

DID DEFENSIVE HOMICIDE IN VICTORIA PROVIDE A SAFETY NET FOR BATTERED WOMEN WHO KILL? A CASE STUDY ANALYSIS

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This article seeks to draw conclusions about the potential impact of the Crimes Amendment (Abolition of Defensive Homicide) Act 2014 (Vic). We do so by considering whether defensive homicide served as a safety net in the 2014 case of Director of Public Prosecutions (Vic) v Williams. The article presents a detailed analysis of the trial transcript and sentencing remarks to support the contention that the defence did in fact achieve this purpose. The conclusion rests, principally, upon understanding the jury finding that Williams killed in the belief that her actions were necessary for her own protection, but apparently determined that she had no reasonable grounds for that belief (thereby failing the legal test of self-defence as it then stood). Having looked at how the 2014 legislation also amended relevant evidence laws, and reinforced jury directions to accommodate considerations of family violence, we then consider the implications of these reforms for battered women who kill. We suggest that, in the absence of the offence of defensive homicide, women like Williams may in the future be convicted of murder, even when they kill in response to family violence and with a genuine belief that their actions are necessary in self-defence.

I INTRODUCTION

In November 2014, Victoria's homicide laws received their second major shake-up in a decade when the offence of defensive homicide was abolished by the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic) ('2014 reforms'). This legislation also amended relevant evidence laws and reinforced jury directions to accommodate considerations of family violence.¹ The implications of these changes will be considered in detail further below.

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1 *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic) items 4, 11. For comment, see Nicola Wake, "'His Home is His Castle. And Mine Is a Cage': A New Partial Defence for Primary Victims Who Kill" (2015) 66 *Northern Ireland Legal Quarterly* 151.

The abolition of defensive homicide in 2014 came at a time when family violence was at the forefront of public discourse. In 2013, family violence was described as the ‘greatest social epidemic of our time’.² In 2014 came the introduction of an Australian Senate inquiry,³ and a Special Taskforce into Family Violence in Queensland.⁴ Around the same time, the newly elected Victorian Labor Government appointed Victoria’s (and Australia’s) first Minister for the Prevention of Family Violence,⁵ and established the Victorian Royal Commission into Family Violence, described as ‘a long-overdue statewide conversation about the extent of family violence in our community’.⁶ In January 2015, Rosie Batty, grieving-mother-turned-family-violence-campaigner, was named 2015 Australian of the Year and, two days later, was appointed to the Advisory Panel on Reducing Violence Against Women and Their Children established by the then Prime Minister, Tony Abbott.⁷ She used statistics to drive home the reality of family violence in her Australian of the Year Award acceptance speech:

No matter where you live, family violence exists in every pocket of every neighbourhood. It does not discriminate and it is across all sections of our society. Family violence may happen behind closed doors but it needs to be brought out from these shadows and into broad daylight. One in six women has experienced

- 2 Annette Gillespie, Chief Executive Officer, Women’s Domestic Violence Crisis Service in Victoria (now Safe Steps Family Violence Response Centre), quoted in Rachel Browne, ‘Domestic Violence Becoming “Greatest Social Epidemic of Our Time”’, *The Sydney Morning Herald* (online), 23 June 2013 <<http://www.smh.com.au/national/domestic-violence-becoming-greatest-social-epidemic-of-our-time-20130622-2op6c.html>>.
- 3 The inquiry received 165 public submissions and confidential submissions, and tabled its final report on 20 August 2015: Senate Finance and Public Administration References Committee, Parliament of Australia, *Domestic Violence in Australia* (2015) 1 [1.3].
- 4 The inquiry’s final report was released on 28 February 2015: Special Taskforce on Domestic and Family Violence (Qld), *Not Now, Not Ever — Putting an End to Domestic and Family Violence in Queensland* (2015). The Government has announced that it will adopt or support all 140 of the inquiry’s recommendations: ‘Domestic Violence: Queensland Government to Implement All Recommendations of Bryce Report’, *ABC News* (online), 18 August 2015 <<http://www.abc.net.au/news/2015-08-18/qld-implement-all-recommendation-bryce-domestic-violence-report/6705678>>.
- 5 Richard Willingham and Tom Cowie, ‘Premier Daniel Andrews Finalises Ministers’ Portfolios’, *The Age* (online), 4 December 2014 <<http://www.theage.com.au/victoria/victoria-state-election-2014/premier-daniel-andrews-finalises-ministers-portfolios-20141204-11zxcl.html>>. NSW followed suit in April 2015: ‘NSW Election 2015: Pru Goward Sworn in as Minister for the Prevention of Domestic Violence’, *ABC News* (online), 2 April 2015 <<http://www.abc.net.au/news/2015-04-02/pru-goward-minister-prevention-of-domestic-violence-nsw-cabinet/6366908>>.
- 6 Kate Fitz-Gibbon, ‘Explainer: Victoria’s Royal Commission into Family Violence’, *The Conversation* (online), 27 February 2015 <<http://theconversation.com/explainer-victorias-royal-commission-into-family-violence-36510>>. The Royal Commission released its report shortly before this article went to print. The Victorian Government has committed to implementing all of the Commission’s 227 recommendations: see Miki Perkins, ‘Royal Commission into Family Violence: What You Need to Know’, *The Age* (online), 30 March 2016 <<http://www.theage.com.au/victoria/royal-commission-into-family-violence-what-you-need-to-know-20160330-gnttws.html>>.
- 7 Tony Abbott, Prime Minister of Australia, ‘COAG Agenda to Address Ending Violence Against Women’ (Media Release, 28 January 2015) <<http://pmtranscripts.dpmc.gov.au/release/transcript-24155>>.

physical or sexual abuse by a current or former partner including some of those celebrating with us today.⁸

Family homicide must be looked at within this wider context. Although killings of and by women grab the attention of the media and legal researchers,⁹ they ‘are just the tip of the iceberg’,¹⁰ with most family violence cases ‘submerged, allegedly invisible to society’.¹¹ When a woman is killed by her violent partner, it is often the culmination of years of physical, psychological and financial abuse, threats and emotional manipulation. Similarly, a battered woman who kills her partner is exactly that: *battered*. And the question is, to what extent does the law — its offences, defences and processes — engage with and take account of her experience?

In addition, by analysing the case of *Director of Public Prosecutions (Vic) v Williams*,¹² and particularly the transcript of the expert witness and the judicial directions, we have a secondary — but no less important — aim to better enable readers to ‘walk in the shoes’ of the battered woman.¹³

The former Attorney-General of Victoria, Rob Hulls, who introduced the offence of defensive homicide in 2005, recently asserted that ‘the new offence of defensive homicide served as a safety net for those whose actions may not have seemed reasonable to a jury’.¹⁴ It is important to examine whether defensive homicide was in fact serving as a safety net for women subject to domestic violence. If it did, then its abolition by the 2014 reforms may well have negative consequences for some battered women who kill their violent partners. Our project thus continues the narrative of the experiences of battered women that has been so richly told in the body of legal research on this topic, and it comes at a time of significant public discourse on family violence.

8 ‘Australian of the Year 2015: Rosie Batty’s Speech Text, Pays Tribute to Son’, *The Australian* (online), 25 January 2015 <<http://www.theaustralian.com.au/in-depth/australia-day/australian-of-the-year-2015-rosie-battys-speech-text-pays-tribute-to-son/story-fnrjzbzgk-1227196361078>>. The ‘one in six women’ figure accords with Australian Bureau of Statistics data: Australian Bureau of Statistics, *Personal Safety, Australia, 2012*, Catalogue No 4906.0 (11 December 2013) ‘Experience of Partner Violence’ <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0Chapter7002012>>.

9 Indeed, a ‘public interest’ argument was the basis for an (unsuccessful) application by the media in late 2014 to access the record of interview of the defendant whose case is the focus of this paper: *DPP (Vic) v Williams [No 1]* [2015] VSC 107 (27 March 2015) [48].

10 Australian Broadcasting Corporation, ‘High-Profile Domestic Violence Murders “Tip of the Iceberg”’, 7.30, 21 April 2014 (Fiona McCormack) <<http://www.abc.net.au/7.30/content/2014/s3989316.htm>>.

11 Enrique Gracia, ‘Unreported Cases of Domestic Violence Against Women: Towards an Epidemiology of Social Silence, Tolerance, and Inhibition’ (2004) 58 *Journal of Epidemiology and Community Health* 536, 536.

12 [2014] VSC 304 (27 June 2014) (*Williams*).

13 See Anthony Hopkins and Patricia Eastal, ‘Walking in Her Shoes: Battered Women Who Kill in Victoria, Western Australia and Queensland’ (2010) 35 *Alternative Law Journal* 132, 132.

14 Rob Hulls, ‘Foreword: Complexity and Violence — The Political Need for Reform’ in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) vii, vii. See also Danielle Tyson et al, ‘The Effects of the 2005 Reforms on Legal Responses to Women Who Kill Intimate Partners’ in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 76.

As will be discussed further below, with the abolition of defensive homicide, a manslaughter conviction on the basis of an unlawful and dangerous act or criminal negligence is the sole refuge between a murder conviction and acquittal.¹⁵ Such a conviction will only be available where it is either accepted by the prosecution or found by the jury that the mens rea (or fault element) for murder is not otherwise present. Accordingly, where a woman kills her violent partner with the requisite mens rea for murder, that is, an intention to kill or cause grievous bodily harm, or foresight that her actions will probably cause death or grievous bodily harm,¹⁶ meeting the test of self-defence becomes an ‘all-or-nothing’ venture.¹⁷ As stated by Victoria’s then shadow Attorney-General and current Attorney-General, Martin Pakula, in acknowledging the argument for the retention of defensive homicide:

Without defensive homicide as the midpoint between acquittal and murder, the reality is that the self-defence claim becomes an all or nothing roll of the dice for women in these circumstances, and if they are unable to convince the court that self-defence has been made out, then what these women will face is a conviction for murder. This is a high stakes change.¹⁸

In order to draw conclusions about the potential impact of the abolition of defensive homicide, we first consider whether it served as a safety net in the 2014 case of *Williams*. We examine the trial transcript and sentencing judgment of *Williams* to examine the efficacy of defensive homicide. This case is unique in the admission of expert evidence and the nature of the jury directions given and therefore provides an ideal means of examining defensive homicide and the impact of recent changes in detail.

We contend that the defence achieved its purpose, having regard to the jury finding that Williams killed in the *belief* that her actions were necessary for her own protection, but that she apparently nonetheless had no reasonable grounds for that belief (thereby failing the legal test of self-defence as it then stood). Secondly, after examining the 2014 reforms and considering their operation, we ponder the implications of the abolition of defensive homicide for battered women who kill. Specifically, we do so by considering what the jury might have found in Williams’ case if the law applicable had been that which is now in operation in Victoria. In doing so, we voice concern that without the ‘halfway house’ of defensive homicide,¹⁹ women like Williams may in the future be convicted of murder, notwithstanding the fact that their actions are in response to the family violence to which they have been subjected.

- 15 Whilst the punishment for manslaughter is set out in *Crimes Act 1958* (Vic) s 5 (*‘Crimes Act’*), the two categories of manslaughter are established and defined by the common law: *Wilson v The Queen* (1992) 174 CLR 313, 333–4 (*‘Wilson’*).
- 16 Whilst the punishment for murder is set out in *Crimes Act* s 3, the elements of the offence are defined at common law, as set out in *R v Crabbe* (1985) 156 CLR 464, 469.
- 17 Wake, above n 1, 157.
- 18 Victoria, *Parliamentary Debates*, Legislative Assembly, 3 September 2014, 3137 (Martin Pakula, Attorney-General).
- 19 Thomas Crofts and Danielle Tyson, ‘Homicide Law Reform in Australia: Improving Access to Defences for Women Who Kill Their Abusers’ (2013) 39 *Monash University Law Review* 864, 886. See also Kate Fitz-Gibbon and Arie Freiberg, ‘Introduction’ in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 1, 6.

II THE LEGISLATIVE FRAMEWORK GOVERNING DEFENSIVE HOMICIDE

A The 2005 Reforms

Defensive homicide was introduced in 2005 by the *Crimes (Homicide) Act 2005* (Vic), which also abolished the contentious partial defence of provocation.²⁰ The new offence contained in s 9AD of the *Crimes Act* offered an alternative to murder in defined circumstances.²¹ It provided an alternative verdict to murder when a person killed another person in circumstances that *would* constitute self-defence, but for the person lacking reasonable grounds for the belief that their actions were necessary. The maximum penalty for defensive homicide was 20 years' imprisonment, which was on par with manslaughter,²² but considerably lower than murder's maximum sentence of life imprisonment.²³

The 2005 reforms also sought to facilitate the admission of expert evidence in relation to family violence to assist jurors in deciding if an accused acted in self-defence,²⁴ to assess 'the nature of the threat the accused faced, his or her state of mind, and the reasonableness of the accused's response'²⁵ and/or to understand why a person might have remained in an abusive relationship and 'resorted to lethal force rather than seeking outside help'.²⁶ Admission of family violence evidence was explicitly provided for in relation to homicide, under the former s 9AH of the *Crimes Act* (now re-enacted in s 322M, as discussed further below). Section 9AH was the result of the VLRC's 2004 *Defences to Homicide* report, which recommended, inter alia, that evidence from people with expertise on family violence be admissible, including evidence on the nature and dynamics of

20 *Crimes (Homicide) Act 2005* (Vic) item 3.

21 Ibid item 4. The decision to abolish provocation largely implemented the recommendations of the Victorian Law Reform Commission (VLRC) in its 2004 report: *Defences to Homicide*, Final Report (2004). For discussion of the background to the 2005 reforms, see Kate Fitz-Gibbon and Sharon Pickering, 'Homicide Law Reform in Victoria, Australia: From Provocation to Defensive Homicide and Beyond' (2012) 52 *British Journal of Criminology* 159, 163–5; Kellie Toole, 'Defensive Homicide on Trial in Victoria' (2013) 39 *Monash University Law Review* 473, 480–3; Wake, above n 1, 154–6; Fitz-Gibbon and Freiberg, above n 19, 2–7; Justice Marcia Neave, 'The More Things Change the More They Stay the Same: Homicide Law Reform in Victoria' in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 9; Justice Felicity Hampel, 'Legal Culture, Professional Education and Homicide Law Reform' in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 29; Tyson et al, above n 14, 88; Greg Byrne, 'Simplifying Homicide Laws for Complex Situations' in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 144, 147.

22 *Crimes Act* s 5.

23 Ibid s 3.

24 VLRC, *Defences to Homicide*, above n 21, 134–5 [4.16]–[4.18].

25 Ibid 135 [4.19].

26 Ibid 136 [4.20], citing Office of the Status of Women, Department of the Prime Minister and Cabinet, *Community Attitudes to Violence against Women: Executive Summary* (Australian Government Publishing Service, 1995) 30 and Prasuna Reddy et al, 'Attributions About Domestic Violence: A Study of Community Attitudes' (1997) 4 *Psychiatry, Psychology and Law* 125, 141.

abuse and how this impacts on people in violent relationships.²⁷ Described as ‘[t]he most significant reform to the law of self-defence introduced in Victoria’,²⁸ s 9AH did not limit the evidence that may be adduced where family violence is alleged. ‘Violence’ was taken to mean physical, sexual or psychological abuse, which includes but is not limited to: intimidation, harassment, damage to property, and threats of physical, sexual or psychological abuse.²⁹ Under s 9AH(3), the evidence that could be admitted ‘may relate to the history of the relationship, the nature and dynamics of violent relationships generally, and the effect of family violence (both generally and in the particular case)’.³⁰ Section 9AH, in allowing for circumstances where a person believed their conduct was necessary even where the harm was not immediate or their response used excessive force,³¹ has been described as being of ‘critical importance as it directly confronts the problem abused women have faced in having their belief in lethal conduct considered genuine and reasonable’.³² Importantly, this means an accused can be protected by self-defence even without the presence of a psychological disorder.

B Impact of the 2005 Reforms

Defensive homicide was intended to apply where ‘a killing occurs in the context of family violence’,³³ to give jurors more options in self-defence cases than ‘all or nothing’ (ie, a conviction for murder or outright acquittal).³⁴ It was anticipated that it would serve as a ‘safety net’ for women who killed in response to family violence.³⁵ However, contrary to their intention, the 2005 reforms allowed some Victorian men who killed to have ‘their perpetration minimised, and even legitimised, with a conviction less than murder’.³⁶ Although the 2005 changes were held up as an example of ‘feminist-inspired reforms to remediate gender

27 VLRC, *Defences to Homicide*, above n 21, lii [34]. For background and discussion, see Heather Douglas, ‘Social Framework Evidence: Its Interpretation and Application in Victoria and Beyond’ in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 94.

28 Hopkins and Eastal, above n 13, 134.

29 *Crimes Act* s 9AH(4).

30 Kellie Toole, ‘Self-Defence and the Reasonable Woman: Equality before the New Victorian Law’ (2012) 36 *Melbourne University Law Review* 250, 265.

31 *Crimes Act* ss 9AH(1)(c)–(d), and now replicated in *Crimes Act* s 322M(1).

32 Toole, ‘Self-Defence and the Reasonable Woman’, above n 30, 266.

33 Debbie Kirkwood, Mandy McKenzie and Danielle Tyson, ‘Justice or Judgement? The Impact of Victorian Homicide Law Reforms on Responses to Women Who Kill Intimate Partners’ (Domestic Violence Resource Centre Victoria, Discussion Paper No 9, 2013) 7, quoting Office of the Attorney-General (Vic), ‘Hulls Announces Major Reform to Homicide Laws’ (Media Release, 4 October 2005).

34 Kate Fitz-Gibbon, *Homicide Law Reform, Gender and the Provocation Defence: A Comparative Perspective* (Palgrave Macmillan, 2014) 122–3, quoting Office of the Attorney-General (Vic), ‘Defensive Homicide Review to Seek Community Feedback’ (Media Release, 8 August 2010).

35 VLRC, *Defences to Homicide*, above n 21, 99 [3.100].

36 Kate Fitz-Gibbon, ‘The Victorian Operation of Defensive Homicide: Examining the Delegitimation of Victims in the Criminal Court System’ (2012) 21 *Griffith Law Review* 555, 577.

imbalances in legal responses’,³⁷ the dominant and successful use of the offence by males was its ultimate downfall.³⁸ Particularly significant was the 2010 case of Luke Middendorp, who was the first to successfully raise defensive homicide after killing his female intimate partner.³⁹

In the wake of Middendorp’s trial, which evoked legal and media criticism,⁴⁰ the Victorian Government announced that the Department of Justice (DOJ) would review the operation of defensive homicide. In August 2010, a discussion paper was released, calling for submissions on ‘the offence, its future viability and options for its reform’.⁴¹ The three options proposed in the 2010 discussion paper were for defensive homicide to be retained, limited (for example, to situations involving family violence), or abolished.⁴²

At that point, there had been 13 convictions of defensive homicide — 10 were the result of a guilty plea and three were determined by the jury as an alternative conviction to murder; all 13 offenders were male.⁴³ Between the release of the discussion paper and the release of a consultation paper in September 2013, there were a further 15 defensive homicide convictions. In total, 25 men were sentenced for defensive homicide from its 2005 inception to September 2013, with all offenders other than Middendorp killing a male victim.⁴⁴ By contrast,

37 Kirkwood, McKenzie and Tyson, above n 33, 3, citing Carolyn B Ramsey, ‘Provoking Change: Comparative Insights on Feminist Homicide Law Reform’ (2010) 100 *Journal of Criminal Law and Criminology* 33 and Caroline Forell, ‘Gender Equality, Social Values and Provocation Law in the United States, Canada and Australia’ (2006) 14 *Journal of Gender, Social Policy and the Law* 27.

38 Fitz-Gibbon, *Homicide Law Reform, Gender and the Provocation Defence*, above n 34, 201.

39 *R v Middendorp* [2010] VSC 202 (19 May 2010).

40 See Sarah Capper and Mary Crooks, ‘New Homicide Laws Have Proved Indefensible’, *The Sunday Age* (Melbourne) 23 May 2010, 21; JaneMaree Maher, ‘Commentary on *R v Middendorp* (Defensive Homicide)’ in Heather Douglas et al (eds), *Australian Feminist Judgments: Righting and Rewriting Law* (Hart Publishing, 2014) 325; Fitz-Gibbon, *Homicide Law Reform, Gender and the Provocation Defence*, above n 34, 192; Wake, above n 1, 155–6; Kate Fitz-Gibbon and JaneMaree Maher, ‘Feminist Challenges to the Constraints of Law: Donning Uncomfortable Robes?’ (2015) 23 *Feminist Legal Studies* 253, 253. Cf Toole, ‘Defensive Homicide on Trial in Victoria’, above n 21, 486–7.

41 Fitz-Gibbon, *Homicide Law Reform, Gender and the Provocation Defence*, above n 34, 192.

42 Department of Justice (Vic), ‘Defensive Homicide: Review of the Offence of Defensive Homicide’ (Discussion Paper, August 2010) 7. For discussion, see Neave, above n 21, 21–3.

43 Department of Justice (Vic), ‘Defensive Homicide: Review of the Offence of Defensive Homicide’, above n 42, 33 [119]–[120].

44 ‘Crimes Amendment (Abolition of Defensive Homicide) Bill 2014’ (Research Brief No 10, Parliamentary Library, Parliament of Victoria, 2014) 34.

there were only three female offenders sentenced in this period, all of whom killed a violent intimate partner.⁴⁵

C Arguments For and Against Abolishing Defensive Homicide

1 Arguments For Abolition

Some victims' groups and family violence stakeholders advocated for defensive homicide to be abolished, mainly because it had not been used as intended.⁴⁶ In her submission, Kate Fitz-Gibbon, a criminologist who wrote her doctoral thesis on this issue, captured concerns about the operation of the offence for battered women who kill:

In relation to providing a safety net for battered women who kill ... defensive homicide is not the appropriate categorisation for this type of killing as it would suggest that the offender did not have reasonable grounds for believing that they were defending themselves or another from death or really serious injury ... A conviction of defensive homicide in these circumstances sends a problematic message to the community that the actions of such persons were not reasonable.⁴⁷

The proposal to abolish defensive homicide was consistent with Fitz-Gibbon's conclusion that homicide law in Victoria should be reformed from its reliance upon 'partial defences or alternative offences', to better accommodate the circumstances of battered women defendants.⁴⁸ Fitz-Gibbon argued that alternate 'safety nets' such as defensive homicide 'fail to achieve a reflective space for the voices of this traditionally silenced population to be appropriately heard and represented'.⁴⁹ In

45 Department of Justice (Vic), 'Defensive Homicide: Proposals for Legislative Reform' (Consultation Paper, September 2013) 8, 64–72. These cases were *R v Black* [2011] VSC 152 (12 April 2011) ('*Black*') (on appeal: *Black v The Queen* [2012] VSCA 75 (26 April 2012)), *R v Creamer* [2011] VSC 196 (20 April 2011) ('*Creamer*') and *R v Edwards* [2012] VSC 138 (24 April 2012) ('*Edwards*'). In *Black*, Karen Black killed her de facto husband Wayne Clarke by stabbing him twice in the chest, after being cornered by him in a physical argument in their kitchen. She pled guilty to defensive homicide with the Crown accepting there had been a long history of family violence by Mr Clarke. The offence was found to be in the middle of the range for defensive homicide and Ms Black was sentenced to nine years' imprisonment with a non-parole period of six years. In *Creamer*, Eileen Creamer severely beat her husband David Creamer with a blunt weapon before stabbing him in the abdomen. Ms Creamer offered to plead guilty to defensive homicide but that offer was rejected and she was tried for murder. The trial judge did not accept all of Ms Creamer's evidence about the killing or about the history of family violence but decided the jury must have, in finding her guilty of defensive homicide. She was sentenced to 11 years' imprisonment with a non-parole period of seven years. An appeal on the sentence on the basis that it was manifestly excessive was dismissed. Finally, in *Edwards*, Jemma Edwards stabbed her husband James Edwards more than 30 times and claimed she acted in self-defence, saying Mr Edwards had assaulted and threatened her before she stabbed him. The trial judge expressed reservations about Ms Edwards' account. After being charged with murder, Ms Edwards pleaded guilty to defensive homicide. In finding she had suffered family violence at the hands of Mr Edwards during their relationship, but also that Ms Edwards had a previous conviction for assault occasioning actual bodily harm for stabbing Mr Edwards several years previously, she was sentenced to seven years' imprisonment with a non-parole period of four years and nine months. For a recent analysis of these cases, see Wake, above n 1, 159, 163–4; Tyson et al, above n 14, 80–4; Douglas, 'Social Framework Evidence', above n 27, 102–5.

46 Department of Justice (Vic), 'Defensive Homicide: Proposals for Legislative Reform', above n 45, 13.

47 Ibid.

48 Fitz-Gibbon, 'The Victorian Operation of Defensive Homicide', above n 36, 576.

49 Ibid.

the 2011 *Creamer* case,⁵⁰ there were gaps in evidence that, despite the known facts supporting a murder charge, resulted in a defensive homicide verdict. Toole described the verdict as being based on ‘the traditional conceptions of female subservience, emotional lability and lack of coping skills’,⁵¹ even though the 2005 reforms ‘were intended to reduce the need for abused women to rely on these stereotypes’.⁵²

It should also be noted that in 2012, Flynn and Fitz-Gibbon found that, of the 21 cases of defensive homicide finalised by 30 April 2012, 16 resulted from the Crown’s acceptance of a guilty plea.⁵³ They suggested that because a guilty plea to defensive homicide can only be entered where the Crown agrees to withdraw additional homicide-related charges (and defensive homicide in practice was only used as an alternative charge to murder),⁵⁴ ‘it is likely that many of these cases involved plea bargaining’.⁵⁵ The authors thought this was of concern in relation to the justice of the result for the particular women affected, and also because it limited researchers’ ability to ‘evaluate the practical application’ of defensive homicide, ‘including its impact on gender bias in the operation of homicide law’.⁵⁶ Of the four women convicted of defensive homicide in Victoria for killing an intimate partner, two resolved their cases by way of a guilty plea.⁵⁷

Finally, Fitz-Gibbon also argued that the ‘varied levels of culpability’⁵⁸ in cases that may otherwise have resulted in a defensive homicide conviction ‘could be addressed adequately at the sentencing stage, as is the case in the current model for considering any mitigation due to provocation’.⁵⁹

50 [2011] VSC 196 (20 April 2011). See above n 41.

51 Toole, ‘Self-Defence and the Reasonable Woman’, above n 30, 285, citing Rebecca Bradfield, ‘Women Who Kill: Lack of Intent and Diminished Responsibility as the Other “Defences” to Spousal Homicide’ (2001) 13 *Current Issues in Criminal Justice* 143, 152–3.

52 Toole, ‘Self-Defence and the Reasonable Woman’, above n 30, 285.

53 Asher Flynn and Kate Fitz-Gibbon, ‘Bargaining with Defensive Homicide: Examining Victoria’s Secretive Plea Bargaining System Post-Law Reform’ (2011) 35 *Melbourne University Law Review* 905, 906, 926–7.

54 *Ibid* 906, 919.

55 *Ibid* 906.

56 *Ibid*.

57 *Black* [2011] VSC 152 (12 April 2011) [24]; *Edwards* [2012] VSC 138 (24 April 2012) [42].

58 Fitz-Gibbon, ‘The Victorian Operation of Defensive Homicide’, above n 36, 578.

59 *Ibid*. For discussion, see Arie Freiberg, Karen Gelb and Felicity Stewart, ‘Homicide Law Reform, Provocation and Sentencing’ in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 57. The scope for taking the offender’s individual circumstances into account at the sentencing stage has been complicated in Victoria by the introduction in 2014 of baseline sentences: see Neave, above n 21, 27–8; Tyson et al, above n 14, 91; Ian Leader-Elliott, ‘Reform and Codification of the Law of Homicide: Reflections on the Victorian Experience’ in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 158, 171–2. However, this area of law is now under review after the Court of Appeal recently found the model to be ‘incapable of being given any practical operation’: *DPP (Vic) v Walters (a Pseudonym)* [2015] VSCA 303 (17 November 2015) [9] (Maxwell P, Redlich, Tate and Priest JJA). See also Martin Pakula, ‘Government Seeks Baseline Sentencing Review’ (Media Release, 24 November 2015) <<http://www.premier.vic.gov.au/government-seeks-baseline-sentencing-review/>>; Victorian Sentencing Advisory Council, *Baseline Sentencing* <<https://www.sentencingcouncil.vic.gov.au/about-sentencing/baseline-sentencing>>.

2 Arguments for Retention

The DOJ's consultation paper revealed that legal stakeholders, including Victoria Police, Victoria Legal Aid and the former Director of Public Prosecutions, favoured retaining defensive homicide because it filled a 'gap in the law'.⁶⁰ There was 'little support' for limiting the offence.⁶¹ It should be acknowledged that a number of women's organisations, family violence groups and academics also opposed the abolition of defensive homicide.⁶² A joint submission to the DOJ on its review of defensive homicide was compiled by representatives of Domestic Violence Resource Victoria (DVRCV), Federation of Community Legal Centres, Victorian Women's Trust and academics from Monash University, and endorsed by a number of organisations, including Domestic Violence Victoria, the Victorian Women's Trust, the Human Rights Law Centre, Victorian Women Lawyers, Women's Domestic Violence Crisis Service, Women's Health Victoria, Women's Legal Service Victoria and Victorian Aboriginal Legal Service.⁶³ In this submission, Kirkwood et al recommended, inter alia, that defensive homicide not be abolished.⁶⁴ However, if defensive homicide was abolished, it was recommended that 'excessive self-defence should be reintroduced'. In the alternative, 'if excessive self-defence [was] not reintroduced, a family violence-specific partial defence ... should be considered', as this would be 'preferable to having no other partial defence' available.⁶⁵ The submission went on to state:

While we acknowledge that there are problems with defensive homicide, we recommend it be retained in the interests of women who kill abusive intimate partners.

We believe that the push for its abolition is partly driven by recent press coverage. ... Abolishing defensive homicide without replacing it with any other partial defence will be detrimental for women who kill male partners in the context of family violence. If the government is seriously committed to addressing the impact of family violence on women who kill their abusers, it should retain the partial defence of defensive homicide.⁶⁶

Advocates for retention of the partial defence also raised concern that the 'label of "murder"' has a community stigma attached that may downplay the effect of the family violence experienced by the convicted woman.⁶⁷ In addition, in response to the argument that the circumstances of violence could simply be taken into

60 Department of Justice (Vic), 'Defensive Homicide: Proposals for Legislative Reform', above n 45, 13. This 'gap' was presumed by the DOJ to 'probably concern the fact that manslaughter does not apply where a person intends to kill or cause really serious injury to another person': at 13 n 35.

61 Ibid 11.

62 This point was recently recognised by Wake, above n 1, 156.

63 Kirkwood et al, Submission to the Department of Justice (Vic), *Defensive Homicide: Proposals for Legislative Reform — Consultation Paper*, 27 November 2013.

64 Ibid 1.

65 Ibid.

66 Ibid 3 (citations omitted).

67 Select Committee on the Partial Defence of Provocation (NSW), *The Partial Defence of Provocation* (2013) 87 [5.97]; Wake, above n 1, 165. On the issue of the 'highly emotive' label of murder, see Leader-Elliott, above n 59, 158–61.

account at the sentencing stage, concern was raised that '[i]f sentences for murder are perceived to be low there may be public outrage and pressure for higher sentences'.⁶⁸

3 *The DOJ's Recommendations*

The DOJ ultimately proposed that 'defensive homicide be abolished' and that 'excessive self-defence ... should not be re-introduced' in any form.⁶⁹ The consultation paper found there was 'no clear evidence that defensive homicide is working in the way intended to support women who kill in response to family violence'.⁷⁰ The paper noted:

The VLRC [in its 2004 report on defences to homicide] always envisaged that the primary changes needed to be made to self-defence, with defensive homicide being a 'safety-net'. The focus has disproportionately shifted to defensive homicide. This creates the risk that the community may see women who kill in response to family violence as acting unreasonably.⁷¹

The consultation paper further argued that self-defence 'should be the primary focus of reforms for women who kill in response to family violence',⁷² and that the necessity of the 'safety-net' of defensive homicide had been reliant on the lack of efficacy of self-defence.⁷³

The intended main focus of law reform regarding battered women who kill was to be on making self-defence more useable. Accordingly, the DOJ recommended that:

- the 'first limb of the common law test of self-defence ... be reinstated';
- the test for self-defence be codified and 'apply consistently to fatal and non-fatal offences';
- the 'common law test for self-defence be expressly abolished' wherever the statutory test applies;
- the social context evidence laws of s 9AH be 'extended to apply to *any* claim of self-defence' (and not limited to murder or manslaughter charges); and
- the operation of the reforms be reviewed five years after their commencement.⁷⁴

68 Kirkwood, McKenzie and Tyson, above n 33, 49–50.

69 Department of Justice (Vic), 'Defensive Homicide: Proposals for Legislative Reform', above n 45, xi. For discussion, see Neave, above n 21, 23–4.

70 Department of Justice (Vic), 'Defensive Homicide: Proposals for Legislative Reform', above n 45, 26.

71 Ibid 27.

72 Ibid 30.

73 Ibid.

74 Ibid xi–xii.

III OUR ANALYTICAL APPROACH

For her 2012 research, Fitz-Gibbon analysed 22 defensive homicide cases finalised in the Supreme Court of Victoria from the introduction of defensive homicide in 2005 through to 1 September 2012.⁷⁵ Sheehy, Stubbs and Tolmie employed a singular case analysis approach to explore expert testimony on domestic violence,⁷⁶ in the Queensland case of *R v Falls*.⁷⁷ Tyson et al recently analysed all post-2005 Victorian cases involving women who killed their violent partners which proceeded beyond a committal hearing (n=10).⁷⁸ This analysis, which was undertaken concurrently with and independently of our research, included some reference to Williams' case, albeit in much less detail than the present analysis. Similar to Fitz-Gibbon,⁷⁹ our analysis identified key themes by a close reading of Williams' case.⁸⁰ Like Sheehy, Stubbs and Tolmie, we examine a single case. Specifically, we present a detailed analysis of the complete trial transcript in Williams' case, which has not previously been subject to such in-depth analysis.⁸¹

In July 2008, Angela Williams killed her long-term partner, Douglas Kally, by striking him to the back of the head and neck area 16 times. Williams then buried his body in a shallow hole she had dug. For four years, Williams lied to her family and friends about Kally's whereabouts. The defence made two offers for Williams to plead guilty to defensive homicide, initially four months and then again one week before the trial was due to commence, but these were rejected by the prosecution.⁸² Ultimately, Williams was one of only two defensive homicide trials involving a female offender.⁸³ On 27 June 2014, Williams received a sentence of eight years' imprisonment, with a non-parole period of five years.⁸⁴

Not only was the verdict decided in the final months of the existence of the defensive homicide defence, and therefore had the guidance of nearly a decade of relevant precedents and research, but it was also one of just four defensive

75 Fitz-Gibbon, 'The Victorian Operation of Defensive Homicide', above n 36, 557.

76 See generally, Elizabeth Sheehy, Julie Stubbs and Julia Tolmie, 'Securing Fair Outcomes for Battered Women Charged with Homicide: Analysing Defence Lawyering in *R v Falls*' (2014) 38 *Melbourne University Law Review* 666.

77 (Unreported, Supreme Court of Queensland, Applegarth J, 3 June 2010).

78 Tyson et al, above n 14, 80–1.

79 Based on a research methodology designed by Norman Fairclough in Norman Fairclough, *Analyzing Discourse: Textual Analysis for Social Research* (Routledge, 2003).

80 See also Robert K Yin, *Case Study Research: Design and Methods* (SAGE Publications, 5th ed, 2014) 53–5.

81 Cf the brief discussions in Wake, above n 1, 161; Neave, above n 21, 10–11; Tyson et al, above n 14, 80, 89–91; Douglas, 'Social Framework Evidence', above n 27, 105–106; Kate Fitz-Gibbon, 'The Offence of Defensive Homicide: Lessons Learned from Failed Law Reform' in Kate Fitz-Gibbon and Arie Freiberg (eds), *Homicide Law Reform in Victoria: Retrospect and Prospects* (Federation Press, 2015) 128, 131; Byrne, above n 21, 148.

82 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 23 May 2014) 3 (B Kissane).

83 The other relevant case was *Creamer* [2011] VSC 196 (20 April 2011). The other two defensive homicide convictions involving female offenders did not go to trial: see *Black* [2011] VSC 152 (12 April 2011) and *Edwards* [2012] VSC 138 (24 April 2012).

84 *Williams* [2014] VSC 304 (27 June 2014) 10 [51].

homicide convictions of a female offender and male victim.⁸⁵ Indeed, *Williams* is one of the few cases where defensive homicide was used for its intended purpose. Furthermore, and perhaps most significantly, it was the *only* one of those four cases in which expert family violence evidence was admitted to inform the determination of issues in the case.⁸⁶ In addition, as will be argued, Hollingworth J's remarkably extensive directions in relation to family violence (particularly in light of the fact that her directions preceded the 2014 reforms) and the use made of Easteal's expert evidence on family violence were such as to comply with the 2014 reforms to jury directions.⁸⁷ These unique factors enable us to compare the outcome in *Williams* with what might have ensued following the 2014 reforms, with the availability of the trial transcript and sentencing judgment allowing for a more complete analysis.

Our analysis also examines the way that Crown and defence counsel created a picture of *Williams*' relationship with her deceased partner, his violent death and *Williams*' subsequent years of deceit. Of particular importance, because of their evident effect on the defensive homicide verdict, were the 'largely unchallenged' expert evidence of Professor Easteal,⁸⁸ and the way in which Hollingworth J directed the jury on family violence and the jury's verdict options. Easteal's expert evidence informed the jury about family violence and the experience of battered women, while Hollingworth J's directions explained the test for each of the alternate verdicts, relating the evidence of family violence to findings the jury was required to make.⁸⁹

Our analysis answers the first question of this article, namely, whether defensive homicide served as a safety net between murder and acquittal for *Williams*. The second question, concerning the implications of the abolition of defensive homicide, requires a hypothetical consideration relying on the conclusion of the analysis outlined above. In particular, we consider how a case with parallel facts to *Williams* might be concluded under the current law, including the 2014 changes to Victoria's *Jury Directions Act 2013* (Vic).

85 The other cases were *Creamer* [2011] VSC 196 (20 April 2011), *Black* [2011] VSC 152 (12 April 2011) and *Edwards* [2012] VSC 138 (24 April 2012) discussed above n 45. See also *R v Copeland* [2014] VSC 39 (11 February 2014) where a sex worker pleaded guilty to defensive homicide after stabbing her client, later stating that she feared she would be raped or killed.

86 *Williams* [2014] VSC 304 (27 June 2014) 8 [37]. For discussion of the 'limited uptake of the family-violence evidence provisions', see Tyson et al, above n 14, 84, 89; Douglas, 'Social Framework Evidence', above n 27.

87 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1055–7, 1083–6 (Hollingworth J).

88 *Williams* [2014] VSC 304 (27 June 2014) 7 [33].

89 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1055–67, 1083–6 (Hollingworth J).

IV CASE ANALYSIS OF WILLIAMS

Williams' defence counsel called one witness during the trial: Professor Patricia Eastal AM, a law professor with a 25-year background in family violence research.⁹⁰ Eastal was called 'to help the court ... understand what it's like to live in a family with family violence and to help us understand the impact that that has on a person who may be a victim of family violence'.⁹¹ Her evidence was adduced under s 9AH (now s 322M) to assist in determining the necessity and reasonableness of the accused's actions. Eastal's evidence included, but was not limited to, research involving interviews with family violence victims, health practitioners, counsellors and legal practitioners.⁹²

Hollingworth J, in delivering her sentence, determined that Eastal's evidence was 'largely unchallenged',⁹³ and observed that she had directed the jury to this effect.⁹⁴ Eastal's evidence covered many commonly-held 'myths' about family violence.⁹⁵ Although Eastal had never met Williams,⁹⁶ her testimony was based on her expertise on family violence in general and her perception of the *Williams* case through reading 'various witness statements, committal cross-examination transcripts, depositions, record of interview, crime scene video and a transcript of the evidence' of the *Williams* trial.⁹⁷ She agreed with prosecution counsel that there was a need to look at the evidence available in an individual case to make an assessment of family violence, but that there are also common themes across family violence cases.⁹⁸ To this end, we incorporate Eastal's testimony on the manifestations and effects of family violence into a summary of the relevant facts from *Williams*.

A The Death of Douglas Kally

It was not in dispute that Angela Williams killed her partner of 23 years, Douglas Kally, in the bedroom of their family home some time between 10 and 24 July 2008.⁹⁹ Williams struck Kally to the back of the head and neck area 16 times with a pick axe, causing eight penetrating depressed skull fractures and bleeding and

90 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 832–3.

91 Ibid 834 (K Blair).

92 Ibid 832.

93 *Williams* [2014] VSC 304 (27 June 2014) 7 [33].

94 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1034 (Hollingworth J).

95 See, eg, VLRC, *Defences to Homicide*, above n 21, 160–9 [4.85].

96 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 868.

97 Ibid 834 (K Blair).

98 Ibid 872.

99 *Williams* [2014] VSC 304 (27 June 2014) 1 [3].

swelling in the brain, from which he died soon after the blows were inflicted.¹⁰⁰ Williams admitted her actions to police more than four years later, in December 2012.¹⁰¹ In a police interview, Williams said she and Kally argued one night, and the following morning he collected some money.¹⁰² She then drove him to a train station and he left to live in another town. She alleged that when she returned home a few days later, he had unexpectedly returned, a fight ensued, and she killed him in self-defence: ‘I was defending myself and feared for my life’.¹⁰³ The prosecution disputed that Kally was dropped at the train station and alleged he was killed after an argument one night.¹⁰⁴

In her sentencing remarks, Hollingworth J summarised Williams’ account to the police:

As soon as you walked into the house, Mr Kally was yelling and screaming abuse at you. He called you a slut, and accused you of sleeping with Mr Grainger. He pushed and shoved you, punched you in the chest, pulled your hair, hit you and knocked you down a few times. You kept telling him to stop, to leave you alone, but he would not stop. So you grabbed a pick axe from behind the bedroom door, where various tools were kept. He was goading you, yelling things like ‘Go on. Do it. Do it. Like that, you fucking fat slut.’ You said you felt in danger for your life, and did not think you had any other options open to you to defend yourself. You struck him repeatedly with the axe to the head — you didn’t know how many times.¹⁰⁵

The following excerpts from an exchange between defence counsel and Eastal served to provide the jury with an explanation for Williams’ use of excessive force and violence:

Ms Blair: On the basis of your research, are you able to comment upon the frequency or other of the use of weapons in these events?

Professor Eastal: Yes, I am. They never, women who kill a violent partner never use the same weapon that their violent partner has used. Their violent partner has usually used his hands, his legs, his body, his force. A woman, a victim of violence ... If they tried to use a body parts [sic] in all likelihood they would be overpowered and they would get it worse and they might die. ... I do consider the

100 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 1 April 2014) 743–4 (L Iles).

101 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 26 March 2014) 122.

102 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1070.

103 Ibid 1053 (Hollingworth J).

104 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 4 April 2014) 903 (B Kissane).

105 *Williams* [2014] VSC 304 (27 June 2014) 3 [15].

body to be a weapon but I haven't seen any cases where a victim of violence kills her violent partner using her body as a weapon.¹⁰⁶

Ms Blair: Okay. In those situations or in these events as well in terms of the research that you've done is there generally one strike?

Professor Easteal: If it involves — no, there isn't one strike if it's a knife or another sharp implement. ... I have read, I've written articles in which I talk about cases where she's used a knife or an axe and maybe over 20, over 20 strikes.¹⁰⁷

B Angela Williams' Actions Following Douglas Kally's Death

Williams' actions following the killing are summarised in Hollingworth J's sentencing remarks:

Within a day or so of killing Mr Kally, you wrapped his body in a tarpaulin, taped it up, fastened some rope to the body, and dragged it into the back yard. There, you dug a shallow hole and buried him in it. You then cleaned the blood from the bedroom, and disposed of the mattress and the pick axe.¹⁰⁸

For the next four-and-a-half years, Williams told what the prosecution characterised as a 'plethora of lies' about Kally's disappearance.¹⁰⁹ These included staging a phone call from Kally and giving their son a watch for his birthday, falsely stating that Kally had posted it to him.¹¹⁰ Notwithstanding that these facts were undisputed, Hollingworth J cautioned the jury: 'I give you this warning: Do not follow a process of reasoning that just because a person is shown to have told a lie about something that that is evidence of guilt'.¹¹¹ During Easteal's testimony, the 'particularly curious jury'¹¹² asked for clarification on whether it is common, in cases where a woman kills a violent partner, for her to 'cover it up and attempt to get away with it'.¹¹³ Easteal answered that it is not common, but 'certainly it has occurred'.¹¹⁴

106 For a discussion on the use of weapons by battered women, see Rokeya S Farooque, Ronnie G Stout and Frederick A Ernst, 'Heterosexual Intimate Partner Homicide: Review of Ten Years of Clinical Experience' (2005) 50 *Journal of Forensic Sciences* 648; Ann Goetting, 'Patterns of Marital Homicide: A Comparison of Husbands and Wives' (1989) 20 *Journal of Comparative Family Studies* 341; Cheryl A Terrance, Karyn M Plumm and Katlin J Rhyner, 'Expert Testimony in Cases Involving Battered Women Who Kill: Going Beyond the Battered Woman Syndrome' (2012) 88 *North Dakota Law Review* 921, 928; Dominique Bourget and Pierre Gagné, 'Women Who Kill Their Mates' (2012) 30 *Behavioral Sciences and the Law* 598, 599.

107 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 858–9 (K Blair and P Easteal).

108 *Williams* [2014] VSC 304 (27 June 2014) 1–2 [7].

109 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 4 April 2014) 901 (B Kissane).

110 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 26 March 2014) 120 (B Kissane).

111 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1040. See also Judicial College of Victoria, *Criminal Charge Book*, ch 4.6.1 ('Bench Notes: Incriminating Conduct') (1 March 2016) <<http://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#4082.htm>>.

112 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 875 (Hollingworth J).

113 *Ibid* 865 (K Blair).

114 *Ibid* (P Easteal).

The prosecution submitted that burying the body showed a lack of remorse on Williams' part and implied her guilt:

If she was sick of him, decided that it was time to get rid of him, then that's murder and the easiest way to cover that up is to bury the body in the backyard and to tell everyone that he's gone, knowing that he didn't have a great deal of contact with his family ...¹¹⁵

In her directions, Hollingworth J told the jury they could 'also use evidence of an accused person's conduct such as burying the body as an unspoken or implied admission'.¹¹⁶

During her response to a question about whether a person who kills their violent partner would usually express remorse, Eastéal said:

remorse would be one emotion of many emotions ... it's complex and I would just think that what I get when I read these cases is that probably the primary feeling is relief, that the terror — relief of safety, remorse to have had to kill, yes, some remorse ...¹¹⁷

C Williams' New Relationship

Williams began a relationship with David Grainger, who had been friends with both Williams and Kally, within months of Kally's death. The prosecution submitted to the jury that this could be inferred as a motive for killing Kally, while the defence said such an inference was 'absurd'.¹¹⁸ In turn, Hollingworth J noted that although there is no need to prove motive, this circumstance could nonetheless be considered in assessing the facts.¹¹⁹

In cross-examination, Eastéal was asked about victims of family violence moving very quickly onto a new partner, and responded that it was not a typical 'variable' in her research, but that generally among victims 'there is a tendency, perhaps because of the dependency, the low self-esteem, to be drawn back into another relationship because of not having a sense of self any more'.¹²⁰

115 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 4 April 2014) 934 (B Kissane).

116 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1041.

117 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 861 (P Eastéal).

118 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 4 April 2014) 939 (L Hartnett).

119 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1038–9.

120 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, 1207088, Hollingworth J, 3 April 2014) 868–9 (P Eastéal). The research also suggests that battered women often 'normalise and minimise' the abuse they have experienced: Sheehy, Stubbs and Tolmie, above n 76, 703, citing Viveka Enander, "'A Fool to Keep Staying': Battered Women Labeling Themselves Stupid as an Expression of Gendered Shame' (2010) 16 *Violence Against Women* 5 and Emma Williamson, 'Living in the World of the Domestic Violence Perpetrator: Negotiating the Unreality of Coercive Control' (2010) 16 *Violence Against Women* 1412, 1417.

D Family Violence Considerations

1 Evidence of Family Violence

Eastal told the court that in almost every case she had studied of a woman killing her partner, there had been a history of domestic violence.¹²¹ In the present case a key point in dispute was the extent and role of family violence in the lead-up to Kally's death. In particular, many witnesses testified to his verbal abuse,¹²² but only Williams and Kally's two children and Williams' father testified to the existence of physical violence.¹²³ Williams did not testify during the hearing, but did tell the police about Kally's physical violence.¹²⁴

It was undisputed that Kally was the dominating party in their relationship, that Williams did not work outside the home for most of their relationship, and that she was expected to be Kally's driver after drinking sessions.¹²⁵ Kally used and sold marijuana, had two convictions for drug dealing, and on one occasion he persuaded Williams to 'take the rap' for him, resulting in a conviction against her name.¹²⁶ Witnesses also testified to Kally causing serious injury to other men in fights,¹²⁷ getting into street fights,¹²⁸ and once attempting to rape a mutual friend.¹²⁹

Eastal explained to the court that family violence rarely manifests itself through physical violence alone:

the emotional violence is about putting her down, constant denigration, 'she's a terrible mother', 'she's a horrible person', 'she's a crap wife' ... It's an accompaniment, it's usually almost always in the women that I've interviewed,

121 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 866–7. See also Jenny Morgan, 'Who Kills Whom and Why: Looking beyond Legal Categories' (Occasional Paper, Victorian Law Reform Commission, 2002) 26–7; Deborah Kirkwood, 'Female Perpetrated Homicide in Victoria Between 1985 and 1995' (2003) 36 *Australian & New Zealand Journal of Criminology* 152, 158–60.

122 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 27 March 2014) 220, 230; Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 28 March 2014) 431; Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 31 March 2014) 521, 597.

123 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 28 March 2014) 449; Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 31 March 2014) 490–1, 521, 527, 599.

124 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 4 April 2014) 929, 999.

125 *Williams* [2014] VSC 304 (27 June 2014) 5–6 [25] (Hollingworth J).

126 *Ibid* 6 [25(f)] (Hollingworth J).

127 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 27 March 2014) 212–13, 218–19 (D Grainger); Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 28 March 2014) 431 (A Bird); Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 31 March 2014) 569 (S S Williams).

128 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 26 March 2014) 152 (A Dordevic).

129 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 27 March 2014) 221–2 (D Grainger), 292–4 (J Mills).

it's the beginning. It doesn't start with physical violence, it starts with emotional violence ...¹³⁰

Easteal gave evidence that social control and possessiveness are nearly ubiquitous in family violence cases and that 'it always starts with a bit of jealousy, a bit of possessiveness'.¹³¹ She explained that one way this is commonly demonstrated is where the woman is not allowed to work, which leads to financial control,¹³² whereby 'some abusive men do seem to firmly adopt the creed that money is power, so it's another form of taking power, taking control'.¹³³ Although both Williams and Kally were on social security benefits, there was conflicting evidence about who controlled the finances. However, in her directions to the jury, Justice Hollingworth noted:

[Easteal] spoke about financial control, things like not allowing your partner to work, and in that regard you will remember the evidence that the defence referred to about Mr Kally not wanting Ms Williams to work and how she went out to work after he was dead.¹³⁴

On the topic of sexual assault, Easteal quoted from a report she had compiled ahead of giving her evidence:

Importantly not all forms of IPSV [intimate partner sexual violence] may meet the legal definitions of criminality. For example, calling a partner degrading names such as 'slut' or 'whore' is also a form of sexual violence aimed at degrading or controlling the victim.¹³⁵

Kally and Williams' son, Spencer Williams, testified to such name-calling when asked what names his father would call his mother, saying, '[t]hey're pretty abusive. He called her fat slut, whore, you know, just, you know, c-u-n-t he'd call her at times'.¹³⁶ Their daughter, Simone Williams, testified to Kally's regular verbal abuse, which included him calling both her and her mother a 'slut', as well

130 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 836 (P Easteal).

131 Ibid 842 (P Easteal). See Anna Carline and Patricia Easteal, *Shades of Grey — Domestic and Sexual Violence against Women: Law Reform and Society* (Routledge, 2014) 61.

132 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 843–4 (P Easteal). Battered women are commonly prevented from working or are unable to maintain employment because of the short and long-term effects of their abuse: see, eg, Angela M Moe and Myrtle P Bell, 'Abject Economics: The Effects of Battering and Violence on Women's Work and Employability' (2004) 10 *Violence Against Women* 29.

133 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 844 (P Easteal).

134 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1084.

135 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 846 (P Easteal), quoting Louise McOrmond-Plummer, Patricia Easteal and Jennifer Y Levy-Peck, 'Introduction: The Necessity of Appropriate Service Response to Intimate Partner Sexual Violence' in Louise McOrmond-Plummer, Patricia Easteal and Jennifer Y Levy-Peck (eds), *Intimate Partner Sexual Violence: A Multidisciplinary Guide to Improving Services and Support for Survivors of Rape and Abuse* (Jessica Kingsley Publishers, 2014) 18, 19.

136 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 31 March 2014) 514 (S J R Williams).

as calling Williams ‘fat’.¹³⁷ Other witnesses either echoed this testimony¹³⁸ or, if they had not ever heard name-calling, agreed that Kally ‘could be nasty’.¹³⁹

One witness, Joanne Mills, was asked whether, after hearing Kally’s verbal abuse, she wondered what it was like for Williams at home. She answered, ‘I never know what happens behind closed doors’.¹⁴⁰ Easteal testified that this is not uncommon, and that ‘what happens in the bedroom nobody knows about, and so the shame for that act is even greater ... that’s the hardest probably [sic] manifestation of violence for the victim to name as sexual violence’.¹⁴¹ Although Williams never mentioned sexual assault to police,¹⁴² two prosecution witnesses testified that Williams told them Kally had sexually abused her during their relationship: David Grainger (disclosed some time during their relationship),¹⁴³ and clinical psychologist Dr Kesic (disclosed during consultations with Williams in 2013).¹⁴⁴

2 Characteristics of Family Violence Perpetrators

Although ‘family violence is found in all social classes and all educational groupings’,¹⁴⁵ the risk factors for spousal violence noted by Easteal included alcohol and other drug abuse, a violent upbringing, and violence towards children.¹⁴⁶ Williams and Kally’s son testified to being kicked and slapped by

137 Ibid 597–8 (S S Williams).

138 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 27 March 2014) 220 (D Grainger).

139 Ibid 303–4 (J Mills).

140 Ibid 304 (J Mills).

141 (Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 845 (P Easteal). See also Patricia Easteal, *Less Than Equal: Women and the Australian Legal System* (Butterworths, 2001) ch 6.

142 This fact was reiterated to the jury by the prosecution: Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 4 April 2014) 931 (B Kissane).

143 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 27 March 2014) 216 (D Grainger).

144 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 1 April 2014) 664, 673 (D Kesic).

145 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 850 (P Easteal). With family violence, ‘there are no barriers in terms of age, income, ethnicity, geographic area, religion, race, socio-economic status or occupation’ with the exception of Aboriginal women, who are ‘40 times more likely to be the victims of domestic violence’: Renata Alexander, ‘Women and Domestic Violence’ in Patricia Easteal (ed), *Women and the Law in Australia* (LexisNexis Butterworths, 2010) 152, 155, n 12, citing Fadwa Al-Yaman, Mieke Van Doeland and Michelle Wallis, *Family Violence among Aboriginal and Torres Strait Islander Peoples* (Australian Institute of Health and Welfare, 2006).

146 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 850 (P Easteal). A 2011 multi-country study by the World Health Organization found the factors that increased the risk of intimate partner violence were ‘alcohol abuse, cohabitation, young age, attitudes supporting wife beating, outside sexual relationships, experiencing childhood abuse, growing up with domestic violence, and perpetrating or experiencing other forms of violence in adulthood’: Tanya Abramsky et al, ‘What Factors Are Associated with Recent Intimate Partner Violence? Findings from the WHO Multi-Country Study on Women’s Health and Domestic Violence’ (2011) 11 *BMC Public Health* 109, 123.

his father,¹⁴⁷ and generally abused from the age of ‘five or six’.¹⁴⁸ Their daughter also testified to being hit and kicked, to the point that on one occasion she wet her pants.¹⁴⁹ Kally also had an undisputed, well-documented history of heavy alcohol and drug use.¹⁵⁰

Easteal testified that family violence perpetrators often appear normal to their family, friends, acquaintances and work colleagues, and that ‘family violence is so often about the bizarre becoming normal’,¹⁵¹ with families living in denial and secrecy.¹⁵² Easteal agreed that many perpetrators also have a ‘Jekyll and Hyde’ appearance,¹⁵³ with many victims saying their partner acted differently around other people; significantly, this in turn is ‘another contributor to their feeling inside that nobody is going to believe them’.¹⁵⁴

3 Effects of Family Violence

As Easteal testified, a common effect of family violence is the sense of shame and self-blame felt by the victim, which is a ‘constant onslaught of belittlement and humiliation and her being told that his behaviour is her fault’.¹⁵⁵ As the violence becomes normalised, the violence becomes ‘invisible in the home’.¹⁵⁶ Easteal described how many victims are reduced to living in a condition of terror, which

147 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 31 March 2014) 494–6 (S J R Williams).

148 Ibid 510 (S J R Williams).

149 Ibid 570 (S S Williams).

150 *Williams* [2014] VSC 304 (27 June 2014) 5 [25(c)], 6 [25(f)] (Hollingworth J).

151 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 848 (P Easteal).

152 Ibid 849 (P Easteal).

153 Ibid. In a 2010 qualitative study of 22 Swedish women who had left abusive heterosexual relationships, the common dichotomy of domestic violence perpetrators being seen as Jekyll and Hyde was transcended by a third image, of the abuser as a ‘hurt boy’: Viveka Enander, ‘Jekyll and Hyde or “Who is this Guy?” — Battered Women’s Interpretations of Their Abusive Partners as a Mirror of Opposite Discourses’ (2010) 33 *Women’s Studies International Forum* 81, 87. See also Viveka Enander, ‘Leaving Jekyll and Hyde: Emotion Work in the Context of Intimate Partner Violence’ (2011) 21 *Feminism & Psychology* 29.

154 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 849 (P Easteal). This evidence was summarised in Justice Hollingworth’s judge’s directions: Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1084.

155 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 837 (P Easteal). Battered women who have killed a violent partner have been found to often be too ashamed to present their history ‘sufficiently’: Sarah M Buel, ‘Effective Assistance of Counsel for Battered Women Defendants: A Normative Construct’ (2003) 26 *Harvard Women’s Law Journal* 217, 278.

156 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 838 (P Easteal).

‘comes from not knowing when [the violence is] going to happen, more than what actually happens when it happens’.¹⁵⁷ She explained:

terror becomes your emotion, a primary emotion that you’re living in and if you’re living in terror, then immediacy is omnipresent. I mean, because you don’t know it could happen at any time, there’s no predictor, so it is — the threat is immediate.¹⁵⁸

This often leads to a type of post-traumatic stress disorder (PTSD) known as ‘learned helplessness’,¹⁵⁹ which Eastéal stated was typically characterised by high dependency, very high passivity and low self-esteem.¹⁶⁰ In cross-examination, Eastéal acknowledged that not every victim of violence who kills a violent partner exhibits all of the psychological signs of ‘learned helplessness’.¹⁶¹ However, other common effects of family violence among victims are a lack of trust, depression, anxiety and feeling fearful.¹⁶² Consistent with this experience, Williams demonstrated ‘high levels of anxiety, depression and PTSD’ during a consultation with a clinical psychologist in 2013.¹⁶³

4 Understanding Williams’ Actions in a Family Violence Context

As often occurs in general discussion of family violence, the issue was raised of why Williams did not leave if the violence occurred as she said.¹⁶⁴ Eastéal, again in evidence that was reiterated in Hollingworth J’s comments,¹⁶⁵ testified that women in Williams’ situation often do not have the financial means to leave (especially when their abuser financially controls and socially isolates them).¹⁶⁶ In addition, a large proportion of intimate partner homicides occur after separation, ‘so even if she leaves, it doesn’t necessarily mean the violence is going to end’.¹⁶⁷

157 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 870. It has been noted that ‘[f]or the abused woman living with and in domestic violence, the state of fear is in the continuous present. ... [T]hey suffer from an extreme and continuous fear or state of continuous terror’: Susan S M Edwards, ‘Anger and Fear as Justifiable Preludes for Loss of Self Control’ (2010) 74 *Journal of Criminal Law* 223, 228, quoted in Carline and Eastéal, above n 131, 149.

158 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 841.

159 This is a term ‘used to describe battered women’s loss of ability to see options out of the situation, or to predict whether their natural responses will protect them when the pattern of violence is random and variable’: Carline and Eastéal, above n 131, 132 n 36.

160 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 851.

161 Ibid 869.

162 Ibid 852.

163 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 1 April 2014) 661, 681 (D Kesic). Admittedly this only occurred five years after she killed Kally.

164 A number of the reasons why women do not leave volatile relationships are discussed in Alexander, above n 145, 155–6.

165 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1084.

166 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 856 (P Eastéal).

167 Ibid.

Williams told police she ‘feared for [her] life’ on the night she killed Kally,¹⁶⁸ and in 2013 told a clinical psychologist she was re-experiencing Kally’s violence in flashbacks.¹⁶⁹

Williams did not disclose any violence to friends, family or doctors while Kally was alive.¹⁷⁰ Easteal testified that disclosure is very low among victims for reasons of shame, self-blame, secrecy, fear, the normalisation of the violence, denial, social and emotional isolation, and a lack of trust.¹⁷¹ ‘[W]omen seldom ... open up to a doctor’ about the violence they are experiencing.¹⁷² Furthermore, she noted, police investigating ‘victims of violence who have killed their husband ... don’t ask the sort of questions that would elicit the range of physical violence that she may have experienced’.¹⁷³ Perhaps somewhat remarkably, Williams, after telling police she killed Kally because she was sick of him beating her up, hitting her and threatening her, was not asked to provide any details of past family violence.¹⁷⁴ Hollingworth J told the jury: ‘[the police] were concerned about what had happened on the occasion of the killing. It was not part of their role to ask her and she did not tell them in her record of interview about all this long history.’¹⁷⁵ It is beyond the scope of the present article to explore this issue in detail, but we would suggest that it *should* be part of police officers’ role to explore this issue, especially where, as here, it directly impacts on the investigation of the alleged victim of such violence.

168 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1052–3 (Hollingworth J).

169 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 1 April 2014) 663–4 (D Kesic).

170 *Williams* [2014] VSC 304 (27 June 2014) 4 [20] (Hollingworth J). See also Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 27 March 2014) 304 (J Mills); Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 28 March 2014) 429 (A Bird).

171 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 853–4.

172 *Ibid* 843 (P Easteal). As discussed earlier, battered women’s victimisation and low self-esteem, among other factors, make disclosure ‘problematic’: Carline and Easteal, above n 131, 75. See also Kelsey L Hegarty and Angela J Taft, ‘Overcoming the Barriers to Disclosure and Inquiry of Partner Abuse for Women Attending General Practice’ (2001) 25 *Australian and New Zealand Journal of Public Health* 433.

173 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 3 April 2014) 837 (P Easteal).

174 *Williams* [2014] VSC 304 (27 June 2014) 3–4 [17]. For a discussion on the impediment of eliciting evidence from family violence victims see Patricia Easteal and Anthony Hopkins, ‘Women and Criminal Law: Defences to Homicide’ in Patricia Easteal (ed), *Women and the Law in Australia* (LexisNexis Butterworths, 2010) 109, 113–14. For a discussion on the low disclosure rates of family violence see Emma Birdsey and Lucy Snowball, ‘Reporting Violence to Police: A Survey of Victims Attending Domestic Violence Services’ (Issue Paper No 91, New South Wales Bureau of Crime Statistics and Research, October 2013).

175 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1076–7 (Hollingworth J).

E Jury Directions on Verdict Options

In addition to her directions on Eastal's family violence evidence, Hollingworth J directed the jury on the verdict options available to them. The following section briefly summarises the relevant legal requirements and Hollingworth J's instructions on each of the elements necessary to prove the charge of murder, self-defence or the alternative verdicts of defensive homicide or manslaughter.

1 Elements of Murder

In order to prove murder, the accused's acts must have been 'conscious, voluntary and deliberate'.¹⁷⁶ Hollingworth J directed the jury that 'there is actually no issue that when Ms Williams hit Mr Kally to the head she did so consciously, voluntarily and deliberately in the relevant legal sense that I have just explained to you'.¹⁷⁷

The element of causation requires that the accused's acts must have caused the victim's death, by contributing 'significantly to the death'¹⁷⁸ or being a 'substantial and operative cause' of it.¹⁷⁹ It was also not disputed that Williams' actions, in striking Kally to the head multiple times, caused Kally's death. Her Honour directed the jury as such, noting that 'there is no suggestion in this case, unlike in some cases, that you have to identify precisely which blow it was that caused the death'.¹⁸⁰

The physical elements for murder are discussed above. Under the common law, the accused must have intended to kill or cause 'really serious injury'.¹⁸¹ The prosecution submitted that 'the jury should infer a murderous intent from '[t]he fact that [Williams] used a pick axe on an armed [sic] person; the number of wounds; and where she hit him with the axe around the head'.¹⁸² The defence case, meanwhile, pointed to Williams' answers in her record of interview, where she indicated she 'just lost it' and 'could not remember what she was thinking at the time'.¹⁸³ Her Honour informed the jury that if the prosecution had not proved this element beyond reasonable doubt, they should look to the alternative verdict of manslaughter.

176 *R v Schaeffer* (2005) 13 VR 337, 339, 344; *Ryan v The Queen* (1967) 121 CLR 205, 213.

177 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1047 (Hollingworth J).

178 *Royall v The Queen* (1991) 172 CLR 378, 398.

179 *R v Rudebeck* [1999] VSCA 155 (29 September 1999) 28.

180 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1046 (Hollingworth J).

181 See *Wilson* (1992) 174 CLR 313, 333; *R v Perks* (1986) 41 SASR 335, 337, 345–6; *R v Schaeffer* (2005) 13 VR 337, 357–9 [90]–[98]; *R v Barrett* (2007) 16 VR 240, 252–5 [54]–[70]. The jury in *Williams* was not directed on reckless murder, which under Victorian common law is only raised where the evidence can properly support a conclusion that the accused acted recklessly: *Pemble v The Queen* (1971) 124 CLR 107, 119–20; *R v Barrett* (2007) 16 VR 240, 250–5 [48]–[73].

182 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1048 (Hollingworth J).

183 *Ibid* 1049 (Hollingworth J).

2 Self-Defence

In July 2008, when Williams killed Mr Kally, the applicable test of self-defence required, in essence, that at the time of doing the acts that caused his death, she believed it was necessary to do what she did and there were reasonable grounds for that belief.¹⁸⁴ This has long been the common law test,¹⁸⁵ and was codified in Victoria in 2005 by the passage of the *Crimes (Homicide) Act 2005* (Vic). At the time of Williams' trial, the relevant provision stated:

A person is not guilty of murder if he or she carries out the conduct that would otherwise constitute murder while believing the conduct to be necessary to defend himself or herself or another person from the infliction of death or really serious injury.¹⁸⁶

This was a subjective test, but a defendant would only be acquitted of murder on the basis of self-defence if the jury found that the defendant had 'reasonable grounds' for their subjective belief. Otherwise, they could be found guilty of defensive homicide under s 9AD, explained below.

Once the defence was raised sufficiently on the evidence, it was for the prosecution to disprove its existence beyond a reasonable doubt. If it could not, then the accused had to be acquitted. Self-defence applied even for situations where the person was 'responding to a harm that [was] not immediate' and where the force they used was not proportionate to the threat faced.¹⁸⁷ This is because the VLRC had recognised that women may kill their abusive partners 'when they are asleep or have their guard down',¹⁸⁸ and that intimate partner homicides typically involve the use of a weapon. This means a woman's actions against her violent partner may appear 'disproportionate' to the threat posed (and, therefore, seem 'unreasonable').¹⁸⁹ Despite this, the requirement of 'reasonable grounds' can easily be interpreted as 'exclud[ing] women's experiences'.¹⁹⁰ Women who kill after prolonged family violence have often struggled to have their circumstances understood, namely, 'what it must really be like to live in a situation of ongoing

184 The applicable test was constituted through a combination of sections in the *Crimes Act* which have now been repealed, namely, ss 9AC–AD. In addition, s 9AC required that the person believed their conduct was necessary 'to defend himself or herself or another person from the infliction of death or really serious injury'.

185 *Zecevic v DPP (Vic)* (1987) 162 CLR 645, 661. For discussion, see Toole, 'Defensive Homicide on Trial in Victoria', above n 21, 477–8.

186 *Crimes Act* s 9AC.

187 *Ibid* ss 9AH(1)(c)–(d). This has since been repealed and reinserted in ss 322M(1)(a)–(b). However, it is clear from the former s 9AC and the current s 322K that proportionality remains an issue given the requirement that the accused person believes that their conduct was 'necessary to defend the person or another person from the infliction of death or really serious injury': s 322K(3).

188 VLRC, *Defences to Homicide*, above n 21, 62 [3.11], citing Alison Wallace, *Homicide: The Social Reality* (New South Wales Bureau of Crime Statistics and Research, Attorney-General's Department, 1986) 97.

189 VLRC, *Defences to Homicide*, above n 21, 94 [3.92].

190 Heather Douglas, 'A Consideration of the Merits of Specialised Homicide Offences and Defences for Battered Women' (2012) 45 *Australian & New Zealand Journal of Criminology* 367, 368.

violence'.¹⁹¹ It is these well-documented (but from a jury perspective, less well-understood) circumstances that are the foundation of the claim that a woman had reasonable grounds to act as she did,¹⁹² or, in short, that her actions were 'reasonable'.¹⁹³ Critically, where the prosecution satisfies the jury that there were no reasonable grounds for her belief, then despite the existence of a genuine subjective belief that it was necessary to do what she did, self-defence fails.

A 2013 report on women who killed their intimate partners in Victoria in 2005–2013 noted reluctance on the part of defence counsel to pursue a full acquittal on the ground of self-defence; instead, women were pleading guilty to manslaughter or defensive homicide, possibly 'out of a sense of shame and remorse about their actions'.¹⁹⁴ This could also be due to 'prevailing community attitudes that excuse men's violence',¹⁹⁵ where the woman feels stupid, 'blaming themselves for staying in the relationship and thereby allegedly allowing or taking part in their own abuse'.¹⁹⁶ Invariably, the key consideration in each case in which a plea was entered would have been the risk of a murder conviction at trial.

In relation to the question of whether Williams could rely upon the defence contained in the then s 9AC, her Honour directed the jury to consider Williams' state of mind at the time she killed Kally, and whether she believed 'she was defending herself from the infliction of death or really serious injury' and believed that her reaction was necessary.¹⁹⁷ Her Honour noted that there was no requirement for Williams' actions to have been proportionate to the threat *if* she believed they were necessary. The prosecution had submitted that Kally 'pushing and shoving' Williams and 'pull[ing] her hair' could not have resulted in Williams thinking 'she had to protect herself from a threat of death or really serious injury'. In contrast, the defence had submitted that 'Kally was a physically violent man' whose violence had escalated in the months before his death, and, inferentially, that Williams *did* consider her actions were necessary in that context.¹⁹⁸

The prosecution further submitted that Williams did not have to pick up the axe, and instead 'could have ... left the room'.¹⁹⁹ Her Honour directed that '[a]lthough the law does not require a person to retreat from an attack before defending

191 VLRC, *Defences to Homicide*, above n 21, 135 [4.18], quoting Rebecca Bradfield, Submission No 17 to VLRC, *Defences to Homicide*, 13 December 2003. See also Tyson et al, above n 14, 83–4.

192 See, eg, Belinda Morrissey, *When Women Kill: Questions of Agency and Subjectivity* (Routledge, 2003); Ramsey, above n 37; Julie Stubbs and Julia Tolmie, 'Defending Battered Women on Charges of Homicide: The Structural and Systemic Versus the Personal and Particular' in Wendy Chan, Dorothy E Chunn and Robert Menzies (eds), *Women, Madness and the Law: A Feminist Reader* (Glasshouse Press, 2005) 191; Carline and Easteal, above n 131.

193 See, eg, VLRC, *Defences to Homicide*, above n 21.

194 The authors used the example of Karen Black, who pleaded guilty to defensive homicide after saying in her police interview that she 'blamed herself for reacting' to her partner's violence and that she 'should not have let it get to her': Kirkwood, McKenzie and Tyson, above n 33, 42.

195 Ibid, citing Enander, "'A Fool to Keep Staying'", above n 120, 5.

196 Enander, "'A Fool to Keep Staying'", above n 120, 14.

197 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1051 (Hollingworth J).

198 Ibid 1052–3 (Hollingworth J).

199 Ibid 1054.

themselves, [the jury] can take into account a failure to do so' in determining whether Williams really thought her actions were necessary.²⁰⁰

Speaking on the issue of family violence in the context of self-defence on a murder charge, her Honour gave the following explanation of ss 9AH(1)(c)–(d),²⁰¹ and indicated that the harm need not be immediate and that a response can involve the use of excessive force:

That does not mean that a person who has suffered family violence can use any level of force in any circumstances. They would still be guilty of murder if they didn't believe it was necessary to act in the way they did. But the law recognises that when you are looking at a situation of family violence it is not a simple matter as it might be, for instance, in an incident involving two strangers. It is not a simple matter of determining whether an attack was in progress at the time and whether the accused's response was proportionate and that is because of the complexities of family violence. You have heard quite a bit of evidence about family violence. So in the case of family violence the law recognises that it is not necessarily a simple matter just of looking at what was happening in the room at the time. You need to look at those other matters.²⁰²

In this context, it should be noted that Douglas recently suggested that Hollingworth J's instructions to the jury appeared to have been 'strongly influenced by s 9AH, suggesting [it] may be having an educative effect'.²⁰³

3 Elements of Defensive Homicide

Prior to the 2005 reforms, the VLRC actually recommended a partial defence of excessive self-defence for those defendants who did not satisfy the test of self-defence,²⁰⁴ similar to that operating in New South Wales (NSW),²⁰⁵ rather than an offence of defensive homicide. This option was praised at the time because of the possibility 'that it might encourage battered defendants to go to trial, rather than to plea-bargain, because self-defence will no longer be an all-or-nothing proposition'.²⁰⁶

200 Ibid 1055 (Hollingworth J).

201 *Crimes Act* s 9AH(1) provided that:

Without limiting section 9AC, 9AD or 9AE, for the purposes of murder, defensive homicide or manslaughter, in circumstances where family violence is alleged a person may believe, and may have reasonable grounds for believing, that his or her conduct is necessary ... even if — (c) he or she is responding to a harm that is not immediate; or (d) his or her response involves the use of force in excess of the force involved in the harm or threatened harm.

202 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1056 (Hollingworth J).

203 Douglas, 'Social Framework Evidence', above n 27, 106.

204 VLRC, *Defences to Homicide*, above n 21, 105.

205 *Crimes Act 1900* (NSW) s 421.

206 Julia Tolmie, 'Is the Partial Defence an Endangered Defence? Recent Proposals to Abolish Provocation' [2005] *New Zealand Law Review* 25, 41, quoted in Fitz-Gibbon, 'The Victorian Operation of Defensive Homicide', above n 36, 559.

As discussed above, the Victorian Government instead introduced s 9AD (defensive homicide) as an alternative verdict on a murder charge.²⁰⁷ Though not expressed as a defence, its operation and effect is closely analogous to the defence of excessive self-defence.²⁰⁸ The provision came into effect on 22 November 2005 and provided:

A person who, by his or her conduct, kills another person in circumstances that, but for section 9AC [‘Murder — “self-defence”’ as discussed above], would constitute murder, is guilty of an indictable offence (defensive homicide) and liable to level 3 imprisonment (20 years maximum) if he or she did not have reasonable grounds for the belief referred to in that section.

In the words of former Federal Court judge Justice Weinberg, the focus of defensive homicide was ‘upon the need for the actions, rather than the amount of force used’.²⁰⁹ Accordingly, a person could be found guilty of defensive homicide where they demonstrated a genuine belief in the need to act in self-defence but were found to have no *reasonable grounds* for that belief. The rationale for introducing a new offence (rather than an additional partial defence to murder) was that it would allow for ‘greater consistency between juror verdicts and sentencing’; if a jury returned a verdict of defensive homicide, the judge would know their reasoning.²¹⁰

In circumstances where the prosecution could not exclude the fact that Williams believed her actions were necessary to defend herself against death or really serious injury, the focus turned to defensive homicide. Williams could be convicted of defensive homicide if the prosecution had proved that she did not have ‘reasonable grounds’ for her belief. In determining whether there was a reasonable basis for Williams’ belief that her actions were necessary to defend herself from the infliction of death or really serious injury, the jury was directed to consider ‘the circumstances as perceived by Ms Williams at the time she hit Mr Kally with the axe’,²¹¹ and to again consider family violence.²¹²

4 Elements of Manslaughter by Unlawful and Dangerous Act

Manslaughter is an alternative verdict to murder. The most common basis for a manslaughter plea or conviction is an absence of the required intent for murder (‘unintentionality’),²¹³ which in Victoria, and at common law, is called

207 *Crimes Act* s 4(1).

208 See, eg, statutory formulation of the defence contained in *Crimes Act 1900* (NSW) s 421: ‘[s]elf-defence — excessive force that inflicts death’. See also Toole, ‘Defensive Homicide on Trial in Victoria’, above n 21, 479.

209 Justice Mark Weinberg, ‘Critique and Comment: The Criminal Law — A “Mildly Vituperative” Critique’ (2011) 35 *Melbourne University Law Review* 1177, 1182.

210 Fitz-Gibbon, ‘The Victorian Operation of Defensive Homicide’, above n 36, 559, citing Department of Justice (Vic), ‘Defensive Homicide: Review of the Offence of Defensive Homicide’, above n 42.

211 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1059 (Hollingworth J).

212 *Ibid* 1060 (Hollingworth J).

213 Carline and Easta, above n 131, 138 citing, amongst others, the Victorian cases of *R v Coldbeck* [2005] VSC 187 (12 July 2005) and *R v Kulla Kulla* [2010] VSC 60 (9 April 2010).

manslaughter by unlawful and dangerous act. This requires a finding that the act that caused the death was conscious, voluntary and deliberate,²¹⁴ and that it was both unlawful and dangerous.²¹⁵ Some other jurisdictions also offer provocation, diminished responsibility/substantial impairment by abnormality of mind and excessive self-defence as partial defences to murder (ie, resulting in a manslaughter conviction),²¹⁶ but these are not available in Victoria.²¹⁷ The only other basis for manslaughter in Victoria is manslaughter by criminal negligence, but this did not arise on the facts in *Williams*.

Carline and Easteal have described a guilty plea to manslaughter as the ‘default option’ for battered women charged with murder.²¹⁸ A plea to manslaughter can be expected to result in a lower sentence than being found guilty of murder, not least because a court must have regard to guilty pleas when sentencing an offender.²¹⁹ In Victoria, the maximum sentence for manslaughter is 20 years,²²⁰ whereas a murder conviction can result in life imprisonment.²²¹ In addition, for offences committed on or after 2 November 2014, murder also carries a baseline sentence of 25 years.²²² However, a conviction for manslaughter will only be available where it is either accepted by the prosecution or found by the jury that the mens rea or fault elements for murder are not otherwise present. Accordingly, where it is found that a woman has killed her violent partner with an intention to kill or cause grievous bodily harm, or where she foresaw that her actions would probably cause death or grievous bodily harm,²²³ manslaughter is not available.

The jury was directed to consider manslaughter if they found that Williams was not guilty of murder on the grounds that she lacked the intent to kill or cause ‘really serious injury’.²²⁴ As set out above, there was no dispute²²⁵ that Williams’

214 *Ryan v The Queen* (1967) 121 CLR 205, 215–16 (Barwick CJ); *R v Winter* [2006] VSCA 144 (6 July 2006) [11].

215 *Wilson* (1992) 174 CLR 313, 326–7; *R v Stein* (2007) 18 VR 376, 386–8; *Aidid v The Queen* (2010) 25 VR 593, 601–4.

216 See, eg, *Crimes Act 1900* (NSW) s 23 (extreme provocation), s 23A (substantial impairment by abnormality of mind), s 421 (excessive self-defence).

217 Provocation was abolished in Victoria in 2005, and excessive self-defence was abolished in 1987 following the decision of the High Court in *Zecevic v DPP (Vic)* (1987) 162 CLR 645 (though defensive homicide was, in most respects, analogous to excessive self-defence).

218 Carline and Easteal, above n 131, 129–30.

219 *Sentencing Act 1991* (Vic) s 5(2)(e).

220 *Crimes Act* s 5.

221 *Ibid* s 3(1)(a).

222 *Ibid* s 3(2)(b). A baseline sentence is the median sentence for certain offences imposed over a given period, ie half of all sentences imposed are expected to be lower than the median and half are expected to be higher. As noted, this system is currently under review by the Victorian Sentencing Advisory Council, see above n 59.

223 Whilst the punishment for murder is set out in the *Crimes Act* s 3, the elements of the offence are defined at common law, as set out in *R v Crabbe* (1985) 156 CLR 464, 469–70.

224 See *Wilson* (1992) 174 CLR 313, 327; *R v Perks* (1986) 41 SASR 335, 345; *R v Schaeffer* (2005) 13 VR 337, 357–9; *R v Barrett* (2007) 16 VR 240, 251.

225 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1046–7 (Hollingworth J).

actions caused Kally's death,²²⁶ and were carried out consciously, voluntarily and deliberately.²²⁷ Her Honour explained that to be guilty of manslaughter, Williams' acts must have been both dangerous²²⁸ and unlawful.²²⁹

On being dangerous, her Honour directed:

There is no suggestion in this case that a reasonable person of ordinary strength of mind in Ms Williams's position would not have realised that hitting someone to the head 16 times with an axe was exposing them to an appreciable risk of serious injury. ... I think you would have no trouble finding that this first element of manslaughter had been satisfied.²³⁰

The first element of proving Williams' act was also 'unlawful' would be satisfied by proving Williams intentionally applied force to any part of Kally's body. Her Honour directed that, there being no dispute that Williams hit Kally to the head with the axe, 'it is a matter for you but it seems to me you would have no trouble finding that Ms Williams did intentionally apply force to a part of Mr Kally's body'.²³¹

On the second element of proving an unlawful act, namely, that the actions were not done in self-defence (or with some other lawful justification, which did not arise on the facts), the jury was directed to 'consider whether Ms Williams believed it was necessary to do what she did to defend herself full stop. Not to defend herself from death or really serious injury. Just to defend herself'.²³² For the second component, whether Williams had reasonable grounds for believing her actions were necessary, the jury were directed to look at the circumstances in the family violence context and as Williams *perceived* them.²³³

The jury found Angela Williams guilty of defensive homicide.²³⁴ This means the jurors reached the following conclusions:

1. Williams 'intended to kill or cause really serious injury' to Kally when she struck him with the pick axe;

226 This satisfied the first common law element: *R v Stein* (2007) 18 VR 376, 384; *R v Summers* [1990] 1 Qd R 92, 93–5; *Aidid v The Queen* (2010) 25 VR 593, 602–12.

227 This satisfied the second common law element: *Ryan v The Queen* (1967) 121 CLR 205, 214; *R v Haywood* [1971] VR 755, 758–60; *R v Winter* [2006] VSCA 144 (6 July 2006) [7], [11]; *R v Williamson* (1996) 67 SASR 428, 431–6.

228 Transcript of Proceedings, *DPP v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1061–3 (Hollingworth J); *R v Holzer* [1968] VR 481, 483–4; *Wilson* (1992) 174 CLR 313, 327; *R v Klamo* (2008) 18 VR 644, 660 [70].

229 Transcript of Proceedings, *DPP v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1061–3 (Hollingworth J); *Wilson* (1992) 174 CLR 313, 327; *Pemble v The Queen* (1971) 124 CLR 107, 122–3.

230 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 7 April 2014) 1062 (Hollingworth J).

231 *Ibid* 1063 (Hollingworth J).

232 *Ibid* 1064 (Hollingworth J).

233 *Ibid* 1066 (Hollingworth J).

234 *Williams* [2014] VSC 304 (27 June 2014) 1 [1].

2. The prosecution had not proved beyond reasonable doubt that at the time Williams struck the blows, she *did not* believe it was necessary to do what she did to protect herself from death or really serious injury; and
3. The prosecution had proved beyond reasonable doubt that Williams ‘*did not* have reasonable grounds for believing that it was necessary to do what [she] did’.²³⁵

V POST-WILLIAMS LEGISLATIVE CHANGES

A Amendments to the Crimes Act

The DOJ recommendations were discussed above. These were given effect by the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* (Vic),²³⁶ which came into force in November 2014, shortly after Williams was sentenced. It should be acknowledged that the Victorian Government’s decision to abolish defensive homicide not only sought to respond to criticisms that the defence was not operating as intended,²³⁷ but also took place in the wider context of a dominant populist rhetoric that defensive homicide was, according to the then Attorney-General, Robert Clark, ‘wide open to offenders using it to escape full responsibility where they deserve to be convicted of murder’.²³⁸ It may be that the government of the day embraced Fitz-Gibbon’s position because it was consistent with their law and order agenda (though that may not have been her intention).²³⁹ It should also be noted that the 2014 reforms were passed during a period of fast-paced, legislative change in Victoria that failed to consider the broader environmental, structural, social, political, economic and psychological contexts in which crime occurs. Significantly, this period saw the introduction of a new offence of ‘one punch’ manslaughter, carrying a mandatory minimum 10-

235 Ibid 6–7 [29] (emphasis added).

236 See, eg, Neave, above n 21, 24–5; Fitz-Gibbon, ‘The Offence of Defensive Homicide’, above n 81, 137–8; Byrne, above n 21.

237 See Kate Fitz-Gibbon, ‘Abolishing Defensive Homicide Offence Essential’, *The Age* (online), 4 October 2013 <<http://www.theage.com.au/comment/abolishing-defensive-homicide-offence-essential-20131004-2uyya.html>>; above nn 42–53 and accompanying text.

238 Robert Clark, *Defensive Homicide Abolition to Stop Killers Getting Away with Murder* (22 June 2014) <<http://www.robertclark.com.au/feature/ideas-and-solutions/defensive-homicide-abolition-to-stop-killers-getting-away-with-murder/>> quoted in Oliver Milman, ‘Victoria Will Scrap “Defensive Homicide” and Offer Simpler Test for Self-defence’, *The Guardian* (online), 22 June 2014 <<http://www.theguardian.com/world/2014/jun/22/victoria-will-scrap-defensive-homicide-and-offer-simpler-test-for-self-defence>>.

239 See Fitz-Gibbon, ‘The Offence of Defensive Homicide’, above n 81, 137–8.

year sentence,²⁴⁰ the abolition of suspended sentences,²⁴¹ and restrictions on the availability and conditions of parole.²⁴²

The 2014 reforms repealed the provisions of the *Crimes Act* inserted in 2005 which set out exceptions to homicide offences, including self-defence, defensive homicide, duress and sudden or extraordinary emergency, and the consideration of circumstances of family violence for homicide offences. In its place is a new pt IC, ‘Self-Defence, Duress, Sudden or Emergency and Intoxication’, which applies to *any* offence under statute or common law.²⁴³ The new pt IC was informed by the DOJ’s 2013 consultation paper,²⁴⁴ and consists of five divisions, two of which have particular relevance to our topic and are discussed below.

The new s 322I places ‘the evidential onus of raising self-defence, duress or sudden or extraordinary emergency’ on the accused.²⁴⁵ Once the evidential burden is discharged, the prosecution must prove ‘beyond reasonable doubt that the accused did not carry out the conduct in self-defence, under duress or in circumstances of sudden or extraordinary emergency (as the case may be)’.²⁴⁶ The provisions concerning evidence of family violence previously contained in s 9AH and discussed above were reenacted in this division, in s 322J. Other DOJ recommendations were also introduced by the 2014 reforms, including codifying the test for self-defence for fatal and non-fatal offences. Section 322K (‘self-defence’) now provides:

- (1) A person is not guilty of an offence if the person carries out the conduct constituting the offence in self-defence.
- (2) A person carries out conduct in self-defence if —
 - (a) the person believes that the conduct is necessary in self-defence; and
 - (b) the conduct is a reasonable response in the circumstances as the person perceives them.

240 See *Sentencing Amendment (Coward’s Punch Manslaughter and Other Matters) Act 2014* (Vic) s 9C(2). For comment, see Asher Flynn, Mark Halsey and Murray Lee, ‘Emblematic Violence and Aetiological Cul-De-Sacs: On the Discourse of “One Punch” (Non) Fatalities’ (2016) 56 *British Journal of Criminology* 179.

241 See *Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013* (Vic) pt 2. For discussion, see Lorana Bartels, ‘Sentencing Review 2014–2015’ (2015) 39 *Criminal Law Journal* 326.

242 See *Corrections Amendment Act 2013* (Vic); *Corrections Amendment (Parole Reform) Act 2013* (Vic); *Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013* (Vic) pt 2; *Corrections Legislation Amendment Act 2014* (Vic) ss 14–15, 20, 27; *Corrections Amendment (Parole) Act 2014* (Vic); *Corrections Amendment (Further Parole Reform) Act 2014* (Vic). For background and comment, see Lorana Bartels, ‘Parole and Parole Authorities in Australia: A System in Crisis?’ (2013) 37 *Criminal Law Journal* 357; Lorana Bartels et al, ‘Australian Parole Systems in Crisis? Current Issues and Future Research Directions’ (Paper presented at Crime and Punishment: Back to the Future for Sentencing and Corrections Reform, International Society for the Reform of Criminal Law, Vancouver, 22–26 June 2014).

243 *Crimes Act* s 322G.

244 Department of Justice (Vic), ‘Defensive Homicide: Proposals for Legislative Reform’, above n 45.

245 Justice Neave has suggested that this is ‘presumably intended to remove any requirement to direct the jury on self-defence, except where evidence that may raise this issue is before the court’: Neave, above n 21, 25.

246 *Crimes Act* s 322I(2).

As before, in the case of murder, the defence only applies where ‘the person believes that the conduct is necessary to defend the person or another person from the infliction of death or really serious injury’.²⁴⁷ However, under the new statutory formulation, the question is no longer whether the accused had ‘reasonable grounds’ for the belief, but whether ‘the conduct [was] a reasonable response in the circumstances as the person perceives them’. In relation to this second limb, which is also contained in the equivalent provision of the *Crimes Act 1900* (NSW),²⁴⁸ Howie J held in *R v Katarzynski* that this is to be ‘determined by an entirely objective assessment of the proportionality of the accused’s response to the situation the accused subjectively believed he or she faced’.²⁴⁹ The second limb therefore squarely focuses attention on the circumstances or predicament of the accused, using this as the foundation for the assessment of whether the *response* was reasonable. On its face, the statutory test requires fact-finders to engage with the subjective experience and perception of women, such as Williams. This is important. According to Byrne, the new test ‘should be more intuitive for jurors and therefore easier to apply’.²⁵⁰ However, the extent to which this effects a substantive reform to the common law is subject to debate. In *R v Trevenna*, the NSW Court of Criminal Appeal took the view that ‘[c]odification of what constitutes “self-defence” thereby refines and elaborates on the common law elements, but without introducing any major change’.²⁵¹ Such a position may be supported by consideration of the extent to which the common law test of ‘reasonable grounds’ has been understood as contingent upon the subjective perception of the accused. For example, in *R v Conlon*, Hunt CJ explained that, at common law, the inquiry into whether or not a person had reasonable grounds for a belief was not purely objective.²⁵² Rather,

account must be taken of [the] personal characteristics of [the] particular accused which might affect his [or her] appreciation of the gravity of the threat which he [or she] faced and as to the reasonableness of his [or her] response to that danger ...²⁵³

Similarly, in *R v Hawes*, the NSW Court of Criminal Appeal stated that ‘it is the belief of the accused, based upon the circumstances as he [or she] perceived them to be, which has to be reasonable, and not the belief of the hypothetical person in his [or her] position’.²⁵⁴ This was echoed in Victoria in the case of *R v Hendy*, where the Victorian Court of Appeal stated:

The question whether the belief was (proved not to have been) based on reasonable grounds is to be determined not by what a reasonable person would have believed

247 Ibid s 322K(3).

248 *Crimes Act 1900* (NSW) s 418.

249 [2002] NSWSC 613 (9 July 2002) [23].

250 Byrne, above n 21, 149.

251 (2004) 149 A Crim R 505, 515 [37] (Santow JA); cf *R v Katarzynski* [2002] NSWSC 613 (9 July 2002) [20] (Howie J).

252 (1993) 69 A Crim R 92, 98.

253 Ibid 99 (Hunt CJ).

254 (1994) 35 NSWLR 294, 306.

but by what the accused person might reasonably have believed in all the circumstances in which he [or she] found himself [or herself].²⁵⁵

Indeed, in the *Williams* trial itself, Hollingsworth J, in her charge to the jury, emphasised that the question of whether the prosecution had proved that Williams did not have reasonable grounds for the belief was to be determined from a consideration of ‘the circumstances as she perceived them’.²⁵⁶ Thus, even in the absence of a statutory requirement requiring fact-finders to consider the ‘circumstances as the person perceives them’ in the assessment of the *objective* limb of the test, this *subjective* aspect was an essential part of the test for self-defence. It is doubtful, therefore, that the statutory language itself will result in significant change. Under either formulation, whether the focus is on reasonableness of response or reasonableness of belief, the challenge of reasonableness remains.

In addition to expressly abolishing the common law test for self-defence, the 2014 reforms also extended the family violence provisions in s 9AH (now contained in s 322M) to *all* claims of self-defence.²⁵⁷ This reflects the literature on the effects of family violence, particularly for battered women.²⁵⁸ Wake has expressed concern about the fact that s 322M also extends to other family members, not just abused women, but has suggested, based on the experience in England and Wales with a comparable provision, that the extent to which its broadened scope will ‘change the substantive approach is questionable’.²⁵⁹ Further research is required to determine the impact, if any, of the expanded scope of the family violence provisions.

B Amendments to the Jury Directions Act

The DOJ did not make any recommendations to reform judicial directions laws, but stated that ‘most’ judges consider that jury directions have become ‘increasingly more complex, creating an “over-intellectualisation” of criminal law’,²⁶⁰ and that ‘these comments could readily apply to defensive homicide’.²⁶¹ However, it must be noted that this view was expressed before the *Jury Directions*

255 (2008) 191 A Crim R 81, 87 [10] (Maxwell P), citing *R v Portelli* (2004) 10 VR 259, 273 [28].

256 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingsworth J, 7 April 2014) 1059, 1066.

257 *Crimes Act* ss 322K–N.

258 See, eg, Rebecca Bradfield, ‘Understanding the Battered Woman Who Kills Her Violent Partner — The Admissibility of Expert Evidence of Domestic Violence in Australia’ (2002) 9 *Psychiatry, Psychology and the Law* 177; Sheehy, Stubbs and Tolmie, above n 76; Carline and Eastal, above n 131; Toole, ‘Defensive Homicide on Trial in Victoria’, above n 21, 479–80; Wake, above n 1, 157.

259 Wake, above n 1, 161.

260 Elizabeth Najdovski-Terzioviski, Jonathan Clough and James R P Oglloff, ‘In Your Own Words: A Survey of Judicial Attitudes to Jury Communication’ (2008) 18 *Journal of Judicial Administration* 65, 80, quoted in VLRC, *Jury Directions*, Final Report No 17 (2009) 30 [2.35] and Department of Justice (Vic), ‘Defensive Homicide: Proposals for Legislative Reform’, above n 45, 15–16 [2.5.2].

261 Department of Justice (Vic), ‘Defensive Homicide: Proposals for Legislative Reform’, above n 45, 15 [2.5.2]. The complexity of juror directions for defensive homicide was also noted in Fitz-Gibbon and Pickering, above n 21, 167. See also Fitz-Gibbon, ‘The Offence of Defensive Homicide’, above n 81, 140; Byrne, above n 21, 144–6.

Act 2013 (Vic) came into force. This was in turn reenacted as the *Jury Directions Act 2015* (Vic) with effect from 1 July 2015.

The 2014 reforms introduced a new pt 6 to the *Jury Directions Act*,²⁶² which provides for directions to be given to the jury in criminal proceedings where self-defence or duress in the context of family violence is in issue. In such situations, the trial judge must give the jury preliminary directions on family violence (as defined in s 322J(2) of the *Crimes Act*) if the defence requests such directions, ‘unless there are good reasons for not doing so’.²⁶³ Furthermore, the trial judge must, if requested by the defence, direct the jury that family violence ‘is not limited to physical abuse’, and also discuss the nature of reactions to family violence.²⁶⁴ This recognises that family violence may be relevant in determining whether a person believed their conduct was necessary in self-defence and whether the conduct was a reasonable response to the circumstances as the person perceived them. The directions may include an explanation that family violence can take many forms and consist of separate acts which together amount to abuse, however ‘minor or trivial’ they may appear on their own.²⁶⁵ Importantly, the judge can also direct the jury to consider that ‘people may react differently to family violence’ and it is not ‘uncommon’ for a person to ‘stay with an abusive partner’ or to not report family violence.²⁶⁶ Overall, these amendments are aimed at ‘proactively tackling misconceptions regarding family violence’.²⁶⁷

VI POTENTIAL IMPLICATIONS OF THE 2014 REFORMS FOR BATTERED WOMEN WHO KILL

In theory, following the 2014 reforms, self-defence would become a more palatable option for battered women by ‘provid[ing] greater context for assessing claims of self-defence and assist[ing] to ensure that jurors in relevant cases have a better understanding of the dynamics of family violence’.²⁶⁸ However, what about the actual practice? Wake recently suggested that the “‘one-size-fits-all” approach to self-defence may have unintended consequences in practice, with significant ramifications in intimate partner homicide cases’.²⁶⁹ We agree with this assessment, and her claim that ‘a partial defence is necessary to capture cases that fall outside the scope of self-defence, but do not warrant the murder label’.²⁷⁰ Her research, which examined the experience in New Zealand following the

262 *Jury Directions Act 2015* (Vic) re-enacts *Jury Directions Act 2013* (Vic) with amendments: s 1(g). For discussion, see Byrne, above n 21, 146.

263 *Jury Directions Act 2015* (Vic) s 58(2). It has been suggested that the failure to make such directions mandatory in relevant cases represents ‘a missed opportunity’: Wake, above n 1, 163.

264 *Jury Directions Act 2015* (Vic) ss 60(a)–(b).

265 *Ibid* s 60(a)(iv).

266 *Ibid* ss 60(b)(i)–(ii).

267 Wake, above n 1, 162.

268 Victoria, *Parliamentary Debates*, Legislative Council, 25 June 2014, 2129 (Edward O’Donohue).

269 Wake, above n 1, 152.

270 *Ibid*. See also Tyson et al, above n 14, 87–93; Byrne, above n 21, 148.

abolition of the partial defence of provocation, indicated that domestic violence victims who kill their aggressor are being convicted of murder and consequently receive harsher sentences than if a partial defence was available. She accordingly relied on the experience in New Zealand to conclude that both New Zealand and Victoria should adopt a ‘new partial defence predicated on a fear of serious violence’.²⁷¹ We now turn to the specifics of Williams’ case.

It may be conjectured that the family violence evidence led by Williams’ defence lawyers, including Eastael’s expert testimony, was enough to create sufficient doubt in the jury’s mind that Williams might have held a subjective belief in the necessity of her actions. However, the jury evidently did not accept that this family violence was such that Williams had reasonable grounds for her actions, so she was not acquitted.

As was made plain to the jury, the finding of defensive homicide was contingent upon the jury being satisfied beyond reasonable doubt that Williams had the necessary intent for murder. Accordingly, the verdict of defensive homicide necessarily entailed the rejection of the alternative verdict of manslaughter by unlawful and dangerous act. This was hardly surprising. Despite Williams stating in her 2012 record of interview that she thought she had only struck Kally ‘a few times’ and that ‘she just lost it’,²⁷² without evidence that she was acting in a dissociated state, the number and location of the blows would have made it difficult for the jury to accept the possibility that Williams did not intend to at least cause serious harm.

With the alternative of manslaughter rejected, the only available verdicts at that time were murder, defensive homicide or acquittal, with acquittal being based on acceptance by the jury of the possibility that Williams had reasonable grounds for the belief that it was necessary to do what she did. Given that the jury found Williams guilty of defensive homicide, it is apparent that, for her, the offence operated as a safety net. The jury accepted the possibility that she believed her actions were necessary, but rejected the possibility that she had reasonable grounds for that belief.

What might the jury have decided under the current law? Wake, Tyson et al and the DVRCV have suggested that Williams ‘might have faced a murder conviction’ if defensive homicide had not been available.²⁷³ We agree, and argue, based on our detailed analysis of the transcript, that if the trial had taken place without defensive homicide as an available alternative, the jury reasoning as entailed in the verdict likely *would* have resulted in a murder conviction. In particular, given the prosecution’s refusal to accept Williams’ offers to plead guilty to defensive

271 Wake, above n 1, 171.

272 Transcript of Proceedings, *DPP (Vic) v Williams* (Supreme Court of Victoria, Hollingworth J, 27 April 2014) 1049 (Hollingworth J).

273 Wake, above n 1, 158 citing DVRCV, *Defensive Homicide: An Essential Safety Net for Victims* (23 July 2014) <<http://www.dvrcv.org.au/knowledge-centre/our-blog/defensive-homicide-essential-safety-net-victims>>. See also Tyson et al, above n 14, 90.

homicide, it seems highly unlikely that the prosecution would, under the new legislative regime, accept a plea to manslaughter. The decision not to accept the offer must be taken to establish that the prosecution was of the view that the intention elements of murder could be proved. Thus the trial would have been set for an ‘all or nothing’ consideration of self-defence.²⁷⁴

The onus of proof with respect to self-defence remains unchanged. Once the defence is raised, the prosecution is required to negate it beyond reasonable doubt.²⁷⁵ Under s 322K of the *Crimes Act*, the jury would be required to consider whether Williams believed her conduct was necessary to protect herself from death or really serious harm, as it was required to do under the previous formulation. The jury would then have to consider whether her conduct was a reasonable response in the circumstances as she perceived them. Whilst this formulation differs from the previous test, which focused on ‘reasonable grounds’ for the belief, it continues to operate with both subjective and objective limbs. Accordingly, it retains a focus on reasonableness and enables the jury to find that a battered woman who genuinely believes in the necessity of her actions is nonetheless guilty because her response is not considered to be reasonable. Precisely this finding was made by the jury in the recent case of *R v Silva* under the analogous self-defence test operating in NSW.²⁷⁶ In that case, Jessica Silva unsuccessfully argued self-defence in response to the charge of murdering her abusive partner. She was found not guilty of murder but guilty of manslaughter on the basis of excessive force that inflicts death under s 421 of the *Crimes Act 1900* (NSW), which is analogous to ‘defensive homicide’ as it previously existed. Silva received a sentence of two years’ imprisonment, fully suspended, though she had spent six months in custody. In our view, the leniency of the sentence may indicate the judge’s view as to how close Silva came to meeting the full test of self-defence.

Returning to a consideration of Williams’ case, if the present law in Victoria had applied, the changes to the *Jury Directions Act 2013* (Vic) would place a higher and more prescribed requirement on the trial judge to direct the jury on family violence. We would note, though, that Hollingworth J’s directions in *Williams*, made in light of Eastaer’s extensive evidence, covered the family violence directions that can now be given under s 58 of the *Jury Directions Act 2015* (Vic). Therefore Williams, through the single witness called by her defence, already received this particular ‘benefit’ of the 2014 reforms.²⁷⁷

As made clear above, despite expert testimony, and clear and careful directions in relation to taking family violence into account in the assessment of the existence

274 Victoria, *Parliamentary Debates*, Legislative Assembly, 3 September 2014, 3137 (Martin Pakula).

275 *Crimes Act* s 322I.

276 [2015] NSWSC 148 (6 March 2015).

277 Expert evidence on family violence was not admitted in the trials of the other three women convicted of defensive homicide (*Black* [2011] VSC 152 (12 April 2011), *Creamer* [2011] VSC 196 (20 April 2011) and *Edwards* [2012] VSC 138 (24 April 2012)) despite a consideration of *Crimes Act* s 9AH, so it is possible that a s 58 direction could have helped those juries return a more informed verdict.

of reasonable grounds, the jury was satisfied that Williams did *not* have reasonable grounds for the belief that it was necessary to do what she did. As a matter of logic, then, the factual findings that resulted in a finding of defensive homicide could well have resulted in a murder conviction on the basis that her actions were not a reasonable response. However, it must be acknowledged that, absent the offence of defensive homicide, the jury would be left with a stark choice between murder and acquittal.

A number of possibilities flow from upping the stakes. It can be hypothesised that the jury might have been reluctant to convict; thus, juror sympathy might trump logic.²⁷⁸ Indeed, Justice Marcia Neave, who was appointed Commissioner of the Victorian Royal Commission into Family Violence in 2015, recently mused whether ‘women in the position of Ms Williams [might] have been acquitted of murder if the jury had not been able to find her guilty of defensive homicide’.²⁷⁹ It is possible that the starkness of the choice might have caused jurors to reconsider their factual finding in relation to the reasonableness of the response. However, the recent cases analysed by Tyson et al,²⁸⁰ indicate that it is all but unheard of for women victims of family violence to successfully argue self-defence in cases of this nature.

VII CONCLUSION

This article has presented a detailed examination of the trial and sentencing transcripts in the case of *Williams*. As our study of the trial transcript reveals, what appeared to be a callous murder committed in cold blood, followed by an intricate web of concealment, was actually a reaction to having experienced years of family violence. Justice Neave observed in relation to the facts in *Williams*:

Sixteen blows to the head with a pickaxe might seem totally disproportionate to a mostly verbal attack by a partner. But in the context of 23 years of abuse, it could be a trigger, inspiring terror in the abused partner and an apparently disproportionate response.²⁸¹

Tyson et al suggested recently that Williams’ case ‘highlights the value of defensive homicide for female defendants’.²⁸² Our analysis likewise indicates that defensive homicide did operate as intended in this case, namely, as a safety net between murder and an outright acquittal. Like Hulls, we therefore believe that, notwithstanding its limitations, defensive homicide ‘served its purpose’.²⁸³

278 This occurred in the case of *R v R* (1981) 28 SASR 321, where the jury chose to acquit a woman who killed her physically and sexually abusive husband even though self-defence was not left to the jury and the only issue in dispute was whether she had been provoked.

279 Neave, above n 21, 12.

280 Tyson et al, above n 14, 83.

281 Neave, above n 21, 11.

282 Tyson et al, above n 14, 89.

283 Hulls, above n 14, x.

Freiberg, Gelb and Stewart recently acknowledged that the abolition of defensive homicide ‘increases the likelihood that victims of family violence who ultimately kill the perpetrator may face murder convictions and sentences in future, with the defendant seeking a sentence reduction as a result of the family violence’.²⁸⁴ They suggested that such cases might result in similar sentences to those imposed under the defensive homicide regime.²⁸⁵ Like other opponents of the abolition of defensive homicide,²⁸⁶ we believe that this is not an appropriate outcome, given the opprobrium that attaches to the label of murder.

Canadian legal academic Elizabeth Sheehy noted in the introduction to her 2014 book, *Defending Battered Women on Trial: Lessons from the Transcripts*, that ‘the criminal justice system — its procedures, assumptions, and rules — was never designed for women, especially those who kill their husbands or partners’.²⁸⁷ Our analysis of *Williams*, which was likely the last contested trial to involve defensive homicide as an alternative charge,²⁸⁸ has shown that there are limits to the effectiveness of every law. Although the rationale behind a jury’s verdict can only be inferred, at best, despite the extensive and informed directions on family violence provided by Hollingworth J, Angela Williams’ experience was not seemingly appreciated or believed by the jury.

We already know that the law routinely fails to accommodate the experience of family violence victims. According to Hulls, ‘where a woman has killed, or is killed by, a violent partner, the law may well have *already* failed her — and done so at almost every step along the way’.²⁸⁹ The lack of expert family violence evidence in the factually similar cases of *Black*,²⁹⁰ *Creamer*,²⁹¹ and *Edwards*²⁹² could be indicative of a systemic ignorance of the value of family violence evidence. Even without explicitly interpreting the accused’s actions as the result of a psychological condition such as battered woman syndrome,²⁹³ an expert can ‘not only help judges and jurors to learn more about the violent antecedents in the specific case but also, by substantiating her evidence, the woman’s testimony may be seen as more credible’.²⁹⁴ Battered women, as noted

284 Freiberg, Gelb and Stewart, above n 59, 69.

285 Ibid.

286 See, eg, Wake, above n 1, 152; Tyson et al, above n 14, 91; Kirkwood, McKenzie and Tyson, above n 33, 50.

287 Elizabeth A Sheehy, *Defending Battered Women on Trial: Lessons from the Transcripts* (University of British Columbia Press, 2014) 1.

288 Since *Williams* [2014] VSC 304 (27 June 2014), there has been one other defensive homicide conviction, as a result of a guilty plea: *DPP (Vic) v Sciascia* [2014] VSC 305 (25 June 2014).

289 Hulls, above n 14, xii (emphasis in original).

290 [2011] VSC 152 (12 April 2011).

291 [2011] VSC 196 (20 April 2011).

292 [2012] VSC 138 (24 April 2012).

293 The defence in *Williams* [2014] VSC 304 (27 June 2014) did not use expert evidence from a psychologist.

294 Eastal and Hopkins, above n 174, 126.

by Carline and Easteal, ‘generally are not the best witnesses’.²⁹⁵ Victimization and low self-esteem — coupled with psychological defence mechanisms triggered by ongoing abuse, including ‘minimising, rationalising and disassociation’ — ‘can make disclosure and testimony problematic’.²⁹⁶ This is where expert evidence can ‘prove invaluable’.²⁹⁷ This point was recently acknowledged by Justice Neave, who referred to Easteal’s expert evidence in Williams’ case, and suggested that this ‘illustrate[s] the important part that such evidence [can] play’.²⁹⁸

Given the argument that the second limb in s 322K is not that different from the old common law formulation, the need to interpret the woman’s actions as reasonable remains. The new s 58 of the *Jury Directions Act 2015* (Vic) allows a judge to direct the jury on family violence evidence at the behest of defence counsel,²⁹⁹ so it may be hoped that even without the admission of expert family violence evidence, juries will have a more informed understanding of the reasonableness of a battered woman’s actions. Byrne has recently suggested that such evidence is likely to have a greater impact ‘if given at the *outset* of the trial, so that the jury views [all] the evidence through a new lens of understanding’.³⁰⁰ If this creates a justice system that better understands the reasonableness of a battered woman’s actions, it could be speculated that fewer women will find it necessary to plead guilty to manslaughter,³⁰¹ rather than risk a murder conviction. However, this might be a conclusion borne of optimism, when *Williams* has shown that even expert evidence is not always enough to facilitate a finding that a belief is both genuinely held and reasonable.

Just as momentum slowly gathers for greater public understanding of family violence, this analysis has shown there remains an ongoing need to

increase the courts’ understanding of the dynamics, manifestations and effects of domestic violence and to increase jurors’ and judges’ ability to understand how the woman’s act of killing can be seen as the rational and reasonable behaviour of an ordinary battered woman.³⁰²

Hulls has stated that the 2005 reforms sought to ‘build a framework through which to view cases involving family violence’, and that he ‘wanted each case to be viewed through a lens of awareness about the range of factors at play in a situation

295 Carline and Easteal, above n 131, 75. See also Easteal and Hopkins’ discussion of common impediments in eliciting evidence from family violence victims: Easteal and Hopkins, above n 174, 113.

296 Carline and Easteal, above n 131, 75.

297 *Ibid* 132.

298 Neave, above n 21, 10, 21. See also Douglas, ‘Social Framework Evidence’, above n 27, 105, where she observed that ‘[n]otably, a law professor and family violence expert, Patricia Easteal, gave evidence explaining the complexity of family violence’.

299 If the accused is unrepresented, this may occur of the trial judge’s own volition if s/he believes it to be in the ‘interests of justice to do so’: *Jury Directions Act 2015* (Vic) s 58(3).

300 Byrne, above n 21, 150 (emphasis added).

301 See generally Kirkwood, McKenzie and Tyson, above n 33; Enander, “‘A Fool to Keep Staying’”, above n 120.

302 Carline and Easteal, above n 131, 153. See also Tyson et al, above n 14, 79, 82–3.

of family violence'.³⁰³ The evidence suggests that there is still some way to go in achieving this objective. Tyson et al's recent analysis demonstrated ongoing 'misconceptions about family violence',³⁰⁴ including a failure to understand how this violent history may affect women's responses to the threat of violence. A comprehensive understanding of family violence is vital if the 2014 reforms are to actually assist defendants like Angela Williams. By providing an in-depth discussion of the transcript in her case, this article contributes towards that goal.

303 Hulls, above n 14, ix.

304 Tyson et al, above n 14, 82.