommendation
HRC	UN Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IAS	Indigenous Advancement Strategy
VRC	Victorian Royal Commission into Family Violence
VIFVTF	Victorian Indigenous Family Violence Task Force
NATSISS	National Aboriginal and Torres Strait Islander Social Survey
NHMP	National Homicide Monitoring Program
NIAA	National Indigenous Australians Agency
NGO	Non-government organisation
NHMP	National Homicide Monitoring Program
NNNE	Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland
NPM	New Public Management

NPY lands	Ngaanyatjarra Pitjantjatjara Yankunytjatjara lands
NSW	New South Wales
NT	Northern Territory
PSS	Personal Safety Survey
RCIADIC	The Royal Commission into Aboriginal Deaths in Custody
SA	South Australia
UPR	Universal Periodic Review
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
WA	Western Australia

Table of International Materials, Cases and Legislation

Treaties/Conventions

UN Human Rights Committee

UN Commission on Human Rights

UN Committee Against Torture

UN Committee on Economic, Social and Cultural Rights

UN Committee on the Elimination of Discrimination Against Women

UN Committee on the Elimination of Racial Discrimination

UN Economic and Social Council

UN Human Rights Council

UN General Assembly

UN Permanent Forum on Indigenous Issues

Other documents

International cases

Australian Legislation

Table of Australian Cases

_____

Introduction

In this thesis I ask three, related, research questions: firstly, 'what domestic violence-related service interactions do First Nations women in Australia have prior to fatal episodes of domestic violence?'; secondly, 'do these service responses reflect and respect First Nations women's rights as women and Indigenous peoples?'; and thirdly, 'how can these service responses be improved'? I ask these questions from my perspective as a criminologist and human rights lawyer. I also ask these questions as a non-Indigenous scholar, which I believe requires me to approach answering them in a specific way.

The first question I ask, 'what domestic violence-related service interactions do First Nations women have prior to fatal episodes of domestic violence?', requires significant empirical, criminological analysis. To answer this question, I reviewed all cases of homicide involving First Nations women who were killed by, or killed, an intimate partner following a history of domestic violence between 2006 and 2016. The jurisdictions I studied were New South Wales ('NSW'), Queensland, the Northern Territory ('NT'), South Australia ('SA'), Victoria and Tasmania. I accessed Domestic and Family Violence Death Review ('DFVDR') narratives and, where these were unavailable, I accessed coroner's files to examine women's service contact histories. As I outline in Chapter 1, to date no studies have looked at First Nations women's domestic violence-related service interactions in fatal cases across jurisdictions, despite homicide cases offering considerable insight into the state's

domestic violence response.[1] My study addresses this gap in the literature and my analysis of women's service interactions can be found in Chapters 5 through 7.

The second question I ask, 'how do these responses reflect and respect First Nations women's rights?', demands empirical work, but also a doctrinal, rights-based analysis. To answer this question, in this thesis I assess the quality of the domestic violence service responses that First Nations women received across cases and consider whether these met First Nations women's full suite of rights as—*inter alia*—women and Indigenous peoples. I draw on interviews and yarns with 22 First Nations specialist domestic violence workers, Elders and/or survivors of violence. I combine interviews/yarning and case data to produce a rich, empirical analysis. As international human rights law distinguishes between rights holders (people/s) and rights guarantors (traditionally, states),[2] my approach also focuses on examining the state as rights guarantor in the domestic violence response space. I accordingly ask what the state is legally and normatively expected to do to respond to domestic violence against First Nations women and, via empirical research, I assess what the state actually does. This analysis can be found in Chapters 5 through 7, with my rights-based analysis being contained in Chapter 8.

I specifically address my third and final question—'how can domestic violence service responses be improved?'—in Chapters 8 and 9. To answer this question, I draw on First Nations participants' perspectives about ways forward in domestic violence service provision, and undertake a human rights-based doctrinal analysis,

---

[1] Domestic Violence Death Review Team, *Report 2015-2017* (Domestic Violence Death Review Team 2017) 3.

[2] In this thesis, I focus on human rights as state obligations rather than inalienable moral codes. This represents a more limited human rights discourse than some scholars would deem relevant here. See James Griffin, 'Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights' (2001) 101(1) *Proceedings of the Aristotelean Society* 1.

focusing on the actual and potential possibilities of normative integration—meaning, the integration of different bodies of human rights law. I assess the extent to which normative integration is already happening in the UN system by looking at how rights monitoring mechanisms have considered Indigenous peoples' right to self-determination to be relevant to women's rights to be safe and free from violence. Normative integration is similar to the concept of systemic integration in public international law and both approaches seek to avoid fragmentation and dissociation between human rights standards.[3] Normative integration is particularly relevant, and indeed necessary, given that the UN system distinguishes human rights treaties along 'identity' lines—for instance, one convention deals with racial discrimination, another with gender discrimination, another with disability discrimination etc—and this can fragment the human rights system. UN treaties are also drafted in a 'distinctively open textured manner' which ensures they are open to further development and the influence of states' full suite of human rights obligations.[4] The specific way I approach normative integration in this thesis is most familiar to the work undertaken by Thornberry vis-à-vis the integration of the UN's *Declaration on the Rights of Indigenous Peoples* ('UNDRIP') within the work of the Committee on the Elimination of Racial Discrimination ('CERD Committee').[5] I briefly consider some

[3] See Adamantia Rachovitsa, 'The Principle of Systemic Integration in Human Rights Law' (2017) 66(3) *International and Comparative Law Quarterly* 557; Eva Brems, 'Should Pluriform Human Rights Become One? Exploring the Benefits of Human Rights Integration' (2014) 3 *European Journal of Human Rights* 447.

[4] Rachovitsa (n 3) 558.

[5] Patrick Thornberry, 'Integrating the UN Declaration on the Rights of Indigenous Peoples into CERD Practice' in Stephen Allen and Alexandra Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011).

of the unintended consequences of normative integration in Chapter 8.[6] My analysis focuses specifically on the right to self-determination as it is articulated in the UNDRIP,[7] and examines how UN treaty monitoring bodies have considered this right to be relevant to violence against First Nations women in Australia through jurisprudence, general recommendations and Concluding Observations (as well as other related commentary).

In this thesis I draw together criminological analysis and the corpus of human rights law. This results in a unique research work that both embraces and challenges the bodies of disciplinary knowledge in which it is anchored. It also results in a thesis that I hope can promote advancement of First Nations women's justice claims via human rights mechanisms, including UN state reporting and treaty-body jurisprudence. Despite this practical focus, in Chapter 8 I also critique the UN system and consider the ways in which this system may affirm and sustain the power of nation-states. I argue that the UN's approach may be antithetical and disadvantageous to the justice interests of First Nations people in Australia, despite the practical potential of international human rights law for furthering women's justice claims. As I outline in the next section of this Introduction, the Australian state has particular significance for First Nations people given histories of invasion/colonisation in Australia, as well as the role of the state in contemporary discriminatory practices involving First Nations peoples. It is therefore appropriate for me to centre and

[6] Tomer Broude, 'Principles of Normative Integration and the Allocation of International Authority: The TWO, the Vienna Convention on the Law of Treaties, and the Rio Declaration' (2008) 6(1) *Loyola University Chicago International Law Review* 173; Rachovitsa (n 3).

[7] *UN Declaration on the Rights of Indigenous Peoples,* UNGA Res 61/295 (2 October 2007) UN Doc A/RES/61/295.

question ‘state power’, in all its manifestations (both national and international), in this thesis.

It is important to identify from the outset of this thesis that I am non-Indigenous. I am a ‘settler’ Australian, or a ‘coloniser’.[8] I was born on unceded Awabakal land on the Australian East Coast and grew up white, middle-class and privileged with little day-to-day contact with First Nations people. In my professional and personal life, I have been fortunate to collaborate closely with First Nations people including in roles on the *Family is Culture Review* and in the *Indigenous Law Centre* at the University of NSW. Due to my considerable (white) privilege I have excelled in Western education systems and benefitted from numerous ‘merit’-based scholarships, including the one that now supports me to prepare and submit this DPhil at the University of Oxford. I consider that this privilege and fortune brings with it responsibility, and with this study I hope to support First Nations women advocates and scholars to improve the state’s domestic violence response to First Nations women. Addressing violence against First Nations women is also something that I consider is related to broad structural inequality between First Nations people and the ‘settler’ state, consequent to Australia’s history of invasion/colonisation. I frame my intention to contribute in this way to recognise that my location and intention as a researcher—both personal and geographic—shapes every contour of this thesis. My identity affects how I ask, as well as answer, the three research questions I propose. This is not a reflection of my personal fallibility or my disregard of important research principles, but a truth of all research and researchers. None of us come to research a subject ‘objective’ or ‘neutral’. We come as we are. As a ‘settler’ Australian and non-

[8] Chelsea Watego, *Another Day in the Colony* (University of Queensland Press 2021).

Indigenous scholar, undertaking a DPhil at a foreign institution, I have always risked doing considerable damage with this work and I have attempted to manage that risk by undertaking a study that centres the views and perspectives of First Nations people, and stands in solidarity with First Nations peoples' justice claims. My theoretical framework (Chapter 3) and methodology (Chapter 4) justify and describe my research approach: outlining how I came to this research, what I tried hard to do well, where I failed to meet my own expectations and where I reached the limits of my standpoint as a researcher. Time and readership will tell if I have done the job I intended to do to the standard it should have been done.

Having situated my study—its questions, its unique interdisciplinary presentation, and my personal location as a researcher—in the rest of this introduction I contextualise what follows in the next nine chapters. I also reflect, where appropriate, on why I made the decisions I did in progressing this research.

'Australia'

'Australia' is foundational to this thesis, my research approach, my research questions and the answers I aim to provide. As Tanganekald and Meintangk scholar Irene Watson has described, while today First Nations peoples represent 3% of the Australian population, until 1788 First Nations peoples represented 100% of the Australian population.[9] In 1788 the British landed in Australia for the purposes of establishing a penal colony, although, as Wolfe and Lange et al describe, the

[9] Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge 2015).

primary motivations of their conquest were ultimately economic and imperial.[10] The British falsely declared the land 'terra nullius' (unoccupied land, or land belonging to nobody)[11] and colonised, via a range of models dependent on population density, the many Indigenous peoples of the continent.[12] As Wolfe has described, 'settler' colonisation was undergirded by the logic of elimination and extinction; the settlers 'came to stay', and the Indigenous peoples—who had sustained their communities and lifestyles across the continent for tens of thousands of years—were (and indeed remain) an impediment to that process.[13] Processes of invasion/colonisation dispossessed First Nations people from their land, which was then exploited economically by the colonisers for their own benefit and that of the British crown.[14] In executing invasion/colonisation, the colonisers also perpetrated cultural[15] and biological genocide via the removal and attempted forced assimilation of First Nations children.[16] Invasion/colonisation was executed by agents of the state including police, who have been described as the 'most consistent point of Aboriginal

[10] Patrick Wolfe, 'Nation and Miscegenation: Discursive Continuity in the Post-Mabo Era' (1994) 36 *Journal of Social and Cultural Practice* 93; Matthew Lange, James Mahoney and Matthias Vom Hau, 'Colonialism and Development: A Comparative Analysis of Spanish and British Colonies' (2006) 11(5) *American Journal of Sociology* 1412.

[11] *Mabo v Queensland (No.2)* (1992) 175 CLR 1.

[12] See Lange et al (n 10); Peter Genger, 'The British Colonization of Australia: An Expose of the Models, Impacts and Pertinent Questions' (2018) 25(1) *Peace and Conflict Studies* 4.

[13] Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (A&C Black 1999) 2.

[14] Lange et al (n 10).

[15] Gaye Nayton, *The Archaeology of Market Capitalism: A Western Australian Perspective* (Springer 2011); Cornelius Martin Renes, 'The Stolen Generations, A Narrative of Removal, Displacement and Recovery' in Cornelius Martin Renes, *Lives in Migration: Rupture and Continuity* (Universitat de Barcelona 2011).

[16] Colin Martin Tatz and Winton Higgins, *The Magnitude of Genocide* (Praeger Security International 2016); O P Walker, 'Decolonizing Conflict Resolution: Addressing the Ontological Violence of Westernization' (2004) 28 *American Indian Quarterly* 527.

contact with colonial power.'[17] Invasion/colonisation fundamentally fractured First Nations peoples' ways of life and law and disrupted, and in some cases eliminated, cultural continuity. Unlike other 'settler' nations such as Canada or New Zealand, Australia was invaded/colonised without treaty-making, or negotiation of any constructive arrangement between First Nations peoples and the invaders/'settlers'. Despite over 200 years of 'settler' occupation, agreement or treaty-making has never occurred in Australia. First Nations sovereignty has never been ceded.

Although 'officially' invasion/colonisation may have concluded, Watson describes that its underlying processes and effects continue.[18] The colonial project is incomplete. Within her writing Watson deliberately uses the word 'colonial' instead of 'postcolonial' to describe the Australian state, as she considers that 'the position of First Nations Peoples in relation to the colonial project has not shifted. It is still a relationship of conflict. Colonialism seeks the subjugation of our First Nations identity and we resist it.'[19] Today, First Nations peoples experience ongoing discrimination and are the most disadvantaged population in Australia. First Nations peoples experience more poverty, greater ill-health, higher levels of involvement in criminal justice and child protection systems, and lower life expectancy than non-Indigenous Australians.[20] While the Australian 'settler' state has extended some rights to First Nations people, for instance limited land rights via the *Mabo* decision (which also,

[17] Commissioner Elliott Johnston, *Royal Commission into Aboriginal Deaths in Custody* (Australian Government Publication Service 1991) National Report Volume 2, 10.5.1.

[18] Watson (n 9) 13.

[19] ibid.

[20] Australian Human Rights Commission, 'Indigenous Disadvantage and Self-Determination: Submission of the Social Justice Commissioner Submission to the UN Human Rights Committee' (undated) <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/submissions_un_hr_committee/3_indigenous_disadvantage.pdf> accessed 29 December 2021.

importantly, recognised that the founding 'settler' doctrine of terra nullius was a fiction)[21] and the *Native Title Act*,[22] the apparatus of the Australian 'settler' state, including governments, the courts and bureaucracies, continue to arbitrate and delineate the limits of Indigenous rights and justice claims. Similarly, while the state has previously permitted the creation of representative organisations such as the *Aboriginal and Torres Strait Islander Commission* ('ATSIC') (which, between 1990 and 2005, operated to formally involve First Nations people in the processes of government that affected their lives), it has also abolished First Nations representative institutions such as ATSIC through repeal of legislation,[23] or—in the case of organisations such as *National Congress of Australia's First Peoples*—by reducing state funding to those organisations such that they become unable to function and are forced to close.[24]

Successive federal governments have also failed to recognise First Nations people in the Australian Constitution—'settler' Australia's founding legal document. Most recently this has been evident regarding the *Uluru Statement from the Heart*, which seeks—as its first sequenced reform—constitutional enshrinement of a First Nations Voice to Parliament.[25] This reform would enable First Nations to have direct

[21] *Mabo v Queensland (No.2)* (1992) 175 CLR 1.

[22] 1993 (Cth).

[23] See Angela Pratt and Scott Bennett, *The End of ATSIC and the Future Administration of Indigenous Affairs* (Current Issues Brief No 4, 2004-05, Parliament of Australia) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/Current_Issues_Briefs_2004_-_2005/05cib04> accessed 7 January 2022.

[24] Cassandra Morgan, 'Closure of Aboriginal Organisation Means Loss of First People's Voice: Former Co-Chairman', Canberra Times (Canberra, 29 October 2019) <https://www.canberratimes.com.au/story/6443649/closure-of-aboriginal-organisation-means-loss-of-first-peoples-voice-former-co-chairman/> accessed 25 March 2022.

[25] Commonwealth of Australia, *Final Report of the Referendum Council* (Commonwealth of Australia 2017).

input to the Commonwealth Parliament on matters that impact their lives.[26] This modest reform proposal, gifted to the Australian people in 2017, was initially unilaterally rejected by the then Prime Minister Malcolm Turnbull, the then Attorney-General George Brandis and the then Minister for Indigenous Affairs, Nigel Scullion (a non-Indigenous man), despite being the product of deliberative constitutional conventions by First Nations leaders and peoples from around Australia.[27] Today the *Uluru Statement's* progress is stagnated, awaiting government action notwithstanding the ongoing advocacy and activism of First Nations people. Inaction around the *Uluru Statement* is an emblem of the contemporary relationship between First Nations people and the 'settler' state. Control and power is broadly retained by governments and bureaucracies at the Commonwealth and state/territory level, with the state creating only limited spaces for First Nations self-governance or self-determination. While Australia is no longer a British colony and has forged its own state (albeit one closely associated with the British Crown), there has been no meaningful decolonisation for First Nations peoples.

Situating this thesis: domestic and family violence and international human rights law

From the foregoing section it is apparent that the 'state' is a key actor in this thesis because it is a key actor in First Nations peoples' lives. In answering my research questions, I seek to explore what the Australian state is doing to respond to domestic violence against First Nations women after violence occurs. Under international

[26] ibid.

[27] Malcolm Turnbull, George Brandis and Nigel Scullion, 'Joint Media Release (26 October 2017)' <https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/5596294/upload_binary/5596294.pdf;fileType=application%2Fpdf#search=%22media/pressrel/5596294%22> accessed 29 December 2021.

human rights law the state is responsible for violence by non-State actors and has an obligation to act with due diligence to, *inter alia*, prevent, investigate and punish domestic violence against women (the so-called 'due diligence standard').[28] In light of Australia's history, this responsibility to respond to violence against First Nations women evidently has additional complexity. First Nations women's experiences of the Australian state, and responses to violence by the state and non-state actors, are shaped by Australia's colonial context as well as the 'incomplete' colonial project. State responsibilities to respond to domestic violence must also be understood in the context of the ongoing power imbalance between First Nations people and the state. I centre this issue in this thesis by asking not only whether the state is meeting its responsibilities to respond to violence against First Nations women, but querying more broadly whether the framing of state responsibility in this context is problematic for First Nations women given First Nations women's experiences of the state. These are both human rights-related questions.

When I assess whether First Nations women's rights are fully being met in this thesis, a key right I focus on is Indigenous peoples' right to self-determination. I focus on self-determination as it has been articulated in the UNDRIP.[29] I justify this focus on the basis that the UNDRIP 'generates international actors as arbiters of indigenous claims, tempering the hitherto exclusive power of states to set the terms for recognizing such claims.'[30] International human rights law is 'supra-state', it governs and it binds the state, so I consider that it can operate as a potentially

[28] Julie Goldscheid and Debra Liebowitz, 'Due Diligence and Gender Violence: Parsing its Power and its Perils' (2015) 48 *Cornell International Law Journal* 301.

[29] *Declaration on the Rights of Indigenous Peoples* (n 7).

[30] Melissa S Williams, *Recognition Versus Self-Determination: Dilemmas of Emancipatory Politics* (UBC Press 2014) 11.

important accountability mechanism for Indigenous peoples when the state is coercive or failing to meet its rights obligations. As I outline in this thesis, self-determination is a right with a contested history, but it is predicated on First Nations peoples' collective freedom and self-governance. I explore the contested history of this right in Chapter 2 and return to it in Chapter 8. Importantly, in this thesis I outline what self-determination means for participants in my study and use these findings to critically reflect on whether Indigenous peoples' right to self-determination is being fully respected in rights discourse concerning women's rights to be safe and free from violence. I also consider whether self-determination is fully reflected within the international human rights law system.

Definitions

Before moving into my substantive chapters, I will briefly clarify several terms I use in this thesis. Firstly, I recognise that 'family violence' may be more appropriate terminology when discussing domestic violence involving First Nations people as it reflects holistic, extended conceptualisations of intra-familial violence and harm.[31] However, in this thesis I use the narrower language of 'domestic violence' to refer to violence in intimate partner relationships. This 'gendered' understanding of violence dominates not only Australia's responses to domestic and family violence, but the evidence-base that underpins these responses. Looking closely at domestic violence in intimate partner relationships can help to uncover the gendered and racialised features of the state's response to this harm.

[31] See Kyllie Cripps and Megan Davis, *Communities Working to Reduce Indigenous Family Violence* (Indigenous Justice Clearinghouse 2012); Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (The Federation Press, 2nd edn 2016).

Secondly, throughout this thesis I mostly use the terminology 'First Nations peoples' rather than alternatives such as Aboriginal and Torres Strait Islander peoples or Indigenous peoples. I use the language of Indigenous peoples at different times primarily in respect of human rights discourse as this is the preferred international terminology. The language of First Nations appropriately reflects the many and varied First peoples of Australia, and the language of peoples—rather than people—also recognises the diversity of Australia's First Nations.

I also use the language of 'settler' in inverted commas and use 'invasion/colonisation' to refer to the processes that 'settler' Australian governments have subjected First Nations peoples to since 1788. By using 'settler' in inverted commas, I recognise that Australian 'settlement' was not a peaceful process, and that 'settlement' constitutes ongoing occupation of unceded First Nations lands. This occupation causes significant, ongoing harm to First Nations peoples, communities and families. I use the phrase invasion/colonisation for similar reasons.[32]

I use the terminology 'Australia' or 'the state' to refer to Australia. Australia is a federation of states and territories with governance functions attaching to both states/territories and the federal Commonwealth. Functions are governed by the Australian Constitution. Accordingly, when I discuss 'the state's' response—meaning Australia's response to violence—I acknowledge that this response is distilled within different levels of government. It is not a unified or necessarily coherent response. For instance, as I describe in Chapters 2 and 7, while the criminal justice system is administered at the state/territory level, specialist domestic violence service funding is administered at both the state/territory and Commonwealth level. However, as

[32] Commonwealth of Australia (n 25).

Australia is internationally recognised as a state, with specific, associated responsibilities arising under international human rights law, I accordingly focus on Australia's responsibilities as a 'state' inclusive of its diverse, pluralised state/territory and Commonwealth governance arrangements.

Conclusion

This thesis is new and it is novel. In it, I draw together complementary bodies of disciplinary knowledge from the human rights and criminological canon in an attempt to explore an important issue in a unique, ambitious way. I also very consciously stand on the shoulders of First Nations and Indigenous scholars from around the world, intentionally prioritising the scholarship of First Nations women and their allies throughout this thesis. Over the next nine chapters I hope to make a contribution to that important literature.

Chapter 1: Literature Review Part A

Introduction

In this and the next chapter, I outline the key literature that frames this thesis. In Part I of this chapter, I establish the scale of domestic violence against First Nations women in Australia. I highlight that despite First Nations women being overrepresented as domestic violence homicide victims and perpetrators, to date there has been a lack of research examining First Nations women's interactions with criminal justice and specialist services before fatal violence. I outline how my research responds to this gap.

In Part II, I establish that domestic violence is a human rights violation and Australia has responsibilities under international human rights law to act with due diligence to prevent, investigate and punish domestic violence by non-state actors, including violence against First Nations women. I outline how the domestic violence response system is currently structured in Australia in response to these obligations.

PART I: Fatal and non-fatal domestic violence against First Nations women

The scale of domestic violence against First Nations women

While there is relatively limited quantitative data outlining the scale of domestic violence against First Nations women in Australia, the data that is available suggests that First Nations women experience violence at high rates, and disproportionately, compared to non-Indigenous women. The primary dataset regarding women's experiences of domestic and family violence in Australia, the *Personal Safety Survey* ('PSS'), administered by the *Australian Bureau of Statistics* ('ABS'), does not present

data about First Nations women, citing difficulties in collecting a representative sample of First Nations participants, as well as concerns around the survey's cultural appropriateness.[1] Instead, the *National Aboriginal and Torres Strait Islander Social Survey* ('NATSISS'), as well as disaggregated health and social services data, provide some relevant insight into the disproportionate impact of domestic violence on First Nations women.

According to 2014-2015 NATSISS data, about one in 10 First Nations women self-reported that they had experienced at least one episode of domestic and family violence in the previous 12 months.[2] *Australia's National Research Organisation for Women's Safety* ('ANROWS') has estimated that three in five First Nations women (65%) have experienced physical or sexual violence from an intimate partner during their lifetime.[3] Intimate partner violence has been identified as the leading contributor to the burden of disease, and the largest cause of lost years of life, for First Nations women aged 25-34 years.[4] First Nations women have also been reported to be 32 times more likely to be hospitalised due to family violence than non-Indigenous women.[5]

---

[1] ANROWS, *Violence Against Women: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey 2012* (ANROWS 2016). The 2021-2022 Federal Budget allocates $29.4 million over four years to establishing the first PSS for First Nations peoples, see Australian Government Department of Social Services, *Historic Investment in Women's Safety and Domestic Violence Support: Budget 2021-2022* (Department of Social Services 2021).

[2] Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Women's Experiences of Family and Domestic Violence: 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2014-15* (Australian Bureau of Statistics 2019).

[3] Kim Webster, *A Preventable Burden: Measuring and Addressing the Prevalence and Health Impacts of Intimate Partner Violence in Australian Women: Key Findings and Future Directions* (ANROWS 2016).

[4] Australian Institute of Family Studies, *Family Violence Prevention Programs in Indigenous Communities: Resource Sheet No.37* (Closing the Gap Clearinghouse December 2016).

[5] Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future* (Australian Human Rights Commission 2020) 44.

While data regarding non-fatal domestic violence against First Nations women is limited, there is more comprehensive data available about fatal violence. Prior research shows that First Nations people are more likely to be killed by a domestic partner or family member compared to non-Indigenous Australians,[6] and between 2010-2018, despite representing around 3.3% of the Australian female population,[7] First Nations women represented almost 25% of domestic violence-context intimate partner femicide victims (women killed by an intimate partner).[8]

In addition to being overrepresented as intimate partner homicide victims, First Nations women in Australia are overrepresented as intimate partner homicide perpetrators. According to Voce and Bricknell, between 2004 and 2014, 39% of female intimate partner homicide perpetrators in Australia were First Nations women.[9] Again, given that First Nations women constitute only around 3.3% of the Australian female population this is a considerable overrepresentation by population rate.[10]

Like intimate partner homicides involving First Nations women as victims,[11] a high proportion of intimate partner homicides involving First Nations women as perpetrators follow a history of domestic violence. According to Voce and Bricknell,

---

[6] Tracy Cussen and Willow Bryant, 'Indigenous and Non-Indigenous Homicide in Australia' (2015) 37 *Research in Practice* 1.

[7] Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (Australian Bureau of Statistics 2018).

[8] Australian Domestic and Family Violence Death Review Network, *Intimate Partner Violence Homicides 2010-2018* (ANROWS 2022) 34.

[9] Isabelle Voce and Samantha Bricknell, *Female Perpetrated Intimate Partner Homicide: Indigenous and Non-Indigenous Offenders* (Australian Institute of Criminology 2020) 9.

[10] Australian Bureau of Statistics, *Estimates* (n 7).

[11] Australian Domestic and Family Violence Death Review Network, *Australian Domestic and Family Violence Death Review Network 2018 Data Report* (Domestic Violence Death Review Team 2018).

most First Nations women who killed their partners between 2004 and 2014 had been in an 'abusive relationship' with the deceased prior to the homicide (67%).[12] Recent data from the *Australian Domestic and Family Violence Death Review Network* ('ADFVDRN') further disaggregates women's domestic violence histories, describing that while about 40% of the women who killed a male intimate partner in Australia between 2010 and 2018 were First Nations women, two-thirds of those women had been the 'primary domestic violence victim' in that relationship before the homicide, and the vast majority had experienced domestic violence from their partner before killing them.[13]

On this basis, in this study I examine cases of both First Nations women victims of domestic violence who were killed by an intimate partner, and First Nations women who killed an intimate partner following a history of domestic violence in which the woman was a victim. I discuss this methodological decision further in Chapter 3.

Limitations in fatal domestic violence research

There are limitations in existing fatal domestic violence research concerning First Nations women as homicide victims and perpetrators. In Australia, there are two main intimate partner homicide datasets: the *National Homicide Monitoring Program* ('NHMP') administered by the *Australian Institute of Criminology* ('AIC'), and data of the ADFVDRN, which is a network of jurisdictional DFVDRs and State Coroner's

[12] Voce and Bricknell (n 9) ix.

[13] Australian Domestic and Family Violence Death Review Network, *Intimate Partner Violence Homicides* (n 8) 39.

courts. Both datasets examine domestic violence-context homicides involving First Nations women.

The NHMP collects high-level data about Indigenous and non-Indigenous homicides, including intimate partner homicides, and reports publicly every two years. Although it is the key source of homicide statistics in Australia, NHMP data is derived solely from limited state records, primarily police and coronial records.[14] In NHMP reporting, data regarding First Nations victims and perpetrators is also reported in aggregate, and sometimes compared with, non-Indigenous victims and perpetrators. Comparative data is useful to map discrimination and disproportionality but does not support examining the characteristics of intimate homicides involving First Nations women as a group. The NHMP also does not collect or report on victims' service interactions, focusing instead on demographic and fatal event data.

Beyond its biennial reports, academic publications drawing on NHMP data, such as studies undertaken by Cussen and Bryant[15] and Mouzos,[16] compare intimate partner homicides involving First Nations and non-Indigenous women. However, these reports offer no insight into First Nations women's service contact histories prior to fatal domestic violence.

The second key dataset concerning domestic violence-related homicides is from the ADFVDRN. The ADFVDRN is comprised of DFVDRs from each Australian state and territory where these bodies are established, and the State Coroner's office

[14] Samantha Bricknell and Laura Doherty, *Homicide in Australia 2018-19: AIC Report, Statistical Report 34* (Australian Institute of Criminology 2021) 1.

[15] Cussen and Bryant (n 6).

[16] Jenny Mouzos, 'Indigenous and Non-Indigenous Homicides in Australia: A Comparative Analysis' (2001) 125(1) *Trends and Issues in Crime and Criminal Justice* 1

in the remaining jurisdictions.[17] The ADFVDRN has publicly reported on domestic violence-related intimate partner homicides, although data concerning First Nations women is expressed cautiously, with limited disaggregation.[18] ADFVDRN reporting focuses on histories of violence, demographic and contextual data regarding the fatal event. However, like NHMP, it does not present data on domestic violence service contact histories for victims or their partners.

At a state/territory level there has been more in-depth research examining fatal domestic violence involving First Nations women, generating some insights into First Nations women's service interactions preceding fatal cases. For instance, DFVDRs in each jurisdiction (where established) conduct research and homicide surveillance under their own motion and auspice legislation, or under the delegated authority of the State Coroner.[19] Several of these bodies report publicly. In its most recent report, the NSW DFVDR described that while First Nations women access 'many' services before domestic violence homicides

> the [domestic violence] service system often fails as multiple services are unable to work collaboratively to secure victim safety, or there is a failure to follow-up or make referrals, as well as issues with intrinsic racism and a lack of cultural safety.[20]

From reviewing fatal cases, the NSW DFVDR recommended increasing cultural safety in mainstream services and further investing in First Nations community-

[17] Lyndal Bugeja, Anna Butler, Emma Buxton, Heidi Ehrat, Michelle Hayes, Sara Jane McIntyre and Carolyn Walsh, 'The Implementation of Domestic Violence Death Reviews in Australia' (2013) 17(4) *Homicide Studies* 353.

[18] Australian Domestic and Family Violence Death Review Network, *Australian Domestic and Family Violence Death Review Network 2018 Data Report* (n 11); Australian Domestic and Family Violence Death Review Network, *Intimate Partner Violence Homicides 2010–2018* (n 8).

[19] Australian Human Rights Commission, *A National System for Domestic and Family Violence Death Review* (Australian Human Rights Commission December 2016).

[20] Domestic Violence Death Review Team, *Report 2017-2019* (Domestic Violence Death Review Team 2020) 89.

controlled services.[21] DFVDRs in other jurisdictions have made similar observations and recommendations.[22]

While all DFVDRs examine fatal cases to identify service intervention opportunities, to date there have been no attempts to combine or collate DFVDR cases or files to examine service issues across jurisdictions. As I describe below, and detail in Chapter 4, my study seeks to respond to this gap.

Outside of the administrative data context, some academic research has sought to examine the scope and scale of fatal violence involving First Nations women, although studies to date have provided only limited insight into the nature of women's service interactions prior to fatal violence. For instance, Lloyd examined domestic and family homicides within the NPY lands of the NT, SA and Western Australia ('WA') that occurred between 2000-2008. [23] Lloyd describes that across the 17 cases she studied, First Nations women 'may have sought help from outside agents and authorities prior to their deaths, indicating the significance and potential of the authorising outsider in reducing violence and protecting those most at risk.'[24] Unfortunately Lloyd does not provide further detail around women's interactions with outside agents and authorities.

Coronial inquiries, such as the inquest into the deaths of Kwementyaye Murphy and Kwementyaye McCormack in the NT,[25] the inquest into the death of

[21] ibid 94.

[22] Domestic and Family Violence Death Review and Advisory Board, *Domestic and Family Violence Death Review and Advisory Board 2016-2017 Annual Report* (Queensland Government 2017).

[23] Jane Lloyd, 'Violent and Tragic Events: The Nature of Domestic Violence-Related Homicide Cases in Central Australia' (2014) 1 *Australian Aboriginal Studies* 99.

[24] ibid 107.

[25] *Inquest into the Deaths of Wendy Murphy and Nathalie McCormack* [2016] NTLC 024.

Andrea Pickett in WA,[26] and the inquest into the death of Norma in NSW,[27] have also examined First Nations' women's interactions with domestic violence services prior to fatal violence. These inquiries have identified limitations in service accessibility and poor service responses to First Nations women, and have examined how these service interactions, or a lack of appropriate or effective services, contributed to the women's deaths. For instance, in the inquest findings for Kwementyaye Murphy and Kwementyaye McCormack, the coroner highlighted issues within police and court responses, and lamented the limited effectiveness of the DVOs that were enforceable prior to both women's deaths.[28] The coroner made similar observations in Andrea Pickett's inquest, describing how the domestic violence crisis response system repeatedly failed Ms Pickett and contributed to her death.[29]

While coronial cases offer a unique, in-depth insight into women's service interactions, these inquiries do not typically look at trends and issues within, or across, jurisdictions unless they are directly connected to the death. Findings accordingly do not necessarily reflect how widespread or systemic service issues may be.

[26] A N Hope, *Inquest into the Death of Andrea Louise Pickett* (2012) <https://humanrights.gov.au/sites/default/files/content/legal/submissions_court/guidelines/Pickett_finding.pdf> accessed 25 March 2022.

[27] NSW State Coroners Court, *Inquest into the Death of Norma** (findings removed 27 November 2014 to avoid the potential for prejudice in the prosecution of persons connected with this death) <https://coroners.nsw.gov.au/documents/findings/2014/Inquest_into_the_death_of_Norma.pdf> accessed 25 March 2021.

[28] *Murphy and McCormack* (n 25).

[29] Hope (n 26).

Contributions of my thesis

Notwithstanding that First Nations women experience non-fatal and fatal violence disproportionately, and at high rates, there is little known about the nature and quality of the domestic violence-related service interactions First Nations women have prior to fatal violence. There has also been no attempt, to date, to combine the qualitative case reviews produced by DFVDRs/coronial files in a systematic, inter-jurisdictional and whole-of-population study. In this thesis, I combine and examine, for the first time, coronial and DFVDR review files across several Australian jurisdictions, for all cases of domestic violence-related homicide involving First Nations women that occurred between 2006 and 2016. I qualitatively examine trends and issues and provide descriptive quantifications regarding women's service interactions prior to fatal violence. I further detail this methodology in Chapter 4.

PART II: Overview of Australia's domestic violence response system

In this thesis I focus on responses to domestic violence, and I examine these through the lens of state responsibility. By 'responses' I mean the systems and services that may be activated following episodes of domestic violence. I do not focus on preventive or early intervention programmes and services, although I recognise that these constitute key components of the domestic violence system,[30] and invoke specific state responsibilities under international human rights law.[31] I recognise that there are also strong continuities between prevention, early

[30] Our Watch, 'Understand the Primary Prevention Approach', *Prevention Handbook* (Our Watch 2021) <https://handbook.ourwatch.org.au/resource-topic/how-to-engage-with-others-about-violence-against-women/understand-the-primary-prevention-approach/> accessed 25 March 2022.

[31] Carin Benninger-Budel (ed), *Due Diligence and its Application to Protect Women from Violence* (Leiden 2008).

intervention and tertiary response systems, meaning that it can be difficult to clearly distinguish different services or programmes working along this continuum. Notwithstanding these difficulties, in this thesis I primarily focus on the system that activates following domestic violence and, more specifically, on criminal justice and specialist service responses.

International human rights standards

Domestic violence is a violation of women's human rights, and—as a consequence—states have positive obligations to respond to such violence. Domestic violence is a form of gender-discrimination,[32] and it breaches a range of rights and freedoms including the right to life, and the right not to be subject to torture, cruel, inhuman or degrading treatment or punishment.[33] Since the *Convention on the Elimination of All Forms of Discrimination Against Women* ('CEDAW')[34] was unanimously adopted by the UN General Assembly ('UNGA') in 1976, albeit without any references to gender-based violence in its text, the law in this area has considerably progressed both inside, and outside of the UN context.[35] Within the UN context, there have been advancements in the recognition of domestic violence as a violation of human rights through the CEDAW Committee's adoption of

[32] UN Committee for the Elimination of All Forms of Discrimination against Women, 'General Recommendation No.19' in 'Note by the Secretariat, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' (29 July 1994) UN Doc HRI/GEN/1/Rev.1 [1] and [6].

[33] ibid [7].

[34] UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women* (18 December 1979) 1249 UNTS 13.

[35] Christine Chinkin on behalf of Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO), *The Duty of Due Diligence* (Council of Europe 21 May 2010) <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000001680593fc8> accessed 25 March 2022.

general recommendations, including to effectively 'read in' gender-based violence to CEDAW through General Recommendation ('GR') 19,[36] clarified later in GR 35,[37] as well as through a wide range of committee jurisprudence.[38] Outside of CEDAW, other UN bodies[39] have also specifically recognised domestic violence as a violation of (primarily women's) human rights, including the UNGA via resolutions[40] and through its adoption of the *Declaration on the Elimination of Violence Against Women* in 1993.[41] In 1994, the UN Commission on Human Rights appointed the inaugural Special Rapporteur on Violence Against Women,[42] whose mandate continues today. Other human rights institutions have continued to sharpen understandings of domestic violence as a human rights violation, and the prevention

[36] CEDAW, GR 19 (n 32).

[37] UN Committee on the Elimination of Discrimination Against Women, 'General Recommendation No.35 on Gender-Based Violence against Women, Updating General Recommendation No.19' (26 July 2017) UN Doc CEDAW/C/GC/35.

[38] See UN Committee on the Elimination of Discrimination Against Women, 'Communication No.5/2005: Sahid Goekce v Austria' (6 August 2007) UN Doc CEDAW/C/39/D/5/2005; UN Committee on the Elimination of Discrimination Against Women, 'Communication No.6/2005: Fatma Yildirim v Austria' (1 October 2007) UN Doc CEDAW/C/39/D/6/2005.

[39] See UN Economic and Social Council, 'Resolution 1984/14: 'Violence in the Family'' (24 May 1984) UN Doc ESC Res 1984/14.

[40] UN General Assembly, 'Domestic Violence' (29 November 1985) UN Doc A/RES/40/36; UN General Assembly, 'Domestic Violence' (14 December 1990) UN Doc A/RES/45/114.

[41] UN General Assembly, *Declaration on the Elimination of Violence Against Women* (20 December 1993) UN Doc A/48/104.

[42] UN Commission on Human Rights, 'Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women' (4 March 1994) UN Doc E/CN.4/RES/1994/45.

of all forms of violence against women—including domestic violence—continues to be a priority area of work for the UN.[43]

The prevailing standard for state responsibility in relation to domestic violence, and an important standard I focus on in this thesis, is the due diligence standard. Initially articulated in the 1989 Inter-American Court of Human Rights judgment in *Velasquez-Rodriguez v Honduras*,[44] the due diligence standard was later affirmed by the CEDAW Committee in GR 19 as the framework articulating state responsibilities in relation to violence against women by non-state actors.[45] The due diligence standard holds states responsible for 'private acts [including acts or omissions by non-state actors] if [states] fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.'[46] State parties will be responsible if they fail to take all appropriate measures to prevent, investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women.[47] Former Special Rapporteur

[43] See, for instance, UN General Assembly, 'Follow-Up to the Fourth World Conference on Women and Full Implementation of the Beijing Declaration and the Platform for Action' (22 December 1995) UN Doc A/RES/50/203; UN Human Rights Council, 'Integrating the Human Rights of Women Throughout the United Nations System' (14 December 2007) UN Doc A/HRC/RES/6/30; The Council of Europe, *The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (Council of Europe, 12 April 2011); UN Human Rights Council, 'Accelerating Efforts to Eliminate All Forms of Violence Against Women: Eliminating Domestic Violence' (22 July 2015) UN Doc A/HRC/RES/29/14; UN Human Rights Council, 'Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice' (19 April 2013) UN Doc A/HRC/23/50; UN Human Rights Council, 'Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice' (1 April 2015) UN Doc A/HRC/29/40; UN Human Rights Council, 'Accelerating Efforts to Eliminate Violence Against Women: Preventing and Responding to Violence Against Women and Girls, including Indigenous Women' (19 July 2016) UN Doc A/HRC/RES/32/19; UN General Assembly, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (21 October 2015) UN Doc A/RES/70/1.

[44] Inter-Am.Ct.H.R. (Ser. C) No.4 (1988).

[45] CEDAW, GR 19 (n 32).

[46] ibid [9].

[47] CEDAW, GR 35 (n 37) [24].

on Violence Against Women, Yakin Ertürk, examined the due diligence standard in depth in her third report to the Human Rights Commission in 2006 and, alongside recent detailed guidance in GR 35,[48] this explanation continues to provide the most thorough guidance about the substance of the standard.[49] For the purposes of this thesis, I focus on the due diligence standard as it relates to protection, investigation and punishment and do not consider issues of prevention and compensation as these are outside the scope of my research questions.

The first key element of the due diligence standard is that states have a duty to protect victims of violence. Ertürk describes that the duty for states to implement protective measures mostly consists of the provision of services to women, including social welfare services, but also DVOs, noting that, despite many states adopting these measures, there remains an enforcement and implementation gap.[50] Ertürk describes that this gap might be evident, for instance, where criminal justice actors fail to enforce civil remedies and criminal sanctions, or where services, such as women's shelters or refuges, may be underfunded or protective programmes may not be in place.[51]

The second component of the due diligence standard is that states have a duty to investigate and punish acts of domestic violence. Ertürk describes that in discharging this duty a state may adopt, amongst other measures, specialised policing practices and legislation, but may fail in its duty where, for instance, police

[48] ibid.

[49] UN Commission on Human Rights, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on the Due Diligence Standard as a Tool for the Elimination of Violence Against Women' (20 January 2006) UN Doc E/CN.4/2006/61.

[50] ibid [48].

[51] ibid.

are reluctant to investigate or punish acts of violence, or where law enforcement authorities or social services may pursue 'mediation or social solutions.'[52] Interestingly, in her 2006 report Ertürk also expressly discusses the issue of 'identity politics', and in doing so decries cultural relativism and the notion of plural approaches/systems to responding to violence against women. She describes that these approaches may violate women's rights and 'pose an obstacle to human rights guarantees'.[53] Unfortunately, Ertürk does not consider the emancipatory potential of plural approaches, including Indigenous justice mechanisms predicated on group self-determination. This is later partially addressed in GR 35, which does not preclude plural approaches but clarifies that these need to be harmonised with CEDAW's standards.[54] I explore these issues in further depth in Chapter 8, where I analyse to what extent Indigenous self-determination rights have been normatively integrated into rights standards around domestic violence responses.

Australia's domestic violence response system

Having outlined prevailing international guidance around state responsibility and domestic violence response systems contained in the due diligence standard, I now return to the Australian context to examine how these responsibilities have translated into, and are reflected within, Australian practice. In Australia, the response system that activates following domestic violence is loosely constituted by two different systems: i) the criminal justice system; and ii) specialist service response, which

[52] ibid [53].

[53] ibid [64].

[54] CEDAW, GR 35 (n 37) [26].

includes domestic violence specialist services and refuges.[55] Broader systems and services may be implicated in the domestic violence response—for instance, healthcare and education systems—but examining these systems is beyond the scope of this thesis.

Due to Australia's federalist structure, the criminal justice system is mostly administered at a state/territory level (i.e. most states and territories have different criminal justice systems), and the specialist service response involves both Commonwealth/federal and state level governments, with services and outsourced service funding being delivered via both Commonwealth and state government procurement arrangements.[56] As I discuss in Chapter 2, alongside these responses operate First Nations community-controlled organisations, some of which deliver domestic violence services specifically to First Nations women.[57] Community-controlled organisations typically receive various funding modalities from both state/territories and Commonwealth sources.

Despite responses to domestic violence being largely jurisdictionally differentiated between Australia's states and territories, *Australia's National Plan to Reduce Violence Against Women and their Children 2010-2022* (the 'National Plan') articulates an overarching national framework for reducing and responding to domestic violence.[58] The current National Plan follows a number of earlier plans

[55] Suellen Murray and Anastasia Powell, *Domestic Violence: Australian Public Policy* (Australian Scholarly Publishing 2011) 9.

[56] ibid; Marcia Langton, Kristen Smith, Tahlia Eastman, Lily O'Neill, Emily Cheesman and Meribah Rose, *Improving Family Violence Legal and Support Services for Aboriginal and Torres Strait Islander Women: ANROWS Research Report Issue 25* (ANROWS December 2020) 75-88.

[57] And, in some instances, potentially non-Indigenous women where community-controlled services are awarded funding to deliver mainstream programmes (see Chapter 7).

[58] Australian Government Department of Social Services, *The National Plan to Reduce Violence Against Women and their Children 2010-2022* (Department of Social Services 2011).

under the Hawke-Keating Labor Government (1983-1996), and the conservative Howard Liberal-National Coalition Government.[59] First launched under the Gillard Labor Government, and inherited by subsequent conservative Liberal Governments, the National Plan targets domestic and family violence and sexual assault, describing these as 'gendered crimes'.[60] It provides a 'coordinated framework that improves the scope, focus and effectiveness of government's actions, ensuring women and their children receive the support and information they need.'[61] The National Plan emphasises improving the responsiveness of specialist domestic and family violence services and increasing access to such services,[62] as well as improving the effectiveness of justice responses, including to adopt increased domestic and family violence reporting as a key measure of success.[63] The National Plan also emphasises investing in and developing 'local solutions' for First Nations women, with Strategy 3.3 requiring state and territory governments to improve access to appropriate services.[64] This recognises the need for differentiated responses to domestic violence against First Nations women, although First Nations women are clearly not exempted or precluded from involvement with other 'settler' systems, including police and mainstream 'settler'-controlled specialist domestic violence services.

[59] Murray and Powell (n 55) 17.

[60] Australian Government Department of Social Services, *The National Plan* (n 58) 2.

[61] ibid 4.

[62] ibid 23.

[63] ibid 26.

[64] ibid 22.

A new *Draft National Plan to End Violence Against Women and their Children 2022-2032* (the 'Draft National Plan') was released for comment in early 2022.[65] For the first time, the Draft National Plan anticipates the development two five-year 'Action Plans' addressing violence against First Nations women, which align with *Closing the Gap* ('CTG') Target 13. CTG is the national framework that governs addressing discrimination against First Nations people and the discrepancies in health and wellness indicators between First Nations and non-Indigenous Australians. Target 13 of CTG states that

> By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50 per cent, as progress towards zero.[66]

Although the details of the new Draft National Plan are not yet finalised, it is described that the five-year action plans will be

> specifically designed with, and led by, the Aboriginal and Torres Strait Islander Advisory Council on family, domestic and sexual violence. Community control and shared decision-making will be embedded into the implementation of the National Plan. In this way, it will support Aboriginal and Torres Strait Islander self-determination, and community driven holistic solutions to ending violence against Aboriginal and Torres Strait Islander women and children.[67]

The criminal justice response

In alignment with the due diligence standard, the criminal justice system is a key component of Australia's response to domestic violence. In Australia, the criminal justice response comprises police, the courts and corrective services/prisons, all of which are administered via different state/territory frameworks (and with different

[65] Australian Government Department of Social Services, *Draft National Plan to End Violence Against Women and their Children 2022-2032* (Department of Social Services 2022).

[66] ibid 41.

[67] ibid 26.

elements of the system being administered by different government departments/bureaucracies within each jurisdiction). In this thesis, I focus on policing and the court system and do not consider post-conviction settings (punishment) in significant detail. The justice response, in addition to operating as a self-contained and 'complete' response system (beginning with police intervention and concluding with correctional intervention), is also a key pathway into the domestic violence specialist service system.[68]

Australia's criminal justice response to domestic violence closely resembles systems that operate in other Western liberal democracies such as the United States and the United Kingdom, and the trajectory that led to an emphasis on criminal justice responses to domestic violence has been similar. Both internationally and within Australia, investment in the criminal justice system as a key domestic violence response can be traced to feminist advocacy from the 1970s onwards.[69] This advocacy focused on mobilising the criminal justice system as a means by which states should take men's violence against women seriously,[70] as while behaviours such as 'assault' had long been included as criminal offences within the law, historically there had been under-enforcement, and under-prosecution, of these offences in the context of domestic relationships.[71] This was due, at least in part, to beliefs amongst police and criminal justice actors that violence was private and not a

[68] Christopher Dowling, Anthony Morgan, Chloe Boyd and Isabella Voce, *Policing Domestic Violence: A Review of the Evidence: Research Report 13* (Australian Institute of Criminology 2018).

[69] Murray and Powell (n 55) 91.

[70] Leigh Goodmark, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (University of California Press 2018) 13.

[71] ibid 13-14.

concern of the state.[72] Underenforcement was a driving force behind the domestic violence criminalisation agenda, which advocated increasing the charging, prosecution and punishment of men's domestic violence offences against women.[73] This carceral emphasis also coincided with the neoliberal state agenda,[74] and, as Coker describes, domestic violence criminalisation was politically attractive due to the appeal of crime control politics, and governance via criminal regulation.[75] As will become apparent in the foregoing chapters, neoliberalism as an ideological construct of the Australian 'settler' state is of particular relevance to this thesis, and something I consider in greater detail later in this chapter, in Chapter 2 and in Chapter 7.

In Australia, public policy attention turned to domestic violence during the 1980s. As Murray and Powell describe, the earliest government taskforce reports regarding domestic violence emphasised the importance of the criminal justice system and identified that underenforcement of criminal law in this area was embedded in policing practice as well as official policy.[76] Early taskforce findings rhetorically reinforced that domestic violence was a crime, but also emphasised that specialist civil/criminal responses—such as domestic violence orders ('DVOs')—were required to effectively respond to the unique challenges of domestic violence.[77]

Today, in each Australian state and territory, many domestic violence behaviours are criminalised, including spousal assaults, strangulation and various

[72] Murray and Powell (n 55) 90.

[73] Goodmark (n 70) 12-14.

[74] ibid 14.

[75] Donna Coker, 'Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review' (2001) 4 *Buffalo Criminal Law Review* 801, 804

[76] Murray and Powell (n 55) 90.

[77] ibid 93.

forms of sexual abuse. States and territories have typically legislated specific domestic violence laws that consolidate and specify generalist laws precluding behaviours that may be domestic or non-domestic in nature, such as assault. As Murray and Powell also describe, since the 1980s in Australia there has been a considerable shift in police responses to domestic violence, with police moving from viewing violence as 'just a domestic' to seeing it as a priority area in policing.[78] Notwithstanding this shift, as I discuss in Chapter 2 and explore in-depth in Chapter 5, First Nations women continue to experience poor police responses to domestic violence.

In addition to incorporating standalone domestic violence offences, Australian states/territories also preclude a broad range of domestic violence behaviours (as well as potentially non-criminal behaviours that may augment or increase the likelihood of domestic violence offending, such as alcohol and drug use) through DVOs. First introduced in the United States during the 1970s,[79] and implemented across Australia throughout the 1980s,[80] DVOs are civil orders that aim to stop future, rather than punish past, violence. DVOs operate similarly across different Australian states and territories, with minor differences.[81] In recent years, DVOs

[78] ibid.

[79] Department of Economic and Social Affairs, Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (United Nations 2010) 45.

[80] Patricia Easteal, 'Addressing Violence Against Women in the Home: How Far Have We Come? How Far to Go?' (1994) 37 *Family Matters* 86, 89.

[81] Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Palgrave MacMillan 2019) 13; Karen Wilcox, *Recent Innovations in Australian Protection Order Law: A Comparative Discussion (*Australian Domestic and Family Violence Clearinghouse 2010); The National Council to Reduce Violence against Women and their Children, *Domestic Violence Laws in Australia* (FAHCSIA 2009); Samantha Jeffries, Christine Bond and Rachel Field, 'Australian Domestic Violence Protection Order Legislation: A Comparative Quantitative Content Analysis of Victim Safety Provisions' (2013) 25 *Current Issues in Criminal Justice* 627.

made in different jurisdictions have become recognised and enforceable across Australia through the National DVO Scheme,[82] and over the past decade there been calls for orders to be recognised internationally via private international law.[83]

DVO breaches constitute a criminal offence and attract a criminal penalty.[84] In most jurisdictions, police can apply directly for provisional or interim DVOs on behalf of victims either following, or in anticipation of, future violence, courts are empowered to make longer-term final orders encompassing a wide range of possible conditions, and victims are able to privately apply for DVOs through local, and in some jurisdictions specialist domestic violence, courts.[85] Although Murray and Powell argue that Australia has largely 'decriminalised' domestic violence through the implementation and widespread use of DVOs,[86] order breaches are nonetheless administered via the criminal justice system, and police across jurisdictions are empowered to apply for DVOs when they attend domestic violence callouts. DVOs are accordingly closely associated with the criminal justice response.

[82] Australian Government Attorney General's Department, *National Domestic Violence Order Scheme* <https://www.ag.gov.au/families-and-marriage/families/family-violence/national-domestic-violence-order-scheme> accessed 25 August 2020.

[83] Permanent Bureau of the Hague, *Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note Document No 7* (Permanent Bureau of the Hague 2021); Permanent Bureau of the Hague, *Questionnaire on the Recognition and Enforcement of Foreign Civil Protection Orders: Summary of Member Responses and Possible Ways Forward* (Permanent Bureau of the Hague 2014).

[84] Heather Douglas and Robin Fitzgerald, 'The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People' (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 41, 42.

[85] Regarding specialist courts see, for instance, Christine Bond, Robyn Holder, Samantha Jeffries and Chris Fleming, *Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport* (Griffith Criminology Institute 2017).

[86] Murray and Powell (n 55) 87; Heather Douglas and Lee Godden, 'The Decriminalisation of Domestic Violence: Possibilities for Reform' (*Expanding Our Horizons: Understanding the Complexities of Violence Against Women*, University of Sydney, Sydney, 18 February 2002).

Internationally, DVOs form part of the suite of model legislative measures articulated by the UN Division for the Advancement of Women,[87] who instructs that each country should make DVOs available to survivors of all forms of violence against women.[88] DVOs have also been the subject of due diligence jurisprudence through the Optional Protocol to CEDAW, [89] and in the European Court of Human Rights.[90] DVOs have also been recognised as forming an integral part of the state's obligations under the due diligence standard.[91]

The criminal justice system in Australia has also proved to be continually expansive, with increases in police powers and expansions of the range of domestic violence behaviours that may be criminalised. In recent years in Australia, following jurisdictions such as England, Wales and Scotland, there have been moves to criminalise coercive and controlling behaviour. Queensland[92] and NSW have announced an intention to criminalise coercive control[93] with NSW recently clarifying that this will be done through creation of a standalone criminal offence.[94] Concerns

[87] Department of Economic and Social Affairs (n 79) 45.

[88] ibid.

[89] UN Committee on the Elimination of Discrimination Against Women, 'Communication No.2/2003: A.T. v Hungary' (26 January 2005) UN Doc CEDAW/C/32/D/2/2003.

[90] See *Bevacqua and S. v. Bulgaria* App no 71127/01 (ECtHR, 12 June 2008); *Opuz v Turkey* App no 33401/02 (ECtHR, 9 June 2009).

[91] UN Commission on Human Rights, 'Report of the Special Rapporteur on Violence Against Women' (n 49).

[92] Women's Safety and Justice Taskforce, *Options for Legislating Against Coercive Control and the Creation of a Standalone Domestic Violence Offence: Discussion Paper 1 Summary* (Queensland Government 2021).

[93] Joint Select Committee on Coercive Control, *Coercive Control in Domestic Relationships, Report 1/57* (Parliament of New South Wales 2021).

[94] Lucy Cormack, 'Coercive Control in Intimate Relationships to be Criminalised in NSW' *Sydney Morning Herald* (Sydney, 18 December 2021) <https://www.smh.com.au/politics/nsw/coercive-control-in-intimate-relationships-to-be-criminalised-in-nsw-20211217-p59ij8.html> accessed 30 December 2021.

have been specifically raised around the unintended consequences coercive control laws may have for women,[95] especially First Nations women who may already be overpoliced in the Australian 'settler' state.[96] I discuss issues of overpolicing in Chapter 5.

Notwithstanding an ongoing emphasis on, and investment in, the criminal justice response to domestic violence, there is an expansive literature—both internationally and in Australia—that explores and articulates the limitations of this response. For instance, policing research has examined limitations in officers' investigations of domestic violence,[97] queried arrest practices and whether these have a deterrent effect,[98] considered the effectiveness of, and problems associated with, mandatory arrest policies,[99] as well as investigated problems of dual arrest of victims and perpetrators.[100] Prior research has identified that there may be considerable problems associated with the misidentification of domestic violence

[95] Sandra Walklate, Kate Fitz-Gibbon and Jude McCulloch, 'Is More Law the Answer? Seeking Justice for Victims of Intimate Partner Violence through the Reform of Legal Categories' (2018) 18(1) *Criminology & Criminal Justice* 115.

[96] Megan Davis and Emma Buxton-Namisnyk, 'Coercive Control Law Could Harm the Women it's Meant to Protect' *Sydney Morning Herald* (Sydney, 2 July 2021); Chelsea Watego, Alissa Macoun, David Singh and Elizabeth Strakosch, 'Carceral Feminism and Coercive Control: When Indigenous Women Aren't Seen as Ideal Victims, Witnesses or Women' *The Conversation* (25 May 2021).

[97] See Dowling et al, *Policing Domestic Violence* (n 68).

[98] See Janell D Schmidt and Lawrence W Sherman, 'Does Arrest Deter Domestic Violence' (1993) 36(5) *American Behavioral Scientist* 609.

[99] See G Kristian Miccio, 'A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement' (2005) 42 *Houston Law Review* 237; David Hirschel, Eve Buzawa, April Pattavina and Don Faggiani, 'Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions' (2007) 98 *Journal of Criminal Law and Criminology* 255; Miriam H Ruttenberg, 'A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy' (1994) 2 *American University Journal of Gender, Social Policy and the Law* 171; Carolyn Hoyle and Andrew Sanders, 'Police Response to Domestic Violence: From Victim Choice to Victim Empowerment?' (2000) 40 *British Journal of Criminology* 14.

[100] See Philip D McCormack and David Hirschel, 'Race and the Likelihood of Intimate Partner Violence Arrest and Dual Arrest' (2018) 11(4) *Race and Justice* 434.

victims as perpetrators,[101] alongside, and sometimes intersecting with, issues related to sexism, racism, and classism in domestic violence policing.[102] DVOs have also been subject to considerable scholarly attention, with academic research raising concerns about their effectiveness, issues with order enforcement/policing, and challenges associated with cross-orders or reciprocal DVOs (which name the victim of violence as both a defendant/respondent and a protected person).[103] This research has contributed to ongoing reform and shifts within domestic violence criminal justice policy and law in the United Kingdom, United States and Australia, as well as other jurisdictions worldwide.

Some scholars have also queried the domestic violence criminalisation agenda more forcefully. Goodmark has been a leading figure in this debate in recent years, arguing for the reframing of domestic violence responses through the lens of victim interests and rights, which, she argues, will lead to a more 'balanced' approach to domestic violence criminalisation.[104] It has been recognised that

[101] See Anne O'Dell, 'Why Do Police Arrest Victims of Domestic Violence? The Need for Comprehensive Training and Investigative Protocols' (2007) 15(3-4) *Journal of Aggression, Maltreatment & Trauma* 53; Heather Nancarrow, Kate Thomas, Valerie Ringland and Tanya Modini, *Accurately Identifying the Person Most in Need of Protection in Domestic and Family Violence Law*: *Research Report 23/2020* (ANROWS 2020

[102] See Natalie J Sokoloff and Ida Dupont, 'Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalised Women in Diverse Communities' (2005) 11 *Violence Against Women* 38; Michele R Decker, Charvonne N Holliday, Zaynab Hameeduddin, Roma Shah, Janice Miller, Joyce Dantzler and Leigh Goodmark, '"You Do Not Think of Me as a Human Being": Race and Gender Inequities Intersect to Discourage Police Reporting of Violence Against Women' (2019) 96(5) *Journal of Urban Health* 772.

[103] Christopher Dowling, Anthony Morgan, Shann Hulme, Matthew Manning and Gabriel Wong, 'Protection Orders for Domestic Violence: A Systematic Review' (2018) 551 *Trends and Issues in Crime and Criminal Justice* 1; Reine Cordier, Donna Chung, Sarah Wilkes Gillan and Renee Speyer, 'The Effectiveness of Protection Orders in Reducing Recidivism in Domestic Violence: A Systematic Review and Meta-Analysis' (2019) 22(4) *Trauma, Violence and Abuse* 804; Douglas and Fitzgerald (n 84); Dowling et al, *Policing Domestic Violence* (n 68); Nancarrow (n 81).

[104] Goodmark (n 70).

criminalisation approaches may particularly harm marginalised women,[105] exposing poor, minority women to increased state control.[106] Coker refers to this as 'the dilemma of making domestic violence a public responsibility in the context of racist and classist public systems.'[107] As I discuss in Chapter 2, criticism and rejection of the criminalisation response to domestic violence has also been evident in research conducted by, and with, First Nations women in Australia.

Notwithstanding questions about the effectiveness of the criminalisation response to domestic violence, there continues to be ongoing, and increasing investment in criminal justice responses in Australia. This emphasis also aligns with, and is reinforced by, the due diligence standard.

The specialist service response

The second component of the domestic violence response system I consider in this thesis, albeit a loosely constituted component,[108] is the specialist service response. Under the due diligence standard—specifically the duty to protect victims—states are required to provide social welfare services to women who experience violence, including specialist services and shelter accommodation.[109] While the criminal justice response, in some ways, presents as a more uniform, discrete system, the specialist service response is a rather more amorphous, plural, group of different services that provide support to victims, offenders and their families. Broadly, specialist service

[105] ibid.

[106] Coker (n 75) 805.

[107] ibid 807.

[108] Murray and Powell (n 55) 10.

[109] UN Commission on Human Rights, 'Report of the Special Rapporteur on Violence Against Women' (n 49).

responses may include health, income support and technology-assisted services, in addition to family and relationship services and women's refuges or shelters.[110] The family law system may also be implicated,[111] as may perpetrator intervention programmes. For the purposes of this thesis, however, I focus my analysis on domestic violence refuges/shelters and specialist domestic violence services that women may interact with after experiencing violence. I discuss, and in relevant ways distinguish, between 'settler'-controlled and First Nations community-controlled organisations providing domestic violence services to First Nations women.

Domestic violence specialist services and shelters/refuges are a central pillar of Australia's domestic violence response.[112] In Australia, the introduction of specialist services and refuges has been attributed to the women's refuge movement, which—from the 1970s onwards—established crisis supports for women and children.[113] The trajectory of the Australian women's refuge movement was similar to women's liberation movements in the United States, Canada and United Kingdom from the 1970s onwards,[114] and, in Australia, the first women's refuge, Elsie's, was set up without funding in 1974 in Sydney by a group of feminist activists.[115] Twelve more domestic violence services were established within a year

[110] Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia: Continuing the National Story* (Australian Government 2019) iii.

[111] See Parliament of the Commonwealth of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (Commonwealth of Australia 2017).

[112] See Murray and Powell (n 55).

[113] Suellen Murray, 'The Origins and Development of the Australian Women's Refuge Movement' (2006) 19(1) *Parity* 11, 11; Domestic Violence New South Wales, 'NSW Women's Refuge Movement' (Domestic Violence New South Wales, 2017) <http://www.dvnsw.org.au/wp-content/uploads/2017/07/DVNSW_History_17A.pdf> accessed 25 November 2021.

[114] Murray (n 113) 11.

[115] ibid.

of Elsie's being opened.[116] Throughout the 1980s, the women's refuge movement grew to include peak bodies—non-government advocacy groups representing community organisations working within particular areas or fields (in this case, domestic violence)—who would advocate for government funding on behalf of their members.[117] Murray describes that by 2005 there were 291 agencies funded through the Commonwealth's Supported Accommodation Assistance Program providing support services and crisis accommodation for women and their children who were escaping violence.[118] Today, while there are no comprehensive lists of domestic violence services across Australia, it appears there are in excess of 1000 services that receive funding under Commonwealth and state regimes.[119] Commonwealth funding schemes include the Families and Children Activity (which includes specialised family violence services, allocated $5 million annually), Legal Assistance services, the Settlement Grants programme, Financial Wellbeing and Capability and Specialist Homelessness services.[120] First Nations community-controlled organisations may also receive Indigenous-specific funding, for instance under the Indigenous Advancement Strategy ('IAS'). I discuss the IAS further in Chapter 2.

Since the beginning of the women's refuge movement, the specialist service sector has considerably grown and changed. While its origins were feminist, the

[116] ibid.

[117] ibid.

[118] ibid.

[119] Natasha Cortis, Megan Blaxland, Jan Breckenridge, Kylie Valentine, Natasha Mahoney, Donna Chung, Reinie Cordier, Yu-wei Chen and Damian Green, *National Survey of Workers in the Domestic, Family and Sexual Violence Sectors: Final Report* (Social Policy Research Centre UNSW 2018).

[120] Australian Government Department of Social Services, 'Family and Relationship Services' (Department of Social Services, 2021) <https://www.dss.gov.au/families-and-children-programs-services-parenting-families-and-children-activity/family-and-relationship-services> accessed 25 November 2021.

sector has grown to include service delivery by religious and community groups who provide services and supports that are not always underpinned by feminist values.[121] The nature of support services has also pluralised and shifted over time, and today 'domestic and family violence services include crisis and transitional accommodation services, as well as outreach, support, advocacy and specialist children's services.'[122]

Across Australia today, domestic violence specialist services and refuges are mostly outsourced and provided by non-government organisations ('NGOs') operating with government funding rather than being administered by government agencies. Public sector outsourcing of social services has a long history in Australia,[123] but has been particularly prominent since the 1980s with the implementation of New Public Management ('NPM') approaches (also known as Neoliberal Public Management due to its association with neoliberal political ideology).[124] NPM essentially sought to reframe relationships in the public sector to be based on economic market relationships; outsourcing policy, implementation and delivery functions via contracts, and subjecting contracting processes to administrative technologies such as competitive tendering and de-regulation.[125] NPM

[121] Murray (n 113).

[122] ibid.

[123] Legislative Assembly of New South Wales Committee on Community Services, *Outsourcing Community Service Delivery: Final Report (Report 2/55)* (Parliament of New South Wales November 2013) 3-24.

[124] Janine O'Flynn, 'From New Public Management to Public Value: Paradigmatic Change and Managerial Implications' (2007) 66(3) *The Australian Journal of Public Administration* 357.

[125] ibid; See also, Patrick Sullivan, 'The Tyranny of Neoliberal Public Management and the Challenge for Aboriginal Community Organisations' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018).

created economic markets where markets did not previously exist.[126] Today, this has translated into a social service framework whereby an external provider—typically an NGO or charitable organisation—enters into a service-delivery contract with the state (usually through a government agency).[127] In Australia, states and territories, as well as the Commonwealth, are responsible for administering the outsourcing and procurement of social service responses to domestic violence, including specialist services and domestic violence refuges.[128]

Perhaps as a consequence of this economic arrangement, under-resourcing and underfunding is commonly cited as an issue facing domestic violence specialist services. For instance, 2018's *National Survey of Workers in the Domestic, Family and Sexual Violence Sectors* determined that many domestic and sexual violence workers and service leaders had concerns around resourcing and client access to services (with less than 40% of surveyed staff believing that their service had sufficient human resources to do their work).[129] I discuss this issue further in Chapter 2 and Chapter 7, including in relation to First Nations community-controlled domestic violence services.

Conclusion

In this chapter, I have outlined relevant literature concerning the scope and scale of domestic violence against First Nations women in Australia, and I have provided an

[126] Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (SAGE 1999).

[127] Honor Figgis and Gareth Griffith, *Outsourcing in the Public Sector* (NSW Parliamentary Library 1997).

[128] Langton et al (n 56) 75.

[129] Cortis et al (n 119) 10.

overview of Australia's domestic violence response system, outlining how this aligns with international standards in this area. In Chapter 2, I continue my literature review, examining First Nations women's experiences of the domestic violence response system and First Nations peoples' right to self-determination under international human rights law.

Chapter 2: Literature Review Part B

Introduction

This chapter comprises the second part of my literature review. In Part I of this chapter, I outline prior research concerning First Nations women's experiences of the domestic violence response system in Australia. I focus specifically on criminal justice and specialist service responses and emphasise academic and grey literature produced by, and in collaboration with, First Nations women. Not only does prior research establish that the current domestic violence response system presents a range of challenges for First Nations women, but it highlights the need for further critical examination of the adequacy of state responsibilities in this area as they are articulated under international human rights law (see Chapter 1). In Part II of this chapter, I examine Indigenous peoples' right to self-determination as outlined in the UNDRIP. I describe that there is a need to further investigate how the right to self-determination has been understood as relating to First Nations women's rights to be safe and free from violence, and I outline how my research responds to this gap.

PART I: First Nations women's experiences of the domestic violence response system in Australia

Explanatory issues

While my research focuses on the domestic violence response system, I acknowledge that the notion of a 'crisis response' to violence may be conceptually

problematic for First Nations women.[1] Blagg questions the adequacy of a response system predicated on the idea of domestic violence as a distinct 'crisis' set against a background of assumed stability and normalcy, as this may not reflect the multi-level, sustained interventions required to respond to the multiple, overlapping and reinforcing crises that First Nations women may be experiencing in their lives (for instance, homelessness, poverty, ill-health, bereavement and alcohol abuse, as well as domestic violence).[2] Blagg instead reinforces the need for holistic, community-driven prevention and early intervention work, and challenges the notion that reactive response systems may achieve any lasting solution to domestic violence against First Nations women. In this research, I focus on examining the 'crisis' response system to better understand, and critique, the impact this system has on First Nations women. I hope that my research findings can inform the development of more effective, integrated, domestic violence interventions, as well as reinforce the need for strengthened prevention and early intervention work predicated on community self-determination.

Although I analytically distinguish between criminal justice and specialist service responses to violence in this thesis, I also acknowledge that the domestic violence response system, as a whole, may operate to disadvantage of First Nations women. Indeed, this is one of the important questions I broker in this thesis as I look into, as well as across, the two different systems that form the backbone of the domestic violence response. As Kabi Kabi scholar Boni Robinson described in the

[1] Harry Blagg, 'Restorative Justice and Aboriginal Family Violence: Opening a Space for Healing' in Heather Strang and John Braithwaite (eds), *Restorative Justice and Family Violence* (Cambridge University Press 2002) 203.

[2] ibid; Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (The Federation Press, 2nd edn 2016) 126.

Aboriginal and Torres Strait Islander Women's Task Force on Violence

('ATSIWTFV') Report

> Indigenous women, on the basis of both race and gender, are disempowered by the lack of culturally appropriate legal services, court personnel, police, counselling facilities, childcare and adequately resourced, Community-based organisational assistance.[3]

As Blagg has similarly identified,[4] First Nations women do not always

> receive equitable and timely support from front line agencies and courts, and … there is a dearth of appropriately structured and funded community-based prevention, intervention and treatment programs capable of mobilizing and engaging Aboriginal communities in the struggle against violence.[5]

Accordingly, despite narrowing—for analytical purposes—my focus to criminal justice and specialist service responses, I acknowledge that these and other systems work together in myriad, compounding ways to disadvantage First Nations women.[6]

Barriers to reporting

Prior research by 'settler' and First Nations scholars highlights that First Nations women may not report domestic violence to police and other specialist and front-line services.[7] It has been estimated that 90% of violence against First Nations women is

[3] Aboriginal and Torres Strait Islander Women's Task Force, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (State of Queensland 1999) 224.

[4] Blagg, 'Restorative Justice and Aboriginal Family Violence' (n 1) 191.

[5] ibid.

[6] Chris Cunneen, *Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities* (Department of Communities 2010) 100.

[7] See Matthew Willis, 'Non-Disclosure of Violence in Australian Indigenous Communities' (2011) 405 *Trends and Issues in Crime and Criminal Justice* 1; Jacinta Price, Marcia Langton and Josephine Cashman, *Ending the Violence in Indigenous Communities: National Press Club Address, November 2016* (Centre for Independent Studies 2016).

unreported to police or support services,[8] however, the true extent of underreporting is unlikely to be known.

While I do not consider reasons for underreporting in depth in this thesis, many of the barriers that prevent First Nations women from reporting or engaging with the 'settler' domestic violence response system appear to relate to the way First Nations people and families are treated by state agencies and organisations involved in the violence response. Reflecting on underreporting, the final report of the *Victorian Royal Commission into Family Violence* ('VRC') described that

> Given the relationship between Aboriginal people and authority organisations such as the police or government welfare departments, it is understandable that Aboriginal people are wary of making reports that, whilst they may have the immediate impact of safety, have the longer term impact of breaking up a family, putting children into out of home care, sending someone into custody, becoming homeless or other impacts.[9]

There is also considerable evidence that different components of the criminal justice system embed various, compounding forms of discrimination against First Nations women. As Robinson described in the ATSIWTFV Report

> Aboriginal women's contact with the justice system does not only involve their direct contact with the police, the judiciary or prisons. Their contact must also be counted in terms of being wives, mothers and sisters of the prodigious number of Aboriginal prisoners and as the victims of homicide, assault and rape crimes at levels unheard of in the rest of Australia and against which the criminal justice system seems hopeless.[10]

Scholars have also identified that the 'settler' criminal justice system's violence towards First Nations peoples may undermine that system's perceived and actual

[8] Aboriginal and Torres Strait Islander Women's Task Force (n 3).

[9] Victorian Aboriginal Legal Service, *Submission 826*, 3, cited in Royal Commission into Family Violence, *Volume V: Report and Recommendations* (Victorian Government Printer March 2016) 28.

[10] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 223.

effectiveness in responding to domestic violence against First Nations women.[11] There is evidence that First Nations women may reject the criminalisation response,[12] which may fail them at a symbolic and practical level due to a lack of community ownership, rehabilitation or safety.[13] The system may also lack legitimacy due its disconnection from (and interruption of) First Nations law and cultural authority, as well as the system's tendency to separate First Nations men from the consequences of their actions (with accountability more likely to be achieved via traditional customary legal structures and authorities).[14]

However, literature in this area also establishes the importance of First Nations women retaining the choice to access the 'settler' criminal justice system. First Nations women may choose, or be required by necessity, to engage with the criminal justice system in some circumstances and seek for this system to be culturally safe.[15] I discuss this further towards the end of Part I of this chapter.

[11] See, for instance, Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2); Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan 2019) 203-244.

[12] Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2); Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities - Key Issues* (Human Rights and Equal Opportunity Commission June 2006); Heather Nancarrow, 'In Search of Justice for Domestic and Family Violence: Indigenous and Non-Indigenous Australian Women's Perspectives' (2006) 10(1) *Theoretical Criminology* 87, 94.

[13] Nancarrow, 'In Search of Justice' (n 12).

[14] Paul Memmott, Rachael Stacy, Catherine Chambers and Catherine Keys in association with Aboriginal Environments Research Centre, University of Queensland, *Violence in Indigenous Communities* (Commonwealth of Australia 2006) 16.

[15] See Aboriginal and Torres Strait Islander Women's Task Force (n 3).

Issues identified with the police response to domestic violence against First Nations women

As I discussed in this thesis' Introduction, it is well recognised that the role of police in executing discriminatory and genocidal policies on behalf of the state since invasion/colonisation has contributed to ongoing poor relationships between police and First Nations communities in Australia.[16] The relationship between police and First Nations people has been described as one of 'continuing hostility, mistrust, suspicion and fear'[17] and, as Blagg has observed, many First Nations people 'see the criminal justice system—and particularly the police—as agents of oppression.'[18] Studies suggest that poor relationships between First Nations peoples and police are sustained in the context of domestic violence service provision,[19] and are embedded and reinforced by the ways police respond to domestic violence against First Nations women.

It has been previously identified that police may not attend domestic violence callouts, or may be considerably delayed, when violence involving First Nations women is reported.[20] This may be worse for First Nations women living on remote

[16] ibid 230; Amanda Porter and Chris Cunneen, 'Policing Settler Colonial Societies' in Philip Birch, Michael Kennedy and Erin Kruger (eds), *Australian Policing: Critical Issues in 21st Century Police Practice* (Routledge, 2020); Chris Cunneen, *Conflict Politics and Crime: Aboriginal Communities and the Police* (Routledge 2001).

[17] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 227.

[18] Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2) 123.

[19] See Marcia Langton, Kristen Smith, Tahlia Eastman, Lily O'Neill, Emily Cheesman and Meribah Rose, *Improving Family Violence Legal and Support Services for Aboriginal and Torres Strait Islander Women: ANROWS Research Report Issue 25* (ANROWS, December 2020) 70.

[20] See Audrey Bolger, *Aboriginal Woman and Violence: A Report for the Criminology Research Council and the Northern Territory Commissioner of Police* (Australian National University North Australia Research Unit 1991*)* 59; Langton et al (n 19) 62, 75; Royal Commission into Family Violence, *Volume V: Report and Recommendations* (Victorian Government Printer March 2016) 28; Victorian Indigenous Family Violence Task Force, *Final Report* (Aboriginal Affairs Victoria 2003) 120.

outstations, who may be even more isolated than women living in communities or town centres.[21] It has been identified that police stations may not be accessible to First Nations women and may not be fully staffed, particularly in rural and remote areas.[22] This can reduce accessibility and discourage reporting. As Robinson describes, for First Nations women in very remote areas such as the Torres Strait Islands, 'if a crime is committed after 5pm or on the weekend, the victim must wait for [police] assistance to come from Thursday Island the next morning, or the following Monday morning, if it is on the weekend.'[23]

When police do respond, officers may not do so effectively, or officers may respond in ways that are harmful to First Nations women. Literature in this area suggests that when police officers attend they may treat violence against First Nations women as being private, or unimportant,[24] may informally settle the dispute in ways that conflict with the victim's wishes,[25] or may arrest and charge the perpetrator notwithstanding that the victim does not support that course of action.[26] Police may also attend but fail to enforce or undercharge current enforceable DVOs,[27] and may appear apathetic when women report violence, especially where it is a continued and cyclical experience.[28] As Robinson described in the ATSIWTFV

[21] Bolger (n 20) 64.

[22] ibid 58; Cunneen, *Alternative and Improved Responses* (n 6) 109.

[23] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 230.

[24] Bolger (n 20) 72.

[25] ibid 59.

[26] ibid 72.

[27] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 231; Cunneen, *Alternative and Improved Responses* (n 6) 111.

[28] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 230.

Report, in that inquiry 'many women were concerned that the police were ignoring their calls for help and this was seen as increasing their risk of serious harm.'[29] These challenges may be heightened for women living in small communities, where responding officers may be familiar with, and may appear to collude with, the perpetrator.[30]

When police respond to domestic violence against First Nations women, victims may also suffer discrimination or disadvantage as a consequence. Prior research highlights that police officers may engage in victim-blaming and disbelieve First Nations women,[31] and may charge First Nations women with minor offences (such as traffic violations) when they report violence.[32] Police responses may be worse where First Nations women have previously been identified as criminal offenders.[33]

There is evidence that the domestic violence response must be understood within the context of the broader criminal justice response to First Nations people, including concerns of overpolicing and over-incarceration.[34] Prior research highlights that First Nations women may choose not to engage with police following domestic violence due to fears that their partners will end up in gaol,[35] or that their partners

[29] ibid 229.

[30] Langton et al (n 19) 62.

[31] ibid 71.

[32] Victorian Indigenous Family Violence Task Force (n 20) 98.

[33] Royal Commission into Family Violence, *Volume V* (n 20) 40.

[34] Australian Law Reform Commission, *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)* (Australian Law Reform Commission 2018).

[35] Bolger (n 20).

may die in custody.[36] Women may also lack trust in the criminal justice and police response to domestic violence as they do not believe incarceration changes men's behaviour,[37] and incarceration may deplete the community of men.[38]

It is also common for First Nations women to identify fear of child removal and child protection involvement in the family as a barrier to engaging with police.[39] This fear may reflect the historical role of the police in removing First Nations children from their families (discussed in the Introduction), as well as contemporary disproportionate rates of removal of First Nations children by child protection services.[40] I discuss this further in Chapter 5.

Prior research also highlights that the gender and race composition of police forces may render 'settler' police inaccessible to First Nations women. First Nations women may prefer to engage with female officers or First Nations police aides, but these options may not always be available.[41] In the ATSIWTFV Report, Robinson recommended that there 'should be more Aboriginal Community Police and Police Liaison Officers… across the state [Queensland], especially women.'[42] First Nations Police Liaison Officers were identified by an informant in ATSIWTFV as potentially

[36] ibid 59; Aboriginal and Torres Strait Islander Women's Task Force (n 3) 232.

[37] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 232.

[38] ibid.

[39] Cunneen, *Alternative and Improved Responses* (n 6) 105; Langton et al (n 19) 65.

[40] SNAICC, *The Family Matters Report 2021* (SNAICC 2021).

[41] Bolger (n 20) 61.

[42] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 233.

changing police culture/attitudes,[43] although Robinson notes that not all Indigenous officers may want to be Koori Liaison Officers.[44]

Numerous studies and inquiries have also identified that 'settler' police may lack cultural competency when responding to domestic violence against First Nations women, and this may cause women to experience difficulties when reporting violence or engaging with police.[45] Police officers may not receive cultural training,[46] and where they do, this may not necessarily translate into culturally safe service delivery.[47] Police may also fail to refer victims to First Nations community-controlled services as they have not asked whether the victim is a First Nations person or not.[48] This limits possibilities for culturally safe service interactions following police involvement.

Some research also describes that the police may be institutionally racist and highlights that institutional racism can limit the accessibility of police for First Nations women who experience domestic violence. For instance, Robinson stated in the ATSIWTFV Report that '[i]nformants suggested that institutional racism exists in the police culture at many levels reinforcing negative and sometimes derogatory attitudes and behaviours.'[49] Robinson also found that police may use offensive or

[43] ibid 234.

[44] Victorian Indigenous Family Violence Task Force (n 20) 120.

[45] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 230.

[46] ibid.

[47] Royal Commission into Family Violence, *Volume V* (n 20) 35.

[48] ibid 41.

[49] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 233.

abusive language to community members when responding to domestic violence episodes, demonstrating disrespectful and racist attitudes.[50]

In response to some of these concerns around cultural safety and accessibility, jurisdictions such as Victoria have piloted specific protocols for police working with First Nations communities, including First Nations women who experience domestic violence.[51] While one benefit identified with the Victorian pilot protocol was that community-controlled organisations received more referrals due to increased reporting, women remained concerned that some police were still minimising violence, victim-blaming and failing to issue interim DVOs.[52]

In theorising poor police responses to First Nations women who experience domestic violence, Blagg has described that due to the colonial construction of Aboriginal people as criminal people, Aboriginal victims may not be ideal victims.[53] Drawing on the work of Sercombe,[54] Blagg describes that 'the face of criminality is often an Aboriginal face.'[55] Police may also fail to understand First Nations women's help-seeking behaviours, or may believe that women are wasting their time.[56]

Prior research also establishes that First Nations women may not want to use police or the criminal justice system (or social services) in the same way as non-

[50] ibid 231.

[51] Royal Commission into Family Violence, *Volume V* (n 20) 39.

[52] ibid.

[53] Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2) 123.

[54] Howard Sercombe, 'The Face of the Criminal is Aboriginal' (1995) 43 *Journal of Australian Studies* 76.

[55] Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2) 123.

[56] Bolger (n 20).

Indigenous women.[57] First Nations women may use police or shelter accommodation to diffuse an immediate crisis and may not want to progress further with the criminal justice pathway or use services in order to separate from their partner.[58]

Prior negative police experiences may also reduce the likelihood that First Nations women will report violence in the future.[59] As Langton et al describe, 'many [First Nations] women who had experienced family violence [in their study] expressed their deep suspicion of the police, and their reluctance to engage with them for family violence matters.'[60] In that research, women also frequently described that their fear of police was founded in their negative experiences of reporting.[61] As Langton et al note

> Critically, when police fail to report family violence incidents appropriately or attend incidents in a timely manner and do not believe Aboriginal victims of family violence, it not only authenticates feelings of distrust, it significantly endangers the lives of Aboriginal women and their children. Most Aboriginal women in this research who had experienced family violence maintained their distrust of the police force based on their lived experiences as, time and again, contacting the police had compounded rather than alleviated their circumstances.[62]

---

[57] Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2) 128; Harry Blagg, 'Aboriginal Youth and Restorative Justice: Critical Notes from the Australian Frontier' in Allison Morris and Gabrielle Maxwell (eds), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart 2000); Sue Gordon, Kay Hallahan and Henry Darrell, *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (Western Australia Department of Premier and Cabinet 2002) 479.

[58] Harry Blagg, Emma Williams, Eileen Cummings, Vickie Hovane, Michael Torres and Karen Nangala Woodley, *Innovative Models in Addressing Violence Against Indigenous Women: Final Report* (ANROWS 2018) 52.

[59] Cunneen, *Alternative and Improved Responses* (n 6) 110; See also Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Women's Experiences of Family and Domestic Violence: 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2014-15* (Australian Bureau of Statistics 2019).

[60] Langton et al (n 19) 70.

[61] ibid 71.

[62] ibid 73.

Issues identified with the operation of DVOs in respect of First Nations women

As I described in Chapter 1, DVOs form a key element of Australia's domestic violence response and are a required measure under the due diligence standard. Notwithstanding this, prior research has raised concerns around the way DVOs operate for First Nations people in Australia.

Prior research establishes that First Nations women may lack awareness around how to get a DVO,[63] and, where granted, orders may not be explained properly to the woman or her partner.[64] The enforcement of DVOs may also be undermined by poor police responses to domestic violence,[65] and the uptake and effectiveness of DVOs may be limited due to inadequate support service availability.[66] The *Victorian Indigenous Family Violence Task Force* ('VIFVTF') Report also specifically identified that First Nations women may believe that DVOs do not work.[67]

Two Queensland-based studies—by Cunneen and Nancarrow—suggest that DVOs may contribute to the enmeshment of First Nations peoples in the criminal justice system.[68] In his study, Cunneen found that First Nations people were significantly more likely than non-Indigenous people to be named as the

[63] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 209.

[64] Royal Commission into Family Violence, *Volume V* (n 20) 41.

[65] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 209.

[66] ibid; Cunneen, *Alternative and Improved Responses* (n 6) 114.

[67] Victorian Indigenous Family Violence Task Force (n 20) 120.

[68] Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Palgrave MacMillan 2019) 155; Cunneen, *Alternative and Improved Responses* (n 6); See also Heather Douglas and Robin Fitzgerald, 'The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People' (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 41; Heather Nancarrow, 'In Search of Justice for Domestic and Family Violence: Indigenous and Non-Indigenous Australian Women's Perspectives' (2006) 10(1) *Theoretical Criminology* 87.

aggrieved/protected person in a DVO and identified that these orders were far more likely to be applied for by police than the aggrieved on personal application. [69] Cunneen describes that high levels of police-initiated DVO applications raise 'questions about [First Nations peoples'] engagement with and confidence in the process, as well as the availability of services to assist with private applications.'[70] Nancarrow's study similarly found high levels of DVOs involving First Nations people, with police far more likely to be the applicant than the aggrieved/protected person on personal application.[71]

Nancarrow also found there were high levels of cross-DVOs between First Nations people; meaning orders where both parties were named as an aggrieved and defendant/respondent. Nancarrow determined that First Nations women were more likely than both non-Indigenous women and First Nations men to have been identified as a victim of violence before police sought a DVO naming that woman as the defendant/respondent.[72] This suggests that victims of violence were subsequently being identified, and possibly misidentified, as perpetrators. The Queensland DFVDR has raised similar concerns from review of fatal cases, reporting that almost all victims of First Nations family violence homicide from that jurisdiction had a history of being recorded as both an aggrieved and a defendant/respondent in a DVO.[73] Langton et al's research also describes that

[69] Cunneen, *Alternative and Improved Responses* (n 6) 61.

[70] ibid 67.

[71] Nancarrow, *Unintended Consequences* (n 68) 113.

[72] ibid.

[73] Domestic and Family Violence Death Review and Advisory Board, *2016-2017 Annual Report* (Queensland Government 2017) 82.

violent men may seek DVOs against First Nations women victims as a form of manipulation.[74]

First Nations people may also be more likely than non-Indigenous people to have DVOs with standard conditions only. In his study, Cunneen determined that the majority of orders involving a First Nations aggrieved had standard conditions (and did not include an 'ouster' or non-contact condition),[75] and Nancarrow similarly identified that most Indigenous women who were named as respondents in DVOs were subject to orders with standard conditions only.[76] Cunneen describes that '[t]he major reasons for these differences between Indigenous and non-Indigenous conditions related to the desire for the aggrieved to have contact with the respondent and the specific nature of life in remote communities.'[77] Standard orders may also suggest a lack of victim or perpetrator involvement or engagement in condition-setting, again raising concerns about First Nations peoples' limited support to participate, and lack of confidence in, DVO processes. [78]

Cunneen also observes that First Nations offenders who breached a DVO order were 'more likely to be proceeded by way of arrest than non-Indigenous offenders', but were less likely to be proceeded against in court.[79] He also describes that there was a general view amongst those involved in the legal process that few

[74] Langton et al (n 19) 69.

[75] Cunneen, *Alternative and Improved Responses* (n 6) 88.

[76] Nancarrow, *Unintended Consequences* (n 68) 101.

[77] Cunneen, *Alternative and Improved Responses* (n 6) 89.

[78] ibid 87.

[79] ibid 74.

DVOs involving First Nations people were contested by the defendant/respondent.[80] Cunneen notes that this 'again raises issues about the sense of ownership of the process by Indigenous people and has implications in terms of either the aggrieved or the respondent understanding the nature of the order.'[81]

Cunneen identified that First Nations offenders convicted of breaching a DVO were also 'twice as likely as non-Indigenous offenders to be gaoled, and about half as likely to receive a fine. For every ten Indigenous breaches of a domestic violence order, between four and five … result[ed] in a sentence of imprisonment.'[82] This raises concerns about the extent to which DVOs may contribute to the disproportionate incarceration of First Nations men, and have spiralling, negative consequences for First Nations women and families. This is a relevant consideration when assessing the application of the due diligence standard of state responsibility regarding DVOs, and I consider this specifically in Chapter 6.

Issues identified with the court system and legal/judicial actors in respect of First Nations women

Prior research has identified that First Nations women may experience a multitude of barriers accessing and participating in the court system and court processes. For instance, Cunneen's research on DVOs found that while DVOs with a First Nations aggrieved were more likely to be granted, parties were less likely to attend court.[83] There may be many reasons First Nations women may not attend court when they

[80] ibid 87.

[81] ibid.

[82] ibid 90.

[83] ibid 87.

are victims of violence, including a lack of support,[84] and the court and its processes being alienating, frightening and stifling.[85] The court system and its services may be too formal,[86] and in some locations, there may be a lack of safe areas for women to wait.[87] First Nations women may consider that hearings are too short and matters are not dealt with satisfactorily, and there may be minimal time to brief lawyers due to courts being fly-in/fly-out and remote.[88] First Nations women may also be unable to make informed decisions due to a lack of advice and information, including a lack of knowledge about their rights, court processes and procedures.[89]

Earlier research also highlights that justice and legal system personnel may behave in culturally unsafe ways,[90] and there may be a lack of First Nations family support workers.[91] Community-based/Indigenous legal services may also not be sufficiently funded to help women in domestic violence cases, [92] and First Nations women may experience difficulties in accessing or using Legal Aid or community legal services due to having previous negative, personal experiences with the justice system.[93] Women may also struggle to access community-controlled organisations

[84] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 234.

[85] ibid 244; Victorian Indigenous Family Violence Task Force (n 20) 120.

[86] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 236.

[87] ibid 245.

[88] ibid.

[89] ibid 236.

[90] ibid. See also, *R v Kina* [1993] QCA 480.

[91] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 236.

[92] Royal Commission into Family Violence, *Volume V* (n 20) 39.

[93] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 235.

delivering legal services due to limited service availability.[94] Courts may also fail to acknowledge First Nations women's psychosocial issues,[95] including when women present as offenders,[96] First Nations women may lack confidence in the confidentiality, support and empathy offered when they access programmes and services,[97] and may consider that the legal system takes too long to deal with matters, including DVO breaches.[98] First Nations women's awareness of the cultural insensitivity and alienating nature of court processes has also been specifically identified as contributing to underreporting of domestic violence.[99] As Robinson described in the ATSIWTFV Report

> The justice system is based on Western values and forms of communicating, and it is also male-focused. This is exemplified in the processes, structures and functions that often exclude or silence all women, and have serious implications for Indigenous women in particular.[100]

She further described that

> The present justice system is characterised by cultural exclusiveness and does not easily accommodate the needs of minority groups who may not have the skills to understand its language, procedures or structural complexities.[101]

[94] Langton et al (n 19) 76.

[95] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 244.

[96] ibid 247.

[97] ibid 236.

[98] Cunneen, *Alternative and Improved Responses* (n 6) 94-95.

[99] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 245.

[100] ibid 222.

[101] ibid 224.

Other research describes that First Nations communities may not trust the legal system,[102] may not access it due to culturally linked shame and fear, as well as community attitudes towards violence.[103] Blagg observes that justice interventions that have been designed based on the 'settler' experience may not only lack legitimacy for First Nations people, but may displace customary law and discourage the accountability that would otherwise be clearly afforded by culturally legitimate mechanisms.[104] The importance of customary law as a way to regenerate communities and revive culture,[105] as well as a means to address social disorder and violence,[106] has been emphasised in research by, and with, First Nations women.[107] As Robinson has observed, '[t]he recognition of cultural differences is integral to ensuring real justice is done.'[108] Other academics, however, have raised concerns about some (mis)articulations of customary law and the negative impact this may have on First Nations women who experience violence.[109]

Finally, research suggests that the court system can operate as a compounding form of violence against First Nations women. As Langton et al describe, 'the inability of the ['settler'] judicial system to engage Aboriginal and

[102] ibid 236.

[103] ibid.

[104] Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2) 127.

[105] C Wohlan, *Aboriginal Women's Interest in Customary Law Recognition - Background Paper No.13* (Law Reform Commission of Western Australia 2005) cited in Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2) 127.

[106] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 251.

[107] Blagg et al, *Innovative Models* (n 58).

[108] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 250.

[109] See, for instance, Megan Jane Davis, 'Aboriginal Women and the Right to Self-Determination: A Capabilities Approach to Constitutional Reform' (PhD thesis, Australian National University 2010).

Torres Strait Islander victims (and perpetrators) in court processes related to family violence leads to…secondary abuses.'[110]

Problems with (mainstream) domestic and family violence services and the social service response to First Nations women

Moving now to the second component of the domestic violence response system—the specialist service response—there is considerable evidence that many First Nations women experience barriers in accessing 'settler'-controlled or mainstream domestic violence specialist services. These barriers suggest both administrative issues within the service system (including inadequate service availability) but also relate to issues of cultural safety.

Prior research highlights that domestic violence specialist services may not be available, accessible, or acceptable to First Nations women. As Cunneen has identified, based on review of data from 29 domestic and family violence services in Queensland, the percentage of First Nations clients accessing services was lower than would be expected based on population rates.[111] In interpreting these results, Cunneen describes that the majority of specialist services 'did not correspond with the location of Indigenous need',[112] which he considers was unsurprising given that most services (27 out of 29) were mainstream ('settler'-controlled), rather than Indigenous-specific, services.[113]

Blagg has similarly described that family violence services

[110] Langton et al (n 19) 70.

[111] Cunneen, *Alternative and Improved Responses* (n 6) 76.

[112] ibid 77.

[113] ibid.

> are *metro-centric* as well as *ethnocentric* and *Eurocentric*. There is a dearth of appropriately funded community-based prevention, intervention and treatment programs capable of mobilizing and engaging Aboriginal communities in the struggle against violence.'[114] (emphasis in original)

In Queensland's recent inquiry into domestic and family violence, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* ('NNNE'), it was similarly described that domestic violence services and refuges may be too far away from where First Nations women live.[115] Service provision in regional areas may be inconsistent and inaccessible,[116] and services may fail to accommodate First Nations women's realities (for instance, having older male children and being refused access to a refuge on that basis).[117] Langton et al have also found that First Nations women's access to secure and stable housing is undermined by limited housing availability.[118]

First Nations women across jurisdictions have consistently identified a lack of services as an issue that endangers their security and safety.[119] As Bolger describes, women in the NT reported having to leave their communities to find a safe place to stay/to get help,[120] and described being unable to get to safe refuge due to a lack of transport.[121] Her research also found that men would often follow First

[114] Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (n 2) 124.

[115] The Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Queensland Government 2015) 122.

[116] Langton et al (n 19).

[117] ibid 82.

[118] ibid.

[119] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 234.

[120] Bolger (n 20) 61.

[121] ibid.

Nations women to try and bring them back, including because women would sometimes call them when they became lonely.[122] More recently, the VRC also determined that in many rural areas First Nations women could not access either a 'settler' or community-controlled service,[123] and where services did exist, delays in getting appointments, and the lack of service outreach (i.e. women having to get to the service themselves), may reduce support opportunities.[124] Service inaccessibility may also be particularly acute for women in the Torres Strait Islands, with women living on remote islands needing to call a help line and wait for a Charter flight in order to attend a refuge on Thursday Island.[125]

Prior research also establishes that mainstream and community-controlled domestic violence services are often subject to inconsistent, short-term funding.[126] Concerns have been raised that mainstream 'settler'-controlled domestic and family violence services may also receive funding to work with First Nations clients—effectively taking money away from community-controlled services (discussed below)—despite those 'settler'-controlled services being culturally unsafe, and the community not being aware that those services exist. As the VIFVTF Report described

> many mainstream service providers were using the statistical data provided by the Australian Bureau of Statistics to submit for funds to provide services for the Indigenous community. Most Indigenous organisations had no knowledge of the services available with Indigenous specific funding and in

[122] ibid.

[123] Royal Commission into Family Violence, *Volume V* (n 20) 29.

[124] ibid.

[125] The Special Taskforce on Domestic and Family Violence in Queensland (n 115) 122-123.

[126] Langton et al (n 19) 86.

> cases where there was knowledge, the service provider was deemed to be culturally inappropriate and not 'Koori friendly'.[127]

In consultations for the ATSIWTFV, Robinson also identified that domestic violence services often do not work together and do not combine knowledge and skills.[128] This may be a function of competitive tendering processes within the NPM/neoliberal economic model I described in Chapter 1, which I consider further in Chapter 7.

First Nations women may also experience discrimination and racism when accessing mainstream 'settler'-controlled services.[129] Service employees may lack knowledge of First Nations peoples' culture and traditions,[130] believe that domestic violence is cultural,[131] and 'effectively collude in the continuation of violence' against First Nations women.[132] The VIFVTF Report identified that service workers may also enforce 'feminist' views that First Nations women must end their abusive relationship to get support, and this may not match First Nations women's wishes.[133] Services may also assume that a First Nations victim should use a community-controlled service, which is not only discriminatory, but denies First Nations women autonomy and choice.[134] The need to promote cultural safety in 'settler'-controlled services

---

[127] Victorian Indigenous Family Violence Task Force (n 20) 116; note 'The Task Force recommends that Government ensure that Indigenous specific funding have accountability mechanisms put in place to ensure that Indigenous community members have an understanding of and have access to those services and that the recipient of the funds have an obligation to provide proof of the services delivered.'

[128] Aboriginal and Torres Strait Islander Women's Task Force (n 3) Annexure 2, 22.

[129] Royal Commission into Family Violence, *Volume V* (n 20) 29; Langton et al (n 19) 86; Victorian Indigenous Family Violence Task Force (n 20) 98.

[130] Bolger (n 20) 71.

[131] ibid.

[132] ibid.

[133] Victorian Indigenous Family Violence Task Force (n 20) 98.

[134] Royal Commission into Family Violence, *Volume V* (n 20) 29.

working with First Nations women has been reinforced by studies and inquiries,[135] which have recommended that services employ First Nations support workers,[136] as well as provide adequate resources and training to non-Indigenous staff.[137] The cultural capability of mainstream, 'settler'-controlled services is critically important as First Nations women, by choice or necessity, may have to engage with those services.

Finally, as I briefly identified earlier, there is evidence that First Nations women may engage with domestic violence services differently to non-Indigenous women. First Nations women may be more likely to seek help in a crisis,[138] and may use services more as respite than as a way to end a relationship.[139] In inquiries such as NNNE, this has been used as an opportunity to recommend co-location of a broad range of social welfare services, [140] and—in the VRC—promote 'one stop shop' approaches.[141] Some First Nations women have raised concerns about co-location and 'one stop shop' approaches citing that these approaches may expose women to greater risk of child protection involvement, that women may have to repeatedly tell their stories and talk about the violence, and co-location may disadvantage community-controlled organisations, who may receive less referrals as a result.[142] For instance, in her submissions to VRC, CEO of *Djirra*, Antoinette

[135] See, for example, Langton et al (n 19).

[136] Aboriginal and Torres Strait Islander Women's Task Force (n 3) Annexure 2, Submission 28, 31.

[137] Royal Commission into Family Violence, *Volume V* (n 20) 3; Langton et al (n 19).

[138] Cunneen, *Alternative and Improved Responses* (n 6) 78.

[139] Blagg, 'Restorative Justice and Aboriginal Family Violence' (n 1) 201; Bolger (n 20) 66.

[140] The Special Taskforce on Domestic and Family Violence in Queensland (n 115) 126.

[141] Royal Commission into Family Violence, *Volume V* (n 20) 33.

[142] Langton et al (n 19) 83.

Braybrook, specifically described that 'one stop shop' approaches may reduce women's confidence that the service will support them to leave the perpetrator should they wish to do so, that the service may not be private and may increase pressure for the family to remain together, and that women may have less trust in a service that also works with perpetrators.[143] Notwithstanding these concerns, co-located service delivery for victims of domestic violence continues to be emphasised in contemporary public policy approaches.[144] A preference for co-ordinated approaches is also reflected in the proliferation of multi-agency or inter-agency committees administering the domestic violence response, including via risk assessment models. Langton et al's recent research has identified challenges with these systems for First Nations women in cross-border situations (in this case women in Albury/Wodonga on the NSW/Victoria border).[145] Blagg has also observed that multi-agency approaches may expose women to increased surveillance by state agencies and organisations.[146] I discuss these approaches further in Chapter 7.

Challenges facing community-controlled services

When it comes to domestic violence specialist service delivery, many First Nations women express a preference for using First Nations community-controlled services and local solutions to domestic violence.[147] The VRC reported hearing consistently

[143] Royal Commission into Family Violence, *Volume V* (n 20) 34.

[144] See Recommendation 37 of the Royal Commission into Family Violence, *Summary and Recommendations* (Victorian Government Printer March 2016) 55.

[145] Langton et al (n 19).

[146] Harry Blagg, 'A Long Way from Duluth: Decolonizing Family Violence Intervention in Indigenous Australia' (EuroCrim 2017, Cardiff, 13-16 September 2017).

[147] See for instance, Langton et al (n 19).

that most First Nations people had a 'strong preference' for receiving services from community-controlled organisations, because—in addition to other strengths—those organisations were most likely to deliver services in culturally appropriate ways.[148] This emphasis is also reflected in the recommendations and findings of NNNE,[149] as well as the work of other inquiries and processes, including research led by First Nations women.[150] Notwithstanding this, there are numerous barriers that may limit First Nations women's access to community-controlled services, as well as challenges that may impact the operation of these services more generally.

Funding

A primary concern facing First Nations community-controlled organisations delivering domestic violence-related services is underfunding. Community-controlled organisations form part of the 'Indigenous sector' which Rowse describes is

> neither the 'state' (though it is almost entirely publicly funded) nor is it 'civil society' (though its organizations are mostly private concerns in their legal status). Rather the Indigenous Sector is a third thing created out of the interaction—sometimes but not always, frictional—of government and the Indigenous domain. The Indigenous sector is an important source of Indigenous choice.[151]

Although Sanders argues that Australian Indigenous policy was protected for a decade or more by the rhetoric of self-determination (influential during the 1970s and

[148] Royal Commission into Family Violence, *Volume V* (n 20) 33.

[149] The Special Taskforce on Domestic and Family Violence in Queensland (n 115) 123-124.

[150] See, for instance, Royal Commission into Family Violence, *Volume V* (n 20); Aboriginal and Torres Strait Islander Women's Task Force (n 3); Cunneen, *Alternative and Improved Responses* (n 6); Langton et al (n 19).

[151] Tim Rowse, *Indigenous Futures: Choice and Development for Aboriginal and Islander Australia* (University of New South Wales Press 2002) 72.

1980s),[152] with the arrival of the 'implementation era' Indigenous people and organisations were brought into the broader neoliberal market economy alongside 'settler' organisations and mainstream service delivery.[153] The neoliberal shift in economic policy that supported the move to NPM approaches has had a range of impacts on First Nations people and organisations, some positive, although arguably, mostly negative.[154] Sullivan observes that since the abolition of ATSIC by repeal of legislation in 2005, NPM has 'facilitated the destruction of the Aboriginal community-controlled service sector';[155] forcing community-controlled organisations into competition with one another and narrowing the services organisations are funded to provide. This results in the funding of one-off, fragmented programmes without sustained support, and the exposure of community-controlled organisations to an interface with 'high-churn' government agencies, who lack knowledge and awareness of the complex funding needs and development within the sector.[156] As Sullivan remarks, based on his research with community-controlled organisations in the Kimberley region of WA in 2010, 'highly technical 'scientific' public management

[152] Will Sanders, 'Missing ATSIC: Australia's Need for a Strong Indigenous Representative Body' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press, 2018) 113.

[153] Kirsty Gover, *Tribal Constitutionalism: States, Tribes, and the Governance of Membership* (Oxford University Press 2010).

[154] See chapters in Deirdre Howard-Wagner, Maria Bargh and Isabel Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018).

[155] Patrick Sullivan, 'The Tyranny of Neoliberal Public Management and the Challenge for Aboriginal Community Organisations' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018) 205.

[156] ibid 206.

is necessarily antagonistic to diversity'—including the diversity presented by First Nations communities and community-controlled organisations.[157]

Sullivan also observes that the contributions community-controlled organisations may make, including to learning, governance and service provision, may depart from mainstream indicators of success and, accordingly, may not 'speak' the same language as government funders.[158] As Sullivan describes, due to Australia's 'monoculturalism', government managers are rendered 'deaf to cultural nuances', including the need for local autonomy and difference, leading to a devaluation of the services that First Nations community-controlled organisations provide to communities.[159] This can all translate into communities and organisations facing difficulties in securing, and maintaining, adequate government funding.

Although to date there has been nothing explicitly written about community-controlled organisations, domestic violence services and the NPM economic model, domestic and family violence inquiries have frequently identified that a lack of funding, or difficulties associated with getting funding, undermines the development and continuation of local solutions to violence. As was described in the VRC

> Long standing under-investment, combined with increasing demand for services due to population growth and increased levels of reporting, means that Aboriginal organisations and communities are struggling to deliver their own solutions.[160]

That report further noted that

> in examining government funding data it is apparent that there is a pattern of relatively small allocations of funding spread widely across a number of organisations. This occurs both in short-term and ongoing funding streams.

[157] ibid 205.

[158] ibid 207.

[159] ibid 206.

[160] Royal Commission into Family Violence, *Volume V* (n 20) 50.

> This may reflect responsiveness on a geographic basis, the emergence of particular projects over time, a high degree of fragmentation or potentially all three.[161]

This reinforces earlier findings of the VIFVTF Report, which also emphasised the need for First Nations community organisations to be given long-term funding, rather than one-off grants to community projects, when working in the domestic violence space.[162]

The processes by which community-controlled organisations delivering domestic violence services are forced to apply for, and secure, funding have also previously been criticised. For instance, concerns were raised in submissions to the ATSIWTFV that domestic violence service funding guidelines are inaccessible and full of bureaucratic language,[163] and that '[c]ommunity people often don't know, [and] aren't informed about available funding.'[164] The VIFVTF similarly identified that workers may have a lack of resources to write funding submissions or tenders,[165] and the VRC described that organisations have to repeatedly ask for funds and re-apply year after year, without any certainty that the programme will be continued, even if it is very successful.[166] Regional/smaller communities may also miss out on funding to metro-based or state-wide organisations,[167] and funding allocations may be decided by local governments unilaterally without consultation with First Nations

[161] ibid.

[162] Victorian Indigenous Family Violence Task Force (n 20) 118.

[163] Aboriginal and Torres Strait Islander Women's Task Force (n 3) Annexure 2, Submission 10.

[164] ibid, Annexure 2, Submission 31, 32.

[165] Victorian Indigenous Family Violence Task Force (n 20) 118.

[166] Royal Commission into Family Violence, *Volume V* (n 20) 31.

[167] Victorian Indigenous Family Violence Task Force (n 20) 118.

organisations.[168] In the VRC, difficulties associated with funding were described as being 'disdainful to clients' and 'a disincentive for people in need of assistance to use services because of lack of continuity.'[169]

There is also evidence that the IAS has had a detrimental impact on the community-controlled domestic violence service sector. When the IAS was introduced in 2014, it 'significantly restructured the Commonwealth's relationship with the Indigenous sector.'[170] There is evidence that community-controlled organisations, including those providing domestic violence services, were not consulted prior to the IAS' implementation, although the significant funding regime changes it brought about meant that many organisations faced potential closure.[171] The IAS administers funding across a range of portfolios, including Commonwealth funding related to women's safety. In Langton et al's recent site-based research, the researchers identified that the (federally-funded) Mildura Office of the community-controlled domestic violence organisation *Djirra*, had experienced a significant funding cut with the introduction of the IAS in the 2013/2014 funding cycle and, consequently, the organisation now worked on a (likely more destabilising) one to three-year funding cycle.[172] As Sanders describes, the introduction of the IAS coincided with a move to streamline and centralise Indigenous specific-programmes

[168] Aboriginal and Torres Strait Islander Women's Task Force (n 3) Annexure 2, Submission 47, 37.

[169] Royal Commission into Family Violence, *Volume V* (n 20) 30-31.

[170] Alexander Page, 'Fragile Positions in the New Paternalism: Indigenous Community Organisations During the 'Advancement' Era in Australia' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018) 185.

[171] ibid 186.

[172] Langton et al (n 19) 76.

at the Commonwealth level into the Prime Minister and Cabinet portfolio, which he argues was 'very adverse to Indigenous interests.'[173]

Where funding is provided by either Commonwealth or state sources, prior research suggests that funding allocations may be insufficient for community-controlled organisations to deliver the full range of domestic violence-related services the community needs. For instance, in several submissions to the ATSIWTFV, it was described that community safe houses (refuges)—while being increasingly used by community members—were under-resourced and may not be open for women to access when they need them.[174] It has also been identified that there may be a lack of funding for adequate staffing or staff training, including in relation to specialist roles.[175] A lack of funding has also been identified as undermining opportunities for capacity-building within community-controlled organisations delivering domestic violence services,[176] which may have a cyclical impact on the service's ability to deliver its services and secure funding.

Limited programme evaluation may also impact the funding of community-controlled organisations and diminish their funding competitiveness. Memmott et al described in 2006 that few Indigenous family violence programmes were evaluated,[177] and in 2014 the Victorian Auditor-General re-affirmed that—in general terms—there remained 'significant scope' to improve monitoring, evaluation and

[173] Sanders (n 152) 120.

[174] Aboriginal and Torres Strait Islander Women's Task Force (n 3) Annexure 2, Submissions 20 and 34, 25, 33.

[175] ibid, Annexure 2, Submission 31, 32.

[176] Victorian Indigenous Family Violence Task Force (n 20) 116, 118; Aboriginal and Torres Strait Islander Women's Task Force (n 3) Annexure 2, Submission 30, 31.

[177] Memmott et al (n 14) 94.

reporting of First Nations service delivery strategy and programme outcomes.[178] As Mugford and Nelson describe, a primary reason for a lack of evaluation is that many community projects run on small budgets and the cost of evaluation would outweigh the cost of running the programme. They describe that 'much more investment in evaluation is needed, but not at the expense of precious operational dollars.'[179] Programme evaluation is also undermined by a lack of data, and limited access to data enabling communities to assess the problem and provide adequate services.[180]

Concerns have also been identified that funding may not extend sufficiently to community-controlled crisis programmes and solutions for First Nations women. Both Memmott et al and Cunneen have previously identified that while there are many Indigenous family violence projects across Australia, most operational programmes regarding violence are preventive, not interventionist.[181] This creates a gap in service delivery, meaning that at points of 'crisis' First Nations women's preferred services may be unavailable.

Safety, confidentiality, and access to justice

Notwithstanding First Nations women's common preference for accessing community-controlled services,[182] prior research also highlights that community-controlled services, particularly within small or close-knit communities, may not

[178] Victorian Auditor-General's Office, *Accessibility of Mainstream Services for Aboriginal Victorians* (Victorian Government Printer May 2014) x.

[179] Jane Mugford and Diana Nelson, *Violence Prevention in Practice: Australian Award-Winning Programs* (Australian Institute of Criminology Research and Public Policy Series 3, 1996) 2.

[180] Memmott et al (n 14) 95.

[181] ibid 3; Cunneen, *Alternative and Improved Responses* (n 6) 35.

[182] Langton et al (n 19).

always be safe or confidential. First Nations organisations,[183] including community-controlled refuges,[184] may not be appropriate for all women due to family connections, and while the service delivery model may be more holistic and safe, this may be offset by the perceived lack of confidentiality, or lack of privacy, within the service.[185] In these circumstances, women may access mainstream or 'settler'-controlled services in preference to community-controlled ones, reinforcing the need for cultural safety in mainstream services as well as sufficient service availability. [186] In NNNE, it was also described that community safe houses (refuges) for women and children in rural and remote areas may not be safe for First Nations women to access as their location may not be sufficiently confidential.[187]

Other barriers may impact service provision by community-controlled legal services, as such services may be required to prioritise criminal matters, conflict of interest policies may disadvantage First Nations women seeking assistance in relation to domestic violence,[188] and organisations may lack sufficient funding to hire lawyers with expertise in these areas.[189] Underfunding may also lead to high caseloads and inadequate servicing.[190] In response to these issues, First Nations women have established specific First Nations women's legal services, although recent literature suggests that these may also be under-resourced and unable to

[183] Aboriginal and Torres Strait Islander Women's Task Force (n 3) Annexure 2, Submission 16, 23.

[184] Victorian Indigenous Family Violence Task Force (n 20) 98.

[185] Langton et al (n 19) 85.

[186] ibid 86.

[187] The Special Taskforce on Domestic and Family Violence in Queensland (n 115) 122.

[188] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 236.

[189] Langton et al (n 19) 76.

[190] Aboriginal and Torres Strait Islander Women's Task Force (n 3) 236.

cope with high service demands.[191] For instance, the VRC heard submissions from both the *Aboriginal Family Violence Prevention and Legal Service Victoria* and *Victorian Aboriginal Legal Service*, with both describing significant under-resourcing and resulting service limitations.[192] These concerns are reinforced by other research.[193]

Contribution of my thesis

There is an extensive literature, primarily by First Nations women and their allies, as well as numerous government inquiries, that establishes that there are a range of deficiencies and limitations in the current domestic violence response to First Nations women. These challenges extend both to criminal justice systems and domestic violence specialist services. A unique contribution I make in this thesis is to examine issues within both the criminal justice and the specialist service response together, adopting a unique methodological approach (Chapter 4) and a theoretical framework specifically attuned to state power and responsibility (Chapter 3). By framing problems in the domestic violence response to First Nations women as a human rights issue and one of state responsibility, my thesis also anticipates rights-based solutions (see Chapter 8). Finally, by examining a unique cohort of fatal domestic violence cases, my thesis examines the domestic violence response system in a new way that adds weight to prior research in this area.

[191] ibid 237.

[192] Royal Commission into Family Violence, *Volume V* (n 20) 39.

[193] Langton et al (n 19) 76.

PART II: Self-determination and responses to domestic violence

The final body of literature relevant to my thesis relates to Indigenous peoples' right to self-determination. In light of limitations of the criminal justice and specialist service response discussed in Part I of this chapter, throughout this thesis I specifically focus on the right to self-determination and consider its relevance to domestic violence responses. By focusing on self-determination as a right, I consciously extend the reach of this criminologically-oriented thesis into the potentially transformative international human rights law space.

Overview of my approach

While in this section I briefly chart the development of the right to self-determination as one belonging to Indigenous peoples, I focus on the vision of self-determination articulated in the UNDRIP. I acknowledge that, in some ways, my focus on self-determination as a right under international human rights law is unduly limiting, as this is but one expression of self-determination. As former Special Rapporteur on the Rights of Indigenous Peoples, Rodolfo Stavenhagen, has described

> Self-determination is an idée-force of powerful magnitude, a philosophical stance, a moral value, a social movement, a potent ideology, that also may be expressed, in one of its many guises, as a legal right in international law.[194]

In another guise, for instance, self-determination is also recognised as an international legal principle with potentially broad application.[195] It is also regularly used as an ideological way to normatively describe Indigenous peoples' freedom and

[194] Rodolfo Stavenhagen, 'Self-determination: Right or Demon?' in Donald Clark and Robert Williamson (eds), *Self-Determination: International Perspectives* (Macmillan Press 1996) 2.

[195] See Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995) 132-133.

control over their lives. I do not consider these formations of self-determination in depth, although I briefly revisit its different guises in Chapter 8.

I also acknowledge that self-determination is an inalienable right that is not contingent on the state's recognition of it.[196] Self-determination belongs to Indigenous peoples even though it may be systematically denied by the states in which Indigenous peoples live. However, for the purposes of this thesis, I focus on what the state is required to do to give effect to self-determination as it is articulated in UNDRIP. I am particularly focused on the specific responsibilities that meeting this right may entail in relation to responding to domestic violence against First Nations women.

As will become apparent in this section, self-determination operates in the UNDRIP as a type of 'umbrella right' that frames Indigenous peoples' more specific rights claims.[197] In this way, self-determination is taken to justify other rights (which are understood as expressions of it), such as the right to use native languages, or the right to traditional lands.[198] Some commentators have criticised this framing of self-determination—the so-called 'maximalist approach'—arguing that it disregards the political character of self-determination, by making self-determination 'all things to all men.'[199] This approach may also make 'self-determination' more palatable to governments as it may disconnect self-determination from structural, political change. In other words, 'self-determination' may be 'recognised' by the state in

[196] Alexandra Xanthaki, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land* (Cambridge University Press 2007) 132.

[197] ibid 152.

[198] ibid 153.

[199] See Rosalyn Higgins, *Problems and Processes: International Law and How We Use It* (Oxford University Press 1995) 128; see also Stavenhagen (n 194) 7.

particular areas without a broader redistribution of power being required.[200] I have strong sympathy for this argument, and to an extent I agree that tethering the case for improved responses to domestic violence to the right to self-determination may distract (and potentially also detract) from the political, structural change that is required to achieve meaningful political empowerment for First Nations peoples in Australia, and Indigenous peoples living in other 'settler' contexts. However, I consider that my focus is justified based on the way the UNDRIP constructs self-determination as an umbrella right that finds expression through different practices and processes. I specifically outline my concerns about whether this construction of self-determination is problematic in Chapter 8 of this thesis.

The right to self-determination under international human rights law

Under international human rights law, First Nations people have the right to self-determination. The right to self-determination is enshrined in Article 1 of both the *International Covenant on Civil and Political Rights* ('ICCPR')[201] and the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR'),[202] which proclaim that '[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'

[200] Xanthaki, *Indigenous Rights and United Nations Standards* (n 196) 153.

[201] *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

[202] *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

While its formulation in ICCPR and ICESCR applies to individuals, the UNDRIP,[203] which was opened for signature in 2007, and endorsed by Australia in 2009, specifically recognises that self-determination has particular, collective and individual, significance for Indigenous peoples. UNDRIP builds on existing Indigenous rights regimes established in International Labour Organisation Conventions 107 and 169, but is the first instrument to extend the right to self-determination to Indigenous peoples as a group right.[204] UNDRIP has been described as the 'most important development concerning the recognition and protection of the basic rights and fundamental freedoms of the world's indigenous peoples to date.'[205] UNDRIP's formation not only represented a major development in international law,[206] but one unique insofar as it was driven strongly by long-term efforts of Indigenous peoples worldwide.[207] As a declaration, UNDRIP is considered 'soft' international law,[208] although, as I will discuss in Chapter 8, this does not mean that self-determination is not, and should not be considered, a right with significant normative force.

Indigenous peoples' right to self-determination is specifically articulated in Article 3 of UNDRIP which states that 'Indigenous peoples have the right to self-

[203] *UN Declaration on the Rights of Indigenous Peoples,* UNGA Res 61/295 (2 October 2007) UN Doc A/RES/61/295.

[204] Alexandra Xanthaki, 'The UN Declaration on the Rights of Indigenous Peoples and Collective Rights: What's the Future for Indigenous Women' in Stephen Allen and Alexandra Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011).

[205] Erica-Irene Daes, 'The UN Declaration on the Rights of Indigenous Peoples: Background and Appraisal' in Stephen Allen and Alexandra Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011) 38.

[206] Xanthaki, 'The UN Declaration on the Rights of Indigenous Peoples' (n 204) 413.

[207] ibid 413; Daes, 'The UN Declaration on the Rights of Indigenous Peoples' (n 205) 23-36.

[208] Davis (n 109) 44.

determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'[209]

Although specifically articulated in Article 3, the right to self-determination infuses all articles of the Declaration; UNDRIP operating as a 'framework' for the realisation of Indigenous self-determination.[210] The language in Article 3 of UNDRIP mirrors that used in Article 1 of both the ICCPR and ICESCR (bodies of 'hard' international law), however—for the first time—UNDRIP explicitly recognises Indigenous peoples as collective beneficiaries of the right. Quane describes that the UNDRIP's recognition of self-determination as a collective right belonging to Indigenous peoples is 'one of the most significant stages in the development of the right to self-determination since decolonisation.'[211] Quane's reference to decolonisation hints at the complex history of the right to self-determination and its contested development in international law.

Self-determination has been described as an obscure and thorny[212] concept in international law, due largely to its historical linkage with states' rights and decolonisation processes related to non self-governing colonial territories.[213] Self-determination has been recognised as one of international law's most fundamental principles and—at least in part—constitutes a *jus cogens* norm of an *erga omnes*

[209] *Declaration on the Rights of Indigenous Peoples* (n 203) art 3.

[210] Davis (n 109) 42; S James Anaya, *International Human Rights and Indigenous Peoples* (Aspen Publishers 2010) 61.

[211] Helen Quane, 'The UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights' in Stephen Allen and Alexandra Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011) 260.

[212] Xanthaki, *Indigenous Rights and United Nations Standards* (n 196) 131.

[213] Benyamin Neuberger, 'National Self-Determination: A Theoretical Discussion' (2001) 29 *Nationalities Papers* 391; Davis (n 109) 8.

type.[214] As Hofbauer describes, self-determination is 'tied to the understanding that the people of a territory are to be heard and their consent obtained before their status is altered.'[215] It is therefore closely related to freedom and respect. Self-determination has also been used to progress the decolonisation agenda and return of occupied states.[216] However, commentators such as Apache and Purepecha scholar, and former Special Rapporteur on the Rights of Indigenous Peoples, S James Anaya argue that for Indigenous peoples the right to self-determination has come to mean something different to the territorial secessionist understanding of self-determination pervasive during the decolonisation era.[217]

Anaya describes that the right to self-determination within the Indigenous rights lexicon reflects considerable conceptual progression beyond a narrow 'statist' understanding of self-determination as a right to territorial non-interference.[218] He frames the right to self-determination in UNDRIP as an 'alternative understanding'[219] that departs from the 'minimalist' conception of self-determination that was dominant during the decolonisation period.[220] As Cobble Cobble scholar, and current Chair of the UN Expert Mechanism on the Rights of Indigenous Peoples ('EMRIP'), Megan

[214] Matthew Saul, 'The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?' (2011) 11(4) *Human Rights Law Review* 609, 635.

[215] Jane A Hofbauer, 'Self-Determination, Right to' in Christina Binder, Manfred Nowak, Jane A Hofbauer and Philipp Janig (eds), *Elgar Encyclopedia of Human Rights* (Edward Elgar Publishing, forthcoming).

[216] Xanthaki, *Indigenous Rights and United Nations Standards* (n 196) 146.

[217] Anaya (n 210) 60-61.

[218] ibid 61; See also, Davis (n 109); Xanthaki, *Indigenous Rights and United Nations Standards* (n 196); Iris Marion Young, 'Two Concepts of Self-Determination' in Stephen May, Tariq Modood and Judith Squires (eds), *Ethnicity Nationalism and Minority Rights* (Cambridge University Press 2009).

[219] Anaya (n 210) 60.

[220] Xanthaki, *Indigenous Rights and United Nations Standards* (n 196) 146-155.

Davis further describes, while self-determination may have found some of its earliest expressions within the decolonisation era, the right has significantly evolved since this time to encompass a different, broader, meaning, particularly for the worlds Indigenous peoples.[221] Reflecting on self-determination as it is expressed in Article 3 of UNDRIP, Anaya describes that

> under a human rights approach, attributes of statehood or sovereignty are at most instrumental to the realization of these values—they are not the essence of self-determination for peoples...Full self-determination, in a real sense, does not justify a separate state and may even be impeded by a separate state. It is a rare case in the post-colonial world in which self-determination, understood from a human rights perspective, will require secession or the dismembering of states.[222]

Anaya describes that the approach to self-determination enshrined in the UNDRIP instead seeks to facilitate Indigenous peoples' recovery, development and expression of self-determination within 'the framework of the states in which they live, through contextually defined arrangements that accommodate to diverse realities.'[223] This also reflects Young's description of self-determination as a quest for ''an institutional context of non-domination' rather than a blanket principle of non-interference.'[224] The contextual inclusion of self-determination in UNDRIP also recognises that Indigenous peoples have been systematically, historically and contemporarily denied human rights, and seeks to remedy that denial[225] via Indigenous peoples' full participation and partnership in the nation-states where they

[221] Davis (n 109) 11-19.

[222] Anaya (n 210) 60.

[223] ibid.

[224] Young (n 218) 187.

[225] Anaya (n 210).

live.[226] As Anaya describes, including the right to self-determination in the UNDRIP also recognises that Indigenous people as a group/s may have different and divergent needs and interests from the state's majority population, and accordingly must retain the ability to create their own institutions, as well as participate meaningfully and fully in the state in which they live.[227] These dual aspects reflect the predominant focus of self-determination in the UNDRIP, and reflect what Anaya describes as both remedial and substantive aspects of self-determination: remedying the wrongs of the past and setting up appropriate infrastructure for Indigenous peoples to live and thrive into the future.[228] These dual aspects of self-determination—autonomous governance and participation—are also, arguably, those of greatest relevance to state responses to domestic violence.[229]

The right to autonomous governance

As Davis argues, the UNDRIP privileges an institutional approach to self-determination.[230] This is most clearly reflected in the Declaration's emphasis on Indigenous peoples' right to establish and maintain autonomous institutions. The right to autonomous governance is enshrined in Articles 4, 5, 20 and 34 of the UNDRIP. Article 4 specifically tethers the right to autonomous governance to the right to self-determination, proclaiming that

> Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and

[226] Erica-Irene A Daes, 'Some Considerations on the Right of Indigenous Peoples to Self-Determination' (1993) 3(1) *Transnational Law & Contemporary Problems* 1, 8.

[227] Anaya (n 210).

[228] ibid 61.

[229] ibid 63.

[230] Davis (n 109) 182.

> local affairs, as well as ways and means for financing their autonomous functions.[231]

Article 5 similarly proclaims that Indigenous peoples have the right to 'maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.'

Article 20(1) reinforces that Indigenous peoples have the right to maintain and develop their own systems and institutions, and that they have the right to be 'secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.'[232]

Article 34 also proclaims that

> Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Importantly, Article 39 provides that 'Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.'

Articles 4 and 39 have particular relevance when considering domestic and family violence service funding, which I discussed in Part I of this chapter (and discuss further in Chapter 7).

The right to participatory engagement

In addition to Article 5 discussed above, which reinforces that Indigenous peoples retain the right to participate fully in the political economic, social and cultural life of

[231] *Declaration on the Rights of Indigenous Peoples* (n 203) art 4.

[232] ibid art 20(1).

the states in which they live, participatory engagement is also enshrined in Articles 18 and 19 of UNDRIP.

> Article 18 proclaims that
>
> > Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19 proclaims that

> States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

These articles together enshrine participatory rights reflective of Anaya's understanding of Indigenous peoples' dual status as peoples with the right to develop their own systems of governance and peoples who also have the right to participate fully in the state in which they live.[233] Drawing on participant perspectives from my study's empirical work, I consider the extent to which these different aspects of the right are met by Australia in its domestic violence response in Chapter 8.

Territorial integrity and political unity

Notwithstanding the specific conceptualisation of self-determination within the UNDRIP, it is important to note that self-determination's perceived synonymy with secession, threats to territorial integrity and challenges to state sovereignty remained persistent throughout UNDRIP's drafting process. State parties regularly raised concerns that recognising Indigenous peoples' right to self-determination would also open the possibilities of group secession rights, and these concerns were addressed

[233] Anaya (n 210) 60.

by the ultimate inclusion of Article 46(1) in UNDRIP, which mirrors the safeguard clause from the Friendly Relations Declaration.[234] Article 46(1) proclaims that

> Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.[235]

The inclusion of this article hints at the complex political environments that continue to characterise Indigenous peoples' relationships with the states in which they live, particularly those with 'settler' populations that continue to occupy Indigenous lands and territories (including Australia). I discuss this in greater depth in Chapter 8.

Contribution of my thesis

In this thesis, I argue that self-determination has particular relevance to responding to domestic violence against First Nations women. In addition to states having a range of responsibilities to exercise due diligence in responding to domestic violence against women (discussed earlier in Chapter 1), Article 22(2) of UNDRIP specifically proclaims that

> States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Examining what 'state responsibility' means, and what states are required to do to ensure First Nations women's experiences of domestic violence are responded to effectively, is an important but challenging question. Examining how the state's response to violence interacts with First Nations peoples' right to self-determination is accordingly a key focus of my thesis.

---

[234] Davis (n 109) 39.

[235] *Declaration on the Rights of Indigenous Peoples* (n 203) art 46.

The need for specialised response systems and strategies, different to those of the 'settler' population, to respond to domestic violence against First Nations women in Australia has been highlighted by research and inquiries across jurisdictions.[236] This has been reflected in recent recommendations of DFVDRs in NSW,[237] and Queensland,[238] as well as the WA Ombudsman.[239] It has also been recognised in recommendations of the VRC,[240] NNNE,[241] and in other research.[242] Internationally, the Special Rapporteur on Violence Against Women,[243] and the Special Rapporteur on Indigenous Peoples[244] have both called for specific national action plans addressing violence against First Nations women, noting that plans must be developed in 'close consultation with indigenous women and other relevant

[236] See, for instance, Blagg, 'Restorative Justice and Aboriginal Family Violence' (n 1) 198; Aboriginal and Torres Strait Islander Women's Task Force (n 3); SNAICC, National Family Violence Prevention Legal Services, National Aboriginal and Torres Strait Islander Legal Services, *Strong Families, Safe Kids: Family Violence Response and Prevention for Aboriginal and Torres Strait Islander Children and Families* (SNAICC, National Family Violence Prevention Legal Services, National Aboriginal and Torres Strait Islander Legal Services September 2017).

[237] Domestic Violence Death Review Team, *Report 2017-2019* (Domestic Violence Death Review Team 2020) xx.

[238] Domestic and Family Violence Death Review and Advisory Board, *2016-2017 Annual Report* (Domestic and Family Violence Death Review and Advisory Board 2017) 15.

[239] Ombudsman Western Australia, *Investigation into Issues Associated with Violence Restraining Orders and their Relationship with Family and Domestic Violence Fatalities* (Ombudsman Western Australia 2015) 37.

[240] Royal Commission into Family Violence, *Volume V* (n 20).

[241] The Special Taskforce on Domestic and Family Violence in Queensland (n 115).

[242] See, for instance, Chay Brown, 'From the Roots Up: Principles of Good Practice to Prevent Violence Against Women in the Northern Territory' (PhD thesis, Australian National University 2021); Langton et al (n 19).

[243] See, for instance, United Nations Human Rights Office of the High Commissioner, 'End of Mission Statement by Dubravka Šimonović, United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences, on Her Visit to Australia from 13 to 27 February 2017' (*UN Office of the High Commissioner*, 27 February 2017) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21243&LangID=E> accessed 2 December 2021.

[244] UN General Assembly, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia' (8 August 2017) UN Doc A/HRC/36/46/Add.2 [96].

stakeholders.'[245] The CEDAW[246] and CERD[247] committees have also echoed these calls. However, further work is required to ascertain to what extent the right to self-determination is already considered relevant to differentiated domestic violence responses for First Nations women, and to what extent this is a desirable, meaningful, framing.

The right to self-determination enlivens issues and responsibilities that intersect with other state responsibilities related to domestic violence, including those articulated within the due diligence standard. Understanding how these rights and responsibilities interact necessitates a complex, important conversation relevant not only to the specific issue of domestic violence responses, but the conceptual progression of human rights law. In light of states' international responsibilities to protect women and investigate and punish domestic violence, further analysis is also required to ascertain to what extent human rights mechanisms have integrated Indigenous rights to self-determination into their practice and considered self-determination to be relevant to domestic violence responses. In this thesis, I attempt to respond to this gap, and this analysis can be found in Chapter 8.

Conclusion

In the last two chapters I have outlined the literature that frames and justifies my thesis. I have identified a number of gaps in the literature and indicated how my

[245] ibid.

[246] UN Committee on the Elimination of Discrimination Against Women 'Concluding Observations on the Eighth Periodic Report of Australia' (20 July 2018) UN Doc CEDAW/C/AUS/CO/8 [52(f)].

[247] UN Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia' (26 December 2017) UN Doc CERD/C/AUS/CO/18-20 [28(a)].

study seeks to respond to these gaps through an innovative, interdisciplinary study. In the next two chapters, I outline my theoretical framework and my study's methodology, both of which operate as important anchors for subsequent substantive chapters in this thesis.

Chapter 3: Theoretical Framework

Introduction

As I outlined in my thesis' Introduction, in this study I ask the following research questions: 'what domestic violence-related service interactions do First Nations women in Australia have prior to fatal episodes of domestic violence?'; 'do these service responses reflect and respect First Nations women's rights as women and Indigenous peoples?'; and 'how can these responses be improved'? To respond to these questions, I integrate different theories to develop a framework that supports my investigation of the research problem, guides my study methodology (outlined in Chapter 4), and helps me to make sense of the data. While this chapter outlines my theoretical framework, it should be read in conjunction with Chapter 4, which outlines my study's methodology (and epistemology).

My theoretical framework for this study draws both on intersectionality and postcolonial theory. In Part I of this chapter, I describe that intersectionality provides a useful heuristic, or rule of thumb, to understand and analyse First Nations women's experiences of domestic violence responses in Australia. I use intersectionality as a lens through which to conceive of the relationship between First Nations women and the Australian 'settler' state, and as a way to uncover state power as it is expressed within the domestic violence response. I describe that applying intersectionality in this context necessitates integration of postcolonial theory, given Australia's history of invasion/colonisation.

In Part II, I outline relevant aspects of postcolonial theory. In this thesis, I locate colonialism as a persistent and guiding structure of the Australian state,

familiar to the work of Wolfe[1] and Watson.[2] I take this structure into account in examining domestic violence responses as I consider that these responses reflect and express the intentional decisions, priorities, and interests of the state. In my theoretical framework, I specifically draw on Peruvian sociologist Anibal Quijano's 'coloniality of power' to support my exploration of how state power infuses different processes and practices within the nation-state. Quijano's theory supports my analysis of Australia's criminal justice response to domestic violence (which I discuss in Chapters 5 and 6), the involvement of multiple state systems in the domestic violence response (for instance, via multi-agency committees), and also facilitates exploration the way economic arrangements, expressed via state governance and administrative practices relating to the domestic violence service sector, reflect state power (see Chapter 7). I also draw on the complementary work of Argentinian philosopher Maria Lugones regarding the role of gender within the coloniality of power. As I discuss further in Chapter 4, colonialism also shapes epistemologies and processes of knowledge production, including within the discipline of criminology.

In Part II, I also draw upon Goenpul and Quandamooka philosopher Aileen Moreton-Robinson's 'white possessive' doctrine. This doctrine conceives of the state's relationship with First Nations Australians (and Indigenous peoples in 'settler' contexts worldwide) as one where the state exercises a form of possessive power over Indigenous peoples, whose very existence poses a threat to that power. Moreton-Robinson also articulates the 'patriarchal' character of this white possessiveness, which is particularly relevant as domestic violence is a form of

[1] Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (A&C Black 1999).

[2] Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge 2015).

'gendered' violence that disproportionately affects First Nations women (see Chapter 1). Moreton-Robinson also identifies that Indigenous peoples' right to self-determination may challenge and interrupt the white possessive doctrine and the power of the 'settler' state. I discuss Moreton-Robinson's perspective on self-determination in Part III, and this anchors my human rights-focused discussion in Chapter 8.

In this chapter, I accordingly develop a framework that structures my interrogation of criminal justice and social service responses to domestic violence in Chapters 5, 6 and 7. This framework also supports my discussion of the normative, emancipatory potential of international human right law for First Nations peoples, and my critical analysis in Chapter 8.

PART I: Intersectionality

Throughout this thesis, I use intersectionality as a guiding principle, or heuristic, to conceive of the way Australia responds to domestic violence against First Nations women. Intersectionality is a theoretical approach that seeks to examine the ways in which a person's interconnected identities (for instance, gender, race, sex, sexuality, class, religion, ability, age, etc) intersect or collide to produce distinct forms of oppression, discrimination and privilege. While the term 'intersectionality' was first used by Kimberlé Crenshaw in 1989,[3] the theory has been shaped by a long history of Black feminist scholarship,[4] and developed by diverse theorists across a range of

[3] Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1(8) *University of Chicago Legal Forum* 139.

[4] See Combahee River Collective, *The Combahee River Collective Statement* (Combahee River Collective, 1977); bell hooks, *Ain't I a Woman? Black Women and Feminism* (Routledge 1981/2014); Angela Y Davis, *Women, Race and Class* (Penguin Books 1981/2019).

disciplines, including Patricia Hill Collins,[5] Adrien Katherine Wing,[6] Mari Matsuda,[7] Nira Yuval-Davis,[8] and Shreya Atrey.[9] From its origins in Critical Race Theory, Critical Race Feminism and Critical Legal Studies, intersectional research has burgeoned in recent decades, moving into plural fields of academic inquiry including sociology,[10] criminology,[11] and human rights.[12]

Intersectionality provides a nuanced and context-specific framework for understanding the way First Nations women's experiences of the state's response to violence are shaped by, *inter alia*, their gender and race (racism, in this context, being brought alive by the context of invasion/colonisation[13] which, as I have described earlier, can be understood as a persistent structure of the Australian state, not simply an historical event).[14] Amongst its many applications, intersectionality has been used to interrogate different forms of violence against women of colour, including personal violence, at the intersection of other structural, social forms of

[5] Patricia Hill Collins, *Intersectionality as Critical Social Theory* (Duke University Press 2019); Patricia Hill Collins and Sirma Bilge, *Intersectionality* (Wiley 2016).

[6] Adrien Katherine Wing, *Critical Race Feminism: A Reader* (New York University Press 1997/2003).

[7] Mari J Matsuda, 'Beside My Sister, Facing the Enemy: Legal Theory out of Coalition' (1991) 43(6) *Stanford Law Review* 1183.

[8] Nira Yuval-Davis, 'Power, Intersectionality and the Politics of Belonging' in W Harcourt (ed) *The Palgrave Handbook of Gender and Development* (Palgrave Macmillan 2016).

[9] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press 2019).

[10] Yuval-Davis, 'Power, Intersectionality and the Politics of Belonging' (n 8).

[11] Hillary Potter, *Intersectionality and Criminology: Disrupting and Revolutionizing Studies of Crime* (Routledge 2015).

[12] Atrey (n 9); Emma Buxton-Namisnyk, 'Does an Intersectional Understanding of Human Rights Law Represent the Way Forward in the Prevention and Redress of Domestic Violence Against Indigenous Women in Australia' 18(1) *Indigenous Law Review* 119.

[13] Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (University of Minnesota Press 2015).

[14] Wolfe (n 1) 2.

oppression.[15] Intersectionality has also been used to examine violence against Indigenous women,[16] including the violence of 'settler' state processes and practices.[17] While Indigenous women's scholarship has not always explicitly used the language of intersectionality (or 'feminism' for that matter), this work has nonetheless included a sustained focus on subjects' simultaneous locations as both Indigenous peoples and women,[18] in line with intersectional ontologies.

Intersectionality, in addition to its potential for illuminative inquiry, also incorporates a transformative approach, as it seeks to 'remove, rectify and reform the disadvantage suffered by intersectional groups.'[19] This aligns with my study's emphasis on First Nations women's right to self-determination.

Accordingly, for studying the research problem at hand, intersectionality offers a way to unpack the issues relevant to the state's response to domestic violence against First Nations women. Intersectionality also welcomes the influence of various context-specific concerns, and accordingly supports research that is responsive to,

---

[15] Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1990) 43 *Stanford Law Review* 1241.

[16] See Paulina García-Del Moral, 'The Murders of Indigenous Women in Canada as Feminicides: Toward a Decolonial Intersectional Reconceptualization of Femicide' 43(4) *Signs: Journal of Women in Culture and Society* 929; Natalie Clark, '*Perseverance, Determination and Resistance: An Indigenous Intersectional-Based Policy Analysis of Violence in the Lives of Indigenous Girls: An Intersectionality Based Policy Analysis Framework* (Natalie Clark 2012); Mary Ellen Turpel (Aki-Kwe), 'Patriarchy and Paternalism: The Legacy of the Canadian State for First Nations Women' (1993) 6(1) *Canadian Journal of Women and Law* 174; Roe Bubar, 'Indigenous Women and Sexual Assault: Implications for Intersectionality' in Hilary N Weaver (ed), *Social Issues in Contemporary Native America: Reflections from Turtle Island* (Routledge 2014).

[17] Elena Marchetti, 'Intersectional Race and Gender Analyses: Why Legal Processes Just Don't Get It' (2008) 17(2) *Social & Legal Studies* 155.

[18] See Laura Parisi and Jeff Corntassel, 'In Pursuit of Self-Determination: Indigenous Women's Challenges to Traditional Diplomatic Spaces' (2007) 13(3) *Canadian Foreign Policy Journal* 81; Laura Tohe, 'There is No Word for Feminism in My Language' (2000) 15(2) *Wicazo Sa Review* 103; Aileen Moreton-Robinson, *Talkin' up to the White Woman: Indigenous Women and Feminism* (University of Queensland Press 2000); Jackie Huggins, *Sister Girl* (University of Queensland Press 1999).

[19] Atrey (n 9) 37.

and incorporating of, Indigenous knowledges and lifeworlds. I further discuss intersectionality's methodological implications for my study in Chapter 4.

While, according to Nash, intersectionality has become the 'gold standard' in feminist and anti-racist scholarship for theorising identity and oppression,[20] the theory has been subject to some criticism. Two major critiques relevant to my study relate to intersectionality's use of structural categories (the *post-structuralist critique*), and relatedly (but on the opposite side of the coin), the way intersectionality departs from structural categories, engaging in a potentially endless exercise of reducing groups to ever-smaller parts (the *identity politics critique*). As Atrey describes, post-structuralist critics have taken issue with intersectionality's reliance on structural categories (such as gender, race, disability etc), which can be considered to be at odds with the theory's rejection of essentialism.[21] On the other hand entirely, intersectionality has also been criticised for the 'infinite regress problem'—for reducing peoples' experiences into smaller and smaller sub-categories such that any meaning is lost.[22] Atrey argues however, that both of these criticisms may overstate the problems with intersectionality in practice. She describes that intersectional scholarship critically engages with identity categories rather than using those categories in an 'essential' way, and notes that while intersectional work emphasises plural, individual experiences, these are always related back to the group in terms of sameness and difference.[23] Regarding this second point, although intersectionality

[20] Jennifer C Nash, 'Re-Thinking Intersectionality' (2008) 89(1) *Feminist Review* 1, 1-2.

[21] Leslie McCall, 'The Complexity of Intersectionality' in Patrick R Grzanka (ed), *Intersectionality: Foundations and Frontiers* (Routledge 2019); Barbara Risman, 'Gender as a Social Structure: Theory Wrestling with Activism' (2004) 18 *Gender and Society* 429.

[22] Atrey (n 9) 57-59.

[23] ibid 59.

supports—and perhaps under Atrey's account even requires—comparative analysis, in this thesis I do not compare First Nations women's experiences with those of non-Indigenous women. I further describe this methodological decision in Chapter 4.

Intersectionality accordingly promotes fruitful exploration and is a way of pluralising and growing, rather than reducing, forms of meaning and knowledge. As Atrey describes, drawing from the work of Yuval-Davis and Crenshaw, intersectionality 'embraces a kind of transversal identity politics, which lies in the middle of, and as an alternative to, both universalistic or assimilationist and abortive identity politics.'[24] Intersectionality also accommodates other theoretical approaches where required in context—and, in this way, it does not hold itself out to be a complete theory.[25] Intersectionality supports exploratory and transformative work and, as I argue in line with this study's epistemology (see Chapter 4), provides a framework through which subjectivities can be illuminated, through a more inclusive way of doing (in this case) research related to 'gender-based' harm.

A second major critique of intersectionality derives from the Marxist tradition, and suggests that overreliance on culturally constituted categories, such as race and gender, can serve to obscure the operation of structural and material inequalities, as well as other forms of social domination and subordination.[26] In response to this critique, Atrey reaches into the intersectional canon to argue that class, poverty and redistributive concerns are, in fact, 'writ large' in intersectionality research.[27] As Atrey points out, although the terms of this analysis may not look precisely the same as

[24] Nira Yuval-Davis, 'What is 'Transversal Politics'?' (1999) 12 *Soundings* 94; Crenshaw, 'Mapping the Margins' (n 15) 1299.

[25] Atrey (n 9) 59.

[26] ibid 55.

[27] ibid 56.

those of a Marxist feminist critique, intersectionality has been shaped by concerns of class and poverty, as well as broader themes of social, structural and political power.[28] Socially constructed categories such as gender and race accordingly emerge as a kind of lens through which deeper analysis of other factors that shape peoples' experiences can be undertaken. This is how I aim to incorporate intersectionality, as I seek to illuminate not only how First Nations women experience state systems, but more specifically theorise what the practices and processes of those systems may tell us about state power. This is a use of intersectionality that is intended to specifically illuminate the ways in which colonialism, as an ongoing, not simply historical, process, shapes the way state systems and practices operate. I do not seek to present First Nations women's experiences as something abstract from those processes.

There are several drawbacks associated with incorporating intersectionality in this research. One key drawback is that while intersectionality opens up exciting, discursive spaces that seek to illuminate First Nations women's experiences, my identity and standpoint[29] as a non-Indigenous researcher working in a First Nations research space necessarily shapes all aspects of the research including how I worked with the research data, my interpretation, as well as the way I communicate my research findings and outcomes. I have attempted to respond to this concern by, amongst other things, incorporating principles of Indigenous Criminology in my methodology.[30] I further discuss this in Chapter 4.

---

[28] ibid.

[29] For explications of Standpoint Theory, see Aileen Moreton-Robinson, 'Towards an Australian Indigenous Women's Standpoint Theory: A Methodological Tool' (2013) 28(78) *Australian Feminist Studies* 331; Martin Nakata, 'The Cultural Interface' (2015) 36(S1) *The Australian Journal of Indigenous Education* 7.

[30] Chris Cunneen and Juan Tauri, *Indigenous Criminology* (Policy Press 2016).

Another specific drawback of the way I have used intersectionality in this research is that the exploratory components of the research are, in a sense, constrained by my emphasis on the state, and my reliance on imperfect state records as key empirical source material. Partly as a consequence of my standpoint as a non-Indigenous researcher, I have intentionally focused on Australia's response to domestic violence, international standards in this area, and how this response, and these standards, affect First Nations women and communities. In this thesis, I accordingly do not explore all aspects of personal violence relevant to First Nations women's experiences (for instance, the compounding inequalities of classism and poverty, or the intersubjective dimensions of personal violence) but rather I ventilate one particular angle of this complex research problem. Analyses of the drivers of domestic violence, uses of violence and many issues relevant to violence in First Nations communities are, in my view, better left to the expertise of First Nations researchers and communities, rather than non-Indigenous researchers' solo doctoral research projects. In this research, I instead explore what current responses to domestic violence look like and consider what these responses may tell us about the Australian state. This constrains the intersectional, exploratory focus of the work.

A related issue is that some aspects of this thesis' intersectional analysis, such as the different experiences of women who have First Nations and non-Indigenous partners and—as I discussed above—the impact of poverty and class, are left under-theorised in my study. This is partly a consequence of my reliance on imperfect records, as I did not always know whether women's prior partners were Indigenous or non-Indigenous, and I did not always have access to adequate socio-economic information to discuss class or poverty with participants (nor, importantly, did participants raise this in interviews/yarns). This is likely another consequence of

my position as a researcher and my limited ability to research meaningfully, appropriately, and completely around these complexities.

PART II: Postcolonialism

Integrated postcolonial theory is central to my study's intersectional approach and is the driving theoretical paradigm I adopt within this thesis.[31] While criminological studies related to domestic violence typically focus on the inter-personal aspects of violence, my study focuses on state practices and processes responding to domestic violence against First Nations women (as well as international guidance in this space). My thesis also contemplates to what extent these practices and processes may reflect historically shaped, contemporary expressions of (neo)colonial power. As I discuss in Chapter 4, my emphasis on state power also aligns with Agozino's call to action through his postcolonial critiques of the discipline of criminology.[32]

Incorporating postcolonial theory (including theories that can account for Australia's status as a 'settled' or 'invaded' state)[33] into this study's theoretical framework demands attention to the ways historical and contemporary colonial processes overlay the identification and definition of social 'problems' to be researched, the way in which academic research is done, and the way in which findings are interpreted. I specifically discuss the methodological implications of postcolonialism in Chapter 4.

---

[31] See Bill Ashcroft, 'On the Hyphen in 'Postcolonial' (1996) 32 *New Literatures Review* 23.

[32] See Biko Agozino, 'Imperialism, Crime and Criminology: Towards the Decolonization of Criminology' (2004) 41(4) *Crime, Law and Social Change* 343; Biko Agozino, *Counter-Colonial Criminology: A Critique of Imperialist Reason* (Pluto Press 2003).

[33] See Wolfe (n 1) 2.

Contemporary postcolonialism has its origins in literary theory, including the work of Edward Said,[34] as well as other colonial discourse theorists including Homi Bhabha and Gaytari Spivak, who were in turn heavily influenced by post-structuralist theorists including Michel Foucault (Said), Louis Althusser and Jacques Lacan (Bhabha), and Jacques Derrida (Spivak).[35] With the work of Said acting as a linking point to literary theory, postcolonialism's roots arguably lie in the intellectual and political, revolutionary work of Frantz Fanon, CLR James, Amilcar Cabral and Mahatma Ghandi.[36] Much like intersectionality, contemporary postcolonialism emerges as a broad,[37] heterogeneous,[38] inter-disciplinary (or inter-discursive)[39] and, in some ways fractured,[40] church, absent a universal, didactic, theoretical paradigm. However, at its most foundational, postcolonialism looks to the deeper effects of colonisation on societies and cultures in a way that departs from the more chronological/temporal understanding of postcolonial as the historical (and 'complete') processes of decolonisation after the Second World War.[41] Cunneen, writing from the perspective of postcolonial criminology, offers a definition that is particularly useful for the purposes of my study, describing that

[34] Edward Said, *Orientalism* (Pantheon Books 1978).

[35] Homi Bhabha, *The Location of Culture* (Routledge Classics 1994/2004).

[36] Robert J C Young, *Postcolonialism: An Historical Introduction* (John Wiley & Sons 2016).

[37] Ania Loomba, *Colonialism/Postcolonialism* (Routledge 1998/2002) 504.

[38] Bill Ashcroft, Gareth Griffiths and Helen Tiffin, *Post-Colonial Studies: The Key Concepts* (Routledge, 2nd edn 2007).

[39] See David Atwell, 'Origins, Outcomes and the Meaning of Postcolonial Diversity' in Graham Huggan, *The Oxford Handbook of Postcolonial Studies* (Oxford University Press 2013) 540.

[40] Loomba (n 37) xi.

[41] Ashcroft et al (n 38) 168.

> A postcolonial perspective … draws attention to the connections between the colonial development of the modern political state and the globalized nature of gross violations of human rights of Indigenous and former colonized people.[42]

A postcolonial perspective accordingly demands that research recognise the ways in which the modern political state has been forged, and maintained its power, through the subjugation, domination and human rights abuses of colonised and enslaved peoples.[43] In 'settler' colonial contexts,[44] such as Australia, this means taking into account the processes by which Indigenous peoples' native lands have been invaded and native people enslaved, dominated and eliminated.[45] As Wolfe describes (contrasting settler and economic colonialism), in settler colonies like Australia 'the colonizers [have also come] to stay',[46] and, accordingly, the theory's contextual application also requires particular attention to the way institutions and structures developed for, and managed by, 'settler' populations continue to shape contemporary relations between First Nations peoples and the state. A union of more universal understandings of colonialism as a trans-historical category,[47] and local contexts,[48] is accordingly a balance I seek to strike in this research.[49] As I discuss

[42] Chris Cunneen, 'Postcolonial Perspectives for Criminology' in Mary Bosworth and Carolyn Hoyle (eds), *What is Criminology*? (Oxford University Press 2011) 253.

[43] ibid.

[44] Wolfe (n 1) 1.

[45] ibid.

[46] ibid 2.

[47] Stephen Slemon, 'Unsettling the Empire: Resistance Theory for the Second World' (1990) 30(2) *World Literature Written in English* 30, 31.

[48] Robert J C Young, *Colonial Desire: Hybridity in Theory, Culture and Race* (Routledge 1995) 160.

[49] ibid 163.

later in this chapter, my focus on postcolonial theory also links to the self-determination argument I develop in Chapter 8.

In this thesis, I examine the way two components of the domestic violence response system work through a 'settler' colonial lens—the criminal justice system, and the specialist service response. These dual foci demand close and specific attention to the way Australia's colonial context shapes a range of governance processes within the state. As the domestic violence response system incorporates both regulatory/punitive (criminal justice) and economic (specialist service) processes and practices, Quijano's theory—the 'coloniality of power'—although developed in the Latin American economic imperial, rather than a 'settler' colonial, context, provides a helpful framework.[50]

Quijano theorises that contemporary social structures, including regulatory and economic processes, epistemologies and social hierarchies, are the living legacy of colonialism worldwide, including within ostensibly 'decolonised' nations.[51] The naturalisation of racialised hierarchies built on colonial ideology and attributions of difference (especially race), the naturalisation and domination of Eurocentric knowledge systems, and the normalisation and dominance of cultural systems (such as economic practices, and regulatory systems) embedded in patriarchal,[52] Eurocentric economic and knowledge production systems, constitute the three dimensions of Quijano's coloniality of power. For Quijano, the coloniality of power, and the Eurocentric concept of 'modernity', operate as the two axes of the global,

[50] Anibal Quijano, 'Coloniality of Power, Eurocentrism and Latin America' (2000) 1(3) *Nepantla: Views from South* 533.

[51] ibid.

[52] Maria Lugones, 'Heterosexualism and the Colonial/Modern Gender System' (2007) 22(1) *Hypatia* 186.

capitalist order, and as Lugones argues—extending Quijano's argument—the concept of 'gender' (like the concept of 'race', which is a central focus of Quijano's account), is also a colonial construction, and one that has been used both to destroy communities and peoples, and create a 'building ground of the civilised West.'[53] In her work, Lugones aborts Quijano's term 'patriarchy' in favour of 'hetereosexism' in an attempt to highlight, following Quijano's methodology (but not, ultimately, his own argument),[54] gender's inessential, socially and colonially-constructed character. Lugones' theoretical framework creates space to explore the interaction of gender and race as mutually constructed Eurocentric categories imposed on First Nations people via colonial processes. This also supports theorisation of colonial, patriarchal/heterosexist constructions of First Nations women's 'victimhood', which I discuss in Chapters 5 and 6.

As this thesis considers the way the domestic violence response system operates, which is a system responding to a harm typically described as 'gendered', Lugones' gender-focused theorisation of Quijano's theory is resonant. Lugone's methodological approach, to enjoin the coloniality of power, with the work significantly done by 'Third World and women of color feminists, including critical race theorists',[55] is one that integrates strongly with my topic of study and my methodology (see Chapter 4). Lugones argues for gender-work to take seriously the coloniality of power and decries research that treats with 'indifference' the deep imbrication of race, class, sexuality and gender.[56] The 'gender-work' I undertake in

[53] ibid.

[54] ibid 190.

[55] ibid 189.

[56] ibid 187.

this thesis, examining Australia's domestic violence response system, attempts to explore these intersectional considerations deeply, and in ways particularly informed by First Nations women's scholarship and voices.

In a way that adds important weight and 'settler' context to Quijano and Lugones' postcolonial theories, Moreton-Robinson's 'white possessive' doctrine builds on similar observations around colonial power from a First Nations woman's perspective.[57] Moreton-Robinson's white possessive doctrine is instructive, theorising that Australia, like other 'settler' nations with Indigenous populations including Canada and the United States, should be properly conceived of as a 'white possession'. Moreton-Robinson argues that states' regulatory systems and practices re-affirm and reproduce white possessiveness through 'a process of perpetual Indigenous dispossession, ranging from the refusal of Indigenous sovereignty to overregulated piecemeal concessions.'[58] But rather than just being regulated through systems, she argues that possessive logics are expressed via forms of rationalisation that are embedded in the very processes of knowledge production that are used to affirm, and perpetually re-affirm, the lie of white occupation.[59] Moreton-Robinson describes that 'patriarchal whiteness', 'disavows Aboriginal sovereignty through racist techniques, conventions, laws, and knowledges, each shaping and affecting the lives of Aboriginal people.'[60]

Moreton-Robinson has developed the white possessive doctrine through various explorations of 'property', including the construction of Australian national

[57] Moreton-Robinson, *The White Possessive* (n 13).

[58] ibid xi.

[59] ibid xii.

[60] ibid xx-xxi.

identity,[61] the denial of Indigenous wealth through the circumscription of Native Title claims,[62] legal discourse,[63] and through daily racist acts (experienced through Indigenous peoples' inter-subjective relations with non-Indigenous Australians), as well as in other areas.[64] For Moreton-Robinson, possessive whiteness is patriarchal as the processes of possession are patriarchal: patriarchal logic not only infused processes of conquest and invasion/colonisation, but is embedded in the structure of nation-states, and on display through the police, the army and the judiciary.[65] For Moreton-Robinson, the power of 'whiteness', not only in the Australian context, but also in other 'settler-colonial' contexts founded on Indigenous dispossession, is that it works to sustain its own position 'as the pinnacle of its own racial hierarchy'.[66] Patriarchal white sovereignty is accordingly a 'regime of power that operates 'ideologically, materially and discursively to reproduce and maintain its investment in the nation as a white possession' in a range of ways, and using a range of different techniques.[67]

Taken together, Quijano's coloniality of power, Lugones' extension of it to centre gender, and Moreton-Robinson's white possessive doctrine, provide a diverse theoretical toolkit for interpreting the data from this study. While the state administers the domestic violence response system, it expresses itself through this process in

[61] See 'The House that Jack Built' in Moreton-Robinson, *The White Possessive* (n 13).

[62] See 'Nullifying Native Title' in Moreton-Robinson, *The White Possessive* (n 13).

[63] See 'The High Court and the Yorta Yorta Decision' in Moreton-Robinson, *The White Possessive* (n 13).

[64] See 'Leesa's Story' in Moreton-Robinson, *The White Possessive* (n 13).

[65] Moreton-Robinson, *The White Possessive* (n 13) xx.

[66] ibid.

[67] ibid xxiii.

different ways. Firstly, it creates, and largely self-administers, a criminal justice system (although some functions, such as private prisons, may be outsourced to non-state providers). Secondly, the state (comprising both Commonwealth and state/territory actors) also regulates and administers the mostly outsourced domestic violence specialist service response, via diffuse systems of regulatory governance deployed within neoliberal economic context. Postcolonial theoretical approaches can facilitate exploration of these diverse processes and practices within an overarching framework of colonial power and domination/subordination. As both Moreton-Robinson and Lugones emphasise, these expressions of power are also closely related to the state's constructions of gender and its patriarchal/heterosexist character, which is particularly relevant for understanding the way it seeks to respond to violence against First Nations women.

When considering the limitations of postcolonial theory, there are a number of key debates and, to quote Loomba, 'the 'field' is as beleaguered as it is fashionable.'[68] I consider two of these debates to be particularly relevant to my study. The first debate relates to the use of the prefix 'post' in postcolonial. 'Post' in this context is complicating as it implies both a temporal and ideological aftermath (as if the age of colonialism has ended, and its ideology has been superseded).[69] However, as critics like McClintock have argued, even where countries have been formally decolonised, colonialism continues to shape not only the way those countries function and operate, but the larger world order.[70] This renders it questionable whether colonialism has truly been supplanted. As I described in the

[68] Loomba (n 37) xii.

[69] ibid 7.

[70] ibid.

Introduction to this thesis, Watson makes a similar argument, using the word 'colonial' to describe contemporary practices in the Australian state on the basis that the colonial relationship of domination/subjugation between Australian and First Nations peoples remains ongoing.[71] This argument is also reinforced by Quijano's theory, which locates ongoing expressions of colonialism in formally decolonised states. Certainly, while Australia has been partially 'decolonised' from British rule, the systems and structures established by the invaders/colonisers—by and large—persist, and there remain sharp, racialised divisions between the 'settler' state and Indigenous populations, for whom there has been no meaningful 'decolonisation'. The persistence of colonial structures in Australia is affirmed by Moreton-Robinson's white possessive doctrine, and also supported by Quijano's theorisation of the ongoing, normalised ethnocentric divisions created via colonial processes. I accordingly use the term postcolonial to describe my theoretical approach in this paper in a way that recognises that the processes of formal colonisation may have ended, but colonial forces continue to define relationships between First Nations people and the 'settler' state.

A second debate relates to reductionism within the concept of postcolonialism (and indeed colonialism),[72] and argues that the term is frequently deployed reductively rather than in nuanced ways attuned to context-specific conditions. This may include, for instance, purporting to describe 'the postcolonial condition' or 'the postcolonial subject', without allowing for the exploration of meaningful difference in terms of subject localities at the intersection of other identity characteristics and

[71] Watson (n 2) 13.

[72] Young, *Colonial Desire* (n 48).

experiences (class, gender, location, race, caste, ideology etc).[73] Postcolonialism has also been criticised for failing to meaningfully distinguish between 'settler' and economic colonialism (or imperialist expansionism).[74] The importance of contextual and discursive anchor-points when considering postcolonial theory is reinforced in this study by my adoption of an integrated intersectional, postcolonial approach, which examines colonial constructions of race (as well as gender).[75] However, one limitation to consider here is that due to my study's considerable geographical reach across Australia—across vast colonised lands where diverse peoples were subject to different historical patterns of, and techniques of, colonisation, and across states/territories where today peoples are subject to different governance regimes, including local government practices—there is some unavoidable reductionism and loss of specificity in my analysis. In accordance with the transformative potential of postcolonial approaches (discussed further in Chapter 4), throughout this thesis I pragmatically ascribe to Spivak's notion of the need to embrace strategic essentialism,[76] as this relates—I believe—to the emancipatory project of intersectionality and revolutionary postcolonialism envisioned in the work of Fanon, amongst others. Similar to my previous discussion of intersectionality, despite the complex relationship between post-structuralism and postcoloniality, I argue in this context that the critical adoption of categories such as race and gender remains pragmatically important in the context of fighting for differential treatment (although

[73] Loomba (n 37) 15.

[74] Wolfe (n 1) 2.

[75] Ashcroft et al (n 38) 201.

[76] Gaytari Spivak, 'Criticism, Feminism and the Institution: An Interview with Gaytari Chakravorty Spivak' (1985) 10-11(1) *Thesis Eleven* 175, 183-184.

certainly not to the same extent delivering on it, see Chapter 8 concerning self-determination, which demands a local, ground-up, context-specific approach).

Accordingly, in this thesis I seek to draw out the ongoing, recursive processes by which the Australian state continues to subjugate and dominate First Nations people, especially women, and I consider the way these processes manifest in the state's response to domestic violence. I use the language of (neo)colonial or colonial/colonising to describe this power.

PART III: Indigenous rights as decolonisation

The final theoretical element I draw on in this thesis relates to the right to self-determination. As I foreshadowed in Chapter 2, the right to self-determination, premised on Indigenous freedom and self-governance, is a potential means by which to interrupt cycles of domination and oppression for Indigenous peoples living in 'settler' states such as Australia. The right to self-determination, as it is articulated in UNDRIP, recognises that Indigenous peoples have collective and individual rights to pursue their own destiny in the states they live in (including to develop autonomous institutions and participate meaningfully in the activities of the state). UNDRIP enshrines a range of other rights that reinforce and articulate the contours of this right. UNDRIP, and in particular the right to self-determination, presents a challenge to 'settler' states with Indigenous populations where the state seeks to exercise full and complete sovereignty.

Moreton-Robinson's conceptualisation of Indigenous rights, including the right to self-determination, as an ontological disruption of the white possessive doctrine, is instructive in my thesis and indeed justifies my focus on this right. Moreton-Robinson conceives of the UN itself as primarily a statist organisation, founded and developed

by self-interested 'settler' colonial nations.[77] She describes that the Indigenous rights movement at the international level was insurrectionist, driven from the 1900s onwards by Indigenous peoples and leaders,[78] and attributes the success of this movement to the efforts of Indigenous NGO, activist and transnational networks who drafted the Declaration. Throughout the UNDRIP's drafting process, Canada, New Zealand, Australia, and the United States persistently raised objections and concerns about its contents, including the right to self-determination.[79] In the end, these four nations were the only ones to vote against the UNDRIP, with 144 states voting in favour of it. Moreton-Robinson describes that after the vote, Canada, New Zealand, Australia and the United States intentionally framed their participation in the process as that of constructive and willing participants, while suggesting that Indigenous participants were destructive and unwilling. Those states framed the approach of Indigenous participants as leading to breakdowns in the process and preventing nation-states from being afforded opportunities to participate meaningfully, or achieve consensus, in relation to the UNDRIP.[80] All four states then continued to describe that the UNDRIP was 'aspirational' or 'inspirational' with political and moral, but not legal, force.[81] This devalued self-determination as a right, and (intentionally) cast it as a vague concept. Subsequently, all four states endorsed the UNDRIP, reinforcing their objections to it but also decrying the wrongs of the past, re-asserting their commitment to Indigenous rights and adopting a focus on

[77] Moreton-Robinson, *The White Possessive* (n 13) 174.

[78] ibid.

[79] ibid 175.

[80] ibid 180.

[81] ibid 181 - 182.

reconciliation going forward.[82] Moreton-Robinson describes that these manoeuvres were examples of 'settler' nation-states deploying different 'virtuous' strategies to re-assert and re-affirm their sovereignty in light of the challenge Indigenous rights claimants presented.[83]

As Moreton-Robinson concludes from her discursive analysis of the 'settler' states' response to UNDRIP, 'the declaration ontologically disturbed patriarchal white sovereignty, which retaliated through political, legal, and moral force to disavow the virtue of Indigenous rights.'[84] She describes that the very existence of Indigenous peoples 'threatens the self-realisation of patriarchal white sovereignty's interior truth'[85] and, accordingly, Indigenous peoples' claims are a threat to patriarchal white power that need to be disarmed.

I argue in this thesis that the right to self-determination possesses this unique ontological, disruptive character, and holds promise as a means by which to challenge the policies, approaches, and laws of nation-states. I also argue, however, that there are some challenges associated with the right to self-determination as it has been defined in the UNDRIP. Due to the international system's connection with nation-states and the (consequently) narrow definition of self-determination in the UNDRIP, Watson describes self-determination in UNDRIP as 'gammon self-determination', meaning inauthentic or pretend self-determination.[86] These

[82] ibid 187.

[83] ibid.

[84] ibid 198.

[85] ibid 189.

[86] Watson (n 2) 4.

theoretical approaches, and these critical questions, anchor my discussion of self-determination in Chapter 8, including my more critical perspective on the right.

Conclusion

In this chapter I have outlined my study's guiding theoretical framework. In Chapter 4, I outline my methodology, reflecting and drawing out key theoretical perspectives that I advanced within this chapter, but also introducing additional frameworks and concepts relevant to my study.

Chapter 4: Methodology

Introduction

In this chapter I outline my research methodology. As I discussed in Chapter 3, this study's theoretical framework and methodology are intertwined and inseparable components of my research design. The intersectional, postcolonial theoretical framework I developed in Chapter 3 supports my analysis of the role of the 'state' in domestic violence responses to First Nations women, and—building on this framework—my methodology seeks to incorporate research principles from Cunneen and Tauri's school of Indigenous Criminology in an intersectional way. Accordingly, both this chapter and Chapter 3 need to be considered together to wholly appreciate my approach.

In Part I of this chapter, I examine critiques of 'Western' research methodologies, particularly when it comes to research conducted by non-Indigenous researchers with, or on topics related to, Indigenous peoples. In Part II, I introduce Indigenous Criminology and outline how I adapted its principles in my research design. In Part III, I detail the multi-stage qualitative research framework I implemented in this study and discuss how I managed limitations and challenges arising from my methodology.

PART I: Challenging academic 'research'

The methodology I adopt in this study aims to respond to a broader critique that Indigenous scholars and non-Indigenous allies have levelled at empirical research within the social sciences. According to Māori scholar Linda Tuhiwai Smith,

academic research is ‘an institution of knowledge that is embedded in a global system of imperialism and power’, and it both grows and sustains itself by rejecting the validity of alternative discourses or epistemologies.[1] For Indigenous peoples, the term research ‘stirs up silence, it conjures up bad memories, [and] it raises a smile that is knowing and distrustful.’[2] This is not simply the legacy of years of unethical research on, rather than with, Indigenous populations, but reflects the imperialist character of Western academic research as it relates to Indigenous peoples’ interests and values. Western researchers have not just used and misrepresented Indigenous peoples and Indigenous knowledges through the processes, and under the banner, of ‘research’, but research has contributed to the ‘othering’ of Indigenous peoples—re-presenting the ‘Indigenous’ as divergent from (and inferior to) the white, non-Indigenous subject.[3] Drawing on the work of Said,[4] and Fanon,[5] Smith argues that the processes of academic research (like the processes of colonisation) have constructed, recreated or reimagined Indigeneity through Western eyes.[6] As Bhargarva notes, this is a form of ‘epistemic injustice’ that has served to replace Indigenous peoples’ understandings of the self with those of the coloniser,[7] and contributed to the binary construction of Indigenous difference against an unspoken Western (colonial) norm.[8] Research must accordingly be understood within a

[1] Linda Tuhiwai Smith, *Decolonizing Methodologies* (2nd edn, Zed Books 2012) ix.

[2] ibid 1.

[3] ibid 1-2.

[4] Edward Said, *Orientalism* (Pantheon Books 1978).

[5] Frantz Fanon, *The Wretched of the Earth* (Penguin Modern Classics 1961/2014*).*

[6] Smith (n 1) 27.

[7] Rajeev Bhagarva, ‘Overcoming the Epistemic Injustice of Colonialism’ (2013) 4(4) *Global Policy* 413.

[8] Smith (n 1) 2.

broader context of social, structural and political power; and must be recognised as a method by which hegemonic Western power may be retained, exercised and legitimated.

This critique is particularly salient in respect of research conducted within the discipline of criminology. According to Agozino, criminology's concern with individual deviance and maintenance of the social order has led the discipline to serve colonialism 'more directly than many other social sciences'—a factor that, he argues, has contributed to a lack of progress in non-Western criminology, and a lack of interest in the discipline in non-Western tertiary institutions.[9] Under Agozino's account, criminology's concern with what Oriola describes as 'the petty crimes of hapless and helpless individuals',[10] has fixed the discipline's gaze on the individual crimes of lower class peoples, whilst it has remained blind to the 'organised violence' of social control.[11] To overcome criminology's obsession with the crimes of the poor, Agozino suggests that the discipline turn its attention toward societal injustices and structural inequalities including the slave trade, colonialism and apartheid.[12] He also argues, following the work of Cohen[13] and Schwendinger and Schwendinger,[14] that broader attempts to free criminology from its colonial shackles should result in

[9] Biko Agozino, 'Imperialism, Crime and Criminology: Towards the Decolonization of Criminology' (2004) 41(4) *Crime, Law and Social Change* 343, 343.

[10] Temitope Babatunde Oriola, 'Biko Agozino and the Rise of Post-Colonial Criminology' (2006) 2(1) *African Journal of Criminology and Justice Studies* 104, 105.

[11] Biko Agozino, *Counter-Colonial Criminology: A Critique of Imperialist Reason* (Pluto Press 2003) 121.

[12] ibid 230.

[13] Stanley Cohen, 'Human Rights and Crimes of the State: The Culture of Denial' (1993) 26 *Australian and New Zealand Journal of Criminology* 97.

[14] Herman Schwendinger and Julia Schwendinger, 'Defenders of Order or Guardians of Human Rights?' (1970) 5(2) *Issues in Criminology* 123.

greater attention to human rights violations,[15] which are crimes strongly linked to the state.

While Agozino's work has its genesis in the African context, these same insights have influenced critiques of criminology in Australia[16] and other 'settler'-colonial contexts.[17] For instance, Chris Cunneen and Māori scholar Juan Tauri's Indigenous Criminology has applied the precepts of postcolonial criminology to Indigenous 'settler'-colonial contexts.[18] Given Australia's history of invasion/colonisation, and the ongoing ways in which 'settler' colonial logics frame contemporary relationships between Indigenous peoples and the state (discussed in my Introduction and Chapter 3), Cunneen and Tauri's 'school' of Indigenous Criminology reinforces that criminological research must be sensitive to colonialism. This sensitivity must not only extend to the way colonialism shapes criminological research (including the methodologies criminologists apply and the questions they ask) but must extend to understanding how colonialism shapes individuals' experiences. As Cunneen and Tauri describe, the effect of 'structural violence' on research subjects is not only traditionally obscured by mainstream or 'establishment' approaches to criminology in 'settler' colonial contexts like Australia, but dominant forms of state-serving criminological practice serve to further legitimate colonisation by discounting Indigenous knowledge (rendering it 'unscientific', 'folk' or 'subjective'),

[15] Agozino, *Counter-Colonial Criminology* (n 11) 246.

[16] See Chelsea Watego, 'Who are the Real Criminals? Making the Case for Abolishing Criminology' (43rd John Barry Memorial Lecture, University of Melbourne, 29 November 2021); Chris Cunneen and Juan Tauri, *Indigenous Criminology* (Policy Press 2016); Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (The Federation Press, 2nd edn 2016).

[17] Tamari Kitossa, 'Criminology and Colonialism: Counter Colonial Criminology and the Canadian Context' (2012) 4(9) *Journal of Pan African Studies* 204.

[18] Cunneen and Tauri (n 16).

and excluding it from mainstream, Western criminology.[19] In other words, by separating questions of individual criminality from structural violence, criminological research may continue to justify and serve the 'civilising mission' of Western imperialism, as well as reinforce and legitimate state power.

Agozino, like Cunneen and Tauri, argues that to overcome its deficiencies criminology must welcome divergent schools and epistemologies into its purview.[20] As Doxtater argues, Western knowledge is broadly deficient due to its exclusion of alternative epistemologies,[21] and, within the domain of criminology, Agozino questions the credibility of Western knowledge holding itself out to be the 'standard bearer' of the discipline given that Western nations continue to have the greatest crime problems, and, he argues, perpetrate the greatest crimes.[22] Although Agozino describes Western criminology as 'intellectually bankrupt'[23] due to its exclusion of alternative discourses and its complicity in the colonial project, following Cunneen and Tauri's approach I consider that the tools of criminology can be re-appropriated to advance rights and justice claims. The discipline can resist (and rebalance) the stratification of epistemologies and recognise historical and ongoing wrongs (including colonialism). This applies especially as criminology continues to turn its gaze to, and offer definitions in respect of, 'crime' affecting First Nations peoples.

---

[19] Juan Tauri, 'Indigenous Critique of Authoritarian Criminology' in Kerry Carrington, Matthew Ball, Erin O'Brien and Juan Tauri, *Crime, Justice and Social Democracy: International Perspectives* (Palgrave Macmillan 2013).

[20] Agozino, *Counter-Colonial Criminology* (n 11) 246.

[21] Michael G Doxtater, 'Indigenous Knowledge in the Decolonial Era' (2004) 28(3/4) *American Indian Quarterly* 618, 618.

[22] Agozino, *Counter-Colonial Criminology* (n 11) 246.

[23] Juan Tauri, 'The State, The Academy and Indigenous Justice: A Counter-Colonial Critique' (PhD thesis, University of Wollongong 2016) 58.

PART II: Adapting Indigenous Criminology and incorporating Intersectionality

Before discussing how I attempt to respond to these concerns, I will attend to the question of *how* to 'decolonise' criminological research, and more specifically for the purposes of this study, how I sought to 'decolonise' my research at the intersection of colonial (state) violence and violence against women. As Smith argues, a key way in which Indigenous epistemologies can be brought into the lexicon of academic research is by repositioning and supporting Indigenous researchers to undertake research that has historically been dominated by non-Indigenous academics.[24] This approach has close parallels with the work of Nurungga scholar Lester-Irabinna Rigney, whose theory of Indigenist research calls upon Indigenous people not only to enter research spaces and centre their own forms of knowledge and experiences in their work, but also to work to advance Indigenous self-determination and political empowerment.[25] Indeed, both Smith's and Rigney's approaches to methodology are centrally aimed at supporting Indigenous researchers, and Smith, in particular, remains understandably cautious about non-Indigenous researchers working in Indigenous spaces.[26] In contrast, Cunneen and Tauri argue that Indigenous Criminology is not exclusively the domain of Indigenous researchers, and they highlight several practical principles through which non-Indigenous allies may

[24] Smith (n 1) 5.

[25] Lester-Irabinna Rigney, 'Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and its Principles' (1999) 14(2) *Wicazo Sa Review* 109.

[26] Smith (n 1) 17.

actively seek to 'decolonise' their research with Indigenous peoples, and advance Indigenous peoples' rights.[27]

The first principle of Indigenous Criminology is that researchers should approach their work with 'committed objectivity'.[28] A key critique Agozino makes of the social sciences as they have been practiced in the West, is that they sustain what he refers to as the 'false dichotomy between objectivity and commitment.'[29] This distinguishes between the 'knowledgeable researcher' and the research 'subject', whose knowledge the researcher approaches with detachment and assesses from a hierarchical position of knowledge and power.[30] Agozino argues that this approach accords the idea of 'objectivity' in research a mythical (and false) quality;[31] a quality that is mythical as objectivity is simply another kind of involvement, and the notion of complete detachment is 'a complete fraud'.[32] Instead, Agozino calls for 'committed objectivity' in research, calling for researchers who can stand from within a community and speak with authority.[33] As I outline later in this chapter, as a non-Indigenous researcher working with a range of different communities and groups in this research, I have found this to be the most challenging principle of Indigenous Criminology to incorporate into this study.

---

[27] Cunneen and Tauri (n 16) 30-43. See also, Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan 2019).

[28] Cunneen and Tauri (n 16) 30-43.

[29] Agozino, *Counter-Colonial Criminology* (n 11) 157.

[30] Cunneen and Tauri (n 16) 30-43.

[31] ibid.

[32] Max Deutscher, *Subjecting and Objecting: An Essay in Objectivity* (Blackwell 1983) 2.

[33] This reflects some of the earlier work of standpoint criminology, see, for instance, Maureen Cain, 'Realist Philosophy and Standpoint Epistemologies or Feminist Criminology as a Successor Science' in Loraine Glesthorpe and Allison Morris (eds), *Feminist Perspectives in Criminology* (Open University Press 1990) 124.

The second, closely related, principle of Indigenous Criminology is the need to give back to communities by 'speaking truth to power'.[34] This principle reinforces that Indigenous Criminology is an inherently political criminology, but as Agozino argues, so too are all approaches to social science research (whether researchers admit to it or not).[35] As Bouges describes, central to critical inquiry is the unmasking of power and the uncovering of knowledge that may be 'useful in any emancipatory project'.[36] Accordingly, Indigenous Criminology charges researchers to take a political stance in privileging the perspectives of Indigenous people, critically attending to the activities of the powerful (and the effect of these activities), and offering solutions that empower First Nations peoples in their anticolonial struggles and attempts at self-determination.[37] Given my project's emphasis on self-determination, and the relationship between Indigenous justice issues and state responsibility, this principle is central to my study.

The third, and final, key principle of Indigenous Criminology is that research must be real, meaning that it must come from within peoples and communities.[38] According to Schmidt, Indigenous research must contribute to community empowerment and the community must consider it to be relevant.[39] This requires

[34] Cunneen and Tauri (n 16) 34.

[35] Agozino, *Counter-Colonial Criminology* (n 11) 167.

[36] Anthony Bouges, 'Working Outside Criticism: Thinking Beyond Limits' (2005) 2 *Boundary* 71, 91.

[37] Cunneen and Tauri (n 16) 35.

[38] ibid 30-43.

[39] Heather Schmidt, 'Conducting Research with First Nations and for First Nations: A Reflective Study of Aboriginal Empowerment within the Context of Participatory Research' (Doctor of Philosophy thesis, York University) 52.

more than symbolic consultation[40] in developing and conducting research, and demands that Indigenous knowledges be accorded true respect. Regarding the notion of knowledges being disrespected or treated as 'symbolic', MacDonald[41] draws on the work of Fish, to argue that when dominant schools of thought (for instance, Western knowledge) engage with the knowledge of 'the other' (for instance, Indigenous knowledges), 'we will always stop short of approving other cultures at a point where some value at their centre generates to [an] act that offends against the canons of civilised decency as they have been either declared or assumed.'[42]

Western knowledge and belief systems may therefore trump Indigenous peoples' interests and values at critical moments, or where Indigenous peoples' practices may offend 'Western' sensibilities.[43] While the notion of 'symbolic knowledge' here relates primarily to the subjugation and rejection of Indigenous knowledge and practice, one need look no further than the initial government rejection of the *Uluru Statement From the Heart* discussed in my Introduction,[44] and

[40] Charles Menzies, 'Reflection on Research With, For and Among Indigenous Peoples' (2001) 25 *Canadian Journal of Native Education* 19, 21.

[41] Gaynor MacDonald, 'Colonising Processes, the State and Ontological Violence: Historicising Aboriginal Australian Experience' (2010) 52(1) *Anthropologica* 49.

[42] Stanley Fish, 'Boutique Multiculturalism, or Why Liberals are Incapable of Thinking about Hate Speech' (1997) 23(2) *Critical Inquiry* 378, 378.

[43] See for instance, debates around restorative justice: Julie Stubbs, 'Relations of Domination and Subordination: Challenges for Restorative Justice in Responding to Domestic Violence' (2010) 33(3) *UNSW Law Journal* 970; Heather Nancarrow, 'Restorative Justice for Domestic and Family Violence: Hopes and Fears of Indigenous and Non-Indigenous Australian Women' in James Ptacek (ed), *Restorative Justice and Violence Against Women* (Oxford University Press 2010).

[44] Commonwealth of Australia, *Final Report of the Referendum Council* (Commonwealth of Australia 2017).

Coulthard's analysis of the politics of recognition,[45] to identify that the idea of 'stopping short' can be extended much more broadly to any kind of constructive, political negotiation between Indigenous peoples and the state (the state interest, of course, trumping any Indigenous rights or justice claim). This is also relevant to the right to self-determination as I discuss it in Chapter 8. Given that a broader political and hierarchical context frames this research, mediating the challenge of Indigenous and non-Indigenous knowledge exchange, from my position as a non-Indigenous researcher, is a process I remained conscious of when designing and writing up this study.

Finally, although I detailed the theory of intersectionality in Chapter 3 in regards to my theoretical framework, I have also drawn upon this theory to augment Cunneen and Tauri's methodological approach.[46] As with other Western neoliberal democracies (see Chapter 1), in Australia feminism has shaped Australia's domestic violence response and gender inequality continues to be the dominant framework through which domestic violence is understood.[47] However, the primarily single-axis understanding of domestic violence that undergirds 'settler' approaches goes little of the way to exploring the complex and inter-related system of personal and structural oppressions that First Nations women experience in their lives.[48] In Australia, I

[45] Glen Coulthard, *Red Skin White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press 2014).

[46] Cunneen and Tauri also identify intersectionality as the appropriate methodological framework for researching gendered harms against Aboriginal women, see Cunneen and Tauri (n 16) 89-109.

[47] Australian Government Department of Social Services, *The National Plan to Reduce Violence Against Women and their Children 2010-2022* (Department of Social Services 2011).

[48] Aboriginal and Torres Strait Islander Women's Task Force, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (State of Queensland 1999); Jackie Huggins, 'It's Now or Never: Our Chance to Tackle Indigenous Family Violence' (2003) 2 *Australian Centre for The Study of Sexual Assault, Australian Institute of Family Studies Newsletter* 5; Kyllie Cripps, 'Understanding Indigenous Family Violence in the Context of a Human Rights Agenda' (2006) 15(3) *Human Rights Defender* 3.

believe that the dominant gender inequality framework also influences the way researchers design and conduct domestic violence-related research and, as a result, it is common that this research examines 'all women' as a population, adopts comparative methodologies, or juxtaposes First Nations women's experiences of domestic violence against those of 'settler' women, rather than considering First Nations women's experiences a specific topic of inquiry.[49] While research that purports to examine 'all women' as an aggregate population can obscure First Nations women's experiences, comparative research can also, inadvertently or otherwise, serve to construct First Nations women as 'other' against an assumed white norm.[50] In the context of domestic violence research, these approaches also run the risk of too narrowly focusing on inter-personal violence, without also considering the structural violence of state systems on women's lives.[51] While, as I discussed in Chapter 3, comparative work (interrogating, tracing and mapping sameness and difference) has been identified as a key intellectual activity of intersectionality,[52] in the specific context of First Nations women's experiences of domestic violence systems, I believe that too strong a comparative empirical focus may detract from, rather than illuminate, issues of state and institutional violence that compound and intersect with First Nations women's experiences of personal

[49] See, for instance, Tracy Cussen and Willow Bryant, 'Indigenous and Non-Indigenous Homicide in Australia' (2015) 37 *Research in Practice* 1; Domestic Violence Death Review Team, *Report 2015-2017* (Domestic Violence Death Review Team 2017); Liesl Mitchell *Domestic Violence in Australia—An Overview of the Issues* (Parliament of Australia 2011).

[50] Said (n 4).

[51] Tess Allas, Michelle Bui, Bronwyn Carlson, Pilar Kasat, Hannah McGlade, Suvendrini Perera, Joseph Pugilese, Ayman Qwaider and Chanrandev Singh, 'Indigenous Femicide and the Killing State' in *Deathscapes: Mapping Race and Violence in Settler States* (2018) <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/> accessed 20 April 2022.

[52] Shreya Atrey, *Intersectional Discrimination* (Oxford University Press 2019) 36.

violence. Accordingly, I have intentionally avoided empirical comparison between non-Indigenous and First Nations women in this study.

In this study, I have also attempted to remain attuned to differences amongst First Nations peoples and have sought to facilitate exploratory and discursive work to this end. This is familiar to what Atrey describes as intersectionality's key focus on looking at women's experiences as a whole and with integrity,[53] reflecting not an approach that fragments and looks at categories of race, gender etc as additive, but one that draws in and looks at subjects' experiences as a whole, in and of themselves. First Nations peoples are not a unified group, and women's plural experiences and perspectives, including around issues such as how to conceive of or understand domestic violence,[54] may evince a lack of consensus that is necessary to consider, and draw out, in research. The exploratory and discursive approach I have adopted also problematises a common construction of the idea of 'prioritising Indigenous voice', as if this voice was universal or singular and capable of being distilled from any Indigenous person speaking on behalf of the group. This approach may result in a damaging form of essentialism, which amounts to another kind of orientalism,[55] and ultimately may (inadvertently) cast Indigenous knowledge into the realm of the purely 'symbolic'. To resist doing this, I attempt to illuminate areas of consensus as well as identify areas of complexity and disagreement in this study where these emerged during cases and interviews/yarning. This discursive approach

[53] ibid 46.

[54] Anna Olsen and Ray Lovett, *Landscapes: Existing Knowledge, Practice and Responses to Violence Against Women in Australian Indigenous Communities: State of Knowledge Paper* (ANROWS 2016) v; This can be contrasted with Jacinta Price, Marcia Langton and Josephine Cashman, *Ending the Violence in Indigenous Communities: National Press Club Address, November 2016* (Centre for Independent Studies 2016); Melissa Lucashenko, 'Violence Against Indigenous Women: Public and Private Dimensions' (1996) 2(4) *Violence Against Women* 378.

[55] Said (n 4).

seeks to respect and explore the plural experiences of First Nations women. I have also intentionally avoided reaching didactic conclusions about what 'self-determination'-based responses to domestic violence may look like, as this is properly up to First Nations. Incorporating an intersectional methodology in this study also meant talking to First Nations men as well as First Nations women, in line with a whole-of-community approach to understanding and responding to domestic violence (and in line with my scoping discussions with stakeholders, discussed further below).[56]

Overall, my approach in this study in some ways aligns with what Cho et al describe as an insurgent, centripetal, intersectional methodology.[57] The research is located within the margins of criminological research and draws on some of the discipline's techniques. However, in it I also challenge traditional criminological approaches by adapting Indigenous-centred methodologies for an innovative, unavoidably political, and human rights-focused (transformative) purpose.[58]

PART III: Methodology

Having contextualised my methodological (and epistemological) approach, in this section I specifically describe how I designed and conducted my study. From the outset I would like to acknowledge that during the design, implementation, and

[56] During scoping work the involvement of First Nations men as well as women was identified as important. See also ANROWS, *Warawarni-gu Guma Statement: Healing Together in Ngurin Ngarluma* (2018) <https://www.anrows.org.au/warawarni-gu-guma-statement/> accessed 9 July 2020.

[57] Sumi Cho, Kimberle Williams Crenshaw and Leslie McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications and Praxis' (2013) 38(4) *Signs: Journal of Women in Culture and Society* 785, 793.

[58] ibid 791. This aligns with both the focus of *Indigenous Criminology* and intersectionality.

finalisation phases of this research I have benefited immensely from the support and knowledge of First Nations people whose expertise concerning domestic violence far exceeds my own. I recall attending the Critical Criminology and Social Justice Conference at the University of NSW in 2018 where, during the question and answer component of a plenary session touching on issues related to First Nations research, Dr Kath McFarlane, then from Charles Sturt University, lamented that academia, and particularly academic publication, encourages personal promotion rather than acknowledgement of participant contributions (who should be understood as co-researchers without whom the research would have never been possible). Unfortunately, this uncomfortable observation about academia is accurate, including to the extent that this thesis and its related publications will be identified as *my* DPhil research and will benefit me personally. When I use possessive language ('my research', 'my study') throughout my thesis, it is done with discomfort. I would like to emphasise my indebtedness, honestly and humbly, to all participants in my research, including the people and organisations who participated in both design and steering processes, as well as in the final study, sharing their experiences, knowledge, expertise and insights with me. I would also like to particularly thank all First Nations contributors who have taken the time out of their busy schedules and lives to participate in, and inform, this study.

Research design and scoping work

Prior to commencing this study, I engaged in 'informal' scoping with six First Nations Elders and specialist domestic violence workers. The phrase 'informal' reflects that this process was not for the purposes of data collection, and this label should not be taken as any value judgement regarding the quality of the information sought, or the

importance of the process. Within a few months of commencing my DPhil studies in 2016, I started meeting with these stakeholders to discuss my ideas. Following the third principle of Indigenous Criminology—that research must come from within, and be relevant to, communities—I sought to feel out the research, identify areas of community priority and identify my appropriate role as a non-Indigenous researcher working in this space. The purpose of meeting with Elders was also to pay respect to cultural protocols,[59] and to learn from the knowledge and insights of senior community members. As Smith notes

> Indigenous methodologies tend to approach cultural protocols, values and behaviours as an integral part of methodology. They are 'factors' to be built into research explicitly, to be thought about reflexively, to be declared openly as part of the research design, to be discussed as part of the final results of a study and to be disseminated back to the people in culturally appropriate ways and in a language that can be understood.[60]

Building respect and engagement into the design phase of my research, through this 'informal scoping work',[61] was accordingly an important aspect of my methodology. Dissemination of findings and ongoing engagement with study participants has also been important to my approach, as I will discuss below.

Having worked in the domestic violence sector for many years prior to commencing this research, I already knew many of my scoping participants in a professional, and in some cases personal, capacity. Through these initial consultations, I developed my final study design and I also emphasised that I wanted

[59] See Karen Martin-Booran Mirraboopa, 'Ways of Knowing, Being and Doing: A Theoretical Framework and Methods of Indigenous and Indigenist Re-Search' (2003) 27(76) *Journal of Australian Studies* 203; Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Guidelines for Ethical Research in Australian Indigenous Studies' (AIATSIS, 2012) <https://aiatsis.gov.au/sites/default/files/2020-09/gerais.pdf> accessed 22 April 2022.

[60] Smith (n 1) 15-16.

[61] Danielle Levac, Heather Colquhoun and Kelly O'Brien, 'Scoping Studies: Advancing the Methodology' (2010) 5 *Implementation Science* 69.

to disseminate findings to support communities' advocacy and knowledge-building. This closely aligns with the second and third principles of Indigenous Criminology and follows the approach of my previous research and work.[62] Further, I incorporated questions about self-determination in my study design as I was of the view this was not well respected nor reflected (at the national/state/territory level, at least) in the domestic violence policy landscape in Australia. This emphasis also aligned with the transformative focus of Indigenous Criminology.

Through this scoping work I finalised my research design, which comprised a multi-stage qualitative and iterative process involving cases and interviews/yarning According to the Encyclopaedia of Case Study Research

> iterative refers to a systematic, repetitive, and recursive process in qualitative data analysis. An iterative approach involves a sequence of tasks carried out in exactly the same manner each time and executed multiple times.…The interplay between elements of the research, such as that between design and discovery, or among data collection, preliminary analysis, and further data collection, are examples of an iterative approach in qualitative research.[63]

Although this definition seems formal and rigid, through my iterative approach I essentially moved recursively between analysing the 98 homicide cases I had accessed, and the interview/yarning process with participants (described below). Both analytical processes reciprocally informed one another across the study's duration. This meant in practice that I gathered preliminary case observations, used

[62] Emma Buxton-Namisnyk, 'Does an Intersectional Understanding of International Human Rights Law Represent the Way Forward in the Prevention and Redress of Domestic Violence Against Indigenous Women in Australia?' (2014/2015) 18(1) *Australian Indigenous Law Review* 119.

[63] Albert J Mills, Gabrielle Durepos and Elden Wiebe, 'Encyclopaedia of Case Study Research' (SAGE, 2010) <http://methods.sagepub.com/reference/encyc-of-case-study-research/n185.xml> accessed 28 April 2022.

these to structure discussions with participants in interviews/yarning, and reviewed the cases again in light of participants' observations. This process of revisiting and sense-making was repeated and designed not only to strengthen the study's findings, but to centre First Nations peoples' knowledge and perspectives.

I outline this research methodology in the below flowchart:

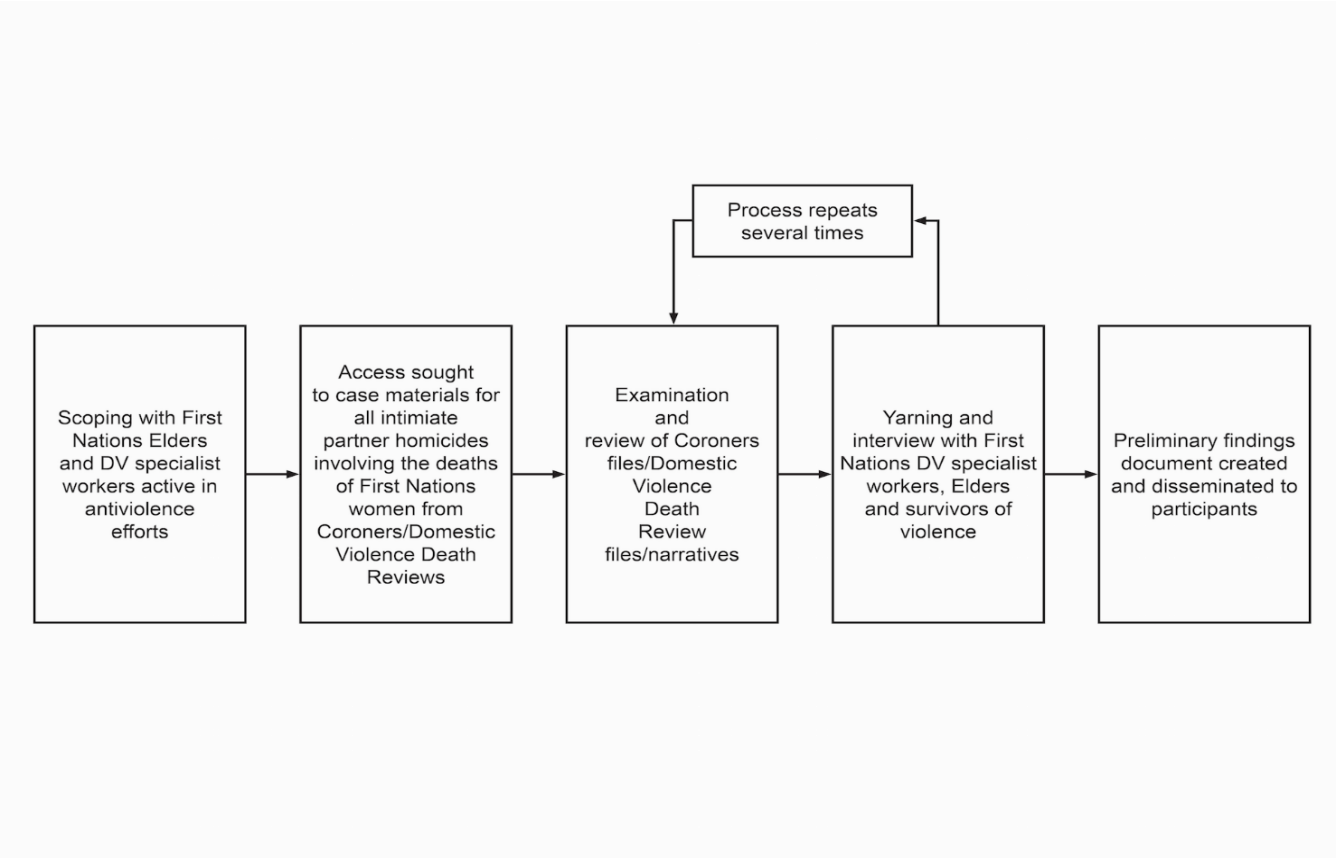

Figure 1: Research design flowchart

Cases

The first stage of qualitative research for this study involved analysing cases from coronial DFVDRs in NSW, Victoria, SA, the NT, Tasmania and Queensland.[64] DFVDR processes were initially developed in North America during the 1990s, and

[64] The author was advised that the ACT had no cases fitting the research criteria. Western Australia was excluded, *inter alia*, due to the domestic violence homicide review process sitting in the jurisdiction of the Western Australian Ombudsman.

the first unit was established in Australia in the late-2000s.[65] Australian DFVDRs operate at the state/territory level, and have a plurality of models, with the majority sitting within the jurisdiction of the State Coroner.[66] DFVDRs review domestic violence-context deaths, typically focusing on the review of state records, including police, health, education and other government and NGO service records, as well as police interviews with family and friends conducted after the homicide. Review findings are used to improve service responses and help the government direct domestic violence resources.[67] Like a coronial inquest, DFVDR processes involve reconstructing a narrative based on review of state records, with a view to making recommendations to improve—amongst other things—the domestic violence service response. These processes also examine victims' interactions with state services and institutions in the years, or even decades, prior to the homicide event. The NSW DFVDR describes the death review process as follows

> By virtue of the death … the [DFVDR] is afforded a unique opportunity to identify issues that might otherwise be obscured within this complex system. The Team's review process, therefore, acts as a lens into systems and affords a critical analysis of the effectiveness of those systems, where improvements have been made, or where systems and services do not, but should, reach.[68]

In this study, I accordingly reviewed domestic violence-related homicide cases from DFVDRs to facilitate critical examination of First Nations women's service contact

[65] Lyndal Bugeja, Anna Butler, Emma Buxton, Heidi Ehrat, Michelle Hayes, Sara-Jane McIntyre and Carolyn Walsh, 'The Implementation of Domestic Violence Death Reviews in Australia' (2013) 17(4) *Homicide Studies* 353; Anna Butler, Emma Buxton-Namisnyk, Susan Beattie, Lyndal Bugeja, Heidi Ehrat, Emma Henderson and Ashnee Lamb, 'Australia' in Myrna Dawson (ed), *Domestic Homicides and Death Reviews: An International Perspective* (Palgrave Macmillan 2017).

[66] Butler et al, *Domestic Homicides and Death Reviews: An International Perspective* (n 65).

[67] Kelly A Watt, 'Domestic Violence Fatality Review Teams: Collaborative Efforts to Prevent Intimate Partner Femicide' (PhD thesis, University of Illinois at Urbana-Champaign 2010).

[68] Domestic Violence Death Review Team (n 49) 3.

histories. This case review approach supported thematic analysis across jurisdictions, identification of common service response issues, and collation of common or divergent characteristics across cases. This responded to the gaps in the literature I discussed in Chapter 1.

In the first stage of the research, I analysed all cases of intimate partner homicide that occurred between January 2006 and December 2016 involving a First Nations female homicide victim or perpetrator, from NSW, Queensland, the NT, Victoria, SA and Tasmania.[69] All cases followed a history of domestic violence in which the First Nations woman was a victim. I included cases where First Nations women were killed by their intimate partners, and cases where First Nations women killed their intimate partners in self-defence and/or following histories of domestic violence victimisation.

I examined 98 cases in total, including 68 cases where women were killed by their partners, and 30 cases where women killed their partners. Some DFVDRs provided de-identified case narratives (NT, NSW), others provided in-person access to complete coronial and/or DFVDR files (SA, Tasmania and Victoria), and one jurisdiction provided a mix of both in-person access to files and de-identified case narratives (Queensland). Where narratives were not already prepared by DFVDRs I prepared narratives from my review of original coronial records. By the end of this process, I had 98 case summaries de-identified by name (but not time or place), each ranging from several pages, to over 50 pages, in length. On average, case reviews were around 10,000 words in length. Information in the review documents

[69] To support this whole-of-population analysis, DFVDR personnel ensured all cases fitting the criteria were made available for the study. In Victoria, cases were identified from publicly available sources and original coronial files accessed based on the names requested.

was not always directly comparable due to some jurisdictions having incomplete records and others, such as NSW, having extensive access to records derived directly from police systems. Nonetheless, these case summaries supported me to map broad areas of consensus as well as identify apparent gaps in information and service availability across cases.

In working with this data, I undertook emergent coding in NVivo, starting with several codes (for instance, police contact, specialist service contact etc) and adding in additional codes as I progressed through the work (for example, language of 'disengagement' being used, etc). I also examined the cases as a whole, looking at women's contact with state agencies, and gaps in service contact, across their lives. This early analysis provided the thematic framework for the interviews and yarning described below in the second research stage.[70] I revisited this analysis continuously throughout the research process in accordance with my iterative approach.

Interviews and yarning

In the second stage of qualitative research, I spoke to 22 First Nations Elders, domestic violence survivors and specialist domestic violence workers, from metropolitan, regional and remote areas, who had worked and lived across different states and territories of Australia. While most participatory research examining domestic violence in First Nations communities to date has focused on intensive

[70] Johnny Saldana, *The Coding Manual for Qualitative Researchers* (SAGE, 3rd edn 2016) 5-7.

engagement in key sites,[71] during my scoping work I identified that seeking different groups' and community members' views around the state response would be beneficial. As in the first stage of research I examined cases from multiple states and territories, in the second stage I attempted to ensure that the interview and yarning sample would include First Nations people with experience in those jurisdictions. While more focused place-based studies have emphasised and supported self-determination,[72] in this study I also considered that the emphasis on state responses and self-determination would be well served by a broad, multi-jurisdictional focus including both case reviews and interviews/yarning.

Figure 2 outlines when, and with whom, I conducted interviews/yarns.

Date	**Category***	**Location of Interview****
May 2018	Interview, worker (male)	NSW
July 2018	Interview, worker (female)	NSW
August 2018	Yarning circle, five workers (male and female)	NSW
August 2018	Interview, Elder (female)	Victoria/NSW
September 2018	Interview, Elder (male)	NSW
September 2018	Interview, worker (female)	Tasmania
October 2018	Interview, worker (male)	Qld
November 2018	Interview, worker (female)	NSW
November 2018	Interview with victim/survivor (female)	NSW
February 2019	Interview, worker (female)	NSW
February 2019	Interview, worker (female)	NSW
September 2019	Interview, worker (female)	NSW
August 2019	Yarning circle, six Elders (female)	NSW

* Many participants were workers as well as Elders and/or victims/survivors.

[71] See, for example, Harry Blagg, Nicole Bluett-Boyd and Emma Williams, *Landscapes: Innovative Models in Addressing Violence Against Indigenous Women: State of Knowledge Paper* (ANROWS 2015); Harry Blagg, Emma Williams, Eileen Cummings, Victoria Hovane, Michael Torres and Karen Nangala Woodley, *Innovative Models in Addressing Violence Against Indigenous Women: Final Report* (ANROWS 2018); Marcia Langton, Kristen Smith, Tahlia Eastman, Lily O'Neill, Emily Cheesman and Meribah Rose, *Improving Family Violence Legal and Support Services for Aboriginal and Torres Strait Islander Women: ANROWS Research Report Issue 25* (ANROWS December 2020).

[72] Sees for instance, Blagg et al *Landscapes* (n 71).

**Some interviews involved participants visiting from other jurisdictions. Participants had often worked or lived in multiple jurisdictions and regional/remote/rural areas.

Figure 2: Interview/yarning sample overview (N= 22)

Perhaps the most unique aspect of this study's methodology from a Western research perspective is the inclusion of yarning: an inclusive form of group discussion. As Dean notes, 'providing a single definition for yarning is risky because it potentially limits its application within different Aboriginal contexts.'[73] However, the key to yarning is its flexibility, and its ability to bring in stakeholders and participants as co-researchers or partners in the process. As Dean notes, central to processes of yarning is a focus on voices, experience/knowledge and relationships,[74] and, as Williams describes, yarning is about creating a sharing and a 'telling' space.[75] Yarning is also about a more informal 'bringing together', although Dean cautions against placing an 'informal value'[76] on the process, as this devalues the intention of the practice,[77] and I believe also runs the risk of relegating this knowledge to the 'purely symbolic'.[78] The yarning circle is a space of equality, although the roles of participants may vary, and the researcher may take on a more 'passive' role (in many ways an approach that is identified as a 'characteristic of good Aboriginal research').[79] Certainly in the group yarns I conducted, as well as in the semi-

[73] Cheree Dean, 'A Yarning Place in Narrative Histories' (2010) 39(2) *History of Education Review* 6,7.

[74] ibid.

[75] Shayne Williams, 'Indigenous Values Informing Curriculum and Pedagogical Praxis' (PhD thesis, Deakin University 2007).

[76] Kerith Powers, 'Yarning: A Responsive Research Methodology' (2004) 11(1) *Australian Research in Early Childhood Education* 37.

[77] Dean (n 73) 7-8.

[78] Fish (n 42).

[79] Dean (n 73) 7.

structured interviews, I did aim to learn from participants rather than driving the processes myself; attempting to listen in deep and humble ways (*Dadirri*).[80] This was especially necessary for me as a non-Indigenous researcher.

While yarning has become increasingly accepted as an academically robust method of conducting research with First Nations people in Australia in recent years, First Nations peoples have used yarning for many generations to raise and resolve community issues.[81] During the University's ethics approval process for this study, Committee members raised concerns about the suitability of yarning in a group, fearing it would traumatise participants, prevent participants from speaking out, or expose participants to risk. However, as Dean argues, the ability of yarning circles to create a space where First Nations people will be heard, and not silenced, is an important aspect of cultural safety in research.[82] To mitigate potential challenges arising from the thesis' focus on violence, I undertook to focus the yarning (and interview) questions on structural issues within the violence response, rather than individuals' own experiences.

This research stage also provided for one-on-one semi-structured interviews—a methodology more aligned with Western qualitative research methods.[83] To limit the possibility of re-traumatisation, my methodology provided the

[80] Roianne West, Lee Stewart, Kim Foster and Kim Usher, 'Through a Critical Lens: Indigenist Research and the Dadirri Method' (2012) 22(11) *Qualitative Health Research* 1582.

[81] Dean (n 73) 7.

[82] ibid 8.

[83] Queensland Health, 'Communicating Effectively with Aboriginal and Torres Strait Islander People' (Queensland Health Cultural Capability Team, September 2015) <https://www.health.qld.gov.au/__data/assets/pdf_file/0021/151923/communicating.pdf> accessed 28 April 2022.

option for support persons to be present and a co-facilitator to be engaged where necessary—although no participants ultimately utilised these options. As I noted above, semi-structured questions were also oriented towards general responses to violence (for instance, seeking feedback on criminal justice responses) rather than interrogating participants' own experiences. However, during interviews/yarning participants often reflected on their own experiences, and those of their families and communities.

As I described above, in this stage of the research I spoke with 22 participants in one-on-one semi-structured interviews and in group yarns (see Figure 2). I asked all participants similar questions based on a questionnaire I developed as part of my ethics approval process. I sought participants' views about the overall response to domestic and family violence against First Nations women, the police and court response, the availability, accessibility and quality of domestic and family violence specialist services, successful community approaches, the adequacy of participatory rights and self-determination in this area, and ways forward.

All participants were offered vouchers to participate in the study, as it is important to compensate First Nations people for sharing their knowledge and expertise. I met with participants in various locations, always bringing lunch, morning or afternoon tea. I met some participants multiple times during the 'data collection' phase, to clarify and further explore issues that had been raised. Participants in the study had experience working and living across the range of jurisdictions, but the majority came from NSW and Queensland, and the majority of interviews and yarns were conducted in NSW (see Figure 2). Many participants were survivors of violence, including most of those who worked as specialist domestic violence

workers. Accordingly, it was very difficult to nominate a specific 'category' for each participant (see Figure 2) and I do so reluctantly.

In this stage of the research, I also spent time at a First Nations community-controlled organisation providing domestic violence services. During site visits to the service, I learned about that organisation's processes and responses to violence and spoke in depth to domestic and family violence workers. During the course of this research, I spoke to many more First Nations and non-Indigenous workers (working in community-controlled organisations) in the context of my professional work. I also learned from many informal conversations I had with First Nations colleagues and friends during this time, including through my work on the *Family is Culture Review* (an Aboriginal-led inquiry into the overrepresentation of Aboriginal children in out-of-home care in NSW).[84] Accordingly, this research is the sum of much professional, as well as structured, academic, observation.

Checking and disseminating findings

The final component of the research process was checking and disseminating study findings. As a non-Indigenous researcher, I was limited in my ability to interpret findings from the perspective of First Nations peoples, and accordingly relied on participants in my study to ensure my understandings and interpretations of the research data were meaningful and appropriate.[85] While guiding interpretation is often a role met by a reference group, I elected to undertake this process with the

[84] Megan Davis, *Family is Culture Final Report: Independent Review of Aboriginal Children in Out of Home Care* (Family is Culture 2019).

[85] This process also responds to concerns that have been raised around privileged white women's participation in intersectional research, and theorisation from the perspective of (unacknowledged) racial privilege. See Wendy Hulko, 'The Time- and Context-Contingent Nature of Intersectionality and Interlocking Oppressions' (2009) 24 *Affilia* 44, 47. For further discussion of intersectionality, see Chapter 3.

research participants who helped shape and build the work. Accordingly, after wrapping up the case review and interviews/yarning components of the study, I invited participants to provide feedback about my preliminary study findings. I was able to re-engage the majority of participants in the research through these processes, although due to the travel restrictions resulting from the COVID-19 pandemic some of these discussions had to be held online or via phone.

I will also disseminate a plain English overview to stakeholders after my thesis is complete. This reflects the importance of research being accessible, and available to be used by First Nations communities and community-controlled organisations.[86] I also have continued to disseminate research findings including to publish my research open-access.[87] I am privileged to have an ongoing relationship with the majority of those who participated in, and assisted in the design of, this study.

Interdisciplinary focus

Although in this chapter I have primarily focused on this study's empirical, criminological methodology, this research project sits at the intersection of criminology and human rights and, as such, incorporates a substantial doctrinal component. Despite increasing commentary around,[88] and claims to, intersectional practice more broadly within the human rights system, existing bodies of human rights law around gender-based violence and Indigenous rights may not always be

[86] Blagg and Anthony (n 27).

[87] Emma Buxton-Namisnyk, 'Domestic Violence Policing of First Nations Women in Australia: 'Settler' Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination' (2021) *The British Journal of Criminology*, azab103 (citation forthcoming).

[88] See Lorena Sosa, *Intersectionality in the Human Rights Legal Framework on Violence Against Women: At the Centre or the Margins*? (Cambridge University Press 2017); Gauthier de Beco, 'Intersectionality and Disability in International Human Rights Law' (2020) 24(5) *The International Journal of Human Rights* 593.

congruent. This conflict arises as women's rights to be safe and free from violence have yielded a greater emphasis on state intervention through the due diligence standard (see Chapter 1),[89] whereas Indigenous peoples' right to self-determination envisions at least some transfer of control (over the group's own affairs) from the state to the self-determining group/s (see Chapter 2).[90] While furthering claims to Indigenous self-determination is therefore an important component of the research, in line with Indigenous Criminology, to effectively achieve this in the area of violence against women (where group rights have often been identified as being antithetical to women's rights, and 'culture' has been identified as a cause for more state intervention, not less—see Chapter 1)[91] requires more than a superficial engagement with human rights law and theory. I undertake this analysis in Chapter 8.

As with the other methodological components of the thesis, doctrinal research is not immune from the influence of my position as a non-Indigenous researcher, and my values and belief systems. Although international human rights law may represent an important justice avenue for First Nations peoples as it encourages accountability beyond the (coercive) state framework, as I have noted previously this body of law has been criticised—including by First Nations academics—as being

[89] This is embodied in the due diligence standard discussed in Chapter 1, which is considered both treaty and customary law. See UN Commission on Human Rights, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on the Due Diligence Standard as a Tool for the Elimination of Violence Against Women' (20 January 2006) UN Doc E/CN.4/2006/61.

[90] UN *Declaration on the Rights of Indigenous Peoples,* UNGA Res 61/295 (2 October 2007) UN Doc A/RES/61/295.

[91] UN Commission on Human Rights, 'Report of the Special Rapporteur on Violence Against Women' (n 89); Susan Moller Okin, *Is Multiculturalism Bad for Women?* (Princeton University Press 1999).

shaped by, and supporting, colonialism and the nation-state (see Chapter 3).[92] I also harbour concerns that 'the master's tools will never dismantle the master's house', and human rights law—to the extent that it is reflective of the values of nation-states—may be incapable of achieving necessary, structural change for Indigenous peoples in 'settler' colonial nations (see Chapter 8).[93] Bearing these concerns in mind, with this work I have consciously adopted a pragmatic methodological approach that looks to the emancipatory potential of human rights law. My choice to engage centrally with international human rights law is made in full recognition of its potential limitations and challenges, but it is an approach that I believe has promise for advancing First Nations women's rights.[94]

Part IV: Limitations

Although in later chapters I specifically discuss some limitations of my research findings, having outlined and contextualised the methodology for this study, in this final section I acknowledge some limitations of my study's design. Firstly, as noted above, due to my broad approach to working with First Nations Elders, survivors and specialist domestic violence workers, 'committed objectivity', the first principle of Indigenous Criminology, was a challenging fit for this research.[95] Agozino describes that researchers should be able to 'speak, with empirical authority about the life-

[92] See Irene Watson, *Indigenous Peoples as Subjects of International Law* (Routledge 2018); Irene Watson*, Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge 2016).

[93] Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House* (Penguin Books 2018).

[94] For limitations of critical legal studies and critical approaches more generally, see Robert A Williams Jnr, 'Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color' (1987) 5(1) *Law and Inequality* 103.

[95] Cunneen and Tauri (n 16) 31.

world of Indigenous peoples',[96] but as a non-Indigenous scholar working across multiple sites and with different participants, there was a high chance that my research could amount to 'outsider research', without an adequate chance to build relationships and trust. Similarly, given the plurality of First Nations language groups and peoples across Australia, no researcher could ever consult adequately, or appreciate the different life experiences of different groups and peoples, through a study designed and executed like this one. Some aspects of this study were accordingly unavoidably reductive, looking at broad similarities and differences across a range of First Nations peoples' experiences, with likely significant gaps. Other sections, such as my discussion of mandatory domestic violence reporting in the NT in Chapter 7, would benefit from further development, for instance through further place-based study. In an attempt to broadly mitigate against this limitation, as described above, I built early engagement and follow-up visits into my research design, and included Elders in my interviews/yarning processes, to recognise and defer to their seniority and knowledge, as well as recognise the importance of my earning respect and trust in conducting this work. I have also undertaken to disseminate findings back to communities at the conclusion of the research. Finally, I used NVivo qualitative coding software to code interview transcripts and notes, so as to draw upon my participants' voice in an unfiltered way wherever possible.[97] As discussed earlier in this chapter, I have also incorporated processes for checking findings into my research design to increase the likelihood that my research can speak with appropriate knowledge and authority.

[96] Agozino, *Counter-Colonial Criminology* (n 11) 157.

[97] Aileen Moreton-Robinson, *Talkin' Up to the White Woman* (University of Queensland Press 2000) 2.

A second limitation of this study is that much of the service contact information I had access to focused narrowly on the domestic violence service system, without including comprehensive information about the operation of adjacent state systems (including, for instance, child protection, healthcare, and education) relevant to First Nations women's experiences. Understanding First Nations women's experiences of the domestic violence response requires analysis beyond criminal justice and specialist service systems, and necessarily invokes consideration of adjacent (state) systems that may impact and influence First Nations women's help seeking and safety. Although some jurisdictions' records did include (sometimes extensive) visibility into adjacent state systems, this was not consistent across, or within, jurisdictions, and in working with the cases, in many instances, *I didn't know what I didn't know*, meaning that it was often difficult to ascertain whether information was missing, or whether no contact with those services or agencies had occurred. To account for this limitation, I invited broader and more wide-ranging discussions around the operation of adjacent systems in interviews/yarning, emancipating this discussion from the potential limitations of the state materials. As a consequence, some sections of the research are based wholly on participant observations and experiences, rather than case findings.

Conclusion

In this chapter I have provided an overview of my study's methodology, and outlined how, in designing this research, I have attempted to centre First Nations peoples' voices and experiences, alongside, and informing, an analysis of state records. In the following chapters I present findings derived from this process, weaving together

case findings as well as findings from interviews/yarning, reflecting the iterative and discursive research design I outlined in this chapter.

Chapter 5: Domestic Violence Policing

Introduction

> Policing in Aboriginal families has always been a problem. It goes back to colonial days. That the police, the state force… that was used to remove Aboriginal children, to remove Aboriginal people from the land. To, you know, lock Aboriginal people up for minor offences. And, and so it's, it's really the wrong part of government to be intervening in Aboriginal peoples' lives around domestic and family violence.
>
> —First Nations specialist domestic violence worker in interview

This chapter examines the police contact histories of the cohort of First Nations women victims of domestic violence who were either killed by, or who killed, a male intimate partner between 2006 and 2016. As I discussed in Chapters 1 and 2, in Australia the police operate as primary 'crisis' responders to domestic violence and act not only as gatekeepers of the broader criminal justice system, but also as a key entry point into other services, such as refuge, counselling and support services.[1] As I established in Chapter 1, Australia's investment in the criminal justice system also aligns with the due diligence standard under international human rights law. However, as I outlined in Chapter 2, the role of 'settler' police in Australia in executing policies of invasion/colonisation, may create challenges for First Nations women who may interact with police when they are victims of domestic violence.

In Part I of this chapter, I examine overpolicing and how these practices emerged in this study. I establish overpolicing as the prevailing context within which domestic violence policing of First Nations women should be understood. In light of

[1] Christopher Dowling, Anthony Morgan, Chloe Boyd and Isabella Voce, *Policing Domestic Violence: A Review of The Evidence* (Research Reports No.13, Australian Institute of Criminology 2018) viii.

this, I then discuss findings relating to the criminalisation of First Nations domestic violence victims and the (mis)identification of victims as aggressors/perpetrators. In Part II, I examine various examples of under-policing, or episodes where police failed to help First Nations domestic violence victims. In Part III, I consider how First Nations women's 'disengagement' was constructed, primarily by police in their records, across cases. Finally, in Part IV I examine the institutional character of police. This chapter lays relevant groundwork for Chapter 6, where I present findings relating to the broader operation of the criminal justice system, including DVOs.

Locating domestic violence policing in (neo)colonial context

As I foreshadowed in my thesis' Introduction and in Chapters 1 and 2, a key challenge with positioning state police as primary responders to domestic violence in Australia relates to the historically expansive role of police in regulating and administering the lives of First Nations people within the Australian 'settler' colony.[2] For First Nations people in Australia, state police remain a uniquely compromised institution due to their historical role as a paramilitary force executing discriminatory, racialised policies of colonisation,[3] initially on behalf of the states and, after 1901, the federated Australian government.[4] Histories of discrimination and violence by colonial police against First Nations peoples on behalf of the state are well

[2] Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (The Federation Press, 2nd edn 2016) 147.

[3] For instance, child removal, see Christopher Cunneen and Terry Libesman, *Indigenous People and the Law in Australia* (Butterworths 1995).

[4] Mark Finnane, *Police and Government: Histories of Policing in Australia* (Oxford University Press 1994) 111; Christine Jennett, 'Policing and Indigenous Peoples in Australia' in Mike Enders and Benoit Dupont (eds), *Policing the Lucky Country* (Federation Press 2001) 50; David Yaoming Yang, 'Policing Indigenous Australians in the Northern Territory: Implications of the "Paperless Arrest"' (2015) 8(18) *Indigenous Law Bulletin* 21, 21.

documented,[5] and oral histories of this violence have been passed down through generations of First Nations peoples.[6] In the *Royal Commission into Aboriginal Deaths in Custody* ('RCIADIC'), Commissioner Johnston described that state police were the 'most consistent point of Aboriginal contact with colonial power',[7] and many contemporary policing studies focus on the ways in which this colonial relationship continues to frame police interactions with First Nations people.[8] Against this background, numerous studies and inquiries have specifically highlighted the negative consequences policing may have for First Nations women,[9] describing colonisation as a gendered project,[10] and locating contemporary raced and gendered

[5] See Matthew Foley, 'Aborigines and the Police' in Peter Hanks and Bryan Keon-Cohen (eds), *Aborigines and the Law* (Allen and Unwin 1984); Henry Reynolds, *With the White People* (Penguin 1990); Henry Reynolds, 'The Unrecorded Battlefields of Queensland' in Henry Reynolds (ed), *Race Relations in North Queensland* (Department of History and Politics, James Cook University 1993); Russell McGregor, 'Law Enforcement or Just Force? Police Action in Two Frontier Districts' in Henry Reynolds (ed), *Race Relations in North Queensland* (Department of History and Politics, James Cook University 1993); Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen and Unwin 2001) 49; Yang (n 4).

[6] Aboriginal and Torres Strait Islander Women's Task Force, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (State of Queensland 1999) 228.

[7] Commissioner Elliott Johnston, *Royal Commission into Aboriginal Deaths in Custody* (Australian Government Publication Service 1991) National Report Volume 2, 10.5.1.

[8] Jennett (n 4) 63; Amanda Porter and Chris Cunneen, 'Policing Settler Colonial Societies' in Phillip Birch, Michael Kennedy and Erin Kruger, *Australian Policing* (Routledge 2020); Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: ALRC Report 133* (Australian Law Reform Commission 2018); Cunneen, *Conflict, Politics and Crime* (n 5) 8.

[9] See Audrey Bolger, *Aboriginal Woman and Violence: A Report for the Criminology Research Council and the Northern Territory Commissioner of Police* (Australian National University North Australia Research Unit 1991); Aboriginal and Torres Strait Islander Women's Task Force (n 6); Victorian Indigenous Family Violence Task Force, *Final Report* (Aboriginal Affairs Victoria 2003) The Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Queensland Government 2015).

[10] See Larissa Behrendt, 'Consent in a (Neo) Colonial Society: Aboriginal Women as Sexual and Legal 'Other'' (2000) 15(33) *Australian Feminist Studies* 353; Cunneen, *Conflict, Politics and Crime* (n 5) 158.

violence by police against First Nations women within colonial context.[11] Relationships between 'settler' police and First Nations women, grounded in historical patterns of colonisation and violence, accordingly form the context within which contemporary domestic violence policing of First Nations women must be examined and analysed.

I will note from the outset that I do not consider the issue of First Nations community policing and night patrols in this thesis, mostly due to a lack of available information. I reference community policing and securitisation initiatives briefly in Chapter 8 in the context of community-led alternatives to 'settler' police intervention, as a potential expression of self-determination, and as an area warranting further research.

Key finding: Contact frequency and nature

It was a key finding in this study that 90% of the First Nations women who were killed by, or killed, a male intimate partner following a history of domestic violence had prior contact with 'settler' police in relation to that history of violence (N = 88). Most women had multiple contacts with police. As I will discuss further in Chapter 7, women were far more likely to interact with 'settler' police than mainstream 'settler', or community-controlled, specialist domestic violence (including refuge or shelter) services. These findings suggest that police continue to be the primary service contact for First Nations women in Australia when they are victims of domestic violence.

[11] Behrendt, 'Consent in a (Neo) Colonial Society' (n 10); Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into Racist Violence in Australia* (Australian Government Publishing Service 2001).

It was another key finding that despite high levels of police contact across cases, police involvement rarely appeared to enhance women's safety. There were very few examples of evidently 'good' or 'protective' policing by 'settler' police in the study. In the remainder of this chapter, I accordingly examine the nature of First Nations women's service interactions with 'settler' police and reflect on what these interactions may suggest in (neo)colonial context.

PART I: Overpolicing

Findings from this study suggest that poor relationships between First Nations people and the police continue to be grounded in, and maintained by, identifiable patterns of overpolicing.[12] First used in the United States in relation to the policing of Black and minority communities,[13] and later in Canada in relation to the policing of Indigenous peoples,[14] the term 'overpolicing' has been used in the Australian context to describe the way First Nations people and communities are disproportionately and differently policed compared with non-Indigenous, or 'settler' Australians.[15] 'Overpolicing' describes not only increased police surveillance of First Nations people compared to non-Indigenous Australians, but also describes the

[12] Behrendt, 'Consent in a (Neo) Colonial Society' (n 10).

[13] John Williams-Mozley, 'Overpolicing: A Critical Commentary on its Conception and Utility in Australian Criminological Explanations about Aboriginal Over-Representation in Police Arrest and Custody Rates' (PhD thesis, Charles Sturt University 2009).

[14] Shirley McMullen and C H S Jayewardene, 'Systemic Discrimination, Aboriginal People, and the Miscarriage of Justice in Canada' in Kayleen M Hazlehurst (ed), *Perceptions of Justice: Issues in Indigenous and Community Empowerment* (Aldershot 1995); Frances Henry, Patricia Hastings and Brian Freer, 'Perceptions of Race and Crime in Ontario: Empirical Evidence from Toronto and the Durham Region' (1996) 38(4) *Canadian Journal of Criminology* 469.

[15] See, for first uses, New South Wales Anti-Discrimination Board, *Study of Street Offences by Aborigines: A Report of the Anti-Discrimination Board in Accordance with Section 119 of the Anti-Discrimination Act 1977* (New South Wales Anti-Discrimination Board 1982). Later uses, see Cunneen, *Conflict, Politics and Crime* (n 5).

criminalisation of conduct that—in non-Indigenous communities and populations—would not ordinarily be subject to police attention. As Cunneen observes, the more intensive and different way First Nations people are policed compared to non-Indigenous Australians, including for minor offences, can partly explain the over-representation of First Nations people in all stages of the criminal justice system, from police records, to charges and police custody and incarceration.[16] In this sense, overpolicing has a 'net-widening' effect,[17] bringing more First Nations people into the criminal justice system and driving disproportionate representation.

In theorising the effects of overpolicing on individuals and communities, Lerman and Weaver's observations from the United States context are helpful. Lerman and Weaver theorise that racialised approaches to policing, as well as the mass incarceration that results, impacts individuals and communities by driving citizens into a state of partial, custodial citizenship, where citizens' relationships to the state are conditioned and shaped by their negative, criminalised interactions with it.[18] Lerman and Weaver describe that this punitive, surveillance and punishment-oriented system of governance creates a 'carceral state', which exercises intrusive and involuntary power over its Black and minority citizens.[19] While context-specific and not directly comparable to the experiences of First Nations people within the

[16] Cunneen, *Conflict, Politics and Crime* (n 5) 29.

[17] Melanie Schwartz, 'Redressing Indigenous Over-Representation in the Criminal Justice System with Justice Reinvestment' (2013) 118 *Precedent* 38, 39.

[18] Amy Lerman and Vesla Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (University of Chicago Press 2014) 29; Reuben Miller and Forrest Stuart, 'Carceral Citizenship: Race, Rights and Responsibility in the Age of Mass Supervision' (2017) 21(4) *Theoretical Criminology* 532, 535.

[19] Vesla M Weaver and Amy E Lerman, 'Political Consequences of the Carceral State' (2010) 104(4) *American Political Science Review* 817.

Australian 'settler' context,[20] these observations can assist in unpacking the causes and effects of state policing practices, and they invite further reflection on what those practices reveal about state power.[21] When it comes to the policing of First Nations people in the Australian 'settler'-colonial context, Blagg and Anthony similarly argue that for First Nations people the Australian 'settler' state has always been a carceral state;[22] the criminal justice system exists along a broader, more expansive, continuum of racism, concerned with furthering the process of Indigenous extinguishment.[23] Under this analysis, overpolicing is accordingly both a reflection and a driver of the state's racialised construction of First Nations people as carceral citizens, whose citizenship is then largely defined in reference to the criminal justice system. Overpolicing is also an expression of (neo)colonial power to the extent it is undergirded by the forces of extinguishment reflecting the incomplete, 'settler' colonial project.[24] This understanding of overpolicing as a practice with structural significance is instructive when examining and theorising the domestic violence policing patterns I identified within this study.

[20] Larissa Behrendt, 'Aboriginal Women and the White Lies of the Feminist Movement: Implications for Aboriginal Women in Rights Discourse' (1993) 1 *Australian Feminist Law Journal* 22.

[21] See for instance, Lerman and Weaver, *Arresting Citizenship* (n 18); Charles R. Epp, Stephen Maynard-Moody and Donald P. Haider-Markel, *Pulled Over: How Police Stops Define Race and Citizenship* (University of Chicago Press 2014).

[22] Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan 2019).

[23] ibid; Harry Blagg and Thalia Anthony *'Bare Life' and the 'Camp': The Carceral Archipelago in Postcolonial Australia'* (Australia and New Zealand Society of Criminology Conference, Melbourne, December 4-7).

[24] Patrick Wolfe, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (A&C Black 1999) 2.

The interaction of overpolicing and domestic violence victimisation

Across cases, the majority of First Nations women who were victims of domestic violence were also known to police as 'criminal offenders'.[25] Of the 88 cases in which First Nations women had domestic violence-related police contact, in 63 cases there was detailed information available about women's police contact histories and in 58 of those cases police had previously identified the women as criminal 'offenders' (N = 58, 92% of women where prior police histories were available, 66% of all First Nations women who had prior domestic violence-related police contact).[26] In NSW, where detailed police records were available to the DFVDR for all cases, the proportion of First Nations women known to police both as 'criminal offenders' and domestic violence victims rose to 84% (N = 21 out of 25 cases).

The First Nations women that police had identified as criminal 'offenders' were mostly known to police for minor offending, sometimes starting from their early teens and usually involving offences such as petty theft, assault, public drunkenness, offensive language, drug use or malicious/wilful damage (for example, throwing rocks at the windows of a state-owned building). In some cases, women had previously been charged with multiple offences arising out of the same set of circumstances—often referred to as the 'trifecta' or 'quinella' (mostly comprising an original contact offence (such as public drunkenness), offensive language, and then

[25] Including being named as suspects and persons of interest for crimes in police records.

[26] This includes domestic violence and other minor offences. This included non-finalised charges and was based often on police records identifying women as 'offenders'.

resisting arrest).[27] These findings mirror those of other studies and inquiries that have shown that First Nations people,[28] and particularly women,[29] are disproportionately represented in police custody populations for public order offences.[30] Given this study's reliance on potentially incomplete institutional records (see Chapter 3 for further discussion of these limitations), it was not always possible to ascertain the circumstances in which women were policed for public order offences and it was not always possible to know whether police interaction resulted in charges or convictions, particularly for older matters. Notwithstanding this, First Nations women's police contact histories were suggestive of overpolicing for minor offences, and women becoming subsequently identified (or 'labelled') in police systems as 'offenders'. This context also forms a foundation for theorising police responses to First Nations women when they were victims of domestic violence. As one Elder and survivor of violence observed in an interview for this study

> When a cop walks up and goes to see who you are and see criminal offences [on your record], that's all they see. You're a criminal. Okay? Now we're going to treat you like a criminal, whether you're a victim or not, that's beside the point. You're a criminal first and foremost, and that's what we'll always run to.

[27] Christine Feerick, 'Policing Indigenous Australians: Arrest as a Method of Oppression' (2004) 29(4) *Alternative Law Journal* 188; See also, Johnston, *Royal Commission into Aboriginal Deaths in Custody* (n 7) National Report Volume 5, Recommendation 85.

[28] See Johnston, *Royal Commission into Aboriginal Deaths in Custody* (n 7) National Report Volume 1, Chapter 7; Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner for the Aboriginal and Torres Strait Islander Commission, *Indigenous Deaths in Custody 1989 – 1996* (Aboriginal and Torres Strait Islander Commission 1996) Chapter 6; Robert Jochelson, 'Aborigines and Public Order Legislation in New South Wales' (1997) 34 *Contemporary Issues in Crime and Justice* 1; Chris Cunneen, 'Policing Public Order and Public Places' (2006) 88 *Reform* 42.

[29] Cunneen, *Conflict, Politics and Crime* (n 5) 165; Lorana Bartels, *Indigenous Women's Offending Patterns: A Literature Review* (Australian Institute of Criminology 2010).

[30] Cunneen, *Conflict, Politics and Crime* (n 5) 166; Tamara Walsh, 'Public Nuisance, Race and Gender' (2018) 26(3) *Griffith Law Review* 334.

The labelling of First Nations victims of violence as 'criminal' was particularly concerning in some cases in NSW, where the police computerised management system (known as COPS) generated automated 'warnings' that would flash up on screen to warn officers when they responded to domestic violence callouts in which those women were victims. For instance, for one First Nations woman in that jurisdiction, Charlene, an automated warning would inform police that she 'had a history of assaulting police, that she may be violent, that she should be approached with caution and that she makes false allegations against police.' While apparently designed to alert officers to potential threats to their safety, these labels also appeared likely to negatively influence officers' perceptions of women when they were victims of violence.

As Cunneen has previously observed, there may be challenges associated with expecting Australia's 'settler' criminal justice system to pivot from seeing First Nations people as criminal offenders (which he describes is the system's default position) to seeing First Nations women as victims in need of assistance and protection.[31] My findings in the next sections of this chapter suggest not only that women's prior recorded histories of 'offending', accessed by police at domestic violence callouts, may inform the way officers respond to those women when they are victims of violence**,** but that—as Cunneen observes—poor police practices in executing their protective function may reflect the operation of broad stereotyping of First Nations people, and First Nations women, as being 'criminal'. The stereotyping of First Nations women as 'criminal' appeared to influence the apparently racialised response many women received from police when they were victims of violence and

[31] Cunneen, *Conflict, Politics and Crime* (n 5) 163.

abuse. If overpolicing is understood as a reflection of state power over First Nations peoples' lives, and is recognised as the context within which domestic violence policing occurs, it becomes a useful paradigm for theorising how police responses designed to protect victims of crime can become systems that simultaneously criminalise, and also abandon, those very same victims.

In the next sections, it becomes increasingly clear that police constructions of First Nations women as 'criminal' or 'undeserving' victims—constructions that can be understood as both a cause and effect of overpolicing—appear common and act to profoundly disadvantage First Nations women who interact with the state police when they are victims of domestic violence.

Criminalising domestic violence victims

Across jurisdictions, domestic violence policing regularly contributed to the criminalisation of First Nations women when they were victims of violence and abuse. In over a quarter of the cases where First Nations women had domestic violence-related police contact (N = 25, 28%), there was evidence that police investigated, arrested or charged those women for unrelated criminal offences when officers attended a domestic violence callout in which the woman was the victim. Several of these episodes involved women being investigated or charged with drunkenness offences, including women in some cases being conveyed into protective custody or a diversionary centre to 'sober up'. In one case, police cautioned a woman for making 'false reports' of domestic violence, and in another, a victim was charged with offensive language and assault officer offences during a domestic violence callout. For one woman from one of the smaller jurisdictions in the study, Peta, police officers helped her to escape from an abusive older male who had kidnapped her and

taken her to Far North Queensland, only to arrest her for outstanding warrants once they had located her and helped her to escape from her kidnapper.

During an interview for this study, one First Nations specialist domestic violence worker described that it was a reality of service provision that First Nations women who experienced domestic violence had to consider the possibility that they could be arrested for other matters if asked police for help. He described that

> … I had to actually say that stuff about the police. You know? I say, look, if, if our home visitor [healthcare worker] is counselling a woman about domestic violence situation, make sure if she's gunna call the police, she gets someone to check her record and, and make sure she's not got any outstanding fines. Because she will go to gaol potentially. And it's, just happens, you know? …Kinda go, you call the police, they'll come round, they'll see you, you'll go to gaol, who knows where the guy will be by then. But, um, that's not, not gonna be helpful. So, um, but it's a horrible thing that I'd have to put something like that into our process for counselling women.

'Misidentifying' victims as aggressors

It was another key finding in this study that police officers would commonly identify First Nations women who were domestic violence victims as domestic violence aggressors or perpetrators. Well over a third of the First Nations women who had domestic violence-related police contact had previously been identified by police as a domestic violence perpetrator (N = 39, 44%). While it was not always possible to ascertain the circumstances of the violence on the information available, or determine whether the identification was a 'misidentification', in many cases it appeared that violence identified as aggression was retaliatory,[32] or attributable to

[32] Cynthia Wills Esqueda and Lisa A Harrison, 'The Influence of Gender Role Stereotypes, the Woman's Race, and Level of Provocation and Resistance on Domestic Violence Culpability Attributions' (2005) 53 *Sex Roles* 821; Leigh Goodmark, 'When is a Battered Woman Not a Battered Woman—When She Fights Back' (2008) *20 Yale Journal of Law & Feminism* 75.

fights.[33] In the vast majority of cases it was also clear from information available on police records, and information identifiable from the scene, that the First Nations women who were identified as aggressors were long-term victims of violence (and were known to police as such).

In some cases, the identification of women as aggressors appeared to be related to police officers' negative perceptions of the victim's demeanour, including the victim's fear and anger towards police. For instance, in one case from NSW, a woman called police to report that her friend Peta (a domestic violence victim) had an abusive partner who was throwing rocks at their home. When police attended, police records describe that Peta was 'extremely intoxicated' and 'extremely aggressive and abusive towards police'. Police restrained Peta as her children clung to her clothes sobbing 'don't take my mummy away'.[34] Police ultimately let Peta return inside with her children but did not provide her with any further support nor investigate the domestic violence her partner had allegedly used against her. Officers also reported Peta's children to child protection services.

In discussing victim misidentification, some study participants specifically criticised police officers' lack of understanding of gender-based violence and dynamics of controlling behaviour as being a key reason for this practice. However, while the broader literature highlights that police officers may lack knowledge and

[33] Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Palgrave MacMillan 2019).

[34] This resonates with policies of forced child removal: See Anna Haebich, *For Their Own Good: Aborigines and Government in the South West of Western Australia 1900-1940* (University of Western Australia Publishing 1992).

understanding around the dynamics of domestic violence,[35] and hold victim-blaming attitudes towards women,[36] participants described that for First Nations women problems with the police response ran far deeper than just a lack of knowledge, or victim-blaming attitudes. As one First Nations specialist domestic violence worker described in an interview for this study, she believed that police routinely misidentified First Nations women as aggressors due to the influence of negative, racialised stereotypes officers held specifically about First Nations women. She described that

> by the time the police get there…you know, women are gunna…they're gunna be pissed off. They're gunna be yelling out, they're gunna be screaming, going like, and that's why they can't, they can't assess who the primary aggressor is. They just think, "Oh, here's a volatile, aggressive Aboriginal woman", rah, rah, rah…It's that, it's that, thing about, well, it's an angry black woman. Uh, like, we're not allowed to be angry…

Another specialist domestic violence worker similarly described that

> I think Aboriginal women, specifically, are not seen as victims [by police]. … Because we're Aboriginal, because we may speak differently, behave differently. The issues or the situation confronting responding police is confusing and they don't understand … what might be happening.

Other participants described that the way police officers perceive First Nations women may be affected by the way a woman's abusive partner presents to officers and this may have specific racialised dimensions where the police believe First

[35] Carol E Jordan, 'Intimate Partner Violence and the Justice System: An Examination of the Interface' (2004) 19(12) *Journal of Interpersonal Violence* 1412; Debra Houry, Laurie Bay, Jennifer Maddox, and Arthur Kellermann, 'Arrests for Intimate Partner Violence in Female Detention Patients' (2005) 23 *American Journal of Emergency Medicine* 96; Christina DeJong, Amanda Burgess-Proctor and Lori Elis, 'Police Officer Perceptions of Intimate Partner Violence: An Analysis of Observational Data' (2008) 23(6) *Violence and Victims* 683.

[36] Eve Buzawa and Carl Buzawa, *Domestic Violence: The Criminal Justice Response* (SAGE 2003); Mehr Khan, 'Domestic Violence Against Women and Girls' (2000) 6 *Innocenti Digest* 1-17; Enrique Gracia, Fernando Garcia, and Marisol Lila, 'Police Involvement in Cases of Intimate Partner Violence Against Women' (2008) 14(6) *Violence Against Women* 697; DeJong et al, 'Police Officer Perceptions of Intimate Partner Violence' (n 35); Marika Guggisberg, 'The Interconnectedness and Causes of Female Suicide Ideation with Domestic Violence' (2006) 5(1) *Australian e-Journal for the Advancement of Mental Health* 53.

Nations women's non-Indigenous male partners over the women themselves. According to a specialist domestic violence worker

> you know, you, you'll have him there, he's Mr cool, calm and collective, and she hysterical about what just occurred, you know? And trying to get a story to police is difficult, because she might—because there may be barriers there that she can't, you know, sometimes—and this is what I've told police in the past—if you're standin' over an Aboriginal woman you know? That's intimidating to her as well and then you're not gunna get anywhere.

Although this study does not go into detail about women's different experiences with non-Indigenous and First Nations partners, in part due to a lack of information about women's former partners in some of the files reviewed (an empirical limitation I discuss in Chapter 3), findings suggest that First Nations women consistently experienced poor responses from police notwithstanding whether their partners were First Nations or non-Indigenous men.

In reflecting on the effects of poor policing and victim misidentification on domestic violence victims in this context, one specialist domestic violence worker described having a First Nations client who had been named as a defendant/respondent in a two-year duration DVO with non-contact conditions, which named her young baby (whom she was breastfeeding at the time), and her abusive partner, as protected persons. The woman had initially asked police for help when her partner had kidnapped their baby, but officers had refused her request for assistance, describing that it was a family law, not a police, matter.[37] When she attempted to retrieve the child from her partner, an argument occurred and he called the police. The worker described that because the woman's partner had contacted police, he was identified as the victim and she was identified as the perpetrator. As a

[37] In Australia, the family law jurisdiction is a Commonwealth jurisdiction and policing is a state matter.

consequence of the police identifying the woman as the perpetrator, and her later being named as a defendant/respondent in the DVO, she was prevented from seeing or breastfeeding her baby, her milk dried up and she eventually lost hope in being able to see her baby again. The worker described that the woman eventually turned to drugs to cope with her trauma and loss. According to the specialist domestic violence worker who shared this story, it highlighted the impact of failed or inadequate policing on the trajectory of First Nations women's lives. The worker described that

> How do you defeat things like that? You know, in, in a system? How do you, it, like, [it was her] first interaction with police, like, why couldn't they just go there [to help her]? Or you know, why couldn't they just say, "Oh, can you give bub back?" Bub was one month old, and she was still breastfeeding. … And that's where racism and attitudes come into it, you know? And she's one, she's one of many. That story's one of many.

Although I discuss the justice and courts response in the following chapter, it is relevant to note that police misidentifying First Nations women as aggressors also appeared to have flow on negative effects for women in their later engagements with the criminal justice system, including when victims of violence killed their abusive partners (as was the case for 30 women whose cases I examined in this study). For instance, in one case from Queensland, involving a long-term victim of significant physical and emotional abuse who killed her male intimate partner, the fact that police had identified the woman as an aggressor in prior episodes of violence appears to have contributed to her pleading guilty to manslaughter (and receiving a significant custodial sentence), rather than seeking acquittal on the basis of self-defence—an option that appeared to be available to her. Although, in this case, the police had previously identified that the woman had used physical violence against her partner, the facts in those episodes suggested that her use of violence was

retaliatory, and that it had occurred in the context of her partner's ongoing controlling behaviour towards her. When police attended those callouts, they were apparently unable to contextualise the woman's resistance, labelling her as the aggressor and her non-Indigenous partner as the victim. This ultimately shifted the narrative of that case from one of self-defence or provocation, to one of mutual violence (and First Nations women's aggression).

PART II: Under-policing

Constructions of First Nations women as being 'criminal' resulted not only in women being overpoliced and criminalised, including when they were victims of violence, but—as I will discuss in this section—appeared to result in women being stereotyped as 'bad' or 'undeserving' victims, unworthy of police action and intervention. In this section, I outline my study findings related to under-policing and police inaction across cases.

Constructing First Nations women as unworthy victims

It was concerning that in almost 40% of the cases where First Nations women had domestic violence-related police contact, there was evidence that police officers disbelieved those women when they reported or disclosed their experiences of violence (39%, N = 34). In many cases, police records suggested First Nations women 'misused' police or officers accused women of lying about their experiences of violence. For instance, in one case from NSW, a domestic violence victim, Elizabeth, regularly contacted the police both when she was experiencing mental health issues and when she was experiencing violence from her partner. In one of these callouts, police records describe that Elizabeth was 'a special for contacting

000 and claiming matters as being far more serious than they are.' Under the section of the police record outlining the prior history of violence, records stated that there had been 'numerous DV incidents since residing in [the area], all alcohol related and over petty, stupid things. No previous offences disclosed or charges laid.' In light of the prior history of violence in this case, which had also been reported and recorded on police systems, these descriptions unfairly minimised the violence that Elizabeth had experienced from her partner, and disrespected her help-seeking behaviour.

In another case from NSW, a victim, Larabeth, called the police for help as she was fearful of her abusive partner who was lurking in the bushes. Police records describe that when officers attended Larabeth 'declined to provide details' and told police that she wanted a lift home. In police records, officers describe that 'it appeared the story provided by the POI [meaning, in this case, Larabeth] to police radio was false and only given to get police to give a lift home.' This was despite Larabeth being protected under a current DVO naming her partner as the defendant/respondent, and notwithstanding a considerable history of violence (in which she was the victim) that had been reported to police. The police decision to describe Larabeth as a POI, meaning a person of interest (which is a term usually reserved for suspects and offenders), was also alarming.

In a similar case from the NT, a woman called Grace reported an assault to police, who described in their records that she 'had no injuries and her behaviour and general demeanour was not consistent with someone who had been assaulted.' Police records also described that Grace had a 'prior history of falsely reporting matters to have her partner taken away when he is intoxicated.' This was despite Grace's partner's considerable history of violence against her, which was reflected in

earlier police records accessible to, and expected under policy to be accessed by, attending officers.

Finally, in one particularly concerning case from the NT, police records misrepresented a domestic violence victim, Harriet's, prior history of violence victimisation and concealed the extent of her injuries following reported violence. In that case, police records from a domestic violence callout described that there was 'no reported domestic violence history' between Harriet and her partner. Records also described that Harriet did not have any visible injuries when police attended the callout. Both of these statements were contradicted by other information on the brief. Not only had three domestic violence episodes been reported to police previously, but hospital records confirmed that Harriet had presented to Alice Springs Hospital the day prior for medical treatment for visible injuries resulting from the domestic violence assault she was now reporting.

Police officers' descriptions of First Nations women as being liars, being untruthful, or being unable to be believed, were not clearly supported by evidence in cases. Nonetheless these descriptions were common, and they appeared to negatively influence the way police treated First Nations women victims. Police also appeared, across cases, to draw upon stereotypes or beliefs around First Nations women's inauthenticity as reasons not to progress investigations in circumstances where such investigations, and the provision of further social support, appeared to be required under law and operational policy. This raised concerns about the extent to which, and how, police were discharging their duties to investigate domestic violence against First Nations women.

Intoxication and inaction

Across cases, police regularly used intoxication—of the First Nations victim, her male partner, or others at the scene (usually First Nations people)—as a reason not to take further action following episodes of domestic violence. In two thirds of the cases with prior domestic violence-related police contact (N = 58, 66%), intoxication of either the victim, her partner, or others at the scene (for instance, witnesses) appeared to influence police decisions to not investigate or progress charges in episodes of domestic violence involving First Nations women victims.

For example, in one case from NSW, a bystander called police after witnessing a man assaulting his partner, Sofia, and her relative with a plank of wood. In the event summary, officers indicated that 'at this stage it is very doubtful if the incident took place due to both of the victims being heavily intoxicated.' Police took no further action in relation to the assault. In another case from NSW, a domestic violence victim, Peta, who was extremely distressed, called the police to report an episode of violence by her abusive partner. When police attended, Peta presented with red marks on her neck and advised police that her partner had repeatedly kicked her in her throat and face. Police records indicate that they were unable to take a statement from Peta as she was 'too intoxicated'. Records further indicate that police did not apply for a DVO to protect her from her abusive partner because of her 'demeanour, lack of credibility and due to conflicting versions provided to police.' Police did not further investigate this episode or provide any other support to Peta before leaving the scene.

Cases from other states and territories suggested similar findings. For instance, in a case from the NT a woman, Grace, called police to report domestic violence. In their records, attending police described Grace as being 'completely

intoxicated'. While police initially coded the episode as a domestic violence callout in their records management system, they ultimately wrote off the episode as 'drunk person', despite evidence that domestic violence had occurred. In another case a victim, Harriet, reported to police that her intimate partner had hit her, but police records described that 'based on [the] situation as presented members are of the belief that while an altercation has occurred, the report of [the victim] is doubtful and/or misleading.'

In another case from one of the smaller jurisdictions, a First Nations woman, Alicia, attended her neighbour's property after an assault. After police arrived, Alicia had several seizures. Both paramedic and police records indicate that officers believed Alicia may have been 'faking' those seizures as she 'seemed intoxicated'. Alicia also asked police to arrest her partner for the assault, but officers indicated that they couldn't 'understand her' and did not believe she had been assaulted. Police officers left the scene without interviewing any of the witnesses. Alicia's partner killed her later that night.

While being intoxicated at the scene of a domestic violence episode may limit a victim's capacity to provide evidence to support a criminal trial, in many cases it appeared that police officers used the victim's intoxication, or the intoxication of others—usually other First Nations people—at the scene, as an excuse not to progress investigations or enliven the criminal justice response. In the wider literature, it has been recognised that people may attribute greater blame to victims

of violence when they are intoxicated.[38] The literature also highlights that police officers may assign more blame to domestic violence victims when they are intoxicated than when they are sober.[39] Studies have further demonstrated that race attributions can negatively compound police officer's negative perceptions of female victims who drink alcohol.[40] For the cases in this study, however, police officers' uses of discretion not to progress charges appeared to reflect a confluence of gendered assumptions and negative racialised stereotypes specifically related to First Nations people and alcohol use.[41] These assumptions and stereotypes are rooted in colonial constructions.[42] This was evident in the attributions made not only in relation to victims, but also attributions made in relation to witnesses, the offender and others at the scene. As Robinson described in the ATSIWTFV Report, alcohol use in First

[38] Deborah Richardson and Jennifer Campbell, 'Alcohol and Wife Abuse: The Effect of Alcohol on Attributions of Blame for Wife Abuse' (1980) 6(1) *Personality and Social Psychology Bulletin* 51; D Dent and I Arias, 'Effects of Alcohol, Gender and Role of Spouses on Attributions and Evaluations of Mental Violence Scenarios' (1990) 5 *Violence and Victims* 185; Beatriz Aramburu and Barbara Leigh, 'For Better or Worse: Attributions about Drunken Aggression Toward Male and Female Victims' (1991) 6(1) *Violence and Victims* 31; Barbara C Leigh and Beatriz Aramburu, 'Responsibility Attributions for Drunken Behaviour: the Role of Expectancy Violation' (1994) 24(2) *Journal of Applied Social Psychology* 115; Gemma Sáez, Manuel J. Ruiz, Gabriel Delclós-López, Francisca Expósito, and Sergio Fernández-Artamendi, 'The Effect of Prescription Drugs and Alcohol Consumption on Intimate Partner Violence Victim Blaming' (2020) 17(13) *International Journal of Environmental Research and Public Health* 4747.

[39] Alice M Home, 'Attributing Responsibility and Assessing Gravity in Wife Abuse Situations: A Comparative Study of Police and Social Workers' (1994) 19(1/2) *Journal of Social Service Research* 67; Loretta J Stalans and Mary A Finn, 'How Novice and Experienced Officers Interpret Wife Assaults: Normative and Efficiency Frames' (1995) 29(2) *Law and Society Review* 287; Anna Stewart and Kelly Maddren, 'Police Officers' Judgements of Blame in Family Violence: the Impact of Gender and Alcohol' (1997) 37 *Sex Roles* 921; Carolyn Hoyle, *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Clarendon Press 1998); Susan Ehrlich Martin and Ronet Bachman, 'The Relationship of Alcohol to Injury in Assault Cases' in Marc Galanter (ed), *Recent Developments in Alcoholism Vol 13: Alcoholism & Violence* (Plenum Press 1997).

[40] See Lisa A Harrison and Cynthia Wells Esqueda, 'Effects of Race and Victim Drinking on Domestic Violence Attributions' (2000) 42(11-12) *Sex Roles* 1043.

[41] See Scott Gorringe, Joe Ross and Cressida Fforde, 'Will the Real Aborigine Please Stand Up: Strategies for Breaking the Stereotypes and Changing the Conversation' (2011) 28 *AIATSIS Research Discussion Paper* 1, 7.

[42] See Heather Douglas, 'The Curse of White Man's Water: Aboriginal People and the Control of Alcohol' (2007) 4(1) *University of New England Law Journal* 3.

Nations communities is inextricably linked with colonisation, and 'the image of the drunken Aboriginal is a colonial construction', with colonial violence against First Nations women and men being closely connected with the provision and use of alcohol.[43] Trauma in First Nations communities has been identified as both a driver for the use of alcohol, and a behaviour that itself results in further trauma,[44] with alcohol use in the context of trauma and violence emerging as a feature in many cases in this study.[45]

In the vast majority of episodes where police declined to take further action due to the domestic violence victim's or others' intoxication, police left without rendering any practical assistance to the victim or providing any other form of support capable of protecting the victim's safety and preventing further violence. This was despite the victim, in many cases, having injuries consistent with physical violence.

Failures to apply the law and failures to respond

In the RCIADIC, Commissioner Johnston described that—at that time, in the late 1980s/early 1990s—many First Nations women were of the view that the police did not pay attention to acts of domestic violence, rapes and murders of First Nations

[43] Aboriginal and Torres Strait Islander Women's Task Force (n 5) 66.

[44] Judy Atkinson, Jeff Nelson, and Caroline Atkinson, 'Trauma, Transgenerational Transfer and Effects on Community Wellbeing' in Nola Purdie, Pat Dudgeon and Roz Walker, *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Commonwealth of Australia 2010).

[45] Alcohol use has also been identified as a feature in a high proportion of Indigenous homicides, see Jenny Mouzos, 'Indigenous and Non-Indigenous Homicides in Australia: A Comparative Analysis' (2001) 125(1) *Trends and Issues in Crime and Criminal Justice* 1; Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011* (Commonwealth of Australia 2011) 53.

women.[46] Similar observations were made in the late 1990s by Robinson in the ATSIWTFV Report, wherein many First Nations women described that the police were ignoring their calls for help and increasing their risk of harm.[47] Similarly, Atkinson[48] and Bolger, in their studies of domestic violence-related policing of First Nations women, uncovered police apathy and inaction in response to violence against those women; Bolger indicating that court processes—further examined in Chapter 6—may be similarly implicated in this poor response.[49]

Across cases in my study, there was considerable evidence that many First Nations women received inadequate and non-responses from police following domestic violence. These episodes strongly suggested that police failed to adequately investigate acts of domestic violence against First Nations women. In 84% of cases with domestic violence-related police contact (N = 74, out of 88 cases), there were episodes of domestic violence where police officers to failed to progress charges or take further action to support victims when charges were available or other actions could have been progressed according to policy at the time.

For instance, in one case in the NT, a domestic violence victim, May, sought help from police at the local station after her partner assaulted her. Officers entered May's details into their system but did not take her statement. May decided to leave the station due to the delay (and likely the fact she was made to wait in the public area where she potentially could have been seen by other passing members of the

[46] Johnston, *Royal Commission into Aboriginal Deaths in Custody* (n 7) National Report Volume 3, 41.

[47] Aboriginal and Torres Strait Islander Women's Task Force (n 6) 229-230.

[48] Judy Atkinson, 'Violence against Aboriginal Women: Reconstitution of Community Law—The Way Forward' (2001) 5(11) *Indigenous Law Bulletin* 19, 19.

[49] Bolger (n 9).

community). When May left, police did not follow up with her as records indicate that they were dispatched to an 'urgent' job. That night May's partner killed her.

It was not always clear from the information available what underpinned officers' failures to progress charges. According to one specialist domestic violence worker interviewed for the study, officers' inexperience could particularly impact First Nations women. She described that

> To become a police officer around [domestic violence] they're expected to know the signs and be able to you know intervene and all this other stuff, and you know, you got 19 year-old police officers fresh out of the academy running into like a big all in brawl and things, that that's, they are just not equipped to except with their Taser and gun. That's gonna lead to, um, bad things happening, isn't it? … It's not rocket science.

Another specialist domestic violence worker similarly described that, in her view, police do insufficient training around domestic violence, and also do not become police officers to respond to domestic violence callouts. She suggested that officers did not always like that kind of work, and it may not be their priority.

Participants also described that police responses were often poor in rural and remote communities. Indeed, 43 of the 98 cases I examined in the study (44%) occurred in remote or very remote areas.[50] Participants described that many police would not enter First Nations communities without backup due to fear, and that a lot of remote police stations did not have permanent staff, leading to delays in response, or sometimes no response at all. These concerns reflect similar findings from prior studies.[51] As one specialist domestic violence worker described in a group yarn

[50] Remoteness was assessed in accordance with the Australian Bureau of Statistics ASGS 2016. See Australian Government Department of Health, Australian Statistical Geography Standard - Remoteness Area (Australian Government, 2022) <https://www.health.gov.au/health-topics/rural-health-workforce/classifications/asgs-ra> accessed 3 April 2022.

[51] Harry Blagg, Nicole Bluett-Boyd and Emma Williams, *Innovative Models in Addressing Violence Against Indigenous Women: State of Knowledge Paper* (ANROWS 2015) 8.

> Nobody knows that [the problems with police in remote areas] more than our people. So that's why there's such a lack of responding, a lack of ringing the police. There's not a...We've still got people [who work in domestic and family violence services] that are from some of those communities that they don't even bother to report. [They think that they are] …bothering the Police. It's like we just deal with all the issues ourselves. Because if you report or you try, and ring the Police and they don't come, you've just put yourself into further danger. That's how our women and children feel in community.

In cases where police were working in remote First Nations communities or rural areas, there were sometimes considerable delays in police attending after they had been called. In one case there were also episodes of violence reported where no police were 'available' to attend, leaving the victim without any police response at all. Although resource issues have been cited as possibly explanatory reasons for the inadequate response to First Nations victims of crime in remote communities,[52] cases in this study also highlight that under-policing, or under-servicing, also occurred in urban and metro areas. As one specialist domestic violence worker described, in a group yarn, while women in remote communities may experience very poor police responses

> …the response from police in like Western Sydney is really bad as well [as the response in remote communities]. So the clients that I've worked with have gone in 15, 20 times, and still can't get support together, an AVO [civil protection order], or even get Police to respond when they ring to say that an incident's happening.

Similar issues of under-policing in remote and urban settings appears to reinforce Cunneen's argument that under-policing is not simply resourcing issue, but rather a practice that goes to the racialised nature of the police response.[53]

[52] For instance, Johnston, *Royal Commission into Aboriginal Deaths in Custody* (n 7) National Report Volume 3, Recommendation 88b.

[53] Cunneen, *Conflict, Politics and Crime* (n 5) 164.

It was particularly concerning that in 13 cases I examined in the study, police did not attend reported episodes of domestic violence against First Nations women. This is likely to be an undercount given most of these non-response episodes occurred on the day of the homicide, which is subject to particular scrutiny in death investigations. In one of these cases from NSW, neighbours called police between five and seven times to report that they had witnessed a domestic violence victim's partner using violence against her, including to pull her across the lawn by her hair. Police did not attend this callout for over 24 hours, until after the victim, Sofia, had been killed. Although a seemingly extraordinary example of a failure to act, in this case police had previously also failed to progress DVO breaches (of an order protecting Sofia) when there was clear evidence that breaches had occurred. Repeated failures to progress breaches of DVOs, or even to recognise when orders were enforceable, were common examples of police inaction across cases. This undermines the effectiveness of such orders and fails to adhere to their intended purpose. I further discuss DVOs in Chapter 6.

In another case from NSW, a domestic violence victim's family, who lived on a former Aboriginal mission, called police a number of times to report that an episode of violence was occurring. Police did not attend for an hour, and when they did finally attend, officers drove through the community and rolled the windows down 'listening for loud music or yelling'. They did not get out of their car. Officers closed the job when they could not hear anything or identify anything untoward from inside their vehicle. Later that night, the victim, Charmaine's, partner killed her.

When considering police non-response, and describing what this says about First Nations women's victimisation, one First Nations specialist domestic violence worker described, in an interview, that

> we still get a lot of women that have no response. You know? Lack of response, no response, um, you know, you can't rely on that. And I think that's one of the reasons why with an AVO, or an ADVO [DVO], you can't rely on that piece of paper. Because in some ways it is a piece of paper. And then, and if you're gunna rely heavily on ringing up the police and saying, “Oh, can you respond? You know, quickly, 'cause there's a, this is happening.” And then they take their time, 'cause it's you, you know, I mean, it's, “Oh, not her again, …or “She's that one, oh.” You know?

PART III: ‘Disengagement’ and policing

This section examines First Nations women’s engagement, and constructions of women’s ‘disengagement’, with ‘settler’ police. In over two-thirds of the cases with prior domestic violence-related police contact, police officers used the language of ‘reluctance’, ‘disengagement’ or similar terms to describe First Nations women who were victims of violence and—in most instances—justify police inaction (N = 59, 67%). Without access to the testimony of victims or their families, it was often difficult to ascertain from police records whether these descriptions reflected victims rejecting further police involvement, or whether these were racialised labels that officers used to excuse or justify inaction. In some cases, however, it clearly appeared to be the latter.

For instance, in one case from NSW, a victim, Larabeth, contacted police to report that her abusive partner was intoxicated and being violent towards her. Police attended but did not enforce the DVO that Larabeth’s partner had breached. Officers returned the following day to obtain a statement from Larabeth, but her partner was present and their records indicate that he ‘started yelling’ at police, accusing them of forcing Larabeth to make a statement against him. Records also indicate that a crowd of community members began to gather and also ‘started yelling’ at police. Larabeth told the officers that she did not want to make a statement in relation to the violence. The police left without taking further action and described in their records

that ‘it is apparent from the incident that the victim is willing to call police but not willing to assist police thereafter.’

In other cases, there was evidence that women did not want to engage further with police after officers initially attended, including in some cases when women had called the police seeking help. In contrast to the findings of some other studies,[54] across cases in this study many First Nations women actively contacted police when they were experiencing an episode of violence from their partner. This was identified in 59% of cases where domestic violence-related police contact had occurred (N = 52). It was common that when police officers attended, after being called by the domestic violence victim or other witnesses, police records would indicate women told police they did not want the police to pursue charges. In a number of cases, police officers described that a woman refused to give them complete, accurate or sometimes any information about what had happened, and their records then diminished women’s behaviour as ‘reluctance’ (or used language similar to this). In several cases, police also required victims to sign statements of retraction, forcing those victims to deny episodes of violence that had occurred, so as to relieve officers from further administrative scrutiny or burden due to their inaction around the violence. In one of these cases from NSW, a domestic violence victim, Tonia, who was bleeding from her ears and her nose and had wet herself due to the ferocity of her partner’s violence, told officers that she did not want charges laid. The officers asked her to sign their notebook, which stated that ‘she did not wish to provide any

[54] See Bolger (n 9) 71, where it is noted that First Nations women were often reluctant to call for outside help when they were assaulted; See also Chris Cunneen, *Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities* (Department of Communities 2010); Renee Fiolet, Laura Tarzia, Renee Owen, Corrina Eccles, Kayley Nicholson, May Owen, Syd Fry, Jasmine Knox and Kelsey Hegarty, ‘Indigenous Perspectives on Help-Seeking for Family Violence: Voices from an Australian Community’ (2019) 36(21-22) *Journal of Interpersonal Violence* 10128.

information.' While some similar findings have been reflected in the broader literature,[55] constructions of First Nations women's reluctance appeared to have particular racialised dimensions, being used to justify either police inaction or further, paternalistic, police intervention (further discussed in Chapter 6).

In many cases when First Nations women called the police, this appeared to represent an attempt to diffuse the situation, for instance by encouraging their partner to leave due to the threat of police attending.[56] Women's calls to police accordingly—and at least some of the time—appeared to reflect a specific kind of help-seeking behaviour; women did not necessarily want to engage with the broader criminal justice system, but police attendance was sufficient. This is similar to what Blagg et al have previously identified.[57] As Robinson also described in the ATSIWTFV Report

> Indigenous women are most likely to use the police as a crisis intervention tool, to stop the abuse at a critical point, and in many cases, they may not want to press charges. Police therefore express cynicism about the seriousness of their intention to stop the violence and in some cases, do not take the complaint seriously.[58]

It was also very clear from the cases that First Nations women often had legitimate reasons for not wishing to progress charges, or take further action against their partners, when police attended.[59] In a number of cases, women described to police

[55] Melissa E. Dichter, Catherine Cerulli, Catherine L. Kothari, Frances K. Barg and Karin V. Rhodes, 'Engaging With Criminal Prosecution: The Victim's Perspective' (2011) 21(1) *Women & Criminal Justice* 21.

[56] Aboriginal and Torres Strait Islander Women's Task Force (n 6) 232.

[57] Harry Blagg, Emma Williams, Eileen Cummings, Vickie Hovane, Michael Torres and Karen Nangala Woodley, *Innovative Models in Addressing Violence Against Indigenous Women: Final Report* (ANROWS 2018) 52.

[58] Aboriginal and Torres Strait Islander Women's Task Force (n 6) 232.

[59] ibid.

officers or other sources that they did not wish to engage further with police as they did not want to be responsible for sending their partners back to gaol, or, on the available facts, it was clear that if women were to provide further information to police, their partners would likely return to custody (for instance, due to breaching a good behaviour bond or parole conditions). In at least one case, a woman's partner had threatened her and told her not to provide evidence to police. He described that 'I don't want the cops to come here because they're going to take me away. I got a bad record now…I told her if she goes to the police, then she is going to ruin her own life as well as mine…'

In another case from the NT, a domestic violence victim, Willow, told police that she was afraid of experiencing further repercussions from her partner if he was sent to gaol. Several participants in interviews/yarns identified that the threat of their women's partners going to gaol was a specific barrier for many women. One specialist domestic violence worker described that this related to the racialised issue of First Nations deaths in custody, and particular concerns women had for the safety of their First Nations partners if they were to involve the criminal justice system in the violence. Another participant, a survivor of violence, described that, in relation to providing statements to police, 'I did have a lot of anxiety and I was scared and the backlash, and if he went back to gaol, the guilt, the blame—all of that.'

In other cases, victim testimony, or the testimony of victims' friends and bystanders, suggested that First Nations women did not want to report their partners to police as they wanted to stay in the relationship. Some women wanted the relationship to continue but the violence to stop. For instance, in one case from NSW, a domestic violence victim, Leanne, described 'I don't want him to be dealt with by the police, I don't want him to leave me, I love him.' In another case from the

NT, a domestic violence victim, Harriet, told police that she did not want officers to proceed with charges because, according to their records, she 'still loves him and did not want him charged'. This suggests that the focus of the criminal justice response did not always align with some First Nations women's justice interests in stopping the violence, but continuing the relationship.

Participants also described in interviews/yarns that First Nations women remain concerned that reporting domestic violence, or engaging with police and justice systems, would invite further scrutiny from state child protection services. Many participants described that it is impossible to understand the violence of the police response to First Nations women without also understanding the historical and ongoing violence of child protection intervention in First Nations families. Today, First Nations children in Australia are significantly overrepresented in state child protection systems, constituting 37.3% of the total out-of-home care population, but only 5.5% of the total national population of children.[60] Contemporary removals of First Nations children from their families have continuities with historical assimilationist policies of forced child removal, which I discussed in my thesis' Introduction. As a consequence of colonial state violence in the form of forced child removal, and the separation of First Nations children from their families and communities—biological and cultural genocide[61]—it is often described that there continues to be extreme distrust of child protection or child welfare services amongst

[60] SNAICC, *The Family Matters Report 2021* (SNAICC 2021)

[61] Colin Martin Tatz and Winton Higgins, *The Magnitude of Genocide* (Praeger Security International 2016); O P Walker 'Decolonizing Conflict Resolution: Addressing the Ontological Violence of Westernization' (2004) 28 *American Indian Quarterly* 527.

First Nations communities.[62] This distrust appears founded in the historical and contemporary racialised operation of these systems for First Nations peoples.

In a number of states, including NSW, when domestic violence against First Nations women was reported to police, it was clear that officers would report the victim's children to child protection services. This is a consequence of mandatory reporting frameworks, requiring police to notify child protection services when children are exposed to domestic violence. Engaging police was accordingly, in many cases, tantamount to putting child protection services on notice in respect of the family, the mother and her children. A number of participants described in interviews/yarns that the threat of child protection involvement was the most significant barrier to First Nations women engaging with police in relation to domestic violence. Child removal, both women having their children removed, or women historically having been removed from their families as children themselves, was also a common feature across cases in the study. Elders I spoke to for the study, in particular, reinforced how attuned First Nations communities remain to the real threat of child protection intervention and the removal of First Nations children. Participants spoke at length about the violence child protection systems visit on First Nations people and families. Many participants moved seamlessly between reflecting on the violence of police, and the violence of child protection services, against First Nations women.

[62] Megan Davis, *Family is Culture Final Report: Independent Review of Aboriginal Children in Out of Home Care* (Family is Culture 2019)

As one First Nations woman, Janey, who killed her partner in one of the smaller jurisdictions described to police after the homicide (in the case file)

> I get scared tells me he's gonna kill me and shoot me with a gun and I get really, really scared and I'm scared that I'm gonna have bubby taken off me cause sometimes bubby's there and I just get really, really scared and I don't know what to do…

As a specialist domestic violence worker similarly described in an interview for this study, 'I think one of the biggest barriers is that Aboriginal women might not call the police [because] well, they're afraid of the repercussions. They're afraid of their kids being taken. All of that stuff.'

Participants described that many of the problems with the operation of child protection systems, the overrepresentation of First Nations children in those systems, and deep community knowledge of the systemic violence of child protection systems, can affect victims' ability to engage with police in relation to domestic violence.

One specialist domestic violence worker described, in an interview, how in child protection systems non-Indigenous people would take First Nations children away from First Nations women and put them with 'settler' families. He described this as the 'absolute worst outcome' for First Nations mothers and further expressed that, in his experience, child protection systems harbour racialised stereotypes of First Nations mothers. He stated that

> One of the biggest concerns from … mothers that have had their children removed, is the health and wellbeing of their child. Child Safety don't believe that. The police don't believe that. But when I talk to [the women] that's what's on their mind.

The relationship between child protection systems and First Nations people, historically defined by policies of forced child removal, and sustained via the ongoing

overrepresentation of First Nations children in the child protection system and out-of-home care population, was identified as a key barrier for First Nations women who experience domestic violence not only in seeking help or contacting police but engaging with police after the immediate crisis was over.

Findings in this section suggest that while First Nations women may be labelled as 'reluctant' or 'uncooperative' in police records as a consequence of their decisions not to engage with the criminal justice system, this must be understood in (neo)colonial context. This includes locating these constructions within the violence that state systems continue to perpetrate against First Nations people. As Blagg et al have described

> Indigenous women continuously balance off the desire to stop the violence by reporting to the police with the potential consequences for themselves and other family members that may result from approaching the police; often concluding that the negatives outweigh the positives.[63]

Findings from my study also suggest that police officers labelling women as 'reluctant' or 'uncooperative' represents a failure to recognise the productive role of policing, its violence and the violence of associated state systems (such as child protection systems), in creating a climate where First Nations women in particular do not feel, and more accurately, are not, safe to engage with 'settler' police. The consequences of police intervention outlined in this chapter, as well as specifically in this section—the criminalisation of women's partners, child protection intervention (an adjacent form of state violence against First Nations peoples) and mismatched aspirations—must be understood as harms the state perpetrates against First Nations women. Accordingly, police officers describing First Nations women as

[63] Blagg et al, *Innovative Models: State of Knowledge Paper* (n 51) 13.

‘reluctant’ or ‘uncooperative’, or viewing women’s behaviours in this dismissive way, deflects blame from the system and the way that system operates, and individualistically holds the victim responsible for the system’s lack of safety for her. When examples of this blame shifting were viewed on mass in this study, it is difficult not to emphasise that many First Nations women’s ‘distrust of police’—a commonly repeated statement—is grounded in clear, identifiable raced and gendered failures in the way that system works with, and for, First Nations women. It is not therefore simply women’s reluctance or non-cooperation; it is a systemic lack of structural safety and security that must be understood in (neo)colonial context.

I will note here that paternalistic police practice is another issue related to constructions of ‘victim reluctance’. Paternalistic practice involves progressing police or other criminal justice interventions without the victim’s consent, and sometimes directly against the victim’s wishes. I outline issues of paternalism, including through ‘settler’ policing practice, in Chapter 6 as these practices were most commonly identified in the study in respect of DVOs.

PART IV: The institutional character of ‘settler’ police

In reflecting on policing, a number of participants in interviews/yarns described that, in their view, ‘settler’ police often lacked both the cultural competency to work with First Nations people, and they also lacked the skills and knowledge to work with domestic violence victims. The intersectional confluence of these deficiencies in police training and operations led to, in their view, particularly poor outcomes for First Nations women.

A number of participants described that, in their experience, existing cultural training in the police force in their state or territory, like domestic violence training,

was perfunctory and ineffective. Participants described that poor cultural competency contributed to ongoing poor relationships between police and First Nations peoples and communities.

For instance, one specialist domestic violence worker described in an interview that, in her experience, the police would frequently encourage and maintain the division between police and First Nations communities. She reflected on an event she had recently attended where police officers—invited by the community—arrived in uniform and stood separately, as a group, apart from community members. She described that everybody in the community felt like they were 'under surveillance' by the police at the event, which was contrary to the purpose of inviting the officers in the first place. Another specialist domestic violence worker similarly described that, from his perspective, police had the greatest legitimacy in communities when the community knew more about the officer than the officer knew about the community. He described the need for all police officers to build respect with First Nations people, and particularly First Nations women, in order to achieve trust. However, he believed this was undermined by frequent officer rotations, and the need for communities to constantly rebuild relationships whenever new officers came into town. Some participants further identified that building cultural capabilities, as well as domestic violence capabilities, within the police force would be necessary as a first step to begin to heal relationships between First Nations women and police. However, most participants were sceptical of the institutional capacity of 'settler' police to achieve any significant change.

Several participants described that, in their view, racism within police institutions was a key barrier limiting police officers' ability to work effectively with First Nations women, and First Nations communities, around Australia. Some

participants used the language of 'institutional racism' to describe their state or territory police force. The concept of institutional racism has its roots in the early 1960s work of Black Panther leader Stokely Carmichael (Kwame Ture) and Charles Hamilton in their novel 'Black Power: The Politics of Liberation' critiquing white establishment in the United States from the perspective of Black America. In 'Black Power', Carmichael and Hamilton describe that 'institutional racism' amounts to the subtle practices and attitudes that lead to racist outcomes through 'unquestioned bureaucratic procedures'.[64] Institutional racism cannot be reduced to the racist acts of individuals, but rather is a hidden racialised process of assumptions and values benefiting the white citizenry, to the exclusion and subjugation (as they describe, the 'internal colonisation') of, in Carmichael and Hamilton's case, Black American subjects.[65] The concept of institutional racism has since been raised in sociological and criminal justice contexts, such as in the Macpherson Inquiry regarding the Metropolitan Police Service's investigation and handling of the 1993 death of Black British teenager Stephen Lawrence.[66] Signifying a departure from earlier conceptions of racist conduct as a problem of individual officers or 'rotten apples…letting the side down', the Macpherson Inquiry recognised the covert, collective and institutional dimensions of the racist culture within the police force.[67] The terminology of institutional racism has also been adopted in the Australian context, including in the

[64] Karim Murji, 'Sociological Engagements: Institutional Racism and Beyond' (2007) 41(5) *Sociology* 843, 844-845.

[65] ibid 845.

[66] Sir William Macpherson, *The Stephen Lawrence Inquiry* (Secretary of State for the Home Department by Command of Her Majesty 1999).

[67] Robyn Oakley, 'Institutional Racism and the Police Service' (1999) 72(4) *The Police Journal* 285.

RCIADIC, publications of the Human Rights Commission,[68] and academic literature.[69] As Commissioner Johnston described in the RCIADIC, while First Nations Australians have historically experienced overtly institutionally racist policies—such as assimilation and protection (described briefly in the Introduction to this thesis)—in contemporary society, Australian institutional racism should be understood as occurring where an institution has 'significant dealings with Aboriginal people, and has rules, practices, habits which systematically discriminate against or in some way disadvantage Aboriginal people.'[70]

Participants' observations about institutional racism are reinforced by findings concerning domestic violence policing I outline in this chapter. While some participants observed in interviews/yarns that, in their experience, individual officers could be helpful and well intentioned, these examples appeared anomalous, and it was the view of the vast majority of participants that police, as an institution, continued to function in ways that disadvantaged First Nations women and people. For instance, one survivor of violence interviewed for the study described having a positive relationship with a police officer in her local command, and she considered that this positive relationship was integral to her ability to escape violence. She felt that she could speak to that officer without judgement and get help when she needed it. However, she also spoke passionately about her multitude of poor experiences with the NSW Police Force across her life, describing that she felt the police had a

[68] Harry Blagg, Neil Morgan, Chris Cunneen and Anna Ferrante, *Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission 2005).

[69] Cunneen, *Conflict, Politics and Crime* (n 5).

[70] Johnston, *Royal Commission into Aboriginal Deaths in Custody* (n 7) National Report Volume 2, 161.

long way to go to work effectively with First Nations women when they were victims of violence.

This survivor's perspective reflected similar findings of the ATSIWTFV Report, in which Robinson described that while some First Nations communities may have very positive relationships with police,[71] many officers are ill-equipped to provide, or simply do not provide, any assistance to First Nations women experiencing violence.[72] A few cases in the study suggested similar examples of positive relationships between victims and individual officers, but these positive interactions appeared to be largely the result of the officers taking it upon themselves to work effectively with First Nations people and communities, contrary to the institutional approach of the state/territory police force, its practices, and procedures evident often through the same, but also other, case reviews. Positive relationships with individual officers were also generally isolated in an overall pattern of inconsistent and poor policing practice that would otherwise be evident from examining the case. In this sense, while the concept of institutional racism recognises that systemic poor practice is not simply attributable to 'rotten apples', it was also clear from both participant observations and the case findings in my study, that the existence of 'good apples' may not necessarily disrupt the overall institutional context within which systemic poor practice occurs.

One strategy that has been adopted in an attempt to improve cultural competency and expertise in the police response to First Nations women who experience domestic violence has been to employ more First Nations-identified

[71] For instance, in the ATSIWTFV report Elders described the community's relationship with an experienced sergeant who would mix and go fishing with community members. See Aboriginal and Torres Strait Islander Women's Task Force (n 6) 231.

[72] ibid 232.

police officers within ‘settler’ police forces.[73] Although some participants described this as being a positive move for the organisational culture of police, one First Nations specialist domestic violence worker described, in an interview, that simply having First Nations identified officers, or Aboriginal Community Liaison positions (civilian officers who liaise between the police and the community), does not automatically enhance police competency, either around First Nations cultural considerations or around domestic violence. That worker described that

> [Some of the Aboriginal Community Liaison Officers (ACLOs)] need to engage better with the community. And there's a lot of good ones out there 'cause we do get some feedback, and we do get some feedback from some of the communities as well, like, around… having male ACLO's. But they also say that the male ACLOs don't have a clue. And I was telling [you before], how there's one ACLO, that every time there's a DV matter, he consults with his wife. Not a police officer, and not, not an ACLO. But he doesn’t know how to deal with the situation, so he gets his wife involved. It's like, where's the confidentiality? But yeah, but [the police] reckon he does a good job.

That worker further reinforced the specific need for more First Nations women to be hired into the police force, including in community liaison roles, to ensure the accessibility and competency of police specifically for First Nations women. This reflects earlier recommendations made by Bolger,[74] as well as the ATSIWTFV.[75]

In respect of hiring First Nations people into police forces, a number of Elders in yarns and interviews cautioned that in communities with different language groups, including where relationships between groups were fractured, the appointment of First Nations people to these positions would not automatically result in those First Nations people being seen as legitimate or helpful to all members of

[73] For example, IPROWD (NSW), Indigenous Recruit Preparation Program (Qld), Aboriginal Inclusion Strategy and Action Plan – Victoria Police (Victoria). See Australian Law Reform Commission, *Recognition of Aboriginal Customary Laws (Report 31)* (Australian Law Reform Commission 2010).

[74] Bolger (n 9) 95.

[75] Aboriginal and Torres Strait Islander Women’s Task Force (n 6) 233.

the community. Several Elders described, in a group yarn, that community politics was something that governments did not necessarily understand, seeing a general 'First Nations' appointment as a sufficient solution. As Blagg et al have also observed, having Indigenous employees in mainstream services may also ironically make those services less accessible for First Nations clients in circumstances where they would prefer not to seek help from First Nations people for privacy reasons.[76] The issue of choice of services is further considered at Chapter 7, including reinforcing the need for First Nations people to have access to both community-controlled, and culturally safe 'settler'-controlled, services.

In interviews/yarns, a number of participants foreshadowed that the problem with hiring more First Nations people into roles within 'settler' police is that it does not, in itself, disrupt the power balance within police institutions. As one specialist domestic violence worker described, simply hiring First Nations people into a 'settler' institution does not transform the character or nature of that institution, as the First Nations person is, she used the example, 'always the dental assistant and never the dentist'. That worker described that, in her view, the First Nations person was frequently there to 'tick a box' but often did not have a say.[77] It was her perspective, and the perspective of others I spoke to for the study, that simply hiring First Nations people into supportive or ancillary roles within bureaucratic 'settler' institutions did not shift the balance of institutional power or disrupt institutionally racist characteristics or practices. This suggests that addressing institutional power imbalances must be the focus of attention in reforming systems and services, which I consider in Chapter 8 in relation to self-determination.

[76] Blagg et al, *Innovative Models: State of Knowledge Paper* (n 51) 15.

[77] Aboriginal and Torres Strait Islander Women's Task Force (n 6) 107.

Many participants also specifically described that entrenched racism and problems in the police (and other institutions discussed in this thesis) are a result of the structural power that state institutions continue to wield over First Nations people. This structural power is founded in colonisation. As one specialist domestic violence worker described in an interview, reflecting on the RCIADIC, in his view many institutions such as 'settler' police are today being managed and run by people 'who were influential in creating the problem' of overpolicing, over-incarceration and police violence 'in the first place'. He described the need for holistic, cultural and institutional change but questioned whether this was possible within the confines of existing institutions. It was his perspective that simply adding First Nations officers, or filling positions with First Nations people, seemed unlikely to address deeper institutional issues within 'settler' agencies or organisations.

Conclusion

Policing, by its nature, is an activity characterised by high levels of discretion.[78] Police, as gatekeepers of the criminal justice process, determine which cases lead to charges and progress through the courts system, and they also decide which cases do not progress. Officers' decisions not to progress charges are of low visibility and rarely subject to further review, but, as Goldstein notes, these decisions 'largely determine the outer limits of law enforcement…[and] define the ambit of discretion throughout the process of other decisionmakers.'[79] Police decisions were accordingly

[78] Cunneen, *Conflict, Politics and Crime* (n 5) 30.

[79] Joseph Goldstein, 'Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice' (1960) 69(4) *Yale Law Journal* 543.

very powerful in shaping case narratives across cases, especially given First Nations women's high levels of contact with these institutions. It is also worth noting that all jurisdictions studied encompass hierarchical forms of quality assurance, but there was no evidence in the cases that poor policing examples were ever corrected or overturned via these processes.

Cases in this study highlight that, for First Nations women, the way police use discretion cuts both ways. Police discretion appears to result in increased visibility and surveillance in respect of women's 'criminal offending' due to overpolicing, yet it also works to reduce the triage of victims' cases into the criminal justice system (under-policing). Case findings also suggest that constructions of women's 'disengagement' may be racialised and ignorant to the negative effects that engaging with 'settler' systems may have on First Nations women. Final reflections in Part IV of this chapter, based on participant observations, also raise questions about the institutional character of the police as an organisation engaged to respond to First Nations women who experience domestic violence. Although I discuss this issue further later in my thesis, it is also worth noting that findings in this chapter also suggest that Australia is failing to meet its positive obligations to investigate episodes of violence against First Nations women as required under the due diligence standard.

In the next chapter, I present findings about the broader criminal justice response to First Nations women victims. I examine the operation of the court system, focusing on DVOs, the prosecution of criminal offences and, briefly, punishment.

Chapter 6: The Criminal Justice System (Continued): Domestic violence orders, court processes and punishment

Introduction

> The best thing that they know how to do, even getting safety happening, is this piece of paper…
>
> —First Nations specialist domestic violence worker in interview

Building on findings in Chapter 5, in this chapter I examine First Nations women's involvement in subsequent stages of the criminal justice system. In Part I, I present findings about DVOs, which are a key component of the domestic violence response. In Part II, I present findings around the court system, including finalisation of criminal charges and court practice. In Part III, I briefly consider punishment.

PART I: DVOs

As I detailed in Chapter 1, DVOs are the most common legal remedy for domestic violence in Australia,[1] and are the primary statutory and legal mechanism aimed at securing women's immediate and ongoing safety.[2] Known as civil protection orders, intervention orders,[3] domestic violence orders,[4] family violence orders,[5]

[1] Heather Douglas and Robyn Fitzgerald, 'Legal Processes and Gendered Violence: Cross-Applications for Domestic Violence Orders' (2013) 36(1) *UNSW Law Journal* 56, 57-58.

[2] Annabel Taylor, Nada Ibrahim, Shellee Wakefield and Katrina Finn, *Domestic and Family Violence Protection Orders in Australia: An Investigation of Information Sharing and Enforcement: State of Knowledge Paper* (ANROWS 2015) 2.

[3] *Intervention Orders (Prevention of Abuse) Act 2009* (SA).

[4] *Family Violence Act 2016* (ACT); *Domestic and Family Violence Act 2007* (NT); *Domestic and Family Violence Protection Act 2012* (QLD).

[5] *Family Violence Act 2004* (Tas).

apprehended domestic violence orders,[6] and family violence restraining orders,[7] DVOs are legally enforceable civil court orders that aim to protect victims of violence by deterring the restrained party (defendant/respondent) from future violence using the threat of criminal sanction in the event of a breach. DVOs accordingly adopt a 'hybrid criminalisation model' where a breach of the civil order constitutes a criminal offence.[8]

While DVOs have been described as being 'among the most effective legal remedies available to complainants/survivors of violence against women',[9] studies have raised concerns around their effectiveness in meeting their stated objective of protecting victims from future violence.[10] Although research highlights that women may experience other benefits from such orders,[11] including a reduction in the severity of violence,[12] other studies have suggested that the threat of arrest may not

[6] *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

[7] *Restraining Orders Act 1997* (WA).

[8] Heather Douglas and Robyn Fitzgerald, 'The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People' (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 41.

[9] Department of Economic and Social Affairs: Division for the Advancement of Women, *Handbook for Legislation on Violence Against Women* (United Nations 2010) 45.

[10] TK Logan and Robert Walker, 'Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness' (2009) 24(4) *Journal of Interpersonal Violence* 675; See also, DMY Tam, LM Tutty, ZH Zhuang and E Paz, 'Racial Minority Women and Criminal Justice Responses to Domestic Violence' (2016) 31(4) *Journal of Family Violence* 527; Angela Ragusa, 'Rural Australian Women's Legal Help Seeking for Intimate Partner Violence: Women Intimate Partner Violence Victim Survivors' Perceptions of Criminal Justice Support Services' (2013) 28(4) *Journal of Interpersonal Violence* 685.

[11] See Sandra Egger and Julie Stubbs, *The Effectiveness of Protection Orders in Australian Jurisdictions* (Commonwealth of Australia 1993).

[12] Margrette Young, Julie Biles and Annette Dobson, 'The Effectiveness of Legal Protection in the Prevention of Domestic Violence in the Lives of Young Australian Women' (2000) 148 *Trends and Issues in Crime and Criminal Justice* 1; Matthew J Carlson, Susan D Harris and George W Holden, 'Protective Orders and Domestic Violence: Risk Factors for Re-Abuse' (1999) 14 *Journal of Family Violence* 205; TK Logan and Robert Walker, 'Civil Protective Order Effectiveness: Justice or Just a Piece of Paper?' (2010) 25(3) *Violence and Victims* 332; C Migliore, E Ziersch, J Marshall and E Aird, *Intervention Orders and the Intervention Response Model: Evaluation Report 2 (Process Evaluation)* (Office of Crime Statistics and Research, South Australian Attorney-General's Department 2014).

act as a deterrent for men with long histories of violence,[13] or First Nations men.[14] As I outlined in Chapter 2, specific concerns have previously been raised about the application of DVOs in respect of First Nations people and communities,[15] including in light of the issue of overpolicing (discussed in Chapter 5). First Nations people may be overrepresented as both protected parties and respondents in DVOs,[16] and DVOs may contribute to the further, racialised, enmeshment of First Nations people in the criminal justice system.[17]

Key findings: DVOs

DVOs were common across cases in this study. There was evidence in the cases that 60 of the First Nations women who were killed by, or killed, an intimate partner (61% of all First Nations women whose cases I examined) had been previously protected under a DVO. Some women had been protected under multiple orders with the same partner, and some women had also been protected under multiple orders with different partners.[18]

[13] Anna Stewart, 'Who are the Respondents of Domestic Violence Protection Orders?' (2000) 33(1) *Journal of Criminology* 77.

[14] Chris Cunneen, *Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities* (Department of Communities 2010).

[15] ibid; Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Palgrave MacMillan 2019); Douglas and Fitzgerald, 'The Domestic Violence Protection Order System as Entry' (n 8); Aboriginal and Torres Strait Islander Women's Task Force, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (State of Queensland 1999).

[16] Cunneen, *Alternative and Improved Responses* (n 14); Nancarrow, *Unintended Consequences* (n 15).

[17] Douglas and Fitzgerald, 'The Domestic Violence Protection Order System as Entry' (n 8) 52.

[18] In some cases, it was not clear whether women were protected under DVOs with their previous partners. This may be an undercount of true prevalence.

For 16% of the First Nations women in the study (N = 16), there was a DVO in place protecting them from their partner at the time of the homicide. The majority of protected women were killed in breach of that order (N = 13), although three women were protected under an order when they killed their abusive partners (their partners being named as the defendants/respondents). Additionally, two males were protected under DVOs when their female intimate partners (who were named as defendants/respondents) killed them. These DVOs were in place despite case detail suggesting that the women restrained under the order had been long-term victims of violence, including from their abusive partners who were now protected persons.

Across cases, it was also common for First Nations women who were victims of violence to be named as defendants/respondents in DVOs protecting their abusive partners during their relationships. This was evident for 27% (N = 26) of First Nations women whose cases I considered in the study. However, the vast majority of these orders were not enforceable at the time of the homicide.

In light of these findings, in this section I firstly examine DVOs that protected First Nations women from their abusive partners, and then examine orders that restrained First Nations women, including DVOs where women were named as defendants/respondents and protected persons in cross-orders (including applications made at the same time and in relation to the same event, and orders made at different times and in relation to different events—so-called reciprocal orders).[19] Similar to other studies examining First Nations peoples experiences of the DVO system,[20] the most common route to DVOs across the study appeared to be via

[19] See Jane Wangmann,''She said…' 'He said…': Cross applications in NSW Apprehended Domestic Violence Order Proceedings' (PhD thesis, University of Sydney 2009).

[20] Cunneen, *Alternative and Improved Responses* (n 14); Nancarrow, *Unintended Consequences* (n 15).

police, rather than private, application.[21] Accordingly, this section should be read in conjunction with Chapter 5—examining domestic violence policing—for further context around the relationship between First Nations women and 'settler' police.

Paternalistic DVO practice

As I established in Chapter 5, police records commonly described First Nations women as 'reluctant' or 'uncooperative' victims. While police frequently used this language to justify inaction, in other cases, despite women's 'reluctance', police would paternalistically intervene on First Nations women's behalf. I most commonly identified this in relation to DVO applications.

In a quarter of the cases where women had been protected under a DVO, there was evidence that the orders were applied for by police, and in many cases ordered by the court, without women's consent or support (N = 15, 25%). In some cases, these orders were apparently sought directly against First Nations women's express wishes.[22]

Legislation across all jurisdictions studied, in line with international guidance,[23] permits police officers to issue emergency DVOs and to apply to the court, on behalf of victims, for final orders.[24] In NSW, police officers are expressly required to apply

[21] Note, for some historical matters there was no information available about the application and it was not possible to ascertain whether police had applied for the orders, or whether women had applied privately. See Cunneen, *Alternative and Improved Responses* (n 14); Nancarrow, *Unintended Consequences* (n 15).

[22] This reflects similar observations to those Cunneen made in his Queensland-based study, where Aboriginal women expressed concerns that police were making DVO applications even though women opposed the orders. See Cunneen, *Alternative and Improved Responses* (n 14).

[23] Department of Economic and Social Affairs: Division for the Advancement of Women, *Handbook for Legislation on Violence Against Women* (United Nations 2010) 47.

[24] See s45(a) *Family Violence Protection Act 2008* (Vic) s45(a); *Intervention Orders (Prevention of Abuse) Act 2009* (SA) s20); *Family Violence Act 2004* (Tas) Section 14, Part 3; *Domestic and Family Violence Protection Act 2012* (Qld) s101; *Domestic and Family Violence Act 2007* (NT) s 41.

for DVOs even in circumstances where the victim is 'reluctant to make an application'[25] for the order.[26] Mandatory domestic violence policies, including no-drop policies around DVOs,[27] have been previously criticised on the basis of their paternalistic, and disempowering, effect on victims of violence.[28] For First Nations women, this paternalism has been recognised as being even more complex, and its effects more acute.[29] Criminal justice interventions to protect First Nations women 'for their own good', evoke prior colonial policies of government protectionism of First Nations people, and are dismissive of the often valid reasons First Nations women may have for not wanting to engage the criminal justice response. They are also corrosive to women's autonomy. As I discuss below, the incursion of unwanted and paternalistic state intervention into First Nations women's lives also appeared, from the cases, to produce the opposite effect to the protective purpose intended by the orders.

Where police pursued DVOs against First Nations women's wishes, or without their support, case trajectories suggested that this could ultimately expose women to

[25] *Crimes Domestic and Personal Violence Act* 2007 (NSW) s49(6).

[26] Note that the consent requirement is not required in WA for 24-hour orders only. Attempts to lengthen this to 72-hours were not supported by some First Nations groups. See Australian Law Reform Commission, 'Police-Issued Protection Orders' in Australian Law Reform Commission, *Family Violence - A National Legal Response (ALRC Report 14)* (Australian Law Reform Commission 2010).

[27] Tamara L. Kuennen, '"No-Drop" Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims' (2007) 16 *UCLA Women's Law Journal* 39.

[28] Linda G Mills, 'Killing Her Softly: Intimate Abuse and the Violence of State Intervention' (1999-2000) 113 *Harvard Law Review* 551, 554. See also, Rosemary Hunter, 'Law's (Masculine) Violence: Reshaping Jurisprudence' (2006) 17 *Law and Critique* 27, 40; Aboriginal and Torres Strait Islander Women's Task Force (n 15) 49-50; Larissa Behrendt, 'Aboriginal Women and the White Lies of the Feminist Movement: Implications for Aboriginal Women in Rights Discourse' (1993) 1 *Australian Feminist Law Journal* 27, 29.

[29] See Aboriginal and Torres Strait Islander Women's Task Force (n 15) 49-50; Behrendt, 'Aboriginal Women and the White Lies' (n 28) 29.

further, possibly escalating,[30] violence from their partners, and could also stop women from seeking help from state institutions. Case narratives suggested that not only would women stop seeking help from police after experiencing paternalistic DVO interventions,[31] but that their partner's violence against them would continue, and sometimes clearly worsen, notwithstanding enforceable orders being in place.

For instance, in one case from NSW, a domestic violence victim, Anita, reported domestic violence to police. She initially told responding officers that she wanted a DVO taken out against her partner Jackson, but later changed her mind. She also told officers that she would not make a formal statement to police and did not want an order. The police sought a DVO from the court without Anita's support, and the court granted this order notwithstanding Anita's refusal to give evidence against Jackson. Police served the order on Jackson when he and Anita were together at their shared residence, and records describe that 'Anita became angry with police as she apparently did not want the [DVO].' Despite the fact that Anita and Jackson were living together at the time, the DVO included an exclusion/ouster provision. When officers served the order on Jackson, they told Anita that she would have to live elsewhere under the conditions of the order, as she had been residing at Jackson's home. This meant that the DVO designed to protect Anita—an order she opposed—made her homeless. The order also apparently failed to keep Anita safe, as one month after the DVO was served Anita presented at the local hospital with head injuries and cuts. Anita claimed that she had self-harmed, however the hospital

[30] This is similar to findings of the Aboriginal and Torres Strait Islander Women's Task Force (n 15) 209.

[31] This is similar to Loretta Kelly's observations around the ways poor policing practice impacted women's future help-seeking patterns, see Loretta Kelly, 'Indigenous Women's Stories Speak for Themselves: The Policing of Apprehended Domestic Violence Orders' (1999) 4(25) *Indigenous Law Bulletin* 4.

informed police about Anita's presentation as they were apparently concerned that she had been assaulted. When officers spoke to Anita, she denied that Jackson had assaulted her. Anita did not report domestic violence to the police herself again for several years, although it would appear from other information available on the file that Jackson continued to use violence against her throughout this period.

Similar issues were evident in another case from the NT where, after an episode of domestic violence, a victim, Dolly, declined to make any formal complaint of assault to police, but officers applied for—and the court finalised—a full non-contact DVO (including an ouster/exclusion provision) on Dolly's behalf, apparently without her consent. James (who had perpetrated the assault and was restrained by the order) and Dolly continued to live together and remained in a relationship. James was first charged with breaching the order when police located him sitting around a fire with Dolly in contravention of the non-contact condition of the DVO. James was arrested, charged and bailed, but was picked up by police on another (apparently non-violent, although the details are unclear) breach of this order later that day. From these facts it did not appear that James understood the DVO conditions, and it did not appear that a full non-contact order with ouster/exclusion conditions was suitable given that Dolly and James lived together in an ongoing relationship. In relation to breaching the order, James was convicted and fined $200 plus an $80 victim levy. This penalty was ordered even though James and Dolly remained in a relationship and appeared to be financially entangled. This meant the fines would, in effect, penalise Dolly. The day after James was sentenced for the breach offences, Dolly presented at the hospital with an arm injury that she told hospital staff she sustained when she fell over. Anecdotal evidence suggests that this may have been an injury sustained due to James' domestic violence, as it appeared that James continued to

use violence despite the enforceable DVO. Dolly did not report any future episodes of violence to police and James killed her later that year in breach of the order.

In another case from NSW, a domestic violence victim, Charlene, specifically told police that she did not want a DVO as she did not want her partner, Todrick, to go to gaol. Todrick was on supervised parole at the time, meaning that he would likely return to custody if he was found to be using violence.[32] When police served the interim DVO on Todrick, Charlene was upset and she again reiterated to the officers that she did not want the order. Police told her that it was the law and they 'had to do it'.[33] Todrick killed Charlene in breach of the interim DVO only three days before the final orders were scheduled to be heard at court. The DVO appeared to intensify the violence Charlene experienced. It did not protect her from future violence.

Prior research has identified that there may be a number of reasons DVOs may not be a culturally appropriate response for First Nations people. Kinship rules may place pressure on the victim and offender to remain together,[34] redress may be preferred through customary law and processes,[35] applications may be potentially divisive amongst communities, and difficulties may arise due to a lack of alternative

[32] I note that the case highlighted that this supervision was not occurring, as there was no probation and parole officer in the town where James lived and the roving officer had not visited since James had been released from gaol.

[33] This is accurate, per *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s49.

[34] Violence Prevention Unit (VPU) (2006), *Personal Communication with the Author*, Queensland Department of Communities, Brisbane cited in Cunneen, *Alternative and Improved Responses* (n 14) 26.

[35] Aboriginal and Torres Strait Islander Women's Task Force (n 15) 209; see also, Partnerships Against Domestic Violence, *MetaEvaluation* **(**Office of Status of Women, Department of Prime Minister and Cabinet 2001) cited in Cunneen, *Alternative and Improved Responses* (n 14); Heather Nancarrow, 'In Search of Justice for Domestic and Family Violence: Indigenous and Non-Indigenous Australian Women's Perspectives'(2006) 10(1) *Theoretical Criminology* 87; Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (The Federation Press, 2nd edn 2016).

living arrangements (particularly for people living in communities or rural areas) which would enable order conditions to be met.[36] According to Robinson in the ATSIWTFV report, DVOs may also fail to match First Nations women's aspirations as 'women may only want 'time out' from the perpetrator with alcohol and substance abuse counselling and anger management programs enforced, rather than removal, containment or incarceration of their spouse.'[37]

I have presented similar findings in respect of policing and criminal justice intervention in Chapter 5, suggesting that police interventions did not always match First Nations women's justice aspirations. Although in a number of cases, discussed later in this section, First Nations women proactively sought DVOs for their own protection, it was concerning that in the examples profiled above both police and the court system worked together to engage in practices that not only lacked sensitivity to First Nations women's needs and the reasons why DVOs may have been inappropriate, but showed little respect for women's knowledge of their own situation.

In two of the abovementioned cases, police and court responses also appeared to use non-contact conditions as a means by which to coerce First Nations women into separating from their partners, notwithstanding that those women acted in ways consistent with wanting that relationship to continue (but the violence to stop). Although it was not possible to conclude that the women in the cases did want the relationship to continue in the absence of express evidence (such as the women themselves saying this), the cases suggested similar issues to those identified in Gumbaynggirr and Dunghutti scholar Loretta Kelly's research, where First Nations

[36] Violence Prevention Unit (VPU) (2006), *Personal Communication with the Author*, Queensland Department of Communities, Brisbane cited in Cunneen, *Alternative and Improved Responses* (n 14).

[37] Aboriginal and Torres Strait Islander Women's Task Force (n 15) 209.

women who were protected by DVOs described feeling that police were biased against them when they reconciled with the defendant/respondent.[38] Paternalistic practices adopted by police and courts in applying for, and finalising, DVOs in cases in my study not only exposed First Nations women to further violence and abuse from their partners, contrary to the intended objectives of DVOs, but exposed women to unwanted, coercive state intervention. This produced outcomes that were antithetical to the protective intention of the DVO and appeared to drive women away from police and state agencies. I specifically consider the issue of inappropriate conditions (such as exclusion/ouster orders in the context of an ongoing cohabitating relationship) later in this section.

Aiding and abetting; victim 'complicity' and 'duplicity' in DVO breaches

It was concerning that when policing DVO breaches, officers would sometimes describe First Nations women as being complicit in breaches of the orders which named them as the protected person. This was identified in over a quarter of the cases where women had been protected by DVOs (N = 16, 27%). So-called 'aiding and abetting' clauses in DVO legislation allow police to criminally charge the protected person named under a DVO where that protected person is considered to have contributed to a breach of the order.[39] In recent decades, at least partly in response to concerns around the way aiding and abetting provisions served to criminalise women's domestic violence victimisation,[40] these clauses have been

[38] Kelly (n 31).

[39] Taylor et al, *State of Knowledge Paper* (n 2) 18.

[40] Australian Law Reform Commission, *Family Violence* (n 26) [12.3]-[12.46].

removed from DVO legislation in NSW, Queensland, Victoria, and WA,[41] and replaced with provisions specifically absolving victims from responsibility for 'complicity' in breaches. These clauses have also been partially removed from SA legislation, preventing victims from being charged in relation to their own conduct as protected persons, but retaining the possibility that they may be charged where their conduct facilitates a breach of conditions regarding others, for instance, a child also protected under a DVO.[42] In some jurisdictions, such as the ACT, the NT and Tasmania, while specific aiding and abetting provisions do not form part of DVO legislation, women may still be charged under general criminal law (although the extent to which this occurs is unclear).[43]

Despite the repeal of 'aid and abet' provisions, and the enactment of legislation specifically absolving victims from responsibility for DVO breaches across most jurisdictions, cases in this study suggest that police continue to describe First Nations women as being 'complicit' in their partners' order breaches when those women are named as protected persons. This reflects similar issues to those I discussed in Chapter 5 regarding the police's racialised and gendered constructions of First Nations women's victimisation in the context of domestic violence callouts. However, in DVO cases this characterisation was perhaps more confounding given that protective orders were already in place, leaving ostensibly less room for officers to use discretion not to act. Negative characterisations of First Nations women's

[41] Taylor et al, *State of Knowledge Paper* (n 2) 18.

[42] ibid

[43] ibid. See also, Karen Wilcox, *Recent Innovations in Australian Protection Order Law: A Comparative Discussion* (Australian Domestic and Family Violence Clearinghouse 2010).

complicity in DVO breaches were particularly evident in cases from NSW, where case narratives included extensive details derived from police records.

In one case from NSW, the case history highlighted that a domestic violence victim, Charlene, had been named as the protected person in four separate DVOs restraining her partner, Aaron. In one of the episodes where Aaron breached a current DVO, police records described that Charlene's 'reluctance to contact police earlier and allowing the POI [person of interest—Aaron] to attend and remain at her premises breaches the [DVO] conditions.' Charlene was named as the protected person under the DVO, she was not, and had never been, named as a defendant/respondent under an order with Aaron.

In another case from NSW, also discussed above in relation to paternalistic practice, the police attended after the defendant/respondent Jackson had assaulted the domestic violence victim and protected person, Anita, in breach of the non-contact condition of the DVO. In this case, police records described that the 'police fear the accused will continue to assault the vic[tim] however the vic[tim] is facilitating a breach in the contact condition of the [DVO] by continually allowing the accused to live with her...' In this case, as I mentioned previously, Anita had told police that she did not want a DVO, but police had applied for (and the court had granted) this order against her wishes. In this case, the police narrative of Anita's complicity in breach appeared to suggest there was a discrepancy between the law on the books and operational policing practice.[44] In a way similar to Charlene's case discussed above, Anita's choice to remain with her partner also appeared to negatively influence police

[44] This is similar to observations made in the Northern Territory Legal Aid Commission Consultation to the ALRC report - Northern Territory Legal Aid Commission, Consultation, Darwin, 26 May 2010 cited in Australian Law Reform Commission, *Family Violence* (n 26) [12.15].

officers' perceptions of her victimisation, with officers apparently deeming her to be an 'unworthy' or 'bad' victim as a consequence of what they perceived as her failure to leave her partner. This reinforces my observations in Chapter 5 concerning police labelling of First Nations women's 'reluctance' and 'disengagement', and the racialised and gendered dimensions of this practice.

The narrative of victim complicity in DVO breaches was articulated even more clearly in another case from one of the smaller jurisdictions. In this case, however, the construction of victim complicity was not articulated by police, but was instead evident in a government report evaluating the state's domestic violence response in the case. In the report prepared for the coroner by the provider managing the state's domestic violence system, it was described that a domestic violence victim, Janey, and her deceased partner, Shaun, had been subject to a current reciprocal DVO. The report described that there was 'an identified propensity for [both the victim and the perpetrator] to disregard any orders, be duplicitous and complicit in their behaviours when engaging with police and services.' The report also stated that both Shaun and Janey used the orders 'as a convenient relationship tool.' In this case, Shaun had a history of using serious domestic violence against Janey, and both parties would contact police to report verbal and physical violence when this occurred. Although the case narrative described that Janey would 'fight back', the analysis also identified that she was the primary victim of violence during the relationship. Records from the file did not clearly suggest that Janey was engaging with police improperly, but the government provider's report appeared to construct Janey and Shaun as being as responsible as one another for Shaun's violence.

While victim-blaming of women who stay with abusive partners has been recognised as an issue in the broader literature,[45] including the policing literature,[46] victim-blaming by police in relation to First Nations women appeared to have particular gendered and racialised dimensions. When police described First Nations women as being complicit in their partner's DVO breaches, this often sat alongside other issues in the policing response, such as identifying those women as criminal offenders, failing to respond to women when they were victims of abuse, and reporting First Nations victim's children to child protection services.

Reflecting on negative constructions of First Nations women's victimisation, study participants' views supported that the enforcement of DVOs protecting First Nations women raised many of the same issues that affect the policing of First Nations women more generally (detailed in Chapter 5). Participants explained that not only would responding police fail to see First Nations women as 'victims', but officers would routinely judge women's behaviour and choices, including if they decided to remain in relationships with their partners notwithstanding those partners' violence and abuse against them. This bears similarities to the concept of 'white magnanimity and black guilt' described by Blagg and Anthony,[47] as the 'settler'

[45] See, for instance, Niwako Yamawaki, Monica Ochoa-Shipp, Craig Pulsipher, Andrew Harlos and Scott Swindler, 'Perceptions of Domestic Violence: The Effects of Domestic Violence Myths, Victim's Relationship with her Abuser, and the Decision to Return to her Abuser' (2012) 27(16) *Journal of Interpersonal Violence* 3195; Christina Policastro and Brian K. Payne, 'The Blameworthy Victim: Domestic Violence Myths and the Criminalization of Victimhood' (2013) 22(4) *Journal of Aggression, Maltreatment & Trauma* 329.

[46] Christina DeJong, Amanda Burgess-Proctor and Lori Elis, 'Police Officer Perceptions of Intimate Partner Violence: An Analysis of Observational Data' (2008) 23(6) *Violence and Victims* 683; Annabel Taylor, Nada Ibrahim, Heather Lovatt, Shellee Wakefield, Nicola Cheyne and Katrina Finn, *Domestic and Family Violence Protection Orders in Australia: An Investigation of Information-Sharing and Enforcement with a Focus on Interstate Orders: Key Findings and Future Directions* (ANROWS 2017) 2.

[47] Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan 2019) 207.

system sets up police as white saviours, and First Nations women as undeserving, or unfavourable, victims, when they reject criminal justice involvement. Constructions of First Nations women's responsibility for violence in the cases appeared to be shaped by officers' racialised and gendered perceptions of how those women should behave, how they did behave, and whether or not they were then perceived by police to be victims worthy of assistance.

Policing and DVO enforcement

Another common enforcement issue arising with DVOs across cases, was officers' inconsistent charging and prosecution of breach offences—the criminal component of the hybrid criminalisation model. Under-enforcement relates to under-policing, discussed in Chapter 5. More generally, a lack of adequate enforcement of civil remedies and criminal sanctions for violence against women by both police and the judiciary has been described as one of the major gaps in the enforcement of the state's protective obligations under the due diligence standard,[48] and the broader literature is replete with studies examining breaches and order enforcement, both in terms of policing and in the court context (the latter being specifically considered in the next section of this chapter).[49] Without enforcement, DVOs have been described

[48] UN Commission on Human Rights, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on the Due Diligence Standard as a Tool for the Elimination of Violence Against Women' (20 January 2006) UN Doc E/CN.4/2006/61 [49].

[49] See Heather Douglas, 'Not a Crime Like Any Other: Sentencing Breaches of Domestic Violence Protection Orders' (2007) 31 (4) *Criminal Law Journal* 220; Heather Douglas, 'The Criminal Law's Response to Domestic Violence: What's Going On?' (2008) 30(3) *Sydney Law Review* 439; Logan and Walker (n 12); George S Rigakos, 'Situational Determinants of Police Responses to Civil and Criminal Injunctions for Battered Women' (1997) 3(2) *Violence Against Women* 204; George S Rigakos, 'Constructing the Symbolic Complainant: Police Subculture and the Non-Enforcement of Protection Orders for Battered Women' (1995) 10(3) *Violence and Victims* 227.

as being nothing more than ‘a piece of paper’,[50] and as one specialist domestic violence worker described in an interview for this study, First Nations women ‘can't rely on that piece of paper’. Participants described in interviews/yarns that poor policing was a significant barrier to DVO enforcement, and a major sticking point preventing breach offences from progressing through the criminal justice system.

Breaches ‘in fact’ and repeated breaches of DVOs reported to the police were very common across cases in the study.[51] However, cases also demonstrated that it was common for police officers to use their discretion not to enforce DVOs either in the context of technical breaches (for instance, breaches of non-intoxication, non-contact or ouster/exclusion conditions),[52] or when episodes of alleged violence had occurred.[53] It was not always clear from police records whether women had sustained injuries in these episodes of violence, but prior research suggests that police may be less likely to take action in respect of breaches when the victim lacks

[50] Sentencing Advisory Council. *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention Monitoring Report* (SAC 2013) cited in Taylor et al, *Key Findings and Future Directions* (n 46) 31.

[51] ‘In fact’ refers to cases where breaches were identified on the information available, whether or not those breaches were charged by police, or convictions secured. Anecdotal evidence of family and friends also suggested that breaches were not always reported to police, indicating that these reported breaches may have only been the ‘tip of the iceberg’ regarding the violence women experienced in their daily lives.

[52] This is despite police codes of practice in NSW and Victoria highlighting that technical and minor breaches are unacceptable, requiring officers to charge based on evidence rather than discretionary assessment, see Taylor et al, *Key Findings and Future Directions* (n 46) 34.

[53] Elizabeth Matka, Julie Stubbs and Diane Powell, *Domestic Violence: Impact of Legal Reform in NSW: Legislative Evaluation No 5* (NSW Bureau of Crime Statistics and Research 1989); Heather Douglas and Tanja Stark, ‘Stories from Survivors: Domestic Violence and Criminal Justice Interventions’ (2010) *University of Queensland Law Research Services* 1; Molly Chaudhuri and Kathleen Daly, ‘Do Restraining Orders Help? Battered Women’s Experience with Male Violence and Legal Process’ in Eve Buzawa and Carl Buzawa (eds), *Domestic Violence: The Changing Criminal Justice Response* (Auburn House 1992); Rigakos, ‘Situational Determinants’ (n 49).

obvious injuries.[54] Police inaction around breach offences in these cases is consistent with prior research conducted in NSW, which identified that police took no action in relation to DVO breaches in 73% of the cases reported to them.[55] Findings suggest, however, that for First Nations women this inaction must be understood as not only reflecting, but producing, a racialised response.

Given the extensive detail from police records included in case narratives from NSW, issues around DVO enforcement were most visible in that jurisdiction. In NSW, it was common for police to write-off episodes of violence as a 'DV-no offence' when current DVOs were in force protecting First Nations women. Unfortunately, on the information available it was rarely clear how these exercises of police discretion corresponded with the victim's wishes, and records rarely outlined clear reasons why a breach of the enforceable DVO was not progressed.

In addition to, often repeated, failures to progress breach offences where these had occurred, it was concerning that in a small number of cases, officers failed to charge breach offences due to their (sometimes repeated) failures to identify that current DVOs were in force. Failures to identify that enforceable DVOs were in place was not only a failure of police systems, but—especially were such failures occurred repeatedly—strongly suggested that police were apathetic towards First Nations women as victims.

In one case from NSW, police repeatedly failed to enforce DVOs protecting a First Nations woman, Larabeth, from her partner Kyle. In one of these episodes, four

[54] Cunneen, *Alternative and Improved Responses* (n 14) 89; Jane Goodman-Delahunty and Anna Corbo Crehan, 'Enhancing Police Responses to Domestic Violence Incidents: Reports from Client Advocates in New South Wales' (2015) 22(8) *Violence Against Women* 1007.

[55] Lily Trimboli and Roseanne Bonney, *An Evaluation of the NSW Apprehended Violence Order Scheme* (NSW Bureau of Crime Statistics and Research 1997).

months after a DVO had been finalised, Larabeth called police to report Kyle's violence against her. When officers attended, they informally mediated between the parties and left. Upon returning to the station, the officers discovered that an enforceable DVO was in force protecting Larabeth, and that Kyle had breached the conditions of that order. This failure to identify that an enforceable DVO was in place was a result of Larabeth having multiple Central Names Index ('CNI') entries on the police database. Police had checked the incorrect CNI record when responding to the callout and, as a result, had not seen the DVO. When the discrepancy was discovered, attending officers checked with their supervisors, and police records indicate that 'all agreed' that there was insufficient evidence to charge a breach. This was because, according to the police narrative, the only ground breached was that the perpetrator, Kyle, was intoxicated in breach of the non-intoxication conditions of the order—a so-called 'technical breach'. Police decided not to charge a breach despite the fact that officers had attended a victim-reported domestic violence callout—officers determining that whatever violence had occurred was not serious enough to warrant DVO enforcement. Despite being identified as a problem by officers and their superiors, the CNI issue was never rectified, and this scenario repeated several more times in this case, including episodes where police attempted to apply for DVOs protecting Larabeth from Kyle when other orders were already in force, and instances where officers failed to identify that DVOs were enforceable (and Kyle was using violence in breach of those orders), meaning that breach offences were not charged. Larabeth, as a long-term victim of violence, was caught in the middle of this inconsistent and non-protective police response and experienced no ascertainable benefit from the multiple DVOs that were in place across the duration of her relationship with Kyle. Larabeth continued to experience

violence and poor policing in relation to her experiences of violence until Kyle killed her.

While, as I noted previously, DVOs may not always be an appropriate mechanism for First Nations women and families, it is concerning that in some cases even where DVOs were current and enforceable, responding officers used their discretion not to enforce the orders. Inadequate and inconsistent enforcement of DVOs suggested that, in this cohort of cases at least, First Nations women did not enjoy increased safety as a consequence of DVOs being in place. The primary purpose of the DVO—that being the prevention of future violence[56]—did not appear to be realised in practice. This also appeared to, at the very least, be contributed to by police apathy and under-enforcement, as I discussed in Chapter 5.

Court practice and DVO enforcement

While most of this study so far has focused on policing and DVOs, which represent the broadest base of the criminal justice response to domestic violence, cases also suggested that there was considerable attrition through the court system when it came to DVO breach charges. I identified that despite breaches occurring in many cases in this study, these breaches would rarely lead to charges. They would very rarely lead to convictions. Breach charges failed to convert into convictions in 23 cases.

Across cases it was common that breach charges, like other criminal charges, would be heard in court where they would be withdrawn by police or dismissed by the presiding magistrate. In some cases, it was clear from the information contained on the file that breach offences did not progress as women did not, or perhaps could

[56] Taylor et al, *State of Knowledge Paper* (n 2) 30.

not, attend court to give evidence. While First Nations peoples' non-attendance at court for DVO hearings has been previously identified as an issue in the criminal justice system,[57] and I discuss the accessibility of court processes later in this chapter, the visibility of court reasons not to finalise breaches across all jurisdictions' cases was mostly too limited to draw conclusions about why breach charges did not progress to convictions. It was not clear whether this was due to no evidence being offered by police, the victim not attending court, the charges being withdrawn, the attitude of the magistrate,[58] or some other reason. In some cases, it was apparent that police had gathered evidence to support the charge, but convictions nonetheless were not secured. The lack of reasons being provided for failures to secure convictions in court (magistrate's reasons), and a lack of reasons being provided for failures to progress charges (police prosecutor reasons), is a transparency issue within state records. In lower courts across Australia, reasons are rarely publicly available and are only available on the transcript, at a (sometimes considerable) cost. Decisions not to progress charges are similarly of low visibility, and reasons were mostly unavailable within the case files and narratives I examined.

However, in some cases where court convictions for breach DVO offences were secured, I identified that there were issues with the court-ordered penalty. In some cases, penalties appeared to punish the victim by proxy, such as the aforementioned case in which the court ordered a fine as punishment for a breach

[57] Cunneen, *Alternative and Improved Responses* (n 14) 85.

[58] Prior surveys of magistrates suggest that problematic attitudes around domestic violence victims and DVOs may be common, although more recent studies suggest that attitudes amongst the magistracy may be improving. See BJ Carpenter and R M Field, 'Issues Relating to Queensland Magistrates' Understandings of Domestic Violence' (Domestic Violence Court Assistance Network Conference, Brisbane, 17-19 June 2003); Shellee Wakefield and Annabel Taylor, *Judicial Education for Domestic and Family Violence: State of Knowledge Paper* (ANROWS 2015).

DVO offence when both parties were financially entangled.[59] Fines may be inappropriate penalties for domestic violence offences due to financial entanglement, and the way they may punish victims. Similarly, in other cases I identified that the court ordered a fine in circumstances where the defendant/respondent was living in poverty and appeared unable to pay.[60] The negative impacts of court-ordered fines on First Nations people, including ongoing issues around imprisonment for fine default (a consequence of poverty and inability to pay), have also been identified as problematic in inquiries including the RCIADIC.[61] That fines were a feature of breach DVO penalties highlights some of the negative effects the criminal justice component of the state's domestic violence response system may have on First Nations women and people.

In other cases, however, penalties appeared problematic as, in the context of the case, those penalties were ineffective and—looking at the case narrative—it was clear that they did not prevent future violence. In some cases, penalties—including short-term incarceration or good behaviour bonds—were ordered by the court following DVO breach convictions. In the context of those cases, it appeared that these penalties failed to interrupt the perpetrator's repeated use of violence against their current, or former, partners. Some participants described such penalties as retribution absent any therapeutic component and considered that they were incapable of securing the lasting behaviour change that was necessary for the

[59] This is consistent with Douglas and Stark's study, which recommended that fines should be a penalty of last resort. See Douglas and Stark (n 53).

[60] It is a principle of common law in Australia that a court should not impose a fine that someone cannot pay, see *R v Rahme* (1989) 43 A Crim R 81.

[61] Mary Spiers Williams and Robyn Gilbert, *Reducing the Unintended Impacts of Fines: Current Initiatives Paper 2* (Indigenous Justice Clearinghouse 2011); Commissioner Elliott Johnston, *Royal Commission into Aboriginal Deaths in Custody* (Australian Government Publication Service 1991).

defendant/respondent to stop using violence against his partner. Reflecting on this, one specialist domestic violence worker described that

> so I think at the moment, because there's a tendency to do more of the 'lets charge the person—lets send them to the big house and incarcerate them for a period of time, not provide them any therapeutic intervention while they're there'—I don't think that's being very productive in terms of responding to domestic violence.

Participants' concerns around the ineffectiveness of penalties were reinforced by case findings, where it was common that after breach convictions perpetrators would serve a short custodial sentence and return to the relationship, where they would continue to use violence against the victim. This was also evident with longer prison sentences, good behaviour bonds and other penalties—after which (or sometimes in breach of which) the offender would continue using violence. I discuss punishment and deterrence specifically later in this chapter, although this picture of repeated, ongoing violence, and ineffective criminal justice responses, is consistent with Cunneen's research, which found that First Nations women would experience ongoing violence, often over many years, despite this violence being regularly reported to authorities.[62]

It was also common for defendants/respondents to regularly, repeatedly breach DVOs. First Nations women whose cases I considered in this study were often subject to repeated violence and, whether or not the breach of the DVO was charged and a conviction secured, women would continue to experience violence and abuse from their partners. In these cases, the DVO itself, or charges resulting from breach, did not appear to deter future violence. Regular breaches also rarely led to DVOs being extended, and, in a number of cases, the DVO expired only a

[62] Cunneen, *Alternative and Improved Responses* (n 14) 98.

short time after the most recent breach. This led me to question whether DVOs were legitimately capable of protecting First Nations victims in accordance with their intended purpose. Male defendants/respondents in the study also frequently breached DVOs against multiple partners over time, suggesting that the orders had little deterrent effect on their behaviour, and did not keep their current, or future, partners' safe.

Findings outlined in this, and the prior two, sections, suggest that DVOs may not be keeping First Nations women safe due to issues around their under-enforcement, including poor policing and failures to secure convictions in a court context. However, findings also suggest that even where the system mobilises and 'works'—and a DVO is applied for, granted, and a conviction is secured, and punishment is meted out in the event of a breach—First Nations women still continue to experience violence. This suggests that DVOs may not be working effectively to secure First Nations women's rights to be safe and free from violence.

Inappropriate DVO conditions

As I noted in Chapter 2, prior research has identified that the majority of DVOs involving First Nations women contain standard conditions only,[63] however, findings in this study also suggest that in cases where additional conditions were applied for by police, and/or ordered by the court, these conditions were often contextually inappropriate.[64] I identified inappropriate DVO conditions in 22 cases in the study. Participants considered that inappropriate DVO conditions could set up

[63] ibid 13; Nancarrow, *Unintended Consequences* (n 15) 192.

[64] Cunneen, *Alternative and Improved Responses* (n 14); Nancarrow, *Unintended Consequences* (n 15).

defendants/respondents to fail (through technical breaches such as breaches of non-intoxication conditions in circumstances of alcohol use and addiction issues). It appeared that these conditions—particularly in the case of ouster/exclusion orders—could also contribute to the state's construction of First Nations women as being complicit in their victimisation when, for instance, women wanted to remain in a relationship, living together with their partner notwithstanding the existence of an exclusion/ouster order.

As I noted previously, in several cases in this study the presiding magistrate ordered exclusion/ouster orders as part of final DVOs when the victim and defendant/respondent continued to live together in the same residence and remained in a relationship. This echoes Robinson's findings in the ATSIWTFV Report, where she identified that DVO conditions may fail to reflect First Nations peoples' lived experiences, including the economic necessity of co-habiting.[65] Findings from cases in this study also suggest that police, and magistrates, may disregard these factors for apparently paternalistic reasons. This was particularly evident in one case from Queensland where a domestic violence victim, Saskia, sought to have a final DVO varied to remove the exclusion/ouster condition so that her partner would not breach that condition simply on the basis of their pre-existing living arrangement. In this case, the court refused to remove the condition on the order. This appeared to be motivated by a belief in the importance of using the DVO to keep Saskia and her partner apart. The deployment of DVOs as a coercive method by which to separate First Nations women from their partners was apparent in several cases, and—as I discussed earlier—when this method failed, this

[65] Aboriginal and Torres Strait Islander Women's Task Force (n 15) 209-210.

appeared to contribute to constructions of First Nations women as 'unfavourable victims'. As one survivor described, reflecting on her own experiences, 'I left because I wanted to, and I was ready to. And women aren't gunna leave until they're at that place.' Coercive attempts to separate First Nations women and their partners, by 'settler' police or magistrates, also appeared likely to reduce women's trust in the criminal justice process.

It was also common that DVOs would include conditions precluding drug and alcohol use (such as the condition that the restrained party would not approach the protected party within 12 hours of consuming alcohol) in circumstances where the defendant/respondent had problematic long-term substance use issues. While problematic alcohol use would be acknowledged by the court in the form of orders precluding its use (thereby apparently identifying its association with violence), these restrictions would be consistently decoupled from any associated therapeutic response: the only mechanism built into the response was the 'stick', or 'deterrent' condition precluding the behaviour.[66] This approach failed to match with the tangible needs participants identified as central to the justice response—that is, addressing the underlying behaviour rather than simply punishing what may have been a coping mechanism for trauma.

It also appeared problematic that conditions precluding alcohol or drug use effectively criminalised otherwise non-criminal behaviour, and these behaviours would be pursued as a breach of the order despite no evidence that violence had occurred. Although this practice was identified in several cases involving male

[66] This can be contrasted with recently introduced provisions in Western Australia, which may require the defendant/respondent to undertake behavioural change programs via behaviour management orders, see *Restraining Orders Act 1997* (WA) Part IC.

defendants, it was particularly concerning that this was a feature of several cases where DVOs named First Nations women, who were victims of violence, as defendants. For instance, in one case from the NT, both a domestic violence victim, Alana, and her partner, Troy, were subject to a reciprocal DVO, and were charged, and later convicted, of breaching these orders when they were located by police sitting on a bench together outside a supermarket. Both Alana and Troy returned positive breathalyser readings in breach of the non-contact, non-intoxication conditions of the reciprocal DVO, and, as there was no violence alleged in this episode, the technical breach was the only ground for the charge. In another case from NSW, a domestic violence victim, Daphne, and her partner, Jet, were subject to a reciprocal DVO. Police attended after Daphne contacted police to report an episode of fighting amongst family members and officers sought to breach both Daphne and Jet on the basis that they had been drinking alcohol together. There was no suggestion that Daphne had been involved in the fighting, and she had contacted police to report the incident. These findings can be contrasted with my discussion of technical breaches earlier in this chapter, where I identified that police may fail to charge these where First Nations women were protected under the order. This again is also reminiscent of my findings concerning under-policing in Chapter 5.

When it comes to theorising the way DVOs may contribute to the racialised enmeshment of First Nations people in the criminal justice system, there is no clearer way by which this can be achieved than through police or court orders that set up First Nations defendants/respondents to automatically breach the orders' conditions and expose defendants/respondents to high levels of policing in that context. Although non-contact and substance use limitation orders are designed to keep victims safe from partners who may use violence in those contexts, the way

these conditions were ordered and policed across cases suggested that DVOs would become yet another mechanism by which the state could criminalise First Nations people, including First Nations women.

Women who actively sought the protection of DVOs

Although First Nations women's views about DVOs applied for by police on their behalf were not always clear from the cases, from a number of cases in the study it was evident that First Nations women or their families wanted police to apply for DVOs for the victim's protection, but due to problems arising in either the policing or court context, women were left unprotected, without an order, or inadequately protected under a deficient order with inadequate conditions.

For instance, in one case from the NT, at a domestic violence callout (and following a long history of violence), a domestic violence victim, Harriet, asked police to apply for a DVO protecting her from her partner, Stan. Despite offering Harriet the option of a DVO at the scene, police did not follow up with Harriet after she asked police to apply for an order protecting her. Several months later, Stan beat Harriet over the head and back with a stereo, causing her to sustain extensive injuries. Only then did police apply for a DVO naming Stan as the defendant/respondent. Police did not charge Stan with any criminal offence in relation to this assault.

In another case from the NT, the court 'misplaced' the police application for a DVO protecting a woman, Sandy, from her partner, Lewis, and, due to this administrative error, the order was never served. The order was incorrectly listed on the police system as being 'withdrawn' in court and, apparently as a consequence, the police determined that another DVO was not required to protect Sandy when she

again experienced violence from Lewis. Sandy was killed a short time later. She was unprotected by any order.

In a few cases in the study, First Nations women also believed that they were protected under enforceable DVOs when these orders had expired. For instance, in one case from the NT, a domestic violence victim, Zara, who had asked her mother to call police, spoke to attending officers after a domestic violence episode and informed them she was protected under a DVO and her partner Riley had breached it with his violence. After police attempted to arrest Riley (he was described as going 'berserk' and 'bashing his head against the rear of the police cage' during the arrest), officers determined the DVO had expired one month earlier. Although Riley was on a good behaviour bond at the time of the episode, officers informally settled the matter and let Riley go without charge.

Women believing that orders were in force when they had expired was suggestive of the inadequate provision of information to victims about the length and conditions of DVOs. As one specialist domestic violence worker described in an interview for this study

> I think because of the rushed procedures around policing and around responses, I don't think the information trickles down properly. And so when there's incidences, I don't think women are informed properly of what's going on.

That worker further described believing that male perpetrators also did not get sufficient information, stating 'I don't think, um, I don't think perpetrators as well get the information properly. So, I think that people are still walking away with just being told, this is what's happened, but not really completely understanding.' This commentary also reflects issues I discussed earlier around perpetrators apparently not being clear about DVO conditions.

When discussing DVO conditions, one survivor described in an interview that she had experienced inadequate communication from police and court staff regarding DVOs. She also considered that poor communication processes ultimately exposed her to further danger from her abusive partner. For that survivor, the court ordered a DVO protecting her from her partner (who was on trial for offences against her), but nobody asked her what conditions she wanted in that order to help her and her family remain safe. When her partner was found not guilty, the survivor and her children ended up being granted protection under a DVO with standard conditions only, rather than the full non-contact order she wanted, and believed that she needed, to keep her and her children safe. She described feeling anxious and scared by this court outcome, describing that 'he could've walked up to me and my children whenever he wanted to.' She also described feeling let down by the system and unconsulted by the magistrate. This suggested that the DVO system may operate with insufficient engagement with First Nations women and their partners around DVOs. It also suggests that there may be systemic problems with the way First Nations women are supported by the state, including domestic violence services, to navigate the legal system. I discuss issues related to services further in Chapter 7.

A number of study participants described that the challenges First Nations women experience in accessing culturally appropriate legal services contribute to poor practice and outcomes in this area. The prior research I outlined in Chapter 2 also suggests that First Nations women may not be able to access Indigenous specific Legal Services due to conflicts of interest and may not be otherwise able to access culturally appropriate legal advice. Several participants also raised concerns that existing court assistance schemes, such as the NSW Women's Domestic

Violence Court Advocacy Service (government court assistance provided through Legal Aid NSW), while potentially helpful for women, may have workers that are pushed for time and who may not always be able to give First Nations women the best advice around DVOs, or seek First Nations women's views on what they need. Court practice in this area may also be paternalistic, and while discussing this in an interview, one specialist domestic violence worker observed that 'there's still that sort of issue around people telling Aboriginal people what's best for them. Rather than giving them a whole picture, giving them the information and letting them make informed decisions.'

That worker also attributed poor practice in this area to the 'money-making' focus of some mainstream, 'settler'-controlled social services working in this space, and a lack of care for the particular needs of First Nations women. Court-located victim support services may also not have time in their busy schedules to be able to adequately explain order conditions. Given that one of the stated positive features of DVOs is that they can increase victims' sense of control and empowerment,[67] it was concerning that some First Nations women, in cases and interviews, appeared unsupported to communicate their safety needs in the court process and were disempowered by DVOs as they did not appear to understand their conditions or when they were in force. This appears to reflect a broader accessibility issue, which I discuss more generally in the following section.

[67] Clare Connelly and Kate Cavanagh, 'Domestic Abuse, Civil Protection Orders and the 'New Criminologies': Is There Any Value in Engaging with the Law?' (2008) 16(1) *Feminist Legal Studies* 139; Goodman-Delahunty and Corbo Creehan (n 54) 1007.

Female victims of violence named as defendants/respondents in DVOs

As I noted at the start of this chapter, in a high proportion of cases in this study, First Nations women who were victims of violence had also been named as defendants/respondents in DVOs protecting their abusive partners. Over a quarter of the First Nations women whose cases I considered in the study (27%, N = 26) had been named as a defendant/respondent in a DVO in these circumstances; some of these women in standalone DVOs, but most in reciprocal,[68] and possibly cross, orders (although the ordering of the applications was sometimes unclear)[69] naming their abusive partners as defendants/respondents. Twenty-three of the 26 First Nations women who had been named as defendants/respondents in DVOs had also been named as protected/aggrieved persons in DVOs with their abusive partners and, in most cases, these orders were simultaneously enforceable. As I described previously, case narratives also suggested that, for these women, the law was being applied without reference to histories of violence, and episodes of conflict were being policed in an incident-based manner. This led to seemingly perverse outcomes for women who were long-term victims of violence.

In the majority of cases in this study, it appeared that DVOs against First Nations women were applied for by police following episodes of arguments and sometimes fighting, in which the police could not, or did not, identify a primary aggressor. In other cases, DVO applications followed episodes of violence consistent with women acting in self-defence. As Nancarrow describes, reflecting on similar findings from her study, the way DVOs were being applied against First

[68] This refers to orders made at the same time in relation to the same episode of violence.

[69] This refers to orders where one party applies for an order (or one is granted on their behalf) and, sometime later, while the initial order is enforceable, the defendant/respondent (or another party, such as police) seeks a protection order against the protected party, see Wangmann (n 19) 3.

Nations women suggests that the feminist intention of these orders may have 'backfired'—with the orders unable to account for First Nations women's racialised lives and realities.[70] Cases in my study appear to support Nancarrow's observations, highlighting that DVOs, in many cases, were applied for by police in ways that criminalised long-term domestic violence victims.

For instance, in one case from the NT, the police issued emergency cross-DVOs against a domestic violence victim, Kylie, and her abusive partner, Remy, after the police attended a verbal argument. These DVOs were later finalised by the court. It is not clear if they were contested. The police records describe that in the episode leading to the orders, Remy and Kylie were 'both intoxicated and argued over Kylie getting 'drunk all the time' instead of looking after their one-year-old son… Kylie left her mother with her son so she could go out drinking and the child was still being breastfed.' The narrative described that police applied for the DVOs based on 'police hearsay evidence (the recorded history of violence)', notwithstanding that police records indicated Kylie had been previously protected under a DVO naming Remy as the defendant/respondent, and this order had expired only the day prior to this callout.[71] In this case, officers' decision to apply for orders going both ways appeared to be based on their contemporaneous gendered and racialised judgements around Kylie's asserted behaviour—that she was a breastfeeding mother who had left her young child to go out drinking. This application was then couched in terms of the 'recorded history of violence'—notwithstanding that this history was not supported by police records.

[70] Nancarrow (n 15).

[71] The cross-orders included conditions that neither party have contact with one another while intoxicated or under the influence of drugs, despite the case narrative suggesting that both parties had alcohol dependency issues.

After being named as defendants/respondents in DVOs, in some cases women would also be charged with breach offences, leading to enmeshment within the criminal justice system. This was apparent in one case from one of the smaller jurisdictions in the study, where a domestic violence victim, Alana, separated from her abusive partner, Jim, and he made a private application to the court for a DVO, which was ordered for 2 years (including non-contact conditions). It was not clear if Alana contested this order in court. Shortly after the order was put in place, Jim invited Alana (then aged in her late teens) over to his house so that he could see their son. When she arrived Jim seriously assaulted her, causing large haematomas to her head and face, and she ended up calling the police to report this assault. When officers attended, they did not apply for any DVO protecting Alana from Jim. Jim was convicted and sentenced for the assault, as well as aiding and abetting a breach of the DVO he was protected under. However, after this episode, Alana was later charged and convicted of eleven breaches of the DVO, after she text messaged Jim numerous times. She was sentenced to a number of short, suspended terms of imprisonment as a result. When Alana later killed a subsequent abusive partner, Nathanial, pleading guilty to manslaughter, the sentencing remarks described that Alana's prior offending demonstrated that she had 'the capacity to react badly during the breakdown of a relationship.' The sentencing remarks did not similarly contextualise Alana's prior experiences of domestic violence, for instance to describe the ways in which (the much older) Jim had pinned pornographic images on their walls when Alana was a young teenager and used physical and emotional violence against her repeatedly during their relationship. This context was removed, and Alana was instead framed as a prior domestic violence offender. This case highlighted the way DVOs could contribute to the criminalisation of First Nations

women victims of domestic violence. It also highlighted the lasting effect this may have on constructions of First Nations women's victimisation when women later killed their abusive partners.

PART II: Court process issues and punishment

> I know in some cases the police do all the right stuff and then it gets to court and that's where it fails our women
>
> —First Nations specialist domestic violence worker in interview

Although, as I noted earlier, the majority of case information focused on earlier stages of the criminal justice system—policing practice, DVO applications and enforcement—there was some evidence in case files and narratives around women's involvement with subsequent stages of the system. This section accordingly considers some broader issues with the court process, and the final section briefly considers punishment. While in the previous section I have flagged many issues of relevance to the court process more generally, in this section I specifically examine the non-finalisation of charges, paternalistic court practice in the context of criminal charge proceedings and the estranging nature of the court process for First Nations women.

Non-finalisation of charges

In 32 cases in the study there was evidence that prior domestic violence charges had been previously laid against men who had used domestic violence against First Nations women, and these charges did not lead to convictions. As I noted previously, there was not always comprehensive information available about why charges did not lead to convictions, although prior studies suggest that a lack of available

evidence is a key factor in court process attrition.[72] Although it was not always transparent, in some cases this lack of evidence appeared to be a result of a lack of victim testimony or evidence to support the state's case against the offender. Participants described that many of the pressures facing women giving evidence against their partners appeared to mirror those driving women's fear of engaging with police in the first place (see Chapter 5). For instance, in a number of cases women did not provide statements to police or evidence in court due to an apparent fear of child protection services intervening and taking their children away. According to one survivor I interviewed in the study, fear of her children being removed was the reason she lied to the court about the violence she had experienced, minimising its severity and telling the magistrate that she did not remember an episode of violence in which her partner had kicked her with such force that she had gone into labour with their unborn child. She described that

> I went to court for one of them [charges] and I lied about remembering it. And the reason I went to Court again was the DOCS thing [child protection services]. …So I went to the Court, cause this was when he bashed me into labour with my daughter, and then I went to the Court after I had my daughter. And I just went, I said "I don't remember. I don't remember. I don't remember'
>
> Interviewer: And so that wasn't true?
>
> Participant: Yeah. I remembered everything. Flashback. Total recall. [I didn't tell the truth because] we were back together [and I was scared of the department taking my kids away].

Accordingly, while it was often difficult to determine why First Nations women did not give evidence at court from case information alone, participant observations

[72] See Marianne Hester, 'Making it Through the Criminal Justice System: Attrition and Domestic Violence' (2005) 5(1) *Social Policy and Society* 79; Eve Buzawa and Carl Buzawa (eds), *Domestic Violence: The Changing Criminal Justice Response* (Auburn House 1992).

suggested that these reasons mirrored those that made engaging with police in the first place an unsafe process for First Nations women.

Although in some cases charges were not finalised due to a lack of evidence, in other cases despite women apparently supporting charges and providing evidence against their partners, their partners were found not guilty at court. For instance, in one case from NSW, the police charged a domestic violence victim, Larabeth's, abusive partner, Kyle, with maliciously inflicting grievous bodily harm, malicious wounding, contravening the DVO, and assault occasioning actual bodily harm. Kyle also appeared to be remanded in custody and refused bail in relation to the charges. Despite Larabeth making a statement, police taking photos of the scene and her injuries, and other crime scene evidence being gathered, none of these charges resulted in a conviction and each was dismissed with 'no evidence offered'. As I previously discussed in relation to DVOs, due to a lack of reasons being available for cases at a local court level, it was not clear why these cases did not progress to convictions, although on the facts of the case this seemed to be a concerning outcome. More research is required to systematically ascertain the drivers of the non-finalisation of domestic violence charges related to episodes of violence in which First Nations women are victims, and it is also likely that better recording of 'reasons' in lower courts could improve transparency in this area.

What was clear from the information available on case files was that, most of the time, court outcomes in relation to domestic violence-related criminal charges were inconsistent. First Nations women's abusive partners were convicted of some offences and found not guilty of other domestic violence offences during the course of their relationship. Cases also reinforced that women's abusive partners often had histories of using domestic violence against prior partners and these histories had

followed similar, inconsistent, trajectories around police interventions and court outcomes. For instance, in one case from the NT, Samson (who killed his partner Lily) been known to police for violence against two of his former partners, including one partner whom he had attempted to murder. Samson had served several sentences of imprisonment, but also had had charges dropped at other times. In many cases, the histories of violence that were available on the file demonstrated that men would continue to use violence after criminal justice interventions that resulted in convictions, and interventions that did not lead to convictions.

A survivor reflected on this issue and her own experiences during an interview. She observed that, in her view, 'when men get off on [charges], they get that extra bit cockier. … Like [my former partner] got off on murdering [attempting to murder] me. So, if he can do that, then he can do whatever he wants with the next person.' The notion of men 'getting cockier' appeared to be supported by the trajectory of cases over time, where men would continue to use violence with apparent impunity after being subject to inconsistent police, charging or court experiences. This recidivist effect is also supported by an evaluation of DVOs in NSW.[73] Participants also described that inconsistency in court outcomes had particularly negative effects on First Nations women who would lose faith and trust in the system's ability to effect real change in their lives when they sought to engage with it. If men did 'get cockier' this would also likely mean that First Nations women would experience further violence.

[73] See, for example, Lily Trimboli and Roseanne Bonney, *An Evaluation of the NSW Apprehended Violence Order Scheme* (NSW Bureau of Crime Statistics and Research 1997).

Paternalism in the court process

While I have already detailed paternalistic practice in respect of DVOs, I also identified, and participants discussed, paternalism in broader criminal justice processes. In recent years, there have been a number of high profile cases where First Nations women were arrested on bench warrants when they failed to appear in court to give evidence against their abusive partners.[74] These warrants were served in relation to breaches of subpoena, and while there is a foundational question around the ethics of subpoenaing victims of violence who do not wish to provide evidence against their partners (especially in light of compelling reasons victims may not support charges against their partner outlined in Chapter 5), the practical effect of bench warrants in this context is that victims of violence may be arrested and incarcerated for failing to engage in state justice processes that are designed to help them. In other words, this practice turns the coercive force of the state against victims of violence, ironically in the context of proceedings regarding harmful conduct against them. Although the issuing of bench warrants in these circumstances did not appear to be a feature of the cases examined based on the information I had available in the study, a number of participants in the study raised concerns about this practice. For instance, one specialist domestic violence worker described that

> I mean, that's been goin' on for a little while, and I kind of flagged it a while back when I've, was sitting in court, I'm like, "Oh, shit." So, this client, this woman didn't turn up, and they've issued a warrant for her arrest. So, in the matter—and it was a hearing—you can understand cost and all this stuff that's

[74] See Sofie Wainwright and Declan Gooch, 'Domestic Violence Victim Locked Up Because She Couldn't Attend Court Shines Light on NSW Justice System' *ABC News* (Broken Hill, 6 June 2018) <https://www.abc.net.au/news/2018-06-06/domestic-violence-victim-locked-up-because-couldnt-attend-court/9835050> accessed 31 December 2021; NITV Staff Writer, 'Pregnant Mother, Domestic Violence Survivor Jailed For Being Too Sick to Attend Court as a Witness' *SBS News* (Perth, 1 June 2019) <https://www.sbs.com.au/nitv/article/2019/06/01/pregnant-DV-survivor-jailed-being-too-sick-attend-court> accessed 29 December 2021.

> involved. … But she's a victim. And, you know, like… they were re-victimising the clients because—could be many factors. You know, barriers to stop her from getting in there like—could be the mental health. Could be a fear of community reprisals with family members, like lateral violence stuff…Social media—all that comes into play. So, there could be all those factors, you know? Like, so, you know, why not, why not look at another way of doing that?.. Instead of issuing the warrant? Especially—for any woman I guess—it's traumatising. It's frightening. "Oh shit! I've been charged! And I'm a victim!" So, what, what is that going to say? And what's that going to do down the track? Because we do know that women going through DV—it's a cycle. So, there's a big, long wheel and so there's another barrier placed on that wheel for [that woman] ever reporting incidents [in the future]. And she could be just that one number that might be a homicide victim down the track.

Again, this practice appeared to ignore the valid reasons First Nations women may have for not supporting criminal charges or DVO proceedings at court. The importance of supporting women who want to give evidence when they want to do so is considerable, but arresting First Nations women on bench warrants in this context appears tantamount to state coercion augmenting, rather than ameliorating, women's experiences of domestic violence.

Another advancement in evidence gathering for criminal cases in recent years has been the implementation of digitally recorded evidence-in-chief and the use of body-worn camera footage. A number of participants raised specific concerns around the impact these 'advancements' may have on First Nations women. NSW was the first state to introduce Domestic Violence Evidence in Chief ('DVEC') in 2015,[75] and, since this time, similar programmes have been rolled out in SA, the ACT, Victoria, and Queensland.[76] Although digitally recorded evidence-in-chief did not appear, on the information available, to be a feature of the cases I examined,

[75] Women's Legal Services NSW*, A Practitioner's Guide to Domestic Violence Law in NSW* (Women's Legal Resources Ltd 2018) 36-37; Steve Yeong and Suzanne Poynton, *Can Pre-Recorded Evidence Raise Conviction Rates in Cases of Domestic Violence?* (Life Course Centre Working Paper 2019-18, 27 August 2019); Australian Law Reform Commission, *Family Violence* (n 26) [26.154] – [26.188].

[76] Australian Law Reform Commission, *Family Violence* (n 26) [26.154] – [26.188].

several participants discussed these recent reforms in light of their impact on First Nations women. Under digitally recorded evidence-in-chief, police take video or audio-recorded statements from victims of domestic violence (including via body-worn camera) at the domestic violence callout.[77] This evidence can then be introduced in court to help secure a conviction while obviating the requirement for oral victim testimony. DVEC in NSW has been subject to evaluation,[78] although this focused on court-outcomes data rather than victim experiences. The one evaluation in Australia to-date focused on victim perspectives—from Victoria—is tentative in expressing support for the reform, and notes that more research is required to assess its impact on domestic violence victims.[79] Other research has specifically identified some specific limitations of body-worn camera footage for victims, including to identify that the interpretation of body-worn footage may be subject to biases, and is neither neutral nor subjective.[80]

According to one specialist domestic violence worker I interviewed for this study, the DVEC reforms in NSW, which she believed were largely targeted towards First Nations women, were—in her view—implemented without sufficient consultation with First Nations people. She considered that while the reforms may be positive, as they theoretically eliminate First Nations women's' responsibility to

[77] NSW Police Force, Domestic Violence Evidence in Chief (DVEC): Working Together to Build a Safer Community) (undated) <https://www.police.nsw.gov.au/__data/assets/pdf_file/0003/531714/DVEC_Brochure.pdf > accessed 31 December 2021.

[78] Steve Yeong and Suzanne Poynton, 'Evaluation of the 2015 Domestic Violence Evidence-in-Chief (DVEC) Reforms' (2017) 206 *Contemporary Issues in Crime and Criminal Justice* 1.

[79] Jude McCulloch, Naomi Pfitzner, JaneMaree Maher, Kate Fitz-Gibbon and Marie Segrave, *Victoria Police Trial of Digitally Recorded Evidence in Chief - Family Violence: Final Evaluation Report* (Monash University 2020).

[80] Bridget A. Harris, 'Visualising Violence? Capturing and Critiquing Body-Worn Video Camera Evidence of Domestic and Family Violence' (2020) 32(4) *Current Issues in Criminal Justice* 382.

provide evidence against their partners, and may also overcome some barriers for some women, they may also be paternalistic and ignore the meaningful reasons women may not want to, or feel safe to, proceed with cases through the criminal justice system. According to that worker, the implementation of DVEC

> was a little bit concerning for me. Like, gettin'—especially around Aboriginal women and their engagement with that. Like, if they say, "No", is that—like, it's been my experience, um, in working with a few women that have had really negative response around that, and they didn't want to be filmed. But I think it got in anyway. [The women's] wishes were ignored.

It is concerning that despite informed consent being a requirement of recording for DVEC in NSW,[81] that worker described that camera footage still appeared to be obtained by police without women's consent, or at least without women's informed consent. In the broader literature, concerns have also been raised around the ways police camera footage (and, in particular, body-worn footage), including footage taken without women's consent, may disempower victims of violence, erode victim privacy, and produce unforeseen, negative, consequences for victims.[82] Given issues around policing and the court system I have discussed so far, these concerns suggest that further specific research is required to assess the impact of body-worn camera footage, and digitally recorded evidence-in-chief, on First Nations women who are victims of domestic violence. Reflecting on not only issues with the DVEC reforms, but the limited consultation processes that sat around those reforms in NSW (as well as the lack of evaluation in terms relevant to First Nations women's experiences), the worker further described that

> the system fails us all the time. I don't know, uh, Emma, I really don't know how they're ever going to get it right. You know? Because they creep in these

[81] *Criminal Procedure Act 1986* (NSW) s289D.

[82] Ian Adams, 'Visibility is a Trap: The Ethics of Police Body-Worn Cameras and Control' (2017) 39(4) *Administrative Theory and Praxis* 313.

> little, um, laws. And we know that the ones that are going—that, that will impact on the most, is Aboriginal people.

Paternalism within the criminal justice system is a theme that arose regularly in this study, including in regard to policing, DVOs and court practice. The findings I have presented so far suggest that across these different sites within the criminal justice response First Nations women's wishes may be ignored and replaced by more state interventions and innovations, followed by judgements by state actors and negative constructions around First Nations women's victimisation when women resist interventions, or behave in ways contrary to the state's expectation around how victims 'should' behave. In describing how the state 'creeps in' laws that impact First Nations people the most, the specialist domestic violence worker quoted above also specifically identifies important concerns around First Nations women's lack of participation in the 'settler' state law and policy-making that directly impacts them. I raise this issue again in Chapter 8 in relation to self-determination.

The character of the court process

Although the records and narratives I had access to were limited in their ability to shed light on the criminal justice process and its effect on First Nations women who had experienced domestic violence (due largely to the nature and orientation of these records), participants in interviews/yarns made very important observations about this. Participant observations accordingly anchor my discussion of the nature of the court process and how First Nations women who are victims of violence experience this component of the domestic violence response system.

One survivor of violence participating in the study described that when she presented in court to give evidence against her partner, he was able to manipulate the system in ways she found highly distressing. She described that he used the

system as ‘his final stab’ at her.[83] She recounted that he entered a plea of guilty in relation to a domestic violence offence against her, but changed his plea to not guilty shortly before the hearing date. When she appeared in court to give evidence in front of the jury, she described not feeling confident that jury members understood the complexity of domestic violence. She also described that her partner racially manipulated the ‘all white jury’ who had no idea ‘how we live as Aboriginal people. You know, the fact that I lived at my mother’s [house]. There was things talked about, you know, um, the house was untidy.’ She described that her partner (and his lawyer) made disparaging comments that were nothing to do with the facts of the case, in order to undermine her credibility on the basis that she was a First Nations woman.

This survivor also described being highly conscious that, as a First Nations woman, all the people involved in her case were white; ‘White Judge. White Defence. White, um, yeah. So white everything. Um, and on top of being an Aboriginal Woman, in, then domestic violence, that’s another issue that people have no concept of.’

This survivor’s experience reflects Atkinson’s description of the court as a setting for ‘white male racist and sexist attitudes’ that continue to export colonial disrespectful constructions of First Nations women’s identities.[84] Her experience also

[83] For similar observations see Heather Douglas, ‘Legal Systems Abuse and Coercive Control’ (2018) 18(1) *Criminology & Criminal Justice* 84.

[84] Judy Atkinson, ‘Violence Against Aboriginal Women: Reconstitution of Community Law—The Way Forward’ (2001) 5(11) *Indigenous Law Bulletin* 19, 19.

reflects what Blagg et al have described as the 'alien and estranging' nature of the mainstream court system for First Nations people.[85]

As one specialist domestic violence worker described in an interview for this study, the non-specialist nature of the court processes around domestic violence in NSW (as well as other jurisdictions) could create compounding barriers around access to justice for First Nations women. That worker reiterated the need for specialist processes, but also for First Nations specialist workers who could work with women both inside and outside of court contexts, describing

> that's why we've always advocated for Aboriginal specialist workers to be able to have some point of, um, outreach positions, so that they could go in and talk to their communities, go out and speak to women. Not necessarily at the court, you know what I'm saying?

A number of participants also identified the court system's limited specialisation in adjudicating issues of domestic violence, and its racism towards First Nations women, as two significant compounding challenges facing First Nations women who were victims of violence. The survivor of violence, discussed above, described that in the court system 'I feel like they had a pre-conceived view of what I should've looked like. How I should have acted. I should have been, you know, some hunched-over victim. But I had found my strength by then.'

Both survivors and specialist domestic violence workers interviewed for the study described believing in the need for greater specialisation in court practice. For one worker, this included the implementation of specialist domestic violence courts, with First Nations specialist workers who could work effectively, and in a culturally competent way, with First Nations women. In recent years, in progressing actions

[85] Harry Blagg, Emma Williams, Eileen Cummings, Vickie Hovane, Michael Torres and Karen Nangala Woodley, *Innovative Models in Addressing Violence Against Indigenous Women: Final Report* (ANROWS 2018) 3.

under the National Plan, some jurisdictions, such as Queensland, have piloted and commenced implementing specialist domestic violence courts.[86] An evaluation of Queensland's pilot recommended that specialist courts be rolled out across Queensland, but also identified the need for ongoing work with First Nations people and communities.[87]

Although in this thesis I do not ventilate in detail alternative justice mechanisms outside of the 'settler' criminal justice context, it is important to recognise that restorative justice approaches may be preferable for some First Nations women who experience domestic violence from their partners. Such processes may accord with values such as healing from violence, responding to conflict and maintaining the relationship, all of which may be meaningful for First Nations women.[88] A preference for restorative approaches can be contrasted with mainstream and 'settler' feminist approaches that may reject mediation-based dispute resolution based on concerns around power imbalances between the victim and her abusive partner, as well as additional pressures (such as family involvement) that may come to bear on a more informal process.[89] It should be noted that feminist concerns around restorative approaches to domestic violence issues have been reflected in the commentary of former Special Rapporteur on Violence against Women, Yakin Ertürk, in which she clearly praises modes of state response

[86] See Australian Government, *Specialist DFV Court Model* (Australian Government, 2021) <https://plan4womenssafety.dss.gov.au/initiative/specialist-dfv-court-model/> accessed 31 December 2021.

[87] See Christine Bond, Robyn Holder, Samantha Jeffries and Chris Fleming, *Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport* (Griffith Criminology Institute 2017).

[88] See Nancarrow, 'In Search of Justice' (n 35).

[89] See Julie Stubbs, 'Beyond Apology? Domestic Violence and Critical Questions for Restorative Justice' (2007) 7(2) *Criminology and Criminal Justice* 169.

that emphasise investigation and the laying of criminal charges for domestic violence offences,[90] and rejects mediation or social solutions as failing to meet the due diligence standard.[91] However, perhaps Ertürk's comments can be most generously understood not as a complete rejection of restorative approaches in this context, but rather a caution against states who fail to take domestic violence against women 'seriously'.

The potential role of alternative justice mechanisms appears reinforced by CEDAW's Draft GR 39 on Indigenous Women and Girls, which I mentioned in Chapter 2 and discuss further in Chapter 8. This draft GR supports alternative justice systems for Indigenous peoples, but stipulates that these must meet certain standards to be considered appropriate for adjudicating First Nations women's justice claims.[92] Although it is not my purpose or role to outline how transformation of the court system could look for First Nations women and people, it is important to specifically identify that taking violence against First Nations women seriously invokes the requirement for states to engage with, listen to, and respond to the needs and interests of First Nations women and First Nations people consistent with First Nations women's right to self-determination. I discuss this further in Chapter 8.

[90] For instance, the Special Rapporteur on Violence Against Women has stated that '[i]mportantly, Switzerland has moved away from an emphasis on mediation in cases of domestic violence towards a preventive paradigm that emphasizes investigation and the laying of criminal charges. In some jurisdictions, detailed legislation has also been adopted in relation to trafficking in women, on sexual harassment and on honour crimes.' See UN Commission on Human Rights, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences on the Due Diligence Standard as a Tool for the Elimination of Violence Against Women' (20 January 2006) UN Doc E/CN.4/2006/61 [39].

[91] ibid [53].

[92] Committee on the Elimination of Discrimination Against Women, 'General Recommendation No.39 on the Rights of Indigenous Women and Girls: Draft' (11 February 2022) <https://www.ohchr.org/en/calls-for-input/calls-input/draft-general-recommendation-rights-indigenous-women-and-girls> accessed 31 March 2022.

PART III: Conviction and punishment

Although this thesis does not go into significant detail regarding punishment, the obligation to investigate and appropriately punish acts of violence against women forms part of the due diligence standard.[93] This topic was also regularly raised by participants in the study as being relevant to the criminal justice response. As I discussed earlier in relation to DVO enforcement, cases in the study highlighted that even where convictions were secured and men who used violence were subject to punishment (including incarceration in many cases), those men rarely stopped using violence against First Nations women. This was evident where women experienced violence from First Nations and non-Indigenous partners in the study, although the majority of discussions with participants focused on the uses of violence by, and punishment of, First Nations men. While some studies suggest that First Nations women may support their partners going to gaol in some circumstances,[94] reflecting the findings of other prior studies and reports, participants consistently described the ineffectiveness of the criminal justice system in achieving behavioural change for First Nations men who use violence as an issue relevant to the system's response to First Nations women.[95]

As I noted previously, in a number of cases in the study men who used violence cycled in and out of custody, often serving short sentences for domestic violence (or other offences) before being released and returning to their partners and community, where the violence would continue. Consistent with the findings of

[93] UN Commission on Human Rights, 'Report of the Special Rapporteur on Violence Against Women' (n 90) [50].

[94] Kelly (n 31).

[95] See Aboriginal and Torres Strait Islander Women's Task Force (n 15) 232.

previous studies,[96] several participants identified that incarceration itself was no real disincentive to using domestic violence for some First Nations men, as the punishment itself had no legitimacy, and—further—did not encourage real accountability or behavioural change. There was almost no evidence in the cases that while in custody, or outside of this context, men—including First Nations men—were engaged in programmes aimed at rehabilitation, stopping the violence, or behavioural change, even though corrective services records were included on the file in some jurisdictions, and these would have likely contained this information. Although this may have been a function of the older age of the cases, the ongoing lack of behavioural change programmes in custodial and non-custodial settings was concerning across cases. Prior reports, including the ATSIWTFV Report from the late 1990s, have specifically identified the need for culturally appropriate behavioural change programmes for First Nations men in prison.[97] Prior research has also emphasised the need for cultural law/lore focused responses to family violence by First Nations men.[98]

One specialist domestic violence worker described that for First Nations men in particular, the need for therapeutic work to address the drivers of violence, either in custody or as an alternative to custody, remains pressing. A number of specialist workers in a group yarn also described that there just were not enough domestic violence programmes available, either inside or outside of custody, to help men who

[96] Cunneen, *Alternative and Improved Responses* (n 14) 91.

[97] Violence Prevention Unit (VPU) (2006), *Personal Communication with the Author*, Queensland Department of Communities, Brisbane cited in Cunneen, *Alternative and Improved Responses* (n 14) 31.

[98] See Aboriginal and Torres Strait Islander Women's Task Force (n 15) xvii; Harry Blagg, Tamara Tulich, Victoria Hovane, Donella Raye, Teejay Worrigal and Suzie May, *Understanding the Role of Law and Culture in Aboriginal and Torres Strait Islander Communities in Responding to and Preventing Family Violence* (ANROWS 2020).

used violence address complex behavioural issues, the drivers of their violence or facilitate community healing. As one worker described in that group yarn, 'there just aren't the programmes there…they're going to be released, they're going to be on parole, they're addicts…why aren't they doing [therapeutic] work?' Another worker similarly described that 'there's not enough services for men who use violence or people who use violence. There's just not enough of them type of services. For perpetrators to reach out to and get support from.'

Another specialist domestic violence worker described that programmes in custody were often limited and did not respond to the needs of high-risk men, despite 'high-risk' perpetrators being a considerable focus of police attention and resources. Reflecting on this, the worker described that 'we're talking about the high-end, high-risk people that we've just established all these [police] teams to arrest, so why aren't we investing and getting them involved in these programmes for rehabilitation?'

Other workers described that while there has been increased investment in mainstream men's behaviour change programmes in recent years, this has not increased the availability of culturally safe programmes for First Nations men, aimed at responding to trauma, and encouraging changes in behaviour through legitimate cultural approaches. As one specialist domestic violence worker described, mainstream men's behaviour change programmes are often built on 'shamin em up' but this can ignore the complex reality of First Nations men's lives and the experiences that drive domestic violence behaviours. In these contexts, First Nations men may also be the only people of colour in a room full of white 'settlers'.[99] These

[99] One participant described this as being like the short film Babakiueria (1986), which is a pretend ethnographic documentary that satirises Australia's treatment of Indigenous peoples.

concerns reflect not only prior research suggesting mainstream programmes may lack competency with First Nations men,[100] but reinforce that community-controlled programmes may not be adequately funded or supported by government.[101] As that worker described, First Nations men

> lost, during colonisation, our men lost their masculinity. They lost, you know, that, that, intergenerational trauma passed down, and that, you know, could you imagine?...You know, and our culture is so sensitive. And Aboriginal people are caring, loving people. They're not aggressive. We learned that behaviour…. And, and, and when, and when I, and I can say that about the men too, you know…, like, a lot of the men, all they need is that holistic approach. Not shaming them out. But educating them around their behaviours and the consequences of what, what they cause within the family unit. … And, and the impacts that—he's getting angry, [child protection services] are coming in, kids are being removed…There's gotta be a better way, there's gotta be a better way.

Another community Elder described that too often he would see 'culture' being used as an excuse for violence—in some circumstances by First Nations men, but also by state institutions who would see violence as an inevitable part of First Nations peoples' experiences and behaviour. This was reinforced by the comments made by some other participants, one of whom described, in a group yarn, that first responders to domestic violence would be of the view that 'it's an Aboriginal issue. It's an Aboriginal problem. That's their way.' Some participants specifically cautioned against this understanding, emphasising responsibility and healing as important ways to move forward and encourage First Nations men's behavioural change, while reinforcing the close connections between violence against women and the

[100] See Mary Stathopoulos' interview with Edward Mosby and Gil Thomsen, *Working with Indigenous Men in Behaviour Change Programs* (Australian Centre for the Study of Sexual Assault 2014).

[101] See Edward Mosby and Gil Thomsen, 'Gatharr Weyebe Banabe Program: Seeking Behaviour Change in Indigenous Family Violence' (2014) 10(1) *The No to Violence Journal* 7.

processes of invasion/colonisation, including the intrusion of patriarchal values into First Nations worldviews.

Another specialist domestic violence worker similarly described that while unpacking trauma was an important part of working with First Nations men, engendering men's responsibility for their uses of violence was also important. That worker described that encouraging accountability does not look the same for First Nations and non-Indigenous men, and that specific, culturally safe and legitimate, approaches are required. Further, while that worker described that it is important to have culturally competent programmes available for First Nations men in community-controlled organisations, she described that there may also be barriers to accessing services through these organisations, due to the shame men may experience presenting to an organisation run by their community and peers, or undertaking a programme with their mob. Such programmes would accordingly have to be accessible via different mechanisms, in both 'settler'-controlled and community-controlled services. That worker, in raising issues I discuss further in Chapter 7, foreshadowed the importance of choice amongst services for First Nations people in addressing issues around domestic violence. However, based on participant perspectives this 'choice' was often missing, as while a 'settler' service or option may exist, there was rarely a culturally appropriate option available, or accessible, to men who used violence.

Reflecting on the lack of support for First Nations men to engage in behavioural change programmes in custodial contexts, one specialist domestic violence worker also described the way their local community Elders had petitioned for the establishment of a specific programme to work with incarcerated First Nations men in the local prison. The worker's community-controlled organisation had run the

programme, and it showed early indicators of success—although it was not evaluated. Despite local Elders asking for the programme, that programme having legitimacy amongst the men in the prison, and it appearing to meet its objectives, the community-controlled organisation was precluded from repurposing any component of their (government) funding to run the programme. As a result, the programme was discontinued. The issue of NGOs, community controlled-organisations and funding is one I discuss specifically in the next chapter.

It was clear that the lack of suitable 'punishment' matching First Nations peoples' aspirations and justice needs, and the dismissal of First Nations behavioural solutions and First Nations law, highlights a strong preference within the 'settler' state for 'settler' justice solutions. Findings in this study, prior studies, and the perspectives of study participants, suggest that these 'settler solutions' do not appear to work for First Nations people, and when they fail to work this may have a negative impact on First Nations women. Understood within (neo)colonial context, this preference for 'settler'-controlled solutions can be understood to reflect the ongoing dominance of the 'settler' state and the lack of accommodation of First Nations peoples' justice solutions and interests within the predominant 'settler' state framework. Findings in this chapter, including in respect of DVOs and the broader criminal justice system, strongly suggest the failures of the 'settler' domestic violence response to First Nations women.

Conclusion

In this chapter I have examined DVOs, broader issues around the operation of the court process, and, briefly, issues related to punishment. Alongside Chapter 5, findings in this chapter have highlighted numerous problems with the criminal justice

system's response to First Nations women who experience domestic violence. As I described in Chapter 5, it is common for studies to describe that First Nations women and communities may 'distrust' police and criminal justice systems.[102] Findings from both this chapter, and Chapter 5, reinforce, however, that this fear and distrust is likely founded in the ongoing harmful effects of the system's response to First Nations women and First Nations people. Findings suggest that the 'settler' criminal justice system is engaged in a form of violence against First Nations women and peoples, via paternalistic practice, criminalisation, under-policing, and coercion. These approaches appear to be strongly associated with racialised and gendered constructions of First Nations women and, in practice, appear to considerably disadvantage First Nations women, compounding rather than ameliorating their experiences of domestic violence. In the next chapter, I examine domestic violence specialist service responses, and consider what processes and practices within that domain suggest about state power.

[102] See, for instance, Matthew Willis, 'Non-Disclosure of Violence in Australian Indigenous Communities' (2011) 405 *Trends and Issues in Crime and Criminal Justice* 1.

Chapter 7: The Specialist Service Response

Introduction

This chapter examines the specialist service response to domestic violence. As I outlined in Chapters 1 and 2, the specialist service response includes support services for victims of violence in times of crisis (for instance, refuge/shelter services) and in the aftermath of violence (for instance, specialist counselling and associated services). In Australia, the specialist service response is largely outsourced by the state to non-state providers, with procurement and funding processes being administered by complex Commonwealth and state/territory bureaucracies. In this chapter, I specifically explore issues relating to both 'settler'-controlled and community-controlled organisations delivering domestic violence-related services. I focus on the administration of community-controlled organisations providing domestic violence-related services and consider how the state's sectoral regulatory frameworks may reflect, and promote, colonising, gendered and raced regimes of social power. I also briefly consider the intersectional effects of mainstreaming 'settler'-controlled women's services, noting that, as I will outline in this chapter, First Nations women across cases had more access with 'settler', than community-controlled, services.

In Part I, I outline participant perspectives about how involvement with specialist services may expose women to the violence of state systems, including child protection services and the police, and how involvement with services may (including through co-located services and multi-agency committees) expose First Nations women to increased state surveillance. In Part II, I examine issues of service

accessibility. In Part III, I focus on the way the specialist domestic violence system is administered, drawing on participant perspectives to explore how the state's regulatory, economic approach may reflect (neo)colonial state power.

Terminology

Before presenting my analysis of First Nations women's contact with domestic violence specialist services, I will clarify a few points of terminology. As Putt et al describe

> The national picture of direct service delivery to victim/survivors of DFV is unclear, whether the focus is mainstream services or Aboriginal community-controlled ones. However a tentative assessment is that few Aboriginal community controlled organisations in Australia provide core services for women and children who have experienced and been affected by DFV—such as crisis accommodation and support—except for the legal services that offer legal assistance and court support.[1]

There is a dearth of information available about what 'settler' and community-controlled organisations provide domestic and family violence-related services, including refuge services and safe houses, across Australia. There is a lack of transparency and centralised information available regarding service funding, made worse by complex, opaque and disparate funding arrangements split between state and Commonwealth sources. In this chapter, I use the phrase 'community-controlled organisation' or 'community-controlled service' to refer to organisations or services controlled by First Nations people or communities, with or without government funding, that deliver services related to immediate crisis intervention, healing or recovery in the aftermath of violence. The full breadth of work being undertaken by

[1] Judy Putt, Robyn Holder and Cath O'Leary, *Women's Specialist Domestic and Family Violence Services: Their Responses and Practices with and for Aboriginal Women: Final Report* (ANROWS 2017) 20.

First Nations communities to respond to domestic violence is unlikely to be reflected in this definition, however, it reflects the kinds of services that I identified as working with women in the cases. It is highly likely that more community-controlled organisations and First Nations community groups provide informal, unfunded or under-funded supports and services to victims in the aftermath of violence than is recognised in any official data, and I also acknowledge that there may have been community work happening in the cases beyond the purview of state records.

In this chapter, I also use the terminology ‘‘settler’-controlled service’ when referring to organisations that are not controlled by First Nations communities or peoples that deliver specialist domestic violence services. Some ‘settler’-controlled services nonetheless involve, sometimes considerable, participation by First Nations people in management and governance roles, or as clientele. This is particularly true for services operating in areas with high First Nations populations. In the NT, for instance, the Tennant Creek Women’s Refuge is a ‘settler’-controlled service that includes extensive involvement of First Nations employees and board members,[2] with up to 98% of clients being First Nations women.[3] Similarly, the Alice Springs Women’s Shelter has involved considerable participation and leadership by First Nations women, and served primarily First Nations women clients since its establishment in 1975.[4] ‘Settler’-controlled services in other areas with high First Nations populations, such as the Kempsey Women’s Refuge in NSW (renamed *Gandi Guthun Galbaan Wa Dhalayikurr*) run by the NGO Samaritans, may have

[2] See Paul Memmott, Daphne Nash, Bernard Baffour and Kelly Greenop, *The Women’s Refuge and The Crowded House: Aboriginal Homelessness Hidden in Tennant Creek* (Institute for Social Science Research, The University of Queensland 2013) 25.

[3] ibid.

[4] Cath O’Leary, Judy Putt and Robyn Holder, *Alice Springs Women’s Shelter: A History and Overview* (ANROWS 2016) 4-6.

worked closely with community Elders to promote the service as being safe and accessible to First Nations women.[5] However, other 'settler'-controlled services may not involve participation of First Nations employees and board members and may not provide services to many First Nations clientele (even though many First Nations women may reside in those areas). 'Settler'-controlled services may also be inaccessible to First Nations women for a range of reasons I outlined in Chapter 2. Accordingly, the term 'settler'-controlled should not be taken to mean that such services do not do considerable, and often good, work with First Nations women. It should also not be assumed that 'settler'-controlled services work closely, or at all, with First Nations women or that they are culturally safe for First Nations women to access.

Finally, I use the term 'refuge' or 'shelter' to describe specialist crisis accommodation services that may be 'settler' or community controlled. I use 'safe house', at times, to refer to community-controlled shelters. In addition to crisis support in the aftermath of violence, refuge accommodation providers may be funded to deliver outreach and early intervention services.[6] I do not consider early intervention services in detail, although I acknowledge that many services deliver across the prevention, early intervention and tertiary response spectrum.

[5] Lachlan Leeming, 'Elders and Community Representatives Gather at Renaming Ceremony of Kempsey Women's Refuge' *Macleay Argus* (Macleay, 30 June 2017) <https://www.macleayargus.com.au/story/4760159/womens-refuge-renamed/> accessed 31 December 2021.

[6] See for instance, O'Leary et al (n 4) 15.

Key finding: A lack of contact

In comparison to the high levels of contact First Nations women had with 'settler' police in relation to domestic violence (N = 88, 90% of the women who were killed by, or killed, an abusive partner (see Chapter 5)), comparatively few women whose cases I examined in this study had contact with 'settler'-controlled or community-controlled domestic violence services (including specialist and shelter or refuge services). In total, just over a quarter of First Nations women in the cases had contact with a community-controlled and/or 'settler'-controlled specialist service/s (N = 26, 27%). Of these women, five women had contact with a community-controlled service/s only, 16 women had contact with 'settler'-controlled service/s or refuge/s only, and five women had contact with both a community-controlled service/s and a 'settler'-controlled service/s.

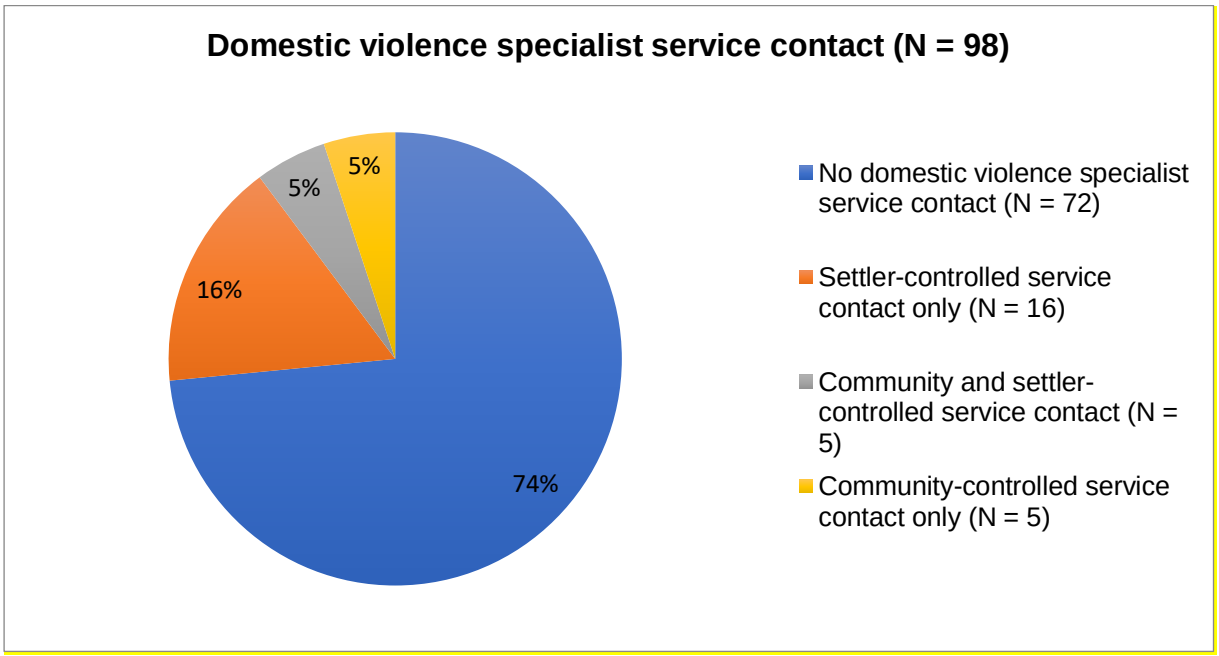

Figure 3: Domestic violence specialist service contact (N = 98)

First Nations women in the cases had more contact with 'settler'-controlled specialist services than with community-controlled specialist services (21 women had contact

with ‘settler’-controlled services, whereas only ten had contact with community-controlled services). Contact with women’s refuges and community safe houses often occurred directly following episode/s of violence, and specialist services, including community-controlled domestic violence services, were more often accessed through/or with access directed by state agencies (such as police) after the initial crisis period was over (for instance, in the days following an episode of violence).

In addition to seeking participants’ views about the specialist service system, during interviews/yarning I discussed First Nations women’s reduced contact with domestic violence services when compared with police across the cases. I asked participants about community-controlled organisations, given that prior literature in this area establishes that First Nations women prefer accessing community-controlled, over ‘settler’-controlled or mainstream, services (see Chapter 2).[7] Participant observations suggested that First Nations women’s access patterns in the cases did not necessarily reflect women’s individual choice/decision-making, but may have been affected by service accessibility, acceptability and availability, both in relation to community and ‘settler’-controlled services.

As I identified at the start of this chapter, I note that just because community-controlled or ‘settler’-controlled domestic violence service contact was not reflected in DFVDR records or narratives does not mean that community practices or support mechanisms were not occurring in the cases beyond the purview of the state coronial/DFVDR investigation. As I observed in Chapter 4, it was difficult to

[7] See, for instance, Marcia Langton, Kristen Smith, Tahlia Eastman, Lily O’Neill, Emily Cheesman and Meribah Rose, *Improving Family Violence Legal and Support Services for Aboriginal and Torres Strait Islander Women: ANROWS Research Report Issue 25* (ANROWS December 2020).

accurately assess what information was not available based on review of case records, although based on the nature of records gathered for those processes it is unlikely substantial formal service contact occurred beyond what was reflected on the files. Accordingly, while it is possible there was more service contact occurring than is reflected in quantitative figures I present, I believe it is safe to conclude that First Nations women had substantially less interaction with 'settler' and community-controlled domestic violence services than they did with police.

PART I: Specialist service contact, state surveillance and accessibility

A key observation emerging from cases, as well as interviews/yarning, was that First Nations women's involvement with domestic violence specialist services seemed likely—based on the current status of the law—to result in notifications to adjacent state services such as police and child protection services. This issue is one I have already briefly identified in relation to policing and mandatory child protection notifications in Chapter 5. Across cases, specialist service involvement appeared to increase the likelihood of women becoming involved, and potentially enmeshed, with other state interventions. Women's involvement with both 'settler'-controlled and community-controlled services appeared to be associated, in most jurisdictions, with mandatory reporting to child protection services. In the NT, service involvement also appeared to be associated with mandatory domestic violence reporting to police. This may be theorised as one reason that First Nations women were less likely to interact with the specialist service response system.

Mandatory Reporting

Mandatory child protection reporting requirements following domestic violence are common across Australia. This means that under legislation it is mandatory for certain personnel, including police officers as discussed in Chapter 5, to report to child protection services regarding a child's exposure to domestic violence. Child protection services may then choose to intervene following these reports if they assess those reports as reaching the risk threshold for intervention. Mandatory reporting obligations extend beyond the police to other social welfare actors including social and healthcare workers. In many jurisdictions this includes social workers in NGOs or charitable organisations, and community-controlled services.[8]

Even in the small number of cases where domestic violence service contact was a feature, it was clear that refuge staff—due to mandatory reporting obligations—may be required to report to child protection services when First Nations women presented following domestic violence. This practice was one that I considered could expose First Nations families to child protection intervention. This could lead First Nations women to avoid accessing services, due to those systems being unsafe given the threat of child removal (see Chapters 2 and 5, as well as below, for further background).

Although cases were not always clear regarding mandatory child protection reports by specialist service workers, I identified what appeared to be mandatory child protection reporting by refuge staff in one case from NSW. In this case, the regional mainstream refuge appeared to make a child protection report after a

[8] Australian Institute of Family Studies, 'Mandatory Reporting of Child Abuse and Neglect' (*CFCA Resource Sheet*, June 2020) <https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect> accessed 1 April 2022.

domestic violence victim, Olivia, presented to the service having been punched in the face by her partner, Steven, in front of her four children. Although the department did not appear to take further action in relation to Olivia's children, this case highlighted the potential for victims of violence to become enmeshed in child protection services via a specialist service pathway.

As I outlined in the Introduction to this thesis and in Chapter 2, child protection intervention in First Nations communities and families has a colonial legacy given forced removal and assimilation policies. Today, First Nations children are overrepresented in every stage of the child protection system, in every Australian state and territory.[9] Where help-seeking brings with it the risk of child protection intervention in First Nations families, this is likely to make that system unsafe for First Nations women to access. Participants in this study could not have expressed this point more strongly. As one specialist domestic violence worker described in an interview for this study

> Historically, in my community, the fear of having your children taken has been such a real one, because children were taken. Aboriginal people were seen as not to being able to look after their children or keep them safe. Even way back to being morally appropriate to have kids…that distrust is still there.

As another specialist domestic violence worker described in relation to child protection, 'they need to be dismantled.'

In the NT, mandatory reporting requirements extend to domestic violence; meaning that where an adult becomes aware that serious domestic violence has occurred, or is likely to occur, they are required by law to notify police. The relevant legislation, the *Domestic and Family Violence Act 2007* (NT), requires all adult persons to report domestic violence to police where those persons believe based on

[9] See SNAICC, *The Family Matters Report 2021* (SNAICC 2021).

reasonable grounds that 'another person has caused, or is likely to cause, harm to someone else with whom the other person is in a domestic relationship; and/or, the life or safety of another person is under serious or imminent threat because domestic violence has been, is being, or is about to be committed.[10] Failing to report actual or suspected domestic violence to police constitutes an offence.[11] In effect, this provision compels specialist service staff to submit a police report when a First Nations woman presents for domestic violence-related assistance, and staff suspect that violence is, or is likely to be, of the level of seriousness required by the legislation.

The NT's mandatory reporting provisions are unique within Australia and were inserted into legislation in 2009, during the period of the NT Emergency Response (NTER or the Intervention) although apparently not formally as part of its measures. When the provisions were introduced, the Attorney-General described that they reflected his government's 'strong commitment to tackling domestic violence'.[12] An evaluation of the reporting requirements undertaken in 2012 determined that that there had been a 19% increase in domestic and family violence reports, a 50% increase in police-issued DVOs and a 24% increase in the proportion of domestic and family violence-related incidents resulting in a DVO, as a consequence of the

[10] Australian Law Reform Commission*, Family Violence - A National Legal Response (ALRC Report 14)* (Australian Law Reform Commission 2010) [8.68]; *Domestic and Family Violence Act 2007* (NT) s124A.

[11] *Domestic and Family Violence Act 2007* (NT) s124A.

[12] Northern Territory, 'Parliamentary Debates, Legislative Assembly' 26 November 2008 speech by C Burns, Justice and Attorney-General, cited in Australian Law Reform Commission, *Family Violence* (n 10) [8.75].

new laws.[13] These increases likely need to be understood in light of the issues with DVOs I discussed in Chapter 6. However, despite being packaged as a measure taking domestic violence 'seriously', mandatory reporting of domestic violence in the NT has been criticised, including for its disregard for victim autonomy.[14] In consultations for the Fourth Action Plan of the National Plan held in the NT's capital city Darwin in 2018, mandatory reporting was specifically identified as requiring review as 'some women are scared they may lose their children'. That consultation summary also described that 'many people have suspicions and frustrations about connecting with government due to detrimental impact [sic] on their family from previous experiences.'[15] This reflects the ways in which the mandatory reporting framework may expose First Nations women to further unwanted, problematic state interventions.

It was clear from some cases in the NT that refuge workers were required to submit mandatory notifications to police when women presented at domestic violence services. For instance, in one case a domestic violence victim, Mary, attended a 'settler'-controlled women's shelter and disclosed to workers that she was afraid her partner, Rodger, was about to be released from prison. Police attended after apparently being called by the refuge and the case notes that Mary 'refused to provide any further details or assist police.' Several months later, Mary again

[13] Northern Territory Opposition, 'Submission to the Senate Inquiry into Domestic Violence (Domestic Violence in Australia Submission 164)' (undated) <https://www.aph.gov.au/DocumentStore.ashx?id=4c2e742d-0ea6-4f7e-80a9-64a732dc023b&subId=304772> accessed 31 December 2021.

[14] Australian Law Reform Commission, *Family Violence* (n 10) [8.80].

[15] Australian Government Department of Social Services, 'Darwin Consultation Summary: Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022 (Summary of Consultation 3 September 2018, workshop by ThinkPlace and DSS)' <https://plan4womenssafety.dss.gov.au/wp-content/uploads/2018/11/30-dss-4ap-darwin-consultation-summary_0.docx> accessed 31 December 2021.

attended the women's shelter and disclosed that she had been assaulted by her new partner, Dieter. The shelter contacted police due to their legal obligation to report domestic violence, even though Mary had told them she did not want to make a complaint to police. When police attended, the DFVDR narrative described that Mary 'refused to talk to police or give any information about the assault, where it took place and what had occurred…she was told to attend the police front counter if she changes her mind.'

Community-controlled services are not exempted from mandatory reporting requirements. This was evident in one case where a domestic violence victim, Vicki, attended the local community-controlled women's safe house where workers, as required by law, contacted police to report domestic violence. Following the report, police attended, and also notified child protection services. Although Vicki made a statement to police and this ultimately led to her partner, Gerald, being convicted of assault offences, he was subject to a short custodial sentence only and, shortly after he was released, he killed Vicki. Issues with the criminal justice response are specifically discussed in Chapter 6, but it was clear in this case that this system, as a whole, did not function effectively to protect Vicki in the longer term.

In reflecting on mandatory reporting and government intervention, one specialist domestic violence worker described during an interview that when welfare workers involve state agencies when working with victims this may compromise effective specialist service delivery. She described that

> well, I really do think if you're working with Aboriginal families, you've just got to open your mind a bit. Even middle-class privilege. You've got to step back a little and not jump on everything. … Recently, I was working with a family that has a lot of family violence. I worked with the five victims, so the children and the mum. One of the young people went to say something and stopped because it was an illegal activity. Their mum said, "No, no, no, [the worker] knows everything", and you could see the relief. I'm not going to bring the cops because there was drugs involved. You have to stop and think about,

> “Well, what's going to happen to this knowledge?” Here's a family who are traumatised by abused and family violence. If you call the cops then there's more trauma, there's more stuff.

Mandatory reporting and notification suggested the ways in which involvement with specialist service systems could further enmesh First Nations domestic violence victims with agencies and organs of the ‘settler’ state.

Association with policing

Across cases women’s refuge access was also associated with policing and police intervention. For most women access to refuges was co-ordinated by police following domestic violence. While in some cases it was positive that police transferred women to accommodation with the intention of keeping them safe (and most of the time women appeared to agree with these actions, or directly asked police to take them to refuge accommodation), there was no evidence in these cases that community-controlled refuges were considered by police to be more suitable venues for First Nations women. This may have been due to such services being unavailable, although this was not always clear on the information available.

In some cases, refuge access for women’s safety was also jeopardised by problematic policing practice, raising similar issues to those I discussed in Chapter 5. For instance, in one case from the NT, a woman asked police to apply for a DVO on her behalf, but police used the fact she had accessed crisis accommodation as a reason not to progress a DVO. In another case from the NT, a domestic violence victim, Winona, asked police if she could be conveyed to the women’s shelter, but police records state that ‘she was not in any danger at this time. DVO options explained.’ Police notes further indicate that officers were dealing with an ‘aggressive drunk male’ at the time and, as such, did not take her to the shelter. In another case,

a domestic violence victim, Harriet, apparently asked police to take her to the women's shelter, but this never occurred.

As I outlined in Chapter 5, poor policing practice is a problem for First Nations women. As a common gateway to social services, poor policing can have a negative impact on women's domestic violence-related help-seeking and help-receiving in broader context.

Surveillance, co-location of services and multi-agency committees

Participants also identified potential problems with contemporary specialist service delivery practices such as co-location of domestic violence specialist services at police stations, and the use of multi-agency domestic violence committees involving government and NGO (including specialist service) participation. While neither of these practices were a feature of the cases, likely due to the time period studied, both of these practice innovations were identified by participants as being potentially problematic for First Nations women due to their central involvement of 'settler' police, and their potential to expose First Nations families to increased state surveillance.

Several participants identified that co-location could be a harmful practice for First Nations women where this was coordinated by a 'settler'-controlled organisation or located in a police station. For instance, one specialist domestic violence worker observed, in an interview, that

> to get an Aboriginal person through the door and remain…engaged in the service, you need to look at the, the service holistically….the term cultural safety has entered a lot more, other areas of human services in particular, like and it's an important way of describing how you might design a service or…a facility to make it, you know, attractive and engaging…for…Aboriginal families, you know? So, the worst thing you could do is posit it in the police station have the police, who are just, you know, blown in from Goulburn, they've been, you know, freshly minted and, and dump them in there…. that's

> the worst-case scenario. The best-case scenario would be an Aboriginal service that, um, respects cultural diversity, you know?

Another specialist domestic violence worker similarly observed that while holistic work with First Nations families was important, community-controlled organisations were better placed to deliver this work than 'settler' state agencies or services, due to community-controlled organisations' cultural safety. For that worker, holistic practice didn't mean involvement of

> FACs [child protection] and Health and all that, but it's looking at what [the family's] needs are. So, it's drug and alcohol, it's counselling, it's healing it's, ah, gambling counselling—all those kind of things. It's all, it's all done in it, it's all done at once rather than, you know, individually provided by different providers.

Another specialist domestic violence worker observed that, in their view, violence is a 'colonial legacy of state intervention, you know? Further state intervention is not going to help.'

Participants made similar observations about multi-disciplinary or multi-agency committees. Multi-agency committees have been set up across Australia in recent years due to an increasing emphasis on government agencies, domestic violence and other social services working together to support victims who are assessed as being 'at high-risk' of experiencing further violence. Following structured common risk assessment completed either by responding police, health or specialist services, victims adjudicated as 'high-risk' have their case triaged by a multi-agency committee who undertakes safety planning, typically without the victim's involvement.[16]

[16] Jude McCulloch, JaneMaree Maher, Kate Fitz-Gibbon, Marie Segrave and J Roffee, *Review of the Family Violence Risk Assessment and Risk Management Framework (CRAF)* (Monash University 2016).

In reflecting on multi-disciplinary committees, one specialist domestic violence worker described believing that the idea of organisations and services working together was good, but cited problems with the structure of these committees for First Nations people. He stated

> I think initially that the theory and that's there behind it, but I'm not sure that the structure of them is well placed for Aboriginal and Torres Strait Islander people…I think we've got the wrong people driving the right teams...I think the police, for example, and child safety, drive the family group meetings or all these high-risk teams, whereas I think the drivers of them should be different organisations…maybe your community—your appropriately qualified person—which is coming from not such a biased position, but somebody who is able to sit back and make more of a balanced analysis of the situation I think is more appropriate.

These comments suggested that multi-agency meetings were not only potentially paternalistic, but subject to the influence of negative stereotypes. This suggested that such meetings could operate coercively, and problematically, for First Nations women.

Another worker raised concerns that the meetings themselves were not subject to proper scrutiny, meaning that the committee making decisions about case management did not necessarily have the authority or expertise to be making decisions about what was required for First Nations families. He specifically raised concerns about the victim's voice being absent in multi-agency committees and queried the choices that the committee could make on the victim's behalf, stating

> where's the victim's voice in all that? It's one thing for police to say this person needs drug and alcohol treatment when, you know, they, they might not need drug and alcohol treatment… they might not need income management.

Several participants expressed concern about the lack of First Nations representation on multi-agency committees. One specialist domestic violence worker described that First Nations people may attend the meetings on behalf of

mainstream services or government programmes and this may lead those people to be conflicted between what may need to happen from a community perspective, and what may need to happen from the perspective of their service. That worker described that, 'I think, I think a lot of them get in there, and they do a really good job. And I think, but when I've had conversations with some of them, their position is that, their position is that of the organisation.'

That worker also described believing that impartial First Nations representation was necessary to ensure the interventions recommended by the committee were culturally safe. She described that

> we can look at services, and that, but who's there to look at some of the cultural moves, or some of the cultural issues, and who's there to speak around those? And who's there to ensure that, you know, some of the racists or, you know, racist attitudes aren't sort of falling into play there.

Another specialist domestic violence worker raised a similar point, identifying that there was a need for the right First Nations workers and people to be participating in good faith in the committee. He described that

> even if they do have an Aboriginal voice around the table, that Aboriginal voice has to be, um, ah, coming, you know, coming back to my experience before—that Aboriginal voice has to be respectful, ethical and um, respect the privacies and best interests of those families, you know?

Another specialist worker described that she had previously participated as a First Nations representative in these meetings even though they were held on her day off work. She was the only First Nations person who attended that committee. As a consequence, she would drive a considerable distance, without recouping her expenses, to participate in the meetings on her day off. She described

> I guess my heart was in it for the rights of my, for Aboriginal women, and makin sure that they're getting a fair, um, access to services and having a, a greater understanding of the best way to work with this woman to engage her…

There was a strong sense from interviews that for First Nations victims multi-agency committees may be another site of problematic practice, with committee organisers—an apparatus of the 'settler' state—appearing to take little interest in ensuring processes were culturally appropriate and safe not only for First Nations victims and their families, but for First Nations specialist domestic violence workers.

Another specialist domestic violence worker described feeling as though the processes involved in multi-agency committees were paternalistic and evocative of colonial practices of the 'settler' state. He stated that we 'might as well have the Aboriginal Protection Board making the decisions again, you know? That's the kind of level that it's at.'

PART II: Service accessibility

Remote communities and service availability

> I would say [regarding service availability] it's patchy. In some areas it's really good and in other areas it's been found wanting
>
> —First Nations specialist domestic violence worker in interview

Across the study, participants—including when reflecting on women's lower levels of specialist service contact across cases compared with 'settler' police—identified that that there is a lack of community-controlled, and 'settler'-controlled, domestic violence service infrastructure for First Nations domestic violence victims living in remote communities. As I noted previously, 43 of the women whose cases I examined in this study lived in remote or very remote communities at the time of their death, and 14 of those women had contact with either community-controlled or

‘settler’-controlled services (33%). Interestingly, this was a higher proportion than the specialist service contact rate for women living in regional or metropolitan areas. However, there were nonetheless service availability limitations evident from some of the detail in the cases.

In one case from the NT, for instance, a domestic violence victim, Rebecca, did not have access to a refuge or a community safe house due to living on a remote outstation. In that case, Rebecca was conveyed by police to a settler-controlled refuge located 3.5 hours away from her home after she experienced violence. Rebecca stayed for a short time, before returning home to her partner. In other cases, it was not always possible to tell whether a lack of service infrastructure was a factor that prevented women from seeking help from specialist services, as hypothesising women’s reasons for not contacting services was difficult from state records alone.

Several participants specifically reflected on the issue of service availability in remote communities. During a group yarn, one specialist domestic violence worker, who had delivered services to First Nations communities in urban, regional and remote areas, described that ‘when we go out to the remoter communities, there's nothing out there. There's a real lack of services, for these services. It's like fly in, fly out.’ Another worker similarly observed that ‘there's no…. I was just thinking, you know, a lot of the remote communities we've been out to… any services is sparse out there. In terms of trying to look after women.’ A third worker in that yarn described that ‘if [women] don't have somewhere locally that they can go to. That's sort of what we’re finding is a really big barrier.’

One worker in that group yarn also observed that in remote and also regional locations

> there's no counselling available. You know, like counsellors get the same money if they're counselling here [in Western Sydney], as if they do in the bush. There's no compensation for a counsellor to go out there and do any work. You know? So they're not getting any counsellors out there to do the work. The ones that are going out there are getting inundated with all of the issues. So, you know, the fact is, they're not getting out there.

As I described in Chapter 2, Blagg has observed that a lack of accessible services in remote areas is indicative of a system that is metro-centric and ethnocentric.[17] Cunneen has similarly observed that women's services may not be located where many First Nations women live,[18] creating barriers for women attempting to access any service, let alone a community-controlled one.

One specialist domestic violence worker also identified, in a group yarn, that even in places where services may be operating, communities may not be aware what services are available. That worker stated that 'I think what we're finding when we go out to do our presentations is a lot of people aren't aware of the local support networks. So, I think promotion of locally… where they can get help [is important].' This issue has also been identified by the NSW DFVDR, which described being advised that

> pathways into programs—including basic operational aspects such as who to contact to gain access to a program, the eligibility criteria, and referral process—was not common knowledge amongst workers and community members. This was particularly identified as an issue for Aboriginal communities receiving state services, and for regional communities.[19]

[17] Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (The Federation Press, 2nd edn 2016) 124.

[18] Chris Cunneen, *Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities* (Department of Communities 2010).

[19] Domestic Violence Death Review Team, *Report 2017-2019* (Domestic Violence Death Review Team 2020).

Another specialist domestic violence worker, in a group yarn, also observed that in some communities over-servicing may also be an issue, noting

> well… it's, it's more the places that are doing poorly are the more remote parts of the state… and I, I think that there's a whole reason, a whole lot of reasons for that. …[F]or instance… the lack of services in those areas. Or you get the opposite as well, which is too many services, the services falling over each other… providing duplicate services or, or things like that. So, … you see, um, both sides. Like, where [there is a] lack of service, but then too [many].

To sum up, as one specialist domestic violence worker described,

> the idea of safety for Aboriginal women is generally having a safe place to go. You know, because especially in country towns, you know in urban country towns, if you're livin' in Brewarrina and you're being assaulted by your partner and you ring the police and you're taken to Dubbo, you know, you're taken to Dubbo hospital to get looked after and what not, and then how to you get back to Bre? There's no way for that woman to get back to Bre! Sometimes women just want to be safe in their own towns and not have to leave.

One solution that communities, particularly First Nations women in remote communities, have developed for this purpose is community safe houses. Although safe house projects may have a plurality of models, there was evidence that four women in the cases accessed safe houses located in remote communities in Queensland and in the NT. The safe houses were all located in Native Title and self-governing areas. Access patterns for these cases differed from 'settler'-controlled women's refuge services, with domestic violence victims taking themselves to the community safe house in two cases, community police conveying a victim to the safe house on one occasion, and state police conveying a victim into the safe house on one occasion. This may suggest that First Nations women may be more likely to access community safe houses proactively, but the numbers are likely too small to draw any firm conclusions.

Although there is limited specific literature regarding community safe houses, a 2004 evaluation of 12 safe houses in Queensland provides some insight into the

service delivery challenges these organisations may face. That evaluation found that safe houses were vitally important infrastructure to First Nations communities and were testament to the antiviolence efforts of First Nations women. However, that evaluation also determined that, *inter alia*, service providers felt unable to influence policy, there was a lack of broader service system infrastructure including to support First Nations services to work together, there was a lack of training and resource development, industrial awards did not reflect the knowledge, skills and abilities of Indigenous peoples (particularly Elder women who were 'cultural advisors' within services), funding allocations were insufficient for the services (including cultural advisory services) required, service providers struggled to manage organisations due to a lack of capacity locally, and cultural protocols were broken and practices ignored 'in order to meet accountability requirements of government'.[20] These challenges reflect many of those facing community-controlled domestic violence services more generally, and I discuss them in some detail later in this chapter.

Available but not accessible

In some cases, First Nations women successfully sought refuge from a 'settler'-controlled or community-controlled service close to where they lived, but in several cases there were barriers that appeared to limit women's access to refuge services. In two cases, there was evidence that women were denied access to a 'settler'-controlled refuge because the service was at capacity; in one case, a woman was denied access as she had children (and the children could apparently not be accommodated by the service); and in another case, a woman was turned away

[20] Bettina Rosser, ''*From Humble Beginnings…' The Safe House Project Report: Sustainable Service Responses to Family Violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland* (Department of Social Services 2004).

from the service as she was intoxicated. In two further cases, it was evident that women were denied access to refuge services, but the reasons why their access was denied were unclear. While, as I noted previously, it was not always possible to identify the reasons that prevented First Nations women from accessing services, in one case it was apparent that a domestic violence victim did not attend the community-controlled safe house as she was intoxicated and was living in an alcohol-restricted community. It is not clear whether she would have been criminalised as a consequence of her alcohol consumption if police became involved, but in a few cases in the study there was evidence of alcohol consumption being criminalised within restricted communities (for instance, prior charges or convictions for alcohol use offences were identified from the file). The accessibility of services relates to issues I discuss in the second part of this chapter.

PART III: The 'Neoliberal' state, New Public Management, bureaucratic governance and domestic violence services

As I identified at the start of this chapter, during interviews/yarns discussion of domestic violence specialist services organically led into discussions around broader governance processes within the domestic violence sector. In theorising the gap in service delivery evident from the cases, and describing the characteristics of the sector more generally, participants routinely identified issues with bureaucratic state administration of the domestic violence service sector that I had not previously considered to be central, or even necessarily relevant, to this study. In the remaining parts of this chapter, I draw these findings together, exploring the issues they raise in some depth, and in concluding I consider—building on participants' observations and my theoretical framework—how these governance processes, and approaches to

domestic violence service provision for First Nations women, may reflect state power.

Community-controlled services

Mainstreaming

Several participants described the ways in which community-controlled domestic violence services have been affected by a broader move in Australia towards mainstreaming of social service delivery to First Nations people. As one specialist domestic violence worker described in an interview for this study

> there's the move to the mainstream in Aboriginal Affairs more generally. So, things like tendering out of services tends to favour the larger providers at the expense of specialist services, particularly for specialist Aboriginal services.

As I noted in Chapter 2, 'mainstreaming' of Indigenous policy (and service delivery) in Australia arguably commenced, or at least intensified, with the dismantling of ATSIC in 2005.[21] As Sanders describes, during the ATSIC-era mainstream services operated alongside Indigenous services as a form of 'supplementary service delivery',[22] however, after ATSIC was abolished, 'standardised government

[21] Will Sanders, 'Missing ATSIC: Australia's Need for a Strong Indigenous Representative Body' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018); Alexander Page, 'Fragile Positions in the New Paternalism: Indigenous Community Organisations During the 'Advancement' Era in Australia' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018) 186.

[22] Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jimenéz, 'From New Paternalism to New Imaginings of Possibilities in Australia, Canada and Aotearoa/New Zealand: Indigenous Rights and Recognition and the State in the Neoliberal Age' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018) 22-23.

programs' replaced the 'Indigenous specific programs' the government had inherited from the agency.[23] As Howard-Wagner observes, under 'new mainstreaming'

> Aboriginal organisations were no longer to be subsidised by the state. They were no longer to be given special treatment. This placed many existing urban Aboriginal organisations in funding competition with secular and religious non-government organisations. They were also subject to a whole new set of regulatory arrangements that dictated the way this newly defined social service sector did business with government.[24]

During interviews/yarns, several workers specifically reflected on the effects these policy approaches have had on community-controlled organisations delivering domestic violence-related services. Several workers described that community-controlled organisations delivering domestic violence services may be disadvantaged compared to large religious-affiliated and 'settler'-controlled service providers in competing for funding. In contrast to large-scale charitable providers, community-controlled organisations are often small, having been established by the community to fulfil a local service need. As one specialist domestic violence worker observed in an interview

> [our] service is quite small. So, in our services, do you know who does the funding? Me … But the thing is, like, you know, you know we aren't one of those big organisations that have those people that come in and do report write, not report writing, for funding, like …. all that stuff. And when you're actually trying to provide a, you know, provide a service, what's your priorities? Just of, I mean, it should, you know, getting money in the door is important, but actually servicing your community is important.

As I described in Chapters 1 and 2, domestic violence service funding is split between various funding modalities across state and Commonwealth sources. This

[23] ibid 22, see also Sanders, 'Missing ATSIC' (n 21).

[24] Deirdre Howard-Wagner, 'Aboriginal Organisations, Self-Determination and the Neoliberal Age' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018) 218.

governance arrangement, as well as a preference for short-term contractual funding, can create significant administrative burden on community-controlled organisations who are required to compete and tender for funding and report about progress against funding allocations from disparate funders.[25] While complicated funding modalities persist, reforms to Commonwealth funding such as the IAS (implemented by the Commonwealth in 2014, see Chapter 2) have purported to create solutions to this crippling administrative burden.[26] Notwithstanding its stated intention, the IAS has been criticised for reducing and mainstreaming funding of service-delivery of Indigenous programmes.[27] Implementation of the IAS resulted in community-controlled organisations being forced to competitively tender against one another, as well as to compete with mainstream, 'settler'-controlled services for funding.[28] The shift to the IAS funding modality also occurred rapidly, with community-controlled organisations being required to navigate a brand new grants system, with limited instruction, in a short time-frame.[29] The IAS' implementation was described as being significantly destabilising[30] to the Indigenous service sector and its implementation saw

> 65 per cent of federal funding for Aboriginal and Torres Strait Islander service delivery go to large, mainstream not-for-profit organisations and the

[25] Royal Commission into Family Violence, *Volume V: Report and Recommendations* (Victorian Government Printer March 2016) 31-32.

[26] See Liberal Party of Australia, *Our Plan: Real Solutions for all Australians—The Direction, Values and Policy Priorities of the Next Coalition Governmen*t (Liberal Party of Australia 2013) 43.

[27] Page (n 21) 189-190

[28] ibid 189.

[29] ibid.

[30] ibid.

> commercial sector, and only 21 per cent go to community-based Aboriginal organisations.[31]

As Page also describes, rather than improving funding processes for community-controlled organisations the IAS amounts to 'top-down, undemocratic, racist and unaccountable programming by the Commonwealth...'[32] Page also described the IAS as

> continuing the neoliberal governance mechanisms and audit technologies used by the Commonwealth in Indigenous affairs policy practice from the mid-2000s, following the dissolution of the Aboriginal and Torres Strait Islander Commission (ATSIC) as a pillar in an 'Indigenous order of Australian government' and a 'shield' from major changes in Australian public administration.'[33]

The IAS is accordingly an exemplar of the challenges community-controlled organisations continue to face in competing for funding to deliver services to First Nations people. Yet it is only one example of domestic violence funding administration in Australia's complex, federalist system, which includes both Indigenous-specific, and domestic and family violence-specific, funding sources, split between the Commonwealth and the states.

Another key impact of mainstreaming, identified above in relation to the IAS, has been that 'settler'-controlled services have been granted often significant funds

[31] Howard-Wagner, 'Aboriginal Organisations' (n 24) 219; see also Anna Henderson, 'Majority of Grants from Indigenous Advancement Strategy First Round Given to Non-Aboriginal Groups' *ABC News* (Australia, 5 May 2015) < https://www.abc.net.au/news/2015-05-05/majority-of-indigenous-grants-go-to-non-aboriginal-organisations/6444534> accessed 18 May 2022.

[32] Page (n 21) 186.

[33] ibid. See also, Sanders, 'Missing ATSIC' (n 21); Will Sanders, *Towards an Indigenous Order of Australian Government: Rethinking Self-Determination as Indigenous Affairs Policy* (Discussion Paper 230, Centre for Aboriginal Economic Policy Research ANU 2002) 8; Patrick Sullivan, *Belonging Together: Dealing with the Politics of Disenchantment in Australian Indigenous Policy* (Aboriginal Studies Press 2011) 70; Elizabeth Strakosch, *Neoliberal Indigenous Policy: Settler Colonialism and the 'Post-Welfare' State* (Springer 2015) 33.

to work with First Nations clients. Several specialist domestic violence workers reflected negatively on this practice in interviews/yarns. One specialist domestic violence worker described, in a group yarn, that there are ‘not enough funded services that are run by our mob’ and another worker described that ‘none of [the services delivering programmes] are [community-controlled organisations], you know? They're all prescribed services, they’re not run or owned by Aboriginal people.’

Participants identified that the government awarding funding grants to non-Indigenous organisations to work with First Nations people may result in services that are not fit for purpose. As one service worker described, even though ‘settler’-controlled services may get the funding, ‘the funding they get, they got to tick boxes for it, so, at the end of the day, the services don't meet the needs of [First Nations] people.’

Some participants also specifically described that ‘settler’-controlled services may lack the experience or cultural safety to work with First Nations clients. As one specialist domestic violence worker described

> in the city and the regional areas, like, there's more services available. So it's a different issue where those services really need to be looking at. If its culturally-safe and really working on getting Aboriginal communities into their service.

Another specialist domestic violence worker similarly described that

> a lot of the services always ask why [are] communities not accessing our services? Instead of thinking, “What can we be doing to engage the Aboriginal community?” So I think there needs to be a more like a shift in services. Like not looking at Aboriginal communities saying, “why aren't they accessing?” Rather than, “what can we be doing?”

One specialist domestic violence worker also specifically related funding governance and procurement favouring ‘settler’-controlled domestic violence services to the state

favouring ‘settler’ over Indigenous-led solutions to domestic violence. She described that

> the Aboriginal person is always the assistant and not ever the main person who’s doing it, and you know that comes through the lack of cutting of funding through Aboriginal organisations and you have all these white organisations getting involved and then there’s with Aboriginal organisations, the close the gap, the Aboriginal organisations they should lead that, you know what I mean? … Let the Aboriginal people or the community organisations lead these programmes in communities why does it always have to be a non-Aboriginal leading the way? … regardless of if an Aboriginal person says something the last phrase is always by the non-Aboriginal person.

Decisions to award funding to non-Indigenous ‘settler’ organisations to work with First Nations peoples are conscious decisions of the state. These decisions express a preference for an economic arrangement that favours ‘settler’ over community solutions.

Assimilating community-controlled organisations into westernised approaches

Several participants described that government funding processes and grants models do not match holistic approaches to service delivery by First Nations organisations, nor do they reflect the service needs of First Nations peoples. One specialist domestic violence worker described, in a group yarn, that ‘when you get services that are funded, they’re still funded under a Western view… the workers then have to assimilate into the government’s way of working.’ Another specialist domestic violence worker reflected on the way one of her organisation’s funding applications under the IAS was only partially funded, with the important, holistic, healing work the organisation was offering being ignored by the *National Indigenous Australians Agency* (‘NIAA’) (the government agency who administers IAS). She described that her organisation applied for IAS funding

> to do more holistic [work with families], and, but, you know, [NIAA] came back and said, “Well no, we're not gunna fund those bits of culture,” and the working with Elders and you know, the, the what we really wanted in terms of self-determination so we could actually change….so they chose this bit and said, “Well fund you that”.

Several workers similarly identified that for community-controlled organisations the funding grants that would be awarded would be inadequate for the services the organisation was required to deliver in the community. As one worker described

> there’s … issues with the size and capacity of Aboriginal services as well, because they’re smaller, that, they, um, tend to, you know, focus on, on particular services [for First Nations communities]… by the same token, even though they’re small and, and have specialist focus—the burden placed on them within their communities is, is quite large. So, for an Aboriginal medical service for instance, their role is primarily providing healthcare to, uh, not, not just necessarily Aboriginal people in a community, but they’re providing community healthcare. But, they, they do much more than that. The, the burden placed on them is much more than them. So, they do the drug and alcohol services, the counselling, the, um, domestic and family violence work, and that stretches their resources, and it also, um, means that, um, that their capacity is, is stretched trying to, to meet that need.

This perspective was also reinforced during my site visits to a community-controlled organisation delivering domestic violence services, where a worker at the service described that the organisation ‘ran on the smell of an oil rag’ and that there was nowhere near the amount of funding for the burden of need in the community. Considerable service brokerage (the allocation of additional funds to contribute to central service delivery) was required at that service to fulfil community demand. Another worker similarly observed that, in her jurisdiction, there was a pressing need for domestic violence services, but funding did not extend to those programmes. She described that

> They have a lot of services that focus on specific stuff, but not specifically family violence. I don't know that they do a lot of work on that. [They should be doing more] I think that their workers, they would agree with that too. Each worker would do it in a different way. Try to address it, but they don't have specific funding for it. They don't have that specific role in doing it. This is my impression.

Community competition and managing dissent

Elders, during a group yarn, described that their community experienced challenges due to another language group in the area having control of the designated First Nations services in the town. Several Elders observed that a lack of services for different language groups within particular areas could make community-controlled organisations and services inaccessible and may either force women to access 'settler'-services or stop women from accessing services altogether. A specialist domestic violence worker similarly observed how administrative funding processes may fracture communities, describing that

> it doesn't matter what service you need. This is what's available. Then the community fights over that money and if a community's fractured, you know because this service got the money and we didn't. So we're not going to use that service. I'm going to tell everybody that's in our little loop, not to use that service. They're just dividing and conquering in our own people again. We don't make the decisions. That's the difference. You know?

One specialist domestic violence worker also described how state funding arrangements could be used to control dissent, stating that '[it's important] to be able to say that, to be on those things, to be able to have an opinion which is not that of … the direct funding sources.'

Capacity-building, demonstrating success and lacking trust in communities

Several workers also reflected on the ways in which funding regimes may not support capacity-building to equip community-controlled organisations to compete in neoliberal funding environments. One specialist domestic violence worker observed that a lack of capacity-building support could make it even more difficult for community-controlled services to compete with 'settler'-controlled organisations for funding within current regimes. He described that

> So this is the, the thing…I think non-Aboriginal people unfortunately [don't]…give us the skills to equip ourselves, or not give us the funding or the resources to be able to develop, develop ourselves, they're happy to do that. And so they can always turn, like, a blind-eye to a service going down because of that. They didn't do the reports, they didn't do this, they didn't do that. Well, what did [the government] do? What did they put in place to give them opportunities to develop those kind of, those kind of things. I mean, I was looking at governance-type training… some, but um, and you know, I've seen some for like $200 a person, $205 a person… So, it's like, you know, well, have more of this funded through government, have more of these staff going out there and doing that, because there are lot of people on the ground that can do these jobs, and can do that, and can run organisations. But it's just those things that, they get absorbed in doing the service provision…and not the account, the other part of it…

Participants also described the ways in which under-evaluation of community-controlled organisations' domestic violence programmes (including failures to build evaluation capabilities into funding grants, and failures to support evaluation of community-driven underfunded programmes) and a preference for innovation could impact the competitiveness of community-controlled services in these funding environments. One specialist domestic violence worker described the way the government's preference for innovation impacted her community-controlled service, describing that with governance and funding approaches

> It's like, let's do something innovative. Everything has to be innovative. But, why?…because there's things that do work, and just haven't been resourced properly to be able to do them. So, it's like we're looking at funding now, and it was like, oh, it has to be innovative. It can't be an enhancement of what you…[already do]. Well, sorry, we do some stuff really well, but we just don't do enough of it because we can't. We don't have the capacity…and there's other services that do that across the board, so, stop worrying about everything being innovative. Let's just start worrying about what's worked, what does work. What the communities think works.

Another specialist domestic violence worker similarly described that he had seen some community-based sport-focused anti-violence programmes be very successful in reducing domestic violence in First Nations communities. He described, however, that those programmes would struggle to demonstrate their success outside of the

community context and under current funding arrangements they would need to be able to do this to be competitive. He described that

> They're so organic and community-driven. The last, the last one, I rang up the guy who's run it, and he's like, just some Aboriginal footy coach from, you know, He's goin', I said, 'You got any data?', and you know, he goes, 'What's this data you're talkin' about brother?' You know? I said to him, 'Well, anything you've written up?', and he said, 'Well you can come down here and write about it if you wanna.' He said, 'We just doing this, you know?'…the worst possible outcome is that what we say is that there's no evidence that these programmes work…And you're actually going, 'Actually, you've never even bloody evaluated it.' You know? How would you know? Um, all you've done is some international literature trawl, um, in which none of this kind of stuff, 'cause it's not in the literature yet…

While one specialist domestic violence worker (discussed above) lamented the state's preference for innovation, another worker described that governments may, in fact, resist innovation where it is proposed by communities and where it may pose a risk of failure. He described how, in his experience, governments may prefer to import programmes that may have been successful overseas rather than support and trust communities to develop their own programmes. He also described that the very features of overseas programmes that made those programmes successful—such as community consultation and structural support—would never be replicated when that programme was imported into the Australian context. He stated that

> Unfortunately, we also import a lot of Indigenous theories from overseas and … and, and just dump it in in Australia and go, 'This'll work!'…There's that and also… there's also a reticence to try new things in government, because like, there's a fear of failure and we know that in order to come up with good solutions, you have to fail many times before you come to a solution. And because we have such a risk-averse government you know? Because you have such risk-averse government, governments, that, um, they're unwilling for things to fail. So that they, they want proof that something's gunna work before you've even tried it. So, what do we do? We import things, because we can point to evidence to say, 'It worked in Canada. It worked in the reserves in the United States'… 'It worked in New Zealand'… And then we bring it in, and it's like, no, it's a dismal failure. Why was that? Because, like it had ten times the amount of money … over there it was done through… consultation! … It was managed through like, the governance systems…

That worker further described that, in his view, this reflects the government's lack of trust in First Nations communities. He suggested that this lack of trust is imbricated with racialised public attitudes stating

> the problem is 'cause government doesn't trust communities because of that fear of failure that they'd be on the front page of the Telegraph [conservative newspaper] and, it's on the front page of the Telegraph today for fuck's sake!

Another specialist worker similarly reflected on the ways this lack of trust may manifest in reduced service funding for community-controlled domestic violence services, describing

> At a national policy level, it's fundamentally an issue of trust and trust and control. But I think it's probably to do more with trust of Aboriginal communities, Aboriginal people and Aboriginal organisations being able to do their job better, or in a different way, and do it well… as opposed to the standard, traditional kind of, institutional approaches. So… and that's gunna be a bit harder to change, even though we can kinda clearly show that most of our Indigenous organisations and community-controlled organisations have done really well over the last 20-30 years, compared to other small businesses in Australia, etc. And you only ever hear about things falling over from governance. You know, you hear about it all the time. But mostly they're small things, and mostly they're governance issues, not practice issues. And there's a whole range of issues around that as well. And, you know, we, we did a kind of a look at a community-controlled health organisation here versus the state health around this issue of trust, and, um, I've put together a table which, you know, contrasted, 'Did we employ Dr. Death?', 'No'. Um, 'Did a Tahitian Prince run off with $15 million of our money?', 'No'. 'Did we employ nurses that weren't actually registered as nurses?', 'No'. And, 'Are we in debt $80 million, like the local district?', 'No'…but where's the trust? The trust in them, and not in us?…The National, you know, Australian systems have failed in Aboriginal affairs. Pretty much. And, so it's time to think about, you know, real community-grounded approaches. Not just listening to people and saying, 'That's a good idea', and patting them on the head and going away and doing what you like. But going, how could we possibly work with this mob to get better methodology, funding, and a good evaluation so we can show it, you know?

Some participants described, however, that notwithstanding evidence of success or positive evaluations, governments may nonetheless make funding decisions to defund or dismantle community-controlled programmes. One Elder observed that

> the anecdotal evidence might be that [the programme's] fantastic [but whether you have an evaluation or not] it doesn't make any difference. I can't

> understand the...It has to be deliberate, because you couldn't logically look at these things and say, “Well, that programme's working really well. Let's cut it.” Who's the idiot making those decisions?

These comments are reinforced by Howard-Wagner’s observations around the IAS and its impact on community-controlled organisations in the Newcastle, NSW, region. She described that the IAS’

> narrow mandate, its blanket competitive process, its failure to fund successful Aboriginal organisations despite evidence-based data demonstrating success in the area, and its failure to support community-based Aboriginal organisations to meet the needs of Aboriginal people on the ground, are just some of the local criticisms of the IAS in the greater Newcastle Region.[34]

Exercising agency

While the governance approaches outlined so far in this section may have detrimental effects on community-controlled organisations delivering domestic violence services, this has not stopped community-controlled organisations from exercising agency in this space. While neoliberal approaches to public management have increased intervention in the lives of First Nations people and dispossessed First Nations people via privatisation, as Howard-Wagner observes, this has not ‘preclude[d] agency, resistance and decolonisation’.[35] Reflecting again on her Newcastle-based research, Howard-Wagner describes that the

> issue is not that Aboriginal organisations in Newcastle embody the economic agenda of the neoliberal state, which arguably they do not… but rather that while all are highly successful organisations, there are Aboriginal organisations that have greater capacity than others to acquire assets and pursue an economic development agenda to subsidise social and cultural development.[36]

[34] Deirdre Howard-Wagner, ‘Aboriginal Organisations (n 24) 219.

[35] Howard-Wagner et al (n 22).

[36] Howard-Wagner, ‘Aboriginal Organisations’ (n 24) 221.

Findings from my study support similar conclusions; that while the characteristics and practices of neoliberal governance may disadvantage community-controlled organisations, organisations may nonetheless emerge as highly successful market competitors.

This was the case for the community-controlled organisation where I conducted fieldwork. That organisation had demonstrated significant innovation in securing mainstream funding to deliver a mainstream domestic violence support programme to non-Indigenous, as well as First Nations, clients. As a result, the uptake of First Nations participation in that programme, a mainstream programme supported via mainstream service funding, was very high. That service, however, also experienced demand consistently exceeding its funding allocation, with significant brokerage being required to prevent the service from having to close its books to new clients.

On this point, it was also clear from interviews/yarns that many community-controlled organisations may deliver services that do not receive government funding. Several participants discussed such initiatives, describing how the success of those programmes sat beyond narrow, limited government metrics. This highlighted that community-controlled organisations were persisting and working in narrow spaces to service community.

Overall, reflecting on the success of community-controlled organisations more generally, one specialist domestic violence worker described the challenges associated with exercising agency and seeking structured self-determination—by which he meant effective community-control—in service-delivery. He observed

> When you talk about community-controlled organisations who are trying to self-determine, and it's a real structured self-determination; we have to fight for every inch of that progress, or every dollar that we get, you know? So, a health service delivery organisation shouldn't be needing to go to Canberra

> and Brisbane to talk to Health Departments and Ministers every couple of weeks, you know? [But they do.]

'Settler'-controlled services

Failure to fund women's choice

It was common for participants to reflect on the necessity of First Nations women having a meaningful choice to access both community-controlled or 'settler'-controlled services, and to highlight the importance of both kinds of services. One specialist domestic violence worker described the important contribution of community-controlled services as a complementary strategy to mainstream 'settler'-controlled systems in the following way

> now, you know, the metaphor I use for this is like the bike. This is like the wheels and the handlebars, you know, and the seat. The bike is robust, you know? And it's unbreakable, you know, unless you run over it with the car. But, but you need the bike. …You need law, otherwise there's chaos. … So you need, we need law, right? But we also need… a little green, friendly green environmentally friendly, green tree-frog. … and it's lovely. It's fresh, it's, um, flexible, you know, beautiful. And it adds value. So, um, that's the metaphor I use that says, we need some, we need the bike. But when we're delivering services to Aboriginal and Torres Strait Islander people, we actually need the, the lovely green tree-frog. … So we need bike strategy, green tree-frog strategies as well.

Another specialist domestic violence worker similarly described that

> I think it's about choices too, it's about, fuck, well, here's a non-Aboriginal organisation, if you want that one, you can go to that one. But here's an Aboriginal one, and if you want that one go with that one. I don't think that it needs to be one or the other. I think about having options and access.

Participants reflected on several barriers that may face First Nations women who seek to access community-controlled organisations delivering domestic violence services. Some of these reflected findings from the prior literature in Chapter 2. Several workers and survivors of violence described that First Nations women may

have family connections at community-controlled organisations and may worry about confidentiality. For instance, one specialist domestic violence worker described that

> that hasn't changed, you know, in all the years… Mum would say, you know, "I'm not going to that organisation." You know? So, she, she kept saying, "I'm not going to that black organisation"—you know—"cause everyone will know my business."

Another specialist domestic violence worker similarly described that

> …like, it's important [to have community-controlled services] but, you know, like, you hear stories like, people from, you know, north-west NSW would rather travel to, say, Dubbo, ah, to access a, a mainstream service or an Aboriginal service …because they get, um privacy.

Workers at the community-controlled organisation I visited described how, at their service, client concerns around confidentiality were managed via a range of strategies, including the service offering to visit women at home, being stringent around confidentiality provisions and employing both First Nations and non-Indigenous workers. A non-Indigenous worker I spoke to described that, at that service, First Nations women would control and steer the service, but the service would also hire non-Indigenous staff to ensure clients could access either a First Nations or non-Indigenous staff member depending on their preference. A worker at that service also used the example of how a First Nations woman had lived in the area for 28 years and never accessed the service due to other family members being involved in the service. After the worker explained the service's strict confidentiality provisions to the woman, and described how important these were to the success and longevity of the service, the woman started using the service.

Other participants described that hiring First Nations workers in 'settler'-controlled services could improve service accessibility for First Nations women. This was evident in one of the cases in the study, where a domestic violence victim had ongoing, favourable engagements with a First Nations worker at a 'settler'-controlled

service in NSW delivering the *Staying Home Leaving Violence* programme. The victim reflected specifically in the state records around how beneficial this service engagement was for her.

One Elder also described that, in his view, even non-Indigenous workers could do good work with First Nations people if they worked within a culturally safe framework. He described that

> Aboriginal people do not necessarily need to be seen by Aboriginal people for help. Some of the best clinicians I know who work with Aboriginal people are in fact non-Aboriginal people. And the reason that they are so good at what they do is because they find out about the person that they're going to treat, whether they're Aboriginal or any other ethnic or cultural group, before they begin the treatment.

The intersectional impacts of 'settler'-controlled service mainstreaming

Case findings suggest that First Nations women may, by choice or necessity, access 'settler'-controlled services, and findings from interviews/yarning also reinforce the importance of First Nations women having the choice to access both community or 'settler'-controlled services. While the majority of interviews/yarns focused on community-controlled services, participants also described that the 'settler' women's service sector is underfunded. Underfunding of 'settler'-controlled services is also likely to have a detrimental impact on First Nations women who access those services. Indeed, even though across cases the group of First Nations women accessing services was small, twice as many First Nations women accessed a mainstream 'settler'-controlled service than a community-controlled service.

Reflecting on the underfunding of 'settler' women's services, one Elder described a recent government funding commitment of 30 million dollars to address violence against women, stating that

> 30 million builds five or six or seven or eight refuges, that's wonderful, but it doesn't staff them recurrently for much unless you've got volunteers. And

> sooner or later they fall into disrepute. Disrepair, not...Well, probably disrepute as well. They fall into disrepair. $30 million doesn't go anywhere. And when I said that at that presentation and I asked five or six people, they said $30 million would keep us going for a couple of years, that's it. What happens after that? What happens to the children of women who are escaping domestic violence?

In ways similar, but different, to the Indigenous sector, 'mainstreaming' or 'genericising' of 'settler'-controlled domestic violence services has, in recent years, increasingly become a feature of the regulatory landscape in Australia. This relates to the 'mainstreaming' or 'de-gendering' of gendered service-provision frameworks via competitive tendering, de-regulation and generalist commissioning/procurement processes for violence-related services.[37]

As I outlined in Chapter 1, the 'settler' domestic violence service sector has its roots in international and local feminist advocacy.[38] Since the emergence of the women's refuge movement in Australia, 'settler' feminist concerns have roundly shaped the development of a strong, politically active women's sector. In recent decades however, there have been documented moves to expunge 'feminist perspectives about the specificities of women's experiences' from key areas of public policy.[39] The *Going Home Staying Home* reforms in NSW (also raised in shadow reporting to CEDAW)[40] are one such example. This policy was defined by wholesale

[37] Susan Heward-Belle, 'Feminist Gains Lost: Public Policy and the Genericising of Women Survivors of Domestic Violence' in Donna Baines, Bindi Bennett, Susan Goodwin and Margot Rawsthorne (eds), *Working Across Difference: Social Work, Social Policy and Social Justice* (Red Globe Press 2019).

[38] ibid. See also, Suellen Murray and Anastasia Powell, *Domestic Violence: Australian Public Policy* (Australian Scholarly Publishing 2011).

[39] Heward-Belle (n 37) 185.

[40] Feminist Legal Clinic Inc, *NGO Shadow Follow Up Report to CEDAW* (4 November 2020) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGS%2fAUS%2f44368&Lang=en> accessed 30 March 2022.

reform of the specialist homelessness sector in NSW, which included recommissioning of the specialist women's refuges under the guise of service consolidation and rationalisation.[41] In effect, women's specialist refuge services were either required to join with other service providers offering generalist homelessness services in order to be competitive, or they were simply tendered out of funding and forced to shut.[42] As a consequence of the reform, government contracts for refuge services reduced by over half, from 336 down to 157.[43]

Several authors have explicitly connected this approach to a neoliberal shift in governance which may de-centre gender issues[44] and promote 'mainstreaming' of women's social services.[45] With its emphasis on the marketisation, deregulation and mainstreaming of social welfare services, neoliberal governance approaches have been described as eroding valid user-difference (in the example, of *Going Home, Staying Home*, differences between men and women in respect of homelessness needs and violence victimisation), and favouring generalist service provision.[46] As Heward-Belle argues, this has resulted in corporatisation of women's services, as well as centralisation of service delivery functions in the hands of a few large

[41] Heward-Belle (n 37) 190.

[42] ibid.

[43] ibid.

[44] Susan Harris Rimmer and Marian Sawer, 'Neoliberalism and Gender Equality Policy in Australia' (2016) 51(4) *Australian Journal of Political Science* 742, 746.

[45] Marian Sawer, 'Australia: The Fall of the Femocrat' in Joyce Outshoorn and Johanna Kantola (eds), *Changing State Feminism* (Palgrave Macmillan 2007).

[46] Katherine Teghtsoonian and Louise Chappell, 'The Rise and Decline of Women's Policy Machinery in British Columbia and New South Wales: A Cautionary Tale' (2008) 29(1) *International Political Science Review* 29; Harris Rimmer and Sawer (n 44).

charitable, frequently faith-based organisations delivering homelessness services under *Going Home Staying Home*.[47]

However, this corporatised approach to service-delivery is also a feature of the broader violence against women sector, extending—for instance—to Commonwealth specialist domestic violence service funding under the Family and Children's Activity, where the majority of the 35 services receiving Commonwealth funding to deliver specialist domestic violence services appear to be faith-based and 'settler'-controlled service-providers. Whatever the effect of neoliberalism and mainstreaming on the women's sector, this effect appears to be compounded for community-controlled First Nations women's services, with only four of the 35 services funded under that activity appearing to be First Nations community-controlled (and all four services appearing to be based in the NT).[48] Despite the disproportionate impact of domestic violence on First Nations women across Australia, it does not appear those four services received funding under that module prior to the implementation of the Fourth Action Plan under the National Plan, in late 2020.[49] Genericising of both 'Indigenous' service delivery and service delivery for women's services is likely to have significant, cascading impacts on domestic violence service availability and accessibility for First Nations women.

Sawer describes that the ideological erosion of difference is at the core of neoliberal mainstreaming and genericising approaches that frame different groups,

[47] Heward-Belle (n 37) 197.

[48] KPMG for the Department of Social Services, *First Progress Report for the Fourth Action Plan (2019-2022): The National Plan to Reduce Violence Against Women and their Children* (KPMG/Department of Social Services December 2020) 28.

[49] This was ascertained from review of Grants Connect data available via searching Grants Connect (2021) <https://www.grants.gov.au/> last accessed 30 March 2022.

such as women (and also First Nations people), as 'special interests'.[50] She also ties this to shifts in operational funding to favour project work, and describes how clauses have even been included in government funding contracts that serve to manage dissent, including media participation and advocacy, by service delivery organisations.[51]

Although case detail did not provide significant insight into the machinations of 'settler'-controlled specialist services, and provided little information about victims' perspectives on those services, there was nonetheless some evidence of the increasing genericisation and corporatisation of 'settler'-controlled services across cases. For instance, in one case a First Nations woman contacted a 'settler'-controlled domestic violence phone-service seeking refuge from her violent partner, and she was triaged into a general homelessness service. It is not clear on available information whether the generalist homelessness service provided her with safe accommodation in female-only premises, although there are examples in other research of domestic violence victims being forced to share refuge accommodation with men under generic homelessness arrangements.[52] In that case, it also did not appear that the victim was offered accommodation or service referral to any community-controlled service.

As Howard-Wagner describes

> while the rationalities and technologies governing Aboriginal organisations in the neoliberal age are not unique to Aboriginal organisations, or not-for-profit organisations in Australia, the insidious racialised effects and how this new regime undermines the rights of Indigenous people is troubling'[53]

[50] Sawer (n 45).

[51] ibid. See also, Sarah Maddison, Richard Denniss and Clive Hamilton, *Silencing Dissent: Non-Government Organisations and Australian Democracy* (The Australia Institute 2004)

[52] Heward-Belle (n 37) 194.

[53] Howard-Wagner, 'Aboriginal Organisations' (n 24) 221.

It is clear from participant observations in this study that the insidious racialised effects of neoliberalism extend into the management of the 'settler' women's service sector which—by necessity or First Nations women's own choice—will impact First Nations women. The effects of neoliberal approaches to public management on the 'settler'-controlled women's sector, including sector mainstreaming, but also underfunding and competitive tendering that favours large, charitable and faith-based organisations, may also have significant intersectional impacts on First Nations women, whose status both as First Nations people, and as women, may be concurrently diminished as 'special interests'.

Administrative governance as state violence

A number of participants specifically connected the bureaucratic, administrative regulation of community-controlled domestic violence services to the ongoing forces of colonialism and state violence. As one specialist domestic violence worker observed in a group yarn

> I think what underpins all of this, we still, even before we start talk about services, lack of services. There's still so much underpinning racism. We haven't shifted. Colonisation happened 200 something years ago. But things haven't… when you're on the ground and you're seeing what's happening in our communities, it hasn't shifted.

Other workers in that yarn built on these observations, describing

> Participant 2: I'd love to see a paper that's written on that false concept that we're talking about here. You can hear it. It's in everything we're saying. It's around exactly how it looked way back then, still looks the same. [The government] must look like [its] doing something, but not to make it look like, to make the community look good. Because if they looked, you know, we need [First Nations people] to continue to sabotage themselves, because then we can keep saying it's an Aboriginal problem then. …[Its like this poem I wrote] …It says like, you know, to sum it up very quickly, it talks about, "Has it really changed or does it just look different?" So it talks about our struggle and its that constantly, they just make it look different.-

> Participant 1: Yeah, all the time. They're shifting it.
>
> Participant 2: It's the same shit over and over again.
>
> Participant 1: Yeah.
>
> Participant 2: With a different name and a different face.
>
> Participant 3: We're still forced into assimilation. They just do it … saying they don't … now, but we still have to assimilate.
>
> Participant 4: As Aboriginal people, we don't get to be Aboriginal people. There's still assimilation and comes in legislation policy, like [Participant 3's] saying. Not enough funded services that are run by our mob. All of that stuff. Then like [another staff member] said the other day. When you do get services that are funded, they're still funded under a western view.

Even though neoliberalism is seen as synonymous with 'less state' and increased deregulation, as Cahill argues 'while the role of the state has changed [under NPM] from the direct deliverer of services, the regulatory apparatuses of the state have not been diminished.'[54] Participant observations throughout this chapter suggest that the governance of domestic violence services both reflects and perpetuates state power over First Nations women's lives. This power is both clandestine and assimilationist; it is concealed within governance agendas which expunge First Nations values and replace them with Western governance norms. When it comes to governance and funding arrangements, rather than the state manifesting as a police officer in the street, it operates as a faceless bureaucrat operating behind closed doors. Unlike public demonstrations of state values (for instance, policing), the form of violence embedded in economic governance is largely concealed from view. Like Blagg and Anthony's characterisation of the criminal justice system as operating along a broader, more expansive, continuum of racism, concerned with furthering the

[54] Howard-Wagner et al (n 22) 6, citing Damien Cahill, ''Actually Existing Neoliberalism' and the Global Economic Crisis' (2010) 20(3) *Labour and Industry: A Journal of the Social and Economic Relations of Work* 298, 309.

process of Indigenous extinguishment; findings in this chapter suggest that the state's governance of domestic violence services also operates as a form of colonising power.[55]

Strakosch describes that neoliberalism forms part of the structure of domination that drives dispossession of First Nations people in Australia; neoliberal policies blame Indigenous people for their life characteristics that have been caused by colonialism, and—as has been evinced in this chapter—disadvantage community-controlled organisations set up to deliver services to First Nations communities and peoples.[56] As Howard-Wagner similarly argues, the 'regulatory technologies of neoliberal governance' weaken 'Aboriginal autonomy and self-determination',[57] and there is particular 'precarity associated with insecure funding arrangements and competitive processes for Aboriginal organisations.'[58] Within the domestic violence sector, findings from this study suggest that this precarity and these processes have a tangible impact on not only community-controlled organisations, but also 'settler'-controlled women's organisations and—as a consequence—the safety and security of First Nations women who experience domestic violence.

As Howard-Wagner also describes, the state subjecting community-controlled organisations to competitive funding processes, as well as processes that diminish

[55] See Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan 2019).

[56] Strakosch (n 33).

[57] Howard-Wagner, 'Aboriginal Organisations' (n 24) 220.

[58] Howard-Wagner et al (n 22) 19.; See also, Page (n 21); Patrick Sullivan, 'The Tyranny of Neoliberal Public Management and the Challenge for Aboriginal Community Organisations' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018); Daphne Habibis, 'Ideology vs Context in the Neoliberal State's Management of Remote Indigenous Housing Reform' in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano-Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018).

and partially-fund Indigenous services, is 'not simply the endless repetition of hierarchical colonial relations. It is a colonising moment in and of itself.'[59] Findings in this chapter suggest that this observation is also true of domestic violence service provision governance and practices, which seek to assimilate community-controlled organisations into 'settler' frameworks and modes of working.

Conclusion

In this chapter, I have presented findings around First Nations women's interactions with domestic violence services. I have highlighted that First Nations women across cases were less likely to access either 'settler'-controlled or community-controlled services than they were to access 'settler' police. I considered that mandatory reporting regimes—evident from the cases—may compromise the services provided by specialist services by enmeshing women further with state processes and organisations, including police, child protection and other government agencies. Participants also identified that women's reduced access to services was a likely reflection of a lack of available and accessible services. Participants identified that 'settler'-controlled or mainstream services may be more successful in securing government funding but may also be poorly equipped to provide services to First Nations women who experience violence. Participants also identified that there were a range of barriers undermining the competitiveness of community-controlled services in the domestic violence sector, identifying economic processes and funding practices as being connected with colonising processes of the state. I briefly also discussed the intersectional impacts of mainstreaming 'settler'-controlled services,

[59] Howard-Wagner et al (n 22) 21.

noting that these are likely to have significant impacts on First Nations women who—including by necessity or choice—may access these services.

In the context of this thesis, findings in this chapter suggest that, just as regulatory regimes in the criminal justice domain (Chapters 5 and 6) may operate as raced and gendered state violence against First Nations women, so too may state structures governing 'settler' and community-controlled domestic violence service delivery. As Sullivan describes

> at its most abstract [the state] is an assemblage of coercive practices tending always to reinforce existing relations of power founded in control of the economy. These practices are instituted by the state's various organs—the judiciary, the police and defence forces, education and the parliament as a whole.[60]

Sullivan's definition evokes Quijano's totalising conceptualisation of colonising power—highlighting that the state and its values find expression through a wide variety of practices and processes, including punitive processes (Chapters 5 and 6), surveillance and governance processes, and economic arrangements (this chapter). Findings in this chapter suggest that coercive practices of the state extend to the operation of policy and state bureaucracies, and state organs—including policing, child protection and other state agencies—are closely enmeshed and implicated in the ongoing colonisation of First Nations peoples and First Nations women.

While, to date, there has been more focus on the way the state exercises power in the criminal justice domain, and indeed this has been my focus in Chapters 5 and 6 of this thesis, there has been a comparatively narrower literature examining the way the state re-asserts its power via economic administrative practices, and little explicit consideration of how this is occurs within domestic violence service

[60] Sullivan, 'The Tyranny of Neoliberal Public Management' (n 58) 201.

delivery. Over the last three chapters, I have highlighted a range of colonising synergies in both criminal justice regulatory systems and the outsourced specialist service response to domestic violence. This is also the expansive and important way participants reflected on the system, and this is accordingly the most appropriate way to reflect on the various processes, organs and systems of the state, considering how they produce, and reinforce, state power.

Finally, findings from this chapter also re-affirm my earlier observations that more 'state power' in the domestic violence space may be problematic for First Nations women. Findings raise questions about the framing of the due diligence standard and the rendering of state responsibilities under international human rights law in this area, highlighting how community-controlled services may struggle under the state's coercive, assimilative, administrative systems. I open up, and attempt to resolve, some of these issues more centrally in the next chapter, where I outline participants' observations on ways forward, connecting these up to a broader rights-focused agenda premised on Indigenous self-determination.

Chapter 8: Self-Determination

Introduction

> We know what the problems are. Our people know what the problems are. But they're never going to change. They're never going to change. That's what is frightening for me, because my kids and my grandkids are going to grow up, and I'm dead and buried, in this same system. They're going to be talking about the same things that I'm talking about today. They're going to be running the same forums again and the government's going to be there, prescribing the same bullshit it prescribes to our people.
>
> —First Nations specialist domestic violence worker in a group yarn

In the last three chapters I have sought to answer the first of my three research questions: 'what domestic violence-related service interactions do First Nations women in Australia have prior to fatal episodes of domestic violence?' In response to this question, I found that First Nations women were most likely to have contact with police (N = 88, 90% of women) and less likely to have contact with specialist domestic violence services (N = 26, 27% of women). In relation to specialist service contact, First Nations women were less likely to have contact with community-controlled (10%), than 'settler'-controlled, domestic violence services (21%).[1] Findings from cases, as well as participant interviews/yarning, also highlighted that there were considerable deficiencies in both the criminal justice and specialist service response to domestic violence against First Nations women. I discuss these findings further in Chapter 9.

In this chapter, I shift focus to my second and third research questions; 'do these service responses reflect and respect First Nations women's rights as women

[1] Some women accessed both community-controlled and 'settler'-controlled services.

and Indigenous peoples?' and 'how can service responses be improved?' In Chapters 1 and 2, I discussed Indigenous peoples' right to self-determination and queried how this may intersect with women's rights to be safe from violence under international human rights law. I also specifically discussed the due diligence standard, which is the prevailing standard for state responsibility in the area of domestic violence responses. I justified my focus on self-determination as it anticipates some transfer of power and control, including over service delivery, from the state to Indigenous peoples. I identified that more work was required to examine the intersection of self-determination and due diligence, and better understand what states are required to do, and what states should normatively be required to do, to respond to domestic violence against First Nations women. As I described in Chapter 4, self-determination is also important to this study's methodology.

Building from the foundation I established in earlier chapters, in Part I of this chapter I outline participant perspectives on how self-determination and women's rights to be safe and free from violence intersect. In Part II, I examine to what extent self-determination has, to date, been considered relevant to state responses to domestic violence against First Nations women in the UN context. In undertaking this analysis, I examine human rights standards, UN guidance, treaty-body jurisprudence and state reporting in relation to Australia since 2009 (when Australian endorsed UNDRIP). In Part III, I consider arguments for, and also against, using the UN system to advance First Nations women's self-determination rights in this area.

PART I: Self-determination: what it isn't, what it is

As I discussed in Chapter 2, Indigenous peoples' right to self-determination is specifically enshrined in the UNDRIP.[2] While the Declaration, as a whole, can be read as an expression of the right to self-determination,[3] the text particularly emphasises Indigenous peoples' rights to establish and maintain autonomous institutions,[4] and to participate and be consulted in matters that affect them.[5] These aspects are also arguably those most relevant to domestic violence responses and, accordingly, are my focus in this thesis.

Autonomous institutions

Indigenous peoples have the right to establish and maintain autonomous institutions.[6] However, it is clear from findings in Chapter 7 that there are myriad ways in which this right is not currently being guaranteed in the domestic violence response space. This is particularly apparent when it comes to the funding and administration of community-controlled domestic violence services.

While detailed analysis is included in Chapter 7, as several participants observed in a group yarn

> Participant 5: The bureaucrats are making the decisions, and they make decisions on budget.

---

[2] *UN Declaration on the Rights of Indigenous Peoples,* UNGA Res 61/295 (2 October 2007) UN Doc A/RES/61/295, art 3.

[3] S James Anaya, *International Human Rights and Indigenous Peoples* (Aspen Publishers 2010) 61; Megan Jane Davis, 'Aboriginal Women and the Right to Self-Determination: A Capabilities Approach to Constitutional Reform' (PhD thesis, Australian National University 2009) 42.

[4] *Declaration on the Rights of Indigenous Peoples* (n 2) arts 4, 5, 20 and 34.

[5] ibid arts 5, 18 and 19.

[6] ibid arts 4, 5, 20 and 34.

> Participant 1: That's right, yeah.
>
> Participant 3: And tick a box.
>
> Participant 5: It doesn't matter what service you need. This is what's available. Then the community fights over that money and if a community's fractured, you know because this service got the money and we didn't. So we're not going to use that service. I'm going to tell everybody that's in our little loop not to use that service. They're just dividing and conquering in our own people again. We don't make the decisions. That's the difference. You know?

Findings in Chapter 7 suggest that there are considerable barriers affecting First Nations peoples' ability to establish and maintain autonomous institutions responding to domestic violence. These barriers arise due to the administration and regulatory governance approach of the state, which—I observe in Chapter 7—should be understood as a productive site of colonising power.

Consultation/Participation

Participation is another key component of the right to self-determination in the UNDRIP.[7] Many study participants specifically described that state actors ineffectively consult with First Nations people in developing and implementing domestic violence responses. One specialist domestic violence worker described the need for greater consultation with First Nations people, explaining that

> I think that when you're making legislations, and funding things, and all that sort of stuff, you can't make them without having an Aboriginal voice. And, too often, there's not an Aboriginal voice. I think you have to really...we just need to see more Aboriginal people having a say. I think most people think that.

That worker also expressed concerns with the quality of consultations that occur with First Nations people. She described that, in her experience, the state's consultations with First Nations people regarding domestic violence responses are often

[7] ibid arts 5, 18 and 19.

inadequate and, when led by non-Indigenous people, may be tokenistic and insensitive to cultural factors. She noted that

> we had this lady come over, and she wanted to implement this new model for Aboriginal people. One of my bigger bosses said to me, “Well, what do you think?” And I said, “Well, actually, I can't speak on behalf of my community, but [Tom] can.” I'm [Tom’s] boss at work, but in the community, he's above me. She couldn't understand that. She couldn't see the culture, “But, you know, he's...” “No, because he's Aboriginal too, and I'm not going to speak over him.” Understanding all that stuff has to be part of how they form all those polic[ies]. I don’t know.

Another specialist domestic violence worker criticised the way governments consult with First Nations communities more broadly, describing that

> … the people that government have, that they are listening to, aren’t proper community people, they’re just self-appointed leaders and what not, who really are out there, they’re not worrying about the grassroots people, you know?

Several participants explained that, in their experience, consultation was undertaken by state agencies and organisations to ‘tick a box’ and was not about really listening to the recommendations, perspectives or values of First Nations people. One specialist domestic violence worker described that ‘they’re good at consulting. But … the other hand’s doin’ all the moving at the back. [They consult and then say] Moving forward! I hate that word. I hate that word. Moving forward, ah, move forward. You know. Next!’

Another worker similarly described that some government agencies simply don’t consult, and when they do consult, they don’t listen. That worker described that this was a characteristic of government departments that was re-embedded and reinforced over time, stating

> Participant: Police and department of child safety don’t consult. They don’t hear. They don’t listen. They only have one voice and that’s their own. There’s no consultation. There’s no negotiation or consultation.

> Interviewer: Do you think that would change? Do you think that that will ever change?
>
> Participant: [pauses] I think its shifting, but they're doing it under duress. We've got to remember that a lot of these services, for example, are now being managed and run by people who were influential in creating the problem, that the *Royal Commission* [RCIADIC] said 'We got a problem'. They were instrumental in that, so we are talking about cultural change, and now those people are in more influential positions to shape where the department's moving. We've heard, you know, we have openly heard people, was it here? it might have been here [in NSW]…say that the Senior Practitioner, running a major programme for Child Safety, said that we don't know whether it's appropriate for Aboriginal and Torres Strait Islander families but we're rolling it out. We're rolling it out!

Another specialist domestic violence worker similarly described that consultation practices were often marketed as 'self-determination' but, in reality, were far from this. He described that

> You can be on a reference group, but that's not self-determination. That's just, they'll take it or leave it, you know? Your advice. And it's, and honestly lots of set-up just to keep Blackfellas happy, you know? Like they're getting input into something but in actual fact they're not big systems changers, and they're not systemic, um, you know, um, re-orientations of services or anything like that. It's just superficial stuff.

My overall impression from interviews/yarns was that participants were dissatisfied and frustrated with the level and nature of consultation by governments and 'settlers' working in agencies and organisations involved in the domestic violence response. Consultation appeared to be a process that was perceived as performative and tokenistic, rather than truly oriented towards improving the lives and respecting the human rights of First Nations women.

The need for structural reform

Importantly, participants also linked deficiencies in consultation processes, as well as inadequacies in supporting autonomous domestic violence institutions, to the need

for significant structural change in the relationship between First Nations peoples and the state. All participants reflected, to some degree, on the colonial context that continues to shape relationships between First Nations and 'settler' Australia, highlighting a common perspective that colonisation remains a force in the present, not simply something that occurred in the past. For instance, one specialist domestic violence worker described that, in her view, persistent failures to confront truths around Australia's history of invasion continued to shape all aspects of contemporary social policy, not just domestic violence policy and law. She described that

> You know, our government can't even acknowledge that Aboriginal people existed before them! (*Laughs*) Like you know that this land was invaded and not colonised, so they won't tell the truth in schools of the history of Aboriginal people, then how the hell they gonna start telling the truth in policy?

Another specialist domestic violence worker, in a group yarn, further described that no system or policy would be capable of responding to the disadvantage of, and discrimination against, First Nations people without a structural corrective, or significant structural change, stating '[w]ell it's got to come from the Crown. You know? They've got to recognise that they did the wrong thing when they came in here and they've got to start giving it back. That's the only way anything's ever going to change.'

An Elder, in an interview, similarly connected the failures of domestic violence systems to the state's failure to recognise First Nations sovereignty, describing that

> …as you know, sovereignty has never been ceded. No war was ever declared, so there was no battle won and we lost. None of that, so in actual fact, we are still sovereign people and this government is illegal. And every government that's ever existed in this country is illegal. Now, they're squashing...or trying to squash...our talk of sovereignty because that ruins everything, all the mining, all the farming, all the...everyone's everything.

Some participants described how racism continued to shape all aspects of First Nations peoples' lives. One specialist domestic violence worker linked racialised

policy responses to domestic violence to everyday racism facing First Nations people, describing that

> When you have like a … a group of people that, aren't really acknowledged, and that don't really feel like they're equal. How, how do you… 'cause this is one thing that people don't sort of realise is that, we can go into a shop, and we can be treated differently. So, if it happens on that lower level, and then you try and look at an agency response, and you're feeling like, a lot like, you know, you're there and you're just ignored, or you're, you know, everyone else is served before you and stuff like that. And then you feel like you're different there, and then you feel like there's different layers. So, I just think that, how do you start tackling the bigger issues if you can't even be treated fairly on a low-level, like, little, normal things like that? You know? How do you start thinking I have any relevance, or I have any importance, or how… you know? How, how does that empower people to feel, you know? To feel like they have a voice or they have a feeling…they can make difference?

Another specialist domestic violence worker described that the government fails to acknowledge that its policies are racist, stating

> They're constantly telling us that this isn't a racist country. They tell us right in this era, right now. But you look back 20 years and we look back 20 years and everybody knows, that it's a racist country. You look back 50 years. Everybody now knows it's a racist country back then. But you look in the time that we're in, nobody can see it. Nobody can see it. "There's no racism here."

An Elder similarly described

> …look, non-Aboriginal Australia hates Aboriginal Australia. There's tolerance for some other cultures. I mean the White Australia policy never stopped until the 70s. The Stolen Generation's never stopped officially till '72. [Child removal rates have] gone up 400% in Victoria since 1972. 400% in 40 years.

As I will discuss in Part III of this chapter, participants' framing of self-determination in structural terms—as requiring further 'decolonisation'—appeared to diverge from the more constrained vision of self-determination in the UNDRIP.

What does self-determination mean?

All participants used the language of 'self-determination' to describe the best ways forward in responding to domestic violence against First Nations women. Participant

perspectives provided a rich picture of what meaningful self-determination could mean in domestic violence responses. This included supporting autonomous institutions, meaningful consultation and participation, as well as structural reform. However, participants provided little detail or consensus on the ultimate constructive state arrangement they believed was necessary to support effective self-determination in Australia.

Some participants described that self-determination could find expression in certain practices and processes, including proper consultation and increased decision-making capabilities. For instance, one specialist domestic violence worker described that self-determination could mean increased state resourcing of community structures. She described that ‘we’ve always got our leaders in our communities, and it's about trying to equip [them] with the resources to do stuff better and to be available.’ Another specialist domestic violence worker similarly observed that community decision-making is fundamental to the success of local services, describing that, in relation to any service or programme, ‘we've got to run it ourselves and we're going to run it our way.’

However, for all participants self-determination was more than simply resourcing, consultation or decision-making capabilities. While consultative, decision-making practices were expressions of the right, they did not represent a fulsome picture of what self-determination meant to First Nations participants either in the domestic violence response space, or more generally. For all participants, it was clear that—at its core—meaningful self-determination involved some degree of relinquishment of state power over First Nations peoples’ lives. Self-determination accordingly required some form of structural change and a redistribution of state power. As one specialist domestic violence worker described

> You know, so until that [government] mindset changes, and that mindset comes with the power and control [things will be the same]. So how does someone with that sort of power and control, or how do a group with that power and control, relinquish that? Because that's what they're going to have to do for us to go forward, they've got to relinquish that power and they're not prepared to do that. You know, so they will do everything within their power to keep us from rising up.

Another specialist domestic violence worker similarly described that

> Well [self-determination] should mean what it stands for, shouldn't it, that you know Aboriginal people determine what the best route for them to take, you know, Aboriginal people are always in… the too hard basket, like I said before, we are looking at these issues under a magnifying glass, with today's eyes and not somewhere where it's all stemmed from—you know? Self-determination means that Aboriginal people have the capacity to make the decisions, how best they think, not being told what to do, not being put on the basics card in communities, you know, put under the banner of they're just lazy, dirty, alcoholic drug addicted blacks, you know?

Some participants considered that self-determination could be expressed via true partnership and participation with government, describing that it did not necessarily mean the state retreating from First Nations people, but rather First Nations people having a meaningful say in what happens with the systems and services that affect their lives. As one specialist domestic violence worker described

> I think that we need to have the police involved [in the domestic violence response] still. We still need all of this stuff involved, but I think my understanding of community here is that they want more of a say. Rather than the police just [being] like, "Right, that's it. You're going to order and we're going to put you in jail." They want more of a say in what happens to Aboriginal families. They want more power in the decision-making, more power in the consequences, and all of that stuff. I think, it's more about [First Nations and 'settler' processes] complementing each other, because at the moment they don't.

In terms of realising self-determination, several participants also emphasised that, in their view, self-determination meant working towards the goal of self-management and control at a local, meaningful, level, in the context of a broader structural redistribution of power. This approach was oriented towards self-determination as an end goal, but the process was properly supported by the state and institutions were

not set up to fail (for instance through a lack of funding). As one specialist domestic violence worker described

> Participant: But, and here I am saying well we need self-determination, but if we took the police out now, it's going to fall over. So has to be sort of a slow transition of that. The end goal? Absolutely.
>
> Interviewer: So it's a process?
>
> Participant: Oh it's definitely a process, it won't happen overnight, but I think some places are really well positioned for that, you've seen some really good programmes today [at the conference]. There are pockets, I would say across Australia, that I see them as political pawns, you know 'Alcohol Management Strategies' and stuff, you know, let's talk about them, but I think at some places the opportunities for self-determination are there.

Specialist domestic violence workers, in a group yarn, similarly described self-determination as a process, stating that

> Participant 2: …the ideal outcome would be that communities can become self-determined and there can be accountability around it. Where the community, you know, can hold each other accountable.
>
> Participant 1: Take back the ownership.
>
> Participant 2: But we're so far from that though, we really are. Because we're still really disempowered. So you can't ask people who are disempowered who don't know themselves, to be accountable for anything, you know? At this point, it's not possible. So self-determination sounds like a beautiful thing, and it's where we want to go. But there's so much more that needs to come before that.
>
> Interviewer: Do you think that it's a process?
>
> Participant 2: Definitely.
>
> Participant 4: And it has to start with acknowledgement.
>
> Participant 2: Acknowledgment and healing.
>
> Participant 4: We can't, if we take away from somebody and ask them to, now that we've done this to you. Now that we've made all the decisions forever. But we want you to show us how you can all be so empowered, without all the resources you had in the ways they've been. So it's just set up to fail. But that's not acknowledged. Instead of saying, "Well, we're seeing what's happening within these communities because..." Instead, it's said because, "it's what they do. It's their way."

Reflecting on the so-called ‘self-determination’ era in Australia, including through the years of ATSIC, described in Chapters 2 and 7, one specialist domestic violence worker also observed that this ‘institutional’ style of self-determination was far from meaningful self-determination for First Nations people. He described that

> self-determination came in, and it was a kind of…a fair bit of rhetoric really. Because it was, you know, if you wanted to really simplify it, it was kind of, “OK, we can’t do this, you do it yourself.” Um, “but we’re not gunna give you resources to do it!” Um that’s not self-determination. It’s probably been over-simplified a lot, that approach. And when you talk about community-controlled organisations who are trying to self-determine, and, and it’s a real structured self-determination; we have to fight for every inch of that progress, or every dollar that we get, you know? So, a health service delivery organisation shouldn’t be needing to go to Canberra and Brisbane to talk to Health Departments and Ministers every couple of weeks, you know?

That worker described further that, in his view, meaningful self-determination for First Nations people has never occurred in Australia, even though this language has been used to describe some practices and processes. He observed that

> self-determination’s never been supported. And it’s never been a policy that’s been implemented in Australia. It kind of went straight from self-determination into the Howard years of mutual obligation and, I don’t know how they worked mutual obligation out, because, just, just the deficit was on their side. But anyway, so some of those major policies, it, it’s worthwhile not throwing out the term just because at the time when it was a major driver in policy, it didn’t work very well because, it, it wasn’t done properly, you know?

Many participants described that, in their view, self-determination meant the creation or restoration of political structures and infrastructure that could give effect to First Nations peoples freedom and values, including the creation and success of community-controlled organisations, the creation of effective partnerships on a real, equal footing with government, and a meaningful say in what domestic violence responses looked like. Self-determination was widely understood as constituting a structural arrangement within which communities and First Nations peoples would be afforded increased control over services and processes, including domestic violence

responses, and an equal partnership with government in relation to the administration and operation of ‘settler’ responses.

As I described previously, in terms of articulating the structure of meaningful self-determination, there was no clear consensus amongst participants, although some reforms such as those contained in the *Uluru Statement from the Heart* were identified by participants as structural demands against the state, with their genesis in deliberative, consultative processes with First Nations people. Some participants expressed support for the aspirations of the *Uluru Statement*, but others appeared to reject the *Statement* and its aspirations. Whatever self-determination looks like for First Nations people is not up to non-Indigenous policymakers, lawyers and bureaucrats to decide, but certainly articulations of self-determination were rich and founded in very strong perspectives on power, control and self-management.

To conclude, as one specialist domestic violence worker described in a group yarn, domestic violence responses will not be responsive to First Nations women’s rights and needs ‘until we run our own affairs. Until we have our own money. Until we have our own governments, and until we have our own judicial systems, the whole box and dice.’

As another specialist worker in that group yarn similarly described, ‘we're colonised. Why wouldn't you write about [the need to] decolonise and start a new structure and you know? That's where it all stems from. But the problems are coming from the structure.’

Participants were also clear that the current structural arrangement was not meeting First Nations women’s rights, identifying the need for a meaningful transfer of the government’s power and control to break the cycle of domination and

assimilation consequent to colonisation (see my thesis' Introduction). As one specialist domestic violence worker described in a group yarn

> At the end of the day, if we don't get control of our own affairs, and I mean real control. I mean stuff that needs to be embedded in the Constitution and embedded in legislation. So that they can't keep coming back to us all the time and changing everything. Every frigging political term. It needs to stay the same, and you need some continuity and that's what we ain't got. But it needs to be, us running our own affairs. Not the white man prescribing stuff for us, and that's what's happening. It'll continue to happen while this country is still run by power and money. That's what it comes down to.

For participants, self-determination accordingly meant more than effective autonomous institutions and participation in domestic violence policy-making and responses. It required re-framing the relationship between First Nations people and the 'settler' state.

PART II: Normative integration of human rights in the UN framework

Indigenous peoples' collective right to self-determination is enshrined in the UNDRIP, although—as I noted in Chapter 2—as a declaration, UNDRIP is soft law without binding force. Thornberry has observed, however, that 'normative integration remains an important aspiration [in human rights law], and progress towards it will lower the risk of sending out contradictory signals to the carriers of human rights responsibilities.'[8] He argues that just as new human rights instruments should be consistent with human rights law, and should give rise to identifiable and predictable legal obligations,[9] existing standards 'are open to the influence of the newer instruments, and monitoring bodies enhance their standing by burnishing their

[8] Patrick Thornberry, 'Integrating the UN Declaration on the Rights of Indigenous Peoples into CERD Practice' in Stephen Allen and Alexandra Xanthaki (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011) 61.

[9] This is established in UN General Assembly, 'Setting International Standards in the Field of Human Rights' (18 February 1987) UN Doc A/RES/41/120.

awareness of changing human rights frameworks.'[10] Normative integration extends to declarations that states have signed, recognising that these have considerable moral and political force,[11] and is an important way to acknowledge that a state's agreement to observe human rights standards is not just a meaningless gesture, but an action that triggers a range of responsibilities.

In this section, I consider to what extent self-determination has been integrated into UN practice concerning violence against Indigenous women since Australia endorsed the UNDRIP in 2009. I firstly examine to what extent self-determination has been articulated as being relevant to violence against women in the Indigenous rights context, and then consider normative integration in UN treaty-body monitoring in relation to Australia through CEDAW and other human rights mechanisms.

Self-determination and Indigenous rights mechanisms

As I outlined in Chapter 2, the need for specialised response systems and strategies for responding to domestic violence against First Nations women in Australia has been highlighted by research and inquiries across jurisdictions, as well as reflected in the international legal commentary of CEDAW,[12] CERD,[13] and the Special

[10] Thornberry (n 8).

[11] Eva Brems, 'Should Pluriform Human Rights Become One? Exploring the Benefits of Human Rights Integration' (2014) 3 *European Journal of Human Rights* 447, 450.

[12] UN Committee on the Elimination of Discrimination Against Women, 'Concluding Observations on the Eighth Periodic Report of Australia' (20 July 2018) UN Doc CEDAW/C/AUS/CO/8 [52(f)].

[13] UN Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia' (26 December 2017) UN Doc CERD/C/AUS/CO/18-20 [28(a)].

Rapporteurs on both Violence against Women,[14] and Indigenous Peoples.[15] It is also reflected in the current National Plan, which emphasises the importance of First Nations community-led responses,[16] and is reflected in the inclusion of two five-year action plans in the new Draft National Plan.[17] More recently, Victoria has conceptually tethered domestic and family violence responses to self-determination, in accordance with its commitment to pursue a state-based treaty with First Nations people.[18]

At an international level, the notion that Indigenous self-determination—at least in terms of participation and the creation and maintenance of autonomous institutions—is important to supporting effective responses to violence against Indigenous women has, to date, been mostly reflected in the work of the UN Permanent Forum on Indigenous Issues ('UNPFII') and EMRIP, as well as the work of the Special Rapporteur on Indigenous Peoples.

UN Permanent Forum on Indigenous Issues

Since its establishment in 2002, the UNPFII has made numerous recommendations relating to violence against Indigenous women, including to emphasise the

[14] UN General Assembly, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia' (8 August 2017) UN Doc A/HRC/36/46/Add.2 [96].

[15] ibid.

[16] Australian Government Department of Social Services, *The National Plan to Reduce Violence Against Women and their Children 2010-2022* (Department of Social Services 2011).

[17] Australian Government Department of Social Services, *Draft National Plan to End Violence Against Women and their Children 2022-2032* (Department of Social Services 2022).

[18] Due to Australia's federalist structure, state-based treaties will not impact First Nations' relationship with the Commonwealth. See also Victorian Government, 'Aboriginal Self-Determination: Aboriginal Self-Determination and the Family Violence Reform' (2022) <https://www.vic.gov.au/family-violence-reform-rolling-action-plan-2020-2023/reform-principles/aboriginal-self-determination> accessed 19 April 2022.

importance of integrating Indigenous peoples' rights into national (and sub-national) strategies on 'gender-based violence and to promote the delivery of culturally acceptable critical services to address gender-based violence and sexual violence…'[19] UNPFII has also reinforced the importance of Indigenous approaches to addressing gender-based violence,[20] releasing reports about combating violence against Indigenous women and girls in 2012,[21] and 2013.[22]

UNPFII's 2012 report, which followed a three-day international expert group meeting, explicitly draws connections between UNDRIP Article 3 (self-determination) and ending various forms of violence against Indigenous women (including domestic violence), noting that 'it is communities themselves that are best equipped to devise solutions to the concrete and contextual problems' members experience.[23] That report also encourages Indigenous communities to engage with, and observe, human rights standards, [24] and to engage with human rights mechanisms including the Special Rapporteurs on Indigenous Peoples and Violence Against Women, as well as the UN treaty-bodies, and the Universal Periodic Review ('UPR') of the

[19] UN Economic and Social Council, 'Permanent Forum on Indigenous Issues, Report on the Twelfth Session' (20-31 May 2013) UN Doc E/2013/43-E/C.19/2013/25 Chapter 1(B) [7(c)].

[20] UN Economic and Social Council, 'Permanent Forum on Indigenous Issues, Report on the Ninth Session' (9-30 April 2010) UN Doc E/2010/43-E/C.19/2010/15 [163].

[21] UN Permanent Forum on Indigenous Issues, 'Combating Violence Against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples: Report of the International Expert Group Meeting' (28 February 2012) UN Doc E/C.19/2012/6.

[22] UN Permanent Forum on Indigenous Issues, 'Study on the Extent of Violence Against Indigenous Women and Girls in Terms of Article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples' (12 February 2013) UN Doc E/C.19/2013/9.

[23] UN Permanent Forum on Indigenous Issues, 'Combating Violence Against Indigenous Women and Girls' (n 21) [45].

[24] ibid [47].

Human Rights Council ('HRC'), to claim their rights.[25] The UNFPII report further reinforces, *inter alia*, that states should 'facilitate and provide support for the development of indigenous women's community-based anti-violence strategies, rather than imposing strategies that do not reflect the values and knowledge of particular indigenous communities.'[26]

The 2013 study by UNPFII members regarding Article 22(2) of the UNDRIP and the extent of violence against Indigenous women and girls, similarly identifies that self-determination is relevant to responses to violence against Indigenous women. This report notes, amongst other things, that Indigenous community initiatives to combat violence in Australia were more likely to succeed 'because of the degree of self-determination exercised by such communities over their development and implementation' (with involvement of men and the police identified as being 'critical' to that success).[27] The report also specifically describes that

> The problem of violence against indigenous women and girls is not only a question of individual human rights but also of the rights of indigenous peoples and general human rights of women and girls. The systematic violation of collective rights of indigenous peoples is a major risk factor for gender violence.[28]

Importantly, the report also recognises that Indigenous women may experience structural violence, including in the context of colonisation and the state.[29] The authors describe that overcoming the violence of colonisation requires 'healing' on a

[25] ibid [52].

[26] ibid [64].

[27] UN Permanent Forum on Indigenous Issues, 'Study on the Extent of Violence Against Indigenous Women and Girls' (n 22) [17].

[28] ibid [6(c)]

[29] ibid [31]-[33].

large scale, including the healing of 'individuals, families and communities.'[30] This strongly evokes the remedial aspects of self-determination envisioned in the UNDRIP (discussed in Chapter 2).

Expert Mechanism on the Rights of Indigenous Peoples

Since it was established by the HRC in 2007, EMRIP has also released a number of studies examining, *inter alia*, Indigenous women's access to justice in both state and Indigenous justice systems, including in 2013[31] and 2014.[32] EMRIP's 2014 report engages centrally with the infrastructure of self-determination, examining Indigenous law and legal systems and describing that these have historically been diminished, or denied, by colonial laws and policies, as well as subordinated to state justice systems. EMRIP suggests that this has particularly been so in Australia, where 'settler' legal systems continue to dominate.[33] This report reaffirms Indigenous peoples' rights to maintain and strengthen their own juridical systems in accordance with human rights standards,[34] and reinforces the importance of self-determined systems for improving Indigenous peoples' access to justice (including where state

[30] ibid [33] citing Paul Memmott, Rachael Stacy, Catherine Chambers and Catherine Keys in association with Aboriginal Environments Research Centre, University of Queensland, *Violence in Indigenous Communities* (Commonwealth of Australia 2006) 12.

[31] UN Human Rights Council, 'Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Study by the Expert Mechanism on the Rights of Indigenous Peoples' (30 July 2013) UN Doc A/HRC/24/50.

[32] UN Human Rights Council, 'Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples: Restorative Justice, Indigenous Juridical Systems and Access to Justice for Indigenous Women, Children and Youth, and Persons with Disabilities: Study by the Expert Mechanism on the Rights of Indigenous Peoples' (25 June 2014) UN Doc A/HRC/EMRIP/2014/3/Rev.1.

[33] ibid [16].

[34] *Declaration on the Rights of Indigenous Peoples* (n 2) art 34.

systems are rendered inaccessible due to, *inter alia*, systemic discrimination).[35] The report describes that a common critique levelled against Indigenous juridical systems is that they do not provide access to justice for women, although the authors caution that this critique 'should not be used as an argument to invalidate indigenous juridical systems altogether.'[36] The report instead affirms that traditional justice systems can increase access to justice due to their cultural relevance, flagging that these systems 'need to be strengthened in their ability to protect indigenous women from violence, and advocate for fair and equal treatment.'[37] This report further affirms the importance of ongoing dialogue and reform within state legal institutions, and promotes the development of community systems of justice inclusive of healing-based and holistic responses.[38] EMRIP's report concludes by, amongst other things, highlighting the importance of the UN dedicating resources to the normative integration of UNDRIP's rights around Indigenous juridical systems, urging that this should form part of the body's foregoing work around the rights of Indigenous women.[39]

Special Rapporteur on Indigenous Peoples

The right to self-determination and its relationship to violence against Indigenous women has perhaps been most clearly articulated by the former Special Rapporteur

[35] UN Human Rights Council, 'Access to Justice in the Promotion and Protection of the Rights of Indigenous Peoples; Restorative Justice' (n 32) [20].

[36] ibid [21].

[37] ibid [42].

[38] ibid [47].

[39] ibid, Annex [18].

on Indigenous Peoples, Victoria Tauli-Corpuz, in her 2015 Report to the HRC.[40] In this report, Tauli-Corpuz describes that violations of Indigenous peoples' right to self-determination including 'denigration and non-recognition of customary laws and governance systems; failure to develop frameworks that allow indigenous peoples appropriate levels of self-governance; and practices that strip indigenous peoples of autonomy over land and natural resources', have been 'highly detrimental to the advancement of Indigenous women's rights.'[41] Tauli-Corpuz describes that the creation of 'false dichotomies between Indigenous women's rights and collective rights' has stripped Indigenous women of their self-determination rights, and this denial of agency not only negatively impacts women's collective and individual rights, but also negatively impacts Indigenous peoples efforts to claim group rights.[42] In this report, Tauli-Corpuz reiterates the close connections between Indigenous women's rights as women and as Indigenous peoples, and reinforces that Indigenous women experience structural violence arising from endemic violations of collective, civil and political, and economic, cultural and social rights: this structural violence intersecting with other forms of violence Indigenous women experience, including domestic violence.[43] Tauli-Corpuz specifically describes that

> domestic violence must be considered within the context of the broader human rights abuses of indigenous communities… strategies for its reduction and elimination must take into account both its causes and consequences through a holistic and human rights-based lens…[and] interventions, such as support and recovery services must also be sensitive to the specific needs of indigenous women and girls.[44]

[40] UN Human Rights Council, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz' (6 August 2015) UN Doc HRC/30/41.

[41] ibid [12].

[42] ibid [13]-[14].

[43] ibid [46].

[44] ibid [59].

Tauli-Corpuz concludes that a paradigm shift, and the development of a 'multi-dimensional approach', is needed, describing that

> States must find a way to strike a delicate balance between protection of indigenous women and respect for self-determination and autonomy of indigenous peoples. Engagement and consultation with indigenous women and girls is central to finding that balance.[45]

In Tauli-Corpuz's view, the UN must support this process, including by reconceptualising 'rights issues to include the nexus between individual and collective rights, as well as the intersectionality between different forms of inequality and discrimination.'[46] In line with the Special Rapporteur on Violence Against Women's 2011 report,[47] Tauli-Corpuz then recommends that states develop a holistic approach to violence against Indigenous women

> based on the indivisibility and universality of all human rights, which recognizes the multiple interconnections between different forms of violence against women, its causes and consequences, and addresses multiple and intersecting forms of discrimination.

She further recommends the availability of parallel justice systems for Indigenous peoples,[48] and recommends that states clarify the relationship between Indigenous, national and local jurisdictions in relation to violence against women—ensuring that the justice process is accessible and sensitive to Indigenous women's needs.[49]

Tauli-Corpuz reaffirmed this position in her 2017 report following her visit to Australia, where she again reinforced the connection—albeit in less specific terms—

---

[45] ibid [75].

[46] ibid [76].

[47] UN Human Rights Council, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Rashida Manjoo' (2 May 2011) UN Doc A/HRC/17/26.

[48] UN Human Rights Council, 'Report of Victoria Tauli-Corpuz' (n 40) [79(b)].

[49] ibid [79].

between ending violence against First Nations women and the right to self-determination.[50] Tauli-Corpuz also described that Australia was failing to meet First Nations peoples' rights to self-determination, and, interestingly, specifically described that the IAS—discussed in Chapter 7—ran contrary to Indigenous peoples' right to self-determination.[51]

In contrast, the HRC's 2016 resolution, 'Accelerating Efforts to Eliminate Violence Against Women: Preventing and Responding to Violence Against Women and Girls, including Indigenous Women and Girls', fails to wholly engage with both the participatory and the autonomous institutional components of Indigenous self-determination.[52] While this resolution affirms that states have a responsibility to facilitate Indigenous women's participation in the formation of solutions and responses to violence, it does not consider Indigenous justice systems, community-based institutions, or alternative, parallel, approaches. It also does not expressly use the language of self-determination.

Other expressions of the right to self-determination in treaty-body monitoring and jurisprudence

Committee on the Elimination of Discrimination against Women

The right to self-determination has not been well integrated into the CEDAW Committee's monitoring of Australia's response to violence against First Nations

[50] UN General Assembly, 'Report of the Special Rapporteur on the Rights of Indigenous Peoples on her Visit to Australia' (8 August 2017) UN Doc A/HRC/36/46/Add.2.

[51] ibid [37-941].

[52] UN Human Rights Council, 'Accelerating Efforts to Eliminate Violence Against Women: Preventing and Responding to Violence Against Women and Girls, including Indigenous women' (19 July 2016) UN Doc A/HRC/RES/32/19.

women since Australia signed UNDRIP in 2009. However, both state reports and the Committee's commentary have considered some issues that coalesce to disadvantage First Nations women and girls and intersect with domestic violence (for instance, child protection intervention, inadequate housing, poor healthcare, and poor educational opportunities).

While self-determination has not been specifically described as being relevant to responses to domestic violence or recommendations around how to respond to domestic violence, the importance of differential responses has, to some degree, been recognised by the CEDAW Committee in other terms. For instance, in its 2010 Concluding Observations regarding Australia, the CEDAW Committee expressed concern about violence against First Nations women, reinforcing its prior recommendation that Australia 'adopt and implement targeted measures including temporary special measures…to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests.'[53] The CEDAW Committee also recommended that Australia fund culturally appropriate services in urban, rural and remote areas.[54] Interestingly, elsewhere in those Concluding Observations, the Committee also reinforced the due diligence standard—reiterating the importance of Australia taking measures including to criminalise 'acts of domestic violence, prosecute acts of domestic violence and punish the perpetrators of such acts.'[55] While the Committee accordingly flagged the need for differential responses to violence against First Nations women, it did not

[53] UN Committee on the Elimination of Discrimination Against Women, 'Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Australia' (30 July 2010) UN Doc CEDAW/C/AUL/CO/7 [41].

[54] ibid.

[55] ibid [29].

consider the extent to which current criminalisation-based approaches—which, in Australia, form part of the state's 'settler' colonial infrastructure—may disadvantage First Nations women. The Committee also did not explicitly link violence against First Nations women to structural inequality, nor did it identify the need for structural remediation of the relationship between First Nations people and the 'settler' state (for instance, through treaty-making or the negotiation of a constructive arrangement between First Nations and the state).

Although in its 2018 Concluding Observations the CEDAW Committee took a more explicit stance on the need for differential responses to First Nations women in Australia, it again did not expressly use the language of self-determination in either its commentary or recommendations.[56] In its Concluding Observations, the Committee recommended that—in line with recommendations of the UPR—Australia increase funding to the (then) *National Congress of Australia's First Peoples*—and recommended that Australia 'elaborate, in collaboration with indigenous women and girls, a specific national action plan on violence against indigenous women and girls.'[57] It also recommended the implementation of culturally sensitive judicial processes, but stopped short of recommending parallel, Indigenous, judicial systems. This was notwithstanding the Committee identifying that the non-recognition of Aboriginal customary laws was relevant to Indigenous women and girls' mistrust of the legal system.[58]

[56] UN Committee on the Elimination of Discrimination Against Women, 'Concluding Observations on the Eighth Periodic Report of Australia' (25 July 2018) UN Doc CEDAW/C/AUS/CO/8.

[57] ibid [52(f)].

[58] ibid [13(a)].

In its 2018 Concluding Observations, the CEDAW Committee also briefly recognised the ways in which specialist service funding processes may adversely impact First Nations women's organisations.[59] The 2021 NGO follow up report, coordinated by the *Equality Rights Alliance*, the *Harmony Alliance* and the *National Aboriginal and Torres Strait Islander Women's Alliance*, also criticises the way Commonwealth government infrastructure fails to prioritise allocations to specialist women's organisations, or those focused on the rights of First Nations women.[60] This report criticises the government's response to the COVID-19 pandemic, noting the lack of funding allocations to community-controlled organisations despite additional extra funding being extended to violence services. It also notes the lack of adjustment for inflation and CPI indexing for women's services funding renewal and short-term contracts. The CEDAW Committee has not yet explicitly considered how funding processes may violate Indigenous peoples' rights more broadly, including the right to finance autonomous functions under Articles 4 and 39 of UNDRIP (discussed in Chapter 2).[61]

It is promising that the Rapporteur on Follow up to CEDAW in July 2021 has requested that Australia provide, in its next periodic report, 'information on further actions taken to expedite the recognition of the First Nations in the Constitution to enable indigenous women to claim their rights.'[62] This communication associates

[59] ibid.

[60] Equality Rights Alliance, Harmony Alliance and National Aboriginal and Torres Strait Islander Women's Alliance, *Follow Up NGO Report Regarding Recommendations Made to Australia by the CEDAW Committee in July 2018* (Equality Rights Alliance, Harmony Alliance and National Aboriginal and Torres Strait Islander Women's Alliance 2021).

[61] *Declaration on the Rights of Indigenous Peoples* (n 2) art 4.

[62] Office of the High Commissioner of Human Rights, 'Letter from Rapporteur on Follow-up to Committee on the Elimination of Discrimination Against Women' (19 July 2021) UN Doc BJ/follow-up/Australia/79, 2.

structural recognition with First Nations women's rights, but again does not specifically adopt the language of self-determination. The request for further information is also vague in reference to the extent of structural reform anticipated via Constitutional recognition of First Nations peoples. It is not clear, for instance, whether this anticipates symbolic recognition only, or structural changes such as those contemplated in the *Uluru Statement from the Heart*.

Committee on the Elimination of Racial Discrimination

The right to self-determination has been integrated more expressly into the CERD Committee's Concluding Observations regarding Australia, although the Committee has not specifically connected Indigenous peoples' self-determination rights and responses to violence against Indigenous women. In its only Concluding Observations since 2009, in 2017, the CERD Committee described that Australia

> continues to conduct its relations with indigenous peoples…in a manner that is not reconcilable with their rights to self-determination and to own and control their lands and natural resources. The Committee is also concerned that the National Congress of Australia's First Peoples and community-controlled programmes and organizations and programmes and organizations controlled by indigenous peoples are underfunded.[63]

The Committee recommended that Australia accelerate its efforts to implement the self-determination 'demands of indigenous peoples, as set out in the *Uluru Statement from the Heart* of May 2017' including a mechanism to enable effective political participation and in good faith treaty negotiations. It also requested that Australia increase its funding of (the then) *National Congress of Australia's First Peoples* and increase support—including financial support— to 'indigenous led programmes and organizations providing services to indigenous peoples, which is

[63] UN Committee on the Elimination of Racial Discrimination, 'Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia' (n 13) [19].

necessary to enable them to discharge their functions effectively.'[64] The Concluding Observations did not go into further detail concerning funding administration practices. In relation to violence against women, the CERD Committee reiterated the recommendation of the Special Rapporteur on Violence Against Women in 2017, that Australia 'adopt a specific national action plan on violence against indigenous women and on gender equality, supported with appropriate special measures that would accelerate the advancement of those women and girls.'[65] It does not, however, specifically link this to the right to self-determination.

Other treaty-body monitoring

Since 2009, other treaty-body and human rights monitoring has similarly recognised that First Nations women may require differential responses to domestic violence, yet this monitoring has failed to frame differential responses in terms of self-determination. For instance, in its Concluding Observations in relation to Australia in 2009 (one month after Australia endorsed UNDRIP), the Human Rights Committee identified that Australia should increase its efforts to effectively consult with First Nations people and should establish an adequately resourced national representative body for First Nations Australians.[66] It separately expressed concerns about high levels of violence against Indigenous women,[67] but failed to draw explicit connections between a lack of self-determination and ineffective responses to

[64] ibid [30].

[65] ibid [28(a)].

[66] Human Rights Committee, 'Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee: Australia' (7 May 2009) UN Doc CCPR/C/AUS/CO/5 [13].

[67] ibid [17].

violence. The Committee also indicated that Australia should strengthen its efforts to eliminate violence against women, especially violence against Indigenous women,[68] but not only left underexplored the potentially harmful effects of strengthening 'settler' violence remedies, but actually reinforced the importance of those remedies in the same report. These issues persisted in the Human Rights Committee's sixth round of Concluding Observations in 2016, wherein it failed to articulate a rights basis for any differential responses to Indigenous women.[69] That report separately described that the state party should adequately fund (the then) *National Congress of Australia's First Peoples*, and—amongst other measures—take appropriate legislative and administrative measures to 'protect and promote the rights of Aboriginal and Torres Strait Islander peoples.'[70] It did not, however, explicitly integrate these considerations when discussing responses to violence against Indigenous women.

Other reports, such as the Concluding Observations of the Committee on Economic, Social and Cultural Rights in 2017, are even less didactic in framing state responsibilities to respond to domestic violence against Indigenous women. That Committee recommended that Australia 'redouble' its efforts to combat domestic violence (including 'among indigenous peoples'), allocate adequate resources to initiatives including the National Plan, increase accommodation and support services with a view to reducing homelessness, 'take effective measures to facilitate access

[68] ibid [17].

[69] Human Rights Committee, 'Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Sixth Periodic Reports of States Parties Due in 2013: Australia' (2 June 2016) UN Doc CCPR/C/AUS/6 [22].

[70] ibid [50].

to justice and legal aid for victims, and take steps to prosecute perpetrators and punishment adequately, if convicted.'[71]

In Concluding Observations regarding Australia in 2014, the Committee Against Torture ('CAT') similarly restated state obligations to combat all forms of violence against women including to enforce legal frameworks, increase public awareness, increase victims support, further intensify 'community-based' approaches to addressing such violence and—specifically in relation to First Nations women—to 'increas[e] its efforts to address violence against indigenous women…'[72] Although Concluding Observations from CAT's current cycle have not yet been released, Australia's state party report specifically discusses domestic violence against First Nations women,[73] and it remains possible that CAT will recognise self-determination as relevant to domestic violence responses in its commentary.

The Universal Periodic Review and other jurisprudence

Interestingly, Australia's most recent UPR in 2021 particularly emphasised the importance of both Indigenous peoples' rights (broadly) and Indigenous women's rights to be safe and free from violence in Australia.[74] In response to this, most recent, UPR, Australia made voluntary pledges to work in partnership with First Nations people on issues affecting them, indicated that it was embedding these

[71] UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the Fifth Periodic Report of Australia' (11 July 2017) UN Doc E/C.12/AUS/CO/5 [34].

[72] UN Committee Against Torture, 'Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Australia' (23 December 2014) UN Doc CAT/C/AUS/CO/4-5 [9(d)].

[73] UN Committee Against Torture, 'Sixth Periodic Report Submitted by Australia Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure, Due in 2018' (28 March 2019) UN Doc CAT/C/AUS/6.

[74] UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review Australia' (24 March 2021) UN Doc A/HRC/47/8.

partnerships via the co-design process for an Indigenous Voice and through a partnership agreement with the Coalition of Peaks, as well as working towards a referendum on Constitutional recognition of First Nations peoples.[75] However, this process did not expressly draw together domestic violence and Indigenous self-determination.

While I have not specifically considered treaty-body jurisprudence through communications mechanisms in this analysis, this is because since 2009 *LNP v Argentina* is the only case that has been decided that has dealt with violence (in that case, sexual violence) against Indigenous women. [76] That case did not specifically consider UNDRIP, nor did it expressly consider the right to self-determination. There remains scope to pursue enhanced normative integration via treaty-body communications processes where these exist, and indeed this is one potential advocacy avenue that remains open to First Nations women and advocates working in this space.

Forthcoming: CEDAW Draft General Recommendation 39

It is possible that going forward there may be greater emphasis on Indigenous women's right to self-determination within the CEDAW monitoring framework. As I described in Chapter 2, at the end of 2021 the CEDAW Committee released for

[75] UN Human Rights Council, 'Report of the Working Group on the Universal Periodic Review Australia, Addendum, Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review' (2 June 2021) UN Doc A/HRC/47/8/Add.1.

[76] UN Human Rights Committee, 'Communication No.1610/2007: L.N.P. v. Argentina' (16 August 2011) UN Doc CCPR/C/102/D/1610/2007.

comment a draft GR on Indigenous Women and Girls.[77] This draft GR, Draft GR 39, appears to represent a step forward in the integration of the UNDRIP and CEDAW, including as it may relate to responding to domestic violence against First Nations women.

Draft GR 39 reinforces that Indigenous women and girls have the right to self-determination, the right to be consulted, and the right to effective participation.[78] It specifically identifies that violations of the right to self-determination constitutes discrimination against Indigenous women.[79] Draft GR 39 also describes that the absence of self-determination is one of the root causes of discrimination against Indigenous women and girls.[80] Very importantly, Draft GR 39's 'Legal Framework' section describes that the CEDAW Committee 'considers UNDRIP an authoritative guide to interpret state party and core obligations under CEDAW',[81] and notes that 'all core international human rights treaties contain relevant protections for the rights of indigenous women and girls.'[82] This clearly establishes normative integration as a guiding principle for both CEDAW and other treaty-bodies, and, if it makes it to the final version, this may potentially decrease fragmentation between CEDAW (as well as other treaty-bodies) and UNDRIP.

[77] UN Committee on the Elimination of Discrimination Against Women, 'General Recommendation No.39 on the Rights of Indigenous Women and Girls: Draft' (11 February 2022) <https://www.ohchr.org/en/calls-for-input/calls-input/draft-general-recommendation-rights-indigenous-women-and-girls> accessed 31 March 2022.

[78] ibid [5].

[79] ibid.

[80] ibid [11].

[81] ibid [15].

[82] ibid [15].

Regarding plural legal systems, Draft GR 39 recognises Indigenous peoples' rights to maintain their own judicial structures and systems, noting that this is 'a fundamental component of their rights to autonomy and self-determination.'[83] It also outlines how Indigenous justice systems must address discrimination against Indigenous women and girls. It reiterates that states have responsibilities to ensure that both mainstream and Indigenous justice systems act in a timely fashion,[84] that courts, quasi-judicial bodies and other bodies are established in urban, rural and remote areas, that they are well maintained and funded,[85] that Indigenous justice systems should be easily available, accessible and effective for Indigenous women, and basic judicial services and free legal aid services should be available close to where Indigenous women live.[86] It also recognises that Indigenous women may experience barriers in accessing 'ordinary justice systems' which 'tend to reflect colonial legacies and post-colonial policies.'[87] Draft GR 39 also specifies ways for Indigenous justice systems to overcome their frequently male-dominated and discriminatory attitudes towards Indigenous women and girls.[88]

Although it explicitly discusses Indigenous self-determination, Draft GR 39 also reinforces that the due diligence obligation to prevent, investigate and punish

[83] ibid [30].

[84] ibid [32].

[85] ibid [33].

[86] ibid.

[87] ibid [34].

[88] ibid [36].

violence by non-State actors, and provide reparations for victims, 'is applicable to both ordinary and indigenous justice systems.'[89] It notes, however, that due diligence

> should be implemented with a gender, indigenous, intersectional, intercultural, and multidisciplinary perspective as defined in paragraph 4 of this General Recommendation, and bearing in mind the gendered causes and impacts of the violence experienced by indigenous women. This entails taking into account how racial discrimination, racism, stereotypes, and post-colonial practices intersect with gender factors to reproduce violence against indigenous women and girls by state and non-state actors.[90]

It also describes that

> States should have an effective legal framework and adequate support services in place to address gender-based violence against indigenous women and girls. This framework must include measures to prevent, investigate, punish perpetrators, and provide assistance and reparations to indigenous women and girls who are victims, as well as services to address and mitigate the harm, of gender-based violence. This general obligation extends to all areas of State action, including the legislative, executive, and judicial branches, at the national, regional and local levels, as well as privatized services. They require the formulation of legal norms, including at the constitutional level, and the design of public policies, programs, institutional frameworks and monitoring mechanisms, aimed at eliminating all forms of gender-based violence against indigenous women and girls, whether committed by State or non-State actors.[91] States are also obligated under the Convention to adopt and implement measures to eradicate discriminatory gender stereotypes and negative social attitudes which are the root cause of gender-based-violence against indigenous women and girls.[92] The Committee reiterates that the failure of a State party to act proactively to prevent gender-based violence when its authorities knew of the danger of violence, and to promptly investigate, prosecute, punish, and grant reparations for these acts, may amount to violations of the Convention by acquiescence or omission.[93]

This appears to envision a more responsive framework to First Nations women, although there is limited 'meat on the bones' regarding what state parties will be

---

[89] ibid [44].

[90] ibid.

[91] UN Committee on the Elimination of Discrimination Against Women, 'General Recommendation No.35 on Gender-Based Violence Against Women, Updating General Recommendation No.19' (26 July 2017) UN Doc CEDAW/C/GC/35 [24(b)].

[92] ibid.

[93] CEDAW, GR 39 (n 77) [46].

expected to demonstrate in order to discharge their renewed due diligence obligations under this framework, and how treaty-bodies—including the CEDAW Committee—will implement the more responsive, intersectional, monitoring approach envisioned.

Although Draft GR 39 may change as a consequence of the comments process (this concluded 31 January 2022), if it is released substantially in its current form it will lay a foundation for increased normative integration of the right to self-determination in human rights related monitoring outside of the Indigenous rights context. However, even once it is released in final form, questions will remain about how it will influence treaty-body practice regarding gender-based violence within and outside of CEDAW, and what state responsibilities to meet Indigenous women's right to self-determination in domestic violence responses will look like in practice.

PART III: Normative integration as a practical manoeuvre: But, cautiously, why the human rights system may not be 'it'

As I established in Part II, while there has been some emerging commentary from the Indigenous rights arena integrating First Nations peoples' right to self-determination and state responsibilities in relation to violence against Indigenous women, there has otherwise been limited integration of these rights within the broader UN system since 2009. Although Draft GR 39 of the CEDAW Committee purports to clarify, *inter alia*, the interaction between the UNDRIP rights and other treaty-bodies, at the time of writing this remains a draft. Once this is finalised, it will be necessary to monitor how states construe, and the CEDAW Committee (and indeed other treaty-body committees) construct, state responsibilities regarding 'self-determination' and responses to violence against Indigenous women. There is great

potential for shadow-reporting and First Nations women's advocacy to put further 'meat on the bones' of this GR.

In this final part of this chapter, building on all that has come in the prior substantive chapters, I outline a case in favour of increased normative integration of Indigenous women's rights to self-determination and to be safe and free from violence within the UN system. I outline what further increased normative integration may achieve, arguing that this is—in part—an important way to progress state recognition of First Nations women's right to self-determination in responding to domestic violence. I also argue that this is an important way to further clarify what state obligations in respect of the right to self-determination entail. However, I also caution against overreliance on the international human rights law system as a way to achieve Indigenous women's self-determination in its most fulsome, meaningful sense. I consider that the very structure of the international law system and the limited, or, as Watson describes, the 'gammon' or inauthentic conception of the right to self-determination operationalised within the UNDRIP, may frame and limit Indigenous women's self-determination in problematic, and potentially even harmful, ways.[94] Accordingly, while I argue that human rights law may hold practical promise to progress First Nations women's self-determination rights in the violence response space, particularly in respect of encouraging states to support autonomous institutions and ensure participation of First Nations peoples, it may not necessarily hold the transformative power to fully overcome the structural disadvantage First Nations women experience within the 'settler' state, including that disadvantage and

[94] Irene Watson, *Aboriginal Peoples, Colonialism and International Law: Raw Law* (Routledge 2015).

discrimination I uncovered and discussed in the substantive, criminological chapters of this thesis (Chapters 5 through 7).

What normative integration may achieve

As I outlined at the start of Part II of this chapter, normative integration is an important mechanism within international human rights law as it can decrease fragmentation and clarify state responsibilities.[95] Improved normative integration of the right to self-determination into standards, monitoring and jurisprudence relating to responses to domestic violence against women can achieve two important things. Firstly, it can clarify what 'settler' states like Australia have to do to respond to violence against First Nations women; and secondly, it can enhance the intersectional capabilities of the human rights law system, which will improve that system's responsiveness to diverse populations, including First Nations women.

Clarification of state responsibilities

Increased normative integration of the right to self-determination will help to clarify what states have to do to respond to domestic violence against First Nations women. It will provide a framework through which to conceptualise appropriate responses to violence. Findings in this thesis support First Nations women's long-term contention, reaffirmed by the work of international actors (such as Special Rapporteurs and treaty-bodies), that they require responses to violence that differ from the 'settler' population. However, findings in this chapter have highlighted that, to date, there has been little international commentary from human rights mechanisms—most problematically the CEDAW Committee—around what states have to do to ensure

[95] Thornberry (n 8).

they meet their full suite of rights responsibilities to First Nations women in this space. Although the CEDAW Committee's Draft GR 39 reaffirms the importance of Indigenous legal systems and the ongoing importance of the due diligence standard, once this is finalised it will be important to maintain surveillance around how the state, and treaty-bodies, conceptualise these provisions and assess state compliance. It will also be important to see what processes human rights mechanisms, including the CEDAW Committee, adopt to define what effective, self-determining responses for Indigenous women look like in different contexts. Will this definitional exercise necessitate increased engagement with Indigenous peoples and especially Indigenous women? Or will observing 'self-determination' maintain the system's existing emphasis on state reporting and a state-led process, wherein Indigenous peoples' perspectives are confined to shadow reporting (if present at all)?

As I established in Chapter 2, the right to self-determination, as it is articulated within the UNDRIP, primarily focuses on Indigenous peoples' rights to establish autonomous institutions and participate meaningfully within the state. The standard that committees may set for states to meet these rights in relation to domestic violence responses may mean that, for instance, the state is required to facilitate the development and continuation of local, community-controlled domestic violence responses for First Nations women. Committees may require the state to develop accessible funding arrangements for community-controlled services that account for cultural requirements and evaluate performance based on community-stipulated metrics. Committees may also require the state to make more unconditional funding available to communities for the purposes of establishing culturally safe and appropriate security responses, such as strongly urged investment in community

securitisation measures including night patrols or community policing (as opposed to a predominant emphasis on 'settler' policing systems).[96] Unconditional funding may avoid the imposition of problematic state regulatory frameworks—such as the economic frameworks I discussed in Chapter 7. Meeting the right to self-determination may also mean the state equipping First Nations communities with greater resources to do the work required in the community in relation to violence, but the state otherwise having a limited say about how this work is done. In respect of participation rights, state responsibilities may extend to ensuring First Nations women can participate meaningfully in domestic violence response policy, law-creation and evaluation, including in respect of autonomous institutions and in relation to 'settler' institutions and programmes. Whatever its content ends up being, in sum, increased normative integration, as an approach, may improve and clarify what the state is required to do to give effect First Nations women's self-determination rights in domestic violence responses.

Clearer standards of measurement or performance metrics

Normative integration also has the potential to significantly improve the UN's assessment processes regarding whether, and to what extent, the state is meeting its human rights obligations to respond to violence against First Nations women. Normative integration of the right to self-determination necessitates improved guidance about what the state has to do, specifically, to respond to violence against First Nations women. This will establish a clearer standard against which state performance can be assessed. As I outlined earlier in this chapter, UN assessment

[96] See Amanda Porter, 'Decolonizing Policing: Indigenous Patrols, Counter-Policing and Safety' (2016) 20(4) *Theoretical Criminology* 548.

processes have, to date, lacked specificity about what states are required to do to respond effectively to violence against First Nations women, despite routinely identifying this as a human rights issue of concern. If the right to self-determination is deemed necessary to effectively respond to domestic violence against First Nations women, this will create a clearer standard against which a state's performance can be assessed. This will also align First Nations peoples' expectations and the expectations of the state and will ensure that guidance flowing from the international rights system actually reflects and respects First Nations women's full suite of rights.

It should be noted that although CEDAW's Draft GR 39 identifies self-determination as being relevant to domestic violence, it does not detail what self-determination means in this space, nor does it specify how states' performance in meeting the right will be assessed. If Draft GR 39 is issued in its current form, significant and ongoing interpretive work will be required to define what state obligations specifically look like in respect of this right. This also raises the important question of whether it is problematic to set up treaty-bodies such as CEDAW and CERD as 'supervisors' of the implementation of the UNDRIP.[97] This may not only risk unintended consequences, such as misapplication of UNDRIP's standards, but it may also 'cross the line between interpreting and modifying' human rights instruments.[98]

Improved guidance to states around how to meet self-determination rights

[97] Adamantia Rachovitsa, 'The Principle of Systemic Integration in Human Rights Law' (2017) 66(3) *International and Comparative Law Quarterly* 557.

[98] ibid.

If First Nations women's right to self-determination is incorporated into the assessment standards of bodies such as the CEDAW Committee, this will not only result in more nuanced and direct articulations of what states are required to do to respond to violence against women, but it will provide enhanced guidance to UNDRIP endorsers regarding how to implement the right to self-determination in practice. Normative integration, in this way, has the potential to add 'meat' to the bones of the UNDRIP and operationalise it in a way that is meaningful for First Nations women in Australia who experience violence. This is consistent with the work of Davis, who has observed that the right to self-determination in its application to First Nations women in Australia is largely undernourished.[99] Davis has argued for an understanding of self-determination founded in terms of measuring 'how the state *and* Aboriginal communities provide the political and material support for Aboriginal women's capabilities', looking not simply at whether organisations, practices and processes exist, but looking at how these actually bear on First Nations women's lives.[100] As I focus on state responsibilities, this means that under an integrated approach the state may be held to a clearer standard around what meeting First Nations women's right to self-determination means when it comes to domestic violence, and Australia's performance will be assessed by the UN more clearly against this standard. Davis' quote also raises an important point outside of the scope of this thesis, however, which is to what standard First Nations communities

[99] Davis (n 3) 169.

[100] ibid.

will be held responsible for this, and how this will coalesce with state responsibilities.[101]

Improved intersectionality within the UN system

Finally, improved normative integration of the right to self-determination in human rights monitoring and guidance around responses to domestic violence will improve the intersectional responsiveness of the human rights law system to diverse women's needs, and it will decrease fragmentation arising from the identity-based treaty framework. Current guidance around state responsibilities in relation to domestic violence—the due diligence standard as it has been articulated to date—has maintained a very strong emphasis on state action, injecting 'more state' into the violence prevention and response space through its articulation of state responsibilities. Normative integration of the right to self-determination may challenge the monolithic nature of the due diligence standard and its state-centric framework, and this may encourage this standard to become more flexible and accommodating of diverse women's realities through a different suite of obligations being required of the state. Enrichment of the due diligence standard has the potential to make human rights monitoring more sensitive and responsive to the experiences of First Nations women in light of invasion/colonisation. This system would also be more capable of achieving justice outcomes for First Nations women and holding states to the appropriate type of responsibility (i.e. holding the state

[101] See Rauna Kuokkanen, *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender* (Oxford University Press 2019).

responsible for giving effect to First Nations community-led solutions founded in self-determination).

However, the ongoing emphasis on the due diligence standard in Draft GR 39 may limit the extent to which this will occur in practice. As I noted previously, Draft GR 39 describes that the due diligence standard applies to both ordinary and Indigenous justice systems, and while it also attempts to frame due diligence in an intersectional way, the recommendation lacks specificity as to what is actually required of states to be intersectionally responsive. The concept of 'intersectionality' under the due diligence standard, as it is framed in Draft GR 39, may require additional nourishment to fully reflect and respect First Nations women's needs. It may also be that due diligence has been retained as the standard to ensure that the state takes violence against Indigenous women and girls 'seriously', but in practice taking such violence seriously for Indigenous women may mean something different to mainstream, criminal justice-focused, solutions to violence. In any event, further work is required to ensure that maintaining an emphasis on due diligence does not make self-determining autonomous justice institutions simply more sites that fail to achieve justice for First Nations women.

But will normative integration ever give full effect to self-determination?

In the first part of this chapter, I outlined how participants described self-determination in my study. It was common that participants defined self-determination in ways that required a restructuring of the relationship between First Nations peoples, communities and the 'settler' state. Participants commonly emphasised that, in their view, nothing was going to change without a broader structural shift, or re-arrangement of the relationship between the state and First

Nations people. This understanding of self-determination differs from the more constrained vision contained in the UNDRIP, which explicitly speaks of structural arrangements only to the extent that the Declaration does not affect treaties or negotiated arrangements with states that Indigenous peoples may have already entered into.[102] UNDRIP does not address, specifically, structural correction and, as I discussed in Chapter 2, its conceptualisation of self-determination is bounded by the inclusion of Article 46(1), which specifically prohibits any action that would dismember or impair the territorial integrity or political unity of sovereign or independent states.[103] While, as Moreton-Robinson has described, self-determination may challenge the dominance of the state as it interrupts the state's power and control, it is also apparent that the form of self-determination in UNDRIP is, to an extent, limited.[104] The UNDRIP does not explicitly centre ongoing structural inequality between First Nations people and the 'settler' state, and, through Article 46(1), expressly precludes mechanisms by which insurrection and structural re-ordering—including recognition of First Nations sovereignty—may occur. This is why Watson refers to UNDRIP self-determination as 'gammon' self-determination—it does not undermine or disrupt the colonial matrix of power.[105] In fact, in many ways, through the inclusion of Article 46, it preserves and maintains the power of the state whilst (perhaps problematically) using the language of 'self-determination' to mean potentially far less than some Indigenous peoples may consider it to mean. By

[102] *Declaration on the Rights of Indigenous Peoples* (n 2) art 37(2).

[103] ibid art 46(1).

[104] Aileen Moreton-Robinson, *The White Possessive: Property, Power, and Indigenous Sovereignty* (University of Minnesota Press 2015).

[105] Watson (n 94) 4.

defining ‘self-determination’ within UNDRIP in a more limited sense to mean, essentially, ‘autonomous institutions’ and ‘participation’, rather than structural power-sharing, this may constrain its meaning and limit its application. Broad restructuring of the state’s relationship with First Nations peoples, however, is precisely what participants in my study identified as being necessary in the Australian context.

This critique may be sustained when it comes to normative integration. Is it correct to talk about self-determination in domestic violence responses as meaning autonomous institutions and participation, absent a structural arrangement whereby First Nations people have meaningful freedom and control over their lives? Perhaps not, and perhaps co-opting the language of self-determination in this way actually deprives the right of its structural force and importance for First Nations peoples.

While I consider that human rights law offers a useful, pragmatic framework and one with particular possibility for Indigenous people given it is a supra-state system, as Moreton-Robinson has observed the human rights law system is itself a product of the colonial imagination and its apparatus is largely comprised of, and serves, nation-states.[106] The structure of the UN system affirms the power of the nation-state, with the state signing up to treaties, agreements and declarations as parties, and agreeing to be bound by their terms alongside their nation-state peers (the international community). The international community then (theoretically) pressures the state to meet its obligations to its citizens and rights-bearers. Within the UN system, reporting and responses are also largely shaped by the state and the information the state provides, with the shadow reporting function offering an important, but necessarily constrained (as it will never represent all interests and

[106] ibid; Moreton-Robinson (n 104) 174.

stakeholders), alternative voice. Nation-state compliance with recommendations is encouraged, but not mandated, and the system's remedy is limited to normative guidance and the threat of negative judgement by the international community. Accordingly, in many ways this structure and framework preserves, rather than diminishes, the power of the nation-state. On this basis, I retain some cynicism about the potential of the more limited concept of self-determination in the UNDRIP to achieve meaningful, structural, transformative change for First Nations people in Australia.

Further, and this is a critical point, if meeting Indigenous peoples' right to self-determination is framed more clearly as a state responsibility, this runs the risk of depriving the right itself of its emancipatory, ground-up character. Positioning the UN and its mechanisms as the assessors and arbiters of whether Australia is meeting Indigenous peoples' right to self-determination is problematic because within the structures of the UN, self-determination may be framed too narrowly, in terms articulated by the state rather than Indigenous peoples. Due to the structure of UN monitoring, the contours of self-determination may also be framed without including local Indigenous peoples' perspectives on what the state is actually required to do to give effect to meaningful structural arrangements between First Nations people and the state, especially at a local level. This runs the risk of further sidelining Indigenous epistemologies and ontologies, and likely lends even more power to the state, and the international system, to define domains of Indigenous meaning. On this basis, it seems unlikely that self-determination can be fully realised within the nation-state centric structures of the UN system.

To leave this critique on a final note, while in this thesis I have focused on self-determination as a right in international human rights law—a framework which

conceives of Indigenous peoples as rights bearers and states as rights guarantors—perhaps this is ultimately the least useful understanding of self-determination for First Nations peoples and First Nations women. As Stavenhagen has observed (and I have mentioned previously),

> Self-determination is an idée-force of powerful magnitude, a philosophical stance, a moral value, a social movement, a potent ideology, that also may be expressed, in one of its many guides, as a legal right in international law.[107]

Perhaps conceiving of self-determination as a 'right' may not fully reflect the aspirations of First Nations people or what is required to address the violence of the Australian 'settler' state. At best, engaging with international human rights law may open up greater spaces for dialogue and discourse on such matters.[108] However, this does not necessarily mean that the broader idea of self-determination itself should be abandoned. It perhaps signifies the need for more critical engagement with self-limiting versions of self-determination that may not reach its most fulsome, transformative, meaning.

Conclusion

In this chapter I have outlined that self-determination is of particular relevance to responses to domestic violence against Indigenous women. First Nations participants in this study articulated fulsome accounts of self-determination, identifying that it is not only related to autonomous institutions and participation (two key elements in UNDRIP), but that it is intimately connected with power and

[107] Rodolfo Stavenhagen, 'Self-Determination: Right or Demon?' in Donald Clark and Robert Williamson (eds), *Self-determination: International Perspectives* (Macmillan Press 1996) 2.

[108] Jack Donnelly, 'Human Rights' in J Baylis, S Smith and P Owens (eds), *Globalisation of World Politics: Introduction to International Relations* (Oxford University Press 2011) 507.

structural reform. Participants also described that self-determination is, in this broader sense, fundamental to effective domestic violence responses. However, to date there has been limited specific discussion within the international human rights law system around how different components of the right to self-determination arising under UNDRIP intersect with domestic violence against First Nations women. While the Indigenous rights context is comparatively rich in terms of this discussion, findings in this chapter suggest that this approach is yet to effectively map on to broader UN practice. While Draft GR 39 of the CEDAW Committee may improve guidance in this area, it is largely silent to the specific content of state responsibilities when it comes to self-determination. Draft GR 39 also reinforces the due diligence standard, although it clarifies that this must be approached in an intersectional way. It is unclear what this will mean in practical terms.

In this chapter I have also argued that further normative integration has the potential to improve responses to domestic violence against First Nations women. However, I have also anticipated some challenges with this approach, including challenges associated with definitions of 'self-determination' and the structure of the UN system.

In the next, and final, chapter of this thesis, I discuss key findings from my study. I also describe the broader potential significance of this study.

Chapter 9: Discussion and Conclusions

Introduction

In this chapter I outline the key contributions of my thesis and critically consider some of its limitations. In Part I, I discuss key study findings and, in Part II, I outline my study's key contributions to policy, research and the disciplines of human rights law and criminology.

PART I: Discussion

Findings in this thesis confirm what many First Nations women scholars and academics have previously identified about the way the domestic violence response works for First Nations women (see Chapter 2). This study has also yielded some novel observations about both the criminal justice and specialist service components of this system, highlighting how these systems work together—albeit in different ways—to disadvantage and discriminate against First Nations women. My analysis considers that both the criminal justice and specialist service response to violence reflect conscious decisions of the state, and I argue—aligned with Quijano's coloniality of power—that both operate as contiguous forms of (colonising) state power.

Case findings in this study highlighted that First Nations women who experienced domestic violence most commonly engaged with 'settler' police, and these engagements emerged as a clear site of coercive state power over First Nations women's lives. Study findings revealed that domestic violence policing contributes to the criminalisation of domestic violence victims. Over a quarter of

domestic violence victims whose cases I considered were investigated or arrested for other matters when police attended a callout in which they were the victim (27%). While this issue has been identified in earlier research,[1] as well as in individual cases such as the death in custody of Yamatji woman Ms Dhu,[2] my study findings suggest that this practice is common and occurs across jurisdictions. My findings also suggest that First Nations women are likely to be identified by police as domestic violence aggressors when they are long-term victims of violence, and this may contribute to women's criminalisation, including within the DVO system.[3] The enforcement of DVOs—a key protective measure under the current domestic violence response system, and a mechanism required under international law—also appeared to contribute to the criminalisation of First Nations women across cases. In several cases, the narrative of victims 'aiding and abetting' their partners breaching DVOs that protected those women was apparent, and this narrative was also used to suggest women's 'complicity' in the violence they were experiencing. This undermined First Nations women's status as victims; contributing to constructions of First Nations women as 'bad' or 'undeserving' victims. These findings suggested that, for 'settler' police, First Nations women were coded 'criminal' and were unlikely to be seen as victims deserving of police help and assistance. These stereotypes were also constructed and expressed via police records, which reinforced and perpetuated those stereotypes. Within police systems, First Nations women were

[1] Harry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan 2019) 212-213.

[2] Rosalinda Fogliani, *Inquest into the Death of Julieka Ivanna Dhu (11020-14): Findings* (15 December 2016) <https://www.coronerscourt.wa.gov.au/_files/dhu%20finding.pdf> accessed 31 March 2022.

[3] Heather Nancarrow, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Palgrave MacMillan 2019).

frequently labelled as ‘offenders’, which appeared likely to negatively inform the police response to those women when they were victims of violence. A negative, racialised response seemed particularly likely where women were subject to ‘automated warnings’ which flashed up on police computer systems to warn responding officers about the woman’s ‘criminal’ behaviours. Participant observations reinforced that First Nations women may be typecast as ‘criminal’, and as ‘bad’ or ‘undeserving’ victims, simply because they were First Nations women, and case findings highlighted that these constructions impacted victim’s access to justice through ‘settler’ criminal justice systems.

Under-policing was another significant issue across cases in this study, with both police failures to enforce the law and failures to attend domestic violence episodes being common. Police failures to act suggested that officers were apathetic towards First Nations women’s victimisation, which again appeared to reinforce that First Nations women were considered undeserving of police assistance. Police failing to apply for DVOs, or take other actions, when First Nations women expressly asked for help seemed to confirm this. Intoxication was also used by police officers in numerous cases as an excuse not to act, suggesting the coalescence of raced and gendered stereotyping of First Nations people, and demonstrating how this specifically disadvantages First Nations women. Cases suggested that First Nations people were racially stereotyped as a ‘drunken Aboriginal’, and this was used to undermine First Nations women’s claims to justice when they were victims of violence and abuse. Across cases, police also frequently disbelieved First Nations women, and, in at least one case, it was clear that officers lied about a First Nations woman’s experiences of violence, and lied about the evidence available, to justify their inaction. These findings suggested there was considerable apathy amongst

police towards First Nations women victims of violence and this was evident across jurisdictions. This appeared founded in the construction of First Nations women as 'criminal', and the synchronous typecasting of women as unfavourable, or undeserving, victims.

Case findings also suggested that First Nations women were disadvantaged within the criminal justice system as a consequence of a strong 'disengagement' narrative that was evident across cases. First Nations women's 'disengagement' was used to justify both police inaction when women were victims of violence, and also paternalistic interventions by police and 'settler' courts against women's wishes. In many cases, the victim's 'disengagement' was cited by police as a reason not to take further action after she experienced abuse but, as I indicated in Chapter 5, this 'narrative' could—and indeed, should—be more accurately understood in terms of the system's lack of safety for First Nations women who are victims of domestic violence. Findings around victim criminalisation, police non-response and inaction (see Chapter 5), as well as police paternalism and state surveillance through innovations such as multidisciplinary committees and co-location approaches (see Chapter 7), suggested the compounding, harmful effects that involvement in the domestic violence service response may have for First Nations women. Findings also suggested that the label of First Nations women being 'disengaged' may have been used to justify police inaction, even when women attempted to activate the criminal justice response. This again demonstrated that the 'settler' police response consistently failed to keep First Nations women safe from violence on women's own terms.

Paternalism was another common feature in cases where First Nations women became involved in the criminal justice system following domestic violence.

Paternalistic DVO applications and court procedures were two examples of this. These paternalistic interventions, sometimes against women's express wishes, represented coercive state interventions that were justified for women's 'own good'. These interventions suggested that police may disregard First Nation's women agency, and/or may consider that women's decisions are ill-informed. Paternalistic interventions were also sometimes required by law, highlighting the 'settler' justice system's legally enshrined disregard of victim agency and the impact of this on First Nations women. First Nations women, both in the cases and in participant interviews and yarning, expressed clear and considered reasons why further involvement with criminal justice systems may be inappropriate or problematic from their perspective. Many of these reasons related to the way state systems worked to disadvantage and discriminate against First Nations women, families and communities. Disregard for women's reasons was, accordingly, a clear expression of coercive state power in this context. Coercive, paternalistic state power was also mobilised through the use of inappropriate DVO conditions, such as orders that attempted to forcibly separate a victim and her partner using the threat of criminal sanction.

These findings strongly suggested that Australia's 'settler' criminal justice system, as a domestic violence response, was largely incapable of working effectively for First Nations women. Cases suggested that even where the system 'worked' and charges progressed to conviction, men did not stop using violence against First Nations women. Participants also described that the system itself was problematic, and its approach did not always match First Nations women's justice needs. Normatively, it follows from the literature in Chapters 1 and 2 that the point of the domestic violence response system should, largely, be to help victims. However, across cases First Nations women victims were not helped where their partners 'got

off' on charges, were not helped when their partners were convicted and were fined (the money in some cases coming from the victim's pocket) and were not helped when their partners went to prison but returned later only to continue using violence. The fact that the system failed First Nations women when it 'worked' and when it did not 'work' suggested that there were deep structural problems within that system.

The lack of alternatives to the criminal justice system for First Nations women seeking help following domestic violence was also apparent across cases, with comparatively few women interacting with domestic violence specialist services, fewer still with community-controlled ones. Participants attributed this lack of contact to a lack of accessible and available services, citing governance issues as reasons why community-controlled services may not be available or accessible to First Nations women. Participants also described the way specialist service contact expose women to increased state surveillance as well as the violence of adjacent agencies (including police and child protection), identifying these as specific barriers facing First Nations women. In Chapter 7, I particularly highlighted and described that inadequate investment in specialist services, and the way investment is structured and managed is an intentional decision of the state—just as investment in the criminal justice decision as the primary response to violence is intentional and a reflection of the state's values. These findings reveal the persistent degradation of community-led solutions and the privileging of 'settler'-controlled approaches, including mainstreamed, neoliberal approaches that sideline both women's and First Nations peoples' rights as those of 'special interests'.

In contrast to the criminal justice system, which is largely administered and run by the state, the domestic violence specialist response is largely delivered by NGOs or civil society and, to a lesser extent, First Nations community-controlled

organisations. Notwithstanding this more diffuse economic arrangement and indirect involvement of the state in service delivery due to (neoliberal) outsourcing, findings in Chapter 7 suggest that the way the domestic violence service sector is administered by the state is both a reflection and expression of 'colonising' state power. This is certainly how many participants framed their understanding of the service sector. This power manifests in the state undermining community-controlled organisations and responses by failing to provide adequate funding (or failing to fund the full suite of service delivery needed for First Nations community work), the state failing to support organisations to build capacity, using funding as a way to manage dissent or criticism, and preferencing delivery of services to First Nations peoples and communities by non-Indigenous providers, rather than community-controlled ones. Economic administrative regimes within the specialist domestic violence sector can be understood as a clandestine form of assimilation: depriving the community-controlled sector of its unique contribution and forcing that sector into competition with 'settler'-controlled services who, under the dominant 'settler' funding regime, are more likely to be successful. Findings also suggest that the state fails to fund First Nations women's choice, deeming a 'settler'-controlled service to be sufficient, when the community identifies the need for local, place-based services and solutions. Findings also suggested that for First Nations women who choose to access 'settler'-controlled services, service mainstreaming approaches that de-gender service provision may make those services even less accessible and appropriate for First Nations women (for instance, by devolving specialist refuges into generalist homelessness services). When viewed through an intersectional, postcolonial lens, it is apparent that the economic decisions that undergird bureaucratic administration of specialist domestic violence services are non-neutral state decisions and are

impacted by probable indifference towards violence against women, compounded by racialised indifference to First Nations women who experience domestic violence.

Building on the evidence contained within my thesis, I concluded in Chapter 7 that both of the two key systems implicated within Australia's domestic violence response—the criminal justice system and the specialist domestic violence response—emerge as contiguous expressions of colonising state power. Both operate along a continuum and highlight, in different ways, expressions of state power that subjugate and dispossess First Nations peoples. My research reinforces that this is an important way to theorise and understand Australia's domestic violence service response.

In light of these key findings, this thesis then shifts gear in Chapter 8 to explore the possibilities of a human rights-based approach to addressing these limitations in the domestic violence response to First Nations women. In particular, I explore and ventilate what a response to domestic violence founded in the right to self-determination may look like, utilising the mechanism of normative integration. When asked about self-determination and its relationship to domestic violence responses, participants expressed complex perspectives on the right, describing that it necessitates greater community control of decision-making, proper consultation, and meaningful power sharing between First Nations and the state. In light of these perspectives, I then examined what the UN has said to date about the relationship between the right to self-determination (as enshrined in the UNDRIP) and responses to domestic violence focused on general commentary (such as GRs), as well as state reporting in relation to Australia, across human rights monitoring mechanisms since Australia endorsed UNDRIP in 2009. Through this analysis I identified that while—to date—there has been limited commentary outside of the Indigenous rights

space, there is the potential that normative integration will be enhanced through the adoption of CEDAW's Draft GR 39. In the final section of Chapter 8, I foreshadow potential challenges with normative integration, identifying the possibility that any approach tethering state responsibilities to the right self-determination may deprive it of its emancipatory, ground-up character for First Nations communities. I also consider that attempts to mobilise self-determination in discrete areas, such as responses to domestic violence against First Nations women, may decouple self-determination from its structural, corrective character, which was central to participants' understandings of self-determination in the Australian 'settler' context. Despite these concerns, I consider that normative integration offers a pragmatically useful approach to further First Nations women's rights to be safe and free from violence.

PART II: Contributions

This thesis and its findings make a number of key contributions to the literature. In this section I outline what I consider to be its major contributions, as well as identify some of the limitations of my study and some areas requiring further research.

Policy implications

This thesis has clear implications for domestic violence policy in Australia. This is the first study to comprehensively examine First Nations women's service contact histories in fatal domestic violence cases across jurisdictions. Findings from my study contribute, I hope significantly, to the existing body of scholarship produced by First Nations women and their allies in the domestic violence response space.

Empirically, my study has significance for understanding the nature and quality of current responses to domestic violence against First Nations women. This study provides a solid foundation for critiquing Australia's domestic violence response system and can be used to advocate for significant reforms to the way this response system operates for First Nations women. Findings comprehensively highlight that existing domestic violence responses—criminal justice and social service responses—can be understood as being harmful to First Nations women both in direct, and more hidden, ways. In respect of the criminal justice system, in light of current moves to criminalise coercive control in Australia in Queensland and NSW,[4] an innovation that will strengthen and expand the criminal justice response, findings in this study are significant, and caution strongly against such expansions of the 'settler' criminal law given the likely negative consequences this will have for First Nations women.

My study also reinforces the importance of identifying bureaucratic, administrative, and economic practices and arrangements within the domestic violence response as a form of state power. Participants described the considerable impact of these processes on community-controlled and 'settler'-controlled domestic violence services, and my analysis highlights how these seemingly neutral, non-violent practices coalesce to undermine service delivery to First Nations women in damaging, violent ways. The way I look at these issues also represents a new, and novel, contribution to the domestic violence literature.

[4] Women's Safety and Justice Taskforce, *Options for Legislating Against Coercive Control and the Creation of a Standalone Domestic Violence Offence: Discussion Paper 1 Summary* (Queensland Government 2021); Joint Select Committee on Coercive Control, *Coercive Control in Domestic Relationships, Report 1/57* (Parliament of New South Wales 2021).

Finally, my study findings also suggest that domestic violence policies and evaluation of the domestic violence system's response to First Nations women cannot be delinked from broader structural, political inequality affecting First Nations' relationship with the state. This study highlights, I think persuasively, the need for First Nations self-determination, and clearly identifies some areas—for instance criminal justice policy, administration of social services—which require specific attention and reform in order to facilitate recognition of this right. Ultimately, this thesis also supports the need for a structural shift in relationship between First Nations and the state, as this will lay the infrastructure for self-determination in its most fulsome sense.

I will note, at this point, that one limitation of the study is that I did not explore the possibility of alternative, self-determinative security approaches such as Night Patrols or community policing in First Nations communities in relation to the domestic violence response. I only identified involvement of Night Patrols/community police in four cases and I did not have sufficient information available from either the files or interviews/yarns to explore this issue in depth. This is an area that will benefit from ongoing research in the domestic violence response space.

Implications for human rights

My thesis also has implications for human rights law. I argue, in Chapter 8, that normative integration is an increasingly important strategy within international human rights law, and this focus has the potential to support improved intersectional, responsive practice for diverse groups at the intersection of different treaty frameworks and rights regimes. Enhanced normative integration will not only improve UN practice, but will support NGOs and civil society organisations, including

First Nations community-controlled organisations, to convey complex rights violations and limitations to UN bodies through monitoring and advocacy. Greater emphasis on an integrative approach may also help to break down some of the barriers associated with the 'identity'-based categorisation approach of human rights treaties.

Findings in this study also reinforce the need for the UN to further clarify what states are required to do to give effect to their human rights obligations in respect of self-determination and domestic violence. Normative integration in this particular context raises questions that are important to state accountability and answerability to both First Nations peoples and international community. Under Draft GR 39, CEDAW will be well positioned to do some of this integrative work, but this work should be informed by concerns I raise in Chapter 8, including about what clarified state responsibilities may 'do' to self-determination as a right belonging to Indigenous peoples. I particularly raise concerns about the UN arbitrating the topography of Indigenous self-determination rights, and this remains a real risk under an integrative approach.

This thesis also demonstrates the potential of interdisciplinary work in the fields of human rights and criminology. This thesis simultaneously both justifies the case for increased self-determination (via criminological, empirical work clearly highlighting and theorising deficiencies in the current 'settler' system) and makes the case for how First Nations women may be able to claim self-determination rights against the state through international human rights law. As a result of this approach, my work goes beyond simply signalling the need for self-determination, and instead explores one potential avenue, normative integration of the right to self-determination, via which responses to domestic violence against First Nations

women may be improved. This represents a unique academic, methodological approach and contributes, I hope meaningfully, to interdisciplinary work between these bodies of scholarship.

In respect of human rights, this thesis also opens up additional avenues of inquiry. My examination of state monitoring and integration of self-determination focuses on Australia, but Australia is only one of many 'settler' states with Indigenous populations participating in the UN system. To fully appreciate the potential of normative integration and how it is currently practiced across UN treaty-bodies, and to better account for the effect of different constructive state arrangements (for instance, treaty arrangements in other countries), this thesis' work could be expanded to look at, and compare, UN monitoring of other 'settler' states such as Canada and New Zealand. This would also support enhanced exploration of the way constructive arrangements between the state and Indigenous peoples affect how states understand and discharge their responsibilities in regard to domestic violence against Indigenous women. It will also support examination of how constructive arrangements affect the kinds of domestic violence response systems developed for Indigenous women, and it may secure an even stronger foundation for revision of structural arrangements—for instance via structured, community-led processes of agreement or treaty-making—in Australia.

Implications for criminology

This study, its methodology and its findings, also have significant implications for the discipline of criminology. As I noted earlier, Australia is currently pursuing the criminalisation of coercive control in several jurisdictions, but findings in this thesis suggest that expansions of the criminal law in this area are likely to have negative

consequences for First Nations women. Findings in this study support what many First Nations women and their allies have already said about the proposed new laws (see Chapter 2) and highlight that 'settler' responses to violence, founded in criminalisation, may be harmful to First Nations women. First Nations women describe that investment in the criminal justice system as a response to domestic violence reflects 'carceral feminism', and it is apparent that such carceral feminist approaches—when translated into law and policy—will negatively impact First Nations women when they are victims of domestic violence.[5]

Relatedly, for criminologists working in the domestic violence response space, findings from this study also reinforce the need to *do* criminology in ways that centre First Nations women's experiences. 'One-size-fits-all' approaches to research are likely to perpetuate damaging meta-narratives around the causes and consequences of domestic violence, and my study suggests that this approach to research, and its policy consequences, will more than likely disadvantage First Nations women. While few criminologists working in domestic violence spaces would self-identify as 'carceral feminists', my research also raises questions about the similarly damaging effects of criminological research that leaves unconsidered and under-theorised the negative impacts that the criminal justice system has on First Nations women. I would argue that *any* research and policy that ignores and erodes meaningful user difference within the domestic violence response system in Australia operates to the detriment of that system as a whole and is likely to negatively impact First Nations women. This argument is supported, I believe, by findings in this thesis.

[5] Megan Davis and Emma Buxton-Namisnyk, 'Coercive Control Law Could Harm the Women it's Meant to Protect' *Sydney Morning Herald* (Sydney, 2 July 2021); Chelsea Watego, Alissa Macoun, David Singh and Elizabeth Strakosch, 'Carceral Feminism and Coercive Control: When Indigenous Women Aren't Seen as Ideal Victims, Witnesses or Women' *The Conversation* (25 May 2021).

Implications for research methods

Another key contribution of my thesis relates to how I have done this work. As a non-Indigenous researcher, I approached this work in a way that I hope was methodologically and theoretically respectful to First Nations peoples and participants in the study. I worked hard to design a thesis that is critical of Western research methods, and I adopt a theoretical perspective attuned to state power. This results in a research piece that I believe reflects the rich perspectives of participants in the study, and stands in solidarity with, but does not speak on behalf of, First Nations women. In particular, I have intentionally avoided reaching didactic conclusions about what self-determinative responses to domestic violence may look like, as these are properly decisions for First Nations women and communities to make. However, I believe by methodologically pushing further into the human rights canon, I have added additional practical potential to this criminological work, providing one strategy through which scholars, activists and communities can push for greater community control over domestic violence institutions and responses, and greater First Nations participation in the state's decision-making in this area.

Theoretical implications

My thesis also demonstrates how it is possible to incorporate intersectionality in research in a meaningful, careful way. Often intersectionality is used as a 'catch all' term to describe any work that deals with subjects at the intersection of different identity characteristics. I am concerned that this approach may co-opt the terminology in ways that depart significantly from its theoretical foundation. In this thesis, I have clearly articulated a specific, limited way of using intersectionality, and anchored it within the extant literature, so that its application makes sense for this

research. Being intersectional in this research has meant remaining attuned to complexity, and working through this complexity, rather than engaging in comparisons between the experiences of non-Indigenous and First Nations women. I also acknowledge the limitations of how I use intersectionality in Chapter 3, which I believe is an important practice for scholars to engage in.

In this thesis, I also engage with postcolonial theory in the context of domestic violence responses in a novel way. By drawing on Quijano and Lugones' coloniality of power, I am supported to explore how elements of colonial power manifest in economic (bureaucratic, regulatory) as well as criminal justice practices and processes in the domestic violence system. By using this theory to structure my inquiry and make sense of my findings, enriched by the theory of First Nations women scholars such as Moreton-Robinson and Watson, I am able to develop an innovative perspective on the domestic violence system, attuned, *inter alia*, to colonialism, racism and gender. This also supported me to identify contiguities between the criminal justice and social service response to violence and illuminate these as a sustained expression of (neo)colonial state power.

Concluding remarks

To conclude, I would like to express my sincerest thanks to the First Nations collaborators who have guided and contributed to this work, and to those institutions that have provided information and guidance. I would like to pay my respects to the First Nations women whose lives have been lost to domestic violence, as well as their children, families and communities. First Nations women deserve to have rich, fulfilling lives, full of joy and promise: free from structural and personal violence. It is my hope that this research contributes, in some small way, to this outcome.

Bibliography

Aboriginal and Torres Strait Islander Social Justice Commissioner, *Ending Family Violence and Abuse in Aboriginal and Torres Strait Islander Communities - Key Issues* (Human Rights and Equal Opportunity Commission June 2006)

Aboriginal and Torres Strait Islander Women's Task Force, *The Aboriginal and Torres Strait Islander Women's Task Force on Violence Report* (State of Queensland 1999)

Adams I, 'Visibility is a Trap: The Ethics of Police Body-Worn Cameras and Control' (2017) 39(4) *Administrative Theory and Praxis* 313

Agozino B, *Counter-Colonial Criminology: A Critique of Imperialist Reason* (Pluto Press 2003)

——, 'Imperialism, Crime and Criminology: Towards the Decolonization of Criminology' (2004) 41(4) *Crime, Law and Social Change* 343

Allas T, Bui M, Carlson B, Kasat P, McGlade H, Perera S, Pugilese J, Qwaider A and Singh C, 'Indigenous Femicide and the Killing State' in *Deathscapes: Mapping Race and Violence in Settler States* (2018) <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/> accessed 20 April 2022

Allen S and Xanthaki A (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011)

Anaya S J, *International Human Rights and Indigenous Peoples* (Aspen Publishers 2010)

ANROWS, *Violence Against Women: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey 2012* (ANROWS 2016)

——, *Warawarni-gu Guma Statement: Healing Together in Ngurin Ngarluma* (2018) <https://www.anrows.org.au/warawarni-gu-guma-statement/> accessed 9 July 2020

Aramburu B and Leigh B, 'For Better or Worse: Attributions About Drunken Aggression Toward Male and Female Victims' (1991) 6(1) *Violence and Victims* 31

Ashcroft B, 'On the Hyphen in 'Postcolonial' (1996) 32 *New Literatures Review* 23

Ashcroft B, Griffiths G and Tiffin H, *Post-Colonial Studies: The Key Concepts* (Routledge, 2nd edn 2007)

Atkinson J, 'Violence against Aboriginal Women: Reconstitution of Community Law—The Way Forward' (2001) 5(11) *Indigenous Law Bulletin* 19

Atkinson J, Nelson J, and Atkinson C, 'Trauma, Transgenerational Transfer and Effects on Community Wellbeing' in Purdie N, Dudgeon P and Walker R, *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Commonwealth of Australia 2010)

Atrey S, *Intersectional Discrimination* (Oxford University Press 2019)

Atwell D, 'Origins, Outcomes and the Meaning of Postcolonial Diversity' in Graham Huggan, *The Oxford Handbook of Postcolonial Studies* (Oxford University Press 2013)

Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Women's Experiences of Family and Domestic Violence: 4714.0 - National Aboriginal and Torres Strait Islander Social Survey, 2014-15* (Australian Bureau of Statistics 2019)

——, *Estimates of Aboriginal and Torres Strait Islander Australians* (Australian Bureau of Statistics 2018)

Australian Domestic and Family Violence Death Review Network, *Australian Domestic and Family Violence Death Review Network 2018 Data Report* (Domestic Violence Death Review Team 2018)

——, *Intimate Partner Violence Homicides 2010–2018* (ANROWS 2022)

Australian Government, *Specialist DFV Court Model* (Australian Government, 2021) <https://plan4womenssafety.dss.gov.au/initiative/specialist-dfv-court-model/> accessed 31 December 2021

Australian Government Attorney General's Department, *National Domestic Violence Order Scheme,* <https://www.ag.gov.au/families-and-marriage/families/family-violence/national-domestic-violence-order-scheme> accessed 25 August 2020

Australian Government Department of Social Services, *The National Plan to Reduce Violence Against Women and their Children 2010-2022* (Department of Social Services 2011)

——, 'Darwin Consultation Summary: Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children 2010-2022 (Summary of Consultation 3 September 2018, workshop by ThinkPlace and DSS)' <https://plan4womenssafety.dss.gov.au/wp-content/uploads/2018/11/30-dss-4ap-darwin-consultation-summary_0.docx> accessed 31 December 2021

——, *Draft National Plan to End Violence Against Women and their Children 2022-2032* (Department of Social Services 2022)

——, 'Family and Relationship Services' (Department of Social Services, 2021) <https://www.dss.gov.au/families-and-children-programs-services-parenting-families-and-children-activity/family-and-relationship-services > accessed 25 November 2021

——, *Historic Investment in Women's Safety and Domestic Violence Support: Budget 2021-2022* (Australian Government Department of Social Services 2021)

Australian Government Department of Health, Australian Statistical Geography Standard - Remoteness Area (Australian Government, 2022) <https://www.health.gov.au/health-topics/rural-health-workforce/classifications/asgs-ra > accessed 3 April 2022

Australian Human Rights Commission, *A National System for Domestic and Family Violence Death Review* (Australian Human Rights Commission December 2016)

——, *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future* (Australian Human Rights Commission 2020)

——, 'Indigenous Disadvantage and Self-Determination: Submission of the Social Justice Commissioner to the UN Human Rights Committee' (undated) <https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/submissions_un_hr_committee/3_indigenous_disadvantage.pdf> accessed 29 December 2021

Australian Institute of Aboriginal and Torres Strait Islander Studies, 'Guidelines for Ethical Research in Australian Indigenous Studies' (AIATSIS, 2012) <https://aiatsis.gov.au/sites/default/files/2020-09/gerais.pdf> accessed 22 April 2022.

Australian Institute of Family Studies, 'Mandatory Reporting of Child Abuse and Neglect' (*CFCA Resource Sheet*, June 2020) <https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect> accessed 1 April 2022

Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia: Continuing the National Story* (Australian Government 2019)

Australian Law Reform Commission, *Family Violence - A National Legal Response (Report 14)* (Australian Law Reform Commission 2010)

——, *Recognition of Aboriginal Customary Laws (Report 31)* (Australian Law Reform Commission 2010)

——, *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Report 133)* (Australian Law Reform Commission 2018)

Bartels L, *Indigenous Women's Offending Patterns: A Literature Review* (Australian Institute of Criminology 2010)

Behrendt L, 'Aboriginal Women and the White Lies of the Feminist Movement: Implications for Aboriginal Women in Rights Discourse' (1993) 1 *Australian Feminist Law Journal* 22

——, 'Consent in a (Neo) Colonial Society: Aboriginal Women as Sexual and Legal 'Other'' (2000) 15(33) *Australian Feminist Studies* 353

Benninger-Budel C (ed), *Due Diligence and its Application to Protect Women from Violence* (Leiden 2008)

Bhabha H, *The Location of Culture* (Routledge Classics 1994/2004).

Bhagarva R, ‘Overcoming the Epistemic Injustice of Colonialism’ (2013) 4(4) *Global Policy* 413

Blagg H, ‘Aboriginal Youth and Restorative Justice: Critical Notes from the Australian Frontier’ in Morris A and Maxwell G (eds), *Restorative Justice for Juveniles: Conferencing, Mediation and Circles* (Hart 2000)

——, ‘Restorative Justice and Aboriginal Family Violence: Opening a Space for Healing’ in Strang H and Braithwaite J (eds), *Restorative Justice and Family Violence* (Cambridge University Press 2002)

——, *Crime, Aboriginality and the Decolonisation of Justice* (The Federation Press, 2nd edn 2016)

—— , ‘A Long Way From Duluth: Decolonizing Family Violence Intervention in Indigenous Australia’ (EuroCrim 2017, Cardiff, 13-16 September 2017)

Blagg H and Anthony T, *‘Bare Life’ and the ‘Camp’: The Carceral Archipelago in Postcolonial Australia’* (Australia and New Zealand Society of Criminology Conference, Melbourne, December 4-7 2018).

Blagg H and Anthony T, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan 2019)

Blagg H, Bluett-Boyd N and Williams E, *Landscapes: Innovative Models in Addressing Violence Against Indigenous Women: State of Knowledge Paper* (ANROWS 2015)

Blagg H, Morgan N, Cunneen C and Ferrante A, *Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission 2005)

Blagg H, Tulich T, Hovane V, Raye D, Worrigal T and May S, *Understanding the Role of Law and Culture in Aboriginal and Torres Strait Islander Communities in Responding to and Preventing Family Violence* (ANROWS 2020).

Blagg H, Williams E, Cummings E, Hovane V, Torres M and Nangala Woodley K, *Innovative Models in Addressing Violence Against Indigenous Women: Final Report* (ANROWS 2018)

Bolger A, *Aboriginal Woman and Violence: A Report for the Criminology Research Council and the Northern Territory Commissioner of Police* (Australian National University North Australia Research Unit 1991)

Bond C, Holder R, Jeffries S and Fleming C, *Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport* (Griffith Criminology Institute 2017)

Bond C and Jeffries S, ‘Similar Punishment? Comparing Sentencing Outcomes in Domestic and Non-Domestic Violence Cases’ (2014) 54(5) *British Journal of Criminology* 849

Bosworth M and Hoyle C (eds), *What is Criminology*? (Oxford University Press 2011)

Bouges A, ‘Working Outside Criticism: Thinking Beyond Limits’ (2005) 2 *Boundary* 71

Brems E, ‘Should Pluriform Human Rights Become One? Exploring the Benefits of Human Rights Integration’ (2014) 3 *European Journal of Human Rights* 447

Bricknell S and Doherty L, *Homicide in Australia 2018-19: AIC Report, Statistical Report 34* (Australian Institute of Criminology 2021)

Broude R, ‘Principles of Normative Integration and the Allocation of International Authority: The TWO, the Vienna Convention on the Law of Treaties, and the Rio Declaration’ (2008) 6(1) *Loyola University Chicago International Law Review* 173

Brown C, ‘From the Roots Up: Principles of Good Practice to Prevent Violence Against Women in the Northern Territory’ (PhD thesis, Australian National University 2021)

Bubar R, ‘Indigenous Women and Sexual Assault: Implications for Intersectionality’ in Weaver H N (ed), *Social Issues in Contemporary Native America: Reflections from Turtle Island* (Routledge 2014)

Bugeja L, Butler A, Buxton E, Ehrat H, Hayes M, McIntyre SJ and Walsh C, ‘The Implementation of Domestic Violence Death Reviews in Australia’ (2013) 17(4) *Homicide Studies* 353

Butler A, Buxton-Namisnyk E, Beattie S, Bugeja L, Ehrat H, Henderson E and Lamb A, ‘Australia’ in Dawson M (ed), *Domestic Homicides and Death Reviews: An International Perspective* (Palgrave Macmillan 2017)

Buxton-Namisnyk E, ‘Does an Intersectional Understanding of Human Rights Law Represent the Way Forward in the Prevention and Redress of Domestic Violence Against Indigenous Women in Australia’ (2014/2015) 18(1) *Indigenous Law Review* 119

——, ‘Domestic Violence Policing of First Nations Women in Australia: ‘Settler’ Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination (2021) *The British Journal of Criminology* azab103

Buzawa E and Buzawa C, *Domestic Violence: The Criminal Justice Response* (SAGE 2003)

Cahill D, ‘‘Actually Existing Neoliberalism’ and the Global Economic Crisis’ (2010) 20(3) *Labour and Industry: A Journal of the Social and Economic Relations of Work* 298

Cain M, ‘Realist Philosophy and Standpoint Epistemologies or Feminist Criminology as a Successor Science’ in Glesthorpe L, and Morris A, (eds) *Feminist Perspectives in Criminology* (Open University Press 1990)

Carlson M J, Harris S D and Holden G W, ‘Protective Orders and Domestic Violence: Risk Factors for Re-Abuse (1999) 14 *Journal of Family Violence* 205

Carpenter B J and Field R M, 'Issues Relating to Queensland Magistrates' Understandings of Domestic Violence (Domestic Violence Court Assistance Network Conference, Brisbane, 17-19 June 2003)

Cassese A, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge University Press 1995)

Chaudhuri M and Daly K, 'Do Restraining Orders Help? Battered Women's Experience with Male Violence and Legal Process' in Buzawa E and Buzawa C (eds) *Domestic Violence: The Changing Criminal Justice Response* (Auburn House 1992)

Chinkin C on behalf of Ad Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO), *The Duty of Due Diligence* (Council of Europe 21 May 2010), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680593fc8>accessed 25 March 2022.

Cho S, Crenshaw K W and McCall L, 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis' (2013) 38(4) *Signs: Journal of Women in Culture and Society* 785

Clark N, '*Perseverance, Determination and Resistance: An Indigenous Intersectional-Based Policy Analysis of Violence in the Lives of Indigenous Girls: An Intersectionality Based Policy Analysis Framework* (Natalie Clark 2012)

Cohen S, 'Human Rights and Crimes of the State: The Culture of Denial' (1993) 26 *Australian and New Zealand Journal of Criminology* 97

Coker D, 'Crime Control and Feminist Law Reform in Domestic Violence Law: A Critical Review' (2001) 4 *Buffalo Criminal Law Review* 801

Combahee River Collective, *The Combahee River Collective Statement* (Combahee River Collective 1977)

Commonwealth of Australia, *Final Report of the Referendum Council* (Commonwealth of Australia 2017)

Connelly C and Cavanagh K, 'Domestic Abuse, Civil Protection Orders and the 'New Criminologies': Is There Any Value in Engaging with the Law?' (2008) 16(1) *Feminist Legal Studies* 139

Cordier R, Chung D, Wilkes Gillan S and Speyer R, 'The Effectiveness of Protection Orders in Reducing Recidivism in Domestic Violence: A Systematic Review and Meta-Analysis' 22(4) *Trauma, Violence and Abuse* 804

Cormack L, 'Coercive Control in Intimate Relationships to be Criminalised in NSW' *Sydney Morning Herald* (Sydney, 18 December 2021) < <https://www.smh.com.au/politics/nsw/coercive-control-in-intimate-relationships-to-be-criminalised-in-nsw-20211217-p59ij8.html> accessed 30 December 2021

Cortis N, Blaxland M, Breckenridge J, Valentine K, Mahoney N, Chung D, Cordier R, Chen Y and Green D, *National Survey of Workers in the Domestic, Family and Sexual Violence Sectors: Final Report* (Social Policy Research Centre UNSW 2018).

Coulthard G, *Red Skin White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press 2014)

Crenshaw K, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1(8) *University of Chicago Legal Forum* 139

——, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color (1990) 43 *Stanford Law Review* 1241

Cripps K, 'Understanding Indigenous Family Violence in the Context of a Human Rights Agenda' (2006) 15 (3) *Human Rights Defender* 3

Cripps K and Davis M, *Communities Working to Reduce Indigenous Family Violence* (Indigenous Justice Clearinghouse 2012)

Cunneen C, *Conflict Politics and Crime: Aboriginal Communities and the Police* (Routledge 2001)

——, 'Policing Public Order and Public Places' (2006) 88 *Reform* 42

——, *Alternative and Improved Responses to Domestic and Family Violence in Queensland Indigenous Communities* (Department of Communities 2010)

——, 'Postcolonial Perspectives for Criminology' in Bosworth M and Hoyle C (eds), *What is Criminology?* (Oxford University Press 2011)

Cunneen C and Libesman T, *Indigenous People and the Law in Australia* (Butterworths 1995)

Cunneen C and Tauri J, *Indigenous Criminology* (Policy Press 2016)

Cussen T and Bryant W, 'Indigenous and Non-Indigenous Homicide in Australia' (2015) 37 *Research in Practice* 1

Daes E, 'The UN Declaration on the Rights of Indigenous Peoples" Background and Appraisal' in Allen S and Xanthaki A (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011)

Davis A Y, *Women, Race and Class* (Penguin Books 1981/2019)

Davis M J, 'Aboriginal Women and the Right to Self-Determination: A Capabilities Approach to Constitutional Reform' (PhD thesis, Australian National University 2010)

——, *Family is Culture Final Report: Independent Review of Aboriginal Children in Out of Home Care* (Family is Culture 2019)

Davis M and Buxton-Namisnyk E, ‘Coercive Control Law Could Harm the Women it’s Meant to Protect’ *Sydney Morning Herald* (Sydney, 2 July 2021)

Dean C, ‘A Yarning Place in Narrative Histories’ (2010) 39(2) *History of Education Review* 6

Dean M, *Governmentality: Power and Rule in Modern Society* (SAGE 1999)

de Beco G, ‘Intersectionality and Disability in International Human Rights Law’ (2020) 24 (5) *The International Journal of Human Rights* 593

Decker M R, Holliday C N, Hameeduddin Z, Shah R, Miller J, Dantzler J and Goodmark L, ‘”You Do Not Think of Me as a Human Being”: Race and Gender Inequities Intersect to Discourage Police Reporting of Violence Against Women’ (2019) 96(5) *Journal of Urban Health* 772

DeJong C, Burgess-Proctor A and Elis L, ‘Police Officer Perception of Intimate Partner Violence: An Analysis of Observational Data’ (2008) 23(6) *Violence and Victims* 683

Dent D and Arias I, ‘Effects of Alcohol, Gender and Role of Spouses on Attributions and Evaluations of Mental Violence Scenarios’ (1990) 5 *Violence and Victims* 185

Department of Economic and Social Affairs, Division for the Advancement of Women, *Handbook for Legislation on Violence against Women* (United Nations 2010)

Deutscher M, *Subjecting and Objecting: An Essay in Objectivity* (Blackwell 1983)

Dichter M E, Cerulli C, Kothari C L, Barg F K and Rhodes K V, ‘Engaging with Criminal Prosecution: The Victim's Perspective’ (2011) 21(1) *Women & Criminal Justice* 21

Domestic and Family Violence Death Review and Advisory Board, *Domestic and Family Violence Death Review and Advisory Board 2016-2017 Annual Report* (Queensland Government 2017)

Domestic Violence Death Review Team, *Report 2015-2017* (Domestic Violence Death Review Team 2017)

——, *Report 2017-2019* (Domestic Violence Death Review Team 2020)

Domestic Violence New South Wales, ‘NSW Women’s Refuge Movement’ (Domestic Violence New South Wales, 2017) <http://www.dvnsw.org.au/wp-content/uploads/2017/07/DVNSW_History_17A.pdf > accessed 25 November 2021

Donnelly J, ‘Human Rights’ in Baylis J, Smith S and Owens P (eds), *Globalisation of World Politics: Introduction to International Relations* (Oxford University Press 2011)

Douglas H, ‘Not a Crime Like Any Other: Sentencing Breaches of Domestic Violence Protection Orders’ (2007) 31(4) *Criminal Law Journal* 220

——, ‘The Curse of White Man’s Water: Aboriginal People and the Control of Alcohol’ (2007) 4(1) *University of New England Law Journal* 3

——, ‘The Criminal Law’s Response to Domestic Violence: What’s Going On?’ (2008) 30(3) *Sydney Law Review* 439

——, ‘Legal Systems Abuse and Coercive Control’ (2018) 18(1) *Criminology & Criminal Justice* 84

Douglas H and Fitzgerald R, ‘Legal Processes and Gendered Violence: Cross-Applications for Domestic Violence Orders’ (2013) 36(1) *University of New South Wales Law Journal* 56

Douglas H and Fitzgerald R, ‘The Domestic Violence Protection Order System as Entry to the Criminal Justice System for Aboriginal and Torres Strait Islander People’ (2018) 7(3) *International Journal for Crime, Justice and Social Democracy* 41

Douglas H and Godden L, ‘The Decriminalisation of Domestic Violence: Possibilities for Reform’ (*Expanding Our Horizons: Understanding the Complexities of Violence Against Women*, Sydney, 18 February 2002)

Douglas H and Stark T, ‘Stories from Survivors: Domestic Violence and Criminal Justice Interventions’ (2010) *University of Queensland Law Research Services* 1

Dowling C, Morgan A, Boyd C and Voce I, *Policing Domestic Violence: A Review of the Evidence: Research Report 13* (Australian Institute of Criminology 2018)

Dowling C, Morgan A, Hulme S, Manning M and Wong G, ‘Protection Orders for Domestic Violence: A Systematic Review’ (2018) 551 *Trends and Issues in Crime and Criminal Justice* 1

Doxtater M G, ‘Indigenous Knowledge in the Decolonial Era’ (2004) 28(3/4) *American Indian Quarterly* 618

Easteal P, ‘Addressing Violence Against Women in the Home: How Far Have We Come? How Far to Go?’ (1994) 37 *Family Matters* 86

Egger S and Stubbs J, *The Effectiveness of Protection Orders in Australian Jurisdictions* (Commonwealth of Australia 1993)

Ehrlich Martin S and Bachman R, ‘The Relationship of Alcohol to Injury in Assault Cases’ in Galanter M (ed), *Recent Developments in Alcoholism Vol 13: Alcoholism & Violence* (Plenum Press 1997)

Epp C R, Maynard-Moody S and Haider-Markel D P, *Pulled Over: How Police Stops Define Race and Citizenship* (University of Chicago Press 2014)

Equality Rights Alliance, Harmony Alliance and National Aboriginal and Torres Strait Islander Women’s Alliance, *Follow Up NGO Report Regarding Recommendations Made to Australia by the CEDAW Committee in July 2018* (Equality Rights Alliance, Harmony Alliance and National Aboriginal and Torres Strait Islander Women’s Alliance 2021)

Esqueda C W and Harrison L A, ‘The Influence of Gender Role Stereotypes, the Woman's Race, and Level of Provocation and Resistance on Domestic Violence Culpability Attributions’ (2005) 53 *Sex Roles* 821

Fanon F, *The Wretched of the Earth* (Penguin Modern Classics 1961/2014*).*

Feerick C, ‘Policing Indigenous Australians: Arrest as a Method of Oppression’ (2004) 29(4) *Alternative Law Journal* 188

Feminist Legal Clinic Inc, *NGO Shadow Follow Up Report to CEDAW* (4 November 2020) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGS%2fAUS%2f44368&Lang=en> accessed 30 March 2021

Figgis H and Griffith G, *Outsourcing in the Public Sector* (NSW Parliamentary Library 1997)

Finnane M, *Police and Government: Histories of Policing in Australia* (Oxford University Press 1994)

Fiolet R, Tarzia L, Owen R, Eccles C, Nicholson K, Owen M, Fry S, Knox J and Hegarty K, ‘Indigenous Perspectives on Help-Seeking for Family Violence: Voices from an Australian Community’ (2019) 36(21-22) *Journal of Interpersonal Violence* 10128

Fish S, ‘Boutique Multiculturalism, or Why Liberals are Incapable of Thinking about Hate Speech’ (1997) 23(2) *Critical Inquiry* 378

Fogliani R, *Inquest into the Death of Julieka Ivanna Dhu (11020-14): Findings* (15 December 2016) <https://www.coronerscourt.wa.gov.au/_files/dhu%20finding.pdf> accessed 31 March 2022

Foley M, ‘Aborigines and the Police’ in Hanks P and Keon-Cohen B (eds), *Aborigines and the Law* (Allen and Unwin 1984)

García-Del Moral P, ‘The Murders of Indigenous Women in Canada as Feminicides: Toward a Decolonial Intersectional Reconceptualization of Femicide’ 43(4) *Signs: Journal of Women in Culture and Society* 929

Genger P, ‘The British Colonization of Australia: An Expose of the Models, Impacts and Pertinent Questions’ (2018) 25(1) *Peace and Conflict Studies* 4

Goldscheid J and Liebowitz D, ‘Due Diligence and Gender Violence: Parsing its Power and its Perils’ (2015) 48 *Cornell International Law Journal* 301

Goldstein J, ‘Police Discretion Not to Invoke the Criminal Process: Low-Visibility Decisions in the Administration of Justice’ (1960) 69(4) *Yale Law Journal* 543

Goodman-Delahunty J and Corbo Crehan A, ‘Enhancing Police Responses to Domestic Violence Incidents: Reports from Client Advocates in New South Wales’ (2015) 22(8) *Violence Against Women* 1007

Goodmark L, ‘When is a Battered Woman Not a Battered Woman—When She Fights Back’ (2008) *20 Yale Journal of Law & Feminism* 75

——, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (University of California Press 2018)

Gordon S, Hallahan K and Darrell H, *Putting the Picture Together: Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (Western Australia Department of Premier and Cabinet 2002)

Gorringe S, Ross J and Fforde C, ‘Will the Real Aborigine Please Stand Up: Strategies for Breaking the Stereotypes and Changing the Conversation’ (2011) 28 *AIATSIS Research Discussion Paper* 1, 7.

Gover K, *Tribal Constitutionalism: States, Tribes, and the Governance of Membership* (Oxford University Press 2010)

Gracia E, Garcia F, and Lila M, ‘Police Involvement in Cases of Intimate Partner Violence Against Women’ (2008) 14(6) *Violence Against Women* 697

Griffin J, ‘Discrepancies Between the Best Philosophical Account of Human Rights and the International Law of Human Rights’ (2001) 101(1) *Proceedings of the Aristotelean Society* 1

Guggisberg M, ‘The Interconnectedness and Causes of Female Suicide Ideation with Domestic Violence’ (2006) 5(1) *Australian e-Journal for the Advancement of Mental Health* 53

Habibis D, ‘Ideology vs Context in the Neoliberal State’s Management of Remote Indigenous Housing Reform’ in Howard-Wagner D, Bargh M and Altamirano-Jimenéz I (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018)

Haebich A, *For Their Own Good: Aborigines and Government in the South West of Western Australia 1900-1940* (University of Western Australia Publishing 1992)

Harcourt W (ed), *The Palgrave Handbook of Gender and Development* (Palgrave Macmillan 2016)

Harris B A, ‘Visualising Violence? Capturing and Critiquing Body-Worn Video Camera Evidence of Domestic and Family Violence’ (2020) 32(4) *Current Issues in Criminal Justice* 382

Harrison L A and Wells Esqueda C, ‘Effects of Race and Victim Drinking on Domestic Violence Attributions’ (2000) 42(11-12) *Sex Roles* 1043

Henderson A, ‘Majority of Grants from Indigenous Advancement Strategy First Round Given to Non-Aboriginal Groups’ *ABC News* (Australia, 5 May 2015) <https://www.abc.net.au/news/2015-05-05/majority-of-indigenous-grants-go-to-non-aboriginal-organisations/6444534> accessed 18 May 2022

Henry F, Hastings P and Freer B, ‘Perceptions of Race and Crime in Ontario: Empirical Evidence from Toronto and the Durham Region’ (1996) 38(4) *Canadian Journal of Criminology* 469

Hester M, ‘Making it Through the Criminal Justice System: Attrition and Domestic Violence’ (2005) 5(1) *Social Policy and Society* 79

Heward-Belle S, ‘Feminist Gains Lost: Public Policy and the Genericising of Women Survivors of Domestic Violence’ in Baines D, Bennett B, Goodwin S and Rawsthorne M (eds), *Working Across Difference: Social Work, Social Policy and Social Justice* (Red Globe Press 2019)

Higgins R, *Problems and Processes: International Law and How We Use It* (Oxford University Press 1995)

Hill Collins P, *Intersectionality as Critical Social Theory* (Duke University Press 2019)

Hill Collins P and Bilge S, *Intersectionality* (Wiley 2016)

Hirschel D, Buzawa E, Pattavina A and Faggiani D, ‘Domestic Violence and Mandatory Arrest Laws: To What Extent Do They Influence Police Arrest Decisions’ (2007) 98 *Journal of Criminal Law and Criminology* 255

Hofbauer J A, ‘Self-Determination, Right to’ in Binder C, Nowak M, Hofbauer J A and Janig P (eds), *Elgar Encyclopedia of Human Rights* (Edward Elgar Publishing, forthcoming)

Home A M, ‘Attributing Responsibility and Assessing Gravity in Wife Abuse Situations: A Comparative Study of Police and Social Workers’ (1994) 19(1/2) *Journal of Social Service Research* 67

hooks b, *Ain’t I a Woman? Black Women and Feminism* (Routledge 1981/2014)

Hope A N, *Inquest into the Death of Andrea Louise Pickett* (2012) <https://humanrights.gov.au/sites/default/files/content/legal/submissions_court/guidelines/Pickett_finding.pdf > accessed 25 March 2022

Houry D, Bay L, Maddox J and Kellermann A, ‘Arrests for Intimate Partner Violence in Female Detention Patients’ (2005) 23 *American Journal of Emergency Medicine* 96

Howard-Wagner D, ‘Aboriginal Organisations, Self-Determination and the Neoliberal Age’ in Howard-Wagner D, Bargh M and Altamirano-Jimenéz I (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018)

Howard-Wagner D, Bargh M and Altamirano-Jimenéz I, ‘From New Paternalism to New Imaginings of Possibilities in Australia, Canada and Aotearoa/New Zealand: Indigenous Rights and Recognition and the State in the Neoliberal Age’ in Howard-Wagner D, Bargh M and Altamirano-Jimenéz I (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018)

Hoyle C, *Negotiating Domestic Violence: Police, Criminal Justice and Victims* (Clarendon Press 1998)

Hoyle C and Sanders A, 'Police Response to Domestic Violence: From Victim Choice to Victim Empowerment?' (2000) 40 *British Journal of Criminology* 14

Human Rights and Equal Opportunity Commission, *Report of the National Inquiry into Racist Violence in Australia* (Australian Government Publishing Service 2001)

Huggins J, *Sister Girl* (University of Queensland Press 1999).

——, 'It's Now or Never: Our Chance to Tackle Indigenous Family Violence' (2003) 2 *Australian Centre for The Study of Sexual Assault, Australian Institute of Family Studies Newsletter* 5

Hulko W, 'The Time- and Context-Contingent Nature of Intersectionality and Interlocking Oppressions' (2009) 24 *Affilia* 44

Hunter R, 'Law's (Masculine) Violence: Reshaping Jurisprudence' (2006) 17 *Law and Critique* 27

Jeffries S, Bond C and Field R, 'Australian Domestic Violence Protection Order Legislation: A Comparative Quantitative Content Analysis of Victim Safety Provisions' (2013) 25 *Current Issues in Criminal Justice* 627

Jennett C, 'Policing and Indigenous Peoples in Australia' in Enders M and Dupont B (eds), *Policing the Lucky Country* (Federation Press 2001)

Jochelson R, 'Aborigines and Public Order Legislation in New South Wales' (1997) 34 *Contemporary Issues in Crime and Justice* 1

Johnston E, *Royal Commission into Aboriginal Deaths in Custody* (Australian Government Publication Service 1991)

Joint Select Committee on Coercive Control, *Coercive Control in Domestic Relationships, Report 1/57* (Parliament of New South Wales 2021)

Jordan C E, 'Intimate Partner Violence and the Justice System: An Examination of the Interface' (2004) 19(12) *Journal of Interpersonal Violence* 1412

Kelly L, 'Indigenous Women's Stories Speak for Themselves: The Policing of Apprehended Domestic Violence Orders' (1999) 4(25) *Indigenous Law Bulletin* 4

KPMG for the Department of Social Services, *First Progress Report for the Fourth Action Plan (2019-2022): The National Plan to Reduce Violence Against Women and their Children* (KPMG/Department of Social Services December 2020)

Khan M, 'Domestic Violence Against Women and Girls' (2000) 6 *Innocenti Digest* 1

Kim M, 'From Carceral Feminism to Transformative Justice: Women-of-Color Feminism and Alternatives to Incarceration' (2018) 27(3) *Journal of Ethnic and Cultural Diversity in Social Work* 219

Kitossa T, ‘Criminology and Colonialism: Counter Colonial Criminology and the Canadian Context’ (2012) 4(9) *Journal of Pan African Studies* 204

Kuennen T L, ‘“No-Drop” Civil Protection Orders: Exploring the Bounds of Judicial Intervention in the Lives of Domestic Violence Victims’ (2007) 16 *UCLA Women’s Law Journal* 39

Kuokkanen R, *Restructuring Relations: Indigenous Self-Determination, Governance, and Gender* (Oxford University Press 2019)

Lange M, Mahoney J and Vom Hau M, ‘Colonialism and Development: A Comparative Analysis of Spanish and British Colonies’ (2006) 11(5) *American Journal of Sociology* 1412

Langton M, Smith K, Eastman T, O’Neill L, Cheesman E and Rose M, *Improving Family Violence Legal and Support Services for Aboriginal and Torres Strait Islander Women: ANROWS Research Report Issue 25* (ANROWS December 2020)

Leeming L, ‘Elders and Community Representatives Gather at Renaming Ceremony of Kempsey Women’s Refuge’ *Macleay Argus* (Macleay, 30 June 2017) <https://www.macleayargus.com.au/story/4760159/womens-refuge-renamed/> accessed 31 December 2021

Legislative Assembly of New South Wales Committee on Community Services, *Outsourcing Community Service Delivery: Final Report (Report 2/55)* (Parliament of New South Wales November 2013)

Leigh B C and Aramburu B, ‘Responsibility Attributions for Drunken Behaviour: The Role of Expectancy Violation’ (1994) 24(2) *Journal of Applied Social Psychology* 115

Lerman A and Weaver V, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (University of Chicago Press 2014)

Levac D, Colquhoun H and O’Brien K, ‘Scoping Studies: Advancing the Methodology’ (2010) 5 *Implementation Science* 69

Liberal Party of Australia, *Our Plan: Real Solutions for all Australians—The Direction, Values and Policy Priorities of the Next Coalition Governmen*t (Liberal Party of Australia 2013)

Lloyd J, ‘Violent and Tragic Events: The Nature of Domestic Violence-Related Homicide Cases in Central Australia’ (2014) 1 *Australian Aboriginal Studies* 99

Logan T K and Walker R, ‘Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness’ (2009) 24(4) *Journal of Interpersonal Violence* 675

Logan T K and Walker T, ‘Civil Protective Order Effectiveness: Justice or Just a Piece of Paper?’ (2010) 25(3) *Violence and Victims* 332

Loomba A, *Colonialism/Postcolonialism* (Routledge 1998/2002)

Lorde A, *The Master's Tools Will Never Dismantle the Master's House* (Penguin Books 2018)

Lugones M, 'Heterosexualism and the Colonial/Modern Gender System' (2007) 22(1) *Hypatia* 186

MacDonald G, 'Colonising Processes, the State and Ontological Violence: Historicising Aboriginal Australian Experience' (2010) 52(1) *Anthropologica* 49

Macpherson W, *The Stephen Lawrence Inquiry* (Secretary of State for the Home Department by Command of Her Majesty 1999)

Maddison S, Denniss R, and Hamilton C, *Silencing Dissent: Non-Government Organisations and Australian Democracy* (The Australia Institute 2004)

Marchetti E, 'Intersectional Race and Gender Analyses: Why Legal Processes Just Don't Get It' (2008) 17(2) *Social & Legal Studies* 155

Martin-Booran Mirraboopa K, 'Ways of Knowing, Being and Doing: A Theoretical Framework and Methods of Indigenous and Indigenist Re-Search' (2003) 27 (76) *Journal of Australian Studies* 203

Matka E, Stubbs J and Powell D, *Domestic Violence: Impact of Legal Reform in NSW: Legislative Evaluation No 5* (NSW Bureau of Crime Statistics and Research 1989)

Matsuda M J, 'Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition' (1991) 43(6) *Stanford Law Review* 1183

McCall L, 'The Complexity of Intersectionality' in Grzanka P R (ed), *Intersectionality: Foundations and Frontiers* (Routledge 2019)

McCormack P D and Hirschel D, 'Race and the Likelihood of Intimate Partner Violence Arrest and Dual Arrest' (2018) 11(4) *Race and Justice* 434

McCulloch J, Pfitzner N, Maher J, Fitz-Gibbon K and Segrave M, *Victoria Police Trial of Digitally Recorded Evidence in Chief - Family Violence: Final Evaluation Report* (Monash University 2020)

McGregor R, 'Law Enforcement or Just Force? Police Action in Two Frontier Districts' in Reynolds H (ed), *Race Relations in North Queensland* (Department of History and Politics, James Cook University 1993)

McMullen S and Jayewardene C H S, 'Systemic Discrimination, Aboriginal People, and the Miscarriage of Justice in Canada' in Hazlehurst K M (ed), *Perceptions of Justice: Issues in Indigenous and Community Empowerment* (Aldershot 1995)

Memmott P, Stacy R, Chambers C and Keys C in association with Aboriginal Environments Research Centre, University of Queensland, *Violence in Indigenous Communities* (Commonwealth of Australia 2006)

Memmott P, Nash D, Baffour B and Greenop K, *The Women's Refuge and the Crowded House: Aboriginal Homelessness Hidden in Tennant Creek* (Institute for Social Science Research, The University of Queensland 2013)

Menzies C, 'Reflection on Research With, For and Among Indigenous Peoples' (2001) 25 *Canadian Journal of Native Education* 19

Miccio G K, 'A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement' (2005) 42 *Houston Law Review* 237

Migliore C, Ziersch E, Marshall J and Aird E, *Intervention Orders and the Intervention Response Model: Evaluation Report 2 (Process Evaluation)* (Office of Crime Statistics and Research, South Australian Attorney-General's Department 2014)

Miller R and Stuart F, 'Carceral Citizenship: Race, Rights and Responsibility in the Age of Mass Supervision' (2017) 21(4) *Theoretical Criminology* 532

Mills A J, Durepos G and Wiebe E, 'Encyclopaedia of Case Study Research' (SAGE 2010) <http://methods.sagepub.com/reference/encyc-of-case-study-research/n185.xml > accessed 28 April 2022

Mills L G, 'Killing Her Softly: Intimate Abuse and the Violence of State Intervention' (1999-2000) 113 *Harvard Law Review* 551

Mitchell L, *Domestic Violence in Australia—An Overview of the Issues* (Parliament of Australia 2011).

Moreton-Robinson A, *Talkin' up to the White Woman: Indigenous Women and Feminism* (University of Queensland Press 2000*)*

——, 'Towards an Australian Indigenous Women's Standpoint Theory: A Methodological Tool' (2013) 28(78) *Australian Feminist Studies* 331

——, *The White Possessive: Property, Power, and Indigenous Sovereignty* (University of Minnesota Press 2015)

Morgan C, 'Closure of Aboriginal Organisation Means Loss of First People's Voice: Former Co-Chairman', *Canberra Times* (Canberra, 29 October 2019) <https://www.canberratimes.com.au/story/6443649/closure-of-aboriginal-organisation-means-loss-of-first-peoples-voice-former-co-chairman/> accessed 25 March 2022

Mosby E and Thomsen G, 'Gatharr Weyebe Banabe Program: Seeking Behaviour Change in Indigenous Family Violence' (2014) 10(1) *The No to Violence Journal* 7

Mouzos J, *Indigenous and Non-Indigenous Homicides in Australia: A Comparative Analysis: Trends and Issues in Crime and Criminal Justice No 210* (Australian Institute of Criminology 2001)

Mugford J and Nelson D, *Violence Prevention in Practice: Australian Award-Winning Programs* (Australian Institute of Criminology Research and Public Policy Series 3, 1996)

Murji K, 'Sociological Engagements: Institutional Racism and Beyond' (2007) 41(5) *Sociology* 843

Murray S, 'The Origins and Development of the Australian Women's Refuge Movement' (2006) 19(1) *Parity* 11

Murray S and Powell A, *Domestic Violence: Australian Public Policy* (Australian Scholarly Publishing 2011)

Nakata M, 'The Cultural Interface' (2015) 36(S1) *The Australian Journal of Indigenous Education* 7

Nancarrow H, 'In Search of Justice for Domestic and Family Violence: Indigenous and Non-Indigenous Australian Women's Perspectives' (2006) 10(1) *Theoretical Criminology* 87

——, 'Restorative Justice for Domestic and Family Violence: Hopes and Fears of Indigenous and Non-Indigenous Australian Women' in Ptacek J (ed), *Restorative Justice and Violence Against Women* (Oxford University Press 2010)

——, *Unintended Consequences of Domestic Violence Law: Gendered Aspirations and Racialised Realities* (Palgrave MacMillan 2019)

Nancarrow H, Thomas K, Ringland V and Modini T, *Accurately Identifying the Person Most in Need of Protection in Domestic and Family Violence Law*: *Research Report 23/2020* (ANROWS 2020)

Nash J C, 'Re-Thinking Intersectionality' (2008) 89(1) *Feminist Review* 1

The National Council to Reduce Violence Against Women and their Children, *Domestic Violence Laws in Australia* (FAHCSIA 2009)

Nayton G, *The Archaeology of Market Capitalism: A Western Australian Perspective* (Springer 2011)

Neuberger B, 'National Self-Determination: A Theoretical Discussion' (2001) 29 *Nationalities Papers* 391

New South Wales Anti-Discrimination Board, *Study of Street Offences by Aborigines: A Report of the Anti-Discrimination Board in Accordance with Section 119 of the Anti-Discrimination Act 1977* (New South Wales Anti-Discrimination Board 1982

NITV Staff Writer, 'Pregnant Mother, Domestic Violence Survivor Jailed for Being Too Sick to Attend Court as a Witness' *SBS News* (Perth, 1 June 2019) <https://www.sbs.com.au/nitv/article/2019/06/01/pregnant-DV-survivor-jailed-being-too-sick-attend-court> accessed 29 December 2021

Northern Territory Opposition, ‘Submission to the Senate Inquiry into Domestic Violence (Domestic Violence in Australia Submission 164)’ (undated) <https://www.aph.gov.au/DocumentStore.ashx?id=4c2e742d-0ea6-4f7e-80a9-64a732dc023b&subId=304772> accessed 31 December 2021

NSW Police Force, ‘Domestic Violence Evidence in Chief (DVEC): Working Together to Build a Safer Community’ (undated) <https://www.police.nsw.gov.au/__data/assets/pdf_file/0003/531714/DVEC_Brochure.pdf > accessed 31 December 2021

NSW State Coroners Court, *Inquest into the Death of Norma** <https://coroners.nsw.gov.au/documents/findings/2014/Inquest_into_the_death_of_Norma.pdf> accessed 25 March 2021

Oakley R, ‘Institutional Racism and the Police Service’ (1999) 72(4) *The Police Journal* 285

O’Dell A, ‘Why Do Police Arrest Victims of Domestic Violence? The Need for Comprehensive Training and Investigative Protocols’ (2007) 15(3-4) *Journal of Aggression, Maltreatment & Trauma* 53

Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner for the Aboriginal and Torres Strait Islander Commission, *Indigenous Deaths in Custody 1989 – 1996* (Aboriginal and Torres Strait Islander Commission 1996)

O’Flynn J, ‘From New Public Management to Public Value: Paradigmatic Change and Managerial Implications’ (2007) 66(3) *The Australian Journal of Public Administration* 357

Okin S M, *Is Multiculturalism Bad for Women?* (Princeton University Press 1999)

O’Leary C, Putt J and Holder R, *Alice Springs Women’s Shelter: A History and Overview* (ANROWS 2016)

Olsen A and Lovett R, *Landscapes: Existing Knowledge, Practice and Responses to Violence against Women in Australian Indigenous Communities: State of Knowledge Paper* (ANROWS 2016)

Ombudsman Western Australia, *Investigation into Issues Associated with Violence Restraining Orders and their Relationship with Family and Domestic Violence Fatalities* (Ombudsman Western Australia 2015)

Oriola T B, ‘Biko Agozino and the Rise of Post Colonial Criminology (2006) 2(1) *African Journal of Criminology and Justice Studies* 104

Our Watch, ‘Understand the Primary Prevention Approach’, *Prevention Handbook* (Our Watch 2021) <https://handbook.ourwatch.org.au/resource-topic/how-to-engage-with-others-about-violence-against-women/understand-the-primary-prevention-approach/> accessed 25 March 2022

Page A, ‘Fragile Positions in the New Paternalism: Indigenous Community Organisations During the ‘Advancement’ Era in Australia’ in Howard-Wagner D,

Bargh M and Altamirano-Jiminez I (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018)

Parisi L and Corntassel J, 'In Pursuit of Self-Determination: Indigenous Women's Challenges to Traditional Diplomatic Spaces' (2007) 13(3) *Canadian Foreign Policy Journal* 81

Parliament of the Commonwealth of Australia, *A Better Family Law System to Support and Protect Those Affected by Family Violence* (Commonwealth of Australia 2017)

Permanent Bureau of the Hague, *Questionnaire on the Recognition and Enforcement of Foreign Civil Protection Orders: Summary of Member Responses and Possible Ways Forward* (Permanent Bureau of the Hague 2014)

——, *Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note Document No 7* (Permanent Bureau of the Hague 2021)

Policastro C, and Payne B K, 'The Blameworthy Victim: Domestic Violence Myths and the Criminalization of Victimhood' (2013) 22(4) *Journal of Aggression, Maltreatment & Trauma* 329

Porter A, 'Decolonizing Policing: Indigenous Patrols, Counter-Policing and Safety' 20(4) *Theoretical Criminology* 548

Porter A and Cunneen C, 'Policing Settler Colonial Societies' in Birch P, Kennedy M and Kruger E (eds), *Australian Policing: Critical Issues in 21st Century Police Practice* (Routledge 2020)

Potter H, *Intersectionality and Criminology: Disrupting and Revolutionizing Studies of Crime* (Routledge 2015)

Powers K, 'Yarning: A Responsive Research Methodology' (2004) 11(1) *Australian Research in Early Childhood Education* 37

Pratt A and Bennett S, *The End of ATSIC and the Future Administration of Indigenous Affairs* (Current Issues Brief no 4, 2004-05, Parliament of Australia) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/Current_Issues_Briefs_2004_-_2005/05cib04> accessed 7 January 2022

Price J, Langton M and Cashman J, *Ending the Violence in Indigenous Communities: National Press Club Address, November 2016* (Centre for Independent Studies 2016)

Prime Minister Malcolm Turnbull, George Brandis and Nigel Scullion, 'Joint Media Release (26 October 2017)' <https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/5596294/upload_binary/5596294.pdf;fileType=application%2Fpdf#search=%22media/pressrel/5596294%22> accessed 29 December 2021

Putt J, Holder R and O'Leary C, *Women's Specialist Domestic and Family Violence Services: Their Responses and Practices with and for Aboriginal Women: Final Report* (ANROWS 2017)

Quane H, 'The UN Declaration on the Rights of Indigenous Peoples: New Directions for Self-Determination and Participatory Rights' in Allen S and Xanthaki A (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011)

Queensland Health, 'Communicating Effectively with Aboriginal and Torres Strait Islander People' (Queensland Health Cultural Capability Team, September 2015) <https://www.health.qld.gov.au/__data/assets/pdf_file/0021/151923/communicating.pdf> accessed 28 April 2022

Quijano A, 'Coloniality of Power, Eurocentrism and Latin America' (2000) 1(3) *Nepantla: Views from South* 533

Rachovitsa A, 'The Principle of Systemic Integration in Human Rights Law' (2017) 66(3) *International and Comparative Law Quarterly* 557

Ragusa A, 'Rural Australian Women's Legal Help Seeking for Intimate Partner Violence: Women Intimate Partner Violence Victim Survivors' Perceptions of Criminal Justice Support Services' (2013) 28(4) *Journal of Interpersonal Violence* 685

Renes C M, 'The Stolen Generations, A Narrative of Removal, Displacement and Recovery' in Cornelius Martin Renes, *Lives in Migration: Rupture and Continuity* (Universitat de Barcelona 2011)

Reynolds H, *With the White People* (Penguin 1990)

——, 'The Unrecorded Battlefields of Queensland' in Reynolds H (ed), *Race Relations in North Queensland* (Department of History and Politics, James Cook University 1993)

Richardson D and Campbell J, 'Alcohol and Wife Abuse: The Effect of Alcohol on Attributions of Blame for Wife Abuse' (1980) 6(1) *Personality and Social Psychology Bulletin* 51

Rigakos G S, 'Constructing the Symbolic Complainant: Police Subculture and the Non-Enforcement of Protection Orders for Battered Women' (1995) 10(3) *Violence and Victims* 227

——, 'Situational Determinants of Police Responses to Civil and Criminal Injunctions for Battered Women' (1997) 3(2) *Violence Against Women* 204

Rigney L, 'Internationalization of an Indigenous Anticolonial Cultural Critique of Research Methodologies: A Guide to Indigenist Research Methodology and its Principles' (1999) 14(2) *Wicazo Sa Review* 109

Rimmer S H and Sawer M, 'Neoliberalism and Gender Equality Policy in Australia' (2016) 51(4) *Australian Journal of Political Science* 742

Risman B, ‘Gender as a Social Structure: Theory Wrestling with Activism’ (2004) 18 *Gender and Society* 429

Rosser B, ‘*’From Humble Beginnings…’ The Safe House Project Report: Sustainable Service Responses to Family Violence in Remote Aboriginal and Torres Strait Islander Communities in North Queensland* (Department of Social Services 2004)

Rowse T, *Indigenous Futures: Choice and Development for Aboriginal and Islander Australia* (University of New South Wales Press 2002)

Royal Commission into Family Violence, *Summary and Recommendations* (Victorian Government Printer March 2016)

——, *Volume V: Report and Recommendations* (Victorian Government Printer March 2016)

Ruttenberg M H, ‘A Feminist Critique of Mandatory Arrest: An Analysis of Race and Gender in Domestic Violence Policy’ (1994) 2 *American University Journal of Gender, Social Policy and the Law* 171

Sáez G, Ruiz M J, Delclós-López G, Expósito F and Fernández-Artamendi S, ‘The Effect of Prescription Drugs and Alcohol Consumption on Intimate Partner Violence Victim Blaming’ (2020) 17(13) *International Journal of Environmental Research and Public Health* 4747

Said E, *Orientalism* (Pantheon Books 1978)

Saldana J, *The Coding Manual for Qualitative Researchers* (3rd edn, SAGE 2016)

Sanders W, *Towards an Indigenous Order of Australian Government: Rethinking Self-Determination as Indigenous Affairs Policy* (Discussion Paper 230, Centre for Aboriginal Economic Policy Research, ANU 2002)

——, ‘Missing ATSIC: Australia’s Need for a Strong Indigenous Representative Body’ in Howard-Wagner D, Bargh M and Altamirano-Jiménez I (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018)

Saul M, ‘The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?’ (2011) 11(4) *Human Rights Law Review* 609

Sawer M, ‘Australia: The Fall of the Femocrat’ in Outshoorn J and Kantola J (eds), *Changing State Feminism* (Palgrave Macmillan 2007)

Schmidt H, ‘Conducting Research with First Nations and for First Nations: A Reflective Study of Aboriginal Empowerment within the Context of Participatory Research’ (PhD thesis, York University)

Schmidt J D and Sherman L W, ‘Does Arrest Deter Domestic Violence’ (1993) 36(5) *American Behavioral Scientist* 609

Schwartz M, ‘Redressing Indigenous Over-Representation in the Criminal Justice System with Justice Reinvestment’ (2013) 118 *Precedent* 38

Schwendinger H and Schwendinger J, ‘Defenders of Order or Guardians of Human Rights?’ (1970) 5(2) *Issues in Criminology* 123

Sercombe H, ‘The Face of the Criminal is Aboriginal’ (1995) 43 *Journal of Australian Studies* 76

Slemon S, ‘Unsettling the Empire: Resistance Theory for the Second World’ (1990) 30(2) *World Literature Written in English* 30

Smith L T, *Decolonizing Methodologies* (2nd edn, Zed Books 2012)

SNAICC, National Family Violence Prevention Legal Services, National Aboriginal and Torres Strait Islander Legal Services, *Strong Families, Safe Kids: Family Violence Response and Prevention for Aboriginal and Torres Strait Islander Children and Families* (SNAICC, National Family Violence Prevention Legal Services, National Aboriginal and Torres Strait Islander Legal Services, September 2017)

——, *The Family Matters Report 2021* (SNAICC 2021)

Sokoloff N J and Dupont I, ‘Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalised Women in Diverse Communities’ (2005) 11 *Violence Against Women* 38

Sosa L, *Intersectionality in the Human Rights Legal Framework on Violence Against Women: At the Centre or the Margins*? (Cambridge University Press 2017)

Spivak G, ‘Criticism, Feminism and the Institution: An Interview with Gaytari Chakravorty Spivak’ (1985) 10 -11(1) *Thesis Eleven* 175

Stalans L J and Finn M A, ‘How Novice and Experienced Officers Interpret Wife Assaults: Normative and Efficiency Frames’ (1995) 29(2) *Law and Society Review* 287

Stansfield R, Semenza D, Napolitano L, Gaston M, Coleman M and Diaz M, ‘The Risk of Family Violence After Incarceration: An Integrative Review’ (2020) 23(2) *Trauma, Violence and Abuse* 476

Stathopoulos M, Interview with Mosby E and Thomsen G, *Working with Indigenous Men in Behaviour Change Programs* (Australian Centre for the Study of Sexual Assault 2014).

Stavenhagen R, ‘Self-determination: Right or Demon?’ in Clark D and Williamson R (eds), *Self-Determination: International Perspectives* (Macmillan Press 1996)

Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage Key Indicators 2011* (Commonwealth of Australia 2011)

Stewart A, ‘Who are the Respondents of Domestic Violence Protection Orders?’ (2000) 33(1) *Journal of Criminology* 77

Stewart A and Maddren K, ‘Police Officers’ Judgements of Blame in Family Violence: The Impact of Gender and Alcohol’ (1997) 37 *Sex Roles* 921

Strakosch E, *Neoliberal Indigenous Policy: Settler Colonialism and the ‘Post-Welfare’ State* (Springer 2015)

Stubbs J, ‘Beyond Apology? Domestic Violence and Critical Questions for Restorative Justice’ (2007) 7(2) *Criminology and Criminal Justice* 169

——, ‘Relations of Domination and Subordination: Challenges for Restorative Justice in Responding to Domestic Violence’ (2010) 33(3) *UNSW Law Journal* 970

Sullivan P, *Belonging Together: Dealing with the Politics of Disenchantment in Australian Indigenous Policy* (Aboriginal Studies Press 2011)

——, ‘The Tyranny of Neoliberal Public Management and the Challenge for Aboriginal Community Organisations’ in Howard-Wagner D, Bargh M and Altamirano-Jimenéz I (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press 2018)

Tam D M, Tutty L M, Zhuang Z and Paz E, ‘Racial Minority Women and Criminal Justice Responses to Domestic Violence’ (2016) 31(4) *Journal of Family Violence* 527

Tatz C M and Higgins W, *The Magnitude of Genocide* (Praeger Security International 2016)

Tauri J, ‘Indigenous Critique of Authoritarian Criminology’ in Carrington K, Ball M, O’Brien E and Tauri J, *Crime, Justice and Social Democracy: International Perspectives* (Palgrave Macmillan 2013).

——, ‘The State, The Academy and Indigenous Justice: A Counter-Colonial Critique’ (PhD thesis, University of Wollongong 2016)

Taylor A, Ibrahim N, Wakefield S and Finn K, *Domestic and Family Violence Protection Orders in Australia: An Investigation of Information Sharing and Enforcement: State of Knowledge Paper* (ANROWS 2015)

Taylor A, Ibrahim N, Lovatt H, Wakefield S, Cheyne N and Finn K, *Domestic and Family Violence Protection Orders in Australia: An Investigation of Information-sharing and Enforcement with a Focus on Interstate Orders: Key Findings and Future Directions* (ANROWS 2017)

Teghtsoonian K and Chappell L, ‘The Rise and Decline of Women’s Policy Machinery in British Columbia and New South Wales: A Cautionary Tale’ (2008) 29(1) *International Political Science Review* 29

The Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Queensland Government 2015)

Thornberry P, 'Integrating the UN Declaration on the Rights of Indigenous Peoples into CERD Practice' in Allen S and Xanthaki A (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011)

Tohe L, 'There is No Word for Feminism in My Language' (2000) 15(2) *Wicazo Sa Review* 103

Trimboli L and Bonney R, *An Evaluation of the NSW Apprehended Violence Order Scheme* (NSW Bureau of Crime Statistics and Research 1997)

Turpel (Aki-Kwe) M E, 'Patriarchy and Paternalism: The Legacy of the Canadian State for First Nations Women' (1993) 6(1) *Canadian Journal of Women and Law* 174

UN Human Rights Office of the High Commissioner, 'End of Mission Statement by Dubravka Šimonović, United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, on Her Visit to Australia from 13 to 27 February 2017 '(*UN Office of the High Commissioner*, 27 February 2017) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21243&LangID=E> accessed 2 December 2021

Victorian Auditor-General's Office, *Accessibility of Mainstream Services for Aboriginal Victorians* (Victorian Government Printer May 2014)

Victorian Government, 'Aboriginal Self-Determination: Aboriginal Self-Determination and the Family Violence Reform' (2022) <https://www.vic.gov.au/family-violence-reform-rolling-action-plan-2020-2023/reform-principles/aboriginal-self-determination> accessed 19 April 2022.

Victorian Indigenous Family Violence Task Force, *Final Report* (Aboriginal Affairs Victoria 2003)

Voce I and Bricknell S, *Female Perpetrated Intimate Partner Homicide: Indigenous and Non-Indigenous Offenders* (Australian Institute of Criminology 2020)

Walker O P, 'Decolonizing Conflict Resolution: Addressing the Ontological Violence of Westernization' (2004) 28 *American Indian Quarterly* 527

Walklate S, Fitz-Gibbon K and McCulloch J, 'Is More Law the Answer? Seeking Justice for Victims of Intimate Partner Violence through the Reform of Legal Categories' (2018) 18(1) *Criminology & Criminal Justice* 115

Watego C, *Another Day in the Colony* (University of Queensland Press 2021)

——, 'Who are the Real Criminals? Making the Case for Abolishing Criminology' (43rd John Barry Memorial Lecture, University of Melbourne, 29 November 2021)

Watego C, Macoun A, Singh D and Strakosch E, ‘Carceral Feminism and Coercive Control: When Indigenous Women Aren’t Seen as Ideal Victims, Witnesses or Women’ *The Conversation* (25 May 2021).

Watson I, *Aboriginal Peoples. Colonialism and International Law: Raw Law* (Routledge 2015)

——, *Indigenous Peoples as Subjects of International Law* (Routledge 2018)

Watt K A, ‘Domestic Violence Fatality Review Teams: Collaborative Efforts to Prevent Intimate Partner Femicide’ (PhD thesis, University of Illinois at Urbana-Champaign 2010)

Wainwright S and Gooch D, ‘Domestic Violence Victim Locked Up Because She Couldn’t Attend Court Shines Light on NSW Justice System’ *ABC News* (Broken Hill, 6 June 2018) <https://www.abc.net.au/news/2018-06-06/domestic-violence-victim-locked-up-because-couldnt-attend-court/9835050> accessed 31 December 2021

Wakefield S and Taylor A, *Judicial Education for Domestic and Family Violence: State of Knowledge Paper* (ANROWS 2015)

Walsh T, ‘Public Nuisance, Race and Gender’ (2018) 26(3) *Griffith Law Review* 334.

Wangmann J, ‘’She said…’ ‘He said…’: Cross Applications in NSW Apprehended Domestic Violence Order Proceedings’ (PhD thesis, University of Sydney 2009)

Weaver V M and Lerman A E, ‘Political Consequences of the Carceral State’ (2010) 104(4) *American Political Science Review* 817

Webster K, *A Preventable Burden: Measuring and Addressing the Prevalence and Health Impacts of Intimate Partner Violence in Australian Women: Key Findings and Future Directions* (ANROWS 2016)

West R, Stewart L, Foster K and Usher K, ‘Through a Critical Lens: Indigenist Research and the Dadirri Method’ (2012) 22(11) *Qualitative Health Research* 1582

Wilcox K, *Recent Innovations in Australian Protection Order Law: A Comparative Discussion (*Australian Domestic and Family Violence Clearinghouse 2010)

Williams M S, ‘Introduction’ in *Recognition Versus Self-Determination: Dilemmas of Emancipatory Politics* (UBC Press 2014)

Williams M S and Gilbert R, *Reducing the Unintended Impacts of Fines: Current Initiatives Paper 2* (Indigenous Justice Clearinghouse 2011)

Williams Jnr R A, ‘Taking Rights Aggressively: The Perils and Promise of Critical Legal Theory for Peoples of Color’ (1987) 5(1) *Law and Inequality* 103

Williams S, ‘Indigenous Values Informing Curriculum and Pedagogical Praxis’ (PhD thesis, Deakin University 2007)

Williams-Mozley J, ‘Overpolicing: A Critical Commentary on its Conception and Utility in Australian Criminological Explanations about Aboriginal Over-Representation in Police Arrest and Custody Rates’ (PhD thesis, Charles Sturt University 2009)

Willis M, ‘Non-Disclosure of Violence in Australian Indigenous Communities’ (2011) 405 *Trends and Issues in Crime and Criminal Justice* 1

Wing A K, *Critical Race Feminism: A Reader* (New York University Press 1997/2003)

Wohlan C, *Aboriginal Women’s Interest in Customary Law Recognition - Background Paper No.13* (Law Reform Commission of Western Australia 2005)

Wolfe P, ‘Nation and Miscegenation: Discursive Continuity in the Post-Mabo Era’ (1994) 36 *Journal of Social and Cultural Practice* 93

——, *Settler Colonialism and the Transformation of Anthropology: The Politics and Poetics of an Ethnographic Event* (A&C Black 1999)

Women’s Legal Services NSW*, A Practitioner’s Guide to Domestic Violence Law in NSW* (Women’s Legal Resources Ltd 2018)

Women’s Safety and Justice Taskforce, *Options for Legislating Against Coercive Control and the Creation of a Standalone Domestic Violence Offence: Discussion Paper 1 Summary* (Queensland Government 2021)

Xanthaki A, *Indigenous Rights and United Nations Standards: Self-Determination, Culture and Land* (Cambridge University Press 2007)

——, ‘The UN Declaration on the Rights of Indigenous Peoples and Collective Rights: What’s the Future for Indigenous Women’ in Allen S and Xanthaki A (eds), *Reflections on the UN Declaration on the Rights of Indigenous Peoples* (Hart Publishing 2011)

Yamawaki N, Ochoa-Shipp M, Pulsipher C, Harlos A and Swindler S, ‘Perceptions of Domestic Violence: The Effects of Domestic Violence Myths, Victim’s Relationship with her Abuser, and the Decision to Return to her Abuser’ (2012) 27(16) *Journal of Interpersonal Violence* 3195

Yaoming Yang D, ‘Policing Indigenous Australians in the Northern Territory: Implications of the “Paperless Arrest”’ (2015) 8(18) *Indigenous Law Bulletin* 21

Yeong S and Poynton S, ‘Evaluation of the 2015 Domestic Violence Evidence-in-Chief (DVEC) Reforms’ (2017) 206 *Contemporary Issues in Crime and Criminal Justice* 1

Yeong S and Poynton S, *Can Pre-Recorded Evidence Raise Conviction Rates in Cases of Domestic Violence?* (Life Course Centre Working Paper 2019-18, 27 August 2019)

Young I M, ‘Two Concepts of Self-Determination’ in May S, Modood T and Squires J (eds), *Ethnicity Nationalism and Minority Rights* (Cambridge University Press 2009)

Young M, Biles J and Dobson A, ‘The Effectiveness of Legal Protection in the Prevention of Domestic Violence in the lives of Young Australian Women’ (2000) 148 *Trends and Issues in Crime and Criminal Justice* 1

Young R J C, *Colonial Desire: Hybridity in Theory, Culture and Race* (Routledge 1995)

——, *Postcolonialism: An Historical Introduction* (John Wiley & Sons 2016)

Yuval-Davis N, ‘What is ‘Transversal Politics’?’ (1999) 12 *Soundings* 94

——, ‘Power, Intersectionality and the Politics of Belonging’ in Harcourt W (ed) *The Palgrave Handbook of Gender and Development* (Palgrave Macmillan 2016)