best addressed through special, targeted services. Furthermore, it confirms that it is not unlawful to fund or deliver such services. However, even though supporters of women’s health services won, they cannot completely relax. More effort is required if Australia is to protect its unique and precious heritage of community-based women’s health services, which constitute a vital part of its overall network of community health services. Three issues in particular remain on the agenda.

1. Public and private discussion of the matter revealed widespread ignorance among both women and men as to the activities of women’s health services. The public interest aroused by the case provides an opportunity to set the record straight, to inform people of what would have been lost if the complainants had succeeded.

2. The Sex Discrimination Act is currently under review by parliamentary committees. The relevant sections of the Act need to be amended so similar actions are more difficult in future. Women have been successful in seeking remedies for discrimination through the courts, and it is therefore essential that the Act is revised so that it can serve more effectively its original intention: to eliminate discrimination against women.

3. Men working positively for improvements in men’s health have not been assisted by the action. The case has, however, focused attention on ways that men’s health—as well as women’s health—may be affected by gender, although discussion around the case has tended to imply that there is, somehow, a masculine equivalent for every women’s health concern. Perhaps the case will prompt a fuller exploration of how many health concerns and risk factors could be addressed more effectively if we recognise their gendered character, and develop better understandings of the distinctive and different patterns of women’s and men’s health needs.

DOROTHY BROOM is the author of Damned If We Do: Contradictions in Women’s Health Care (Allen & Unwin, 1991).

Donations to the Canberra Women’s Health Centre, to help defray the expenses of the case, should be sent to the Centre, PO Box 1492, Woden, ACT 2616.

No Legal Refuge

Cases in which women kill a violent partner or ex-partner are relatively rare in Australia and yet they have a profound effect upon legal and cultural representations of domestic violence. Throughout the 1980s public campaigns around cases such as those of Violet and Bruce Roberts in NSW, Beryl Birch in Queensland and the so-called axe murder case in South Australia were significant in putting the issue of domestic violence on the political agenda. They were also successful in gaining some legislative reforms. In NSW for instance, changes to the legal requirements for the defence of provocation, the removal of the mandatory life sentence for a murderer conviction and the introduction of new legislation concerning domestic violence were all significant outcomes of such campaigns.

However the actions of women who kill a violent partner are still poorly understood, and they are more likely to be depicted as an expression of evil or as due to mental illness or psychological dysfunction than as justifiable actions undertaken in desperate circumstances. Courts have not interpreted the existing defences available to such women in a sympathetic manner.

The defences available to a charge of murder include self defence, provocation, insanity and/or diminished responsibility, and automatism. Each of these defences possesses a basic rationale as to when a killing will be justifiable or excusable. All of the defences rely, in the application of legal doctrine to the facts of the particular case, on commonly held standards. This is manifested formally by the incorporation of standards of ‘reasonableness’ or ‘ordinariness’ against which the individual accused’s behaviour are to be measured. However, these allegedly neutral standards are founded upon the experiences and perceptions of white, middle class men.

Battered women are diverse individuals caught up in unique situations. Nevertheless they share in common a culture of violence, fear and a lack of power. They also share the fact that as women, women who kill, and women who have been subject to abuse within their relationships, their life experiences and perceptions do not neatly coincide with the doctrinal rules, the communal norms, or the conceptual categories that comprise and underlie the defences of murder.

One mechanism which has been used to bring woman battering to the attention of the courts, usually in the context of explaining the behaviour of a woman defendant who has killed a violent man, is the ‘battered woman syndrome’ (BWS). It does not constitute a separate defence, but is used in conjunction with other defences. Such syndrome evidence has been widely used in the United States over the past decade.

Ironically, though, while BWS has arisen as a response to the inadequacies and limitations in prevailing law and legal practice, it may serve to reinforce those very problems. The BWS does not challenge legal and cultural stereotypes about women and about woman battering. Rather it reconstructs and accommodates women’s experiences to fit the requirements of existing legal doctrine.

BWS was first accepted in the Australian court in May 1991. The South Australian Court of Criminal Appeal ruled that a trial judge erred in not allowing expert testimony concerning BWS to be put during the trial of two women for the false imprisonment and assault occasioning grievous bodily harm of a third woman. The women argued they had not been party to inflicting the violence, and in addition they had acted under duress. That is, they claimed that they were in fear of the likely violence of the man named Hill.
(who was de facto husband to both women and a co-accused who had died before going to trial).

One of the women tried in the South Australian case was Erika Kotinnen. In late March this year she was acquitted by the South Australian Supreme Court of Hill's murder. She had shot him while he slept after he had threatened to kill her, another woman named Runjanjic and a child. Evidence concerning the battered woman syndrome was accepted at the trial in support of her claim that she had acted in self-defence. The trial had attracted enormous attention and engendered a great deal of debate.

Kotinnen lived in a menage a trois with her de facto spouse Hill, and Runjanjic. Hill was brutal to both women; he treated them as slaves and referred to them as ‘number one’ and ‘number two’. According to press reports of the case Hill admired Charles Manson and wanted to establish a ‘Manson style’ family. Runjanjic had previously been hospitalised with severe injuries inflicted by Hill. The women’s attempts to seek protection from police and other agencies had been unsuccessful. The women were terrorised by Hill and felt unable to escape the violent relationship.

But what is the battered woman syndrome? The term is associated with the work of clinical psychologist Dr Lenore Walker and describes the psychological characteristics of women who have suffered domestic violence. Walker has defined a battered woman in the following terms:

A woman who is repeatedly subjected to any forceful physical or psychological behaviour by a man in order to coerce her to do something he wants her to do without any concern for her rights. Battered women include wives or women in any form of intimate relationships with men. Furthermore, in order to be classified as a battered woman, the couple must go through the cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.

The ‘cycle’ referred to is the creation of Walker herself. It is said to have three phases: the first phase is one of tension building, the second is one of acute battering and the third is that of constraint and loving behaviour.

The syndrome is associated with the psychological state known as ‘learned helplessness’. This term is borrowed from the animal experiments of Martin Seligman, in which dogs subjected to inescapable electric shocks became passive and helpless. Walker and others argue that after a history of experiencing violence at the hands of her partner, and possibly unsuccessful attempts to avoid the violence, a woman may begin to believe that he is omnipotent, that she is powerless, and that no one can help her. She loses her motivation and becomes helpless and fatalistic.

Expert evidence concerning BWS is not automatically admissible in court. It must meet a number of technical requirements before a judge will allow it to be admitted. For example, it must be an accepted body of scientific knowledge, and it must be beyond the understanding of the average layperson or juror. These requirements have a number of consequences.

First, the testimony of an expert is preferred to the account of the woman herself (although it must be acknowledged that there will be cases where a woman would prefer not to give evidence herself or may be judged by her counsel not to be a good witness). Again the experiences of the woman on trial are by necessity reconstructed to fit the scientific or medical discourse of the expert, who is usually a psychologist or psychiatrist. The fact of the man’s violence and the social and political realities which limit women’s choices in dealing with life-threatening violence become secondary to the consideration of the woman’s psychology. Her actions may be rendered inexplicable in terms of her psychology rather than justifiable as a desperate act of self-help.

The use of psychological or psychiatric testimony also has the potential to reinforce cultural stereotypes about women—particularly their supposed irrationality and emotionality. BWS does not challenge such stereotypes; rather, it is consistent with the depiction of women as irrational.

The threshold for the admission of expert evidence requires the representation of domestic violence as rare, unusual and beyond the understanding of a layperson—an ironic outcome given the incidence of such violence in the community.

There are other potential problems with the use of BWS as evidence. It is most often used in the context of the defence of a woman who has committed an offence. Most cases to date have concerned homicide or assault. BWS is used to explain why the woman committed a criminal act rather than leave a violent relationship. The presumption is that leaving a violent relationship is the ‘normal’, ‘rational’ response to violence and that any other course must be explained.

Characterising leaving a relationship as ‘normal’ presumes that women always have a choice. This is of course obscures many social and structural impediments to women leaving violent relationships. It also ignores the fact that violent coercion keeps some women in abusive relationships. Finally it presumes that violence ceases when a woman leaves her home.

Research has shown that of women killed by a partner or ex-partner, half had been killed after they had separated or during the course of the woman’s attempts to separate. The establishment of a growing network of women’s refuges and the demands for more effective protective legislation provide further evidence that violence does not necessarily cease if a woman is able to leave the relationship.

The use of BWS is also a problem because it fails to confront the male standards which underlie legal concepts such as that of reasonableness. If a defendant’s actions are to be judged by their reasonableness, it might seem fair that the definition of reasonableness be sufficiently broad as to include the circumstances and context of her actions. BWS does not contribute to a broad interpretation of reasonableness, but rather provides a psychological explanation for the departure of a battered woman’s conduct from the existing standard. In doing so a new norm is constructed—that of the ‘reasonable battered woman’.

There are real dangers in constructing a new standard of reasonableness with which battered women must
comply. On Lenore Walker's own evidence not all battered women experience the cycle of violence, nor the learned helplessness which are features of BWS. There is the risk that women who do not conform to the prescribed pattern will be judged harshly for failing two tests of reasonableness—the allegedly neutral male standard of existing legal doctrine and the BWS standard. This has occurred in some jurisdictions in the US, where women have been deemed to be ineligible to use BWS in support of their defence because they do not conform precisely to the criteria of the syndrome. In such cases a construct—the battered woman syndrome—which may have value in describing the experiences and behaviour of some battered women, has been interpreted in such a way as to prescribe what can be considered to be reasonable responses by battered women.

The use of BWS evidence is likely to leave fundamental problems in legal doctrine and legal practice unchallenged. The account offered of the actions of a woman who kills a violent partner will continue to be re-interpreted by the courts and the media as a departure from conventional standards of reasonableness. It will also be viewed as consistent with cultural representations of women as victims or as psychologically dysfunctional. Finally, it is likely to contribute to a distorted representation of women and woman battering—one which highlights individual psychology and fails to emphasise the social, structural and political dimensions of the problem. This is to the detriment of all women.

JULIE STUBBS and JULIA TOLMIE teach in law at the University of Sydney.

**Countback!**

Lights! Camera! Action! The curtains parted and the Great Dirty Tricks Campaign commenced. In a remarkable coalition of forces, the Treasury, the ABS, the Teachers' Union and, for all we know, the Queensland supermarket that filled Dr Hewson's 'representative as far as it went' basket with Harpic and dog food, conspired with Prime Minister Keating to denigrate the notion that everyone will benefit immediately by adoption of the Fightback! package. Except that 'smokers are losers'. Well, possibly they are in more ways than one.

The lights have now gone out and the journalists have moved to the next media event, but Australians are still left with the stark reality of the Treasury analysis. In March, three months after the release of the Fightback! package, Treasury finally concluded its distribution analysis of the winners and losers.

According to Treasury, far from providing net benefits to all groups in the community, the Opposition package would lead to over 70% of full-time wage and salary earner households and 60% of self-employed and farm households becoming worse off. The major beneficiaries would be the top 10%. For the average Australian worker on $25,000 a year, struggling to hold on to a job, with dependent spouse and kids to support, the choice is between a gain of $39.25 a week according to Fightback! and a loss of $7.50 a week according to Treasury: a difference of $46.75 a week or nearly $2,500 a year.

As claim and counter-claim fly, who should we believe? Well, let's ignore the rhetoric and resort to logic of argument. First, Treasury adopts most of the underlying assumptions of the Opposition model and in fact assumes the package will have even less effect on prices than did the Opposition. That's why the Treasury analysis suggests a greater benefit for the average sole parent under Fightback! than even the authors of the document.

But having conceded, and even enhanced, the price effect of the GST, Treasury then point out two major drawbacks. Fightback! ignores the costs to households of expenditure cuts and health policy changes; and it underestimates the compensation required to compensate households fully for the GST price effect and tax bracket creep.

Treasury has a valid point in respect of the so-called 'nasties'. In fact it is a point that Fightback! itself acknowledges, or rather explicitly fails to incorporate. In a footnote to the relevant table of Fightback! the Opposition claims that the Net Benefits takes into account a whole range of factors but no mention is made of the net $6.5 billion expenditure cuts, increases in other taxes, or the medicare levy surcharge.

Treasury in its analysis has incorporated: the introduction of the proposed family income test for the dependent spouse rebate; lowering the income test threshold for family allowance; tightening the income and assets tests; removing AUSTUDY where present eligibility is less than $30 a week; and introducing a Medicare levy surcharge for higher income groups.

However, Treasury has not calculated other directly redistributive expenditure cuts totalling $600m. These include raising the pension age for women to 65, a three-week extension of the waiting period for Job Search Allowance, or possible increases in