

3 Understanding family and domestic violence

3.1 Definition of family and domestic violence

The Australian Bureau of Statistics has identified that there is 'no single nationally or internationally agreed definition'¹⁰⁶ of family and domestic violence and that 'different definitions may be specified in legislation or be required in different contexts and jurisdictions'.¹⁰⁷ Generally speaking, family and domestic violence occurs:

... when a family member, partner or ex-partner attempts to physically or psychologically dominate or harm the other ... domestic violence can be exhibited in many forms, including physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation or threats of violence.¹⁰⁸

For the purposes of this investigation, in using the term 'family and domestic violence', the Office refers to the relationships and behaviours specified in the *Restraining Orders Act*. Section 4(1) of the *Restraining Orders Act* defines 'family and domestic relationship' as a relationship between two persons:

- (a) who are, or were, married to each other;
- (b) who are, or were, in a de facto relationship with each other;
- (c) who are, or were, related to each other;
- (d) one of whom is a child who —
 - (i) ordinarily resides, or resided, with the other person; or
 - (ii) regularly resides or stays, or resided or stayed, with the other person; or
- (e) one of whom is, or was, a child of whom the other person is a guardian; or
- (f) who have, or had, an intimate personal relationship, or other personal relationship, with each other.

Section 4(2) of the *Restraining Orders Act* further provides that:

- (2) In subsection (1) —

other personal relationship means a personal relationship of a domestic nature in which the lives of the persons are, or were, interrelated and the actions of one person affects, or affected, the other person;

related, in relation to a person, means a person who —

- (a) is related to that person taking into consideration the cultural, social or religious backgrounds of the 2 persons; or

¹⁰⁶ Australian Bureau of Statistics, 'Defining Family and Domestic Violence', *Directory of Family and Domestic Violence Statistics*, cat. no. 4533.0, ABS, Canberra, November 2011.

¹⁰⁷ Australian Bureau of Statistics, 'Defining Family and Domestic Violence', *Directory of Family and Domestic Violence Statistics*, cat. no. 4533.0, ABS, Canberra, November 2011.

¹⁰⁸ Dr Kerry Carrington and Janet Phillips, *Domestic Violence in Australia an Overview of the Issues*, eBrief, Parliament of Australia, Canberra, 7 August 2003, viewed 25 February 2014, <http://www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/Domviolence>, p. 1.

- (b) is related to the person's —
 - (i) spouse or former spouse; or
 - (ii) de facto partner or former de facto partner.

An act of family and domestic violence means one of the acts set out in section 6(1) of the *Restraining Orders Act* that a person 'commits against another person with whom he or she is in a family and domestic relationship'. Section 6(1) lists the following as acts of family and domestic violence:

- (a) assaulting or causing personal injury to the person;
- (b) kidnapping or depriving the person of his or her liberty;
- (c) damaging the person's property, including the injury or death of an animal that is the person's property;
- (d) behaving in an ongoing manner that is intimidating, offensive or emotionally abusive towards the person;
- (e) pursuing the person or a third person, or causing the person or a third person to be pursued —
 - (i) with intent to intimidate the person; or
 - (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the person;
- (f) threatening to commit any act described in paragraphs (a) to (c) against the person.

3.2 Victims of family and domestic violence will resist violence and try to protect themselves

The research literature consistently identifies that victims of family and domestic violence will resist violence perpetrated against them and try to protect themselves and their children, and/or seek help.¹⁰⁹ The research literature further suggests that victims will consider and use a wide array of strategies. On this point, the research literature observes that victims:

...often use very creative methods to avoid and deescalate their partner's abusive behaviour. Some of these are successful and others are not. Victims develop their own unique set of protective strategies based on their past experience of what is effective at keeping them emotionally and physically protected from their partner's violence. In deciding which survival mechanism to use, victims engage in a methodical problem-solving process that involves analysing: available and realistic safety options; the level of danger created by the abuser's violence; and the prior effectiveness and consequences of previously used strategies. After careful consideration, victims of domestic violence decide whether to use, adapt, replace, or discard certain approaches given the risks they believe it will pose to them and their children.¹¹⁰

¹⁰⁹ For example, Wilson, D, Smith, R, Tolmie, J and de Haan, I, *Becoming Better Helpers: rethinking language to move beyond simplistic responses to women experiencing intimate partner violence*, Institute for Governance and Policy Studies, Victoria University of Wellington, New Zealand, February 2015; Burstow, B, *Radical Feminist Therapy*, Sage Publications, Newbury Park, California, 1992; Kelly, L, *Surviving Sexual Violence*, University of Minnesota Press, Minneapolis, 1988.

¹¹⁰ Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 28.

How victims respond to, and resist, family and domestic violence depends on the dangers and opportunities of their specific circumstances. Victims may resist violence utilising both covert and overt strategies.¹¹¹

Overt strategies used by victims to resist violence and protect themselves include:

- ‘openly challeng[ing] [the perpetrator’s] behavio[u]r’;¹¹²
- ‘accessing formal and/or informal help ... [t]hese are [overt] resistance strategies because the [victim] goes outside the relationship to assert her refusal to accept her [perpetrator’s] behavio[u]r’;¹¹³ and/or
- separating from the perpetrator, which can involve ‘a range of autonomous behavio[u]rs that directly challenge her partner’s control. Some of these behavio[u]rs include finding a home, getting a job, filing for custody of the children or obtaining a restraining order against [the perpetrator].’¹¹⁴

Conversely, some victims resist covertly.¹¹⁵ Covert resistance strategies used by victims can include ‘storing away personal objects or thinking about something else during an abusive incident, [these] are examples of a covert action that occurs without the [perpetrator] knowing about it’.¹¹⁶

On the use of covert strategies, the research literature observes that:

Victims are acutely aware that any defiant acts will be matched by an increase in the perpetrator’s violence ... [t]herefore, their actions are usually covert and unsuccessful in stopping the violence inflicted upon them ... agency and service records serve as a testament that victims’ acts of resistance are generally overlooked and unrecognised.¹¹⁷

¹¹¹ Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

¹¹² Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

¹¹³ Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

¹¹⁴ Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 5.

¹¹⁵ For example, Wade, A, *Tell it Like it Is: Developing Effective Social Responses to Violence*, Centre for Response-Based Practice, Duncan B.C. Canada, PowerPoint presentation delivered in Lulea, Sweden, 17 January 2012; Brewin, C. R., Andrews, B, Rose, S, ‘Gender, Social Support, and PTSD in Victims of Violent Crime’, *Journal of Traumatic Stress*, vol. 16, no. 4, 2003, pp. 421-427; Brewin, C, Reynolds, M, ‘Intrusive cognitions, coping strategies and emotional responses in depression, post-traumatic stress disorder and a non-clinical population’, *Journal of Behaviour Research and Therapy*, vol. 36, no. 2, Feb 1998, pp. 135-147; Kessler, R, C, Price, R, H, Wortman, C, B, ‘Social factors in psychopathology: stress, social support, and coping processes’, *Annual Review of Psychology*, vol. 36, 1985, pp. 531-572, Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 25.

¹¹⁶ Hayes, B, *Women’s Resistance Strategies in Abusive Relationships: An Alternative Framework*, John Jay College of Criminal Justice, New York, 2013, p. 3.

¹¹⁷ Wilson, D, Smith, R, Tolmie, J and de Haan, I, *Becoming Better Helpers rethinking language to move beyond simplistic responses to women experiencing intimate partner violence*, Institute for Governance and Policy Studies, Victoria University of Wellington, New Zealand, February 2015, pp. 27-28.

The research literature further suggests that some strategies used by victims may create the perception that the victim is also a perpetrator of violence, or not responding in a way that may align with expectations, for example:

- Fighting back or defying the [perpetrator]; ...
- Using or abusing substances as an “escape” or to numb physical pain.¹¹⁸

The research literature observes that:

Although these protective strategies act as coping and survival mechanisms for victims, they are frequently misinterpreted by laypersons and professionals who view the victim’s behavio[u]r as uncooperative, ineffective, or neglectful.¹¹⁹

3.3 Victims of family and domestic violence may seek help to resist the violence and protect themselves

In addition to the strategies discussed above, victims of family and domestic violence may disclose the violence to others in order to obtain support, advice, or assistance.¹²⁰ The research literature refers to such strategies as ‘help seeking behaviour’.¹²¹

The research literature divides help-seeking behaviour into two broad categories, informal and formal.¹²² Victims of family and domestic violence may seek help informally from people within their ‘social network including family, friends, neighbours or colleagues.’¹²³ Formal sources of help include institutions such as police and ‘professional services such as counsellors or crisis accommodation.’¹²⁴

The research literature consistently identifies that victims of family and domestic violence seek help informally from family and friends prior to seeking help formally. On this point, the research literature identifies that:

¹¹⁸Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 28.

¹¹⁹Lien Bragg, H, *Child Protection in Families Experiencing Domestic Violence*, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, Office on Child Abuse and Neglect, Washington, D.C, 2003, p. 29.

¹²⁰Gourash, 1978, quoted by Lumby, B and Farrelly T, ‘Family Violence, Help-Seeking and the Close-Knit Aboriginal Community: Lessons from Mainstream Service Provision,’ *Australian Family and Domestic Violence Clearinghouse*, Sydney, p. 1.

¹²¹In using the term help-seeking behaviour, research literature supports the view that victims engage in self-help by resisting violence and seeking safety and dignity prior to disclosing violence, and recognises that help-seeking does not necessarily first occur when a victim contacts authorities.

¹²²Richards, K and Lyneham, S, ‘Help-seeking strategies of victim/survivors of human trafficking involving partner migration,’ *Australian Institute of Criminology*, Canberra, 2014, viewed 30 May 2014, <<http://aic.gov.au/publications/current%20series/tandi/461-480/tandi468.html>>, p. 2.

¹²³Meyer, S, ‘Responding to intimate partner violence victimisation: Effective options for help-seeking,’ *Australian Institute of Criminology*, Trends and Issues: No. 389, Canberra, 2010, p. 1.

¹²⁴Richards, K and Lyneham, S, ‘Help-seeking strategies of victim/survivors of human trafficking involving partner migration,’ *Australian Institute of Criminology*, Canberra, 2014, viewed 30 May 2014, <<http://aic.gov.au/publications/current%20series/tandi/461-480/tandi468.html>>, p. 2.

Studies show that abused women turn first to those closest to them—extended family, friends, and neighbours—before they reach out to an organization or professional service provider. Relatively few access shelter services. And they seek out government institutions—police, courts, and child protection agencies—last.¹²⁵

Positive reactions to informal help-seeking have been found to encourage help-seeking from formal sources.¹²⁶

With respect to formal help-seeking, most recently, DCPFS identified that fewer than 25 per cent of women experiencing family and domestic violence contacted police or a specialist service.¹²⁷ Other Western Australian research literature further identifies that ‘of those women who experienced violence from their partner in the last 20 years, 80 per cent had not sought help from services at all. Only five per cent experiencing violence from a current partner reported the last incident to police.’¹²⁸ Research undertaken in New South Wales with victims of family and domestic violence who had already sought help from domestic violence services examined the reporting of violence to police. This research identified that, of the 300 victims interviewed, approximately half reported the most recent incident to police.¹²⁹ Of those victims who did not report the most recent incident of violence:

[T]he most commonly cited reasons were fear of revenge or further violence from the offender (13.9%), feelings of shame or embarrassment (11.8%), and a belief that the incident was too trivial or unimportant (11.8%). One in 10 (10.4%) respondents, however, stated that they had not reported the incident because they had previously had a bad or disappointing experience with the police. A further 7.6 per cent had not reported the matter because they thought the police would be unwilling to do anything about the violence.¹³⁰

¹²⁵Family Violence Prevention Fund, *Family Violence: Community Engagement Makes the Difference*, Family Violence Prevention Fund, San Francisco, 2002, p. 2.

¹²⁶Meyer, S, ‘Responding to intimate partner violence victimisation: Effective options for help-seeking,’ *Australian Institute of Criminology*, Trends and Issues: No. 389, Canberra, 2010, p. 1.

¹²⁷Department for Child Protection and Family Support, *Family and Domestic Violence Response Team Evaluation Report: July – December 2013*, Government of Western Australia, Perth, 2014, cover page.

¹²⁸Gordon, S, Hallahan, K and Henry, D, *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities*, Department of Premier and Cabinet, Western Australia, 2002, p. 46.

¹²⁹Birdsey, E and Snowball, L, ‘Reporting violence to police: a survey of victims attending domestic violence services,’ *New South Wales Bureau of Crime Statistics and Research*, Crime and Justice Statistics, Issue Paper No. 91, October 2013, p. 1.

¹³⁰Birdsey, E and Snowball, L, ‘Reporting violence to police: a survey of victims attending domestic violence services,’ *New South Wales Bureau of Crime Statistics and Research*, Crime and Justice Statistics, Issue Paper No. 91, October 2013, pp. 5-6.

3.4 Perpetrators of family and domestic violence make a decision to behave violently towards their victims

The research literature consistently recognises that perpetrators of family and domestic violence choose ‘when, where and how they use violence.’¹³¹ Examples include:

- only hitting their partner in places where bruises won’t show;
- pausing in a tirade of verbal abuse to answer the door or the phone, and resuming it after the interruption;
- destroying items that have particular significance to their partner;
- imposing conditions on attendance at a social event, such as their partner not talking to other men; and
- whispering threats, rather than issuing them aloud where people outside the family might hear them.¹³²

The quote below, from a perpetrator interviewed in Victoria, illustrates the ability of perpetrators to be deliberate in their use of violence:

If someone knocked on the door when I was arguing with my wife, I could stop mid-sentence – I would instantly become MISTER NICE GUY. The second they left it was like turning a tape recorder back on – I could start EXACTLY where I left off.¹³³

Perpetrators will also anticipate, and work to overcome, a victim’s resistance in order to maintain power and control, for example, by threatening to kill the victim, or harm their children, if the police are contacted.¹³⁴

3.5 Perpetrators use family and domestic violence to exercise power and control over victims

The National Plan notes that:

While there is no single definition, the central element of domestic violence is an ongoing pattern of behaviour aimed at controlling a partner through fear, for example by using behaviour which is violent and threatening. In most cases, the violent behaviour is part of a range of tactics **to exercise power and**

¹³¹ Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

¹³² Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

¹³³ “George” in Victorian Health Promotion Foundation, *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, Victorian Health Promotion Foundation, Victoria, 2010, p. 22.

¹³⁴ Domestic Violence Research Centre Victoria, *For families, friends & neighbours*, Domestic Violence Research Centre Victoria, Victoria, <<http://www.dvrcv.org.au/help-advice/guide-for-families-friends-and-neighbours>>; Domestic Abuse Intervention Project, *Power And Control Wheel*, Domestic Abuse Intervention Project, viewed 8 June 2015, <<http://www.theduluthmodel.org/pdf/PowerandControl.pdf>>.

control over women and their children, and can be both criminal and non-criminal.¹³⁵ [Emphasis added]

The Law Reform Commission of Western Australia (**the Law Reform Commission**) recently reviewed the definition of family and domestic violence contained in the *Restraining Orders Act* as part of a larger review 'to examine and report on laws concerning family and domestic violence.'¹³⁶ The Law Reform Commission expressed the view that 'the current definition of an act of family and domestic violence does not refer to common features of family and domestic violence, such as the presence of coercion and control.'¹³⁷ The Law Reform Commission also recommended that the definition of family and domestic violence in its proposed *Family and Domestic Violence Protection Order Act* expand the current definition of 'an act of family and domestic violence' in the *Restraining Orders Act* to recognise:

1. That **family and domestic violence** means any of the following conduct committed by a person (the first person) towards another person (the second person) with whom he or she is in a family and domestic relationship:
 - (a) physical or sexual abuse;
 - (b) damaging the second person's property, including injuring or causing the death of an animal;
 - (c) pursuing the second person or another person, or causing the second person or another person to be pursued –
 - (i) with intent to intimidate the second person; or
 - (ii) in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, the second person;
 - (d) behaving in a manner that:
 - (iii) intimidates, coerces or controls the second person or is likely to intimidate, coerce or control a person in the second person's circumstances; and
 - (iv) adversely affects the safety or wellbeing of the second person or is likely to cause a person in the second person's circumstances to reasonably apprehend that his or her safety or wellbeing, or the safety and wellbeing of another person, will be adversely affected; or
 - (e) if the second person is a child, committing family and domestic violence against another person to which the child is exposed; or
 - (f) threatening to engage in any behaviour that is included in (a) to (e) above, or causing a third person to engage in behaviour that is included in (a) to (e) above.¹³⁸

¹³⁵ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010 – 2022*, Australian Government, Canberra, February 2011, p. 2, viewed 4 February 2014, <<http://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children>>.

¹³⁶ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 3.

¹³⁷ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, p. 40.

¹³⁸ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws, Final Report*, Law Reform Commission of Western Australia, Perth, 2014, pp. 50-51.

3.6 Perpetrators avoid taking responsibility for their behaviour and being held accountable for this behaviour by others

The research literature suggests that perpetrators of family and domestic violence will take steps to avoid being held accountable for their behaviour, including that perpetrators will attribute their behaviour to having “lost it,” “lost control”, or “just snapped”.¹³⁹ The research literature identifies, however, that violence is not the same as anger, and ‘while anger is an emotion, violence is a behaviour’.¹⁴⁰ A decision is made to perpetrate violence, and ‘most men who are violent towards their partners do not usually display similarly violent or abusive behaviour towards others.’¹⁴¹

The research literature also identifies that perpetrators may present the violence as mutual or joint, both to avoid responsibility and to shift responsibility to the victim. For example, describing violence as an “argument” or “retaliation”.¹⁴² Other attempts to minimise responsibility include “I was drunk”/“I was using drugs.”¹⁴³

However, as noted above, the research literature suggests that ‘few who use family and domestic violence are indiscriminately violent or controlling’¹⁴⁴ and, in reality, despite attempts to justify, mutualise, excuse, contextualise or lessen family and domestic violence by perpetrators, the violence is unilateral, and solely the responsibility of the perpetrator.¹⁴⁵

¹³⁹ Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

¹⁴⁰ Danny Blay, Manager, No to Violence Male Family Violence Prevention cited in: *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, Victorian Health Promotion Foundation, Victoria, 2010, p. 24.

¹⁴¹ Danny Blay, Manager, No to Violence Male Family Violence Prevention cited in: *The health costs of violence: Measuring the burden of disease caused by intimate partner violence*, Victorian Health Promotion Foundation, Victoria, 2010, p. 24.

¹⁴² Chung, D, Green, D and Smith G et al, *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*, The Women’s Council for Domestic and Family Violence Services, Perth, p. 11.

¹⁴³ Robinson, K, “Blame Shifting and Minimising: There’s no Excuse for Abuse,” The National Domestic Violence Hotline (US), 2013, viewed 27 August 2014 from <<http://www.thehotline.org/2014/01/blame-shifting-and-minimizing-theres-no-excuse-for-abuse/>>.

¹⁴⁴ Government of Western Australia, *Perpetrator Accountability in Child Protection Practice*, Department for Child Protection and Family Support, Perth, 2013, p. 12.

¹⁴⁵ Coates, L and Wade, A, “Telling it like it isn’t: obscuring perpetrator responsibility for violent behaviour,” *Discourse and Society*, Sage Publications, London, 2004, p. 5.