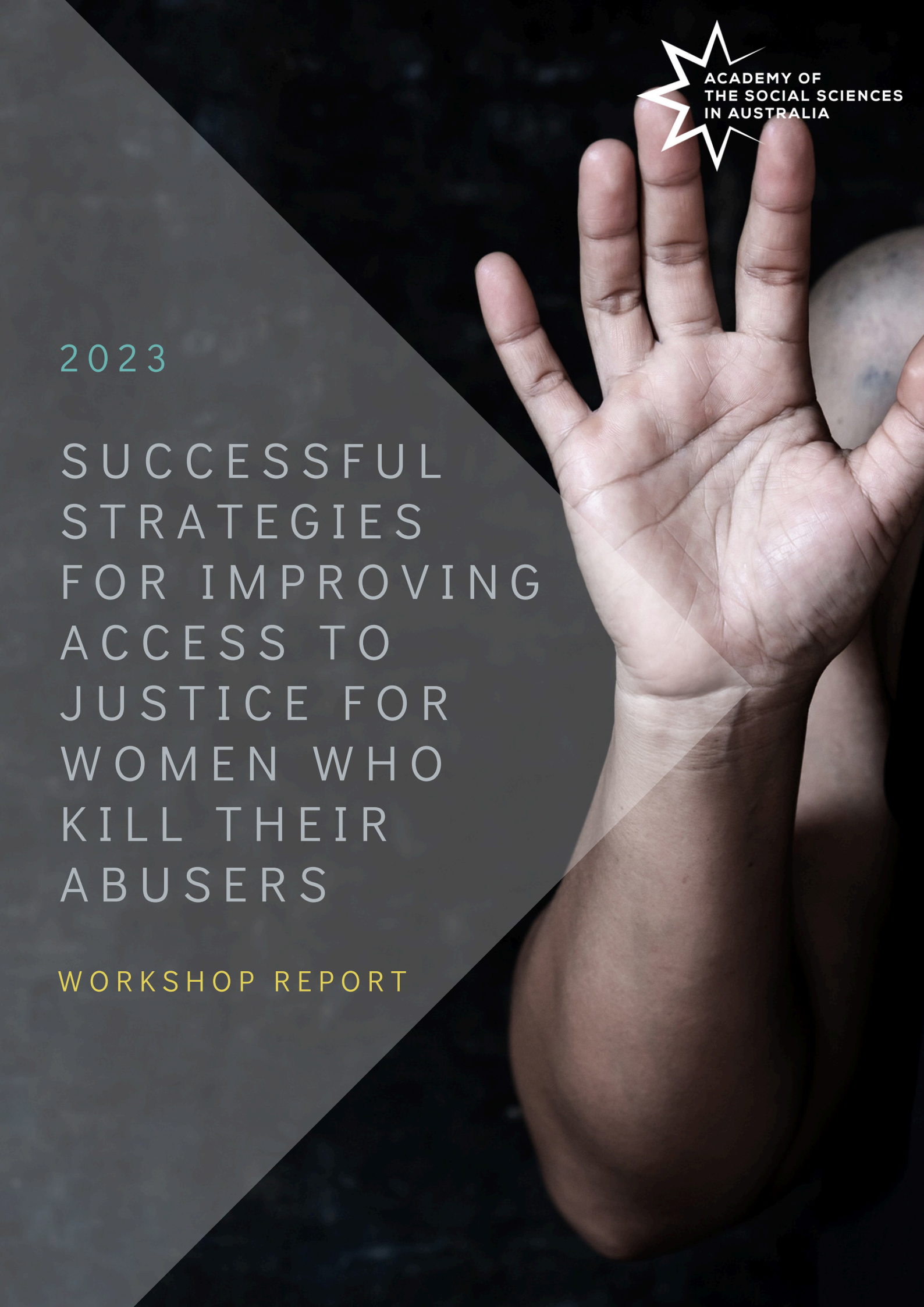

ACADEMY OF THE SOCIAL SCIENCES IN AUSTRALIA

2023

SUCCESSFUL STRATEGIES FOR IMPROVING ACCESS TO JUSTICE FOR WOMEN WHO KILL THEIR ABUSERS

WORKSHOP REPORT

ABOUT THE WORKSHOP

TITLE
Successful Strategies for Improving Access to Justice for Women Who Kill Their Abusers

CONVENORS
- Associate Professor Danielle Tyson | Deakin University
- Professor Bronwyn Naylor OAM | RMIT University
- Professor Heather Douglas AM FASSA | University of Melbourne

DATE AND PLACE
13-14 February 2023
Deakin Downtown, Melbourne.

FUNDING
This workshop was funded by the Academy of the Social Sciences in Australia, as part of the 2023 Workshops Program. Find out more at: https://socialsciences.org.au/workshops-program/

CITATION
Tyson, D., Naylor, B., & Douglas, H. (2024). *Successful Strategies for Improving Access to Justice for Women Who Kill Their Abusers*. Academy of the Social Sciences in Australia. https://doi.org/10.60651/KFYC-3Z13

OVERVIEW

The Successful Strategies for Improving Access to Justice for Women Who Kill Their Abusers workshop was held at Deakin University Downtown in Melbourne on 13 and 14 February 2023.

The workshop drew together practitioners (practicing lawyers, family violence experts, psychologists and psychiatrists) and researchers from a range of disciplines including criminology, law, socio-legal studies, gender studies, Māori health and Indigenous studies and education, to share insights on legal strategy and other instances of 'good' lawyering that have helped to understand women's experiences of domestic and family violence and their use of fatal force against their abusive partners. In bringing together Australian and international legal practitioners, experts and community advocates working at the coalface with victims, the participants at this international workshop collectively identified ways of producing more just outcomes for these women, particularly First Nations women.

The workshop was organised into 10 thematically-grouped sessions:

1. Fighting for justice for women who kill abusive partners, successful strategies from the UK and New Zealand: Setting the Scene | *Harriet Wistrich, Pragna Patel*
2. Listening to Indigenous Women's Stories of Domestic and Family violence: Expert Evidence and its Significance | *Hannah McGlade, Stella Tarrant, Kyllie Cripps, Marlene Longbottom*
3. Practitioner Insights from Australia | *Carolyn Quadrio, Melinda Walker, Jill Prior*
4. Practitioner Insights from England and Scotland | *Clare Wade, Paramjit Alhuwalia, Harriet Wistrich, Pragna Patel, Rachel McPherson*
5. Practitioner Insights from the United States | *Carlotta Lepingwell, Hannah Groedel, Rachel White-Domain*
6. The Aftermath of Self-Defence: Credibility, Remorse and Loss | *Leigh Goodmark, Kate Mogulescu*
7. Homicide Defences for Women in Abusive Relationships: Perspectives from Germany and Australia | *Kerstin Braun, Caitlyn Nash, Rachel Dioso-Villa*
8. Understanding Domestic and Family Violence: Practitioner Insights and the Role of Expert Evidence | *Patricia Easteal, Carolyn Quadrio*
9. Alternative strategies: The Role of Jury Directions and Insights from Post-Trial Reviews | *Heather Douglas, Harriet Wistrich, Pragna Patel*
10. Understanding domestic abuse and coercive control: Strategies from the UK | *Charlie Bishop, Nicola Wake, Vanessa Bettinson.*

CONVENORS

- Associate Professor Danielle Tyson | *Deakin University*
- Professor Bronwyn Naylor OAM | *RMIT University*
- Professor Heather Douglas AM FASSA | *University of Melbourne*

PARTICIPANTS

- Paramjit Alhuwalia | *Criminal Defence Lawyer, London, England*
- Professor Vanessa Bettinson | *Leicester De Montfort Law School*
- Associate Professor Charlie Bishop | *University of Reading*
- Associate Professor Kerstin Braun | *University of Queensland*
- Professor Kyllie Cripps | *Monash University*
- Dr Rachel Dioso-Villa | *Griffith University*
- Emeritus Professor Patricia Easteal AM | *University of Canberra*
- Professor Leigh Goodmark | *University of Maryland*
- Hannah Groedel | *Women's Prison Project, Tulane Law School*
- Professor Becki Kondkar | *Women's Prison Project, Tulane Law School*
- Assistant Professor Carlotta Lepingwell | *Women's Prison Project, Tulane Law School*
- Associate Professor Hannah McGlade | *Curtin University*
- Associate Professor Marlene Longbottom | *James Cook University*
- Dr Rachel McPherson | *University of Glasgow*
- Professor Katherine Mattes | *Women's Prison Project, Tulane Law School*
- Professor Kate Mogulescu | *Brooklyn Law School*
- Caitlin Nash | *Griffith University*
- Pragna Patel | *Formerly Southall Black Sisters; Consultant and Activist*
- Jill Prior | *Law and Advocacy Centre for Women*
- Adjunct Associate Professor Carolyn Quadrio | *University of New South Wales*
- Rachel Smith | *Auckland University of Technology*
- Associate Professor Stella Tarrant | *University of Western Australia*
- Professor Julia Tolmie | *University of Auckland*
- Melinda Walker | *Criminal Law Solicitor, Melbourne*
- Clare Wade KC | *Garden Court Chambers, London, England*
- Professor Nicola Wake | *Northumbria University*
- Rachel White-Domain | *Women and Survivors Project, Illinois Prison Project*
- Professor Denise Wilson | *Auckland University of Technology*
- Harriet Wistrich | *Centre for Women's Justice*.

WORKSHOP OUTPUTS

SESSION 1

FIGHTING FOR JUSTICE FOR WOMEN WHO KILL ABUSIVE PARTNERS, SUCCESSFUL STRATEGIES FROM THE UK AND NEW ZEALAND: SETTING THE SCENE

HARRIET WISTRICH AND PRAGNA PATEL

The first session provided important context for the broader discussion of the workshop. Two of the five speakers, Harriet Wistrich and Pragna Patel, have been feminist activists at the forefront of campaigns for justice for women convicted of the murder of their violent husbands since the late 1980s. Pragna Patel was founding member of Southall Black Sisters (SBS), a leading frontline advocacy and campaigning organisation for black and minority women, and for 30 of its 42 years, worked as co-ordinator and senior case analyst, before training to become a Solicitor. Harriet Wistrich helped co-found the feminist law-reform group Justice for Women (JFW) in 1991 to campaign against laws that discriminate against women in cases involving male violence against partners, and later went on to study to be a lawyer before helping to co-found the Centre for Women's Justice (CWJ) in 2016, a charity that seeks to 'hold the state accountable for failures in the prevention of violence against women and girls.' Their presentation and insights effectively grounded the discussion of legal strategy, advocacy and avenues through to appeal and justice for women who frequently encounter formidable obstacles in accessing justice within the legal system due to difficulties with obtaining adequate legal representation and having their traumatic experiences of domestic abuse fully recognised and understood by the courts. These limited understandings of the complexities of domestic abuse further exacerbate the challenges women face in accessing justice for the violence they endured.

JULIA TOLMIE, RACHEL SMITH AND DENISE WILSON

The second presentation in this session was from Professor Julia Tolmie, Rachel Smith and Professor Denise Wilson, each of whom have served for a number of years as family violence experts for the New Zealand Family Violence Death Review Committee (FVDRC). The presentation highlighted the shortcomings of the courts' over-reliance on Western psy-disciplines which privilege neoliberal ideas of self and perpetuate flawed and outdated psychological theories of intimate partner violence (IPV) (eg. Battered Woman's Syndrome). These shortcomings include the white epistemology underpinning Western psy-disciplines which omits from its theorising the ongoing violence of colonisation, institutional racism, and the marginalisation of Indigenous women. The concept of social entrapment – an IPV entrapment model – is crucial for understanding the social isolation and fear that women experience, the indifference of powerful institutions such as the police and the health system, and how experiences of coercive control are exacerbated by structural inequalities and the limited safety options available to them. Rachel Smith's experience as an expert in the New Zealand case of *R v Ruddelle* demonstrated the need to use experts with frontline experience, who are trained in social entrapment and who can provide evidence on cultural background from an intersectional perspective.

SESSION 2

LISTENING TO INDIGENOUS WOMEN'S STORIES OF DOMESTIC AND FAMILY VIOLENCE: EXPERT EVIDENCE AND ITS SIGNIFICANCE

This session focused on the stories of survival by Indigenous women who have been subjected to intimate partner violence whether at the hands of their husband, de facto spouse, boyfriend or ex-partner. Indigenous women are eight times more likely to be murdered by an intimate partner than their non-Indigenous counterparts, and in some cases, victims of family violence will defend themselves against their abusers. In most of these cases, significant evidence about Indigenous women's experiences of family violence at the hands of their abusers, is not provided to the court and when they fight back against their abusers they can end up convicted of murder or manslaughter.

HANNAH MCGLADE

Associate Professor Hannah McGlade, Noongar woman and Indigenous Human Rights Lawyer at Curtin University and Advisor to the Noongar Council for Family Safety and Wellbeing and Member of the United Nations Permanent Forum for Indigenous Issues, reflected on her work as an advocate for Mirriwoong woman, Jody Gore, who in 2016 was found guilty of murdering her former partner and sentenced to life imprisonment. This was despite having experienced severe domestic violence and abuse from her former partner, who suffered mental illness, for almost two decades. Hannah worked on Jody's case with journalist Annabel Hennessey to uncover significant evidence from an expert psychiatrist and a women's refuge Jody had attended that they believed supported Jody's claim of self-defence, but which was not provided to the court. As a result of their efforts, together with lawyers George Giudice and Carol Bahemia, and University of Western Australia's Associate Professor Stella Tarrant, Jody was eventually released from prison after the Western Australian Government applied "mercy laws", reserved for rare cases where prisoners deserve compassionate treatment and release.

STELLA TARRANT

Failure to understand the complexity of Indigenous women's experiences means a failure to understand the violence they experienced. Associate Professor Stella Tarrant's presentation advanced the argument that in a self-defence case, while the burden of proof lies with the prosecution to disprove beyond reasonable doubt that the woman was acting in self-defence once she raises evidence of self-defence, in cases involving Indigenous women defendants, the women are, in effect, being required to prove that they acted in self-defence. This is because the prosecution misunderstands the nature of the violence an Aboriginal woman faced and so ignores her claim that she defended herself against ongoing social and institutional entrapment properly understood. Instead, prosecution services persistently focus on disproving self-defence in relation to the immediate event, asserting that the killing was disproportionate in an isolated, decontextualised moment. A defence strategy can be a 'no case' submission. The purpose of a no case submission is to argue that the prosecution has failed to present sufficient evidence to support the charges against the accused. When making a no case submission, the defence asserts that, based on the evidence presented by the prosecution, no reasonable jury or judge could convict the accused. It essentially challenges the sufficiency and strength of the prosecution's case, arguing that the evidence falls short of establishing the elements of the offence including the non-existence of self-defence, beyond a reasonable doubt. When the prosecution fails to address an Aboriginal woman's claim of self-defence, they fail to disprove it. Therefore, a no case submission may be an appropriate legal approach where an

Aboriginal woman is charged with homicide of her abusive partner.

KYLLIE CRIPPS, MARLENE LONGBOTTOM, HANNAH MCGLADE AND STELLA TARRANT

The final presentation took the form of a conversation between Professor Kyllie Cripps, Director Monash Indigenous Studies Centre, Associate Professor Marlene Longbottom, from the Indigenous Education & Research Centre, James Cook University, Associate Professor Hannah McGlade and Associate Professor Stella Tarrant. As Aboriginal women and academics, the presenters reflected on their deep concerns and interest in addressing violence against Indigenous women by sharing their stories of survival. Each commented on the silencing of Aboriginal women's voices about violence while the privilege of being heard is often granted to men - both Indigenous and non-Indigenous men - or white women. When Aboriginal women do speak, their advocacy may be misunderstood or interpreted as anger, or they may be portrayed as 'unworthy victims', as angry and aggressive. This session highlighted the importance of research led by Aboriginal women that is inclusive of their voices and of community led campaigns for justice to challenge these inaccurate formulations of violence and the failures by police, health, legal and child protection systems to protect victim-survivors.

> Indigenous women are eight times more likely to be murdered by an intimate partner than their non-Indigenous counterparts, and in some cases, victims of family violence will defend themselves against their abusers. In most of these cases, significant evidence about Indigenous women's experiences of family violence at the hands of their abusers, is not provided to the court and when they fight back against their abusers they can end up convicted of murder or manslaughter.

SESSION 3

Q&A PANEL: PRACTITIONER INSIGHTS FROM AUSTRALIA

CAROLYN QUADRIO

This session focussed on expert evidence, with an emphasis on practitioner insights and perspectives from Australia. Associate Professor Carolyn Quadrio's presentation reflected on her experience as a psychiatrist and expert witness in 14 cases involving women victims of domestic violence charged with criminal offences for assaulting or killing an abusive partner. She reflected on the challenges of relying on the Diagnostic and Statistical Manual of Mental Disorders (DSM) and its classification of Complex PTSD - which is a combination of typical PTSD plus the symptoms of Complex Trauma - to understand both the psychiatric consequences of intimate partner violence (IPV) and the woman victim's experience of entrapment in the abusive relationship. A/Prof Quadrio noted the limited use of 'battered woman syndrome' and its tendency to create a pathologised view of the woman/defendant due to its focus on the woman's 'passivity' and 'learned helplessness'. The value in expert evidence lies in educating jurors and dispelling gender stereotypes that perpetuate the belief that women should endure abuse rather than resort to self-defence. The tendency to pathologise women's responses is best illustrated by the perception often held by juries which is that 'she didn't leave because of her personality failures'. One of the outcomes of this discussion is recognition that if experts are to provide the most effective evidence, they need to focus on the social determinants of IPV, the dynamics of abuse and trauma and the woman's survival strategies, rather than on psychiatric disorders. Potential barriers may include jurors and judges who also judge expert witnesses in terms of stereotypes. Women experts are often seen as less competent than men, more so if they are older women. It is imperative to find ways of challenging these stereotypes within the courtroom.

MELINDA WALKER AND JILL PRIOR

Building on the previous discussion, Criminal Law Solicitor Melinda Walker and Co-Founder and Principal Criminal Lawyer of the Law and Advocacy Centre for Women (LACW) Jill Prior outlined strategies they have adopted through their work as practicing lawyers and the challenges associated with ensuring the strongest evidence of domestic and family violence is presented to the court. The speakers were optimistic following the groundbreaking 1998 High Court decision in the Heather Osland case. However, despite Victoria's commendable history of reform in homicide law, including the influential 2016 Royal Commission into Family Violence, there have been few cases, if any, where women's self-defence claims have been successful.

The presentation highlighted a range of hurdles that must be overcome in order to build the strongest case for a woman who kills the man who has abused her. Victims of domestic and family violence often suffer from trauma, fear, and feelings of helplessness, which can affect their ability to gather evidence, articulate their experiences, and present a coherent narrative to police, to their lawyers and when in court. Trauma-induced memory loss, emotional dissociation, and anxiety can significantly impact their ability to recall events accurately, leading to inconsistencies that may be exploited by the prosecution. Self-defence claims have the greatest chance of success if as much information as possible is identified about the reality of the abused woman's circumstances and history of her victimisation at the hands of the deceased early in the process, particularly when the police arrive at the scene. However, lawyers often advise clients to refrain from responding to the police initially, making it more challenging to raise self-defence at a later stage within the legal proceedings. Women may struggle to determine who to approach. They may also face difficulties accessing lawyers or Legal Aid services with a comprehensive understanding of the nature and

dynamics of domestic and family violence (DFV). During police interviews, women may openly discuss past experiences of violence, unknowingly exposing themselves to potential claims of being of "bad character" later on (evidentiary issues). Even in cases where substantial evidence supports DFV and a self-defence argument, many clients, unable to cope with or overwhelmed by the uncertainties surrounding the prospect of a criminal trial, may opt to take control of the legal process by pleading guilty. Others may simply feel compelled or pressured into pleading guilty for a range of reasons including a perceived lack of alternative options.

> The value in expert evidence lies in educating jurors and dispelling gender stereotypes that perpetuate the belief that women should endure abuse rather than resort to self-defence.

The discussion also emphasised how, despite expectations, the 2005 Victorian legislative provisions for social context evidence and the eligibility of experts beyond psychiatrists and psychologists have not been fully utilized. While there is a degree of recognition within the Higher Courts in some jurisdictions regarding the existence of patterns of coercive and controlling behaviour and social entrapment, this understanding has yet to effectively filter through to practicing lawyers – solicitors, barristers and other legal professionals – who run the actual cases including expert witnesses who write court reports or testify in court.

Further reforms are possible, as we have witnessed with the recently proposed legislative changes concerning Victoria's Bail Laws, which were spurred by community outrage following the Victorian Coroner's Findings into the Death of Veronica Nelson.

One key outcome of this discussion is recognition of the need to find ways of challenging the prevailing prosecutorial culture of relentlessly pursuing a conviction in every case. Another key outcome is recognition of the need for improved professional legal education and training on coercive control and social entrapment. Possible solutions include the provision of education and training about the nature and dynamics of domestic including coercive control as well as online resources for lawyers, experts and community advocates interested in ongoing training and models of best practice for writing court reports and/or testifying in court.

SESSION 4

Q&A PANEL: PRACTITIONER INSIGHTS FROM ENGLAND AND SCOTLAND

CLARE WADE, PARAMJIT ALHUWALIA, HARRIET WISTRICH AND PRAGNA PATEL

This session continued the focus on legal strategy and advocacy, turning to an emphasis on practitioner insights and perspectives from England and Scotland. The first presentation by barrister, Clare Wade, criminal defence lawyer, Paramjit Alhuwalia, Harriet Wistrich and Pragna Patel provided a useful international point of comparison, outlining strategies that more accurately portray the victim's experiences and context leading up to the lethal incident. Over the past decade, there has been a paradigm shift away from an understanding of intimate partner violence as consisting of a one-off or series of isolated physical incidents towards a more comprehensive and accurate paradigm that accounts for patterns of coercive control. Although coercive control is recognised in UK law, it remains difficult to identify and comprehend. In recent cases, significant emphasis was placed on the use of experts to provide evidence concerning patterns of coercive control and/or statistical data on the risk of lethality in order to provide vital contextual information regarding women's experiences of abuse and their use of lethal force against their abusers. The discussion also focused on how the UK legislation on coercive control omits the role of anger in the definition of coercive control, even though women may experience both fear and anger when subjected to coercive control and social entrapment. This omission highlights the issue of the prosecution not fully recognising or validating women's fear, often dismissing it as unrealistic or implausible. This shortcoming of the UK legislation has likely contributed to unfavourable outcomes for women charged with offences related to defending themselves. Cultural evidence is also useful for challenging stereotypes and assumptions about black and minority women. It can help judges and juries better understand coercive control and why some women may choose to not tell anyone about the domestic and family violence they have experienced, to not report incidents to police or may be reluctant to contact services. However, when cultural experts are called upon, there has been noticeable resistance from the courts. An effective strategy is the utilisation of the Judicial College's Equal Treatment Bench Book in the UK which has shown some promising results in addressing judicial stereotypes and assumptions about women victims and survivors of violence.

RACHEL MCPHERSON

The second presentation by Dr Rachel McPherson examined the response of Scottish courts to cases where women were charged with murder or manslaughter for the killing of their abusive partners. Despite ongoing reviews by the Scottish Law Reform Commission regarding defences to murder (2021) and the Scottish Government's call for evidence on female offenders' experiences within the criminal justice system (2021), there seems to be a degree of inertia in relation to efforts to improve access to justice for women who have killed their abusers. The requirements of self-defence, including the consideration of a duty to retreat as a first option, is likely contributing to the limited number of these cases progressing to trial and high number of guilty pleas. It is also noteworthy that the partial defence of provocation is still available in Scotland and appears to be operating in an 'unproblematic' way for women who kill in the context of domestic violence. While there have been few cases involving women killing their abusers that proceed to trial in Scotland, there has been a noticeable absence of meaningful and organized advocacy compared to efforts undertaken in England.

The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 introduced specific jury directions in sexual offences to counter stereotypes held by jurors and assist them to understand why the victim did not physically resist or physically use force (fight back) against the abuser, did not tell or delayed telling anyone about the abuse, or did not report or delayed reporting the incident to police. These jury directions acknowledge and address the complex factors that can influence a victim-survivor's response to abusive behaviour and sexual harm, fostering a more nuanced understanding among jurors and promoting a more appropriate assessment of the evidence presented in such cases. The discussion led to recognition of the need to introduce jury directions in cases where women victims of domestic and family violence are charged with fatal offences when they use lethal force against their abusers to help juries better understand self-defence in the context of family violence (modelled on the Jury Directions Act 2015 (Vic)).

Over the past decade, there has been a paradigm shift away from an understanding of intimate partner violence as consisting of a one-off or series of isolated physical incidents towards a more comprehensive and accurate paradigm that accounts for patterns of coercive control.

SESSION 5

Q&A PANEL: PRACTITIONER INSIGHTS FROM THE UNITED STATES

CARLOTTA LEPINGWELL AND HANNAH GROEDEL

This session continued the focus on legal strategy and advocacy, turning to an emphasis on practitioner insights and perspectives from the United States. The first presentation from Carlotta Lepingwell and Hannah Groedel, both of whom are Clinical Assistant Professors of Law with the Women's Prison Project at the Tulane Law School, reflected on their approach to representing criminalized survivors of domestic and family violence (DFV) in the United States. Criminal lawyers need to collaborate with other professionals and advocates who represent survivors of DFV to provide comprehensive representation for victim-survivors who face significant marginalization within the criminal justice system (CJS). In Louisiana, the penalty for second degree murder is mandatory life imprisonment without parole (the penalty for first degree murder is death). A significant portion of their work therefore involves advocating for clemency, seeking pardons or sentence commutations for women. The state currently has a Democratic governor who is supportive of these efforts. Additionally, the recent election of more progressive prosecutors in Louisiana has resulted in a greater willingness to re-open/revisit cases. Consequently, more women in such circumstances are now entitled to specialized representation from experts in the field, leading to more effective counsel. This has led to the successful release of some women and even cases being dismissed (eg. No Billed by a Grand Jury). If a grand jury has returned a "No Bill" decision, it means that they have concluded that there is not enough evidence of guilt to support a criminal charge against the accused. There has also been recent success with presenting expert witnesses before a Grand Jury due to the more generous evidentiary rules than at trial. Such witnesses have included police with specific expertise in responding to DFV situations and appropriate investigation and interviewing procedures that are trauma informed, experts in IPV and strangulation and lay witnesses to the abuse. The discussion also touched on how there is no right to counsel post-conviction. If the issue of DFV has not been raised at the original trial, there is a lack of resources for criminalized women who have no option but to represent themselves on appeal, with support from 'jailhouse lawyers.' Jailhouse lawyers are prisoners who are selected to help with cases and given some paralegal training to help women litigate their claims with developing template statements, public records requests or 'ineffective counsel arguments'.

Following the 2012 shooting death of Trayvon Martin, at least 35 states in the United States have adopted some form of "stand your ground" laws with each one defining how and where a person can defend themselves when they feel their life is in danger. Criminal lawyers have however so far struggled to get those laws applied to women victims of DFV. The "stand your ground" laws are similar to the "householder" defences in the UK. There are also "home invasion" laws in WA and QLD, and these laws have been used in at least one case in WA involving a victim of DFV.

RACHEL WHITE-DOMAIN

The second presentation continued the focus on post-conviction advocacy by Rachel White-Domain, Director of the Women and Survivors Project, Illinois Prison Project. Sentencing relief for victims of domestic violence has been possible in Illinois since 2016, when the state became one of the first in the nation to pass legislation, ahead of New York which passed the landmark bill to address this problem: the Domestic Violence Survivors Justice Act (DVSJA)) in 2019. The 2016 amendment to Illinois state law offers the chance for resentencing to consider whether DFV played a role either directly or indirectly in a conviction. Most of the clients have been incarcerated for 15 years or more already. One outcome of this discussion was recognition of the need to both educate and advocate so that victims are believed and also to provide vehicles through which DFV is accepted by the courts as relevant.

SESSION 6

THE AFTERMATH OF SELF-DEFENCE: CREDIBILITY, REMORSE AND LOSS

LEIGH GOODMARK AND KATE MOGULESCU

Professor Leigh Goodmark and Professor Kate Mogulescu spoke about post-conviction advocacy and their involvement with the Survivors' Justice Project in New York State. A growing number of jurisdictions have introduced or are considering introducing legislation designed to allow survivors of family violence, intimate partner violence, and human trafficking to receive shorter sentences for offenses deeply entwined with their victimization. Survivor sentencing laws such as New York State's Domestic Violence Survivors Justice Act (DVSJA) passed in 2019, and Illinois' resentencing laws, have resulted in more appropriate outcomes by reducing sentences. However, it is important to note that the conviction itself isn't vacated and its consequences remain unchanged. While most domestic violence survivors face scepticism about their credibility, that scepticism is increased for those who attempt to show they were acting in self-defence when they killed their abuser. The stories that survivors tell in self-defence cases are complex and contradictory: they love their partners/family members, fear their partners/family members and believe their actions were justified while regretting them deeply. While they are relieved, they are no longer in danger, they question whether they could have done anything short of taking the life of the person who was harming them.

A central theme of the presentation was the transformative potential of the resentencing process. Defendants who are deeply remorseful about their actions have an opportunity to navigate the complex emotions and grief that follow being prosecuted for the death of a loved one. Recognizing the limitations of the criminal justice system in facilitating healing for survivors, survivor resentencing work involves supporting defendants to share a more nuanced account of what occurred, distinct from the version they were compelled to present during the adjudication process. By allowing defendants to tell their stories more authentically, this advocacy aims to explore how victim-survivors come to terms with their experiences of violence and feelings of grief and loss in the aftermath of being prosecuted for the death of an abusive partner.

> A central theme of the presentation was the transformative potential of the resentencing process. Defendants who are deeply remorseful about their actions have an opportunity to navigate the complex emotions and grief that follow being prosecuted for the death of a loved one.

During this session, a book launch was held for Professor Leigh Goodmark's latest publication, titled *Imperfect Victims: Criminalized Survivors and the Promise of Abolition Feminism* (published in 2023 by the University of California Press). The book was inspired by Professor Goodmark's work with women serving life sentences. Originally, the plan was for these women to share their personal narratives while Professor Goodmark provided the necessary structure, social science insights, and

background information. Unfortunately, the Department of Public Safety and Correctional Services intervened and prohibited the collaboration.

In response to the women's desire for their stories to be told, Leigh Goodmark took on the task of writing the book herself, given that many of these women were also her clients. Imperfect Victims argues that the current criminal legal system, encompassing law enforcement, prosecutors, judges, and the prison industrial complex, fails to safeguard survivors of violence. Instead, it perpetuates their trauma and subjects them to punishment, particularly if they are not white or financially privileged.

The book also details Professor Goodmark's transition away from carceral feminism, which focuses on reforms that ultimately result in 'bigger and better' prisons that claim to be 'gender-responsive' and 'trauma-informed.' Professor Goodmark now embraces the long-term goal of abolition feminism. This approach involves engaging in 'critical resistance' to the expansion of the prison industrial complex and advocating for 'non-reformist' reforms that do not bolster the legitimacy of the criminal legal system but rather seek to improve the conditions for those currently entrapped within it.

An example of such reforms is the abolition of mandatory minimum sentences, which disproportionately impact criminalized survivors convicted of murder and manslaughter. By advocating for these changes, Professor Goodmark aims to create a system that truly supports and empowers survivors rather than subjecting them to further harm and injustice.

SESSION 7

HOMICIDE DEFENCES FOR WOMEN IN ABUSIVE RELATIONSHIPS: PERSPECTIVES FROM GERMANY AND AUSTRALIA

KERSTIN BRAUN

During the session, various approaches were explored to address the situation of victims of domestic and family violence (DFV) who have killed their abusive partners and seek to rely on a homicide defence. Associate Professor Kerstin Braun focused on cases from Germany involving women who killed their abusive partners while they were sleeping or otherwise inattentive. In Germany, murder carries a mandatory life sentence. In 1981, the Bundesgerichtshof (Germany's highest court of ordinary jurisdiction) delivered a significant judgment in the so-called 'house tyrant' case. The court affirmed that an abused woman who killed her sleeping abuser could be held liable for murder. However, it recognised the exceptional circumstances of this particular case and recommended that the mandatory life sentence be reduced to a more appropriate term. Regrettably, no subsequent legal reforms have addressed this issue since the 1981 ruling. The need for such legal reforms to address the situation of women who kill their abusive partners was recognised. Advocates have also called for greater recognition in Germany of the nature and dynamics of domestic violence and its impacts on victims which could potentially lead to more compassionate and just legal outcomes in such cases.

CAITLYN NASH AND RACHEL DIOSO-VILLA

Caitlin Nash and Rachel Dioso-Villa presented their research examining cases of women prosecuted for killing an abusive partner through the lens of wrongful convictions and miscarriages of justice, which highlighted several key findings. They outlined evidence of overcharging – that abused women were being pressured by police and prosecutors to plead guilty on the basis of partial defences – and that the courts held inaccurate and persistent stereotypes of abused women. They also concluded that the legal system is ineffective in correcting what they term 'false guilty pleas' or wrongful convictions as miscarriages of justice. One potential solution that was suggested is the establishment of a wrongful conviction database. This database could serve as a resource to identify patterns, highlight systemic issues, and contribute to the prevention and rectification of miscarriages of justice in cases involving abused women.

DANIELLE TYSON AND BRONWYN NAYLOR

This presentation shared findings from an ongoing study on the impact of the 2005 and 2014 Victorian homicide law reforms, which aimed to make self-defence more accessible for women using lethal force against intimate partners. Associate Professor Danielle Tyson and Professor Bronwyn Naylor focused on cases from 2015 to 2023, examining the effects of the 2014 reforms. Their findings show progress: more women are raising self-defence, some courts are recognizing coercive control and social entrapment, and some instances of 'good' lawyering have improved outcomes in some cases. However, significant barriers remain, particularly for Indigenous women. The second part of their presentation discussed preliminary findings from a Victorian pilot study. This study involved interviews with practicing lawyers and experts who assist women charged with murder or other criminal offences for using force against their abusers. These findings highlighted key challenges in accessing family violence experts willing to engage with court processes, write reports, and testify in court. One outcome from the discussion was the need for a national database of experts who can write court reports and give evidence in this area, and to collaborate with practicing lawyers and experts to determine existing and further training requirements.

SESSION 8

UNDERSTANDING DOMESTIC AND FAMILY VIOLENCE: PRACTITIONER INSIGHTS AND THE ROLE OF EXPERT EVIDENCE

PATRICIA EASTEAL

This session focussed on expert evidence, with a particular focus on psychological evidence. Professor Patricia Easteal's pre-recorded presentation focused on her experience over the past three decades as an academic and expert witness writing court reports and testifying in court in cases where men have killing their (ex) partners, children and sometimes themselves, and the less frequent instances where women survivors kill their violent partners as an act of self-protection.

Expert evidence can play a crucial role in assisting to understand the behaviours and dynamics of DFV, the effects of DFV on the primary victim and why she felt she was unable to leave. It can include the impact of DFV on the victim's low sense of self and how both the victim and abuser's background and behaviour conform to this paradigm, answering questions from the prosecution about why she kept returning to the relationship, and the need to reinterpret what constitutes 'reasonable grounds for believing' that her act of killing was necessary in the circumstances.

CAROLYN QUADRIO

Associate Professor Carolyn Quadrio then built on this detailed examination of expert evidence with a single case study, drawing on her extensive experience as a psychiatrist and expert witness and examining the impact of a background child sexual abuse, family drug and alcohol abuse, and adult sexual abuse on the couple and their relationship. Carolyn Quadrio highlighted that a traumatic bond can form between the couple and discussed the challenges and benefits of therapeutic intervention. She also pointed to a range of problems with the pathologisation of trauma and how experts often have to talk in psychiatric terms about the impact of trauma because this is what courts expect from them. A/Prof Quadrio also gave a very detailed account of the impact of trauma along with psychological and social and cultural issues. She noted that in all of these cases, the fatal outcome was preceded by an escalation of violence. In such cases the rating scale developed by Roberts in 2002 in the Handbook on Domestic Violence has been used successfully as a reliable predictive factor.

SESSION 9

ALTERNATIVE STRATEGIES: THE ROLE OF JURY DIRECTIONS AND INSIGHTS FROM POST-TRIAL REVIEWS

HEATHER DOUGLAS

Professor Heather Douglas focused on the role of jury directions to address misconceptions and stereotypes about domestic and family violence. In its 2004 Defences to Homicide Final Report, the Victorian Law Reform Commission (VLRC) recognised that while those with expertise in family violence are best placed to address misconceptions, the trial judge has an important role in assisting the jury to recognise the significance of prior violence and to make the connections between expert evidence and the issues at trial. Where expert evidence is not led, the judge's directions to the jury take on even greater significance. While the VLRC did not favour legislating to require a set jury direction to be delivered when a history of family violence is raised (2004, p. 192), in 2014 the Victorian Government introduced a standard jury direction around family violence, observing that many members of the community do not fully understand the dynamics of family violence and that jury directions can play an important role in addressing juror misconceptions. The Jury Directions Act 2015 (Vic) (and s322J Crimes Act 1958 (Vic)), provides that, where requested by Defence counsel or the defendant, the trial judge must give a direction on family violence unless there are good reasons for not doing so. Professor Douglas reflected on two cases that illustrate the application of jury directions.

HARRIET WISTRICH AND PRAGNA PATEL

Harriet Wistrich and Pragna Patel outlined post-trial reviews and their work with the Criminal Cases Review Commission (CCRC) in the UK. Established in 1997, the CCRC looks into criminal cases where people have exhausted appeal avenues but believe they have been wrongly convicted or wrongly sentenced. After the landmark case of Sally Challen, the CCRC decided to review every case that had historically been before them that they had rejected where there was evidence of coercive control. Challen was jailed for life after killing her husband in 2010 but later had her conviction quashed following the decision to make coercive control – a sustained pattern of abuse intended to harm, punish or frighten – a criminal offence in England and Wales in 2015.

Harriet's work has involved working with women and/or a family member who has had their case rejected by the court of appeal but who believes that they may have suffered a miscarriage of justice because coercive control was not explored as a factor during their trial. The speakers noted that unfortunately the CCRC process is slow, and the test for admitting fresh evidence is a high threshold. Furthermore, only about half the cases that go to the CCRC are successful. It is instructive to note that CCRCs have been established in Scotland (in 1999), Norway (in 2004) and New Zealand (in 2020). More recent calls to establish a CCRC in Australia have followed the decision of the New South Wales Attorney-General in June 2023 to pardon Kathleen Folbigg, who served 20 of her 30 year sentence for the murder of three of her infant children and the manslaughter of a fourth child.

SESSION 10

UNDERSTANDING DOMESTIC ABUSE AND COERCIVE CONTROL: STRATEGIES FROM THE UK

This final session of the workshop included two different reflections on approaches to improving understandings of domestic abuse and coercive control. The first presentation by Associate Professor Charlie Bishop discussed the challenges posed by traditional approaches to assessing culpability, based upon Kantian conceptions of the autonomous legal subject, which are, she argues, inherently unable to accommodate women who kill their coercively controlling partners.

The second presentation by Professor Nicola Wake and Professor Vanessa Bettinson considered an alternative strategy to support further self-defence reforms. Although in the early stages, the proposed research will explore public perceptions of self-defence and partial defences to murder through a series of vignettes to be workshopped by focus groups.

CONCLUSIONS

Across two days, the workshop explored reforms in several jurisdictions and continuing challenges to ensuring that the experience of victim/survivors of IPV is presented at their homicide trials.

The presentations prompted discussion about the need for greater opportunities for information sharing between experts in this field and with the lawyers who consult them. This exchange would focus on sharing successful strategies and other instances of 'good lawyering' where advocacy has helped secure more just outcomes for victim survivors. Further research is needed to ascertain existing materials and identify further resources and materials most beneficial to experts and practicing lawyers in this area.

A second theme arising from the workshop was the need to better identify and support a wider range of experts. Specifically, there is a need for formal training of experts to improve their ability to provide the best evidence of domestic and family violence. This is necessary to grow the pool of experts beyond psychologists and psychiatrists who may have little experience with homicide cases where the victim or perpetrator has a history of domestic violence. Professionals working with victim/survivors such as social workers and experienced refuge/ shelter staff should be assisted with training in the requirements of court reports, and in court procedures and cross-examination. This work should be undertaken both within and across jurisdictions.

One avenue would be to establish a database of experts who can write reports and give evidence in this area. Further research with practicing lawyers, experts, and/or advocates with direct experience of advocating on behalf of, representing or supporting women in these cases would be required to identify existing training, and to collaborate in determining the further training required and who might deliver such training.