QCDFVRe@der

Summer 2019

In this Edition

Director's Message

The temperature has ramped up and once again I can't believe how quickly a year has passed. In saying that, as we develop our '2019 in Review' Report (look out for this in the new year) the frenetic range and pace of activities we undertook in the past twelve months are evident.

So it is understandable why the year did indeed seem to speed by! I would suggest you are also reflecting on the frantic pace of your work over 2019? Yet, as always, our collective work is a source of pride, and this is particularly so as we remind ourselves of the sustained advocacy which we have recognised over the recent 16 Days of Activism.

Our research endeavours have not slowed down as the year has dwindled. Since our last Re@der we have concluded a number of evaluative studies (national, state and local) including White Ribbon, Walking with Dads, a Review of the Rockhampton Integrated Service Response and a Sexual Assault Response Team Trial.

In recent months, we completed an exploration of models for working with children with mental health problems including those impacted by domestic and family violence. A project with the Queensland Indigenous Family Violence Legal Service - developing an evaluation framework for their case management model - was also concluded, and near finalisation is a 'Caring Dads' evaluation to be completed by the year's end.

Evaluative studies and research underway include an evaluation of the Women's Health and Wellbeing Support Services along with the very early stages of an evaluation of an Aboriginal and Torres Strait Islander domestic and family violence service. We are also exploring contemporary practice approaches to women who use force, undertaking an evaluation of men's behaviour change programs and mapping progress of an Integrated Service Response.

In emerging areas of research, a major focus is the area of strangulation. Strangulation has been termed 'the ultimate form of coercive control' and is a strong indicator of lethality in intimate partner relationships- yet there is still little research in this space. Those who follow us on social media will be aware that Dr Brian Sullivan and I were invited to join the Advisory Board of the Australian Institute for Strangulation Prevention, launched in August. Chaired by Magistrate Linda Bradford-Morgan the Australian Institute for Strangulation Prevention is the first of its kind outside of the United States. It has been established through the work of the Red Rose Foundation and their endeavours to raise awareness relating to strangulation. It aims to see specific non-lethal strangulation legislation introduced into every State and Territory in Australia and will provide specialist non-lethal strangulation intervention and prevention training and resources

I was very privileged to link with diverse stakeholders in San Diego to learn more about this complex and insidious phenomenon in late October/ early November. I joined others, including a Queensland delegation from the Red Rose Foundation, participating in the Advanced Four Day Training for Communities Seeking to Implement Best Practices. The California based Training Institute on Strangulation Prevention facilitated the training which culminated in an international first: a signed partnership between the San Diego Institute and the Australian Institute for Strangulation. Congratulations to our long-term QCDFVR collaborator, Betty Taylor, for her sustained advocacy in this area. We are thrilled to be also embarking on a range of research projects partnering with the Red Rose Foundation to further knowledge in this area. Watch this space in relation to that research.

In the meantime, this edition of the Re@der explores facets of non-fatal strangulation across a number of pages. You can glean a taste of "the literature" on page 3, then learn more about Betty's perspective on what else could be done to improve the safety of strangulation victims on page 6. Strangulation as a tactic of control occurs in a range of relationships, and this is investigated to a limited extent on page 9 where a small study from the United States is summarised.

As we anticipate 2020 we've been working in the background on paving the way for the May Queensland Indigenous Family Violence Prevention Forum. Expressions of interest to present at the event have closed and we are building the first draft of the program for what promises to be another wonderful event. On this note, our staff took the opportunity to spend time with the engaging Lynette Anderson of Helem Yumba. Lyn kindly shared her perspectives which you read in this edition's At the Coalface on page 11.

On the Education front since the last quarter, we continued with professional development and accredited Vocational Education Training across Queensland. The new undergraduate unit is available this term, and suite of postgraduate units now spans across the academic year. On page 15 we share a student's experience of completing her CQUniversity Graduate Certificate in Facilitating Men's Behaviour Change.

One of our Lecturers, Dr Nicola Cheyne, shares some contemporary thinking about reproductive coercion in this edition too. Nicola attended the Children by Choice Unplanned Pregnancy and Abortion Conference and on page 16 she examines the range of relationships in which reproductive coercion may occur.

Finally, on a study-related note, we thank Kathryn, who is not only a CQUniversity Law student but a domestic violence sector practitioner for sharing one of her assignments with us. In our last edition of the Re@der, we navigated the concept of 'unintended consequences' and we do so again on page 19 thanks to Kathryn's piece on Domestic Violence Applications, awarding of costs and mediation in civil matters.

On behalf of the QCDFVR team, I wish our readers the gifts of peace, joy and safety this festive season, and beyond. We also extend our thoughts to those who may be in situations where this is not possible and commit to continuing our work to end violence against women as we 'melt' into 2020.

Dr Heather Lovatt

Director
Queensland Centre for Domestic and Family Violence Research

Non-fatal Strangulation - An Overview

Non-fatal strangulation on the edge of a homicide

Gwinn, Strack, & Mack, 2014

Strangulation is pressure put on the neck, such that there is reduction of blood flow through the brain or constriction of breathing through the airway in the throat resulting in disruption of brain function by asphyxiation. Pressure is sustained, not instant so time/force/contact area combines to sustain oxygen obstruction to the brain *(Strack, et al, 2014).*

Strangulation is a gendered crime with perpetrators of strangulation almost always a man *(Strack, et al, 2014).* Many offenders strangle their victims to let them know "they can kill them at any time" *(Gwinn, Strack, & Mack, 2014).* Strangulation features as a high indicator of lethality with victims who are strangled once up to 800% more likely to be killed by the same perpetrator *(Strack, et al, 2014).* Police and others working in the domestic and family violence field use risk assessment tools to identify strangulation as a key indicator of increased risk of harm due to domestic and family *(Douglas & Fitzgerald, 2014).*

Signs and symptoms of strangulation

A wide range of signs and symptoms of strangulation have been identified (see table on next page), but at the same time these may not be easily detected *(Douglas, 2018; Douglas & Fitzgerald, 2014; Pritchard, Reckdenwald, & Nordham, 2017)* with no external signs of immediate injury in up to 40% of NFS cases. Victims may also be physically unresponsive and experiencing PTSD symptoms following non-fatal strangulation *(Pritchard, Reckdenwald, & Nordham, 2017).* The lack of apparent injuries means that non-fatal strangulation is often missed, misidentified or minimised by victims, police and medical staff *(Douglas, 2018).*

Signs and symptoms

FACE
- Petechiae (tiny red spots- slightly red or florid)
- Scratch marks
- Facial drooping
- Swelling

CHEST
- Chest pain
- Redness
- Scratch marks
- Bruising
- Abrasions

NEUROLOGICAL
- Loss of memory
- Loss of consciousness
- Behavioural changes
- Loss of sensation
- Extremity weakness
- Difficulty speaking
- Fainting
- Urination
- Defecation
- Vomiting
- Dizziness
- Headaches

VOICE AND THROAT CHANGES
- Raspy or hoarse voice
- Unable to speak
- Trouble swallowing
- Painful to swallow
- Clearing the throat
- Coughing
- Nausea
- Drooling
- Sore throat

EYES AND EYELIDS
- Petechiae to eyeball
- Petechiae to eyelid
- Bloody red eyeball(s)
- Vision changes
- Droopy eyelids

SCALP
- Petechiae
- Bald spots

(from hair being pulled)
- Bump to the head

(from blunt force trauma or falling to the ground)

EARS
- Ringing in ears
- Petechiae on earlobe(s)
- Bruising behind the ear
- Bleeding in the ear

BREATHING CHANGES
- Difficulty breathing
- Respiratory distress
- Unable to breathe

MOUTH
- Bruising
- Swollen tongue
- Swollen lips
- Cuts/ abrasions
- Internal petechiae

Source: Adapted from Signs and Symptoms of Strangulation Factsheet available here.

Health Impacts

Strangulation is responsible for a range of health impacts that can appear within days or take years to emerge *(De Boos, 2019; Douglas, 2018; Strack, et al, 2014; Taliaferro, Hawley, McClane, & Stack, 2009).*

Health impacts include:

- **Internal injuries**
- **Haematomas**
- **Fractured hyoid bone**
- **Vocal cord immobility**
- **Stroke**
- **Airway obstruction**
- **Respiratory complications**
- **Anoxic (traumatic) brain damage**
- **Delayed swelling**
- **Displaced laryngeal fractures**
- **Carotid dissection**
- **Delayed death from blood clots, stroke and brain damage caused by lack of oxygen**

Strangulation is also commonly associated with sexual assault. For example, non-fatal strangulation was reported by 7.4% of victims attending a sexual assault centre in Western Australia *(Zilkens, et al, 2016)*.

Douglas and Fitzgerald (2013) noted that a Queensland study of domestic violence orders (DVO) where women who alleged strangulation also made allegations of other offences, most of which (87 %) were violent offences, including other forms of assault, sexual assault and threats of violence or murder.

Non-fatal Strangulation

Queensland

In Queensland **choking, suffocation or strangulation in a domestic setting** is a stand-alone offence under the Criminal Code 1899, with a maximum penalty of seven years imprisonment *(Queensland Courts, 2019)*. The Queensland Sentencing Advisory Council (*QSAC*) notes that the offence must be committed without the victim's consent; and the victim and perpetrator must be in a domestic relationship, or the offence must be associated with domestic violence (*QSAC, 2019*).

Information on non-fatal strangulation is scarce (*QSAC, 2019*), but we do know, that in Queensland:

- 12% of women (from 328 couples) applying for a DVO reported being strangled by their partner at least once (*Douglas & Fitzgerald, 2013*); and
- 1687 offenders faced court on the charge of strangulation from July 2019-Sep2019; with 793 of these imprisoned (*Queensland Courts, 2019*)

Research and training

It is clear that there is still much to learn: there is still a dearth of research in this field and adequate specialised training and integrated responses, so victims can be more effectively screened for strangulation injuries that may otherwise be overlooked (*Douglas & Fitzgerald, 2014; Pritchard, Reckdenwald, & Nordham, 2017*).

QCDFVR has a particular interest in furthering research about non-fatal strangulation. To this end, QCDFVR is negotiating a Memorandum of Understanding with the Red Rose Foundation. A project that has been commenced is evaluating the training that has been delivered by the Red Rose Foundation, in conjunction with the San Diego Training Institute on Strangulation Prevention.

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Betty Taylor

Strangulation: More Deadly Than We First Believed

Betty has worked across the domestic violence sector for the past 31 years. During that time, Betty has managed front line services, developed and delivered training programs, contributed to the development of best practice policy and practice, and advocated for law reform on various issues. Betty has developed an advanced approach to domestic violence risk and safety management which has been adopted by both government and non-government.

Over many years Betty has developed an expert knowledge on non-lethal domestic violence strangulation, developing training and practice approaches to address this. She has served on the Child Death Review Panel and the Domestic Violence Death Review Board. She is the CEO of the Red Rose Foundation and a founding member of the Expert Panel of the Australian Institute for Strangulation Prevention. She has been instrumental in the formation of a training and research partnership with the Training Institute for Strangulation Prevention USA.

Since the handing down of the *Not Now Not Ever* Report in 2015 (The Special Taskforce), the Queensland Government has been on a fast track to ensure all 121 of its recommendations are implemented. This was achieved by November 2019. This is certainly worthy of applause, for a government who has taken the critical issue of domestic violence seriously.

Is it now time to take stock of what has been achieved: are there still critical problems that impinge on the safety of victims that have arisen over the past 5 years? I believe there are, and none more so than in the Criminal Justice System.

> *"The law needs to be accessible, so that both victims and perpetrators of domestic and family violence can understand the court process and are fully supported in navigating their way through the justice system. Justice responses must be timely, effective and adapted to the complexities and sensitivities that govern the lives of those affected by domestic and family violence."*
>
> (The Special Taskforce, 2015, p. 13)

The Red Rose Foundation made a submission to the Special Taskforce around several pertinent issues including the establishment of a specific crime to address non-lethal strangulation, and the *Not Now Not Ever* Report (The Special Taskforce, 2015) highlighted gaps within the Criminal Code. It has been acknowledged through research and various death review reports that non-lethal strangulation is now seen as a significant indicator of future homicide and can cause serious long-term permanent health issues for victims.

The offence of choking, suffocation or strangulation in a domestic setting was established under 315A of the *Criminal Code* (Qld) and was introduced into law on 5th May 2016.

A report from the Queensland Sentencing Advisory Council (QSAC) (QSAC, 2109) shows that since May 2016 there have been 482 prosecutions for the offence of strangulation. During the same period, 2580 strangulation offences were lodged in the Magistrates Court. However, these charges can only be finalised upon indictment in the Supreme or District Courts.

The research from the QSAC reveals 98.3 per cent of offenders were men.

Strangulation: More Deadly Than We First Believed

> **"The research from the Queensland Sentencing Advisory Council reveals 98.3 per cent of offenders were men."**

In recent times serious problems have arisen with Section 315A of the Criminal Code: *choking, suffocation or strangulation in a domestic setting* and we believe an urgent review is needed.

Our knowledge and understanding of non-lethal strangulation have grown exponentially over the past five years and we are now in a position of advanced knowledge, backed by international research and expertise. Over the past three years, The Red Rose Foundation has hosted Dr. Bill Smock and Gael Strack esq. from the Training Institute on Strangulation Prevention USA to Australia for training and consultation. As a result, almost 1000 people have benefited from their exposure to more in-depth knowledge around non-lethal strangulation.

Our case for a review of Section 315A.

Two of the most critical issues are:

- the inclusion of a definition of strangulation and smothering into legislation and
- the removal of consent to choking, smothering and strangulation within Section315A.

Firstly, I refer to the Inquest into the death of Tracy Beale.

Tracy Beale, aged 45 years, died the morning of 21st January 2013. The medical finding was that her likely primary cause death was asphyxia and a possible vasovagal reflex. On the 28th March 2019 Coroner David O'Connell delivered the findings of the inquest into the death of Tracy Beale and made the following recommendation:

That the Attorney-General, after allowing submissions from appropriate interested parties, review Criminal Code s.315A to determine if it is adequate to deal with the incidence of so called vasovagal reflex, and whether the types of neck compression specified in the provision should be defined in the legislation (Queensland Courts, 2019, p. 8)

The Queensland Government's response to the Coroner included *"The ordinary meaning of these words (strangulation) clearly contemplates the act of squeezing or constricting the neck area"* (*Queensland Department of Justice and Attorney General,* 2019). No changes to 315A were proposed.

At a recent District Court hearing in Townsville, 30th August 2019, the sitting judge directed the jury to return a verdict of not guilty and this occurred. This direction was not based on the innocence of the accused but rather a lack of agreement and expert understanding of strangulation.

The court heard that "*As is clear from the section itself, there is no definition of the words 'choke' 'suffocate' or 'strangle' and those words are not otherwise defined within provisions of the Criminal Code." (District Court of Queensland,* 2019, p. 4).

The court then referred to a strangulation case from the ACT whereby the definition contained within the Macquarie Dictionary was used as a substitute definition: The conclusion of the court was that the definition is a cessation of *"an ability to draw breath in any way, not simply a restriction in the ability to draw breath" (District Court of Queensland,* 2019, p. 9).

This is not a medically acknowledged definition of strangulation which outlines any blockage of both oxygen and blood flow that can be lethal (sometimes months later).

More recently a case whereby the offender stuck his fingers down his victim's throat was again determined not to constitute strangulation.

Recently, the Red Rose Foundation has been contacted by several people and organisations concerned about issues relating to the absence of a definition within 315A.

In addition to the lack of using expert witnesses within court trials, some of the issues raised included the deficits in understanding about

- what strangulation is
- the severity of strangulation across the justice system
- that visible injuries are not the best indicator that strangulation has occurred as many injuries are internal
- the evidence needed to successfully prosecute a case and
- the experience of many victims of strangulation who have endured strangulation on multiple occasions. Many believing they would die.

We are proud that Queensland was the first State in Australia to introduce non-lethal strangulation law but also of Australia as the first country outside of the USA to do so. However, we are also the only place that does not include a definition of strangulation within our statute. This needs to change.

The definition adopted into Federal Law in the USA states (*United States Code*, 2011):

(a) *Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows:*

(8) *Assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate, by a fine under this title, imprisonment for not more than 10 years, or both.*

(b) *Definitions– In this section—*

(4) *The term "strangling" means intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim; and*

(5) *The term "suffocating" means intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.*

The Red Rose Foundation has now established the Australian Institute for Strangulation Prevention to further advance our knowledge and understanding of this most serious of issues. We have formed a partnership with the Training Institute of Strangulation Prevention USA which will allow us to work with leading experts across the globe to research and learn together to address this most serious form of violence.

When we know more, we must do more.

I leave you with the words of Casey Gwinn President and Co-Founder of Hope Alliance and former City Attorney San Diego: "Passing laws is easier than implementing them".

Continue reading with the below sources:

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Same sex relationships, coercive control and strangulation

This research is based on data gathered from a single police department within a specific time frame in a single US police jurisdiction and, thus, cannot be said to be representative of intimate partner violence (IPV) victims. It does not purport to contribute to understanding the prevalence of strangulation among various couple configurations but does contribute to understanding police officer identification (or victim report) of strangulation among intimate partner violence cases.

An amended and abridged research summary:

Messing, J.T, Thomas, K.A, Ward-Lasher, A.L, & Brewer, N.Q. (2018). A Comparison of Intimate Partner Violence Strangulation Between Same-Sex and Different-Sex Couples. *Journal of Interpersonal Violence,* 886260518757223

This Study

Given the prevalence of coercive control in same-sex relationships and the relationship between coercive control and strangulation, the authors identified a gap in understanding nonfatal strangulation within this population.
Informed by the literature, the objectives of this cross-sectional, observational research were to
(a) examine nonfatal strangulation and coercive control among same-sex couples and
(b) identify whether and to what extent the identification of strangulation and coercive control in police reports of intimate partner violence (IPV) differs between same-sex and different-sex couples.

Nonfatal Strangulation and Coercive Control

According to the US 2012 National Intimate Partner and Sexual Violence Survey (NISVS), nearly 10% of heterosexual women in the general population reported having been strangled by an intimate partner. There are several unique aspects of nonfatal strangulation that hinder detection by police, health care providers, and other first responders thereby furthering its effectiveness as a tool of coercive control:

- The physical injuries caused by nonfatal strangulation often are invisible to the naked eye; detection requires strategies such as using alternative light sources.
- When bruising and other marks are visible on the skin, they often do not appear until days after the assault.
- The many other physical effects associated with strangulation are often delayed; when they do appear—regardless of timing—neither health care providers nor survivors themselves are likely to connect the effects to the strangulation incident.
- Effects such as confusion, memory loss, and panic can compromise the credibility of a survivor's story.

These barriers to detection can result in misdiagnoses, a lack of documentation that could be used in criminal investigations and court cases, and a failure to connect survivors with necessary services. Thus, nonfatal strangulation is a powerful weapon of control that evades detection and, so is relatively easy to get away with. This situation is problematic in and of itself, but especially given that coercive control is positively associated with violence severity and homicide risk.

Nonfatal Strangulation and Coercive Control Among Same-Sex Couples

Although research on nonfatal strangulation has increased considerably in the last 15 years, the vast majority focuses on female survivors in different-sex relationships. Very little is known about nonfatal strangulation among gay men and lesbians (i.e., same-sex couples, sexual minorities).
Similar to strangulation, the majority of research on coercive control has focused on heterosexual relationships; however, this trend is slowly changing.

For example, evidence from the 2012 US NISVS indicates lifetime prevalence of coercive control is

- **48.4% among lesbians,**
- **68.8% bisexual women,**
- **45.2% among gay men, and**
- **48.2% among bisexual men.**

Method

Police department data on intimate partner domestic violence (IP-DV) cases where patrol officers filed an official report were collected (2011-2013) from one police jurisdiction in the Southwest United States and analysed in 2016.

Discussion and Implications

The authors suggest that this is the first study to examine strangulation and coercive control in same-sex intimate partner relationships, demonstrating that strangulation occurs across couple configurations.

They conclude that based on the findings of this study, strangulation is indeed associated with coercive control; the odds of police officers identifying at least one coercive controlling behaviour (i.e., intimidation, harassment, terrorising pets/ children, stalking, or restricting use of communication) are 70% higher in cases where they also identify strangulation. Further, two coercive controlling behaviours (intimidation and restricting communication) were more likely among different-sex couples.

It is possible that, for couples with police involvement, there is less coercive control among same-sex couples than among different-sex couples.

It is also possible coercive control is occurring among same-sex couples at similar or higher rates than among different-sex couples, but police officers are not identifying it, or victims are not reporting it.

The authors note that police officer bias with marginalised groups is prevalent and problematic to criminal justice intervention and results in a lack of follow-up medical care. Police officers reported more injury among same-sex couples, but less strangulation. Similar to the conclusion regarding coercive control, it is possible that strangulation is occurring less often among same-sex couples who have police involvement in their violent intimate relationships.

However, the findings from previous research that indicate there is an association between coercive control and strangulation, and that the prevalence of coercive control is higher among lesbian and gay individuals would lead us to believe that nonfatal strangulation is at least as prevalent among same-sex couples. Further, given the inconsistency regarding injury and strangulation in these data, it may be that police are identifying strangulation and coercive control less often in same-sex couple cases (or victims are reporting this less often).

Prior research has indicated that police officers treat IP-DV between same-sex couples less seriously than IP-DV among different-sex couples, and treat female same-sex IP-DV less seriously than male same-sex IP-DV.

Such differential treatment may lead to a lack of screening and identification of strangulation, homicide risk, and other forms of dangerous IPV - especially considering police and other first responders typically receive almost no training in same-sex IP-DV.

Rates of reported medical treatment after intimate partner non-fatal strangulation are generally low but reported to be much higher when trained law enforcement officers refer strangulation victims for forensic evaluation.

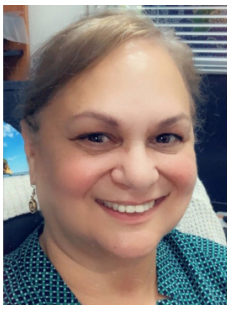
Thus, the potential for lack of detection of non-fatal strangulation due to police bias, victim non-report, or lack of training impedes greatly on timely referrals to medical treatment and may result in a subsequent lack of detection and treatment of the negative physical health effects of strangulation, including stroke and long-term neurological problems.

The prevalence of recorded strangulation in this sample is low compared with studies of abused women, indicating that police officers may not identify all non-fatal strangulation at the scene of IP-DV incidents.
Future research should focus on identifying and understanding the prevalence, characteristics, and health implications of non-fatal strangulation among gender and sexual minorities.

Limitations

This research is limited in several ways.
Not all victims of IPV are seen by police, not all police calls result in documentation, and not all injured IPV victims are referred for medical treatment that may detect non-fatal strangulation.

- The sample was gathered from a single police department within a limited time frame and, thus, cannot be said to be representative of intimate partner violence (IPV) victims.
- This research examined police-identified strangulation, but the true prevalence of strangulation in this sample is not known, so the proportion of strangulation that police are identifying cannot be estimated.
- It is likely that police are not identifying all strangulation; they may, in particular, be under-identifying strangulation among same-sex couples.



At the Coalface

Manager of Helem Yumba, the Central Queensland Aboriginal and Torres Strait Islander Healing Place, Mrs Lynette Anderson is a Gangaalu/ Bitjarra woman from the Central Queensland region. Lynette has a diverse background, having previously worked in community engagement with the Fitzroy Basin Elders. Lynette taught business studies in the vocational sector, and was Head of Department of the Indigenous Education and Student Support at CQUniversity.

What are the origins of the Helem Yumba service?

Helem Yumba was established in 2002 in response to the abnormally high numbers of Aboriginal and Torres Strait Islander youth suicides in Rockhampton. A consortium, comprising community individuals, community-based organisations and government agencies, was formed to discuss and interrogate the underpinning issues related to the suicides. Intergenerational trauma as a result of colonisation was found to be the underlying and primary factor that manifested in Aboriginal and Torres Strait Islander people feeling dispossessed, disenfranchised and disconnected and that Aboriginal and Torres Strait Islander young people were particularly vulnerable in this regard.

As such the concept of Helem Yumba from the beginning was very much about helping our people recover through our cultural healing.

However, when the funding became available, that is, when Government got involved, the healing service was placed under the Domestic and Family violence portfolio, a program area in the Queensland Government, so that set the chain reaction for a clinical DV type service.

The Central Queensland Aboriginal and Torres Strait Islander consortium against Domestic and Family violence had a combination of people from community, from government and across the sector but importantly it included Torres

> **“Helem Yumba from the beginning was very much about helping our people recover through our cultural healing.”**

Strait Islander People and Aboriginal people. This group came up with the name Helem Yumba. Helem is a Torres Strait Islander Creole word for healing, and Yumba is a broad Murri word for place.

What is your background with Helem Yumba?

When I came into the service in 2005 it was very clinical, in terms of the tools and the therapeutic process, but at the same time the service was trying to incorporate men into this very western model that was based on the Duluth model. So, the organisation struggled with trying to deliver this type of service to our people. Counselling is not a concept within our traditional ways: we've had our own ceremonies and protocols to deal with conflicts or any sort of emotional or family issues within our culture and traditions.

When I started at Helem Yumba there were only 10 clients. We realised that we had to do a complete re-start. We had to go back to community, talk to community and try to navigate

between the community and the government to identify mutually beneficial outcomes. What did our people need? What did Government require from us?

A big part of my job being a manager of this organisation is giving the help needed to navigate the coming together of the Government's expected deliverables and what the community needs and aspirations are, or what is still needed around healing.

We've quite confidently come to that point now to say we are able to coalesce our cultural healing with a clinical practice. That is, ensuring both cultural and clinical safety. It has taken a long time to get here. I think that there is a lot happening broadly within and across Aboriginal and Torres Strait Islander families and communities, particularly, around deconstructing the whole colonial, mainstream way of existing and then rebuilding in a way that can embrace modernity, while still ensuring our cultural ways are very strongly respected and adhered to.

What services does Helem Yumba offer?

We don't ordinarily focus on children because there are other services around that can support families with their children. Our focus is on the adults because they are the primary care givers and educators. Our support of parents, care givers or any other senior and significant people in families to have skills, tools and knowledge helps to provide safety and encourage harmony in families.

Our target group is Aboriginal and Torres Strait Islander People - individuals, families, community groups, communities as a whole. Our catchment is the area within and around Rockhampton, including Woorabinda and Mount Morgan, basically the Livingstone and the Rockhampton Local Government and the Woorabinda Aboriginal Shire areas.

However, because people are connected right across Queensland, particularly across Central Queensland, where there is movement of people, we provide services in Biloela, Moura and Barcaldine.

This could be through electronic media such as video conferencing, Skyping or Face timing, or through telephone counselling.

What is a case study where this has been effective?

We had a very successful case with a man who was a user of violence in Barcaldine and there was nothing available for him out there to support him and help him re-unify with his family. So he found us online, and Helem Yumba's male worker and the client started telephoning. The client worked all day and would then come home at night after things had happened and he needed to share his feelings. Then he started emailing our worker who would respond with a tool kit of ideas, and the client could use anything we suggested.

> **the first priority is safety, but the second most important premise is that we have connections. We need to make sure we have a connection with someone, that they have connected with us.**

Then one day the client came into the service here in Rockhampton and asked to speak to our male worker. The client and his partner had travelled in from Barcaldine, and he wanted a meeting face to face, but not only that, he wanted to meet me to talk to me about how well he'd done and how well his family had re-unified because of the help of our male worker.

So when I spoke to our male worker, he said "We mostly emailed." This case really highlighted the whole tyranny of distance and the isolation of people when they are in crisis. They may be only able to reach out online or on the phone, so I really encourage people to use other media to at least give them a start to address their issues. The man from Barcaldine said "I have come through this as a better person" and that now he was looking at starting up a men's group in Barcaldine. He knows that if he needs any help, he can let us know and a couple of our workers could go out and start him off, or we could Skype in, if he needs any specialists or specific knowledge.

So, at the end of the day, something I keep pushing with my mob is that the first priority is safety, but the second most important premise is that we have connections. We need to make sure we have a connection with someone, that they have connected with us - that someone is listening to them. That opens up the door for progress and healing. Our work is all about connection: connecting people to us, connecting ourselves to families.

What do you see are the key issues for your client group at the moment?

The hot issue is the age group of our victims, and how those who use violence are so young and seem to be getting younger and younger. We've done an analysis of the age grouping of the most recent referrals and majority were around 17 or 18 years, and very few were over the age of 22. Our youngest client was a young female who was 15, with a child and in a domestic violence situation.

This is a different cohort for us as workers. Ordinarily, we were used to working with men – **at one stage about 80% of our group were men aged from their late 20s to early 40s**

The change of client demographic has meant a real practice shift for us.

One of the other key issues that is addressed with our clients is technology abuse- it's so easy for the person using the violence to access all sorts of technology. The victim may have blocked her violent partner on one platform, but he can then use other platforms to continue to harass her. He can 'bad mouth' her to influence other people to think badly about her too. Once there was only a certain number of people you could 'bad mouth' her to. Now there are hundreds – the exponential effect of just one message is quite astounding. We focus on this not just with the younger people, but we know that older people have cottoned on to the technology to control and harm emotionally and mentally too.

We're seeing too the information technology is being used to demand sexualised behaviour, to pressure for people to remove clothing, and suffer the consequences if they don't. We see revenge porn among the younger school-leaver age, but also using technology as another form of control. The user of violence tries to get what he wants, for example, if he is in jail or he is away, he may coerce her to show images, "If you don't show it to me, you don't love me".

The concern, and the key issue, is that the users of violence are becoming younger and younger, and the violence is becoming more extreme. Before we would have seen things like he punched, he slapped, he pushed. Now we are seeing strangulations, violence with weapons, violence where there has been a complexity of physical abuse resulting in a hospitalisation. We are aligning a lot of that with drug use and we also identify it with a group that has come through the child safety system.

This brings us to the very recent discussion that kids that are brought up in that system, don't really have any parents, there is no role modelling. Then when they engage in an intimate relationship, and they have children, they don't know how to parent: they are young kids themselves. There is no innate initiation that happens within families. For example, young men may grow into manhood while they are in a system, sometimes moving from foster home to foster home. When they become teenagers, they are put into residential care homes and they have youth workers looking after them.

You can see that it is all connected and while we are funded under the Domestic and Family Violence Strategy I have

been talking to the Department about how our services are funded to be compartmentalised, and we expect our clients to compartmentalise their lives as well. They come to Helem Yumba for healing, then they go somewhere else for legal, somewhere else for housing etc.

We are starting to think: do we need to do more to broaden our scope so we can better respond to the complexity of clients' lives, without stepping on the territory of other services? How do we break down silos, but in a meaningful way, with other services? Success depends on how well you collaborate. No one person just has DV they have a whole heap of other issues, so the challenge is for our services to work meaningfully together, so we can get successes.

What advice would you give to other services to be the best they can be in terms of being culturally sensitive?

I have seen it done before where mainstream organisations get a group of Elders together and employ an Indigenous Worker, but they still have missed the mark and from a community perspective it looks quite tokenistic and could be quite divisive.

If I were a non-Aboriginal person working in a mainstream organisation and in any position of power, the first thing I would do is get out and identify who's who in the Indigenous sector, the health and human services sector for example.

I would go and meet with CEO's and other significant people in each of the organisations and ask about a way in to understand to work together. I wouldn't encourage you to go to a Board, or to any particular individual in agencies. In our Murri community it's all about transparency: getting out there, talking to Murri organisations to find out what they do. Don't just go in and introduce choice within the sector and then go and duplicate: talk with them about how to fill gaps or how to add value.

I've heard non-Indigenous services say "We are running the same service as you because we want to provide choice and Aboriginal people are entitled to have choice". That's good, but if clients come to us and we are not the right fit for them, we will support our people to make the decision about where to go.

If we have a client who doesn't feel comfortable coming here, we try to work through with them how we can re-shuffle what we do so they can feel comfortable here. If this doesn't work, we try to really empower them, so if they go to another service, they are going to get the type of service they need. We want to ensure that the client is engaging in the other service on their terms: how culturally sensitive is the intake? Will the client be supported to feel culturally safe? We don't mind if people go elsewhere because we support choice - as long as the client is empowered to engage in other systems in their way, that they are going to have a meaningful experience to get the outcomes they want.

I always say there is room for all of us in the sector as there is so much work to do - as long as we are working in synergy, working together and complementing each other. So, if another non-Indigenous service is set up, we would welcome them to talk to us and particularly to those organisations that are already rolling out that type of service delivery. Then we can see where the gaps are, where we can work together but more importantly, we can see how we can add value to what each of us is doing.

What gives you hope in this area?

Our sector is evolving and getting better at responding to communities. Even though we are funded separately, services are seeing that we all have to work together to support our families and communities to have a better quality of life. I believe that when this happens organically, our collaboration can really hit the mark.

As well, I think we, as a whole sector, have begun to understand what domestic and family violence is really all about. I'm noticing when I go to workshops and forums that people are thinking outside the box of domestic and family violence. They are starting to see the issue as more about vulnerable people's situations, all that's entailed within their lives.

It's really heartening to see we are moving away from restrictive models, beyond criminalising straightaway and moving to see the humanistic elements. In our community, we're about keeping our families safe, learning how to talk together. We will use mediation in situations where people can stay together in families in safe and harmonious ways.

The thing about our sector is the inclusion of supporting a male to change his behaviour to ensure the safety of women and children. We want our kids to be in a family where they feel safe, where they can go to school and grow and become themselves in safe and harmonious environments, whether their parents are together or not.

A student's perspective

Kylie Heenan is the Domestic Violence Coordinator for SANDBAG in Brisbane North region, and a Registered Counsellor in private practice. Kylie works with women and children experiencing domestic violence and abuse, and more broadly in her practice with couples and families struggling in their relationships. She was a recipient of a Queensland Government Scholarship in 2018.

> **"As a professional counsellor, learning about men who use violence and their change processes was of immense interest to me, so I enrolled in the Postgraduate Certificate in Facilitating Men's Behaviour Change."**

While Kylie had a sound understanding of the impact of domestic violence on women she wanted to learn more about what motivates men to change. "As there were practical assessments we were required to undertake in the course, I had a few 'aha' moments as my knowledge developed. I think the most profound realisation for me was coming to terms with the fact that no two men who use violence are the same. As a practitioner, you have to be willing to understand how a person feels about their use of violence and why they want to stop if you really want to help them. You cannot help someone by shaming them."

The highlight of Kylie's study experience was having a lecturer who was "highly engaging, very encouraging and experienced in the field " This commitment from CQUniversity teaching staff meant that Kylie's learning experience was a positive one, and she gleaned much from the course.

"My practice has been influenced by developing my understanding of current best practices with men who use violence, and how to talk with men about their use of violence in order to invite genuine change and thereby increase safety for families. I am also acutely aware that domestic violence won't stop until there is change at the socio-cultural level. We all need to be talking about our learned biases around gender: this now shapes every conversation in my practice."

Kylie also has advice for those who are in the workplace who are considering embarking on study. "It's all about balance! It is really important for the duration of the study to lower your expectations in other areas of your life. Let family/friends know that you won't be as available while you do this work. Being a student is a time for you to focus, but remember, in the long run, this will bring benefits for those you care about."

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Reproductive Coercion

An Important Area for Policy, Practice and Further Research

By Dr Nicola Cheyne

Dr Nicola Cheyne is a lecturer in the Domestic and Family Violence Practice Program at CQUniversity. She conducts research for QCDFVR on sexual violence, domestic violence, violence against women and perpetrator programs.

Nicola recently attended the Children by Choice Unplanned Pregnancy and Abortion Conference to learn more about reproductive coercion and other areas of importance in the field of domestic and family violence. In this review of what is known and yet to be further explored, Dr Cheyne examines the range of relationships in which reproductive coercion may occur.

Increasing Recognition

There is increasing discussion and research on reproductive coercion as another aspect of domestic violence, used by perpetrators to exert power and control over the lives of women (*McGirr et al.,* 2017)

Reproductive coercion is where a partner or other family member interferes with a woman's ability to choose for herself whether and when she conceives (*Grace & Fleming,* 2016). This tends to involve three different behaviours in relation to pregnancy:

- control or sabotage of contraceptive methods,
- coercing a partner into pregnancy,
- or controlling the outcome of a pregnancy including forced abortion or continuation of pregnancy (*Grace & Anderson, 2018; McGirr et al.,* 2017).

There is emerging research interest in the coercion of males into conceiving children, however, the majority of research at this time focuses on the coercion of women around reproduction (*Grace & Anderson,* 2018), which fits with the increasing recognition of reproductive coercion as another form of domestic violence (*McGirr et al,* 2017).

Some studies suggest that the prevalence rates for female reproductive coercion range from 5% to 16% (*Grace & Anderson,* 2018), with a high degree of overlap between domestic violence and reproductive coercion. For those experiencing domestic violence, prevalence rates of reproductive coercion ranging from 26% to 74% have been identified by some researchers (*Hathaway, Willis, Zimmer & Silverman,* 2005; *Miller et al,* 2007; *Miller et al,* 2010; *Moore, Frohwirth & Miller,* 2010). Other researchers found that amongst women who had experienced reproductive coercion, 32% to 57% had also experienced domestic violence (*Clark, Allen, Goyal, Raker, & Gottlieb,* 2014; *Sutherland, Fantasia & Fontenot,* 2015).

Because it has tended to be a hidden behaviour, education and training about reproductive coercion for agencies who encounter domestic violence victims is a key priority to ensure responsive service provision (*Marie Stopes Australia,* 2018).

Perpetrators of Reproductive Coercion

A systematic review by Grace and Fleming (2016) found that intimate partners are the predominant perpetrators of reproductive coercion in research studies conducted in the United States. Closer inspection of those studies reveals that part of the reason for this finding is that these American researchers have tended to only ask victim-survivors about intimate partner perpetration of this behaviour (*Clark et al.,* 2014; *Hathaway et al.,* 2005; *McCauley et al.*, 2015; *Miller et al.,* 2010; *Miller et al.,* 2014; *Moore et al.,* 2010; *Sutherland et al.,* 2015).

Moreover, the focus has been on male-perpetrated reproductive coercion even where the study included women who engaged in sexual relationships with both men and women (*McCauley et al.,* 2015), or where the study included women who identified as lesbian, bisexual, questioning or having same sex sexual contacts; at least some questions were focused on male-perpetrated reproductive coercion (*McCauley, Silverman, et al.,* 2014). The indication for practitioners and researchers is that broader conceptions of the perpetrators of reproductive coercion may need to be employed to ensure that the range of this behaviour within domestic and familial relationships is captured.

Indeed, when a broader conception of potential perpetrators has been explored in previous research with women in other countries or immigrants to the United States, it has been found that in-laws or the woman's own family are also represented as perpetrators. Gupta, Falb, Kpebo and Annand (2012) conducted a study with 981 women from Côte d'Ivoire, finding that about six per cent had experienced reproductive control from their in-laws at some point in their lifetime. In India, it was noted more specifically that mothers-in-law who lived in the same household as the couple or lived nearby influenced the number of sons a woman had, and decisions on sterilisation (*Char, Saavala & Kulmala,* 2010).

While other family members have been found to influence control over reproduction, partners still exert significant power in this area. Puri, Adams, Ivey and Nachtigall (2011) interviewed 65 Indian women who had immigrated to the United States and found that almost two thirds had been verbally pressured by their mothers-in-law or sisters-in-law to find out if they were carrying a boy or to undertake sex selection to attempt to produce a male child, and 15% had experienced the most pressure from their husband to have a son. In a Jordanian research project involving 353 women, 11% noted their husband had taken away their contraceptive method, with 13% noting that others had taken away their contraception (mothers-in-law and mothers were the most frequent perpetrators in this category) (*Clark et al.,* 2008). In addition, McCauley, Falb, Streich-Tilles, Kpebo and Gupta (2014) found within a sample of 953 women in Côte d'Ivoire 18.5% had experienced partner-perpetrated reproductive coercion and around six percent had experienced the same control from their in-laws.

At the recent Unplanned Pregnancy and Abortion Conference emerging areas for further discussion and investigation that were highlighted were the influences of individual practitioners and organisations on their clients' choices around pregnancy. For example, it was noted that health practitioners themselves may coerce their patients into certain reproductive choices, and religious organisations offering domestic violence services could exert pressure on women to maintain their pregnancies.

"While other family members have been found to influence control over reproduction, partners still exert significant power in this area."

Reproductive Coercion in LGBTIQA+ relationships

Conference participants discussed the lack of research examining reproductive coercion outside of heterosexual relationships, noting there is some initial study into reproductive coercion for the LGBTIQA+ community. What research exists on women who identify as bisexual, lesbian, or questioning, or who engage in same sex contacts, has examined male partner-perpetrated reproductive coercion (*Alexander, Volpe, Abboud & Campbell,* 2016; *McCauley, Silverman, et al.,* 2014; *McCauley et al.,* 2015).

However, there has been a study conducted with 787 men who identified as gay (*Wisniewski, Robinson & Deluty,* 2009). When they came out to their parents, 57% of mothers and 43% of fathers were reported to engage in reproductive coercion by trying to convince their sons to change their minds in order to produce grandchildren. Another study involved 14 interviews with African American women identifying as 'femmes' (feminine in appearance, behaviour and partner role), 'studs' (masculine presentation of self), and 'stemmes' (fluctuations in gender presentation) (*Reed, Miller, Valenti & Timm,* 2011). Interviewees who identified as femmes stated they had support from their stud partners to pursue pregnancy, but from close analysis of their responses, this influence may have been coercive. However, these women did not recognise this influence as coercive. Further research is needed to explore reproductive coercion within LGBTIQA+ relationships.

Lack of Recognition in Domestic Violence Legislation

Another key point raised at the conference was the lack of recognition of reproductive coercion in domestic and family violence legislation. Without direct inclusion of reproductive coercion into the legislation, there exists the danger that such behaviours will not be recognised as domestic violence, by police and the courts or recognised as breaches of domestic violence protection orders. Further exploration and research is required in this area to determine whether reproductive coercion is being overlooked in efforts to respond to domestic and family violence.

Summary

In conclusion, the focus of this article has been on articulating preliminary evidence on the prevalence of reproductive coercion, the relationships in which the behaviour occurs, and the lack of recognition of this behaviour in legislation. These are key areas in ensuring appropriate service responses from practitioners, that policy and legislation is written to acknowledge this behaviour and to highlight the need for additional research on reproductive coercion.

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Domestic Violence Civil Matters
Unintended consequences

Kathryn Reid

is a frontline practitioner who chairs a regional High-Risk Team.

As a Women's Liaison Officer with Queensland Police Service she provides advocacy and support for female victims of domestic and family violence. Kathryn has had 10+ years as a court advocate for women applicants for a Domestic Violence Order and is also undertaking Bachelor of Law studies.

This article about the unintended consequences relating to costs and mediation in civil matters is an adapted version of an assessment item Kathryn developed for her law studies. It offers insights from a practitioner's perspective into the unintended consequences of cross Domestic Violence Applications, awarding of costs and mediation in civil matters.

Domestic and Family Violence Protection Act 2012

The Domestic and Family Violence Protection Act 2012 is 'An Act to provide for protection of a person against violence committed or threatened by someone else if a relevant relationship exists between the persons' .

The Act further recognises that 'Domestic violence is most often perpetrated by men against women with whom they are in an intimate partner relationship and their children; however, anyone can be a victim or perpetrator of domestic violence'. It is estimated that one-quarter of women in Australia have experienced at least one incident of violence by an intimate partner.

> **"In my experience, a letter of demand is usually received by an aggrieved woman from the respondent's lawyer threatening to sue for costs at Hearing. This could be for a malicious, frivolous or vexatious complaint."**

Kathryn's analysis of the implications stemming from civil Domestic Violence matters and unintended consequences have been drawn from her practice experience and an assessment paper as part of her legal studies. Recently Kathryn presented to a Community of Practice, hosted by QCDFVR, to Domestic and Family Violence Specialists within Family and Child Connect Services and Intensive Family Support Services.

Kathryn's practice wisdom echoes the statistics regarding the gendered nature of domestic violence, and also the increasing number of cross Domestic Violence Applications (DVAs), with each partner naming the other as a respondent. This is despite many women served with a DVA having a significant prior history of victimisation. Hence, the number of 'aggrieved' women being served with a DVA in response to their request for protection continues to rise. This highlights the need to identify the 'person most in need of protection', an aspect of the Act designed to minimise the incidence of cross applications.

The importance of identifying the primary aggressor and taking note of the history of abuse is reflected in the Domestic and Family Violence Death Review and Advisory Board 2016–17 Annual Report which states :

> *All adult females in the cases reviewed had previously been identified as a respondent by services, even though some had a significant prior history of victimisation. This demonstrates the need for increased understanding of when, why and how victims may use violence, and highlights opportunities for enhancing the capacity of services to identify these underlying relationship dynamics.*
>
> *Where a primary victim who uses violence as a reaction to prior abuse is listed as a respondent on protection orders, it can have wide-ranging and long-lasting ramifications, including in the way that services respond to that person. It can also impact on a victim's willingness to seek help in the future and may increase their risk of further victimisation as it can validate and perpetuate a perpetrator's abusive actions.*

Awarding of Costs

In the situation of cross DVAs Kathryn's belief is that the power of the Courts to award costs can be problematic. In Queensland, the overriding philosophy is 'to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense'. Under the Act (Part 5 Division 3 s157 ss(2)) the Court has the power to award costs. Specifically, it states:

(1) **Each party to a proceeding for an application under this Act must bear the party's costs for the proceeding.**

(2) **However, the court may award costs against a party who makes an application that the court hears and decides to dismiss on the grounds that the application is malicious, deliberately false, frivolous or vexatious.**

(3) **In this section—party includes an aggrieved.**

Guidance for Magistrates in awarding costs is found within in the *Magistrates Courts Act* 1921, *Domestic and Family Violence Protection Rules* 2014 Part 7. The capacity to impose cost sanctions is aimed at deterring parties from conducting their cases in an excessively adversarial manner. This relies on Magistrates having an understanding of the dynamics of domestic violence (which may be ongoing), in order to achieve a just outcome.

Kathryn reflects on her day-to-day work in this way:

In court, I note that the Magistrate reminds parties that this is a costs jurisdiction, which means that the process is closely related to either coming to an agreement in regard to cross orders (even though the Act stipulates that the Court should make a finding of the person most in need of protection but cross orders may still be made) or the consequential withdrawal of an application for protection in fear of further negative consequences.

In my experience, a letter of demand is usually received by an aggrieved woman from the respondent's lawyer threatening to sue for costs at Hearing. This could be for a malicious, frivolous or vexatious complaint. The aggrieved applicant who has filed a private application to the Court for a Protection Order is often unable to afford a lawyer and ineligible for Legal Aid. Unfortunately, the local Community Legal Centre is under-resourced and unable to provide representation in the court.

I have seen many, many instances where a woman has been too afraid to continue to a Hearing. This can be because the respondent is still intimidating her and making her fearful, using threats against her or the children, and generally continuing his power and control tactics against her.

Kathryn further notes that her practice experience is reflected in the Victorian Law Reform Commission Civil Justice Review. The Review states that this may be due to the respondent controlling the family finances or wanting to punish the victim further. Often, the aggrieved may withdraw her application due to the fear of having to pay for the respondent's legal costs if an adverse finding is made against her. As in all civil matters, the standard of proof required is based on 'the balance of probability'.

The Victorian Law Reform Commission Civil Justice Review goes on to note that:

> *Self-represented litigants are not a homogenous group, but exhibit a wide range of very diverse needs for information, advice and direction as well as exhibiting a wide range of emotional states and responses to litigation… By definition litigants in person lack the skills and abilities usually associated with legal professionals ...*

Commentators have observed that adversarial litigation in common law civil justice systems is designed on the assumption that litigants will be represented by competent legally trained professionals and that when people represent themselves conventional assumptions about how the case will be conducted do not apply because most self-represented litigants will have none of the attributes the system design assumes they will have - knowledge of civil procedure, advocacy, evidence and law and duties to the court.

Kathryn concurs with a further statement from the Review that "these difficulties have the tendency to hamper and prolong court proceedings and also create a risk that meritorious claims brought by self-represented litigants may be obscured by or fail because of poor articulation, incoherence or procedural irregularity".

Mediation

Civil procedure places a great emphasis on mediation between parties and their lawyers. This is specifically so if cross applications are in place. The pressure to achieve a resolution to avoid a trial places a precedent on lawyers to come to some sort of resolution and avoid trial. Should the matter go to trial and 'the person most in need of protection' is ill-identified, the case is additionally complicated and the aggrieved are placed at further risk. As the Courts still have the power to make cross Orders and, if a finding is made using the categories of frivolous or vexatious applications, then the applicant will have to pay the costs of the other party, which aggrieved parties often cannot afford. This causes significant distress for the aggrieved and often results in them withdrawing their applications. The level of proof is reliant on the 'balance of probabilities' as much of this type

of abuse happens 'behind closed doors' where perpetrators behaviours are invisible, meaning they are behaviours that leave no evidence and are therefore difficult to prove.

To an inexperienced observer, mediation may seem like a reasonable path for victims of domestic violence, but Kathryn knows well the unintended consequences, including fear, that can be involved when mediation is requested. This is particularly so when the aggrieved has no representative with her during the civil process and is faced with a persuasive lawyer.

Kathryn's experience supporting women in the Domestic Violence Court is that the aggrieved often have multiple issues affecting their ability to engage on an equal footing with the respondent. Apart from a history of abuse, they frequently had responsibility for children, had been forced from their home into a refuge, had their employment negatively affected, lost access to family finances and felt significantly afraid of the respondent.

Additionally, women from Aboriginal and Torres Strait Islander backgrounds, from culturally and linguistically diverse backgrounds, affected by disabilities or who have experienced mental health issues were often unable to react assertively to the challenges of mediation or the threatened imposition of costs. Unintended consequences are compounded for women who still have to face actions in the Family Court, which also has the concept of mediation embedded, and where there is an expectation of reaching an early resolution, whilst attempting to protect their children, recover and continue with their lives.

Concerns are further elevated if the Briginshaw method of proof is called upon. For instance, what may only appear to the Court as an exchange of 'frivolous' text messages is- to the victim- a calculated manipulation by a perpetrator to elicit a traumatic reaction. This can also affect the credibility of the aggrieved as they appear on the stand and react with behaviours from a place of trauma. This means they may not appear to be the 'perfect' submissive victim people are conditioned to expect. Kathryn also draws attention to the protected witness status which can be applied for under Part 5 Division 2 of the Act and further s151 which allows a lawyer only and not the respondent to cross-examine the aggrieved.

Of course, Kathryn is not the only commentator who suggests that some kinds of power imbalance make mediation inappropriate. For example, mediation has been described as 'problematic' in situations involving domestic abuse or violence.

Kathryn, along with other specialist women's advocates, feels it is necessary for all involved in court processes to understand and attempt to anticipate the impact of unintended consequences. A final comment from Kathryn is that the power to dispense with the rules of procedure enables the Court to exercise its discretion to facilitate the attainment of justice and prevent the application of the rules from becoming a source of injustice.

Concluding comments

In concluding this segment Kathryn reflects on her experience and cases she has reviewed as part of her studies where the adult female identified as a respondent has had a significant prior history of victimisation. Therefore, the need for increased understanding of when, why and how victims may use violence has never been higher. It also brings attention to opportunities for enhancing the capacity of courts, agencies and services to identify these underlying relationship dynamics. Kathryn is concerned that when this does not occur:

> *it can have wide-ranging and long-lasting ramifications, including in the way that services respond to that person. It can also impact on a victim's willingness to seek help in the future and may increase their risk of further victimisation as it can validate and perpetuate a perpetrator's abusive actions.*

In concluding Kathryn poses the question 'So where to from here?' She notes that one of the factors attributed to the application for protection orders originating in the civil jurisdiction is Parliament's acknowledgement that victims of domestic violence generally do not want prosecution of a criminal offence against their partner - they just want the violence to stop. There is ongoing controversy surrounding whether this process should remain in the civil jurisdiction (with all the above adversities discussed) or be placed immediately in the criminal jurisdiction and call it for what it is, criminal. Kathryn concludes that for her, to weigh up the many pros and cons of this process, 'the jury is still out'

- Kathryn Reid

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Funded by

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The Queensland Centre for Domestic and Family Violence Research receives defined term funding from the Department of Child Safety, Youth and Women to undertake research and develop educational resources pertaining to domestic and family violence in Queensland.