

Submission to the Royal Commission into Family Violence

Judicial College of Victoria



Judicial
College of
Victoria

William Cooper Justice Centre
Level 7, 223 William Street
Melbourne VIC 3000
DX 210611

Telephone (03) 9032 0555
Facsimile (03) 9032 0500
Email info@judicialcollege.vic.edu.au
www.judicialcollege.vic.edu.au

'...all magistrates and judges need to be able to 'shift their lenses' to see more accurately the underlying dynamics of family violence at the heart of many 'regular' offences'.¹

About the Judicial College of Victoria

The Judicial College of Victoria (the “College”) was established in 2002 to provide education and ongoing professional development for judges, magistrates and VCAT members in the State of Victoria. The College has its own board under the *Judicial College of Victoria Act 2001*, which is chaired by the Honourable Chief Justice Marilyn Warren AC and comprises heads of the four largest jurisdictions and two Governor-in-Council appointees.

The College provides a range of innovative, timely and multidisciplinary education programs. The College also publishes a suite of online publications – bench books and practice manuals, covering important areas of criminal and civil law.

¹ Consultation with Centre for Innovative Justice, 28 April 2015. For example, see *Filiz v R* [2014] VSCA 212, *Pasinis v R* [2014] VSCA 97 and *DPP v Meyers* [2014] VSCA 314 but compare *Marocchini v R* [2015] VSCA 29.

Table of Contents

| | |
|---|-----------|
| 1. Introduction..... | 4 |
| 1.1 Purpose of this submission..... | 4 |
| 1.2 Executive Summary | 4 |
| 2. Proposed Recommendations | 5 |
| 3. Judicial education in family violence | 6 |
| 3.1 The need for judicial education in family violence | 6 |
| 3.2 Family violence – Not just an issue for the Magistrates’ Court | 9 |
| 3.3 Recent judicial education in family violence | 10 |
| 4. What are the opportunities for improvement and consolidation of family violence education?..... | 12 |
| 4.1 The need for a systematic response | 12 |
| 4.2 A “core” family violence education package..... | 13 |
| 4.3 Jurisdiction-specific family violence education | 15 |
| 4.4 How to deliver effective family violence education? | 16 |
| 4.5 A progressive curriculum..... | 17 |
| 4.6 Building a proactive, research-oriented and reflective courts system | 20 |
| 5. Conclusion | 21 |
| References | 22 |

1. Introduction

1.1 Purpose of this submission

This submission makes recommendations on family violence education for the Victorian judiciary. This submission identifies gaps in, and opportunities for, judicial education in family violence at each level of the court system. It articulates how comprehensive and regular education will improve the effectiveness of the court system's response to, and prevention of, family violence. We propose proactive judicial leadership to ensure family violence education is accessed by all judicial officers.

1.2 Executive Summary

Family violence is a significant issue across the Victorian court system. There were over 65,000 intervention order applications and over 15,000 charges of contravention of an intervention order last year in the Magistrates' Court. In 2013–2014, there were approximately 25 family violence homicides dealt with in the Trial Division of the Supreme Court and a significant number of appeals to the Court of Appeal involving circumstances of family violence. Even these numbers tell only part of the story, as family violence impacts the whole court system through non-fatal offences of violence, property, contract and wills disputes and residential tenancies disputes.

This submission outlines the need for judicial education in supporting consistent and best judicial practice and how the College has addressed this need to date.

We then identify the opportunities for improvement and consolidation of family violence education, emphasising the need for a systemic response in the delivery of effective family violence education. We propose a "core" family violence curriculum relevant to judicial officers from all courts, supplemented by jurisdiction-specific education which examines the issues particular to each court. We also propose a Judicial Research Hub to support courts-led research into systemic issues in family violence across the courts system. This will support ongoing judicial education on family violence and contribute to public policy responses to family violence.

The College can deliver a best practice curriculum of education through its programs and publications and support cross-jurisdictional forums to improve lines of communication and information sharing on family violence matters between the courts. We also consider that family violence is an issue on which judicial officers can and should demonstrate leadership on and, through their behaviour in court and their pronouncements, build a court system which uses its authority to reduce the current epidemic of family violence.

2. Proposed Recommendations

Recommendation 1: That the Victorian Government provide funding to the College to ensure that:

- judicial officers from each court attend thorough and regular best practice professional development on contemporary family violence issues.
- the curriculum for each court is developed collaboratively with a steering committee from that court.
- the family violence education curriculum includes:
 - (a) For all courts, “core” family violence education as outlined in section 4.2; and
 - (b) Specific family violence education relevant to each court as identified with the steering committee from that court (see section 4.3).

Recommendation 2: That the Victorian Government provide funding to the College to revise the Family Violence Bench Book and update it on a regular basis so as to provide judicial officers and the broader community with a readily available resource to access in matters involving actual, or potential, family violence (see section 3.3).

Recommendation 3: That the Victorian Government provide funding to the College to extend the ‘Judicial Research Hub’ to examine and disseminate family violence research as required by the courts (see section 4.6).

Recommendation 4: That the Victorian Government provide funding to the College to deliver an annual cross-jurisdictional education forum for judicial officers to address family violence matters of cross-jurisdictional relevance including discussion of appeals and best practice decision-making within the current overlapping and interrelated jurisdictions between the courts (see section 4.5).

3. Judicial education in family violence

3.1 The need for judicial education in family violence

Family violence is one of the most challenging issues currently facing the Victorian community. Developing an effective judicial education course in that area is similarly complex, as it must provide social context information enabling judicial officers to identify and characterise family violence behaviour, keep judicial officers up to date with changes to the law and maintain their court craft skills. Inevitably, judicial officers will hear cases involving people from vastly different social and cultural backgrounds to themselves, and even if they have had previous experience with the particular social group from which a litigant comes, may lack a detailed cultural understanding. Consequently, judicial education must increase awareness of how family violence affects some communities differently, and highlight how that difference manifests in court. Broadly, this type of social context education aims to increase awareness of different views and experiences; explore ways in which participants might understand different people's attitudes and social realities; and enable them to recognise and to deal more sensitively and fairly with problems that arise in court.

Subjective experiences of the courts may be conceptually divided into two constructs: procedural justice and distributive justice. Procedural justice refers to the perceived fairness of court processes, including such aspects as respect, fairness, trustworthiness and voice. Distributive justice refers to the perceived fairness of court outcomes.²

Research has shown that more positive perceptions of procedural justice predict higher likelihood of seeking help from the justice system in the future.³ In contrast, perceptions of distributive justice – of the outcomes of cases – are not uniquely predictive of future help-seeking. Even for victims who are not successful in securing a civil protection order against their abusers, or who do not see their abusers receive a criminal conviction, the court process itself may provide some benefit. For those victims who do not receive their desired outcomes, a positive court process may be even more important, as 'all they have to take away from their court experience is the way the system made them feel'.⁴

This finding illustrates the importance of procedural justice and feelings of support and validation for victims of family violence. Conversely, though, the research implies that a *negative* court experience can have significant implications for victims, including poor

² Calton and Cattaneo, 2014: 330.

³ For example, Calton and Cattaneo (2014) interviewed 142 participants from a Domestic Violence Intake Center at an urban court in the US to measure victims' experiences of physical abuse, psychological abuse and stalking, their quality of life and levels of depression, and their perceptions of justice and likelihood of using the justice system in the future.

⁴ Calton and Cattaneo, 2014: 337.

quality of life, depression and a lower likelihood of turning to the criminal justice system for help in the future. Indeed, Hotaling and Buzawa (2003) showed that victims of intimate partner violence who felt that they had been ignored by court personnel, or who felt that their voices had not been heard, were significantly less likely to report new instances of victimisation one year later. Perhaps worse yet, research suggests that ‘criminal justice processes often add to the violence already experienced by women at the hands of their partners’ by ‘the approaches of respondents, police, lawyers and magistrates in colluding in the minimisation and trivialisation of violence and the shifting of blame to the victim’.⁵

In Victoria, in 2014 the Centre for Rural and Regional Law and Justice examined family violence victims’ perceptions of court processes. In interviews with victims of family violence and support workers, many women reported positive experiences with police officers, magistrates, lawyers and court personnel who both validated their experiences and prioritised their (and their children’s) safety. But the negative aspects of the women’s experiences were many and varied.

Many of the women felt intimidated by the processes of the court, with limited opportunity to be heard and to have their concerns validated, or even to have their evidence considered, which contributed to ‘feelings of isolation and despair at not being heard by the justice system’.⁶

Significantly, not all women felt that the magistrates understood the dynamics of family violence. For some, magistrates were perceived to be fair when they demonstrated compassion and a specialist understanding of family violence. But a number of women reportedly felt intimidated by the magistrate, being ‘talked down to’ or being told off for talking. Negative interactions with magistrates minimised women’s experiences, mirrored prior experiences of abuse and reinforced feelings of disempowerment.⁷

The workers interviewed for the study felt that magistrates ‘often failed to recognise psychological, verbal and financial abuse as family violence’.⁸ While there was a general consensus that support could reduce anxiety and facilitate the court processes, provision of support ‘remains largely ad hoc, with no streamlined processes to connect all women who access the court’.⁹ The authors conclude:

Our findings suggest the need for a more consistent approach to survivors seeking safety and justice, including increased levels of specialist training for all justice system personnel working on family violence cases.¹⁰

⁵ Douglas, 2004: 440.

⁶ Jordan and Phillips, 2013: 23.

⁷ Jordan and Phillips, 2013: 25.

⁸ Jordan and Phillips, 2013: 25.

⁹ Jordan and Phillips, 2013: 22.

¹⁰ Jordan and Phillips, 2013: 5.

In an extension of the Jordan and Phillips (2013) study, George and Harris' (2014) interviews with magistrates highlighted the important role they can play in improving women's perceptions of the court experience. The magistrates saw value in further education to explore the long-term legacy and impact of family violence. Interviewees believed that magistrates must appreciate 'how their tone, language and behaviour can affect a woman's experience of court' and how compassion and training can 'reduce the trauma of the court process and enhance the quality of evidence that is provided by a survivor'.¹¹

The Centre for Innovative Justice also consulted widely for its report on early intervention for perpetrators of family violence.¹² The 'overwhelming' opinion of all the stakeholders with whom the Centre consulted was that training, knowledge and experience of judicial staff makes all the difference to both victims and perpetrators of family violence. For victims, for whom coming forward to apply for an intervention order may have taken many years and much courage, a magistrate who responds compassionately and understands the nature and complexities of family violence can help her feel confident that it has been a process worth undertaking. If the victim feels she is being dismissed or misunderstood by the court, she may not trust the court to help in the future. Education is not just relevant for magistrates who grant Family Violence Intervention Orders, but for all judicial officers. As other offending can take place in a context of family violence, all magistrates and judges need to be able to 'shift their lenses' to see more accurately the underlying dynamics of family violence that lie at the heart of many 'regular' offences.¹³

The Centre notes the important role that magistrates play in improving the effectiveness of protection orders.¹⁴ Tailoring an intervention order to the individual circumstances of each case is important to ensure that the order has the best chance of being effective and protecting the women and children whom it is designed to protect. Understanding the nature and context of each case of family violence is the best way to ensure that the terms of the order are appropriate.

Intervention orders will also be more effective if the magistrate has managed to engage the respondent in a meaningful way. Men often appear in court in a state of anger and denial and do not accept that the court has the authority to order them to do anything under an intervention order. Education around making the perpetrator's attendance at court a meaningful interaction with the judicial officer increased the likelihood of compliance with any order.

¹¹ George and Harris, 2014: 173–174.

¹² Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of family violence into view*, 2015. At <http://mams.rmit.edu.au/r3qx75qh2913.pdf>

¹³ Consultation with Centre for Innovative Justice, 28 April 2015. For example, see *Filiz v R* [2014] VSCA 212, *Pasinis v R* [2014] VSCA 97 and *DPP v Meyers* [2014] VSCA 314 but compare *Marocchini v R* [2015] VSCA 29.

¹⁴ Consultation with Centre for Innovative Justice, 28 April 2015.

The Centre emphasises the importance of education – not just for judicial officers, but for other court staff and practitioners as well – as absolutely critical to improve both the effectiveness of protection orders in actually protecting victims, and the ability of intervention programs to prevent future offending.

3.2 Family violence – Not just an issue for the Magistrates’ Court

Court policy debates on responses to family violence naturally focus on activity in the Magistrates’ Court. The Magistrates’ Court receives the highest volume of cases each year, and operates the intervention order system, a primary prevention response to the problem of family violence. Last year, there were over 65,000 intervention order applications and over 15,000 charges of contravention of an intervention order in the Magistrates’ Court.¹⁵

However, to focus exclusively on the Magistrates’ Court is to overlook the impact family violence has across the court system. In 2013–14, approximately 25 family violence homicides were dealt with in the Trial Division of the Supreme Court. There are also cases of non-homicide offences in the context of family violence.¹⁶ The Court of Appeal encounters numerous appeals which involve family violence. In the County Court there are cases each year of burglary, serious violent offending, sexual offending and threats to kill or cause serious injury which are heard in circumstances of family violence. There are also de novo appeals from family violence orders.¹⁷ In 2013–14 at VCAT there were 52 applications relating to the termination and creation of tenancy agreements where family violence intervention orders had been made.

In addition to the number of cases, law and society are changing to require courts to adopt an increasingly sophisticated approach to cases involving family violence. The *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* codified the laws of self-defence and duress and explicitly recognise how the experience of family violence can be relevant to those defences. This extended the principles first enacted as part of the *Crimes (Homicide) Act 2005* in the context of murder, manslaughter and defensive homicide. In addition, the *Crimes Amendment (Abolition of Defensive Homicide) Act 2014* created both mandatory and optional jury directions which inform juries of matters such as the nature of family violence and the range of reactions which are commonly observed in victims of family violence. Finally, the opinion evidence provisions of the *Evidence Act 2008* have

¹⁵ Magistrates’ Court of Victoria, Annual Report, 2013–2014, 68, 84.

¹⁶ The Supreme Court has noted the difficulty in accurately capturing family violence prevalence data.

¹⁷ In preparing this submission, we have been unable to access data on the number of family violence proceedings in the County Court. Information on the number of offences involving circumstances of family violence and the number of de novo appeals is not publicly available. Measuring family violence-related cases is an important step in identifying the scale of family violence, and should be incorporated as part of the Victorian Government’s family violence index. See <http://www.abc.net.au/news/2015-05-17/victoria-launches-family-violence-index-to-track-scale-of-crisis/6476294?section=vic> (accessed 18 May 2015).

been utilised to call expert evidence on the effects and nature of family violence.¹⁸ Judges in the Supreme Court and the County Court need to approach trials with an understanding of these issues so that they can rule on issues of relevance, frame their directions to the jury and ensure that their treatment of accused and victims is fair and respectful.

The cases of family violence *offending* across the courts is only one half of the picture. Family violence can also manifest in civil litigation, such as property or contract disputes, testator family maintenance, guardianship and residential tenancy disputes.¹⁹ The prevalence and increasing awareness of family violence mean these issues appear more frequently in civil courts. Given the insidious nature of family violence, it is important that all judges are properly educated to recognise and understand the various manifestations of family violence to ensure they exercise appropriate court craft to control the proceedings and properly weigh the evidence to reach the correct result.

3.3 Recent judicial education in family violence

The majority of judicial education in Victoria is judge-led education developed through the College, or delivered by professional development committees internally by the courts. The College has conducted multiple programs for judicial officers to address family violence matters effectively where they arise in proceedings. These programs have addressed the social context of family violence, the substantive legal issues which arise in family violence cases and the skills necessary to deal with matters involving issues of family violence effectively.

Family violence educational initiatives delivered through the College in 2014–15 are outlined below.

2014 General Family Violence Education

- *Family Violence Program for Magistrates – 28 February 2014*
- *Understanding Financial Abuse in Domestic Relationships – 27 May 2014*

¹⁸ *DPP v Williams* and *DPP v Bracken*. Sections 41 and 135 of the *Evidence Act 2008* and Part 6 of the *Jury Directions Act 2015* provide important protections to ensure victims of family violence are treated fairly in court proceedings.

¹⁹ The *Family Violence Protection Act 2008* made amendments to the *Residential Tenancies Act 1997* to give VCAT jurisdiction to make orders terminating a tenancy agreement where one party to the agreement is excluded from the premises due to a family violence intervention order. See *Residential Tenancies Act 1997* sections 233A to 233D. The Residential Tenancies division relies heavily on the Magistrates' Court making an intervention order with the correct exclusionary clauses. For example, to order a new tenancy agreement under section 233A of the *Residential Tenancies Act 1997*, VCAT requires a final intervention order to be made which includes a condition excluding a tenant (the excluded party is usually the perpetrator of family violence). If the Magistrates' Court fails to impose an exclusionary condition on the intervention order, VCAT will adjourn the matter, while application is made to the Magistrates' Court for the correct form of order. This results in double-handling by both jurisdictions, and delay. Amendment to the *Residential Tenancies Act 1997* as proposed in VCAT's submission to the Royal Commission into Family Violence would resolve this issue.

- *Family Violence Twilight Program – 10 September 2014*

Specialised Education: Family Violence Education for Magistrates 2015 – 2016

In 2014 the College embarked on a partnership with the Magistrates' Court to deliver specialised, detailed and contemporary education for all magistrates to ensure a consistent and effective justice response for the heavy caseload of family violence cases in this jurisdiction.

The program aims to deliver best practice education for Victorian magistrates in the hearing, determining and sentencing of family violence matters. The first cohort attended the program in February 2015. A similar program will be delivered twice more over a 12 month period to enable the participation of all Victorian magistrates in this education program.

The program fulfilled the specified learning outcome of bringing increased contextual awareness to the application of substantive and judicial skills, thereby assisting in the impartial and informed delivery of justice. The program was well received by the magistrate participants, with post-program evaluation comments including that the program 'reframes, refreshes and re-inspires good and appropriate practice' and that it was 'excellent, best workshop I've been to'.

Family Violence Bench Book

The College publishes the Family Violence Bench Book; a publication dedicated to discussion of family violence related issues.²⁰

This publication was funded by the Department of Justice in 2008 as a special project to support the implementation of the *Family Violence Protection Act 2008*. It provides in-depth commentary on the family violence intervention order system. It provides guidance to judicial officers on practice and procedures, the operation of the law and sentencing. It also contains a dedicated social context chapter, which considers issues such as the nature of family violence; responding to men who use violence against family members; the impact of family violence on children; specific considerations which arise in relation to people from diverse communities; court craft; and risk assessment and management.

While the Family Violence Bench Book has been updated to reflect legislative changes and case-law developments, there have been significant developments in the social and legal context of family violence, and judicial best practice when dealing with matters involving family violence. We note that a national family violence bench book has been proposed.²¹ It is likely that the national family violence bench book will reference the Victorian Bench

²⁰ The Family Violence Bench Book is available at <http://www.judicialcollege.vic.edu.au/eManuals/FVBBWeb/index.htm>

²¹ AIJA News, May 2015, <http://www.aija.org.au/AIJA%20News/May%202015.pdf> (accessed 14 May 2015).

Book by linking to it.²² Accordingly, the Victorian Bench Book would benefit from substantial revision to reflect current family violence practice and research and any recommendations for change arising out of the national project. Dedicated resources are required to ensure its ongoing currency. This would ensure Victorian judicial officers can continue to use a bench book tailored to the Victorian legal environment, reflecting Victoria's ongoing leadership in responding to family violence. The College has extensive experience in maintaining legal publications for a judicial audience, as reflected in our resources on criminal and civil procedure, evidence, jury directions and sentencing laws.

4. What are the opportunities for improvement and consolidation of family violence education?

4.1 The need for a systemic response

The need for appropriate and extensive continual education for those involved in the family violence judicial response is a recurring and consistent theme in family violence policy recommendations.²³

As noted at section 3.2, family violence manifests at each level of the court system. However, education to date in family violence has been primarily focused on the Magistrates' Court.

The policy aims of effective response and prevention are better supported when comprehensive and regular education is prioritised for all courts, with the nature of the education reflecting the caseload and content demands of each court.

For the purposes of this submission, the College conducted preliminary consultations with judicial officers of each court to ascertain the family violence needs of each jurisdiction. This process clarified that education on what we term 'core' family violence content is essential for each jurisdiction. Each jurisdiction also identified specific topics around which they would increase their expertise to manage family violence cases in their court rooms.

What also became evident through this consultation process was that a systemic court response requires improved alignment between the courts themselves. There are overlapping and interrelated jurisdictions between the courts, especially first instance proceedings in VCAT, Magistrates' Court, Children's Court, Federal Circuit Court and the

²² Consultation with Professor Heather Douglas, who is leading the team to develop the National Family Violence Bench book, 27 May 2015.

²³ Australian Law Reform Commission, *Family Violence: A National Legal Response*, 2010: Chpt 31; Victorian Law Reform Commission, *Review of Family Violence Laws*, 2006; Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of family violence into view*, 2015: 92 At <http://mams.rmit.edu.au/r3qx75qh2913.pdf>, Centre for Rural Regional Law and Justice, *Landscapes of Violence: Women surviving family violence in regional and rural Victoria*, 2014: 95

Family Court. This can have the effect of increasing confusion around court orders or leading to conflicting or inconsistent court orders, particularly if lines of communication and information sharing between the courts are not effective. The courts cannot rely on individuals bringing relevant information from one proceeding to another. While several judicial officers commented that the courts would benefit from the systematic sharing of more important information there are some legislative and resource constraints on jurisdictions sharing information. Thorough examination of the legislative framework is required so that enabling legislation can ensure the effective sharing of information and interconnectivity between the courts.²⁵

4.2 A “core” family violence education package

While various law reform reports and other policy papers have recommended ongoing education in family violence, the specifics of the training required are not clearly articulated.²⁶ The Australian Law Reform Commission (2010) came closest to enumerating core family violence education topics for the judiciary.²⁷

Recommendation 31-1 The Australian, state and territory governments and educational, professional and service delivery bodies should ensure regular and consistent education and training for participants in the family law, family violence and child protection systems, in relation to the nature and dynamics of family violence, including its impact on victims, in particular those from high risk and vulnerable groups.

In this section we outline a core curriculum in family violence education that is applicable in each Victorian jurisdiction.²⁸ The following curriculum is based on a review of the literature on family violence education and the design and delivery of family violence education that has been delivered to the courts to date (including participation at the courts’ internal professional development conferences). It is supported by a brief consultation process we conducted with judicial officers from each court to establish where the judicial officers themselves consider they would benefit from increasing their skills and knowledge base in family violence to manage and intervene more effectively in the family violence cases that come before them.

²⁵ For an example of proposed legislative change see the recommendation made in VCAT’s submission to the Royal Commission into Family Violence on amending the *Residential Tenancies Act 1997* (Vic).

²⁶ Victorian Law Reform Commission, *Review of Family Violence Laws*, 2006; Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of family violence into view*, 2015, 92 At <http://mams.rmit.edu.au/r3qx75qh2913.pdf>, Centre for Rural Regional Law and Justice, *Landscapes of Violence: Women surviving family violence in regional and rural Victoria*, 2014: 95

²⁷ Australian Law Reform Commission, *Family Violence: A National Legal Response*, 2010: Chpt 31

²⁸ While the College is tasked with educating Victorian judicial officers, the College recognises that a family violence education curriculum is also required in the Federal Circuit Court and the Family Court. The College has capacity to provide family violence education to the federal courts on a fee for service basis.

The family violence educational topics comprising a core curriculum are outlined below.

- The social and psychological dynamic of family violence²⁹
 - Relationship dynamics: the pattern of power and control and nature of non-physical violence
 - Family violence and diverse family relationships
 - The gendered nature of family violence and gendered power relations in society
 - The myths vs realities of family violence (referencing the most recent National Community Attitudes to Violence Against Women survey)
- The effect of family violence on children along their developmental trajectory
- Understanding the trauma of family violence
 - Impact on the victim's mental health, their presentation in court and therapeutic court craft
 - Traumatic bonding
- Perpetrator accountability: Maximise the opportunity to change perpetrator's behaviour and attitudes through education on best practice perpetrator engagement in the courtroom.³⁰
- Risk assessment frameworks and specifically the Common Risk Assessment Framework (*CRAF*)
 - Identification and amelioration of risk
 - The protection of children
- Understanding groups with specific needs
 - Indigenous groups
 - People (predominantly women) with disabilities
 - People from culturally and linguistically diverse backgrounds³¹
 - Elders
 - Gay, lesbian, bisexual and intersex community members

²⁹ Australian Law Reform Commission, *Family Violence: A National Legal Response*, 2010: Chpt 31

³⁰ Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of family violence into view*, 2015, 60

³¹ The Children's Court noted their need to understand cross-cultural issues and their impact on family relationships and parenting.

- Victims and perpetrators with mental illness
- Mental health and wellbeing of judicial officers³²
 - Education and skills training on managing exposure to traumatic family violence material

The College has previously implemented elements of this curriculum through its existing education programs, but it has not yet been implemented as a systematic curriculum for application to all courts. Despite the depth of the current specialised education program for magistrates, there are parts of this curriculum which are not covered in that program. This reflects the depth and complexity of the education needs regarding family violence, and the need for a systematic curriculum which is delivered over several years and regularly reinforced.

4.3 Jurisdiction-specific family violence education

The core curriculum is designed to be supplemented by jurisdiction-specific education which explores how family violence issues manifest in particular courts. These issues are not static, but vary over time based on the case-mix within the jurisdiction and the areas of concern or need for judicial officers. Based on our consultations so far, topics which could be addressed as jurisdiction-specific components of family violence education include:

- Intersection between family violence intervention orders, child protection orders, family services system and Family Law Act orders (Magistrates' Court and Children's Court);
- Court craft when dealing with multiple (often unrepresented) parties (All courts and VCAT);³³
- Court craft around children as witnesses, applicants and respondents (including age-based understanding of a child who is a respondent³⁴) (All courts)
- Technological developments relevant to family violence such as phone tracking programs ("cyber stalking") (All courts and VCAT)
- Balancing risk factors surrounding removal of children from their parents, and formulating child contact arrangements (Magistrates' Court and Children's Court)

³² See for example the submission of the Supreme Court to the Royal Commission into Family Violence.

³³ The Children's Court noted the need for education around how to manage the complex dynamics of multiple family members appearing in court, some of whom are unrepresented.

³⁴ The Children's Court identified the level of understanding possessed by children of different ages as an example of a research question in the family violence context that Magistrates would like addressed (see our Recommendation 3).

- Family violence perpetrated by young people upon their parents/grandparents/siblings etc and mechanisms for family intervention (Children’s Court)
- Prevention of family violence and holding perpetrators to account: availability and effectiveness of perpetrator behaviour change programs and other specialist referral support services, motivational interviewing training in the context of perpetrator accountability (County Court, Magistrates’ Court and Children’s Court)
- Sentencing and bail for offences in a context of family violence, including offences by perpetrators and victims (All courts);³⁵
- New statutory directions on self-defence and duress in the context of family violence (Magistrates’ Court, County Court and Supreme Court);
- Use of expert opinion evidence and extrinsic family violence data in jury trials (County Court and Supreme Court);
- Operation of family violence intervention orders on residential tenancy agreements (Magistrates’ Court and VCAT).

4.4 How to deliver effective family violence education?

“Effective judicial education encompasses much more than knowledge transmission and includes skills development and contextual awareness, flowing from understanding of the complex and multifaceted role of judges”³⁶

The implementation of reforms 10 years ago to improve the treatment of sexual assault complainants provides a model for effective family violence education. In both cases, certain witnesses have faced significant barriers to reporting and have been the subject of misguided and outdated stereotypes which negatively affected their experiences in the court system. The required response, then as now, was to improve understanding of the dynamics of the relevant traumatic experience across the justice system, so that all participants (including judicial officers) can adapt their procedures to ensure a fair process for all parties.

Ongoing judicial education in family violence is therefore vital to enhancing community confidence in the courts, and will improve court performance overall. No single program can deliver comprehensive family violence education to all judicial officers, particularly

³⁵ An education topic suggested on consultation with the Court of Appeal was the effect of family violence committed by the victim (e.g., the accused’s partner) on the accused, and whether this can be considered as a form of provocation which can mitigate the seriousness of the accused’s violent response (County Court and Supreme Court)

³⁶ Hon. Justice Thea Herman and Professor T. Brettel Dawson, ‘Engaging Canadian Judges in International Cooperation Activities’ (2006) *Transnational Judicial Dialogue*

when new judicial officers are appointed each year, and the Victorian community is constantly evolving. Like all adult learners, judicial officers come to professional development courses with a variety of experience behind them. Consequently, any successful judicial education program must be founded on adult learning principles. Ideally it is judge-led, and offers a range of formats including short seminars, multi-day conferences, and independent learning. It features a regular and evolving curriculum, with refresher programs in family violence.

Effective family violence education must take into account that some judicial officers will have more experience in family violence and provide opportunities for those individuals to share that experience with others. Evaluations of family violence programs have shown that judicial education is most effective when the judicial officers are involved in program development, and are joined in presentation of the program by senior academics, members of the legal profession, law reformers, criminologists, educators and other relevant experts.

The Australian Law Reform Commission (2010) noted that while quality education and training in family violence is critical, there are numerous challenges to ensuring that education and training are relevant, useful and have a meaningful impact on behaviour in an ongoing way. One of the principal limitations in the effectiveness of judicial education on family violence is that participation in education is self-selecting. Judicial officers who choose not to learn about family violence do not have their preconceptions challenged, or their views expanded.

The 2015–2016 specialised education program for magistrates is significant in this regard, as the Chief Magistrate directed all magistrates to attend one of the three two-day programs. For a court such as the Magistrates' Court, where family violence forms such a high volume of their case-load, this involved significant leadership and commitment to a well-informed court. In other courts, there is likely to be greater reluctance to attend education programs due to a perception that family violence is confined to the Magistrates' Court. In our view, this is a mistaken approach, as family violence manifests at all levels of the court system through property disputes, violent crime and disputes over children.

All Victorian jurisdictions are acutely aware of the problem and they are pursuing ways to improve judicial knowledge of family violence. The courts support the recommendations in this submission, which would optimise the delivery of effective family violence education.³⁷

4.5 A progressive curriculum

The College recommends a structured, coordinated approach to consistent judicial education across Victorian jurisdictions. The proposed core curriculum is outlined in section 4.2 above and should be provided to all jurisdictions. However, there is no one-size fits all solution. Much of the core education would be delivered on a single jurisdiction

³⁷ See for example the submissions of the Supreme Court and VCAT to the Royal Commission into Family Violence.

basis, supplemented by forums for cross-jurisdictional communication and understanding of family violence issues as they arise between the courts.

The curriculum would encompass course-based core education, in-person or online continuing education and topical seminars, complemented by electronic learning resources. In addition, ongoing and regular education of all judicial officers through continuous course modules is recommended to reinforce and extend their application of family violence knowledge and skills.

Additional education on specific topical issues as they arise should be offered to all judicial officers on a jurisdiction-specific or all jurisdictions basis as appropriate. Topics of specific jurisdictional relevance as articulated by judicial officers from each court are outlined in section 4.3.

Complementary, up-to-date electronic resources should be available to judicial officers in all regions and the wider legal community. Similarly, to optimise accessibility, the resources should be available in a variety of formats, including in-person, online and via electronic resources.

The following table describes how the core education and the jurisdiction-specific components can be rolled out across Victoria as part of a coherent and progressively delivered curriculum.

| Family Violence education: A progressive curriculum for all Victorian judicial officers | | | | |
|---|---------------|---------------------------|--|---|
| Stages | Structure | Key components | Key features | Notes |
| Stage 1 | Comprehensive | Core subjects | <ul style="list-style-type: none"> • Enhance judicial skills • Specialised training program (up to two days) • Substantive law, skills-based and social context framework | <ul style="list-style-type: none"> • Tailored to each jurisdiction • In-person program • Delivered with the explicit support of the head of jurisdiction |
| Stage 2 | Continuum | Education Modules | <ul style="list-style-type: none"> • Continuing judicial skills • Ongoing and repeated • Reinforce & extend knowledge & skills • Include topics not covered in comprehensive program • Substantive law, skills-based and social context framework | <ul style="list-style-type: none"> • All jurisdictions • Jurisdiction-specific • In-person and online modules |
| Stage 3 | Concurrent | Short seminars and forums | <ul style="list-style-type: none"> • Twilights and half-day programs • Areas of specific jurisdictional interest • Substantive law and social context | <ul style="list-style-type: none"> • All jurisdictions • Jurisdiction-specific • In-person and online modules |
| Stage 4 | Complementary | Electronic Resources | <ul style="list-style-type: none"> • Family Violence Bench Book • Up-to-date educational resources | <ul style="list-style-type: none"> • All jurisdictions • Self-directed learning • Online |

4.6 Building a proactive, research-oriented and reflective courts system

Victorian courts have endorsed the International Framework for Courts Excellence. This Framework commits courts to adopt processes for continuous improvement through a cycle of assessment, analysis, implementation and review. Within the family violence system, there is currently no structured means for courts to examine questions such as:

- How effective are men’s behaviour change programs?
- What forms of judicial intervention are most effective in breaking the cycle of violence?
- What is the ideal duration for family violence intervention orders?
- In the context of a child respondent to a family violence intervention order, what is the level of cognitive capacity and comprehension of children of different ages?
- How many criminal proceedings involve circumstances of family violence?

We consider that a modern courts system embraces the opportunity to reflect on its practices and identify opportunities for improvement. While other organisations such as the Australian National Research Organisation for Women’s Safety³⁸, Australian Institute of Family Studies and the Sentencing Advisory Council may conduct research into family violence, there is no organisation with a focus on discrete research issues relevant to the judiciary. So far, there has also never been a formal, comprehensive review of the operation of the intervention order process under the *Family Violence Protection Act 2008*.

In 2015, the College received seed funding from the Court Fee Pool to establish a ‘Judicial Research Hub’. The Hub will provide a means to support and oversee research into the courts environment, build linkages with universities and support courts’ own development of evidence-based policy within an independent court system. This Hub has been endorsed by the Board of the Judicial College as a means of both supporting the College’s education work through robust analysis of judicial practice, and also to identify areas for process and practice improvements within courts.

In our consultations with the Magistrates’ Court, it was suggested that the ‘Judicial Research Hub’ should be extended to support research into family violence issues relevant to the judiciary. This would ensure the Magistrates’ Court has access to researchers who can critically evaluate the impact of changes to Magistrates’ Court practices, whether due to legal policy changes (arising from the Royal Commission’s recommendations or otherwise) or due to process changes within the Court. Consistent with the view that family violence is an issue that extends beyond the Magistrates’ Court, the Hub could also

³⁸ We note that ANROWS has been commissioned to define what measures, statistics and data will be included in the Victorian government’s proposed “Family Violence Index”.

examine manifestations of family violence in the higher courts and provide analysis of responses by the courts to family violence.

This expansion of the Judicial Research Hub would complement the family violence curriculum outlined in section 4.5 above by ensuring that the curriculum can incorporate courts-led research into responses to family violence.

5. Conclusion

The Royal Commission Issues Paper notes there is a need to “increase public awareness of the problem, and to change attitudes that blame those affected by family violence and/or minimise the harm caused, to individuals and to the community, by family violence.”

The judiciary is ideally positioned through its judgments and pronouncements to increase public awareness and help change attitudes to family violence. However, effectively addressing family violence in the court system requires more than publically available judicial reasoning. The Centre for Innovative Justice noted:

Using the imprimatur of the court and, more broadly, the leadership of the judiciary, is an opportunity that all jurisdictions should seize more effectively ... ³⁹

This is an opportunity for the judiciary to lead, to reinforce the concepts of family violence as articulated in the *Family Violence Protection Act 2008*, to support family violence education for all judicial officers and improve alignment across the courts on family violence issues. Under such proactive leadership, the College can deliver a best practice curriculum of education on family violence and support cross-jurisdictional forums to improve lines of communication and information sharing between courts.

³⁹ Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing Perpetrators of family violence into view*, 2015: 60 At <http://mams.rmit.edu.au/r3qx75qh2913.pdf>

References

- Australian Law Reform Commission, *Family Violence: A National Legal Response*, 2010
- Babcock, JC, Green, CE and Robie, C (2004). 'Does Batterers' Treatment Work? A Meta-Analytic Review of Domestic Violence Treatment', 23 *Clinical Psychology Review* 1023.
- Benitez, CT, McNiel, DE and Binder, RL (2010). 'Do Protection Orders Protect?' 38 *Journal of the American Academy of Psychiatry and Law* 376.
- Brown, T and Hampson, R (2009). *An Evaluation of Interventions with Domestic Violence Perpetrators*. Melbourne: Monash University.
- Calton, J and Cattaneo, LB (2014). 'The Effects of Procedural and Distributive Justice on Intimate Partner Violence Victims' Mental Health and Likelihood of Future Help-Seeking', 84(4) *American Journal of Orthopsychiatry* 329.
- Centre for Innovative Justice (2015). *Opportunities for Early Intervention: Bringing Perpetrators of Family Violence into View*. Melbourne: Centre for Innovative Justice.
- Chung, D, Green, D, Smith, G and Leggett, N (n.d.) *Breaching Safety: Improving the Effectiveness of Violence Restraining Orders for Victims of Family and Domestic Violence*.
- Day, A, Chung, D, O'Leary, P and Carson, E (2009). 'Programs for Men who Perpetrate Domestic Violence: An Examination of the Issues Underlying the Effectiveness of Intervention Programs', 24(3) *Journal of Family Violence* 203.
- Douglas, H (2005). 'The Criminal Law's Response to Domestic Violence: What's Going On?', 30 *Sydney Law Review* 439.
- Eckhardt, CI, Murphy, C, Black, D and Suhr, L (2006). 'Intervention Programs for Perpetrators of Intimate Partner Violence: Conclusions from a Clinical Research Perspective', 121 *Public Health Reports* 369.
- Edelson, JL (2012). *Groupwork with Men who Batter: What the Research Literature Indicates*. National Online Resource Center on Violence Against Women.
- Feder, L, Wilson, DB and Austin, S (2008). *Court-Mandated Interventions for Individuals Convicted of Domestic Violence*. Oslo: The Campbell Collaboration.
- George, A and Harris, B (2014). *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria*. Melbourne: Deakin University.
- Gondolf, EW (1997). 'Patterns of Reassault in Batterer Programs', 12(4) *Violence and Victims* 373.
- Gondolf EW (2004). 'Evaluating Batterer Counseling Programs: A Difficult Task Showing some Effects and Implications', 9 *Aggression and Violent Behavior* 605.

Holt, VL, Kernic, MA, Wolf, ME and Rivara, FP (2003). 'Do Protection Orders Affect the Likelihood of Future Partner Violence and Injury?', 24(1) *American Journal of Preventative Medicine* 16.

Hotaling, GT and Buzawa, ES (2003). *Forgoing Criminal Justice Assistance: The Non-reporting of New Incidents of Abuse in a Court Sample of Domestic Violence Victims*. Washington DC: National Institute of Justice.

Jordan, L and Phillips, L (2013). *Women's Experiences of Surviving family Violence and Accessing the Magistrates' Court in Geelong, Victoria*. Melbourne: Deakin University.

Kothari, CL, Rhodes, KV, Wiley, JA, Fink, J, Overholt, S, Dichter, ME, Marcus, SC and Cerulli, C (2012). 'Protection Orders Protect against Assault and Injury: A Longitudinal Study of Police-Involved Women Victims of Intimate Partner Violence', 27(14) *Journal of Interpersonal Violence* 2845.

Laing, L (2002). 'Responding to Men who Perpetrate Domestic Violence: Controversies, Interventions and Challenges', *Australian Domestic and Family Violence Clearinghouse Issues Paper 7*.

Logan, TK and Walker, R (2009). 'Civil Protective Order Outcomes: Violations and Perceptions of Effectiveness', 24(4) *Journal of Interpersonal Violence* 675.

Magistrates' Court of Victoria (2014). *Annual Report 2013/2014*. Melbourne: The Magistrates' Court of Victoria.

Sentencing Advisory Council (2009). *Sentencing Practices for Breach of Family Violence Intervention Orders*. Melbourne: Sentencing Advisory Council.

Sentencing Advisory Council (2013). *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention*. Melbourne: Sentencing Advisory Council.

Steering Committee for the Review of Government Service Provision (2015). *Report on Government Services 2015*. Canberra: Productivity Commission.

Urbis Pty Ltd (2013). *Literature review on Domestic Violence Perpetrators*. Melbourne: Urbis Pty Ltd.

Victorian Law Reform Commission, *Review of Family Violence Laws*, 2006

Victoria Police (2014). *Crime Statistics 2013/2014*. Melbourne: Victoria Police.