
Beyond 'getting him to a program': Towards Best Practice for Perpetrator Accountability in the Specialist Family Violence Court context

Literature Review

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Contents

Acronyms	5
Introduction and Key Conceptualisations	6
Literature Review and broader research strategy	9
Definitions of ‘perpetrator’	9
Definition of ‘perpetrator accountability’	10
Part One – Specialist Family Violence Courts: Current Landscape	13
SFVC and MBCP collaborations – moving from exception to rule	13
Challenges, benefits and limitations of SFVCs	15
Court programs mandating MBCP participation – an overview	17
Queensland	17
South Australia	18
Western Australia	19
Victoria.....	19
Other Australian jurisdictions.....	20
International Context	21
New Zealand.....	21
United Kingdom and Scotland.....	22
Canada.....	23
United States.....	25
Conclusion to Part One	28
Part Two – The potential of procedural and therapeutic justice	29
The dual obligation of SFVCs	29
Procedural justice	29
Aboriginal perpetrators and procedural justice.....	32
Therapeutic Jurisprudence	34
Judicial supervision	35
Part Three – Further components of best practice MBCP and SFVC interface 39	
Active/warm referrals and other forms of early perpetrator engagement	39
Assessments – Eligibility	39
Assessments – Suitability	40
Monitoring by MBCP providers	43
Reporting progress and completion	44
Responding to risk ‘vs’ providing a program	45
The combined role of courts and MBCPs in case management	46

Tailoring and sequencing interventions.....	47
Case planning, goal setting and Safety and Accountability Plans	50
Practice frameworks.....	51
Diversity of perpetrators.....	51
Women as perpetrators.....	53
Perpetrators with Disabilities.....	54
Part Four - Considerations of complexity	55
Typologies of perpetrator	55
Stages of change.....	58
Differentiating perpetrators by risk.....	58
Perpetrator pathways towards desistance.....	60
Part Five – Lessons regarding effectiveness & success.....	66
Men’s Behaviour Change Programs – do they ‘work’?	66
The evidence challenge.....	67
Measurements of success.....	67
Valuing work with partners/family members	69
Valuing work with children.....	70
Source of partner/broader family support.....	72
Combining measures of success.....	72
Conclusion	75
References.....	77

Acronyms

ANROWS	Australia's National Research Organisation for Women's Safety Limited
AOD	Alcohol and Other Drug (programs/interventions)
BIP	Batterer Intervention Program
CALD	Culturally and linguistically diverse
CIJ	Centre for Innovative Justice (Victoria)
CSA	Crime Statistics Agency (Victoria)
DV	Domestic Violence
DFV	Domestic Family Violence
DVPC	Domestic Violence Prevention Centre (Goldcoast)
DVPP	Domestic Violence Perpetrator Programme (UK)
DVRNA	Domestic Violence Risk and Needs Assessment
FV	Family Violence
FVPA	<i>Family Violence Protection Act 2008</i>
IPV	Intimate Partner Violence
LEAP	Law Enforcement Assistance Program (Victoria Police)
LGBTIQ	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer
MARAC	Multi-Agency Risk Assessment Conferences
MBCP	Men's Behaviour Change Program
MCV	Magistrate's Court of Victoria
MTT	Multi-disciplinary team (Colorado model)
NTV	No to Violence
RCFV	Royal Commission into Family Violence (Victoria)
RNR	Risks, Needs, Responsivity
SFVC	Specialist Family Violence Court
TJ	Therapeutic Jurisprudence

Introduction and Key Conceptualisations

Background to the wider project

This review of literature was prepared to provide the foundation for a project commissioned by the Magistrates' Court of Victoria (MCV). This project involved a review by the Centre for Innovative Justice (CIJ) of the MCV's Counselling Intervention and Counselling Order programs, two slightly different programs operating across four court sites which enable Magistrates to make mandated referrals to Men's Behaviour Change Programs (MBCPs) for eligible perpetrators of family violence (FV).

Amidst the engine of activity in which the MCV is engaged in light of Recommendations from the Victorian Royal Commission into Family Violence (RCFV), this project was commissioned as an *additional* piece of work to support and inform the expansion of Victoria's Specialist Family Violence Courts (SFVCs). This was done because the MCV took the view that this expansion should only occur on a foundation of current evidence and best practice. It was also because the MCV was aware that there were gaps in the current models' operation – particularly in relation to perpetrator accountability – which it wanted to identify and rectify, rather than see replicated on a wider scale. The MCV should therefore be commended for committing to this further interrogation of its processes and practices at a time when such substantial other change is already underway.

Of course, when the first iteration of Victoria's SFVCs were first established well over a decade ago, the supporting legislation and implementation was a substantial step towards acknowledging the need for integrated service responses to family violence. In the context of legal responses, it was also a significant departure from convention – requiring, as it did, perpetrator attendance at programs in the context of a civil response, and imposing a criminal penalty for non-attendance at such programs. As indicated throughout this review of literature and supporting consultations, this approach remains uncommon, with the majority of responses in English-speaking jurisdictions still opting for approaches in the criminal context. This is partly because the criminal context offers substantially more levers than civil jurisdictions. It is also because the imposition of a criminal response for contravention of a civil order is still viewed with ambivalence by some in the legal sector.

In addition to this ambivalence about imposing a criminal sanction in a civil context, the decision to dedicate additional (albeit limited) resources towards participation in MBCPs represented an encouraging step towards recognising the need to diversify and strengthen responses to perpetrators. Significant anxiety that additional funding would shift focus and resources away from services supporting victims of family violence has prevented adequate and additional attention being directed at the source of family violence risk.

This means that the establishment of mandated referrals to MBCPs within a specialist civil jurisdiction context was a substantial step in family violence reform, with Victoria consequently seen for some time as a leader across Australia in this respect. By taking this further step and committing these further resources, the new specialist family violence divisions were attempting to meet a dual objective – a paramount focus on increased victim safety and confidence, combined with achieving a level of perpetrator accountability.

That said, the resulting legislation was a product of its time. Absent more nuanced and detailed evidence, this meant that the process set out in the legislation implied the expectation that referral to an MBCP was, in and of itself, a form of accountability.

Consequently, the focus of the establishing legislation and the procedures that followed were based very much on 'getting him to a program' and on a perpetrator's attendance and completion once he was there. Over a decade on, however, practitioner expertise and a building evidence-base points to *assessment of*, and *response to*, risk as a far more appropriate and useful objective than program attendance and completion. Accordingly, our understanding of those elements required for an effective inter-agency response has evolved at a very rapid pace since the establishment of the programs which are under examination.

Concurrent with this evolving evidence base is the vast array of reforms facing the MCV in light of the RCFV recommendations. These include: the establishment of an expanded SFVC division; record demand on courts, both in the family violence context as well as broader criminal contexts; and cultural and organisational transformation as the MCV moves towards becoming a genuinely cross-disciplinary workplace.

This underlying complexity lends extra weight and credit to the MCV's decision to proceed with this project. MCV's commissioning of additional research to develop a single, best practice Counselling Order program that can properly support the work of the SFVC into the future goes at least some way to addressing the challenges: to respond more effectively to perpetration; to monitor and understand risk; and to work together to contribute to processes of creative accountability.

Accordingly, this literature review – which is informed by additional expert consultations from interstate and overseas – flags the issues which the MCV will be considering as it works towards developing and cementing a best practice model for its Counselling Order program over the coming years. It does so by providing an 'outward looking scan' of broader literature and practice beyond the Victorian context, which can then indicate benchmarks towards which a contemporary, best practice Counselling Order program in the SFVCs can build.

The development of this model is also being informed by the CIJ's accompanying consultations, recommendations and development of internal resources conducted for the broader project which, at time of writing, are being prepared in collaboration with the MCV. Over a decade on from its original establishment, this combined work is therefore about ensuring that Victoria's SFVCs, once again, set the pace in terms of working within the context of contemporary evidence and best practice.

About the Literature Review

With this background in mind, this review of literature is geared towards identifying the elements necessary for a single best practice program model at the interface of court-mandated referral to MBCPs and associated monitoring mechanisms. Rather than detailing the substantial breadth of literature concerning MBCPs in general, or the operation of specialist courts beyond the context of family violence, the CIJ targeted the limited peer-reviewed and grey literature directed at this interface, in both civil and criminal jurisdictions.

This literature is then supported by in-depth stakeholder consultations in interstate and international settings. In this respect, it is not a standard or systematic literature review as would be conducted for conventional or longer-term research projects.

In terms of structure, the review commences with a brief discussion of key definitions and concepts which inform the CIJ's identification and consideration of relevant literature.

Part One provides a background of the development of SFVCs, including summaries of operations in different jurisdictions which draw on the recent consultations held to support the project.

Part Two moves to a discussion of literature which points to potential for more effective perpetrator accountability in court-integrated referral contexts through the employment of procedural and therapeutic justice principles.

Part Three then provides an account of other key considerations and important elements for the development of both effective MBCPs and the court-program interface.

To put this literature and the consultations in deeper context, Part Four of the review explores some considerations which need to be applied when developing best practice interventions with perpetrators of family violence. These considerations have not necessarily been a feature of SFVCs, whether in Victoria or elsewhere, as SFVCs have predominantly focused on improving victims' experience of the justice system. As indicated at the outset, the MCV recognised the absence of these considerations, which point to the need for courts to perform an active role in monitoring perpetrator engagement in relevant program(s) and perpetrator-driven risk, and to do so through court-based multi-agency collaborative structures that facilitate regular flows of information.

Following this, Part Five concludes the review with a discussion about useful measurements of effectiveness and success. Much of the literature here is drawn from emerging research in relation to MBCPs in general, regardless of their relationship to a specialist jurisdiction. For the purposes of the current project, however, this literature is highly relevant for the MCV's aim of working towards a best practice program model at the MBCP/specialist court interface.

Literature Review and broader research strategy

As indicated above, this review is not intended to be a comprehensive account of the extensive literature on specialist courts more broadly and MBCPs overall.¹ Certainly, the literature concerning the history and various approaches taken by MBCPs is significant, but is not within the scope of this review, particularly given that industry standards for MBCPs are the subject of other RCFV recommendations.

Rather, the focus of this review is to identify those elements necessary to support best practice *collaboration* between SFVCs and MBCPs. Drawing on the project team's expertise, the CIJ has identified current leading literature, including hard-to-reach grey literature sources and doctorates. The strategy used was targeted mining of these leading contemporary sources, including searches of the publications of key organisations.

To complement the literature, expert consultations obtained insights from interstate and overseas sources not either represented in the peerreviewed or grey literatures, or where literature did not provide sufficient detail or reflect current practice. Consultations were sought with senior policy workers, program managers and academic experts who:

- are implementing models or reforms related to SFVC arrangements with MBCPs;
- have conducted relevant research or have an overview of such models in their jurisdiction or country, and/or;
- are conducting initiatives or research focusing on specific perpetrator cohorts.

Observations about specific industry practice and additional program models obtained during these consultations are also informing other aspects of the overall project. Comments of those consulted are not all directly attributed to relevant individuals, but a list of those consulted is provided at Appendix A.

Definitions of 'perpetrator'

This review is concerned with evidence around maximising a SFVC's capacity to intervene more effectively with 'perpetrators' of FV. 'Perpetrators' is the most widely used term in both literature and policy settings and will be the term used for the purposes of this review. This is particularly as it relates to the justice setting, although other terms used may include, where appropriate, 'respondents'; 'offenders', 'defendants' or 'people who use violence against family members'. To note, the term 'perpetrator' is intended to refer to those who use violence against others within the broad definition of the Victorian *Family Violence Protection Act 2008* and is not limited to those against whom orders have been made or charges been laid.

¹ A somewhat simplistic debate persists about the most appropriate approach between those committed to a gender-based analysis which aligns with the Duluth model primarily, and a preference for what has been described as 'non-punitive' engagement and privileging of the therapeutic relationship. See for example Erin E. Crockett et al, 'Breaking the Mold: Evaluating a Non-Punitive Domestic Violence Intervention Program' (2015) 30(4) *Journal of Family Violence* 489-499; Clare Cannon et al, 'A survey of domestic violence perpetrator programs in the United States and Canada: Findings and implications for policy and intervention' (2016) 7(3) *Partner Abuse* 226-276. Both these articles are deeply critical, even scathing, of programs based on the Duluth model. However, those trained in the Duluth model argue that this view of it as 'punitive' is a misconception, with the model adopting the *opposite* approach of employing a dialogical, anti-oppressive engagement methods based in part on the work of Paulo Freire. See, for example, Rodney Vlasis et al, 'Family and Domestic Violence Perpetrator Programs: Issues paper of current and emerging trends, developments and expectations' (2017) <<http://sfv.org.au/wp-content/uploads/2017/05/FDV-perpetrator-programs-issues-paper.pdf>>.. Literature suggests that, in Australia, MBCPs have generally implemented 'mixed' models, influenced by Duluth but also incorporating CBT and narrative approaches: Andrew Day et al, 'Integrated responses to domestic violence : legally mandated intervention programs for male perpetrators' (2010) 404 *Trends and Issues in Crime and Criminal Justice* 1-8. See also Claire Grealy and Alison Wallace, 'Literature Review on Domestic Violence Perpetrators' (2013) <https://www.dss.gov.au/sites/default/files/documents/09_2013/literature_review_on_domestic_violence_perpetrators.pdf>.

Crucial to note is that, unless otherwise specified, this term will refer to male perpetrators, based on the evidence that the majority of perpetrators of FV are men, and the majority of victim/survivors are women and children. Substantial evidence indicates that men are the majority of perpetrators in both reported FV incidents and finalised FV protection orders.² Evidence also indicates that men are the majority of perpetrators of violence of *any* kind, including family violence against other men.³ This and broader debates about the gendered nature of FV was thoroughly explored by the RCFV and will therefore not be the subject of detailed discussion in this review.

That said, those who are violent and controlling towards their families are not homogenous, but individuals who require – and should receive – a targeted response.⁴ What’s more, it is vital to acknowledge the impacts of this gendered assumption about perpetrators – and the response with which they are met – on adolescents who use FV;⁵ or on women who either use FV, or who are wrongly identified as the ‘predominant aggressor’ by police.⁶

Equally vital to acknowledge are the impacts of a response designed primarily for heterosexual perpetrators from Anglo-Celtic populations when this is imposed on perpetrators from culturally and linguistically diverse (CALD) communities; Aboriginal and Torres Strait Islander communities; lesbian, gay, bisexual, trans, intersex and queer (LGBTIQ) communities; or on perpetrators experiencing various forms of disadvantage, including cognitive impairment.

Considerations in relation to the diversity of perpetrators will be discussed further in Part Three of this review to inform considerations of tailored and appropriate responses. That said, the majority of literature concerning perpetrators of any kind is drawn from research with adult male perpetrators, usually from English-speaking backgrounds. Similarly, the focus of much FV policy assumes an adult male perpetrator, with legal systems and FV sectors understandably focused on those who, statistically, cause the most (including lethal) harm. These limitations on the literature in this review should therefore be kept in mind.

Definition of ‘perpetrator accountability’

Perhaps most important in contextualising the discussion, this review conceptualises ‘perpetrator accountability’ in a somewhat different way from much previous policy and academic commentary. Certainly, it has taken policy circles some time to extend a focus to those wielding, as well as those experiencing, FV. The welcome attention on ‘perpetrator accountability’, however, has been largely limited to conceptualising ‘accountability’ as meaning the imposition of a justice system response, or on ‘getting him to a program’ (a referral to a MBCP), the latter being the predominant ‘perpetrator intervention’ delivered in most Australian jurisdictions to date.⁷

² Sentencing Advisory Council, ‘Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending’ (2016), xiii-
xiv <<https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Contravention%20of%20FVIOs%20and%20FVSNs%20Prior%20Offences%20and%20Reoffending.pdf>>; Australian Bureau of Statistics, *2016 Personal Safety Survey: Key Findings* <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>>; Victorian Law Reform Commission, *Family Violence Laws: Report* (2006) [2.34]; Leslie M. Tutty, Robbie Babins-Wagner and Michael A. Rothery, ‘Women in IPV Treatment for Abusers and Women in IPV Survivor Groups: Different or Two Sides of the Same Coin?’ (2017) 32(8) *Journal of Family Violence* 787-797.

³ Australian Bureau of Statistics, ‘Perpetrators of Violence, Personal Safety, Australia, 2012’ (2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/4906.0Chapter3002012>>; Australian Bureau of Statistics, *2016 Personal Safety Survey: Key Findings*, above n 2.

⁴ Centre for Innovative Justice, ‘Opportunities for Early Intervention: Bringing perpetrators of family violence into view’ (2015) <<http://mams.rmit.edu.au/r3qx75qh2913.pdf>>; Centre for Innovative Justice, ‘Pathways towards accountability: mapping the journeys of perpetrators of family violence: Report to Department of Premier and Cabinet’ (2016) <https://www.vic.gov.au/system/user_files/Documents/fv/Pathways%20towards%20accountability%20November%202016.pdf>.

⁵ See current research by the CIJ: ANROWS, *The PIPA project: Positive interventions for perpetrators of adolescent violence in the home* <<https://www.anrows.org.au/node/1330#overlay-context=node/1330>>.

⁶ Centre for Innovative Justice, ‘Pathways towards accountability: mapping the journeys of perpetrators of family violence: Report to Department of Premier and Cabinet’, above n 4. Australian Law Reform Commission, ‘Family Violence - A National Legal Response’ (2010) (114) <<https://www.alrc.gov.au/publications/family-violence-national-legal-response-alrc-report-114>>. (see Part 9. Police and Family Violence, Identifying the ‘primary aggressor’); Women’s Legal Service Victoria, *Paola’s story, Impact Report 2016-2017* <https://womenslegal.org.au/impact_report_2017/case-studies/paola-story/>; Emma Younger, ‘When police misjudge domestic violence, victims are slapped with intervention order applications’, *ABC News* <<http://www.abc.net.au/news/2018-08-15/domestic-violence-victims-mistaken-for-perpetrators/10120240>>.

⁷ National Council to Reduce Violence against Women and their Children, *National Plan to reduce violence against women and their children 2010-2022* (2011).

Emerging focus on perpetrator intervention *systems*,⁸ however, suggests that ‘perpetrator accountability’ is about delivering a combined community and justice response which, in the case of adult intimate partner violence, ‘is more powerful than the man’s power in the relationship.’⁹ For this to occur, every part of the service system response needs to be held accountable for the way in which they:

- interact with any perpetrator;
- open doors or build bridges to other interventions;
- understand FV as pattern, rather than incident, based;¹⁰
- recognise and response to risk, including dynamic risk; and
- support perpetrators’ paths towards taking responsibility for their behaviour and its consequences.¹¹

If we accept this conceptualisation, then our expectations of a single intervention, such as an MBCP or a court-based response, are brought into more realistic perspective. Conversely, our recognition of the need to create a broader, more consistent and informed messaging and targeted interventions *increases*. Canadian researcher and practitioner Dr Katreena Scott describes this conceptual leap as ‘grappling with how to move from placing a protective bubble around women and children, towards also placing a bubble around the perpetrator causing harm’.¹²

Ultimately, decision makers and commentators alike are recognising that accountability also needs to be internalised by the perpetrator on a journey of change.¹³ As Judge Ian Gray observed during the Coronial Inquest into Luke Batty’s death:

The fact is that the perpetrator ultimately controls the risks of family violence. Therefore, it is critical that perpetrators become engaged, or are forced to engage, with the family violence system and the criminal justice system at every possible opportunity to ensure they are not only held to account for their behaviour but also to ensure they receive appropriate treatment, counselling and management to assist them to change that behaviour.¹⁴

As such, evidence suggests that service systems cannot *make* perpetrators accountable, only attempt to direct and hold them in interventions. These systems can use incarceration; monitoring; supervision; and predict consequences if the perpetrator does not change his behaviour. These are important and legitimate actions with many people who use FV to reduce risk. However, they are not the same as ‘holding the perpetrator accountable’. In other words, enacting these and other *mechanisms* of accountability are not the same as the perpetrator *becoming* more accountable. Indeed, sometimes perpetrators can respond to accountability mechanisms in ways that increase risk to adult and child victims.¹⁵

⁸ Harry Blagg et al, ‘Innovative models in addressing violence against Indigenous women: Final Report’ (2018); Andrew Day, Donna Chung and Rodney Vlasis, ‘Evaluation readiness, program quality and outcomes in men’s behaviour change programs’ (forthcoming) *ANROWS Horizons*; Centre for Innovative Justice, ‘Opportunities for Early Intervention: Bringing perpetrators of family violence into view’, above n 3; Centre for Innovative Justice, ‘Pathways towards accountability: mapping the journeys of perpetrators of family violence: Report to Department of Premier and Cabinet’, above n 4.

⁹ Cathy Humphreys, Chris Laming and Kristin Diemer, ‘Are Standalone MBCPs dangerous?’ (Paper presented at the Australasian Conference on Responses to Men’s Domestic and Family Violence: Experience, Innovation and Emerging Directions, Melbourne, Australia, 14-16 November).

¹⁰ See Family Violence Death Review Committee, ‘Fifth Report: January 2014 to December 2015’ (2016) <<https://safeandtogetherinstitute.com/wp-content/uploads/2018/01/FVDR-5th-report-Feb-2016.pdf>>; Domestic Violence Death Review Team, ‘Report 2015-2017’ (2017) <https://www.parliament.nsw.gov.au/c/papers/DBAssets/tabledpaper/WebAttachments/72106/2015-2017_DVDR%20REPORT%20PDF.pdf>.


¹¹ Centre for Innovative Justice, ‘Pathways towards accountability: mapping the journeys of perpetrators of family violence: Report to Department of Premier and Cabinet’, above n 4.

¹² Consultation with Dr Katreena Scott, February 2018.

¹³ No To Violence, ‘Strengthening Perpetrator Accountability Within the Victorian Family Violence Service System: Submission to the Royal Commission into Family Violence’ (2015) <<http://www.rcfv.com.au/getattachment/E771CDC5-4D7C-4638-B3EE-546EA32871F1/No-To-Violence--Men's-Referral-Service-->>>.

¹⁴ Cited in Pauline Spencer, ‘Strengthening the web of accountability: Criminal courts and family violence offenders’ (2016) 41(4) *Alternative Law Journal* 225-229.

¹⁵ Donna Chung et al, ‘Breaching safety: Improving the effectiveness of Violence Restraining Orders for victims of family and domestic violence’ (2014) <www.womenscouncil.com.au/uploads/6/1/1/9/6119703/breaching_safety_final.pdf>; Donna Chung and Damian Green, ‘Making accountability and responsibility matter in systemic responses to family and domestic violence’ (forthcoming).



Rather, ‘perpetrator accountability’ rests on the system’s obligation to create opportunities for the perpetrator to work with services towards taking responsibility and working towards accountability as an individual. Seen in this way, accountability is a process – not a single outcome – in which government, non-government, community and cultural organisations, can collaborate and build.

Part One – Specialist Family Violence Courts: Current Landscape

Given that a gap identified by the MCV in the existing SFVC landscape is the lack of opportunity for rigorous perpetrator accountability measures, this review examines what the literature concerning SFVCs, MBCPs and perpetrator experiences more broadly suggests should be occurring where courts wish to become more effective at intervention. It therefore asks:

- What more does literature suggest that courts need to do to promote system and individual accountability?
- What do courts need to ask from the MBCP providers with which they are collaborating?

To reflect the variation in current SFVC practice, the first section of Part One will provide a brief background of the development of SFVCs more broadly, including some of the benefits and limitations that relevant literature identifies. The next section describes the operation of SFVCs in comparable jurisdictions, complemented by stakeholder consultations.

This scan indicates that, while all SFVCs have limitations, many have features of best practice which can inform a contemporary, best practice model for Victoria. These include the greater use of therapeutic and procedural justice approaches; effective judicial and systemic monitoring; dynamic approaches to risk assessment and management; collaborative review processes; and, in some cases, the involvement of victim perspectives. These are discussed in more detail below.

SFVC and MBCP collaborations – moving from exception to rule

The pending expansion of SFVCs in Victoria represents a formal integration of programs and approaches that have, for the most part, operated as distinct from one another. Certainly, in Labriola and colleagues' audit of practice in the US, 'coordination, cooperation and communication' were noted both as a strength of SFVCs, as well as a practical challenge.¹⁶

Given that the original intention when perpetrator programs were established was to situate them within a co-ordinated community response, this step is long overdue.¹⁷ As Vlasis observes:

Domestic violence perpetrator programs have made substantial progress over the past 25 years in moving away from operating as stand-alone programs, towards participating in integrated family and domestic violence service partnerships...

...This has strengthened their capacity to work with other systems agencies – specialist women's services, police, child protection, family services, courts and corrections – and to follow Ed Gondolf's dictum that **"the system matters"**. ...perpetrator programs that are firmly embedded within coordinated community responses appear more effective in reducing recidivism than that which are not.¹⁸

Certainly, Canadian scholar Katreena Scott emphasises the need to *embed* MBCPs within broader service system responses, particularly for higher-risk, higher-harm perpetrators. She suggests that embedding can occur through joint and shared responsibilities between the MBCP provider and the referring or coordinating agency. These should occur at several milestone points in the perpetrator's participation in the MBCP, such as at initial/comprehensive assessment, case reviews and exit planning. Scott emphasises the importance of the MBCP provider and the referring or coordinating agency actively collaborating at each of these points. This includes, for example, through joint participation with the perpetrator at case review and exit planning meetings.¹⁹

¹⁶ Melissa Labriola et al, 'A National Portrait of Domestic Violence Courts' (2009), 70 <https://www.courtinnovation.org/sites/default/files/national_portrait.pdf>.

¹⁷ Edward W. Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice* (Northeastern University Press, 2012).

¹⁸ Rodney Vlasis, 'Ten Challenges and Opportunities for Domestic Violence Perpetrator Program Work' (2014) <<http://www.ntv.org.au/wp-content/uploads/2016/12/Ten-challenges-and-opportunities.pdf>>. (references in the original omitted).

¹⁹ Consultation reported in Vlasis et al, above n 1.

Focusing on coordinated community responses in the context of domestic violence criminal courts in the US, Labriola and colleagues explain:

A domestic violence court is both dependent upon and facilitates interagency coordination around the goals of victim safety and offender accountability. **Because domestic violence court goals include aims related to both victims and offenders**, coordination typically goes beyond law enforcement, prosecutors, and probation departments to include independent victim service organizations, batterer programs, and other service providers....

Several process evaluations suggest that interagency coordination facilitates the linking of victims to services, information sharing by probation and community-based programs with judges, the development of better evidence for the prosecution, and increased stakeholder confidence.²⁰

Commenting on MBCP embeddedness in the context of Magistrate Courts' responses to perpetrators in civil jurisdictions, Vlais and colleagues argue:

As these referral mechanisms expand, MBCP providers will have an important role in shaping up collaborative processes with participating Magistrates Courts. ...MBCP providers and courts will need to have well formulated and mutually agreed roles and responsibilities and accountabilities to each other. This could include sufficient reporting-back arrangements by providers to the court based on ongoing assessments of risk, and the maintenance of some form of court or judicial oversight to support the man's participation in the program.²¹

The development of a best practice Counselling Order program model represents a valuable opportunity to refine and cement these collaborative processes, many of which will be explored below.

Background to SFVCs – explanation and snapshot

SFVCs are certainly not an Australian invention. In fact, nearly a decade ago, New York's Center for Court Innovation noted that there were already 208 Domestic Violence Courts across the US, and approximately 100 in the UK and 50 in Canada.²² Meanwhile, despite being a jurisdiction only the size of Victoria, New Zealand has seven SFVCs, with a legislative scheme which also supports the automatic referral of perpetrators to MBCP equivalents, not only through these courts, but through criminal and family jurisdictions. These are described in detail later in this section.

In the Australian context, the operation of SFVCs has fluctuated over the last decade. Though perhaps described more accurately as a specialist list, the first specialist FV jurisdiction was established in South Australia in 1997. Other specialist jurisdictions have operated at certain points in other jurisdictions, such as Western Australia and New South Wales, with policy makers moving between a preference for specialisation and a 'mainstreaming' approach and, in some cases, half-way back again.

Other jurisdictions such as Queensland and the Northern Territory have moved to establish specialist jurisdictions much more recently, with two now operating in Queensland and three more on the way; and a unique model beginning operation soon in Alice Springs. The Australian Capital Territory operates a specialist FV list in the criminal jurisdiction, linked closely to its integrated family violence service response.²³ There have been calls there, however, for a SFVC based on the Victorian model.²⁴ In Tasmania, the Sentencing Advisory Council has also observed the desirability of a separate FV court, citing the Victorian approach as an example.²⁵ The Victorian approach is described later in this section.

²⁰ Labriola et al, above n 16 (our emphasis, citations in the original omitted).

²¹ Vlais et al, above n 1.

²² Labriola et al, above n 16.

²³ Magistrates Court of the Australian Capital Territory, *Family Violence Court* <http://www.courts.act.gov.au/magistrates/courts/family_violence_court>.

²⁴ Alice Zhang, 'One family, four courts: the case for implementing a specialist domestic and family violence court in the ACT' (2016)(241) *Ethos: Official Publication of the Law Society of the Australian Capital Territory* 38-43.

²⁵ Sentencing Advisory Council of Tasmania, 'Sentencing of Adult Family Violence Offenders' (2015), 51 <http://www.sentencingcouncil.tas.gov.au/_data/assets/pdf_file/0018/333324/SAC_-_family_violence_report_-_corrected_accessible_version_for_web.pdf>.

Challenges, benefits and limitations of SFVCs

As flagged earlier, SFVCs differ from other specialist jurisdictions in many ways, the most challenging being that their practice is directed at dual intervention. Other specialist jurisdictions – such as Drug Courts or Mental Health Courts – have a primary party before these courts, being an offender who has associated issues which have contributed to the offence. In this way, the ‘client’ of those jurisdictions is the person who has *committed* the offence, but who also needs support and ongoing monitoring to prevent them from committing the same, or similar, offence again.

By contrast, SFVCs were established in recognition that those who have *experienced* the offence had been largely ignored (and even blamed) by the legal system.

This means that the priority of most SFVCs has been to provide a safe and supported climate for victims, which would in turn encourage them to come forward and remain engaged with prosecutions. The task of many SFVCs has therefore been designed to ‘hold the perpetrator accountable’ by imposing a sanction or ordering completion of a program and in this way indicate the community’s denunciation of his violence. This has left little room for more intensive accountability work focussed on risk, or for additional capacity to address co-occurring issues which may be contributing (though not driving) this risk. As the literature explored later in this review suggests, this may have left the full potential of SFVCs unfulfilled.

Regardless of these reservations, a growing consensus suggests that SFVCs are achieving more than mainstream courts in terms of addressing the needs of victims of FV, as well as potentially improving system contributions to perpetrator accountability.²⁶ Though various models for SFVCs exist, most share a common set of objectives, summarised as:

- increasing victims’ capacity to access and navigate a more streamlined legal process, as well as their willingness to appear as witnesses in criminal proceedings;²⁷
- strengthening judicial and staff understanding of the patterns and dynamics of FV, as well as strengthening capacity to craft court responses to promote safety; decreasing risk; and increasing perpetrator compliance with orders;²⁸
- improving coordination of cases resulting in court efficiencies and better outcomes for parties through consistency of orders concerning the same parties;²⁹
- consistent application of statute, in particular where there is FV-specific statute;³⁰ and
- stronger perpetrator accountability and insight through engagement with court-ordered programs, potentially enhanced through judicial monitoring and oversight.³¹

That said, the extent to which SFVCs fully meet all these objectives is not clear. This is partly because of limitations on the measurements used in existing evaluations, which have variously included: increases in arrests, monitoring and convictions of FV offenders; victims’ increased participation in prosecution; provision of more support services to victims; more effective treatment referrals for offenders; lowered rates of recidivism; and, crucially, a drop in the numbers of women’s deaths associated with FV.³²

²⁶ See eg. Zhang, above n 24; Sentencing Advisory Council of Tasmania, above n 25; Susan Eley, ‘Changing Practices: The Specialised Domestic Violence Court Process’ (2005) 44(2) *The Howard Journal of Criminal Justice* 113-124; Carolyn D. Schwarz, ‘Unified Family Courts: A Saving Grace for Victims of Domestic Violence Living in Nations with Fragmented Court Systems’ (2004) 42(2) *Family Court Review* 304-320; Australian Law Reform Commission, above n 6; Law Reform Commission of Western Australia, ‘Problem oriented courts and judicial case management: Final Report’ (2009) (96), 89 <<http://www.lrc.justice.wa.gov.au/files/P96-FR.pdf>>.

²⁷ Law Reform Commission of Western Australia, above n 26.

²⁸ Ibid 91-92; Labriola et al, above n 16.

²⁹ Labriola et al, above n 16.

³⁰ Ibid.

³¹ Ibid 92; Law Reform Commission of Western Australia, above n 26.

³² Dana L. Radatz and Emily M. Wright, ‘Integrating the Principles of Effective Intervention into Batterer Intervention Programming: The Case for Moving Toward More Evidence-Based Programming’ (2016) 17(1) *Trauma, Violence, & Abuse* 72-87; Anat Maytal, ‘Specialized Domestic Violence Courts: Are They Worth the Trouble in Massachusetts?’ (2008) 18 *Boston University Public Interest Law Journal* 197.

While there is obviously value in measuring these gains, taken on their own they may not necessarily be able to reveal the full extent of a specialist jurisdiction's impact. Measures that look at recidivism, in particular, are notoriously unreliable.³³ For example, an evaluation in which men self-report a reduction in their use of FV is not likely to be an accurate reflection without verifying reports from (former) partners.³⁴

Meanwhile an apparent increase in recidivism may in fact reflect the *benefit* of a perpetrator's participation in a court-ordered MBCP. Further arrests may indicate the greater scrutiny under which the perpetrator has been placed, or the gain in confidence that his partner feels as a result, which in turn encourages her to report further abusive behaviour.³⁵ This contradiction is just one example of how measures of any intervention need to reflect the broader context in which they sit.

Beyond the capacity to measure their effectiveness, other reservations have been expressed about SFVCs. For example, Labriola and colleagues' audit of SFVCs in the US revealed that staff and judicial officers felt that they had to maintain a 'balancing act' between affording a presumption of innocence to defendants and mitigating the adversarial system's impacts on victims.³⁶ This challenge is discussed further in Part Two of this review.

Further, a study of 'one judge, one family' courts in the US by Greacen identified a number of additional challenges, this time to legal conventions. These included confidentiality issues provoked by the 'bundling' of cases all dealing with the one family in which parties may gain inappropriate access to information about other parties.³⁷

An additional risk nominated is that participants will see court-mandated referral to a program as a form of 'punishment', rather than an opportunity.³⁸ This in turn increases the challenge of developing motivation and engagement, as well as risks of non-completion.³⁹ This is discussed later in this Part in relation to the varying views of specialist jurisdictions about the value of bringing perpetrators to court.

As explored by the CIJ in other settings, the imposition of a strong justice intervention also has the potential of escalating risk for victims. In other words, just as relationship separation is acknowledged as a time of increased risk for victims of FV, so is the imposition of an Intervention Order.⁴⁰

Some commentary also suggests that increased investigative engagement by judicial officers and aggressive prosecutorial policies impact on victim capacity for self-determination.⁴¹

Arguably, this concern is also echoed in recent UK research reflecting unexpected losses or 'trade-offs' experienced by women seeking respite from abusive partners in the specialist FV sector.⁴² These issues highlight how vital it is to include victims' perspectives in any court processes designed to manage integrated perpetrator interventions. A best practice Counselling Order program should therefore not assume that the imposition of an order on a perpetrator is experienced as a positive intervention by the victim of his violence.

³³ See a key contribution on this topic: Edward W. Gondolf, 'Evaluating batterer counseling programs: A difficult task showing some effects and implications' (2004) 9(6) *Aggression and Violent Behavior* 605-631.

³⁴ See discussions around these issues in these two complementary studies: Tony McGinn, Mary McColgan and Brian Taylor, 'Male IPV Perpetrator's Perspectives on Intervention and Change: A Systematic Synthesis of Qualitative Studies' (2017) epublication ahead of print *Trauma, Violence, & Abuse*; Tony McGinn et al, 'Survivor Perspectives on IPV Perpetrator Interventions: A Systematic Narrative Review' (2015) 17(3) *Trauma, Violence, & Abuse* 239-255.

³⁵ See the process for 'triangulating' and testing re-assault data outlined in Gondolf, 'Evaluating batterer counseling programs: A difficult task showing some effects and implications', above n 33.

³⁶ Labriola et al, above n 16.

³⁷ John M. Greacen, 'Confidentiality, Due Process and Judicial Disqualification in the Unified Family Court: Report to the Honourable Stephanie Domitrovich' (2008) 46(2) *Family Court Review* 340-346.

³⁸ For example, see the views of participants noted in Day et al, above n 1; Contrast this with the New York Model framing of BIPs as a form of sanction discussed in Kristy Minns, 'To investigate men's domestic violence behaviour change programs, particularly effective practice and integration with the criminal justice and human service systems' (2013), 30-32 <https://www.churchilltrust.com.au/media/fellows/2012_Minns_Kristy_1.pdf>.

³⁹ Consultation with Graham Barnes, March 2018.

⁴⁰ These risks appear to be elevated in cases where the abuse is rooted in coercion and control. See discussions around risk and safety planning: Jacquelyn C. Campbell, 'Helping Women Understand Their Risk in Situations of Intimate Partner Violence' (2004) 19(12) *Journal of Interpersonal Violence* 1464-1477; Jacquelyn C. Campbell, Daniel W. Webster and Nancy Glass, 'The Danger Assessment: Validation of a Lethality Risk Assessment Instrument for Intimate Partner Femicide' (2009) 24(4) *Journal of Interpersonal Violence* 653-674; Holly Johnson et al, 'Intimate Femicide: The Role of Coercive Control' (2017) epublication ahead of print *Feminist Criminology*; Christine E. Murray et al, 'Domestic Violence Service Providers' Perceptions of Safety Planning: a Focus Group Study' (2015) 30(3) *Journal of Family Violence* 381-392; Susan McDonald and Elizabeth Byrne, 'How verbal abuse of Tara Costigan escalated to murder' (2018) <<http://www.abc.net.au/news/2018-02-23/tara-costigan-murder-escalated-from-verbal-abuse-by-rappel/9466974>>.

⁴¹ Kathryn Gillespie Wellman, 'Taking the Next Step in the Legal Response to Domestic Violence: the need to re-examine specialised domestic violence courts from a victim perspective' (2013) 24 *Columbia Journal of Gender and Law* 444.

⁴² Kristie Thomas, Lisa Goodman and Susan Putnins, 'I Have Lost Everything': Trade-Offs of Seeking Safety From Intimate Partner Violence' (2015) 85(2) *American Journal of Orthopsychiatry* 170-180.

Because they are engaged in front-end and therapeutic work, specialist jurisdictions also tend to cost more than mainstream courts.⁴³ This is understood to have been a factor in the Western Australia decision to wind back their SFVCs in 2015.⁴⁴ That said, specialist jurisdictions may also improve use of court resources where they avoid the imposition of conflicting orders and multiple court sittings.⁴⁵ More broadly, the extremely high costs of repeat offending, both in the human and financial repercussions, including FV homicides, as well as in the criminal justice system costs of processing repeat offenders and funding prison beds (\$304.12 per day or \$111 003 per year in Victoria in the 2016-17 year)⁴⁶ are likely to dwarf the running costs of a SFVC jurisdiction and integrated responses, even at their most intensive.

Court programs mandating MBCP participation – an overview

The following sub-section provides a brief description of the various specialist court and mandated referral jurisdictions operating in Australia and internationally. The summaries below are based on available literature, and then supplemented by the CIJ's consultations.

Queensland

In all Queensland Magistrates' Courts, perpetrators are able to be referred to participate in a MBCP as a condition of an Intervention Order that respondents enter into voluntarily.⁴⁷ This means that Queensland Magistrates do not have powers to automatically mandate respondents to an MBCP in the civil jurisdiction. Rather, the Magistrate can ask the respondent if he 'wishes to be mandated'. Alternatively, police prosecution or the respondent's defence counsel can, with the respondent's consent, suggest this to the Magistrate. If a respondent agrees, he is issued with an Intervention Order (previously termed 'Voluntary Intervention Order') to attend a MBCP or other counselling.⁴⁸

These Intervention Orders differ from standard protection orders (called Domestic Violence Orders in Queensland) which focus on prohibiting the perpetrator's use of FV and attract criminal consequences for contravention. The CIJ understands that Intervention Orders are used somewhat inconsistently across the Magistracy, while non-attendance or attrition from the program means that a Notice of Contravention is submitted by the MBCP provider and filed by the court. This contravention does not constitute a criminal offence but may be taken into account in any future or current decisions by a Magistrate in relation to a Domestic Violence Order. Similarly, a Notice of Compliance submitted by the MBCP provider can also be filed and taken into account by the court when a respondent has attended and completed a program.⁴⁹

Despite not being limited to SFVCs, use of these Intervention Order referrals is likely to be more consistent in the SFVCs that were established as part of the recommendations arising from the *Not Now, Not Ever* Special Taskforce report.⁵⁰ These courts currently operate in Southport and Beenleigh, with three further such courts to be developed in Townsville, Mount Isa and Palm Island during 2019.

The key finding from the interim evaluation of the trial court at Southport was around the critical importance of staffing - particularly for Magistrates to be appropriately trained to understand and respond to the complexity of FV.⁵¹

⁴³ Consultation with Judge Karen Ruddy, Yukon, Canada, 16 March 2018; Tension between court efficiency and more in-depth engagement with some cases is also discussed in Labriola et al, above n 16,

⁴⁴ Domestic Violence Legal Workers Network, 'Submission to the Department of the Attorney-General on the New Integrated Model for Tackling Family Violence in the Court System' (2015) <<https://www.wlcwa.org.au/resources/doc00488520150609154252.pdf>>; 'Evaluation of the Metropolitan Family Violence Court and Evaluation of the Barndimalgu Court', (2014) <http://www.department.dotag.wa.gov.au/_files/fvc_evaluation_report.pdf>.

⁴⁵ eg. Minns, above n 38.

⁴⁶ Prisons and Parole Corrections, *Corrections Statistics: quick reference* Justice and Regulation, Victoria State Government <<http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/corrections+statistics+quick+reference>>.

⁴⁷ See discussion in 'Domestic and Family Violence Protection Act 2012: Best Practice Report', (2015), 29 <http://www.courts.qld.gov.au/_data/assets/pdf_file/0015/435030/dv-best-practice-report-2015.pdf>.

⁴⁸ This order is in addition to, and does not replace, the concurrent Domestic Violence Order.

⁴⁹ A Notice of Suitability can also be filed in the court if the MBCP provider assesses the perpetrator as suitable for their program. It is not clear, however, if Notices of Suitability are filed routinely across the state in cases of Intervention Orders, or only in relation to the specialist family violence courts.

⁵⁰ Special Taskforce on Domestic and Family Violence in Queensland, 'Not Now, Not Ever: Putting an end to domestic and family violence in Queensland' (2015) <<https://www.communities.qld.gov.au/gateway/end-domestic-family-violence/about/not-now-not-ever-report>>.

⁵¹ 'Interim evaluation of the trial specialist domestic and family violence court in Southport', (2016) <http://www.courts.qld.gov.au/_data/assets/pdf_file/0006/511737/report-on-the-interim-evaluation-of-the-domesticand-family-violence-court-in-southport.pdf>.

The final evaluation at the twelve month point found that parties at the Southport Court (compared to a comparison mainstream court) indicated higher rates of satisfaction; understanding of court outcomes; perceptions of procedural justice; and accountability of perpetrators, although it was not clear from the evaluation what the definition of 'perpetrator accountability' was in this context.⁵²

Issues around wait times and availability of appropriate group programs for perpetrators were identified as persistent issues in both the final evaluation and the CIJ's Queensland consultations.⁵³ Authors of the 2017 final evaluation also expressed concern around the lack of a strong evidence base for the effectiveness of perpetrator interventions and recommended a program review to develop a range of differentiated treatment options for offenders.⁵⁴ In this case the perpetrator-focused outcomes listed by the researchers do not clearly discuss referral, engagement or completion of an MBCP which may reflect ambivalence around the effectiveness of MBCPs.⁵⁵

The CIJ heard that a relatively unique feature of the Queensland specialist FV court model are weekly Operational Working Group (OWG) meetings that focus on identifying and removing barriers to information sharing and effective collaboration. These meetings involve the Magistrate; Registrar; women's FV support service (NGO-provided); the two MBCP providers in the region; Queensland Legal Aid; Queensland Police; an Indigenous service; and other relevant services. The meetings do not characteristically focus on individual cases, but case-based discussions can occur when risk management issues become pressing. These are discussed further in Part Three.

In terms of perpetrator monitoring, the CIJ understands that Southport Magistrates are considering the idea of requiring a man who has agreed to an Intervention Order to come back to court in two months' time to monitor compliance with the program's requirements. One other notable feature is that Respondent Workers are NGO, rather than court-appointed. This practice raises the issue of the relative advantages and disadvantages of Respondent Practitioners being appointed by the court compared to the MBCP provider.⁵⁶

South Australia

In 1997 South Australia was the first Australian jurisdiction to develop SFVCs. In practice these remain specialised FV sitting days, with associated treatment programs and dedicated Magistrates, police prosecutors and advocates.⁵⁷ Prior to 2011, referrals to MBCPs were only available through the criminal jurisdiction, with perpetrators referred to one of two intervention programs of 26 weeks duration with around six additional individual sessions.

Now operating eight specialist FV lists (four in metropolitan Adelaide and four in regional areas), the CIJ heard that the lists collectively mandate approximately 350 perpetrators per year to what is now known as the Abuse Prevention Program (APP). Perpetrators can be directed to attend a program either as a condition of an Intervention Order; or as an agreed condition of bail where an offender has been charged with FV related offences.⁵⁸

The CIJ understands that Magistrates who sit in these specialist lists vary significantly in their use of and referral to MBCPs (a similar pattern to Queensland, above). A low level of referrals might occur when a Magistrate is concerned about mandating participation in programs through the civil jurisdiction. Nonetheless this remains the predominant path of referrals, potentially reflecting the larger volume of Intervention Orders compared with FV related prosecutions. The CIJ also heard that, occasionally, a police prosecutor or a senior case manager (described in Part Three) may recommend that a referral is appropriate.

A 2014 evaluation of the South Australian model assessed the Intervention Order and Abuse Prevention Program primarily in terms of re-offending outcomes of defendants, as well as rates of completion of the MBCP.

⁵² Christine Bond et al, 'Evaluation of the Specialist Domestic and Family Violence Court Trial in Southport: Summary and Final Reports' (2017).

⁵³ Ibid 83.

⁵⁴ Ibid 84. (Recommendation 89).

⁵⁵ Ibid 128-129.

⁵⁶ For discussion of a leading example of collaborative practice between Respondent Practitioners and Legal Aid duty lawyers operating at some Brisbane-based Magistrate Courts, see Centre for Innovative Justice, 'Pathways towards accountability: mapping the journeys of perpetrators of family violence: Report to Department of Premier and Cabinet', above n 4.

⁵⁷ Courts Administration Authority of South Australia, *Abuse Prevention Program and Family Violence Courts* <<http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Abuse-Prevention-Program-and-Family-Violence-Courts.aspx>>.

⁵⁸ Ibid.

It suggested that there were limited consequences for offenders who fail to engage or complete a MBCP, as non-compliance with program attendance may be prosecuted, but the penalty is limited to a fine.⁵⁹

However, this evaluation did highlight a number of process and implementation issues, primarily due to budget constraints of the program. These included the lack of program options for female or same-sex attracted FV perpetrators; as well as accessibility issues for offenders outside of metropolitan regions; offenders who had work and carer commitments incompatible with program offerings; or offenders who have cognitive disabilities.⁶⁰ Since the evaluation was published, however, the South Australia Courts Administration Authority has prioritised attempting to strengthen the program's presence in some non-metropolitan areas of the state.

Western Australia

Western Australia was also an early adopter of specialisation, with the 1999 launch of the Joondalup FV Court.⁶¹ Following the positive evaluation of the Joondalup court, this model was extended to six SFVCs, which had powers to offer conditional bail to perpetrators who pleaded guilty to a FV related crime.

This arrangement involved a delay of sentencing while perpetrators participated in a six-month MBCP, combined with perpetrator case management provide by the court. It also included extensive collaborative case management by the court and the perpetrator being brought back for regular appearances.⁶²

However, five of these courts were decommissioned in July 2015 after an evaluation reported negatively on the court's running costs and impacts on overall rates of FV recidivism.⁶³ This evaluation has been widely criticised as conceptually limited, given the weight it put on recidivism as an indicator compared with the weight it put on positive outcomes for victims. For example, of surveyed victims at Western Australia's Metropolitan Family Violence Courts, 97% evaluated the system positively.⁶⁴ Barndimalgu Court in Geraldton, which focuses on responding to Aboriginal FV, has remained in operation.

Western Australia has now established a new model, featuring Specialist FV lists sitting in the criminal jurisdiction on a weekly or fortnightly basis in six locations. During FV list days, a Magistrate can decide to place a perpetrator on judicial monitoring, which involves asking the perpetrator (if he pleads guilty) whether he will elect to participate in a MBCP and have his sentence delayed. The CIJ heard that very few offenders decline this offer.

The CIJ understands that the collaborative approach operating under the previous model remains a significant, albeit informal, aspect of the new model. A particularly important feature is the Family Violence Service, which is staffed by court employees and is responsible for supporting and liaising with victims and other services to develop, amongst other things, a Bail Risk Assessment Report. In addition, a Magistrate can request a Risk Assessment Summary at any time in proceedings which combines information from relevant sources with information obtained through assessment with the victim-survivor to update the court's understanding of the risk that the perpetrator poses.

Victoria

Though somewhat later to adopt a specialist approach in the FV context, as mentioned at the outset of this review, Victoria's legislative foundation for its Specialist FV Divisions in 2005 was considered pioneering for its time. This legislative scheme established two specialist FV divisions – one in a metropolitan and one in a regional location – which were led by Specialist FV Magistrates and supported by specialist FV staff. This included a Specialist FV Registrar, as well as Applicant and Respondent Practitioners engaged by the court to support both parties. A crucial aspect of these divisions was the potential capacity for the sitting Magistrate to hear multiple matters relating to the relevant family, from criminal proceedings, through child protection, victims of crime assistance and, to a limited extent, family law matters.

⁵⁹ Connie Migliore, Emma Ziersch and Jayne Marshall, 'Intervention Orders and the Intervention Response Model: Evaluation Report 3 (Statistical Overview and Outcome Evaluation)' (2014).

⁶⁰ Ibid 35.

⁶¹ Law Reform Commission of Western Australia, above n 26.

⁶² Ibid.

⁶³ Domestic Violence Legal Workers Network, above n 44; 'Evaluation of the Metropolitan Family Violence Court and Evaluation of the Barndimalgu Court', above n 44.

⁶⁴ 'Evaluation of the Metropolitan Family Violence Court and Evaluation of the Barndimalgu Court', above n 44.

This legislative foundation also provided for Magistrates to impose Counselling Orders in addition to Family Violence Intervention Orders. These Counselling Orders required eligible respondents to attend for an assessment to participate in an associated MBCP.

In the original scheme, non-attendance at the MBCP sessions was expected to be reported by the MBCP provider to Victoria Police. After some years of operation, the MCV recognised this as a potential weakness, compounded by challenges with data collection.⁶⁵

To establish an evidence base for an alternative approach, an expansion of specialist capacity to two further metropolitan courts allowed for MBCP non-attendance to be followed up and reported to police by the court-based Respondent Practitioner.

A limitation of these SFVCs was, of course, their postcode-specific jurisdiction. Until recent legislative change, only those respondents living in the areas gazetted under the legislation were eligible for referral under a Counselling Order. This has been amended to expand the eligibility criteria⁶⁶ but, like other SFVC jurisdictions elsewhere, the reach of this specialist approach remains limited to parties attending specific court locations.

These include the four current specialist court locations, Heidelberg, Ballarat, Frankston and Moorabbin, with Shepparton also a newly recognised SFVC under recent legislation. Pursuant to RCFV recommendations, these SFVC jurisdictions should eventually expand to all Victorian headquarter Magistrates' Courts as a permanent feature of the Victorian legal response to FV.

Other Australian jurisdictions

In contrast to this gradual Victorian expansion, New South Wales specialist jurisdictions have fluctuated. Although these models did not include an MBCP component, pilot Domestic Violence Courts were established in Campbelltown and Wagga Wagga in 2005.⁶⁷ Calls from stakeholders have since encouraged the expansion of a more comprehensive model across the state.⁶⁸

However, an evaluation of these pilots focused primarily on measures of recidivism and/or successful prosecution and showed no real impact or improvement that could directly be attributed to the pilot.⁶⁹ This is despite victim and stakeholder satisfaction with the models being high.⁷⁰

These pilots have now been wound back, with a focus on delivering less intensive services into all New South Wales courts instead.⁷¹ However, calls continue for specialist courts (or specialist court list days) similar to the Southport model in Queensland to be established across the state.⁷²

⁶⁵ Clare Keating et al, 'Evaluation of the Family Violence Court Intervention Program: Final Report' (2013).

⁶⁶ The amending Act is the *Justice Legislation Amendment (Family Violence Protection and Other Matters) Act 2018* (Vic) which was assented 18 August 2018. At the time of publication the relevant sections had not yet been proclaimed and s 128 (b) *Family Violence Protection Act 2008* (Vic) retained the post-code exclusion.

⁶⁷ Laura Rodwell and Nadine Smith, 'An Evaluation of the NSW Domestic Violence Intervention Court Model' (2008) <<http://www.bocsar.nsw.gov.au/Documents/119.pdf>>.

⁶⁸ Women's Domestic Violence Court Advocacy Service Network Inc, 'Specialist domestic violence court lists for New South Wales' (2012) <<https://www.wdvcasnw.org.au/images/papers/position-papers/Policy-Position-Paper-on-Domestic-violence-specialist-lists-20120601.pdf>>.

⁶⁹ Rodwell and Smith, above n 67; Urbis Keys Young, 'Research into good practice models to facilitate access to the civil and criminal justice system by people experiencing domestic and family violence: Final report' (2001); Alison Wallace et al, 'Evaluation of the State-wide Domestic Violence Pro Active Support Service: Final Report' (2013)

<https://www.women.nsw.gov.au/_data/assets/pdf_file/0007/292750/DVPASS_Evaluation_Report_by_Urbis.pdf#DVPASS%20Evaluation%20Report%20by%20Urbis>; 'Towards Safe Families: A practice guide for men's domestic violence behaviour change programs', (2012)

<http://www.crimeprevention.nsw.gov.au/domesticviolence/Documents/Mini/agi_domestic_violence_practice_guide_final_consolidated_sec.pdf>; Julie Stewart, 'Specialist Domestic Violence Courts: What We Know Now – How Far Have Australian Jurisdictions Progressed?' (2011) (Topic Paper 20).

⁷⁰ Wallace et al, above n 69; Rodwell and Smith, above n 67.

⁷¹ Stewart, above n ; Domestic Violence Death Review Team, above n 10 (see Recommendation 7).

⁷² Susan Smith, 'Specialist Domestic Violence Courts (Or Court Lists days) in New South Wales' (2017)

<https://ric.org.au/sites/default/files/attachments/171117-RLC-Position-Paper_Specialist-Domestic-Violence-Courts-in-NSW.pdf>; Domestic Violence Death Review Team, above n 10 (Recommendation 7).

In the Australian Capital Territory, a specialist FV court operates in the criminal jurisdiction and functions as part of the Australian Capital Territory Family Violence Intervention Program, an integrated service system response. There have been calls, however, for this court's jurisdiction to be expanded.⁷³ Similar calls have come from Tasmania, where there is no specialist FV court.⁷⁴ However, the Tasmanian Magistrates' Court does operate a unique program called the Defendant Health Liaison Service. This program enables Magistrates to bail FV offenders to an assessment which identifies those services or supports that might be required to address factors contributing to risk. Their participation in these services may subsequently be taken into account in sentencing.⁷⁵

Finally, the Northern Territory has recently taken steps to establish a FV therapeutic list in Alice Springs. This is in addition to the Domestic Violence (civil) and criminal lists. This list will refer respondents to a Domestic Violence Order, as well as FV offenders in the criminal list who enter a guilty plea or indicate that they intend to do so, who are then referred to the therapeutic list by default. The CIJ heard that this approach was preferred in recognition that 80% of the matters before the local Magistrates' court involve FV. Other improvements, therefore, such as increased privacy and security for victims, as well as fast-tracking of video evidence, will improve the operation of the court for *all* users.

International Context

Internationally, MBCPs integrated within the criminal system are much more prevalent than the civil model currently operating in Victoria. In the US, for example, most courts that order completion of a 'batterer intervention program' (BIP) as they are known in the US, do so as an element of a criminal sentence.⁷⁶ The next section of the review will explore the operation of specialist courts in English-speaking international settings, some of which operate in civil, but the majority in criminal, contexts.

New Zealand

In New Zealand (NZ), legislation requires that *all* respondents to a Protection Order are automatically referred to a MBCP equivalent (called a 'non-violence programme' in NZ).⁷⁷ The legislation also specifies that it is an offence not to comply with the Protection Order referral, contravention of which is punishable by a fine or period of imprisonment (not exceeding 6 months).⁷⁸ This civil pathway constitutes the bulk of referrals to MBCPs in NZ⁷⁹ and obviously results in a much higher proportion of perpetrators being directed to attend an MBCP than in Australia.

Some perpetrators are also referred to a program in the criminal jurisdiction, either as a condition of deferred sentencing or of probation or parole. This is referred to as 'non-mandated' because a perpetrator must agree for this condition to be included in the relevant order.⁸⁰

Significantly, the majority of respondents are referred to an MBCP without having appeared in court. This means that, when a judicial officer grants a Protection Order, a Direction for the perpetrator to attend a program is automatically generated. No court-based assessment occurs to determine whether he is eligible. Police or a bailiff then serve the Direction upon the perpetrator within the next two to three weeks, at which point the perpetrator can lodge an objection and make a case as to why the Direction should not apply. However, the CIJ heard that this is the exception and that 90% of Protection Orders are ultimately associated with a Direction to attend an MBCP.

⁷³ Zhang, above n 24; Tracy Cussen and Matthew Lyneham, 'ACT Family Violence Intervention Program review' (2012) Technical and Background Paper 52 <<http://apo.org.au/node/31515>>. See also Women's Legal Centre executive director Elena Rosenman and Victims of Crime Commissioner John Hinchey quoted in Clare Colley, 'Could a domestic violence court work in the ACT?', *The Canberra Times* (Canberra), 17 June 2015 <www.canberratimes.com.au/act-news/could-a-domestic-violence-court-work-in-the-act-20150617-ghqbqu.html>.

⁷⁴ Sentencing Advisory Council of Tasmania, above n 25.

⁷⁵ Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing perpetrators of family violence into view', above n 4.

⁷⁶ Labriola et al, above n 16.

⁷⁷ *Domestic Violence Act 1995* (New Zealand)

⁷⁸ Section 51T *Domestic Violence Act 1995* (New Zealand)

⁷⁹ Section 51D *Domestic Violence Act 1995* (New Zealand)

⁸⁰ Consultation with NZ Ministry of Justice, March 2018.

In consultations the CIJ heard that this referral process may counter what can sometimes be negative impacts of perpetrators' attendance at court. This includes their escalating defensiveness and victim stance, and their sense that the court experience means nothing because of the 'assembly line justice' they believe they have received.⁸¹

The CIJ similarly heard that these risks were heightened when judicial officers with minimal training interacted with perpetrators in ways that increased this defensiveness.⁸² By contrast, judicial officers who are appropriately trained (e.g. with motivational interviewing techniques) can improve attendance and engagement.

Issues in relation to the effectiveness of judicial interaction with perpetrators is discussed further in Parts Two and Three. An additional distinctive feature of the NZ model, however, is the extensive and detailed reporting and information sharing regime between the court and MBCP providers. Briefly, this reporting process involves templates which MBCP providers are required to complete and submit electronically to the court on a regular basis and in a range of situations. These variously include notices that the perpetrator has:

- contravened the Direction to attend;
- is not suitable for participation;
- has agreed to and signed an Intervention Case plan;
- has completed the program;
- presents a safety concern.⁸³

Another key feature of the NZ system is a flexible funding model aimed at developing tailored intervention plans. This design enables responses to adapt to the level of risk.⁸⁴ Programs for female offenders are also streamed in this way.⁸⁵

United Kingdom and Scotland

In the United Kingdom (the UK), the Integrated Domestic Abuse Program (IDAP) sits within a broader system including SFVCs and local Multi-Agency Risk Assessment Conferences (MARAC) designed to assess and manage risk comprehensively; reduce repeat victimisation; and improve agency accountability for staff engaged with high risk cases.⁸⁶

SFVCs in the UK consist of a specialist list, women's advocates, specialist prosecutors and Magistrates with some degree of FV specialisation. Through these courts, perpetrators can be mandated to attend an MCBP-equivalent (referred to in the UK as Domestic Violence Perpetrator Programmes or DVPPs) through the criminal jurisdiction pathway. These programs are run by the Probation Service, not by community organisations.

The focus of these courts is primarily on victim support - not only to increase victim safety, but the rate and success of prosecutions.⁸⁷ In consultations the CIJ heard that there was little or no focus on monitoring of perpetrator participation in a DVPP. In fact, when a perpetrator is mandated to attend a DVPP, he will only return to court if he has contravened the order, rather than for monitoring in terms of his progress or attendance.

⁸¹ Consultation with Graham Barnes, February 2018. 'Assembly line justice' is a concept identified in research in Johanna L. Pike, *Demanding Accountability in Domestic Violence Courts: Defendants' Perceptions of Mandated Batterer's Intervention Programs* State University of New York, 2015) <<https://ubir.buffalo.edu/xmlui/handle/10477/51551>>.

⁸² Consultation with Graham Barnes, February 2018.

⁸³ Ibid.

⁸⁴ Bronwyn Morrison and John Davenne, 'Family violence perpetrators: Existing evidence and new directions' (2016) 4(1) *Practice: The New Zealand Corrections Journal*.

⁸⁵ Ibid.

⁸⁶ Minns, above n 38.

⁸⁷ 'Specialist Domestic Violence Court Programme: Resource Manual', (2011)

<https://www.cps.gov.uk/sites/default/files/documents/publications/sdvc_resource_manual_2011_v2.pdf>.

That said, innovation continues to occur in the UK in relation to a strong focus on the response to victims at high risk through the Multi-Agency Risk Assessment Conferences (MARACs)⁸⁸ and the Drive Project.⁸⁹ This is consistent with research identifying the significant level of harm caused by a small proportion of high risk perpetrators also emanating from the UK.⁹⁰ Further, an additional strength of the UK response is its emphasis on a thorough accreditation process for community-based DVPP providers in relation to minimum standards of practice.⁹¹

In Scotland, meanwhile, the Caledonian model continues to be acknowledged as best practice in terms of the integration of service systems and the tailored and substantial interventions provided to perpetrators. Delivering standard groupwork, the model also conducts Risk Need Responsivity assessments (discussed further in Part Four). This assessment not only identifies a perpetrator's level of risk, but his individualised needs relating to dynamic risk, and the factors that will make him most likely to respond to interventions.⁹² The program offers an extensive initial phase of individual sessions prior to the group sessions to address barriers that participants may have. The model is up to two years' duration overall and offers subsequent maintenance sessions after the groupwork component.⁹³

Canada

Ten Canadian provinces and territories have a SFVC or specialist court-based processes, mostly in large urban settings. Arrangements to mandate perpetrators to intervention programs stemming from these courts all operate in the criminal jurisdiction.⁹⁴

The arguable exception to this is in the Calgary Homefront court, where perpetrators who admit to the offence have the opportunity to have the charge withdrawn and agree to participate in an MBCP as a condition of a peace bond. Still formally part of the criminal jurisdiction, the perpetrator's participation in the program is monitored by probation. Participation in other services, such as Alcohol and other drug services (AOD), can also be mandated through the Homefront 'peace bond' process.⁹⁵ Information about cases proceeding through the Homefront jurisdiction is shared between services at daily Early Case Resolution meetings.

In seven of these provinces and territories, court-mandated arrangements occur through a differentiated response model that streams perpetrators into lower and higher risk categories. Perpetrators who are assessed as posing a relatively high risk to adult and/or child victims are prosecuted and sentenced through traditional judicial processes, and their attendance at MBCPs and other interventions is mandated as a condition of probation (if they are not incarcerated) and supervised through the Corrections system.⁹⁶

In these differentiated models, lower risk perpetrators who plead guilty are fast-tracked into an 'early intervention' response system where sentencing is delayed, enabling the perpetrator to participate in a MBCP before coming back to court to be sentenced.⁹⁷ There are no standard criteria across these models in terms of how lower and higher risk perpetrators are differentiated. However, lower risk perpetrators tend to be those who have come into contact with police and the justice system for their FV offending for the first time; where victim-survivors have not experienced significant physical harm; and where children were not present at the incident that precipitated justice system involvement.⁹⁸

⁸⁸ Ibid 15. See also Dee Cook et al, 'Evaluation of Specialist Domestic Violence Courts/Fast Track Systems' (2004) <<http://wlv.openrepository.com/wlv/handle/2436/22612>>.

⁸⁹ The Drive Project, *Evaluation of the Drive Project: Year 1 Feasibility Study* <<http://driveproject.org.uk/evaluation-of-the-drive-project-year-1-feasibility-study/>>.

⁹⁰ Amanda Robinson and Anna Clancy, 'New initiatives to tackle domestic violence using the Priority Perpetrator Identification Tool (PPIT)' (2017) <<http://orca.cf.ac.uk/107138/1/Robinson%20%26%20Clancy%20%282017%29%20New%20PPIT%20Initiatives%20for%20Tackling%20Domestic%20Abuse.pdf>>. See also earlier commentary around the difficulties of police risk assessment: Juan Jose Medina Ariza, Amanda Robinson and Andy Myhill, 'Cheaper, Faster, Better: Expectations and Achievements in Police Risk Assessment of Domestic Abuse' (2016) 10(4) *Policing: A Journal of Policy and Practice* 341-350.

⁹¹ See Respect UK, *Accreditation* <<http://respect.uk.net/what-we-do/accreditation/>>. The Probation Service has a separate accreditation process.

⁹² Rory Macrae, 'The Caledonian System: An integrated approach to address men's domestic violence and improve the lives of women, children and men' (2013)(Spring) *Ending Men's Violence Against Women: The No to Violence Journal*.

⁹³ Ibid.

⁹⁴ Katreena Scott et al, 'Justice-linked domestic violence intervention services: Description and analysis of practices across Canada' in Todd Augusta-Scott, Katreena Scott and Leslie M. Tutty (eds), *Innovations in interventions to address intimate partner violence: Research and practice*. (Routledge, 2017) 53.

⁹⁵ Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing perpetrators of family violence into view', above n 4.

⁹⁶ Lisa Heslop et al, 'Programming Responses for Intimate Partner Violence' (2016) <<http://www.justice.gc.ca/eng/rp-pr/jr/ipv-vpi/ipv-vpi.pdf>>.

⁹⁷ Leslie M. Tutty, Jane Ursel and Fiona Douglas, 'Specialised Domestic Violence Courts: A Comparison of Models' in Leslie M. Tutty, Jane Ursel and Janice leMaistre (eds), *What's law got to do with it? : the law, specialized courts and domestic violence in Canada* (Cormorant Books, 2008) 69.

⁹⁸ Ibid.

Some specialist courts stream all or most perpetrators into a specialised response system (or at least those who plead guilty). The specialist jurisdiction in Yukon represents a variation of this approach as, while most perpetrators who plead guilty are eligible for a delay of sentencing and a specialised response, two options are available depending on the complexity of dynamic risk factors contributing to the risk that the perpetrator poses. These options are also discussed in Parts Two and Three of this review.⁹⁹

In those specialist courts that adopt a differential response model, approximately half link both higher and lower risk offenders to the same MBCP.¹⁰⁰ In the remainder courts, different MBCP providers applying different treatment programs are available for lower and higher risk perpetrators respectively.

These arrangements broadly follow one of the tenets of the Risk Need Responsivity framework, being that the 'dosage' and intensity of intervention needs to be matched with the degree of risk posed by the perpetrator, as well as with the complexity of dynamic risk factors associated with the perpetrator's presentation.¹⁰¹ Scott and colleagues note:

Where court-linked differentiation in DV intervention does exist, there also tends to be tight connections between the court and the service providers, so that men judged as being at various levels of risk are assigned to specific intervention programs funded with an understanding that the client group to be served has a defined profile of risk.

These programs also tend to offer longer intervention (albeit sometimes only slightly longer) to offenders judged as higher and lower risk. Regions served by DV courts with differential intervention also have clear systems in place for information sharing and collaboration across justice and intervention services. Service providers in these places have full access to the offender's criminal and relationship history, the details of the substantive offense(s), and all risk assessments. The courts, in turn, have detailed information about the offender's attendance and progress at regular intervals through intervention.¹⁰²

Commenting on the variable nature of the MBCPs provided through these arrangements, the authors identified a 'one size fits all' model of intervention as the standard.¹⁰³ To this end, Canadian approaches have been critiqued as involving a somewhat rigid and simplistic interpretation of the Risk Need Responsivity framework, failing to employ the flexibility and 'multiple checks from multiple service eyes' required to determine if the initial categorisation of each perpetrator was accurate.¹⁰⁴ Further, these arrangements do not easily enable service system responses to transition to a more intense intervention if inaccurate categorisation or escalation in risk has been identified.¹⁰⁵

This said, Scott and colleagues have identified a growing trend for service intensity to vary according to level of risk, with longer services being offered to men at high risk and shorter services for those identified as being at lower risk of reoffending.¹⁰⁶ As noted earlier, Scott and colleagues also emphasised the importance of embedding perpetrator intervention programs within collaborative working relationships and integrated systems that contribute as much as possible to ensuring women's safety.

⁹⁹ Consultation with Judge Karen Ruddy, Whitehorse Court, Yukon.

¹⁰⁰ Of course judicial processes and responses, such as sentencing outcomes and the involvement of probationary supervision differs.

¹⁰¹ Consultation with Dr Katreena Scott, February 2018

¹⁰² Scott et al, above n 94.

¹⁰³ Ibid.

¹⁰⁴ Day, Chung and Vlasis, above n 8. See also our consultation summary with Dr Katreena Scott.

¹⁰⁵ Vlasis et al, above n 1.

¹⁰⁶ Katreena Scott et al, 'Intervening to Prevent Repeat Offending Among Moderate- to High-Risk Domestic Violence Offenders: A Second-Responder Program for Men' (2015) 59(3) *International Journal of Offender Therapy and Comparative Criminology* 273-294.

United States

The New York Specialist Domestic Violence Courts and the Centre for Court Innovation have been leading sources of practice innovation and research since the first specialist FV court was established in Brooklyn in 1996.¹⁰⁷ As noted above, SFVCs expanded to over 200 sites within a very short time. These include criminal-only lists or courts designed to hear FV related offending; as well as courts which may be limited to hearing civil matters (protection orders) and criminal matters and simply reviewing family law orders for consistency. A fuller model may also hear family law and/or child protection matters. This latter model has been referred to as a 'one court, one judge', unified family court model.¹⁰⁸

The literature in relation to the vast array of specialist FV and other family-related courts is too extensive to detail here. For this reason, a sample of select studies and/or models will be discussed which point to considerations of best practice. The discussion focuses first on a study of courts in New York, including the Brooklyn Domestic Violence Felony Court, which have been lauded as promising examples. The review then moves to consider the Colorado Domestic Violence Offender Management Board. Though not a court, the latter is an example of highly promising practice linked to an integrated criminal justice response.

New York landscape

Responding to the diversity of SFVC models, the Centre for Court Innovation conducted an impact evaluation of 24 (of the 64) FV courts operating in New York State.¹⁰⁹ The key finding of this research was that courts which prioritised deterrence measures (final orders of protection, program attendance, judicial supervision and sanctions for non-compliance) in combination with victim support and safety planning were able to impact positively on rates of re-arrest over a three-year tracking period.¹¹⁰

In addition, this study found that New York SFVCs had lower average case processing times than non-specialist jurisdictions (197 versus 260 days).¹¹¹ Finally, there were increases (although not statistically significant) across these courts in terms of the rates of conviction (65% versus 61%) and the percentage of custodial sentences imposed (32% versus 28%). These final two measures were identified as indicators in relation to 'offender accountability'. While the need for measures of interventions to go beyond re-arrest/recidivism is discussed elsewhere in this review,¹¹² this study does suggest that the approaches that produced these effects should be included in any best practice integrated response.

Thomforde Hauser's recent study 'What Courts Should Know' is an essential complement to existing work on SFVCs, arguably identifying greater potential in the SFVC sphere.¹¹³ Amongst other things, Thomforde Hauser suggests that the key emerging features of a best practice court and MBCP interface are their capacity to incorporate risk and needs assessments; streamed treatment levels; and stronger accountability mechanisms (such as judicial monitoring/sanctions for non-compliance).¹¹⁴

To this end, Thomforde Hauser notes that a promising and arguably efficient protocol for monitoring may be group conferences between monitoring officers (a probation officer in this case but potentially a court-appointed supervision officer) and program participants as a whole group - conducted at particular intervals and in parallel with the perpetrators' participation in the intervention program. The suggested benefits of this include the consistent delivery of accountability messages, as well as heightening participants' awareness and understanding of the consequences of non-compliance through witnessing the sanction or reward of other group members.¹¹⁵

¹⁰⁷ Robyn Mazur and Liberty Aldrich, 'What Makes a Domestic Violence Court Work? Lessons from New York' (2003)(Spring) *The Judge's Journal* 5-9.

¹⁰⁸ Liberty Aldrich and Judge Judy Harris Kluger, 'New York's One Judge-One Family Response to Family Violence' (2010) 61(4) *Juvenile and Family Court Journal* 77-86.

¹⁰⁹ Amanda B. Cissner, Melissa Labriola and Michael Rempel, 'Testing the Effects of New York's Domestic Violence Courts' (2013) <http://www.courtinnovation.org/sites/default/files/documents/statewide_evaluation_dv_courts.pdf>. These courts appear to have primarily worked as specialised 'lists' with specified sittings days, rather than stand-alone courts.

¹¹⁰ *Ibid* 36, 41.

¹¹¹ *Ibid* 43.

¹¹² See the authors' acknowledgement of this issue: *ibid* 3.

¹¹³ Rebecca Thomforde Hauser, 'What Courts Should Know: Trends in Intervention Programming for Abusive Partners' (2017) <<https://www.courtinnovation.org/publications/what-courts-should-know-trends-intervention-programming-abusive-partners>>.

¹¹⁴ *Ibid*.

¹¹⁵ *Ibid* 12.

Perhaps most relevantly to this review, the final area of developing practice which Thomford Hauser identifies is the incorporation of procedural justice principles.¹¹⁶ Arguably, the significance of ensuring that program participants feel heard, respected and engaged in a fair process that they understand is particularly heightened in the context of Protection Order respondents, as this process is about preventing *future* conduct, rather than only responding to conduct in the past. As Thomford Hauser observes, an emerging body of research suggests that application of procedural justice principles can improve compliance with court orders.¹¹⁷ This will be discussed further in Part Two.

Colorado

One of the most promising perpetrator intervention system approaches is found in Colorado.¹¹⁸ This streams perpetrators who are referred through the criminal justice system into low, medium and high intensity interventions based on the locally designed Domestic Violence Risk and Needs Assessment (DVRNA) instrument.¹¹⁹ This instrument assesses both the level of risk *and* the complexity of dynamic risk factors that require addressing to reduce this risk.

Each intervention intensity stream is associated with a particular minimum of group and supplementary individual sessions per week. For example, the lowest intensity stream requires a minimum of one groupwork session per week, while the high intensity stream requires a minimum of one groupwork session and one individual session.

Key features of the Colorado model include a specialised RNR assessment tool, the DVRNA mentioned earlier,¹²⁰ which informs tailored interventions for perpetrators, as well as minimum standards for court-ordered treatment ('Treatment Standards') for perpetrators.¹²¹ According to the guiding principles outlined in the Treatment Standards document, the primary goals of interventions are 'cessation of abusive behaviours and victim safety.'¹²²

The approach is currently implemented through multi-disciplinary teams (MTTs), which include a victim advocate, probation officer and perpetrator intervention program representative, and which make decisions around treatment intensity and goals. In a study by Grover and colleagues, the researchers found that the streaming of offenders into graded risk categories seemed to be effective as offenders' risk assessments were primarily graded down, rather than up, as the intervention progressed.¹²³

A 'process evaluation' of the implementation of the Treatment Standards also found that 'low risk' offenders were the minority, but were completing treatment programs at a high rate (90.5%). Completion rates were lowest for the highest risk category.¹²⁴ Treatment lengths correlated positively with assessed risk, indicating that appropriately differential treatment regimes were being implemented (and potentially explaining the higher drop-out rates with higher risk offenders over the course of longer interventions).¹²⁵

¹¹⁶ Ibid 13.

¹¹⁷ Ibid 14.

¹¹⁸ Colorado Domestic Violence Offender Management Board, 'Standards for Treatment with Court Ordered Domestic Violence Offenders' (2018) <<https://www.colorado.gov/pacific/dcj/dvomb-standards>>; Jesse Hansen et al, 'Standards for Treatment With Court Ordered Domestic Violence Offenders: A Process Evaluation' (2016) <<https://cdpsdocs.state.co.us/dvomb/Research/Evaluation.pdf>>; Angela R. Grover, Tara N. Richards and Elizabeth A. Tomsich, 'Colorado's Innovative Response to Domestic Violence Offender Treatment: Current Achievements and Recommendations for the Future' (2015) <<https://cdpsdocs.state.co.us/dvomb/Research/UCDDV.pdf>>.

¹¹⁹ Colorado Domestic Violence Offender Management Board, 'Domestic Violence Risk and Needs Assessment (DVRNA)' (2016) <<https://cdpsdocs.state.co.us/dvomb/Standards/DVRNAScoringManual.pdf>>. This instrument is currently undergoing validation research. Consultation with Jesse Hansen, February 2018.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid..

¹²³ Grover, Richards and Tomsich, above n 118.

¹²⁴ Hansen et al, above n 118.

¹²⁵ Ibid.

A 'preliminary assessment' of the DVRNA published in February 2017 indicated that relatively few offenders were assessed as low risk and that medium and high risk offenders' rates of recidivism within 12 months of their treatment assessment did correlate with their allocated risk status.¹²⁶ As the authors note, however, this analysis was based on an unrepresentative sample and recidivism was measured by reported offending so is likely to be under-estimated.¹²⁷ Nonetheless, this preliminary research does suggest that the DVRNA is an effective assessment tool for predicting future FV and general re-offending. The DVRNA is currently in its fifth edition but Hansen indicates that it may be revised following the current round of validation research.¹²⁸

¹²⁶ Jesse Hansen, Jeanne M. Smith and Stan Hilkey, 'The Colorado Domestic Violence Risk and Needs Assessment: A Preliminary Assessment' (2017) <<https://cdpsdocs.state.co.us/dvomb/Research/DVRNA1.pdf>>.

¹²⁷ Ibid 2.

¹²⁸ Consultation with Jesse Hansen, February 2018.

Conclusion to Part One

As is evident from the above summaries of a range of comparable jurisdictions, all have their strengths and limitations. Some courts remain focused on improving services for victims, as well as the outcomes and rates of prosecutions. Some see the role of court-mandated referral to an MBCP as simply contributing to monitoring and scrutiny, and others see their role as contributing to an expectation of some behaviour change.

Some jurisdictions indicate reluctance to mandate perpetrators to an MBCP, even where it is supported by legislation, because of reservations about a condition of this kind attracting a criminal sanction. Others seem to have no hesitation in directing all respondents to participate in an MBCP with criminal sanction upon contravention, although prosecution of this contravention may not always occur.

Similarly, some models signal little or no capacity for monitoring of perpetrator progress through these programs, while others have detailed processes for doing so. Equally, some take a therapeutic approach to regular judicial monitoring, while others do very little in this regard.

Through this variation, we can nevertheless identify valuable lessons for the Victorian context. These include promising practices in terms of how the court:

- Coordinates multi-agency collaboration, including with the program provider;
- Assesses and refers the perpetrator to a program;
- Monitors the perpetrator and responds to risk;
- Conducts case management, and tailors or sequences interventions;
- Responds to a diversity of perpetrators;
- Makes the victim/survivor's role and experiences central;
- Leverages evidence about procedural and therapeutic justice to maximise engagement and deliver on their role in supporting perpetrator accountability.

Themes from the literature and consultations concerning these promising practices will now be explored in Parts Two and Three.

Part Two – The potential of procedural and therapeutic justice

The dual obligation of SFVCs

As SFVCs eventually expand to all headquarter Magistrates' Courts in Victoria, these courts will have an opportunity to refine and expand their practice, including in ways which set the tone for other courts outside the specialist frame.

As mentioned earlier, one of the most obvious challenges for specialist courts when seeking to improve their role in perpetrator interventions is that, unlike other specialist courts operating in other areas (such as Drug Courts), there are multiple clients to be considered. In fact, unlike other problem-oriented courts where the offender is generally the relevant 'client' and beneficiary of therapeutic interventions designed to address their offending,¹²⁹ an important guiding principle underpinning the work of SFVCs and MBCPs alike is that *victims are the primary intended beneficiaries*.¹³⁰

This creates a challenge and tension in the court's work with perpetrators. SFVCs were developed in a wave of efforts to recognise the experience of FV victim/survivors and to 'get tough' on perpetrators of FV by 'holding them to account'. As the CIJ has previously suggested, however, victims will remain at risk unless that risk is effectively addressed at the source.¹³¹ The following discussion therefore explores evidence which suggests that a purely punitive approach does not maximise the opportunity for meaningful intervention.

As discussed elsewhere, the state of knowledge about perpetrator interventions – which interventions are likely to be effective at which points and with which men – is evolving. However, existing research is clear that there are factors in a legal process that influence offenders' likelihood of compliance with court orders. In particular, procedural justice research indicates that, where offenders – including perpetrators of family violence – experience a legal process as fair, they will be more likely to see the court's decisions as legitimate, and therefore more likely to comply with them.

In the context of court orders to attend MBCPs, this research suggests that courts can maximise the potential of perpetrators' compliance with these programs by ensuring that the legal process embodies procedural justice. As indicated in the work of Thomford Hauser discussed in Part One, this suggests that holding perpetrators accountable does not mean treating them in a way that is unfair or compromises their dignity, and that victim safety actually *requires* that courts treat perpetrators with fairness and respect.

Meanwhile, proponents of therapeutic jurisprudence argue that courts should go further than creating conditions conducive to offender compliance. They propose that courts, and in particular judicial officers, can also play a critical and *therapeutic* role in motivating offenders to engage in meaningful behaviour change.

This section will examine the therapeutic jurisprudence literature as it applies to courts' potential to motivate perpetrators of family violence to pursue meaningful change. As will be discussed, this literature suggests that legal sector personnel – particularly judicial officers – can interact with perpetrators in ways that not only promote their compliance with court orders, but their motivation to engage.

Procedural justice

Procedural justice research suggests that the way in which a legal outcome is reached is central for the person who experiences that outcome. Indeed, procedural justice proponents argue that legal process is more important to people than the particular outcome.¹³²

¹²⁹ Law Reform Commission of Western Australia, above n 26.

¹³⁰ Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing perpetrators of family violence into view', above n 4.

¹³¹ Ibid.

¹³² See for example E. Allen Lind and Tom R. Tyler, *The Social Psychology of Procedural Justice* (Plenum Press, 1988).

In a criminal law context, this means that the way in which the legal process is conducted has a greater impact on an accused person than the sentence ultimately imposed.¹³³ According to procedural justice theory, people are more likely to see an outcome as valid and comply with it if they perceive the process that led to it as being fair. This includes situations where the outcome is not favourable to them.¹³⁴ Conversely, if people feel unfairly treated by the legal system, they will see outcomes as less legitimate and be less likely to comply with them.

A solid base of empirical research supports the contentions of procedural justice theory. A wide range of studies in different contexts over time establish a clear connection between people's experience of procedural justice and their perception of the legitimacy of a legal outcome.¹³⁵ Further, this research has shed light on factors that determine whether a legal process is perceived to be procedurally just by a person who experiences it. These include:

- Having the chance to be heard (voice);
- That officials and decision makers approach the case with an open mind (neutrality of the decision maker);
- That officials and decision makers are consistent in how they treat similar cases, and in how they relate to the same person over time;
- Being treated with respect.¹³⁶

More specific to the subject of this review, an influential study by Paternoster and colleagues in the US in 1997 examined procedural justice theory in the FV context.¹³⁷ The researchers investigated data from 1000 cases where police intervened in response to a FV incident to determine whether the manner in which police treated the alleged perpetrators, as distinct from the police's choice of legal response, had an effect on recidivist violence.

The researchers found a statistically significant relationship between alleged perpetrators' experience of procedural justice in their interactions with police and their recidivism rates. In other words, those who were arrested and who perceived themselves as having experienced fair treatment had lower recidivism rates than those who were arrested and perceived themselves as having experienced unfair treatment.¹³⁸

The work of Carrie Petrucci provides further support to Paternoster and colleagues' findings. Petrucci conducted a study of a SFVC in California which had achieved low recidivism rates. Petrucci suggested that the shared respect that was built between the judicial officers and perpetrators in this court program formed the basis for the perpetrators' compliance and thus their reduced rate of reoffending. She observed that judicial officers in this court were 'caring, genuine, consistent but firm' with the perpetrators who appeared before them.¹³⁹

These judicial officers conveyed a respectful attitude by 'actively listening to defendants and seldom interrupting them when they spoke, [using] body-language that demonstrated attentiveness, and speaking slowly, clearly and loudly enough to be heard, while conveying concern and genuineness.'¹⁴⁰ Given that perpetrators often adopt a strong victim stance and often believe that the victim's story is the only one being heard, it is particularly important for judicial officers enable them to feel heard, without colluding with perpetrators' violence-supportive narratives. Pike's research, discussed below, signals how this can be achieved, unlocking the potential for perpetrators to perceive the experience as fair.¹⁴¹

¹³³ Tom R. Tyler, 'The Role of Perceived Injustice in Defendants' Evaluations of their Courtroom Experience' (1984) 18(1) *Law & Society Review* 51-74.

¹³⁴ Tom R. Tyler, *Why People Obey the Law* (Yale University Press, 1990).

¹³⁵ For an overview, see Deborah Epstein, 'Procedural Justice: Tempering the State's Response to Domestic Violence' (2002) 43 *William and Mary Law Review* 1843-1905, 1878-1882.

¹³⁶ *Ibid.*

¹³⁷ Raymond Paternoster et al, 'Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault' (1997) 31(1) *Law & Society Review* 163-204.

¹³⁸ *Ibid.*

¹³⁹ Carrie J. Petrucci, 'Respect as a component in the judge defendant interaction in a specialised domestic violence court that utilizes therapeutic jurisprudence' (2002) 38 *Criminal Law Bulletin* 288.

¹⁴⁰ *Ibid.* 299.

¹⁴¹ Pike, above n 81.

In contrast to the Petrucci study, Johanna Pike's study interviewing perpetrators who were managed through a different US SFVC and who were all referred to a batterers' program (MBCP equivalent), revealed that, for the most part, participants interpreted their treatment by the court as having been unfair.¹⁴² Although most reported feeling that they were communicated with respectfully throughout the process, a strong theme was that perpetrators tended to feel that they had not been given the opportunity to tell their side of the story. They felt that the judicial officer and other court personnel were not interested in learning about what 'really happened' because the main concern of judges and court staff was managing the court caseload, and therefore their priority was concluding the matter as quickly as possible.

Pike found that the research participants believed that they had experienced 'assembly line justice', rather than a process in which they were listened to and heard.¹⁴³ This experience shaped their perception of being ordered by the court to attend the batterers' program. Men tended to see this outcome as the court's routine response, rather than as an opportunity to help with their individual situation.

Ultimately, Pike found that there was a connection between the perpetrators' experience of perceived unfair treatment by the legal system, and their capacity to avoid taking responsibility for the violence. This was because they were able to deflect blame onto the injustice that had been delivered (in their view) by the court. Perhaps counter-intuitively to an approach which seeks to validate victims' experiences and 'hold perpetrators to account', Pike argues that denying perpetrators the opportunity to exercise voice can actually present a barrier to holding perpetrators to account. This is reflected in literature explored in Part Three of this review.

Pike acknowledges that there are legitimate concerns with allowing perpetrators' voices to have too much prominence within FV legal proceedings. This is because there is a real risk that doing so will provide a platform for the perpetrator to continue to wield coercion and control and potentially to manipulate the court.¹⁴⁴ Similarly, a victim of FV may perceive a perpetrator's opportunity to 'tell his side of the story' as indication by the court that she has not been believed.

However, as Deborah Epstein has identified, the effectiveness of the justice system's response to FV is largely dependent on whether, and to what extent, perpetrators comply with the interventions at the systems' disposal. These include intervention orders; conditions of community-based sentencing orders; and parole conditions.

If the legal system contributes to a sense by perpetrators that they have been treated unfairly - a sense that is often preconceived in many perpetrators - this will reduce the likelihood of their compliance with legal mechanisms. Given that these are ultimately the primary tools the legal system uses to keep victims safe,¹⁴⁵ Epstein reminds us that, '[u]ltimately, the safety of domestic violence victims is directly linked to the perceptions and experiences [of the legal system] of their intimate partners.'¹⁴⁶

These findings add weight to the stark reminder by Judge Gray cited earlier in this report: 'the perpetrator ultimately controls the risks of family violence. Therefore it is critical that perpetrators become engaged, or are forced to engage, with the family violence system and the criminal justice system at every possible opportunity'.¹⁴⁷ In other words, procedural justice research suggests that, when the legal system engages perpetrators, or forces them to engage, it is critical for victims' safety that all legal system personnel treat perpetrators with fairness and respect; and that perpetrators are given the opportunity to exercise voice. This is a difficult and challenging line to walk, particularly given - as Epstein reminds us - the historical failure of the legal system to give *victims* any voice. Making the legal system more responsive towards victims, however, does not necessitate procedurally unjust treatment of perpetrators. Instead, this emerging literature suggests that victim safety *demand*s that procedural justice is accorded to those who control and pose that risk: perpetrators.

¹⁴² Ibid.

¹⁴³ Ibid 117.

¹⁴⁴ Ibid 165.

¹⁴⁵ Epstein, above n ,

¹⁴⁶ Ibid 1849.

¹⁴⁷ Cited in Spencer, above n 14.

Aboriginal perpetrators and procedural justice

Despite the compelling findings explored above, procedural justice research has tended to ignore the distinct experiences of Indigenous peoples. This is obviously concerning given the substantial overrepresentation of Indigenous peoples in many criminal jurisdictions around the world, including Australia.¹⁴⁸ In the Australian context various scholars have argued that it is difficult to see how Aboriginal offenders could experience courts as being fair and unbiased, given a history of forced imposition of the Anglo-centric legal system upon Aboriginal people, as well as this system's ongoing failure to recognise Aboriginal sovereignty.¹⁴⁹

The introduction of Aboriginal sentencing courts is an attempt to address this problem. While these courts operate within the dominant Western legal tradition, they seek to include Aboriginal culture and values in order to make the court experience more meaningful for offenders. The assumption of these courts is that Aboriginal offenders will see these courts as more legitimate, and therefore their compliance with orders will be increased.¹⁵⁰

Research by Elena Marchetti aimed to explore this assumption. Over a period of four years Marchetti conducted interviews with the Elders and Community Representatives, Magistrates, lawyers, police, support workers, victims and perpetrators who had participated in Aboriginal sentencing courts in Queensland and New South Wales in relation to FV offences.

Marchetti found that the Aboriginal sentencing courts performed well when measured against the conventionally understood aspects of procedural justice – that is, perpetrators tended to report that they felt heard, respected and supported. However, the crucial component of their increased perception of justice was the opportunity to be held accountable, as well as to be supported by respected members of their own community. Further, the respect that Magistrates and other legal system personnel demonstrated towards the Elders and Respected Community Representatives meant that perpetrators felt that their cultural identity was valued by the legal system.¹⁵¹

Ultimately, Marchetti's work suggests that Aboriginal sentencing courts have the potential to be a positive influence on perpetrators' perceptions of the legitimacy of the court process, and to impact meaningfully on their attitudes and behaviour.

There is ongoing debate about whether family violence offences should be dealt with by Aboriginal sentencing courts because of the complexity of patterns of family violence in Aboriginal communities and the impacts that community imperatives can have on victims.¹⁵² The Victorian Koori Court currently excludes this type of offence, although work is ongoing to explore change in this setting as a result of recommendations by the RCFV.¹⁵³

Nevertheless, Marchetti's argument is borne out to a significant extent by the approach taken in both the Barndimalgu Court in Geraldton in Western Australia, and in Yukon, Canada. In both jurisdictions, the focus of these courts is on First Nations peoples and an acknowledgment of the additional discrimination – and consequences of intergenerational trauma – that they have experienced. To this end, the strength of culture is employed through the use of Respected Elders or Community representatives, as well as a more informal, 'circle' approach to proceedings which addresses the range of needs of the individual perpetrator, as well as his community.¹⁵⁴

¹⁴⁸ Chris Cunneen, 'Colonial Processes, Indigenous Peoples, and Criminal Justice Systems' in Sandra Bucerias and Michael Tonry (eds), *The Oxford Handbook of Ethnicity, Crime and Immigration* (Oxford University Press, 2014).

¹⁴⁹ For an overview of this literature, see Elena Marchetti, 'An Australian Indigenous-focussed Justice Response to Intimate Partner Violence: Offenders' Perceptions of the Sentencing Process' (2015) 55(1) *The British Journal of Criminology* 86-106, 90.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² See for example Donna Coker, 'Transformative Justice: Anti-Subordination Processes in Cases of Domestic Violence' in Heather Strang and Jphn Braithwaite (eds), *Restorative Justice and Family Violence* (Cambridge University Press, 2002).

¹⁵³ Magistrates' Court of Victoria, *Koori Court* <<https://www.magistratescourt.vic.gov.au/koori-court>>.

¹⁵⁴ Consultations with Judge Karen Ruddy, Whitehorse Court, Yukon; and Steve Ford, Regional Manager, Murchison, Geraldton Court, WA Department of Justice.

This said, these approaches need to be founded upon adequate and culturally appropriate support of the victims of a perpetrator's violence. The CIJ heard in consultations that - while the strength of community and culture can be employed to great effect towards a perpetrator's willingness to take responsibility for his actions - it can inadvertently place pressure on victims to minimise their own needs. This can potentially include, as part of a community's support for a perpetrator who is attempting to engage in services, pressure on a victim to 'take him back' or 'give him another chance'. Care must always be taken, therefore, to ensure that the process of giving a perpetrator voice and employing procedural justice does not displace the voice of those whom a specialist approach is trying to protect.

Therapeutic Jurisprudence

Beyond procedural justice principles which focus on the benefits of compliance, therapeutic jurisprudence (TJ) proposes that an encounter with the legal system has the potential to have either a therapeutic or counter-therapeutic effect.¹⁵⁵ This means that practical applications of TJ are chiefly concerned with how to maximise the potential for a person's contact with the legal system to be a *constructive* intervention.¹⁵⁶ Proponents of TJ argue that the way in which legal actors – such as police, lawyers, court staff and judicial officers – interact with people plays a key role in determining what kind of effect contact with the legal system ultimately has on someone experiencing it.¹⁵⁷

The manner in which judicial officers exercise their function is seen as particularly important within therapeutic jurisprudential scholarship, and much attention has been devoted to examining how judicial officers can encourage both compliance *and* rehabilitation through interacting effectively with people appearing before them.¹⁵⁸ The next section of this report will look at what the literature reveals about the factors that can make these interactions effective, and how judicial officers might most usefully leverage their contact with perpetrators of FV.

Therapeutic jurisprudential approaches to judicial officers' conduct and demeanour argue that procedural justice principles must provide a foundation to all TJ interactions.¹⁵⁹ This means that the starting point must be that judicial officers treat perpetrators with respect, listen to them, and act in a neutral and consistent way.

If judicial officers apply these principles, they may create opportunities for perpetrators to be more likely to recognise the authority of the court and its orders. For the purposes of the current discussion, this means complying with courts orders to attend a MBCP. However, as Bruce Winick, one of the pioneers of therapeutic jurisprudence, recognised:

Rehabilitative programs for batterers...are unlikely to succeed absent the motivation of the offender to change his attitudes and behaviour. There is no pill for the treatment of domestic violence...[an offender] may simply comply with the formal requirements of the program, going through the motions, but resisting any genuine attitudinal or behavioural change.¹⁶⁰

This points to why the step from procedural justice to therapeutic justice is so important. In addition to applying procedural justice principles to increase compliance, Winick and colleagues argue that judicial officers can play a crucial role in motivating perpetrators to comply *meaningfully* by engaging fully in rehabilitation, with judicial officers able to:

...motivate the individual to obtain treatment, facilitate its delivery, monitor compliance, and bolster the individual's self-esteem and self-efficacy, building on existing strengths. The judge functions as a member of the treatment team, and applies a therapeutic rather than a punitive approach.¹⁶¹....Where the judicial officer takes on this role, he or she acts as a 'behaviour-change agent'; someone with the potential to help the perpetrator activate his own motivation to change.¹⁶²

¹⁵⁵ David Wexler, 'An Introduction to Therapeutic Jurisprudence' in David Wexler and Bruce Winick (eds), *Essays in Therapeutic Jurisprudence* (Carolina Academic Press, 1991).

¹⁵⁶ Bruce Winick, 'The Jurisprudence of Therapeutic Jurisprudence' (1997) 3 *Psychology, Public Policy & the Law* 184.

¹⁵⁷ David Wexler, *Therapeutic Jurisprudence: The Law as a Therapeutic Agent* (Carolina Academic Press, 1990).

¹⁵⁸ Dave Wexler and Winick Bruce (eds), *Judging in a Therapeutic Key: Therapeutic Jurisprudence and the Courts* (Carolina Academic Press, 2003).

¹⁵⁹ For example, Bruce Winick, 'Applying the Law Therapeutically in Domestic Violence Cases' (2000) 69 *University of Missouri-Kansas City Law Review* 33, 34; Michael King and Becky Batagol, 'Enforcer, Manager or Leader? The Judicial Role in Family Violence Courts' (2010) 33 *International Journal of Law and Psychiatry* 406-416, 408.

¹⁶⁰ Winick, 'Applying the Law Therapeutically in Domestic Violence Cases', above n

¹⁶¹ Bruce Winick et al, 'Dealing with mentally ill domestic violence perpetrators: A therapeutic jurisprudence judicial model' (2010) 33 *International Journal of Law and Psychiatry* 428-439, 436. Note: In the above passage Winick and colleagues are talking specifically about perpetrators of FV who also have psychiatric illnesses. When he refers to 'treatment' he is referring to both mental health treatment and participation in behaviour change programs. However, the approach he proposes is relevant to a broader demographic of FV perpetrators who may or may not also have mental health problems, as Winick's other work makes clear. See for example Winick, 'Applying the Law Therapeutically in Domestic Violence Cases', above n 159.

¹⁶² Winick et al, above n 161.

Again, the CIJ's consultations with stakeholders from the Barndimalgu specialist FV list, as well as the Domestic Violence Treatment Options court and Community Wellness court in Yukon, Canada, revealed a strong emphasis on therapeutic jurisprudence. This included an emphasis on motivational interviewing and very frequent contact with the judge, as well as repeat contact with a range of services, with the ultimate aim of allowing the perpetrator to see the court as a supporter in his efforts towards change, rather than as an adversary.¹⁶³

In relation to both courts, the CIJ heard that a therapeutic approach was essential, given that many offenders – FV and otherwise – experienced significant social disadvantage and a range of complex needs, including cognitive impairment and Foetal Alcohol Disorder Syndrome.¹⁶⁴

The existence of these complex needs contributed to 'realistic expectations' about what a single intervention could achieve, with the expectation in the Yukon context that further treatment options would be required.¹⁶⁵ Similarly, in the Barndimalgu court, offenders subsequently placed on Community Corrections Orders following participation in an Indigenous-specific MBCP were afforded an average of 18 months of treatment. The CIJ heard that, when the Barndimalgu list was established, Community Elders expressly indicated that they did not wish for it to operate as a diversion from prison for high risk offenders, but as an early intervention option to increase scrutiny and prevent further harm.¹⁶⁶ Of course, as referred to above, culturally appropriate responses to victims must also be incorporated into these approaches for this aim of early intervention to achieve its desired results.

Judicial supervision

Regular interaction between judicial officers and offenders is certainly an essential part of many SFVC environments. Rather than being perceived as a punitive mechanism as in the New York model described in Part One, however, procedural and therapeutic justice literature explains that judicial officers must build rapport with offenders in order to achieve meaningful change.¹⁶⁷ In solution-focused courts, which have a different structure to the Victorian SFVCs, this opportunity is created through the use of judicial supervision hearings, which are regularly scheduled hearings where an offender appears in court and has his compliance with court orders and progress with treatment goals reviewed by a judicial officer.

Where perpetrators are ordered to attend MBCPs by a SFVC, judicial supervision is theoretically available as part of these courts' mandate through the use of adjournments or a deferral of sentence where a criminal charge is involved. Further, as Magistrate Pauline Spencer has noted, judicial officers sitting in mainstream courts also have the capacity to engage in judicial supervision.¹⁶⁸ Spencer's arguments support the proposition that, where a court orders a perpetrator attend an MBCP, this should be done in the context of a judicial supervision process. This includes whether or not the order is made in a SFVC context.

That said, there is mixed empirical evidence regarding the effectiveness of judicial supervision in the context of FV. For example, a much-discussed study of a specialist FV court in New York found that judicial supervision did not have an effect on recidivism.¹⁶⁹

However, the same researchers conducted a subsequent study that found more promising results.¹⁷⁰ Similarly, a number of other studies have also reported positive effects of judicial supervision in FV cases.¹⁷¹

¹⁶³ Consultation with Judge Karen Ruddy, Whitehorse Court, Yukon, February 2018.

¹⁶⁴ Consultation with Steve Ford, Regional Manager, Murchison, Geraldton Court, WA Department of Justice and Judge Karen Ruddy, Whitehorse Court, Yukon, February 2018.

¹⁶⁵ Ibid.

¹⁶⁶ Consultation with Steve Ford, Regional Manager, Murchison, Geraldton Court, WA Department of Justice.

¹⁶⁷ Wexler, 'An Introduction to Therapeutic Jurisprudence', above n 155.

¹⁶⁸ Spencer, above n 14.

¹⁶⁹ Melissa Labriola, Michael Rempel and Robert C. Davis, 'Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomized Trial at the Bronx Misdemeanor Domestic Violence Court' (2005)

<<https://www.courtinnovation.org/sites/default/files/battererprogramseffectiveness.pdf>>; Michael Rempel, Labriola Melissa M. and Robert C. Davis, 'Does Judicial Monitoring Deter Domestic Violence Recidivism: Results of a Quasi-Experimental Comparison in the Bronx' (2008) 14 *Violence Against Women* 185.

¹⁷⁰ Cissner, Labriola and Rempel, above n 109.

¹⁷¹ See for example Edward W. Gondolf, 'Mandatory Court Review and Batterer Program Compliance' (2000) 15(4) *Journal of Interpersonal Violence* 428-437.

Certainly, as mentioned in Part One, in Labriola and colleagues' meta review of SFVCs in the US, the authors found an important difference between the focus by some courts on perpetrator accountability as being limited to whether the perpetrator met the conditions of the court order to attend the program; and the focus by others who viewed accountability more in terms of whether the perpetrator had changed his attitudes and behaviour by the time of program completion. Of note, a higher proportion of the courts (85%) rated the improved ability to monitor perpetrators as a reason for mandating men to batterer intervention programs, rather than to provide treatment/rehabilitation (68%).¹⁷²

In terms of what this court-based monitoring entailed, Labriola and colleagues reported wide variation in how frequently perpetrators were brought back to court.¹⁷³ Meanwhile, the interaction between the judge and the offender was similarly variable in terms of frequency and objectives. The authors also found that court supervision and monitoring of defendants was greater in courts that:

- emphasised penalising defendants for non-compliance, and swift judicial actions;
- valued specialist judicial expertise;
- issued protection/restraining orders at the first court appearance, in addition to considering criminal charges; and
- received regular information from probation about the defendant.¹⁷⁴

In the Victorian context, a recent inquiry by the Sentencing Advisory Council into swift and certain responses to FV perpetrators reported that all key legal sector stakeholders consulted supported an increase in the use of judicial supervision for family violence perpetrators.¹⁷⁵ This approach was ultimately recommended.¹⁷⁶

Further, as Magistrate Spencer has outlined, where a perpetrator remains in the community, victim safety will be maximised where:

- The perpetrator perceives a greater risk of being detected;
- There are timely, consistent and firm consequences for non-compliance or re-offending;
- He remains motivated to engage in treatment; and
- He receives support.¹⁷⁷

Magistrate Spencer notes that judicial supervision, in combination with other forms of perpetrator intervention, may give effect to these objectives.

¹⁷² Labriola et al, above n 16.

¹⁷³ Around half brought perpetrators back once every three months most of the time, with others doing it less frequently. Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Sentencing Advisory Council, 'Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders' (2017)

<[https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-](https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Swift_Certain_Fair_Approaches_Sentencing_Family_Violence_Offenders_Report.pdf)

[documents/Swift_Certain_Fair_Approaches_Sentencing_Family_Violence_Offenders_Report.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Swift_Certain_Fair_Approaches_Sentencing_Family_Violence_Offenders_Report.pdf)>. See also Centre for Innovative Justice, 'Submission to Sentencing Advisory Council, Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders' (2017).

¹⁷⁶ Centre for Innovative Justice, 'Submission to Sentencing Advisory Council, Swift, Certain and Fair Approaches to Sentencing Family Violence Offenders', above n 175.

¹⁷⁷ Spencer, above n 14.

This suggests, of course, that judicial monitoring can be about more than encouraging compliance through a punitive approach. Along these lines, King and Batagol have proposed a framework of judicial strategies that can be used in the context of judicial supervision to promote effective engagement with perpetrators. These strategies (summarised at some length here) include:

- *Giving perpetrators choice*: the option of participating in a program should be put to the perpetrator as a choice, notwithstanding that the alternative (which may be a term of immediate imprisonment) may be such that the degree of real choice is quite limited. The perpetrator's input should be sought on bail or intervention order conditions, even if the judicial officer ultimately does not make the order in the terms the perpetrator wants.
- *Engagement with the victim*: the judicial officer must acknowledge the full extent of the violence and its effect on the victim. The judicial officer should seek the victim's views about important decisions such as sentencing and bail conditions.
- *Emphasis of goals and strategies*: the judicial officer can play a role in prompting the perpetrator to develop his own treatment goals. This can lead to the perpetrator tapping into his own internal sources of motivation.
- *Developing a good relationship*: judicial officers should demonstrate active listening, sensitivity and empathy (where appropriate), and should speak clearly. They should use appropriate body language and treat perpetrators with respect.
- *Acknowledging the whole person*: the judicial officer must condemn the violent behaviour but not the person. Judicial officers should act in a way that conveys to the perpetrator that they believe he has capacity to change. However, this must be applied in combination with an ongoing focus on the victim's safety. Signs of danger or escalating risk must not be ignored, and a perpetrator's statements about his own behaviour should not be automatically accepted.
- *Positive use of review hearings*: where judicial monitoring is used, review hearings should be used to engage the perpetrator constructively, and encourage him to achieve his goals, not simply as an opportunity to check up on him.¹⁷⁸

The last strategy mentioned above raises complex issues. Certainly a primary benefit of legal system interventions with perpetrators is their potential to keep perpetrators in view, to monitor their behaviour and to engage in ongoing risk assessment. In this way, courts can be an important strand in a 'web of accountability',¹⁷⁹ along with service systems and informal networks of families and communities.¹⁸⁰

This means that an important part of a hearing in which a judicial officer reviews a perpetrator's progress *is* the fact that this provides an opportunity for the court to monitor and 'check up' on him. As suggested earlier, however, this opportunity can be used to maximum effect if the monitoring element of the interaction is not its *only* dimension. King and Batagol's interpretation is that the inconsistent study findings regarding judicial supervision of FV perpetrators may be explained by discrepancies in the quality of the interactions between judicial officers and perpetrators. They suggest that it is not so much the fact of judicial supervision *occurring* that can make the difference, but rather whether the judicial officer uses supervision as an opportunity to engage the perpetrator in an effective way.

¹⁷⁸ King and Batagol, above n 159.

¹⁷⁹ Joanie Smith, *Experiences of consequences, accountability and responsibility by men for their violence against women and children* (PhD dissertation Thesis, University of Melbourne, 2010).

¹⁸⁰ Spencer, above n 14.

Echoing the reflections in the NZ context earlier, these authors comment that some judicial approaches can be:

...counter-productive, hindering offender motivation and retarding the effectiveness of mandated court programs. Thus, judging techniques including those that convey the impression that perpetrators are dangerous people that have to be watched and coerced into compliance, that do not involve them in decision-making but instead order them into particular programs and that confront them in open court about their cognitive distortions and the power to reinforce negative self-concept and resistance to change and lower self-efficacy. It may be asked whether this form of judging hinders perpetrator treatment outcomes.¹⁸¹

King and Batagol argue that a better approach is for judicial officers to engage with defendants; see them as whole human beings with strengths, weaknesses and solutions; actively involve them in decision-making directed at promoting their rehabilitation; take an active interest in and support their progress; and, as far as possible, use techniques that promote them developing a solution in the event that a problem arises.

Certainly, this would seem to be the approach employed in the Yukon Domestic Violence Treatment Options court, in which perpetrators are brought back before the court as frequently as once a fortnight. During this attendance, perpetrators have contact with a wide range of services and the judge, all of whom try to enforce the message that they are supportive of his efforts to change and improve his life.¹⁸² As other research has indicated, the interaction with a justice system intervention is often the first time that many perpetrators have experienced this kind of active interest in their wellbeing.¹⁸³

Conclusion – Part Two

In summary, procedural justice and therapeutic jurisprudence literature suggests that, where a court makes an order that requires a perpetrator to attend a MBCP, the court can create conditions that maximise the perpetrator's likelihood of compliance and meaningful engagement by:

- Treating the perpetrator with dignity and respect;
- Giving the perpetrator the opportunity to be heard;
- Where the perpetrator is Aboriginal, including Elders and Respected Community Members in the legal process, particularly sentencing;
- Building rapport through the use of judicial supervision hearings; and
- Using judicial supervision hearings not just to monitor the perpetrator (although this is an important dimension) but to engage him actively and seek to build his motivation.

The aim of these strategies is, of course, to improve victim safety by contributing to perpetrator accountability.¹⁸⁴ These strategies should therefore not ignore the practical danger that courts may inadvertently collude with perpetrators in an attempt to build rapport and engagement.¹⁸⁵ Equally, they should not displace the dual obligation of SFVCs to ensure that victims feel heard, believed and supported. Striking this balance can only be achieved when interventions operate on a solid foundation of contemporary, evidence-based understanding.

¹⁸¹ King and Batagol, above n 159.

¹⁸² Consultation with Judge Karen Ruddy, Whitehorse Court, Yukon, February 2018.

¹⁸³ Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing perpetrators of family violence into view', above n 4.

¹⁸⁴ Lucy Healey, Marie Connolly and Cathy Humphreys, 'A Collaborative Practice Framework for Child Protection and Specialist Domestic and Family Violence Services: Bridging the Research and Practice Divide' (2018) *Australian Social Work* 1-10.

¹⁸⁵ Centre for Innovative Justice, 'Pathways towards accountability: mapping the journeys of perpetrators of family violence: Report to Department of Premier and Cabinet', above n 4.

Part Three – Further components of best practice MBCP and SFVC interface

This Part of the review identifies literature concerning other components of a best practice SFVC/MBCP interface. These are stepped out in terms of the numerous opportunities that arise for courts and MBCP workers alike to apply lessons from the relevant literature concerning the complexity of perpetrator interventions and are especially relevant to the development of a best practice Counselling Order program.

Active/warm referrals and other forms of early perpetrator engagement

A significant body of research indicates that warm/active referrals are essential in terms of increasing the likelihood that clients of any service will participate in the service.¹⁸⁶ 'Active' or 'warm' referrals involve a referring agency doing more than simply handing a client or service user a telephone number, and instead sitting down to telephone the service with them or, in some cases, attending an intake appointment with the client.¹⁸⁷

The need for 'hot or warm referrals' was noted by Brown and Hampson in their evaluation of MBCPs provided by LifeWorks in Victoria.¹⁸⁸ Program participants involved in this research reported difficulty locating the relevant service, with court referrals generally limited to provision of contact details for MBCP providers.¹⁸⁹ Given the concern indicated by Scott and colleagues that the fast streaming (and presumably active referrals) of low risk offenders into MBCP equivalents was not matched in the higher risk streams, this time lapse in referral uptake becomes of additional concern.¹⁹⁰

Meanwhile, strengths of a number of specialist jurisdictions canvassed in the consultations included mechanisms which allowed for supported referral uptake from perpetrators directed to attend an MBCP. This included the Senior Case Manager who is present at court each FV list day in South Australia. The CIJ heard that, once a Magistrate refers a perpetrator to a program, the Senior Case Manager then sits with the perpetrator to explain the program and to encourage him to make contact with it.

Assessments – Eligibility

For a referral to be made, of course, an assessment needs to occur regarding whether this referral is appropriate. Across the literature, it appears that this practice is adopted somewhat unevenly, as was also reflected in many of the consultations. For example, in Labriola and colleagues' national audit of practice, it appeared that approximately half of the US SFVCs were not conducting any assessments of perpetrators being referred for programs.

Where assessments *were* used to stream perpetrators into appropriate program responses, there was a split between these being conducted by court staff, as opposed to probation or batterer intervention program intake workers.¹⁹¹ The minority of these assessments were geared toward risk assessments of lethality (12%).¹⁹²

Meanwhile, limited literature explores the merits of various eligibility and suitability criteria for perpetrators referred, or who self-refer, to MBCPs. In the UK, the peak body for the DFV sector, Respect, has suggested that men engaged in criminal court proceedings regarding their use of FV at the time of referral should not be considered eligible for programs.¹⁹³

¹⁸⁶ Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing perpetrators of family violence into view', above n 4.

¹⁸⁷ Ibid.

¹⁸⁸ Thea Brown and Ralph Hampson, 'An Evaluation of Interventions with Domestic Violence Perpetrators' (2009) <<https://www.violencefreefamilies.org.au/web/wp-content/uploads/2015/09/ResearchReportWeb.pdf>>.

¹⁸⁹ Ibid.

¹⁹⁰ Scott et al, above n 94.

¹⁹¹ Labriola et al, above n 16.

¹⁹² Ibid 54.

¹⁹³ Consultation with Neil Blacklock, UK Respect, February 2018.

The thinking behind this is that participation when criminal court proceedings are occurring could be detrimental, as the perpetrator might be very hesitant to contribute in a way that would incriminate himself. This wariness does not seem to be shared by Australian funders or providers. Research also demonstrates that the first few months after arrest is often a relatively high-risk time for repeat offending. This signals the importance of keeping a perpetrator within view, at least from a risk assessment and management perspective.¹⁹⁴

Other issues include questions over whether perpetrators with co-occurring alcohol abuse should be excluded from referrals. Certainly, international research indicates that alcohol abuse is prevalent amongst perpetrators of FV.¹⁹⁵ Recent research also suggests that perpetrators with alcohol abuse problems who are *not* excluded from MBCPs see a concomitant improvement in their alcohol abuse problems on completion of a MBCP.¹⁹⁶ A clear correlation does not appear to occur the other way, however, in relation to FV programs initiated within a health setting.¹⁹⁷

In consultations the CIJ heard that perpetrators in NZ cannot be mandated to participate in concurrent treatment for any other issue which was perceived as a barrier to effective intervention.

The CIJ heard that legislative amendments were currently in development which would allow a judge to be guided by a highly specialised Risk and Need Assessment to inform judicial decisions about which referral options were appropriate.¹⁹⁸

Assessments – Suitability

Of course, not all men who initially appear eligible for referral by a court to an MBCP will actually be *suitable* to participate in the program. For example, in a number of consultations, the CIJ heard that Magistrates refer a sizeable number of perpetrators to an MBCP who are subsequently assessed as unsuitable. This was largely because of perpetrators indicating absolutely *no* motivation to participate, or had co-occurring issues which would prevent them from participating effectively and which the MBCP provider was not funded to address.¹⁹⁹

In most Australian jurisdictions, no further mechanism exists once a perpetrator is assessed as unsuitable for participation, bar a Victorian MBCP provider seeking a revocation of a Counselling Order. By contrast, the NZ model provides that, if an assessment by a program provider deems the perpetrator as unsuitable to participate in the program, the provider notifies the court Registrar, who then brings the matter to the attention of the Judge. The Judge can then discharge the original order to attend the non-violence program and make new directions that depend on the circumstances. This can include delaying the perpetrator's attendance at a non-violence program to address the other issues that currently make him unsuitable for the program.²⁰⁰ However, the CIJ heard that it was rare for a perpetrator to be assessed as unsuitable, given the scheme's focus on keeping the perpetrator within view through the intervention, rather than achieving a 'quick fix'.²⁰¹

¹⁹⁴ Centre for Innovative Justice, 'Pathways towards accountability: mapping the journeys of perpetrators of family violence: Report to Department of Premier and Cabinet', above n 4.

¹⁹⁵ Heather M. Foran and K. Daniel O'Leary, 'Alcohol and intimate partner violence: A meta-analytic review' (2008) 28 *Clinical Psychology Review* 1222–1234.

¹⁹⁶ Marisol Lila, Enrique Gracia and Alba Catalá-Miñana, 'More Likely to Dropout, but What if They Don't? Partner Violence Offenders With Alcohol Abuse Problems Completing Batterer Intervention Programs' (2017) Online release ahead of publication *Journal of Interpersonal Violence*; Fleur L. Kraanen et al, 'The comparative effectiveness of Integrated treatment for Substance abuse and Partner violence (I-StoP) and substance abuse treatment alone: a randomized controlled trial' (2013) 13 *BMC Psychiatry* 189–189; L. W. Bennett, 'Substance abuse by men in partner abuse intervention programs: current issues and promising trends' (2008) 23(2) *Violence Vict* 236–248; Gregory Stuart, L., 'Improving Violence Intervention Outcomes by Integrating Alcohol Treatment' (2005) 20(4) *Journal of Interpersonal Violence* 388–393.

¹⁹⁷ C. A. Crane, C. I. Eckhardt and R. C. Schlauch, 'Motivational enhancement mitigates the effects of problematic alcohol use on treatment compliance among partner violent offenders: Results of a randomized clinical trial' (2015) 83(4) *Journal of Consulting and Clinical Psychology* 689–695; Larry Bennett and Oliver J. Williams, 'Substance Abuse and Men Who Batter: Issues in Theory and Practice' (2003) 9(5) *Violence Against Women* 558–575.

¹⁹⁸ Consultations with NZ Ministry of Justice, February 2018.

¹⁹⁹ In NZ, however, perpetrators with complex needs and/or who might be difficult to engage are not necessarily deemed unsuitable, as the focus is on providing additional scrutiny through the intervention, rather than expecting the perpetrator to be 'fixed'. Consultation with New Zealand Ministry of Justice, February 2018.

²⁰⁰ Consultation with NZ Ministry of Justice, February 2018.

²⁰¹ *Ibid.*

These conflicting practices suggest that suitability assessments and responsive processes are vital, particularly as issues may be picked up by an MBCP during intake assessment which were not evident to the court. Further, higher levels of risk may become apparent during participation in a program. As with some of the factors causing ineligibility, it is possible for a perpetrator to be unsuitable for the program at one point in time and suitable at another - for example if he becomes more willing to participate.²⁰²

Australia's only contemporary practice guide for MBCP work, *Towards Safe Families*, contains a tool outlining 19 indicators suggestive of poor engagement.²⁰³ Low motivation to change or even to participate in the program are generally not seen as sufficient reasons to deem an eligible referral as unsuitable.

As *Towards Safe Families* reports:

Historically, there has been a strong view among men's behaviour change professionals that men should not be accepted into an MBCP unless they appear at least somewhat committed to embark on a change process. In recent years, this has been countered with the view that:

- men who are less motivated might pose higher risks to their family members;
- the domestic and family violence service system has a responsibility to offer all men an intervention as part of working towards the safety and human rights of those affected by their violence;
- if men are not admitted into programs, their partners miss out on opportunities for support and a valuable opportunity to monitor and manage men's risk is lost.

Furthermore, the practice guide notes that professionals now recognise that many men - even those who appear relatively motivated - have substantial blocks to being committed to men's behaviour change work. Indeed, very few start the work from a position of high motivation.²⁰⁴

In the initial stage of court-referred engagement, research suggests that most participants are likely to be resistant to engagement and accountability and are likely to employ denial and minimisation tactics.²⁰⁵ Evidence also suggests that only a very small proportion of men will actually self-refer through their own free will.²⁰⁶ In fact, the CIJ's own recent qualitative research with perpetrators also documented resistance to mandated attendance: men who were court-mandated initially insisted at the outset of the research discussions that it was their decision to participate, presumably as a way (even unconsciously) of regaining some sense of control over being at the program.²⁰⁷

Towards Safe Families similarly explains that most perpetrators will be defensive at the outset of a program, denying or minimising their behaviour. However, they may still be able to identify *some* benefit in participating. *Towards Safe Families* therefore recommends that it is preferable to consider men as ineligible *only* if they appear to have practically *no* motivation for doing the work at all. Individual sessions may instead be preferable beforehand so as to explore the possibility of them becoming open to participation.

²⁰² Erica Bowen and Elizabeth Gilchrist, 'Predicting dropout of court-mandated treatment in a British sample of domestic violence offenders' (2006) 12(5) *Psychology, Crime & Law* 573-587; Lisa M. Jewell and J. Stephen Wormith, 'Variables Associated With Attrition From Domestic Violence Treatment Programs Targeting Male Batterers: A Meta-Analysis' (2010) 37(10) *Criminal Justice and Behavior* 1086-1113.

²⁰³ 'Towards Safe Families: A practice guide for men's domestic violence behaviour change programs', above n 69.

²⁰⁴ *Ibid.* 126-129.

²⁰⁵ Andrew Day et al, 'Programs for Men who Perpetrate Domestic Violence: An Examination of the Issues Underlying the Effectiveness of Intervention Programs' (2009) 24(3) *Journal of Family Violence* 203-212, 207.

²⁰⁶ Nicky Stanley et al, 'Men's talk: Research to inform Hull's social marketing initiative on domestic violence' (2009) <http://clock.uclan.ac.uk/2028/1/Men's_Talk_full_report_pdf.pdf>.

²⁰⁷ Rodney Vlasis and Elena Campbell, 'Bringing Pathways Towards Accountability Together' (forthcoming).

The CIJ heard repeatedly in consultations that the capacity to conduct front-end 'readiness' work was a big need across perpetrator programs. Similarly, Scott and Crooks observe:

Program funding models ... need to reflect men's resistance by more adequately funding the front-end work necessary to engage clients. [M]any unmotivated or resistant clients require multiple starts (or intakes) into a program before they can be engaged successfully. If resistance is conceptualised as a point along the change continuum, it can be reasonably argued that each attempt to start intervention is a small step toward change, rather than a complete failure.²⁰⁸

To that end, of course, risk is also a vital element to suitability assessments, though not necessarily with a view to excluding a man who poses a relatively high risk. Akin to the NZ approach reported in consultations, *Towards Safe Families* urges that a man who would otherwise be considered unsuitable should still be offered a place if the additional scrutiny would enable his behaviour to be monitored, and if his participation would enable his partner and children access to the program's associated services.²⁰⁹

However, risk can vary over time. This includes spikes in risk escalated by events such as the imposition of an Intervention Order or an upcoming family law hearing and can result in a perpetrator who generally poses a moderate threat entering into a higher risk category for a certain interval.²¹⁰ This may mean that MBCPs need to manage perpetrators who, for (sometimes lengthy) periods of time, pose a very serious threat to family members. Men who pose a sustained, high risk to multiple partners over a period of many years, however, are generally not suitable for community-based MBCPs.²¹¹

Australian jurisdictions are several steps away from developing the orientation, capacity, processes and tools to stream perpetrators into different categories of risk.²¹² In this context, the development and trialing of tools in overseas jurisdictions such as the Priority Perpetrator Identification tool in the UK²¹³ and the Domestic Violence Risk and Needs Assessment in Colorado,²¹⁴ holds some potential for Australian jurisdictions in this respect.

Little literature exists concerning best practice regarding MBCP provider responsibilities where a man has been deemed unsuitable - either initially or during the course of participation in a program. *Towards Safe Families* explains, however:

If a man is assessed as ineligible or unsuitable, the partner support worker must contact his (ex)partner to inform her of this, assist with safety planning, ensure she has access to support and information, and address needs related to her own or her children's wellbeing.

If the man was actively or formally referred, a report should be sent to the referrer outlining the reasons why the man is ineligible or not suitable for the program, and that reports information about the risk that the man poses to family members, discerned through the intake and comprehensive assessment process.²¹⁵

The question in this case, of course, is what a referrer does as a result of this information.

²⁰⁸ Katreena L. Scott and Claire V. Crooks, 'Intervention for Abusive Fathers: Promising Practices in Court and Community Responses' (2006) 57(3) *Juvenile and Family Court Journal* 29-44, 37.

²⁰⁹ 'Towards Safe Families: A practice guide for men's domestic violence behaviour change programs', above n 69, 125.

²¹⁰ Jeff L. Edleson, 'Promising practices with men who batter: report to King County Domestic Violence Council' (2008) <<http://citeseerx.ist.psu.edu/viewdoc/download?rep=rep1&type=pdf&doi=10.1.1.208.6818>>.

²¹¹ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, above n 17; Michael Salter, 'Managing Recidivism amongst High Risk Violent Men' (2012) (Issues Paper 23).

²¹² Rodney Vlasis and Elena Campbell, *Dimensions of family violence perpetrator intervention systems* (Centre for Innovative Justice, RMIT University, forthcoming).

²¹³ Robinson and Clancy, above n 90.

²¹⁴ Colorado Domestic Violence Offender Management Board, above n 119.

²¹⁵ 'Towards Safe Families: A practice guide for men's domestic violence behaviour change programs', above n 69, 125.

Monitoring by MBCP providers

In addition to being able to respond to information about a participant's suitability, a crucial goal of both MBCP provider and court monitoring of program participants is to respond to dynamic risk factors. Scott and Crooks suggest that, during engagement with a program, group facilitators may be best placed to conduct ongoing risk assessments, tailor support, and to communicate risks to workers or agencies supporting partners/families/children.²¹⁶ Given evidence that judicial monitoring and 'swift, certain' consequences for non-compliance can improve the results of MBCPs,²¹⁷ MBCP monitoring of risk should be linked to a judicial notification system that can trigger recall of a participant and judicial scrutiny of perpetrators' participation in the program and compliance with protective court orders.²¹⁸

To this end the vast majority of Australia's approximately 110 MBCPs²¹⁹ employ what could be considered base-level monitoring processes, relative to what the industry ideally considers to be best practice. Most MBCP providers try to keep some track of each man's progress through the program via information sharing between partner contact workers²²⁰ and practitioners who work with the men. This is in addition to practitioners debriefing with each other at the end of groupwork sessions about the quality of each man's participation. Due to the multiple needs and goals of post-session debriefing, however, these discussions are necessarily brief, and often do not lead to any significant record-keeping.

A small minority of program providers use a tool to assist groupwork facilitators to monitor men on the basis of their participation in each groupwork session. *Towards Safe Families* provides an example of such tools, specifically:

- a session summary form used after each groupwork session, where each man's participation is rated according to several dimensions (responsibility taking; interactions with others in the group and the facilitators; depth of participation; other-centredness; conceptualisation and understanding; and application) with space to add any pertinent qualitative information.
- a participant review tool that for each man charts their ratings across session summary forms and provides fields to summarise other relevant information pertaining to the man's behaviour, risk that he poses and dynamic risk factors / circumstances in his life related to risk.²²¹

Conducting risk review meetings involving the whole MBCP practitioner team (including the partner contact worker) on a regular basis is also considered to be industry best practice in terms of monitoring men and risk. During these meetings, men's practitioners and partner contact workers spend time discussing each participant - pooling together any available information relevant to his progress through the program, as well as to the risk that he poses to his family.

Wider processes to monitor men are conducted very infrequently by Australian community-based MBCP providers. In an exception, MBCPs provided by the Domestic Violence Prevention Centre (DVPC) on the Gold Coast (the site of the Southport Specialist Family Violence Court pilot) involve case reviews jointly conducted by a man's probation officer and a MBCP practitioner. These jointly held case reviews can result in decisions, for example, that a man should repeat a groupwork module or even start the program again if it is clear that he has not been meaningfully participating, or needs to take more time to reach his case goals. DVPC is extending this practice to involve joint case planning and review practices with child protection and family support services.²²²

²¹⁶ Scott and Crooks, above n 208.

²¹⁷ Labriola et al, above n 16. Also see Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, above n 17.

²¹⁸ By contrast, the NZ approach does not employ a therapeutic model, but regular reports from MBCP providers do inform a court's knowledge of a perpetrator's progress. The CJJ heard that, where an MBCP has lodged a first Failure to Comply notice, it is usually the Court Registrar who will contact the perpetrator to discuss any barriers to his participation, including in consultation with the MBCP.

²¹⁹ In terms of the number of sites or locations in which a MBCP is run.

²²⁰ Most Australian MBCP providers conduct partner contact work internally via a program practitioner who has this designated role; in general, these partner contact workers do not work directly with the men, though for some programs these roles are combined. The provision of partner contact by an external agency - for example, a specialist women's family violence service through a Memorandum of Understanding with the MBCP provider - occurs less often in Australia than in UK and US jurisdictions but is the preferred option by some providers.

²²¹ 'Towards Safe Families: A practice guide for men's domestic violence behaviour change programs', above n 69, 252 - 258

²²² Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing perpetrators of family violence into view', above n 4. A further example of this practice in Queensland is arising through the Walking With Dads program run by the Department of Communities, Child Safety and Disability Services, where child protection practitioners specialising in family violence perpetrator engagement are beginning to work closely with MBCP and Caring Dads program providers in joint case planning and case review.

Collaborative case reviews in a number of the specialist FV jurisdictions with whom the CIJ consulted also showed a push towards more effective and detailed monitoring. This includes the incorporation of information and views from the Family Violence Service in Western Australia which works with victims and can provide a more accurate account of the real risk that a perpetrator may pose.²²³

With a similar focus on risk, the NZ approach requires that MBCP providers deliver regular reports in relation to the perpetrator's attendance, but also to his risk. This includes filing a Notice of Safety Concern where it is deemed that a perpetrator's risk is escalating (or has not reduced by the end of his participation in a program).²²⁴

Referred to above, the Colorado approach to FV perpetrator program provision employs three processes to monitor men's participation. Like the Caledonian System model in Scotland,²²⁵ the approach is based on a strong focus on case planning for each perpetrator. Accordingly, these individualised case plans drive decisions about what needs to be monitored with respect to each perpetrator.

Second, monitoring is conducted by the program provider, the victim's advocate and the probation officer regularly sharing information – including periodic case reviews – to score and re/score risk and need issues using the purpose-built tool, the Domestic Violence Risk and Needs Assessment. The involvement of all three services is seen as critical.

Third, monitoring is partly based on making professional judgements of the degree to which the perpetrator has achieved what the model describes as (16) core competencies.²²⁶ These refer to specific awareness, attitudinal, skills-based and behavioural proximal changes that are hypothesised to be prerequisites for the perpetrator to achieve significant and sustainable behaviour change. While there is no structured decision-making tool to guide judgments about the man's progress in relation to these competencies, joint decision-making and the pooling of available information across the three services is a vital part of this process.

A more limited version of multi-agency monitoring is employed in the Massachusetts system. Offender participants in the EMERGE abuser education program who are identified as at high risk of injuring or murdering their partners/ex-partners are the subject of monthly meetings between relevant parties including group facilitators, victim advocates, police, prosecutors and probation officers.²²⁷

Reporting progress and completion

Scott and Crooks argue that critical feedback from program providers to the court is needed to remedy the risk that stakeholders will assume that program completion is equivalent to increased safety for affected family members.²²⁸ This was a common theme arising from the CIJ's consultations, and highly relevant to the context of this literature review. Drawing on the example of the Caring Dads program, Scott and Crooks describe an evaluative final report that is made available to all services engaged with a family.²²⁹ Coordinated service responses and information exchanges are also facilitated through multi-organisational conferences conducted at the points of intake and exit of the program.²³⁰

Some Australian referrers require, as part of contractual arrangements, that a MBCP provider compiles a report at the end of a man's participation regarding the 'progress' he has made. While such reporting can potentially assist referrers in their decision-making, MBCP providers have generally been very hesitant to provide detailed reports.

²²³ Consultation with Teresa Tagliaferri, Acting Director, Court Counselling and Support Services, Department of Attorney General WA, February 2018.

²²⁴ Consultations with NZ Ministry of Justice, February 2018.

²²⁵ Macrae, above n 92.

²²⁶ Hansen et al, above n 118.

²²⁷ Minns, above n 38.

²²⁸ Scott and Crooks, above n 208.

²²⁹ Ibid 35.

²³⁰ Ibid.

Indeed, previous No To Violence minimum standards (that have recently been reviewed) prohibited providers from reporting more than a list of a man's dates attending the program.²³¹ Reflecting upon his experience managing MBCPs, Daniel Shephard-Bayly writes:

[W]e are often asked to comment on how much 'progress' men have made in the group. Our assessments may in turn inform important decisions such as: where the offender resides; whether contact with the partner or children is permitted; and sentencing outcomes. However, our experience suggests that using the notion of men's 'progress' as the basis of these decisions can be problematic and potentially dangerous... [given that] the starting point from which a man may make any 'progress' is often a more extensive use of violence and abuse than is apparent at face value. ...

[I]n the absence of women and/or children's feedback, any reporting of 'progress' focused only upon a man's favourable attendance, group interaction, understanding and application of the MSVG concepts is vastly inadequate. Such reporting cannot claim to reflect levels or occurrence of violence. Even where feedback from partners is available, including this information within formal reports without further endangering victims may be extremely difficult.²³²

Shephard-Bayly also notes that, while a perpetrator is attending an MBCP he is also likely to be subject to monitoring by more than one service and be facing a range of potential external consequences. As a result, he may be on his 'best behaviour'. While this is arguably a sign that integrated responses are effective, it is also inappropriate to assume that a perpetrator's 'progress' in that limited period of time indicates genuine change or can be ascribed to just one element (such as to his participation in the MBCP). This also means that it is important to avoid the conclusion that an MBCP has enabled a man to make progress and that other monitoring and intervention measures can be wound back or withdrawn.

Instead, Shephard-Bayly emphasises the value of reporting on the risk, at the point of program completion, that the man poses to those experiencing his violence:

One of our main responses has been to ensure that the principles of safety and accountability are prioritised within 'progress' reports for men attending the [program]. These principles have shaped a number of practices. Men's reports are qualified with clear statements if and when men's demonstrated behaviour within intervention sessions is not correlated with actual behaviour change outside of the group. Where available and when safe, the feedback from men's partners, former partners or children is included within the report. Men's self-disclosure around additional, unreported acts of violence and/or abuse and patterns of power and control are included.²³³

Responding to risk 'vs' providing a program

As with conceptualisations of 'progress', Vlasis and colleagues invite MBCP providers to consider the difference between delivering a 'program' and delivering a flexible response to risk:²³⁴

... A drawback of centring the term 'program' is that ...program completion becomes the way in which outcomes are defined, centred on the question 'did he complete the program?' ... Importantly, thinking about responding to risk as the starting point, rather than solely through the lens of providing a program, can help to open a space for more flexible collaboration with partner agencies. Instead of viewing child protection, family support services, corrections, courts, police, mental health, AOD, primary health and problem gambling services solely as referrers to a program, they can more generally be considered as collaborators in responding to risk. How MBCP providers assist them in their work becomes equally important to how they can actively refer and support perpetrator participation in MBCPs.²³⁵

²³¹ Reporting back to referrers at the end of a man's participation in the program is different from information sharing with referrers on matters of risk during the man's participation in the program. MBCP providers have generally not been hesitant to do the latter.

²³² Daniel Shephard-Bayly, 'Working with men who use violence: the problem of reporting "progress"' (2010) 39 *Australian Domestic and Family Violence Clearinghouse Newsletter*.

²³³ *Ibid.*

²³⁴ Vlasis et al, above n 1.

²³⁵ *Ibid.*

These authors point to growing evidence that men who drop out of a perpetrator program are at an increased risk of using FV than those who did not start the program in the first place.²³⁶ With attrition rates in MBCPs relatively high, the authors suggest this as a reason to direct *more* resources to risk management strategies with men who discontinue or are at risk of discontinuing with the program, and to allocate them and their families at least as much attention in case planning and review than those who continue with the program.²³⁷ This is particularly relevant to court-integrated referrers who might be the only ones with the leverage to respond to this discontinuation, but who may not currently be provided with this vital information.

The combined role of courts and MBCPs in case management

In the US context a significant amount of case management work, including victim engagement and support, is delegated to probation officers.²³⁸ In the Australian criminal context, case management is also provided by Community Corrections, though focusing primarily on criminogenic needs. This is an organisational link that is missing in protection order referrals in the civil context in Australia or elsewhere, with little literature addressing this gap.

In the criminal context, however, Magistrate Pauline Spencer has discussed the value of courts taking an active role in case management of offenders. This relates not so much to case management of offenders' co-occurring issues, but case management in terms of bringing the offender back to court and *holding service providers to account* in terms of the commitments *they* have made to the court about the work they will conduct with offenders. This includes:

- active case management to minimise delays²³⁹
- making matters part-heard and conducting 'case-management' hearings to enable continuity and judicial case management;²⁴⁰
- judicial supervision for offenders remaining in the community, achievable through bail conditions/monitoring, deferral of sentence and judicial monitoring as a condition of a Community Corrections Order.²⁴¹

Certainly, a strength of many of the jurisdictions consulted for the purposes of this review was the collaborative case reviews conducted by multi-disciplinary teams. This was a particular feature of the more therapeutic jurisprudential responses, where it was acknowledged that perpetrators would require a range of supports to move away from using FV. The case management team in Barndimalgu, for example, analyses the perpetrator's progress before discussing this with the perpetrator at fortnightly attendances.²⁴²

More broadly, the regular meetings of the Operational Working Group in the Southport SFVC was a promising example of how integrated practice groups can work to identify barriers to information sharing and blockages to effective collaboration. The CIJ heard that this group meets regularly to identify operational changes; develop and refine consistent messaging; share practice frameworks and philosophies; and to open pathways for information to be shared more readily in terms of individual cases.

²³⁶ Hansen et al, above n 118; Erica Bowen, *The Rehabilitation of Partner-Violent Men* (Wiley-Blackwell, 2011); Desiree A. Cuevas and Ngoc H. Bui, 'Social Factors Affecting the Completion of a Batterer Intervention Program' (2016) 31(1) *Journal of Family Violence* 95-107; Mary McMurran and Eleni Theodosi, 'Is treatment non-completion associated with increased reconviction over no treatment?' (2007) 13(4) *Psychology, Crime & Law* 333-343.

²³⁷ Vlasis et al, above n 1. Similarly, Smith, Humphreys and Laming found that as men progressed through the MBCP, some women felt safer to increasingly draw a line in the sand about their partner's behaviour, and to become more vocal in trying to hold him to account to his promises to change. This was particularly the case when men were approaching completion of the program. This can in turn become a time of increased risk: Humphreys, Laming and Diemer, above n 9. See also Kristin Diemer et al, 'Researching collaborative processes in domestic violence perpetrator programs: Benchmarking for situation improvement' (2013) 15(1) *Journal of Social Work* 65-86; Smith, above n 179.

²³⁸ Labriola et al, above n 16.

²³⁹ Spencer, above n 14.

²⁴⁰ *Ibid* 227.

²⁴¹ *Ibid*.

²⁴² Consultation with Steve Ford, Regional Manager Murchison, Geraldton Court, WA Department of Justice.

In terms of case management of perpetrators by MBCPs, calls both within the sector and by external stakeholders have argued for MBCP providers to have sufficient resources to conduct extended one-to-one work with men with complex needs to strengthen their stability, capacity and resilience to participate in groupwork.²⁴³ The CIJ is aware that resources are being allocated in the Victorian context for this to be piloted.

Commentators suggest that providing additional one-to-one sessions in this context would be part of increasing program provider ability to tailor their interventions and to increase the 'dosage' and intensity of the intervention to higher-harm perpetrators.²⁴⁴ Industry opinion suggests that reasons for perpetrators to be offered supplementary individual counselling include: case planning, goal setting, motivational enhancement, and safety and accountability planning.²⁴⁵ Participants with mild to moderate cognitive impairment may also benefit from additional one-on-one support.

Similarly, participants who present with significant histories of trauma may need individualised support to build their capacity to engage with program content. Researchers stress that it is important that this therapeutic engagement does not detract from the MBCP goals of accountability.²⁴⁶ Awareness is also developing that participants have diverse learning styles and benefit from the inclusion of visual aids, audio-visual teaching content and other activities. This acknowledges that the fundamental MBCP component is often conversational and dialogical groupwork – arguably something for which a significant proportion of MBCP participants are not sufficiently equipped.²⁴⁷

Tailoring and sequencing interventions

As already discussed, recent literature argues for perpetrator intervention systems to assess the dynamic risk factors impacting on the degree of risk posed by a perpetrator to adult and child victims. These calls have also identified the need for this assessment to drive case-by-case decisions regarding what additional or alternative interventions might be required to MBCP participation.²⁴⁸

Limited literature, however, guides best practice on case planning, case management or service coordination decisions regarding the sequencing of interventions for FV perpetrators. There are no studies of which the CIJ is aware, for example, evaluating how outcomes might be affected by different sequencing decisions. For example, we might ask, 'under what circumstances and for which perpetrators might safer outcomes for adult and child victims be maximised by sequencing mental health or AOD interventions with the perpetrator *prior* to MBCP participation, as distinct from sequencing them in parallel with the program?'

That said, broader evidence concerning desistance with violent offenders shows that sequencing *does* matter, at least in terms of contributions to readiness.

²⁴³ Victorian Government, *Royal Commission into Family Violence* <<http://www.rcfv.com.au/Report-Recommendations>>; Vlasis et al, above n 1; Devon Polascheck, 'Responding to perpetrators of family violence' (2016) <<https://nzfvc.org.nz/sites/nzfvc.org.nz/files/NZFVC-issues-paper-11-responding-perpetrators.pdf>>.

²⁴⁴ Hansen et al, above n 118; Vlasis et al, above n 1.

²⁴⁵ Day, Chung and Vlasis, above n 8.

²⁴⁶ Macrae, above n 92; Scott Mills, 'Emotion-focused approaches in men's behaviour change work' (2013)(Spring) *Ending Men's Violence Against Women and Children: The No To Violence Journal*; Rosemary O'Malley, 'CollaborACTION' (2013)(Spring) *Ending Men's Violence Against Women and Children: The No To Violence Journal* 51-71.

²⁴⁷ Michael Cagney and Ken McMaster, 'Externalising the internalised 'abuser': Moving from 'education' to education and therapy' (2012).

²⁴⁸ Day, Chung and Vlasis, above n 8; Ken McMaster, 'The changing nature of family violence interventions' (2013) 10 *Te Awatea Review: The Journal of Te Awatea Violence Research Centre* 8-11; Radatz and Wright, above n 32; Victorian Government, above n 243.

Literature concerning the RNR and other assessment frameworks for sexual and serious violent offenders suggests that 'readiness' is a crucial but often ignored element of the 'responsivity' element of RNR.²⁴⁹ Drawing on this, the question for SFVCs then becomes the extent to which their intervention can assess and contribute to *readiness* for a perpetrator of FV. Vlasis and colleagues explain:

There has been increasing concern that DFV [domestic and family violence] perpetrator programs generally follow a "one size fits all" approach, in the sense that all perpetrators participating in any given program are provided with an almost identical intervention, usually structured around a single groupwork approach ... This has led to calls to tailor MBCP delivery to each perpetrator, based on variables such as the level of risk he poses to family members, his capacity to participate or get the most out of the program, concurrent problems such as substance abuse and mental health issues, and the degree and nature of his motivation to participate.²⁵⁰

These authors suggest that an assessment of individual perpetrators in relation to all these variables would enable appropriate interventions, or arrangement of interventions to be delivered. This includes the capacity to reclassify perpetrators into a higher level of risk where new information arises, as per the Colorado model described above. To this end, they argue that:

...Colorado's Domestic Violence Risk and Needs Assessment framework is not only a risk assessment instrument, but also a tool that helps program providers to identify and focus on factors in the perpetrator's lifestyle and behaviours (including outside his use of violence) that accentuate risk and, if not addressed, might limit his capacity to make changes in his violent behaviour through the program.²⁵¹

Some Australian and overseas MBCP minimum standards, practice guides and other documented sources of industry opinion have identified principles to assist with sequencing decisions.²⁵² These include:

- The need for decisions about sequencing to be made either by a fully specialised perpetrator intervention practitioner or service providing initial assessment; or by a partly specialised practitioner or service with consultation-liaison support provided by (or at least available from) a fully specialised service.
- Sequencing decisions to be informed by a case plan that is modified over time, depending on changing circumstances.
- The benefits of the perpetrator commencing MBCP work as soon as possible.
- A preference to run parallel interventions – that is, for the perpetrator to participate in an AOD, mental health or other service addressing identified dynamic risk factors in parallel with his participation in a MBCP, except when an issue or individual history would significantly interfere with his ability to attend or meaningfully participate.
- In situations where the perpetrator commences with an intervention to address a dynamic risk factor or criminogenic need, strategies to scaffold/bridge his subsequent participation into the MBCP, so that after the AOD or mental health intervention he does not disappear out of view of the system.²⁵³
- For high-risk, high-harm perpetrators, interventions that address a mental health, AOD or other issue impinging upon risk, delivered simultaneous to his participation in a MBCP, can help ensure sufficient intervention intensity, as part of combining individual session and group-work modalities.

²⁴⁹ Andrew Day et al, 'The Intensity and Timing of Sex Offender Treatment' (2017) epublication ahead of print *Sexual Abuse*; Andrew Day et al, 'Assessing Treatment Readiness in Violent Offenders' (2008) 24(4) *Journal of Interpersonal Violence* 618-635; Peter S. Hoymand and David N. Ford, 'Sequence and Timing of Three Community Interventions to Domestic Violence' (2009) 44(3-4) *American Journal of Community Psychology* 261-272.

²⁵⁰ Vlasis et al, above n 1.

²⁵¹ Ibid. (citations in the original omitted).

²⁵² 'Minimum standards for men's domestic violence behaviour change programs', (2012)

<[http://www.crimeprevention.nsw.gov.au/domesticviolence/Documents/Mini/dfv_behaviour_change_program_standards_april_2012%20\(1\).pdf](http://www.crimeprevention.nsw.gov.au/domesticviolence/Documents/Mini/dfv_behaviour_change_program_standards_april_2012%20(1).pdf)>; 'Men's Behaviour Change Minimum Standards', (2018) <<http://www.ntv.org.au/wp-content/uploads/2018/03/FINAL-MBCP-Minimum-Standards-1.pdf>>.

²⁵³ This might include, for example, the perpetrator's case manager arranging some early contact between the MBCP provider and the perpetrator, even some months before the perpetrator is formally assessed by the MBCP provider. It might also involve the case manager participating in a case review session with the AOD or mental health service, taking a united approach towards participation in a MBCP as a necessary next step.

- That MBCP providers should develop some workforce capability and capacity to address reasonably low- or moderate-level AOD, mental health or other issues that impinge upon risk without the need for referral to agencies that specialise in the issue. For example, when a perpetrator has had a recent but not current AOD issue, it can be important to work with the man regarding how to stay focused on his relapse prevention plan. MBCP providers should obtain secondary consultations from AOD or mental health providers to assist them to build capability and capacity to do so.

Rather than identifying various programs or case management strategies that target issues such as AOD or that more generally equip perpetrators with behaviour management strategies as *alternatives*, Vlasis and colleagues suggest that these ought to be understood as *complementary strategies* which form a spectrum of responses to the complex issue of FV.²⁵⁴

Though there is little or no literature concerning the inclusion of such fundamental case management needs as housing, as noted earlier, Labriola and colleagues found that the majority of SFVCs in the US referred perpetrators to substance abuse treatment in *addition* to a batterer intervention program, rather than as an alternative.²⁵⁵

Another issue identified as co-occurring with FV and potentially likely to escalate the risk of ongoing financial abuse of partners – even where physical abuse may appear to have ceased – is gambling.²⁵⁶ In fact, recent studies have indicated that approximately a third of ‘problem gamblers’ are also perpetrators of FV.²⁵⁷ Practice in relation to referrals by courts or MBCPs to appropriate gambling harm treatment, however, is only just developing.²⁵⁸

Meanwhile, the value of supplementary or additional treatment for mental health issues has not been clearly proven. Research conducted by Gondolf in 2009 did not find any positive correlations between mental health treatment and relevant FV indicators. However, this study was troubled by low compliance with referrals. It may be more likely to signal that simplified, integrated and supported referral processes are needed, rather than that supplementary treatment will not achieve the same goals within an integrated response.²⁵⁹

Other complementary interventions to be considered include incorporation of fathering components. Certainly, Barocas, Emery and Mills contrast the broadened statutory definition of ‘family violence’, as is the case in Victoria, with behaviour change programs that remain primarily concerned with partner-focused abuse (IPV).²⁶⁰ Barocas and colleagues’ concern around the need to differentiate and respond to the specific contours of abuse against children echoes a thread encountered in literature across jurisdictions.

²⁵⁴ Vlasis et al, above n 1.

²⁵⁵ Labriola et al, above n 16; Mark D. Thomas and Larry Bennett, ‘The Co-Occurrence of Substance Abuse and Domestic Violence: A Comparison of Dual-Problem Men in Substance Abuse Treatment and in a Court-Ordered Batterer Program’ (2009) 9(3) *Journal of Social Work Practice in the Addictions* 299-317.

²⁵⁶ Centre for Innovative Justice, ‘Compulsion, convergence or crime? Contact with the criminal justice system as a form of gambling harm’ (2017) <<https://www.rmit.edu.au/content/dam/rmit/documents/college-of-business/graduate-school-of-business-and-law/Gambling-Harm-Report.pdf>>.

²⁵⁷ Nicki Dowling et al, ‘Problem Gambling and Intimate Partner Violence: A Systematic Review and Meta-Analysis’ (2014) 17(1) *Trauma, Violence, & Abuse* 43-61.

²⁵⁸ Centre for Innovative Justice, ‘Compulsion, convergence or crime? Contact with the criminal justice system as a form of gambling harm’, above n 256.

²⁵⁹ Edward W. Gondolf, ‘Outcomes from Referring Batterer Program Participants to Mental Health Treatment’ (2009) 24(8) *Journal of Family Violence* 577.

²⁶⁰ Briana Barocas, Danielle Emery and Linda G. Mills, ‘Changing the Domestic Violence Narrative: Aligning Definitions and Standards’ (2016) 31(8) *Journal of Family Violence* 941-947.

Accordingly, one potential innovation might be to direct cases where children are particularly at risk²⁶¹ into specialised intervention streams that include a specialist DFV-informed fathering program such as 'Caring Dads.'²⁶² It is important to note, however, that Caring Dads and similar DFV-focused fathering programs again should not be seen as an alternative to MBCP work, and are not designed to address perpetrator patterns of coercive control and tactics of violence used against *adult* victims. Scott and Crooks argue:

Appropriate programs [MBCPs] will explicitly assert that men cannot be good fathers and abusive partners – that children's emotional security depends on a non-abusive relationship between their mother and father.²⁶³ While this is accepted and incorporated into most MBCP work with perpetrators, in Australia, Humphreys and Campo indicate that most MBCPs (with a few exceptions) do not include a strong, dedicated focus on fathering.²⁶⁴

Overall, the weight of literature points to the need for delivery of multiple interventions simultaneously, tailored and sequenced according to need, and with the capacity for flexibility along the way.

Case planning, goal setting and Safety and Accountability Plans

Further to effective case management of co-occurring issues, NZ based program developer and trainer Ken McMaster outlines the following questions as essential to the development of individualised case formulation in the context of group-based non-violence programs:

Who is this man and family/whanau (cultural and social considerations)? What place does abusive practice play in their lives? What are the barriers to change? What pathways can enhance change? What are the key factors that underpin and sustain pathways of abusive practice? What strategies can be suggested to minimise the barriers and establish new pathways to safety? Who do we need to involve to implement these strategies? How do we help the man and their family/whanau to implement the strategies?²⁶⁵

While case formulation for participation in groupwork is essential, recent literature also suggests that Safety and Accountability Plans for men upon exit from a program are perhaps the most effective way of identifying what 'success' might mean on a case-by-case basis, or at least a man's accountability to what he has committed to in this plan.²⁶⁶

Safety and Accountability planning involves the development of a plan for a participant's exit from a program which goes beyond case planning and formulation to identify the man's ongoing goals for how he is going to reduce the risk he poses to his family and work towards a violence free future. These plans are intended to be led by the man, with the support of the group facilitators, rather than practitioner-driven.

Day, Chung and Vlasis' forthcoming ANROWS publication highlights the value of safety and accountability planning throughout a perpetrator's participation in a MBCP as one of the most promising avenues to improve the quality and effectiveness of these programs.²⁶⁷ Safety and accountability plans also hold promise to assist with program evaluation efforts. This is because they have the potential to be reliably assessed against specific criteria, which can change over time in response to new understandings about risk. As the authors of this report suggest:

Safety and accountability planning focuses on promoting incremental changes in perpetrator patterns over time and across multiple interventions, based on what those most affected by his use of violence most need to see change in his attitudes and behaviours at particular points in time.²⁶⁸

²⁶¹ Katreena Scott, founder of the Caring Dads program, emphasises that in all situations where a family violence perpetrator engages in significant coercive controlling tactics against his (ex)partner, referral to a MBCP is the most appropriate first option rather than Caring Dads or a similar family violence informed parenting program, even if the children are also significantly affected. Caring Dads and similar programs should be prioritised as the first referral point only when the risk and cumulative harm to the children is significantly more pressing or urgent than addressing the perpetrator's violence towards the children's mother.

²⁶² Scott and Crooks, above n 208

²⁶³ Ibid.

²⁶⁴ Cathy Humphreys and Monica Campo, 'Fathers who use violence: Options for safe practice where there is ongoing contact with children' (2017) *CFCA Paper No. 43* <https://aifs.gov.au/cfca/sites/default/files/publication-documents/fatherswho_useviolence-final-v2_0.pdf>.

²⁶⁵ McMaster, above n 248.

²⁶⁶ Day, Chung and Vlasis, above n 8.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

As such, this research points to promising new directions in terms of developing tangible measures which can contribute to victim safety and respond to victim needs. The question then becomes what role court-integrated MBCPs may have for developing a Safety and Accountability Plan with the MBCP provider and perpetrator upon his completion of the program.

Practice frameworks

Very little research attempts to compare the usefulness or effectiveness of different frameworks and models for MBCP practice. The small amount of research that does exist suggests that the type of theoretical orientation or practice framework used is less important in terms of program outcomes than any variables related to program quality and program integrity.²⁶⁹ Further to this, Day and colleagues have argued that MBCPs are vulnerable, like any other kind of program, to 'drift' or 'degradation' in the absence of clear guidance for facilitators.²⁷⁰

Accordingly, it appears that the current 'muddling' of theories of change which is common across many Australian MBCP programs leads to genuine problems with program integrity.²⁷¹ As noted elsewhere, this is consistent with other research conducted by the SAFER Project at the University of Melbourne, in which researchers identified inconsistent approaches by a number of Victorian MBCPs, including the extent to which they were connected with the broader justice and service sectors.²⁷²

The evaluation experiences of Carson, Chung and Day in relation to three providers of MBCPs and associated partner support in the Queensland context indicate that program integrity cannot be guaranteed through contractual terms and reporting requirements. Although the three organisations that Carson and colleagues investigated were engaged with identical contracts, the researchers found significant variation in the delivery of the programs.²⁷³

They therefore concluded that better practice was a consequence of *organisational culture*. For example, where an organisation's culture supported commitment to victim support, workers were able to draw on additional resources and funding beyond the contract to support the provision of those services.²⁷⁴

While this is not necessarily a desirable organisational objective, it does highlight the motivating capacity of organisational culture and adherence to practice principles over contractual terms.

Workforce capacity is also key to successful implementation of a court-integrated referral program. This is because the quality of facilitation is a crucial element of effective MBCPs,²⁷⁵ while judicial officers and court employees play a key role in engagement and effective referral processes at court, as explored above. As Carson and colleagues have observed, the expectation that there is sector capacity to meet public tenders for services has not generally been borne out by experience in the community sector in Australia, due to a failure to invest in capacity building.²⁷⁶

Ensuring the development of a Counselling Order program that can mitigate 'program drift'; provide consistent training to court staff and MBCP providers; and cement solid foundations for collaboration should therefore be clear priorities for any best practice SFVC.

Diversity of perpetrators

As the RCFV recognised, FV is experienced in a wide diversity of ways. While FV is predominantly perpetrated by men, this is not always the case and, where it is, these men are not always homogenous. Understanding the diversity of experiences of those who use FV is therefore crucial in terms of developing, tailoring or sequencing an appropriate response; what to expect from that response; or in fact knowing when a particular response is simply not appropriate.

²⁶⁹ Ibid.; Scott et al, above n 94.

²⁷⁰ Day, Chung and Vlasis, above n

²⁷¹ Ibid. 206.

²⁷² Diemer et al, above n 237.

²⁷³ Ed Carson, Donna Chung and Andrew Day, 'Evaluating Contracted Domestic Violence Programs: Standardisation and Organisational Culture' (2009) 9(1) *Evaluation Journal of Australasia* 10-19, 17.

²⁷⁴ Ibid.

²⁷⁵ See for example Brown and Hampson, above n 188. Courtenay S. Silvergleid and Eric S. Mankowski, 'How Batterer Intervention Programs Work: Participant and Facilitator Accounts of Processes of Change' (2006) 21(1) *Journal of Interpersonal Violence* 139-159, 146.

²⁷⁶ Carson, Chung and Day, above n 273. See also Thea Brown et al, 'A Study of the Impact on Men and Their Partners In the Short Term & In The Long Term Of Attending Men's Behaviour Change Programs' (2016).

For example, an increasing body of literature points to the specificity of Aboriginal experiences and perspectives.²⁷⁷ Hovane and others have argued that mainstream feminist analyses of FV fail to account for the complexity of Aboriginal experiences. These experiences are distinguished by the ongoing effects of Aboriginal people's intergenerational trauma; as well as exposure to violence arising out of colonisation; their forcible displacement from traditional lands and culture and ongoing experience of racism, including disproportionate levels of criminalisation.²⁷⁸

The powerful analyses of Aboriginal authors and others working with Aboriginal communities demand that FV prevention programs for Aboriginal individuals and communities be grounded in Country-specific Aboriginal experiences, law and culture.²⁷⁹ This includes a focus on healing and on weaving together MBCP principles with approaches which challenge individualised or strictly gendered assumptions, as well as incorporating concepts of therapeutic justice into responses.²⁸⁰

This approach was reflected in the Barndimalgu and Yukon consultations, as these programs were very specifically designed to address the experience of First Nations people.²⁸¹ Because these approaches are so specific to community, some research projects and reports have overtly omitted discussion of Aboriginal experiences and programs dealing with FV.²⁸²

Challenging issues also arise in the context of CALD communities. An evolving body of research points to cultural imperatives; uncertain residency status; lack of culturally specific services; and discrimination by mainstream services as just some of the factors which compound the risk for FV victims from CALD communities.²⁸³

However, current ANROWS funded research to be published later in 2018 is also working on developing principles for interventions with refugee FV perpetrators.²⁸⁴ Consultations with the Chief Investigators of this project revealed the way in which concepts of a perpetrator's 'responsibility' (for his family's wellbeing and their safety) are far more useful in terms of engaging a perpetrator than concepts of 'accountability' which seemed imposed by external forces. Early findings from this research also remind us of the importance of acknowledging previous experiences of trauma; of involving community in the development of programs; and emphasising education and prevention, as well as response.²⁸⁵

Efforts in the Victorian context to establish CALD specific MBCPs, including two delivered in language, echo the need for considerations of trauma; of education about the Australian legal landscape; as well as the challenges compounded by the limited availability of practitioners with such a defined and expert skillset.²⁸⁶

Meanwhile, limited published peer-reviewed or grey literature exists on the experiences of FV perpetrators from LGBTIQ communities specifically. A 2015 study of Victorian MBCP providers, however, indicated that homophobic and transphobic attitudes are frequently exhibited by mainstream MBCP participants.²⁸⁷

²⁷⁷ Victoria Hovane, 'Improving outcomes through a shared understanding of family violence in Aboriginal communities: Towards an Aboriginal theory of Family Violence' (2015) 37(5) *InPsych: The Bulletin of the Australian Psychological Society Ltd* 1-5; Victoria Hovane, 'Our Story to tell: Aboriginal perspectives on domestic and family violence' (2015)(1) *ANROWS Footprints* 13-17; Blagg et al, above n 8; Judy Putt, Robyn Holder and Cath O'Leary, 'Women's specialist domestic and family violence services: Their responses and practices with and for Aboriginal women: Final Report' (2017).

²⁷⁸ Hovane, 'Our Story to tell: Aboriginal perspectives on domestic and family violence', above n 277.

²⁷⁹ See a useful summary of existing programs in David Gallant, Cathy Humphreys and Kristin Diemer, 'Aboriginal Men's Programs Tackling Family Violence: A Scoping Review' [48] (2017) 20(2) *Journal of Australian Indigenous Issues* 48-68. See also Andrew Day et al, 'Indigenous Family Violence: An Attempt to Understand the Problems and Inform Appropriate and Effective Responses to Criminal Justice System Intervention' (2012) 19(1) *Psychiatry, Psychology and Law* 104-117.

²⁸⁰ Edward Mosby and Gill Thomsen, 'Gatharr Weyebé Banabe Program: Seeking behaviour change in Indigenous family violence' (2014) Spring *Ending Men's Violence Against Women, No to Violence Journal*.

²⁸¹ Consultations with Steve Ford, Regional Manager, Murchison, Geraldton; and Judge Karen Ruddy, Whitehorse Court, Yukon

²⁸² See for example Vlasis et al, above n 1.

²⁸³ Victorian Government, above n 243; Cathy Vaughan et al, 'Promoting community-led responses to violence against immigrant and refugee women in metropolitan and regional Australia. The ASPIRE Project: Research report' (2016) <<https://anrows.org.au/anrows.org.au/publications/horizons-0/promoting-community-led-responses-violence-against-immigrant-and-refugee-women>>.

²⁸⁴ See details: *Best practice principles for interventions with domestic and family violence perpetrators from refugee backgrounds*, ANROWS <<https://anrows.org.au/node/1311>>.

²⁸⁵ Consultation with Professor Colleen Fisher, Population and Global Health, University of Western Australia.

²⁸⁶ R McIvor, K Nguyen and R Bhandary, 'Effective Men's Behaviour Change Programs for CALD Men' (Paper presented at the Ending Domestic and Family Violence Conference, Melbourne, 14-15 October).

²⁸⁷ Vlasis et al, above n 1, 20.

This was echoed in the CIJ's consultations, where providers reported that members of the LGBTIQ community can face considerable harm through participation in a mainstream MBCP, not only from the attitudes of other group participants, but from being required to engage with program content which does not reflect their own lives or experiences.

Beyond this, broader literature also indicates that members of LGBTIQ communities experience FV at rates equivalent to, or even higher than, people in heterosexual relationships.²⁸⁸ This includes violence not only from intimate partners, but from wider family members, such as family members punishing the victim for their LGBTIQ status,²⁸⁹ or partners or family members threatening to 'out' the victim to the wider community.²⁹⁰

Compounding this is the prevalence of violence experienced by LGBTIQ communities from the wider population.²⁹¹ This is combined with the characterisation of FV as predominantly relevant to heterosexual couples.²⁹² These factors can mean that violence and homophobia are so entrenched in the daily lives of members of LGBTIQ communities that they may simply not recognise what they are experiencing as FV.²⁹³

The CIJ heard that service provision and justice system responses similarly do not recognise perpetration of FV in contexts involving, for example, two female partners.²⁹⁴ Perpetrators who do not identify with a heteronormative masculinity are also likely to be considered inappropriate for mainstream MBCPs. This mirrors gender-diverse people's general exclusion from other therapeutic programs in the corrections/criminal justice sector.²⁹⁵

An increasing effort is being invested in Victoria and elsewhere to improve responses and increase understanding of the experience of FV in LGBTIQ communities. As mentioned above, consultations with two FV-focused LGBTIQ services indicate that referral of LGBTIQ perpetrators to mainstream MBCPs is not a safe or appropriate option and that referrals to a LGBTIQ FV specific service should be prioritised where one exists. One such service ReVisioning, has been operating in Victoria for some time, while an ANROWS funded action research project is currently developing a LGBTIQ specific service in New South Wales.²⁹⁶ Recent funding initiatives by the Department of Justice and Regulation have also funded further interventions for gender diverse communities.²⁹⁷

Women as perpetrators

Evidence suggests that many men identified by police as victims of female partners are actually the predominant aggressor. In 2016, the Men's Referral Service (now incorporated in No to Violence) conducted a trial in which 500 men assessed by New South Wales police as the affected family member at a FV call-out were telephoned to be offered support and referrals. Around one-half of referrals involved men being assessed as victims of a female partner. Of those men who could be engaged, practitioners assessed 30% as being the predominant aggressor. Cross-checks with police data on those initially assessed as victims also revealed that 46% had a protection order taken out against them in the previous four months.²⁹⁸

²⁸⁸ Carrie Chan, 'Domestic Violence in Gay and Lesbian Relationships' (2005); William Leonard et al, 'Coming forward: The underreporting of heterosexist violence and same sex partner abuse in Victoria' (2008) <<https://www.glhv.org.au/report/coming-forward-underreporting-heterosexist-violence-and-same-sex-partner-abuse-victoria>>; William Leonard et al, 'Private Lives 2: The second national survey of the health and wellbeing of gay, lesbian, bisexual and transgender (GLBT) Australians' (2012) <https://www.latrobe.edu.au/_data/assets/pdf_file/0020/180425/PrivateLives2Report.pdf>.

²⁸⁹ Annaliese Constable et al, 'One Size Does Not Fit All: Gap analysis of NSW domestic violence support services in relation to gay, lesbian, bisexual, transgender and intersex communities' needs: Executive Summary and Recommendations' (2011) <https://static1.squarespace.com/static/54d05b39e4b018314b86ca61/t/55ac6babe4b075430cc38db9/1437363115609/Gap_Analysis.pdf>.

²⁹⁰ Melissa Kay and Samantha Jeffries, 'Homophobia, heteronormativity and hegemonic masculinity : male same-sex intimate violence from the perspective of Brisbane service providers' (2010) 17 *Psychiatry, Psychology and Law*.

²⁹¹ William Leonard, Anthony Lyons and Emily Bariola, 'A Closer Look at Private Lives2: Addressing the mental health and well-being of lesbian, gay, bisexual and transgender (LGBT) Australians' (2015) <https://www.glhv.org.au/sites/default/files/Closer_Look_Private_Lives2.pdf>.

²⁹² Victoria Health, 'Preventing violence against women in Australia: Research summary' (2011).

²⁹³ Leonard, Lyons and Bariola, above n 291.

²⁹⁴ Presentation by Ro Allen, Commissioner for Diversity, Chief Magistrates' FV Taskforce, February 2018.

²⁹⁵ The Law and Advocacy Centre for Women (LACW) in Melbourne reports that Aboriginal gay and trans MTF individuals have been excluded from therapeutic spaces due to concerns for their safety and the 'complexity' of their case. Personal communication with Centre for Innovative Justice, March 2018. See also Philomena Horsley, 'Family violence and the LGBTIQ community: Submission to the Victorian Royal Commission into Family Violence' (2015) <<http://www.rcfv.com.au/getattachment/97B8FCEE-6CEB-4A49-9648-25DCA846696A/Gay-an>>.

²⁹⁶ Consultations with Victorian AIDS Council; Consultation with ACON, NSW, February 2018

²⁹⁷ *Boost for Family Violence Perpetrator Programs*, (2 May 2018) Attorney-General, Government of Victoria <<https://www.premier.vic.gov.au/boost-for-family-violence-perpetrator-programs/>>.

²⁹⁸ Rodney Vlasi, 'Scoping study of innovations in family and domestic violence perpetrator interventions' (forthcoming).

This corroborated research by New South Wales Women's Legal Service which found, in a large sample of women with an interim protection order made against them, that over two-thirds reported being victims of FV, and that less than 40% had final protection orders made against them.²⁹⁹

Certainly, where FV is perceived as an incident of physical violence, rather than a pattern of coercive control, women are more likely to be identified as perpetrators. Evidence certainly suggests that women's use of violence is much more incident-based. In fact, US research demonstrates that the most common contexts for women's decisions to use violence against their (male) intimate partners are:

- To assert dignity, to resist their partner's ongoing coercive control tactics and patterns.
- To defend themselves and/or their children, or 'fight back' to prevent further harm.
- As a result of false allegations, where violent men are able to successfully persuade police and the courts that their female partners were the primary aggressors.³⁰⁰

This said, where a gendered assumption of FV prevails, this can render some victims invisible. For example, the abovementioned literature concerning LGBTIQ communities features a consistent concern that female or gender diverse partners of female perpetrators often have their experiences ignored.³⁰¹

The differing nature of FV experienced in Aboriginal communities also point to lateral and inter-generational violence perpetrated by women.³⁰² This is reflected in the provision of referral pathways for women in connection with the Barndimalgu and Yukon court models referred to in Part One.³⁰³

Perpetrators with Disabilities

It is well acknowledged that people with disabilities experience violence and abuse of all kinds at a disproportionately high rate.³⁰⁴ What is less well researched is the perpetration of violence by people with disabilities. However, research conducted by Victoria Legal Aid indicates that the greatest proportion of legally aided clients who breach FV Intervention Orders (including female clients) have an Acquired Brain Injury or other form of disability.³⁰⁵

Referral pathways and research, however, are similarly lacking, with no current ANROWS project underway to examine perpetration of FV by people with disabilities.

This said, the Domestic Violence Treatment Option (DVTO) in Yukon has perhaps one of the only specialist FV streams for perpetrators with cognitive impairment, who receive one-to-one sessions instead of groupwork. Arguably, this streaming approach is similar to the Court Integrated Services Program in the Victorian criminal context, although the sessions delivered to perpetrators in the DVTO context are delivered by former MBCP practitioners, a crucial distinction to note in the expansion of the Victorian SFVC context.

One Victorian MBCP provider has recently been funded, through a Department of Health and Human Services innovation grant, to develop a model and set of practice guidelines for working with FV perpetrators with cognitive impairment. This will provide some much needed guidance to the field.

²⁹⁹ Ibid.

³⁰⁰ Lisa Young Larance and Susan L. Miller, 'In Her Own Words: Women Describe Their Use of Force Resulting in Court-Ordered Intervention' (2016) 23(12) *Violence Against Women* 1536-1559.

³⁰¹ Ibid.

³⁰² Hovane, 'Our Story to tell: Aboriginal perspectives on domestic and family violence', above n 277.

³⁰³ Consultations with Steve Ford, Regional Manager, Murchison, Geraldton Court, WA Department of Justice; and Judge Karen Ruddy, Whitehorse Court, Yukon.

³⁰⁴ Lucy Healey, 'Voices Against Violence: Paper 2: Current Issues in Responding to and Understanding Violence Against Women with Disabilities' (2013) <<https://www.aph.gov.au/DocumentStore.ashx?id=7c4b94c1-6b44-45f2-9a0e-2d3a1401aa15&subId=298454>>.

³⁰⁵ Victoria Legal Aid, 'Research Brief: Characteristics of respondents charged with breach of family violence intervention orders' (2015) <<https://www.legalaid.vic.gov.au/about-us/what-we-do/research-and-analysis/characteristics-of-respondents-charged-with-breach-of-family-violence-intervention-orders>>.

Part Four - Considerations of complexity

Having explored targeted literature and reported on consultations concerning SFVCs integrated with MBCPs, this review now turns to broader considerations relevant to the development of any best practice perpetrator intervention. These include questions in relation to the usefulness of grouping FV perpetrators according to 'type' as opposed to 'risk' as well as an exploration of qualitative research regarding perpetrator pathways towards 'desistance'.

Typologies of perpetrator

In developing a best practice Counselling Order program, the MCV will wish to direct its efforts towards those with whom it anticipates an intervention will be most effective. This desire should not be confused, however, with attempting to stream eligible offenders by 'typology', including any based on existing evidence in relation to typologies of other kinds offending.³⁰⁶ Certainly, as referred to in Part Three, policy makers more broadly are understandably keen to identify what interventions might be most effective with a diverse range of perpetrators, as well as any barriers to this effectiveness which might be relevant to certain groups.³⁰⁷

However, this diversity – and the complexity and need which might accompany it – should not be confused with the *risk profile* that perpetrators may present and the interventions they should receive as a result. In other words, SFVCs should not simply assume that a perpetrator with or without complex needs necessarily presents a particular level of risk, or accords with a particular 'typology' or 'cohort' of perpetrator.

With this caveat acknowledged, the most frequently cited typology was initially suggested in 1994 by Holtzworth-Munroe & Stuart.³⁰⁸ This typology divides FV perpetrators into categories: *generally violent* (GV) perpetrators who commit acts of violence both within and outside the family context; *family only* (FO) perpetrators who commit family violence only; and a third group characterised by significant psychopathy and personality disordered traits.³⁰⁹

A recent Australian study by the Crime Statistics Agency (CSA) found that 60% of FV perpetrators identified through the Victoria Police LEAP database over a period of five years were classified as having offences confined to FV, with the remaining 40% having additional types of offences during this period.³¹⁰ The authors concluded that this provides support for the Holtzworth-Munroe and Stuart typology differentiating GV from FO perpetrators.

³⁰⁶ Nancy Ver Steegh, 'Differentiating Types of Domestic Violence: Implications for Child Custody' (2005) 65 *Louisiana Law Review* 1379; N. Z. Hilton and G. T. Harris, 'Predicting wife assault: A critical review and implications for policy and practice' (2005) 6 *Trauma, Violence, & Abuse* 3-23; Salter, above n 211; Jill Theresa Messing and Jonel Thaller, 'The Average Predictive Validity of Intimate Partner Violence Risk Assessment Instruments' (2012) 28(7) *Journal of Interpersonal Violence* 1537-1558; S. Oram et al, 'Systematic review and meta-analysis of psychiatric disorder and the perpetration of partner violence' (08/21) (2013) 23(4) *Epidemiology and Psychiatric Sciences* 361-376; Pablo Carbajosa et al, 'Differences in treatment adherence, program completion, and recidivism among batterer subtypes' (2017) 9(2) *The European Journal of Psychology Applied to Legal Context* 93-101; Pablo Carbajosa et al, 'Responsive versus Treatment-Resistant Perpetrators in Batterer Intervention Programs: Personal Characteristics and Stages of Change' (2017) 24(6) *Psychiatry, Psychology and Law* 936-950; K. McRee Lauch, Kathleen J. Hart and Scott Bresler, 'Predictors of Treatment Completion and Recidivism Among Intimate Partner Violence Offenders' (2017) 26(5) *Journal of Aggression, Maltreatment & Trauma* 543-557.

³⁰⁷ Ver Steegh, above n 306.

³⁰⁸ Jane Wangmann, 'Different Types of Intimate Partner Violence - An exploration of the literature' (2011) *Issues Paper 22* <<http://www.qldfamilylawnet.org.au/sites/qldfamilylawnet/files/qfipn/Differentiated%20Violence%20Models%20-%20Lit%20Review.pdf>>.

³⁰⁹ Alex R. Piquero et al, 'Assessing the Offending Activity of Criminal Domestic Violence Suspects: Offense Specialization, Escalation, and De-Escalation Evidence from the Spouse Assault Replication Program' (2006) 121(4) *Public Health Reports* 409-418; Alex R. Piquero, Delphine Theobald and David P. Farrington, 'The Overlap Between Offending Trajectories, Criminal Violence, and Intimate Partner Violence' (2013) 58(3) *International Journal of Offender Therapy and Comparative Criminology* 286-302; T. N. Richards et al, 'A longitudinal examination of offending and specialization among a sample of Massachusetts domestic violence offenders' (2013) 28(3) *Journal of Interpersonal Violence* 643-663; P. Lussier, D. P. Farrington and T. E. Moffitt, 'A 40-year prospective longitudinal study on the developmental antecedents of intimate partner violence' (2009) 47 *Criminology & Criminal Justice* 741-780; C. Huffine, 'In a class by themselves: Intervening with psychopathic DV perpetrators' (Paper presented at the Advancing the Narrative Batterer Intervention Services Coalition of Michigan conference, Michigan, 15-17 April 2015) <<https://www.biscmi.org/wp-content/uploads/2015/02/Criminally-oriented-group-BISCMI-handout.pdf>>; Marcus Juodis et al, 'What can be done about high-risk perpetrators of domestic violence?' (2014) 29 *Journal of Family Violence* 381-390; Leana A. Bouffard and Sara B. Zedaker, 'Are Domestic Violence Offenders Specialists? Answers from Multiple Analytic Approaches' (2016) 53(6) *Journal of Research in Crime and Delinquency* 788-813; Sentencing Advisory Council, 'Contravention of Family Violence Intervention Orders and Safety Notices: Prior Offences and Reoffending', above n 2, xvii-xviii.

³¹⁰ See Crime Statistics Agency, 'Identifying the differences between generalist and specialist family violence perpetrators: Risk factors and perpetrator characteristics' (2017) <<https://www.crimestatistics.vic.gov.au/research-and-evaluation/publications/identifying-the-differences-between-generalist-and-specialist>>.

It is not possible, however, to tell from this report how many of these additional offences were crimes against the person. Certainly, while current analysis of the literature on perpetrator typologies suggests some usefulness in differentiating a cohort of FV perpetrators who are 'generally violent', it concludes that evidence of this differentiation's value for the purposes of intervention and treatment is insufficient.³¹¹

What's more, while a Risks Need Responsivity assessment (discussed below) may indicate that a perpetrator is at high risk of offending *in general*, this may point to factors which can contribute to a person's contact with the criminal justice system in general and therefore mean that a different or additional kind of intervention is required. This means that 'FO' offenders should not just be assumed to be low risk or to be more compliant. Assumptions that a 'FO' offender has a greater stake in conformity just because he has no broader criminal record can ignore the significant and sometimes lethal risk that such a perpetrator may pose to his family.³¹²

More of a consensus currently exists about the need to differentiate the other cohort within the Holtzworth-Munroe and Stuart typology, being perpetrators with particularly high psychopathy traits. A key defining feature of this cohort is their inability to empathise and exert a conscience. This differs from the way in which other perpetrators make a *choice* not to empathise with those towards whom their violence is directed.³¹³

Clinical opinion from the US demonstrates that standard MBCPs are generally inappropriate for psychopathic perpetrators, and in fact may *increase* the risk they pose to family members instead.³¹⁴ This is because the focus on empathy-building, interpersonal skills and emotional literacy by many MBCPs can be used by these perpetrators to *increase* their repertoire of tactics to control, manipulate and deceive victims. This has caused some commentators to despair at the effectiveness of MBCPs or perpetrator intervention overall with this typology of perpetrator.³¹⁵ However, others note that interventions which focus on monitoring and ongoing risk assessment can still be useful tools for keeping this cohort of perpetrators within view, as long as it does not result in a net increase to risk.³¹⁶

Other well-known – though potentially contentious – 'typologies' of FV perpetrator focus more on the 'type of violence' than a 'type of perpetrator'. This includes the typology developed by Pence and Dasgupta, associated with the Duluth model,³¹⁷ who developed five categories of domestic violence: battering (coercion and control); resistive/reactive violence (primarily in context of being battered); situational violence (distinguished by absence of a pattern of intimidation or control); pathological violence (arising out of mental illness or cognitive impairment), and anti-social violence (a product of anti-social personality disorder).³¹⁸

Similarly, a typology described by Johnson and colleagues includes: coercive controlling violence (also called 'patriarchal or intimate terrorism' in earlier iterations); violent resistance (generally associated with women's self-defence against an abusive partner); situational couple violence (mutual violence, not characterised by asymmetrical relations of coercion and control); and separation-instigated violence (to be differentiated from situational and coercive controlling violence that extends through the relationship and break-up).³¹⁹

Johnson contends that the most common form of IPV is situational couple violence, but notes that courts, medical professionals and women's shelters are most likely to see women who experience coercive controlling violence at the hands of a male partner, since this kind of violence is the most likely to seriously injure and frighten a partner and is primarily the domain of male perpetrators.³²⁰

³¹¹ Vlasis et al, above n 1.

³¹² Cathy Humphreys et al, 'Children Living with Domestic Violence: A Differential Response through Multi-agency Collaboration' (2018) *Australian Social Work* 1-13.

³¹³ Huffine, above n 309; Juodis et al, above n 309.

³¹⁴ Huffine, above n 309.

³¹⁵ For example, see treatment guidelines noting potentially damaging impacts of standard interventions and the disruptive impacts of having psychopathic participants in group programs: Matthew T. Huss, Christmas N. Covell and Jennifer Langhinrichsen-Rohling, 'Clinical Implications for the Assessment and Treatment of Antisocial and Psychopathic Domestic Violence Perpetrators' (2006) 13(1) *Journal of Aggression, Maltreatment & Trauma* 59-85; Juodis et al, above n 309.

³¹⁶ Salter, above n 211; Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing perpetrators of family violence into view', above n 4.

³¹⁷ Ellen Pence and Shamita Da Dasgupta, 'Re-examining 'Battering': Are All Acts of Violence Against Intimate Partners the Same?' (2006) <<http://praxisinternational.org/wp-content/uploads/2016/02/ReexaminingBattering-1.pdf>>.

³¹⁸ *Ibid.* 13-14.

³¹⁹ Joan B. Kelly and Michael P. Johnson, 'Differentiation among types of Intimate Partner Violence: Research Update and Implications for Interventions' (2008) 46(3) *Family Court Review* 476-499.

³²⁰ Michael P. Johnson, 'A Personal Social History of a Typology of Intimate Partner Violence' (2017) 9(2) *Journal of Family Theory & Review* 150-164. See discussion of this historical tension in Kelly and Johnson, above n 319. See also Lawrie Moloney et al, 'Allegations of family violence and child abuse in family law children's proceedings: A pre-reform exploratory study' (2007) *Research Report No. 15* <<https://aifs.gov.au/sites/default/files/publication-documents/aifsreport15.pdf>>.

Given the research referred to above regarding women's use of violence,³²¹ the CIJ urges caution about assumptions regarding what might be seen by first responders to be 'situational couple violence'. Nevertheless, in the family law sphere, Johnson and Kelly's 2008 typology has been incorporated into professional training and resources.³²² This is despite forensic psychiatric practitioners' suggestion that perpetrator typologies such as this are 'descriptive' and need to be supplemented by a structured forensic risk assessment.³²³

Australian MBCP practitioners argue that there is little compelling evidence for cohort differentiation, and note a lack of appropriate tools to identify perpetrator or FV types.³²⁴

More promising 'typology' research, however, has been conducted by Susan Heward-Belle regarding violent fathers and the **type of risk they pose**. She identified four sub-groups from men's descriptions of their own behaviour, being the degree to which they identified with hegemonic masculinities; and their perceived control over their use of FV, being:

- High (masculine) Identification, High (perceived) Control;
- High Identification, Low Control;
- Low Identification, High Control; and
- Low Identification, Low Control.

Heward-Belle notes that:

...the risks posed...by a domestically violent father who strongly identifies with hegemonic masculinity, is a member of a privileged cultural and socioeconomic group, enjoys good health and gains his life's meaning from his fatherhood status may differ markedly to the risks posed by a father who is poor, has a history of drug dependence, mental health issues, is from a marginalised cultural group, and who practices a subordinated masculinity. Children of men in the former group may be particularly at risk of physical and sexual abuse as well as emotional neglect. **Women and children may also be particularly at risk of separation retaliation**...Children of men in the latter group may be particularly at risk of emotional abuse and all forms of neglect.³²⁵

These patterns in relation to the type of risk that perpetrators may pose to family members are particularly important for a best practice Counselling Order program, and any SFVCs in which they operate.

³²¹ Larance and Miller, above n 300. See also Alesha Durfee, "'I'm not a victim, she's an abuser': Masculinity, victimization, and protection orders' (2011) 25(3) *Gender and Society* 316-334.

³²² Zoe Rathus, 'Shifting language and meanings between social science and the law : defining family violence' (2013) 36(2) *University of New South Wales Law Journal Forum* 359-389.

³²³ William G. Austin and Leslie M. Drozd, 'Intimate Partner Violence and Child Custody Evaluation, Part I: Theoretical Framework, Forensic Model, and Assessment Issues' (2012) 9(4) *Journal of Child Custody* 250-309.

³²⁴ Vlasis et al, above n 1; Kelly and Johnson, above n 319.

³²⁵ Susan Heward-Belle, 'Exploiting the 'good mother' as a tactic of coercive control: Domestically violent men's assaults on women as mothers' (2017) 32(3) *Affilia* 374-389. (our emphasis).

Stages of change

Over the past decade there has also been growing interest in the application of Prochaska and DiClemente's Transtheoretical Stages of Change model to FV perpetrator interventions.³²⁶ The premise of this model is that people move through a predictable series of stages when attempting to modify health-related behaviours, being pre-contemplation; contemplation; preparation; action; and maintenance. The model also posits that, common to many health behaviours, particular tasks are required to help people to move from one particular stage to the next.

Motivational enhancement interventions based on this model have been shown to help with treatment *compliance* for some FV perpetrators, though there is no evidence of this translating into improved *outcomes*.³²⁷ That said, the classification of perpetrators according to their position on the Stages of Change continuum by MBCP practitioners has been found to be able to predict treatment *attrition* to some degree.³²⁸

Overall, however, the Stages of Change model has limitations in the field of FV. This is partly because the factors which influence perpetrator readiness to participate in a service, and readiness to change, are often cyclical and non-linear – including events such as developments in legal or court proceedings, the terms of a corrections order coming to an end or the perpetrator finally realising that his partner has decided to end the relationship.³²⁹

Other limitations of this model include the fact that no practice guidance or pathways analysis is available concerning the relevance of attempting to differentiate perpetrators according to their stage of change for intervention or treatment.³³⁰ This and the above discussion about typologies suggests that a best practice Counselling Order program should be cautious about differentiating eligible perpetrators by type, or even by stage of change, when deciding who to refer for an MBCP intake assessment.

Differentiating perpetrators by risk

More promising – and as indicated throughout the literature and consultations – jurisdictions to which Australia often looks for comparative research and practice have increasingly moved toward differentiating offenders and tailoring responses *by risk*.³³¹

This is in part because a key finding is that some high-risk offenders should not be included in group programs as there is a significant risk of peer collusion and negative social learning, and of interrupting the positive social bonds that maintain a reduction in risk.

For example, Gondolf's widely acclaimed longitudinal, multi-site study (which classified perpetrators into four groups based on risk), found significant and sustained program effectiveness for all but the highest risk group, which composed approximately 10-20% of the overall sample of perpetrators.³³² In fact, one potential explanation for equivocal results concerning the effectiveness of MBCPs has been the difficulty of having an impact in this high-risk cohort, thereby dragging the overall results down.³³³

³²⁶ For a description of this model see Pro-Change Behaviour Systems Inc, *The Transtheoretical Model* <<http://www.prochange.com/transtheoretical-model-of-behavior-change>>.

³²⁷ Cory A. Crane and Christopher I. Eckhardt, 'Evaluation of a Single-Session Brief Motivational Enhancement Intervention for Partner Abusive Men' (2013) 60(2) *Journal of counseling psychology* 180-187.

³²⁸ Katreena L. Scott, 'Stage of Change as a Predictor of Attrition Among Men in a Batterer Treatment Program' (2004) 19(1) *Journal of Family Violence* 37-47.

³²⁹ George Ronan et al, 'Relevance of a stage of change analysis for violence reduction training' (2010) 21(5) *The Journal of Forensic Psychiatry & Psychology* 761-772.

³³⁰ Vlasis et al, above n 1.

³³¹ On the UK see Marianne Hester, 'Domestic violence advocacy and support in a changing climate - findings from three recent evaluations' (2012) <<https://www.nr-foundation.org.uk/downloads/SAFE-Article-Marianne-Hester.pdf>>.

³³² Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, above n 17. See also Alison Jones et al, 'Complex Behavioral Patterns and Trajectories of Domestic Violence Offenders' (2010) 25(1) *Violence Vict* 3-17.

³³³ Radatz and Wright, above n 32.

Studies such as Gondolf's aim to identify the most appropriate interventions for different perpetrators. This includes providing a relatively less intense intervention to those posing a lower risk – both to target the use of limited resources, and because the criminogenic nature of criminal justice environments can be counterproductive to any attempts to reduce a perpetrator's risk.³³⁴ This said, as discussed in relation to the Canadian context, static or inflexible risk assessments that do not adapt to new information about perpetrator-risk can mean that perpetrators wrongly classified as low-risk receive an inadequate intervention.³³⁵

Well known to policy circles and discussed above, Correctional and probation services in many jurisdictions classify violent offenders (including those with FV related offences) into high, medium and low risk categories. Increasingly, this involves use of the Risk Need Responsivity (RNR) framework.³³⁶ At its simplest, the RNR framework, developed by Andrews and Bonta,³³⁷ calls upon providers to:

- Differentiate interventions according to the degree and nature of **risk** posed by the perpetrator.
- Identify and address dynamic risk factors (**needs**) related to the person's offending behaviour.
- Seek ways to make the program responsive to the individual's motivational patterns, life situation, cultural context and other individual factors (**respond**).

The RNR framework covers a broad set of principles and can be used in conjunction with a range of intervention models but is not an intervention model in itself. Although calls for the incorporation of the RNR framework in MBCP provision have increased,³³⁸ researchers caution that it was not developed with FV specifically in mind, but as a way of helping Corrections environments to take a more individually-tuned approach to offenders.³³⁹

Certainly, while considered a reliable predictor of an offender's *general recidivist risk*, literature suggests that this approach to classification should be used with more care when assuming that it correlates with the offender's risk to their family members.³⁴⁰ This is because FV perpetrators who use an extensive array of coercive controlling tactics could potentially be deemed as 'low risk' if they have chosen to use physical violence infrequently (or it is simply not known to the system); have not engaged in other criminal behaviour; and have at least an average 'stake in conformity' with many social norms.³⁴¹

This may include the High Masculinity, High Control sub-group identified by Heward-Belle, who can prove particularly dangerous to their families post-separation.³⁴² This consideration could be highly relevant to the practice of SFVCs overall, which see so many perpetrators come through their courts each year and may direct the bulk of referrals to those on multiple service radars, and who may be classified as high risk of *general* offending.

³³⁴ Donald Ritchie, 'Does Imprisonment Deter? A Review of the Evidence' (2011)

<<https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Does%20Imprisonment%20Deter%20A%20Review%20of%20the%20Evidence.pdf>>; José Cid, 'Is Imprisonment Criminogenic?: A Comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions' (2009) 6(6) *European Journal of Criminology* 459-480; Scott D. Camp and Gerald G. Gaes, 'Criminogenic Effects of the Prison Environment on Inmate Behavior: Some Experimental Evidence' (2005) 51(3) *Crime & Delinquency* 425-442; Michael S. Caudy, Marie Skubak Tillyer and Rob Tillyer, 'Jail Versus Probation: A Gender-Specific Test of Differential Effectiveness and Moderators of Sanction Effects' (2018) epublication ahead of print *Criminal Justice and Behavior*.

³³⁵ Consultation with Dr Katreena Scott, February 2018

³³⁶ Thomforde Hauser, above n 113; Colorado Domestic Violence Offender Management Board, above n 119.

³³⁷ D. A. Andrews and James Bonta, *The Psychology of Criminal Conduct* (Mathew Bender, 2010); D. A. Andrews and James Bonta, 'Rehabilitating criminal justice policy and practice' (2010) 16(1) *Psychology, Public Policy, and Law* 39-55. See also D. A. Andrews, James Bonta and J. Stephen Wormith, 'The Risk-Need-Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention?' (2011) 38(7) *Criminal Justice and Behavior* 735-755.

³³⁸ Radatz and Wright, above n 32; Lynn A. Stewart, Jillian Flight and Maria Claire Slavin-Stewart, 'Applying Effective Corrections Principles (RNR) to Partner Abuse Interventions' (2013) 4(4) *Partner Abuse* 494-534; Lynn A. Stewart et al, 'Profile of Female Perpetrators of Intimate Partner Violence in an Offender Population: Implications for Treatment' (2014) 5(2) *Partner Abuse* 168-188.; Victorian Government, above n 243; J. Stephen Wormith and Mark Olver, E., 'Offender Treatment Attrition and its Relationship with Risk, Responsivity, and Recidivism' (2002) 29(4) *Criminal Justice and Behavior* 447-471.

³³⁹ Stewart, Flight and Slavin-Stewart, above n 338.

³⁴⁰ Thomforde Hauser, above n 113.

³⁴¹ Salter, above n 211; Morrison and Davenne, above n 84

³⁴² Debbie Kirkwood, 'Just Say Goodbye': Parents who kill their children in the context of separation' (2013) *Discussion Paper No. 8* <<https://www.dvrcv.org.au/sites/default/files/%E2%80%98Just%20Say%20Goodbye%E2%80%99%20%28January%202013%20online%20edition%29.pdf>>.

Certainly, beyond correctional contexts, difficulty exists in isolating a *group* of perpetrators that can be considered 'low risk'. In the MBCP context, weeks of participation in an intervention is often needed to indicate the full risk a perpetrator poses.³⁴³ Equally, while studies indicate that a small proportion of high risk perpetrators cause the greatest amount of harm,³⁴⁴ those identified as 'low risk' may slip off the justice system's radar altogether if they have no police history of FV;³⁴⁵ have never used physical violence;³⁴⁶ or otherwise appear to comply with the law.³⁴⁷ As described in Part One in relation to Canadian approaches, an approach which enables assessments of risk to be dynamic, and categorisations of risk to be transitioned where higher risk becomes apparent, is essential.

Perpetrator pathways towards desistance

Beyond categorisations (whether of perpetrators, or of risk), perpetrator interventions aiming to be best practice need to grapple with and acknowledge the complexity of perpetrator pathways towards 'desistance,' and away from violence.

Broader desistance literature distinguishes stages of primary, secondary and tertiary desistance, all of which involve different elements beyond ceasing the use of physical or other direct forms of violence. Desistance literature – both in relation to FV perpetration and other forms of offending – also indicates that a range of factors are required for an individual to move from exhibiting violence, through to sustained behaviour change.³⁴⁸ This means that many perpetrators who achieve a first port of call of primary desistance (being desistance from the offending behaviour), will require further changes for gains to be sustained and to work towards *secondary desistance* goals (being changes away from social bonds and identities which reinforce the behaviour).³⁴⁹

Meanwhile, evidence suggests that perpetrators who have used violence against multiple partners - and possibly in other community or interpersonal settings - might need to work towards *tertiary desistance* goals to support sustainable behaviour change.³⁵⁰ This occurs when the perpetrator's new identity which is focused on non-violence is reinforced and reflected in new or existing social networks to which he belongs.³⁵¹

This means that many people who use FV as part of a pattern of coercion and control will move only part of the way towards sustained risk reduction, particularly if only in receipt of a single program. Similarly, little formal research exists mapping pathways or journeys by which perpetrators move towards desisting from using violence. Such research requires methodologies of intensive, time-consuming qualitative investigation with a sufficient diversity of perpetrators, then ideally followed up with substantially scaled-up quantitative studies.

Nevertheless, a small number of Australian and overseas qualitative studies signal the complexity of pathways towards desistance for perpetrators of FV. This includes the fact that these pathways flux and divert onto different trajectories over time. These studies are discussed below to provide a context for understanding the challenges of delivering a court-mandated Counselling Order program and – most importantly perhaps – a 'reality check' about what it can achieve.³⁵²

³⁴³ Scott et al, above n 94.

³⁴⁴ Robinson and Clancy, above n 90. Also worth noting is the recent Victoria Police initiative to prioritise forensic investigation into 'high volume, high harm' recidivist perpetrators.

³⁴⁵ For example, a recent NZ study revealed that only 13% of those prosecuted for FV homicide had police histories as FV offenders. Morrison and Davenne, above n 84.

³⁴⁶ Johnson et al, above n 40; McDonald and Byrne, above n 40. The case discussed in the latter reference also raises issues relevant to risk-assessment and the impacts of court-orders on escalating risks of harm faced by victims.

³⁴⁷ Kirkwood, above n 342; Lundy Bancroft, Jay G. Silverman and Daniel Ritchie, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (SAGE Publications, Inc., 2nd ed, 2012).

³⁴⁸ Vlais et al, above n 1; David Morran, 'Desisting from Domestic Abuse: Influences, Patterns and Processes in the Lives of Formerly Abusive Men' (2013) 52(3) *The Howard Journal of Criminal Justice* 306-320; David Morran, 'Re-education or recovery? Re-thinking some aspects of domestic violence perpetrator programmes' (2011) 58(1) *Probation Journal* 23-36.

³⁴⁹ Morran, 'Desisting from Domestic Abuse: Influences, Patterns and Processes in the Lives of Formerly Abusive Men', above n 348; Morran, 'Re-education or recovery? Re-thinking some aspects of domestic violence perpetrator programmes', above n 348.

³⁵⁰ Fergus McNeill, 'Desistance and criminal justice in Scotland' in H. Croall, G. Mooney and M. Munro (eds), *Crime, Justice and Society in Scotland* (Routledge, 2015).

³⁵¹ Michael Roguski and Natalie Gregory, 'Former family violence perpetrators' narratives of change' (2014) <<https://library.nzfvc.org.nz/cgi-bin/koha/opac-detail.pl?biblionumber=4553>>; Clavijo Lopez, *Desistance from intimate partner violence: A narrative study of men with histories of violence against their female partner* (PhD thesis Thesis, Monash University, 2016); Heather McLaren and Ian Goodwin-Smith, 'Hearing their voices: Perceptions of women and men on reducing men's perpetration of domestic violence' (2016) <<http://www.flinders.edu.au/sabs/social-and-policy-studies-files/accsr/DAFV%20Report%202016%20McLaren-Goodwin-Smith-A.pdf>>.

³⁵² Qualitative studies of US participants in batterer intervention programs are not included here, due to the substantially different nature of the service system compared to the Victorian context. For an in-depth account of 11 men's journeys towards long-term desistance from family violence, see Sara Elinoff Acker, *Unclenching Our Fists: Abusive Men on the Journey to Nonviolence* (Vanderbilt University Press, 2013). See also: Silvergleid and Mankowski, above n 275; Kendal Holtrop et al, 'Exploring Factors That Contribute to Positive Change in a Diverse, Group-Based Male Batterer

Highly relevant to this particular review, as part of the ARC Linkage Project *Safety and Accountability in Families: Evidence and Research*, Joanie Smith conducted 69 in-depth interviews with MBCP participants, current or former partners and program practitioners.³⁵³ This included two in-depth interviews approximately six months apart with 20 perpetrators participating or recently participating in MBCPs.

Three main themes were apparent in terms of engagement with Magistrates' Courts. Half of the 20 men had significant histories of protracted legal proceedings over many years focusing on their use of FV, other violence in the community, and regarding child custody matters. For these men, the involvement of courts generally had no real bearing on pathways towards accountability and responsibility.

For several perpetrators, the absence of a genuine experience of accountability was a major theme, including being shielded from the court's full authority where they were not required to appear before the Magistrate, and through numerous delays or the drawn-out nature of proceedings. For many of the men, court involvement added to their sense of being victimised by the system (that took women's side against men) and by their partner. This echoes the NZ consultations reported earlier, as well as the procedural justice research about men's experiences of court as 'assembly line justice' referred to in Part Two.³⁵⁴ The question for a best practice Counselling Order program, of course, is whether a single appearance before a Magistrate is also akin to assembly line justice for some perpetrators.

Smith also found, with respect to Intervention Orders:

... Almost half of the 17 men with intervention orders, discussed them in dismissive terms, from being ineffective and unfair, to an imposition by courts. There was little acknowledgement that orders were a consequence of men's choice to use violence...

... They believed their partners had taken out orders either to make them look bad in family court proceedings; to limit their access to children; or simply to make their life difficult.... None of the men discussed receiving any legal/formal consequences for breaching orders... breaching was not seen as further violence, nor as a criminal act in itself.

... Throughout the interviews the men struggled to clearly articulate what orders they were on. ... It is difficult to judge which of these comments reflected genuine confusion with the process, an unwillingness to take responsibility, or a strategy to evade responsibility.... Other men discussed feeling overwhelmed by the justice process, which contributed to not understanding what orders they had or why. Some of these feelings related to mental health issues, ranging from depression, to schizophrenia.³⁵⁵

Intervention Program: Using Qualitative Data to Inform Implementation and Adaptation Efforts' (2015) 32(8) *Journal of Interpersonal Violence* 1267-1290.

³⁵³ Smith, above n 179.

³⁵⁴ Pike, above n 81.

³⁵⁵ *Ibid* 208-213.

Further, in 2014 Chung and colleagues conducted qualitative research with men participating in a MBCP, to determine their understanding of and attitudes towards the protection order to which they were subject.³⁵⁶ The authors found:

The men minimised their use of violence and externalised responsibility to 'the relationship' and/or their partner. They diminished or minimised the role and purpose of protection orders, commenting that they are 'just a piece of paper' and 'anyone can get one'. Most men agreed that protection orders were important for 'those that really need it' however they did not see their partners as being in need of protection, describing them as being unreasonable. ...

...The perception of unfairness was exacerbated by a lack of understanding about the process for obtaining a police order or violence restraining order (VRO) including the grounds in which an order can be made, court processes, the conditions an order can impose and penalties of a breach. For example, the participants conflated the civil process with criminal proceedings making comments like 'there was no evidence of violence so how could they get the...order'.³⁵⁷

Meanwhile, as part of the Glenn Inquiry into NZ's FV and child protection systems, Roguski and Gregory (2014) interviewed 26 former perpetrators.³⁵⁸ The authors noted:

Little impact was associated with court ordered attendance, as the individual, in being forced to attend, was not generally positioned as seeking behaviour change and / or exploring reasons underlying their offending. Those...who experienced positive impacts from programme attendance traced this to...sharing experiences within a group environment and the context in which the programmes occur ... participants' turning point had been the emotional and cognitive impact of hearing others share similar stories in a group environment. For all..., this was the first time that they had heard others' accounts of abuse and violence and, importantly, the first time that they had shared their story...³⁵⁹

Consistent with other research, all participants noted the lack of options for on-going support after the program ended. Participants also stressed the importance of developing a violence free network to support change in the long-term. For some this involved moving away to new locations and becoming part of new social settings. For others, it meant their existing communities making gradual shifts towards non-violence. Access to role models was important, through the men's association with various programs and support groups.³⁶⁰ These findings are further reminders that a best practice Counselling Order program must have realistic expectations about what 'getting him to a program' can achieve unless this process is supported by a range of additional measures which can maximise the program's potential.

In South Australian research, interviews with FV victim-survivors, perpetrators and MBCP practitioners focused on participant perceptions of what could help stop men's violence.³⁶¹ All 20 participating perpetrators were court-ordered to participate in a program.

Echoing the earlier research, a strong theme from all participants was that one short program was not enough to make or sustain any change, and that multiple interventions over time were needed, including follow up programs.³⁶² Most women in the study stated that their partner only saw a program as a way to 'get out of trouble'³⁶³, while many of the men in the study commented on the lack of prompts from other service providers to address their violence, or guidance from legal system players to maintain their participation in a program.³⁶⁴

³⁵⁶ Chung et al, above n 15.

³⁵⁷ Ibid.

³⁵⁸ Roguski and Gregory, above n 351.

³⁵⁹ Ibid.

³⁶⁰ Ibid.

³⁶¹ McLaren and Goodwin-Smith, above n 351.

³⁶² Ibid 51.

³⁶³ Ibid 45.

³⁶⁴ Ibid 48, 56.

Meanwhile, in New South Wales research, Gray and colleagues interviewed 24 participants across several MBCP sites and 14 partners/former partners over a 2.5-year period.³⁶⁵ The study focused in part on which aspects of the program assisted or impeded attendance and overall motivation. The study found that the peer support culture in the group process was a motivating factor, particularly in light of external barriers to attendance.³⁶⁶ However, the negative peer culture outside of the group sessions, including during coffee breaks, could render this group work inauthentic and therefore reduce motivation and attendance.³⁶⁷

Building substantially on this previous literature, an in-depth qualitative study into pathways towards desistance from FV perpetration was recently conducted by Clavijo Lopez who interviewed both former perpetrators and those who were continuing to perpetrate.³⁶⁸

A central theme amongst those participants committed to desisting from FV was the adoption of this as an 'ongoing life project', rather than as a set of concrete and discrete behaviour change goals. Many reported needing to attend more than one MBCP over a period of time, so that they could adopt a new framework and develop confidence in applying their new skills.

Desisters initiated their movement towards change when they got involved in MBCPs, and reali[z]ed that they have hurt significant affective figures and felt that the connection with these figures was at serious risk due to the intervention of the justice system. They considered their children to be the most valued of these figures; and partnered men also considered their partner as equally significant. Men, however, did not realize autonomously the seriousness of their violent behaviour. They needed to be held accountable by the justice system or the police, and to be referred to an MBCP or similar at some point in their history.³⁶⁹

Clavijo Lopez's findings on pathways towards secondary desistance are consistent with those of similar qualitative research in the UK by Morran, who found that long-term desisters identified the following as crucial to their ongoing journeys of accountability:

- Framing non-violence as a lifetime project requiring periodic external support, even well after completion. Some men described never having 'graduated' from the program;
- Significant changes to personal identity consistent with non-violence ways of being;
- General maturation and responsibility-taking for one's life trajectories and choices;
- Developing new social bonds, and shedding old ones that reinforced their old identity; and
- The desire to make use of their journeys of change to give back to other men at a much earlier point in their journey, for example through becoming peer mentors.³⁷⁰

Further UK research has proposed an explanatory model focusing on FV perpetrator pathways towards desisting from violence. As part of a 'paradigm shift' from an 'old way of being' to a 'new way of being' the authors describe three central *catalysts of change*, being consequences of violence; negative emotional response; and points of resolve / autonomous decision-making.³⁷¹

³⁶⁵ Rebecca Gray et al, 'Peer Discussion and Client Motivation in Men's Domestic Violence Programs: An Australian Qualitative Interview Study' (2014) 67(3) *Australian Social Work* 390-404.

³⁶⁶ *Ibid* 386.

³⁶⁷ Rebecca Gray et al, 'I'm working towards getting back together: Client accounts of motivation related to relationship status in men's behaviour change programs in NSW, Australia' (2014) 25(3) *Child Abuse Review* 171-182.

³⁶⁸ Lopez, above n 351.

³⁶⁹ *Ibid* 227.

³⁷⁰ Morran, 'Desisting from Domestic Abuse: Influences, Patterns and Processes in the Lives of Formerly Abusive Men', above n 348; Lopez, above n 351.

³⁷¹ Kate Walker et al, 'Desistance From Intimate Partner Violence: A Conceptual Model and Framework for Practitioners for Managing the Process of Change' (2015) 30(15) *Journal of Interpersonal Violence* 2726-2750.

The authors noted that, rather than a single, defining moment or incident, the triggers accumulate and gain momentum over the course of time. When the triggers are perceived as important enough, they lead onto a new pathway. Crucial to their model, the accumulation of negative consequences was not sufficient for perpetrators to make an autonomous decision to change. These consequences needed to be *internalised* as matters of personal concern:

Theoretically, it is the case that triggers are not static single events that cause change but are incidents that build-up over time until they become meaningful or important enough to an individual. This suggests that it is not the actual events per se that are important but the meaning that these events have during an individual's offending... In the case of IPV offenders, the trigger is an interaction with something already present...in that person's life, such as a child or family member, which are likely to have different meaning at different stages of their lives.³⁷²

This model is also consistent with the findings of a review by Sheehan, Thakor and Stewart of six qualitative studies - four from the US, and one each from Canada and Finland. These authors found:

In the majority of studies reviewed, perpetrators who changed their abusive behavior recognized a specific event or situation which constituted a turning point. These included criminal sanctions, fear of losing their partner or family, and an awareness that they were becoming like their abusive father...

...While most research focuses on the internal motivation for a perpetrator's decision to change, this suggests that external and potentially negative events are seen by some perpetrators as motivational...Interestingly, the importance of external factors was recognized by both perpetrators who were court-mandated to participate in programming and those who self-referred.³⁷³

The question, of course, is how a best practice Counselling Order program can identify and understand its role in this accumulation of triggers, as described in the UK research, or combine the internal and external factors described in the research above.

Most recently, the PEARL (Promoting EARly intervention with men's use of violence in ReLationships through primary care) study explored men's help-seeking behaviour.³⁷⁴ The authors found that men's lack of self-awareness was, not surprisingly, a major barrier. Men had seen their behaviour as normal to such an extent that a significant trigger was required to break this perception. The authors concluded that:

...the act of help seeking is rarely a result of mere awareness raising and significant turning points are required. Whether an intervention can provide this through pre-crisis triggers such as, as the men suggested, powerful testimonies, peer influence or reflections on effects on children remains relatively unknown.³⁷⁵

This reflects observations made by Clavio Lopez in his own research, being that:

A significant characteristic of the desistance process from IPV...is that desisting men have transformed their identity in such a way that they **now consider external assistance as a key factor** in continuing their improvement of their behaviour after program completion. Before the MBCP they were independent men who never spoke about their issues; while after the MBCP they have become responsible men who look for assistance when they feel they are at risk of going back into their old ways.³⁷⁶

Finally, in research to be released later in 2018, the CIJ conducted its own study with perpetrators, recruited through MBCPs.³⁷⁷ To this end, the research confirmed the limitations of relying totally on focus groups of MBCP participants, including their consistent recasting of experiences to present themselves in a positive light and to present views in line with MBCP content.

³⁷² Ibid.

³⁷³ Kathleen A. Sheehan, Sumaiya Thakor and Donna E. Stewart, 'Turning Points for Perpetrators of Intimate Partner Violence' (2012) 13(1) *Trauma, Violence, & Abuse* 30-40.

³⁷⁴ Laura Tarzia et al, 'Interventions in Health Setting for Male Perpetrators or Victims of Intimate Partner Violence' (2017) epublication ahead of print *Trauma, Violence, & Abuse*; Kelsey Hegarty et al, 'Final Report: Promoting EARly intervention with men's use of violence in ReLationships through primary care (PEARL study)' (2016) <<http://rsph.anu.edu.au/files/Hegarty-Full%20report%20FINAL.pdf>>; Kirsty Forsdike-Young, Laura Tarzia and Kelsey Hegarty, 'A lightbulb moment': Using the theory of planned behaviour to explore the challenges and opportunities for early engagement of Australian men who use violence in their relationships' (forthcoming).

³⁷⁵ Forsdike-Young, Tarzia and Hegarty, above n 374.

³⁷⁶ Lopez, above n 351, 235.

³⁷⁷ Vlais and Campbell, 'Bringing Pathways Towards Accountability Together', above n 207.

The purpose of the research was to explore the extent to which men had engaged with *other* services prior to their MBCP participation; and how that different engagement impacted on their own (relatively new) pathway towards desistance.

The CIJ spoke with 25 men and, while the results are not yet able to be released, the overall themes of the findings confirm and expand upon the literature described above in terms of the complexity of desistance; and the barriers involved in perpetrator intervention. The study also confirmed that the burden of intervention should not lie with one part of the service system. Nor should it involve a 'one size fits all' approach. Rather, in moving towards a systemic response which provides multiple catalysts for change, services must start to embrace a shared purpose and understanding around what 'perpetrator intervention' involves.

Overall, these findings from relevant qualitative research suggest that perpetrators of FV:

- Need help to understand the orders to which they are subject;
- Need help to experience the court process as authoritative or meaningful;
- Nevertheless experience the court process as one of a series of negative consequences which need to accumulate to act as triggers or 'catalysts for change' – provided that perpetrators are assisted to explore emotional reactions such as shame and guilt in relation to these triggers;
- Need to shift to seeing external assistance as acceptable;
- Need more than one program and value ongoing peer support;
- Need to see behaviour change as an 'ongoing life project'.

Conclusion – Part Four

The question is then how a best practice court-mandated Counselling Order program and the wider operation of the SFVCs can realistically help to address these requirements. Certainly, the above exploration of relevant literature in Part Four has attempted to provide a flavour of the complexity inherent in developing and delivering perpetrator interventions.

The discussion of typologies indicated the limitations of attempting to identify categories or cohorts of perpetrators. Rather – and perhaps most importantly of all - *adaptable* responses to the risk that an *individual* perpetrator might pose to his family is likely to be the most effective lens through which any perpetrator intervention should be applied.

The review of literature in relation to perpetrator pathways towards desistance then indicated that multiple catalysts – both internal and external – need to occur for a perpetrator to engage with the prospect of change. It also indicates that sustainable change towards non-violence might require some degree of ongoing program involvement or 'top up' contact, and for perpetrators to adopt a view of behaviour change as an 'ongoing life project'.

Against a background of constantly evolving knowledge and research, it is essential that best practice SFVCs – as well as any Counselling Order programs which they may deliver – keep these considerations of complexity in mind.

Part Five – Lessons regarding effectiveness & success

A reasonable conclusion to be drawn from the above scan of literature concerning the complexity inherent in perpetrator interventions is that best practice SFVCs and any court-mandated Counselling Order program will also need to measure their effectiveness in a nuanced and tailored way. This includes recognising that previous measures of effectiveness – whether in the SFVC or MBCP sphere – have been limited, and ill-equipped to recognise the variable and diverse factors that contribute to improvements to family members' safety and reduced perpetrator-driven risk.

This Part therefore describes some of these limitations identified in relation to MBCPs specifically and, in some cases, in relation to court-integrated programs. It then explores emerging approaches taken by researchers to develop more meaningful measures of success. Although these currently relate primarily to MBCPs, these approaches signal that appropriate measures for *any* perpetrator intervention must be linked back to the definition of 'perpetrator accountability' proposed at the outset of this review.

To this end, perpetrator accountability may mean more than a perpetrator's compliance with an order to attend a program.³⁷⁸ However, evaluators should perhaps expect less than comprehensive change in attitudes and behaviour at the completion of a single MBCP. Taking this approach will allow a SFVC intervention to define goals which are both broader *and* more realistic, to develop nuanced assessments of an intervention's value, and to identify where collective responsibility for achieving perpetrator accountability lies.³⁷⁹

Men's Behaviour Change Programs – do they 'work'?

A constant question pursued in literature concerning perpetrator interventions, of course, concerns the extent to which MBCPs actually 'work'.³⁸⁰ As explored by the RCFV, the evidence on MBCPs/Batterer Intervention Programs (BIPs) can be described as ambivalent at best.³⁸¹

Programs in the US have certainly been comprehensively evaluated, albeit with mixed results. As the CIJ has previously noted: 'equally mixed – and regrettably vexed on occasion – is the associated academic debate'³⁸² with a great deal of energy consumed within relevant academic discussion by demolition of other researchers' methodologies, rather than examining the real questions of the value of a program.³⁸³

Of course, the question of whether MBCPs 'work' is an important one, as it influences the flow of government resources, as well as the expectations and behaviour of both service systems and victims alike.³⁸⁴ It is therefore important to have a comprehensive picture of the impact that MBCPs are actually having; as well as a *realistic* understanding that this impact, if any, is occurring within a broader set of circumstances which may be difficult to measure in isolation. After all, when first developed in the US in the late 1970s, BIPs were never intended to work alone, but instead as part of an integrated intervention response.³⁸⁵

³⁷⁸ The Sentencing Advisory Council of Victoria has observed that the primary purpose of sentencing for contravention of a FVIO should be ensuring compliance with that order in order to safeguard the victim and community. Sentencing Advisory Council, *Guiding Principles for Sentencing Contraventions of Family Violence Intervention Orders* (2009) 3.

³⁷⁹ Vlasis et al, above n 1; See commentary from Phyllis Frank, associated with the New York model in Minns, above n 38.

³⁸⁰ Julia C. Babcock, Charles E. Green and Chet Robie, 'Does batterers' treatment work? A meta-analytic review of domestic violence treatment' (2004) 23(8) *Clinical Psychology Review* 1023-1053.

³⁸¹ Victorian Government, above n 243; Esther Arias, Ramón Arce and Manuel Vilariño, 'Batterer intervention programmes: A meta-analytic review of effectiveness' (2013) 22(2) *Psychosocial Intervention* 153-160; Christopher I. Eckhardt et al, 'The Effectiveness of Intervention Programs for Perpetrators and Victims of Intimate Partner Violence' (2013) 4(2) *Partner Abuse* 196-231; Lynette Feder and David B. Wilson, 'A meta-analytic review of court-mandated batterer intervention programs: Can courts affect abusers' behavior?' (2005) 1(2) *Journal of Experimental Criminology* 239-262; Lori Heise, 'What Works to Prevent Partner Violence? An Evidence Overview' (2011) <<http://strive.lshtm.ac.uk/resources/what-works-prevent-partner-violence-evidence-overview>>; A. J. Velonis et al, 'Searching for the mechanisms of change: a protocol for a realist review of batterer treatment programmes' (2016) 6(4) *BMJ Open*; G. Smedslund et al, 'Cognitive behavioural therapy for men who physically abuse their female partner' (2007) 18(3) *Cochrane Database Syst Rev*; Grealy and Wallace, above n 1.

³⁸² Centre for Innovative Justice, 'Opportunities for Early Intervention: Bringing perpetrators of family violence into view', above n 4.

³⁸³ See, for example Kenneth Corvo, Donald Dutton and Wan-Yi Chen, 'Toward Evidence-Based Practice with Domestic Violence Perpetrators' (2008) 16(2) *Journal of Aggression, Maltreatment & Trauma* 111-130.

³⁸⁴ Issues include that victims may expect their partners to desist from violence while engaged in a program: Grealy and Wallace, above n 1; Lynette Feder and Laura Dugan, 'A test of the efficacy of court-mandated counseling for domestic violence offenders: The broward experiment' (2002) 19(2) *Justice Quarterly* 343-375, 345; Erin Mackay et al, 'Perpetrator interventions in Australia: State of knowledge paper' (2015), 10 <<https://d2c0ikyv46o3b1.cloudfront.net/anrows.org.au/s3fs-public/Landscapes%20Perpetrators%20Part%20ONE.pdf>>.

³⁸⁵ Mackay et al, above n 434.

The evidence challenge

Equally vital to understand about how MBCPs work within this integrated system is that the evidence also remains mixed simply because of the methodological challenges involved in the relevant research. For example, one barrier to rigorous research into MBCP outcomes is the cost of multi-site, longitudinal studies that draw on multiple sources of data.³⁸⁶ Promising evaluations of MBCPs in the Australian context should therefore be viewed with some caution if they rely purely on perpetrator self-reports³⁸⁷ and do not contain a full picture of a perpetrator's behaviours through reports from his (former) partner/s.³⁸⁸

Where rates of individual recidivism remain the dominant strategy for evaluating the performance of MBCPs, practical and analytical problems also arise. For example, studies that measure rates of recidivism at only a short interval after program completion fail to convey a strong sense of the effects of the program over time.³⁸⁹ Others lack a common definition for recidivism (for example, re-charged/parole revoked/re-sentenced).³⁹⁰

Arguably, the key substantive problem with measuring success by 'recidivism' is that it falls back on an understanding of FV as 'incident-based', rather than taking the pattern-based approach that leading analyses increasingly prefer.³⁹¹ Furthermore, counting those who re-offend as program 'failures' ignores potential positive effects in both the lives of participants and those connected to them. As noted above, this includes the fact that increased 'recidivism' may actually indicate greater scrutiny of the offender and/or increased confidence by the victim to report offending behaviour.³⁹²

Further challenges lie in the lack of 'gold standard' experimental studies which, in other spheres, demand that one group of subjects be provided with an intervention while a comparison group goes without. Even without the ethical questions of depriving a comparison group of an intervention, this approach demands that other variables which may contribute to the impact of the evaluation are discounted – something which is not possible within the complex human and social terrain of integrated responses to FV.³⁹³ In fact, whereas the goal of a randomised experimental trial is to *exclude* external factors, Part Four of this review indicates that it is *precisely* those external factors that can work in concert with, or against, an intervention.³⁹⁴

Measurements of success

The challenge for a best practice Counselling Order program – and an SFVC more broadly – would therefore be to devise measures for effectiveness that do justice to the complexity of FV; to perpetrator's convoluted pathways toward change; to the varied ways in which victims experience benefits from their partners' participation in an intervention;³⁹⁵ and to victims' own priorities and resistance to the violence they experience.³⁹⁶

³⁸⁶ Vlasis et al, above n 1.

³⁸⁷ Silvergleid and Mankowski, above n 275. See also Vlasis and Campbell, 'Bringing Pathways Towards Accountability Together', above n 207.

³⁸⁸ See for example, Brown and Hampson, above n 188. Despite this being a multi-site, longitudinal project which indicated promising results for the evaluated MBCP, the limited engagement of partner/ex-partner perspectives has been identified as a significant weakness of the study. See Vlasis et al, above n 1.

³⁸⁹ Jan Breckenridge and Jen Hamer, 'Traversing the Maze Of 'Evidence' and 'Best Practice' in Domestic and Family Violence Service Provision In Australia' (2014) *Issues Paper 26* <<https://d2c0ikyv46o3b1.cloudfront.net/anrows.org.au/s3fs-public/page-attachments/IssuesPaper26-May2014.pdf>>.

³⁹⁰ Although see a more nuanced discussion of risk assessment for recidivism here: Marisol Lila et al, 'Recidivism risk reduction assessment in batterer intervention programs: A key indicator for program efficacy evaluation' (2014) 23(3) *Psychosocial Intervention* 217-223.

³⁹¹ Nicole Westmarland, Liz Kelly and Julie Chalder-Mills, 'What counts as success?' (2010) <<https://www.nrfoundation.org.uk/downloads/Respect-research-briefing-note-1.pdf>>.

³⁹² Vlasis, 'Ten Challenges and Opportunities for Domestic Violence Perpetrator Program Work', above n 18.

³⁹³ Lisa A. Goodman, Deborah Epstein and Cris M. Sullivan, 'Beyond the RCT: Integrating Rigor and Relevance to Evaluate the Outcomes of Domestic Violence Programs' (2018) 39(1) *American Journal of Evaluation* 58-70, 60; Breckenridge and Hamer, above n

³⁹⁴ Goodman, Epstein and Sullivan, above n 393. Further technical challenges with experimental research in this field, such as sample selection, have also been identified: Roger Matthews and John Pitts, 'Rehabilitation, Recidivism, and Realism: Evaluating Violence Reduction Programs in Prison' (1998) 78(4) *The Prison Journal* 390-405.

³⁹⁵ Nicole Westmarland and Liz Kelly, 'Why Extending Measurements of 'Success' in Domestic Violence Perpetrator Programmes Matters for Social Work' (2013) 43(6) *The British Journal of Social Work* 1092-1110.

This includes acknowledging some unexpected disadvantages from the service system's intervention. See Thomas, Goodman and Putnins, above n 42.

³⁹⁶ See further discussion of this complexity in Carson, Chung and Day, above n 273.

A promising strategy for evaluation of a perpetrator intervention has been developed by Westmarland, Kelly and Chalder-Mills.³⁹⁷ These authors conducted preliminary research with victims, perpetrators and practitioners, to identify interviewees' perspectives on 'success' in relation to a MBCP.³⁹⁸ The weight that participants gave six themes reverses the sector's traditional main focus on physical safety,³⁹⁹ as well as on men's accountability.

Ordered by frequency of mention, themes were:

- Respectful/improved relationships;
- Expanded space for action;
- Support/decreased isolation;
- Enhanced parenting;
- Reduction or cessation of violence and abuse; and
- Men understanding the impact of domestic violence.⁴⁰⁰

For male participants, MBCPs were judged a success when men were able to:

- gain an enhanced awareness of themselves and others (including capacity to exercise patience, self-control and empathy);
- reduce or cease using violence or other abusive behaviours; and
- achieve improved relationships with better communication.⁴⁰¹

This particular study, of course, does not suggest that considerations of risk – including lethal risk – should not be prioritised. Rather, it suggests that perspectives of adult and child victims should be given far more weight in our conceptualisation of 'success'. This is an objective which has not been well-served by the criminal justice system's incident-focused prosecution lens;⁴⁰² the FV sector's traditional emphasis on women separating from abusive men;⁴⁰³ or social and child protection workers' benign construction of fathers.⁴⁰⁴

Certainly, recent literature has drawn attention to the ways in which interventions can work against, or in solidarity with, victim/survivor's own priorities and strategies of resistance. As the authors of a recent *Stopping Family Violence* Issues paper, Vlasis and colleagues have observed:

[I]f perpetrator interventions serve in part to assist family members in their struggle to restore dignity, the usual notions and measures of safety might not be sufficient to capture this intent.⁴⁰⁵

To this end, the next section considers the priority which should be given to partner and family safety contact and how this might inform conceptualisations of success for a best practice Counselling Order program.

³⁹⁷ Westmarland, Kelly and Chalder-Mills, above n 391.

³⁹⁸ Brown and Hampson, above n 188.

³⁹⁹ Westmarland, Kelly and Chalder-Mills, above n 391.

⁴⁰⁰ Ibid 4.

⁴⁰¹ Ibid 7-9.

⁴⁰² Eve S. Buzawa, Carl G. Buzawa and Evan Stark, *Responding to Domestic Violence: The Integration of Criminal Justice and Human Services*, (SAGE, 2011).

⁴⁰³ J. L. Herman, 'Justice from the victim's perspective' (2005) 11(5) *Violence Against Women* 571-602; Robyn Holder, 'Sisyphus and the system: Criminal justice reform in the Australian Capital Territory' (2009) 8(1) *Currents: New Scholarship in the Human Services* 1-20.

⁴⁰⁴ Jeff L. Edleson, 'Responsible mothers and invisible men: Child protection in the case of adult domestic violence' (1998) 13(2) *Journal of Interpersonal Violence* 294-298; Maria Eriksson, 'Girls and boys as victims: Social workers' approaches to children exposed to violence' (2009) 18(6) *Child Abuse Review* 428-445; Margo Lindauer, 'Damned if you do, damned if you don't: Why multi-court involved battered mothers just can't win' (2012) 20(4) *American University Journal of Gender, Social Policy and the Law* 797-822; Christopher Walmsley, 'Fathers and the Child Welfare System' (2009) <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.532.1&rep=rep1&type=pdf>>.

⁴⁰⁵ Vlasis et al, above n 1.

Valuing work with partners/family members

A crucial element of any MBCP is the partner, or family safety, support service associated with the program. This is provided either by a partner contact worker as part of the MBCP team, or by a specialist women's family violence service in an MoU arrangement with the MBCP provider. Partner safety support, more generally known as partner contact, is widely recognised in Australian MBCP minimum standards and practice guidance documentation as having a *central* role in MBCP provision. Each Australian jurisdiction that has minimum standards devotes several standards specifically to partner contact.

Research suggests that partner contact can be *the* crucial element in terms of the difference to family members' feeling of safety and expanded space for action.⁴⁰⁶

Other literature suggests that this is why some MBCPs continue partner contact even where a perpetrator has stopped attending, or has finished, a program.⁴⁰⁷ Given the evidence referred to earlier suggesting that program dropout is also correlated with higher rates of recidivism,⁴⁰⁸ providers and/or case managers should certainly not withdraw support from partners/families because a perpetrator has withdrawn from the program.

Indeed, program discontinuation can be grounds, due to what this might signal about risk, to *increase* the support that a victim/survivor receives. This is particularly the case given previous research that suggests that, in many cases, women whose partners are linked with an MBCP have often not received support from other sources.⁴⁰⁹

Partner safety support procedures and processes vary widely between MBCP providers both within and across jurisdictions, as a result of:

- Different resource allocations for the work, including how internal resources are prioritised for partner safety support in relation to work with the men.
- Implicit, if not articulated, philosophical differences regarding the objectives of MBCP work. This includes the visibility and importance given to working towards positive outcomes for family members that do not necessarily depend on the man changing his behaviour through the program.
- Different opinions in terms of what is considered part of this work, and of the responsibilities and parameters of the partner contact worker role.
- The difference between partner contact being conceptualised as a limited service focused mainly on checking issues of risk to family members and as a window to men's behaviour at home, as distinct from a more comprehensive service that keeps victim-survivor needs and experiences at the centre in case planning and intervention decisions that are made in relation to the men.
- The extent to which partner contact provision 'hangs' off and directly or indirectly depends upon the man's participation in the program, as distinct from this being an independent service provided to women in their own right.
- The degree of family violence specialisation held by the MBCP provider as an agency, and, in particular, its experience in providing specialist DFV services for women and children.

⁴⁰⁶ Westmarland and Kelly, above n 395; Smith, above n 179; McGinn et al, above n 34; Stephanie Denne, Leigh Coombes and Mandy Morgan, 'Problematising effectiveness: The inclusion of victim advocacy services in living without violence programmes provision and evaluation' (Paper presented at the Refereed Proceedings of Doing Psychology: Manawatu Doctoral Research Symposium Volume 2, Massey University, Palmerston North, <https://mro.massey.ac.nz/bitstream/handle/10179/4955/Denne_PsySymposium_2012.pdf>.

⁴⁰⁷ Rodney Vlasis, 'Domestic violence perpetrator programs: Education, therapy, support, accountability 'or' struggle?' (2014) <<http://www.ntv.org.au/wp-content/uploads/2016/12/Elements-of-DV-perpetrator-program-work.pdf>>.

⁴⁰⁸ Cuevas and Bui, above n 236; McMurrin and Theodosi, above n 236.

⁴⁰⁹ Brown and Hampson, above n 188.

New Zealand research on partner safety support points to the crucial importance of prioritising this work on an equal footing to the perpetrator intervention components of integrated approaches:

The women's accounts of victim advocacy in the current study suggests that there is a need to broaden our understandings of "effectiveness" when evaluating living without violence program provision ... Regardless of whether their (ex)partners experienced reductions in their level of abuse and violence, the women's feelings of safety and well-being increased as a result of partner and family support services. The women were not dependent on the men's processes of change, but instead were enabled to nurture their own well-being independently.⁴¹⁰

These results mirror a recent evaluation of Caledonian System interventions with family violence perpetrators, which found important gains for women's wellbeing, independent of how their partners were progressing through the program.⁴¹¹ In fact, the Caledonian System significantly prioritises women's and children's services as crucial components of the overall approach and may be an exemplar in this respect for any best practice Counselling Order program.

Valuing work with children

Of course, family safety support potentially involves more than adult victims. Growing evidence points to the extent to which children are impacted by experience and exposure to family violence, including the style of parenting they receive from their father.⁴¹² This includes the impact of the perpetrator's behaviour on their mother's capacity to parent where she is constantly undermined by, or in fear of, their father.⁴¹³

Recent research in the UK has indicated that MBCPs remain one of the key resources/services that can potentially fill a much-needed gap in terms of addressing men's violence against children. Stanley and colleagues' research suggests that, in the absence of appropriate services, child protection social workers have tended to ignore fathers using violence, instead concentrating pressure and surveillance on mothers on whom the onus to protect children is placed.⁴¹⁴

Kennedy discusses similar inadequacies in child welfare responses to FV in the US, urging greater involvement of FV services and holistic support for families and children experiencing FV.⁴¹⁵ Reports in Australia have documented similar problems.⁴¹⁶

Indeed, one of the highest priorities of the MBCP 'industry' across Australia is to bring children's needs and experiences more into the foreground of the work. This can potentially involve a number of strategies, such as to:

- Use an assessment framework or tool that considers the threats that the perpetrator behaviour poses to the safety, stability, development and (cumulative) wellbeing of each of the perpetrator's children with whom he has significant contact.⁴¹⁷

⁴¹⁰ Denne, Coombes and Morgan, above n 406.

⁴¹¹ Rachel Ormston, Ciaran Mulholland and Lucy Setterfield, 'Caledonian system evaluation: Analysis of a programme for tackling domestic abuse in Scotland' (2016) <<http://www.gov.scot/Resource/0050/00507596.pdf>>.

⁴¹² Susan Heward-Belle, 'The Diverse Fathering Practices of Men Who Perpetrate Domestic Violence' (2016) 69(3) *Australian Social Work* 323-337; Katie Lamb, Cathy Humphreys and Kelsey Hegarty, "'Your behaviour has consequences': Children and young people's perspectives on reparation with their fathers after domestic violence' (2018) 88 *Children and Youth Services Review* 164-169.

⁴¹³ Katie Lamb, *Seen and heard: embedding the voices of children and young people who have experienced family violence in programs for fathers* (PhD Thesis Thesis, University of Melbourne, 2017); Red Tree Consulting, 'Assessing children and young people experiencing family violence: A practice guide for family violence practitioners' (2013)

<https://dhhs.vic.gov.au/sites/default/files/documents/201705/Assessing_children_and_young_people_family_violence_0413.pdf>; *Fathering Challenges Project*, <<https://violenceagainstwomenandchildren.com/fathering-challenges-project/>>; Humphreys et al, above n 312; Healey, Connolly and Humphreys, above n 184; Humphreys and Campo, above n 264; Cathy Humphreys, Lucy Healey and David Mandel, 'Case Reading as a Practice and Training Intervention in Domestic Violence and Child Protection' (2018) *Australian Social Work* 1-15.

⁴¹⁴ Nicky Stanley et al, 'A Stop-Start Response: Social Services' Interventions with Children and Families Notified following Domestic Violence Incidents' (2011) 41(2) *The British Journal of Social Work* 296-313.

⁴¹⁵ Deseriee Kennedy, 'From Collaboration to Consolidation: Developing a More Expansive Model for Responding to Family Violence' (2013) 20(1) *Cardozo Journal of Law & Gender* 1-32.

⁴¹⁶ Ellen Fish, Mandy McKenzie and Helen MacDonald, 'Bad Mothers and Invisible Fathers: Parenting in the context of domestic violence' (2009) *Discussion Paper no. 7* <<http://www.dvrcv.org.au/knowledge-centre/our-publications/discussion-papers/bad-mothers-invisible-fathers>>; Liz Kelly and Nicole Westmarland, 'Domestic Violence Perpetrator Programmes: Steps Towards Change' (2015) <https://www.nr-foundation.org.uk/downloads/Project_Mirabal-Final_report.pdf>; Lamb, above n 413; Sue Alderson, Liz Kelly and Nicole Westmarland, 'Domestic Violence Perpetrator Programmes: Children and Young People' (2013) <https://www.nr-foundation.org.uk/downloads/FinalversionChildren_and_Young_Peoplebriefingnote.pdf>.

⁴¹⁷ For example, Victoria's Practice Guide for FV practitioners: Red Tree Consulting, above n 413.

- Assess the ways in which the perpetrator might be directly or indirectly, tactically or less deliberately, harming his (ex)partner's capacity and perceived worth as a parent; relationship with their children; and their children's and family's connections to cultural, health and social service supports.
- Introduce a child contact worker as part of the MBCP team – or develop an arrangement with a children's service external to the agency – to conduct child contact work that is informed by, and helps to inform, partner support and interventions with the men.⁴¹⁸
- Consider the opportunities and risks involved in leveraging program participants' professed love for their children, and their self-image as a 'good Dad'.
- Increase the visibility of the participants' children's needs. This includes recognition of the effects of violence on children; as well as recognition that contributing towards a safe family environment is an essential requirement of being 'a good Dad', as is the way in which the perpetrator treats and views the children's mother.
- Consider offering an extended module for program participants, or a second stage group, for men who are fathers on child-centred, responsive, reparative fathering.
- Develop skill and capacity to respond to adolescent violence in the home and adolescent relationship violence, including links to services to address this complex issue.

That said, few MBCP providers currently have the resources to adopt all these strategies.

Recent Victorian research with children and young people experiencing FV found that the overwhelming majority did not know whether their father was, or had been, attending a MBCP.⁴¹⁹

Similarly, UK research has found that children of MBCP participants had little understanding of the program in which their father was participating, and had not been directly or indirectly informed about the program, despite many still having contact with their father.⁴²⁰ The authors of one such study argued:

Since a core principle of DVPPs [domestic violence perpetrator programs] is to hold men accountable for their behaviour, we argue that more consideration should be given to extending this to their children. This might take the form of program sessions on finding the right language to talk to children about violence and abuse and about positive, healthy relationships. This may also ... start to reduce, where safe to do so, the burden on the mother to always be the one to explain and provide support for others on top of her own victimisation-survival.⁴²¹

These studies signal vital future directions for all best practice perpetrator interventions in terms of the kinds of collaborative and multi-directional support they should be seeking to provide.

⁴¹⁸ The children's contact service as part of the Caledonian System approach provides one example of this – see Ormston, Mulholland and Setterfield, above n 411.

⁴¹⁹ Lamb, above n 413.

⁴²⁰ Susan Alderson, Nicole Westmarland and Liz Kelly, 'The Need for Accountability to, and Support for, Children of Men on Domestic Violence Perpetrator Programmes' (2013) 22(3) *Child Abuse Review* 182-193; Gwynne Rayns, 'What are children and young people's views and opinions of perpetrator programmes for the violent father/male carer? PLR0910/086 ' (2010) <http://dera.ioe.ac.uk/2758/7/Microsoft_Word_-_PLR0910086Rayns_YT_edits_Final_Redacted.pdf>.

⁴²¹ Alderson, Westmarland and Kelly, above n 420, 7-8.

Source of partner/broader family support

A key question for MBCP providers and the expanding SFVCs is which organisation is best-placed to provide partner/family support. An emerging evidence base certainly indicates that partner support associated with MBCPs can contribute significantly to:

- women's capacity for safety planning;
- women's access to support services; and
- women's subjective feelings of empowerment, wellbeing and safety,

However, research also indicates that there may be higher uptake of partner support services when these are offered by a specialist women's service.⁴²² Indeed, a recent review of the MBCP field in Australia notes:

Providers generally have good intent regarding the importance of partner support work. However, in terms of the allocation of resources for this work relative to working with men, and the use of language to describe the work with women, partner support often manifests as a second priority tied mainly to the man's participation in the program.

... victim advocacy services can perform an important role as part of multi-disciplinary teams providing joined-up assessment and case reviews with respect to perpetrators participating in intervention programs. Rather than the provision of a partner contact service being 'off to the side' of the 'main intervention' with the men, the involvement of independent specialist women's and children's FDV services can perform an important role in cross-agency decision making regarding perpetrator case plans and reviews.⁴²³

Given the increasing emphasis on information sharing and collaborative working arrangements, exploring opportunities for this kind of cross-agency decision making would seem a clear priority for any best practice SFVC and associated Counselling Order programs.

Combining measures of success

US sector experts Goodman, Epstein and Sullivan suggest that evaluations of FV interventions should prioritise victim/survivor perspectives, and that these are best gathered through qualitative research instruments such as interviews, focus groups and participatory research, rather than through quantitative measures such as recidivism.⁴²⁴

Rather than evaluating discrete program components or attempting to develop a single program model, Goodman and colleagues therefore argue that researchers and evaluators should look to identify common approaches (or principles) that work across different contexts, or what they call 'community-defined evidence'.⁴²⁵

⁴²² Leslie Maureen Tutty, Sarah Anne Knight and Jacqueline G. Warrell, 'An evaluation of the Calgary partner check process for domestic violence' (2011) <<http://www.ucalgary.ca/resolve/files/resolve/an-evaluation-of-the-calgary-partner-check-process-for-domestic-violence.pdf>>; Catherine Opitz, 'Considerations for partner contact during men's behaviour change programs: Systemic responses and engagement' (2014) Autumn *Ending Men's Violence Against Women and Children: The No To Violence Journal* 114-142.

⁴²³ Vlasis et al, above n 1.

⁴²⁴ Goodman, Epstein and Sullivan, above n 393.

⁴²⁵ Ibid 64.

To this end, the European IMPACT project evaluation toolkit sets out some of these issues around defining 'success' and the complex environment in which perpetrator interventions are evaluated:

Programmes sometimes appear to have no impact on a man's use of violence and abuse against his partner, or they can't show this because the relationship has ended and there is no contact. Sometimes things may get worse and sometimes this can be because of factors over which the programme has no control, such as a failure in another part of the legal or protection system....

For example, she may have been waiting for him to go on the programme as a last chance and decide that she has given him every opportunity to change and is now going to end the relationship. Another example is that she may have support or information and advice from the programme or programme partner organisations which she would not otherwise have had...

Sometimes the programme will identify problems for women or children who weren't identified before – this is a success, even though it will show up that a problem not identified at the start has been identified by the end. This could be misunderstood but it is an important aspect of how programmes can contribute to community safety.⁴²⁶

The IMPACT project's push for standardised evaluation offers a template for improved data collection, as well as for monitoring of the impacts of MBCPs in Australia.⁴²⁷ Some of the key questions that Lilley-Walker and colleagues suggest needs to be answered include (but are not limited to) program attrition and, as this excerpt reveals, delve more deeply than has been conventionally the case into this simple indicator:

...we need to understand who is participating and why; who is dropping out, when and why; who is completing; and who is changing, when, why, and how?⁴²⁸

Featured below is Lilley-Walker and colleagues' diagram of five proposed points of data collection designed to develop a more comprehensive account of the engagement and impacts of MBCPs.⁴²⁹

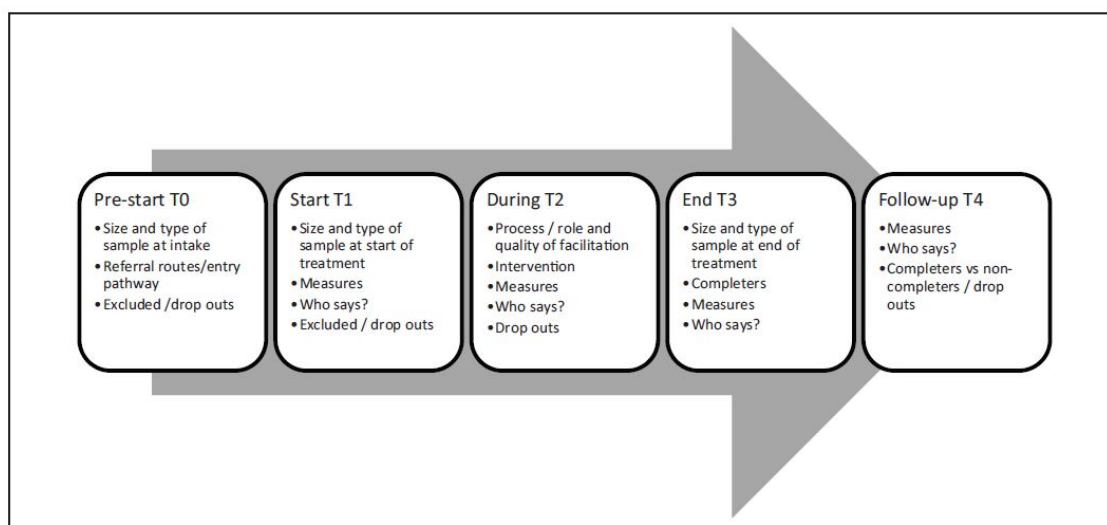


Figure 2. Evaluation data and time points (for collection and reporting).

⁴²⁶ Project Impact, 'Impact toolkit report pro-forma for DVPP outputs and outcomes ' (2018) <<https://www.work-with-perpetrators.eu/research/project-impact/impact-monitoring-toolkit.html>>.

⁴²⁷ Sarah-Jane Lilley-Walker, Marianne Hester and William Turner, 'Evaluation of European Domestic Violence Perpetrator Programmes: Toward a Model for Designing and Reporting Evaluations Related to Perpetrator Treatment Interventions' (2016) 62(4) *International Journal of Offender Therapy and Comparative Criminology* 868-884.

⁴²⁸ Ibid 11.

⁴²⁹ Ibid 12.

These and other researchers therefore suggest that 'success' should be viewed in terms of how the MBCP program contributes to an integrated or coordinated community response which increases victim safety, in addition to the extent to which it changes an individual perpetrator's behaviour. This includes the extent to which a program is contributing to positive outcomes for partners, even if the man does not change his behaviour at all.

Drawing on the work of Westmarland and colleagues referred to earlier, this includes potentially rethinking the emphasis we put on particular measures. Drawing on all the literature referred to throughout this review, of course, this also includes potentially rethinking the measures we use to measure *system* accountability – what the participating organisations in a best practice perpetrator intervention must keep doing to respond to risk and to keep family members safe.

Conclusion

The most recent literature therefore confirms what Ed Gondolf, one of the most respected researchers in this area, argued decades ago - that, above all, 'the system matters'.⁴³⁰ The task for SFVCS – and any best practice Counselling Order program operating within them – is to identify how they can play an integral, proactive, risk-informed part within this system.

This includes perceiving their role as more than just being concerned with 'getting him to a program', but instead as a role which:

- identifies those who may not be suitable for a program, as well as those who need other, sequenced interventions before they can participate;
- monitors attendance, or non-attendance at this program, including failure to attend for an intake assessment or program attrition as a sign of potentially increased risk;
- uses the relationship with, and information gathered through, this program in combination with the court's authority to leverage meaningful engagement and to assess and manage this risk;
- brings realistic expectations of what a program can achieve, as well as nuanced understandings of perpetrator pathways towards desistance, to bear in its decisions; and
- values family member experiences, as well as the contribution of services supporting those family members, in measurements of its success.

Of course, the literature regarding MBCP participation and outcomes, SFVC effectiveness and even perpetrator pathways is considerable. This review has therefore attempted to provide a targeted sample of the emerging and established evidence which echoes many of the imperatives identified above and clearly points to:

- The breadth of SFVC approaches currently in operation;
- The role of procedural and therapeutic justice in monitoring and increasing perpetrator compliance and accountability;
- The need for interventions to be tailored, sequenced and capable of responding to fluctuating risk;
- The need for victim/survivors to have a central role in SFVC responses to perpetrators through representation of victim perspectives and services;
- The complexity inherent in any perpetrator intervention, including in attempting to differentiate and stream perpetrators into different intervention cohorts;
- The limited capacity of a single intervention to make a lasting difference on its own; and
- The consequent need to identify more realistic, long term and meaningful measures of effectiveness and success.

As such, the purpose of the review has been to help 'pivot' the MCV towards more effective perpetrator accountability contributions. While some of the complexity identified here may seem external to the daily operation of any court-mandated Counselling Order program, SFVCs need to know how to ensure that all of its actions –referral, eligibility and suitability assessments, case management approaches, monitoring and compliance or any interaction with a perpetrator in the courtroom – can play a part in an effective integrated response. To do this, SFVCs must be as well-equipped as possible to make the most of each opportunity as it arises.

⁴³⁰ Gondolf, *The Future of Batterer Programs: Reassessing Evidence-Based Practice*, above n 17.

Counselling Order Review – Appendix A – Consultations

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- Kai Noonan from ACON (NSW)
- Professor Colleen Fisher, Head of School, Population and Global Health, University of Western Australia
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- Sally Bolton, Director of Courts, Southern Region, NT Department of Attorney General & Justice
- Yasmin Gunn, Principal Policy Officer, Domestic and Family Violence Court Program, Queensland Department of Justice and Attorney-General;
- Rebecca Maurer, Integration Manager Domestic and Family Violence, South East Region, Queensland Department for Communities; and Centacare’s MBCP practitioner team
- Sue King, Manager Intervention Programs, Court Administration Authority South Australia
- Teresa Tagliaferri, A/Director, Court Counselling and Support Services, Court and Tribunal Services, Western Australia Department of Justice
- Nicola Sandbrook and Jo-Anne Vivian of the Ministry of Justice,
- Graham Barnes, Lead Trainer of Shine
- Neil Blacklock, Respect’s Development Director
- Rory Macrae, founder and lead trainer of the Caledonian System, Scotland
- Katreena Scott, Canada Research Chair in Family Violence Prevention and Intervention, University of Toronto
- Judge Karen Ruddy, Whitehorse Court, Yukon
- Melanie Sawatzky, DVIRT Program Manager & HRMI Coordinator, Homefront Alberta
- Jesse Hansen, Program Coordinator, Colorado Domestic Violence Offender Management Board
- Professor Angela Glover, School of Public Affairs, University of Denver Colorado

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