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WHEN TRANSPARENCY CAN BE DEADLY: REPORTING OF IDENTIFIABLE AND LOCATABLE PERSONAL INFORMATION IN AAT COUPLE RULE DECISIONS THAT INVOLVE DOMESTIC VIOLENCE

LYNDAL SLEEP* & LUISA GRAS DIAZ**

This paper investigates the disclosure of identifiable and locatable details about domestic violence victim/ survivors in publicly available Administrative Appeals Tribunal ('AAT') reporting of decisions. The researchers investigated the frequency and type of disclosure of identifiable and locatable details of women and children in situations of domestic violence in 27 publicly available AAT couple rule decisions. It was found that victim/survivors' names were identified in 86.7% of decisions and 2120 times across all 27 decisions. This paper argues that the very high frequency of reporting identifiable and locatable details in AAT decisions is cause for alarm in situations of domestic violence. It poses serious safety risks to women and children during an already vulnerable time, and more care is needed in the reporting of these decisions. This paper recommends that the approach used in New Zealand, where names and addresses are obscured in all reporting of Social Security Appeals Authority Decisions, be adopted by AAT reporting in Australia as the only practicable way to ensure women's and children's safety in the context of domestic violence.

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I INTRODUCTION

When a person discloses domestic or family violence, it is important that identifying or locatable information be managed with appropriate protective factors in place.¹ This is because there is a very real risk of perpetrators locating their victims and their children and inflicting further harm on them. It is also due to the sensitive nature of this information.

Administrative Appeals Tribunal ('AAT') decisions are accessible to the general public online, free of charge. Sleep found that one in five 'couple rule' decisions reported by the AAT involved domestic violence and, further, that these decisions report identifiable and locatable information about domestic violence victims and their children.² This puts

¹ Queensland Government, Department of Communities, Child Safety and Disability Services, *Domestic and Family Violence Information Sharing Guidelines May 2017* (Report, May 2017) 11 ('Domestic and Family Violence Information Sharing Guidelines').

² Lyndal Sleep, 'Sex-Snooping in Australian Social Welfare Provision: The Case of Section 4(3) Surveillance' (PhD Thesis, Griffith University, 2016).

victims and their children at increased risk of further abuse from their perpetrator.

This paper analyses the extent of the reporting of identifiable and locatable details of domestic violence victims in AAT 'couple rule' decisions. It argues that more care should be taken when disclosing individual's identifiable and locatable information in reports of AAT decisions, especially in situations that involve sensitive and/or risky information like 'couple rule' decisions that involve domestic violence. It is suggested that the approach taken by New Zealand's Social Security Appeals Tribunal, to obscure all identifiable information for all decisions (not just those that involve violence), be adopted in Australia to limit the risk of disclosure in the context of domestic violence.

This is demonstrated in the following steps. First, the importance of applying appropriate protective factors when dealing with identifiable and locatable details of domestic and family violence disclosures is established. Second, the significance of AAT 'couple rule' decisions that involve domestic violence is highlighted. Third, a content analysis of AAT 'couple rule' decisions that are publicly available online and involve domestic violence is outlined, and its findings shown. Finally, what this means for disclosure of identifiable and locatable individual's details in AAT reporting is discussed.

II DOMESTIC AND FAMILY VIOLENCE, DISCLOSURE, RISK, AND THE NEED FOR APPROPRIATE PROTECTIVE FACTORS

Research by Australia's National Research Organisation for Women's Safety (ANROWS) has found that one in three Australian women over the age of 15 have experienced physical violence, and one in six women have experienced sexual or physical violence from a current or former partner.³ These statistics are an underestimate of the actual number, because these events are often not disclosed by victims.⁴ Further, the view of domestic violence as a heated argument between a couple that is their own private business has been replaced by an increased public understanding that the level of violence and control that the perpetrator inflicts can be deadly and is unacceptable.⁵ This

³ Australia's National Research Organisation for Women's Safety and Foundation to Prevent Violence Against Women and Their Children, *Violence Against Women: Key Statistics* (Fact Sheet, 2018).

⁴ Janet Phillips and Malcolm Park, 'Measuring Domestic Violence and Sexual Assault against Women' (E-Brief, Parliamentary Library, Parliament of Australia, 12 December 2006).

⁵ Council of Australian Governments, *The National Plan to Reduce Violence against Women and their Children, 2010-2022*, 2011.

is demonstrated by the 2017 National Community Attitudes towards Violence against Women Survey,⁶ which shows a decreased acceptance of domestic violence in the Australian community and an increased understanding of its complexities, as well as the launching of *The National Plan to Reduce Violence Against Women and their Children 2010-2022*.⁷

With this increased concern comes increased reporting of domestic violence incidents by victims to authorities like police and hospitals.⁸ It is generally understood that this reflects a mainstream culture of increased disclosure of this type of violence (although it is still underreported) and of the expectation of institutional support and understanding after this disclosure.⁹ Hence, public institutions have a special responsibility to deal with the sensitive information contained in these disclosures in a respectful manner that does not cause harm to the victim. This is particularly important in situations of gender-based violence which historically has led to shame, ostracism, enforced poverty, taking of children and additional violence on the women who disclose.¹⁰ In Australia, most family and domestic violence services are delivered at a state or local government level. The public caring institutions which deal with the health, safety and nurturing of women and children, hospitals, police and schools, are also state based. In awareness of this, most state governments have a set of clear protocols in how to deal with the information contained in disclosures of domestic and family violence, and how to share this information with consideration of the safety and rights of the individuals involved. For example, the Queensland Government *Domestic and Family Violence Information Sharing Guidelines May 2017*, which is supported by the *Domestic and Family Violence Protection Act 2012* (Qld), states that ‘The risk of perpetrators locating victims as a result of information sharing can be countered by appropriate protective factors such as those

⁶ Kim Webster et al, ‘Attitudinal Support for Violence against Women: What a Population-level Survey of the Australian Community Can and Cannot Tell Us’ (2018) 54(1) *Australian Journal of Social Issues* 52.

⁷ Council of Australian Governments (n 5) 2011.

⁸ Janet Phillips and Malcolm Park, ‘Measuring Domestic Violence and Sexual Assault against Women’ (E-Brief, Parliamentary Library, Parliament of Australia, 12 December 2006).

⁹ Queensland Law Reform Commission, *Domestic Violence Disclosure Scheme* (Report No 75 June 2017); Queensland Law Reform Commission, *Review About Whether a Domestic Violence Disclosure Scheme should be Introduced in Queensland* (Consultation Paper, WP No 75 December 2016). See also Heather Douglas, ‘Legal Systems Abuse and Coercive Control’ (2018) 18(1) *Criminology and Criminal Justice* 84-99.

¹⁰ Alana Piper and Ana Stevenson (eds), *Gender Violence in Australia: Historical Perspectives* (Monash University Press, 2019).

that take care to obscure identifying information about a victim's whereabouts.¹¹

III THE PARTICULAR RELEVANCE OF AAT 'COUPLE RULE' DECISIONS THAT INVOLVE DOMESTIC VIOLENCE

A The AAT

The AAT is a merits review tribunal that provides independent reviews of various Commonwealth administrative matters, including social security matters. Individuals can lodge an appeal with the AAT and ask for a decision that was made about them to be re-made based on the merits of the case. As such, the AAT provides an important check on the power wielded by Australian Commonwealth government institutions over individuals. The AAT was legislatively instigated in 1975 with the *Administrative Appeals Tribunal Act 1975* (Cth) ('AAT Act'). It is legislatively permitted to make its decisions available to the public. This provides transparency to its own decision making and the actions of governmental decision makers. Transparency is particularly important as prior to the 'new administrative law' reform of the AAT and other merits review tribunals, the only freedom of information individuals had over their information held by government was through the judicial system — an expensive and inaccessible avenue.¹² Merits review tribunals like the AAT are intended to be a more accessible, free and less intimidating way for individuals to question governmental decisions made about them.¹³ This is important work.

Part of the AAT's mandate to provide transparency in governmental decision making is the publication of decisions. Section 66B of the *AAT Act* provides that the tribunal may publish decisions in any form, unless prohibited by another Act. Exceptions are made when the disclosure can cause harm, and identifiable information is obscured in Child Support,¹⁴ Migration¹⁵ and Taxation¹⁶ decisions.¹⁷ No exception is currently made for

¹¹ Domestic and Family Violence Information Sharing Guidelines (n 1) 13.

¹² Roger Douglas and Michael Head, *Douglas and Jones's Administrative Law* (The Federation Press, 7th ed, 2014).

¹³ *Ibid.*

¹⁴ *Child Support (Registration and Collection) Act 1988* (Cth) s 16(2AB).

¹⁵ *Migration Act 1958* (Cth) ss 431, 501K.

¹⁶ *Taxation Administration Act 1953* (Cth) s 14ZZJ.

¹⁷ *Child Support (Registration and Collection) Act 1988* (Cth) s 16(2AB); see also Administrative Appeals Tribunal, 'Guidelines', *Practice Directions, Guides and Guidelines* (Web Page)

social security decisions that involve domestic violence, and these decisions are published without routine removal of identifiable and locatable information. However, current AAT guidelines do not mandate the publication of these details, including for social security decisions. Rather, they explain that:

The wide availability of published decisions gives rise to the potential for misuse of information contained in written decisions ... When preparing reasons for decision, Tribunal members: (a) should only include information about a party, witness or other person in reasons for decision if it is relevant to the findings or otherwise necessary for the cogency of the reasons.¹⁸

The policy guidelines go on to state that personal addresses should not be included.¹⁹ Given the ease of access to AAT decisions, which are available online through AustLII, it is also important to consider additional responsibilities when managing disclosures of information in order to reduce harm to vulnerable individuals. When the legislation mandating transparency was drafted in 1975,²⁰ the written AAT decisions were not digitised. Remote online access was not possible. The function of the written decision was as a record, which was accessible to those who made the effort, rather than available online to the general public. The potential for perpetrators to misuse the enhanced accessibility of the information available through social security AAT decisions has increased since the original legislation.

B The AAT and the 'Couple Rule' in the Context of Domestic Violence

However, AAT 'couple rule' decisions disclose a plethora of sensitive and personal information as part of the reasons for the decision. These include details about sexual activities, the nature of relationships, level of commitment, and the character of a household. In fact, these details are legislatively required to be collected by Section 4(3) of the *Social Security Act 1991* (Cth). This piece of legislation is known as the 'couple rule'. The 'couple rule' decides whether an individual is a member of a couple for social security

<<https://www.aat.gov.au/resources/practice-directions-guides-and-guidelines>>.

¹⁸ Administrative Appeals Tribunal, 'Publication of Decisions' (Web Page)

<<https://www.aat.gov.au/AAT/media/AAT/Files/Policies/AAT-Publication-of-Decisions-Policy.pdf>>.

¹⁹ *Ibid.*

²⁰ Administrative Appeals Tribunal Act 1975 (Cth).

purposes.²¹ This is very important in Australia, as an individual's access to social security payments is tied to the income and assets of their partner.²²

The nature of 'couple rule' decisions leads to particular vulnerabilities for women who have experienced domestic violence for multiple reasons.²³ First, the 'couple rule' effectively ties a woman's access to social security payments to the income and assets of her perpetrator. Sleep found that one of five reported AAT 'couple rule' based decisions involve domestic violence.²⁴ This is particularly dangerous at a time when a woman is at heightened financial and physical vulnerability when she attempts to end the violent relationship.²⁵ This is demonstrated by domestic and family violence being a leading cause of homelessness for Australian women.²⁶

Second, it is understood by researchers and practitioners in domestic and family violence that women tend to make multiple attempts to leave the relationship. However, this is not considered in 'couple rule' decision making.²⁷ Rather, Easteal states that 'couple rule' decisions do not take 'battered women's reality' into account.²⁸ Further, in these decisions, residential addresses are particularly important for decision making, and are reported in AAT decisions. These addresses are particularly pertinent when establishing the nature of the relationship and the household in AAT 'couple rule' decisions. Short term accommodation, which is part of the context of the cycle of abusive relationships, gains the attention of decision makers but is not treated as sensitive information that could compromise the safety of the individual that the decision is about. The temporary residential addresses of women who are attempting to leave a violent and controlling relationship, and also those of relatives and friends with whom they have stayed, are

²¹ Lyndal Sleep, 'Domestic Violence, Social Security and the Couple Rule' (Research Report, Australia's National Research Organisation for Women's Safety, April 2019).

²² Lyndal Sleep, 'Sex-Snooping in Australian Social Welfare Provision: The Case of Section 4(3) Surveillance' (PhD Thesis, Griffith University, 2016); Sleep (n 21).

²³ Sally Cameron, 'How Well Does Australia's Social Security System Support Victims of Family and Domestic Violence?' (Briefing Paper, National Social Security Rights Network, August 2018).

²⁴ Sleep (n 22).

²⁵ Australian Institute of Health and Welfare, *Family, Domestic and Sexual Violence in Australia 2018* (Report, 2018).

²⁶ Kathryn Di Nicola, Dini Liyanarachchi and Jacquelin Plummer, 'Out of the Shadows, Domestic and Family Violence: A Leading Cause of Homelessness in Australia', *Mission Australia* (Report, 11 April 2019); Australia's National Research Organisation for Women's Safety, 'Domestic and Family Violence, Housing Insecurity and Homelessness: Research Synthesis' Insights (2nd ed, July 2019).

²⁷ Patricia Easteal and Derek Emerson-Elliott, 'Domestic Violence and Marriage-Like Relationships: Social Security Law at the Crossroads' (2009) *Alternative Law Journal* 34(3), 173-76.

²⁸ *Ibid.*

routinely reported in the AAT decisions.²⁹

Third, it is understood by practitioners and researchers in domestic and family violence that a woman is at increased risk of escalated violence from her perpetrator when she attempts to leave the relationship as the perpetrator desperately tries to re-establish their control.³⁰ Hence, reporting of addresses and any other identifiable or locatable details at the time that a woman is making an attempt to leave a relationship, even if temporary, creates substantial risks for that woman and her children. AAT 'couple rule' matters that involve domestic violence have often come to the attention of the department due to the relationship's uneasy categorisation as a 'couple relationship' or 'single individuals'. The mining of these sensitive relationships for information like temporary residential addresses, and then the publishing of these details in its reasons for decisions, puts the victim at heightened risk of serious harm at the hands of her perpetrator and/or others through potential public shaming and exclusion. The next section analyses the sensitive identifiable and locatable information reported on AAT 'couple rule' decisions that involve domestic violence.

IV AN ANALYSIS OF AAT 'COUPLE RULE' DECISIONS THAT ARE PUBLICLY AVAILABLE ONLINE AND INVOLVE DOMESTIC VIOLENCE

Previous research has shown that identifiable and locatable details of women in the context of domestic violence are made available to the public through the reporting of AAT decisions, particularly in 'couple rule' decisions. However, the numerical extent of this has not been clarified. This research aims to quantify the extent of this disclosure of sensitive information that posed particular safety risks to women and children. This is done by counting the number of disclosures of identifiable and locatable information on 'couple rule' decisions that involve domestic violence.

²⁹ Sleep (n 21).

³⁰ A 2015 study by Australia's National Research Organisation for Women's Safety found that two out of five women experienced violence when temporarily separated from their violent male partner, while six out of ten women reported an increase in violence during separation. See Peta Cox, 'Violence Against Women: Additional Analysis of the Australian Bureau of Statistic' Personal Safety Survey, 2012' (Research Report, Australia's National Research Organisation for Women's Safety, 2016) 121. This is supported by a substantial body of Australian and international research. See, eg, Jacquelyn C Campbell et al, 'Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study' (2003) *American Journal for Public Health* 97(7) 1089-97; Rae Kaspiew et al, 'Domestic and Family Violence and Parenting: Mixed Methods Insights into Impact and Support Needs: Final Report' (Research Report, Australia's National Research Organisation for Women's Safety, 2017).

A Method

27 AAT 'couple rule' decisions involving domestic violence between 1994 and 2014 were included in the study. The sample for the current study was derived from the previous data set used by Sleep.³¹ Sleep accessed the Australasian Legal Information Institute (AustLII) database, using the Administrative Appeals Tribunal of Australia database and used search terms such as 's.4(3)' and 'member of a couple' to arrive at a sample of 133 decisions. In this current study, the 133 AAT 'couple rule' decisions were further analysed using AustLII's AAT database to identify decisions that involved domestic violence. Search terms such as 'violence' and 'abuse' were used to identify 'couple rule' decisions that involved domestic violence.

The 27 AAT 'couple rule' decisions involving domestic violence were individually analysed according to criteria of personal identifiers. The following criteria were recorded for each decision: victim's name, victim's children's name, victim's address, victim's past address, victim's workplace, victim's past workplace, perpetrator's name, perpetrator's address, perpetrator's work, children's school, relative's name, relative's address, and whether a protection order was issued by the relevant state/territory.

Please note that in reporting these findings, individual decisions will not be referred to. This is to prevent further dissemination of the identifiable and locatable information available in these decisions. It is hoped that this will limit additional risks to the safety of women and children for the decisions used in this study caused by their inclusion in the study.

Major demographic characteristics of the sample were gender, ethnicity and sexuality. The gender of applicants in decisions were overwhelmingly female, with 24 female applicants. The ethnicity of the sample was overwhelmingly Caucasian Australian with one applicant identifying with Indigenous Australian culture and whose partner was also recorded as an Indigenous Australian. The remainder of the sample were recent immigrants, comprising of five from South Eastern Europe, one from Asia, and one from the Middle East. The sexuality of all couples was heterosexual.

³¹ Sleep (n 22).

B Findings

Major findings of the analysis revealed that 86.67% (N=26) of decisions recorded the victim's name and 73.33% (N=22) of decisions recorded the perpetrator's identifiable and/or locatable information. In addition, 40% (N=12) of decisions recorded a relative's identifiable and/or locatable information; 20% (N=6) of decisions utilised anonymisation methods; and only one of these decisions did not record any personal identifying information in the decision. Almost half (N=13) of the 26 decisions involved protection orders.

The high frequency in which the victim's name was recorded was a standout among the criteria, with the highest incidence being 199 times in one decision. Of the 26 decisions that identified the victim by name (Table 1), 16 decisions identified children's names (Table 2), the majority included children's month and year of birth; two decisions included full dates of birth; and two decisions provided sufficient detail to identify the children's school (Table 2). A disturbing finding was one decision where a named adult discloses historical sexual abuse by the perpetrator, her step father, which occurred when she was a child.

Table 1. Incidences of disclosure of victims' identifiable and/or locatable details

Identifiable and/or Locatable Information	Frequency	Quantity of Decisions
Victim's name	2120	26
Victim's address	276	11
Victim's past addresses	159	9
Victim's workplace	2	2
Victim's past workplace/s	19	4

Table 2. Incidences of disclosure of victims' children's identifiable and/or locatable details

Identifiable and/or Locatable Information	Frequency	Quantity of Decisions
Victim's children's name	295	18
Victim's children's school	2	2

Perpetrators' identifiable and/or locatable information was also recorded frequently (1971 times over 22 decisions), with 12 of these decisions identifying their address, and eight decisions identifying their place of work (Table 3). One decision recorded identifiable and locatable information including: the perpetrator's name, places of work and the suburb where he lived. The perpetrator was Indigenous and lived in a suburb with a high Indigenous population, that has a maximum population of 250 people.

Table 3. Incidences of disclosure of perpetrator's identifiable and/or locatable details

Identifiable and/or Locatable Information	Frequency	Quantity of Decisions
Perpetrator's name	1971	22
Perpetrator's address	388	12
Perpetrators work	38	8

Relatives of the victim or perpetrator were also regularly identified throughout decisions with their name or address being recorded or described in the decision. See Table 4.

Table 4. Incidences of disclosure of relative's identifiable and/or locatable details

Identifiable and/or Locatable Information	Frequency	Quantity of Decisions
Relative's name	117	12
Relative's residence	45	6

Anonymisation was used in six decisions; however, only one of these decisions did not record any personal identifying information for any persons mentioned in the decision. In this particular decision, all persons were referred to by a single letter and children

were referred to by their gendered pronoun. Nil other locatable information was found in this decision. By contrast, the remaining decisions that used anonymisation in the title still disclosed identifying personal information. Three decisions identified the victim by name with one of these also identifying the children. Two of these six decisions also identified the children's names, which were unusual names, as well as other locatable information for one of the children. One decision anonymised the perpetrator's name and recorded the victim's name.

V WHAT THIS MEANS FOR DISCLOSURE OF IDENTIFIABLE AND LOCATABLE INDIVIDUAL'S DETAILS IN AAT REPORTING

Hence, the current reporting of identifiable and locatable details in AAT decisions, particularly 'couple rule' decisions, places domestic violence victims at considerable risk. The disclosure of identifiable and locatable information in situations that involve domestic violence by the AAT, puts domestic violence victims at increased risk of physical assault and potential public shaming.³²

While the AAT has a legislated mandate to allow publication of decisions for transparency of governmental decision making, it also has a responsibility to protect vulnerable individuals from harm. The increased accessibility that is provided by the ability to access decisions online requires careful consideration, as this ease of access was not intended by the original legislators in the 1970s before the internet. Further, when reporting AAT decisions, careful consideration needs to be taken of the improved understanding of the extent and dynamics of power and control in domestic violence over the last five decades. We now know that many women rely on social security payments to establish financial independence after fleeing a violent relationship, but social security rules make women in the context of domestic violence particularly vulnerable to social security non-compliance.

However, in situations of domestic violence, women and children are frequently still identified by name and their addresses displayed, despite the considerable risk to women and children.

³² This public shaming has been shown to be particularly risky for culturally and linguistically diverse women. See Marie Segrave, 'Temporary Migration and Family Violence: An Analysis of Victimisation, Vulnerability and Support' (Report, Monash University, September 2017).

In New Zealand's reporting of Social Security Appeals Authority Decisions, the names of the appellant and respondent are obscured, and, throughout the document, further identifiable and locatable details are redacted.³³ This is not just done for sensitive cases involving, for example, children or violence, but all social security decisions.³⁴ Here, the tribunal's obligation to provide transparency of governmental decision making is balanced with the need for the safety and dignity of individuals.

This paper suggests that a similar approach be adopted in Australia —that the names and addresses, and any other identifying or locating information, be obscured in all reported AAT decisions. While this study identified a number of decisions that involved domestic violence, this is not exhaustive. Domestic violence is notoriously underreported and individuals do not always disclose the violence in the course of decision making. The most reliable way to ensure women's and children's details are not publicly disclosed in situations of domestic violence through AAT reporting, is to obscure these details when reporting *all* social security decisions.

VI CONCLUSION

This paper analysed 27 AAT 'couple rule' decisions that involved domestic violence and showed very high frequencies of the disclosure of identifiable and locatable details of women and children (in 86.67% of decisions). Victim/survivors' names were identified 2120 times in the 27 decisions, with one decision reporting the victim/survivor's name 199 times.

This paper argued that the disclosure of women's identifiable and locatable information in the reporting of AAT 'couple rule' decisions that involve domestic violence, poses serious safety risks to women and children during an already vulnerable time, and more care is needed in the reporting of these decisions. The very high frequency of reporting identifiable and locatable details in AAT decisions is cause for alarm. This paper recommends that the approach used in New Zealand, where names and addresses are obscured in all reporting of Social Security Appeals Authority Decisions, be adopted by

³³ An appeal against a decision of the Benefits Review Committee, *NZSSAA 62* [2003] (21 May 2003) <<http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZSSAA/2003/62.html?query=facto%20violent>>.

³⁴ An appeal against a decision of a Benefits Review Committee, *NZSSAA 3* [2019] (23 January 2019) <<http://www.nzlii.org/nz/cases/NZSSAA/2019/3.html>>.

AAT reporting in Australia as the only practicable way to ensure women's and children's safety in the context of domestic violence.

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