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2015 CHURCHILL FELLOWSHIP REPORT

THE WINSTON CHURCHILL MEMORIAL TRUST OF AUSTRALIA

Report by – DR KATE FITZ-GIBBON - 2015 Churchill Fellow

THE PETER MITCHELL CHURCHILL FELLOWSHIP

to examine innovative legal responses to
intimate homicide in the UK, USA and Canada



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Signed 

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Shortly after I was awarded the Churchill Fellowship I was struck by a quote that is often attributed to Winston Churchill:

Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen.

Over the past 12 months as I prepared for and embarked on my fellowship trip I have adopted this quote knowing that during my Fellowship trip my role was to sit down and listen, to soak up all the knowledge, experience and wisdom of the incredible people that I met with. Now that I am back and have had the opportunity to digest and reflect on those meetings I believe it is my turn to be courageous – to stand up and to speak with the aim of advocating for better legal responses to intimate partner violence in Australia.

I want to thank all the people who met with me during my Fellowship trip. I am incredibly grateful for the generosity that all persons showed and the willingness of people who I appreciate are extremely busy to open their doors and allow me to draw on their experiences and insights. This project would not have been possible without such generosity and cooperation.

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Finally, I want to acknowledge the support of my husband, Michael. Thank you for your endless support, encouragement and enthusiasm. It was not easy to be away from home for several months but your support of this Fellowship and my research (as always) makes it all possible. Thank you so very much.

Abbreviations

ACT	Australian Capital Territory
ADFVR	Australian Domestic and Family Violence Review
ALRC	Australian Law Reform Commission
CDR	Child Death Review
COAG	Council of Australian Governments
CPS	Crown Prosecution Service
CRAF	Common Risk Assessment and Management Framework
DSS	Department of Social Services
DVDRC	Domestic Violence Death Review Committee
DVRC	Domestic Violence Resource Centre
FJC	Family Justice Centre
IDV	Integrated Domestic Violence
IDVA	Independent Domestic Violence Advocate
IPH	Intimate partner homicide
IPPC	Independent Police Complaints Commission
IPV	Intimate partner violence
MARAC	Multi-Agency Risk Assessment Conference
MPS	Metropolitan Police Service
NSW	New South Wales
NSWLRC	New South Wales Law Reform Commission
NT	Northern Territory
NY	New York
NZ	New Zealand
Qld	Queensland
RCFV	Royal Commission into Family Violence
SA	South Australia
Tas	Tasmania
UK	United Kingdom
US	United States
Vic	Victoria
WA	Western Australia

Executive Summary

Each week in Australia at least one woman is killed by her current or former intimate partner (Cussen and Bryant 2015). Between 2002/3 and 2011/12 in Australia 488 women were killed by an intimate partner nationally (Cussen and Bryant 2015). When these statistics are brought to mind it is unsurprising to note that in 2014 family violence was declared a national emergency in Australia (Malone and Phillips 2014). Domestic violence is the leading cause of preventable death and disability among Australian women aged 15-44 (VicHealth 2004).

Increasing recognition of the devastation of family violence in the Australian community and the inadequacy of legal responses to family and domestic violence has animated scholarly debate, captured political and public attention, and prompted the establishment of numerous reviews at the state and national level. These reviews have painted a dull picture of a criminal justice system unable to provide justice for victims, which fails to achieve perpetrator accountability and that is crumbling under the pressure of reduced resources and increased demand. There is a recognised need to transform and significantly improve legal responses to family violence across Australia.

This Report presents the findings of my 2015 Peter Mitchell Churchill Fellowship. Over a 7-week period I visited England, Scotland, United States and Canada to gather knowledge on what Australia could learn from comparative legal responses to intimate partner homicide specifically and family violence more broadly. While it is recognised that focusing on the law alone is not sufficient in improving responses to and the prevention of family violence in Australia, the criminal justice system provides a key opportunity to hold perpetrators to account, to acknowledge victimisation and ensure a person's safety, and to send a clear message to the community that family violence – in all forms – is unacceptable.

The findings contained within this Report are relevant at the national level and to all Australian state and territory jurisdictions. 22 recommendations are made. These relate to changes to practice, policy and law in Australia and elsewhere. The need for further research in particular areas is also highlighted with the aim of improving the evidence base to inform and enhance legal responses to intimate partner violence.

This Report highlights the value of specialist court responses to intimate partner violence and the need for a nationally consistent approach to family and domestic violence death reviews. Some Australian state and territory jurisdictions have already made progress in both areas and that work should be encouraged. This Fellowship points to gaps in the Australian system and identifies particular opportunities to expand current approaches by learning from international practice. It is argued that there is a need to better integrate specialist court processes in Australia with the aim of minimising the complexities of court processes for victims of family violence.

This Report also urges caution in some areas. It does not recommend the introduction of a specific offence of family and domestic violence or controlling and coercive behaviour nor does it advocate for the introduction of a domestic violence disclosure scheme. In both cases it is recognised that the evidence base supporting the introduction of such reform is underdeveloped and that Australia should wait till the impacts of those reforms emerge in international research and practice.

In making these recommendations, this Fellowship Report aims to inform the much needed transformation of Australian legal responses to intimate partner violence with the aim of better serving the needs of victims, improving prevention practices and ensuring perpetrators are held to account. The Report emphasises that without adequate funding, dedicated resources and specialisation our criminal justice system will continue to provide inadequate responses to victims of family violence.

Introduction

Domestic and family violence in Australia

In February 2014 43-year-old Kelly Thompson was killed by her former partner, Wayne Wood. At the time of her death, Thompson had an intervention order taken out against Wood, a 'jealous and possessive man', which had been breached on at least two occasions (Coronial Inquest 2016: 77). In the months prior to her death, Wood made repeated threats of violence, strangled Thompson and stalked her (Spooner 2015). In the three weeks prior to her death, Thompson called the police on at least 35 occasions, disclosed the violence she was experiencing to friends, neighbours and work colleagues, and made contact with a family violence outreach service (Percy 2015, Coronial Inquest 2016). Three hours before she was killed, Thompson's neighbour called the police to report that she had seen Wood at the house acting strangely (Davey 2016). Despite the intervention order in place, a police response was not sent to the house (Coroner Inquest 2016). Three hours later Kelly Thompson had been stabbed to death by her former partner, Wayne Wood, who then committed suicide.

The death of Kelly Thompson highlights both the preventability of intimate partner homicide *and* the failure to effectively prevent. This tragic case captured significant media attention, prompted a Coronial Inquiry (2016) and has been used to demonstrate not only the preventability of intimate partner homicides but also the missed opportunities by those within the system to effectively respond to known risk factors. As described by one commentator:

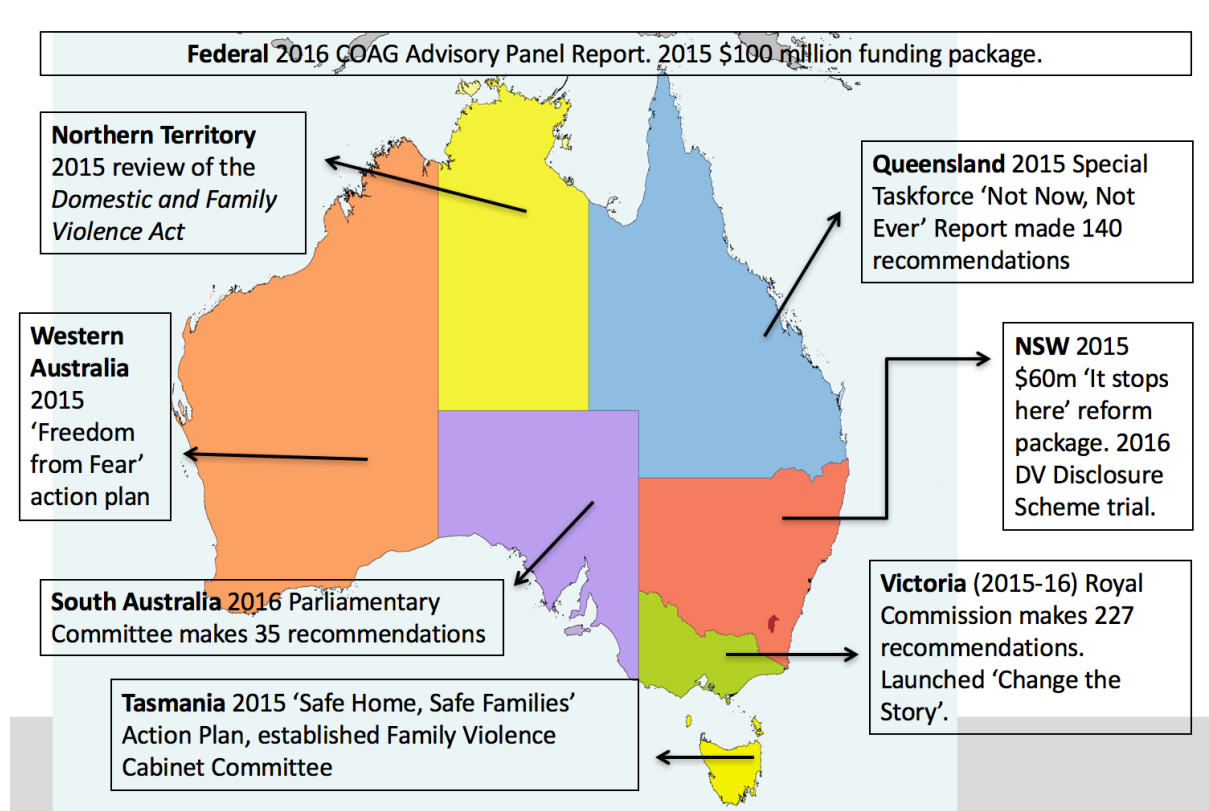
Kelly Thompson's story shows that, for all the good intentions expressed by police chief commissioners about family violence, something is fundamentally wrong with the response from on-the-ground police. They are overwhelmed, ill-equipped and undertrained. (Fyfe 2015)

The missed opportunities to prevent the killing of Kelly Thompson are not unique. Each week in Australia at least one woman is killed by her current or former partner (Cussen and Bryant 2015). Between 2002/3 and 2011/12 in Australia 488 women were killed by an intimate partner nationally (Cussen and Bryant 2015). When these statistics are brought to the fore it is unsurprising to note that in 2014 family violence was declared a national emergency in Australia (Malone and Phillips 2014). Domestic violence is the leading cause of preventable death and disability among Australian women aged 15-44 (VicHealth 2004).

The changing nature of legal responses to family and domestic violence in Australia

Over the last five years increasing recognition of the devastation of family violence in the Australian community and the inadequacy of legal responses to family and domestic violence has animated scholarly debate, captured political and public attention, and prompted the establishment of reviews at a state and national level. As the image below illustrates, reviews and reforms in the area of family and domestic violence have not been confined to one state or territory.

Image: Australian state and national review activity relating to family and domestic violence in Australia 2015-2016.



The activity captured here provides merely a 'snapshot' of recent reform and review activity in the Australian context. Beyond the reviews and recommendations illustrated above, much has been done at a leadership and governance level in an attempt to ensure that family violence remains at the forefront of public and political thought moving forward. For example, at a political level, both NSW and Victoria have, for the first time, appointed Ministers for the prevention of family violence and at the police level, in Victoria an Assistant Commissioner was appointed in 2015 to lead the first ever Family Violence Command in any Australian state police force (Andrews 2015).

In addition to these largely state-level led activities, at the national level in 2015 the Australian of the Year was Rosie Batty a family violence survivor and late last year one of the first policy decisions of the then new Australian Prime Minister Malcolm Turnbull was to commit \$100 million funding for a 'Women's Safety Package' which sought to better support women victims of family violence (Turnbull 2015). Most recently in 2016 a national advisory panel to the Council of Australian Governments (COAG) provided the final outcomes of their 10-month investigation into violence against women and their children in Australia. The Report made 28 recommendations for national reforms to challenge gender inequality, transform community attitudes and improve national responses to keep women and children safe (COAG 2016).

The need for this Fellowship

Despite unprecedented levels of political and media attention, numerous reviews and reports examining legal responses to family and domestic violence in Australia paint a dull picture of a system that is unable to provide justice and satisfactory outcomes for victims, which fails to ensure perpetrator accountability is achieved, and which is crumbling under the pressure of reduced resources and increased demand. As described in the Victorian Royal Commission into Family Violence (RCFV 2016: Summary – 6) *Report and Recommendations*:

All parts of the system – support services, police, courts – are overwhelmed by the number of family violence incidents now reported. Services are not currently equipped to meet this high level of demand, which undermines the safety of those experiencing family violence and their potential for recovery ... Efforts to hold perpetrators to account are grossly inadequate. Victims are too often left to carry the burden of managing risk ... There is inadequate investment in measures designed to prevent and respond to family violence.

While the Royal Commission in Victoria represents arguably the most thorough examination of family violence and system responses ever undertaken in Australia, recognition of the limits of current responses to family violence is not unique to Victoria. State level reviews undertaken in other Australian jurisdictions have made similar conclusions. For example, the Queensland Taskforce (2015: 13) *Not Now, Not Ever* Report concluded:

perpetrators must be better held to account for their conduct; the court response must be improved, particularly when family law issues arise; victims need to be better supported through the complex legal system; and police responses need to be swifter, more empathetic and focus more on victim safety.

As these two excerpts reveal there is a recognised need to transform legal responses to family violence across Australia. While such transformation can not occur in isolation of other reforms to system and service responses, in this climate of ongoing review and law reform activity, this Fellowship sought to gather international knowledge on what Australia could learn from comparative jurisdictions. In doing so, it seeks to contribute insight and knowledge to inform the much needed transformation of Australian legal responses to intimate partner violence with the aim of better serving the needs of victims, improving prevention practices and ensuring perpetrators are held to account for their conduct.

Fellowship trip and report

This Report presents the findings of my Peter Mitchell Fellowship to examine innovative legal responses to intimate homicide in the United Kingdom (UK), United States (US) and Canada. My fellowship trip involved two weeks in London (England), one week in Edinburgh (Scotland), two weeks in New York (United States) and one week in Toronto (Canada). The opportunity to meet with professionals working within each of the jurisdictions I visited and to observe court practices was invaluable in terms of better understanding how international practice can be used to inform and improve legal responses to intimate partner violence and homicide in Australian state and territory jurisdictions. Appendix 1 outlines the people and places visited as part of my Fellowship trip.

At the outset of my Fellowship, I identified four reforms and legal practice that would be the specific focus on my Fellowship trip. These were:

1. The introduction of a new offence of coercive or controlling behaviour in England and Wales;
2. The proposed introduction of a new offence of domestic abuse in Scotland;
3. The operation of the Integrated Domestic Violence Court system in New York; and
4. The domestic violence death review process in Ontario.

These reforms were selected because of their relevance to current Australian policy and law reform discussions in the area of family and domestic violence. Recent reviews undertaken at the state level have often looked to international jurisdictions for reform inspiration and as a guide towards best practice. While in some case this is certainly a meritorious exercise, it is important that reforms and legal practices are understood contextually and that their impact in practice is examined to ensure that the intentions and objectives of the approach to reform are aligned with their outcomes in practice. Without such understanding Australian jurisdictions are at risk of replicating reforms introduced internationally that have as yet failed to achieve their intended outcomes, are supported by a limited evidence base and/or have disadvantaged the very population of persons whom they were designed to assist. With this in mind, the four focuses on my Fellowship were chosen to gain a greater understanding of how the reform and/or legal process was operating in each case and to gain an appreciation of what the impact had been from the perspectives of those directly engaged in the operation of the law.

In addition to the four specific focuses outlined above, over the six-week Fellowship trip - through court observations and meetings with legal practitioners, relevant stakeholders and family violence service providers - I gained valuable insight into a range of divergent legal practices and reforms introduced in the UK, US and Canada to improve legal responses to family and domestic violence. Section Four of the Report presents a brief summary of other reforms and legal practices that I encountered throughout the trip, which may be of interest to an Australian audience.

This Fellowship Report is structured into four main sections:

1. New criminal offences for family and domestic violence
2. The integrated domestic violence court system in New York
3. Family and domestic violence death reviews
4. Other domestic violence reforms and initiatives

In each section a summary of the current Australian context is provided alongside the main findings of the Fellowship trip, which are presented by drawing on the views of the persons visited and the observations undertaken in each location. Each section concludes by examining what lessons can be taken for Australia and making specific recommendations.

Throughout this Report the terminology used to refer to family and domestic violence differs slightly according to the jurisdiction under examination. In Australia the encompassing term of 'family violence' has been increasingly used in government reviews, practice and scholarship. Family violence is defined in Victorian legislation as:

- (a) Behaviour by a person towards a family member of that person if that behaviour –
 - (i) Is physically or sexual abusive; or
 - (ii) Is emotionally or psychology abusive; or
 - (iii) Is economically abusive; or
 - (iv) Is threatening; or
 - (v) Is coercive; or
 - (vi) Is any other way controls or dominates the family member and causes that family member or another person; or
- (b) behaviour by a person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to in paragraph (a).
(Section 5, *Family Violence Protection Act 2008 (Vic.)*)

As this Fellowship was focused specifically on intimate partner violence and homicide, the operation and merits of the reforms and legal practices under focus are mostly examined in the specific context of responding to violence perpetrated between current or former intimate partners. In order to differentiate between the two contexts, the terms family violence and intimate partner violence are used throughout the Report to refer to the broad and all encompassing perpetration of violence within the family and the more specific perpetration of violence between intimate partners. It is worth noting, however, that in contrast to Australia in England and Scotland the preferred term of 'domestic abuse' was most commonly used by those who I met with during my Fellowship trip and has been adopted as the preferred term at a political level. Practitioners in both jurisdictions expressed the view that the term 'domestic abuse' more clearly captures the range of abusive behaviours, both physical and non-physical, that can be perpetrated between intimate partners. For this reason, the sections of this report that examine English and Scottish practice do at times adopt the terminology of domestic abuse. All other sections of the report refer to family violence and intimate partner violence as the preferred terms.

New criminal offences for family and domestic violence

In response to concerns over the inadequacy of criminal justice responses to intimate partner violence, and increasing acknowledgement of the failure of courts to hold perpetrators to account, momentum has risen to reform the criminal law to better account for the *patterns* of abuse experienced by women on a day-to-day basis. One of the ways in which it is thought this could be achieved is through the criminalisation of coercive and controlling behaviours.

The work of Evan Stark (2007, 2009) has been critical to recent understandings of coercive control and attempts to bring coercive control within the bounds of the criminal justice system. Coercive control is used to describe a range and pattern of non-physical abusive behaviours, including intimidation, threats, stalking, destruction of personal property, isolation, manipulation, psychological abuse, economic oppression, limitations on movement and restrictions on liberty (Stark 2007). Research examining the presence and impact of such abuse in intimate partner relationships have noted that it rarely occurs in isolation and that acts of coercive control are usually recurring and ‘often culturally and contextually prescribed’ (Velonis 2016: 6). Emphasising the importance of power and control, Stark (2007) argues that by understanding intimate partner violence through the lens of coercive control abusive behaviours that have traditionally been overlooked by the justice system come to the fore. As Stark (2007: 204) describes:

It exposes dimensions of partner abuse that have gone largely unnoticed and that are not normally associated with assault, such as the monopolization of perception or “ways to make me crazy”, as well as tactics used to isolate victims, monitor their behaviour, or break their will.

Through his extensive work on coercive control Stark (2009: 1509) has advocated for the translation of clinical understandings ‘and realities of coercive control into practical legal and advocacy strategies’. The merits of this argument have since been examined and extended by a range of scholars (see, for example, Anderson 2009; Arnold 2009; Hanna 2009; Libal and Parekh 2009).

Reforms to criminalise coercive control have been targeted at improving police responses at the charging stage of the justice system and improving court outcomes, including prosecution and conviction rates. Australian and comparable international jurisdictions have differed markedly in the approaches they have adopted to bringing ‘coercive control’ within the confines of criminal law. For example, in England and Wales a gender-neutral offence of controlling or coercive behaviour has been introduced (as of December 2015), while as of September 2016 the Scottish Parliament is debating the merits of creating a specific criminal offence of ‘abusive behaviour in relation to a partner or ex-partner’, as part of a draft *Domestic Abuse Bill* (BBC 2016). In some jurisdictions specific offences have been created using gender neutral language, such as the new English offence, while in other countries a gender specific approach has been favoured, for example in Spain and Sweden.

On this backdrop of divergent reform activity, one of the key focuses of this Fellowship (and specifically my visit to England and Scotland) was to document the justifications for the introduction of new offences and the initial impact of the new offence of controlling or coercive behaviour in England and Wales. To do so, I was incredibly fortunate to meet with a range of professionals in both England and Scotland, including criminal justice practitioners, political stakeholders, specialist service

professionals and advocates. This section of the Report presents the findings of this part of my Fellowship. In order to do so, the section is structured into six parts. Part 1 provides an overview of the Australian context. Part 2 and 3 examine the offence of controlling or coercive behaviour in England and Wales and the draft offence of domestic abuse in Scotland. In Part 4 the difficulties arising from the Scottish requirement of corroboration is briefly examined. Part 5 and 6 return to the focus on new criminal offences by examining the merits of introducing more law and the value of such reform in the Australian context.

The Australian context

Reviews undertaken at the state level in Australia over the last five years have, to varying degrees, considered the merits of introducing a new offence of domestic abuse, controlling or coercive behaviour, and/or strangulation. These debates have focused on the merits of new laws as a mechanism through which to increase perpetrator accountability, improve legal practices and bring a wider range of abusive behaviours within the remit of the criminal justice response (Douglas 2015).

In Victoria the merits of introducing a new offence was debated in submissions made to the RCFV. Several stakeholder submissions acknowledged that coercive control is a characteristic of family violence (Domestic Violence Victoria 2015; DVRC 2015) but few recommended that a new offence be introduced to specifically cater to this type of violence. Indeed, the submission by Victorian Legal Aid (VLA 2015) recommended against the offence stating:

There have been recent suggestions for the creation of specific family violence offences and further sub-categories of offending behaviour - such as attempted strangulation or controlling behaviour – that are said to enable prediction of risk to personal safety. We strongly agree that efforts to predict and manage risk are critical, but in our view these are more properly and effectively directed at earlier points in the system, rather than increasing the range of offences available once allegations or incidents of family violence have already occurred. The stated objectives of these suggested categories of offences – such as being able to track certain perpetrators and predict future risk – can be advanced through existing offences supported by better data capture, risk assessment and referral to relevant agencies for a targeted response where risk factors are identified. In our view, the creation of new offences or the recasting of existing offences to apply specifically to family violence will not necessarily deliver any additional protective outcomes and may result in fragmentation and uncertainty in the criminal justice response.

Contrasting this view, the Victorian State Government (2015) submission recommended the introduction of a specific domestic violence offence. Despite this, the Royal Commission (2016) recommended against the introduction of any new offences noting that while perpetrators must be held to account the creation of new offences was not the most effective avenue through which to achieve this. In the wake of the release of the Royal Commission's Report, the Government has however demonstrated an ongoing commitment to pursuing the viability of a domestic violence offence and/or disclosure scheme (Argoon et al 2016).

Beyond Victoria, the Queensland Taskforce on Domestic and Family Violence (2015: Recommendation 120) also did not advocate for the introduction of a dedicated domestic or family violence offence. Rather the Final Report noted the importance of achieving perpetrator

accountability and ensuring that the courts send a clear message of the unacceptability of family violence. To achieve this, it recommended a range of other reforms, including recording on a person's criminal record where an offence occurred in the context of family violence (Taskforce 2015: 15).

While it did not advocate for a specific offence of domestic violence or an offence of controlling or coercive behaviour, the Taskforce did recommend the introduction of an offence of non-fatal strangulation (see Recommendation 120, Taskforce 2015: 40). In doing so, the Taskforce (2015: 15) recognised 'gaps in the existing Criminal Code' and noted:

The introduction of a separate offence for strangulation, which is not limited by association with a further crime, would allow for better recording of domestic and family violence incidents leading to better risk assessment and increased protection of victims. (Taskforce 2015: 302)

The new offence, introduced in April 2016, carries a maximum penalty of 7 years' imprisonment and applies to unlawful non-fatal choking, suffocation and strangulation committed in a domestic setting (section 315A, *Criminal Law (Domestic Violence) Amendment Act 2016*). The conduct must have been carried out by a person in a domestic relationship with the victim and/or as conduct associated with domestic violence (as defined under the *Domestic and Family Violence Protection Act 2012*). Announcing the new offence, Queensland Minister for the Prevention of Domestic and Family Violence Shannon Fentiman stated:

We know strangulation is a pivotal moment that reveals an escalation in the seriousness of the violence committed against a person in the context of domestic and family violence. The offence of strangulation is an important part of the package of legislative amendments the government is implementing to tackle domestic violence. (Queensland Government 2016)

It is worth noting that beyond the Australian context, other international jurisdictions such as New York have also legislated for a stand alone offence of strangulation.

The offence of strangulation in Queensland builds on the introduction of other offences in Australian jurisdictions designed to assist the law in capturing the range of abusive behaviours committed within a family and/or intimate partner relationship. For example, stalking offences, the offence of economic and emotional abuse in Tasmania and the offence of torture in Queensland (see Douglas 2015 for further discussion).

The offence of controlling or coercive behaviour in England and Wales

The introduction of the new offence of controlling or coercive behaviour in England and Wales in December 2015 aimed to increase victim confidence in the criminal justice system and increase the likelihood of successful prosecutions in domestic violence cases where physical violence is either not present or not the only form of abuse perpetrated. In December 2015 the Home Office published a Statutory Guidance Framework to explain the nature and dynamics of coercive and controlling behaviour. That Framework was enacted with the legislation (Home Office 2015) and is intended to compliment training. The Statutory Guidance on the new offence provides that where there are

multiple offences committed by an offender against the one victim (for example, coercive and controlling behaviour, rape, grievous bodily harm) then the charges should be heard together to avoid isolating the incidents and to encourage the court to view the behaviour as ‘a pattern’ of abuse (Home Office 2015).

Introduced by Section 76 of the *Serious Crime Act 2015* (UK), the offence of controlling or coercive behaviour is punishable by up to five years’ imprisonment. The legislation provides:

- (1) A person (A) commits an offence if —
 - (a) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
 - (b) at the time of the behaviour, A and B are personally connected,
 - (c) the behaviour has a serious effect on B, and
 - (d) A knows or ought to know that the behaviour will have a serious effect on B.
- (2) A and B are “personally connected” if—
 - (a) A is in an intimate personal relationship with B, or
 - (b) A and B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.

See *Appendix D* for the full legislation.

Under the new law controlling or coercive behaviour can include financial, physical, movement and psychological abuse as well as surveillance. This captures several forms of non-violent domestic abuse that have typically been poorly identified, responded to and sanctioned by the various agencies of the criminal justice system. During one meeting in England, a professional reflected on the types of conduct that could fall under this definition:

the thing about coercive controlling behaviour is that it’s things that you just would never think of ... [we have had] women telling us that they would either have an allowance that they would have to account for with receipts and things like that or, you know, one woman said, which I think is terrifying, that her partner made her have a little earphone with the microphone on and be on the phone to him all day when she was at work so when she sat at her desk ... he was just there. So it’s those sorts of things and really just terrifying fear of violence ... the woman whose partner would leave for work and he hid six or seven pound coins around the house and she had to clean the house and find all the pound coins and if she didn’t she was at risk of physical violence and for her that was her everyday, day to day life ... so it [the legislation] was more about trying to encapsulate those patterns of psychological and controlling behaviour and really just for someone to recognise that that is also a violent crime.

Reflecting the seriousness of such conduct, the sentence for the new offence, punishment of up to five years’ imprisonment, is the highest sentence possible for an offence against the person not containing a physical element.

The offence requires a dual purpose of ‘intent’ and ‘impact’. Several practitioners that I met with commented on the importance of both limbs of the new offence, and the hope that this drafting will

minimise the extent to which the offence can be misused. The offence also includes a 'reasonable person' test and a 'best interests' defence. These provisions were viewed positively by some professionals that I met with who believed they provided a safeguard to ensure that the offence is not applied beyond its intended scope and application. The following case example was provided by the Home Office (2015b) in their explanation on the need for the 'best interests' defence:

circumstances where someone was a carer for a mentally ill spouse, who by virtue of their medical condition, had to be kept in the home or compelled to take medication, for their own protection or in their own best interests. In this context, the spouse's behaviour might be considered controlling, but would be reasonable under the circumstances.

Importantly, the best interest defence cannot be used in cases where the defendant has caused the victim to fear violence (Home Office 2015b).

The introduction of the new offence of controlling or coercive behaviour was initially delayed to allow sufficient time for the Crown Prosecution Service (CPS) and police training as well as the development of guidelines for the new offence. The importance of specific training to embed the new offence in practice was captured in the reflections of one professional:

There is a wider culture change that we're trying to drive in the police response – understanding the dynamics of domestic abuse, understanding the importance of sensitive inquiry, trying to promote victim-empathy, trying to really embed that domestic abuse is a serious crime. There is still a bit of a culture of "Oh, it's just a domestic, I'll get onto it, I'll deal with this [first]" ... So how do we really embed it as a serious crime for police?

For many persons that I met with the answer to this question lay in the importance of specialised and ongoing training for frontline police officers. As described by one professional:

The challenge is around making sure that the police understand the law and understand coercive control ... I think there is huge challenges around that and it still needs to happen.

Responsibility for the delivery of training for the offence was assigned to the College of Policing. Some stakeholders noted that this commitment to training at the outset of the reform was unusual and that in the past training was often not implemented until one to two years following the introduction of law reform. There were however questions as the extent to which that training had been delivered prior to the law's introduction and whether such training was ongoing. For one professional that I met with this reflected a common trend whereby 'what generally happens is you get the law and then you get the training about two years later'.

Meetings with key organisations and professionals in London sought to document why those involved in advocating for a new offence believed there was a need for a specific law of this nature. In answering this question, several stakeholders discussed the limits of the criminal law to date and the need to encourage a lens shift among those operating at various levels of the criminal justice system. Legal practitioners noted that prior to the introduction of the law cases involving coercive and controlling behaviour were inconsistently dealt with by law and that such cases were only responded to in law once the abuse reached a higher threshold, typically involving an act/s of

physical violence. The value of 'naming' a phenomenon in law and in political spaces has been recognised by Stark (2007: 369) who argues:

By fixing attention on specific behaviors, consequences, or dynamics that have not been previously linked, it moves them from the shadow to the center of consciousness, influences how we think of those we associate with a problem, and shapes the allocation of resources.

Stark's view aligns with that expressed by persons that I met with in London who saw the new offence as an opportunity to recognise behaviour previously overlooked and to ensure that responding to coercive control is considered the responsibility of criminal justice agencies.

Linked to this, among those who supported the introduction of the new offence of controlling or coercive behaviour there was a belief that it would encourage a reorienting of the lens through which justice practitioners view intimate partner violence. Specifically, they noted that it would allow the law to recognise ongoing patterns of abuse rather than focusing solely on single 'discrete' incidents of violence. Participants believed that the focus on individual incidents of physical abuse served to minimise the severity of the domestic abuse experienced. This view aligns with that of Stark (2009: 1510) who argues that the traditional criminal justice response:

is largely the result of a paradigm that defines domestic violence as an incident specific crime, equates abuse with physical and psychological assault, applies a "calculus of harms" to assess severity (the more injury or trauma, the more serious the abuse', and rations interventions accordingly. When shelters, police, courts or medical personnel use this frame to understanding male partner abuse, the oppression battered women experience is disaggregated, trivialized, normalized, or rendered invisible, with interventions actually becoming more perfunctory as subjugation becomes more comprehensive.

By articulating coercive control into legislation professionals expressed the view that the new legislation will widen what is considered abuse at law and will provide a vehicle to encourage cultural change among those working within the criminal justice system. As described by one professional:

[the legislation] gave people the words to know what they were thinking and the police really recognise it now and I think that's so important that something actually has changed on a national level it's about creating culture change and having a law does really powerfully set out a very clear line in the sand about what is acceptable in society and what isn't.

Extending this beyond criminal justice practitioners, one stakeholder spoke about the broader educative value of the offence noting that there was a need to encourage the community to view domestic violence as a pattern of related abusive behaviours rather than as an isolated offence of grievous bodily harm and/or coercive control. To this end one professional described that a new offence would provide an avenue through which the law will be able to respond to the 'iceberg' not just deal with its 'tip'.

Some professionals believed that the very existence of the legislation, and the scope of the behaviours that it captures, would also provide an opportunity for early intervention in cases that

were previously excluded from a justice system response. As one practitioner described, ‘there were no existing laws that would cover it [controlling or coercive behaviour]’ prior to the offence’s introduction. This view was also held by others within the Scottish sector, who noted that the impacts of coercive and controlling behaviour were previously ‘invisible’ in law and that the law as it stood was structured to respond to tangible offences as opposed to the typically ‘hidden conduct’ of controlling and coercive behaviour. Related to this, several stakeholders noted that the significant media coverage of the campaign for, and the implementation of the new offence had been important in terms of educating the community and generating cultural recognition of the need for improved legal responses to intimate partner violence beyond physical assaults.

The draft offence of domestic abuse in Scotland

In Scotland professionals first begun advocating for the introduction of a new criminal offence five years ago. Concerns surrounding the inadequacy of legal responses to intimate partner violence were heightened in 2013 following the conviction and sentencing of Member of Scottish Parliament (MSP) Bill Walker (Donaldson 2014). Walker was tried in the Edinburgh domestic violence court, during which a 30-year history of abuse and protection orders against three female partners was revealed (*PF v Walker*). While Walker was convicted of 24 offences of physical acts and threats of violence, the judge Sheriff Kathrine Mackie noted that much of the evidence about Walker’s ‘controlling, domineering, demeaning and belittling’ treatment of his three ex-partners did not amount to criminal offences under Scottish law (as cited in Donaldson 2014). In September 2013 Walker was sentenced to a 12 months’ custodial term; the maximum term available in the summary sheriff court (*PF v Walker*).

The *Walker* case attracted unprecedented media interest and public attention across Scotland and brought to the fore concerns relating to the inadequacy of legal responses to intimate partner violence (Brown 2014; Johnson 2013; Nanjiani 2013). During my Fellowship meetings in Scotland several professionals that I met with noted the importance of the *Walker* case in setting the context within which a new offence was being debated. As described by one professional:

This [the *Walker* case] is domestic abuse. This is what we mean when we talk about domestic abuse. Serial offenders are not uncommon. And the kinds of assaults that are described are all standard. There was actually nothing unusual ... The real issue is not what happened in this individual case, it is that this is the norm ... that’s the real issue here.

At the time of my Fellowship trip, the Scottish Government were consulting on the merits of a newly drafted criminal offence of ‘abusive behaviour in relation to a partner or ex-partner’ (Scottish Government 2015). The consultation period ran from December 2015 to April 2016, during which time the Government sought responses to the development of the draft offence, including the scope, structure, definition, application and penalties associated (Scottish Government 2015).

This consultation period followed an earlier consultation, which ran from March to June 2015 and sought views on the need for and merits of introducing a specific offence of domestic abuse. 92 responses were received revealing a dominant view that the existing legal framework was inadequate and failed to capture the experiences of victims of intimate partner violence (Robertson 2015). Consequently, there was high support for the introduction of a specific offence of domestic

abuse that would improve criminal justice responses to such violence (Robertson 2015). The need for a more adequate legal response was well captured in the reflections of one professional that I met with in Edinburgh, who commented:

One of the challenges for a long time in Scotland has been that domestic abuse has been prosecuted under a range of criminal laws. None of them fit for purpose. All of them serving to minimise the impact and therefore reduce the sanctions available to the court system ... As the system has matured a bit there have been things like domestic abuse flags or aggravators but none of the law was fit for purpose in terms of being gendered or reflecting the dynamics of domestic abuse. So the obvious problem with that, of course, is that it's really hard to get convictions for something that you don't have a law against.

Responding to many of the problems identified in this excerpt, like the new offence in England and Wales, the draft law in Scotland seeks to recognise domestic violence as a 'course' of abuse rather than an isolated incident. While it is not drafted with the term 'controlling or coercive' behaviour in its title, during the 2015 consultation many respondents highlighted the importance of grounding the new offence in the notion of coercive control, as explored by Stark (2007, 2009). Respondents highlighted the need for a new law to better recognise a wider range of abusive behaviours, including deprivation of liberty, isolation, withholding access to resources, psychological control, manipulation, threats as well as withholding access to health care, education or employment opportunities (Robertson 2015: 4). This does not mean that the law should not readily recognise physically abusive behaviours as well but rather professionals – both during the government's consultation as well as in my meetings with them - advocate for a more complete picture whereby non-physically abusive behaviours can be central to understanding the wider context within the physical violence is perpetrated.

Unlike the English law, the draft law in Scotland is limited to coercive and controlling behaviours perpetrated between intimate partners and does not propose to cover abuse committed among other family members. My Fellowship meetings revealed mixed views among professionals I met with in England and Scotland as to whether the offence of coercive and controlling behaviour should be restricted to persons in an intimate partner relationship. Scottish professionals described confining of the law to intimate partner as 'so important', arguing that wider family abuse stems from a different dynamic and that by bringing it under the heading of coercive control the clarity of the law would be diluted. Two professionals commented:

I don't think it's helpful; extending it to family violence ... I still think that intimate partner violence or intimate partner abuse is the best way forward because I think if we can do that, we can root it in gender inequality, and that's what's made the difference.

This is not about abuse of other family members. It is about partners and ex-partners ... once you move away to other family members, it's really, really hard to keep people's eyes on the prize of violence against women.

These views mirror the majority view expressed during the Government's 2015 consultation period where 67 per cent of respondents advocated for the new offence to be limited to behaviour between current or former partners (Robertson 2015). For these respondents:

it was important to keep a clear focus on domestic abuse within the broader understanding of gender inequality and gender-based violence and coercive control. A concern was that extending the legislation to cover other familial relationships could lead to dilution and diminution of the understanding of and response to domestic abuse. (Robertson 2015: 4)

The question of whether a specific offence should be limited to intimate partner relationships raises several important questions. Those in favour of expanding an offence beyond the realm of an intimate relationship noted other contexts of family violence that display similar patterns of abuse, for example, adolescent to parent violence and abuse of older persons.

During my Fellowship meetings in Scotland all professionals that I met with emphasised the value of a new offence and hoped that the introduction of a new law and its operation would contribute to a change in the discourse around domestic violence in the Scottish criminal justice system. As described by two professionals that I met with in Edinburgh:

If law can change culture, then that [the new offence] will have an effect.

The reason that this is so much better is it begins to use the language of coercive control ... it talks about a course of behaviour ... What I really like about this is it begins to open up areas that have never been prosecutable before ... it's changing the culture of the whole country around our understandings of what happens in the context of domestic abuse. We still have so far to go with that, and so far to go with getting people to move away from the construction of domestic abuse as a crime of physical violence, and moving it towards a liberty crime. But I think it's really important that we do not underestimate the power of this discussion in changing that.

Beyond the value of promoting a change in culture, several practitioners also discussed the importance of victim/survivor informed policy development and the need to engage victim/survivors throughout the reform process to ensure that their experiences of abuse and of the system responses are captured and used to inform reform.

While the need for the law to reflect the language and reality of coercive control, professionals that I met with in Scotland stopped short of recommending an offence labelled as such. Practitioners noted that there had been a push in Scotland not to call the new offence coercive control, with one practitioner raising a concern about the lack of a clear definition as to what constitute 'coercive' and 'controlling' behaviour in the English context.

Related to this, practitioners that I met with emphasised the importance of clarity in law. It was believed that creating a specific offence would serve to enhance prosecution practices and emphasise the seriousness of such behaviour. One professional described the draft law as 'a game changer', noting that it reorients the focus of the justice system onto the harms experienced over time by the victim. In creating clarity and better outcomes for victims, the 'language' used in the drafting of the new law was seen as vital. By bringing coercive and controlling behaviour within the language of law, mirroring views expressed during my English visits, practitioners reflected that the creation of a new offence would allow the justice system to more readily recognise abusive behaviours which restrict women's agency. To this degree one practitioner described the proposed new offence as an 'offence of liberty'.

The Scottish approach is interesting as it contrasts with the English offence in that the draft offence uses gender specific language. The English offence of controlling or coercive behaviour as well as Scottish rape laws have always been gender neutral. The gender specific drafting of the new offence in Scotland reflects the Scottish definition of domestic abuse which is gender specific. The *National Strategy to Address Domestic Abuse in Scotland* (2000) defines domestic abuse as:

gendered based violence, can be perpetrated by partners or ex partners and can include physical abuse (assault and physical attack involving a range of behaviour), sexual abuse (acts which degrade and humiliate women and are perpetrated against their will, including rape) and mental and emotional abuse (such as threats, verbal abuse, racial abuse, withholding money and other types of controlling behaviour such as isolation from family and friends. (see also Scottish Government 2010)

Persons that I met with during my Fellowship Trip to Scotland were overwhelmingly supportive of a gender specific approach in legislation to domestic abuse. These professionals saw value in creating a gender specific offence, noting that it provides clearer recognition of what the issue is by recognising the gendered reality of domestic violence.

In contrast, several English practitioners discussed the importance of gender-neutral laws as well as policies and campaign work. These participants noted that while the definition in law should not be gendered, a gendered lens should inform our understanding of how such violence is perpetrated and experienced. This view was also expressed during meetings in Toronto (Canada) where legal professionals suggested that gender specific domestic violence laws would be a step backwards. These professionals believed that gender specific laws would fail to accommodate same-sex couples and transgender persons and that it was important for the law to recognise that men can also be victims, albeit that it is statistically considerably less likely to occur.

Scottish practitioners noted that the true value of an offence will become evident in terms of how it impacts investigation, prosecution and sentencing. To this respect, one practitioner cautioned that while a new offence opens up the possibility of evidence of non-physical abuse being recognised in law it will still be reliant upon such evidence being able to be produced and admitted into court. For this reason, Scottish professionals emphasised the importance of the implementation stage and the need for a clear implementation plan to support the introduction of any new offence.

The Scottish requirement of corroboration

The requirement of corroboration is unique to Scottish criminal law and requires two different and independent sources of evidence in criminal cases. The requirement has long been critiqued as increasing the barriers to prosecution and conviction for domestic violence cases in Scotland (Nicolson and Blackie 2013; Robertson 2015). Within the context of this Fellowship, during my visits in Scotland several professionals believed that the ongoing requirement for corroboration was likely to limit the extent to which a new criminal offence could improve legal responses to domestic abuse. For this reason, several professionals advocated for reform of this aspect of the criminal law alongside any reforms to domestic abuse laws. One professional described the requirement of corroboration as ‘an insane archaic feature of Scottish law’, while other professionals noted that the

requirement was not ‘a coherent law’, that it was ‘a real impediment’ and that it remains the ‘Achilles heel’ of the law. Other practitioners recognised the problems that arise in domestic abuse cases as a result of the requirement of corroboration but described it as a ‘check and balance’ that they believed was unlikely to be eradicated. Another practitioner suggested that certain offences, such as domestic abuse and sexual offences, could be exempt from the corroboration requirement in recognition of the inherent difficulty of meeting this requirement in cases of often-private interpersonal violence. Linking this to the draft offence, one professional commented that the new law ‘will get nowhere’ if the requirement for corroboration remains.

Reform of the corroboration requirement has been on the Government agenda in recent years. In 2011 a review undertaken by Lord Carloway (2011: 7.2.45, 7.2.55) described the rule as ‘archaic’ and stated that it has ‘no place in a modern legal system’. Recommending abolition of the requirement, the Review proposed a qualitative assessment of evidence. While this recommendation gained some momentum in the years following the Carloway Review, in April 2015 the then Justice Secretary Michael Matheson announced that the abolition of the requirement for corroboration in criminal cases would not be included in the forthcoming *Criminal Justice Bill* (BBC 2015). Despite this the requirement in law has continued to animate debate among legal practitioners and scholars (Castle 2016; Robertson 2015) and was mentioned during my Fellowship meetings as a key barrier in prosecuting and convicting intimate partner violence.

Like all areas of reform while those involved in domestic violence advocacy in Scotland supported the abolition of the corroboration requirement they also cautioned that ongoing monitoring of the impact of such reform in practice would be important to ensure that it did not have unintended consequences in practice. At the time of writing, reform of the corroboration requirement has been pushed back against by the Criminal Bar and other legal stakeholders who argue that any reforms would impede the rights of the accused (Nicholson 2014).

The merits of introducing *more law*

I think we’ve got enough laws. (English professional)

New law in and of itself isn’t going to change things. (English professional)

The more laws, the more complicated. (English professional)

As captured in the excerpts quoted here, the introduction of a new offence of controlling or coercive behaviour in England and Wales raised questions among persons that I met with around the need for more laws versus the need for better enforcement and use of existing laws. The potential for unintended consequences where ‘more law’ is introduced has been recognised by Hanna (2009: 1460) who notes the potential for the new law to ‘reinforce classic conundrums about women’s own agency and complicity in the abuse’.

Several professionals that I met with reflected on the adequacy of existing stalking and harassment laws and in doing so noted anecdotally concerns with these laws. Concerns identified included:

- That prosecutions often only succeed in cases involving an ex-partner;

- That harassment laws were ill suited for persons involved in an intimate relationship and that the law is better applied to offences outside the scope of an intimate relationship;
- That stalking laws had been under used across the board;
- That stalking laws had resulted predominately in convictions of women; and
- That the CPS often accept a lesser plea to harassment in stalking cases.

In addition, one English professional noted that prior to the introduction of the new offence domestic violence cases were often resolved as criminal damage or property offences where an offence against the person was too difficult to prove. It was the view of this stakeholder that such practice had contributed to a perceived underreporting and capturing of domestic violence offences. Mirroring England, in Scotland the pre-existing offences of threatening and abusive behaviour causing fear and alarm (Section 38, *Criminal Justice and Licensing Act 2010*) and stalking (Section 39, *Criminal Justice and Licensing Act 2010*) also raised questions about the adequacy of existing laws.

Regardless of recognised limitations in the operation of the pre-existing laws, there was still a question as to how cases would sort post-reform and what patterns of behaviour would be criminalised under existing offences such as harassment versus the new controlling or coercive behaviour offence. One English professional questioned where ‘the bar will be set’ in terms of court interpretations of what does and does not amount to controlling and coercive behaviour:

As far as I’m concerned there was nothing being done in terms of working out what the actual impact of this is going to be ... The main thing seems to be where are you going to set the bar? It will probably be set too high rather than too low, in which case you’re going to get a lot of victims who [will be told] “Well no sorry, you don’t meet the criteria, so therefore your experience doesn’t count” ... It will be that kind of difficulty.

In this respect it was noted that a difficult balance needed to be struck between, on the one hand ensuring that the offence does not become a catch all and over criminalise, while also ensuring that the bar is not set so high that it presents significant evidentiary barriers for persons experiencing such abuse. A related concern also emerged among a small number of persons that I met with as to whether the offence will be misused to criminalise victims of domestic violence. In particular, several persons raised the scenario of women who are escaping an abusive relationship with children and whose withholding of parental visitation due to safety concerns may be construed as coercive or controlling behaviour. As the offence cannot be retrospectively applied to abusive conduct occurring prior to the introduction of the new law it is likely to take some time before the validity of these concerns can be tested and the impact of the offence will emerge in case law. One stakeholder described the offence of controlling or coercive behaviour as ‘unchartered territory’, noting that ‘making an offence that wasn’t there before’ naturally raises doubt over how the law will be implemented and with what impact in practice.

There was also recognition throughout the meetings that the introduction of a new law of this scope is likely to increase pressure on police and court resources and exacerbate time constraints for the system and the people within it. One stakeholder noted that ‘resources wise it will be a strain’, while another cautioned that any policies or law reform that will require greater resources should be avoided in the current climate of austerity. This was accompanied by recognition among English and Scottish professionals of the impact of recent austerity measures and the creation of a system whereby all those within it are ‘completely overwhelmed’ (as described by one professional). Several

practitioners reflected on the impact of the austerity measures, with one commenting that it ‘is biting’ and impacting the ability to provide services to all in need. There was a perception that austerity measures had disproportionately impacted the community sector (see also Robson and Robinson 2013; Townsend 2015).

In the first 10 months of its operation there are some initial reports emerging as to the impact of the offence’s operation in practice. It has been reported that in the first six months since its introduction the offence was used 62 times by 14 of the 22 police forces across England and Wales (Hill 2016). Nine of the police forces have charged 2 or less persons with the new offence and eight police forces are yet to charge anyone with the new offence of controlling or coercive behaviour (Hill 2016). These initial figures have raised concern about the extent to which the new law has been embedded in practice.

What value for Australia?

While no Australian state or territory jurisdiction has yet to introduce an offence of controlling or coercive behaviour, the merits of introducing new specific criminal offences remains a contested area. There is much that can be learnt from the recent reforms implemented in England and the current reform process in Scotland. The new legislation promises to provide a vehicle through which the law will view abusive behaviours along a continuum. This is important in the Australian context given emerging evidence that coercive and controlling behaviours is a leading risk factor for serious harm and lethal violence. Death reviews undertaken in Queensland, NSW and Victoria have highlighted the prevalence of coercive and controlling behaviours prior to a male perpetrated intimate homicide (McKenzie et al 2016; NSW DVDRT 2015; Ryan 2014). In these three reviews coercive and controlling behaviours were found to be a leading fatality risk factor and included verbal abuse, psychological controlling behaviour, social control and isolation, strategies to restrict employment opportunities and financial abuse.

It is not the recommendation of this Report however that the only way to bring such behaviours within the remit of the law is through the creation of specific offences. As noted by the Victorian RCFV (2016: Summary - 27):

Introducing new offences and sentencing provisions often has only a symbolic effect and does not result in changes in practice. Whatever laws we have will be only as effective as those who enforce, prosecute and apply them. Improving these practices – through education, training and embedding best practice and family violence expertise in the courts – is likely to be more effective than simply creating new offences.

Reflecting this view, it is argued that there is a need to ensure that Australian criminal justice systems are able to effectively respond to all forms of abusive behaviour, in terms of both policing and court responses.

Preliminary concerns in the operation of the new offence overviewed throughout this section highlight the need for consistent monitoring and evaluation of the impact of the offence in practice to ensure that its operation aligns with the intent of the reforms. Such monitoring and oversight of the operation of the new offence will be essential learning for other comparable jurisdictions, such

as Australia, where the merits of similar laws have been debated in recent years. As Hanna (2009: 1460) describes the relationship between women victims of intimate partner violence and the justice system is a 'complicated and often elusive' one. Attempts to improve this relationship have yielded mixed results, as argued by Hanna (2009: 1460) 'the more the law attempts to intervene to help women, the more it is likely that it will create new challenges and dilemmas for women'. With this in mind, this Report urges caution to Australian jurisdictions seeking to introduce new criminal offences for family and intimate partner violence. Australia should take the opportunity to learn from the international experience and draw on research examining the impact of new categories in practice to ensure that any reforms introduced are evidence-based and informed by the need to improve legal processes and outcomes for victims of intimate partner violence.

This Report makes the following recommendations relating to the creation of new criminal offences for family and intimate partner violence:

Recommendation 1. Australian state and territory jurisdictions should exercise caution before introducing new offences targeted at family and domestic violence. New offences should only be implemented where there is:

- a. An evidence base to support the introduction of the offence; and/or
- b. An evaluation of the impact of such offences internationally which reveals improved outcomes for victims of intimate partner violence.

Recommendation 2. Where new family and domestic violence offences are introduced, reform must always be accompanied by a detailed implementation plan, including specialist training and education of service providers and justice system professionals to ensure that the education underpinning the reform is communicated and the new law is embedded into practice. Without the necessary investment in training and education, a change in law is unlikely to result in a significant change in practice.

Recommendation 3. Given the short timeframe within which the new offence of coercive and controlling behaviour has been in operation in England and Wales there is currently no research which examines its impact in practice. There is a need for research to examine the operation and impact of the new offence of controlling or coercive behaviour in England and Wales within a two to five-year period. Such research should consider the extent to which the offence is being used by police services across England and Wales, the number of charges and the circumstances of those cases, the conviction rate and nature of contested trials as well as legal practitioners' views and victim satisfaction with justice outcomes in cases where the new offence has been pursued.

Recommendation 4. Australian state and territory jurisdictions should exercise caution before introducing new offences targeted at family and domestic violence. New offences should only be implemented where there is:

- a. An evidence base to support the introduction of the offence; and/or
- b. An evaluation of the impact of such offences internationally which reveals improved

outcomes for victims of intimate partner violence.

Recommendation 5. Where new family and domestic violence offences are introduced, reform must always be accompanied by a detailed implementation plan, including specialist training and education of service providers and justice system professionals to ensure that the education underpinning the reform is communicated and the new law is embedded into practice. Without the necessary investment in training and education, a change in law is unlikely to result in a significant change in practice.

Recommendation 6. Given the short timeframe within which the new offence of coercive and controlling behaviour has been in operation in England and Wales there is currently no research which examines its impact in practice. There is a need for research to examine the operation and impact of the new offence of controlling or coercive behaviour in England and Wales within a two to five-year period. Such research should consider the extent to which the offence is being used by police services across England and Wales, the number of charges and the circumstances of those cases, the conviction rate and nature of contested trials, legal practitioners' views and victim satisfaction with justice outcomes in cases where the new offence has been pursued.

The Integrated Domestic Violence Court Model in New York

In Australia a person experiencing family violence will often be required to move between a number of courts to have their matters heard. For example, a person who is experiencing family violence and seeking to separate from their partner – with whom they may or may not share a child – may be required to engage with the magistrates' court, district (County) court, supreme court, children's court, and/or family court (ALRC/NSWLRC 2010: 132). The possible journey required for a family was described in a 2010 Review conducted by the Australian Law Reform Commission (ALRC) with the NSW Law Reform Commission (NSWLRC):

one family in which there is serious, ongoing controlling violence may need to go to three different courts in order to deal with that violence. The family is likely to commence proceedings in a magistrates court for a protection order. The conduct that led to the need for protection may constitute a criminal offence; and there may be a prosecution, often also in the magistrates court—but in more serious cases in the District (County) or Supreme Court. The violence may have alerted family, neighbours or the police to notify a child protection agency, which may commence care proceedings in a children's court. At the same time, one of the parents may wish to see the children and commence proceedings in a family court for parenting orders governing the children's living arrangements. (ALRC/NSWLRC 2010: 139)

For most persons the court environment is a foreign and confusing setting, complexities which are further exacerbated when a person is required to navigate multiple jurisdictions and courtrooms. The impact of this is well captured by the ALRC/NSWLRC as well as the Family Law Council (2009: 7.3.5) who note:

The net effect of the complexities of the division of power between the Commonwealth and the states and territories is a system which is fragmented ... as a result, the effective protection of those who experience family violence is compromised by gaps arising as a result of the inaction between the jurisdictions. (ALRC/NSWLRC 2010: 136-7)

more than one court may be involved in a particular family breakdown. Disputes cannot be neatly divided into private and public areas of law and parties will often have to institute or be engaged in proceeding in various legal forums to have all of their issues determined ... the overlapping jurisdictions cause significant angst for the parties involved and considerable difficulties for the courts. (Family Law Council, as cited in ALRC/NSWLRC 2010: 137)

This fragmentation is exacerbated in cases involving child protection issues and for 'blended' families (ALRC/NSWLRC 2010). In recognition of the need to better cater to victims of family violence before the court, including to minimise complexities and fragmentation in processes, a key part of this Fellowship sought to examine to what extent the New York Integrated Domestic Violence Court (IDVC) approach would add value to the current specialist court approaches adopted across Australian state and territory jurisdictions.

The New York integrated domestic violence court falls under the broad umbrella of a specialist 'problem solving' court (Pradhan 2011, Rickard 2010). To varying degrees specialist family violence courts have emerged nationally and internationally. There is no one definition of a specialist court, a

consequence of the variances in approaches adopted across Australia and internationally. The American Bar Association (1996: 1) defines a specialist court as:

tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed. Judges who serve on a specialized court generally are considered specialists, even experts, in the fields of the law that fall within the court's jurisdiction. Such specialized court judges are to be contrasted with judges in general jurisdiction courts, whose caseloads span board areas of the law and who are considered generalists. (cited in Parkinson 2016: 6)

Building on this definition, Parkinson (2016) differentiates between the specialised 'list' or docket, the specialised court and the integrated court approach. Koshan (2014: 1000), writing specific to the US context, notes the 'diversity' of specialist court models:

in terms of their context (urban or rural communities), jurisdiction (civil or criminal, felony or misdemeanour charges, and first appearance or trial court), scope (intimate partner violence or domestic and family violence more broadly), and approach (diversion or low risk offenders or vigorous prosecution).

Variances in different approaches has made evaluation and comparison of specialist courts a difficult task (Parkinson 2016). Of the research that does exist, advocates suggest numerous benefits of specialist court processes generally, including efficiency gains, better case management practices, uniformity and improved quality of decision making (Parkinson 2016).

Under the broad banner of specialist courts, family violence specialist courts have been described as 'the most common example of a modern specialist criminal court defined by subject matter' (Parkinson 2016: 7). Family violence specialist courts have emerged across Australia, United States (US), North America and the UK (Labriola et al 2009; Parkinson 2016) in recognition of the failures of court processes to provide justice in cases of family violence as well as the complexity of the court system and the processes within it for victims of family violence.

As noted above, this Fellowship was particularly interested in the *integrated* domestic violence court model, whereby a specialist court deals with criminal and civil law, including most notably family law matters. Integrated domestic violence courts have been implemented in various US states, the District of Columbia and Toronto (Canada) as well as in other international jurisdictions (ALRC/NSWLRC 2010; Jones 2011). Parkinson (2016: 32) describes this model as follows:

This model of one judge and one family involves a single judge dealing with both the criminal and family proceedings in cases where there is an issue of family violence that either leads to separation (necessitating the establishment of post-separation parenting arrangements) or where the alleged violence occurs post-separation.

This section provides a detailed examination of the integrated domestic violence (IDV) court in New York (United States). During the Fellowship trip I observed court proceedings and met with persons working in the Manhattan IDV Court, the Bronx IDV Court and the Brooklyn Domestic Violence Felony Court. New York was chosen as a focus jurisdiction for examining the IDV court model given the number of IDV Courts and the described view that New York is 'a leader in the integrated court

movement’ (MacDowell 2011). During my Fellowship trip, I also conducted court observations at the Edinburgh Domestic Abuse Court and at the Ontario Court of Justice. These meetings and observations enriched my understanding of the benefits of an integrated court approach and have informed my views and recommendations, as detailed below.

The Australian context

Australian state and territory jurisdictions currently demonstrate an ad hoc commitment to specialist family violence courts. To varying degree specialist family violence courts have been introduced in all Australian state and territories, with the exception of the Northern Territory (NT). Of those jurisdictions that do have specialist family violence courts, what is termed a ‘specialist court’ or ‘list’ and the degree to which processes and personnel are indeed specialised varies significantly. The need for a more uniform approach to specialist family violence courts in Australia was recognised by the ALRC/NSWLRC in their 2010 review, which highlighted the merits of a ‘one court’ approach and made numerous recommendations to further harmonise legal responses to family violence across Australian jurisdictions.

The first specialist family violence court in Australia was introduced in South Australia (SA) in 1999 (Payne 2005). The specialist court model has since expanded in SA and the Court now sits once a week in Adelaide and Port Adelaide Magistrates’ Courts as well as the original location at Elizabeth Magistrates’ Court (Legal Services Commission of SA 2012).

In Victoria, as of 1 March 2016 there were two magistrates’ courts that had a Family Violence Court Divisions; Ballarat and Heidelberg. The Ballarat and Heidelberg courts are the only family violence courts in Australia that exercise jurisdiction over civil compensation claims, statutory compensation claims, family law and child support matters as well as criminal matters and protection orders. All judicial officers and staff at the court receive specialised and ongoing family violence training.

In addition to the Ballarat and Heidelberg courts, in Melbourne, Frankston, Sunshine and Werribee the Magistrates’ Courts have a specialised family violence criminal division. The Royal Commission (RCFV 2016: 37) detailed the supports provided at these locations to assist parties involved in family violence matters, including:

- Trained family violence registrars;
- Applicant support workers;
- Co-located legal and non-legal support services;
- Dedicated policy prosecutors for police-initiated family violence applications; and
- Specialist training for magistrates and staff.

While recognising its benefits, the Royal Commission (2016) also documented why the current approach to specialist family violence courts in Victoria does not go far enough. The Commission found that:

Many court users and court-based professionals and services expressed concern about the complexity of applying for an intervention order, access to court-based services, court safety, delays before and between hearings (which sometimes lead to serious risks to the

applicant's safety and wellbeing), unevenness in magistrates' understanding of family violence, and consistency of procedures and outcomes in the courts ... some of the procedural and jurisdictions features of the courts have the potential to produce adverse consequences in family violence proceedings. (RCFV 2016: Summary – 26)

This extract from the Royal Commission's final report illuminates the litany of barriers encountered by persons who have experienced family violence and are engaged in the court system. It also clearly captures why reform of court responses is needed and provides definite support for the Royal Commission's recommendation that within five years all family violence matters in Victoria should be heard within a specialist court setting. Specifically, the Commission made 3 recommendations relating to the expansion of the specialist court system in Victoria (Recommendation 60, 61 and 70, see Appendix B for full detailing of these recommendations), which set out how Victoria should develop and implement specialist family violence courts that can deal with criminal, civil and family law matters 'at the same time' (RCFV 2016: Summary – 15). These recommendations for reform are particularly relevant to this Fellowship's examination of the integrated domestic violence court system in New York.

The Queensland *Not Now, Not Ever* report documented similar limitations in court responses to family violence. The Taskforce (2015: 13) found that the court process often 'served to further victimise or marginalise victims' and that reform was necessary to create a legal system which 'support survivors, achieves fair and protective outcomes for victims and makes perpetrators of violence accountable'. Reflecting this, the Taskforce (2015: 284) made four recommendations relating to the establishment of specialist domestic violence courts in legislation in Queensland (see Appendix C for full detailing of these recommendations).

Since the 2015 Taskforce Report, a pilot trial of a family violence specialist court has been introduced in Southport. The trial commenced in September 2015 and the location was chosen as Southport deals with the highest proportion of domestic violence proceedings in Queensland (Department of Social Services 2015). The trial aims to provide:

victims with consistent, coordinated and timely access to justice. With a specialist court, a dedicate magistrate will have expertise in domestic and family violence issues, and integrated support services will be on hand to help participants navigate through the complex legal processes. (DSS 2015: 19)

To deliver on this aim the Southport trial court has two dedicated magistrates, duty lawyers to provide support to parties involved, specialist staff training, access to perpetrator programs as well as monitoring and evaluation systems (DSS 2015).

Beyond SA, Victoria and Queensland, specialist courts have been piloted and/or introduced in the ACT as a list in the Magistrates' Court, in NSW (first piloted in 2005), and in Tasmania (since 2004). In a step away from the specialist court model, in 2015 specialist family violence courts in Western Australia (WA) were abolished (Parkinson 2016). Abolition of the specialist family violence court model occurred in response to the draft findings of a 2014 evaluation of the court (Parkinson 2016). In abolishing the court, the Attorney-General Michael Mischin announced that the government was developing an integrated court model for family violence (Banks 2015). At the time of writing the

status of that reform agenda is unclear. In lieu of the specialist court in WA, a Family Violence Support List is now utilised in the Magistrates' Court (Parkinson 2016).

The Integrated Domestic Violence (IDV) Court System in New York

The New York IDV Courts emerged from the unified court system and were first established in 2001. The IDV court model differs from state to state, however, New York was the first US state to establish an IDV court and as of 1 August 2014 there were 42 IDV courts in the state operating in all five boroughs (Kirby 2016; Koshan 2014). While the model is now not unique to New York, several persons I met with during my Fellowship trip expressed the view that New York has established itself as a national leader in IDV courts. Broadly speaking, the IDV court model aims to streamline and consolidate court processes and systems for persons experiencing family violence. By bringing multiple stakeholders together the model also aims to increase transparency across the different court systems and areas of law with the aim of increasing victim safety and satisfaction, enhancing perpetrator accountability, and improving case management and processing (Rickard 2010). The model was introduced in response to mounting concerns that the court system was failing to hold perpetrators to account, to achieve justice, to address recidivist domestic violence offending and to address concerns that victims were routinely left dissatisfied with the process and outcomes (Mazur and Aldrich 2003).

IDV Courts sit under the division of the Supreme, Criminal and Family Court, which means that it holds the authority to hear all violation, felony and misdemeanour cases as well as civil/family and divorce matters (Kluger n.d; Peterson 2014). Specifically, IDV Courts are able to hear civil, criminal and family matters including cases relating to matrimonial, criminal, child custody, child support and child protection matters as well as protection order applications and visitation orders. The IDV Court can also hear applications for revoking parole where it relates to ongoing matters before the court. Based on the notion of 'one family, one judge' in IDV courts all eligible matters involving persons who:

1. are or were formerly involved in an intimate relationship, including same-gender couples;
2. are or were formerly married to each other;
3. have a child together, regardless of marital status or living arrangement; or
4. are blood relatives. (Kirby 2016: 2)

Matters involving the one family are heard one after the other ideally on the same day to increase efficiency, simplify court processes for families, minimise the number of times that persons involved need to come before the court and lead to more informed decision making (Mazur and Aldrich 2003; Peterson 2014; Pradhan 2011; Rickard 2000). This approach aims to achieve 'streamlining', as described by Rickard (2010: 8):

Rather than shifting from courtroom to courtroom to handle various issues in a case, families meet before the same judge for their civil, criminal, and family matters. A more streamlined process is intended to provide faster outcomes to families, on everything from the ultimate disposition of the case to hearing on Orders for Protection and Exclusive Occupancy.

Persons appearing before the court may have multiple counsel involved in their case, including separate counsel for criminal, matrimonial and child protection matters. While consistency in legal representation cannot be achieved across all matters, the IDV model aims to have the same lawyer taking charge of a person's criminal and family law matters, however, different representation is required for matrimonial cases. The model also recognises the importance of the judicial role and the need for specialisation. IDV Court judges are trained in multiple areas of the law and also receive state-wide domestic violence training and education programs (Kirby 2016). In New York the IDV Courts have dedicated judges. For example, the Manhattan IDV Court has been presided over by Judge Tandra Dawson since it was opened in 2007. While the expertise and value of Judge Dawson's commitment to the court was clearly evident during my visit, the model of dedicated judges raises concern around succession planning and the viability of the court beyond the one judge. In other jurisdictions (such as Canada) a rotating judicial approach has been adopted (Koshan 2014). During my Fellowship meetings, IDV court judges reflected on the resource intensive need to stay abreast of law reform and legislative changes in the areas of matrimonial, family law and criminal law.

Beyond the judiciary and legal practitioners, the IDV Courts also have specialised court officers and security staff, which was described by one professional as a 'really important' part of ensuring a safe court environment. Court officers receive specialist domestic violence training and are tasked with managing the safety of the environment, including moving persons in and out of the courtroom. This has the dual aim of enhancing victim safety and also ensuring the efficiency of the specialist court process.

The Center for Court Innovation took charge of the planning and development of the IDV courts. The Center for Court Innovation is the national technical assistance providers for all domestic violence courts nationally and holds specialist stakeholder training and national judicial training. The Center assisted in rolling the IDV Courts out over a 10-year period in New York, including introducing them in rural areas. Throughout the establishment of the courts the Center and other relevant stakeholders consulted widely, including with defence and prosecution counsel, to troubleshoot and anticipate the practicalities of the model. This consultation period was viewed as critical in terms of gaining a commitment ('buy in') from key stakeholders, legal practitioners and program personnel who would be involved in the operation of the court.

While in some US states, defence attorneys have pushed back against the idea of integrated domestic violence courts, there was less resistance experienced in New York. One professional suggests this was linked to the mandate provided by the Chief Justice in *People v. Wood* (742 N.E.2d 114 (N.Y. 2000)).

The court itself is structured like a working courtroom with the various legal representatives (including criminal and civil attorneys), program representatives (including from batterer, substance abuse and mental health court ordered programs), social workers, staff and associates, court officers as well as the persons involved in the case within the one room and where required a translator. By bringing together multiple stakeholders the IDV Court model aims to bring everyone onto the same page. This is supported by the 'IDV Application' which is a secure specialised computer system designed to share information about a case among the relevant criminal justice agencies and service providers (Kirby 2016; Mazur and Aldrich 2003). The goal of the IDV Application is to 'promote

greater coordination among relevant entities and help improve the criminal justice system's responses to domestic violence' (Kirby 2016: 3).

More recently several of the IDV Courts have introduced a 'Resource Coordinator' role, which while not mandated is recommended. The Resource Coordinator acts as a key point of contact for service providers and batterer intervention programs. The Coordinator will handle all information about the program, receive reports for all program completions and liaise with other relevant agencies and partners involved in the case. Anecdotally, members of the IDV Courts that I visited reflected that the introduction of a resource coordinator had avoided case adjournments due to a lack of report or no information about a specialist program being readily available. Peterson (2014) also sets out that the Resource Coordinator plays a valuable role in liaising with the victim to ensure they understand why their case has been transferred to the IDV Court, how the court operates and whether they are eligible for free legal counsel.

Selection of cases to be heard in an IDV court setting differs somewhat across each court. Broadly speaking for a case to be eligible it must have a criminal matter as well as either a civil or family violence matter (Rickard 2010). The criminal matter must be an allegation of domestic violence between intimate partners (Rickard 2010) and in some cases the IDV court will also hear child abuse, neglect and paternity cases (Peterson 2014). During my visits to the Manhattan and Bronx IDV courts, the judges explained their involvement in the selection process, including that they retain the authority to reject cases even where they meet the criteria for inclusion. The criteria for the Bronx IDV Court requires the case to have a domestic violence-related arrest as well as either a matrimonial and/or family court matter. If it involves a domestic violence arrest but not either of the subsequent matters, then it will proceed through the mainstream criminal court system. In some cases, there may be a discussion held between the IDV judge and the legal representative as to the suitability of the case for the IDV court.

There are several other features of the IDV courts worth noting:

- In matters involving a child, a legal representative for the child is made available and can be assigned on the day. This is particularly relied upon in custody and visitation matters.
- In some IDV courts, where necessary criminal matters can be jury tried, dependant on the severity of the offence.
- Pending open criminal matters are taken into account in deciding child protection matters.

Several of the IDV Courts have adopted the rule that all plea negotiations must be on the record. In these courts, all plea negotiations are heard in open court between relevant counsel and the judge. In some matters this will involve the prosecution detailing what offers have been made and why as well as the judge providing the defence with a indication of the sentence that would be imposed in the event of a guilty plea. This process was believed by some professionals to create greater transparency and better ensure offender accountability.

More recently 'mentor courts' have been established which facilitate peer to peer learning among practitioners. Supported by the Office for Violence against Women, mentor courts hold site visits and learning exchange opportunities. The Brooklyn IDV is an example of a mentor court.

State-wide statistics provide an insight into the number of cases which proceed through the IDV courts in New York. As of January 2011 112,562 cases had been handled within an integrated domestic violence court setting in New York (Kluger n.d). These 112,562 cases involved 21,457 families, with an average of 5.25 cases per family (Kluger n.d). Building on this, as of 1 August 2014 the New York IDV Courts had handled 163,969 cases involving 31,079 families (Kirby 2016). More recent figures were also provided during my visit to the Manhattan IDV Court, which showed that as of 22 January 2016 the Manhattan IDV Court had 1400 dockets pending (involving family, criminal and matrimonial combined cases) involving 411 families. These figures highlight the demand on these courts and provide insight into the significant resources required to ensure the efficient management of cases.

Stakeholder views

Meetings with those working within and outside of the IDV Court system revealed several key benefits of this model. In particular, legal professionals highlighted the procedural and efficiency benefits of an integrated court process noting that the process becomes streamlined for those involved. During my observations I saw the benefits of this in terms of multiple matters involving the one family being heard within a morning or afternoon session to minimise trips to the court, absence from work or education as well as prolonged involvement with the justice system.

Accountability is also a central tenant of the IDV courts, which focus on bringing the perpetrator into view at all stages of the case and ensuring accountability. One professional described accountability as 'a pillar' of the IDV court. In achieving this accountability and acknowledgement of the need for change, engagement with and referrals to batterer intervention programs are commonplace in the IDV court process and in some cases the court is able to mandate program attendance and monitor for compliance (Peterson 2014). This was seen as a benefit by some persons that I met with and during my observations at two New York IDV Courts there was engagement with batterer intervention programs. Two practitioners that I met with did, however, caution that as yet there is a relative lack of evaluation of the effectiveness of such programs in preventing future offending. This view also emerged in interviews in England, where one professional described the evidence base for perpetrator programs as 'at best patchy'. To this end, the need for greater evaluation of batterer intervention and behavioural change programs was emphasised particularly in light of the historical hesitance in the US towards such programs and the growing level of funding that is allocated to them (both in the US and Australia).

Linked to the need for perpetrator accountability, those involved in the IDV Court discussed the importance of ensuring that the seriousness of criminal law matters are not lost when integrated with family law matters. From this perspective it was clear that any model that could be perceived as decriminalising domestic violence would be a step backwards. This highlights the importance of ensuring that the seriousness of *each* and *all* matters involving in the family are addressed and that the seriousness of each individual matter is not diluted as a consequence of it being heard alongside other matters.

Several professionals in each jurisdiction I visited referred to the importance of timely court outcomes in family violence matters. In Toronto it was estimated by a specialist Crown Attorney that

domestic violence cases typically take 10-12 months to proceed from charge to trial and conviction. It was offered that 6-8 months would be a more ideal timeframe. In the context of IDV Courts, the Center for Court Innovation recognises the value of timely outcomes noting that 'the longer the victim must wait for legal action, the longer she is at risk' (cited in Rickard 2010: 13). Since their introduction, however, some researchers have questioned whether the IDV court model itself prolongs court proceedings given the difficulty of bringing all persons and professionals involved in various aspects of a case together. As argued by Rickard (2010: 13) 'it may be simply more difficult for all the necessary participants to schedule an appearance at all in IDV court, meaning that parties must wait longer before addressing their motions'.

While the court process itself adopts an integrated approach one professional lamented that there is not more knowledge transfer and integration among the lawyers operating within the courts. In their experience district attorneys, for example, will often leave once the criminal matter is heard missing the opportunity to hear and understand the other matters involving the same intimate partners. While it is to some extent expected that attorneys will be time poor and unable to dedicate time to court observation, the benefits of greater understanding of the range of issues faced by persons in domestically abusive relationships was thought to benefit practice.

Beyond this, some of the gaps that were identified with the current model included:

- A desire to be able to assign representation in matrimonial cases where financial advice is required;
- Gaps in terms of legal aid and free legal representation. There was an expressed view that the threshold to qualify for legal aid is very high and that a lot of people are unable to meet the strict criteria but are unable to secure their own representation;
- Need for more free supervised visitation agencies alongside recognition that existing services often have a wait list;
- Professionals commented that there was a need to develop programs and services targeted to addressing stalking behaviours. There was an expressed view that batterer intervention and behavioural change programs do not cater to defendants with a history of stalking behaviour.
- All court orders should be translated in the native language of the person involved. At present some lawyers will organise translation for their clients but the courts do not facilitate the process.

The IDV court model also raises challenges in terms of the different evidentiary burdens of proof. Even where the same persons are involved there is a need to keep each matter separate and to ensure that the correct evidentiary rules and procedural laws are applied in each case (Kirby 2016). In practice this means that while the process itself is integrated and the one judge sits across all matters, a distinction must be made between civil, criminal and family matters (Rickard 2010). The difficulty of achieving this in practice was raised by defence counsel during the inception of the IDV Courts, who noted that the model could be heavily biased against perpetrators if legal practitioners are not able to separate the family law history from the criminal matter.

Finally, while the IDV Courts are now heralded by many as a success in improving court responses to domestic violence, one professional recognised the evolution of the specialist court model noting that it is now a 'smooth process' but that it 'didn't start out that way'. The professional discussed the

importance of a 'champion' for the court; a person who is able to promote the model and also bring the necessary stakeholders to the table. This is an important reflection point for jurisdictions that are looking to design and implement an integrated court model as to value of ensuring adequate consultation and stakeholder partnership throughout the process to ensure that all relevant persons have 'buy in' and can champion the introduction of the court model in their area.

What value for Australia?

Domestic violence courts alone cannot eliminate family violence, but they can play an important role, increasing accountability for defendants and safety for victims. This is the lesson of New York's experiences with domestic violence courts. (Mazur and Aldrich 2003)

While anecdotally the IDV court model in New York is considered best practice by many working within the family violence and legal system, this is as yet a lack of robust analysis and evaluation of the model since its inception. The research and evaluations that have emerged reveal mixed findings, with some studies questioning the extent to which the model delivers on its aims of improving efficiency, achieving consistency and enhancing victim safety while others have noted the positive outcomes and impacts of the court (see for example, Cissner et al 2011; Katz and Rempel 2011; Koshan 2014; Peterson 2014; Picard-Fritsche et al 2011; Rickard 2010).

There is a need for greater research on the effectiveness, efficiency and outcomes of the IDV courts to better understand whether it achieves better outcomes for victim, improves satisfaction with the court process, and enhances perpetrator accountability and victim safety. As previously recommended by Rickard (2010) such research should take into account potential differences in practice and outcomes across the IDV courts as well as the experiences of diverse populations. At present there is a lack of understanding of the extent to which the IDV Court model has benefited diverse populations, including ethnic minorities (Koshan 2014).

Even while the evidence base and evaluation of the IDV Court model develops, there is still much to be gleaned from the IDV Court model that can be used to inform the (re)development of specialist domestic violence courts in the Australian context. As overviewed at the beginning of this section there is currently a diverse range of reform activity directed at specialist family violence court systems in various Australian states and territories hence the timeliness of consideration of an alternate model. Through its goals of efficiency, improving perpetrator accountability and enhancing victim satisfaction the IDV Court model addresses many of the known failures of traditional court responses to family violence in Australia. By streamlining the process of decision making and hearings across family, civil and criminal law divisions the IDV model also directly answers concerns raised in recent Australian law. For example, the Coronial Findings (2015: 97-98) in the inquest into the death of Luke Batty recognised that the interaction between the Federal family law system and the state family violence system 'is complex' and that families affected by family violence are often dealing with multiple jurisdictions and justice systems (p.105). The merits of bringing multiple areas of law under the one specialist court banner should be given due consideration in light of the mounting evidence of the inadequacies of the current segregated approach.

The value of IDV Courts was recognised by the ALRC and NSWLRC in their 2010 review of legal responses to family violence nationally. In their Final Report four specific principles that should guide

the redevelopment of legal frameworks in this area were proposed:

- (1) *Seamlessness* – to ensure that the legal framework is as seamless as possible from the point of view of those who engage with it.
- (2) *Accessibility* – to facilitate access to legal and other responses to family violence.
- (3) *Fairness* – to ensure that legal responses to family violence are fair and just holding those who use family violence accountable for their actions and providing protection to victims.
- (4) *Effectiveness* – to facilitate effective interventions and support in circumstances of family violence. (ALRC/NSWLRC 2010: 141)

The ALRC/NSWLRC (2010: 145) review considered whether a ‘one court’ model would be plausible in the Australian context and noted that it aligned with these four principles of reform set in the Report. They did however note two ‘significant’ challenges impeding the introduction of a ‘one court’ model in Australia – (1) the constitutional division of power between the Commonwealth and the states, and (2) the cost and practical challenges of establishing a completely new specialist family violence court. In response to the latter, the expense of redesigning the family violence legal framework in Australia is not to be overlooked but it also should not be presented as an insurmountable barrier. At a moment in time when Australian governments – both state and national – have publicly pledged their commitment to preventing and better responding to family violence the creation of a stronger and more effective legal system must be prioritised and appropriately resourced.

This Report makes the following recommendations relating to specialist family violence courts:

Recommendation 7. The Northern Territory is the only state or territory jurisdiction in Australia that has never introduced any specialist court responses to family violence, be it in the form of a specialist list or court. In line with the ‘six asks’ of the *Make Justice Work* campaign, the Northern Territory Government should commit to the development and introduction of a specialist family violence court system. Within this, the government should also explore the need for a specialist Koori Family Violence Court and/or Koori Family Violence Court Support Program.

Recommendation 8. At the time of the abolition of the specialist family violence court in Western Australia, the Attorney-General Michael Misichin announced that the government was developing an integrated court model for family violence (Banks 2015). It is recommended that that reform agenda be undertaken in partnership with the family violence system in Western Australia and be open to consultation from relevant stakeholders.

Recommendation 9. The Council of Australian Governments (COAG) Advisory Panel, or another suitable review team, should develop an Australian integrated family violence court model. The developed model should consider what legislative amendments are required to facilitate the inclusion and resolution of family law matters at the state level for cases involving family violence. This model should propose a way forward in accommodating the constitutional division of powers between Commonwealth and State laws with the aim of minimising the fragmented and complex web of court processes that persons experiencing family violence are presently expected to navigate.

Recommendation 10. In implementing the recommendations of the Victoria Royal Commission relating to specialist family violence courts, stakeholders tasked with the redevelopment and expansion of Victoria’s specialist family violence court model should examine the integrated domestic violence court system as a potential model of best practice. Including specifically:

- The value of a ‘one family, one judge’ approach in the Victorian context and the merits of a dedicated or rotating approach to judicial appointment;
- The potential to allow for the resolution of family law matters within state based family violence specialist courts;
- The development of a detailed strategy for specialist training and education of all court officers and personnel.

Recommendation 11. To date there is a limited evidence base on the impact of the integrated domestic violence court model in terms of improving legal outcomes, enhancing victim safety and satisfaction, increasing perpetrator accountability and improving the efficiency of court processes. There is a need for greater data collection and research evaluating the impact of the integrated domestic violence court model in New York. Research should examine victim perspectives, recidivism rates as well as outcome, process and efficiency data.

Recommendation 12. Engagement with and referrals to batterer intervention programs are commonplace in the Integrated Domestic Violence Courts. There is however limited evidence to support the effectiveness of such programs in practice. Greater research is needed in both the US and Australian context to inform the development and use of batterer intervention programs. Such research should consider data on program completion, approaches to court monitoring and case management as well as the effectiveness of programs in reducing recidivism and improving the safety of women and children.

Family and Domestic Violence Death Reviews

Research indicates that intimate partner homicides are *the* most preventable types of homicide as the histories of abuse and known risks often present in the relationship prior to the act of lethal violence provide a clear risk indicator of future harm (Bugeja et al 2013; Deardan and Jones 2008; Virueda and Payne 2010). By learning from past deaths and creating a strong evidence base relating to risk, informed intervention strategies can be developed with the aim of better preventing the killing of women by their male intimate partners.

Death Reviews play a critical role in preventing future deaths by reviewing past cases to identify system failures and missed intervention opportunities. They first emerged in the United States in the 1970s with a focus on child deaths (Dawson 2013). In the 1990s the work of death reviews was expanded into the domestic violence space, with the aim of better understanding circumstances within which women were killed in the context of domestic violence (Dawson 2013). At the time of their introduction it was recognised that:

There were limited existing data or the capacity to collect such data that could help capture relevant and timely information needed to improve society's understandings of the individual, community, and societal factors associated with these violent lethal outcomes. (Dawson 2013: 335)

Such recognition is not unique to the establishment of domestic violence death reviews in the United States. Over the last three decades, family and domestic violence death review processes have, to varying degrees, been introduced in a range of comparable international jurisdictions including Canada, England and Wales. There is no one model of best practice and in each of the international jurisdictions where reviews have been introduced the scope, processes and reporting practices of the review differ significantly.

To date there has been limited research examining 'best practice' models on the approach to and the processes of domestic violence death reviews as well as limited international analysis of the impact of death review recommendations and findings in improving approaches to intervention and prevention (Dawson 2013). The research that does exist indicates that the 'best practice' principles for death review processes include transparency, statutory protections and accountability mechanisms (David 2008; Eltringham 2013; Taylor 2008; Wilson and Websdale 2006).

Despite their recognised benefits internationally, domestic violence death review teams are not employed in each state and territory in Australia. In some state jurisdictions they have never been introduced and in other states they have been introduced with varying mandates and scopes. In recognition of the need for greater research examining the merits and operation of domestic violence death reviews, this Fellowship sought to examine death review processes in Canada. This section presents the findings of that part of the Fellowship. In order to do so it is structured into four sections. Part 1 sets the Australian context by examining what family/domestic violence death review processes were in place at the time of this Fellowship (as of January 2016). In Part 2 the approach to death reviews undertaken in Ontario (Canada) is examined in detail with reference to the views of stakeholders and organisations that were engaged throughout the Canadian component of the Fellowship trip. In Part 3 the approach to domestic homicide reviews in England and Wales is briefly

explored. In the final part, this section considers what lessons can be offered to Australia and recommendations are made.

This section does not draw on information from Scotland and the US. At present there is no systematic national domestic violence homicide review process in Scotland. While there is a police review process in place for all homicides, professionals that I met with during my Fellowship trip discussed the need for Scotland to examine the merits of a multi-agency death review process that engages beyond the police, such as that operationalised in other comparative jurisdictions (for example, Canada). In the United States death review processes are largely undertaken at a state level leading to a complicated web of divergent models, processes and outcomes. It was beyond the scope of this Fellowship to examine the operation of domestic violence death reviews across the US.

The Australian context

The Australian Federal Government has no national review mechanism for deaths, including for family violence deaths. This is unsurprising given there is no Federal Coroner's Court or federal system for Coronial style inquiries. What the Federal government has done though, through the work of *The National Council to Reduce Violence against Women and their Children*, is highlight the importance of family violence death review processes. In the 2009 *Time for Action* report, the Council recommended:

Establish or build an emerging homicide/fatality review processes in all States and Territories to review deaths that result from domestic and family violence so as to identify factors leading to these deaths, improve system responses and respond to service gaps. As part of this process ensure all information is, or recommendations are, centrally recoded and available for information exchange. (National Council 2009: 11)

A similar recommendation was made in the Final Report of the Australian Law Reform Commission (ALRC) and the New South Wales Law Reform Commission (NSWLRC) in 2010, which recommended that, 'State and territory governments should undertake systemic and ongoing reviews into deaths resulting from family violence' (ALRC/NSWLRC 2010: 1483). Further acknowledgement of the value of family violence death reviews has emerged in the five-year period since, including through the work of the Council of Australian Governments (COAG 2011, 2013) and in various reviews undertaken at the state level (for example, Taskforce on Domestic and Family Violence 2015; RCFV 2016).

As of January 2016 family/domestic violence death reviews operate in Victoria, New South Wales (NSW), Queensland (Qld), South Australia (SA) and Western Australia (WA). There are no formalised death review processes in place in the Northern Territory (NT), Australian Capital Territory (ACT) or Tasmania (Tas). In the Australian jurisdictions that do undertake family/domestic violence death reviews there is no one best practice approach. Each state jurisdiction has adopted their own model, leading to significant discrepancies across the policies and the practice of family/domestic violence death reviews in Australia. This includes variances in the method of establishment (legislative or administrative), the scope of the review process, the transparency of the review panel and process, the reporting requirements as well as the composition and activities of the panel.

Table: Approaches to family/domestic violence death reviews across Australia (as at January 2016)

	Established (year)	Method of establishment	Objective of Reviews	Responsibility of	Reporting
ACT	No formalised family/domestic violence death review process.				
NSW	2010	Legislatively established	To reduce the incident of domestic violence deaths and facilitate improvements in systems and services.	Conducted by the NSW Domestic Violence Death Review Team at the Coroner's Court	Annual to bi-annual reports.
NT	No formalised family/domestic violence death review process.				
Qld	2011 (reformed in 2015)*	Legislatively established	To analyse data, identify patterns, trends and risk factors as well as conduct research, compile systemic reports and recommend improvements to legislation, policies, training and other matters.	Conducted by the Qld Domestic Violence Death Review Board. Chaired by State Coroner.	No reporting since 2015 reforms.
SA	2011	Not legislatively established	To identify deaths, review files, develop data collection systems and conduct specific retrospective research projects.	Located at the Coroner's Office, with assistance from a Senior Research Officer	Annual reports & report to SA 'A Right to Safety' Chief Executive Group.
Tas	No formalised family/domestic violence death review process.				
Vic	2009	Not legislatively established	To examine context, identify risk as well as trends or patterns, consider systemic responses and provide an evidence base to assist in developing prevention focused recommendations.	Conducted by the Coroner's Court	Produces individual investigations as well as systemic review (only one in 2012)
WA	2012	Not legislatively established	Review circumstances, identify patterns and trends, make prevention-related recommendations to public authorities.	Conducted by the Ombudsman. Separate from the Coroner's Court.	Included in Ombudsman Annual Report. No separate reports on the FV death reviews findings have been produced.

* The information presented here relates to the formation and scope of the Queensland domestic violence death review process following the 2015 reforms.

Where death reviews have been implemented they have quite often gained political support following a high profile family violence death. In both SA and NSW high profile family violence deaths, both occurring in unique circumstances - a public space, in front of witnesses and where there were restraining orders in place intended to protect the victim at the time of their death prompted a political response which saw the establishment of a family violence death review process.

In 2011 the Australian Domestic and Family Violence Review (ADFVR) Network was established. Described by Dawson (2013: 336) as an 'important development', the network initially consisted of the relevant death review committees from Victoria, NSW, Queensland and SA, however, in the period since it has expanded to include WA and also grant special observer membership to New Zealand (NZ). The Network has recently completed the first stage of a National Data Collection Protocol, which involved the development of a dataset on intimate partner homicides (Domestic Violence Death Review Team 2015). Analysis of that data is presently underway but promises to offer important insights into the risks faced by persons killed by an intimate partner in the context of domestic violence. Beyond this there is limited published information about the work of the ADFVR Network and it does not publish reports in its own name.

The Ontario Domestic Violence Death Review Committee

Established in 2002, the Ontario Domestic Violence Death Review Committee (DVDRC) arose from two major inquests into the high profile deaths of Arlene May/Randy Iles and Gillian and Ralph Hadley (Office of the Chief Coroner 2015). Through its review work, the Ontario DVDRC has sought to develop a database to better track deaths and improve prevention practices and policies. The review work of the Committee aims to identify opportunities for proactive intervention and to make recommendations to help prevent future domestic violence deaths (Office of the Chief Coroner 2010). Objectives of the Committee also extend to providing annual reports based on aggregate data collected and to stimulating education activities, including disseminating educational information (Office of the Chief Coroner 2010).

Members of the Committee are appointed at the 'sole discretion' of the Ontario Chief Coroner (in Section 15(4), *Coroners Act RSO 1990* c. C.37) and include professionals from criminal and family justice systems, healthcare sector, public and private social services with expertise in domestic violence, advocacy groups and researchers (Office of the Chief Coroner 2010). There is also a Northern Ontario representative on the Committee, who brings specific expertise in indigenous communities. With the exception of police officers, reviewers are remunerated. Meeting with persons from the Ontario DVDRC during my Fellowship trip was a highly valuable experience which provided an insider perspective on the workings, practices and processes of the committee, including its benefits and limitations. The following description of the DVDRC is informed by those meetings and by the relevant documents provided to me (Office of the Chief Coroner 2010, 2015).

The Ontario DVDRC identifies and reviews all intimate partner homicides and homicide-suicides. The scope of the Committee includes 'all homicides that involve the death of a person, and/or his/her child(ren) committed by the person's partner or ex-partner from an intimate relationship' (Office of

the Chief Coroner 2010: 1). In cases where the perpetrator committed suicide following the homicide, the Committee is required to review both persons involved in the murder-suicide. This defined scope provides a wider remit than purely homicides between intimate partners and in some cases extends to child death reviews where the child has been killed in the context of an intimate partner relationship. While there has been an external push for suicides to be included within the remit of the Committee, the scope and resources at present do not permit a widening of the remit. It was noted by professionals involved that where a suicide occurs it can be more difficult to discern whether the suicide was precipitated by a domestic violence incident.

For a homicide case to be eligible for review it must be completely finalised in the legal system, including all appeal processes. This can, in some cases cause a significant lapse in time between the perpetration of the homicide and the undertaking of the review. As reflected by one of the Committee members 'some of our reviews might not take place until several years' later. This was noted as a 'big challenge' whereby by the time a review is undertaken some recommendations may no longer be relevant. While this is a limitation of the Committee, it is also essential that the review process does not impede with the right to a fair trial and the appeal process.

The review takes into consideration all documentation related to the homicide incident including the police investigation file, court records, Children's Aid Society records, medical and counselling records, social service agency reports, probation and parole records (Office of the Chief Coroner 2010, 2015). This review process takes approximately 2-3 months following which the review is presented to the Committee for a discussion of risk factors and recommendations (see Appendix E for further details on the DVDRC process).

One of 'primary goals' of the Committee is to make recommendations aimed at preventing future deaths and minimising the perpetration of domestic violence (Office of the Chief Coroner 2015: 3). While the Committee is not permitted to make a 'conclusion in law or making any finding of legal responsibility' (Office of the Chief Coroner 2010) it does make new recommendations and acknowledge any relevant previous recommendations in each review. Recommendations are made in the areas of risk assessment, policing, probation, healthcare, child welfare, education and training, housing, resources, legislation and policy as well as recommendations relating to the judiciary and the legal profession. While the recommendations are not legally binding and carry no obligation for response, as part of the Review process relevant agencies and organisations are 'asked' to provide a response to the Committee Lead within a year of the review (Office of the Chief Coroner 2015). Any responses provided are part of a public record, which also records where responses were not received. This public recording of information surrounding the implementation of recommendations seeks to increase accountability.

In the period 2003 to 2014 the DVDRC completed 199 case reviews, involving 290 deaths (Office of the Chief Coroner 2015). This included reviews of 122 homicides and 77 homicide-suicides. Using data collected across these cases in 2015 the DVDRC published a list of 39 risk factors, which 'indicate the potential for lethality within the relationship examined' and which are considered in each case as part of the review process (Office of the Chief Coroner 2015: 10). Of the 199 case reviews completed between 2003 and 2014 the ten risk factors most commonly identified as present in the relationship between the victim and perpetrator prior to the homicide were:

- history of domestic violence (present in 72 per cent of cases)
 - actual or pending separation (present in 69 per cent of cases)
 - obsessive behaviour displayed by the perpetrator (present in 53 per cent of cases)
 - perpetrator depressed (present in 54 per cent of cases)
 - escalation of violence (present in 49 per cent of cases)
 - prior threats or attempts to commit suicide (present in 44 per cent of cases)
 - prior threats to kill the victim (present in 44 per cent of cases)
 - prior attempts to isolate the victim (present in 42 per cent of cases)
 - victims who had an intuitive sense of fear (present in 38 per cent of cases)
 - a perpetrator who was unemployed (present in 41 per cent of cases).
- (Office of the Chief Coroner 2015: 11)

In the majority of cases (80 per cent) reviewed in the period 2003 to 2014 the Committee noted the presence of 7 or more risk factors. No risk factors were identified in only 1 per cent of cases. The importance of this finding was well captured in the Committee’s Annual Report:

The significance of this finding is that many domestic homicides may have been predicted and prevented with earlier recognition and action towards identified risk factors for future lethality. (Office of the Chief Coroner 2015: 12)

The review undertaken by the DVDRC also found that risks to children were routinely overlooked and that while child victims often had not been abused prior to the homicide they were killed in the context of parental revenge (Office of the Chief Coroner 2015). This finding aligns with the recent work of the Victorian Royal Commission into Family Violence (2016: 23) which described children as the ‘silent victims’ of family violence and recommended that the common risk assessment and management framework (CRAF) be redeveloped to include evidence based risk factor specific to children (Recommendation 1, RCFV 2016).

The value of improving understandings of risk is well captured in the DVDRC’s 2013-14 Annual Report which states:

The recognition of multiple risk factors within a relationship may be interpreted as “red flags” that require proper interpretation and response. Recognition of multiple risk factors potentially allows for enhanced risk assessment, safety planning and possible prevention of future deaths related to domestic violence through appropriate interventions by criminal justice system and healthcare partners, including high risk case identification and management. (Office of the Chief Coroner 2015: 10)

As noted here such evidence can be used to inform the (re)development of risk identification, assessment and management practices. Several of the recommendations made by the Committee over the last ten years have spoken to the need for better risk practice, including the development of a ‘systems-approach to managing cases involving victims who are at high risk’ (Recommendation 1, Case 2013-01) and to ‘explore the feasibility of developing a brief lethality assessment protocol for domestic violence calls that do not involve charging for domestic violence’ (Recommendation 1, Case 2014-8). More recently the Committee has recommended that police risk assessment be made

mandatory for all domestic violence calls attended (Recommendation, Case 2015-08).

These findings relating to the high presence of risk prior to an act of homicide and the relevant risk focused recommendations are of relevance to the Australian context. Several Australian jurisdictions have introduced or are in the process of developed a common risk assessment framework and/or other risk identification and assessment screening tools (McCulloch et al 2016). International knowledge and learnings on risk are of vital importance to this process and should be taken into consideration in the Australian context (see McCulloch et al (2016) for further information on the recent review of the Victorian Common Risk Assessment and Management Framework).

Stakeholder views

When it was first established the Committee included engagement with the justice sector, relevant academics and social service providers. While the Committee still includes multiple stakeholders with divergent expertise, the difficulty of navigating competing interests in the review process, informed the decision to move to a more 'impartial' evidence gathering exercise. Likewise, the initial review process also involved inviting the lead police investigator from the case to attend the review discussion, however, it was noted anecdotally by persons on the Committee that police did not like this process and it no longer occurs. The continued involvement of police as reviewers, however, was seen as a positive whereby the greater involvement of police in the reviewer role can facilitate the transfer of findings and recommendations back into police training and practice. Police acting as reviewers serve in a professional capacity and are remunerated for their role (other reviewers are paid for their time working on a case review).

The initial scope of the Committee permitted engagement with the family and friends of persons involved in the homicide case under review. However, in recent years, there has been a move away from face to face interactions between family and friends and the Committee members. Reflecting on this change in practice, a committee member noted that 'it can just be a very tenuous slippery slope, because they're [family and friends] coming at it from a very different angle'. Anecdotally it was noted that in some cases family members have expressed an interest in participating in the review process and they have been permitted to compile their own materials which were provided to the reviewer for consideration alongside all other documentation.

One of the main limitations identified in the scope of the reviews was the current inability to record ethnicity. This was described as a 'weakness of the process' as ethnicity was considered an important contextual factor and the lack of understanding around the ethnicity of the victim and offender limited the extent to which the reviews could tailor findings and recommendations to specific communities. It was noted that this has been a frustration on the part of the Committee.

There is an emerging body of research examining the recommendations made by Death Review Committees/Teams and the degree to which they contribute to improving system responses and to the development of 'best practice' responses to family and domestic violence. In the Canadian context it is difficult to monitor which recommendations have been implemented and which remain relevant to system practices today. As one person I met with commented:

Have we made a difference? I don't know that we can even answer that question, it's very difficult.

During my Fellowship trip to Canada, professionals involved in the Committee reflected on the changing nature of the recommendations made over the last 15 years. It was noted anecdotally that there are now less recommendations made about frontline police responses than initially as well as improved understanding of risk factors and the relative risk of each of those factors.

In some areas the permitted reach of the Committee was seen as a barrier to impact. At present the Committee is permitted to undertake training with Crown Attorneys, however, judicial training is not within the scope of the DVDRC. Given that one of the key themes of the recommendations made in over ten years of the Committee's reviews relates to the 'judiciary and legal professionals' it is limiting that those learnings are not directly translated into judicial education and training initiatives. As one member reflected during our meeting, 'more education of the judiciary, making the whole system more efficient. If we had the ability to have more influence on it, I guess [that] would be helpful'.

Domestic Homicide Death Reviews in England and Wales

While the Fellowship trip did not seek to examine in detail the operation of domestic homicide deaths reviews in England and Wales during meetings with professionals from the Home Office, London Metropolitan Police and various specialist family violence services several reflections were made on the strengths and limitations of the current approach. While not professing to present a detailed review of domestic homicide death review processes in England and Wales this section canvasses those reflections.

Since 2011 domestic homicide reviews have been legislated for in England and Wales (section 9, *Domestic Violence, Crime and Victims Act 2004*). Governed by the Home Office, the legislation provides that a 'domestic homicide review' should be undertaken in cases where:

the death of a person aged 16 or over has, or appears to have, resulted from violence, abuse or neglect by –

- (a) a person to whom he was related or with whom he was or had been in an intimate personal relationship, or
- (b) a member of the same household as himself,

Held with a view to identifying the lessons to be learnt from the death.

(Section 9(1) *Domestic Violence, Crime and Victims Act 2004*)

A partnership approach is adopted. Stakeholders involved in the review process include police, local authorities, probation services, health services, and other voluntary partners (Home Office 2011). Within this, the Metropolitan Police Service (MPS) are involved whereby specialist review officers produce the MPS section of the review, which then feeds into and sits parallel to what is produced by other partner agencies. The Serious Case Review Group produces an incident report. Following completion by the local area, reviews are submitted to the Home Office for a quality assurance check.

During the initial operation of the review process (April 2013 to March 2013) the Home Office received 54 domestic homicide reviews (Home Office 2013). Analysing 'lessons learned' from the first two years of reviews, the Home Office (2013) Report made the following key findings:

- There are gaps in awareness and understanding of what constitutes domestic violence (p.3);
- There is a need for improved training and awareness on domestic violence abuse for general practitioners and healthcare professionals (p.4);
- Consistent approaches to risk identification, assessment and management for all professionals is important (p.5);
- Information sharing about risk and abuse across agencies is important (p.5);
- Victims and perpetrators often have complex needs. There is a need to improve understandings of how to best respond to persons with complex needs (p.6);
- There is inadequate information sharing between agencies in some instances where a perpetrator is released on bail or released from prison (p.7); and
- There are missed opportunities to refer cases to Children's Services (p.8).

Persons that I met with during my Fellowship trip discussed the importance of the work of the Home Office reviews and the significance of some of the recommendations that have been made. For example, one professional discussed the recommendation that there be clear reward and recognition for police officers who work/specialise in domestic violence. As that person explained:

There is a certain kind of feeling that officers who work in domestic abuse aren't as valued as officers who are dealing with serious organised crime or robbery or terrorism ... so how can you actually make sure that, in terms of your workforce policies, that people who are doing great work on domestic abuse are recognised and progress through their organisation.

Creating a clear reward and recognition structure in the area of family and domestic violence policing was viewed as a way to achieve 'far more systematic' change in the organisation's culture and view of domestic violence.

Some professionals that I met with noted that repeat recommendations often arise across case reviews leading them to question what could be done to improve the embedding of the learnings from individual reviews and ensuring the recommendations lead to enhanced responses. This view is captured in the following reflection:

How do we systematically ensure that learning from domestic homicide reviews is captured, rather than just published in documents and stuck on a website somewhere that no-one will ever read.

It was the view of this professional that a balance between local ownership of the recommendations and necessary change should be combined with national oversight potentially through the creation of a monitoring process.

In addition to the Home Office domestic homicide reviews, several persons that I met with also discussed the Femicide Census which was developed by Karen Ingala Smith in partnership with

Women's Aid and with support provided by Freshfields Bruckhaus Deringer LLP and Deloitte. Launched in February 2015, the Femicide Census collects information on all women killed by men (Neate 2015). The Census aims to:

ensure that one agency locally is held accountable for understanding and meeting the needs of women experiencing and escaping domestic violence, to preserve the national network of life-saving women's refuges, and above all to make solving this crisis one of the most urgent social policy priorities. (Neate 2015)

The Femicide Census is still under development and has not yet been made publicly available.

What value for Australia?

This Fellowship's examination of the Ontario Domestic Violence Death Review Committee revealed the value of comprehensive death review processes in terms of generating further evidence on known risks, informing intervention and prevention practices, and identifying system failings. The DVDRC has been in operation since 2003 during which time it has consistently produced individual reviews and Annual Reports. While the scope and process of the Committee has changed in some ways since its introduction, consistency in the work of the Committee is a clear strength and indication of an ongoing commitment in Ontario to learning from past tragedies to prevent the killing of persons in the context of family violence.

Beyond the work currently being undertaken by the ADFVR Network, there is a need for Australia to invest in the development of a 'best practice' death review process nationally. The necessity of a nationally consistent approach is evident from the kaleidoscope of current approaches adopted across the state and territory jurisdictions which hinders comparability of data, sharing of information and knowledge transfer across each jurisdiction. A nationally consistent family and domestic violence death review process would facilitate the development of a national case database and collection of national information on risk factors, system responses and failings, and points of intervention. Such a database would be invaluable for improving system responses to intimate partner violence and informing prevention initiatives and practices as well as supporting the development of a national common risk assessment framework, as recommended by the Royal Commission (2016) and COAG Advisory Panel (2016).

In lieu of or until a national death review process can be operationalised, there is a need for each state and territory in Australia to introduce and support the operation of a family/domestic violence death review process.

This Report makes the following recommendations relating to family and domestic violence death reviews:

Recommendation 13. The Australian state jurisdictions that currently do not have a formalised family and domestic violence death review process should move swiftly towards implementing a state-based approach. Specifically, it is recommended that:

- The Tasmanian state government should either introduce a distinct family and domestic

violence death review process or expand the scope of its Child Death Review (CDR) process to include investigation of family and domestic violence related deaths.

- The ACT state government should establish a permanent family and domestic violence death review process, which is informed by and builds on the work completed by the Domestic Violence Prevention Council (2015).
- The NT state government should commit to the immediate establishment of a formalised family and domestic violence death review process, including committing the necessary resources and funding to support the formation and operation of the review process as well as an annual reporting procedure.

Recommendation 14. The Victorian Government should implement Recommendation 138 of the Victorian Royal Commission into Family Violence (2016): to establish a legislative basis for the Victorian Systemic Review of Family Violence Deaths and provide adequate funding to enable the Coroner's Court of Victoria to perform this function. Within this, funding allocated to the Victorian Coroner's Court Death Review Unit in the 2015-16 state budget should be used to support the work of the Victorian Systemic Review of Family Violence deaths, including to facilitate (1) an investigation of all family violence related deaths in Victoria and (2) the production and publication of an annual systemic review.

Recommendation 15. A national review of all family/domestic violence death review processes with the aim of aligning state practices to better facilitate knowledge transfer and comparative analysis nationally should be developed and completed. The national review should be undertaken in consultation or partnership with the state level death review teams and the Australian Domestic and Family Violence Review Network.

Recommendation 16. There is limited evidence internationally on fatality risks specific to children in the context of family violence. Drawing on the database compiled by the Domestic Violence Death Review Committee, research should be supported in the Canadian context to review the deaths of all children in the contexts of family violence and identify risk factors. Such evidence would be invaluable to informing risk practice and services responses to direct and indirect child victims of family violence in Canada as well as other international jurisdictions, including Australia.

Recommendation 17. At present there is no national domestic violence homicide review process in Scotland external to the reviews undertaken by the police. In light of the recognised value of death review processes for family and domestic violence in comparable international jurisdictions, the Scottish Government should develop and implement a legislated multi-agency domestic abuse homicide review process nationally.

Other domestic violence reforms and initiatives

While my Fellowship Trip was focused on three key areas of the criminal justice response to intimate partner violence, during my meetings and visits in England, Scotland, United States and Canada I was fortunate to be exposed to a range of interesting practices and initiatives targeted at improving legal responses to family and domestic violence. While this section does not purport to provide a detailed examination of these additional reforms and initiatives, it does briefly canvas knowledge gathered and professional views captured on the merits of three additional topics: domestic violence disclosure schemes, The Impact Project, and the New York Family Justice Center.

Domestic violence disclosure schemes

While it was not an intended focus of the Fellowship, during my meetings in London and Edinburgh several professionals discussed their views on the merits of the recently introduced domestic violence disclosure scheme, known as Clare's Law in England and Wales.

Clare's Law was introduced across England and Wales in 2011 in the wake of the high profile killing of Clare Wood by her male partner, George Appleton (for further details of the case, see IPCC 2010). Introduced with the aim of enhancing information sharing practices to better prevent the perpetration and escalation of violence between intimate partners (Fitz-Gibbon and Walklate 2016), Clare's Law involves two information sharing avenues: the "right to ask" and the "right to know". Under the 'risk to ask' provisions an application can be submitted by any member of the public requesting information about whether a person has a history of domestic violence. The 'right to know' provision provides that police may proactively decide to disclose information about a person's history of domestic violence where there is a need to protect a potential 'high risk' victim from harm. In both cases the Scheme relies on an assessment of the necessity, proportionality and lawfulness of the request versus the risk posed to the applicant (Home Office 2016). Information that can be disclosed includes details of previous convictions, allegations, arrests, charges and failed prosecutions for domestic violence offences as well as other offences including burglary, theft, affray, arson, possession of a firearm, cruelty to children and sexual offences (Police Foundation 2014).

Those who favoured the introduction of a domestic violence disclosure scheme in England and Scotland commented that it was 'worth doing if it makes people feel like they have an avenue' to access information. One professional that I met with in Scotland, while recognising that it may not be widely accessed, strongly believed it was a useful reform. She explained:

I think that even if this affects two or three women a year, then it's worth doing ... go back to the process of abuse – you're being condition by your partner, you're beginning to have warning bells ringing, but the other part of you is thinking, really? So you don't know whether it is right or not, but you've got that wee nagging doubt. Why shouldn't you be able to say and ask, "Has there been anything like this in the past?" ... So what do we do, just stand by? ... I'm an advocate of proactive contact.

Supporting this view, another Scottish professional commented that 'it's worth doing if it makes people feel like there's an avenue that they can pursue if they have concerns'. For these

professionals the value of the scheme lay in its perceived ability to empower persons with information.

Some professionals, however, questioned the degree to which the scheme will support women to make decisions that enhance their safety, including how the Scheme will enhance the safety of persons who wish to remain with their partner after a disclosure has been made and what supports will be offered for women who choose to leave a relationship following the disclosure. These concerns are well captured in the following comments of a Scottish professional that I met with in Edinburgh:

I think it's a total waste ... oh my god, what a waste ... I think the concerns are both safety for women and also the bureaucratic burden, with no money, on services is huge. It's diverting police resources ... the other thing it also opens the door for some really unfortunate discourse around, "well why would she need to go to the police? Doesn't she have enough sense to walk away if she has concerns?" Women blaming, women blaming ... I think it's a terrible, terrible program.

Recognition of the drain on police resources is also important given present austerity measures in the UK and widespread recognition of the strain consequently experienced by the criminal justice agencies. If the Scheme is not used widely (as is anticipated by some professionals that I met with, see earlier quote) then the question emerges as to its worth given the police time and resources that will be diverted away from frontline services.

Compounding these concerns, some professionals also noted that a direct program of training did not accompany the introduction of Clare's Law raising a risk that the scheme will be implemented and used inconsistently across the police boroughs. Given the relative short period within which the Scheme has been in place in England and Wales as well as Scotland it is difficult as yet to determine if these concerns will emerge in practice, however, it does highlight the need for greater investment in the implementation and embedding of the Scheme as well as research to examine its operation across various areas to determine consistency in the Scheme's application and impact.

Within Australia, several state and territory jurisdictions have – to varying degrees – contemplated the value of a domestic violence disclosure scheme. For example, at the time of writing, in NSW a disclosure scheme is currently being piloted (Gerathy 2016; NSW Government 2015) and the Government of South Australia (2016) has just closed a consultation seeking views on the details associated with introducing a domestic violence disclosure scheme. Notably, the spread of the scheme to Australia has occurred despite a distinct lack of evidence to support its introduction, including limited knowledge as to the impact of the Scheme in England and Wales. This is understandable given the short timeframe within which the scheme has been in place, however, it is concerning given similar schemes already been introduced in Scotland and are being debated and piloted in several Australian states (Fitz-Gibbon and Walklate 2016). There is an urgent need for research to critically examine and document the impact of the Scheme from a system and victim perspective.

For further analysis on the merits of a domestic violence disclosure scheme, focusing specifically on the UK context, see Fitz-Gibbon and Walklate (2016).

The Impact Project

During my Fellowship trip I spent a morning with members of the Crime Safety Unit and Impact Project that has been set up at Hammersmith (England) police station since June 2013. The Impact Project aims to decrease risk and increase the safety of persons experiencing domestic abuse. It recognises the importance of understanding why domestic abuse cases fail to result in a conviction or to progress through the justice process. The project places the victim at the centre of the model. Funding for the project is provided by the Mayor's Office for Policing and Crime and by Shepherd's Bush Housing Group. During meetings with members of the project, it was estimated that it costs approximately £200,000 annually.

Based on a partnership model the Impact Project brings together a range of partners to better respond to family and domestic violence. Impact Project partners include: London Metropolitan Police, Crown Prosecution Service (CPS), court and probation services, Standing Together against Domestic Violence, local authorities, Shepherd's Bush housing services and Independent Domestic Violence Advocates (IDVAs). Partners have all systems access.

The Impact Project includes a case officer/manager who manages all cases from charge to conviction to ensure best possible progression and case formation. The assigned case officer provides advice and information to victims on police procedures, court processes and civil protection options as well as information on housing and safety. As the case proceeds through the criminal justice process, the assigned case officer will update the victim and provide support in court where needed. The case officer also consults with police in the week leading up to a trial to ensure the file and evidence is 'trial ready'. Once the case reaches court, an Impact Project worker sits with CPS in the specialist domestic violence court every Thursday. Project officers also provide Hammersmith police with relevant information and legislation updates. Specialist domestic violence and peer training is also provided.

The effectiveness of the Impact Project is measured using police detection rates and court outcomes. As yet there has not been any research examining victim's experiences and satisfaction following engagement with The Impact Project. Such research is vital to ensuring the longevity of the initiative and to determine the extent to which the model should be implemented across England and Wales and/or in comparable international jurisdictions.

Persons that I met with described that police officers had responded positively to the project, in terms of achieving better outcomes and recognising the value of being kept informed of case progression. Professionals also discussed the benefits of the co-location partnership model. Those involved noted the importance of striking the balance between independence and partnership and while they noted that the former was important, they believe that both can be achieved through co-location. The value of a partnership approach was noted by several professionals that I met with, with one professional commenting 'partnerships run through everything'.

Members noted that the project would be improved if CPS representatives were also co-located with the police. It was believed that this would create a closer working partnership between police and prosecutors. As one professional reflected:

Co-location clearly isn't possible at the moment but it's a dream. It would be lovely to have everyone under the same roof but it's all about money.

The Impact Project is one example of a police partnership model for improving responses to domestic abuse. Other London boroughs also have variances on this model. Within the Australian context the value of co-location of policing and support services has been recognised in Victoria through the roll out of multi-disciplinary centres (MDCs) which while traditionally focused on responses to sexual assault, have more recently been discussed in the context of family violence. As of March 2016 there were six MDCs across Victoria, which were described by the Royal Commission as 'one-stop shops' for victims of sexual assault and contain Victorian Police Sexual Offences and Child Abuse Investigation teams, Department of Health and Human Services Child Protection practitioners and CASA counsellors/advocates (RCFV 2016: 88). In their submission to the Royal Commission the Victorian Government (2015) expressed a desire to expand the MDC model to include specialist family violence workers and Victoria Police Family Violence Command. At the time of writing it is unclear to what degree this approach will be rolled out state-wide.

The New York Family Justice Center

During my Fellowship I was fortunate to visit and meet with professionals at the New York Family Justice Center in Manhattan. The Center provides a wide range of 'walk-in' services for victims of domestic violence, elder abuse and sex trafficking (Mayor's Office to Combat Domestic Violence n.d). All services located within the Center are provided free of charge. The range of services include:

- Counselling services
- Case management
- Advocacy services (including family law, immigration, matrimonial and criminal law)
- Housing services
- Financial advice and assistance services
- Wellbeing programs (including yoga, meditation)
- Professional development programs (including financial literacy, resume building, job training and educational programs)
- Clothing and baby supplies
- Children's waiting room area
- Immigration and visa services
- Assistance specific to minority communities
- Translator services
- Police and prosecution services.

Interpreter services are also made available at the Center through the use of a telephone translation service although it is also worth noting that staff at the Center speak a minimum of ten languages.

Legal staff from the Center do not represent clients in court but are available to provide advocacy advice in preparing forms and documents for court appearances and also to answer questions and explain the legal process to clients. Prosecutors from the District Attorneys' are also located at the Center to answer questions about the criminal justice system (Mayor's Office to Combat Domestic Violence n.d). In addition to legal practitioners, the Center houses New York City Police Department

Domestic Violence Prevention Officers who can assist clients who want to report a crime and/or provide information on how police can assist with safety (Mayor's Office to Combat Domestic Violence n.d). While there is a significant justice system presence in the services offered by the Center, the Center recognises that not all clients want to engage with the criminal justice system and that often it may not be in their best interests to do so.

In Manhattan, the FJC is located within the Mayor's Office to Combat Domestic Violence in a state building that also houses the District Attorney's office. This was the Center that I visited during my Fellowship trip. The building is a secure site in that all persons who enter the Center need to go through a security check. The Center receives funding from the Office of Violence Against Women as well as grants and private funding from philanthropists and foundations.

Upon first arrival all persons are given an initial consultation and risk assessment, which determines their suitability and the range of services that they may wish to access. Anecdotally professionals that I met with at the Center reflected that clients visit the Center on average six times. Data published by the Mayor's Office to Combat Domestic Violence (2014) states that in 2014 there were over 54,600 client visits to Family Justice Centers in New York City, including 15,203 visits from new clients. These rates marked a 22.3 per cent increase on the number of client visits recorded in 2013 and a 20 per cent increase on the number of new client visits (Mayor's Office to Combat Domestic Violence 2014).

What value for Australia?

While this Fellowship did not intend, nor was there the time, to examine the three initiatives/reforms examined here in detail they were noted as interesting international developments. In relation to these additional reforms and initiatives, this Report makes the following recommendations:

Recommendation 18. Australian state and territory jurisdictions should not introduce a domestic violence disclosure scheme.

Recommendation 19. In Australian state and territory jurisdictions where a domestic violence disclosure scheme is already being piloted (ie. New South Wales):

- a. The impact of the Scheme should be monitored and evaluated within a two-year period. Any evaluation of the Scheme's impact in practice should examine the number of requests made under the right to know and right to ask avenues, the relationship between the applicant and the subject of the request, and whether any persons who have made or been the subject of a request have interacted again with the justice system in the years following; and
- b. Clear police risk identification and assessment protocols should be implemented to ensure that relevant referral pathways, support services and information are provided to persons contacting the Scheme and requesting information about an intimate partner.

Recommendation 20. To date there has been minimal research examining the impact of the Impact

Project, including whether it enhances victim's experiences and satisfaction with the criminal justice process. Such research is vital to ensuring the longevity of the initiative and to determining the extent to which the model should be implemented across England and Wales and/or in comparable international jurisdictions. Research should be undertaken within the next 2 years to examine the merits and effectiveness of the Impact Project model, with consideration given to the merits of the partnership approach, the range of partners involved and the impact of the model from a victim and system perspective.

Recommendation 21. Initiatives, such as the New York Family Justice Centre, the Impact Project at Hammersmith and the Victorian Multi Disciplinary Centres highlight the value of partnership models for coordinating and improving responses to victims of intimate partner violence specifically and family violence more broadly. The merits of introducing partnership approaches and efforts at colocation of services should be explored in all Australian state and territory jurisdictions. Consideration should be given to what services are required, case management processes, information sharing within and across services, and the facilitation of knowledge exchange.

Recommendation 22. In designing and implementing the Support and Safety Hubs in local communities throughout Victoria (as recommended by the Victorian Royal Commission into Family Violence), consideration should be given to the experience of the Family Justice Centers in the United States including the range of services offered, design of the Centers and any research available on victim and stakeholder experiences.

Conclusion and Recommendations

There is nothing wrong in change, if it is in the right direction.
To improve is to change, so to be perfect is to have changed often.
(Winston Churchill, 23 June 1925)

This quote from Winston Churchill strikes me as particularly relevant to the Australian family violence system. Over the last five years the system has been subjected to unparalleled levels of political scrutiny, media attention and community disquiet. The failings of the criminal justice system and each of its agencies have been documented in detail through Coronial Inquests, family and domestic violence death reviews, and on the front pages of state and national newspapers. Which returns me to the quote from Churchill – now is the time for change. This level of national attention and recognition provides a vital opportunity to transform the criminal justice system’s response to family violence.

In various sections this Report makes mention of some of the tragic cases of Australian women killed by their current or former male intimate partners. These cases are used to demonstrate the failings of the system to date and the need for change but also as a reminder of the tragedy of family violence in Australia whereby in any given week on average at least one woman is killed by her male intimate partner. While in a portion of cases women killed will not have been in contact with the criminal justice system prior to their death, there are many instances where they have been. It is those cases that bring to the fore the need for the criminal justice system to provide a more coordinated, effective and efficient approach to intimate partner violence.

This Report points to several areas where that change could be achieved. It highlights the value of specialist court responses to intimate partner violence and the need for a nationally consistent approach to family and domestic violence death reviews. Some Australian state and territory jurisdictions have already made progress in both areas and that work should be encouraged. This Fellowship points to gaps in the Australian system and identifies particular opportunities to expand current approaches by learning from international practice. It is argued that there is a need to better integrate specialist court processes in Australia with the aim of minimising the complexities of court processes for victims of family violence.

This Report also urges caution in some areas. It does not recommend the introduction of a specific offence of family and domestic violence or controlling and coercive behaviour nor does it advocate for the introduction of a domestic violence disclosure scheme. In both cases it is recognised that the evidence base supporting the introduction of such reform is underdeveloped and that Australia should wait till the impacts of those reforms emerge in international research and practice.

While this Fellowship Report has focused predominately on legal responses to intimate partner violence, it is important to emphasise that law reform in and of itself is not sufficient to improve responses to and prevention of family violence in Australia and elsewhere. As recognised by Douglas (2015: 471) ‘especially for some groups, there maybe particular risks involved in placing greater emphasis on the criminal justice response’. For this reason, while it is outside the bounds of my Fellowship focus, it is important to note that several professionals whom I met with emphasised the

importance of achieving broader longer term attitudinal change and that improved legal and system responses were just one way to facilitate that change. While this Report is focused on the ways in which the Australian system can look internationally to improve its response to intimate partner violence, we must not lose sight of the dire need to invest in the primary prevention of such violence.

This Report has made 22 recommendations relating to Australia and the international jurisdictions visited as part of my Fellowship trip.

Recommendations

Recommendation 1. Australian state and territory jurisdictions should exercise caution before introducing new offences targeted at family and domestic violence. New offences should only be implemented where there is:

- a. An evidence base to support the introduction of the offence; and/or
- b. An evaluation of the impact of such offences internationally which reveals improved outcomes for victims of intimate partner violence.

Recommendation 2. Where new family and domestic violence offences are introduced, reform must always be accompanied by a detailed implementation plan, including specialist training and education of service providers and justice system professionals to ensure that the education underpinning the reform is communicated and the new law is embedded into practice. Without the necessary investment in training and education, a change in law is unlikely to result in a significant change in practice.

Recommendation 3. Given the short timeframe within which the new offence of coercive and controlling behaviour has been in operation in England and Wales there is currently no research which examines its impact in practice. There is a need for research to examine the operation and impact of the new offence of controlling or coercive behaviour in England and Wales within a two to five-year period. Such research should consider the extent to which the offence is being used by police services across England and Wales, the number of charges and the circumstances of those cases, the conviction rate and nature of contested trials as well as legal practitioners' views and victim satisfaction with justice outcomes in cases where the new offence has been pursued.

Recommendation 4. Australian state and territory jurisdictions should exercise caution before introducing new offences targeted at family and domestic violence. New offences should only be implemented where there is:

- c. An evidence base to support the introduction of the offence; and/or
- d. An evaluation of the impact of such offences internationally which reveals improved outcomes for victims of intimate partner violence.

Recommendation 5. Where new family and domestic violence offences are introduced, reform

must always be accompanied by a detailed implementation plan, including specialist training and education of service providers and justice system professionals to ensure that the education underpinning the reform is communicated and the new law is embedded into practice. Without the necessary investment in training and education, a change in law is unlikely to result in a significant change in practice.

Recommendation 6. Given the short timeframe within which the new offence of coercive and controlling behaviour has been in operation in England and Wales there is currently no research which examines its impact in practice. There is a need for research to examine the operation and impact of the new offence of controlling or coercive behaviour in England and Wales within a two to five-year period. Such research should consider the extent to which the offence is being used by police services across England and Wales, the number of charges and the circumstances of those cases, the conviction rate and nature of contested trials, legal practitioners' views and victim satisfaction with justice outcomes in cases where the new offence has been pursued.

Recommendation 7. The Northern Territory is the only state or territory jurisdiction in Australia that has never introduced any specialist court responses to family violence, be it in the form of a specialist list or court. In line with the 'six asks' of the *Make Justice Work* campaign, the Northern Territory Government should commit to the development and introduction of a specialist family violence court system. Within this, the government should also explore the need for a specialist Koori Family Violence Court and/or Koori Family Violence Court Support Program.

Recommendation 8. At the time of the abolition of the specialist family violence court in Western Australia, the Attorney-General Michael Misichin announced that the government was developing an integrated court model for family violence (Banks 2015). It is recommended that that reform agenda be undertaken in partnership with the family violence system in Western Australia and be open to consultation from relevant stakeholders.

Recommendation 9. The Council of Australian Governments (COAG) Advisory Panel, or another suitable review team, should develop an Australian integrated family violence court model. The developed model should consider what legislative amendments are required to facilitate the inclusion and resolution of family law matters at the state level for cases involving family violence. This model should propose a way forward in accommodating the constitutional division of powers between Commonwealth and State laws with the aim of minimising the fragmented and complex web of court processes that persons experiencing family violence are presently expected to navigate.

Recommendation 10. In implementing the recommendations of the Victoria Royal Commission relating to specialist family violence courts, stakeholders tasked with the redevelopment and expansion of Victoria's specialist family violence court model should examine the integrated domestic violence court system as a potential model of best practice. Including specifically:

- The value of a 'one family, one judge' approach in the Victorian context and the merits of a dedicated or rotating approach to judicial appointment;
- The potential to allow for the resolution of family law matters within state based family

- violence specialist courts;
- The development of a detailed strategy for specialist training and education of all court officers and personnel.

Recommendation 11. To date there is a limited evidence base on the impact of the integrated domestic violence court model in terms of improving legal outcomes, enhancing victim safety and satisfaction, increasing perpetrator accountability and improving the efficiency of court processes. There is a need for greater data collection and research evaluating the impact of the integrated domestic violence court model in New York. Research should examine victim perspectives, recidivism rates as well as outcome, process and efficiency data.

Recommendation 12. Engagement with and referrals to batterer intervention programs are commonplace in the Integrated Domestic Violence Courts. There is however limited evidence to support the effectiveness of such programs in practice. Greater research is needed in both the US and Australian context to inform the development and use of batterer intervention programs. Such research should consider data on program completion, approaches to court monitoring and case management as well as the effectiveness of programs in reducing recidivism and improving the safety of women and children.

Recommendation 13. The Australian state jurisdictions that currently do not have a formalised family and domestic violence death review process should move swiftly towards implementing a state-based approach. Specifically, it is recommended that:

- The Tasmanian state government should either introduce a distinct family and domestic violence death review process or expand the scope of its Child Death Review (CDR) process to include investigation of family and domestic violence related deaths.
- The ACT state government should establish a permanent family and domestic violence death review process, which is informed by and builds on the work completed by the Domestic Violence Prevention Council (2015).
- The NT state government should commit to the immediate establishment of a formalised family and domestic violence death review process, including committing the necessary resources and funding to support the formation and operation of the review process as well as an annual reporting procedure.

Recommendation 14. The Victorian Government should implement Recommendation 138 of the Victorian Royal Commission into Family Violence (2016): to establish a legislative basis for the Victorian Systemic Review of Family Violence Deaths and provide adequate funding to enable the Coroner's Court of Victoria to perform this function. Within this, funding allocated to the Victorian Coroner's Court Death Review Unit in the 2015-16 state budget should be used to support the work of the Victorian Systemic Review of Family Violence deaths, including to facilitate (1) an investigation of all family violence related deaths in Victoria and (2) the production and publication of an annual systemic review.

Recommendation 15. A national review of all family/domestic violence death review processes with the aim of aligning state practices to better facilitate knowledge transfer and comparative

analysis nationally should be developed and completed. The national review should be undertaken in consultation or partnership with the state level death review teams and the Australian Domestic and Family Violence Review Network.

Recommendation 16. There is limited evidence internationally on fatality risks specific to children in the context of family violence. Drawing on the database compiled by the Domestic Violence Death Review Committee, research should be supported in the Canadian context to review the deaths of all children in the contexts of family violence and identify risk factors. Such evidence would be invaluable to informing risk practice and services responses to direct and indirect child victims of family violence in Canada as well as other international jurisdictions, including Australia.

Recommendation 17. At present there is no national domestic violence homicide review process in Scotland external to the reviews undertaken by the police. In light of the recognised value of death review processes for family and domestic violence in comparable international jurisdictions, the Scottish Government should develop and implement a legislated multi-agency domestic abuse homicide review process nationally.

Recommendation 18. Australian state and territory jurisdictions should not introduce a domestic violence disclosure scheme.

Recommendation 19. In Australian state and territory jurisdictions where a domestic violence disclosure scheme is already being piloted (ie. New South Wales):

- c. The impact of the Scheme should be monitored and evaluated within a two-year period. Any evaluation of the Scheme's impact in practice should examine the number of requests made under the right to know and right to ask avenues, the relationship between the applicant and the subject of the request, and whether any persons who have made or been the subject of a request have interacted again with the justice system in the years following; and
- d. Clear police risk identification and assessment protocols should be implemented to ensure that relevant referral pathways, support services and information are provided to persons contacting the Scheme and requesting information about an intimate partner.

Recommendation 20. To date there has been minimal research examining the impact of the Impact Project, including whether it enhances victim's experiences and satisfaction with the criminal justice process. Such research is vital to ensuring the longevity of the initiative and to determining the extent to which the model should be implemented across England and Wales and/or in comparable international jurisdictions. Research should be undertaken within the next 2 years to examine the merits and effectiveness of the Impact Project model, with consideration given to the merits of the partnership approach, the range of partners involved and the impact of the model from a victim and system perspective.

Recommendation 21. Initiatives, such as the New York Family Justice Centre, the Impact Project at Hammersmith and the Victorian Multi Disciplinary Centres highlight the value of partnership

models for coordinating and improving responses to victims of intimate partner violence specifically and family violence more broadly. The merits of introducing partnership approaches and efforts at colocation of services should be explored in all Australian state and territory jurisdictions. Consideration should be given to what services are required, case management processes, information sharing within and across services, and the facilitation of knowledge exchange.

Recommendation 22. In designing and implementing the Support and Safety Hubs in local communities throughout Victoria (as recommended by the Victorian Royal Commission into Family Violence), consideration should be given to the experience of the Family Justice Centers in the United States including the range of services offered, design of the Centers and any research available on victim and stakeholder experiences.

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Magistrates' Court Act 1989 (Vic)

International Legislation

Coroners Act RSO 1990 (Canada)
Criminal Justice and Licensing (Scotland) Act 2010
Domestic Violence, Crime and Victims Act 2004 (UK)
Serious Crime Act 2015 (UK)

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Appendix A: Fellowship Programme

Persons and organisations visited during Fellowship Trip

London, England

- Harry Fletcher (Criminal Justice Director, Digital Trust)
- Clare Laxton (Public Policy Manager, Women's Aid London)
- Detective Superintendent Damien Allain (London Metropolitan Police)
- Detective Inspector Lee Barnard (Public Protection – Service Delivery Team, London Metropolitan Police)
- DCI Sam Faulkner (London Metropolitan Police)
- Christian Papaleontiou (Home Office)
- Lucy Reed (The Transparency Project, Family Barrister and Mediator, New Statesman)
- Andy Myhill (College of Policing)
- Rhea Garbour (Chief Operating Officer, Sara Charlton Foundation)
- Katherine Vaughan (Policy Researcher, Citizens Advice)
- James Mole (Campaigns Manager, Citizens Advice)
- Members of the Impact Project Hammersmith (London Metropolitan Police)

Edinburgh, Scotland

- Marsha Scott (Chief Executive, Scottish Women's Aid)
- Kenneth MacAskill MSP (Scottish Parliament)
- Lily Greenan (Independent Consultant, Former Chief Executive Women's Aid Scotland)
- Mhairi McGowan (Head of Service, ASSIST & Domestic Abuse Services)
- Sheriff Kathrine Mackie (Edinburgh Sheriff Court)
- Louise Johnson (Legal Issues, Scottish Women's Aid)

New York, United States

- Judge Kendra Dawson (Integrated Domestic Violence Court Manhattan)
- Katie Crank (Deputy Director, Research Practice Strategies, Centre for Court Innovation)
- Sarah Flatto (Programs and Outreach Director, Family Justice Centre Manhattan)
- Judge Diane Kiesel (Integrated Domestic Violence Court Bronx)
- Professor Evan Stark (Professor, Rutgers University)*
- Judge Matthew D'Emic (Felony Domestic Violence Court Brooklyn)
- Jezebel Walter (Social Worker, Brooklyn Domestic Violence Court)
- Lynn Hecht Schafran (Director, National Judicial Education Program, Legal Momentum)
- Amy Barasch Esq. (Executive Director, Her Justice)

Toronto, Canada

- Cidalia Faria (Assistant Crown Attorney, Toronto)

- Dr William Lucas (Coroner, Office of the Chief Coroner)
- Kathy Kerr (Executive Lead – Committee Management, Office of the Chief Coroner)
- Christine Jenkins (Trial Crown Attorney, Domestic Violence Team Lead, College Park Courts)*
- Maria Tassou (Associate Chair, Criminal Injuries Compensation Board, Social Justice Tribunals Ontario)*

Court Observations

- Edinburgh Domestic Abuse Court (Edinburgh, Scotland)
- Integrated Domestic Violence Court Manhattan (New York, United States)
- Integrated Domestic Violence Court Bronx (New York, United States)
- Felony Domestic Violence Court Brooklyn (New York, United States)
- Ontario Court of Justice (Toronto, Canada)

* Meeting conducted via Skype or phone

Appendix B: Royal Commission into Family Violence recommendations relating to specialist family violence courts

Recommendation 60

The Victorian Government ensure that all Magistrates' Court of Victoria headquarter courts and specialist family violence courts have the functions of Family Violence Court Division courts [within two years]. These courts should therefore have:

- specialist magistrates, registrars, applicant and respondent workers to assist parties in applications for family violence intervention orders and any subsequent contravention proceedings
- dedicated police prosecutors and civil advocates
- facilities for access to specialist family violence service providers and legal representation for applicants and respondents
- power to make counselling orders under Part 5 of the Family Violence Protection Act 2008 (Vic)
- remote witness facilities for applicants
- the jurisdictional powers of the Family Violence Court Division under section 41 of the Magistrates' Court Act 1989 (Vic), including the power to make parenting and property orders under the Family Law Act 1975 (Cth).

Recommendation 61

The Victorian Government legislate to ensure that, subject to exceptional circumstances and the interests of the parties, all family violence matters are heard and determined in specialist family violence courts [within five years].

Recommendation 70

The Victorian Government fund and complete works to ensure all Magistrates' Court of Victoria headquarter courts [within five years]:

- provide safe waiting areas and rooms for co-located service providers
- provide accessibility for people with disabilities
- provide proper security staffing and equipment
- provide separate entry and exit points for applicants and respondents
- provide private interview rooms for use by registrars and service providers
- provide remote witness facilities, to allow witnesses to give evidence off site and from court-based interview rooms
- provide adequate facilities for children and ensure that courts are 'child-friendly'
- use multi-lingual and multi-format signage
- use pre-existing local facilities and structures to accommodate proceedings or associated aspects of court business—for example, for use as safe waiting areas.

Prior to all family violence matters being heard and determined in specialist family violence courts, the Victorian Government should fund and complete works to ensure that those magistrates' courts (and children's courts) that deal with a high volume of family violence-related matters have similar capacity.

Appendix C: Queensland Taskforce (2015) Recommendations relating to specialist family violence courts

Recommendation 96

The Taskforce recommends that the Queensland Government establishes specialist domestic violence courts in legislation with jurisdiction to deal with all related domestic and family violence and criminal/breach proceedings.

Recommendation 97

The Taskforce recommends that specialist courts should include specialist divisions or programs and utilise specialist Magistrates with specialised expertise in domestic, family and intimate partner sexual violence to improve the efficacy of responses to domestic and family violence. This recommendation is to be considered in combination with the other recommendations in this Report and in particular recommendations 116 (interpreters), 124 (court support workers), 126 (duty-lawyers) and 80 (perpetrator interventions).

Recommendation 98

The Taskforce recommends that the Queensland Government considers providing for related family law children's matters (by consent) and child protection proceedings to be dealt with by the same court.

Recommendation 99

The Taskforce recommends that the Domestic and Family Violence Protection Act be amended so that the court must consider a family law order when making a Domestic Violence Order. An amendment also be made to the Domestic and Family Violence Protection Act so that the court must consider concurrent cross applications at the same time and a later application and related cross applications or order.

Appendix D: Legislation pertaining to the offence of controlling or coercive behaviour

Section 76 Serious Crimes Act 2015 (UK)

(1) A person (A) commits an offence if —

- (e) A repeatedly or continuously engages in behaviour towards another person (B) that is controlling or coercive,
- (f) at the time of the behaviour, A and B are personally connected,
- (g) the behaviour has a serious effect on B, and
- (h) A knows or ought to know that the behaviour will have a serious effect on B.

(2) A and B are “personally connected” if—

- (a) A is in an intimate personal relationship with B, or
- (b) A and B live together and—
 - (i) they are members of the same family, or
 - (ii) they have previously been in an intimate personal relationship with each other.

(3) But A does not commit an offence under this section if at the time of the behaviour in question —

- (a) A has responsibility for B, for the purposes of Part 1 of the Children and Young Persons Act 1933 (see section 17 of that Act), and
- (b) B is under 16.

(4) A’s behaviour has a “serious effect” on B if —

- (a) it causes B to fear, on at least two occasions, that violence will be used against B, or
- (b) it causes B serious alarm or distress which has a substantial adverse effect on B’s usual day-to-day activities.

(5) For the purposes of subsection (1)(d) A “ought to know” that which a reasonable person in possession of the same information would know ...

(6) For the purposes of subsection (2)(b)(i) A and B are members of the same family if—

- (a) they are, or have been, married to each other;
- (b) they are, or have been, civil partners of each other;
- (c) they are relatives;
- (d) they have agreed to marry one another (whether or not the agreement has been terminated);
- (e) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);
- (f) they are both parents of the same child;
- (g) they have, or have had, parental responsibility for the same child.

(7) In subsection (6) -

“civil partnership agreement” has the meaning given by section 73 of the Civil Partnership

Act 2004;

“child” means a person under the age of 18 years;

“parental responsibility” has the same meaning as in the Children Act 1989;

“relative” has the meaning given by section 63(1) of the Family Law Act 1996.

(8) In proceedings for an offence under this section it is a defence for A to show that —

- (a) in engaging in the behaviour in question, A believed that he or she was acting in B’s best interests, and
- (b) the behaviour was in all the circumstances reasonable.

(9) A is to be taken to have shown the facts mentioned in subsection (8) if —

- (a) sufficient evidence of the facts is adduced to raise an issue with respect to them, and
- (b) the contrary is not proved beyond reasonable doubt.

(10) The defence in subsection (8) is not available to A in relation to behaviour that causes B to fear that violence will be used against B.

(11) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

Appendix E: Ontario Domestic Violence Death Review Committee process

