# Media Backgrounder: *Transforming legal understandings of intimate partner violence*

**26 June 2019**

## Despite reforms aimed at recognising self-defence against intimate partner violence, in practice, the reforms are not operating as intended.

## Event details

*Report Launch*: 5:30pm-7pm, Thursday 27th June, Old Court House Law Museum

*Seminar*: 3pm-5pm, Friday 28th June, Francis Burt Law Museum

*Exhibition*: Friday 28th June – Friday 9th August, UWA Law Library

## About the report

The ANROWS research project *Transforming legal understandings of intimate partner violence*, by Stella Tarrant and Julia Tolmie, examines homicide trials in which self-defence is raised by women who have killed an abusive intimate partner. It explores how legal professionals and experts understand intimate partner violence (IPV), influencing which facts are selected and presented as relevant to understanding the homicide, the language used to frame those facts, and the conclusions drawn from them. The report has ramifications for other instances in which an understanding of facts involving IPV is essential to the application of the law, including at trial and sentencing.

The project involved a close analysis of the case of *The State of Western Australia v. Liyanage* (SCWA, No. 27 of 2015) (“*Western Australia v Liyanage*”), a case that demonstrates the way in which women’s claims to have acted in self-defence against an abusive partner have been systematically rejected.

This research project applied a “social entrapment” analysis to the case of *Western Australia v Liyanage*.A social entrapment framework recognises, in line with current research, that the victim’s ability to resist abuse is constrained by the abuser’s behaviour, her available safety options, and broader structural inequities in her life. Using a social entrapment framework requires analysis at three levels:

1. documenting the full suite of coercive and controlling behaviours employed by the abuser, including the strategic and responsive dimensions of this behaviour (and the isolation and fear that this creates for the victim);
2. examining the responses of family, community and agencies to the abuse; and
3. examining the manner in which any structural inequities experienced by the victim supported the abuser’s use of violence (including thwarting her attempts to resist the abuse).

Using a social entrapment framework to understand facts would allow the court to make an adequate assessment of whether a victim had access to services or other means that would have realistically provided enduring safety from an ongoing threat of serious harm or death.

Key recommendations of the research include:

* All those involved in investigating, charging, prosecuting, defending or trying a woman who has killed her violent/abusive intimate partner should be using a social entrapment framework (including consideration of sexual violence) to understand the facts.
* Evidence of the availability of alternative avenues to safety should be considered by all those involved in the justice process. This should occur before charges are laid, in advance of trial, during trial, and at the end of trial.
* Education on the social entrapment framework should be provided to all those involved in the criminal justice process.

## Why the focus on *Western Australia v Liyanage*

Researcher Professor Julia Tolmie explains, “The case of *Western Australia v Liyanage* allowed us to demonstrate how the outmoded ways of thinking about intimate partner violence that are commonly used in the criminal justice process today *pre-package* the victim’s defensive force as unreasonable self-defence—meaning that women’s self-defence cases are rejected without being fairly considered. We need to update our understandings of intimate partner violence in order for justice to be done in these cases. We use the case of *Liyanage* to model what a better response might look like.”

## Why this research matters

“We know that there has been important law reform and advocacy that has improved the recognition and understanding of intimate partner violence within the criminal justice system. However, we also know that there is a long way to go,” says ANROWS CEO, Dr Heather Nancarrow.

“Violent tactics by an abusive partner are uniquely tailored to, and have meaning for, the specific victim. These tactics can be difficult to capture within legal narratives, and it leaves victims open to the still-enduring question, ‘why didn’t she leave?’

“Research shows us that the majority of women who kill male intimate partners in relationships with a history of domestic violence are the primary victims of abuse. This means that when these women come before the courts, the court needs a comprehensive understanding of the circumstances the woman was facing.

“This report gives those in the legal field a way of understanding intimate partner violence that captures the cumulative intensity and compounding effects of abuse. New understandings, of course, don’t guarantee acquittal for women who use lethal force against an abusive partner, but instead allow for a case to be assessed fairly on the facts.”

Associate Professor Stella Tarrant, researcher on the project, says, “The problem we face now is ensuring the fair and proper application of the law of self-defence. If a person acts in self-defence no crime has been committed. We may think that applying the law in a different way will distort it and provide a ‘special case’ for victims of intimate partner violence. But it is the reverse of that. Victims of intimate partner violence are being denied the support of the law, which is everyone’s right. When criminal courts fail to recognise a form of violence because it is ongoing and appears too ‘normal’, a person’s claim to have acted in self defence simply disappears. That is unfair.

“It is a confident society (and a confident criminal justice system) that acknowledges the reality of an ongoing form of violence that can be extreme, and proceeds to apply the law on the basis of that acknowledgement.”

## About the exhibition

Chamari Liyanage’s artwork offers a unique insight into the world of a survivor of intimate partner violence (IPV).

Ms. Liyanage’s artwork has deep significance in her recovery as a survivor of IPV. As well as providing a path to healing, it plays a crucial role in communicating her experiences as a survivor, and as a tool to advocate for change. Ms Liyanage describes her art as “a driver to challenge people’s perceptions of domestic, family, and intimate partner violence”. She hopes that her art will inspire a focus on primary prevention.

This exhibition is being supported by Australia’s National Research Organisation for Women’s Safety (ANROWS) as a key part of new research into how the criminal justice system understands IPV and assesses the actions of women in abusive relationships.

The exhibition will be continuing at the University of Western Australia law school, recognising the importance of different ways of understanding the legal system and its impact, and providing young lawyers and students with a unique way of engaging with legal stories. The exhibition grounds and extends the key messages and learnings of the report, offering a new medium to think through reform and change.

Ms Liyanage says of the exhibition, “I believe that art is a powerful medium to tell our hidden stories and expose inadequately explored dimensions of family violence.

“We need to acknowledge the remarkable courage and resilience of people who experience violence and abuse in their lives. With appropriate support, there is hope for recovery, positivity and a better future.

“Let the colours and brush strokes explore our souls and unite each other to achieve a better future for all”.

## About ANROWS

Australia’s National Research Organisation for Women’s Safety (ANROWS) is a not-for-profit independent national research organisation. An initiative of Australia’s National Plan to Reduce Violence against Women and their Children 2010-2022 (the National Plan), it was established as by the Commonwealth and all state and territory governments of Australia to produce, disseminate and assist in applying evidence for policy and practice addressing violence against women and their children.

ANROWS is the only such research organisation in Australia.

We conduct in-house research and we engage Australia’s most eminent researchers through an external grants program under the National Research Agenda. All research proposals are peer-assessed and all publications peer-reviewed.

Our strategic goals are to:

1. Deliver high quality, innovative and relevant research.
2. Ensure the effective dissemination and application of research findings.
3. Build, maintain and promote collaborative relationships with and between stakeholders.
4. Be an efficient, effective and accountable organisation.

The report *Transforming legal understandings of intimate partner violence* addresses National Outcome 5 under the National Plan, “Justice responses are effective”. Under this outcome, two key strategies are addressed by this research:

* improve access to justice for women and their children; and
* strengthen leadership across justice systems.

ANROWS CEO Dr Heather Nancarrow says, “In our work that focuses on responses to domestic violence, we keep at the core of our efforts the original intention of those who advocated for the change that became the National Plan. There is an important distinction to maintain: not just that justice responses are effective, but that *responses are just*.

“This report points the way forward to improving access to justice, strengthening leadership across the justice systems, but also, fundamentally, ensuring that responses are just”.

## Responsible reporting on domestic and family violence

ANROWS encourages responsible reporting on these sensitive issues. For guidance, please see Our Watch’s [How to report on violence against women and their children](https://www.ourwatch.org.au/What-We-Do/How-to-report-on-violence-against-women-and-their).

**Please include the following information in all reports:** If you or someone you know is impacted by sexual assault or family violence, call 1800RESPECT on 1800 737 732 or visit [www.1800RESPECT.org.au](http://www.1800RESPECT.org.au). In an emergency call 000.

## For more information:

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Ms Liyanage is not available for further comment.