

Centre for
Innovative Justice

Opportunities for Early Intervention:

Bringing perpetrators of
family violence into view

March 2015

Centre for Innovative Justice

The Centre for Innovative Justice (the CIJ) was established by RMIT University in October 2012 and opened by former Prime Minister Julia Gillard in March 2013. The CIJ's objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. RMIT is a global university focused on creating solutions that transform the future for the benefit of people and their environments.

The CIJ is dedicated to finding innovative and workable solutions to complex problems that manifest in the justice system. Our analysis is not limited to problem definition; we strive to develop practical ways to address problems. The CIJ's focus is on identifying alternatives to the traditional approaches to criminal justice, civil dispute resolution and legal service provision. Our mission is to identify strategies that take a holistic approach and address the reasons people come into contact with the justice system.

Centre for Innovative Justice

RMIT University
Building 98, Level 1
102 Victoria Street
Melbourne VIC 3000
Phone: (03) 9925 1139
Email: cij@rmit.edu.au
Web: rmit.edu.au/innovativejustice
Twitter: twitter.com/InnovateJustice

Contents

Executive Summary	5
Part One	9
1. Background and Scope of this Report	9
A note on terminology	12
2. Understanding the Challenge – a Snapshot	14
Prevalence	14
Costs	15
Risk	15
Impacts	16
Shifts, evolution and foundations	17
3. Ambitions and Limitations of the Current Response	19
Civil justice response	19
Criminal justice response	22
Part Two	24
Chapter One: The Importance of Early Intervention	24
1.1 Introduction	24
1.2 Early intervention, family violence and the justice system	27
1.3 Interventions with children	28
1.4 Interventions with adolescents who use violence in the home	30
1.5 Interventions in escalation	31
1.6 Conclusion	32
Chapter Two – Perpetrator Programs	34
2.1 Introduction	34
2.2 What are Perpetrator Programs?	35
2.3 Mixed evidence	36
2.4 Opportunities	38
2.5 Conclusion	44
Chapter Three – Initial Period After a Police Callout	45
3.1 Introduction	45
3.2 Opportunities that support women	46
3.3 Opportunities to engage earlier with men	47
3.4 Opportunities to refer men to other agencies	49
3.5 Opportunities to keep men on the radar	50
3.6 Opportunities for inter-agency monitoring and escalation of responses	52
3.7 Conclusion	53

Chapter Four – Opportunities at Court	54
4.1 Introduction	54
4.2 Opportunities through initial contact at court	54
4.3 Opportunities for more support and information at court	56
4.4 Opportunities for legal advice and information	58
4.5 Opportunities for judicial leadership and imprimatur	59
4.6 Opportunities to increase the effectiveness of specialist courts	61
4.7 Conclusion	67
Chapter Five – Opportunities Through Corrections	68
5.1 Introduction	68
5.2 Opportunities for more strategic use of Corrections	68
5.3 Opportunities for identifying family violence in other offenders	70
5.4 Opportunities post-release	72
5.5 Conclusion	75
Chapter Six – Other, Emerging Opportunities	76
6.1 Introduction	76
6.2 Opportunities for resolution	76
6.3 Opportunities with adolescents	79
6.4 Opportunities to support children and safe fathering	80
6.5 A final note on opportunities in the Family Law jurisdiction	81
6.6 Conclusion	84
Chapter Seven – Costs, Conclusions and Recommendations	85
7.1 Return on investment	85
7.2 Conclusions	86
7.3 A map of pathways to potential interventions	89
7.4 Recommendations	90
Appendix A – Table of Highlighted Initiatives	95
Appendix B – Consultation List	98
CIJ Team	99

Executive Summary

This Report turns the spotlight on perpetrators of family violence.

In doing so, it calls for earlier and more proactive intervention - explaining that, while family violence has finally come to attention as a systemic wrong in need of a National Plan, a significant gap exists in our collective response. Equally, while victims of family violence must remain our priority, these victims will also remain at risk unless we step back and widen our gaze.

In other words, until we adjust the lens and bring those who use violence and coercion more clearly into view - until we intervene at the source of the problem - the cycle of this violence will simply roll on. This may manifest in assaults against the same or subsequent partners, in the damaging effects we know are experienced by children, in the behaviour of adolescents, or in the tragic escalation that can devastate an entire community. Either way, it will manifest as core business in our courts and as an ongoing drain on our economic and social wellbeing. As one practitioner told the CIJ:

...You can't put violent men in a corner and expect them to change. All you'll achieve is another partner, another victim, somewhere down the track....¹

The aim of this Report, then, is to help to bring violent individuals out of this corner and under the scrutiny of a systemic response. In doing so it makes no apologies for its gendered analysis as, while men can be victims of family violence too, this does not change the fact that structural inequality and widespread community attitudes perpetuate violence against women, as well as rigid gendered roles that entrap women and men alike.

As many commentators have pointed out, however, men are often written out of the analysis of gendered violence,² rendered invisible by descriptions of the violence as if it is a separate entity, rather than something used by an individual with whom the system might intervene. Meanwhile, though 'perpetrator accountability' has importantly been flagged as a priority in the *National Plan to Reduce Violence Against Women and their Children* and subsequent Second Action Plan, our understandable focus on responding to increasing demand has prevented the majority of policy responses from engaging in detail with what this concept might actually mean.

Despite its epidemic proportions and despite the value of public health analogies, family violence does not sweep invisibly through communities, leaving victims inexplicably in its wake. Instead, family violence consists of controlling, coercive, abusive or violent behaviour used by *identifiable individuals* – ones with whom our legal system can and must engage. What's more, similar threads run through the trajectories of this behaviour that reveal how this engagement might occur.

1 Telephone consultation with Gary Smith, Program Manager, Accommodation and Therapeutic Services, Communicare, WA.

2 Jackson Katz, http://www.ted.com/talks/jackson_katz_violence_against_women_it_s_a_men_s_issue?language=en. Others refer to this as 'men's politics of silence', with primary prevention initiatives which employ the voices of high profile men part of increasing efforts to break this silence down. M Flood, *Where Men Stand: Men's Roles in Ending Men's Violence Against Women*, White Ribbon Prevention Research Series No. 2 2010.

From the respondent churned through the court system who does not understand the basis of a protection order, to the man sitting on a behaviour change waiting list with his motivation waning; from the individual jailed for a family violence assault who receives no rehabilitation, to the man who cannot be located by police when an arrest needs to be made and who ultimately commits the unthinkable – too often the detached operation of the conventional court process serves to propel perpetrators away and cement isolation, rather than keep them within reach of effective intervention.

The aim of this Report, therefore, is to write those who commit family violence back in to the analysis – **to broaden and train our gaze on opportunities to be more proactive**, and to do so in language which may help these opportunities more readily be seized.

In other words, the aim of this Report is to promote the potential of the justice system, not as an unwieldy intervention that can sometimes escalate the cycle of family violence,³ but as an active and involved participant that can *interrupt* it and make those who use it more visible – monitoring a perpetrator's behaviour; bringing him back to court to account for his commitments; making sure he is known to relevant service agencies; addressing related addiction, mental health or accommodation problems; and identifying whatever stake he may have in becoming a safer man.

It also means promoting the justice system as a dynamic, rather than static actor – one that can adapt and tailor its responses as circumstances change; that can be effective as early as possible with those most likely to work towards safety for their families; and which can then be freed up to keep those which pose a higher risk firmly on the radar.

This Report does not suggest, of course, that there is a 'magic bullet' or 'quirky initiative' as one stakeholder rightly cautioned, waiting to be discovered. If there were, those working tirelessly in this field for decades would have found it. Rather, the CIJ's ambition for this project has been to synthesise growing consensus around this issue and, in doing so, signal the direction in which others might head.

Equally, this Report does not call for a blunt or 'tougher' criminal justice response. A 'lock 'em up and throw away the key' approach may seem like accountability but, ultimately, abdicates our collective responsibility to address the violence. It also abdicates our responsibility to acknowledge that family violence is not something committed by an aberrant fraction of the population who can be pushed conveniently out of sight, but by a wide range of individuals **whose behaviour and sense of entitlement we have, collectively, allowed to endure**.

Collectively, therefore, we must develop a smarter response – drawing on what is already known about interventions with perpetrators and the substantial contribution that these already make – while identifying *additional* opportunities which could be seized in a more considered and proactive way. As a result, the Report recommends a series of more nuanced interventions – harnessing the opportunity that contact with the justice system presents to step in effectively at the earliest stage.

This includes that jurisdictions support a dedicated conference on Perpetrator Interventions, in addition to any national crisis summit currently being proposed. It also calls for jurisdictions to develop Early Intervention Strategies which can support a range of interventions arising at different points along the spectrum, such as the development of a more considered and well supported sector of perpetrator programs, or Men's Behaviour Change Programs.

3 Perpetrators sometimes punish their partners after the police have been called, or even once an intervention order has been imposed, the law entrenching their view of the victim as the enemy. This can also be the case in family law proceedings, especially when victims are cross-examined in contested court proceedings by a self-represented perpetrator, with legal aid for family law matters increasingly difficult to obtain.

The Report also recommends the use of callouts to police as opportunities not only to apply an appropriate criminal or civil justice response, but also to make referrals to a range of other services. In particular, the Report highlights a need for perpetrators to be referred to crisis accommodation so that they do not spiral into isolation and instead are kept within view. It also calls for perpetrators to be connected to an active Mens's Referral Service which can provide case coordination, support speedier inter-agency collaboration and ongoing contact with perpetrators prior to a court appearance.

Once a perpetrator has contact with a court, the Report suggests ways in which this interaction can become more purposeful – harnessing the potential of a court appearance to connect perpetrators to early referral and treatment, including those who may have used family violence but are charged with other offences; using bail and remand as an opportunity to do the same; recognising the value of appropriately trained respondent workers and duty lawyers in protection order hearings; using the imprimatur of a judge's authority to increase a perpetrator's willingness to comply with orders; applying swift and reliable sanctions; and bringing perpetrators back for ongoing monitoring and assessment before the court.

The Report then recommends ways in which Corrections systems can be used more effectively - to monitor offenders while they are in the community; to intervene in, rather than perpetuate, the cycle of violence in custodial settings; to use these settings to screen for and identify family violence perpetration in the general population of offenders; and to explore possibilities for ongoing monitoring post-release.

The Report also calls on jurisdictions to consider additional opportunities for perpetrators to demonstrate accountability to their victims, as well as for jurisdictions to intervene more proactively in the intergenerational transmission of family violence. This includes through interventions which respond more effectively to adolescents who use violence, as well as children at risk of the profound harm that we know exposure to family violence can cause.

Finally, the Report recommends opportunities for further research, including into ways in which interventions can be more effectively measured.

Overall, these recommendations are about **removing the burden from victims of family violence and placing it squarely on the system**. Just as urgently, therefore, this Report calls for us to face up to our *own* accountability – as individuals, as jurisdictions, as a population at large. As commentators have noted, the task of addressing family violence requires a combined justice and community response which 'is more powerful than the man's power in the relationship'⁴. For this kind of response to be mounted, however, concerted and long term investment is also required - an acknowledgment by the public, and by governments on our behalf, that family violence is not an incidental or temporary crisis, but an ongoing 'wicked problem' which permeates all levels of the justice and service sectors alike.

As daunting as this may seem in the face of other budgetary pressures, this means more and targeted resources - for support services which, inexplicably, are still expected to fight for every penny - but also for additional interventions right along the spectrum which may ultimately see these services experience less demand. After all, we know enough about the costs of family violence to realise that simply doing more of the same is not an option. What's more, a Return on Investment study of a perpetrator intervention program in the UK has revealed the sobering truth that an intervention which prevents even one family violence related homicide will save the community not only a damaging social toll, but the cost of the intervention itself.

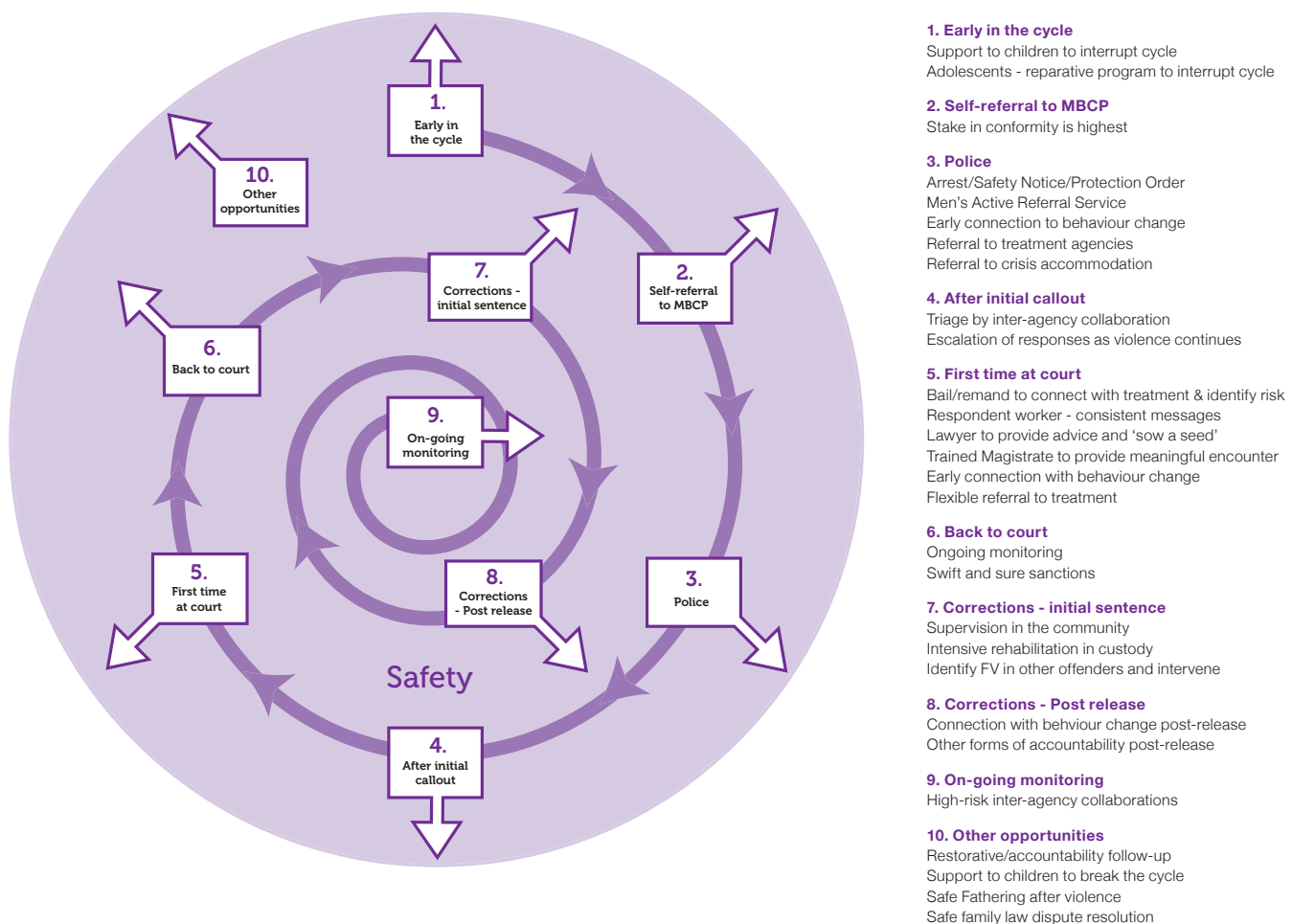
4 Prof C Humphreys, Dr C Laming & Dr K Diemer, 'Are Standalone MBCPs dangerous?', Workshop Presentation, NTV 2012 Australasian Conference on Responses to Men's Domestic and Family Violence; Experience, Innovation and Emerging Directions, 2012.

Substantial though the challenge might be, therefore – and as entrenched as patterns of violence are in many of those who use it – understanding of the cause of family violence and the attitudes which support it has reached a crucial stage, as has the political, media and community motivation to do something about it.

In fact, as this Report was being finalised, Rosie Batty was named Australian of the Year – recognition of her courage in continuing to tell her story and raise awareness of family violence, certainly, but also a signal that the nation may be truly ready to listen.

Put simply, and as Rosie Batty herself has emphasised, the overall focus needs to shift from simply expecting a victim to keep herself safe – to leave, to report breaches, to testify - to demanding that perpetrators take responsibility for their violence and an effective intervention is applied.⁵ Equally, our focus needs to shift from hoping that the law's intervention will address a single incident to ensuring that more nuanced and repeated interventions might also break the cycle of violence for subsequent generations.

Governments spend a great deal of time talking about valuing families, as well as about securing our social and economic future. Addressing the violence occurring within these families, then, is a crucial way of doing both. There are things we can do *now* to mount a more comprehensive and proactive response to family violence. There are opportunities we can seize to widen our gaze, to step in earlier and bring perpetrators clearly, unequivocally into view.



5 D Rose, 'Prisons won't fix family violence: Batty', *The Age*, 26 October 2014. At <http://news.theage.com.au/breaking-news-national/prisons-wont-fix-family-violence-batty>.

1. Background and Scope of this Report

When officially opened in 2013, the Centre for Innovative Justice ('the CIJ') was commissioned by the Commonwealth Attorney-General's Department to provide a series of reports exploring innovations in the justice system. For the purposes of its third project, the CIJ was asked to examine early intervention initiatives within the justice system, 'with a focus on innovative and emerging strategies, aimed at both reducing unnecessary interaction with the justice system, and promoting effective processes and outcomes in a range of jurisdictions.' The benefits of early intervention are recognised as addressing issues before they escalate or become entrenched, while facilitating a more responsive and affordable justice system for the community.

When preparing to commence work, the CIJ determined that this broad topic would be addressed most effectively through a specific lens. Given the insidious presence of family violence⁶ across so many aspects of the justice system, as well as the momentum for change in this area, the CIJ decided that this was the context in which a targeted contribution may be of most use. In particular, the CIJ heard that 'perpetrator accountability' was a significant gap in the justice system's response.

Much work has been conducted recently, of course, in the area of family violence. In addition to the National Plan and subsequent Action Plans, each state and territory has also developed its own specific strategy, with justice sectors and local communities identifying a need for more concerted action as well.⁷ Independent reports about the scale, as well as the health and economic costs, of family violence, meanwhile, have helped to propel the momentum, with long overdue media coverage of family violence related deaths also serving as a lightning rod for public opinion.⁸

During the course of the CIJ's research and consultation period alone, a number of important Australian studies were released which further collective understanding about a range of issues. These include, but are by no means limited to:

- The experience of violence and its additional impacts on women in rural and regional areas;⁹
- The experience of violence for women with disabilities¹⁰

6 See 'A Note on Terminology'.

7 A Taskforce has been convened, for example, between all sectors of the justice system, both public and private, in Victoria, in acknowledgment of the pervasive nature of the challenge. At <http://www.liv.asn.au/Practice-Resources/News-Centre/Media-Releases/Courts--Police--lawyers-and-community-groups-estab.aspx?rep=1&glist=0&sdiag=0>.

8 For example, the Centre for Advancing Journalism is also collaborating with the Herald Sun to research how changes in new priorities have occurred. G Jennings, 'Behind media silence on domestic violence are blokey newsrooms', *The Conversation*, 5 August 2014. At <http://www.theconversation.com/behind-media-silence-are-blokey-newsrooms-29532>. The role of the media is also the focus of a stream of research at ANROWS, as well as a feature of the National Plan. This said, the media can still perpetuate some worrying stereotypes, a recent homicide in Queensland in which headlines focused entirely on the fact that the victim of an appallingly violent murder was a transgender woman, as well as a sex worker, being an example. 'Brisbane murder-suicide: Police investigating 'domestic violence incident that got out of hand'', ABC News, 9 October 2014. At <http://www.abc.net.au/news/2014-10-08/brisbane-death-domestic-violence-out-of-hand>. C Ford, 'Mayang Prasetyo's murder and the problem with domestic violence reporting' *The Age* 7 October 2014. At <http://www.smh.com.au/it-pro/mayang-prasetyos-murder-and-the-problem-with-domestic-violence-reporting-20141007-10r8e8.html>.

9 A George & B Harris, *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria*, Centre for Rural and Regional Law and Justice, Deakin University, 2014. http://www.deakin.edu.au/_data/assets/pdf_file/0003/287040/Landscapes-of-Violence-online-pdf-version.pdf.

10 D Woodlock, L Healey, K Howe, M McGuire, V Geddes and S Granek, *Voices Against Violence*, Women with Disabilities Victoria, Office of the Public Advocate and Domestic Violence Resource Centre Victoria, 2014.

- The lack of primary prevention and early intervention initiatives targeted at at-risk groups and communities¹¹
- The need for a better evidence base around primary prevention and early intervention initiatives regarding young children aged 0-8 years¹²
- The kinds of early intervention initiatives which work with men and boys at risk.¹³

Most recently at the time of writing, the Federal Senate is conducting a broad ranging inquiry,¹⁴ a bi-partisan, national Summit is being proposed,¹⁵ and the former Governor-General, Dame Quentin Bryce, has chaired a Special Taskforce on Domestic and Family Violence in Queensland which handed down its comprehensive findings as this Report went to print.¹⁶ Meanwhile, the newly elected Victorian government has appointed the nation's first dedicated Minister for the Prevention of Family Violence¹⁷ and established a Royal Commission to investigate the ongoing failure, despite significant reform of service and legal systems to respond adequately to family violence.¹⁸

In particular, these systems-wide analyses will add to understanding about how to improve information sharing between agencies. Keenly felt in the Victorian context will be the Coroner's Report following the inquest into the death of Luke Batty, one of just many horrifying family violence related deaths in Victoria in 2014, but one which highlighted especially starkly how an escalating risk was overlooked by a range of agencies.¹⁹

Studies such as the Australian and NSW Law Reform Commissions' comprehensive review of the legal response to family violence, meanwhile, have also laid the foundations for greater understanding of how different legal responses function and intersect and, just as significantly, how they must improve.²⁰ The ClJ reviewed these studies and as much relevant literature as possible, in order to cement its understanding and appreciation of the difficult issues involved.

This literature ranged from peer reviewed journal articles through government reports, police and health association codes of practice; to briefs from practitioners in the field. It also examined policy settings around Australia, as well as in international contexts, from the United States and Canada, through New Zealand, to Europe and the United Kingdom.

The overarching task of the ClJ, however, is to advocate for the justice system to be seen as

- 11 S Tayton, R Kaspiw, S Moore and M Campo, (2014) *Groups and communities at risk of domestic and family violence: a review and evaluation of domestic and family violence prevention and early intervention services focusing on at-risk groups and communities*. 2014, Australian Institute of Family Studies.
- 12 M Campo, R Kaspiw, S Moore, S Tayton, (2014) *Children affected by domestic and family violence: A review of domestic and family violence prevention, early intervention and response services*, 2014, Australian Institute of Family Studies.
- 13 M Carmody, M Salter & GH Presterudstuen (2014). *Less to lose and more to gain? Men and Boys Violence Prevention Research Project Final Report*, 2014, University of Western Sydney.
- 14 This Inquiry is now due to report by 18 June 2015. Senate Standing Committee on Finance and Public Administration, Inquiry into Domestic Violence in Australia. http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Domestic_Violence.
- 15 M Gordon, 'Rosie Batty to back summit call on violence against women', *The Age*, 4 March 2015. At <http://www.theage.com.au/federal-politics/political/news/rosie-batty-to-back-summit-call-on-violence-against-women-20150303-13u18s.html>.
- 16 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland*. 2015. At <http://www.qld.gov.au/community/getting-support-health-social-issue/dfv-read-report-recommendation/index.html>.
- 17 M Johnston, 'Daniel Andrews sworn in as Victoria's new Premier', *Herald-Sun*, 4 December 2014. <http://www.heraldsun.com.au/news/victoria-state-election-2014/daniel-andrews-sworn-in-as-victorias-new-premier/story-fnocxssc-1227144476447?nk=183e6131e6a88b69debc131c0b7d41fd>.
- 18 'Premier announces Royal Commission into Family Violence', at <http://www.premier.vic.gov.au/premier-announces-royal-commission-into-family-violence>. The Commission's Terms of Reference were announced on 20 January 2015 and it commenced formal operation on 22 February 2015. It is due to report by 29 February 2016. At <http://www.rcfv.com.au/>.
- 19 The Guardian, 'Luke Batty's father displayed 'red flags' before murder, inquest hears'. At http://www.theguardian.com/australia-news/2014/dec/05/luke-battys-father-displayed-red-flags-before-inquest-hears?CMP=share_btn_tv.
- 20 Australian Law Reform Commission and New South Wales Law Reform Commission, (ALRC/NSWLRC), *Family Violence – A National Legal Response*, November 2010. At <http://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>.

a site of opportunity and innovation, rather than constraint.²¹ It did not seem useful, therefore, simply to reiterate the findings of this broader work, nor to describe in detail the full span of the justice system's response – itself a very broad area of discussion.

As a research stream at the Australian National Research Organisation for Women's Safety (ANROWS) has now been dedicated to Perpetrator Interventions,²² and national outcome standards for perpetrator interventions are also being developed,²³ the aim of this Report is to support these proposed standards, to identify innovative policy directions, and to suggest areas of focus for further research.

Given that practice shifts quickly in this area, it was important to consult with a wide range of individuals with direct experience in this area. As the CEO of ANROWS has observed, knowledge about family violence is not housed exclusively in one field.²⁴

With the CIJ based in Victoria, numerous face to face consultations were conducted with Victorian stakeholders, both on an individual basis and via a roundtable group discussion in November 2014. Every effort was made to contact a broadly representative reach of stakeholders. Given the demands on a small workforce and the constant activity in this area, however, not all of those contacted were able to make themselves available for direct consultation.

Further afield, the CIJ endeavoured to contact a range of individuals and organisations working around Australia. The CIJ was able to speak to a variety of policy officers, academics, Magistrates, court officers and behaviour change practitioners from the Northern Territory, Tasmania, South Australia, Western Australia, Queensland, New South Wales and the ACT, as well as from New Zealand. Email exchanges were conducted with practitioners and academics in the UK and in the United States. The CIJ is extremely grateful for the time and expertise of all consulted, many of whom have sought reform in this area for decades.

Throughout this Report, practices, policies and observations will be nominated as examples of the themes which the CIJ wishes to highlight. Their selection is illustrative only, as many similar programs or practices may operate in different jurisdictions around Australia, or be in development.

In fact, government responses are constantly evolving. This means that any description of the context in any particular jurisdiction should not be taken as static, with the CIJ not attempting to catalogue every response or capture every promising approach but simply to identify examples of the directions which policy might take. Researched during the last quarter of 2014, written in January 2015, and updated just before going to print in March, this Report is effectively a snapshot of a particular moment in a fast-moving policy environment. The CIJ sees the task of this Report as contributing to this momentum, and prompting further discussion about a relatively under-examined part of a much wider challenge. As with so many areas of policy, of course, a tension exists between the benefits of focusing limited resources on 'what works' and identifying areas for future analysis. It is possible, however, for the two to move forward in tandem.²⁵

21 Fleur Johns, 'The law isn't just a set of constraints – it can also be a site of innovation', *The Guardian*, 16 September 2014. At <http://www.theguardian.com/commentisfree/2014/sep/16/the-law-isn't-just-a-set-of-constraints>.

22 Second Action Plan, Action 21, p 44.

23 Second Action Plan, Action 22, p 44. The CIJ was advised that release was expected in the first half of 2015.

24 Heather Nancarrow, CEO, ANROWS. Conference hosted by Australian Institute of Family Studies, Melbourne, 11 September 2014. At <http://www.aifs.gov.au/institute/seminars/2014/nancarrow/slides.html>.

25 J Guy with L Feinstein & A Griffiths, *Early Intervention in Domestic Violence and Abuse, Full Report*, Early Intervention Foundation, UK, 13 March 2014, p 81. At <http://www.eif.org.uk/publications/early-intervention-in-domestic-violence-and-abuse-full-report/>.

A note on terminology

Family violence

Definitions are important, particularly regarding a subject which has for so long been ignored or misunderstood.²⁶ While definitions of what constitutes family violence have been widened to include the economic, emotional and other forms of abuse which can be as debilitating as physical violence, different jurisdictions and organisations also use a range of terminology to refer to violence against women itself.

This is driven by attempts to capture its predominant manifestation in intimate relationships ('intimate partner violence'); its gendered nature ('men's violence against women'); the reach of its effects beyond intimate partnerships, including its effects on children and within Aboriginal and Torres Strait Islander communities ('family violence'); and the fact that the fear and coercion used is not always physical ('domestic abuse'). Often terms are used interchangeably, as are 'family violence' and 'domestic and family violence' throughout the National Plan.

Emphasis on the value of definitions can shift, with some feminists wary of the term 'domestic violence' because it reinforces the problem as belonging purely to the private sphere,²⁷ while others prefer this term to contrast with a school of thought which has used the language of 'family violence' to frame violence as being perpetrated equally by both genders.²⁸ ANROWS is, in fact, doing further work on developing an agreed definition of violence against women which can be used on a national basis.²⁹

This Report clearly acknowledges the highly gendered nature of its subject. While terminology such as 'domestic violence' and 'abusive behaviour' will be used interchangeably where relevant, however, the predominant term used throughout the Report will be 'family violence'. This is in part for reasons of both breadth and efficiency, and in part to acknowledge the impacts of the violence on other members of a perpetrator's household, in keeping with the Report's emphasis on early intervention in the cycle of violence. Further to this, however, the CIJ sees particular value in keeping the term 'family' at the centre of any analysis in order to remind policy and decision makers that, if they value the family unit as much as their public statements often suggest, the violence occurring within it must be squarely addressed.

Perpetrators

The common term to describe individuals who use violent and controlling behaviour is 'perpetrators'. This term is useful in that it captures *all* those who use violence, rather than just men, as well as reinforcing the criminal nature of the behaviour. Some in the field, particularly those who work with violent men, prefer to use terms such as 'men who use violence' so as not to reduce their clients, many of whom have experienced traumas and difficulties in their lifetimes themselves, to a label. Equally, practitioners wish to draw attention to the behaviour, rather than the individual, and thereby reinforce to their clients that this behaviour is not inevitable.³⁰ Others worry, however, that this description is too benign.³¹

The CIJ considers the term 'perpetrator' useful for reasons of both breadth and consistency with the National Plan, as well as for keeping the criminal nature of the behaviour in the spotlight. For this reason, it will be the predominant term throughout the Report, although other terms relevant to the specific legal context (such as 'respondent', 'defendant' or 'offender'), will also be applied as appropriate.

²⁶ Domestic Violence Resource Centre, *What's in a Name? Definitions and Domestic Violence*, Discussion Paper 1, 1998. At <http://www.dvrcv.org.au/knowledge-centre/our-publications/discussion-papers/whats-name>.

²⁷ Ibid. 'See also *Not Now, Not Ever* p 88.

²⁸ C Atmore, *Men as Victims of Domestic Violence: Some Issues to Consider*, Domestic Violence Resource Centre, Discussion Paper No. 2, 2001.

²⁹ ANROWS, *National Research Agenda to Reduce Violence Against Women and their Children*, May 2014.

³⁰ No to Violence: Male Family Violence Prevention Association. At <http://www.ntv.org.au>.

³¹ B Pease & S Fisher, 'Preventing Men's Violence', *Women Against Violence*, Issue Ten, July 2001, p 51.

This said, one of the messages of this Report is that men who are violent and controlling towards their partners have been largely invisible within the law's intervention. Another is that they are not homogenous, but individuals who require a targeted response. Where possible, therefore, this Report will attempt to use language which writes men back into the analysis.

Victim

Many feminists are wary of the use of the term 'victim' when writing or speaking about gendered violence, because it is perceived to define women by their experience, rather than who they are as individuals. Further, it is seen to deny women's considerable efforts to resist or avoid the violence and to protect themselves and their children. Many writers therefore use the term 'victim/survivors' or 'survivors'.

The CIJ acknowledges the merits of this approach. For the purposes of a Report in which the justice system's response to family violence is being examined, however, the CIJ sees value in maintaining use of the term 'victims' to reinforce that family violence is a wrong to which the justice system has an obligation to respond. Where appropriate and relevant, however, terms such as 'women whose partners have been violent towards them' will also be used, again to start bringing those partners back into view.

Incidence/Prevalence

When grappling with the widespread nature of family violence, the concepts of incidence and prevalence need to be distinguished – prevalence being the rate at which family violence is said to have been experienced as a phenomenon by a representative portion of the population over their lifetimes; and incidence being the number of individual incidents reported to police.³²

Protection orders

Different jurisdictions use different terms to refer to civil orders which are taken out in the context of family violence to prohibit certain behaviour. These include 'Intervention Orders' (IVOs), 'Domestic Violence Orders' (DVOs), and 'Apprehended Violence Orders' (AVOs) to name a few. Where possible, the appropriate term will be applied to the relevant context. Predominantly, however, the term 'protection order' will be used as a generic term to refer to these mechanisms.

Men's Behaviour Change Programs

Programs which provide education and rehabilitation for perpetrators of family violence are referred to in various ways in different jurisdictions. Predominantly referred to as Batterer Intervention Programs ('BIPs') in the US and 'Stopping Violence Programs' in New Zealand, the majority are referred to as Men's Behaviour Change Programs (MBCPs) in the Australian context. This term will be used interchangeably with 'perpetrator programs' throughout this Report. Specific programs which use other titles, such as 'Abuse Prevention Program', will be referred to as such.

³² ABS, *Defining the data challenge for family, domestic and sexual violence*, 2013 cat. No. 4529.0, ABS, Canberra, 2013. Cited in J Phillips and P Vandenbroek, *Domestic, family and sexual violence in Australia: an overview of the issues*. Research Paper Series, 2014-15, Parliamentary Library of Australia, 14 October 2014, p 5.

2. Understanding the Challenge – a Snapshot

Prevalence

Given that family violence still goes largely unreported, despite growing awareness and available support,³³ a solid statistical understanding is difficult to glean. This is compounded by the fact that methods of measurement – and definitions of what is being measured – vary, while incidents reported to police rarely correspond with broader measurements;³⁴ and interviewees or survey respondents do not always recognise their experience as violence.³⁵

However, it is now widely accepted that family violence affects a significant proportion of the Australian population and that, while its reach spreads across all economic, cultural and social demographics,³⁶ it is a profoundly gendered phenomenon. Recent influential Australian studies have shown that:

- Family violence is the most significant contributor to death, disability or illness in women aged 15 - 44.³⁷
- One woman is killed almost every week by a partner or ex-partner.³⁸ Estimates have recently increased to six women a month,³⁹ although it is not yet clear whether this is the result of better identification of deaths which may previously have been recorded as something else.⁴⁰
- The most recent ABS Personal Safety Survey of 2012 indicates that around one in six Australian women has been subjected to physical or sexual violence by a current or former intimate partner since the age of 15 years, compared with 1 in 19 men. One in four women has been subjected to emotional abuse, compared with 1 in 7 men.⁴¹
- Women are most likely to experience violence in their home and by a current or former partner while men are most likely to experience it outside the home, by an acquaintance or neighbour.⁴²
- Internationally, the first systemic international review of the prevalence of violence against women found that gendered violence affected more than one third of all women globally.⁴³

33 Stanley suggests that underreporting is, itself, a consequence of high prevalence – that domestic violence is so normalised that victims, perpetrators and children may not recognise or define their experiences as domestic violence. This constitutes a barrier to its identification and to seeking help. N Stanley, *Research in Practice* (2011) *Children Experiencing Domestic Violence: A Research Review*, London: NSPCC. Cited in EIF Report, above note 25.

34 ABS, *Recorded crimes – victims, Australia*, No. 4510.0, ABS, Canberra, 2011. See also EIF Report, above note 25, p 28.

35 *Landscapes of Violence*, above note 9. See also Australian Bureau of Statistics, *Defining the Data Challenge for Family, Domestic and Family Violence*, 2013. At <http://www.abs.gov.au/ausstats/abs@nsf/mf/4529.0/>.

36 Phillips and Vandenbroek, above note 32.

37 VicHealth, 'Preventing violence against women' <https://www.vichealth.vic.gov.au/our-work/preventing-violence-against-women>.

38 A Chan & J Payne, *Homicide in Australia: 2008-09 to 2009-10 National Homicide Monitoring Report*, Australian Institute of Criminology, Monitoring Report 21. At www.aic.gov.au/media_library/publications/mr/21/mr21.pdf.

39 S Smail, 'Domestic violence: Noeline Beutel's murder leads Queensland authorities to rethink abuse handling' *ABC News*, 27 September 2014. At <http://www.abc.net.au/news/2014-09-26/queensland-mothers-murder-leads-to-domestic-abuse-rethink>.

40 Professor C Humphreys, 'High Risks for Family Violence Interventions', Keynote Presentation to Domestic Violence Resource Centre Forum, 'What Does it Take? Addressing high risk family violence through an integrated response', Melbourne, 11 September 2014. At <http://www.drcv.org.au/knowledge-centre/multimedia/podcast/what-does-it-take-cathy-humphreys>.

41 Australian Bureau of Statistics, 2012 *Personal Safety Survey, Experience of Partner Violence*, at <http://www.abs.gov.au/ausstats/abs@nsf/Lookup/4906.0Chapter7002012>; and *Experience of Emotional Abuse by a Partner*, at <http://www.abs.gov.au/ausstats/abs@nsf/Lookup/4906.0Chapter8002012>.

42 Ibid.

43 World Health Organisation (WHO), London School of Hygiene and Tropical Medicine and South African Medical Research Council, *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence*, WHO, Geneva, 2013.

Costs

The costs of family violence include the demand on police, legal aid, and the court and Corrections systems; lost productivity in the workforce;⁴⁴ as well as demand on the health and social services system.⁴⁵

- In 2009 the National Council to Reduce Violence against Women and their Children estimated that this violence would cost the economy \$15.6 billion by 2021-2022.⁴⁶
- In 2013, KPMG estimated that violence against women and their children cost the Australian economy \$14.7 billion,⁴⁷ suggesting that the Council's estimates are likely to be exceeded.⁴⁸
- As an international comparison, in 2001/2 a study calculated the total single year cost of domestic physical violence in the UK, at 22.9 billion pounds. This study is in the process of being updated.⁴⁹
- Women are directly impacted financially, with family violence widely acknowledged as the biggest contributor to homelessness in women and children,⁵⁰ as well as a significant cause of poverty.⁵¹

Risk

Understanding has also grown about the factors that contribute to a higher level of risk of experiencing family violence. For example:

- Pregnancy and the early parenting years pose a particular risk for the start or escalation of family violence, when a man may feel that his primacy in the relationship has been undermined.⁵²
- Alcohol and substance abuse by perpetrators is widely acknowledged as increasing the frequency and severity of family violence.⁵³ The 'toxic trio' of domestic violence, alcohol and substance abuse and mental ill-health, meanwhile, is also well recognised.⁵⁴

44 The ABS Personal Safety Survey of 2005 found that almost two-thirds of women affected by domestic and family violence in Australia are in some form of paid employment. Australian Bureau of Statistics, *Personal Safety Survey 2005* (Reissue) Catalogue No 4906.0 (2006) At [www.abs.gov.au/AUSSTATS/abs@nsf/DetailsPage/4906.02005%20\(Reissue\)?OpenDocument](http://www.abs.gov.au/AUSSTATS/abs@nsf/DetailsPage/4906.02005%20(Reissue)?OpenDocument).

45 For example, as early as 1992 a US study identified that individuals who had experienced violence or abuse in their lifetimes accessed the healthcare system 2 to 2.5 times as often as those not exposed to abuse. MP Koss & L Heslet, 'Somatic consequences of violence against women', *Archives of Family Medicine* 1992 September 1 (1): 53-9. Cited in T Dolezal, D McCollum, M Callahan, MN Eden Prairie: Academy on Violence and Abuse, *Hidden Costs in Health Care: The Economic Impact of Violence and Abuse*, (2009).

46 National Council to Reduce Violence against Women and their Children, *The Cost of Violence against women and their Children* (2009), p 4. At www.fahcsia.gov.au/our-responsibilities/women/publications-articles/reducing-violence/national-plan-to-reduce-violence-against-women-and-their-children.

47 KPMG, *The Costs of Violence Against Women and their Children*, 2009 and 2013. At https://www.dss.gov.au/sites/default/files/.../vawc_economic_report.pdf.

48 Advocates suggest this cost is partly attributable to the churn on service utilisation. R Kleinman, 'The growing problem of family violence in Victoria', *The Age*, 27 March 2014. At <http://www.smh.com.au/national/the-growing-problem-of-family-violence-in-victoria>.

49 EIF Report, above note 25, p 11.

50 This link is clearly articulated in the National Plan, and in the Australian Government's White Paper on Homelessness. See *The Road Home – The Australian Government White Paper on Homelessness*. Department of Social Services. At <https://www.dss.gov.au/our-responsibilities/housing-support/programs-services/homelessness/the-road-home-the-australian-government-white-paper-on-homelessness-0>.

51 To counter this, women's legal services have started to offer financial, as well as legal advice to women fleeing family violence. Australian Domestic and Family Violence Clearinghouse, *Seeking Security*.

52 The EIF Report, above note 25, p 40, estimates that 30% of domestic and family abuse starts in pregnancy. See also a review of 74 studies which suggest that intimate partner violence is associated with termination of pregnancy as well, and that there may be a repetitive cycle of abuse and pregnancy. M Hall, L Chappell, B L Parnell, P Seed, S Bewley, 'Association between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis'. *PLOS Medicine*, 7 January 2014.

53 Dr R Braaf, *Elephant in the room: responding to alcohol misuse and domestic violence*, Australian Domestic and Family Violence Clearinghouse, Issues Paper 24, July 2012. Co-occurrence of these issues is so common that alcohol or drug treatment agencies have begun to develop specialised responses to family violence within their services. R Nicholas, M White, AM Roche, S Gruenert & N Lee (2012). *Breaking the Silence: Addressing family and domestic violence problems in alcohol and other drug treatment practice* Australia National Centre for Education and Training on Addiction (NCETA). Flinders University, Adelaide, SA.

54 EIF Report, above note 25.

- Problem-gambling is more recently being nominated as a significant contributor to violence,⁵⁵ while an increase in family violence incidents has also been consistently observed in communities experiencing natural disasters.⁵⁶
- Some studies draw links between socio-economic disadvantage and domestic violence, but stress no deterministic correlation.⁵⁷ UK Office for National Statistics figures, however, show similar prevalence in women in professional occupations and women who are long term unemployed, another indication that the perpetration of family violence knows no demographic bounds.⁵⁸
- Despite community perception that women can just choose to leave a violent relationship,⁵⁹ separation is the time at which physical violence can start or escalate, often to lethal effect. Many women choose to stay as the safest option for them and their children.⁶⁰
- The use of family violence by men against women is widely recognised as being predominantly fuelled by a male sense of entitlement and desire for control.⁶¹ Studies confirm that, while many risk factors may be present, a pattern of coercive and controlling behaviour and a sense of entitlement on the part of the perpetrator is a strong indicator of risk that is likely to escalate, as is attempted strangulation, in particular, as well as threats to kill any members of the household.⁶²

Impacts

The impact of family violence on some women in sectors of the community can be particularly acute.

- Women with a disability experience especially high rates of gendered violence; are often dependent upon the perpetrator financially, or for care and assistance;⁶³ and are frequently treated poorly by authorities when reporting the abuse.⁶⁴ Less widely known, disability in women is often the result of family violence.⁶⁵
- Aboriginal and Torres Strait Islander (ATSI) women experience family violence at considerably higher rates than women in the wider community.⁶⁶ For example, in 2009–09, Aboriginal women were 31 times more likely to be hospitalised as a result of family violence than other women.⁶⁷ Many Indigenous women face discrimination when attempting to access services; can be deterred from seeking help where the response

55 'Study unearths hidden link between domestic violence and problem gambling', ABC News, <http://www.abc.net.au/news/2013-09-05/study-unearths-hidden-link-between-domestic/4938062> See also No to Violence, 'What can be done to strengthen accountability for men who perpetrator family and domestic violence?'. *Ending Men's Violence Against Women: The No to Violence Journal*, Spring 2013, p 3.

56 These include the Black Saturday fires in Victoria and earthquakes in Christchurch. M Sety, *Domestic Violence and Natural Disasters*, Australian Domestic and Family Violence Clearinghouse, Thematic Review 3, February 2012. At http://www.adfvc.unsw.edu.au/PDF%20files/Thematic%20Review_3.pdf.

57 EIF Report, above note 25, p 42.

58 Ibid.

59 O Khazan, 'Why They Stayed', *The Atlantic*, 9 September 2014. At http://www.theatlantic.com/health/archive/2014/09/why-they-stayed/379843/?utm_source=nextdraft&utm_medium=email. See also C Zielinski, 'Women share stories of abuse and survival via #whyistayed and #whyileft' *The Age*, 10 September 2014. At <http://www.dailylife.com.au/news-and-views/news-features/women-share-storiesof-abuse-and-survival-via-#whyistayed-and-#whyileft>.

60 Dr D Kirkwood, *Just Say Goodbye: Parents who kill their children in the context of separation*, Domestic Violence Resource Centre, Discussion Paper No. 8, 2012. [http://www.dvrcv.org.au/.../Just%20Say%20Goodbye'%20\(January%202013](http://www.dvrcv.org.au/.../Just%20Say%20Goodbye'%20(January%202013)

61 Evan Stark argues for consideration of a 'liberty crime' of coercive control. E Stark, *Coercive Control: How Men Entrap Women in Personal Life*, Oxford University Press, 2009. As one academic explains, 'men's violence can be seen as a consequence, in part, of men's privilege. Male privilege leads men to believe that they are entitled to receive services from women', Pease, above note 31, p 9.

62 Department of Communities, Child Safety & Disability, *Domestic & Family Violence and its relationship to Child Protection Practice Paper*, October 2012. At www.communities.qld.gov.au/.../prac-paper-domestic-violence.pdf. The Special Taskforce in Queensland recently recommended the creation of a specific offence of strangulation. *Not Now, Not Ever*, above note 16.

63 *Voices Against Violence*, above note 10.

64 Victorian Equal Opportunity & Human Rights Commission, *Beyond Doubt: the experiences of people with disability reporting violence*, 2014.

65 L Olle, *Violence-Induced Disability: The Consequences of Violence Against Women and Children*, Domestic Violence Resource Centre, Discussion Paper No. 5. 2006.

66 Aboriginal Family Violence Prevention & Legal Service Victoria (FVPLS Victoria), *Standing firm for change: A journey to justice*. A summary of key themes and FVPLS Victoria recommendations.

67 Productivity Commission *Overcoming Indigenous Disadvantage: Key Indicators 2011*, Chapter 4.11.

is not culturally safe or appropriate; or are reluctant to involve the law because their community is already overrepresented in the criminal justice system.

- Family violence in ATSI communities is impacted by a range of complex factors, including intergenerational disadvantage; racism; dispossession and the forced removal of children. It therefore manifests in a broad range of ways, including through community abuse and lateral violence, and is not exclusively a gendered phenomenon.⁶⁸ ATSI women emphasise the need for community-based responses which can acknowledge all of these different considerations, including by distinguishing between the factors that contribute to the risk of perpetrating violence and the risk of experiencing it. Many also note that, in comparison with mainstream efforts to bring family violence out of the private sphere, violence in Indigenous communities is already a public matter.⁶⁹
- The impacts of family violence can be especially pronounced for women from culturally and linguistically diverse backgrounds who may find services inaccessible or experience cultural pressure to maintain their relationships.⁷⁰ Women with uncertain immigration status can be at a further disadvantage, the threat of children being removed deterring them from seeking help.⁷¹
- Lack of services, geographical isolation and the tightknit nature of small communities can compound impacts for women in rural and regional areas. Many feel deterred from seeking help by a lack of anonymity, while the availability of guns for use in farming contexts heightens the risk of severe retaliation.⁷² Women with disabilities, from CALD backgrounds or in remote Aboriginal communities may experience additional challenges in regional locations.⁷³
- Other groups at especially high risk - a risk that is not yet fully recognised in the wider community - include young women aged 18-24, older women and members of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer communities.⁷⁴

Shifts, evolution and foundations

While an appreciation of the impacts of family violence which have long existed is important, it is useful to understand that its manifestation can also evolve. For example:

- Improved technology has given perpetrators more sophisticated and numerous ways of enforcing fear and control⁷⁵
- Conversely, technology is also being employed to keep track of the whereabouts of violent men⁷⁶ and to help women seek support.⁷⁷

68 Australian Human Rights Commission, *Social Justice Report 2011, Chapter 2, Lateral violence in Aboriginal and Torres Strait Islander Communities*. At <https://www.humanrights.gov.au/publications/chapter-2-lateral-violence-aboriginal-and-torres-strait-islander-communities-social>.

69 N Bluett-Boyd, *In Search of Justice in Family Violence: Exploring Alternative Justice Responses in the Victorian Indigenous Australian Community*, Victorian Aboriginal Legal Service, September 2005.

70 InTouch Multicultural Centre Against Family Violence, *Barriers to the Justice System faced by CALD women experiencing family violence*, 2010.

71 Consultation with Berry Street Family Services. *Landscapes of Violence*, above note 9, p 53.

72 *Landscapes of Violence*, above note 9.

73 Ibid.

74 The ABS notes that young women experience physical violence at especially high rates. Australian Bureau of Statistics, 'Australia's 18-24 year olds most at risk of violence', Media Release, 11 December 2013. At <http://www.abs.gov.au/ausstats/abs.nsf/Latestproducts/4906.0Media%20Release12012?opendocument&tabname=Summary&prodno=4906.0&issue=2012&num=&view=>. The Special Taskforce on Domestic and Family Violence in Queensland, meanwhile, has called for further research into elder abuse, and for greater communication about domestic violence in LGBTIQ communities to raise awareness and remove stigma around reporting and seeking help. *Not Now, Not Ever*, above note 16, Recommendations 11-13 and Recommendation 14.

75 D Woodlock (2013) *Technology-facilitated Stalking: Findings and Recommendations from the SmartSafe Project*, Domestic Violence Resource Centre Victoria, Collingwood. At <http://smartsafe.org.au>.

76 International evidence about the usefulness of this is mixed, although the Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever*, above note 16, has called for a trial of the use of GPS monitoring for high risk perpetrators. Recommendation 123.

77 K McDonough, 'This incredibly smart domestic violence app could save women's lives', Salon.com, 22 November 2013. At http://www.salon.com/2013/11/21/this_incredibly_smart_domestic_violence_app_could_save_women's_lives See also *Safety Net Australia project*, at <http://www.wesnet.org.au/safetynet/>.

- The Senate Inquiry heard that Queensland's domestic violence hotline is increasingly overwhelmed by calls, 'and calls of an increasingly serious nature at that'.⁷⁸ Anecdotal reports from practitioners also suggest that the severity and variety of physical violence is growing,⁷⁹ while its spread is increasingly reaching beyond intimate partnerships to broader family structures.⁸⁰

ANROWS will be collecting its own data in all of these areas. This task remains vital, especially as debate persists concerning whether women and men experience family violence in equal proportions,⁸¹ an argument which is posited by some groups advocating for fathers in family law disputes which have gained profile in recent years.⁸²

Certainly, men can and do experience family violence. This includes:

- At the hands of female partners⁸³
- At the hands of male partners, a reality often rendered invisible by homophobia and described by some as 'another closet'. Equally hidden is family violence within lesbian relationships⁸⁴
- At the hands of other male relatives,⁸⁵ including adolescent or adult sons, sons-in-law or brothers.⁸⁶ Adolescent violence in the home, especially, is an emerging area of study which will be explored later in this Report, although victims are also most likely to be women.⁸⁷
- At the hands of their own fathers as children.⁸⁸

Acknowledging that some men experience violence at the hands of family members, however, does not detract from the fact that societal norms support and perpetuate violent and discriminatory attitudes towards women, as well as constructions of gender which reward and encourage aggression by men.⁸⁹ It is not only possible but critical, therefore, to maintain a gendered analysis of family violence if we want to understand how to respond.

78 R Brennan, 'Senate Inquiry hears arguments over appropriate force', *The Courier-Mail*, 7 November 2014. At <http://www.couriermail.com.au/news/queensland/domestic-violence-inquiry-hears-arguments-over-appropriate-force/story-fnn8difs-1227115178445>.

79 Telephone consultation with Rosemary O'Malley, Manager, Domestic Violence Prevention Centre, Gold Coast Integrated Domestic Violence Response.

80 Telephone consultation with Bev Reynolds, practitioner Positive Lifestyles Program, Salvation Army, Morwell and consultation with Magistrate Fiona Hayes, Regional Co-ordinating Magistrate, Gippsland, Victorian Magistrates' Court.

81 Sometimes referred to as the 'gender symmetry debate', some argue that women and men commit violence at similar rates within relationships, referring to a form of measurement developed some decades ago known as the 'Conflict Tactics Scale' to calculate the occasions on which violence is used by one partner or another. What this approach ignores, however, is the context in which violence often occurs, as well as its nature. As numerous studies have established, some women do use a form of violence, but mostly in a defensive way, or to retaliate for the violence perpetrated against them. Just as importantly, these studies reveal that men are predominantly the instigators of violence and that the severity of the violence which men use is far more extreme. For a useful and comprehensive discussion, see C Atmore, above note 28.

82 'Antifeminist men's groups: An interview with Dr Michael Flood', Australian Institute of Family Studies, 30 January 2013. At <http://aifs.govspace.gov.au/2013/01/30/antifeminist-mens-groups-an-interview-with-dr-michael-flood>.

83 B Mottram and M Salter (forthcoming) "It's an ethical, moral and professional dilemma I think": Domestic violence workers' understandings of women's use of violence in relationships, *Affilia*.

84 At <http://www.anothercloset.com.au>. See also Same-Sex Abuse, at <http://hr.umich.edu/stopabuse/about/same-sex.html>.

85 Aboriginal and Torres Strait Islander men, in particular, experience different forms of family violence in their communities. Australian Human Rights Commission, above note 68.

86 Atmore, above note 28. Practitioners also note that this is a significant issue. See *Evolution of a men's active referral service, Workshop, No To Violence Conference*, Melbourne, November 2012. At <http://ntv.org.au/conference/wp-content/uploads/2012-ntv-conference-workshop-8g-evolution-of-an-active-referral-service-doc.pdf>.

87 J Howard & L Abbott, *The Last Resort: Pathways to Justice, Adolescent Violence in the Home* 2013, Peninsula Health, Melbourne. Digital Repographics.

88 Ibid.

89 Flood, above note 2. Practitioners also note that gendered attitudes and assumptions, as well as exposure to family violence in general, can influence the development of aggression in girls. Dr D Swift, The Girl's Project, *He Said, She Did: the patriarchy behind violence in adolescent girls*, No to Violence Conference, 2012.

3. Ambitions and Limitations of the Current Response

There are many aspects to the community's response to family violence, the most significant and longstanding being the establishment and ongoing provision of women's support services.⁹⁰ For the purposes of this Report, however, the following is a brief snapshot of the legal system's response.

Far from just one of a range of matters to which a local or Magistrates' court must attend, family violence is core business for most Australian courts at this level.⁹¹ Superior courts deal with family violence as well, although trials may concern charges of various levels of assault or grievous bodily harm, for example, and therefore not specify family violence on the record.⁹²

Despite the frequency with which Australian courts address family violence matters, however, they are often ill equipped to do so. The adversarial nature of the court system – whether in the civil or criminal sphere, or in the area of family law – has frequently been nominated by women as a platform for further abuse.⁹³ Although beyond the scope of this Report, commentators note, for example, the conflicting imperatives between the emphasis in the child protection system on separation as the safest outcome for children; and the general emphasis in the family law system on continuing parental/child contact post-separation, a time when, rather than ending, family violence is often very likely to escalate.⁹⁴

Meanwhile the detached nature of the law and the way in which it deals with the parties before it can contribute to or exacerbate the dynamic of the violence. Many of these overriding concerns will be explored in the various systems-wide analyses flagged for release in 2015. Broadly, however, some ongoing concerns regarding the current response are listed below.

Civil justice response

While jurisdictions in the US have prioritised a criminal justice response since the 1990s,⁹⁵ as have Canada and Scotland more recently, other European states, such as Austria, have emphasised a civil route, combining protection orders with the eviction of offenders from the family home.⁹⁶ This approach has been widely lauded, providing immediate safety and access to support for victims.⁹⁷ The majority of Australian states also initially emphasised the use of civil protection orders, in part as a more accessible and immediate mechanism for family members⁹⁸

90 J Theobald, 'Collaboration, Confrontation and Compromise: A History of the Victorian Domestic Violence Services Movement' (2012) 1 *DVRCV Quarterly*, 9-12, 9. Cited in *Landscapes of Violence*, above note 9.

91 A Day, T Richardson, E Bowen & J Bernardi, 'Intimate partner violence in prisoners: Toward effective assessment and intervention', *Aggression and Violent Behaviour* 19 (2014) 579-583.

92 See, for example, P Johnston, 'Calls for tougher family violence sentences by Victoria's highest court, Court of Appeal', 4 December 2014, *ABC News*. At <http://www.abc.net.au/news/2014-12-04/tougher-family-violence-sentences-called-for-by-court-of-appeal/5944954>.

93 Cited in *Landscapes of Violence*, above note 9, p 36.

94 Recent legislative change has reduced this emphasis, see *Family Law Legislation Amendment (Family Violence and Other Measures) Act* 2011. Where these imperatives continue to clash, however, the family law system often expects a mother to facilitate contact between her children and her former partner, despite this meaning that she risks being accused of 'failure to protect' by the child protection system. E Fish, M McKenzie & H MacDonald, *Bad Mothers and Invisible Fathers: Parenting in the Context of Family Violence*, Discussion Paper No. 7, Domestic Violence Resource Centre, 2009. See also Prof C Humphreys, *Domestic Violence and Child Protection: Challenging Directions for Practice*, Australian Domestic & Family Violence Clearinghouse, Issues Paper 13. At http://www.adfvc.unsw.edu.au/RTF%20Files/Issues_Paper_13.rtf

95 *Violence Against Women Act*, 1994. United States Congress. At www.house.gov/legcoun/Comps/DOMVIOL.PDF

96 R Lagar, *The Austrian Model of Intervention in Domestic Violence Cases*, UN Division for the Advancement of Women pp 10-11 <http://www.un.org/womenwatch/daw/egm/vaw-gp-2005/docs/experts/logar.dv.pdf>.

97 Ibid.

98 The Neighbourhood Justice Centre in metropolitan Melbourne notes that victims often come straight from the Emergency Department seeking an intervention order. Consultation with Cameron Wallace and Michelle Stevens, Neighbourhood Justice Centre.

and to avoid the difficulties associated with prosecution.⁹⁹

As awareness of family violence and expanded definitions has grown, so too have applications for these orders, with a recent comparison revealing that, in 2012-2013, 33,879 had been issued in Victoria; 23,794 in Queensland; 22,363 orders in NSW; and 5,191 in Western Australia.¹⁰⁰

Further to this, the use of what are generally known as 'safety orders' - being short-term equivalents to protection orders which are issued by police without requiring attendance at court - is an increasingly used practice around Australia, as are standard intervention orders initiated by police.¹⁰¹ In Victoria, in fact, over 70% of applications are now made by police.¹⁰² These police initiated orders are nominated as a very useful mechanism - not only removing the burden from women of applying for intervention orders in the immediate aftermath of a crisis, but the blame of doing so as well.

Failures to comply with these orders, however, are not always pursued by police, statistics from various jurisdictions suggesting that at least a third are breached.¹⁰³ Where breaches occur, a common concern is that women are left to seek and repeatedly follow up assistance while warrants are left outstanding.¹⁰⁴ Many jurisdictions are attempting to address some of these concerns through various legislative means. Western Australia, for example, has developed a 'three strikes and you're in' approach to breaches of protection orders.¹⁰⁵

Some additional criticisms of the current civil response include that:

- Protection orders issued or initiated by police are usually confined to standard conditions, which do not allow for the circumstances of the parties to be taken into account and therefore leave open greater potential for breaches - inadvertent or otherwise - or for victims to be forced to apply for further conditions.¹⁰⁶
- Matters are often dealt with perfunctorily once they reach court, with circumstances not examined sufficiently to ensure what orders or terms are appropriate. For example, one relatively recent examination suggested that Victorian Magistrates spent an average of 3 minutes on each application, which may have reduced given the increase in volume of late.¹⁰⁷

99 Commentators describe intervention orders as a particularly Australian response. K Wilcox, *Recent innovations in Australian Protection Order Law: A comparative discussion*, Australian Domestic & Family Violence Clearinghouse, Topic Paper, 2010. At http://www.adfvc.unsw.edu.au/PDF%20files/Topic_Paper_19.pdf.

100 See <https://theconversation.com/infographic-a-snapshot-of-domestic-violence-in-australia-300>.

101 In Victoria the period of these Safety Notices has been extended while the Law Reform Commission of Western Australia has recently emphasised the value of an application being brought to court as quickly as possible after issue by police. Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report*, Chapter Three, p 83, 2014. As this Report went to print, the WA Government announced a new form of restraining order which is described as reducing the onus on victims to produce evidence of intimidating or controlling behavior. This may lead to a further increase in the number of applications. 'New family violence restraining order set to be introduced by WA Government', ABC News, 8 March 2015. At <http://www.abc.net.au/news/2015-03-08/wa-introduces-new-restraining-order-for-family-violence-victims/6289230>.

102 Consultation with Detective Superintendent Rod Jouning and Clare Waterman, Manager, Policy and Projects, Sexual and Family Violence Division, Victoria Police. A 2010 evaluation of the Family Violence Safety Notice scheme noted that it takes less time for police to issue an FVSN than an application and warrant. *Final Report to Victoria Police*, FVSN Evaluation Steering Committee, 2010. At <http://www.parliament.nsw.gov.au/VicPol%20violence%20evaluation>.

103 R Spooner & C Butt, 'System struggles as domestic violence orders, breaches, hit record high'. *The Age*, 28 November 2013, at <http://www.theage.com.au/victoria/system-struggles-as-domestic-violence-orders-breaches-hit-record-high-20131127-2yag7.html> and Curtin University, Communicare and Department for Child Protection and Family Support, *Breaching Safety: Improving the effectiveness of violence restraining orders for victims of family and domestic violence*. At <http://ntv.org.au/wp-content/uploads/2014-Breaching-Safety-Final-Report.pdf>.

104 Consultation with Rosie Batty, Family Violence prevention advocate. See also A Cooper, 'Luke Batty's mother Rosie urges overhaul to prevent children's deaths', *The Age*, 28 August 2014. At <http://www.theage.com.au/victoria/luke-battys-mother-rosie-urges-overhaul-to-prevent-childrens-deaths>.

105 The Law Reform Commission of WA notes concerns that these reforms have not been effective. LRCWA, above, note 101, p 115. Meanwhile, the former Victorian government proposed severe custodial penalties of four years for breaches of intervention orders and a system of 'naming and shaming' offenders. This was condemned as counterproductive, however, by most in the state's family violence sector, who pointed to the criminogenic nature of custody itself, given the lack of rehabilitation and other treatment programs offered to offenders while in prison, as well as the impact that imprisonment has on the wider family. C Atmore, 'Family violence needs smart justice, not law and order' Community Law Blog, Federation of Community Legal Centres, 20 November 2014. At <https://communitylawblog.wordpress.com/2014/11/24/family-violence-needs-smart-justice-not-law-and-order/>.

106 Legal Affairs and Community Safety Committee, *Inquiry on Strategies to prevent and reduce criminal activity in Queensland*, Report No. 82, Queensland Parliament, November 2014, p 156.

107 R Hunter, *Domestic violence law reform and women's experience in court: the implementation of feminist reforms in civil proceedings*, Cambria Press, 2008.

- Respondents do not always understand the legal basis of the order, or the terms with which they are expected to comply. A recent WA study found that many respondents questioned the validity of the court's role, not understanding its power to issue an order despite the fact that the police had not laid charges. Some believed that 'anybody could get one of those' and felt that the orders were 'just a piece of paper', while others inadvertently breached the order repeatedly simply because they did not understand its terms.¹⁰⁸ The latter was also nominated by practitioners in the Northern Territory as a particular problem for perpetrators in remote communities, to the extent that courts often preferred to impose limited conditions.¹⁰⁹ More bluntly, professionals noted women's frequent question 'how is a piece of paper going to stop a gun?'¹¹⁰
- Respondents attending the first hearing of an application who have not received any sort of legal advice or information are often too angry about the application being brought to engage with the conditions of the order or the basis on which it is being made.¹¹¹
- Respondents who do not attend court at all are even less likely to understand or engage with the terms of an order, making subsequent applications for variations and revocations more likely.¹¹² Despite this, legislation passed in Victoria in 2014 provided for orders to be 'self-executing' in certain circumstances, and to become final where applications for revocation or variation are not made.¹¹³
- Reports note an increase in the number of 'mutual orders/cross-applications' for intervention orders. Cross-applications or concurrent arrests have significant implications for women in terms of their capacity to access services when classed as a perpetrator,¹¹⁴ or their ability to report breaches. With both parties at risk of prosecution where an order has been breached, this prevents women from alerting police, reducing opportunities for intervention and increasing vulnerability to escalation and serious criminal assaults.¹¹⁵
- Practitioners report that, of those women who come before the courts as respondents to protection orders, many are victims of family violence as well - either at the time or in the past.¹¹⁶
- Just as failures to pursue breaches of intervention orders remain a common concern, conversely, some jurisdictions report that police often rely too heavily on this response – charging perpetrators for breaches (being administrative offences), which usually attract a lesser sentence, rather than criminal assault.¹¹⁷ This in turn communicates to a victim that 'when he hits her it is a breach of a domestic violence order, it is not assault.'¹¹⁸ This is a similar criticism of the Austrian response, in which eviction and protection orders are swiftly imposed, but a strong criminal response is the 'missing piece of the puzzle'.¹¹⁹

108 Breaches, even inadvertent, can increase victims' levels of fear and undermine their confidence in the justice system.

Where they are required to report breaches, which are then not followed up, this confidence is further undermined, while perpetrators feel vindicated, either that their behaviour is justified, or simply that they are above the law. *Breaching Safety*, above note 107. A repeat offender who had been jailed five previous times for a total of 16 violent offenders and appeared previously in the County or Magistrates' Court on multiple occasions for threats to kill and breaching intervention orders, was told by a Victorian County Court that family violence intervention orders were 'but pieces of paper to you'. The man was jailed for 10 years. S Butcher, 'Repeat domestic violence offender jailed for 10 years', *The Age*, 27 October 2014. At <http://www.theage.com.au/victoria/repeat-domestic-violence-offender-jailed-for-10-years>.

109 Telephone consultation with Maree Corbo, Program Manager, Men's Family Violence Prevention Centre, Tangentyre Council, Alice Springs.

110 Consultation with Family Violence Prevention & Legal Service (Victoria) consultation.

111 Consultation with Magistrate Fiona Hayes, Regional Co-ordinating Magistrate, Gippsland, Magistrates' Court of Victoria.

112 Ibid.

113 *Family Violence Protection Amendment Act 2014* (Vic), ss 56A-56C. See also J Lee & N Bucci, 'Plan sparks alarm on family violence', *The Age*, 20 September 2013.

114 *Landscapes of Violence*, above note 9, p 100.

115 The Federal Senate Inquiry heard of an example in which a man had a protection order taken out against his partner using evidence that she bit him under the arm – an injury which is likely to have been caused by the man having the woman in a headlock. Federal Inquiry, *Transcript of Proceedings (Hansard) Public Hearing, LACSC, Toowoomba*, 31 July 2014, p 20.

116 Consultation with Bev Reynolds, Program Manager, Positive Lifestyles Program, Salvation Army, December 2014.

117 Queensland Inquiry, above note 106, p 165.

118 Ibid.

119 R Lagar, above note 96.

Criminal justice response

Despite their initial emphasis on a civil response, most Australian jurisdictions now describe their policy as ‘pro-arrest, pro-prosecution’, an approach which is intended to encourage once reluctant police not only to make arrests but to gather evidence, as well as to overcome the challenge of victims recanting complaints or refusing to testify. This approach has been credited as reducing reported incidents in Tasmania,¹²⁰ and is used in most provinces in Canada and states in the US.

Arresting and charging a woman’s violent partner and then initiating prosecutions can have significant impacts in and of itself. For example, it may sufficiently meet the victim’s immediate needs in terms of relocation, as well as meaning that she is ‘more likely to participate if [she has] received a supportive early response from police and knows that solid evidence has already been collected.’¹²¹ What’s more, it may drive home to her violent or abusive partner that he has finally crossed a line,¹²² particularly where he has had no previous contact with the criminal justice system,¹²³ although conversely arrest is noted to increase recidivism in some of the most high risk offenders.¹²⁴

Arguably, a pro-arrest, pro-prosecution policy simply requires authorities to do their job as they would in other areas. Certainly, some ambivalence exists about whether this approach is intended to encourage or *compel* arrest and prosecution,¹²⁵ with studies suggesting that maintaining a discretion for authorities is viewed as the most effective approach.¹²⁶ Equally important to remember, a pro-arrest approach is only as strong as the response it meets in the courts.

A number of states have legislated so that offences committed in the context of a family relationship attract a greater sentence.¹²⁷ A limited number of specific family violence offences have been enacted,¹²⁸ an approach that is being considered in the UK¹²⁹ and which has long been a feature of many US states. The Northern Territory requires mandatory reporting from all professionals.¹³⁰

Beyond the immediate realm of police, ‘no-drop’ policies in Canada, the US and the Northern Territory require that prosecutions for domestic and family violence offences are continued regardless of whether victims retract their statements;¹³¹ while case fast-tracking policies are increasingly being implemented.¹³²

120 K Wilcox, ‘Final newsletter’, Australian Domestic & Family Violence Clearinghouse, December 2013. It is not clear, however, whether some victims have been deterred from reporting because of this approach.

121 Queensland Inquiry, above note 106 p 159, citing Crown and Hodgson in H Douglas and T Stark, *Stories from Survivors: Domestic Violence and Criminal Justice Interventions*, TC Beirne School of Law, University of Queensland, 2010, pp 59-60.

122 J Smith, ‘Consequences for men who use violence? Perspectives of men attending men’s behaviour change programs and women from partner/ex-partner contact programs’, PhD research, <http://ntv.org.au/conference/wp-content/uploads/2012-ntv-conference-workshop-1j.pdf>.

123 Dr M Salter, ‘Managing Recidivism Amongst High Risk Violent Men’, Australian Domestic & Family Violence Clearinghouse, Issues Paper No. 23, January 2012. At http://www.adfvc.unsw.edu.au/PDF%20files/IssuesPaper_23.pdf. See also Day et al, above note 93 and A Day and E Bowen, ‘Offending competency and coercive control in intimate partner violence’, *Aggression & Violent Behaviour*, Vol 20, pp 62-71 (provided to the CIJ by first author).

124 Salter, above note 123.

125 L Tutty, K Wyllie, P Abbott, J Mackenzie, EJ Ursel J Koshan, *The Justice Response to Domestic Violence: A Literature Review*, November 2008.

126 Ibid.

127 LRCWA, above, note 101.

128 ALRC/NSWLRC above note 23 and LRCWA, above note 101.

129 ‘David Cameron vows to consider creating new domestic violence offence’, *The Guardian*, 22 July 2014. At <http://www.theguardian.com/society/2014/jul/25/david-cameron-consider-new-domestic-violence-offence>.

130 K Wilcox, above note 120.

131 Queensland Inquiry, above note 106, p 160.

132 For example a pilot is being trialed in one headquarter court in Melbourne. Magistrates’ Court of Victoria, <http://www.magistratescourt.vic.gov.au/news/family-violence-initiatives-2015-2017>.

Some criticisms of the current criminal response, however, include that:

- Reports describe the concurrent arrest of both parties as a by-product of a pro-arrest, pro-prosecution policy with police feeling compelled to make an arrest but being unable to determine which party is the ‘primary aggressor’.¹³³ Where the woman has retaliated against violence by her partner, arrest of both parties only vindicates his story that they are both at fault, or that she ‘provoked’ him.
- As a result of this increased risk, as well as the fact that many victims do not want to see their violent partner arrested, but simply for the violence to stop, pro-arrest, pro-prosecution policies may in fact deter victims from seeking help – decreasing, rather than increasing reporting.¹³⁴
- Once before a court, adjournments, delays, waiting areas which compel proximity between the parties and an evidentiary burden which is exceedingly difficult to sheet home to a pattern of behaviour – these and other factors may deter women from turning to the legal system for help, or from acting as witness to a prosecution.¹³⁵
- Of equal concern are sentences imposed upon a perpetrator, if convicted, which are not seen to reflect the gravity of the crime. For example, the CIJ was contacted by one woman who, having repeatedly pursued a response to her former partner’s multiple breaches of an intervention order, was extremely distressed and frustrated when he received only a fine as punishment, an amount that was a small percentage of his annual income. By contrast, the violence still had an ongoing effect on the wellbeing of this woman and her children.¹³⁶ A similar concern about the use of fines, as well as comparatively short custodial sentences, was echoed throughout the CIJ’s consultations.

Courts and jurisdictions are well aware of all these criticisms and are working hard to address them.¹³⁷ Specialist courts, discussed later in this Report, are part of these efforts. As one Magistrate remarked in consultations, ‘we want women to come to court, there needs to be a visible justice response, but it also has to be a safe one’.¹³⁸

While the focus remains on reacting to a series of perpetual crises, however, rather than embracing opportunities to be more proactive, this task will remain insurmountable. The following chapters make a case for smarter, more nuanced and early interventions which can be added to complement this response - to increase the likelihood that civil and criminal justice approaches alike will be more effective and to prevent those who use family violence from remaining invisible.

¹³³ L Tutty et al, above note 125.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Personal email communication to the CIJ from Marni Allan, protection order applicant, September 2014 (permission obtained to reproduce). Australian and US statistics indicate that fines have conventionally been the most common sentence imposed, confirmed by the Victorian Sentencing Advisory Council Report, *Sentencing Practices for Breach of Family Violence Intervention Orders*, Final Report 2009. At <http://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Sentencing%20Violence%20Intervention%20Orders%20Final%Report.pdf>. However, more recent work by the Sentencing Advisory Council indicates that this practice is changing. Sentencing Advisory Council, *Family Violence Intervention Orders and Safety Notices: Sentencing for Contravention, Monitoring Report*, 2013. At <http://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Family%20Intervention%20Orders%20and%20Safety%20Notices.pdf>.

¹³⁷ For example, the Victorian Magistrates Court is expanding dedicated services to all headquarter courts, increasing the availability of safe waiting areas, staging a video conferencing pilot, offering a 2 day specialist course to all Magistrates regarding the dynamics of family violence, and trialing a fast-tracking procedure for domestic violence offences, including breaches, to be brought within a set timeframe. Magistrates’ Court of Victoria, *Family Violence Initiatives*, 2015-2017.

¹³⁸ Consultation with Magistrate Felicity Broughton, Co-ordinating Magistrate, Family Violence Divisions, Magistrates’ Court of Victoria.

Chapter One: The Importance of Early Intervention

1.1 Introduction

Evidence is growing about the value of early intervention strategies in preventing disadvantage and any consequent anti-social behaviour.¹³⁹ In the UK, in particular, an Early Intervention Foundation ('the EIF') has recently been established following comprehensive reviews which called for a reversal of a 'late intervention culture ...by building out the costs of failure...' ¹⁴⁰ The EIF has released a number of resources to increase understanding of how early intervention strategies might be applied.¹⁴¹

One of the EIF's first major reports concerned early intervention in what is defined in the UK as domestic violence and abuse.¹⁴² Understandably, the Report focused on measures which prevent the cycle of violence from starting (universal services, or primary prevention)¹⁴³ and which target groups at particular risk (early or secondary intervention). The Report emphasised that domestic violence and abuse has powerful but still often neglected intergenerational impacts and costs which need to be addressed.¹⁴⁴

Certainly, it is important to acknowledge the efforts being invested in Australia into these primary and secondary intervention categories. As advocated by the World Health Organisation, ¹⁴⁵ governments have recognised the imperative of averting the development of attitudes which support violence. Organisations such as VicHealth have helped to lead this charge,¹⁴⁶ although a recent study found that, overall, this field was still in the preliminary stages of development in Australia.¹⁴⁷ In particular, concurrent studies found significant gaps in initiatives for at-risk groups and communities,¹⁴⁸ as well as for younger children.¹⁴⁹

Broadly, however, a significant focus of this approach is to involve men in effecting change,¹⁵⁰ with the White Ribbon Foundation, for example, encouraging men to speak up about gendered

139 See Victorian Government, *Supporting parents, supporting children: A Victorian early parenting strategy: For early parenting services providing specialist support to vulnerable children and families from pregnancy to pre-school, 2010 – Stage 1: Building the foundation for change* (2010);

140 *Smart Investment, Massive Savings*, Early Intervention Foundation, UK, <http://www.eif.org.uk>.

141 This includes factsheets on how organisations might calculate the social cost-benefit ratio of their work. *Making an Early Intervention Business Case: Evidence and resources*. At <http://www.eif.org.uk/publications/>.

142 EIF Report, above note 25.

143 This Report drew on a comprehensive review and guidance developed by the National Institute for Health and Care Excellence ('NICE'), to support practitioners working in health and social care. National Institute for Health and Care Excellence, Guideline PH50, February 2014.

144 EIF Report, above note 25, p 11.

145 World Health Organisation, *World Report on Violence and Health approaches; and Preventing Intimate Partner and Sexual Violence Against Women* (2010).

146 VicHealth, *Preventing Violence Before It Occurs* At <https://www.vichealth.vic.gov.au/programs-and-projects/vichealth-framework-for-preventing-violence-against-women>.

147 The study found a 'clustering of activity in Victoria and NSW, with some also occurring in Queensland'. S Tayton et al, above note 11.

148 Ibid.

149 M Campo, et al, above note 12.

150 D Flynn, (2011). 'Involving men in efforts to end violence against women', *Men and Masculinities* 14(3, 358-377). R Vlais, 'Men's Violence against women is a choice...by all men, everywhere', *The Guardian*. At <http://www.theguardian.com/commentisfree/2014/sep/18/mens-violence-against-women-is-a-choice-by-all-men-everywhere>.

violence – including, importantly, in the workforce.¹⁵¹ More recently, the national foundation, *Our Watch*, has launched a campaign using high profile Australians to promote the message that family violence is unacceptable, and to combat discriminatory views.¹⁵² This task is likely to be considerable if views reported in a recent *VicHealth* survey are indicative, with an alarming number of respondents asserting that women were partially responsible for rape if they were drunk, and 80% agreeing that they couldn't understand why women stayed in violent relationships.¹⁵³

Some of these attitudes are perpetually reinforced in quarters of popular culture, with social media simultaneously revealing an opposition to gender-based violence, as well as quite frightening levels of misogyny.¹⁵⁴ As one practitioner told the CIJ, for example, a man may reduce the risk he presents during participation in a treatment program, but violent attitudes about women are reinforced in many of his daily interactions 'as soon as he walks out the door'.¹⁵⁵

Accordingly, a wide variety of programs attempt to engage the general community in speaking up about gendered violence¹⁵⁶ and developing respectful relationships between men and women. These include:

- 'Bystander' approaches, which encourage others, particularly men, to see that, although they may not use violence themselves, they have a responsibility to challenge its use by others.¹⁵⁷ Locally run examples include the Mentors and Violence program run in Queensland and based on Jackson Katz's programs in the US¹⁵⁸ and, just as importantly, a program which attempts to harness the influence of Aboriginal women as mentors in their community.¹⁵⁹

151 White Ribbon (2014) *Workplaces driving change*. At <http://www.whiteribbon.org.au/workplaces>. Meanwhile, former Victorian Chief Commissioner of Police, Ken Lay, has noted the ongoing lack of leadership from high profile men and the need for visible spokesmen on this issue. Ellen Whinnett, 'Chief Commissioner Ken Lay says more men need to stand up against domestic violence', *Herald Sun*, 22 July 2013. At <http://www.heraldsun.com.au/news/law-order/chief-commissioner-ken-lay-says-more-men-need-to-stand-up-against-domestic-violence>.

152 'Not on our watch' campaign, Our Watch Foundation. At <http://www.ourwatch.org.au/>.

153 VicHealth, *National community attitudes towards violence against women survey*, 6 September 2014. At <https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes-towards-violence-against-women-survey> A male volunteer who assisted with conducting the survey reported encountering considerable defensiveness, and deeply entrenched attitudes from a range of respondents, including educated, middle-class men who thought they were right simply because of how they were valued in society. 'I spoke to hundreds of men about rape and domestic violence', as told to Clementine Ford, *Daily Life*, 24 September 2014. At <http://www.dailylife.com.au/news-and-views/news-features/i-spoke-to-hundreds-of-men-about-rape-and-domestic-violence>.

154 C Ford, 'What Christy Mack's assault teaches us about modern misogyny', 14 August 2014. At <http://www.dailylife.com.au/news-and-views/dl-opinion/what-christy-macks-assault-teaches-us-about-modern-misogyny-20140813-3dmi1.html>.

155 Telephone consultation with Susan Gebhardt, Manager, Men's Behaviour Change Program, Baptcare, NSW.

156 Australian Human Rights Commission, *Be a supportive bystander: Violence, Harassment and Bullying Fact Sheet*. At <https://www.humanrights.gov.au/what-you-can-do-stop-bullies-be-supportive-bystander-violence-harassment-and-bullying-fact-sheet>.

157 Cheetham 2002 (in Pease, above note 31, p 4), has established that the majority of non-violent men do not challenge other men who are violent. The CIJ heard that men are often more likely to engage with this responsibility where they have daughters and can relate to this systemic wrong on a personal level. Consultation with Scott Holmes, YMCA. It should be noted that some scholars take issue with the term 'bystander', as it implies complete detachment from gender norms, attitudes and inequality which are perpetually reinforced by society at large. See Dr Anastasia Powell, 'Bystander approaches: Responding to and preventing men's sexual violence against women', *Australian Centre for the Study of Sexual Assault Issues*, No. 17, 2014, p 4.

158 Cited in Queensland Inquiry, above note 106, p 138.

159 K Cripps & M Davis, 'Communities working to reduce Indigenous family violence', Brief 12, June 2012, Indigenous Justice Clearinghouse. At <http://www.indigenousjustice.gov.au>.

- Programs in schools, such as the Safe Dates program in the US, which is one of a minority of primary prevention programs that has undergone rigorous evaluation and been shown to reduce physical and sexual dating violence at a four year follow up.¹⁶⁰ The SUPA Kids and Love BITES programs in Australia¹⁶¹ are reported to have contributed to a significant reduction in both relationship violence and in bullying.¹⁶²
- At a local government level, the town of Maryborough in regional Victoria initiated its own independent campaign to promote positive relationships, particularly amongst secondary school students, and increase understanding of appropriate behaviour.¹⁶³
- Perhaps the best example of community based prevention initiatives, of course, are those developed by Aboriginal and Torres Strait Islander communities. While the high prevalence of family violence in many communities means that these programs straddle the primary and secondary intervention spheres, their effectiveness stems from community ownership and from the fact that they are designed to respond and appeal to a specific context.¹⁶⁴
- Other important initiatives include programs designed to increase awareness and engagement in CALD communities.¹⁶⁵

Further to these broader prevention initiatives are measures which target specific groups or leverage the value of particular settings, with health contexts widely acknowledged as useful opportunities.¹⁶⁶

- The Family Violence Prevention Legal Service (Vic)'s *Sisters Day Out* program is a highly regarded example, offering 'wellbeing' services while providing support and legal information on site, without participants having been seen to have overtly sought out assistance.¹⁶⁷
- An initiative offering legal advice at the Royal Women's Hospital in Melbourne has also proved successful in identifying women who have no other opportunity to disclose violence other than appointments associated with their pregnancy.¹⁶⁸

160 EIF report, above note 25, p 13.

161 At <http://lovegoodbadugly.com/category/love-control/>.

162 Queensland Inquiry, above note 106, p 139.

163 'Maryborough takes on domestic violence through special programs', *The Age*, 8 June 2014. At <http://www.theage.com.au/victoria/maryborough-takes-on-domestic-violence-through-special-programs-20140607-39q14.html#ixzz39f80b82b>. The Generating Equality and Respect program involves a partnership between local council and health services which aims to build communities, cultures and organisations which are gender equitable and promote equal and respectful relationships between men and women. City of Monash, Generating Equality and Respect. At <http://www.monash.vic.gov.au/community/equality-respect.htm>. The StoryTelling & Organising Project, or STOP, in the Bay Area of California involves the collection and sharing of stories of everyday people who have found ways to end violence, including people who have experienced and perpetrated violence, and practitioners working in the field. The stories are compiled as an online resource for communities to use. Lauren Caulfield, 'Community-based action to reduce violence', Domestic Violence Resource Centre Victoria, 16 July 2014. At <http://www.dvrcv.org.au/knowledge-centre/our-blog/community-based-action-reduce-violence>.

164 The Victorian *Indigenous Family Violence Primary Prevention Frameworks* sets out a very clear approach across all aspects of community life. Department of Human Services, 2012. See also *Strong Cultures, Strong Peoples, Strong Families: towards a safer future for Indigenous families and communities* (Second Edition) Aboriginal Affairs Victoria 2008, Victorian Government, Melbourne. and the Strong Aboriginal Men program discussed in M Carmody et al, above note 13. See also M Salter & G Presterudstuen, (2015) 'Resolving the prevention paradox: The role of communities and organisations in the primary prevention of violence against women', presented to the Inaugural Asia-Pacific Conference on Gendered Violence and Violations, University of New South Wales, February.

165 InTouch Multicultural Centre Against Family Violence, *Vietnamese Men's Family Violence Program: Evaluation Report*, Melbourne 2011.

166 Some studies suggest that the act of disclosure itself is a protective factor, although it does not necessarily lead to referral. EIF Report, above note 25, pp 77-79.

167 FVPLS Victoria, *Sisters Day Out: wellbeing workshops for Aboriginal women*. 2014. At <http://www.fvpls.org>

168 Bec Zajac, 'Royal Women's Hospital service offering legal advice to domestic violence victims could expand', *The Age*, 28 September 2014. At <http://www.theage.com.au/victoria/royal-womens-hospital-services-offering-legal-advice-to-domestic-violence-victims-could-expand>.

- The Family Nurse Visiting Program in the US and UK, which supports young mothers with weekly visits during pregnancy followed by fortnightly visits for two years following birth, has recently been adapted specifically to target the prevention of domestic violence.¹⁶⁹

This convergence of health and legal services is increasingly valued as an essential part of primary prevention efforts,¹⁷⁰ while recognition is also growing of how legal and other needs can cluster and compound one another.¹⁷¹ Useful interventions obviously occur outside the health context as well. Findings of a recent review of programs specifically aimed at helping boys to break the cycle of family violence included that:

- Multi-modal, structured, and culturally relevant interventions, particularly those that include interpersonal and social skills training, were most effective in reducing violent behaviour
- Effective programs were responsive to the needs and learning styles of participants and help boys to feel significant, connected, and as if they could make a contribution
- Well managed programs could be highly cost effective when targeted correctly, potentially returning more than seven times the investment over the longer term.¹⁷²

Meanwhile, programs which assist fathers to become more involved in child care and household tasks have also been found to decrease the risk of family violence,¹⁷³ a theme which recurs at the end of this Report.

1.2 Early intervention, family violence and the justice system

Despite increasing intersections between health and community settings and family violence interventions, the justice context can seem a long way down the trajectory of violence. In fact, in many ways it is reasonable to argue that early intervention and the law are mutually exclusive when it comes to family violence, given that the justice system is usually activated only once patterns of behaviour are entrenched.¹⁷⁴

As a Queensland Parliamentary Committee has explained, the ‘criminal justice system...is limited by a fundamental paradox – that is, while...capable of delivering swift interventions that may be critical to preventing domestic homicide and repeat offending, it is ultimately limited in

169 The Family Nurse Partnership 2014 Partnership <http://fnp.nhs.uk/about>. Three randomised control trials of the US model with up to 19 years follow-up data revealed multiple beneficial effects, including improved maternal and child health and a reduction in child maltreatment. EIF Report, above note 25, p 64- 65.

170 L Gyorki, *Breaking down the silos: Overcoming the Practical and Ethical Barriers of Integrating Legal Assistance into a Healthcare Setting*, Churchill Trust, 2013. The Academy on Violence and Abuse is an example of a coalition of health practitioners and academics who promotes health education and research to increase recognition and inform better treatment and prevention in this area. See Academy on Violence and Abuse, *Mission & Vision*. At http://www.avahealth.org/who_we_are/mission.html AVA Research Reviews. See also P Gulliver, ‘The effects of intimate partner violence before during and after pregnancy in nurse visited first time mothers’. At <http://www.avahealth.org> and Public Health Association, *Policy-at-a-glance – Domestic and Family Violence Policy*, Adopted September 2013.

171 C Coumarelos, D Macourt, J People, HM MacDonald, Z Wei, R Iriana & S Ramsey, 2012, *Legal Australia-Wide Survey: legal need in Australia*, Law and Justice Foundation of NSW, Sydney. At <http://www.lawfoundation.net.au/ljf/app/6DDF12F188975AC9CA257A910006089D.html>.

172 LJ Schweinhart, LJ (1993) *Significant Benefits: The High/Scope Perry Preschool Study through Age 27*, Monographs of the High/Scope Educational Research Foundation, No. 10. Cited in C Baim & L Guthrie (2012) *Helping Boys to Break the Cycle of Family Violence: A Literature Review*, Berry Street, Melbourne.

173 A trial involving over 270 families showed that a 16 week couples group resulted in a reduction in parenting stress, an increase in father involvement in the tasks of child care, maintenance of couple relationship satisfaction and stable children’s problem issues over an 18 month follow up period. P A Cowan, C P Cowan, M K Pruett, K Pruett & JL Wong (2009) ‘Promoting fathers’ engagement with children: Preventative intervention for low-income families. *Journal of Marriage and the Family* 71(3), 663-679. Cited in EIF Report, above note 25, p 63.

174 Magistrates nominated 7 times as the average number of times that women are assaulted before they call the police or seek an intervention order. Consultation with Co-ordinating Magistrates, Family Violence Divisions, Magistrates’ Court of Victoria. Even more so, the Family Violence Prevention Legal Service cautioned that often it is only after years of experiencing violence that many Aboriginal women are prepared to involve an external authority. Consultation with Family Violence Prevention & Legal Service Victoria.

its ability to prevent the emergence of abuse and its far reaching and often cyclically expressed consequences'.¹⁷⁵

That said, however, the CIJ believes that the justice system has greater potential than it is credited. Certainly, as with recognition about the benefits of preventing disadvantage and dysfunction more generally, a growing number of jurisdictions around the world are engaging with the concept of 'justice investment' - recognising that it is more cost effective to *prevent* crime, than to punish it after the fact.

- Governments in the US are taking a broader view of the trajectory to offending and directing resources towards education and community settings to reduce disadvantage and increase opportunities – including for those re-entering the community following incarceration. For example, 'at least 17 states having **shifted resources away from prison construction** in favour of treatment and supervision as a better means of reducing recidivism'.¹⁷⁶ In Kentucky, for example, legislation has reserved prison beds for the most serious offenders and re-focused resources on community supervision.¹⁷⁷
- Similarly, of course, many European countries emphasise the benefits of redirecting offenders away from institutionalisation. In Sweden, a **focus on rehabilitation** saw prison numbers drop sufficiently between 2011 and 2012 that four prisons were able to be closed.¹⁷⁸
- Meanwhile, an Australian Senate inquiry has emphasised the value of justice reinvestment and recommended the trial of a '**place-based approach**' in various locations.¹⁷⁹
- The Queensland Inquiry referred to above also called for more investment at the '**front end**' of social and economic contributors to crime, pointing out that early intervention does not just mean early in a person's life but also in other transition points across a lifetime.¹⁸⁰

Justice reinvestment can therefore, in many ways, equate both to primary and secondary prevention in the family violence sphere – an investment in universal services, as well as with particular communities or groups in need. The question becomes, however, what other measures can be viewed as an early intervention when applied in the justice and, more specifically, the family violence context.

1.3 Interventions with children

As family violence can be both 'an outcome and a driver of outcomes',¹⁸¹ interventions with families affected by family violence can be construed as a crime prevention strategy. Research identifies links between children who grow up exposed to family violence and their increased contact with the criminal justice system in general, although debate exists about any direct

¹⁷⁵ Queensland Inquiry, above note 106, p 136.

¹⁷⁶ US Department of Justice, *Smart on Crime: Reforming the Criminal Justice System for the 21st century*, August 2013, p 4. See also P Mares, 'Every law not based on wisdom is a menace to the state', *Inside Story*, 11 March 2014. At <http://www.inside.org.au/every-law-not-based-on-wisdom-is-a-menace-to-the-state/>.

¹⁷⁷ US Department of Justice, above note 179. Non-government initiatives have also developed to prevent violence. *Cities United*. At <http://www.nlc.org/find-city-solutions/institute-for-youth-education-and-families/violence-prevention/cities-united>. D Jarvis & S Reed, 'To stop youth crime before it starts, we need to shift power to communities', *New Statesman*, 14 July 2014. At http://www.newstatesman.com/politics/2014/03/stop-youth-crime-it-starts-we-need-shift-power-communities?utm_content=buffer6330e&utm_medium=social&utm_.

¹⁷⁸ R Orange, 'Sweden closes four prisons as number of inmates plummets', *The Guardian*, 12 November 2013. At http://www.theguardian.com/world/2013/nov/11/sweden-closes-prisons-number-inmates-plummets?CMP=twi_gu. See also Ministry of Justice, New Zealand, *Youth Crime Action Plan (2014)*. At <http://www.justice.govt.nz/policy/crime-prevention/youth-justice-youth-crime-action-plan>; and J Edwards, 'To prevent reoffending, how about giving former prisoners support?' *The Guardian*, 21 July 2014. At <http://www.theguardian.com/commentisfree/2014/jul/21/to-prevent-reoffending-how-about-giving-former-prisoners-support>.

¹⁷⁹ Senate Legal and Constitutional Affairs Committee, Inquiry into Justice Reinvestment www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010_13/justicereinvestment/report/b02

¹⁸⁰ Queensland Inquiry, above note 106, p 93.

¹⁸¹ EIF Report, above note 25, p 22.

causal link, or whether other commonly co-occurring factors are greater contributors.¹⁸² Nevertheless, the US Attorney-General's Taskforce on Children Exposed to Violence calls for an approach to juvenile justice which 'acknowledges that the vast majority of children involved in that system have been exposed to violence'.¹⁸³

Considerable research also now exists which emphasises the significant effects of family violence on children, including its capacity to undermine the mother-child bond,¹⁸⁴ as well as the increased likelihood that family violence and child abuse or maltreatment will co-exist.¹⁸⁵ Although beyond the scope of this Report, this is clearly an imperative for early intervention in and of itself. As well as the obvious social and ethical imperatives, child protection is also a highly resource intensive area,¹⁸⁶ while the 'ongoing process of removal' of children in many Aboriginal communities can simply entrench the grief and loss that contributes to the cycle of violence in the first place.¹⁸⁷

More specific to this Report - although by no means inevitable¹⁸⁸ - studies suggest that the 'intergenerational transmission of violence'¹⁸⁹ means that children growing up exposed to violence may be significantly more likely to use or experience it as adults. Magistrates also report that, increasingly, not only are they seeing women coming before them profoundly damaged as a result of family violence, but also children as young as 12 and 13 who exhibit extraordinary levels of violence, mirroring what they have been exposed to at home.¹⁹⁰

Certainly, many victims subjected to violence by their partners speak of having grown up with it and therefore having 'normalised' it,¹⁹¹ some practitioners noting that individuals referred to their program, including women, often have a history of family violence in childhood and simply 'don't know any other way'.¹⁹² This cycle can be repeated not just in adulthood, but can emerge in adolescence, with women experiencing violence first from their partner and then, when the relationship breaks down or the partner leaves, from their adolescent sons.¹⁹³

182 D Jaffe, D Wolfe & SK Wilson, *Children of Battered Women*, Sage Publications, California, 1990. Negative effects are said to include higher levels of antisocial behaviour, violent crime, substance abuse and delinquency. The EIF Report, above note 25, p 25 cites Kitzmann's meta-analysis of 118 studies dating from 1978 to 2000 which found that children exposed to domestic violence without suffering harm themselves display similar outcomes as children who have been abused but not exposed to violence between parents. Meltzer (2009) found that witnessing severe domestic violence and abuse is associated with a tripling in the likelihood of a child having a conduct disorder. EIF Report, above note 25, p 48. Child maltreatment and domestic violence and abuse often co-exist – CAADA's study *Children's Insights* dataset shows that 61% of children in Independent Domestic Violence Advocacy services in 2013 were themselves subject to abuse. EIF Report, above note 25, p 11.

183 Report of the Attorney-General's National Taskforce on Children Exposed to Violence, p 6. <http://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>. See also Queensland Child Protection Commission Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*.

184 Humphreys, above note 40, observes that the UK Independent Domestic Violence Advocate works intensively with women at risk of domestic violence and abuse and notes that interventions with children and women at risk work most effectively when addressed together.

185 K Kitzmann, N Gaylord, A Holt & E Kenny, 'Child Witnesses to Domestic Violence: A Meta-Analytic Review', *Journal of Consulting & Clinical Psychology*, 2003, Vol 71, No. 2 pp 339-352. C Potito, A Day, E Carson & P O'Leary (2009) 'Domestic Violence and Child Protection: Partnerships and Collaboration', *Australian Social Work*, 62:3, 369-387.

186 Professor Cathy Humphreys, *Women and their children living with domestic violence: problems, principles and possibilities*. Keynote address to PeakCare Conference, Brisbane, 4 August 2014. At <http://communitydoor.org.au/news/peakcare-lecture-by-professor-cathy-humphreys>.

187 M Bamblett, H Bath and R Roseby, *Growing Them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children*, Report of the Board of Inquiry into the Child Protection System in the Northern Territory 2010, Northern Territory Government, Darwin.

188 EIF Report, above note 25, p 50.

189 Ibid.

190 Ibid. Consultation with Magistrate Fiona Hayes, Regional Co-ordinating Magistrate, Magistrates' Court of Victoria. See also M Flood & L Fergus, *An Assault on our Future: The impact of violence on young people and their relationships*. A White Ribbon Foundation Report, 2008. At http://www.whiteribbon.org.au/uploads/media/Research_series/An_assault_on_our_future_FULL_Flood_Fergus_2010.pdf.

191 *Landscapes of Violence*, above note 9. Telephone consultation with Bev Reynolds, Program Manager, Positive Lifestyles Program, Salvation Army, Morwell, Victoria.

192 Telephone consultation with Bev Reynolds, Program Manager, Positive Lifestyles Program, Salvation Army, Morwell, Victoria.

193 Howard and Abbott, above note 87.

1.4 Interventions with adolescents who use violence in the home

The subject of 'child to parent violence'¹⁹⁴ or, more commonly termed in the Australian literature, 'adolescent violence in the home' ('AVITH')¹⁹⁵ is an emerging area of study and practice that needs far greater emphasis, both as a standalone subject and as a consideration in family violence policy. Statistics suggest, in fact, that adolescent violence in the home is increasing, with 16% of intervention orders in Victoria being made against adolescents in 2013/14.¹⁹⁶

This apparent increase is reflected in family violence incident reports in previous years,¹⁹⁷ although it is not known whether this is the consequence of more parents feeling able to seek help, albeit after they have exhausted all other options. Certainly, the isolation of parents who experience adolescent violence in their home and their accompanying feelings of responsibility are important to acknowledge.¹⁹⁸ Equally crucial to understand is that not all adolescents who develop violent behaviour have previously been exposed to family violence. Further, many use violence in adolescence without 'graduating' to use it in their adult relationships.¹⁹⁹

Nevertheless, research suggests that the most significant determinant for adolescent violence in the home is a child's and mother's experience of family violence,²⁰⁰ with commentators noting that this may be in part a result of the effects of a parent's family violence on the adolescent's development, as well as their exposure to negative attitudes towards women.²⁰¹ Adolescent violence in the home also has a palpably gendered manifestation, although not to the same degree as family violence perpetrated by adults. International studies echo Australian statistics which suggest that two thirds of adolescents who are violent in the home are male and one third are female.²⁰²

Regardless of who is using this violence, the majority of those subjected to it are women. Mothers who are sole parents are particularly at risk from their adolescent sons, many describing how the language and behaviour of their sons bears a chilling similarity to that of their violent fathers.²⁰³ This alone makes AVITH an area that should be the focus of greater investment and energy in family violence policy.

That said, responses to this imperative should not simply be subsumed within other 'perpetrator interventions'. An important distinction from other forms of family violence is that adolescents who are violent at home are under age and still owed a duty of care by their victims.²⁰⁴ Equally, parents of violent adolescents are usually especially keen to maintain the family relationship and to keep their child out of the criminal justice system.²⁰⁵

Perhaps because of this additional complexity, as well as the fact that recognition of this particular subject has emerged relatively recently, there are few responses available on a national basis for adolescents who are violent in their home beyond interaction with the juvenile

194 *Responding to Child to Parent Violence: European Perspectives, Final Conference*. At <http://www.rcpv.eu/event/2-responding-to-child-to-parent-violence-final-conference>.

195 Howard and Abbott, above note 87. See also N Bobic, 'Adolescent Violence Towards Parents', Australian Domestic & Family Violence Clearinghouse, Topic Paper, 2004.

196 'Statistics reveal hundreds of children on family violence orders', *The Age*, 13 January 2015. <http://www.theage.com.au/victoria/statistics-reveal-hundreds-of-children-on-family-violence-orders-20150113-12ncw6.html>

197 Howard & Abbott, above note 87.

198 Ibid.

199 Ibid.

200 J Howard, *Adolescent Violence in the Home - The Missing Link in Family Violence Prevention and Response*, Stakeholder Paper 11, September 2011, Australian Domestic & Family Violence Clearinghouse.

201 Ibid. See also J Howard, *Adolescent Violence in the Home: Mapping the Australian and International Services System*, No to Violence, November 2012. David Nugent, practitioner from Heavy Metal, conducts programs with at risk teenage boys in school environments and notes that, often, there is also family violence occurring in the boys' homes.

202 Howard & Abbott, above note 87.

203 Siblings are also affected. J Howard & N Rotten, *It All Starts at Home: Male Adolescent Violence to Mothers*, A Research Report, 2008, Inner South Peninsula Health Service. See also: C Medcraft 'Are They Really Just Like Their Father?' Presentation to NTV Conference 2012. At <http://ntv.org.au>.

204 Howard & Abbott, above note 87.

205 Ibid.

justice system. The final chapter of this Report, however, describes a response that emerged in the US and has recently been applied in the Australian context which attempts to balance these multiple and complex considerations.

1.5 Interventions in escalation

While it is easy to perceive the value of early intervention in stemming the intergenerational transmission of violence, it is also important to see the justice system as a potential intervener in the escalation of violence in adult relationships. A sobering realisation, in fact, is that any effective intervention is early if it prevents a homicide. The Queensland Inquiry reminds us that family violence related deaths are ‘amongst the most preventable deaths in the community’,²⁰⁶ with ‘red flags’ often evident and potential victims known, many of whom express fears for their lives yet encounter a ‘wall of lethal indifference’.²⁰⁷

Increasingly, courts and other agencies in jurisdictions such as Victoria and Western Australia, for example, are using risk assessment frameworks to identify the level of risk involved in matters which come before them.²⁰⁸ This is an important development, although the CIJ heard that these frameworks were not used consistently and that training in their application was not always part of relevant professional development.²⁰⁹ Equally, some academics point to the complexities of risk assessments, noting that high frequency and high severity, for example, do not necessarily equate to the same thing.²¹⁰ What’s more, though women are usually the most reliable assessors of the risk that they face, those whose cases have attracted a low risk assessment from authorities can often confront barriers in receiving an appropriate response at a later date.²¹¹

Nevertheless, the inter-agency risk collaborations which have emerged around Australia and internationally are a crucial measure directed towards intervening in the escalation of this risk, primarily by ensuring that as much information as possible is shared about the risk that the perpetrator poses. Examples include:

- Risk Management and Assessment Panels or ‘**RAMPs**’ in Victoria, which were piloted in a small number of locations and recently extended across the state. These panels bring together justice agencies, including Corrections, as well as support services, to assess and then monitor those cases in which victims are seen to be at high risk. Safety of women and children is the highest priority, with women often relocated with the support of the panel.²¹²
- A model in **Massachusetts** was nominated by stakeholders as particularly effective as keeping the focus squarely on perpetrators, escalating interventions and monitoring offenders, including via electronic monitoring, in a way that echoes the escalation of a perpetrator’s attempt to control his partner.²¹³

206 Queensland Inquiry, above note 106, p 142.

207 This was illustrated starkly in the case of Andrea Pickett, an Aboriginal woman in Western Australia who experienced repeated service failure before being killed by her husband. Radio National, *Law Report*, 27 November 2012. At www.abc.net.au/radionational/. See also S Smail, ‘Domestic violence: Noeline Beutel’s murder leads Queensland authorities to rethink abuse handling’ *ABC News*, 27 September 2014. At <http://www.abc.net.au/news/2014-09-26/queensland-mothers-murder-leads-to-domestic-abuse-rethink>. See also D Oakes, ‘Review ordered into the police investigation of Kelly Thompson’s murder’, *ABC News*, 27 August 2014. At <http://www.abc.net.au/7.30/content/2014/s4075810.htm>.

208 Victoria and WA, both have well developed Common Risk Assessment and Risk Management Frameworks, while the Special Taskforce on Domestic and Family Violence in Queensland recently called for the development of a standardised framework for Queensland agencies as well. *Not Now, Not Ever*, above note 16, Recommendation 77.

209 Stakeholders suggested that training needed to be better directed towards the child protection and Corrections spheres, as well as mainstream justice contexts.

210 Salter, above note 123.

211 Ibid. Salter notes that women may underestimate their level of risk too and that risk assessments can obviously not meet the needs of women who have not yet presented as clients.

212 Risk Assessment and Management Panels, like equivalent collaborations in other Australian jurisdictions, are largely based on Multi-Agency Risk Assessment Conferences in the UK. See <http://www.abc.net.au/am/content/2014/s4016192.htm>.

213 A Marcotte, ‘Massachusetts’ Simple Solution for Preventing Domestic Homicide’, 15 July 2013. At http://www.slate.com/blogs/xx_factor/2013/07/15/massachusetts_figured_out_a_simple_solution_to_prevent_domestic_homicide.html.

The various systems-wide analyses scheduled to report in the near future will contribute to better understanding of how this focus on high-risk cases can be further improved.

As most in the field will acknowledge, however, it is not possible to identify all high-risk situations,²¹⁴ particularly while agencies are grappling with such high demand. This means that additional measures are needed, measures which can:

- Intervene with as many perpetrators as possible at an earlier point in the trajectory of violence;
- Break the cycle of violence with lower risk perpetrators and, in doing so, reduce the volume;
- Consequently prove more effective in spotlighting those whose violence is more entrenched, and for whom more intensive scrutiny is required.

In other words, while the justice system is considered to be a tertiary intervention, many in the field believe that opportunities for earlier interventions should be seized. As the Queensland Inquiry recognised, both victims *and* perpetrators need to be engaged:

*...if there is to be an effective shift from largely reactive work to more proactive interventions which go to the source of the problem...*²¹⁵

SPEAQ, the peak body for services and practitioners who work with perpetrators in Queensland, similarly argues that:

*...demand for [services to victims of DFV] can ultimately be reduced only if those persons causing the violence, predominantly men, are directly and effectively dealt with and assisted to end their violence.*²¹⁶

What's more, family violence is not only cyclical in terms of its intergenerational aspect, as noted above, but in terms of the frequency with which perpetrators, particularly high risk ones, reconcile with partners,²¹⁷ or move from one victim to the next and start the cycle again.²¹⁸ Stepping in before further victims are subjected to violence or abusive behaviour seems a persuasive reason for adopting an early intervention approach.

1.6 Conclusion

Finally, and as the following chapters will highlight, those experienced in this area indicate that:

- A police callout to a family violence incident is a crisis in the life of many men, and an opportunity which needs to be more effectively seized, particularly in the two to three weeks following callout²¹⁹
- Men with minimal previous contact with the criminal justice system are more likely to complete or engage with behaviour change programs²²⁰

214 Professor Cathy Humphreys notes that high risk collaborations would not necessarily identify individuals who choose to murder their children in retaliation against their wife. Address to 'Just Say Goodbye' conference, Domestic Violence Resource Centre. At <http://www.dvrcv.org.au/knowledge-centre/multimedia/podcast/just-say-goodbye-cathy-humphreys-address>.

215 Queensland Inquiry, above note 106, p 173.

216 Services & Practitioners for the Elimination of Abuse, Queensland (SPEAQ), Submission to the Queensland Inquiry, p 10-11.

217 Salter, above note 123.

218 M Davey, 'Domestic violence: call to take onus off victims to report their partners', *The Guardian*, 10 September 2014. At <http://www.theguardian.com/society/2014/sep/10/domestic-violence-call-to-take-onus-off-victims>. This was a theme reiterated in consultations, though it was noted that statistics in this regard are not available.

219 No to Violence, *Enhancing the front end work of responding to police active referrals for men*, excerpt from submission to government provided by No to Violence, 30 September 2014. The submission notes that a perpetrator's openness to change often closes up after this two to three week period.

220 For example, an evaluation of a NSW program found that first-time offenders were less likely to reoffend than those with previous domestic violence convictions. Urbis Keys Young (2004) *Evaluation of the NSW pilot program for perpetrators of domestic violence: final report*, cited in Urbis, *Literature Review on Domestic Violence Perpetrators*, 2013, p 12.

- Participants who enter programs within this immediate period after first contact with police are more likely to complete them²²¹
- Conversely, delay in entering programs, or a failure to enforce or impose sanctions, can vindicate a perpetrator's belief that he is above the law or that his behaviour is not unlawful or inappropriate.²²²

Rather than directing its gaze towards interventions which interrupt the spiral of isolation and distorted thinking that so many perpetrators display, however, the conventional legal approach propels perpetrators away from adequate and ongoing scrutiny. To attempt to 'build out the costs of failure', as called for by the UK's Early Intervention Foundation, we need to start looking at the whole picture.

221 J Edleson, *Promising practices with men who batter: report to King County Domestic Violence Council*, January 2008.

222 E Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, Northeastern University Press, 2012. See also E Gondolf, *The survival of batterer programs? Responding to 'evidence-based practice' and improving program operation*. Position paper presented at the policy symposium — Batterer Intervention: Doing the Work and Measuring the Progress, National Institute of Justice and Family Violence Prevention Fund, Bethesda, MD, December 3–4, 2009. At http://www.futureswithoutviolence.org/userfiles/file/Children_and_Families/The%20Survival%20of%20Batterer%20Programs.pdf. No To Violence, *Annual Report* 2013, p 3. At <http://ntv.org.au/news/#ntvar>.

Chapter Two – Perpetrator Programs

2.1 Introduction

A conception of family violence as simply ‘conflict within a relationship’ – a problem requiring couples or marriage counselling - is something that many have fought hard for years to dispel. This is because it positions the violence as a neutral element in the relationship, rather than as the result of one party’s choices or behaviour, its existence often only revealed some time after a couple has started counselling.²²³

Equally, the conception of family violence as the result of ‘anger’²²⁴ which needs to be ‘managed’ inappropriately positions the violence as something caused by external forces, and therefore *beyond* the control of the perpetrator, rather than something which is used instead to *exert* control.²²⁵

What have come to be known as ‘perpetrator programs’ emerged as an alternative to these approaches and, as suggested in Part One, are positioned as the predominant response to family violence perpetrators in addition to the conventional justice system, though increasingly they are intrinsically *connected* with the justice system as well.

The purpose of this chapter is not to provide an analysis of whether MBCPs ‘work’ in the Australian context overall, as many other studies are currently engaged in this task.²²⁶ Rather, the purpose of this Chapter is to draw out some of the themes from existing knowledge about MBCPs which, as well as informing the way that MBCPs are used, may also inform the nature of interactions with perpetrators at various points along the spectrum of contact with the justice system, from police, through courts to Corrections and beyond.

These themes include that:

- Perpetrator Programs were never intended to operate as a panacea but, rather, as one part of an integrated, community response to family violence.²²⁷
- Though programs are criticised as supported by ‘mixed’ evidence at best, a purely empirical evidence base is difficult to achieve, given the ethical considerations involved. What’s more, ‘effectiveness’ can be poorly measured, with recidivism not necessarily a useful tool given that increased monitoring or specialist courts to which programs are attached are more efficient at detecting subsequent violence.²²⁸
- Those programs which are attached to a swift, certain response for non-compliance, as well as ongoing contact with the same judge, are noted as particularly effective.²²⁹

223 For example, an evaluation of a program which offered both ‘couples counselling’ and a Men’s Behaviour Change program noted that, often, it was not until couples were some way through the counselling that the presence of family violence was revealed, or that couples understood that family violence was present. T Brown & R Hampson, *An Evaluation of Interventions with Domestic Violence Perpetrators*, 2009. Department of Social Work, Monash University, Caulfield Campus, p 42. At https://www.lifeworks.com.au/files/ResearchReport_FV.pdf.

224 Rory Macrae from the Safer Families Edinburgh Project, Scotland, notes that often men are encouraged to express all negative emotions as anger. ‘The Caledonian System: An integrated approach to address men’s domestic violence and improve the lives of women, children and men’. *Ending Men’s Violence Against Women: The No to Violence Journal*, Spring, 2013.

225 Stark, above note 61.

226 Urbis Literature Review, above note 220.

227 The Duluth Model has always been proposed as part of an integrated system. M Paymar & G Barnes *Countering confusion about the Duluth Model*. At www.theduluthmodel.org/pdf/CounteringConfusion.pdf. Edward Gondolf also emphasises the importance of accountability to the system. Gondolf, above note 222.

228 M Labriola, S Bradley, C O’Sullivan, M Rempel & S Moore, *A National Portrait of Domestic Violence Courts*, Report submitted to the National Institute of Justice, December 2009. At <http://www.courtinnovation.org/topic/domestic-violence>.

229 Gondolf, above, note 222. Labriola et al, above note 228.

- Perpetrators with minimal previous contact with the criminal justice system are more likely to complete behaviour change programs;²³⁰ while participants who enter programs within two to three weeks after first contact with police are more likely to engage with behaviour change.²³¹
- Correspondingly, delay in entering programs, or a criminal justice system which fails to enforce or impose sanctions, can simply vindicate a perpetrator's belief that he is above the law.²³²
- The capacity to address individual risk factors, both dynamic and static, and to tailor program intensity to individuals, is being increasingly sought after and employed.²³³
- Services to partners are a crucial aspect of what has recently been termed a 'web of accountability', particularly as women whose partners are connected with an MBCP often have not previously been connected with any other kind of support.²³⁴
- A long term collaboration in the UK which documented women's experiences as a result of their partner's participation in an MBCP recently released findings that perpetrator programs do have a considerable and positive impact.²³⁵

2.2 What are Perpetrator Programs?

Known variously as Batterer Intervention Programs (BIPs) in the US, Men's Behaviour Change Programs (MBCPs) for the most part in Australia and Stopping Violence programs in New Zealand, various models have developed in tandem.

The most well recognised and adopted program, however, is known popularly as the Duluth Model. This was crafted as part of an integrated community response and involves participation in regular psycho-educational group sessions which, amongst other things, examine and unpack the foundation of the violence and its effects on others.²³⁶ This model was awarded the 2014 Future Policy Award for Ending Violence Against Women and Girls by the World Future Council and UN Women.²³⁷

Similar programs exist in Europe, the UK, South America, New Zealand and, of course, Australia. Peak bodies also exist which oversee their operation²³⁸ while, in Europe, Perpetrator Intervention Standards have been developed as a guide to the development of programs. Most importantly, these standards emphasise that women and children are the ultimate consumers of any work conducted with violent men.²³⁹

The majority of programs in the US are attached to an integrated and legislated criminal justice response, one which, for the most part, is highly regulated. In California, for example, legislation provides that an offender convicted of a specific domestic violence offence must attend a 52 week Batterer Intervention Program.²⁴⁰ Further, a study of US programs found that only three

230 As noted at the end of the previous chapter, an evaluation of a NSW program found that first-time offenders were less likely to reoffend than those with previous domestic violence convictions. Urbis, above note 220, p 12.

231 Edleson, above note 221.

232 Gondolf, above note 222. See also No To Violence, *Annual Report* 2013, p 3. At <http://ntv.org.au/news/#ntvar>.

233 For example, RL Langlands, T Ward and E Gilchrist, 'Applying the Good Lives Model to Male Perpetrators of Domestic Violence', *Behaviour Change*, Volume 26 Number 2, 113-129, (2009).

234 J Smith, C Humphreys and C Laming, 'The central place of women's support and partner contact in men's behaviour change programs', *Ending Men's Violence Against Women and Children: the No To Violence Journal*, Spring 2013, pp 7-28.

235 L Kelly & N Westmarland, *Domestic Violence Perpetrator Programs: Steps Towards Change* January 2015, Project Mirabal Final Report, London and Durham, London Metropolitan University and Durham University. At <http://www.dur.ac.uk/criva/projectmirabal>.

236 Domestic Abuse Intervention Programs, Duluth Minnesota. At <http://www.theduluthmodel.org/>.

237 http://www.theduluthmodel.org/u_futurepolicyaward2014.html.

238 Respect, United Kingdom. At <http://respect.uk.net/>.

239 *Guidelines to develop standards for programmes working with male perpetrators of domestic violence*, Work with Perpetrators of Domestic Violence, Europe, Daphne II Project 2006-2008. At <http://www.work-with-perpetrators.eu>.

240 Labriola et al, above note 228.

states allow referral to differing levels of treatment where men are first time offenders, while 5% specifically prohibit referral to individualised treatment of any kind.²⁴¹

By comparison, Australia's programs have developed on a fairly ad hoc basis and are primarily community based. While some operate attached to specialist court services or in partnership with Corrections; others operate as part of a community agency; or even as primarily standalone operations. The development of such programs has also occurred at different rates in different jurisdictions. The CIJ heard, for example, that while MBCPs had been in operation on quite a widespread basis in Victoria for nearly thirty years, the field had only begun to develop much more recently in some other states.²⁴²

As identified in the National Plan, National Outcome Standards for perpetrator programs are being developed which are expected to be released in the first half of 2015. The peak body for MBCPs in Victoria, No to Violence, has already developed Minimum Standards which have now been adopted in NSW,²⁴³ practice standards also exist in other jurisdictions.²⁴⁴ These Minimum Standards have been superseded by global standards, the program duration of a minimum of 12 weeks which they prescribe, for example, being considerably shorter than accepted practice internationally,²⁴⁵ but a comprehensive study of MBCPs in Victoria suggests that they are continuing to develop a more consistent and accountable approach.²⁴⁶

2.3 Mixed evidence

Programs in the US have been comprehensively evaluated, albeit with mixed results. Equally mixed – and regrettably vexed on occasion – is the associated academic debate.²⁴⁷ Given that it is not generally considered appropriate to conduct a fully experimental study in which some perpetrators are offered intervention while others are offered none at all, many studies are also 'quasi-experimental' at best – criticised for lack of a 'gold standard' evidence base that, arguably, it is not ethical to achieve.²⁴⁸

What's more, evaluations dismissing or endorsing particular models are often undermined by variations in the implementation of that model.²⁴⁹ Meanwhile, debate continues about whether programs are more effective when mandated or voluntary,²⁵⁰ with commentators pointing to a

241 R Maiuro & J Eberle, 'State Standards for Domestic Violence Perpetrator Treatment: Current Status, Trends and Recommendations,' *Violence and Victims*, Volume 23, November 2, 2008.

242 MBCP practitioners told the CIJ that many community based programs were about to lose government funding and that they were therefore uncertain about how they would continue to operate.

243 Minimum Standards, No to Violence. At <http://ntv.org.au/what-we-do/mens-behaviour-change/standards-and-guidelines/standards-of-practice/minimum-standards/>.

244 Department of Communities, *Professional Practice Standards, Working with men who perpetrate domestic and family violence*, Queensland Government.

245 This includes by NTV themselves. Consultation with Rodney Vlasis, Acting CEO, No to Violence. Respect in the UK recommend a minimum of 75 hours over 30 weeks. At <http://www.respect.org.uk>.

246 C Humphreys, C Laming and K Diemer, above note 4.

247 K Corvo, D Dutton & W-Y Chen, 'Toward Evidence-Based Practice with Domestic Violence Perpetrators', *Journal of Aggression, Maltreatment & Trauma*, Vol 16(2) #48 2008.

248 Urbis, above note 220. See also A Day, D Chung, P O'Leary and E Carson, 'Programs for Men who Perpetrate Domestic Violence: An Examination of the Issues Underlying the Effectiveness of Intervention Programs', *Journal of Family Violence*, DOI 10.1007/s10896-008-9221-4, published online 31 January 2009.

249 Ibid.

250 Practitioners suggest that it is the job of the criminal justice system to get men into a program, and the job of the program to make them want to change. R Vlasis, 'Domestic Violence Perpetrator Programs: Education, Therapy, Support, Accountability 'or' Struggle?'. No to Violence, At <http://www.ntv.org.au>.

higher drop-out rate for voluntary participants, for example, but significantly less willingness to engage on the part of mandated participants.²⁵¹

Equally, assessments which use recidivism as a measure do not account for the fact that a program which is part of an integrated response, or which allows for heightened monitoring of the perpetrator, is more likely to identify further offending, or to encourage victims to report it.²⁵² In other words, a robust empirical evidence base around best practice in this area is difficult to achieve.²⁵³

It is important to note, however, that the elusive nature of 'proof' that MBCPs work should not detract from many studies which indicate that these programs do have a significant positive impact.²⁵⁴

Recent long term work, in particular, has taken a more qualitative approach and examined the experiences of perpetrators, victims and practitioners associated with these programs. For example:

- A long term Australian study has indicated that men do experience participation in an MBCP as a significant and meaningful consequence.²⁵⁵
- A substantial project in the UK entitled Project Mirabel has recently released findings that a considerable number of men do reduce or cease their use of violence and coercion as a result of participation in these programs.²⁵⁶
- Equally, it is vital to recognise the considerable experience of many practitioners, who report the significant difference that perpetrator programs can make.²⁵⁷

As the EIF has observed, the debate about the value of standard batterer/men's behaviour change programs

*...is a very good example of the tensions between the requirements of evaluation on the one hand and the locally variable and self-generated approaches of much local practice on the other.*²⁵⁸

Jurisdictions should therefore take the opportunity to identify the combination of measures which may be more useful for determining the effectiveness of MBCPs – ones which use qualitative, as well as quantitative data, and which draw from the experiences of participants, partners and practitioners alike. Certain common features in the existing research, however, are useful to examine for the purposes of this Report – highlighting opportunities which may need to be seized more effectively if MBCPs are to reach their full potential.

251 Some report that the mandated nature of programs can sometimes increase men's sense of victimisation. A Day, D Chung, P O'Leary, D Justo, S Moore, E Carson & A Gerace, 'Integrated responses to domestic violence: Legally mandated intervention programs for male perpetrators', *Trends & issues in crime and criminal justice*, No. 404, December 2010. Australian Institute of Criminology.

252 Labriola et al, above note 228.

253 J Breckenridge & J Hamer, 'Traversing the Maze of 'Evidence' and 'Best Practice' in Domestic and Family Violence Service Provision in Australia', Issues Paper 26, May 2014. Australian Domestic & Family Violence Clearinghouse.

254 Brown & Hampson, above note 223.

255 J Smith, above note 122.

256 Project Mirabal, above note 236.

257 'Perpetrator programs do work' At <http://www.smh.com.au/national/the-growing-problem-of-family-violence-in-victoria>. This was reiterated in consultations with practitioners in MBCPs around in NSW, Victoria, Western Australia, the Northern Territory, Queensland and the ACT.

258 EIF Report, above note 25, p 70.

2.4 Opportunities

2.4.1 Opportunities for a systemic response

The first overriding consideration is that BIPs as they were developed in the US were never intended to operate as a panacea but, rather, as one part of an integrated, community response that involves robust and ongoing monitoring by courts and probation, as well as crucial support for the partners of perpetrators.²⁵⁹

Certainly, commentators remind us that ‘the system matters’,²⁶⁰ emphasising the importance of seeing any intervention as part of a wider system of legal and social policy which ensures that perpetrators are identified, prosecuted and receive interventions to reduce recidivism.²⁶¹ In fact, some MBCPs describe their collaboration with criminal justice agencies as ‘the missing pieces of each other’s puzzle’.²⁶²

Evidence from the US suggests that those programs which are attached to a swift, certain, criminal justice response for non-compliance are particularly effective, especially when contact with the same judge can encourage compliance.²⁶³

In keeping with this view, **BIPs in New York** see themselves as one of a range of sanctions available to a court and therefore as offering a service to the court, rather than to the men attending the program. Under this model, referrals will not be accepted if it cannot be guaranteed that there will be consequences enforced for non-compliance. Programs only hold men accountable for what they can enforce, such as attendance, punctuality and a respectful manner during the sessions, and non-compliance with these requirements is reported to the court within 24 hours.²⁶⁴

While the use of perpetrator programs as part of an integrated response is a particular focus of the US criminal model – one in which courts and Probation play a strong monitoring role – it is also worth noting the value of approaches that are developed as an integral part of a particular community. This may be especially useful in CALD communities,²⁶⁵ or in rural and regional communities where men are reluctant to seek help or have their experiences become known to a tightknit network.²⁶⁶

²⁵⁹ Paymar & Barnes, above note 227.

²⁶⁰ Gondolf, above, note 222.

²⁶¹ E Aldarondo (2010) ‘Understanding the contribution of common interventions with men who batter to the reduction of re-assaults’, *Juvenile and Family Court Journal*, 61, No. 4, National Council of Juvenile and Family Court Judges. Cited in EIF Report, above note 25, p 56.

²⁶² Rosemary O’Malley, ‘CollaborACTION’, *Ending Men’s Violence Against Women: the No to Violence Journal*, Spring 2013.

²⁶³ Gondolf, above note 222.

²⁶⁴ K Minns, *To investigate men’s domestic violence behaviour change programs, particularly effective practice and integration with the criminal justice and human service systems*, Churchill Trust 2012. This approach is supported by the view that the small percentage of men seen by the court is by no way representative of the magnitude of domestic violence in society – and that desisting from, not using, violence is actually the choice, with domestic violence instead being the default option. This program views ‘behaviour change’ as a damaging term, as this undermines women’s responsibility to deal with the man that they know, not the one who they hope he might become.

²⁶⁵ For example, In Victoria, a collaboration between agencies in metropolitan Melbourne put substantial effort into developing an MBCP for the local Vietnamese community, one which was delivered in Vietnamese and in which the facilitators were trained in the appropriate MBCP qualification. Though small scale initially, partners of participants indicated that the program had real value in terms of engaging the men along the continuum of change and engaging them in a service of any kind. InTouch Multicultural Centre Against Family Violence, above note 165. Kildonan UnitingCare now run an ongoing program for the South Asian community. At <http://www.kildonan.org.au/programs-and-services/child-youth-and-family-support/family-violence/south-asian-mens-behaviour-change-program/>

²⁶⁶ *Landscapes of Violence*, above note 9, p 126, Urbis, above note 220 p 12.

In one especially promising example, the **Tangentyre Council in Central Australia** spent three years developing the foundation of its integrated response before establishing the Marra'ka Mbarintja Men's Family Violence Prevention Program as one of 5 elements of an integrated response to service the local community around Alice Springs. The program partners with the women's support service (Alice Springs Women's Shelter), which carries out the women's safety service work with partners of the men engaged in the program. The Program Manager and facilitators for the MBCP were recruited after a lengthy process to ensure that the relevant expertise was involved. Because the Tangentyre Council is representative of, and run by, local Indigenous communities, 'buy-in' was carefully cultivated. The Program Manager told the CIJ that, crucial to its operation is the **assertive outreach** provided by the service, in which a cultural consultant visits the town camps to increase awareness, provide information and, if needed, assist participants to travel into Alice Springs to attend the program on relevant days. The program is also open to participants dropping in, as well as formal individual sessions carried out on a case by case basis with a view to ensuring group readiness for particular men who may require further support.²⁶⁷

2.4.2 Opportunities for earlier intervention – before they have nothing to lose

Beyond this – and especially relevant to this Report - studies indicate that participants who enter programs within two to three weeks after first contact with police are less likely to drop out and more likely to engage with behaviour change.²⁶⁸

- Gondolf emphasises that, while longer programs can be beneficial (as per the standards in many US and European jurisdictions), **early connection with and entry into treatment** has a far greater impact,²⁶⁹ with men in programs with pre-trial, rather than post-conviction mechanisms, for example, much more likely to stay in treatment.²⁷⁰ Gondolf therefore recommends providing programs as early as possible and **increasing the focus on program intensity**. For example, he suggests that, as soon as possible after charges, offenders could attend counselling three or four times per week for the first four to six weeks.²⁷¹
- Correspondingly, experts note that **delay** in entering programs, or a criminal justice system which fails to enforce or impose sanctions, **can simply vindicate a perpetrator's belief that he is above the law**,²⁷² or his sense that he has been victimised by it.²⁷³
- Studies also indicate that perpetrators with minimal previous contact with the criminal justice system are more likely to complete behaviour change programs.²⁷⁴ Some practitioners report that men who self-refer *before* police intervention are more likely to do better as they have 'more to lose'.²⁷⁵ Perpetrators who are employed, have children, and have 'pro-social connections' are more likely to want to change because they have a higher '**stake in conformity**'.²⁷⁶

267 Consultation with Maree Corbo, Program Manager, Men's Family Violence Prevention Program, Tangentyre Council, Alice Springs. Program Description, MMFVPP, Provided by Maree Corbo.

268 Edleson, above note 221. E Gondolf, *Batterer Intervention Systems: Issues, outcomes & recommendations*, SAGE, 2002.

269 Gondolf, above notes 222 and 268.

270 Gondolf, above note 268.

271 Gondolf, above note 268. It should be noted here that Tasmania has trialed the provision of four services a week to attempt to deliver this kind of intensity. Safe at Home, at <http://www.safeathome.tas.gov.au/offenders/fvoip>.

272 Gondolf, above notes 268 and 222. See also No To Violence, *Annual Report 2013*, p 3. At <http://ntv.org.au/news/#ntvar>.

273 Brown & Hampson, above note 223, p 40.

274 As already noted, an evaluation of a NSW program found that first-time offenders were less likely to reoffend than those with previous domestic violence convictions. Urbis above, note 220, p 12.

275 Telephone consultation with David Nugent, Convenor, *Heavy Metal* Men's Behaviour Change Program, Cranbourne, Victoria.

276 Aldarondo, above note 261. Salter, above note 123.

In other words, researchers note that change may be easier to achieve among violent men who are concerned about the impact of their arrest and other interventions upon their employment and social status.²⁷⁷ This supports the argument that attempts to interrupt the cycle of violence are more likely to be effective when these interventions occur as early in the cycle as possible, and when they occur at the right level of intensity so as to leverage this stake in conformity.

2.4.3 Opportunities to provide more flexible, effective interventions

Individuals without social connections or a stake in conformity; who are not linked into employment; and who have an existing history of offending, are more likely to drop out of perpetrator programs.²⁷⁸ For these offenders, research suggests that other forms of intervention, such as drug and alcohol treatment, are necessary before the group-based component of an MBCP can even be considered.²⁷⁹

Accordingly, the opportunity to support group based programs with individualised case management was nominated by MBCPs in Victoria as one of their top three priorities for the future,²⁸⁰ including individual sessions as an early intervention to prevent program drop-out.²⁸¹ Meanwhile many large scale studies also note the value of incorporating a greater emphasis on individualised, or case management, approaches to complement group work and to increase readiness to participate in this work.²⁸² Others note the value of offering differing levels of program intensity to match the risk level of different perpetrators.²⁸³

The question, of course, is how to achieve this while maintaining a gendered analysis of family violence and avoiding collusion or excuses for behaviour. Many practitioners consulted described this as an ongoing balancing act, addressing 'the ways in which misogyny and male violence are enmeshed in the life histories, circumstances and psychology of offenders'.²⁸⁴ This sometimes included acknowledging contentious terms with which participants could identify, such as 'anger management', yet introducing concepts, such as male entitlement, with which they had never engaged before.²⁸⁵ It also included supportive responses to disclosures of childhood trauma which men might have experienced, such as family violence in their own home while growing up, yet maintaining a central focus on the unacceptable nature of the behaviour and the overriding objective of increasing women and children's safety.²⁸⁶

With these considerations in mind, it is reasonable to suggest that expertise and understanding have developed sufficiently for a more flexible approach to be taken - for a gendered analysis of family violence to remain central, but supported by measures which increase the capacity of perpetrators to engage with a program, comply with orders, and to assume responsibility for their violence in some way.²⁸⁷

277 Salter argues that, conversely, violent men without these social connections can react to an arrest or some other intervention by escalating rather than reducing or ceasing their violence, above note 123.

278 This is reported particularly the case with programs which take a psycho-educational approach such as the Duluth model. Urbis, above note 220.

279 Commentators agree that some offenders are particularly high risk and will likely remain resistant to change, regardless of the threat or incentive. These offenders usually display a set of interrelated problems that contribute to repeated breaches of protection and exclusion orders; high rates of attrition from counseling; and multiple offences not only against the same woman, but subsequent partners as well. Gondolf, above note 222. Salter, above note 123. Braaf, above note 53.

280 No To Violence, *Men's Behaviour Change Programs in Victoria – a Sector Snapshot*, April 2011. At <http://ntv.org.au/resources/publications/#sector-ss>.

281 R Vlais, *Ten Challenges for Domestic Violence Perpetrator Program work*, No To Violence. At <http://ntv.org.au>.

282 The EIF Report, above note 25, observes that a range of programs all suggest combining perpetrator interventions with support to tackle other problems such as drug and alcohol problems, as well as developing culturally specific interventions.

283 Urbis, above note 220, p 14.

284 Macrae, above note 224.

285 Telephone consultation with David Nugent, Convener, *Heavy Metal Men's Behaviour Change Program*, Cranbourne Victoria.

286 Telephone consultation with Gary Smith, Program Manager, Therapeutic and Accommodation Services, Communicare, WA. Vlais, above note 250, p 7. See also M Atkinson, *The Exiled Child*, Griffith University, At <https://griffithreview.com/articles/the-exiled-child/>.

287 Urbis, above note 220, p 21.

As one commentator observes:

*...the provision of a generic intervention with the idea that some[thing] will stick is a poor use of precious and limited resources....*²⁸⁸

This said, practitioners caution that this should not just involve a smorgasbord of approaches,²⁸⁹ but requires elements to be carefully and strategically woven together instead. For example:

A respected program in Scotland known as the **Caledonian System** is founded squarely on a gendered analysis and has delivered Duluth-based group interventions for years. To increase readiness in some participants, however, it conducts 'Risk, Need, Responsivity'²⁹⁰ assessments which involve identifying not only a perpetrator's level of risk, but his individualised needs and the factors that will make him most likely to respond to interventions. These are leveraged to maximum effect, including by posing the question 'what kind of man do you want to be?'²⁹¹

The program then offers an initial phase of individual sessions which occur prior to commencement of the group sessions to address barriers that participants may have in addressing their behaviour. The model is of two years' duration overall and offers subsequent maintenance sessions. It also offers online sessions to men who may be unable to attend because, for example, of shift or 'fly-in, fly-out' work.²⁹²

Meanwhile, other programs take an individualised, case management approach to all cases while still maintaining a gendered analysis of violence.

The **Canberra Men's Centre** told the CIJ that sometimes their participants 'self-refer' before any police intervention, although the Program takes referrals from the criminal justice context as long as the perpetrator is accepting some level of responsibility. Assessments are conducted of the individual's needs, including aspects of such things as 'production' (ie whether he is employed or enrolled in study); attachments; peer identity and sexual identity which might increase his stake in engagement with the program.

The program also helps participants to map out their 'village' – friends or family who may help them to reduce their violence, and others who may be reinforcing its use. The program often visits participants in their home where appropriate and sometimes helps them to access accommodation where needed. The program facilitator estimated participant recidivism rates were around 5-6%, which is presently being analysed by the AFP to provide a more accurate base, although cautioned that the ACT's pro-arrest policy may deter reporting to a certain extent.²⁹³

More broadly, the capacity to assess a perpetrator's 'Risk, Need and Responsivity' is increasingly sought after, with this a common approach in Correctional settings as well. In this context, gendered attitudes are sometimes identified as criminogenic risks;²⁹⁴ while an emphasis on tailoring programs to each participant's learning style echoes the findings of prevention programs which work with boys at risk, highlighted in Chapter One. Although this

288 Ken McMaster quoted in Vlasis, above note 250, p 8.

289 Vlasis, above note 281.

290 J Bonta and DA Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Treatment*, 2007. (User Report No. 2007-06). Ottawa, Ontario: Public Safety Canada.

291 Macrae, above note 224.

292 Ibid, and personal email communication with Rory Macrae, October 2014.

293 Phone consultation with Simon Port, Canberra Men's Centre.

294 O'Malley, above note 262.

is now reasonably uncontentious in the MBCP setting, other models, such as strengths-based models, are also emerging approaches that are now being considered.

In particular, the **Good Lives Model** (GLM) is a strengths-based model of offender rehabilitation developed initially for application in the treatment of sexual offenders. The GLM is based on the premise that:

...people offend because they are attempting to secure some kind of valued outcome... Unfortunately, the... goal manifests...in harmful and antisocial behaviours, due to a range of deficits and weaknesses within the offender and his/her environment. Essentially, these deficits prevent the offender from securing his desired ends in pro-social and sustainable ways, thus requiring that s/he resort to...offending behaviour.²⁹⁵

The GLM seeks to develop the capacity in offenders to meet their inherent needs in positive and constructive ways, at the same time managing risk. It identifies the internal and external flaws or barriers that are distorting the ways in which an offender attempts to fulfill his needs or acquire primary human goods,²⁹⁶ and proposes an assessment and treatment program that seeks to guide offenders to use their strengths and goals to desist from further offending.²⁹⁷

Proponents suggest that the GLM might provide a useful framework for application in the context of family violence perpetrator programs, in combination with gender-based approaches.²⁹⁸ Certainly, some commentators echo the notion that violence is a tool which perpetrators use to attempt to secure an outcome, including to cement their 'fragile sense of masculine entitlement'.²⁹⁹ Equally, others note the use of appealing to a man to see 'the implicit value of a life free from violence'.³⁰⁰

The GLM has yet to be tested widely in the MBCP setting and would obviously need to be approached with caution so that a perpetrator's negative life experiences, for example, are not positioned as an excuse for his violence or abuse. Worth noting more broadly, however, is the fact that New Zealand's funding model for perpetrator programs requires case management and individualised treatment plans.³⁰¹

2.4.4 Opportunities to offer greater support for women

One of the most important lessons emerging from research concerning perpetrator programs is that their full value may not necessarily lie with their effect on male participants at all.

Referred to above, a long term collaboration in the UK known as **Project Mirabel** has recently released research which indicates that perpetrator programs have value to women in a variety of ways. In particular, Project Mirabel encourages a wider conceptualisation of program 'success' beyond the cessation of physical violence or attitudinal change, noting that women seek 'expanded space for action' – a sense that they are sufficiently autonomous and able to resume control of their own lives and decisions.³⁰²

295 <http://www.goodlivesmodel.com/information#General>.

296 Langlands et al, above note 233.

297 See also, DA Andrews, J Bonta and J Stephen Wormith, 'The Risk-Need-Responsivity Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention', *Criminal Justice and Behaviour* 2011, 38:735.

298 Ibid.

299 Macrae, above note 224.

300 Salter, above note 123.

301 Telephone consultation with Mike Cagney, Men's Behaviour Change Practitioner, New Zealand, October 2014.

302 Project Mirabal, above note 235. At <http://www.theguardian.com/society/2015/jan/23/reform-programs-stop-most-violent-men-harming-partners-says-landmark-study>. See also J Smith, *Literature Review: Overview of Research & Evaluations of MBCPs*. March 2009. At www.cfecfw.asn.au/sites/default/files/Smith_2009-Lit-Review-MBC.pdf.

This work reaffirms that the services which perpetrator programs provide to the partners of participants are crucial, despite the fact that they are often not funded in the Australian context, and only recently allowed for in New Zealand.³⁰³ Nevertheless, some programs continue to provide support, even where the perpetrator has dropped out of the program, as this may be a time of increased risk.³⁰⁴ Many argue that this support needs to continue well after program completion in any event.³⁰⁵

Further to this, studies report that the partners of participants in behaviour change programs are a largely different cohort from those women who seek other support services.³⁰⁶ Frequently, the support provided by a perpetrator program is the first service with which these women have had contact,³⁰⁷ becoming part of what has been termed a 'web of accountability',³⁰⁸ in which women's informal efforts to re-assert control and to hold the perpetrator accountable are a fundamental aspect of the wider response.

It should be noted that these efforts include the frequent decision taken by women to leave the relationship following a man's participation in a program. Many men do not understand this decision, of course, especially where they have ceased using violence, assuming that their efforts will 'wash away the past'.³⁰⁹ The fact that separation is often a time of highest risk, however, means that the cessation of violence and 'space for action' can enable a woman to make a decision which she has not previously felt was safe to make.

In this way, participation in a perpetrator program can be seen as useful even where the relationship does not continue or, ironically, the violence does not cease. As one practitioner told the CIJ's roundtable, a man's failure to cease his violence despite participation in an MBCP is often the only thing that will convince a woman that her husband simply will not change.³¹⁰ This is a view shared by the New York model of BIPs, which considers it irresponsible to encourage women to believe that change is likely, suggesting that instead, women must engage 'with the man they know'.³¹¹ This is particularly important when, as Gondolf has observed, women often decide to stay in the relationship on the basis that their partner is receiving treatment.³¹²

Meanwhile other practitioners report that many perpetrators need to participate in a program a number of times, or on an ongoing basis, to start to unravel a lifetime of violent and controlling behaviour.³¹³ One notes that 'many men may 'white-knuckle' during participation of a program' in order to meet a court's requirements,³¹⁴ while another pointed out that, sometimes, it can take some time just for a man 'to stop referring to his partner as 'that bitch' and start using her first name'.³¹⁵

303 Telephone consultation with Mike Cagney, Behaviour Change Practitioner, New Zealand.

304 NTV, above note 280.

305 Vlasis, above note 250, p 6.

306 Gondolf, above note 268, Smith, above note 302.

307 Brown & Hampson, above note 223. Gondolf, above note 268.

308 Smith et al, above note 234, pp 7-28. The CIJ repeatedly heard that, for many partners of the perpetrators in behaviour change programs, the contact and support they received from the program was the only service that they had received. This was echoed in a recent Victorian study, Brown & Hampson, above note 223, p 42.

309 Brown & Hampson, above note 223, p 40.

310 CIJ Roundtable, 11 November 2014. Researchers suggest that some violent men are so resistant to change that the primary usefulness of perpetrator programs are to effect a brief cessation in violence that enables workers to make contact with victimised women and children. Salter, above note 123.

311 Minns, above note 264.

312 Gondolf, 'Evaluating programs for Men who Batter: Problems and Perspectives', *Journal of Family Violence*, 1986.

313 Gondolf, above note 222. Brown & Hampson, above note 223, Day et al, above 91.

314 O'Malley, above note 262.

315 Telephone consultation with Gary Smith, Program Manager, Accommodation and Therapeutic Services, Communicare, WA.

2.5 Conclusion

Overall, it is arguable that critics and advocates alike are expecting too much of either BIPs or MBCPs – asking them to achieve a complete turnaround with every participant in a relatively short time. Many in this field question, in fact, whether it is possible to measure a complete cessation of violence, suggesting that ‘de-escalation’ is a more achievable base.³¹⁶ Where these programs are insufficiently funded even to achieve their stated goals, however, let alone provide additional services outside these goals, it is arguable that they are being set up to fail.

Certainly, governments create a roadblock when nominating ‘perpetrator programs’ as the primary option available while simultaneously stressing that these programs must be subject to further evaluation and meet certain benchmarks before they will be funded to do so. For example, the fact that many programs across Australia have long waiting lists means that opportunities are being lost – the readiness of participants to engage, as well as the likelihood that the program will have some effect, waning as more time elapses.³¹⁷

Dismissing the value of MBCPs as ‘mixed’ or, alternatively, assuming that a referral to one will be a form of accountability in and of itself, risks these referrals becoming yet another ‘piece of paper’ which perpetrators can ignore.

Instead, MBCPs need to be:

- Supported as one part of a wider system which collaborates to identify and monitor those who pose the highest risk
- Developed as a sector with agreed upon standards
- Provided with sufficient funding to be as effective as possible with those most likely to participate
- Augmented by additional measures which can provide ongoing support to partners and maximise the potential of more participants to engage with change

The following chapters explore three stages of the justice system’s response in which some of these lessons might be usefully applied.

³¹⁶ Gondolf, above note 222.

³¹⁷ NTV, above note 280.

Chapter Three – Initial Period After a Police Callout

3.1 Introduction

As first responders to reported incidents of family violence, police can set the tone for how, or whether, a pattern of violence continues. Police indifference to family violence has, historically, been widely acknowledged as a significant barrier to perpetrator accountability³¹⁸ – indifference which, as referred to in the previous chapter, can sometimes have lethal results³¹⁹ and which can at the very least contribute to the ongoing isolation of victims and sense of vindication in perpetrators.

As one witness told the Queensland Inquiry:

*...the police would attend but leave without taking any action. Each time...it handed more power to him.*³²⁰

Services in all Australian jurisdictions continue to report examples of police failing to understand the dynamics of family violence. While police may no longer, for example, dismiss incidents as ‘just a domestic’, a horrifying case in Queensland in which a woman was murdered, dismembered, and her body parts boiled on a stove, was reportedly described by police as a ‘domestic violence incident that got out of hand’.³²¹ The inference that other domestic violence matters might, by comparison, be ‘in hand’, suggests that there is some way to go before *all* members of police recognise the gravity of the task before them.

This being said, of course, the task is an enormous and unenviable one. Our collective desire to see family violence recognised as a serious wrong can sit at odds with the complex context in which this violence occurs – one in which a relationship between the parties often continues or resumes; in which the parties share responsibility for children; in which the victim may be dependent upon the perpetrator financially; and in which complicated cultural considerations may exist.

Arguably, civil protection orders are designed to take account of these complexities, a response which gives victims an element of control and enables them to seek protection without the criminal law being invoked. Certainly, many women report that they want the violence to stop and their partner to take responsibility for it, rather than to see him punished.³²² This does not mean, however, that women do not need a strong, expert and unequivocal response at the time they call the police. This requires comprehensive and ongoing training for officers who are mounting this response, a need that has been increasingly recognised by police forces around Australia.

In fact, though police inaction has been part of the problem, improvements in police procedure have been a significant part of the solution. Once almost viewed as the opposition by women’s

318 Atmore, above note 28.

319 When neighbours called police in accordance with Kelly Thompson’s safety plan, for example they were reportedly told to ‘call back if you hear screams or breaking glass’. Oakes, above note 227.

320 Queensland Inquiry, above note 106, p 151.

321 Brisbane murder-suicide: Police investigating ‘domestic violence incident that got out of hand’, ABC News, 9 October 2014. At <http://www.abc.net.au/news/2014-10-08/brisbane-death-domestic-violence-out-of-hand>.

322 Tutty et al, above note 125. This was echoed in consultations with stakeholders. The Loddon Campaspe Community Legal Centre has conducted a survey of clients to better understand what outcomes they wish to see occur as a result of seeking assistance from the justice system, as many indicate that they just want their partner to acknowledge and take responsibility for it, rather than be punished. Consultation with Bonnie Renou, Loddon Campaspe CLC, Summary of research provided to CIJ in January 2015.

support services, police forces around Australia are now, for the most part, partners in the response - sitting at the same table;³²³ developing dedicated and highly praised specialist officers and response units;³²⁴ and training members to appreciate the gravity and complexity of the situations they confront.³²⁵ Police leadership, in particular, has helped to put family violence squarely on government agendas.³²⁶

Despite this encouraging progress, a police callout may present a greater opportunity than the conventional civil or criminal options currently provide. If police are to respond as proactively as we might hope, they need to be equipped to provide a wider range of interventions, ones which engage more effectively with perpetrators and direct them onto a potentially different path.

3.2 Opportunities that support women

As in relation to MBCPs, support that police can facilitate for victims when called to a family violence matter is also crucial in holding men accountable in the justice context. This is because appropriate support may mean that victims are more likely to seek the legal system's intervention. In many jurisdictions, referrals are sent by police to a relevant women's service so that the case may be triaged and women can receive appropriate support as soon as possible.

- This approach is also widespread across Europe, based on a model which originated in **Austria**. Under this model, police callouts usually result in a perpetrator being evicted from the family home for a period of ten days. The callout is then followed up by a specialist women's service attached to police which visits women in their homes and provides referrals and support. Women can then apply to a court for the eviction and protection order to be extended.³²⁷
- In the criminal justice context, a longstanding women's service in Scotland called **ASSIST** is now co-located with police and, where an arrest is made, specialist workers contact the victim to ascertain what support the victim needs. Police and ASSIST meet regularly and have also begun to audit each other's files and to develop a monitoring process for serial perpetrators in which relevant information must be shared.³²⁸
- In Winnipeg, Canada, **police-social worker teams** respond to households in which the police have been called out, often numerous times but where there is insufficient evidence to lay a charge. These are cases flagged by the responding officers as having the potential to escalate. The specialist team visits the household upon agreement of the complainant and checks to see if there is further evidence that might result in a charge as well as making referrals to services for both the complainant and the alleged accused. This program was designed to intervene before any eventual escalation.³²⁹

323 C Waterman & F McCormack, *Reforming the Family Violence System in Victoria: A shared experience* Victoria Police and Domestic Violence Victoria, 2010.

324 These units are universally praised in *Landscapes of Violence*, above note 9. See also Queensland Inquiry, above note 106 p 171. The number of family violence units within Victoria Police has tripled since November 2011, with more than 30 now operating across the state. Victoria Police report that they are now responding to 60,000 family violence callouts a year. *Victoria Police Blueprint*, 2012-2015.

325 P O'Leary, D Chung & L Bahnisch, Project S.A.F.E.R. (Safety Assessment for Every Response), *Evaluation Report, A Joint Initiative of Research and Education Unit on Gendered Violence*, University of South Australia & Domestic Violence Prevention Centre, Gold Coast Inc, Queensland Police, February 2007..

326 E Whinnett, 'Chief Commissioner says more men need to stand up against family violence', *Herald Sun*, 22 July 2013. At <http://www.heraldsun.com.au/news/law-order/chief-commissioner-ken-lay-says-more-men-need-to-stand-up-against-domestic-violence/story-fni0fee2-1226682705782?nk=ec045710661580bfeaba75e146c91bec>.

327 R Lagar, above note 96.

328 M McGowan, Keynote Presentation to Domestic Violence Resource Centre Forum, 'What Does it Take? Addressing high risk family violence through an integrated response', Melbourne, 11 September 2014. At <http://www.dvrcv.org.au/knowledge-centre/multimedia/podcast/what-does-it-take-cathy-humphreys> McGowan notes that repeat victims have reduced to about 37% of their clientele, as opposed to 60% elsewhere in Scotland where the program does not run. M Davey, 'Domestic violence: call to take onus off victims to report their partners', *The Guardian*, 10 September 2014. At <http://www.theguardian.com/society/2014/sept/10/domestic-violence-call-to-take-onus-off-victims>.

329 Tutty et al, above note 125.

Overall, the initial response that women receive from police will be a crucial contributor to whether they call the police again,³³⁰ or whether they are deterred from doing so by concerns that they will be subject to criminal sanction themselves, or risk involvement with child protection.³³¹ Jurisdictions should therefore make every effort to support police in developing specialist and dedicated family violence response units, preferably linked with social worker support.

3.3 Opportunities to engage earlier with men

In addition to these crucial services for victims, however, one of the responses available to police is a referral to appropriate services for the perpetrator. This includes to a men's information line or perpetrator program. Various men's lines operate around Australia which can be rung by men, their partners or concerned family members or friends to access information and advice.³³² MBCPs, meanwhile, can connect with men at all points along the trajectory of violence, without necessarily requiring contact with police. In fact, as noted in the previous chapter, where men have not yet experienced police involvement and therefore have 'more to lose', they are more likely to want to participate.³³³ Equally, the CIJ heard that MBCPs are a particularly useful direct referral point where police feel that there is not enough evidence to make an arrest, with an organisation called *Violence Free Families* currently trialing an online program with men in this cohort.³³⁴

Active referral services, however, are a specific, early and recent intervention in the justice and family violence context once police have been called out.³³⁵

In Victoria – and now recently expanded to NSW – this process occurs through referral to locally run **Men's Active Referral Services (MARS)**, which are largely run by MBCP providers, or to the **After Hours Service** which is attached to the statewide Men's Referral Service.³³⁶ Perpetrators' contact details are provided to the relevant service after a police call-out, with the parties advised that this has occurred. Upon receipt by the service, these referrals are 'triaged' and prioritised – in this case, in order of the risk that the perpetrator might present.³³⁷ An intake worker will then attempt to make phone contact as soon as possible in order to reinforce the unacceptability of the man's behaviour; to assess ongoing safety of his partner and children; and to provide him with direct referrals to MBCPs, information about intervention orders and court processes, and additional information and links as required.³³⁸

The overall objective of this service is to connect men to a community response as early as possible and to start the series of repeated messages that practitioners suggest men need

330 Salter, above note 123.

331 For example, see Koori Family Violence Police Protocols: What Can You Expect? At <http://www.fvpls.org.au>.

332 Men's Line Australia, at <http://www.mensline.org.au>. Men's Referral Service at <http://ntv.org.au>.

333 The CIJ heard from practitioners that often men self-refer when they realise that their behaviour is starting to escalate, such as 'yelling more'. Telephone consultation with Simon Port, Canberra Men's Centre.

334 Consultation with Violence Free Families.

335 No to Violence reports that active referrals started in 2008/09. No to Violence *Annual Report* 2013. At <http://ntv.org.au>.

336 NTV MBCP Provider Consultation Project, January 2014. At <http://ntv.org.au>.

337 *Evolution of a men's active referral service, Workshop*, No To Violence Conference, Melbourne, November 2012. At <http://ntv.org.au/conference/wp-content/uploads/2012-ntv-conference-workshop-8g-evolution-of-an-active-referral-service-doc.pdf>, p 3.

338 Active referrals of these kinds have increased substantially in recent years. No To Violence, 'Enhancing front-end work of responding to police active referrals for men', *Ending Men's Violence Against Women and Children: the No To Violence Journal* Spring edition, 2014 *Evolution of a men's active referral service, Workshop*, No To Violence Conference, Melbourne, November 2012. At <http://ntv.org.au/conference/wp-content/uploads/2012-ntv-conference-workshop-8g-evolution-of-an-active-referral-service-doc.pdf>. The CIJ notes with interest suggestions that men access services by telephone more frequently than women. T Brown & R Hampson, at note 223, p 22.

to hear.³³⁹ Given that this is an assertive outreach service, rather than a voluntary telephone counselling and advice line, the men being contacted are usually in 'pre-contemplation' and have not begun to consider the effects of their behaviour. This means that a conversation with a trained professional as soon as possible after an intervention from police may help them to 'inch forward' towards contemplating change.³⁴⁰

Further to this, intake workers try to encourage further contact where men may not be ready to participate in a face-to face assessment for an MBCP, but might appear sufficiently interested to participate in a second telephone-based intake call at a later time.³⁴¹ Services identify this as a particularly important objective in order to seize the windows of opportunity which potentially present in the first two to three weeks following police attendance, being:³⁴²

- One to three days following police attendance, at which stage a man is likely to be in a state of crisis and may be in immediate need of housing if police have imposed an exclusion order.
- Within a few to several days after attending court, at which point the reality of the situation may have sunk in and the man has heard a Magistrate reinforce the unacceptability of his behaviour.
- Two to three weeks after police attendance, at which point any openness to change might be closing, making this the last potential attempt to encourage him to engage with services.³⁴³

Communicare in Western Australia also runs an outreach service, taking referrals from police and sometimes from a perpetrator's neighbours or friends. The program manager advises that active referral enables them to ascertain the safety of family members, as well as the perpetrator's understanding and likelihood to comply with any orders, which can then be reported back to police; and to provide referrals to other services or support. The CIJ heard that this service acts as a useful monitoring and prevention mechanism and that, where police have not yet been contacted, provides a useful opportunity to intervene before the cycle of violence escalates.³⁴⁴

Similarly, **ReachOut** is a partnership between police, child protection and other agencies in the North Canterbury region of New Zealand. Operating alongside existing services and supports for women and children, this service identifies and contacts men who have been named on a Police Incident Report or Safety Order as a perpetrator or potential/suspected perpetrator of family violence.

An evaluation of the service reported that it:

*...provided men with an opportunity to access support that had hitherto been unavailable; ...to engage with an earlier intervention service at a point of crisis when they were most likely to be open to change...; and ...to experience pro-social influence, take responsibility and ownership for effecting their own change and thereby break their pattern of recidivist family violence offending...The majority of men who interacted with ReachOut made progress along the stages of change continuum.*³⁴⁵

339 Consultation with Rodney Vlais, Acting CEO, No to Violence. See also SPEAQ (Services for the Elimination of Abuse, Queensland) *Submission: Inquiry on strategies to prevent and reduce criminal activity in Queensland*. Queensland Parliament Legal Affairs and Community Safety Committee (2014).

340 SPEAQ, above note 339.

341 No to Violence, above note 338.

342 Ibid.

343 Edleson, above note 221.

344 Telephone consultation with Gary Smith, Program Manager, Accommodation and Therapeutic Services, Communicare, WA.

345 Dr L Campbell, Reachout Men's Community Outreach Service, *Connections and Conversations with a Purpose: An Evaluation of the Pilot*, April 2014, Aviva Family Violence Services.

All jurisdictions should examine whether opportunities exist to develop and support an active referral and outreach service, one which is capable of offering follow-up contact and further referral to other relevant services to identify ongoing risk and ensure that men do not slip off the radar.

3.4 Opportunities to refer men to other agencies

Whether through a referral to an assertive outreach service, or to a more generic service agency, contact with perpetrators needs to occur as an ongoing process which may not only assist men to take responsibility for their violence, but may also be able to contribute to monitoring of the risk that they present. After all, neither a civil nor criminal legal response is usually capable of addressing all the contributors to violence. As the Queensland Inquiry heard:

*...One of the frustrating things for police is some of the underlying causes to the problems that they interact with every day of the week. They do not have the answers or the solutions to them, but other agencies do....*³⁴⁶

Certainly, the justice system is just one of many contexts in which men perpetrating violence can be identified, with health settings, alcohol and drug services, problem gambling services and child protection services presenting other opportunities.³⁴⁷ Arguably, however, men's interaction with these services is often of a different nature from that of women, with men less likely to disclose or even to access support directly.³⁴⁸

A callout by police, therefore, represents a crisis point – the first formal help-seeking interaction for many victims, but also the first time that many perpetrators have been called to account by anyone outside their relationship on their behaviour. It is therefore an opportunity that needs to be seized.

In some jurisdictions, such as Queensland and the ACT, this is partially addressed by police referral to **SupportLink**, a broad-based referral service which assesses client needs and then proactively sources appropriate services for them, rather than leaving them to make the contact themselves.³⁴⁹ Submissions to the Queensland Inquiry noted that, although the number of perpetrators consenting to SupportLink referrals are smaller than those of victims, data comparing the number of repeat calls pre and post SupportLink referral has identified that there has been a 39% reduction in repeat calls to domestic violence incidents since the service's deployment.³⁵⁰

A limitation noted by the service, however, is that referrals are strictly contingent on the consent of the party who is at-risk.³⁵¹ Further limitations are that services are not always available, particularly in remote Indigenous communities.³⁵²

Nevertheless, if police were to have the power to provide formal, or active, referrals as is the process with the Men's Active Referral Service described above, the potential for addressing underlying factors would be much greater. Jurisdictions should therefore consider what opportunities exist for ensuring that this kind of active referral to a support agency can occur.

³⁴⁶ Queensland Inquiry, above note 106, 167. The CIJ heard during consultations that, where police in the catchment area of Victoria's Neighbourhood Justice Centre do not feel they have enough evidence to make an arrest or issue a protection order, they often send parties 'down the road to the NJC' so that they can access other services that they might need. Consultation with Cameron Wallace and Michelle Stevens, Neighbourhood Justice Centre.

³⁴⁷ Vlasis, above note 281.

³⁴⁸ Brown & Hampson, above note 223, found that none of the participants in the study had any prior contact with community services of any kind. This is reiterated by the Department of Community Development, *The Men's Project: Exploring Responses to Men who are Victims or Perpetrators of Family and Domestic Violence*; and in consultations with Jacqui West, Defendant Health Liaison Officer, Magistrates' Court of Tasmania.

³⁴⁹ SupportLink National Pty Ltd, Submission No. 71, Queensland Inquiry, above note 106.

³⁵⁰ SupportLink National Pty Ltd, Submission No. 71, p 1, Queensland Inquiry, above note 106, p 167.

³⁵¹ Queensland Inquiry, above note 106 p 167.

³⁵² Ibid, p 168.

Further afield, a preliminary trial in **Ontario**, Canada, has applied the concept of ‘**Second Responder**’ models to perpetrators of family violence. This involved referrals to support and service agencies for perpetrators who had previously been arrested and who were assessed as moderate to high risk. Eligible men were contacted following police involvement to see if they wanted referrals to health services such as drug and alcohol or mental health services, and other forms of intervention. The men were also advised that participation in any intervention would not contribute to a lesser sentence.

The results of the trial were that subsequent charges for domestic violence related offences, as well as more general police involvement, were less than half in the intervention group than the comparison group, which was taken from a cohort of men who could not be contacted by police at that time. This was the same at the 1 and 2 year marks, with a much lower volume of police time attributed to this group as well.³⁵³

In noting the results as ‘surprisingly positive’, the authors of the study attributed three possible reasons to its success. The first was that the interventions were tailored to the individual risk and needs, or ‘RNR’, of the clients, as discussed in Chapter Two – though given that the interventions averaged only six sessions with each client, this was assessed as only a partial contributor. The second was the immediacy of the intervention, being after arrest but before the perpetrators had attended court.

Most curiously, perhaps, the authors proposed that a significant factor may have been that, in determining their eligibility for the program, the participants were advised at a relatively early point that they posed at least a moderate to high risk. The authors suggest that, as in health settings, early advice that a client is ‘at-risk’ can often lead to a change, even minor, in behaviour.³⁵⁴

While this trial was small, it signals the potential value of early referrals and risk identification for perpetrators of family violence. Just as importantly, it suggests the value of *any* service provision, given the additional finding that ‘lack of access to services and referral failure was the norm’,³⁵⁵ especially as many of the men would have otherwise been ineligible for services precisely because they were perpetrators.

In this scenario, the criminality of the perpetrators’ behaviour is preventing them from receiving referrals which may actually help to address it, with resulting isolation likely to entrench the violence instead. Even where perpetrators are eligible for services, however, lack of service availability – and men’s willingness to access it - is a theme echoed throughout this Report. Jurisdictions should therefore investigate ways in which to increase the connection of family violence perpetrators with relevant treatment services where they may otherwise not be provided.

3.5 Opportunities to keep men on the radar

Perhaps one of the most important initial referrals for police to make – or at least facilitate – is a referral to accommodation if a perpetrator has been issued with an exclusion or ‘ouster’ order.

The number of exclusion orders being issued is increasing, with government awareness that family violence is the greatest contributor to homelessness in women and children leading to a laudable emphasis on enabling women and children to stay in their family homes.³⁵⁶ These orders are supported in some jurisdictions, such as NSW, with schemes which offer outreach and assistance

353 K Scott, L Heslop, T Kelly & K Wiggins, ‘Intervening to Prevent Repeat Offending Among Moderate- to High- Risk Domestic Violence Offenders: A Second-Responder Program for Men’, *International Journal of Offender Therapy and Comparative Criminology*, 10 December 2013. SAGE. At <http://ijo.sagepub.com/content/early/2013/12/03/0306623X13513709>.

354 Ibid.

355 Ibid p 16.

356 Australian Government, above note 50.

to victims to ensure that remaining in their home is safe and viable.³⁵⁷ As an ACT study revealed, victims need ongoing support, without which they are likely to lose the home in any event.³⁵⁸

The question, however, is whether perpetrators also need ongoing support in order for them to be kept within view and work towards safety. Although it is vital that victims and their children have the opportunity to remain in their own home, allowing perpetrators to ‘slip off the radar’ where ongoing accommodation is not identified or arranged can be an opportunity lost.

Certainly, police often have difficulty locating family violence perpetrators, whether to follow up breaches of protection orders or for other reasons.³⁵⁹ As the Luke Batty Inquest heard, for example, it is common for people to be bailed to a non-specific address, such as a geographical area,³⁶⁰ while a limitation of the Canadian study referred to above was that many eligible participants could simply not be located.³⁶¹

In remote communities in Australia, meanwhile, transient men can be difficult to locate even without the imposition of exclusion orders,³⁶² with the challenges of exclusion orders also compounded even in reasonably well populated regional areas, given that respondents may need to move a considerable distance to access affordable housing, which can result in loss of employment and financial support to the family.³⁶³

Regardless of the location, where perpetrators’ outrage and sense of entitlement may have escalated by being excluded from their home environment, this poses a potentially alarming risk. These considerations suggest that it is in the interest of victims and the overall goal of perpetrator accountability to ensure that, where possible, perpetrators are found accommodation on a reasonably ongoing basis.³⁶⁴

Certainly, many stakeholders agreed that there was a need for crisis services for men, while active referral services note that ‘men are more likely to be able to take responsibility for their use of violence if basic needs such as housing are met’.³⁶⁵ This was also an observation by the independent Glenn Inquiry in New Zealand, which recently called for ‘dedicated houses for men’ who have been excluded from their home as an ‘excellent mechanism to wrap around support and provide early intervention’.³⁶⁶

While various schemes for crisis accommodation for men exist in Australia, and while the Victorian Government is trialing a number of Men’s Case Management positions to address the immediate needs of men removed from the family home,³⁶⁷ one service has taken this concept a considerable step further.

357 NSW Government, *Staying Home, Leaving Violence*, http://www.domesticviolence.nsw.gov.au/what_are_my_options/what_are_my_options/i_want_to_stay_in_my_home_but_end_the_relationship/staying_home_leaving_violence; K Crinall, J Hurley & L Healy, ‘Safe at home’ programs in the context of the Victorian Integrated Family Violence Service System Reforms: A review of the literature’, SAFER Research Program, Policy Online Briefing, 2 October 2014.

358 J Watson, *Staying Home after Domestic Violence*, ACT Domestic Violence Crisis Service, January 2014. See also S Meyer, ‘Victims’ experiences of short- and long-term safety and wellbeing: Findings from an examination of an integrated response to domestic violence’, *Trends & Issues in crime and criminal justice*, No. 478, June 2014.

359 Scott et al, above note 353, pp 7 & 18.

360 Luke Batty inquest, Community Law Blog. At <https://communitylawblog.wordpress.com/category/luke-batty-inquest/>.

361 Scott et al, above note 353, pp 7 & 18.

362 The Men’s Project, above note 348. Consultation with Maree Corbo, Program Manager, Men’s Family Violence Prevention Service, Tangentyre Council, Alice Springs.

363 *Landscapes of Violence*, above note 9, p 102, notes that women can be in a particularly complex situation where the family home is a farming property owned by the perpetrator’s family for generations.

364 Humphreys, Address to PeakCare, above note 186.

365 *Evolution of an active men’s referral service*, above note 86, p 8.

366 S Collins, ‘Inquiry suggests refuges for men’, *The New Zealand Herald*, 3 December 2014. At www.nzherald.co.nz/news/article.cfm?c_id=1&objectid=11360087.

367 Victoria’s Action Plan to Address Violence Against Women & Children, 2012 - 2015, p 17. Overall, however, the CIJ heard that crisis accommodation was not used as often as it should and that longer term housing, post-crisis, was a serious gap. Consultation with Cameron Wallace and Michelle Stevens, Neighbourhood Justice Centre.

Breathing Space at Communicare in Western Australia provides a three month, residential program for men who are perpetrators of family violence. Men come from the full range of referral sources, although most are through criminal justice paths, and pay according to their income.³⁶⁸ During their time in the program, participants are required to attend a two hour behaviour change session twice a day in mid-morning and mid-afternoon from Monday to Friday. The program manager advised that, with a curfew of 9pm and with Centrelink and other appointments to attend, this does not leave much time for contacting partners or perpetuating any violence.

Case management services, meanwhile, provide onsite help with life skills, such as learning how to shop, cook and budget for themselves, an element which may be particularly crucial where participants have come from dysfunctional family backgrounds.³⁶⁹ Case management also helps participants to access treatment for contributing factors such as drug and alcohol abuse which inhibit men's ability to make safe choices. Standard program sessions function in the same way as most other MBCPs.³⁷⁰ The CIJ heard that Communicare is hoping to expand this service to offer transitional accommodation for men moving back into the community.

As SPEAQ points out:

*Men who have perpetrated [domestic and family violence] pose more danger when they drop out of sight. Providing case management support for these men to establish themselves separately and manage changes in their lives can reduce the likelihood of criminal breaches of orders...*³⁷¹

It would therefore seem to be common sense for jurisdictions to ensure that men who are already violent and controlling, and whose anger may have escalated upon the legal system's response, are not only offered opportunities to change their violent behaviour, but to learn to live independently and, most importantly, to be kept within view.

3.6 Opportunities for inter-agency monitoring and escalation of responses

Beyond referrals, of course, a police callout to a family violence incident can act as a flag for multiple agencies to compare information regarding the risk³⁷² that may be present in that particular case. As referred to in Chapter One, most Australian jurisdictions now operate a form of multi-agency collaboration to monitor cases of high risk. A recent initiative in South Australia, however, is attempting to address the gap that exists between the large number of perpetrators who come to the attention of police, and the small number who are monitored on an ongoing basis by these high-risk collaborations.

Similar to 'multi-agency safeguarding hubs', which are a child protection mechanism in the UK,³⁷³ the Multi-Agency Protection Service, or **MAPS program**, is a new partnership led by South Australia Police (SAPOL) and involving the Department for Communities and Social Inclusion, the Department for Education and Child Development, SA Health and the Department for Correctional Services.

³⁶⁸ Telephone consultation with Gary Smith, Program Manager, Therapeutic and Accommodation Services, Communicare, WA.

³⁶⁹ Macrae, above note 224, writes that many abusive men lack basic independence, having come from damaging family-of-origin backgrounds.

³⁷⁰ Telephone consultation with Gary Smith, Program Manager, Accommodation and Therapeutic Services, Communicare, WA.

³⁷¹ SPEAQ submission, above note 339 p 24.

³⁷² Academics note that 'risk' can be a vexed concept. Day et al, above note 91, Salter, above note 123.

³⁷³ Safeguarding Children, United Kingdom. At <http://www.londonscb.gov.uk/mash/>.

Complementing the Family Safety Framework, which addresses higher risk cases, the MAPS program involves co-location of participating agencies, which enables ‘real-time’ information sharing, risk assessments and allocation of responses in cases where there are domestic violence and child protection concerns, consequently intervening at an earlier point.

Currently MAPS referrals come from SAPOL only, but when fully implemented the service will extend to include referrals about domestic violence and child protection concerns from all partner agencies.

The CIJ heard that matters are ‘triaged’ on a daily basis and that risk assessments include consideration of whether there are repeat victims involved.³⁷⁴

In addition to using initial police attendance to ‘triage’ matters between agencies, one model of police response mirrors the subversion of a perpetrator’s escalation, as described in relation to high risk monitoring in Massachusetts in Chapter One.

Police in **West Yorkshire** in the UK impose an **automatic increase in the level of intervention with each police attendance**. Beginning with an official warning to the perpetrator and rising through to court attendance, each level of intervention is accompanied by a standardised letter explaining the policy and stating what sanctions will be imposed should a perpetrator’s behaviour continue.³⁷⁵ The model is described as enabling police to ‘filter out’ lower risk offenders so that police can better identify and concentrate on higher risk offenders.

This approach echoes themes described in reference to perpetrator programs, as well as in the following chapter regarding court attendances, that swift and sure sanctions are the most effective. Certainly, studies suggest that the certainty, rather than the severity, of a penalty is a more influential factor in terms of the impact of a sentence on an offender and, arguably, a more useful deterrent.³⁷⁶ Jurisdictions should therefore consider whether opportunities exist to map out a clearer and more certain series of responses for police to use with family violence perpetrators – advising perpetrators that this path lies ahead to increase the chances that they may curtail their violent behaviour.

3.7 Conclusion

Clearly, there are multiple opportunities for perpetrators, as well as victims, of family violence to come to the attention of agencies at an earlier point than has conventionally been the case. For some, this may be enough to set them on a path of addressing, or at least reducing, their violent or controlling behaviour, while for others, it will not.

Even so, those in the field note the importance of ongoing interactions so that, if a violent man does not change his behaviour, he may nevertheless be more ready to engage when police attend again.³⁷⁷ What’s more, these repeated conversations – whether with a men’s referral service or another kind of agency, and preferably with the same workers each time – may not only mean that the perpetrator is less likely to slip off the radar, but also that he will be aware of what response he will meet if he does not attempt to change. Where pooled appropriately, information gathered from a range of sources can help to build the profile of individuals who are violent and controlling towards their family, and keep these individuals firmly within view.

³⁷⁴ Telephone consultation and personal email communication with Andrew Shaw, Department of Correctional Services, MAPS Manager, South Australian Police.

³⁷⁵ C Hagelmann-White, *Innovative Legal Measures Addressing Violence Against Women: New Structures and Practices in Europe, Presentation to Conference, Ten Years of Austrian Anti-Violence Legislation*, International Conference in the Context of the Council of Europe Campaign to Combat Violence Against Women, November 2007, Vienna, p 50. See also J Hanmar, S Griffiths & D Jerwood, *Arresting Evidence: Domestic Violence & Repeat Victimisation Policy Research Series*, Paper 104, Home Office, 1999.

³⁷⁶ Breckenridge & Hamer, above note 253.

³⁷⁷ Consultation with Rodney Vlasis, Acting CEO, No to Violence.

Chapter Four – Opportunities at Court

4.1 Introduction

This Report has suggested that the adversarial nature of the conventional legal process tends to discourage, rather than facilitate, proactive interventions. Certainly, the prospect of a penalty or an order which curtails a perpetrator's movements can act as an incentive for him to minimise or deny his conduct. Meanwhile, the detached and fairly cursory tone of many judicial interactions can cement a perpetrator's relative anonymity and, perversely, the sense that he is misunderstood - that the court has no authority to tell him what to do and that he should continue to fly under the radar as much as possible.

This does not mean that protection orders or criminal justice penalties are not appropriate responses. Rather, what it means is that attendance at court by an abusive man should be seen as an opportunity for multiple, *purposeful* interactions. This is particularly the case where the man has not had previous contact with - or has managed to avoid the scrutiny of - other agencies. In these circumstances, the court system represents a chance to bring him, and keep him, under the spotlight.

4.2 Opportunities through initial contact at court

There are certainly a variety of ways in which a court can act as a referral point for relevant treatment services.

The **Neighbourhood Justice Centre** in metropolitan Melbourne is a 'one stop shop' in which parties to a legal matter can access a range of community services on site. Before even entering the courtroom, parties can receive information, advice, referral and support regarding health, housing, and employment services from specially allocated workers. Parties to intervention order applications can receive support from a women's support service worker for applicants, and a community health case worker for respondents. Court Network and the Salvation Army are also available to provide support.

Though the NJC operates a dedicated family violence list one day a week like many other courts, matters are triaged on the papers (to the extent that this is possible) on the day beforehand. A co-ordination meeting between agencies enables treatment and service requirements to be identified, with matters then attended to according to immediate need, rather than according to the customary listing practices of most courts. The CIJ heard that this required the careful development of a new listing practice with the Court's Registrar.³⁷⁸

Flexible listing practices are also nominated by other stakeholders as being useful, as is a more strategic use of bail, although this remains a somewhat contentious area given that defendants released on bail have not, of course, been convicted of the relevant offence. Nevertheless, the CIJ heard that:

- Family violence defendants in South Australia are **bailed to a morning timeslot** to prevent their partners from having to wait all day.³⁷⁹

³⁷⁸ Consultation with Cameron Wallace and Michelle Stevens, Neighbourhood Justice Centre.

³⁷⁹ Consultation with Magistrate Jay McGrath, South Australian Magistrates' Court.

- Magistrates in Western Australia have the option to call for a **protective bail risk assessment report** when they are concerned about bailing defendants they may perceive as dangerous. Services are asked to provide relevant information so that a more informed decision about bailing a defendant can be made.³⁸⁰
- The Gold Coast Integrated Response is exploring the potential of DV Response Teams (DVRTs) using information available from police, corrective services, child safety and the Domestic Violence Prevention Centre, which can be presented in one file to the magistrate presiding in bail applications. The front of the file will contain a summary sheet highlighting the number of DVOs taken out against the offender, the number of police callouts to the particular person, the number of breaches of DVO, his other criminal history (state and interstate), and details of the current offences before the Court. The purpose of this file and summary report is to facilitate informed judicial decision-making by providing the court with the full spectrum of a defendant's behaviour.³⁸¹

In Tasmania, meanwhile, the integrated Safe at Home system also uses bail as an opportunity to identify health and other needs.

Individuals charged with a family violence offence can be bailed to the **Defendant Health Liaison Service (DHLS)**. A condition of bail is that defendants make and attend an appointment with the DHLS, after which the DHLS functions in a case co-ordination capacity, assessing the individual's health and other needs and referring them to appropriate services. As it occurs when a defendant has been charged, but not convicted, of an offence, no report is made to the court about an individual's progress or attendance at any relevant treatment unless or until a conviction or guilty plea is recorded and the defendant agrees to engage with the DHLS. At this point, a court report from the DHLS goes towards sentencing.³⁸²

The service's Defendant Health Liaison Officer advised that, as Tasmania does not have an active men's referral service, this intervention is the first time that many men have ever been asked, or talked about, their behaviour or personal circumstances. The aim of the DHLS is therefore to 'get them in the door' on the first court date,³⁸³ their contact with the criminal justice system often the first time that associated issues have been identified.³⁸⁴

This is a theme which recurs throughout the literature and consultations – the fact that men are often simply not willing or able to seek help, presumably in part because doing so involves admitting some sort of responsibility for their behaviour.³⁸⁵

Accordingly, a program with a similar emphasis operates in the Canadian province of Yukon, although post-plea, rather than prior to any conviction.

380 LRCWA Report, above note 105. The CIJ heard that defence lawyers were initially concerned about the introduction of this mechanism, given that it effectively introduced unsubstantiated material into evidence. Consultation with Stephen Clarke, Manager, Family Violence Intervention Services, Department of the Attorney, WA.

381 Consultation with Rosemary O'Malley, Manager, Men's Domestic Violence Program, Gold Coast Integrated Domestic Violence Response.

382 The CIJ heard that, when the DHLS was first established, it provided information to the court at every court appearance. This practice discontinued, however, due to concern that it may prejudice the outcome of any trial. Telephone consultation with Jacqui West, Defendant Health Liaison Officer, Magistrates' Court of Tasmania.

383 Telephone consultation with Jacqui West, Defendant Health Liaison Officer, Magistrates' Court of Tasmania. Referral depends on the willingness of Magistrates to bail to the service. Magistrates who do so, however, use the opportunity to ask how sentencing can help to ensure that offenders continue to receive the treatment that they may need.

384 Brown & Hampson, above note 223.

385 Urbis, above note 220 p 22.

Defendants who plead guilty to at least one family violence related charge – thereby accepting some level of responsibility for what has occurred – can opt in to the **Yukon Domestic Violence Treatment Option**. Having done so, defendants are expected to engage with relevant health services following assessment, after which they make frequent appearances before the court, decreasing in frequency if they are seen to be making progress and complying with orders.³⁸⁶

Clearly, initial or early contact with a court is an opportunity which needs to be seized more effectively. The importance of bail being used more effectively - either to ensure consistency with existing protection orders, to mitigate risk or to leverage some kind of connection with a service agency - is a theme which recurred throughout the CIJ's consultations. There would seem to be no reason, however, why such an opportunity should be limited to those on bail, with a large population of defendants held on remand receiving no services at all.

Attendance at court is a crucial opportunity for a defendant's health or substance abuse issues to be identified and, potentially, for a background of family violence to be identified even where it is not immediately evident. Jurisdictions should therefore consider what additional opportunities lie in using the window of a defendant's first court appearance – whether they are bailed or remanded in custody - to identify and address issues that may well contribute to further offending down the track.

4.3 Opportunities for more support and information at court

Also capable of providing referrals, as well as messages about the unacceptable nature of the violence, are support workers based at court. Certainly, the presence of applicant workers or women's services at court is nominated as a vital element in providing victims with support, discussing safety planning, and therefore helping to hold perpetrators accountable.

Despite this, relationships between courts and services are inconsistent, with many women's services effectively kept at arm's length from some court locations, while others are firmly embedded as part of an integrated response.³⁸⁷

The integration of the service which operates as part of the **Gold Coast Integrated Domestic Violence Response** was nominated as the 'gold standard' in this respect in Australia – a response discussed in more detail later in the Report. Overseas, the **Calgary Domestic Violence Court in Canada** engages court-based caseworkers who initiate contact with a victim immediately following the accused's arrest.³⁸⁸

During consultations, however, stakeholders also voiced resounding support for the value of respondent workers, or other specially trained staff who work with men once they attend court, and provide a source of unequivocal messages about the unacceptable nature of perpetrators' behaviour. Currently these workers are only available at a limited number of locations in courts around Australia, whether formally provided by the relevant court, or by local behaviour change programs, although their use is expanding.³⁸⁹

An examination of men's court support services provided by DV Connect in Brisbane and, for a limited period, via Anglicare in Ringwood, Melbourne, suggests that this **face to face**

386 L Tutty, J Ursel & F Douglas, 'Specialised Domestic Violence Courts: A Comparison of Models', in J Ursel, L Tutty & Lemaistre (eds), *What's Law Got to Do With it? The Law, Specialised Courts and Domestic Violence in Canada* 2011.

387 Consultations with Rodney Vlasi, Acting CEO, No to Violence and Berry Street Family Services.

388 Tutty et al, above note 386.

389 The Magistrates' Court of Victoria will provide respondent workers at all headquarter courts. Magistrates' Court of Victoria, <http://www.magistratescourt.vic.gov.au/news/family-violence-initiatives-2015-2017>.

contact with respondent workers at court can increase the likelihood that perpetrators will take responsibility for their behaviour, and calm them down sufficiently to engage effectively with the terms of any orders imposed.³⁹⁰

Other reports have also noted that respondent workers are highly valuable in terms of their capacity to ‘diffuse men’s anger’,³⁹¹ which Magistrates advise can prevent men from engaging with or understanding court processes or consequent orders, as referred to earlier.³⁹² Practitioners also report that women often feel more comfortable in following through with applications when the respondent has received some practical advice.³⁹³

In its consultation with SPEAQ,³⁹⁴ the CIJ heard that contact with respondent workers could influence whether respondents were prepared to be referred to an MBCP as a condition of **Voluntary Intervention Orders** (VIOs). This legislative mechanism was developed to support referrals to perpetrator programs³⁹⁵ with the consent of the respondent.³⁹⁶ SPEAQ advised that, following the introduction of VIOs, the uptake had been relatively low. In one region, however, a Judicial Registrar started sending respondents to the respondent court worker to help them make the necessary phone call to the MBCP on the spot, and to make a time for an intake interview. Respondents had the opportunity to discuss the nature of MBCPs with the respondent worker, and the local MBCP suddenly noticed a distinct increase in numbers within the space of a few weeks.³⁹⁷

As noted above, ‘warm’ or active referrals are an important measure, with other reports also noting the value of such referrals made by a court, rather than perpetrators being left to make contact with the relevant program themselves.³⁹⁸ Where respondent workers are linked to the MBCP, or to the referral service which may have made contact with the perpetrator following police callout as referred to in Chapter Three, the benefits are increased, and a path of interactions mapped out.

Consistent with this, the WA study referred to in Part One which found that respondents often did not understand the legal basis or conditions of protection orders, called for a **proactive service to contact all respondents** 24 hours after being served with an order application to provide information, answer questions and assess risk. This worker would be the ongoing contact for the respondent through the court process, and provide referrals to services, as well as information to women’s agencies where the respondent was considered to be of high risk.³⁹⁹

Jurisdictions should therefore consider the development of a service which not only provides information, support and referrals to respondents once they reach court but which, linked to an

390 See *Engaging men at court*, Summarised from workshops at the No To Violence Conference, Melbourne, November 2012, in which men’s service workers offer a follow up call to men after first engaging with them at court. At <http://ntv.org.au/conference/wp-content/uploads/2012-ntv-conference-workshops-7a-and-8a-engaging-men-at-court.pdf> This paper notes that the relevant behaviour change program makes six attempts to contact men over a two week period.

391 *Landscapes of Violence*, above note 9, p 103.

392 Consultation with Magistrate Fiona Hayes Regional Co-ordinating Magistrate, Gippsland, Magistrates’ Court of Victoria.

393 *Engaging men at court*, above, note 390.

394 Consultation with Secretariat of SPEAQ. Also noted in SPEAQ’s submission to the Queensland Inquiry above, note 216.

395 The CIJ heard that this was in part because of concerns that a breach for non-attendance did not seem to be the equivalent of breach on another ground, such as a further assault. Consultation with Secretariat of SPEAQ.

396 The consequence of subsequent failure to pursue the referral, however, is less severe than a breach, being simply that police are advised and the Magistrate may take this into account in any further proceedings. *Domestic and Family Violence Protection Act*, 2012.

397 Consultation with Secretariat of SPEAQ.

398 The CIJ notes that, ironically, perpetrators often rely on their partners to make the initial contact with the program. Brown & Hampson, note 223, p 40. *Breaching Safety*, above note 103.

399 *Breaching Safety*, above note 103.

active referral service as described in the previous chapter, can initiate contact with respondents to protection orders prior to their attendance at court, provide necessary information, and keep this contact going during the course of the matter's progress before the court.

4.4 Opportunities for legal advice and information

Equally important in terms of holding men accountable is the availability of legal advice for both parties to intervention orders. Legal representation for the applicant is crucial, increasing her understanding of the process as well as her ability to negotiate the terms of the order. For many family violence protection order applicants, however (as well as those party to a family law dispute) legal advice and representation is unaffordable, with legal aid unavailable and community legal centres swamped.⁴⁰⁰ Here it is worth noting that, in some European jurisdictions, women are required to be provided with free legal representation in domestic violence matters.⁴⁰¹

The role of legal representation for the *respondent*, however, is also a vital part of the equation. Interaction with a lawyer is another opportunity for the respondent to hear that his behaviour will not be tolerated by the justice system; that he must comply with any intervention order made; and that he should consider referral to a relevant service agency for any associated problems he may have. Legal advice also means that perpetrators are more likely to negotiate terms of an order with which they are *able* to comply.

Providing these messages can be a difficult balance for any lawyer to strike, of course, when arguably the conventional role of legal representation is to ensure that a client in this situation has no order made against him at all. However, Victoria Legal Aid (VLA) notes that no lawyer want to see clients embroiled in more serious matters down the track. Lawyers also report that even getting a respondent to think about his behaviour 'sows a seed'.⁴⁰²

Under the Domestic Violence Justice Strategy in NSW, funding has been announced for the provision of legal advice and information to protection order respondents.⁴⁰³ Beyond this, however, it is crucial that those providing this advice receive specialist training if they are aiming to achieve the balance referred to above. Certainly, a Victorian study of the experiences of women in rural and regional areas at court found that specialist duty lawyers or CLC lawyers were more likely to advocate strongly for applicants, as well as to make referrals to services, than private practitioners on the duty lawyer roster.⁴⁰⁴

Training regarding the dynamics of family violence and the challenges of working with perpetrators has been delivered by No to Violence to VLA lawyers.⁴⁰⁵ At the time of writing, this training had not been provided to equivalent lawyers in other jurisdictions. VLA has also recently established a specialist Family Violence Panel.⁴⁰⁶ VLA reports that, in 2012-13, only 2% of those respondents who had received advice from VLA duty lawyers failed to comply with the terms of any subsequent order made.⁴⁰⁷

400 *Landscapes of Violence*, above note 9, p 116.

401 Centre for European Constitutional Law and Institute of Advanced Legal Studies, *Protecting Victims' Rights in the EU: the theory and practice of diversity of treatment during the criminal trial*. Comparative Report and Policy Recommendations, p 196. At <http://victimsprotection.eu/images/4.38-Comparative-Report.pdf> See also European Agency for Fundamental Rights, *Access to justice in Europe: an overview of challenges and opportunities* 2010.

402 Victoria Legal Aid, <http://www.legalaid.vic.gov.au/about-us/news/white-ribbon-day-victoria-legal-aid> and consultation with Leanne Sinclair, Family Violence Program Manager, Victoria Legal Aid. See also A Blatchford, 'Are you here for an intervention order?' When domestic violence finds its way to court'. *The Citizen*, 27 June 2014. At <http://www.thecitizen.org.au/features/%E2%80%98are-you-here-intervention-order%E2>.

403 NSW Domestic Violence Justice Strategy, at http://www.domesticviolence.justice.nsw.gov.au/domesticviolence/dvjustice_strategy.html.

404 *Landscapes of Violence*, above note 9, p 112.

405 Consultations with Leanne Sinclair, Family Violence Program Manager, Victoria Legal Aid and Rodney Vlais, Acting CEO, No to Violence.

406 At <http://www.legalaid.vic.gov.au/information-for-lawyers-doing-legal-aid-work/panels/open> 25 October 2014.

407 Consultation with Leanne Sinclair, Family Violence Program Manager, Victoria Legal Aid.

Conversely, a NSW study concluded that provision of legal advice did not result in fewer breaches, but did benefit court processes.⁴⁰⁸ Jurisdictions should therefore consider ways in which to harness the potential of duty lawyers to greater effect, offering fully developed, specialist training to legal aid duty lawyers which may support their ability to work effectively with respondents to protection order applications and, where an order is issued, to increase the likelihood that respondents will comply.

4.5 Opportunities for judicial leadership and imprimatur

Training and specialisation, of course, is also a significant theme of any discussion about the role of judicial officers and family violence. Consistently repeated were observations about the difference between an interaction with a specially trained Magistrate and one who saw family violence matters as an irritant or distraction to the business of 'real law'.⁴⁰⁹

That this perception would endure in any quarter is disappointing, given that family violence matters absorb the bulk of many court lists. Yet, as one report observed, the dismissive manner of Magistrates who do not believe in the value of the work can, on occasion, 'replicate family violence'.⁴¹⁰

This is likely to have a devastating effect on the victim and deter her from seeking the court's help in future. In contrast, a positive interaction with a Magistrate – in which the applicant feels respected and understood, and in which the Magistrate engages effectively with the individual circumstances of the case – can make a substantial difference.⁴¹¹ International studies confirm that, where a judicial officer understands the dynamics of family violence, he or she is more able to appreciate the nuances and complexities of the matters which come before the court and make orders which are appropriate.⁴¹²

Accordingly, the **Victorian Magistrates' Court has recently announced that all Magistrates (not just those sitting in specialist lists or divisions) will be required to undergo two days of specialised training in family violence.**⁴¹³ Though this is an important step, ongoing training and education is equally vital. The CIJ heard that one of the most useful contributors to the expertise in WA's specialist courts is the **Family Violence Court Operational Committee** – regular meetings involving the sitting Magistrates, lawyers and support workers in which the latest research is discussed and a focus on victim safety emphasised. With the meetings chaired by the Magistrate, this encourages attendance and increases engagement.⁴¹⁴

408 L Trimboli, 'Legal services for defendants in Apprehended Domestic Violence Order proceedings: An evaluation. *Crime and Justice Bulletin*, No. 179, November 2014. NSW Bureau of Crime Statistics and Research. At <http://www.bocsr.nsw.gov.au/agdbasev7wr/assets/bocsar/m71685412/cjb179.pdf>.

409 Labriola et al, above note 228, note that, in contrast, Judges in US Specialist Domestic Violence Courts do not see this role as 'punishment' but rather a strong career path.

410 *Landscapes of Violence*, above note 9, p 107. See also, *People's Report*, The Glenn Inquiry, New Zealand, at <https://glenninquiry.org.nz/>.

411 Rosie Batty has spoken of the difference it made to her to have her matter dealt with by a specialist Magistrate. 'Luke Batty inquest: Magistrate recognised the danger that Greg Anderson presented', *Herald Sun*, 5 December 2014. See also <http://www.heraldsun.com.au/news/law-order/luke-batty-inquest-magistrate-recognised-danger-greg-anderson-represented/story-fni0fee2-1227146423372>. *Landscapes of Violence*, above note 9, p 95 notes that female Magistrates are especially likely to value eye to eye contact and interpersonal skills. This was echoed in consultations with the Women's Legal Service.

412 Minns, above note 264. Labriola et al, above note 228.

413 Magistrates' Court of Victoria, <http://www.magistratescourt.vic.gov.au/news/family-violence-initiatives-2015-2017>. Registrars will also be provided with training, and an increased number of court-based applicant and respondent workers provided with professional development.

414 Consultation with Stephen Clarke, Manager, Family Violence Intervention Services, Department of the Attorney, WA.

Consistent with the theme of this Report, Magistrates also emphasise that the first hearing must be as effective as possible:

*The more work that could be done at the first hearing, the more likely it was that the [FV] IOs would be consented to and referrals and services put in place to assist with making orders hold...*⁴¹⁵

A crucial part of being effective is ensuring that a Magistrate engages meaningfully with a perpetrator in court and that judicial authority is leveraged to maximum effect. Research concerning procedural fairness confirms that the way in which a defendant is treated in the courtroom - including whether he feels heard and respected, and whether communication is clear - has a profound effect on his perception of the process, as well as the likelihood of him complying with court orders and the law generally.⁴¹⁶

In Western Australia, the importance of this clear and meaningful communication has been recognised in the introduction of **pre-court reviews** between the sitting Magistrate, prosecutor, defence and relevant agencies. During these meetings, the progress of an offender is discussed so that the Magistrate is aware of any issues affecting his engagement in a behaviour change program, for example. Participants are careful not to discuss any matter which may jeopardise the safety of victims, or prejudice a fair hearing or sentencing at a later date.

The value of these meetings then translates to the interaction between the Magistrate and the offender when in court. The CIJ heard that offenders engage more readily when it is clear that the Magistrate is already aware of their circumstances and knows specific details of their lives, such as the names and ages of their children, for example. The CIJ heard that this 'choreographed' exchange leads to offenders feeling more accountable to the court as they know that the same Magistrate will hear of any non-compliance, and that they will have to answer to that Magistrate about it on their next appearance.⁴¹⁷

Using the imprimatur of the court and, more broadly, the leadership of the judiciary, is an opportunity that all jurisdictions should seize more effectively, particularly as contact with the justice system often represents the only proactive intervention that many perpetrators experience. Yet the majority of Australian courts have remained largely reactive, regarded usually as a place to which victims can turn for a protection order but which will not be further involved unless any order issued is breached.

Many judicial officers now understand, however, the impact that leveraging their authority can have on both victims and perpetrators alike. For example, constant court monitoring of offenders as occurs in specialist drug courts ensures not only that the offender is motivated to continue with relevant treatment but that he also understands the gravity of the orders made.

It is worth noting in this context that, although the CIJ was asked to focus on initiatives which reduced unnecessary interaction with the justice system, *unnecessary* interaction with the justice system is that which propels perpetrators from scrutiny, which compounds existing isolation and, in some cases, vindicates a perpetrator's sense of justification or entitlement by failing to respond in an adequate or timely way.

⁴¹⁵ *Landscapes of Violence*, above note 9.

⁴¹⁶ P Bowen & E Gold LaGratta, *To Be Fair: Procedural Fairness in Courts*, Policy Briefing 24 November 2014, Criminal Justice Alliance, at <http://justiceinnovation.org/better-courts/publications/be-fair-procedural-fairness-courts> Similar observations emerge from an older study of domestic violence perpetrators in the context of their contact with police. R Paternoster, R Brame, R Bachman & L W Sherman, 'Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault', *Law & Society Review*, Vol. 31, No. 1 (1997), pp. 163-204. See also Breckenridge & Hamer, above note 253.

⁴¹⁷ Consultation with Stephen Clarke, Manager, Family Violence Intervention Services, Department of the Attorney, WA.

By contrast, *necessary* interaction with the justice system is that which addresses the matter in an early and proactive manner – providing information, identifying risk and need alike; mapping a plan for ongoing interaction; and challenging the denial and minimisation that so many family violence perpetrators display. Jurisdictions should therefore explore ways in which they can maximise the use of contact between a perpetrator of family violence and a court, so that the interactions are as purposeful and effective as possible every time.

4.6 Opportunities to increase the effectiveness of specialist courts

This kind of ongoing and meaningful interaction is one of the objectives of most specialist family violence courts, particularly where this interaction is meaningful for victims.

Family Justice Centers in the US, for example, are a standout example of ‘one stop shops’ at which victims can access support services in the same building as the specialist court, and are appointed an Assistant District Attorney who provides ongoing information during pending criminal proceedings to ensure that victims feel safe and confident about the process.⁴¹⁸

The question is whether these interactions are also meaningful for perpetrators and therefore function as an effective – and early – intervention in the cycle of violence. In considering this question it is not the intention of this Report to provide an exhaustive analysis of specialist courts in Australia and internationally, particularly as much as been written elsewhere.

However, it is important to note that models vary widely, both across and within jurisdictions. For example, over 200 specialist courts exist in the US, most of which are based on a predominantly criminal justice response, as are those in the UK,⁴¹⁹ although as mentioned in Chapter Two, those in the US put particular emphasis on mandating offenders to a perpetrator program, with compliance then monitored on an ongoing basis.⁴²⁰

A range of integrated specialist courts also exist – both in the US and in Canada – which take a ‘**one family, one judge**’ approach and have the capacity to address family violence matters, child protection and some matters relating to family law disputes concurrently.⁴²¹ Evaluations of integrated models show that docket systems are especially effective, with parties required to attend fewer court hearings and therefore not give evidence repeatedly; that more family law cases are settled and fewer filed, suggesting that more reached early resolution; that post-disposition monitoring of offenders is increased; and that a single judge in possession of all the information about a family can make more informed and useful decisions – an echo of the emphasis on meaningful interaction and procedural fairness referred to above.⁴²²

Models vary in Australia as well. Those in NSW, Queensland and the ACT are largely focused on a criminal justice response, with the ACT, in particular, developing an integrated network to support this.⁴²³ In South Australia and Western Australia courts can address criminal and protection order matters,⁴²⁴ while Victoria’s specialist court divisions can deal with a broader range of matters,

418 Family Justice Center Alliance, at <http://www.familyjusticecenter.org/>.

419 Labriola et al, above note 228. Protection orders can be put in place as part of the consequences imposed on the offender.

420 The National Portrait study of these courts in the US, however, found that they lacked consistent goals and policies, with some prioritising rehabilitation – such as those in California which mandate participation in a 52 week program – some focusing on improved court processes and others on offender accountability. Ibid.

421 Minns, above note 264.

422 Minns, above note 264 and A Cissner, S Picard-Fritsche & N Puffet, *Erie County Integrated Domestic Violence Courts: Policies, Practices and Impacts*, Center for Court Innovation, December 2011.

423 J Stewart, *Specialist Domestic Violence Courts: What We Know Now – How Far Have Australian Jurisdictions Progressed?* Australian Domestic & Family Violence Clearinghouse, Topic Paper 20, 2011 Reissue.

424 Stewart, above note 423. See also ALRC/NSWLRC, above note 20.

including child support and crimes compensation applications. These also have the capacity to mandate perpetrators to undertake an assessment for a behaviour change program in the civil, as well as the criminal context, an approach that is gradually being adopted elsewhere.⁴²⁵

The empirical evidence base connected with specialist courts faces a similar challenge as that connected with MBCPs in that indicators of 'progress' are not necessarily useful. For example, a frequently referred to evaluation of the Bronx Misdemeanor Domestic Violence Court found no reduction in re-arrest rates for offenders who had gone through the court, and no difference in results between participants who had only undergone intensive judicial monitoring, only a batterer program, or a combination of both.⁴²⁶ This is said to have influenced policy and practice in New York considerably, with less attention given to referrals to BIPs.⁴²⁷ The focus adopted since the study's release is reported to have shifted to using intervention programs as a tool for monitoring and sanctioning, rather than for expecting any change.⁴²⁸

Closer to home, an evaluation of WA's specialist courts (which also operate in a criminal context) also indicated no reduction in recidivism in offenders who had progressed through specialist courts, but indicated a benefit in being linked to supervised participation in an MBCP.⁴²⁹ The evaluation concluded that 'utilising mainstream courts in conjunction with case managed BCP is likely to be more effective in reducing reoffending by family violence offenders and will also be more cost effective'.⁴³⁰ As noted in relation to the 'mixed' evidence about MBCPs, caution should be used when basing conclusions on a narrow measure like recidivism. Interestingly, however, the WA evaluation mirrors findings in other studies that offenders with more previous convictions overall, as well as more violent prior convictions, were significantly more likely to reoffend.⁴³¹

More broadly – and, again, in keeping with knowledge concerning effective MBCPs – a statewide evaluation of New York's specialist domestic violence courts found that:

- Those which prioritised deterring reoffending and swift, certain sanctioning for noncompliance, significantly reduced re-arrest of convicted offenders – although not arrests overall – when compared with courts without this focus.
- Defendants with a more extensive criminal history, and who demonstrated prior noncompliance with court orders were significantly more likely than others to be re-arrested.

Specialist courts were also significantly more likely than comparison courts to impose a severe sentence, and to secure a conviction given that they are more likely to elicit cooperation from the victim.⁴³² In fact, some studies find that specialist courts and judicial oversight are effective in reducing recidivism purely because offenders are more likely to be resentenced to jail, and are therefore unable to commit further offences in the community.⁴³³

⁴²⁵ Ibid.

⁴²⁶ M Labriola, M Rempel, R Davis, *Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomised Trial at the Bronx Misdemeanor Domestic Violence Court*, Centre for Court Innovation, 2005.

⁴²⁷ JA Kaye, SK Knipps, 'Judicial Responses to Domestic Violence: The Case for a Problem Solving Approach' 27 *W.ST.UL Rev* 3 (1999-2000) cited in Minns above note 264, p 27.

⁴²⁸ Minns, above, note 264.

⁴²⁹ Research & Analysis Branch, Department of Attorney-General, *Evaluation of the Metropolitan Family Violence Court & Evaluation of the Barndimalgu Family Violence Court, Evaluation Report*, Western Australia Government, December 2014. At www.department.dotag.wa.gov.au/files/fvc_evaluation_report.PDF.

⁴³⁰ Ibid.

⁴³¹ Ibid.

⁴³² A Cissner, M Labriola & M Rempel, *Testing the Effects of New York's Domestic Violence Courts, A Statewide Impact Evaluation*, Centre for Court Innovation, February 2013, p 4 and 45. This study reported (at p 31) that 29% of domestic violence courts reported often or always imposing jail and 24% reported often or always revoking probation. These results closely mirror the results of the National Survey cited at note 228.

⁴³³ Cissner et al, note 228.

Given the criminogenic nature of custodial settings, discussed further in the next chapter, these last two points might be regarded as having less weight in terms of the value of specialist courts. Nevertheless, elsewhere, a study of specialist courts in the UK found that clustering and fast-tracking of cases, as well as an emphasis on effective evidence gathering, made advocacy and information sharing easier and improved victim participation.⁴³⁴ A further Canadian study found that, although participation in a domestic violence court did not impact on the likelihood of offending overall, offenders who had gone through a specialist court were less likely to be convicted of another violent, as opposed to administrative, offence.⁴³⁵

Some Australian jurisdictions are moving 'from a focus on specialisation to integrated models'. This was the recommendation of a recent study of NSW's specialist courts, and also seems to be the direction being considered in Victoria and Western Australia; while the Special Taskforce on Domestic and Family Violence in Queensland has recently recommended the introduction of specialist courts.⁴³⁶ The CIJ heard that, where courts are overwhelmed by volume, it is essential that as many courts as possible are able to offer a meaningful intervention. One of the purposes of this Report is therefore to highlight some features which seem most likely to be part of this meaningful intervention, whether in a mainstream or specialist jurisdiction.

4.6.1 Increased monitoring

New York's **Integrated Family Violence Courts** were nominated by Victorian Magistrates as a particularly useful approach, in which all matters are dealt with by the same judge and dedicated court planning teams ensure that information about compliance with court mandated programs is occurring. These courts have also recently introduced offender monitors, dedicated staff members who follow the progress of defendants post-conviction to ensure that they are complying with their sentence.⁴³⁷

The **Brooklyn Domestic Violence Felony Court**, in particular, puts emphasis on swift response to violations of orders. As referred to above, BIPs are now used almost wholly as a monitoring tool by New York courts, rather than carrying any expectation of behaviour change. In addition to referral to a BIP, therefore, offenders are assigned to intensive supervised probation, which requires more frequent contact and intensive monitoring than traditional probation. Some probationers are assigned to the Start Program, which uses electronic surveillance and victim alarms to enforce conditions.⁴³⁸

As discussed in Chapter Two, respected evaluations of BIPs in the US have suggested that they are most effective when linked with a strong criminal justice response and rigorous probation supervision.⁴³⁹ This includes being able to apply a 'swift and sure' response, such as an immediate, short-term period of imprisonment.⁴⁴⁰

434 D Cook, M Burton, A Robinson & C Vallely, *Evaluation of Specialist Domestic Violence Courts/Fast Track Systems*, March 2004. The evaluation found that increased support reduced, rather than encouraged, victim retractions as had previously been suspected, p 8 & 9.

435 Cited in Tutty et al, note 386.

436 *Not Now, Not Ever*, above note 16. See also Magistrates' Court of Victoria, <http://www.magistratescourt.vic.gov.au/news/family-violence-initiatives-2015-2017>. A Bates, 'DV Court axed', 23 January 2015. At <http://au.news.yahoo.com/thewest/a/26075863/domestic-violence-court-axed/>.

437 New York Courts, Problem Solving Courts, Domestic Violence Courts. At <http://www.nycourts.gov/courts/2jd/kings/criminal/problemsolvingcourts.html>.

438 Center for Court Innovation, <http://www.courtinnovation.org/project/booklyn-domestic-violence-court> The organisation *Stop Violence Against Women* reports that, since the establishment of Brooklyn's DV felony court, not a single victim linked to an open case has been killed. Broader evidentiary rules, allowing 911 emergency calls or domestic incident reports to be admitted when a victim is afraid or unwilling to testify, have led to a higher number of guilty plea convictions. Offenders know they'll get the same judge. At http://www.stopvaw.org/specialised_domestic_violence_court_systems.

439 See Gondolf, above note 222. See also Edleson, above note 221.

440 Studies indicate that it is the certainty, not the severity, of the offence, which is important. Breckenridge & Hamer, above note 253.

For example, the **Domestic Violence Swift and Sure Sanctions** program was trialed in Lansing County in the US as part of Michigan's broader Swift and Sure Sanctions Probation Program. It required repeat domestic violence offenders who pleaded guilty to be referred to a relevant treatment program but then immediately sentenced to a short term of imprisonment upon any subsequent re-offence.⁴⁴¹

Jurisdictions should therefore explore additional opportunities for courts to increase ongoing monitoring of family violence offenders, including by being brought back repeatedly before the same judge, and by employing swift and certain sanctioning where offenders have failed to comply with orders. This being said, it is important that these opportunities do not place further burden or pressure upon victims to attend court or revisit their experiences. Rather, the role of the court is to step in and assume this burden – keeping the victim informed, but engaging directly with the perpetrator to hold him more effectively to account.

4.6.2 Early connection to perpetrator programs

An emphasis worth noting in respect of Canada's specialist courts are the various models which encourage accelerated referral to perpetrator programs.

In **Ontario's Domestic Violence Court Programs**, for example, an **early intervention stream** emphasises swift access to treatment for offenders who have no prior domestic violence convictions, who did not use a weapon in commission of the offence and who caused no significant harm to the victim. This is described as often being used in situations where the victim and offender wish to reconcile.⁴⁴² To participate in this stream, defendants must plead guilty and, as a condition of bail, be ordered to attend a Partner Assault Response (PAR) program. A specialised Crown Prosecutor does the necessary screening, while the Victim/Witness Assistance Program consults with victims. On completion by the offender, the PAR program provides a report which can be considered as a factor in sentencing. If satisfactory, the Crown usually recommends a conditional discharge. If the accused does not successfully complete the program, however, bail conditions are considered to have been breached, and the individual is processed by a second stream which emphasises vigorous prosecution. An evaluation of the schemes found that the early intervention stream has led to reduced case processing times, a higher proportion of guilty pleas and offenders commencing treatment much earlier.⁴⁴³

Other courts in Canada take a slightly different approach to achieving the same aim.

Calgary's **HomeFront** scheme is not a specialist court, but an initial or docket court that acts as an entry point. Accused considered at low risk of reoffending can have their charges stayed by a '**peace bond**' and are then mandated to treatment immediately, with the view that they will be less resistant to intervention in the immediate aftermath of police contact. Early case resolution is a basic principle, with around 46% of cases concluded within two weeks from first appearance. The Crown prosecutor reads the particulars of the offence into the record and has the accused acknowledge its accuracy so that this information is on the file in the event of a re-assault.

Although some commentators express concerns that the use of peace bonds decriminalises domestic violence, authors of a detailed study of the program explain that 'those with Peace Bonds tend to make quicker linkages with treatment and are less likely to drop out than those without.'⁴⁴⁴ While a condition attached to a peace bond might not

441 Available information indicates that the program's initial funding grant was not ultimately approved by the local authority. At <http://www.scrippsmedia.com/fox47news/news/New-Program-to-Fight-Domestic-Violence-in-Lansing-267152471.html> See also <http://courts.mi.gov/administration/admin/op/problem-solving-courts/pages/swift-and-sure-sanctions-probation-program.aspx>

442 Tutty et al, above notes 125 & 386.

443 Ibid.

444 Tutty et al, above note 386.

be considered to be the responsibility of Corrections, probation services nevertheless monitor the conditions and take action if requirements are not met. Conditions are applied in a relatively short period after arrest and a well-supported intervention system mean that offenders start treatment within days of having attended the HomeFront court.

Since trial is expensive, commentators note that these procedures are likely to have resulted in substantial financial savings.⁴⁴⁵ Clearly, Canadian jurisdictions have invested in approaches which accelerate the intervention process and ensure that the motivation of perpetrator program participants is not undermined by being placed on a waiting list. Jurisdictions around Australia should therefore consider ways in which they can support earlier connection with perpetrator programs through the court process, ensuring that the benefits of this process are not eroded by perpetual delay.

4.6.3 Opportunities for more flexible use of a court's authority

As well as interventions which occur at an earlier stage, interventions which are appropriately targeted are also important. Highlighted in relation to perpetrator programs, academics are pointing to intensity and swift referral to interventions as a particularly vital emphasis so that the effectiveness of these interventions are not undermined by delay.⁴⁴⁶

Legislative reform in South Australia in recent years has enabled Magistrates to require respondents to any final or interim protection order to undergo an assessment for potential referral to a tiered series of perpetrator programs connected to the court.

The **Abuse Prevention Program** includes a targeted combination of supervised treatment, rehabilitation, or behaviour change, as well as supervised access to support services. Men facing charges can also be bailed to the program as an alternative pathway and the program includes a case manager service and a Women's Safety Contact Program. While many specialist courts have an intervention program attached, this program is distinct in terms of the various levels of intervention on offer, with a 24 week, rolling entry program matched to higher risk defendants, and a 12 week program either for men who have literacy, language and other barriers, or for lower risk men who are not facing criminal charges or who have entered voluntarily. Individual counselling is also available for men who are not able to participate in a group setting because, for example, of language barriers; while links with an Aboriginal men's organisation provides a 12 week group model that is culturally sensitive. The CIJ heard that a three day intensive group program was also being trialed for Aboriginal men in Port Augusta.⁴⁴⁷

Other jurisdictions also take a flexible approach.

The **Marin County Family Violence Court** program in the US is a therapeutic program which operates post-plea or conviction and involves regular court appearances, as well as three mandatory phases including a combination of participation in a 52 week court mandated batterer program, fines, restitution measures, drug and alcohol treatment and community service, with a voluntary fourth phase to address other issues such as housing and parenting classes. The program offers graduated incentives, such as certificates and other forms of recognition. It also delivers sanctions such as 'flash incarceration' without being brought back for court hearing, admonishment by the judge, as well as other measures sometimes connected with BIPs or MBOPs, such as submission of an accountability essay.⁴⁴⁸

445 Ibid.

446 Gondolf, above note 222.

447 Consultation with Magistrate Jayanthi McGrath, South Australian Magistrates' Court.

448 http://www.marincourt.org/therapeutic_fam_violence.htm.

Some commentators caution against what they see as an ‘apparently uncritical acceptance of the appropriateness of therapeutic jurisprudence and restorative justice as judicial responses to domestic violence’⁴⁴⁹. Similarly, they are concerned that this approach means that a focus on victim safety and support is diminished, if not lost, in some instances, particularly in ‘a climate of diminishing service levels for victims of domestic violence’.⁴⁵⁰ This is an important reminder, as is the simple caution offered in Chapter Two that ‘referral to ...treatment does not equate with offender accountability’.⁴⁵¹

The CIJ agrees and in no way suggests that referrals of any kind are a solution in and of themselves. What needs to be better understood, however, is that therapeutic courts are not about ‘doing therapy’⁴⁵² with an offender. Rather, their aim is to break the cycle of crime by leveraging the authority of the court, as well as leveraging the more personalised sense of accountability that is a key feature of many wider therapeutic models.

For example, the use of incentives connected with the offender’s local community or cultural base, such as those employed at Victoria’s Neighbourhood Justice Centre and in many Indigenous courts, encourage offenders to feel that they have a greater stake in complying with the court’s decision. In this context, however, it should be noted that women’s services cautioned against the extension of family violence matters to Indigenous courts precisely because, while it may be a more powerful intervention for the perpetrator, the influence of community was also relevant to the victim and may be so strong that a woman might feel compelled to withdraw her protection order application or complaint so as not to cause ongoing conflict within the community.⁴⁵³

More broadly, however, the CIJ heard from Magistrates in Victoria that co-morbidity of other issues was one of the greatest challenges they faced and that, even in the specialist divisions, inability to address these other – and often multiple – issues holds them back from being as effective as they can. In contrast, specialist family violence courts in WA have specifically adopted a case management approach to address an offender’s needs and monitor his progress.⁴⁵⁴ Judges consulted for a UK study also expressed a frustration about the limited sentencing options on offer, as well as lack of information about the outcomes of the cases they had heard, either on an individual basis or at a broader level in terms of what sentences were effective for different kinds of cases.⁴⁵⁵

Other approaches, such as the **Courts Integrated Services Program (CISP)** in Victoria⁴⁵⁶ and similar programs interstate examine offenders’ multiple or complex needs and refer them to appropriate treatment in order to maximise the likelihood that the cycle of offending will be broken.

Though this program is not available in relation to Intervention Orders, the capacity to focus more effectively on an individual’s needs, the risk that he poses and his likelihood to respond effectively to different interventions is a capacity which is increasingly being sought in perpetrator programs. Jurisdictions should therefore consider opportunities to extend this approach to defendants charged with family violence related offences.

449 Stewart, above note 423.

450 Ibid.

451 Ibid p 14.

452 Vlasis, above note 250, p 11.

453 Consultation with Family Violence Prevention & Legal Service, Victoria.

454 M King, *Solution-Focused Judging Bench Book*, Legal Services Board, AJJA, 2014. At www.ajja.org.au/Solution%20Focused%20BB/SFJ%20BB.pdf It is worth remembering, of course, that the capacity of a court to do this is dependent on the availability of services in its local area and it will be interesting to see whether this emphasis continues under the new integrated models proposed.

455 Centre for Justice Innovation and New Economics Foundation, *Better courts: a snapshot of domestic violence courts in 2013*, February 2014. Centre for Justice Innovation, p 15.

456 Courts Integrated Services Program, Magistrates’ Court of Victoria, *Final Evaluation* <https://www.magistratescourt.vic.gov.au/publication/court-integrated-services-program-economic-evaluation-%E2%80%93-final-report>.

4.7 Conclusion

Overall, the same elements which contribute to a more effective intervention by a perpetrator program seem to be present in an effective interaction with a court:

- Ongoing monitoring by the court or probation, including bringing the offender back for regular appearances
- Swift, certain sanctions for non-compliance
- Early referral to treatment and services
- Leveraging a perpetrator's 'stake in conformity', particularly those with minimal criminal history
- A capacity to tailor an intervention to the circumstances of each defendant.

These elements, however, are not likely to be present where a court simply issues an order or imposes a sentence and then sends the perpetrator away. As noted above, a significant difference exists between unnecessary and necessary interaction with the justice system. Jurisdictions should therefore encourage any intervention by the justice system to be a necessary and proactive one – one which can keep the perpetrator firmly within view.

Chapter Five – Opportunities through Corrections

5.1 Introduction

A recurrent theme to emerge throughout the CIJ's consultations and research was the crucial role of Corrections in holding violent men more effectively to account. This role may not function, however, as many people might assume. This is because, despite the call from many quarters for a 'tougher' criminal response to family violence, the revolving door and criminogenic nature of imprisonment is viewed by many as likely to make tendencies towards violence worse.⁴⁵⁷ After all, 'jails are not exactly places where men learn to respect women'.⁴⁵⁸ This is particularly the case where men do not receive any appropriate rehabilitation while in custody, which in Australia is often the case. At best, then, a period in custody can offer the partners of violent offenders some respite.

Consequently, commentators and practitioners alike point to the 'smarter' role that Corrections can play, and, in particular, has been playing in the criminal justice response in the US for many years. As described in previous chapters, probation or parole officers monitor offenders in the community post-conviction and report non-compliance to the courts.

Increasingly, Corrections is nominated as offering a similarly valuable opportunity for intervention in the Australian context, with the introduction of Community-based Corrections Orders (CCOs) in Victoria proving especially useful when Magistrates are able to tie attendance at an MBCP into a CCO. This enables offenders to be monitored while they are living in the community and connected to other relevant treatments, with Corrections officers able to provide a case management role that is not currently available through other services.⁴⁵⁹

5.2 Opportunities for more strategic use of Corrections

A more structured relationship between Corrections and other services is an additional feature of specific community-based responses.

Regarded as the 'gold standard', the **Gold Coast Domestic Violence Integrated Response** incorporates a partnership between the local hospital, a specialist court, a specialist women's support service, an MBCP of 24 weeks duration and Corrections. The women's service, MBCP and Corrections office are all co-located, enabling information sharing and consultation to occur easily. Like responses in the US, men's compliance with conditions of orders – including VIOs – are monitored closely by probation and reported to the MBCP and women's service, as well as to the court.⁴⁶⁰

Partnerships such as this, however, need not be confined to post-conviction monitoring, with the Calgary Homefront program referred to earlier using probation officers to monitor participation, even though defendants are on peace bonds and therefore not yet convicted offenders.⁴⁶¹

⁴⁵⁷ The Chief Justice of Western Australia has noted that, the longer an offender is in prison, the more likely he is to return. Martin CJ, at <http://www.supremecourt.wa.gov.au/files/Outcare%20AGM%20Martin%20CJ%2029%20Oct%202014.pdf>.

⁴⁵⁸ Cited in Salter, above note 123.

⁴⁵⁹ *Sentencing Amendment (Community Correction Reform) Act 2011*.

⁴⁶⁰ Consultation Rosemary O'Malley, Manager, Men's Domestic Violence Program, and CollaborACTION, above note 262.

⁴⁶¹ Tutty et al, above notes 125 and 386.

On a wider note, some jurisdictions are taking a more comprehensive approach to monitoring and treating offenders.

The **Colorado Domestic Violence ‘Offender’ Manager Board** was established:

*to evaluate and facilitate treatment and ongoing monitoring of post-plea domestic violence offenders on probation or parole, community orders or deferred sentence.*⁴⁶²

The Board has developed standards for evaluation, treatment and monitoring and established an application and review process for providers. The Board has representation from the District Attorney’s office, victims’ groups, police, the judiciary, counsellors, social workers, as well as relevant government departments.

Under the Board’s supervision, trained Multidisciplinary Treatment Teams share information and make informed decisions related to risk assessment, treatment, behavioural monitoring and offender management with consensus required for initial placement in treatment, change to the risk level of offenders⁴⁶³ and discharge from treatment.

Differing levels of intervention are available after intake evaluation is conducted. Level A, or low risk, offenders are those who do not have an identified pattern of ongoing abusive behaviours, have a pro-social support system, minimal criminal history and no evidence of substance abuse or mental health issues. These offenders are required to attend 90 minute group clinical sessions once a week. Level B offenders are required to attend group sessions as well as additional clinical interventions, while Level C offenders who have multiple risk factors are required to attend a minimum of two interventions per week, one to address core competencies and one treatment session such as a cognitive skills group, substance abuse or mental health issues group.

This kind of tiered response has not been developed in Australian jurisdictions with offenders who are supervised in the community. Nor has it been properly considered in terms of offenders who are sentenced to a period of incarceration, custodial and post-release settings presenting an opportunity for treatment that is currently not being seized.⁴⁶⁴

Commentators note that, in part, this failure is because few offenders convicted of offences specifically identified as related to domestic violence receive custodial sentences of any length. In fact, one Australian analysis of 20,000 cases found that less than one in five offenders received a prison sentence following conviction for ‘assault occasioning bodily harm’ against an intimate partner. The study found that it was only when the conviction was for a more serious offence of ‘recklessly causing grievous bodily harm’ that a prison sentence was likely.⁴⁶⁵ Gondolf notes that the majority of domestic violence convictions in the US are also at the misdemeanor level, and so do not attract a custodial sentence.⁴⁶⁶

This means that the majority of domestic violence offenders in custodial settings are not eligible for the long term rehabilitation programs that are increasingly being directed at other violent,

⁴⁶² Minns, above note 262. Colorado Domestic Violence Offender Management Board, Standards for Treatment with Court Ordered Domestic Violence Offenders. At <http://sites.google.com/a/state.co.us/dcj-domestic-violence/>. See also Tracking Offenders in Treatment Project. At <https://drive.google.com/a/state.co.us/file/d/o>.

⁴⁶³ Offenders can be moved based on new information, although moderate and high risk offenders cannot be moved down to a low risk assessment. Ibid.

⁴⁶⁴ Northern Territory Council of Social Services (NTCOSS), Submission to NT Department of Attorney-General and Justice, NT Domestic & Family Violence Reduction Strategy, January 2014.

⁴⁶⁵ NSW Bureau of Criminal Statistics and Research (BOCSAR) Criminal Courts Statistics 2010, http://www.bocsar.nsw.gov.au/bocsar/bocsar_mr_ccs2010.html.

⁴⁶⁶ Gondolf 2012. Breckenridge & Hamer, above note 253 observe that this is a problem with a wide range of offending, the principle of proportionality preventing offenders from accessing substantial intervention.

or serious sexual, offenders.⁴⁶⁷ This is especially disappointing when, as referred to earlier, experts such as Gondolf have identified that immediacy and intensity, rather than just length, of intervention both have particular value.⁴⁶⁸

Nevertheless, the Tangentyre Council's integrated program referred to above has commenced conducting intake assessments in custodial settings to prepare family violence offenders for more intensive interventions post-release.⁴⁶⁹ The MBCP program manager for the Gold Coast Integrated Response advised that they were considering doing the same in the near future.⁴⁷⁰ The CIJ also heard that, in South Australia, a number of prisons have begun to organise White Ribbon events in an effort to raise overall awareness.⁴⁷¹

There is no reason, however, to limit such interventions to those convicted of - and in custody for - specific family violence related offences. Instead, Corrections and other environments should be viewed as additional opportunities for identifying and reaching perpetrators of family violence, even where they are not present in the system in that specific capacity.

5.3 Opportunities for identifying family violence in other offenders

Though family violence is a significant feature across the legal system - VLA reporting, for example, that it is present across all its program areas⁴⁷² - academics note that little data is available on the number of prisoners who have a history of being violent in their intimate relationships. As mentioned in the introduction to this Report, however, statistics do suggest that a significant proportion of the female prison population have been *victims*, rather than offenders, of sexual or family violence.⁴⁷³

Certainly, even those convicted of offences which have occurred in the context of family violence are difficult to identify, with offences not always flagged by police or coded to identify family violence in this way, and records subsuming family violence offences under other, non-specific codes.⁴⁷⁴ As such, a conviction for a serious assault, arson or aggravated burglary may have occurred in the context of family violence, without this being evident on the record of the court or Corrections system.⁴⁷⁵

A US study, however, reported that 1 in 3 US male prisoners acknowledged recent use of physical violence against intimate female partners, with 1 in 10 reporting that the violence was severe.⁴⁷⁶ At a broader level, the correlation between existing criminal history and recidivist family violence perpetration referred to above means that a significant proportion of any prison population is likely to have a history of using family violence.

Given the highly criminogenic nature of custodial settings - environments in which male aggression and gendered attitudes are usually entrenched - this also means that interventions in these contexts are essential if the cycle of family violence is to be broken. Yet the CIJ heard from stakeholders that violence was not only going unaddressed, but being perpetuated in these settings - offenders often breaching intervention orders from within custody by repeatedly

⁴⁶⁷ Day et al, above note 91.

⁴⁶⁸ Gondolf above, note 222.

⁴⁶⁹ Consultation with Maree Corbo, Program Manager, Men's Family Violence Prevention Program, Tangentyre Council, Alice Springs.

⁴⁷⁰ Consultation with Rosemary O'Malley, Manager, Men's Domestic Violence Program,, Gold Coast Integrated Domestic Violence Response.

⁴⁷¹ Consultation with Trevor Richardson, Policy Officer, Victims and Services and Client Advocacy, Department of Correctional Services, South Australia.

⁴⁷² Consultation with Leanne Sinclair, Family Violence Program Manager, Victoria Legal Aid.

⁴⁷³ Women's Aid, *Women in Prison*. At http://www.womensaid.org.uk/domestic_violence_topic.asp?section=0001000100220048§ionTitle=Women+in+prison.

⁴⁷⁴ Day et al, above note 91.

⁴⁷⁵ S Butcher, 'Repeat domestic violence offender jailed for 10 years', *The Age*, 27 October 2014. At <http://www.theage.com.au/victoria/repeat-domestic-violence-offender-jailed-for-10-years>.

⁴⁷⁶ White, Gondolf, Robertson, Goodwin and Caraveo (2002) cited in Day et al, above note 91.

contacting former partners despite being prohibited by a court.⁴⁷⁷ Equally, the CIJ was told that offenders were often released on parole to the same address that an intervention order prohibited them from attending.⁴⁷⁸

This suggests an urgent imperative for engaging more effectively with opportunities in the custodial environment – working with identified family violence offenders, but also establishing systems to screen all offenders on a routine basis. In other words, there is an imperative to identify those who may have been convicted for other offences, but are nonetheless perpetrators of family violence, albeit with appropriate safeguards to ensure that offenders do not effectively confess to crimes for which they have not been charged.

This would require more than the generic risk assessment tools used in most correctional settings.⁴⁷⁹ Rather, a specific family violence risk assessment framework would need to be adapted and applied. Certainly, as commentators note, any proposals for a more concerted prison-based Corrections response to family violence requires robust data about the level of need within the population.⁴⁸⁰ Equally, it requires a commitment from Corrections agencies to take a more strategic approach to screening and identifying existing offenders on their records.

For example:

- The CIJ was told that Corrections officers in South Australia are in the process of developing a system for **reviewing all existing files** – including court records and reports – to identify offenders who are perpetrators of family violence but who have not been formally identified as such.⁴⁸¹
- Queensland Corrections Service's **Next Generation Case Management** system includes the capacity not only to identify risk factors for known family violence offenders, but to identify offenders charged with other offences, such as drink driving who, during the period of their supervision, are brought to the attention of police for family violence. Under this model, Probation and Parole Officers may assess and refer perpetrators to the associated behaviour change program and issue them with a Reasonable Direction to attend. Meanwhile, female offenders charged with other offences are also assessed for exposure to family violence and then referred for relevant support services, increasing their chances of successful re-integration into the community.⁴⁸²

The merits of taking this broader view are mirrored in a program which, conversely, seems to have an effect on the perpetration of family violence while targeting other offending.

South Dakota's 24/7 Sobriety Project is a program described as offering an alternative to prison for offenders who have repeatedly endangered or harmed others under the influence of drugs and alcohol. Originating in South Dakota and now used elsewhere in the US as well as in the UK, offenders in this category remain in the community but are prohibited from consuming alcohol, instead carrying portable breath testers with facial recognition. If a breath test indicates that conditions have been violated, the offender is immediately taken to jail for 24 hours then released back into the community, known colloquially in the program as 'skip or fail and you go to jail'.⁴⁸³

477 Consultation with Berry Street Family Services and CIJ Roundtable, 11 November 2014.

478 CIJ Roundtable, 11 November 2014.

479 Day et al, above note 91.

480 Ibid.

481 Consultations with Trevor Richardson, Policy Officer, Victims Services and Client Advocacy and Annette McKee, Director, Strategic Services, Department of Correctional Services, SA.

482 O'Malley, above note 262.

483 South Dakota 24/7 Sobriety Project. At <http://apps.sd.gov/atg/dui247/>.

This award winning program has contributed to a significant reduction in drink-driving arrests (and collisions) in jurisdictions where it is used, while ensuring that offenders can continue in their employment and contribute to their family's income.⁴⁸⁴ Most relevantly, however, it has also been noted to have resulted in a 10% decrease in domestic violence arrests in the jurisdictions where it has operated, leading to suggestions that it may have merits for trial in the Australian context as well.⁴⁸⁵

The question then becomes what interventions in other categories of offences may have an associated effect on the perpetration of family violence. Certainly, commentators note that some victims of family violence feel able to alert police to other violations or offences, such as drink driving, rather than further assaults, as the disclosure will be less likely to be attributed to them.⁴⁸⁶ Where perpetrators are on probation, this is sufficient to bring them back to the attention of police and therefore offer the victim a period of safety – mirroring the benefits of the Next Generation Case Management model referred to above.

Overall, more work to identify the links between family violence perpetration and the general population of offenders is essential if the cycle of violence is to be interrupted – both in terms of a man's violence towards existing partners, or any partners in the future. Given that serious offenders of any kind are more likely to reoffend, and that, 'unlike almost any other offence, it is often possible to predict who an offender's next victim will be and where the offence will occur',⁴⁸⁷ the imperative is difficult to deny.

Equally, as the Gold Coast Integrated Response notes, 'for no other cohort of offenders can [Corrections services] contact another agency to ask for assistance in relocating the victim to safety or to provide immediate assistance'.⁴⁸⁸ Partnerships between perpetrator programs and Corrections may therefore present more opportunities than are currently being seized, such as the former being funded to conduct intake assessments with other offenders, not just those specifically convicted for family violence related matters, once a history of family violence has been identified.

In other words, once through a door, the likelihood that a high risk offender might be identified and monitored on an ongoing basis is increased. Jurisdictions should therefore examine any credible opportunity to screen for and identify the risk of family violence perpetration, whether through referrals to service agencies, contact with a court, participation in an MBCP, or supervision by Corrections.

5.4 Opportunities post-release

Connection with Corrections, of course, also offers opportunities to continue to monitor offenders once they have completed their period of incarceration and are released back into the community. Very few such opportunities, however, have been seized in this area in the context of family violence, although innovation in other areas of gendered violence is more common.

Circles of Support and Accountability (COSA), for example, apply a therapeutic, community based approach to the reintegration of sexual offenders through harnessing local community supports, and providing post-release offenders, or 'core members', with

484 'Efficacy of Frequent Monitoring With Swift, Certain, and Modest Sanctions for Violations: Insights From South Dakota's 24/7 Sobriety Project.' *American Journal of Public Health* (December 2012). At <http://ajph.aphapublications.org/>.

485 Ibid. See also *Repeat Offender Substance use Sentencing Initiative*, Associate Professor Peter Miller & Inspector Bill Mathers, *RuralLife: Rural and Regional Responses to Alcohol, Gambling and Substance Abuse*, Deakin University.

486 Smith, above note 302.

487 Day et al, above note 91.

488 O'Malley, above note 262.

a 'circle' of trained volunteers to help offenders remain accountable for their behaviour.⁴⁸⁹ COSA reflect the objectives of the Good Lives Model to help offenders to develop the capacity to desist from crime, discussed in the context of MBCPs.

Core members participate on a voluntary basis and must have demonstrated an understanding of the harm caused by their offending, as well as a desire to prevent its reoccurrence. The circle meets regularly during the initial period after the core member has been released from prison, before his needs are re-assessed. The volunteers' role is to support core members to reintegrate into the community, to challenge core members' behaviour and attitudes, and to assist them to comply with court orders and conditions.⁴⁹⁰ Volunteers are expected to report any increased risk or incidence of offending behaviour to the relevant authorities.⁴⁹¹

Originating in Canada, the COSA model now operates across a number of Canadian, US, UK and European jurisdictions, as well as in New Zealand.⁴⁹² As yet, no similar model has been formally adopted in Australia. Evaluations of the original Canadian project found a significant reduction in recidivism, as well as improvements in the reintegration of offenders and public perceptions of safety.⁴⁹³ Reviews of COSA pilots operating in the UK have also found that they support risk management and compliance as well as reduced social isolation.⁴⁹⁴

In particular, a 2013 evaluation of a COSA program operating in the US State of Vermont⁴⁹⁵ made a number of findings about the features of COSA that contribute to their success, including that:

- COSA fill the gaps between programming inside prison and compliance and supervision in the community by probation and parole. The gap for high-risk offenders exists because of factors such as lack of support from family and friends, and relationship and life skill deficits.⁴⁹⁶
- The involvement of unpaid, non-professional volunteers creates a sense of mutual respect and elicits a greater sense of obligation than is forged with paid staff.⁴⁹⁷

489 S Hannem and M Petrunik, 'Canada's circles of support and accountability: A community justice initiative for high-risk sex offenders' (2004) 66(7) *Corrections Today*, 98-101; K Richards, 'The Australian Capital Territory (ACT) Government Office for Women Audrey Fagan Churchill Fellowship to study Circles of Support and Accountability' (2010). At http://www.churchilltrust.com.au/media/fellows/Richards_Kelly_2010.pdf.

490 See K McCartan, H Kemshall, S Westwood, J Solle, G MacKenzie, J Cattell and A Pollard, *Circles of Support and Accountability (COSA): A Case File Review of Two Pilots* (2014) Ministry of Justice, 2-3. At https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/289300/cosa-research-summary.pdf.

491 Richards, above note 489, pp 10-11.

492 For an overview of the origins of Circles of Support and Accountability, see Richards above n 491, 7-10, and T Thomas, D Thompson and S Karstedt, *Assessing the impact of Circles of Support and Accountability on the reintegration of adults convicted of sexual offences in the community: Final Report*, June 2014, Centre for Criminal Justice Studies, School of Law, University of Leeds, 37-55. See also J van Rensburg, 'The dawn of circles of support and accountability in New Zealand' (2012) 4 *Sexual Abuse in Australia and New Zealand*, 30-35.

493 Ibid, 17-24; K Daly, 'Conventional and Innovative Justice Responses to Sexual Violence' (2011) 12 *Australian Centre for the Study of Sexual Assault*, 1-35, 15.

494 McCartan et al, above note 490. A Bates, R Saunders and C Wilson, 'Doing something about it: A follow-up study of sex offenders participating in Thames Valley circles of support and accountability' (2007) 5(1) *British Journal of Community Justice*, 19-42.

495 K Fox, *Circles of Support & Accountability: Qualitative Evaluation*, Final Report for the State of Vermont Department of Corrections, November 2013.

496 Ibid, 9.

497 Ibid, 12. A similar finding was made in S Armstrong and D Wills, *A Review of the Five Circles of Support and Accountability Project Commissioned By Sacro*, Scottish Centre for Crime and Justice Research, University of Glasgow (30 May 2014): 'Core Members also underlined the value of working with non-professionals. They felt this allowed for conversations about more than risk and danger to take place, supporting development of a positive self-identity that would allow for participation in healthy activities and relationships.'

- The team approach means there are more eyes on the core member, leading to greater accountability and better risk management. It also reduces the risk of collusion with the core member, and allows all members to keep one another accountable regarding appropriate roles, obligations and boundaries.⁴⁹⁸

While COSA have emerged as re-entry strategies for sex offenders, in Vermont they are used for other types of offenders as well, including in cases of family violence.⁴⁹⁹ A quantitative recidivism study of the COSA program in Vermont is underway and is expected to compare outcomes for sex offenders and other types of offenders.⁵⁰⁰

Although it has limitations,⁵⁰¹ and its focus to date has largely been on the reintegration of sex offenders leaving prison, the COSA model may nevertheless offer a framework for the development of future options for monitoring and preventing reoffending by perpetrators of family violence whose isolation and lack of social support exacerbates their risk of reoffending.

Certainly, an emphasis on support from ‘peers’, being former perpetrators, is emerging in the practice of a perpetrator program in NZ to encourage ongoing safety.⁵⁰² Meanwhile the CIJ notes that the use of ‘supportive allies’ was trialed in the context of some US BIPs in the early 1980s. Participants in these programs were asked to identify several men in their lives⁵⁰³ who might contract with the participant and the program to learn about the patterns and nature of male violence towards women and then engage in ‘compassionate confrontation’ to help the program participant to end their violence.⁵⁰⁴

This US trial occurred, however, at a time when most BIP participants were ‘socially mandated,’ and not compelled to attend by a court. As BIP workers were largely volunteer and the program funded solely by participant fees, the cost and labour intensiveness of the ‘supportive ally’ component meant that it was eventually abandoned.⁵⁰⁵

Nevertheless, some thirty years on and in very different terrain, it is worth examining what opportunities exist to harness men’s voices to greater effect - not only in primary prevention initiatives, but in interventions directed at those who have already used violence. To this extent, the CIJ notes that men who have used violence in the past – and who therefore have direct experience of the change process that is required - are now involved in the operation of some MBCPs, both as ‘peers’ and as facilitators who can act as role models to participants.⁵⁰⁶

The influence of immediate community or respected elders, after all, is a model used in other contexts to great effect, increasing visibility of offenders not just to broader society, but to the immediate circle in which offenders feel they have a stake. This echoes, to an extent at least, the evidence that offenders are more likely to engage with change or comply with orders where they have a ‘stake in conformity’, discussed in Chapters Two and Four above.

498 Ibid, 14.

499 Associate Professor Kathy Fox, University of Vermont, personal communication, 2 October 2014.

500 Ibid.

501 For a discussion of COSA limitations, see, Richards, above n 491, 26-30.

502 Aviva Family Services, Christchurch, New Zealand, at <http://www.avivafamilies.org.nz/Services/Peer-Support/>.

503 Arguably, the concept of mapping a man’s ‘village’ described in relation to the Canberra Men’s Centre contains similar elements. Consultation with Simon Port, Canberra Men’s Centre.

504 B Hart, *Future Directions for BIPs: Examining the Power of Male Peer Support and Building Alternative Support Communities*, Cutler Institute of Family and Health Police, November 2009. At www.bwjp.org/files/bwjp/articles/Future_Directions_BIPs.pdf.

505 Hart, above note 504.

506 Aviva, above note 502.

Any attempts to do so, of course, would require careful development and training to avoid collusion. Respected male figures in the community, however – including those who have already nominated to be ‘mentors’ for violence prevention⁵⁰⁷ – could be part of efforts to hold violent men, whether they have completed a perpetrator program or a period in custody, more effectively to account.

Jurisdictions should therefore examine opportunities to develop programs – to be used in addition to other interventions – which incorporate:

- The establishment of a relationship that combines support for the perpetrator and expectations of accountability
- The involvement of a team of community-based volunteers with appropriate skills and training
- The capacity to report any increased risk of reoffending to police, courts or Corrections officials.

5.5 Conclusion

Clearly, more strategic use can be made of an offender’s relationship with the Corrections system. Whether an offender is serving a sentence in the community, in a custodial setting or back in the community post-release, the structured relationship with Corrections facilitates opportunities for formal monitoring, supervision and treatment oversight that do not exist in other contexts. It is common sense, then, for these opportunities to be seized.

Just as importantly, the relationship of an offender with a Corrections system is an opportunity for the existence of family violence to be identified – whether as perpetrated or experienced by an offender. Once identified, interventions can be applied which may help to break the cycle, decreasing the likelihood that more victims will be created and that the offender will place repeated demand on the Corrections system down the track.

⁵⁰⁷ City of Casey, Challenge Family Violence, at <http://www.casey.vic.gov.au/health-safety/health-promotion/family-violence-prevention>.

Chapter Six – Other, Emerging Opportunities

6.1 Introduction

Outside the conventional context of the justice system lie other opportunities to address the cycle of family violence, to bring perpetrators more effectively to account and to give victims some of the more varied outcomes they might be seeking.

6.2 Opportunities for resolution

Opportunities are increasingly being sought for perpetrators to offer some level of accountability directly to those they have harmed following satisfactory completion of other interventions. This is described by practitioners in New Zealand as an opportunity for ‘resolution’- not to reunite or repair the relationship, but to offer the victim a chance to speak about the impact that the violence has had on them, and to provide feedback to their violent (usually ex-) partner about whether they and their children now feel safe.⁵⁰⁸ In other words, if a violent or coercive man has promised to change, practitioners are seeking additional opportunities for those around him to hold him to that promise on an ongoing basis.⁵⁰⁹

Approaches like these have a ‘restorative’ element, ‘restorative justice’ referring to a broad range of practices that attempt to repair the harm caused by a crime by collectively including those with a stake in the offence in its resolution.⁵¹⁰ Restorative justice conferencing is one of the more common applications of restorative justice in the criminal justice system⁵¹¹ and involves a scheduled, mediated encounter between a consenting victim and offender, and/or their representatives, in order to decide collectively how to repair the harm caused by a crime.⁵¹² Sometimes family and broader community are involved. The process relies on the offender acknowledging how his conduct has affected the victim, and accepting responsibility for the crime.

Any move towards the application of restorative justice measures in cases of family violence, however, has long been controversial, with critics cautioning that the process could be a site of further abuse and manipulation; that it is ill-equipped to accommodate patterns of ongoing abuse; or to respond appropriately to cycles in which violence is followed by apparent remorse and reconciliation. Opponents are also concerned that, as a policy response, restorative justice is, or will be perceived to be, a ‘soft option’, and that it risks re-privatising family violence.⁵¹³ Against this background, recent substantial examinations of the legal

508 M Cagney & K McMaster, *Family Resolution and Domestic Violence Programme Outcomes: What is ‘safety and accountability’ in real terms?* Workshop at No to Violence Conference, Melbourne 2012. At ntv.org.au/.../2012-ntv-conference-workshop-2a-family-resolution-and-domestic-violence-programmes.

509 Vlais, above note 250, p 9.

510 See generally, H Strang, ‘Restorative Justice as Evidence-Based Sentencing’, in J Petersilia and K Reitz (eds), *The Oxford Handbook of Sentencing and Corrections* (Oxford University Press, 2012), 215-243; J Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002); T Marshall, *Restorative Justice: An Overview* (1996) Home Office—United Kingdom, 5.

511 It can sit alongside the conventional criminal justice process, for example as a pre- or post-sentencing requirement, or might be an entirely separate and independent option for victims of crime. See also *Innovative Justice Responses to Sexual Offending: pathways for victims, offenders and the community*. Centre for Innovative Justice, RMIT University, Melbourne, May 2014. <http://mams.rmit.edu.au/qt1g6twlv0q3.pdf>

512 See generally, Strang, above n 510.

513 See Curtis-Frawley & K Daly, *Gendered Violence and Restorative Justice: The views of victim advocates* (2005); J Stubbs, *Restorative Justice, Domestic Violence and Family Violence*, Australian Domestic & Family Violence Clearinghouse Issues Paper 9 (2004).

response to family violence have recommended that further research be conducted before such practices are used.⁵¹⁴

Nevertheless, many women seek a range of responses, not all of them related to the conventional criminal justice system.⁵¹⁵ Those who support the use of restorative justice approaches, therefore, argue that they have the potential to empower victims of family violence by providing a safe forum to tell their story: to have this experience heard and acknowledged; and to promote genuine accountability, rather than denial, on the part of the perpetrator. A restorative justice encounter can also offer victims some of the specific outcomes they may be seeking without necessarily having to invoke the intervention of the criminal justice system.

This is a particularly vital consideration where relationships between communities and police or courts are strained, or where women have experienced an inadequate or damaging response from the criminal justice system in the past. It is equally relevant for women who do not want to see, or cannot afford to have, their partners incarcerated, but simply want their partner to acknowledge and take responsibility for their behaviour.⁵¹⁶ Including other family members or peers in the conference process may also serve to dismantle the invisibility of the perpetrator's violence to all but the victim.⁵¹⁷

Certainly there are jurisdictions where restorative justice options are offered as one possible response to cases of family violence, as well as examples of individual programs operating at a community level.⁵¹⁸ Research findings about the impact of these programs remain reasonably limited and inconclusive. There is evidence, however, that family violence victims who participate in restorative justice processes generally find the experience a positive one.⁵¹⁹

In New Zealand, where restorative justice is relatively well integrated into the justice system, the Ministry of Justice has issued **standards to guide services providing restorative justice conferencing in domestic violence cases**.⁵²⁰ The standards nominate safety of the victim as paramount; require service providers to consider the context in which domestic violence occurs; recommend extensive preparation and multiple conferences to maximise the potential to effect change; and suggest that support programs for victims and change programs for perpetrators be used in tandem with conferences.

Participants at the CIJ's roundtable acknowledged that restorative encounters may offer some victims outcomes which are otherwise not available through the adversarial criminal justice system, and were aware of programs that are well structured and prioritise safety. However, most urged caution in proceeding down this path on the basis that policymakers should prioritise improving the police and court response to family violence; that we do not yet have a sufficient understanding of perpetrator accountability to develop novel responses; and that introduction of any restorative approach may risk undermining efforts to make clear public

514 Because it considered there was insufficient clarity in the research at that time to support the adoption of restorative justice practices for use in family violence matters and little experience in using such practices, the VLRC's 2006 *Review of Family Violence Laws: Report* recommended that further research should be conducted before such practices could be considered for use in family violence matters in Victoria VLRC, 84-85. The ALRC/NSWLRC endorsed and reiterated this conclusion, above, note 20, 1093-4.

515 Heather Nancarrow, 'In search of justice for domestic and family violence Indigenous and non-Indigenous Australian women's perspectives', *Theoretical Criminology* February 2006 vol. 10 no. 1 87-106.

516 Bluett-Boyd, above note 69.

517 C Q Hopkins, 'Tempering Idealism with Realism: Using Restorative Justice Processes to Promote Acceptance of Responsibility in Cases of Intimate Partner Violence', (2012) 35 *Harvard Journal of Law and Gender* 312.

518 For discussion of various programs see: G Loseby, A Ntziadima and T Gavrielides, *Restorative Justice and Domestic Violence: A Critical Review*, Independent Academic Research Studies (2014).

519 L Drost, B Haller, V Hofinger, T van der Kooij, K Lunnemann & A Wolthius, *Restorative Justice in Cases of Domestic Violence: Best practice examples between increasing mutual & awareness of specific protection needs*, (JUST/2013/JPEN/AG/4587)WS1. Comparative Report, January 2015.

520 Ministry of Justice (New Zealand), *Restorative justice standards for family violence cases*, (July 2013).

statements about the community's non-acceptance of family violence.

Despite the caution of stakeholders and policymakers in this area, however, the CIJ believes that restorative justice options should remain under consideration for application as part of the justice system's response to family violence, particularly as practice experience and evidence bases expand. In the short term, the potential of restorative practices may be best harnessed as *an addition* to existing practices and processes in order to promote empowerment of victims and accountability on the part of perpetrators. For example:

- Jurisdictions could explore greater opportunities for **truth-telling processes** for victims and public confessions and apologies by perpetrators in the context of family violence diversion programs.⁵²¹
- As part of specialist training for lawyers acting for women who have experienced family violence, lawyers could be encouraged to **ask about their clients' preferred outcomes**, and whether their clients wish to speak directly about their experiences at court and in the presence of the perpetrator.⁵²²
- MBCPs could examine suggestions from NZ authors that carefully structured encounters following completion of behaviour change can be viewed as '**accountability conferences**', in which the victim participates in a discussion with the perpetrator and program facilitators to map out how he might maintain any changes he has achieved.⁵²³
- Echoing this, MBCPs could also examine options for the voluntary participation of victims in '**exit interviews**', essentially to facilitate a similar discussion. The CIJ heard that this approach was currently being trialed by the Gold Coast Integrated Domestic Violence Response.⁵²⁴
- Jurisdictions could also examine the use of '**arranged dialogues**' which have been piloted in the context of family violence in Norway as part of an effort to strengthen coordination between the various services that offer assistance to victims.⁵²⁵
- Jurisdictions could also examine an approach used in many Aboriginal and Torres Strait Islander communities which involves the affected parties and wider family in a '**healing circle**' which aims to acknowledge the impacts of the relevant violence or offending on all in the community, as well as the effects of other factors – such as intergenerational grief and loss – on the perpetrator.

Arguably, this last initiative can be seen as a therapeutic approach designed to harness the strength of community to address wrongdoing, rather than specifically to repair harm or increase accountability directly to the victim.⁵²⁶ Nevertheless, as our understanding of the needs and experiences of victims of family violence deepens and broadens,⁵²⁷ we are also obligated to adapt our responses to ensure that they remain relevant and responsive. This may mean that restorative justice programs need to be integrated into conventional justice approaches.

⁵²¹ Hopkins, above note 517.

⁵²² Loddon Campaspe Community Legal Centre 'Why Didn't You Ask?' Interim Project Report October 2013, 6. Summary of final research provided to CIJ in January 2015.

⁵²³ Cagney & McMaster, above note 508.

⁵²⁴ O'Malley, above note 262 and consultation with Rosemary O'Malley, Manager, Men's Family Violence Program, Gold Coast Domestic Violence Integrated Response.

⁵²⁵ Royal Norwegian Ministry of Justice and Public Safety, *Action Plan Against Domestic Violence*, 2012, p 9. At http://www.regjeringen.no/pages/36783932/ActionPlan_DomesticViolence.pdf.

⁵²⁶ E Mosby & G Thomsen, 'Indigenous Male Offending – Reconnection with Self', Transcript of Presentation to No to Violence Conference, Melbourne, November 2012. At <http://ntv.org.au>.

⁵²⁷ See for example Loddon Campaspe Community Legal Centre above, note 522, which found that a large proportion of women surveyed "indicated that they wanted to heal from the harm which had occurred, wanted their partner or former partner's behaviour to be monitored and ... wanted their partner or former partner to acknowledge the harm he had done" (p 5).

6.3 Opportunities with adolescents

One area in which restorative approaches can have immediate application, however, are contexts in which victims are much more likely to be seeking a reparative response, given that the perpetrator is their child. As noted in Chapter One, AVITH has many parallels with adult family violence, but also a palpable difference, being that parents are especially reluctant to see their child in contact with the criminal justice system and equally keen to maintain a relationship beyond the violence.

Currently, however, the predominant response available to desperate parents is to call the police, or apply for an intervention order against their own child, breach of which risks arrest in any event. When this occurs, little recourse is on offer but the involvement of juvenile justice services, with practitioners reporting that the tragic result of a call to police is often that a child is taken into residential care – a likely foundation for further violence or anti-social behaviour in the future.

In recent years a range of programs have emerged which attempt to avert this spiral into institutionalisation and further offending. Although many have focused predominantly on offering support to parents, given that adolescents in this context are often difficult to engage and diversions on offer in Australia are voluntary, an increasing number of programs are being offered which offer support to adolescents at risk,⁵²⁸ or support and intervention to parents and adolescents alike.⁵²⁹

This provision of ‘family-focused’ interventions is viewed as an essential component to any effective response to AVITH,⁵³⁰ the focus of emerging interventions in this field being to divert young people from the criminal justice system and to repair their family relationship – itself a mitigating factor against offending.⁵³¹ In other words, families grappling with AVITH - including mothers with violent adolescent sons - are seeking a more reparative path than the criminal justice system has conventionally had to offer, with many community agencies now running programs for adolescents who use violence, as well as their families, as part of their services.⁵³²

In particular, **Step-up** is a court-mandated, US-based program which has recently been adapted to a voluntary context in three settings in Australia, known as the Adolescent Family Violence pilot. Step-up’s objective is to stop adolescents using violence and abuse in the home and build respectful family relationships instead. Employing cognitive behavioural, skill development, strengths-based and motivational interviewing strategies, the program includes an adolescent group, parent group and multi-family group. Over 21 sessions, adolescents and parents learn and practise skills for respectful, non-violent family relationships, with adolescents self-evaluating their progress, while separate weekly check-ins with the wider family assess ongoing safety in the home.

Step-Up is described as using a restorative justice model of accountability to help adolescents understand the effects of their actions on others, cultivate empathy and take steps to repair the harm done. The process is seen as collaborative, with the family and wider community helping

528 *Heavy Metal* works with adolescents at risk in schools. Consultation with David Nugent, Convener, Heavy Metal Behaviour Change Program, Cranbourne, Victoria.

529 The Gain Respect, Increase Personal Power, or ‘GRIPP’ program in Melbourne was an intervention for young male offenders who had been convicted of a violent offence – including, but not limited to violence in the home - and placed on a bond or order with conditions attached. Offenders were referred on a voluntary basis for 12 individual sessions combining cognitive behaviour and aggression replacement therapy. A family intervention component followed included crisis response and relationship rebuilding, with siblings also able to be involved. S Marov & J Obbostre, ‘GRIPP’, Presentation to No to Violence Conference, Melbourne, November 2012. At <http://ntv.org.au> Although an evaluation of the program found improved relationships and self-esteem, better engagement with employment and education and significant reduction in recidivism, the CJJ was told that the program is no longer funded. Personal email communication with Sylvia Marov, Counselling & Support Team Leader, City of Greater Dandenong, December 2014.

530 Howard & Abbott, above note, 87.

531 Telephone consultation with Jo Howard, Executive Manager, Youth & Family Services, Kildonan UnitingCare.

532 Jo Howard, *Adolescent Violence in the Home: Mapping the Australian and International Service Response*, No to Violence November 2012.

to hold the adolescent to account. The Power and Control Wheel designed in the Duluth Model and used by most MBCPs in Australia, has been adapted in Step-Up to the Mutual Respect Wheel and Abuse Wheel as a way for parents and adolescents to monitor progress towards safety.⁵³³ Operation of this adapted program is still relatively small scale in Australia, with a two-year independent evaluation scheduled to have commenced in mid 2014.⁵³⁴

Nevertheless, this program is another demonstration of the increasing flexibility which program providers are seeking in order to reach their target base most effectively – the program combining many of the threads identified throughout this Report, from strengths-based and educative approaches through to restorative elements. In the case of adolescents using violence – those potentially sited at either the end of one cycle of violence, the start of another, or both – it makes sense to use every opportunity to step in early and intervene.

6.4 Opportunities to support children and safe fathering

A final emerging strategy in the context of early intervention is the growing emphasis on support for children and improved fathering skills *following the cessation* of violence.⁵³⁵ Increasingly, MBCPs are appealing to a man's ambitions to be a good father and be involved in some way in his children's lives as a motivational factor in their work.⁵³⁶ Equally, programs are recognising that children's support should accompany support for women as part of the service that they provide.

The Caledonian System in Scotland, described above, has dedicated **children's workers** as part of its service,⁵³⁷ as well as a '**fathering after violence**' element to its program. This attempts to extend the notion of accountability to a man being accountable to his children as well, many of whom are not informed that their father is in a program or why, with mothers often bearing the responsibility of explaining the violent behaviour.⁵³⁸

The emphasis on these programs is not reunification, nor to leave the violence un-named. Rather, children's workers attached to these services aim to address some of the damaging effects on children exposed to family violence, while fathering programs aim to harness men's hopes for an ongoing relationship with their children as an incentive to ensure safety.

Though approached with caution, it is worth examining how these interventions can also try to counter the invisibility of men in the spheres of child protection and family law – positioning them as very visible people with obligations to be safe, not just as 'entitled' to have contact. Certainly, a lack of role models in their own family background can contribute to a lack of parenting, or even self-care skills, for many men in these circumstances.⁵³⁹ Further, as noted at the conclusion of Chapter One, some early intervention programs indicate that increasing men's involvement in household tasks and the care of children can reduce the risk of the cycle of family violence from starting. Safe fathering programs may therefore be another starting point in interrupting the cycle of violence, though only one which can be addressed *after* immediate relationships have been made safe.⁵⁴⁰

⁵³³ Ibid

⁵³⁴ Victoria's Vulnerable Children: Our Shared Responsibility. Implementation Bulletin No. 3, November 2014. Department of Human Services. See also, Victoria's Action Plan to Address Violence Against Women and Children, 2012 - 2015, Implementation Bulletin May 2014, p 7.

⁵³⁵ Vlasis, above note 281, notes that a three year ARC Linkage Project, *Fathering, Family Violence and Intervention Challenges will contribute considerably to understanding in this area*. See also http://socialwork.unimelb.edu.au/research/cyf/domestic_and_family_violence/fathers_family_violence_and_intervention_challenges.

⁵³⁶ David Mandel, *The Safe and Together Model: A field tested approach to helping child welfare and its partners to make good decisions for children impacted by domestic violence perpetrators*. At <http://endingviolence.com>.

⁵³⁷ Macrae, above note 224, describes that this is part of a particularly well developed Scottish scheme providing for specific individuals to be identified as supports for children.

⁵³⁸ Vlasis, above note 281, p 24.

⁵³⁹ Atkinson, above note 286.

⁵⁴⁰ Telephone consultation with Gary Smith, Program Manager, Therapeutic and Accommodation Services, Communicare, WA.

An increasing emphasis on services for all members of the family is an acknowledgment that the impact of family violence is profound and widespread. It is worth noting here a comparison between this and the emphasis on ‘family-centred’ interventions in Aboriginal and Torres Strait Islander communities, referred to in the previous section. Practitioners in these communities note that, far from isolating a perpetrator of family violence, perpetrators need family and community connections to help them to address their behaviour. In other words, ‘we don’t see victim and perpetrator, we see a family unit disengaged’.⁵⁴¹

This notion is challenging to feminist approaches to family violence. The question is whether there are any aspects of this family-centred practice which can inform mainstream approaches, without losing sight of the importance of keeping a gendered analysis at the core.

6.5 A final note on opportunities in the Family Law jurisdiction

Although beyond the scope of this Report, other studies have examined ways in which the ‘siloeing’ between child protection, family law and Magistrates Courts – such as inconsistency between family law orders which direct that contact should take place and family violence orders which prohibit it – can often mean that jurisdictions work against each other to the detriment of the victim of family violence and her children.⁵⁴²

It is vital to recognise overall, therefore, that the Family Court and Federal Circuit Court (the latter being where most parenting applications are now filed) continue to make substantial efforts to address these concerns and to improve the way that family violence is identified and addressed in those matters which come before it. For example, Best Practice Principles have been developed to guide decision making in cases involving family violence,⁵⁴³ while legislative amendments in 2011 expanded definitions of abuse and family violence and facilitated greater reporting of its presence or risk.⁵⁴⁴

Especially relevant to the themes of this Report, however, are emerging approaches which increase the likelihood that the presence of family violence and any child maltreatment will be identified more effectively and at an earlier point.

The CIJ heard in consultations, for example, that:

Having initially been piloted in South Australia, as of January 2015, an amendment to the Federal Circuit Court Rules requires that a new **Notice of Risk** be completed, filed and served with **every application or response in proceedings seeking parenting orders**.⁵⁴⁵ The Notice enables parties to alert the court to any risk to the children in the proceedings, including child abuse or maltreatment; presence or risk of family violence; or other risks such as mental illness or substance abuse by a parent. If no risk is alleged, the form must still be filed and served.

An evaluation of the SA pilot revealed that the previous Notice of Child Abuse, Family Violence or Risk of Family Violence (Form 4), which was only required to be filed where allegations had been made, often had to be followed up by Judges where allegations emerged in other contexts. This wider Notice of Risk, required in all matters involving children, increases the

541 Daphne Yarram and Ivy Yarram, *Working with Aboriginal Families*, Presentation at NTV Conference, November 2012. At <http://ntv.org.au>.

542 ALRC/NSWLRC above, note 20.

543 See, for example, Family Court of Australia, *Family Violence Best Practice Principles* – Edition 3.1 April 2013. At http://www.familylawcourts.gov.au/wps/wcm/connect/FLC/Home/Publications/Family+Law+Courts+publications/fv_best_practice_for_flc.

544 *Family Law Legislation Amendment (Family Violence and Other Measures) Act 2011*.

545 Federal Circuit Court of Australia, *Notice of Risk*, at www.federalcircuitcourt.gov.au/forms/html/notice_risk.html.

court's capacity to intervene earlier, alert child protection authorities where relevant, and comply with its legislative requirements.⁵⁴⁶

In keeping with this emphasis on earlier identification and improved information sharing, the CIJ also heard that the Federal Circuit Court is working to strengthen the Court's relationships with state and territory child welfare agencies. This has included:

- A **co-location initiative with the Department of Human Services** in the Melbourne and Dandenong Court registries to increase the likelihood that child protection matters can be identified and referred as swiftly as possible.⁵⁴⁷
- Recent amendment to the Federal Circuit Court rules to allow for **family reports** – reports prepared by specially appointed individuals to assess the circumstances of the children in the relationship – **to be made available to appropriate bodies in the child protection system and to legal aid bodies.**⁵⁴⁸

These initiatives echo the theme of this Report that initial contact with a court is an opportunity for the perpetration of family violence to be identified and a more strategic intervention applied. In this context, the court is taking a commendable and more proactive role, rather than waiting until indications of family violence or child maltreatment emerge once proceedings are in train.

Equally important to recognise, changes to the family law jurisdiction over recent decades have seen an increasing emphasis on parties attempting 'family dispute resolution' (FDR, previously called 'family mediation') before resorting to conventional adversarial court proceedings. While legislation allows parties to seek exemption from the requirement to participate in FDR in cases involving family violence or child abuse, many practising in family law note that this is not always applied, given that courts must be satisfied that there are reasonable grounds to believe that the violence has occurred. Equally, FDR services are not always successful at identifying or 'screening out' cases involving family violence, despite being required to do so.⁵⁴⁹

As discussed at the beginning of this chapter, substantial concerns exist about mediation and other forms of informal dispute resolution exposing women who have experienced family violence to further risk. Concerns also exist that mediators in this setting are not adequately trained to identify and respond to the dynamics of family violence and that an emphasis on FDR keeps this violence 'behind closed doors', rather than exposing it in a public setting, such as a formal court hearing.⁵⁵⁰ At the same time, however, courts themselves have expressed concern that this very formality, as well as the adversarial nature of the proceedings, does not encourage

546 Consultation with Manuela Galvao, Regional Co-ordinator, Child Dispute Services, Family Court of Australia and email communication from Adele Byrne, Principal Registrar, Federal Circuit Court of Australia, 3 December 2014. See also Federal Circuit Court of Australia, *Notice of Risk Pilot (Parenting Proceedings – Federal Circuit Court – South Australia) Evaluation*. At <http://www.federalcircuitcourt.gov.au/pubs/html/notice%20of%20risk%20pilot%20evaluation.html>

547 Consultation with Manuela Galvao, Regional Co-ordinator, Child Dispute Services, Family Court of Australia. See also Judge K Hughes, 'Balancing Confidentiality and Information Sharing – New Procedures in the Federal Circuit Court', Provided via personal email communication from Adele Byrne, Principal Registrar, Federal Circuit Court of Australia, 3 December 2014.

548 Federal Circuit Court of Australia Rules, Subrule 23.01A(5) implements this by permitting the Court (by order or otherwise) to give a copy of the report to any of the following (in addition to a party, a lawyer or an independent children's lawyer): a children's court; a prescribed welfare authority; a Legal Aid Commission or the convenor of any legal dispute resolution conference. These amendments are consistent with recommendations in a recent report by Professor R Chisholm AM, *The Sharing of Experts Reports Between the Child Protection System and the Family Law System*, March 2014. At <http://www.ag.gov.au/FamiliesAndMarriage/Families/Pages/Familylawandchildprotectioncollaboration.aspx> See also Judge K Hughes, above, note 547.

549 Dr D Kirkwood, *Behind Closed Doors: Family Dispute Resolution and Family Violence*, Discussion Paper No. 6, 2007, Domestic Violence and Incest Resource Centre, Melbourne, p 5.

550 Dr D Kirkwood, above. See also ALRC/NSWLRC above note 20, at 21. Family Dispute Resolution, FDR in cases involving family violence.

maximum disclosure by women who have experienced family violence.⁵⁵¹ Certainly, where their former partner is self-represented, women may face the prospect of being cross-examined about the violence by the very person who committed it.⁵⁵²

Consequently, attempts have been made to offer more structure and protection by developing a safe, specialist form of Family Dispute Resolution in matters where there is past or current family violence.

Commissioned by the Commonwealth Attorney-General's Department and piloted in five locations around Australia between 2010 and 2012, the **Coordinated Family Dispute Resolution** program used a multi-disciplinary, collaborative and case-managed approach, drawing on the Duluth model to assist families to achieve safe and sustainable post-separation parenting outcomes. Specialised family violence risk assessments were built into the four-phased process, which included intake evaluations, comprehensive preparation for the mediation, attendance at the mediation and repeated follow up post-mediation. In keeping with the initiatives highlighted throughout this Report, alleged perpetrators of the violence were required, at an absolute minimum, to acknowledge that another family member believed that family violence had impacted upon the relationship.

All professionals involved were trained in the model and philosophical basis, being a non-adversarial approach and gendered analysis of violence. The collaboration included a representative of a Women's Legal Service or CLC; a Family Violence or Domestic Violence specialist support service; a Men's Service such as an MBCP provider; and an FDR service provider to coordinate the overall process. Where relevant, other collaborations potentially included children's specialist workers, immigrant women's support service workers, Aboriginal and Torres Strait Islander services or disability services.⁵⁵³ Those responsible for developing the model noted that, while many women seek exemption from FDR, many others are attracted to its affordability, accessibility and the opportunity to be 'given a voice'.⁵⁵⁴

An evaluation of the CFDR program described it as being 'at the cutting edge of family law practice', its coordinated approach contrasting with criticisms of the wider family law system that it works in isolation from other agencies.⁵⁵⁵ The evaluation also noted that each element of the service was crucial in providing the necessary, but complex and resource intensive, support to parties involved and that, although less cases ultimately proceeded to FDR than in the comparison group, more emerged with an agreement.⁵⁵⁶

In keeping with one of the lessons highlighted in Chapter Two regarding perpetrator programs, the value of the CFDR pilots was noted to include the ongoing services that it provided to the victim of family violence – such as early access to counselling and legal support, as well as to comprehensive risk assessment – even where the perpetrator had ultimately not participated.⁵⁵⁷

551 'Chief Judge calls for Spouse-Abuse Court', *The Australian*, 14 July 2014. Victoria Legal Aid is also considering whether to expand its legally assisted Roundtable Dispute Management service to include matters in which there has been or is a risk of family violence. Victoria Legal Aid, *Family Law Legal Aid Services Review, Consultation and Options Paper*, January 2015.

552 *The Australian*, above.

553 RM Field & A Lynch (2014), 'Hearing parties' voices in Coordinated Family Dispute Resolution (CFDR): An Australian pilot of a family mediation model designed for matters involving a history of domestic violence', *Journal of Social Welfare and Family Law*, 36:4, 392-402. At <http://dx.doi.org/10.1080/09649069.2014.967988> See also A Lynch, 'Towards a Co-ordinated Community Response in FDR: A model to pilot FDR for families where past or current family violence exists', Women's Legal Service, Brisbane.

554 Ibid.

555 R Kaspiw, J De Maio, J Deblaquiere & B Horsfall, *Evaluation of a pilot of legally assisted and supported family dispute resolution in family violence cases*, Final Report, December 2012, Australian Institute of Family Studies.

556 Ibid.

557 Ibid. See also Audio Transcript, *Coordinated Family Dispute Resolution: Findings and Future Directions*, Australian Institute of Family Studies, Child Family Community Australia. At <http://www.3.aifs.gov.au/cfca/audio-transcript-coordinated-family-dispute-resolution-findings-and-future-directions>.

While the evaluation found participants' feedback about the mediation process itself to be somewhat mixed, participants were very appreciative of the support and access to legal advice that they received as a result of their contact with the service.⁵⁵⁸

It is presumably because of the resource intensiveness, noted above, that the model has not been continued at the time of writing. However, the CIJ urges the Commonwealth to continue to explore every opportunity to support additional approaches which, rather than ignore the existence of family violence, keep it firmly at the centre of the legal system's response. Ongoing work, including a recent reference to the Family Law Council of Australia, may provide further avenues for these opportunities to be highlighted.⁵⁵⁹

6.6 Conclusion

Clearly, opportunities exist outside the conventional civil or criminal justice context for family violence to be identified at a much earlier point. Equally, opportunities exist for this violence to be addressed more effectively, so that its cycle is interrupted, rather than perpetuated, by the legal system's response. In other words, additional opportunities exist right across the spectrum of people's contact with the law which enable us to bring the perpetration of family violence – and those who use it – more clearly into view.

⁵⁵⁸ Ibid.

⁵⁵⁹ Sen the Hon G Brandis, QC, *Family Law: Evolution or Revolution?* Address to the National Family Law Conference, Sydney NSW, Wednesday 8 October 2014. At <http://www.lawchat.com.au/index.php/a-g-speech-to-the-national-family-law-conference-family-law-evolution-or-revolution/>.

Chapter Seven – Costs, Conclusions and Recommendations

7.1 Return on investment

Given that evidence is ‘mixed’ about ‘what works and for whom’, it is unsurprising that little data is available about the economic benefits of earlier interventions with perpetrators.⁵⁶⁰ Though this area is only just beginning to be examined, what is known already about the long term costs of family violence - as well as incarcerating those who commit it - is argument enough that our focus needs to change.

Certainly, a practitioner in the Caledonian System explains that establishment of this service was well supported because Scotland was imprisoning people more than most other Western European nations and that this was recognised as expensive and ineffective.⁵⁶¹ Similarly SPEAQ explained to the Queensland Inquiry,

*...considering the costs of incarceration alone, if [MBCP] program participation led to only between 1 and 4 out of 100 participants not needing to serve a prison term of 12 months, the program will have covered its costs.*⁵⁶²

Rather soberingly, police also caution that the costs of investigating a homicide are far greater than the costs of intervening in violence before it escalates.⁵⁶³

Beyond these broad acknowledgments, however, one perpetrator intervention program in the city of Hull, in the UK, has undergone an extensive ‘Return on Investment’ study.

Strength to Change works with perpetrators, partners, ex-partners and children and is supported by a primary prevention focus in its local community. Men generally self-refer to this program and are offered extensive individual, as well as group, sessions.

The independent study found that the program had contributed to measurable change in the families involved, with significant savings attached. Reduced offending, including in severity, and reduced police callouts had reduced criminal justice agency and associated costs.⁵⁶⁴ ‘Adverse life events’ amongst family members, meanwhile, were more likely to have been averted, again saving associated costs.

Based on the average national costs of domestic violence, the study calculated that, by averting 16.5 crimes over its time in operation, for example, the program had saved the community £426,273. Using a ‘Family Savings Calculator’, seven cases considered typical were analysed to reveal average gross savings of £63,937 per man, £35,058 per partner/ex-partner and £1,172 per child. If the program maintained this performance across all other users, this would indicate a gross saving of £7,929,502.

560 M Remme, C Michaels-Igbote & C Watts, *What Works to Prevent Violence Against Women and Girls? Evidence review of approaches to scale up VAWG programmes and assess intervention cost-effectiveness and value for money*. At <https://library.nzfvc.org.nz/cgi-bin/koha/opac-detail.pl?biblionumber=4562>.

561 R Macrae, above note 224.

562 SPEAQ submission, above note 339 p 17.

563 Y Rehman, ‘Prevention of Domestic Violence Against Women and Children’, Presentation, *Ten Years of Austrian Anti-Violence Legislation*. International Conference in the Context of the Council of Europe Campaign to Combat Violence Against Women, Including Domestic Violence. 5-7 November 2007, Vienna.

564 Men still on the scheme have been involved in 75% fewer incidents. Men who have left the scheme have been involved in 54% fewer incidents. *Strength to Change, Return on Investment Study*, Perfect Moment, November 2010.

The study also calculated the gross annual savings to associated agencies (such as police, health, justice and social services) at £1.43 million, estimating that, over the 16 month period studied and excluding set up costs, every £1 invested by the program had returned £2.24 in reduced criminality; £2.57 in net savings to health services; £10 in savings to all public agencies; and £14 in total savings when human & emotional costs were also included.⁵⁶⁵

Finally, compared with the option of no intervention and ultimate resort to custodial sentences, the study calculated that Strength to Change could provide services to 55 men, 66 women and 113 children each year for the same cost as keeping just three people in prison.⁵⁶⁶ Meanwhile, if it averted just one domestic violence homicide in its first four years, it would have recovered all its set-up and running costs.⁵⁶⁷

Obviously this is only one study of one program. Nevertheless, it signals the way in which the benefits of early intervention can begin to be assessed. So does, at one end of the offending trajectory the study concerning interventions with boys at risk, as described at Chapter One and, at the other end of the trajectory, work conducted concerning Circles of Support and Accountability, as discussed in Chapter Five. This work indicates that the costs of operating a circle are reasonably modest when compared to the cost of incarceration and other professional-led interventions, with a UK review calculating the average annual cost per circle (including administration, training and support, travel and office expenditure) to be between £12,600 and £16,400.⁵⁶⁸ More work needs to be done right across the spectrum of interventions with perpetrators, however, as there is no denying that additional, albeit targeted, resources are definitely required.

‘The resources question’, of course, is a perpetual concern in a sector already stretched to the limit – whether it be funding for women’s emergency accommodation, or MBCPs that experience lengthy waiting lists. In the CIJ’s view, funding allocations for family violence have been approached as if the problem which they are addressing is incidental or temporary, rather than an ongoing ‘wicked problem’⁵⁶⁹ that permeates all levels of the justice and service sectors alike.

Once the nature of the challenge is accepted, then our response to it has to be equally as comprehensive - strengthening responses right along the spectrum, yes, but also putting in more work at an earlier point which may mean that less demand is ultimately experienced ‘downstream’.

This said, stakeholders also agree that improvement will not just occur by throwing more money at every response. For example, stakeholders suggested that resources particularly needed to be invested with perpetrators who showed insight and were therefore capable of some level of change at an earlier stage.⁵⁷⁰ Responses therefore need to become smarter, acknowledging that, until we engage more immediately and effectively at the site of the problem – and until we harness the potential of the justice system to do so - we will be throwing good money after bad.

7.2 Conclusions

Writing perpetrators back into the analysis of family violence is a complex and long term task. This Report has attempted to suggest, however, that we are now in a position to make a start – that understanding has reached a stage which enables us to engage with additional opportunities and avoid the rigid thinking that, as one practitioner notes, can ironically plague

⁵⁶⁵ Ibid.

⁵⁶⁶ Ibid. Similarly, as it costs an average of £130,000 per annum to keep one child in care; one child averted from this path enables the program to recover its annual costs.

⁵⁶⁷ Ibid.

⁵⁶⁸ McCartan et al, above note 490.

⁵⁶⁹ R Herbert & D Mackenzie, *The Way Forward: An Integrated System for Intimate Partner Violence and Child Abuse and Neglect in New Zealand*, Wellington, The Impact Collective, July 2014.

⁵⁷⁰ CIJ Roundtable, 11 November 2014.

this field.⁵⁷¹ Many agencies, in fact, are constantly engaging with change, the mottos of the Gold Coast Integrated Response and ASSIST in Edinburgh, for example, both indicating that their practice is constantly evolving.⁵⁷² As long as the safety of women and children are kept central in any response,⁵⁷³ additional opportunities can and *must* be seized.

Clearly, none of these opportunities - whether in isolation or combination - emerge as 'the answer'.⁵⁷⁴ Equally clearly, the cycle of family violence is so complex that a linear path for these interventions cannot always be mapped, particularly when the violence concerned is so often ongoing.

Ensuring that these interventions are repeated and consistent, however, *is* achievable, particularly via ongoing interactions with identifiable individuals connected to the justice system, from police, respondent workers, lawyers, judges, or probation officers through to perpetrator program facilitators, all of whom reinforce the unacceptable nature of a perpetrator's behaviour and have the capacity to draw on a range of resources to hold him to account.⁵⁷⁵

Equally achievable is our capacity to build on what we know, being:

- That isolating perpetrators and failing to connect them with services or treatment for associated issues, including homelessness, is not going to reduce the risk that they present
- That initial contact with a court, in particular, offers a unique opportunity to identify a perpetrator's use of family violence, as well as any contributing factors, and connect him to appropriate responses
- That perpetrators need to be provided with as much information and advice as possible upon this initial contact to increase the likelihood that they will comply with orders or treatment
- That this connection with a court or with any relevant treatment services needs to occur as early as possible in the cycle of violence
- That 'active' or 'warm' referrals are more effective – meaning that workers or agencies contact the relevant service on the spot, rather than leaving the perpetrator to follow it up himself later
- That perpetrators who have a minimal criminal history and a higher 'stake in conformity' are more likely to engage with any treatment offered
- That these orders or treatment need to be more carefully tailored to an individual's circumstances and 'Risk, Need, Responsivity'
- That perpetrators need to be monitored on an ongoing basis. This includes being brought back before a court, preferably before the same judge who is equipped with all the relevant information about a perpetrator and is able to determine all the relevant matters. It also includes being assessed regularly by a perpetrator program; and/or supervised by probation to mitigate risk and enforce compliance.
- That non-compliance should be met with swift and certain sanctions, the response escalating in parallel with any violence
- That the Corrections environment, including post-release, offers unique opportunities to intervene with and supervise rehabilitation of perpetrators of family violence

⁵⁷¹ O'Malley, above note 262.

⁵⁷² O'Malley, above note 262. See also McGowan, above note 328.

⁵⁷³ Macrae, above note 224.

⁵⁷⁴ Salter, above note 103.

⁵⁷⁵ Salter identifies the importance of ongoing relationships with identifiable individuals in authority. *Ibid.*

- That programs to address adolescent violence in the home and, more broadly, the intergenerational transmission of family violence, are essential if we want to break an intractable and expensive cycle.
- That the existence of family violence must be better identified by *all* services and agencies with which perpetrators come into contact
- That, overall, perpetrators need to be kept within view of the justice system, rather than be allowed to drop out of sight.

Unless we apply and link this knowledge, of course, perpetrators of family violence will continue to exploit gaps in the community's response and slip under the radar. Perhaps, therefore – and as queried at the outset of this Report – we need to grapple more effectively with what the concept of accountability actually means.

Certainly, accountability means more than one thing. Researchers indicate, in fact, that men, women and practitioners experience accountability very differently.⁵⁷⁶ Accordingly, these researchers argue that accountability consists of formal and informal mechanisms which, when combined, hold men responsible for their behaviour and any promises they make to change it.⁵⁷⁷ Equally, practitioners argue that, just as men need to take responsibility for their violence, the system and wider community need to be accountable for its collective response as well.⁵⁷⁸

Ultimately, therefore, perpetrator accountability is about all parts of the system working together. It is not about excluding, or excusing, violent and controlling men. It is not simply about locking people up, and certainly not about letting them off the hook.

First and foremost, accountability means making victims of family violence safe. It means keeping the perpetrator firmly in view, not isolating him or propelling him from scrutiny. It means leveraging the authority of the justice system and whatever stake in conformity the perpetrator has to ensure that he complies with the law. It means measuring the right things. It means keeping not only the violence and its user visible but also the system's response. It means every part of the system bearing responsibility and the victim setting the pace. Just as importantly, it means coming to terms with the fact that family violence is core business in the legal system and has to be treated – and funded – as such.

At its simplest, perpetrator accountability is about widening our gaze to include individuals who use family violence – bringing them squarely into the spotlight; making them responsible for their own behaviour, certainly; but *all* of us accountable for how the community steps up to meet it.

⁵⁷⁶ J Smith, above note 122.

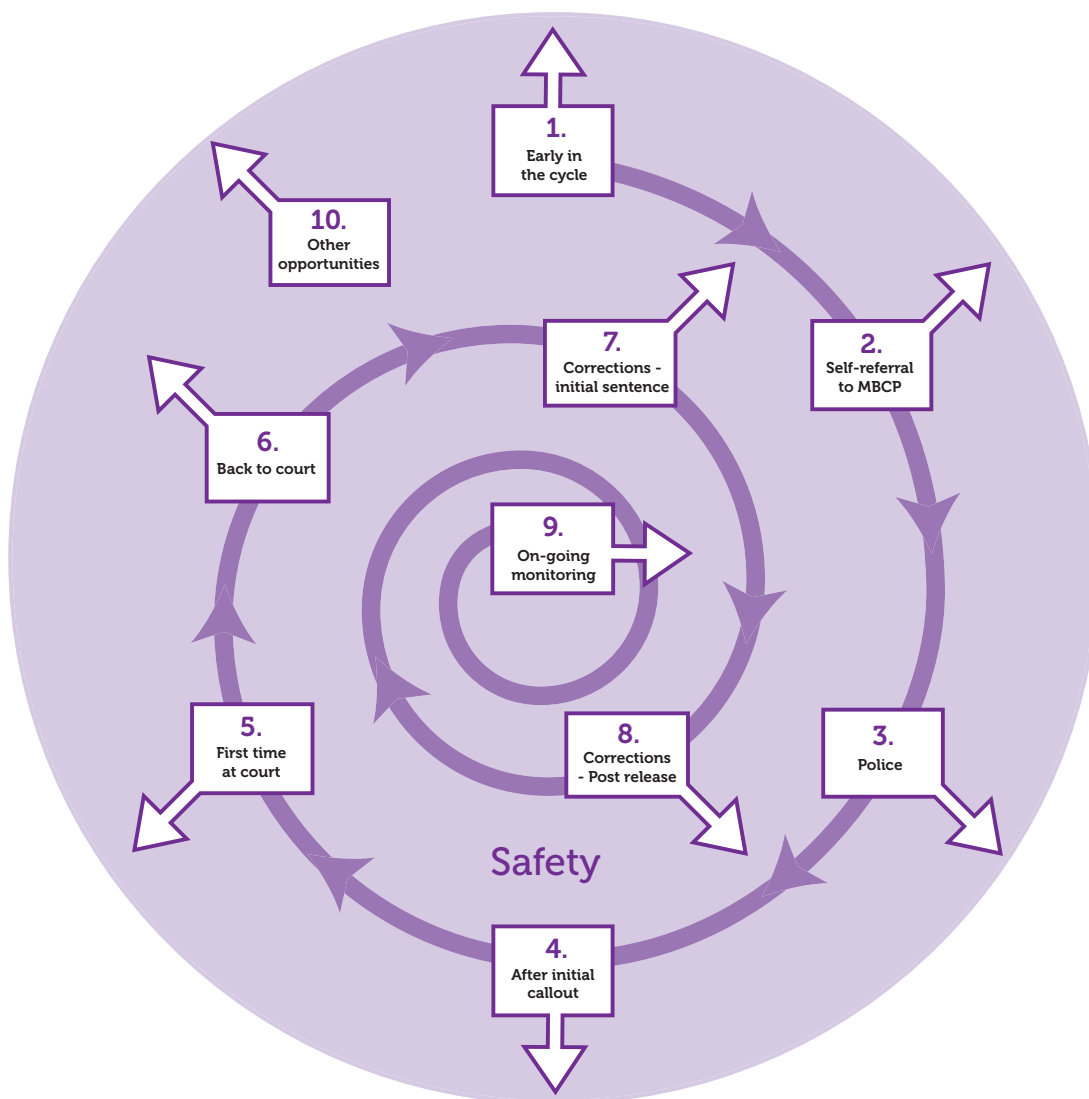
⁵⁷⁷ Smith, Humphreys & Laming, above note 234.

⁵⁷⁸ Telephone consultation with Susan Geraghty, Program Manager, MBCP, BaptCare NSW. To this extent, a Western Australian Safety & Accountability Audit nominates four kinds of accountability that need to be in place for programs to be effective – institution to victim; offender to victim; practitioner to practitioner and agency to agency. Cited in Smith, above note 302 p 9.

7.3 A map of pathways to potential interventions

Intervening in the spiral of family violence

The cycle of family violence is, in many ways, a spiral. Unchecked, the violence or controlling behavior becomes worse. What's more, it rarely involves a single incident of violence, making a visual representation difficult. Below, however, is a simplified depiction which points to potential opportunities along this spiral for the justice system to intervene.



1. Early in the cycle

Support to children to interrupt cycle
Adolescents - reparative program to interrupt cycle

2. Self-referral to MBCP

Stake in conformity is highest

3. Police

Arrest/Safety Notice/Protection Order
Men's Active Referral Service
Early connection to behaviour change
Referral to treatment agencies
Referral to crisis accommodation

4. After initial callout

Triage by inter-agency collaboration
Escalation of responses as violence continues

5. First time at court

Bail/remand to connect with treatment & identify risk
Respondent worker - consistent messages
Lawyer to provide advice and 'sow a seed'
Trained Magistrate to provide meaningful encounter
Early connection with behaviour change
Flexible referral to treatment

6. Back to court

Ongoing monitoring
Swift and sure sanctions

7. Corrections - initial sentence

Supervision in the community
Intensive rehabilitation in custody
Identify FV in other offenders and intervene

8. Corrections - Post release

Connection with behaviour change post-release
Other forms of accountability post-release

9. On-going monitoring

High-risk inter-agency collaborations

10. Other opportunities

Restorative/accountability follow-up
Support to children to break the cycle
Safe Fathering after violence
Safe family law dispute resolution

7.4 Recommendations

The CIJ notes the ongoing importance of primary prevention efforts to dismantle the gendered attitudes and assumptions that allow family violence to endure. It also notes the overriding imperative of providing adequate services to women experiencing and recovering from family violence – including, most urgently, **the immediate re-instatement of funding to Family Violence Prevention Legal Services around the nation and to other community legal centres that provide specialist support and advice to women.**

It also includes the long awaited national intervention order scheme, provision for Family Violence Death Review teams in all coronial jurisdictions and better information sharing between agencies, such as police and court databases. All of these things are essential, in fact, if perpetrators are to be held more effectively to account. Equally, these are all likely to be the subject of upcoming systems-wide analyses, as well as being the subject of recommendations in many previous reports.

In an effort to be more targeted and useful in the context of this broader work, however, the CIJ has directed its specific recommendations towards interventions with perpetrators. In particular, it urges jurisdictions to ensure that perpetrators are encouraged to address associated issues and acknowledge their violence as early as possible. Equally, the justice system should aim to be sufficiently dynamic and adaptable to respond to family violence as an ongoing cycle of behaviour.

To this end, the CIJ recommends that:

1. Early intervention strategies

Many jurisdictions already have well developed primary prevention strategies regarding family violence, being strategies which seek to encourage respectful relationships and prevent the cycle of violence from starting (See Chapter 1). In addition, however, all jurisdictions should develop and implement Early Interventions in Family Violence strategies to support their ongoing commitment to the National Plan and to articulate opportunities to intervene as early as possible once this cycle has actually commenced. Return on Investment studies (see Chapter 7.1) should be conducted in relation to a selection of the interventions described below, where applicable, to support these strategies.

2. Perpetrator Intervention Conference

To support these strategies – and potentially in collaboration with the Australian National Research Organisation for Women's Safety - jurisdictions should fund and support the staging of a national conference dedicated to best practice in perpetrator interventions, in addition to any crisis summit that is currently being proposed. Focusing specifically on perpetrator interventions, this conference could highlight initiatives already in operation, both nationally and around the globe, as well as those in development, and explore opportunities that governments at all levels can seize. In particular, it could help to train the spotlight on an area that has, as yet, received comparatively little focus in other contexts.

3. Perpetrator programs:

Perpetrator programs (or MBCPs) should be more strategically developed as a sector by all jurisdictions. This should be supported by investment in the development of a more nuanced and Australian evidence-base. In particular:

- a. Sector development should include targeted publication of MBCP services to increase the likelihood that perpetrators will self-refer prior to police intervention (see Chapter 2.4.2)

- b. Provision should be made for earlier referral to MBCPs through sufficient funding to minimise waiting lists (see Chapter 2.5)
- c. Provision should be made for MBCPs to maintain contact with any potential participants on waiting lists to increase engagement (see Chapter 2.4.2)
- d. Provision should be made for tiered levels of intensity, including more frequent sessions over a shorter period of time, to offer more targeted interventions to perpetrators with different histories of contact with the criminal justice system and different capacities to engage. (see Chapter 2.4.3)
- e. Provision should be made for the capacity to provide individual case management and referral to treatment services such as alcohol and substance abuse services (see Chapter 2.4.3)
- f. Provision should be made for partner contact and specific children's services, as well as fathering services in an additional phase to maintain any changes achieved (see Chapters 2.4.4. and 6.4)
- g. Consideration should be given for links to crisis and ongoing accommodation (see Chapter 3.5)
- h. Provision should be made for ongoing training, supervision and professional development for MBCP practitioners.

4. Development of an active men's referral service

All jurisdictions should develop active men's referral services with the capacity to provide ongoing contact with men suspected of, or identified as having used, family violence (see Chapter 3.3). This should activate upon referral from police, as well as self-referral, and have the capacity to provide assertive outreach based upon police records of arrest. This service should have the capacity to provide men with ongoing conversations about their behaviour, including any ongoing risk that they may pose, as well as information about court processes and potential orders. It should also include case co-ordination to provide active referrals to:

- Appropriate health and other treatment services (see Chapter 3.4);
- Adequately funded crisis and ongoing accommodation services (see Chapter 3.5);
- Men's Behaviour Change Programs (see Chapters 2 and 3.3)
- Legal advice (see Chapter 4.4)

5. Protocols for police referrals:

In addition to ongoing and commendable efforts to improve training and specialist responses by police (see Chapter 2), Australian police forces should develop protocols for referrals to:

- Active men's referral services
- Relevant treatment agencies
- Crisis accommodation

6. Low to medium risk monitoring through inter-agency collaboration and escalation of responses

Jurisdictions should establish 'co-located' inter-agency collaborations which can 'triage' incidents attended by police which have attracted a low to medium risk assessment (see Chapter 3.6). Jurisdictions should develop protocols for police to escalate responses to low to medium risk perpetrators, advising them that escalation will occur with each repeat attendance. (see Chapter 3.6)

7. Effective interventions at court

In addition to providing adequate support for women, all jurisdictions should acknowledge family violence as core business and endeavour to ensure that, at the minimum, headquarter courts provide:

- a. Trained applicant and respondent workers who have access to ongoing professional development (see Chapter 4.3)
- b. Duty lawyers trained in the dynamics of family violence for both victims and perpetrators (see Chapter 4.4)
- c. An onsite health liaison service to which respondents or defendants alleged or suspected to have used family violence, including in the context of other offences, can be referred (see Chapter 4.2)

Further to this, all jurisdictions should endeavour to maximise the leadership and imprimatur of the court by ensuring that:

- d. All Magistrates receive specialist family violence training, as well as training in motivational interviewing and procedural justice (see Chapter 4.5)
- e. Options and processes for identifying family violence dimensions in other offending are explored and developed including, where appropriate, proactive questioning, screening and assessment tools and as conditions of other orders. Appropriate safeguards should be built in to prevent information from being used as evidence where relevant matters have not yet been brought before a court (see Chapter 4.2)
- f. Courts develop protocols for 'triaging' these matters after first attendance (see Chapter 4.2.)
- g. Courts develop processes to 'leverage' bail and remand to direct family violence perpetrators to appropriate treatment (see Chapter 4.2)
- h. Courts apply a risk assessment and management framework, to assess the risk posed to the victim and, where relevant and appropriate, Risk, Need, Responsivity principles in respect of the intervention applied to the perpetrator (see Chapters 2.4.3 & 3.6)
- i. Courts develop protocols for case conferencing prior to hearings of family violence matters subsequent to initial appearances (see Chapter 4.5)
- j. Courts develop protocols for accelerated referral to treatment services for 'first time' offenders or those with a minimal history of offending (see Chapter 4.6.2)
- k. Courts develop protocols for diverting higher risk offenders into a vigorous prosecution stream (see Chapter 4.6.2)
- l. Courts explore the development of 'One Judge, One Family' docket schemes, as far as is practicable, in order to bring all matters relevant to a party, including family law disputes, before the same judicial officer in order to maximise informed and targeted adjudication (see Chapter 4.6)
- m. Courts develop procedures for bringing perpetrators – whether respondents to protection orders or offenders referred to treatment or behaviour change – back for ongoing monitoring and supervision, preferably before the same judge (see Chapter. 4.6, 4.6.1, 4.6.2 & 4.6.3)
- n. Courts provide clear advice to perpetrators about the escalation of sanctions they should expect should they fail to comply with relevant orders. This includes developing protocols for 'Swift and Certain' sanctioning, such as consideration of 'flash incarceration' for 24 hours upon non-compliance (see Chapter 4.6.1)
- o. Courts identify future opportunities for developing and integrating restorative approaches in an effort to meet victim's needs and to promote perpetrator accountability. (see Chapter 6.1)

8. Strategic use of Corrections systems

Jurisdictions should ensure that Corrections systems:

- a. Provide immediate referral and access to relevant treatment for defendants accused of family violence offences who are on remand (see Chapter 4.1)
- b. Conduct more work to identify links between family violence perpetrators and the general population of offenders, such as routine screening and family violence risk assessment for all offenders upon entry into the Corrections system, whether in custody or on community-based orders (see Chapter 5.3)
- c. Develop intensive perpetrator programs to be delivered in custodial settings, including over short-term periods, for those identified as using family violence (see Chapter 5.2)
- d. Develop protocols for MBCPs to conduct intake evaluations and readiness programs for entry into perpetrator programs upon release from custody (see Chapter 5.2)
- e. Maximise the use of supervision by Corrections services for offenders in the community – including providing specialist family violence training to Community Corrections officers; giving consideration to extending relevant periods of supervision; as well as exploring opportunities where convictions are not yet secured but defendants are linked to perpetrator programs (see Chapter 5.2)
- f. Support research into the use of innovative interventions connected with other forms of offending, such as alcohol abuse, as a means to reducing family violence perpetration (see Chapter 5.3)
- g. Develop protocols for Parole Boards to consider family violence issues - including whether the offender has a protection order against him and an address he is prohibited from visiting - when assessing parole eligibility. (see Chapter 5.3)
- h. Give consideration to the use of networks of trained volunteers or Circles of Support and Accountability (COSA) to monitor the behaviour and reintegration of serious family violence offenders once released into the community following a period of incarceration. (see Chapter 5.4)

9. Breaking the cycle

To start to disrupt the intergenerational transmission of family violence (see Chapter 1.3), and address the risk that adolescents may mirror the violence and coercion of their fathers and other significant male figures in their lives (see Chapter 1.4), jurisdictions should:

- a. Conduct research into the intergenerational transmission of family violence and the evidence base concerning interventions which are effective in disrupting it
- b. Support the delivery of programs for 'at risk' children in both primary and secondary school settings, particularly those at risk of disengaging from education
- c. Develop specific risk assessments to be used by police and relevant agencies in order to identify adolescents who may be using family violence at home, but who come into contact with the justice system in relation to other matters
- d. Develop appropriate police protocols and diversion pathways when responding to callouts for adolescents who use violence in their home
- e. Support the development of a sustainable sector of family-centred intervention programs for parents and adolescents where the adolescent is using violence in the home
- f. Conduct further research into family-centred approaches drawing, amongst other things, on the experience of practitioners in Aboriginal and Torres Strait Islander communities.

10. Further research

In addition to any opportunities for further research identified through the above recommendations, ANROWS should support further research into:

- a. Appropriate measurements of success and effectiveness regarding perpetrator interventions (see Chapter 2.3)
- b. Evidence concerning the benefits of advising offenders of the level of risk that they pose (see Chapter 6.2 & 6.3)
- c. Restorative and family-centred approaches which offer opportunities for perpetrators to demonstrate accountability directly to their victims (see Chapter 3.4)
- d. Linking the contemporary emphasis on primary prevention initiatives with tertiary intervention efforts, such as the use of peers or mentors to act as role models for perpetrators (see Chapter 5.4)
- e. Application of approaches in Aboriginal and Torres Strait Islander communities which could be applied in other responses to family violence (see Chapter 6.2)
- f. Application of the themes of this Report to support responses to family violence in Aboriginal and Torres Strait Islander communities (see Chapter 6.2)
- g. Potentially effective interventions with men who are repeat perpetrators of violence against women of uncertain immigrant status (see Part One, Impacts)
- h. Potentially effective interventions with men who are repeat perpetrators of violence against women with disabilities (see Part One, Impacts)
- i. Potentially effective interventions which specifically address family violence in LGBTIQ communities (see Part One, Impacts)
- j. Effective interventions with perpetrators of family violence against young people aged 18 - 24 and against older people (see Part One, Impacts)
- k. Sustainable programs which facilitate safe dispute resolution in family law matters which involve family violence (see Chapter 6.3).

Appendix A – Table of Highlighted Initiatives

Bystander approaches	Programs which challenge the use of violence by others and engage mentors to act as role models	Chapter 1.1
Safe Dates, SUPA Kids, Love Bites	Programs in schools which encourage respectful relationships	Chapter 1.1
Independent community primary prevention campaigns	Programs such as in Maryborough, which promote positive relationships and increase understanding	Chapter 1.1
Primary prevention in ATSI communities	Community-developed and driven initiatives designed to respond to specific contexts	Chapter 1.1
CALD primary prevention	Programs designed to increase awareness in CALD communities	Chapter 1.1
Sister's Day Out	Program run by FVPLS Vic to create opportunities for women to receive advice and assistance in safety	Chapter 1.1
Royal Women's Hospital Legal advice scheme	Program providing women with legal advice about family violence when they attend for ante and post natal appointments	Chapter 1.1
Family Nurse Visiting Program	Program visiting at-risk mothers in their homes following birth	Chapter 1.1
Interventions with boys at risk	Study showing characteristics of effective programs	Chapter 1.1
Justice reinvestment	Approaches which redirect funds from prisons towards rehabilitation and 'front-end' contributors to crime	Chapter 1.2
Interventions with children	Addressing intergenerational transmission of violence	Chapter 1.3
Interventions with adolescents	Addressing adolescent violence in the home	Chapter 1.4
Risk Assessment & Management Panels	Multi-agency collaboration to assess and manage high risk cases	Chapter 1.5
Perpetrator monitoring – Massachusetts	Monitoring of high risk perpetrators that includes escalation of interventions as time goes on	Chapter 1.5
BIPS in New York	One of a range of sanctions available to courts Hold men accountable for what they can enforce Want courts to guarantee consequences for non-compliance	Chapter 2.4.1
Tangentyre Council – Marra'ka Mbarintja Men's Family Violence Prevention	Community developed, integrated response in Alice Springs, Central Australia. Includes assertive outreach to town camps.	Chapter 2.4.1
Caledonian System	Longstanding model that provides Duluth based interventions but also conducts 'Risk, Needs & Responsivity Assessments. Three phases, two years duration overall.	Chapter 2.4.3
Canberra Men's Centre	Individual, case management approach. Includes outreach & occasional referral to accommodation	Chapter 2.4.3
Good Lives Model	Seeks to develop capacity in offenders to meet their needs in constructive, non-violent ways	Chapter 2.4.3
Project Mirabel	Long term study involving qualitative research with partners, participants and practitioners of behaviour change programs. Demonstrates benefits of programs.	Chapter 2.4.4
Austrian model	Police-issued exclusion orders supported by follow-up from women's service.	Chapter 3.2
Winnipeg police/social worker teams	social workers respond to cases flagged by responding officers as having potential to escalate.	Chapter 3.2
ASSIST	Women's service co-located with police. Share information about perpetrators.	Chapter 3.2
Men's Active Referral Service	Perpetrator's contact details provided to service following police call-out. Perpetrators then contacted for conversations about their behaviour.	Chapter 3.3
Communicare – WA	Active referral, as above. Ascertain risk and advise relevant agencies.	Chapter 3.3
ReachOut	Assertive outreach – identifies and contacts men named on police incident report	Chapter 3.3
SupportLink	Active referral agency to treatment services	Chapter 3.4
Second Responder model – Ontario	Contacts FV defendants and asks if they want to be referred to relevant treatment	Chapter 3.4

Breathing Space – WA	Three month residential behaviour change and case management program for violent men	Chapter 3.5
Multi-Agency Protection Service SA	Co-located agencies ‘triage’ and assess low to medium risk cases following police callout	Chapter 3.6
West Yorkshire – automatic increase in response	Police automatically apply an escalation in response for repeat FV incidents and advise perpetrators that this will occur	Chapter 3.6
Neighbourhood Justice Centre	Triages FV matters on the papers the day before the list is heard. Matters prioritised according to need.	Chapter 4.2
Strategic use of bail	Defendants bailed to morning timeslot to prevent victims from having to wait all day	Chapter 4.2
Protective Bail Risk Assessment Reports	Requested by Magistrates to assess risk when determining whether to grant bail	Chapter 4.2
Summary reports at bail	Provision to Magistrate of all relevant information concerning defendant	Chapter 4.2
Neighbourhood Justice Centre, Melbourne	Specialist workers provide advice and referrals before court; FV matters triaged beforehand.	Chapter 4.2
Defendant Health Liaison Service – Tasmania	FV defendants bailed to service to connect them with relevant treatment	Chapter 4.2
Yukon DV Treatment Option	Post-plea, engages defendants with treatment	Chapter 4.2
Calgary DV Court	Court-based case workers initiate contact with victim immediately following accused’s arrest	Chapter 4.3
Respondent workers	Can diffuse men’s anger and increase compliance with protection orders and referrals	Chapter 4.3
Voluntary Intervention Orders – Queensland	Supports referral to perpetrator programs. Uptake improved once respondents referred to respondent workers to facilitate ‘active’ or ‘warm’ referrals	Chapter 4.3
Proactive respondent contact service – WA	Service recommended by WA Report in which workers would make contact with respondents to protection order applications	Chapter 4.3
Specialist training – duty lawyers Victoria	Specialist FV training provided to Victoria Legal Aid duty lawyers to increase likelihood of respondent compliance with protection orders	Chapter 4.4
Compulsory training for ALL Magistrates – Victoria	All Magistrates in Victoria will now be required to undergo 2 days of specialist FV training	Chapter 4.5
Family Violence Court Operational Committee – WA	Regular meetings involving sitting Magistrates, lawyers, prosecutions, behaviour change programs and victim advocates to discuss latest research, best practice and perpetrator accountability	Chapter 4.5
Pre-Court Reviews – WA	Pre-hearing meetings between Magistrate, prosecutor, defence and relevant agencies to establish progress of offender. Choreographed exchange in court improves effectiveness.	Chapter 4.5
Family Justice Centers – US	One stop shops – specialist courts, victims support, Assistant District Attorney to keep victim advised	Chapter 4.6
Integrated Courts	‘One Judge, One Family’ – judges with all relevant information about a family can make more informed decisions	Chapter 4.5
New York’s Integrated FV Courts & Brooklyn DV Felony Court	All matters dealt with by same judge, offender monitors follow offender’s progress. Supervised probation.	Chapter 4.6.1
DV Swift and Sure Sanctions – Lansing, US	Defendants referred to treatment post-plea. Re-offence incurs immediate sentence to short term of imprisonment on basis of plea to previous offences.	Chapter 4.6.1
Domestic Violence Court, Early Intervention Stream – Ontario	Swift connection to perpetrator program for low-level offenders with no prior conviction. Second stream emphasises vigorous prosecution.	Chapter 4.6.2
Calgary Homefront Scheme – Peace bonds	Charges stayed by peace bond, immediate connection to perpetrator program.	Chapter 4.6.2
Abuse Prevention Program – SA	Tiered level of intensity of program, determined by risk or language barriers	Chapter 4.6.3
Marin County FV Court – US	Full range of interventions available, including ‘flash incarceration’ of 24 hours for non-compliance	Chapter 4.6.3

Courts Integrated Service Program – Victoria	Examine offenders' multiple or complex needs and connect them with appropriate treatment	Chapter 4.6.3
Gold Coast DV Integrated Response	Co-location of women's service, behaviour change, and Corrections. Supervision by probation	Chapter 5.2
Colorado DV Offender Management Board – US	Comprehensive standards for referral of offenders to behaviour change. Tiered levels of intervention depending on risk assessment.	Chapter 5.2
Corrections case reviews – SA	Correctional Services in SA developing strategy to review all files to identify presence of FV in other offenders	Chapter 5.3
Next Generation Case Management – Qld	Identification of FV in other offenders. Probation can issue Reasonable Direction to attend treatment	Chapter 5.3
24/7 Sobriety Project – South Dakota, US	Drink driving offenders prohibited from drinking, carry portable breath testers with facial recognition. 'Skip or fail and you go to jail' for 24 hours. Jurisdictions noticed distinct drop in DV offences.	Chapter 5.3
Circles of Support and Accountability	Trained volunteers holding offenders accountable post-release into the community	Chapter 5.4
Peer Support	Emerging program in NZ using former perpetrators as role models for how to become safe	Chapter 5.4
Supportive Allies	Volunteers contracted with participant and program to help hold men accountable	Chapter 5.4
Standards for RJ Conferencing – NZ	Comprehensive standards guiding restorative justice conferencing in DV cases	Chapter 6.2
Truth-telling processes	Opportunities for victims to be heard and acknowledged	Chapter 6.2
Asking Clients	Lawyers asking clients about preferred outcomes	Chapter 6.2
Accountability conferences – NZ	Victim participation in safe, facilitated conference with perpetrator and behaviour change practitioner to map out how he can maintain change	Chapter 6.2
Exit interviews	Voluntary victim participation in exit interviews from behaviour change programs	Chapter 6.2
Arranged dialogues – Norway	Strengthen co-ordination between services	Chapter 6.2
Healing Circles	Affected parties and wider family involvement	Chapter 6.2
Step-Up	Family focussed, reparative program for adolescents using violence in the home	Chapter 6.3
Caledonian System	Children's support and safe fathering after violence	Chapter 6.3
Notice of Risk	Federal Circuit Court – all parties to disputes involving children required to file Notice of Risk to assist in early identification of concerns	Chapter 6.5
Co-location with Child Protection	Child protection officers co-located in two registries of Family Court in Victoria	Chapter 6.5
Family Reports	Amendment to Federal Circuit Court Rules to make family reports available to child protection system	Chapter 6.5
Coordinated Family Dispute Resolution	Safe family law dispute resolution service using women's support, men's practitioner, legal advice and FDR service provider.	Chapter 6.5
Strength to Change – UK	Return on Investment study of early intervention perpetrator program which demonstrates high value for money.	Chapter 7.1

Appendix B – Consultation List

During the development of this Report, the CIJ consulted a range of stakeholders. All stakeholders were consulted individually, either face-to-face, over the telephone or, in the case of those in the US and UK, via personal email communication. Some participated in a Roundtable Discussion at RMIT University in Melbourne on Tuesday, 11 November 2014. An Issues Paper was circulated to the Roundtable participants prior to the discussion.

- **Rosie Batty**, family violence prevention advocate, Australian of the Year 2015
- **Deputy Chief Magistrate Felicity Broughton**, Co-ordinating Magistrate, Family Violence Division, **Magistrate Kate Hawkins**, Co-ordinating Magistrate, Family Violence Division, **Magistrate Pauline Spencer** and **Magistrate Fiona Hayes**, Regional Co-ordinating Magistrate, Gippsland, Magistrates' Court of Victoria
- **Magistrate Jayanthi McGrath**, Magistrates Court of South Australia
- **Fiona McCormack**, Chief Executive Officer, Domestic Violence Victoria
- **Rodney Vlasis**, Acting CEO, No To Violence
- **Antoinette Braybrook**, Chief Executive Officer, **Laura Vines**, Senior Policy Officer, and **Tania McKenna**, Education Manager, Aboriginal Family Violence Prevention and Legal Service (Victoria)
- **Joanna Fletcher**, Chief Executive Officer, and **Pasanna Mutha**, Policy and Campaigns Manager, Women's Legal Service Victoria
- **Liana Buchanan**, Executive Officer, and **Chris Atmore**, Senior Policy Adviser, Federation of Community Legal Centres
- **Leanne Sinclair**, Family Violence Program Manager, Victoria Legal Aid
- **Kathy Prior**, Deputy Director, Northern Region, **Sharon Clark**, Senior Manager, Northern Family and Domestic Violence Service, and **Kate Cannon**, Family Violence Team, Berry Street Victoria
- **Rod Jouning**, Detective Superintendent, and **Claire Waterman**, Manager Policy and Projects, Sexual and Family Violence Division, Victoria Police
- **Scott Holmes**, Healthy Workplaces Senior Adviser, YMCA
- **Jill Prior**, co-founder Law & Advocacy for Women, former Executive Officer, Victorian Aboriginal Legal Service
- **Bonnie Renou**, Lawyer, Loddon Campaspe Community Legal Centre
- **Nicole Bluett-Boyd**, Lead Consultant, BluettBoyd Consulting
- **Cameron Wallace**, Acting Director, and **Michelle Stevens**, Family Violence Co-ordinator, Neighbourhood Justice Centre
- **Caroline Counsel**, Principal, Caroline Counsel Family Lawyers
- **Kaye Swanton**, Director, and **Dr David Smyth**, Chairman, Violence Free Families
- **Tony Fletcher**, Perpetrator Intervention Research, ANROWS
- **Jo Howard**, Executive Manager, Youth and Family Services, Kildonan Uniting Care, Victoria
- **Sylvia Marov**, Program Manager, Youth Counselling and Support Services, City of Greater Dandenong, Victoria
- **Jen Hargrave**, Policy Officer, Women with Disabilities Victoria
- **Bev Reynolds**, Program Manager, Positive Lifestyles Program, Salvation Army, Morwell
- **Jane Reynolds**, A/Regional Registry Manager NSW/ACT, Manager International Court Excellence Framework, Family Court and Federal Circuit Court of Australia, **Manuela Galvao**, Regional Coordinator, Child Dispute Services, Family Court of Australia and **Adele Byrne**, Principal Registrar, Federal Circuit Court of Australia

- **David Nugent**, Director, Heavy Metal Men's Behaviour Change Program, Cranbourne, Victoria
- **Andrew Day**, Associate Professor, Deakin University, Geelong Campus
- **Marni Allan**, intervention order applicant
- **Kristen Daghish-Rose**, Acting Manager, Domestic and Family Violence, NSW Department of Justice
- **Susan Geraghty**, Manager, Relationship Services, BaptistCare, Bankstown, NSW
- **Rosemary O'Malley**, Manager, Men's Domestic Violence Program, Gold Coast Domestic Violence Integrated Response, Queensland
- **Paul Monsour**, Secretary, Services and Practitioners for the Elimination of Abuse, Queensland
- **Stephen Clarke**, Manager, Family Violence Intervention Services, Department of the Attorney, WA
- **Gary Smith**, Program Manager, Accommodation and Therapeutic Services, Communicare, WA
- **Trevor Richardson**, Policy Officer, Victims Services and Client Advocacy and **Annette McKee**, Director, Strategic Services, Department for Correctional Services, SA
- **Andrew Shaw**, Department of Correctional Services MAPS Manager, South Australian Police
- **Jacqui West**, Defendant Health Liaison Officer, Magistrates' Court of Tasmania
- **Simon Port**, Canberra Men's Centre, ACT
- **Maree Corbo**, Program Manager, Men's Behaviour Change Program, Tangentyere Council, Alice Springs, Northern Territory
- **Mike Cagney**, Behaviour Change Practitioner and Therapist, Wellington, New Zealand
- **Rory Macrae**, Program Manager, Safer Families, Edinburgh
- **Professor Edward Gondolf**, University of Pennsylvania
- **David Garvin**, Coordinator, Batter Intervention Services Coalition, Michigan
- **Associate Professor Kathy Fox**, University of Vermont

The CIJ thanks all stakeholders and other contributors to this project. Many stakeholders pointed to initiatives and resources that added significantly to the Report, and some offered feedback on the Roundtable Issues Paper or potential recommendations. The CIJ also thanks students and volunteers at the CIJ who provided research assistance.

CIJ Team

Rob Hulls - Director

Elena Campbell – Project Leader and Report Author

Mary Polis - Manager, Policy and Research

Stan Winford – Principal Coordinator, Legal Programs

Mina Hilson – Centre Coordinator



www.rmit.edu.au/innovativejustice