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Specialist Domestic/Family Violence Courts within the Australian Context[1]

Julie Stewart, Australian Domestic and Family Violence Clearinghouse, University of New South Wales

Introduction

Over the last 20 years participants in the legal system, the judiciary, legal practitioners, consumers and their advocates, have sought alternative approaches to the dispensing of justice in particular areas of law enforcement. This movement has arisen due to a range of perceived shortcomings and limitations of judicial and legal practice and relies on an ever-expanding body of research into alternative methods of jurisprudence. In certain civil jurisdictions, including family law and neighbourhood disputes, courts have diverted parties into non-judicial non-adversarial processes for resolution of their cases through negotiation, mediation, conciliation and arbitration. This has been partly to alleviate the strain on the courts' resources and to avert expensive litigation.

In the criminal jurisdiction, the shift in the disposition of cases has been largely philanthropic, away from a retributive approach towards a rehabilitative approach, whereby coercive judicial authority is used to address an underlying social problem. Responses of criminal courts to some criminal offences committed within the context of social problems have emerged which take into account the offender's social and/or health problems, for example, where courts have considered the commission of crime within the context of substance abuse or addiction and/or on a background of social disadvantage, poverty and child abuse. The argument in support of this development is that 'the standard adjudicatory process is not suited to multidimensional problems' (Feinblatt and Denckla 2001, p. 207). Such responses can be seen in all sentencing procedures and particularly in drug and alcohol courts, mental health matters, circle sentencing courts for Aboriginal offenders and community courts.

Much of the literature describes the underpinning of judicial practice in these courts as the doctrine of therapeutic jurisprudence, in that the health, welfare and rehabilitation of the offender are the paramount concerns in sentencing or diversion, leading therefore to a reduction in reoffending behaviour.

Possibly as a function of these innovations and due to a number of complex factors described later in this paper, domestic violence courts are beginning to develop in Australia, having proliferated in the United States, with hundreds now operating in that country (Feinblatt and Denckla 2001). While generally focussing on common outcomes, these specialist courts have adopted different systems in the many sites where they are currently operational or planned. The uniqueness of these systems can be explained by local jurisdictional and infrastructure imperatives and constraints.

This paper outlines theoretical and other issues identified in the literature which have informed the establishment of domestic violence courts and describes the development of domestic violence courts in Australia at the time of writing.

While there are many models of specialist court responses to domestic violence and many different names for them, the term 'domestic violence court' is used throughout the paper as a

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generic term to encompass family violence courts, domestic/family violence intervention courts, integrated responses to domestic/family violence involving the court, courts dealing exclusively with domestic violence or family violence and other ancillary matters, special sittings of courts, special courts or sittings of courts with dedicated personnel or not, special court-based services to support the carriage of domestic violence matters, and so on.

Consistent with the large and ever-expanding body of literature and knowledge around domestic violence, gender-specific language is appropriate and is therefore used in this paper's reference to victims and perpetrators. Domestic violence is a gendered issue: overwhelmingly the vast majority of perpetrators of domestic violence are men and their victims women. Goodman and Epstein (2005) affirm that recent developments in policy and programs, for example, the widespread push for perpetrator treatment, 'have largely sacrificed the contextualised, woman-centred focus from which the anti-domestic violence movement originated' (2005, p. 479).

To back this up, in *Crime and victimisation in Australia: key results of the 2004 International Crime Victimisation Survey,* the Australian Institute of Criminology reported that 'women are more likely than men to be assaulted within the context of intimate relationships (9% compared with 2%)' (Johnson 2005, p. 2).

The Australian Domestic and Family Violence Clearinghouse maintains the integrity of its purpose in its deliberate use of language in naming and recognising gendered issues.

Background

In the political lobby for equal rights for women, internationally and nationally, domestic violence was recognised in the 1970's as one of the most powerful tools of oppression and subordination of women. Awareness of this social ill shifted private relations into the public sphere so that women need no longer bear the shame and suffering in silence and in private. A range of initiatives were developed and eventually funded by governments to acknowledge the problem and to attempt to enable women to live safely and without fear. Women's refuges were an important development for women and their children made homeless by violence.

More sophisticated responses developed over time with research that identified the enormous health and economic costs of domestic violence to women and their life chances, through damage to children who were living with domestic violence and to the community as a whole. An early development was recognition of the criminality of domestic assault, that assault is assault, whether it takes place in the home or in the street. Legislation and policing practices were amended to emphasise the role of the criminal justice system and especially the role of police as the gatekeepers to it. The levels of violence, torture, torment and fear endured by victims in their own homes is still underestimated; perhaps this is the reason that political, legal and social responses to domestic violence are still vastly inadequate to address the problem and eradicate it.

As criminal and civil justice responses to domestic violence were implemented and modified throughout the 1980's and on, the development of treatment and education programs for perpetrators of domestic violence mushroomed and their effectiveness is still yet the subject of debate, particularly around methodological issues, court-mandated vs voluntary participation and what constitutes 'effectiveness' (Laing 2002, p. 9). In general, such programs rely on groupwork but one size does not fit all and so, of importance and relevance to their success, is the appropriate assessment and screening of suitable candidates for treatment and the tailoring of treatment to meet participants' needs. Although the effectiveness of this strategy remains the subject of debate, it is generally accepted that programs are best placed within a co-ordinated response where a range of health and welfare services are available to the victim and the family (Laing 2002, p. 17).

Treatment or education programs for perpetrators of domestic violence vary in their format and content: they can be voluntary or court-mandated as a condition of probation (post-sentencing) or of bail (pre-conviction or pre-sentencing); participation may last from between six and 24 weeks; psychological tools used to measure levels of violence and abuse, before and after treatment, have varied; programs may adopt an educative function, for example, around responsibility and accountability for the use of violence and abuse, sexist behaviour and male privilege, or they may be therapeutic in responding to clients' personal, interpersonal and psycho-social issues, such as,

self-esteem, communication, intimacy.

There is controversy over the individual approach to the use of violence, though confronted within a group setting, in the absence of higher-level intervention to bring about structural and social change. The cessation of violence by an individual against family members or an intimate partner 'does not equate…with the prevention of men's violence' (Pease and Fisher 2001).

In the past responses to the practical safety needs of women and children have included the development of the women's refuge movement providing emergency accommodation for women and children made homeless through domestic violence, medium-term housing options and access to longer-term public housing dependent on certain criteria.

Legal and advocacy services to assist women in court seeking protection orders; court support services also evolved.

Counselling and support services for women and children have been made available through mainstream community health and women's health services and through some charitable services to a limited degree. Overall, the development of therapeutic programs for women and children who have experienced domestic violence has lagged behind the development of treatment programs for men who use violence in the home.

More recently, in recognition of the growing body of research into the damaging effects of domestic violence on women and witnessing children, more advanced treatment modalities are emerging, though neither extensively nor well funded in Australia. Their development has been ad hoc and generally not as part of a planned integrated system.

Safe affordable alternative housing remains a largely unresolved need.

Universally in Australia and in other industrialised western countries since the 1980's, a central policy tenet is that domestic violence is a crime and that legally enforceable safety and protection of victims is to be provided. Criminal justice agencies, however, just as universally, have been judged as insufficiently responsive to the issues.

Police in particular, by taking a miniminalist approach to a domestic violence incident, treating it not as the subject of criminal investigation, have been criticised for their inadequate initial response, lack of appropriate action or intervention and lack of victim follow-up and referral. Perhaps as a consequence of minimalist and inadequate responses, victim witnesses have been reluctant to attend court. Prosecutors have been found wanting in their understanding of the complexities and sensitivities of the offence and the context of it; bail determinations have lacked appropriate conditions and enforcement of bail and of protection orders has been at best patchy. Further, police attendance and intervention at both single and repeat domestic violence incidents have tended to be informed by a perception of the incident as a single one-off incident or offence, unconscious of the nature of the experience as *a course of conduct*.

The upshot is that good policing has been relied upon as the key to access to an effective criminal justice response – often mistakenly.

The upshot is that good policing has been relied upon as the key to access to an effective criminal justice response – often mistakenly. Regrettably, new research, *Policing Domestic Violence in Queensland*, informs us that the problem of inadequate policing is indeed chronic and endemic (Crime and Misconduct Commission 2005).

Courthouses have not been designed to facilitate comfort and safety of victim witnesses. Attitudes expressed from the bench, as well as by prosecutors and police officers, have sometimes been unhelpful and inappropriate.

Many problems which have been identified in the administration of the criminal justice system's response to domestic violence are not only subjective but also systemic – questions have arisen as to whether or not the day-to-day operations of the criminal justice system can accommodate all the issues to be considered to appropriately and properly dispose of offences and other matters concerning domestic violence.

On this background, on the background of other developments in the dispensing of justice in criminal courts and in line with developments for addressing domestic violence in many overseas jurisdictions, most Australian jurisdictions have established or are in the process of establishing

specialist domestic violence courts, either as divisions of existing magistrates' courts or specially convened courts on particular court sitting days, operating with special procedures and protocols and improved professional practice.

What is a domestic violence court?

From the time domestic violence was acknowledged as a crime, feminist and other academics, service providers, legal practitioners and others have complained of the poor institutional response to domestic violence, and especially of the often shabby treatment of victims, whose stories are not heard. Frustration and lack of trust in systems and legal processes have led to rethinking and innovation by governments.

One local example of failure in the systemic response is the rate of withdrawal of applications for Apprehended Domestic Violence Orders: in 2004, 43.5% of the 29,902 applications were withdrawn – an indicator of low support and assistance for victims to proceed with their applications (source: Legal Aid Commission of New South Wales, May 2005).

In recognition of the failure of traditional criminal and civil justice proceedings to address domestic violence matters appropriately (Dawson and Dinovitzer 2001, pp. 595, 596), much legal research has been undertaken to identify specific problems within legal systems, albeit mostly in North America. As a result, governments have followed a trend towards specialty to redress the situation, as has been the case in the establishment of specialist 'problem-solving' courts for crime committed by offenders with social problems like drug addiction; as well, the notion of 'healing' courts has been adopted by some jurisdictions in applying particular processes for dealing with Indigenous defendants.

In general, domestic violence courts are courts specially convened or courts scheduling a specially allocated list day – to remove domestic violence cases from the mainstream of day-to-day court processes by identifying them and tagging them for streaming for improved legal processes and expedition. Their objectives or ideals are to ameliorate victims' experiences of the legal system and, more often than not, so it seems, to use the court's powers to direct offenders into treatment. Overall, the specialist domestic violence court, due to its specialist expertise, operates with the intention of providing better outcomes for victims and perpetrators, while operating within the precincts of magistrates' courts (or their equivalent).

The rationale behind the establishment of specialist domestic violence courts recognises that problems due to domestic violence are multiple and complex and that responsibility for addressing the issue involves services and intervention by multiple agencies to provide a vast range of culturally appropriate services to victims and their children, not merely an appropriate criminal justice response.

In general, specialist domestic violence courts differ from other 'problem-solving' courts in that they are to consider evenly the safety of victims of domestic violence and ways to ensure offender responsibility and accountability; these courts are frequently described in the literature as 'victim-centred' with a primary focus on victim protection (Goldberg 2005). This sets them apart from other alternative specialist courts in which offender well-being is the focus – sentencing with a focus on rehabilitation rather than on deterrence or retribution.

The literature in the field is rich, identifying many varieties of models of domestic violence courts in the United States, Canada, New Zealand, the United Kingdom and Australia. There is no standard model, although each model relies on the existence and availability of appropriate and accessible services for victims and perpetrators, a high level of interagency collaboration and co-operation between these services and between them and the court to ensure that options are made available for victims and offenders. Each model is an adaptation of a 'core' model to fit its own jurisdictional imperatives and constraints.

Models of specialist domestic violence courts are defined by language used to describe their different approaches, whether the operation and outcomes of a specialist domestic violence court are *interventionist* or an *integrated response*.

An '**interventionist approach'** implies that the court takes on a role which intrudes into the heretofore private lives of victims, offenders and their children, coercing treatment and overseeing ongoing progress of offenders' treatment and overseeing safety of victims and children through requesting ongoing reports of their circumstances and the offenders' behaviour while they are still under the supervision of the court.

An **'integrated response'** is one where the court is the central player, the focal point, from which other responses from a range of agencies flow, facilitated by victim advocates on behalf of the victims and children and by probation services on behalf of the offenders. The integrated response means collaboration and co-operation amongst services to receive referrals and, as well, a significant level of co-ordination of these services to ensure appropriate and non-duplicative services can be delivered.

Even definitional issues raise debate: is it the role of the court to intervene in domestic violence, coercing offenders into treatment the value of which is very much still in question? Does the court have a role in ensuring that systems are in place in the community to support and protect victims of domestic violence and in ensuring that they run smoothly to ensure better short-term and long-term outcomes for victims and their children?

Legal responses to domestic violence have not of themselves 'failed'; failure in the implementation of the legislation and of prescribed roles have long been identified and have underpinned the persistent reason for revisiting and reforming legislation, for tinkering around its edges and for rewriting protocols and procedures.

What theoretical principles underpin the establishment of specialist domestic violence courts?

There is much discussion in the literature – and sometimes a blurring – of fundamental principles underlying the operation of specialist domestic violence courts. Discussion centres around the application of **therapeutic justice** or **therapeutic jurisprudence** to criminal determinations and argues that the establishment of specialist domestic violence courts is a further, and logical, application of the doctrine of therapeutic jurisprudence. Therapeutic justice focusses on accountability of the offender and rehabilitation; 'the primary goal of sentencing is to heal the offender' (Phelan 2003, p. 5). Goldberg (2005) describes therapeutic sentencing as addressing the revolving-door syndrome and giving hope of change and positive outcomes in an inclusive and non-coercive manner. Therapeutic jurisprudence seems, however, to be offender-oriented, despite protestations that it is able to accommodate equally both the safety needs of the victim and the future well-being of the offender. Goldberg states that offender accountability is the primary focus, along with safety of the victim, and that the rehabilitation of the offender is secondary to these (2005, p. 25). But denial, minimisation and justification by offenders of their violent and abusive conduct are renowned, so the question might be asked what constitutes accountability and responsibility – many lawyers would reply that merely a guilty plea means just that.

Hannam (2003) discusses negotiation with the offender over bail and probation conditions to encourage compliance through remand with regular reviews and lengthy adjournments to give defendants chances to demonstrate reform. In describing her observations of therapeutic jurisprudence in action in New York specialist domestic violence courts, Hannam emphasises the positive therapeutic effect on victims – particularly due to their access to an array of support services and early intervention.

Practices of therapeutic jurisprudence are applied with an emphasis of rehabilitating the offender. Phelan (2003, p. 5) states that under this regime 'crime is seen as a function of the offender's 'illness' (including non-medical problems), which therefore needs treatment'. He describes a model of a 'community court' which applies both restorative justice ('to compensate communities through community service') and therapeutic justice ('offenders are encouraged through sentencing regimes to deal with their particular problems and, hence, restore themselves') (Phelan, 2003 p. 13).

As an example of therapeutic jurisprudence in practice, Wexler (2002, p. 30) describes concepts of re-entry courts and graduation ceremonies for defendants upon successful completion of drug court sentences – in one Chicago drug court applause and diplomas are handed out to defendants on graduation. This may be taking therapeutic justice a step too far in the case of domestic violence offenders.

Restorative justice, representing another development in the field of criminal justice, seems to be somewhat mixed up with therapeutic jurisprudence: there is a blurring of the two theoretical concepts, though court practices are distinctive. It is described as placing 'an equal focus on the offender, the community and the victim … the goal of sentencing is to

repair the harm to the offender, victim and the community, restore offender accountability to the other stakeholders and encourage community responsibility for responding to crime' (Phelan 2003, p. 6). A great deal of hope is invested in the community to take up this responsibility and such an expectation may be too onerous for the very same community which produced the offender's social disadvantage in the first place.

The concept of **problem-solving courts** is also mentioned in discussion surrounding the establishment of domestic violence courts. Problem-solving courts signify the recognition by governments and the judiciary of their 'failure…to solve problems of quality of life crimes' and that persistent problems might be dealt with in such a way as to effect more lasting benefit to victims, the community and offenders (Feinblatt and Denckla 2001). Courts have modified their practices to accommodate offenders whose criminality is deemed to be caused by their disadvantage and for whom imprisonment is unlikely to lead to ongoing positive outcomes for anyone – the offender, the victim or the community.

Confusion arises from the adoption of two conflicting approaches to sentencing (retribution vs therapy/restoration).

On the one hand, this trend to adjust judicial processes towards diversion emerges at the same time as governments and the community have become conscious of and reactive to the high economic and social cost of imprisonment. On the other hand, however, is the increasing rate of imprisonment due to popular law-and-order doctrine, with laws and policing practices to support it. Confusion arises from the adoption of two conflicting approaches to sentencing (retribution vs therapy/restoration).

There is merit in the application of a restorative or problem-solving approach in criminal proceedings involving victimless crime, petty property offences and other infringements. Debate around whether or not to apply them to crimes of violence against a person wherein the direct victim of the offence participates in the sentencing process is very much alive, kept alive by feminist legal scholars and the community of women who struggled throughout the 1970s, 80s and 90s (and still struggle) to ensure that domestic assault is recognised, named and dealt with as a crime (Petrucci 2002). Personal violence, including sexual violence, committed within the context of an intimate or family relationship is very complex; the position of power of the offender over the victim distorts, even negates, the purpose and process of a victim participating freely in conferencing for sentencing in a restorative justice framework.

Circle sentencing courts are a rapidly growing phenomenon, having originated in Canada in 1999, specifically to determine appropriate sentencing outcomes for Indigenous offenders. Principles and processes are informed by restorative justice, along with aspects of traditional Indigenous justice, including the authority of Elders and communal participation in sanctions.

Circle courts have been established in Australia for sentencing Aboriginal and Torres Strait Islanders as appropriate; they are sometimes called Aboriginal Courts.[2]

The aims are 'to make the court processes more culturally appropriate, to engender greater trust (and confidence) between Indigenous communities and judicial officers and to permit a more informal and open exchange of information about defendants and their cases. Indigenous people, organisations, Elders, family and kinship group members are encouraged to participate in the sentencing process and to provide officials with insight into the offence, the character of victim-offender relations and an offender's readiness to change' (Mouzos and Makkai 2004, p. 1).

Circle sentencing provides an opportunity for input from the representatives of the offender's community and from the victim of the crime. A magistrate presides over the deliberations as a facilitator, negotiator, broker and participant and ensures focus is maintained on the goal of sentencing appropriately within the conventional range in order to be endorsed by the court (Dick 2003, p. 6). The main features of court-based Indigenous justice initiatives are:

- informality of the proceedings
- plain language
- relaxed and familiar local community venue, not the courthouse
- active, voluntary participation by Elders of the offender's community

- the desire of participants to make it work
- shaming the offender
- contrition by the offender
- freedom to speak
- the victim's voice is heard
- impact and effects of the offence are heard
- victim support.

To summarise, in claiming to adopt the principles and practices of therapeutic jurisprudence (quite possibly to lend some legitimacy to them), specialist domestic violence courts may be caught in the debate arising around the potential for courts to lean too far to a 'softer' response to perpetrators of domestic violence, losing sight of their role in deliberating over responsibility and accountability for offences while being equally concerned with victim safety and ongoing protection.

The theoretical underpinning of the delivery of justice needs to be sound, grounded in research-based evidence that demonstrates efficacy without compromising principles of justice. Concerns have been expressed that long-standing fundamental principles, procedures and practices within the criminal justice jurisdiction (including the presumption of innocence, due process and rules of evidence), risk compromise – possibly for good reason.

Good reason and good intention are inherent in the principles to support the operation of a specialist domestic violence court. There is much research over the last thirty years to prove the need for an improved criminal justice response to domestic violence (Hopkins & Mc Gregor 1991, Buzawa & Buzawa 1996 a and b, Stubbs 1994, Katzan and Kelly 2000) and so to set up specialist domestic violence courts. On the other hand, there is very little research-based evidence to support the implementation of therapeutic jurisprudence principles and practices in specialist domestic violence courts. It seems that these two growth areas have merely collided in time and coalesced in the minds of law-makers and policy-makers without the benefit of adequate critical analysis.

The underpinnings for specialist domestic violence courts need not be dressed up in doctrinal edicts. What is needed in Australian jurisdictions is a consistent integrated statewide framework which encompasses clear aims, guiding principles and a process to ensure outcomes, all of which are consistent with its aims. Evaluation of the framework and the operations is essential.

Principles for setting up specialist domestic violence courts, to redress problems of the past, have been identified in research and are expressed very simply as follows:

- victims' interests to be 'at the heart of the process'
- emphasis on criminalisation of domestic violence
- empowerment for victims
- responsibility and accountability of offenders
- respect.

Perhaps there is no valid 'new' theoretical underpinning for establishing a specialist domestic violence court program. Legal and academic research (Stubbs 1994; Buzawa and Buzawa 1996a & b; Holder 2001; Holder and Mayo 2003) has exposed shortcomings in the delivery of justice to victims of domestic violence and it is this research that has informed the resort to establish specialist court programs. The initiative of specialist domestic violence courts in their many forms merely requires participants in the delivery of justice in domestic violence cases to execute their roles and tasks more appropriately and effectively. What is 'new' about the initiative is an intended vast improvement in the delivery of justice for victims.

What is the aim of specialist domestic violence courts?

Commonly stated aims of specialist domestic violence courts are that they are to provide for:

- best practice in policing and prosecuting domestic violence offences
- expedition of cases
- information, support, advocacy and services for victims of domestic violence and their children
- safety for victims of domestic violence and their children as the primary outcome
- safety for victims at court
- validation and empowerment of victims of domestic violence and their children
- responsibility and accountability for domestic violence to be accepted by offenders
- reduction and prevention of domestic violence.

What outcomes are expected of specialist domestic violence courts?

There is also commonality in the anticipated outcomes or goals of specialist domestic violence courts, due largely to their victim focus and the superior level of expertise among practitioners within the jurisdiction of domestic violence specialisation:

- increased level of awareness of domestic violence within the community and the agencies which respond to it
- raised awareness of offenders and victims that action will be taken if a domestic violence offence is reported to police
- increased rate of reporting of domestic violence offences
- increased victim participation, a lessened rate of victims' withdrawal from proceedings
- proactive policing and improved investigation methods in domestic violence offences
- increased rate of guilty pleas and convictions for domestic violence offences, due in part to better evidence and brief preparation
- increased rate of prosecution of domestic violence offences
- decreased rate of withdrawal of charges
- higher level of safety of victims of domestic violence and their children
- more appropriate protection orders, tailored to victims' circumstances
- increased quality of service delivery
- increased interagency co-operation
- consistency of approach to domestic violence
- co-ordination of services
- accountability of courts and its personnel to the community and service providers
- reduction and prevention of further domestic violence
- victim satisfaction with the process.

What makes the difference in specialist domestic violence courts?

In general domestic violence courts share common elements, discussed in detail later:

- victim focus
- victim support
- victim advocacy
- specialist court officers: specialist or dedicated magistrate or judge, specialist or dedicated prosecutor, specialist defence lawyer
- court facilities to accommodate and provide for victims' safety
- identification, fast-tracking and case management of domestic violence matters
- availability of appropriate services for victims and perpetrators
- integration of service responses to victims and perpetrators of domestic violence
- high quality police investigation practices
- high quality brief preparation to encourage guilty pleas
- pro-arrest and pro-prosecution policy
- high quality prosecution of domestic violence offences
- bail determination, bail conditions and protection orders that ensure safety of victims and their children
- referral of victims and their children to available and appropriate specialist services
- court-directed assessment for eligibility and suitability for perpetrator treatment or education programs
- court-directed post-court supervision of perpetrators, including orders to attend treatment programs
- monitoring and follow-up of offender progress and compliance by the court.

Variations between specialist domestic violence courts tend to be due to the particular structure and legislation of the jurisdiction in which they work. A significant variation is the coverage of legislation which is applied within the specialist domestic violence court. That is, a specialist domestic violence court may deal exclusively with criminal matters, while another may deal with criminal matters and incorporate civil proceedings, family law matters, child abuse matters, matrimonial law matters and proceedings for protection orders, for example, some specialist domestic violence courts, such as those in Central New York, operate as a 'one-stop shop', determining residence and contact issues and divorce. In the Australian Capital Territory the dedicated magistrate hears family

violence criminal matters only, including assaults of children.

Other variations include special listing and court sitting days as opposed to dedication of a whole court to specialise in domestic violence, individual magistrates presiding over all domestic violence-related matters and a panel of magistrates who share responsibility for all matters.

Specialist prosecutors are a common feature of domestic violence courts, not necessarily solely dedicated to domestic violence matters being involved in the prosecution of other matters.

Who makes the difference in specialist domestic violence courts?

A specialist domestic violence court ideally is a model of best practice and is referred to as a *system change*. Participants in the system are responsible for adhering to best practices in their own field to make the system work; each has an important role in the system. These practices are not new or innovative – participants simply have to carry out their roles and responsibilities in line with best practice which, in Australia, has been identified in recommendations of numerous reports of numerous task forces over decades. 'System change' is perhaps a misnomer in Australia – it is more likely that the system is merely being refined and improved procedurally and that it is better supported by improved, more effective practice.

Critical to the successful effective operation of a specialist domestic violence court in the range of models are the key personnel who make it work.

While operating within a conventional legal system, most models of specialist domestic violence courts overseas have created a 'new' system within the system. This new system is the result of an overhaul of the mainstream system, its processes and procedures adjusted and refined to ensure an effective and efficient specialist domestic violence court. The system for this court is holistic and its processes and procedures are co-ordinated and integrated, not fragmented and ad hoc as may often be the case in the mainstream system.

Critical to the successful effective operation of a specialist domestic violence court in the range of models are the key personnel who make it work. These officers share a common understanding of the principles and objectives of the specialist domestic violence court and work in close liaison and co-operation with each other. The typical model identifies the following key individuals:

- dedicated specialist judge or magistrate presiding exclusively or part-time over domestic violence matters
- dedicated specialist prosecutor, specially trained in domestic violence and the intricacies of the array of laws which are relevant to domestic violence proceedings (and, in some courts, ancillary matters, such as family law)
- specialist witness assistant or victim advocate to provide information, advocacy, support (pre-court, during court and post-court) and referral to services, which are available and accessible within the community to provide appropriate domestic violence service responses to victims, offenders and their children and to ensure appropriate referral on to other services to meet the multiple needs of victims and their children
- investigating police officers highly skilled in crime scene investigation, evidence-gathering and brief preparation
- specialist officer to assess eligibility and suitability of the offender for treatment where accredited services are available
- dedicated specially trained probation officers
- defendants' legal representatives who are sympathetic to and prepared to support the aims of the court
- court staff trained to be sensitive and responsive to domestic violence issues.

Descriptions of ideal models of specialist domestic violence courts outline the way in which all the above key personnel consult and co-operate, working together to manage cases and the workflow and to develop expeditious but realistic and manageable timeframes for return appearances at court for presentation of reports ordered by the bench.

Protocols and procedures are developed for seamless integration of roles of key personnel within the specialist domestic violence court. A

greater understanding of and respect for the roles of specific workers and of services within the community is thereby engendered.

In addition, the domestic violence court system is predicated on the assumption that effective, accessible services exist within the community to provide ongoing support and follow-up for victims and their families, the assumption of appropriate referral and the assumption of highly skilled policing.

In overseas jurisdictions it has been necessary to legislate to establish such a framework. In general in Australian jurisdictions this seems not to have been necessary, with the exception of Victoria where legislation has been proclaimed to set up the model specialist family violence courts in Ballarat and Heidelberg. In the rest of Australia and elsewhere, specialist domestic violence courts have been located within the magistrates' courts as programs, adaptations and enhancements of existing systems. Legislation would provide a solid foundation for the existence of the court and clarity for those involved.

What do they do that is different from mainstream responses?

Magistrates

The expanded role of the judge or magistrate is a departure from standard judicial practice in that he/she is engaged with the community (often through court-users forums, case management, interagency meetings, as considered appropriate) and, of necessity, develops an understanding of the realities and limitations of service provision to victims, offenders and children in order to sentence appropriately and to make appropriate orders. The judge/magistrate is engaged in collaborating in the development of policy and procedures while ensuring adherence to fundamental principles of justice. The leadership role of the magistrate in these processes is most significant.

In addition, the role of the judge/magistrate is more interactive; he/she is likely to adopt a more inquisitorial style by making inquiries from the bench to better inform the course of action to be taken, as is the case in other problem-solving courts. There is some discussion around the increased amount of court time necessary for this and for the assumed increase in prosecutions. The counter-argument to the increase in the allocation of court resources is the projected decrease in court time to be allocated to defended hearings of domestic violence offences, predicated on better police investigative practices and brief preparation.

Models of domestic violence courts vary in terms of the way in which judges or magistrates are assigned. The variety of deployment options include:

- dedicated presiding judges or magistrates who deal exclusively with domestic violence matters at that court
- dedicated presiding judges or magistrates who deal with domestic violence matters on a part-time basis at that court
- one of several magistrates who sit on specified domestic violence days at that court and who may be specially appointed to that role or not.

If adopting a method of therapeutic jurisprudence with concerns for the safety and ongoing protection of victims uppermost, the magistrate or judge affects a more down-to-earth presence, avoids making disparaging remarks, provides defendants with constructive criticism and praise for successful completion of a treatment or education program.

In the Australian Capital Territory and commonly in jurisdictions with specialist domestic violence courts in the United States, the United Kingdom and Canada, these court systems operate on the premise of improved policing and police investigation, resulting in improved quality of evidence and briefs, with the presumption that an increase in guilty pleas will follow, and therefore expeditious disposition of these matters. Early guilty pleas obviate the requirement for a victim-witness to give direct evidence. If this ideal ('best evidence rule', Green 2001, p. 2) is met, court resources and witnesses' time are saved and victims are spared the court experience. Specific examples of this outcome are the K-Court in Toronto, Ontario, Canada and the Family Violence Intervention Program in the Australian Capital Territory (Holder and Mayo 2003).

Insofar as the literature has explored different approaches, it seems likely that dedicated presiding judges/magistrates provide the most consistent and committed approach to the specialist court, possibly because they have

elected to undertake the role and have an understanding of their purpose and role. For example, the model operating at the Waitakere District Court in New Zealand experienced inconsistencies of approach when visiting judges were sitting, as they were unfamiliar with its integrated response and their role in it.

In addition, the manner in which the judge or magistrate communicates and conducts himself/herself in court, adopting a less formal and less remote persona, generates a more understanding and less antagonistic atmosphere during the proceedings. Petrucci concludes that *respect* between a judge and the defendant is possibly a 'key factor in defendant compliance' (2002, p. 263). In the Australian Capital Territory model, the defendant is accorded respect by both the prosecution and the defence counsel (source: ACT Victims of Crime Co-ordinator, March 2005).

Judges and magistrates in specialist domestic violence courts are described as adopting a number of strategies to communicate effectively and clearly with defendants and witnesses, using plain simple everyday language. Court requirements of parties for future court attendance and compliance with orders or bail conditions are articulated and explained clearly and may even also be negotiated with the defendant directly.

Some judges, magistrates or registrars in specialist domestic violence courts convene regular stakeholder forums for prosecutors, local service providers, victim advocates, defence counsel, probation officers, facilitators of perpetrator programs and other interested court users. At these informal meetings, processes and procedures are discussed and improvements sought for smoother operating of the court and better outcomes, consistent with the commonly agreed upon goals of the model. This has occurred in South Australia.

In operating in a specialist domestic violence court, the judge/magistrate requires all participants to co-operate with each other to meet their common objectives of better outcomes for victims. This includes a requirement for court staff to provide services efficiently and effectively, to provide information, court lists and appearance dates to relevant parties and assistance to witnesses, defendants, legal practitioners, prosecutors and of course the judge/magistrate. Formalised protocols or memoranda of understanding have been developed jointly to guarantee clarity and continuity of operational procedures.

In many specialist domestic violence courts in Canada and the United States, the role of the judge includes monitoring progress of the defendant. Defendants are present in open court to hear reports from their counsellors or probation and parole officers and the judge makes open-court remarks concerning defendants' progress for the record.

In determining or reviewing bail conditions and dealing with breaches of bail, judges or magistrates are in a position to impose conditions which are centred around the safety of victims and their children.

In sentencing, specialist domestic violence court judges or magistrates have great responsibility in weighing up the unique issues of domestic violence and balancing the safety needs of the victim and the family. Sentencing options include:

- imprisonment, including periodic detention
- post-imprisonment attendance at court for review and setting of conditions of parole and/or orders
- suspended sentence with supervision and pending progress reports and outcomes of participation in a perpetrator program
- bond with conditions including attendance at a perpetrator program and supervision, pending progress reports and outcomes of participation in the program
- fines as appropriate
- community service orders
- home detention with monitoring and supervision.

Sentence discounting is a common feature of courts where defendants enter a guilty plea. The earlier the plea, the greater the discount. Upon conviction, magistrates have been urged to make a protection order if one is not already in existence. As well, submissions are made for the court to order a perpetrator into treatment (Smith 2004, p. 4). The salient feature of overseas models of specialist domestic violence courts is the role of the presiding judge or magistrate in recalling the defendant to court for review, during the period of supervision and/or on immediate release from incarceration. Thus the defendant is seen to be accountable to the court

Ursel's review of Manitoba's specialist domestic violence court in the mid-1990's made particular

note of the increased penalties for domestic violence offences as a function of the specialist court, including incarceration for convictions for offences which previously would not have attracted a prison sentence.

In 2003, however, Ursel (in Gannon and Mihorean 2004) found that probation was by far the most common sentence handed down to spousal violence offenders – 72% of convicted spouses received probation as the most serious sentence, compared with 69% of other family members who were convicted, 55% of convicted friends or acquaintances and 42% of strangers. Conditional sentences were rarely used otherwise for crimes of violence - except for 2% of spousal physical violence offenders and 24% of spousal sexual violence offenders (compared with 15% of non-spousal sexual offenders).

The role of police investigating a domestic violence offence is vital to achieving the aims of the specialist domestic violence court.

A study by Gannon and Mihorean (2004) of 18 Canadian urban sites between 1997 and 2002 found that those convicted of spousal violence were less likely to be sentenced to imprisonment than other convicted violent offenders (19% of spousal offenders compared with 29% of non-spousal offenders). In contrast, 32% of spouses convicted of criminal harassment were sentenced to prison, compared with 26% of non-spouses.

Dependent on the jurisdiction, judges and magistrates in specialist domestic violence courts can deal with a range of matters. For example, where the jurisdiction encompasses indictable matters, the specialist domestic violence court judge is able to convict and sentence in serious assault matters. As well, judges and magistrates in some specialist domestic violence courts can make a protection order for the victim. Immediate enforceable protection is afforded to victims and their families in the light of the information contained in the charge, far greater protection for victims in Australian jurisdictions than bail conditions since a breach of bail is not an offence and generally results in simply a review of the conditions of bail. A breach of a protection order is a criminal offence, carrying a penalty of up to two years' imprisonment.

Contrary to the Waikatere, New Zealand, experience (see below), however, it may be argued that, in the interests of justice seeming and being seen to be done, the judge or magistrate should maintain a neutral position, neither committed to specialisation of the delivery of justice in the area of domestic violence, nor pro-prosecution, nor pro-defence, nor pro-therapeutic intervention. In this way, there can be no bias perceived or alleged by defence counsel.

Police

At the outset, in order to be effective within the criminal justice response to domestic violence, police policy and procedures in jurisdictions with domestic violence courts generally adopt a pro-arrest and pro-prosecution position. Some American jurisdictions have gone down the path of mandatory arrest, usually where 'probable cause' to believe an offence has occurred can be demonstrated. In Australia, governments have favoured the adoption of a pro-arrest, pro-prosecution position, leaving police discretion intact.

The role of police investigating a domestic violence offence is vital to achieving the aims of the specialist domestic violence court. In particular, the role is proactive and more professional:

- appropriate and timely responses to calls for assistance to domestic violence incidents
- appropriate and timely police intervention and action, proceeding by way of arrest and charge when a domestic violence offence has occurred and not by way of summons or court attendance notice
- improved investigation of offences, commencing with treatment of the site of the offence as a crime scene and the gathering of physical evidence (exhibits and forensic evidence), including photographing and videotaping the crime scene, photographing the victim's injuries, involvement of forensic scientists or scene of crime officers, improved statement-taking, canvassing of neighbours, family and friends
- taped evidence of the emergency call to be made available and obtained by the investigating officer
- ensuring safety and protection of victims and family members through appropriate police bail

determination and by applying immediately for interim protection orders
- medical evidence relating to the incident and to prior incidents to be obtained by the investigating officer
- videotaping or audiotaping of statements of victims and records of interview with defendants; this requires skill in planned interview techniques
- ensuring logging and continuity of exhibits
- follow-up interviews with victims to ensure orders sought meet the specific needs of the victim and family and continue to be appropriate
- provision of information and notice of the requirement to attend court
- referral to appropriate agencies for further assistance
- high quality brief preparation
- timely disclosure to the defendant/defence counsel
- liaison with and detailed briefing of prosecutors, including provision of details for submissions on bail and conditions of orders to be made by the court
- ongoing contact with the victim to ensure victim 'co-operation'.

Dawson and Dinovitzer (2001, pp. 610-619) note that while the specialist domestic violence court (K-Court) in Toronto, Canada, has been designed to minimise the requirement for victim 'co-operation', cases are seven times more likely to proceed when victims do 'co-operate'. As well, in the specialist court in Manitoba, Canada, victim 'co-operation' was pivotal for prosecutors to decide whether or not to proceed – 17% of cases were withdrawn and 60% of decisions not to prosecute were due to non-'co-operation' of victims.

Much can be questioned about the issue of 'victim-co-operation' - in addition to what is implied in this use of language by Dawson and Dinovitzer (2001) for example:

- how much control did the victim have in relation to the prosecution?
- was the victim interviewed by the prosecutor prior to the court hearing?
- did the victim understand her role in relation to witness evidence?
- did the victim hold fears for her safety if she attended court and gave evidence?
- did she know she would be required to attend court and at what point did she know?
- did the victim understand the implications of her failure to attend court?
- what attempts were made to ensure the victim attended court and testified?
- what support was present at court, before court and after court?
- in the absence of information, advice and support, why would a victim want to attend court?

Holder and Mayo (citing urbis keys young 2001) report that, in the Australian Capital Territory Family Violence Intervention Program, the Australian Capital Territory Director of Public Prosecutions determined that it is more likely to be in the public interest to prosecute, notwithstanding a victim's request to terminate proceedings (2003 p. 13). They highlight the value of independent advocacy for the victim, given the 'public interest', and possibly risky, position adopted. They also reported that the program resulted in a significant increase in action taken by police and a high rate of early guilty pleas due to better evidence and early briefs (2003 p. 10).

Thorough police evidence should bolster the likelihood of a guilty plea and spare the victim being required to give evidence. In the above-mentioned program, between 1998-1999 and 1999-2000, early guilty pleas increased from 24% of charges to 40% and, by February 2001, the number of guilty pleas had increased to 66% of charges (urbis keys young 2001). This is significant as it has impacted positively on the court time and on the situation of victims, otherwise required to give direct evidence. Holder and Mayo make reference to 835 police days being saved through not being required for court (2003 p. 10).

Prosecutors

Again, policy and procedures in relation to domestic violence offences dealt with in specialist domestic violence courts tend to be based on a pro-prosecution, 'no-drop' approach. Applications for withdrawal of charges require evidence of good reason for discontinuing the prosecution process, as opposed to mere administrative ad hoc decision-making. Prosecutors are required to report to the court at the next mention date of the 'good reason(s)' for deciding to withdraw charges.

In some jurisdictions' specialist domestic violence courts use prosecutors from prosecution services for higher courts, thereby being qualified to prosecute more serious offences while others use police prosecutors, limited to the lower court jurisdiction. Either way, the literature refers to the desirability of specialist prosecutors being appointed to specialist courts given their critical role in achieving the goals of the court.

They have a highly significant role in:

- ensuring the brief of evidence is thorough and all relevant evidence is included and admissible
- ensuring appropriate charges have been laid
- ensuring exhibits are available as and when required
- ensuring expeditious hearing dates
- meeting with and interviewing the victim witness to obtain further information and to provide information about procedures
- ensuring appropriate bail conditions and orders are imposed
- liaison with victim court advocates, as appropriate
- making submissions on sentencing with the victim's safety in mind
- providing a positive attitude to prosecution of the offence to the victim to encourage participation and attendance at court
- timely disclosure to the defence
- prosecuting offences at a high level of skill
- participating in specialist court forums to improve and develop streamlined processes and procedures
- ensuring that the victim-centred objectives of the specialist court are facilitated and fulfilled.

Prosecutors should meet at least once with each victim witness to ensure she is acquainted with the specific circumstances of her case, to ensure victims are informed in relation to their role as witness for the prosecution and the limitations of their evidence and to make victim witnesses more at ease with the forthcoming proceedings. There are some sound issues which might be considered by prosecutors in choosing instead to limit their exposure to victims and aspects of the role just outlined may be undertaken by a victim advocate/witness assistant.

The independent evaluation of the Australian Capital Territory Family Violence Intervention Program suggested that the appointment of a specialist prosecutor had been 'a major success' regarding the management of domestic violence charges (urbis keys young 2001, p. 63), as had the introduction of 'case management' processes within the Office of the Director for Public Prosecutions and the Magistrates' Court.

The Australian Capital Territory Office of the Director for Public Prosecutions is the only prosecuting authority in Australia with a specialist prosecution team.

Court support for victims/Victim Advocates/Witness Assistants

Early contact with victims has proven to be very important in the process. Where attending police obtain consent from the victim to pass on their details to other services and early contact is made by a court victim support or court victim advocate, victims are more likely to continue with the process (for example, Waikatere, New Zealand).

...the literature refers to the desirability of specialist prosecutors being appointed to specialist courts given their critical role in achieving the goals of the court.

In the Australian Capital Territory, this practice is the subject of a memorandum of understanding between the Australian Federal Police and the Domestic Violence Crisis Service (Holder and Mayo 2003).

Working collaboratively with the police, the role of the court support officer (sometimes an independent victim advocate or prosecution-based witness assistant) in a specialist domestic violence court is to provide information about the legal process, including specific details of appearance dates, availability of legal aid and legal representation for applying for orders if necessary, possible outcomes of the legal process and referral to other support agencies.

In some overseas jurisdictions, the support officer and/or victim advocate has been granted speaking rights and can address the judge or magistrate on particulars concerning the victim's circumstances, fears and safety, for example, in the Waikatere pilot court in West Auckland, New Zealand, in 2002 to 2003. There have been

concerns, however, that this practice encompasses a degree of hearsay evidence and subjectivity.

Legislation prescribing victims' rights in some jurisdictions provides for access to services and information concerning their cases. A number of conventions in relation to court support services have grown over the years with court support being provided by volunteers, charitable organisations (for example, the Salvation Army) and salaried workers performing this role as part of their duties. The court support officer/victim advocate can provide information, support and ongoing contact before court, during court appearances and after court processes have been concluded or adjourned.

Victim advocates are generally not legally qualified and may have social work qualifications. They may be employed in community-based women's services or by prosecution services. It appears that, if the position is based in a prosecution service, there is ideal unfettered access to information and a higher probability of collaboration and co-operation between the victim advocate/support role and the prosecution, leading to a better-informed prosecution in relation to the victim's wishes and needs in relation to safety. Helling makes a strong case for the position to work within the prosecutor's office, in particular, in the Seattle Municipal Domestic Violence Pre-trial Court (2003 p. 10).

The Australian Capital Territory Family Violence Intervention Program, however, involves both external victim advocates and an internal witness assistance officer, employed within the Office of the Director for Public Prosecutions. Their roles are different and complementary.

Information, support and assistance before, during and after the court process should be reinforced through a range of culturally and linguistically appropriate accessible services for victims and their children within the community. Such services include emergency accommodation, medium-term and long-term affordable housing, counselling and support services for women and children and legal services. Services must be resourced to enable long-term involvement with clients with complex needs.

Offender assessors

In general, specialist domestic violence courts are located where there is a range of services to provide ongoing counselling and support to victims of domestic violence and their children and to provide 'treatment' options for offenders.

There appears to be concurrent and concomitant growth of specialist domestic violence courts and perpetrator treatment programs. The establishment of a specialist domestic violence court to fulfil its objectives of victims' interests and safety is not necessarily dependent on the existence of treatment options for perpetrators. The establishment of perpetrator treatment programs may be seen by some as an attempt to balance the process, given that a specialist system is apparently weighted to favour the victim. It appears interestingly as an artefact of the development of specialist domestic violence courts, possibly coincidental, but not essential in the light of the lack of compelling evidence that treatment or education programs for perpetrators of domestic violence actually make a difference in enhancing the safety of victims and their children and reducing domestic violence. Overall, it seems that, if a perpetrator program is a component of a specialist domestic violence court program, it could be used the vehicle for monitoring compliance and/or behaviour of offenders/defendants.

On a plea of guilty and on conviction by the court and at the discretion of the court, offenders may be ordered for assessment prior to sentencing for suitability and eligibility for entry into a treatment or education program as a condition of probation or of parole following release from prison, as in the Australian Capital Territory. In South Australia, however, participation in a program is a condition of bail and sentencing takes place after completion or withdrawal from that program.

Assessors are represented in the literature as either independent of any services for men, possibly a probation officer, who can assess the offender and refer him to a program to suit his individual needs, or the co-ordinator of the one and only local perpetrators' program in the locale.

In the Australian Capital Territory, the probation officer assesses the offender as 'eligible' and the program provider (Relationships Australia, under contract to the Department of Corrections) makes the assessment for 'suitability'. The program is one of the sentencing options available and is also one of the 'management' options available to a probation officer.

Assessment for suitability is based on

appropriateness of the referral, some indication of contrition and responsibility for the offence (interestingly, not necessarily a guilty plea), a commitment to participation in the program as a whole and satisfaction of a range of other criteria, pertaining to such issues as language, mental health and/or drug and alcohol abuse or addiction.

The results of assessment for suitability and eligibility are provided to the court as part of pre-sentence reporting.

In the Australian context, if the establishment of perpetrator programs is seen as a component of specialist domestic violence courts, there will be a quantum increase in their numbers as specialist domestic violence courts proliferate. This begs questions of their role, efficacy, standards, accreditation, quality of intervention, auspice – and other issues, including resource allocation in an environment where few specialist domestic violence counselling services are available to women and children.

It is paradoxical to establish specialist domestic violence courts with concerns for victims' safety and service needs at the forefront, if resources are to be poured into as yet unproven, unregulated and non-standardised perpetrators' 'treatment'.

Probation officers

In a number of models, the function of assessing eligibility and suitability for inclusion in perpetrator treatment may be provided by the community corrections/probation service. It is not common for perpetrator treatment to be provided by the community corrections or probation service and more common that treatment is provided by the private sector with government funding. In New South Wales, however, the Probation and Parole Service of the Department of Corrective Services will be providing the treatment program for perpetrators in the pilot Domestic Violence Intervention Court Model, as it did in the earlier pilot in the Penrith area.

Compliance with orders or conditions imposed on the defendant by the court is monitored and reported back to the court by the probation service, as both a progress report and a final report on completion of a program or on non-compliance with orders and conditions. Prosecution of breaches of probation and parole are initiated by probation and parole officers.

In the Australian Capital Territory, the Department of Corrections family violence program includes partner contact facilitated through the Domestic Violence Crisis Service, whether the offender is in a group program or not.

Until recently corrections departments have been absent from the arena of domestic violence service provision. Specialist legal responses have brought them to the table to be responsible for the management of offenders, highlighting the role of corrections agencies in the safety of victims and their families, broadening their focus to the community at large.

Defence lawyers

In their discussion about specialist courts in the United States, Feinblatt and Denckla raise the issue of dominance of the culture of lawyers, imbued with the paramountcy of clients' interests – not the community's – and the goal of 'winning'. Lawyers, asked and expected to adopt a different style and objective (win-win) in a court setting which is geared towards therapeutic intervention or problem-solving, are confronted with a cultural and philosophical dilemma which rails against their training (2001, p. 209).

Helling makes a case for early engagement and involvement of the legal profession in the establishment of specialist domestic violence courts. As defence lawyers, there is potential for them to misunderstand the goals of the proposed model. When involved in discussion, the earlier the better, their input in terms of operational issues during development and implementation phases has proven to be most valuable (2003, p. 24).

A defence representative has participated in the Australian Capital Territory Family Violence Intervention Program Co-ordinating Committee since its inception in 1998. This relationship supported the development of a Guideline to Practitioners from the Australian Capital Territory Law Society regarding contact and communication with a victim/witness in matters involving physical and sexual assault.

An overriding concern is to make clear to all participants that principles of due process and natural justice are to be maintained and that fair and equitable disposition of cases is the goal, while focusing at the same time on the safety and well-being of victims.

Though the role and method of defendants' legal representation has traditionally been one of vigorously defending clients, the specialist domestic violence court encourages lawyers to share the commonly agreed upon goals and act as negotiators for a better overall outcome, that is, they should observe a victim-centred, or more restorative, approach.

Court staff

Court administration staff should be included in the development and establishment of any specialist court model and protocols, as the experience of court processes depends to some degree on their attitudes and levels of service to clients of the court. They are required to list matters promptly and to provide involved parties with lists and other information in a timely way. On the list day, court staff may be required to provide directions and assistance to clients unfamiliar with the setting.

It is important for court personnel to be aware that the dynamics of domestic violence are not confined to the home or even the courtroom but pervade the court precincts. Safety for victims attending court and for court personnel should be highlighted in protocols.

Ideally separate accommodation within the court complex should be provided for victim witnesses as they wait for their cases to be called. They should be able to feel safe and free of potential intimidation by the defendant or the defendant's family.

Opposition and resistance to the establishment of specialist domestic violence courts

Criticism of the concept of specialist domestic violence courts has been expressed from a number of quarters – women's groups, the legal profession, the judiciary.

The most vocal dissent comes from women's groups and feminist legal academics who express concern that practice which leans towards the interests of offenders within a specialist domestic violence court is the thin edge of the wedge to soften society's stance on domestic violence, having worked for decades to have domestic violence dealt with within a criminal justice framework, as a crime against women and the community.

The very construct of 'therapeutic justice' is considered anathema to hard-line criminalisation of domestic violence. The application of a therapeutic justice model to domestic violence, as is the case for offenders whose criminality is directly linked to drug addiction, is considered to be quite inappropriate. The prevailing analysis of domestic violence is that the behaviour is not a health problem or disease – rather, it is the **cause** of a major public health problem - but that it is based in conscious choice for which the offender must take responsibility and bear the brunt of the law accordingly, as would be the case for a violent assault on any person other than a partner. Shrouding domestic violence offence dispositions in the ideology of therapeutic justice may weaken the criminal justice approach that has been so strongly advocated for and further-more may result in a reversion to less progressive applications of the legal system, like turning back the clock.

An economic rationalism argument may be used as logic to support such a scheme (a specialist domestic violence court), in the light of the failure of court and penal systems to manage the increasing number of domestic violence offenders being brought before the court. An integral part of models of domestic violence courts is the diversion of perpetrators to treatment, away from imprisonment. In some jurisdictions, an incentive to plead guilty for the pragmatic purpose of speedy disposition is offered in the form of a sentence indication of either substantial discounting or court-mandated attendance at a perpetrator program. This policy might easily be construed as tantamount to decriminalisation of domestic violence, especially in the light of the controversy around the effectiveness of perpetrator programs (Tsai 2000, p. 1312).

With the anticipated increase in offenders being brought before the courts due to more effective policing, as in the Australian Capital Territory, it is likely that a specialist domestic violence court and its concomitant programs would be quite expensive. The question of cost-effectiveness has not yet been fully evaluated.

Critics also cite the variable and inconclusive results of perpetrator treatment and the ad hoc development of programs offered to perpetrators (Chung et al, 2003). Treatment suggests hope for change, if not reform, to perpetrators, their victims, the community and the court. A one-

size-fits-all program symbolises this hope, possibly forlorn.

Legal practitioners also express concern in relation to the potential corruption of due process with the lessening of rigour in the courts and a relaxation of stringent rules of evidence. As defence lawyers, they express concern that coercion is brought to bear to encourage defendants to plead guilty, rather than to exercise their rights to test the evidence brought against them. And in the light of the continuing problem of victim witnesses declining to give evidence and the continuing reliance of prosecutors on their testimony, the likelihood of acquittal for these clients is strong.

[This situation emphasises the necessity to engage local practitioners early in the development of a domestic violence court scheme in order to take into account their input and assistance in developing a model.]

Judicial officers have expressed concern that the role and dignity of the bench is diminished by informality in the specialist court. Jurists argue that the traditions of formality and neutrality embodied in remoteness, being positioned at arms-length from the parties and therefore objective, are compromised by familiarity with personnel working within the specialised court and by an informal style of communication with the parties. The collaborative relationship between the parties and the bench may even be perceived as possibly too cosy – 'all in this little boat together and they have to get along out there on the ocean' (Stuart, quoted in Feinblatt and Denckla 2001, p. 212).

There is the potential for specialist domestic violence courts to mirror the same problems of mainstream courts, should it be the case that -

- training was incomplete or inadequate
- practice did not adhere to the commonly agreed goals
- responses and services were not co-ordinated and integrated
- responses and services were not adequately resourced.

The definitive criticism is that there actually is no need for a specialist domestic violence court system. The existing system would work effectively but for the fact that the numerous integral parts to the process do not work as they should: not everyone does his or her job in compliance with existing policy. It appears that a 'new system' (specialist domestic violence courts) may be really only repackaging or relabelling.

Potential problems and limitations of specialist domestic violence court models

Problems which have been foreseen in the literature are based on the performance and practices of individuals, as opposed to systemic issues. For example:

- a poor judge/magistrate (uncommitted to the process or uninterested in the principles) would mean that the specialist court would not be implementing the principles agreed to and enshrined in the development of the model and therefore would fail to meet its objectives
- successful models are predicated on high quality policing which may not be sustainable
- the anticipated inevitable increased caseload for police, the court and services will impact on resources allocated without projected necessary increased resourcing and/or budgeting; and so the quality of responses and depth of response required for each victim will be necessarily truncated, thereby watering down the goals
- removal of cases from mainstream courts will ghettoise the problem of domestic violence and the problem itself and criminality of domestic violence will become hidden
- victims of domestic violence may perceive stigmatisation if they are not dealt with in the mainstream court
- defence lawyers, who are not onside or on board with the principles of the specialist domestic violence court, will perceive bias against their clients and could argue that their clients are discriminated against or disadvantaged by the specialist domestic violence court and its focus of victims' interests
- there will be an inevitable increase in workload without concomitant increases in staffing
- there is potential for a high rate of burnout of professionals (including support workers, lawyers and the judiciary) involved in the intervention with offenders, victims and children

- as workers burn out, turnover is inevitable and expensive and there is a lag in the provision of highly specialised service delivery
- therefore there is a great need for inbuilt debriefing opportunities and clinical supervision for practitioners
- there is a need for an inbuilt system of rotation of workers, not of all personnel at once so that some residual expertise assists incoming rotational staffing
- the specialist domestic violence court needs to be empowered to deal with indictable offences, i.e., serious assaults, particularly as cases often come before lower courts with inappropriate lesser charges
- the specialist domestic violence court needs to be able to make protection orders of their own motion or on an oral application by the prosecutor or victim, based on the facts of the assault, in cases where no written application is before the court, thereby sparing the victim the need to attend further proceedings to obtain protection
- the specialist domestic violence court needs to be able to vary or make residence or contact orders to fit the circumstances and to accommodate protection orders to spare the victim of further interface with the defendant and the court
- unless there are clear guidelines directing victim safety and perpetrator accountability and responsibility to inform the court's operations, there is a real danger of applying principles of restorative justice and blurring of the distinction between therapeutic justice and restorative justice
- in any event, there is potential for courts to soften their response to offenders due to good intention
- 'there is no silver bullet to solve the problem' (Judge Fritzler, Clark County District Court, Vancouver, Washington)
- marketing specialist domestic violence courts as such raises false expectations
- the court needs to take a holistic and long-term approach to the problem of domestic violence.

Evaluation and research potential

The implementation of specialist domestic violence courts provides a very rich source of data and a centralised point of data collection. Set up with appropriate databases, a large amount of data with a range of variables can be captured for analysis and evaluation purposes, particularly in courts where defendants are required to return to court on completion of their treatment or education program and/or on release from prison.

The range of variables will enable researchers to identify what is critical to making the difference in successful prosecutions and how demographics and other factors might play a part (or not) in outcomes, as well as in intervention. For once, there is a data source for research into improved court outcomes, co-ordination of service delivery and quality of services. In addition, there is potential for research to ascertain the benefits, or otherwise, of court outcomes properly administered and supported for victims of domestic violence.

Other relevant areas of research

The establishment of specialist domestic violence courts offers opportunities for additional research to learn about a wide range of issues, not previously researched within this framework; for example,

- what works and what doesn't work
- the role of co-ordination within the model
- the extent to which protocols are complied with
- whether legislation to prescribe roles and processes is necessary to ensure compliance with protocols
- whether it is possible for services to be integrated through court intervention
- whether specialist courts improve the levels of victim satisfaction with policing and the court process
- whether victims and their children feel safer
- whether mandating of offenders to treatment/education should be a condition of bail or a condition of probation or a bond
- whether coerced perpetrator treatment or education is effective.

Some examples of overseas initiatives

United States of America

In the United States there are now several hundreds of specialist domestic violence courts, set up within a wide range of frameworks, with varying legislation and infrastructure due to local jurisdictional resource allocation, policy-making and legislation. To name a few: Dade County, Florida; Duluth, Minnesota; La Crosse, Wisconsin; and San Diego, California.

In ***New York*** it is anticipated that by 2006 every county in New York State will have a specialist domestic violence court and on 11 March 2005, new legislation was announced to protect victims of domestic violence – victims' safety to be taken into account in bail considerations; protection orders to be extended to ten years (increased from the current limit of one to five years); criminalisation of 'cyber-stalking', use of the internet and other technology to obtain personal information for no legitimate purpose.

In ***Seattle, Washington***, the Municipal Domestic Violence Pre-trial Court holds pre-trial conferences (similar to case management and case tracking in the Australian Capital Territory model) on a separate calendar, which are meetings between the prosecution and the defence to plea-bargain on misdemeanour and gross misdemeanour domestic abuse offences. Three primary judges handle these calendars. The Seattle Attorney's office has a Domestic Violence Unit with specialist domestic violence prosecutors; two of them and two witness assistants attend all pre-trial conferences. Cases are set down for disposition as early as possible. Victims are able to attend the pre-trial conference if they wish.

The Domestic Violence Home Court, ***Sacramento, California***, hears all non-evidentiary appearances for felony and misdemeanour domestic violence cases, that is, where direct evidence is not called from the victim or defendant. These hearings include resolution of legal argument, arraignment, pre-trial conferences for plea-bargaining and sentencing. Status reviews are mandatory for bail, custody and progress in defendants' participation in batterers' programs. Only one judge (with a back-up) is assigned to this court. Victim witness evidence is not presented. The position of a single judge is thought to increase offender accountability as he is obliged to appear before the same judge on every occasion that he is charged. The Sacramento District Attorney's Office has a Domestic Violence Unit with ten specialist prosecutors, including five for trials and one full-time supervisor. There are also four witness assistants (advocates). In the first nine months of operation, 3225 cases were referred for prosecution.

Clark County District Court in ***Vancouver, Washington***, was created in 1998 and is representative of other specialist domestic violence courts which deal with all appearances of criminal domestic violence cases. In Clark County only one judge is assigned to deal with these cases. But in Clark County, the specialist domestic violence court also hears civil matters involving family law, including divorce, child custody and contact, child support, alimony and applications for protection orders. The evidence for the criminal charge of assault satisfies the evidence for the protection order. Prosecutors represent the state and therefore do not appear in hearings for protection orders. Helling raises some issues concerning the cross-examination of the person in need of protection at that hearing and the impact of that on evidence to be tested at the criminal proceedings (2003, p. 8). An independent agency, contracted by the City of Vancouver, provides victim support and referral services and makes recommendations to the court on protection orders and release from custody. A witness assistant is employed in the prosecutor's office to make sure the victim is informed and available to testify but does not present information to the court. Probation officers attend the first appearance and make contact with the victim. On a guilty plea the probation officer provides an oral pre-sentence report; most defendants are placed on intensive supervision.

Canada

In 2002 in Canada there were specialist domestic violence courts in Winnipeg, Manitoba; London, Toronto and Ottawa, Ontario; Calgary and Edmonton (specialist prosecutors only), Alberta and the province of Ontario planned to have established 55 specialist domestic violence courts by the end of 2004.

The ***Winnipeg, Manitoba***, Family Violence Court commenced in 1990. It operates with summary (provincial) jurisdiction and commits to trial in the

higher court more serious charges. Judges with a particular interest in working in the area preside over the court on a part-time basis, except for one judge who is full-time. Five Crown attorneys recruited especially from existing staff prosecute in the court. Judges and prosecutors are domestic violence specialists in their respective fields. Prosecution policy has 'dual considerations of vigorous enforcement and sensitivity to the victim'; the 1996 evaluation found that specialist prosecutors were 'the single greatest factor responsible for the court's success' (Ursel 1997, pp. 271-274).

'The most integral and critical feature' (Family Violence Unit 2002, p. 2) of the specialised family violence court in Winnipeg is the inhouse Women's Advocacy Program, consisting of three social workers and one lawyer. They have access to all information (including that provided to the court) and provide information, support and advocacy for family violence victims and have particular regard to safety plans and safety measures for victims. There is one social worker allocated to child abuse cases to provide information to the court regarding the abused child's particular circumstances concerning supports and options available and accessible to him or her. Court layout is more user-friendly and the Crown Counsel offices, with the Women's Advocacy Program, are in close proximity. Corrections services are unable to respond adequately to the demand for services and for treatment of offenders due to the high volume of work generated by the specialist court. Defence lawyers adopt a traditional approach for their clients, advising them to plead not guilty; if the victim attends court to give evidence, however, the majority of cases are resolved by guilty pleas.

In ***Toronto, Ontario***, pilot court projects were set up in North York and in Old City Hall (K-Court). Features of both (as yet not evaluated) include:

- guilty pleas to low-level offences
- integrated approach to the prosecution, that is, prosecutors and police work together to gather additional evidence
- mandated programs for offenders – 10 such programs cost-shared by offenders on a sliding scale in North York
- a commitment to work with other community agencies through a co-ordinated and collaborative process.

North York

Cases are screened to be dealt with in the specialised court by Crown Attorneys. Victims and offenders are directed to attend court to be introduced to the specialised court process. Defendants may enter a plea of guilty and conditions of bail may be made by the judge, including attendance at an intervention program.

Victims meet with the Crown Attorney and Victim Witness Assistance Co-ordinator for a group discussion about what they need from the court. Defendants meet separately with a representative from the Metro Woman Abuse Council who assesses them and assigns them to an intervention program if they intend to plead guilty.

The court reconvenes and those pleading guilty are mandated to attend a 16-week program. Attendance is monitored, as is victims' safety. On successful completion, with no identified further risk, the defendant returns to court for final disposition, conditional discharge and 12-months' probation.

Old City Hall (K-Court)

This pilot has dedicated Crown Attorneys to prosecute all domestic violence cases from three police divisions. Victims' statements are videotaped. Additional evidence is gathered in collaboration between police and the Crown Attorney. The victim is contacted by the Victim Witness Assistance Program and encouraged to attend an interview to familiarise her with the court process. If the court mandates the defendant to attend an intervention program as a condition of probation, the probation service is responsible for referral to a program (Green 2001).

United Kingdom

Five models of specialist domestic violence courts were set up in ***Derby, Leeds, Wolverhampton, Hammersmith (West London)*** and ***Cardiff***. An evaluation, conducted by Cook et al between November 2003 and January 2004, examined five models of specialist domestic violence courts in the above locations, having operated at that time for 6 months (Derby) to four years (Leeds) with varying arrest rates – from 99 arrests for domestic violence offences over three months (West London) to 853 in Leeds for the same period (Cook et al 2004, p. 49). The models have the specific needs of the victim at the forefront of their work. The findings show that cases were expedited and prosecutors, in Derby

in particular, relied on evidence other than the victim's testimony if she had recanted. Good evidence was therefore crucial, as well as timely and thorough brief preparation. Witnesses were summonsed but only as individual cases warranted. As well, better consideration of appropriate bail conditions, based on informed submissions on bail, emerged as a finding of the evaluation.

The evaluation showed that many opportunities for evidence-gathering were lost: outcomes of specialist domestic violence courts are predicated on best policing practice based on thorough investigation and evidence-gathering. They are 'crucial to the success of a domestic violence case' (Cook et al 2004, p. 9).

The evaluation showed that many opportunities for evidence-gathering were lost: outcomes of specialist domestic violence courts are predicated on best policing practice based on thorough investigation and evidence-gathering.

The entering of a guilty plea at any time, early or late, was considered to be a good outcome and support for victims was intrinsic to victim-co-operation with the prosecution. Victim support was strongly linked to victim participation and to victim satisfaction – the earlier the provision of advice, information, support and advocacy, the better. Consultation with victims concerning pleas and 'bindovers' was rare, except for the Cardiff court, and victims had little input into pre-sentence reports, except at the Leeds court.

There is no interface between these criminal proceedings and civil courts which is identified as an area for further development.

Specialist magistrates courts, dedicated to dealing with domestic violence and homophobic and race hate cases, were set up in ***Darlington, County Durham***, in November 2004 with a view to increasing community confidence in the criminal justice system and encouraging more victims of hate crime and domestic violence to come forward.

Spain

In June 2004 the government announced its plan to create 400 specialist domestic violence courts to cover each of Spain's 436 judicial districts. Their jurisdiction will cover criminal offences, divorce and protection orders. The draft bill sought to enable courts to prohibit abusers from visiting their children and to rescind their paternal authority in cases of violence involving the use of weapons. Paternity and contact rights could be suspended for up to five years. Specialist prosecutors are to be appointed to operate in all regions in Spain.

A 'toughening' of sentences was to be introduced, for example, an offender found guilty of threatening a partner with a weapon or dangerous implement could be sentenced to between three months' and five years' imprisonment. Victims seeking protection were to be provided free legal assistance at court.

Uruguay

In Uruguay, domestic violence is regarded as an extremely serious matter for its population of three million. A woman is murdered by her partner every 10 days. In December 2004, the government established four specialist domestic violence courts with specialist domestic violence magistrates in the capital, Montevideo, and one for the remainder of the country. Legislation had been enacted two years previously for this purpose.

The specialist courts, housed in a purpose-built courthouse, sit seven days a week and magistrates are available for contact by police at all times. No action is taken by police without the sanction or order of a magistrate.

Based on the severity of the assault, the offender is ordered to leave the home for a period of up to 30 days and is escorted by police to obtain his personal effects. This period can be extended for a further 30 days and a breach of the order results in arrest.

Imprisonment for domestic assault is a common penalty, for a period of three months up to two years. On release the offender must return to face the magistrate to determine whether or not he can return home.

The specialist domestic violence courts in Montevideo are assisted by a psychiatrist, psychologist and social worker who assess offenders and victims who come before the courts to assist the magistrate. Specialist

services are provided at no cost to women and children. There is one perpetrator program in Uruguay (source: interview with specialist magistrate from Montevideo, Uruguay, Adriana Arturo on 4 May 2005).

New Zealand

The Chief District Court Judge issued a Practice Note in relation to case management of all summary domestic violence charges to take effect as of 1 February 2005. It prescribes timeframes for charges to be dealt with and includes the requirement of timely disclosure by police to the defendant and the entering of a plea within two weeks of charging. If the defendant pleads not guilty, a status hearing is held (in some courts) no more than four weeks after that and, if the case is not resolved then, the defended hearing is to be listed on a date no more than six weeks later.

Restorative justice has been introduced extensively throughout New Zealand as pre-sentence conferencing and at a range of other stages of the criminal justice process. In a number of areas it is considered an appropriate method of resolving family violence matters. It aligns with Maori values of reciprocity and reconciliation.

The widespread application of restorative justice conferencing became an issue of concern and discussion by the judiciary, in particular as to the safety and appropriateness of some of its processes. The issue was raised as a critical issue for discussion in the New Zealand Ministry of Justice Discussion Paper, *Draft principles of best practice for restorative justice in the criminal court*, May 2003. These principles are now final.

As well, the government as at May 2004 was planning to set up a three-year pilot of Family Safety Teams, which would each consist of ten members including police investigators and child and victim advocates.

A number of specialist domestic violence courts have been piloted, for example, ***Waikatere Family Violence Court, West Auckland***, largely to schedule domestic violence matters and to reduce delays, applying a multidisciplinary approach. The specialist domestic violence court was piloted in 2002-2003 largely to address the 80% retraction rate by victims in defended matters. 'First-time' offenders who pleaded guilty and completed a 20-week stop-violence course could be discharged without conviction.

The pilot was premised on a shared understanding by all parties involved that 'healing of the family is of paramount consideration in that it is damaging to proceed on a not guilty basis except in cases where there is a clear denial' (Ashmore 2004). Victim services, provided by Viviana, a non-government women's service, were involved and given the right of audience to advocate for victims at court; Man Alive provided counselling for defendants. Protection orders were perceived to be made as a 'sentencing tool'. Ashmore writes of concerns for the increasing involvement of police in family law issues and contact with children being negotiated by the non-government agencies on their clients' behalf, without the input of lawyers. The cessation of the pilot brought about changes which removed the 'right' of audience for victims' advocates and the making of protection orders became rare. These matters were still under review in mid-2004 (Mather 2004).

Manukau Family Violence Court, South Auckland, commenced in early February 2005 with the principal goal of fast-tracking. Little material on this initiative was available at the time of publication.

Hamilton Abuse Intervention Pilot Project (HAIPP), Waikato

HAIPP was a two-year pilot project which commenced in mid-1991 and operated along the lines of the Duluth Domestic Abuse Intervention Program, Minnesota. The population of Hamilton (approximately 130,000), a principal city of New Zealand, is somewhat greater than the size of Duluth's population (approximately 87,000). HAIPP was a model of integrated intervention into family violence and evaluated very positively: the arrest rate in domestic violence incidents increased by two-thirds, though compliance with protocols was often low and required persistent monitoring and scrutiny; prosecutions were generally successful; sentencing of convicted offenders was consistent; perpetrators who completed the men's program were positive about it, despite initial resistance, and referrals to the program increased by 83% in the second year, including self-referrals; victims of domestic violence and their children were well-supported, their safety was enhanced and women were very satisfied with the intervention (Robertson and Busch 1993). Workloads for participating agencies increased and have been

overwhelming. The program is continuing and additional initiatives have been implemented.

Examples of specialist domestic/family violence courts and other criminal justice initiatives in Australia

In Australia, domestic violence cases are matters for State and Territory courts. They have typically been dealt with in the magistrates' courts, which deal with a range of day-to-day civil and criminal matters. These courts are local and generally accessible to clients, both victims and defendants. Protection orders, some (undisputed) family law matters and criminal charges can be dealt with at this lower level of the administration of justice. Historically criminal charges for domestic violence offences have been dealt with at this level, irrespective of the severity of the facts of the case.

Magistrates in the lower courts receive practice directions from their Chief Magistrates on some issues but in general they operate their courts in a manner which they determine, taking into account the demographics and other features of the local area. There are some court complexes where a number of magistrates sit concurrently dealing with the matters before them in their own style.

So far in Australia systems do not exist wherein domestic violence is dealt with in a consistent way statewide (let alone nationally), given the independence of magistrates and their individual styles, with the exception of the Australian Capital Territory, unusual because of its size, resource allocation and infrastructure. A consistent statewide approach is difficult to achieve due to regional and local variations in available resources.

Domestic violence, however, spills over into proceedings within the Family Court of Australia. It is often the root cause of separation and of difficulties over contact, residence and property disputes. The power imbalance in all cases of domestic violence is the reason that private resolution of these matters is difficult, if not impossible, hence the resort to the Family Court for resolution.

Notwithstanding the enlightened and progressive stance on domestic violence of the former Chief Justice, Alastair Nicholson, for decades the Family Court of Australia has resisted developing a consciousness of domestic violence and an understanding of the problem and its impact on the lives of the parties and the children involved in Family Court proceedings. The upgrading of the Court's security for the protection its own officers is evidence of an awareness of the danger posed by some litigants, yet its processes were such as to expose victims to further harassment and abuse (Kaye et al 2003).

Perhaps the limited analysis by court personnel of their duty to the court has been based on the law's 'no-fault' principles. The Court's blinkered view of the seriousness of these issues has caused unnecessary ongoing suffering to many of its clients and their children. In addition, its processes of counselling, conciliation and mediation have been anathema to resolution between a bullying, if plausible, abuser and his victim.

In 2001 the Family Court established two pilots, Columbus in Western Australia and Magellan in Victoria which take into account 'allegations of spousal violence, child abuse or sexual abuse, and family violence where there were significant risk issues' (Kerin and Murphy 2003). These projects are outlined below.

Family Court of Australia and Family Court of Western Australia: Special Projects, *Magellan* and *Columbus*

The principles enshrined in the Family Law Act 1975 assumed and required a capacity of judicial frameworks and the legal profession to shift in their mode of operating from adversarial to conciliatory. This shift did not evolve and over time the Family Court became more formal and more adversarial, despite the spirit and intention of the law.

It is fair to say that vigorous political lobbying by men's groups and violent attacks on the Court and its personnel brought about over time a conservative and wary approach to its practices and processes, reflected in the donning of judicial regalia to represent judicial authority and remoteness, in decision-making and the high level of security installed within its precincts to protect staff, clients and their representatives.

Research reports showed that contested hearings within the Family Court involved a high number of cases involving child abuse (50% at

pre-hearings and 30% at full hearings). In most cases, the abuse was of a serious nature and, in the majority of cases (86%), it had not been reported to child protection authorities. Of those cases of abuse reported by the Family Court to the child protection authorities, only 50% were investigated by them and reports were 'brief, uninformative and untimely' (Monash study, cited in urbis keys young 2002, p. 122).

The former Chief Justice of the Family Court of Australia, Alastair Nicholson, described child abuse as the Court's 'core business' and, despite this, the Court's record in responding appropriately to such allegations had been poor, including disbelief. The Court has a view of itself as a service provider (Nicholson 1999, pp. 6-8) and not an investigator of criminal conduct. As a civil forum, it has argued that it is not in the business of making criminal findings. Its position has been vexed in relation to allegations of child sexual and physical abuse, opting for notification of state-based child protection services – whose responses in turn have often been less than helpful, as mentioned above.

In response to the difficulties of resolving such matters pilot projects were carefully planned and set up in two sites. Magellan commenced in June 1998 in Victoria in Dandenong and Melbourne registries of the Family Court of Australia with dedicated staffing of two judges, a registrar and two counsellors.

A review of Magellan by Brown (2003) made many positive findings, including earlier disposition of such cases for contact and residence orders and implementation of a separate representative scheme for children who were the subject of the dispute.

The Family Court of Western Australia in Perth is a unique model of family law jurisdiction incorporating both federal and state law, with its own state Act to support it. In establishing the Columbus project in June 2001, the Court borrowed from the earlier Magellan project the concept of individualised case management and was extended 'to include cases where there have been allegations of domestic violence, child abuse, child sexual abuse or family violence where there are risk issues in respect of the children' (Kerin and Murphy 2003, p. 3). The Columbus project, now a program, is being promoted as a model of 'therapeutic jurisprudence (which) represents a return to the original idealised concept of the 'helping court' advocated during the formation of the Family Court' (Kerin and Murphy 2003, p. 2). The purpose of the Columbus program is to divert parties away from inevitably prolonged (and expensive) litigation and to do so by utilising local support and education programs. It appears that referral to and drawing on existing services are what makes the model innovative, 'integrated', 'helping', 'healing' and 'therapeutic'. As well, the program has had the effect of bringing about greater understanding of the Family Court and its processes and new collaborative working relationships.

The purpose of the Columbus program is to divert parties away from inevitably prolonged (and expensive) litigation and to do so by utilising local support and education programs.

The program consists of case management through a process of assessment and referral to a series of conferences with a designated Registrar and Family Court Counsellor to ultimately negotiate an agreement over the disputed issues for which parties are seeking resolution, 'until either a stable, safe contact regime is established or the matter is referred back to the general court system' (Kerin and Murphy 2003, p. 3). Information disclosed in these conferences is inadmissible as evidence in Court.

An outcome is new working relationships between disciplines within the Court itself. Key to the program are Child Representatives, appointed by the Legal Aid Commission of Western Australia, to all children involved in cases referred to the program. As well, Court Experts who report on 'family dynamics' have been appointed by the Legal Aid Commission to the Columbus program. The Legal Aid Commission has also established a four-tiered Alternative Dispute Resolution service to determine eligibility for a grant of aid, escalating through the tiers with increasing complexity. The first level is chaired by a mediator and other levels are chaired by legal practitioners and the parties are represented by their solicitors.

A Family Court Network has been established to include the Department of Community Development to investigate and report on allegations of child abuse and a range of non-government agencies providing perpetrator treatment, counselling services, supervised contact services and education services for separating couples.

The Columbus project distinguished itself from the Magellan project in that the latter project focussed on case management and fast-tracking of cases where there were allegations of child abuse and/or child sexual assault, while Columbus included cases where there were allegations of domestic violence. It is difficult to imagine that domestic violence would not have been a feature of both projects. In addition, the jurisdiction of the Columbus project court includes care matters.

Family Court of Australia Family Violence Strategy

The Chief Justice of the Family Court of Australia, Alastair Nicholson, established a working committee within the Family Court to review all aspects of the operations of the court in relation to family violence. He established the Family Violence Committee in 2002 and released a consultation report in mid-2003.

The result of the consultation is the Strategy document outlining the salient issues with which the Court as an institution has to grapple:

- definitional issues and understanding of the dynamics and the impacts of domestic/family violence
- importantly, a set of guiding principles for practice within the jurisdiction
- five key areas of practice within the jurisdiction: Information and Communication; Safety; Training; Resolving the Dispute; and Making the Decision.

The process of implementation of the strategy is underway and training of Court personnel has recently commenced.

Australian Capital Territory

Family Violence Intervention Program

In Australia the most promising initiative to date to implement an integrated approach to domestic violence within the criminal justice system is the Australian Capital Territory Family Violence Intervention Program which commenced in 1998. Domestic violence, child abuse and elder abuse offences are dealt with in this program.

In a formal protocol, the key criminal justice and related agencies committed themselves to:

- work together co-operatively
- maximise safety and protection for victims of family violence
- provide opportunities for offender accountability and rehabilitation
- work towards continual improvement.

Key elements within the Family Violence Intervention Program include:

- provision of advocacy and support for those affected by domestic and family violence by the Domestic Violence Crisis Service 24 hours a day, seven days a week
- victim contact and liaison throughout the prosecution process and within probation and parole periods
- implementation of Chief Magistrate's Practice Direction on Family Violence (2000) and the creation of a position of Family Violence Magistrate to oversee and manage the specialised hearing process (conducted weekly)
- appointment of dedicated Family Violence Prosecutors within the Office of the Director of Public Prosecutions to prosecute both summary and indictable matters at court and to provide specialist forensic and policy advice and training
- a three-day training program for all police and prosecutors (open to victim advocates and child protection workers as well) aimed at improving the quality of investigations, evidentiary preparation and victim contact
- the appointment of a Family Violence Project Sergeant and other staff within Australian Capital Territory Police
- provision of investigative equipment for all patrol cars and training in its use
- development of the role of Witness Assistant within the Office of the Director for Public Prosecutions to assist the prosecutor in relation to information concerning the victim's safety and particular circumstances relevant to bail determinations and to provide information to witnesses
- introduction of new procedures within the court system to identify, tag, fast-track and track matters

- weekly case tracking meetings involving relevant Program personnel to monitor progress of criminal matters and, in particular, victim safety
- provision of specialised assessment and programs for offenders convicted of a family violence offence.

The Court Practice Direction fast-tracks criminal family violence matters from their first appearance at court to the case management process before the dedicated magistrate. Guilty pleas may be heard by this magistrate who may then sentence the offender. If the matter is to be defended, then the hearing is listed before a different magistrate. Hearings are listed about six weeks after the not-guilty plea has been entered. Good briefs of evidence, however, tend to lead to guilty pleas.

This court does not deal with applications for protection orders and police-initiated applications for protection orders are not emphasised in this program. Bail conditions are relied upon to provide for immediate protection of victims. Victims seeking protection orders are assisted by the Domestic Violence Crisis Service workers and represented by the Legal Aid Commission duty solicitor or assigned to the private profession if there is a conflict of interests.

The Program ensures referral to the Domestic Violence Crisis Service if the victim has not already been in contact with the service. The Service provides victim information with her consent for the prosecutor at bail hearings. The Court can mandate offenders to the Perpetrator Education Program, provided by the Australian Capital Territory Department of Corrective Services and Relationships Australia ACT. The program takes place over 24 weeks and was the subject of evaluation (urbis keys young 2001).

Two independent comprehensive evaluations were conducted (Keys Young 2000, urbis keys young 2001). These reports provided detailed feedback to program stakeholders about what is working and what needed to be improved. Police expressed a high level of satisfaction with the work and 74% of victims were satisfied with the process and outcomes (Holder 2001; urbis keys young 2001).

Most importantly they provided baseline data from which the program continues to be monitored. The most striking results concerning the impact of police and legal measures were:

- an increase from 16% to 27% of 297 incidents resulting in arrest
- an increase from 27% to 47% of incidents resulting in 'positive action' (including arrest)
- an increase by 152% in the number of family violence matters handled by the Director of Public Prosecutions over three years (1998/99 – 2001/02)
- an increase by 69% in matters commenced and completed
- an increase from 24% to 61% of matters finalised by plea of guilty, with 40% being finalised by a guilty plea on the first mention date
- 86% of all family violence matters commenced and completed in both 2000-2001 and 2001-2002 resulted in a conviction (ACT Family Violence Intervention Program 2003).

South Australia

Central and Northern Violence Intervention Programs

Early developments within the criminal justice setting to respond to domestic violence matters were located in South Australia in the 1980's. Following on from this, the Adelaide Magistrates Court established a Family Violence Court in 1999.

The Central and Northern Violence Intervention Programs are essentially the same, in that they articulate the same goals around victims' safety. They differ in some respects, however, in their practical application and day-to-day operations.

Both programs provide information at the court to victims making applications for protection orders, opportunities for men to address their violent and abusive behaviour and facilitate access to a range of services for women and children. The programs enable specialist and generalist services, the court and the Child and Family Investigations Unit, South Australia Police, to work together.

Both the Northern Violence Intervention Program (NVIP) located in Elizabeth, a northern metropolitan area of Adelaide, and the Central Violence Intervention Program (CVIP), located in central metropolitan Adelaide, are characterised by the employment of key personnel to deliver client services and coordinate processes. The NVIP is auspiced by Northern Metropolitan Community Health Service and the CVIP is auspiced by the Salvation Army.

Both services employ a coordinator, a women's worker, a children's worker and two men's workers. They operate in conjunction with a case manager from the Department of Correctional Services to ensure ongoing case management of all domestic violence matters before the court. Both the NVIP and the CVIP can refer offenders to Stopping Violence Groups; criteria for entry into the twelve-week CVIP program are:

- acknowledgement of past violence and abuse
- acknowledgement that the violence and abuse is problematic to himself and others
- an indication that he wishes to take steps to cease his violence and abuse.

Women whose partners/ex-partners are clients of the program are offered support and information and invited to participate in the program. They may choose to contribute a victim's perspective to the intervention outcomes report to the Family Violence Court by providing evidence of change in the man's behaviour during his involvement with the program' (Courts Administration Authority South Australia 2005, p. 3).

The court worker assesses men for suitability from those who are at court responding to protection order applications and as defendants to charges for domestic violence offences. Specific conditions of bail include assessment and supervision by the court worker and, if the defendant is suitable, bail is extended to enable him to participate in the twelve-week program. This is regarded as a suspension of proceedings.

Both the CVIP and the NVIP include the mandating of a defendant to perpetrator treatment as a condition of bail, rather than post-conviction, as a condition of probation or bond. It is argued that compliance and participation with the treatment program is a function of the fact that the defendant is due to return to face the court again for review regarding compliance and participation (urbis keys young 2002, p. 54).

In Adelaide there is a specialist magistrate who sits on Thursdays, dealing with both criminal matters and returns of restraining orders in the morning and applications for restraining orders in the afternoon.

A defendant enters his plea at the completion of the group program, if on diversion he has been assessed as suitable for participation. The Violence Intervention Program provides the court with reports of progress against set criteria using accredited evaluative tools. The Violence Intervention Program case manager institutes non-compliance proceedings or provides the court with a report when the defendant fails to attend the group. On request, the Violence Intervention Program provides pre-sentence reports and reports concerning bail conditions.

In the Northern Violence Intervention Program, men are mandated into the perpetrator programs by the court, while in the Central Violence Intervention Program, early engagement of perpetrators into treatment is the goal. In addition, earlier contact and intervention with women and children occurs in the Central Violence Intervention Program and reports on their circumstances are presented to the court.

In providing services to women, safety, empowerment and respect are the lynchpins of those services, for example, advocacy, information about court and group processes, development of safety plans, reporting back to the court where a variation or revocation of a protection order or withdrawal from charges is sought.

The NVIP offers a women's group over eight weeks and a separate children's group, which offers a range of play therapy activities over eight to ten weeks. Family counselling is also available. Only individual counselling is offered to women and children in the Central Violence Intervention Program.

The Programs' services to women were evaluated jointly over twelve months in 2001. The study (Power and Kowanko 2001) predictably found that there was an increase in workload for all agencies involved and that systems were not adequately resourced, so that existing resources were used to enhance interagency collaboration.

Altogether, 182 women were registered as clients of the Program. 50% of men participated in a Stopping Violence Group. Only a very small number of women reported positive changes in their partners' behaviour and it appeared that the men's treatment models varied. As a whole, women were very positive about the services provided to them by the Violence Intervention Programs.

At the Australian Institute of Judicial Administration workshop on domestic violence in Melbourne in April 2005, a pilot program for conferencing domestic violence in Adelaide was announced. No further details are available as yet.

Victoria

Heidelberg and Ballarat Family Violence Courts

Recently the Victorian Government announced the establishment of the Family Violence Court Division to be piloted in two sites, Heidelberg, an outer Melbourne suburb, and Ballarat, a large regional centre 100 kilometres from Melbourne city. $5.2 million has been committed for the development of the specialist courts over the next four years. It is intended that these courts will provide a 'one-stop shop' approach ensuring that victims and offenders who come before the court will receive a more integrated response from legal and support services. Importantly the courts will hear a range of matters involving domestic violence such as protection order applications, criminal charge matters, victim's compensation and some family law matters. A priority is to reduce the number of court appearances required to finalise family violence matters.

$5.2 million has been committed for the development of the specialist courts over the next four years.

Legislative amendments, proclaimed on 1 April 2005, provide for new grounds for intervention orders for children, for example, hearing or witnessing family violence will be grounds for an intervention order for a child. Intervention orders will be able to be made of the court's own motion. Restrictions will limit the giving of evidence by children in intervention proceedings. Inter alia, the package of amended legislation provides that new facts and circumstances will be required for a defendant's application for variation or revocation of intervention orders and evidence may be given by affidavit as well as orally in applications for intervention orders.

Registrars for the Division were to be recruited during March 2005 to be responsible for the smooth operation and administration of the court. Professional development and training on domestic/family violence is to be delivered to magistrates, registrars and court staff. The court will have the power to direct defendants who are subject to an intervention order to be assessed for their eligibility for compulsory men's behavioural change programs.

In the new Division, the special needs of people with a disability will be taken into account and alternative methods of giving evidence will be available – affidavit evidence, recorded evidence, remote witness facilities and screens within the court. Court facilities are being modified to improve access and safety for witnesses and training is to address disability issues.

Courts have been renovated to provide for offices for defendants' court support workers and for applicants' court support workers, on different floors to minimise risk and contact.

New positions have been created to employ applicant workers, family violence outreach workers, defendant workers, legal services, dedicated police prosecutors and security officers.

The purpose of the program is to provide for safety, to simplify access to protection and to increase accountability of defendants; it is also expected to speed up proceedings.

Court Support Services

The Victorian Government has also established a new program to provide legal and non-legal support services to victims of domestic/family violence and defendants in family violence matters. Services will include information, advocacy, referrals and legal advice. Outreach workers will also be appointed.

Court Network, a scheme of court support provided by volunteers, exists in a number of Victorian magistrates courts and supreme courts.

New South Wales

The legislation providing for protection orders is very clear about the realities of the experiences of domestic violence and sets out the Objects of Division to enshrine its purpose.[3]

The significance of this statement is more than symbolic; Subsection 562AC(4) binds the court, police and others to these objects and principles.

Campbelltown and Wagga Wagga Domestic Violence Intervention Court Model

Specialist domestic violence courts are to be trialled in two sites in New South Wales; the model is due to commence in May 2005 in Wagga Wagga and in June 2005 in Campbelltown. Services will be funded through existing resources and an additional $1 million over two years for capital equipment (digital and

video cameras and dictaphones for police), for four new positions, for the proposed women's and children's programs in each site and for evaluation of the pilot.

The program is an adaptation of a number of models outlined in this paper and has a similar objective providing a co-ordinated and integrated response to domestic violence. It will involve improved police responses to reports of domestic violence incidents (including better quality investigation, brief preparation and prosecution of offences); early support and information for victims (a Victim's Advocate is to be appointed to each site, located in a community-based service); provision of counselling and support services for women and children; provision of an offender treatment/education program through the Department of Corrective Services, integrated with the women's and children's programs.

A Systems Change Manager has been appointed to the New South Wales Police to facilitate the changes required within the organisation, including information management systems, police training and practices. It is anticipated that information management systems and exchange will be facilitated through the pilot between Police, Local Courts and Corrective Services. As well, it is anticipated that standardisation of interventions will occur through the development of practice standards across participating agencies.

Campbelltown and Wagga Wagga Local Courts will deal with domestic violence offences and applications for protections orders if accompanying applications are before the court at that time. Applications for protection orders for other victims of domestic violence will still be dealt with on the Apprehended Violence Order list day. Specialist magistrates and prosecutors are not features of the proposed model and it is anticipated that improved procedures and practices will be rolled out to other courts.

Women's Domestic Violence Court Assistance Program

In New South Wales there are 33 Women's Domestic Violence Court Assistance Schemes which support women at 56 courts in domestic violence matters, generally only applications for protection orders on special Apprehended Violence Order list days. Court assistance schemes in New South Wales are funded by the New South Wales Government and administered by the Legal Aid Commission of New South Wales.

The Program assists women and children to obtain legal protection from domestic violence from the courts through an integrated system of legal representation, specialised support and advocacy which is provided by seconded workers from community agencies, and information and referrals to local agencies for ongoing support.

Funding provides for the full-time or part-time co-ordinator's salary, infrastructure needs and training for support workers.

Legal representation is provided by the police prosecutor in some courts; in others, by solicitors from community legal centres, by the Domestic Violence Advocacy Service, by private practitioners on a pro bono basis or funded by legal aid for eligible clients, or by the *Domestic Violence Solicitors Schemes,* whereby solicitors are paid by the Legal Aid Commission to attend court on the list day for domestic violence protection orders – at Bankstown, Blacktown, Central Coast (Gosford, Woy Woy and Wyong courts), Inner West (Burwood), Illawarra (Wollongong and Port Kembla courts), Liverpool, Macarthur (Campbelltown), Penrith, Sutherland and Waverley.

The key outputs of the Women's Domestic Violence Court Assistance Program are:

- improved safety of women seeking protection orders (Apprehended Domestic Violence Orders)
- more appropriate protection orders designed to fit individual needs
- improved access to the court process
- improved levels of legal representation
- appropriate referrals to support services.

In 2003/04 the Program assisted in 33,618 Apprehended Domestic Violence Order appearances. One-third of women assisted live in rural and remote regions of New South Wales. Over 14% of the total number assisted were Aboriginal. (Source: Legal Aid Commission of New South Wales, May 2005)

Queensland

Gold Coast Domestic Violence Integrated Response Project

This project has been operating for over nine years to provide a community-based integrated interagency response to domestic violence within a justice reform model. The project initially operated without funding using existing service

provision. In 1999 funding was received to pay one court worker to work with the overseeing management committee in the domestic violence office of Southport Court.

Its aims are:

- enhancement of safety of women and children who have experienced domestic violence
- holding perpetrators of domestic violence accountable for their behaviour
- provision of multi-agency responses to domestic violence on the Gold Coast.

The court worker for the project provides women at court with a safe waiting area, information and referral, safety planning, assistance with applications or variations of protection orders, information on court processes, advocacy and liaison with other services and the police, post-court follow-up and debriefing

A key strategy of the project is early contact with the Domestic Violence Service following police intervention. Victims are asked if they wish to be put in contact with the Service and, with their consent, police fax the contact details to the Service which in turn makes contact with the victim within a day or so of police intervention. This is known as the Police Fax-Back Project and has been implemented in all nine Gold Coast police stations. Workers from the Integrated Response Project have worked closely with police to establish protocols that assist in evidence gathering and responses to domestic violence incidents.

Mandated attendance at a 24-week perpetrator program is a sentencing option for breaches of protection orders. The Domestic Violence Service attends sessions of the program as a means of monitoring perpetrators' behaviour in regard to victims' safety.

The Project also provides professional training, community education and information resources on the issue of domestic violence.

Western Australia

Joondalup Family Violence Court

The project was launched in late 1999 in Joondalup, an outer suburb of Perth, situated 25 kilometres from Perth, following a feasibility study which was informed by the South Australian Northern Violence Intervention Program. The Joondalup program was established by reallocation of existing resources and a Project Manager was appointed to oversee the implementation of the program. It adopted an interagency case management approach to the supervision of offenders and support of victims. The aims were to improve the criminal justice process, to support victims and ensure their safety and to hold perpetrators accountable for their violence.

It deals with civil matters for protection orders (Violence and Misconduct Restraining Orders) and all criminal matters related to family violence.

A specialist magistrate, prosecutor and defence counsel are attached to the court. Defendants receive legal advice prior to agreeing to participate in the perpetrator program.

Other staffing consists of a full-time case management co-ordinator, a full-time victim support worker, a dedicated full-time Community Corrections officer and a family and children's services worker (on a needs basis).

The Case Management Team is a unique initiative; it meets weekly to discuss cases and to prepare pre-sentence reports, management plans for victims and offenders, prepare progress reports, referral to agency-specific interventions as appropriate, dealing with breaches and re-offending matters and final review for case closure.

The case management process is seen to be the core element of the model for its success (urbis keys young 2002, p. 69).

Defendants who plead guilty are remanded for a pre-sentence report after which they are placed on bail with the condition to attend a six-month perpetrator program, supervised by Community Corrections and reviewed midway by the court. At this point they may be sentenced if they have made no progress; on completion of the program, they are given a non-custodial sentence if they have shown a commitment to behaviour change.

Defendants who plead not guilty are remanded to attend normal court for hearing and are not dealt with the Family Violence Court.

Another significant feature is the Police Domestic Violence Investigation Unit in the Joondalup Police Region, responsible for investigating all incidents of domestic violence. The Unit consists of a staff of eight police officers: the Officer-in-Charge, the prosecutor and six investigators.

During the early stages of the program there was a marked decline in the numbers of victim-witnesses failing to appear, a gradual increase in the number of interim protection orders and decline in the number of adjournments, dismissals by consent and non-appearances.

The program was then evaluated over the period 2000-2001, using control groups in two other Courts of Petty Sessions, Midland and Armadale. The findings included 'critical success factors':

- clear identification of prosecution matters related to domestic violence
- affidavit-assisted applications for protection orders
- special listings for protection orders and hearings of charges
- incorporation of interagency information in pre-sentence reports
- case management for offenders
- court support for victims
- validation of risk assessment tools (Kraszlan and West 2001).

During the evaluation period 368 incidents were investigated by the Joondalup Domestic Violence Investigation Unit and charges were laid in 39% of cases.

The majority of applications for protection orders were either cancelled or dismissed, more in Joondalup than by the control courts.

The higher level of breaching of orders in the Joondalup group was explained by a more intensive supervision process.

'Roads to Healing' Program, Geraldton Court

Under the rubric of therapeutic jurisprudence and in collaboration with the Geraldton Regional Domestic Violence Project, a program has been implemented 'as a means for parties to address underlying issues if they so wish while at the same time protecting the victim from violence…the aim is to reach a situation where there is little risk of violence and therefore no longer a need for a violence restraining order' (King 2003, p. 14). Domestic violence offenders and 'parties to applications for violence restraining orders arising from domestic violence' can be assessed for suitability for entry into the program by a 'local agency'.

Geraldton Court has implemented the Geraldton Alternative Sentencing Regime, whereby the magistrate focuses on rehabilitation of offenders with 'substance abuse, domestic violence and other offending related problems', as well as 'wellbeing' of other participants in the judicial process, including staff. He states, 'participants in domestic violence related matters have signed a behavioural contract with the court and have participated in anger management counselling, substance abuse programs, the stress reduction and self-development program, transcendental meditation and have appeared before the court for review' (King 2003, p. 15).

Interestingly the court requires both parties to enter into the behavioural contract to participate in the Roads to Healing program and protection orders (which are only interim) may be amended to allow them to attend together. King states, 'if participation in the Roads to Healing program has resolved the problem, then the interim order can be cancelled' (2003, p. 16).

Legislative amendments came into force in December 2004. Family/domestic violence has been defined and broader grounds for a Violence Restraining Order have been introduced in recognition of the reality of abusive conduct to include intimidation and emotional abuse. As well, children exposed to domestic violence can be covered in recognition of the damage done to children who witness domestic violence. Children are not required to be summonsed or to give evidence except if ordered, only under exceptional circumstances.

Other provisions have been made to provide for greater safety for victims of domestic violence: applicants for protection orders cannot be cross-examined by an unrepresented defendant; affidavit evidence can be presented; the court is to be closed for interim hearings and a support person can be present. Failure of the defendant to appear in a final hearing in relation to an interim order will result in a final order being made. Lifetime protection orders will be made automatically at the sentencing of an offender convicted of a serious violent assault (unless the victim does not wish to have an order).

The defence of 'consent' to a breach of a protection order has been removed. The maximum penalty for a breach of a protection order has also been increased. Penalties have also been increased for offences committed in the context of domestic violence, if a child was present at the time of the offence and if the victim already had a protection order against the offender.

These amendments increase police powers in cases of domestic violence, including the issuing of an on-the-spot protection order in specified circumstances. Legislation requires investigation if they have a reasonable suspicion that an act of domestic violence is occurring or has occurred.

New police orders will be evaluated after two years of operation.

Tasmania

While no specific specialist domestic violence court program has been developed to operate in Tasmania, a number of important infrastructure and legislative changes have been made.

Safe at Home

Commencing in September 2004 the *Safe at Home* program is funded to the tune of $17.7 million over four years. It changes the way in which services respond to domestic violence and includes a range of initiatives and new services. The aim of the program is to enable more victims of domestic violence to remain in their own homes safely.

Pro-arrest, pro-prosecution policy has been reinforced and courts have received additional resources to support anticipated higher workloads. Victim Safety Response Teams are being established and trained in Tasmania Police to respond to domestic violence incidents, to investigate offences, assess ongoing risk, conduct a safety audit, facilitate upgrading of security as necessary, provide victims with a safety plan, assist in applications for Family Violence Orders, notify the child protection agency of children at risk and provide information and referral. Four five-day special training courses are being offered to members of the teams, specially selected for their policing experience and interest in the issues; the training was developed in consultation with key stakeholders and academics.

Courts are required to expedite domestic/family violence proceedings and a statewide court support service has been funded.

Additional services have been funded for child witnesses and for counselling and support of adult victims and for child victims.

Legislation now provides for specific Family Violence Orders and police-issued Police Family Violence Orders, with increased penalties for breaches and acts of violence committed in the presence of children and against pregnant victims.

Legal aid is to be extended to ensure victims of family violence are not disadvantaged by a lack of legal representation.

Legislation now provides for specific Family Violence Orders and police-issued Police Family Violence Orders, with increased penalties for breaches and acts of violence committed in the presence of children and against pregnant victims.

The new Family Violence Offender Intervention Program will assess ongoing risk posed by offenders and provide rehabilitation for suitable offenders as a sentencing option. A three–week specialist training program was delivered to the Program's facilitators in August 2004. The Program will run for 100 hours over ten weeks, with four sessions per week, and emphasises offender accountability and skills for behaviour change. As well, provision has been made for accommodation for defendants, should they experience difficulty in finding accommodation if ordered from the family home (Women Tasmania 2004a and b).

Northern Territory

There is no specialist domestic violence court program in the Northern Territory – its uniqueness, remoteness and its population, together with disparate interests of the many scattered Indigenous communities, militate against centralised policy to establish programs which could be applied throughout the Territory – or even in major centres. The remoteness of the communities, policing services (where they exist), the infrequency of court sittings, issues of language and cultural diversity, complex social problems, such as access to basic health services and housing, prevalence of domestic violence, child abuse and substance abuse compound difficulties of centralist approaches to local problems. The problem of family violence in the Northern Territory is profound, with a third generation of children now experiencing extreme forms of violence within their communities.

Conclusion

Specialist domestic violence courts represent an attempt by State and Territory governments to address the inadequacies of mainstream criminal justice processes for dealing with domestic violence in an improved criminal justice framework, with the interests and safety of victims as the central focus. Inadequacies are demonstrated in a number of ways:

- calls for assistance from the police only as a last resort, when fears for the victim's safety are acute
- inadequate action taken by police
- reluctance by victims to attend court and the shortfall in service delivery and/or follow-up to provide the necessary support to facilitate court attendance by victims, both in prosecutions and when protection orders are sought
- discomfort and embarrassment for victims attending court unsupported and unaware of court processes, procedures, potential outcomes
- insufficient legal support and representation for victims seeking protection orders
- low prosecution rates and poor rates of conviction
- the laying of low-level charges when a serious assault has occurred
- high rates of domestic violence recidivism among offenders
- the disproportionately high rate of domestic homicides, compared with other homicides, as an indicator of risk to victims of domestic violence.

It is important to emphasise that the genesis of specialist domestic violence courts is based in observance of the rights, needs and interests of victims of domestic violence to be safe and free of further violence, intimidation and harassment.

There are many models of specialist domestic violence courts with a range of variations; some deal exclusively with domestic violence offences and ancillary matters, including protection orders, with specialist personnel and services attached to special sittings of magistrates' courts; some merely set aside a special list day each week; others operate within the mainstream with specialist services to represent and/or support victims at court. All share in common the stated goal of an improved police response to domestic violence in order to bring matters before the courts and to increase prosecution rates and guilty pleas. All share in common the stated focus on the safety and interests of victims.

The benefits of specialist domestic violence courts lie in the strength of the process of integrating service and legal responses to domestic violence. A high level of interagency co-operation and collaboration, effective, co-ordinated, appropriate service delivery to victims and their children, and to perpetrators is required.

There seems to be no doubt that there would be great value in the establishment of appropriately resourced specialist domestic violence courts which could hear and finalise criminal charges, make orders for protection of victims and resolve family law issues by making orders for contact and residence, as well as enforcement of child support orders, breaches of bail, protection orders and probation or parole orders, supported by skilled legal and police practitioners, support workers, counsellors, probation officers, etc, working collaboratively and co-operatively for the safety of victims.

The key to the successful operation of specialist domestic violence courts is the development of carefully and thoughtfully researched and negotiated protocols and procedures, including processes for court case tracking and case management hearings.

Strong arguments are made out for the establishment of positions of specialist magistrates and specialist prosecutors which are dedicated to the operation of the specialist domestic violence court. Victim advocates and court support services are also important players in ensuring victims' safety, communication of their needs for protection and referral to services for ongoing support and intervention as necessary.

The ideal of the specialist domestic violence court is expedition of criminal proceedings and the making of final protection orders in the light of a greater propensity for guilty pleas, based on high quality timely police intervention, investigation and brief preparation.

Police practice is the platform on which the ideals of the specialist domestic violence court stand and can be met. The major challenges then are to upgrade police practice in domestic violence cases to significantly higher quality of intervention and investigation, that is, to revolu-

tionise policing in the area of domestic violence, and to sustain these major changes over time.

Ongoing thorough evaluation of the operations of the specialist domestic violence court and its components will illuminate strengths and weaknesses of its operations. But, in addition, it is essential to ensure that the program is managed and driven as a whole to ensure that all components of the program, processes and protocols work effectively on a day-to-day basis and in the spirit of the commonly agreed-upon objectives, for example:

- best practice in policing and prosecuting domestic violence offences; high standard police investigation and briefs of evidence to encourage guilty pleas
- identifying, tagging and fast-tracking of domestic violence cases
- regular meetings of key specialist court personnel
- case management
- expedition of resolution of cases
- discount in sentencing of offenders for early guilty pleas
- information, support and advocacy for victims attending court
- child care facilities for victims attending court
- safety for victims within the court precincts
- validation and empowerment of victims
- responsibility and accountability of offenders
- legal representation for victims seeking protection orders
- skilled dedicated prosecutors
- bail conditions set to fit the circumstances and safety needs of the victim
- protection orders to include and fit the particular circumstances and safety needs of the victim and her children
- consideration of the use of exclusion orders, as appropriate, to enable victims of domestic violence to remain in their own homes if they so wish
- assigned specialist magistrate with an interest in the role
- contact, discussion and collaboration with local legal profession to explain principles and objectives of the specialist domestic violence court
- appropriate assessment of offenders for perpetrator treatment programs
- referral of victims and their children for specific support and counselling services
- reduction and prevention of domestic violence.

Constant, transparent, monitoring by stakeholders should be integral to the program, as well as a mechanism for accountability, discussion, debate and complaints management. External independent evaluation of the program is critical.

At the same time as Australian jurisdictions are turning their attention to specialisation in courts for domestic violence, the doctrine of therapeutic jurisprudence is beginning to have influence in its application in other areas of specialisation of the dispensation of justice and law enforcement. There is some risk that the impetus to set up specialist domestic violence courts in the name of victims' interests might be hijacked and derailed by this movement, apparently being largely driven by judicial officers, to focus on the well-being and healing of offenders – and there is some evidence that this is occurring.

Little research is available on recidivism by domestic violence offenders and what prevents domestic violence. The benefit of prevention of reoffending is yet to be measured; meanwhile the costs of domestic violence to Australia in 2002-2003, as assessed by Access Economics (2004), was $8.1 billion. There is much to be gained by the reduction and prevention of domestic violence.

Caution needs to be taken in the development and implementation of specialist domestic violence courts in Australia so that there can be no perception of a softening of the legal response to perpetrators of domestic violence.

Endnotes

1 This paper builds upon the ideas expressed in the Australian Domestic and Family Violence Clearinghouse Issues Paper 3 2001, *Domestic and Family Violence: Criminal Justice Interventions*, by Robyn Holder. Her paper sets out the historical and philosophical background to the development of improved criminal justice responses to domestic violence overseas and in Australia.

2 Circle sentencing courts now operate in South Australia (5), Victoria (2), Queensland (2), Western Australia (4 including Alternative Sentencing Regimes in courts servicing communities of significant Aboriginal populations), the Australian Capital Territory (1) and New South Wales (4).

3 CRIMES ACT 1900 - SECT 562AC

Objects of Division

562AC Objects of Division

(1) The objects of this Division are:

to ensure the safety and protection of all persons who experience domestic violence, and

to reduce and prevent violence between persons who are in a domestic relationship with each other, and

to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women.

(2) This Division aims to achieve its objects by:

empowering courts to make apprehended domestic violence orders to protect people from domestic violence, and

ensuring that access to courts is as speedy, inexpensive, safe and simple as is consistent with justice.

(3) In enacting this Division, Parliament:

recognises that domestic violence, in all its forms, is unacceptable behaviour, and

recognises that domestic violence is predominantly perpetrated by men against women and children, and

recognises that domestic violence occurs in all sectors of the community.

(4) A court that, or person who, exercises any power conferred by or under this Part in relation to domestic violence must be guided in the exercise of that power by the objects of this Division.

References

Access Economics 2004, The Cost of Domestic Violence to the Australian Economy: Part 1. Partnerships Against Domestic Violence. ACT. http://www.accesseconomics.com.au/reports/Violence part1.pdf

ACT Family Violence Intervention Program 2003, ACT Family Violence Intervention Program 2000-2002 Update. August 2003: pp. 1-4.

Adelaide Magistrates Court Family Violence Court 2002, *Central Violence Intervention Program: Information for Magistrates*, Central Violence Intervention Program. (September): pp 1-13.

Adelaide Magistrates Court Family Violence Court 2002, *Central Violence Intervention Program: Information for Lawyers*, Central Violence Intervention Program. (September): pp. 1-4.

Ashmore, A. 2004, '*West Auckland Courts Domestic Violence Pilot*.' Advocate-Family Law Section New Zealand Law Society vol. no. 7, Autumn Issue no. 1: pp. 1-5. http://www.familylaw.org.nz/advocate/wakld-dvpilot-aut04.asp [2005, February 28].

Brebner, N. 2005, '*Police Hope Court Will Aid Domestic Violence Victims*.' Times Newspaper. New Zealand: pp. 1. http://www.times.com.nz/news/printer-2810.shtml [2005, February 28].

Brown, C. 2005, Family Violence Court Development Project E-Newsletter, Department of Justice Victoria. February: pp. 1-2.

Brown, T. 2003, Project Magellan. *Child Sexual Abuse: Justice Response or Alternative Resolution Conference, Adelaide*: pp. 1-10.

Bryant, D. 2005, '*From the Chief Justice*.' Courtside (February Issue): pp. 1-2.

Burton, M., Cook, D., Robinson, A. & Vallely, C. 2004, *Evaluation of Specialist Domestic Violence Courts/Fast Track Systems*. United Kingdom, Crown Prosecution Service: pp. 1-16. http://www.cps.gov.uk/publications/docs/specialistdv-courts.pdf [2005, February 11].

Buzawa, E., Hotaling, G., & Klein, A. 1998, '*The Response to Domestic Violence in a Model Court: Some Initial Findings & Implications*.' Behavioral Sciences & the Law vol. 16: pp. 185-206.

Buzawa, E.S. and Buzawa, C.G. eds. 1996a, *Do Arrests and Restraining Orders Work?* Sage, Thousand Oaks.

Buzawa, E.S. and Buzawa, C.G. 1996b, *Domestic Violence: the criminal justice response*, 2nd edition, Sage, Thousand Oaks.

Cairnduff, A. 2005, '*Domestic Violence Intervention Court Model'.* Australian Domestic and Family Violence Clearinghouse Newsletter. Issue no.7: pp. 8-9 http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/newsletter.pdf [2005, March 2].

Carruthers, D. 2004, Practice Note: Domestic Violence Prosecutions. District Court Judicial Officers. New Zealand. December: pp.1-2.
http://www.lawyers.org.nz/general/Practicenotes/Dom_Vi_Prac_Note.htm
[2005, March 8].

Cartwright, S. 2001, '*Central Violence Intervention Program - A Case Study'*. Australian Domestic & Family Violence Clearinghouse Newsletter. Issue no. 7: pp. 3-4.
http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/newsletter.pdf [2005, March 2].

Cartwright, S., Duigan, B., Duncan, J., Felus, J., Lloyd, E., Ramsay, B. & Richardson, T. 2002, *Central Violence Intervention Program: Program Manual*. South Australia, Central Violence Intervention Program: pp. 1-72.

Central Violence Intervention Program 2003, *'Data for the Period 1 July 2002- 30 June 2003'*. Information Bulletin. Issue no. 4: pp. 1-26.

Christopher, C. 2002, '*Domestic Violence Courts*.' LawNowOnline (February/ March Issue): pp. 5-8.
http://www.extension.ualberta.ca/1sp/LawNow26-4/264dom.pdf
[2005, February 10].

Chung, D., O'Leary, P. & Zannettino, L. 2003, *A National Review of Integrated Programs for Perpetrators of Domestic Violence*. Research and Education Unit on Gendered Violence, School of Social Work & Social Policy, University of South Australia and Partnerships Against Domestic Violence, Canberra: pp. 1-90.

Cook, D., Burton, M., Robinson, A. & Vallely, C. 2004, *Evaluation of Specialist Domestic Violence Courts/Fast Track Systems*. United Kingdom, Crown Prosecution Service: pp. 1-16.
http://www.cps.gov.uk/publications/docs/specialistdv-courts.pdf
[2005, February 11].

Courts Administration Authority 2005, *Magistrates Court Violence Intervention Program*. South Australia, Magistrates Court: pp. 1-4.
http://www.courts.sa.gov.au/courts/magistrates/violence_intervention.html [2005, February 9].

Court Services Division, Department of Justice & Crime Prevention and Community Support Division, West Australian Police Service 2002, *Joondalup Family Violence Court-Final Report*. Western Australia, Department of Justice & West Australian Police Service: pp. 1-131.
http://www.justice.wa.gov.au/portal/server.pt/gateway/PTARGS_0_2_303_0_0_47/http://just [2005, March 4].

Courts Administration Authority South Australia 2003, *Magistrates Court Violence Intervention Program:* pp. 1-4.
http://www.courts.sa.gov.au/courts/magistrates/violence_intervention.html [2005, March 22].

Crime and Misconduct Commission Queensland 2005, Report Summary: Policing Domestic Violence in Queensland. Crime and Misconduct Commission Queensland, Brisbane. March: pp. 1-4.

Crime Prevention Division, NSW Attorney-General's Department 2005, '*Circle Sentencing Court Alternative*.' Partners in Crime Prevention Newsletter (April/May): p. 3.
http://www.lawlink.nsw.gov.au/cpd.nsf/pages/cpdnews_April2005
[2005, March 22].

Daly, K. and Marchetti, E. 2004, '*Indigenous Courts and Justice Practices in Australia*.' Trends & Issues in Crime and Criminal Justice, The Australian Institute of Criminology vol. 277, May Issue: pp. 1-6.

Dawson, M. and Dinovitzer, R. 2001, '*Victim Cooperation and the Prosecution of Domestic Violence in a Specialized Court*.' Justice Quarterly vol. 18, no. 3 (September Issue): pp. 593-622.

Department of Justice and Industrial Relations, Tasmania 2004a, '*Safe at Home*.' Safe at Home Newsletter Issue no. 1, August: pp. 1-6.
http://www.women.tas.gov.au/news/safeathome.html [2004, August 24].

Department of Justice and Industrial Relations, Tasmania 2004b, '*Safe at Home: A Criminal Justice Framework for Responding to Family Violence in Australia*.' Safe at Home Newsletter Issue no. 2, December: pp. 1-2.
http://www.justice.tas.gov.au/legpol/SafeatHome.htm [2005, February 23].

Dick, D. 2003, Circle Sentencing of Aboriginal Offenders-Victims Have a Say. *INNOVATION: Promising Practices for Victims and Witnesses in the Criminal Justice System Conference*, *Canberra*. ACT Victims of Crime Coordinator's Office & ACT Attorney General's Department.

Domestic Violence, Crime and Victims Bill, House of Lords 2003, United Kingdom Parliament, Session 2003-2004. *House of Lords Bill 6, December*: pp.1-9.
http://www.publications.parliament.uk/pa/ld200304/ldbills/006/en/04006x—.htm [2004, September 16].

Family Court of Australia 2004, Family Violence Strategy 2004-2005

Family Violence Court Division Project Team 2005, New Laws for Victorian Intervention Orders. Department of Justice, Victoria

Family Violence Unit 2002, *Specialised Family Violence Courts with Specialised Prosecutors*: *Winnipeg Family Violence Court, Manitoba (Canada)*
http://www.wjin.net/Pubs/2975.pdf [2005, March 1].

Fass, M. 2005, '*'NY DA Pushes Measures to Help Domestic Violence Victims'*.' New York Law Journal (March, 11): pp. 1-3.
http://www.nylawyer.com/news/05/03/031105f.html [2005, March 17].

Feinblatt, J. and Denckla, D. 2001, '*What Does it Mean to be a Good Lawyer*?' Judicature vol. 84, no. 4(January/February Issue): pp. 206-214.

Freiberg, A. 2004, Innovations in the Court System.

Crime in Australia: International Connections Australian Institute of Criminology International Conference, Melbourne, Victoria

Fryar, K. 2003, Presiding Over the Family Violence Criminal List. *INNOVATION: Promising Practices for Victims and Witnesses in the Criminal Justice System Conference*, Canberra, ACT, Victims of Crime Coordinator's Office & ACT Attorney General's Department.

Gannon, M. and Mihorean, K. 2004, '*Sentencing Outcomes: A Comparison of Family Violence and Non-family Violence Cases*.' JustResearch Issue no.12, January 2005:pp. 1-7. http://canada.justice.gc.ca/en/ps/rs/rep/jr12/jr12-005e.html

[2005, February 12].

Goldberg, S. 2005, *Judging for the 21st Century: A Problem-solving Approach*. Canada, National Judicial Institute: pp. 1-54.

http://www.nhi.ca/Public/documents/Judging%20for%2021st%20century-De.pdf [2005, February 2].

Golding, S. 2002, Coordinating Policy, Planning & Front-Line Delivery Responses to Prevent Domestic Violence in South Australia. *Crime Prevention Conference, Sydney, Australian Institute of Criminology & the Crime Prevention Branch, Commonwealth Attorney-General's Department. 12th-13th September: pp. 1-15.*

http://www.aic.gov.au/conferences/crimpre/golding.pdf [2005, February 10].

Goodman, L. and Epstein, D. 2005, *'Refocusing on women: A new direction for policy and research on intimate partner violence.'* Journal of Interpersonal Violence vol 20, no 4 April 2005: pp. 479-487.

Green, V. 2001, '*Domestic Violence Courts Project*.' Education Wife Assault vol. no. 8 (Issue no. 2): pp.1-4.

http://www.womanabuseprevention.com/html/domestic_violence_courts_proje.html [2005, February 7].

Hannam, H. 2003, Therapeutic Justice. 21st Australian Institute of Judicial Administration Conference: *New Challenges, Fresh Solutions*, Government House, *Perth*, A.I.J.A.I.

http://www.aija.org.au/ac03/papers/Hannam.rtf [2005, February 9].

Harrison, P. and Hovane, M. 2004, *Update on Tasmanian Legislation & Review of Victorian Crimes (Family Violence) Act*. Australian Domestic & Family Violence Clearinghouse Newsletter. Issue no. 20, December: pp. 4.

Helling, J. 2003, *Specialized Criminal Domestic Violence Courts*.

Violence Against Women Online Resources: pp. 1-25.

http://www.vaw.umn.edu/documents/helling/helling.html

[2005, February 11].

Holder, R. 2001, *Domestic and Family Violence: Criminal Justice Interventions*. Australian Domestic & Family Violence Clearinghouse Issues Paper 3: pp. 1-24.

Holder, R. 2004, *Ngambra Circle Sentencing Court: Report on the Pilot Initiative from the ACT Victims of Crime Co-ordinator*.

Holder, R. and Mayo, N. 2003, *What do Women Want? Prosecuting Family Violence in the* AC. Current Issues in Criminal Justice. Journal of the Institute of Criminology, University of Sydney Faculty of Law. vol 15, no 1, July 2003: pp. 5-21.

Hopkins, A. and McGregor, H. 1991, Working for Change: The movement against domestic violence, Allen & Unwin, North Sydney.

Hovane, M. and Harrison, P. 2004, *New Domestic and Family Violence Legislation in Western Australia*. Australian Domestic & Family Violence Clearinghouse Newsletter. Issue no. 20, December: pp. 1-3.

Johnson, H. 2005, *Crime and victimisation in Australia: key results of the 2004 International Crime Vicitmisation Survey*. Australian Institute of Criminology Research and Public Policy Series No. 64

http://www.aic.gov.au/publications/rpp/64/index.html

[2005, May 10].

Katzen, H. and Kelly, L. 2000, *'How Do I Prove I Saw His Shadow?' Responses to breaches of AVOs: a consultation with women & police in the Richmond Local Area Command of NSW*, Northern Rivers Community Legal Centre, Lismore.

Kaye, M., Stubbs, J. & Tolmie, J. 2003, *Negotiating child residence and contact arrangements against a background of domestic violence.* Griffith University Families, Law and Social Policy Research Unit, Brisbane.

Kerin, P. and Murphy, P. 2003, *Overview of an Emerging Model of an Integrated Family Court System*. Eighth Australian Institute of Family Studies Conference, Melbourne.

Keys Young 2000, *Evaluation of ACT Interagency Family Violence Intervention Program: final report*, PADV, Commonwealth of Australia, Canberra

King, A. 2003, *Discussion Paper: Draft Principles of Best Practice for Restorative Justice Processes in the Criminal Court*. New Zealand, Ministry of Justice: pp. 1-42.

King, M. 2003b, '*Roads to Healing: Therapeutic Jurisprudence, Domestic Violence and Restraining Order Applications*.' BRIEF (August Issue): pp.14-16.

King, M. 2003a, '*Applying Therapeutic Jurisprudence in Regional Areas: the Western Australian Experience.'* E LAW Murdoch University Electronic Journal of Law, vol. 10, no2: pp. 1-11.

http://www.murdoch.edu.au/elaw/issues/v10n2/king102_test.html

[2005, February 9].

Kraszlan, M. & West, R. 2001, '*Western Australia Trials a Specialised Court*.' Alternative Law Journal vol. 26, August Issue no. 4: pp. 197-210.

Laing, L. (2002). *Responding to Men Who Perpetrate Domestic Violence: Controversies, Interventions and Challenges*. Australian Domestic & Family Violence Clearinghouse. Issues Paper 7: pp. 1-31.

http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issues_paper_7.pdf [2005, March 23].

McCurdy, D. (2005). *When Violence Hits Home*. The New Zealand Herald. New Zealand: pp. 1-4.

http://www.nzherald.co.nz/index.cfm?ObjectID=3569280

[2005, February 28].

MacLennan, C. 2004, '*Judge Says Domestic Violence Court Process a 'Masquerade'*.' Auckland District Law Society (Issue no. 18): pp. 1-13.

http://www.adls.org.nz [2005, February 28].

MacLeod, D. and Weber, J. 2000, *Domestic Violence Courts: A Descriptive Study*. California, Judicial Council of California, Administrative Office of the Courts. May: pp. 1-55.

http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/dvreport.pdf

[2005, March 23].

Marchetti, E. and Daly, K. 2004, '*Indigenous Courts and Justice Practices in Australia*.' Trends & Issues in Crime and Criminal Justice, The Australian Institute of Criminology, number 277, May Issue: pp. 1-6.

Mather, D. 2004, '*Letter to the Editor: West Auckland Courts Domestic Violence*.' Advocate-Family Law Section New Zealand Law Society vol. 7, Winter Issue no. 2: pp. 1-3.

http://www.familylaw.org.nz/advocate/westalkd-dvp-wint04.asp

[2005, February 28].

Ministry of Justice 2003, *Draft principles of best practice for restorative justice processes in the criminal court: discussion paper*. Ministry of Justice, New Zealand.

http://www.justice.govt.nz/pubs/reports/2003/restorative-justice/RJ_Discussion_Paper.pdf [2005, February 28]

Morgan, F. 2004, *The NDV Project Evaluation*. Crime Research Centre, University of Western Australia. Adelaide: pp. 1-114.

http://www.cpu.sa.gov.au/2004%20NDV%20Final%20Eval.pdf

[2005, March 17].

Mouzos, J. and Makkai, T. 2004, *Women's experiences of male violence: findings from the Australian component of the International Violence Against Women Survey (IVAWS)*, Australian Institute of Criminology, Canberra.

http://www.aic.gov.au/publications/rpp/56/RPP56.pdf

[2005, March 17]

Murphy, P., Kerin, P. & Pike, L. 2003, '*The Columbus Pilot - Catalyst for an Emerging Model of an Integrated Family Court System in Western Australia*.' Family Matters, Australian Institute of Family Studies vol. 64, Autumn Issue: pp. 82-86.

Murphy, P. and Pike, L. 2003, *The Columbus Pilot in the Family Court of Western Australia: Some Early Findings From the Evaluation*. Eighth Australian Institute of Family Studies Conference, Melbourne.

Newman, T. 2003, Family Violence Court - Adelaide Magistrates Court. *INNOVATION: Promising Practices for Victims and Witnesses in the Criminal Justice System Conference*, Canberra, ACT, Victims of Crime Coordinator's Office & ACT Attorney Generals Department.

NSW Legislative Assembly Hansard (26 October 2004). Domestic Violence Court Intervention Model Trial. Sydney, NSW State Government: p. 11949.

http://www.parliament.nsw.gov.au/prod/parlment/hansart.nsf/V3Key/LA200410260 [2005, February 10].

Nicholson, A. 1999, Court Management of Cases Involving Child Abuse Allegations. *The 7th Australasian Conference on Child Abuse and Neglect, Perth*: pp. 1-23.

http://www.familycourt.gov.au/papers/pdf/abuse.pdf

[2003, March 14].

One News, Source 2005, *Domestic Violence Court Opens*. National News. New Zealand, TV New Zealand.

http://tvnz.co.nz/view/news_national_story_skin/471986?format=html

[2005, February 28].

Pease, B. and Fisher, S. 2001, *Preventing Men's Violence: A response to the Victorian whole of government discussion paper on men's behaviour change programs.* Women against violence: an Australian feminist journal, vol 10, pp. 49-53.

Petrucci, C. 2002, '*Respect as a Component in the Judge-Defendant Interaction in a Specialized Domestic Violence Court that Utilizes Therapeutic Jurisprudence'*. Criminal Law Bulletin vol. no. 38 (Issue 2): pp. 263-295.

Phelan, A. 2003, Solving Human Problems or Deciding Cases? Problem Solving Courts. *INNOVATION: Promising Practices for Victims and Witnesses in the Criminal Justice System Conference*, Canberra, ACT, Victims of Crime Coordinator's Office & ACT Attorney General's Department.

Potas, I., Smart, J., Brignell, G., Thomas, B. & Lawrie, R. 2003, *Circle Sentencing in New South Wales*: *A Review and Evaluation*. Judicial Commission of NSW & NSW Aboriginal Justice Advisory Council. Monograph 22: pp. 1-64.

Power, C. and Kowanko, I. 2001, *Just Don't Give Up On Us: An Evaluation of the Women's Service of the Central and Northern Violence Intervention Programs*. Adelaide, Flinders University of Adelaide: pp. 1-27.

Robertson, N. and Busch, R. 1993, *Hamilton Abuse Intervention Pilot Project (HAIPP): Two Year Review*, The HAIPP Team & The University of Waikato. Report no. 5, August: pp. 1-36.

Smith, P. 2004, *The Operation of Specialised Domestic Violence Courts, especially with Respect to Court Ordered Behaviour Change Programs, in the USA. Final Report*. Melbourne, State Magistrates' Court: pp. 1-15.

Stubbs, J. 2004, *Restorative Justice, Domestic Violence & Family Violence*. Australian Domestic & Family Violence Clearinghouse. Issues Paper 9: pp. 1-23.

http://www.austdvclearinghouse.unsw.edu.au/PDF%20files/Issues.Paper_9.pdf [2005, March 3].

Stubbs, J. (ed.) 1994, *Women, Male Violence and the Law*, Institute of Criminology Monograph Series No. 1, The Federation Press, Sydney.

Tomaino, J. 2004, *Aboriginal (Nunga) Courts*. Information Bulletin, Office of Crime Statistics & Research (South Australia). vol. 39: pp. 1-16. http://www.oscar.sa.gov.au [2005, March 4].

Tsai, B. 2000, '*The Trend Toward Specialized Domestic Violence Courts: Improvements on an Effective Innovation*.' Fordham Law Review vol. 68, March Issue no. 4: pp. 1285-1327.

urbis keys young 2001, *Evaluation of the ACT Family Violence Intervention Program Phase II - Final Report*, ACT Department of Justice & Community Safety: pp.1-97.

urbis keys young 2002, *Research Into Good-Practice Models to Facilitate Access to the Civil and Criminal Justice System by People Experiencing Domestic and Family Violence-Final Report*. ACT, Office of the Status of Women Department of the Prime Minister: pp. 1-213.

Ursel, E. J. 1997, '*The Possibilities of Criminal Justice Intervention in Domestic Violence: A Canadian Case Study*.' Current Issues in Criminal Justice vol. 8 March Issue no. 3: pp. 263-274.

Victorian Family Violence Court Division Project Team. (2005). *'New Laws for Victorian Intervention Orders'*. Department of Justice, Court Services. Press Release: pp. 1-2.

Wexler, D. (2002). '*Robes and Rehabilitation: How Judges can Help Offenders 'Make Good'*.' Victorian Bar News vol. 123(Summer Issue): pp. 27-31.

Women Tasmania 2004a, *Safe at Home*. Issue 1, August 2004:pp. 1-6.

http://www.women.tas.gov.au/news/safeathome.html

Women Tasmania 2004b, *Safe at Home*. Issue 2, December 2004:pp. 1-2.

http://www.women.tas.gov.au/news/safeathome.html

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Ph: (02) 9385 2990 • TTY: 02 9385 2995
Fax: (02) 9385 2993
Email: clearinghouse@unsw.edu.au
Website:
http://www.austdvclearinghouse.unsw.edu.au

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Design: anthouse@acay.com.au