



## Research Brief *Specialist Family Violence Courts*

### Introduction

The term 'Specialist (or Specialised) Domestic/Family Violence Courts' (SDFVCs) currently serves as a catch-all denomination referring to courts that specialise in the handling of civil and/or criminal domestic and family violence (DFV) matters by way of a specialist division, list, program or set of processes within existing courts in Australia (ALRC 2010: 1485-6). Though the descriptor 'specialised' is used, it should be noted that these courts have a generalist jurisdiction and are therefore distinct from courts that have a specialist jurisdiction, such as the Family Court of Australia (Parkinson 2016: 6).

A key feature of SDFVCs is the incorporation of a 'problem solving' and 'therapeutic jurisprudence' approach to the treatment of DFV issues (Jeffries 2002; Freiberg 2007). Indeed, SDFVCs have developed out of the recognition that 'behavioural and environmental factors contribute to offending' (Hennessy 2009: 67) and that '[t]he justice system is ideally positioned' to address and treat these issues in addition to enforcing accountability of offenders and guaranteeing safety for victims (Stewart 2010: 2).

The first SDFVC was pioneered in Elizabeth (South Australia) in 1999 and a variety of specialised approaches and therapeutic models currently operate in courts across all Australian States and Territories with the exception of the Northern Territory (Fitz-Gibbon 2016), although there are plans to trial a SDFVC in Alice Springs (Zillman 2016).

### Justifications for a Specialist Court Response

Specialist court responses to family violence are advocated by many of those working in the area 'as a strategy for achieving best practice' (ALRC 2010: 1486). Parkinson notes that specialisation in this area is motivated by three overlapping concerns - 'efficiency gains', 'post-conviction monitoring', and 'therapeutic goals' (Parkinson 2016: 7). Early studies of the development of SDFVCs cited the following as key motivating factors, 'frustration ... with traditional approaches to case processing; rising case loads'; the failure of 'traditional social and community institutions' to support those affected; the lack of 'therapeutic interventions' for offenders; and the recognition that 'recidivism', to the extent that it is social, is more effectively 'dealt with by ... social intervention than by harsher sentences', as key motivating factors (Freiberg 2001: 9; cf. Berman and • Feinblatt 2001).

As Hennessy (2009: 67) writes, SDFVCs aim to 'address the underlying problems of individual litigants, the structural problems of the justice system, and the social problems of communities'. Recent large-scale reports conducted in Australia reiterate the idea that court specialisation results in best practice and call for an expansion of SDFVCs (Royal Commission into Family Violence 2016, RCFV hereafter; Not Now, Not Ever 2015, NNNE hereafter). These reports point to numerous areas of concern in court responses to DFV and advocate for improvements in already established specialist processes to

address these concerns.

### Characteristics of SDFVCs

Parkinson (2016: 25) notes that while 'hundreds' of SDFVCs operate throughout the 'English-speaking world' they are diverse in their composition. Most notable are differences in jurisdictional capacity, as he writes, some courts 'deal only with criminal law aspects, some also deal with protection orders, while others also deal with civil law aspects, notably family law issues' (ibid). Ideally, SDFVCs will operate as a 'one stop' shop 'dealing with related criminal, child protection, civil and family law matters' (Stewart 2011: 3).

However, as specified in the ALRC (2010: 1489-90) report, SDFVCs will typically include a variation of the following key elements:

- Specialised staff such as judicial officers, lawyers, victim support workers and community corrections officers;
- Specialist procedures including dedicated lists on specified days, case coordination mechanisms and specialised intake procedures;
- Support and referral services for victims and in some cases defendants;
- Special arrangements for victim safety including separate areas and remote access technology;
- Offender and behavioural change programs;
- Problem solving or therapeutic approaches.

A distinctive feature of SDFVCs is the connections they seek to foster between the 'criminal justice system' and the 'delivery of therapeutic outcomes' (Jeffries 2002: 11). Freiberg (2007) describes these approaches as falling into the following three categories (cf. Jeffries 2002: 13-22):

*Problem-solving:* these are 'specialised courts', such as indigenous courts, that shift 'from a focus on individuals and their criminal conduct to offenders' problems and their solutions'. Problem solving courts aim for lasting solutions for 'victims and the broader society', 'they are less adversarial', and 'they rely on judicial authority ... to change the behaviour of litigants' (Freiberg 2007: 210).

*Therapeutic jurisprudence:* concerns the implementation of the law and its capacity to have a positive impact on 'psychological well-being'. The theory of therapeutic jurisprudence has been developed to encourage a balance between 'community protection (i.e. justice principles) against individual autonomy (i.e. therapeutic principles)' (ibid 212).

*Restorative justice:* describes a process in which affected parties collectively decide how to deal with the after-effects of an offence. These decisions are made in 'non-court setting[s]' and may involve 'group conferences' and 'victim-offender reconciliation'. There is an overarching focus on 'community not courts' where 'dispositional outcomes ... are the product of a consensus

decision' (ibid 214). It has been noted that the 'use of restorative justice as a response to family violence is controversial' (Cussen & Lyneham 2012: 23).

### Recent Findings and Research

There is consensus among recent major studies that all states and territories should either establish or continue to develop SDFVCs (ALRC 2010: 1509; COAG 2016: 119; Fitz-Gibbon 2016; NNNE 2015: 36; RCFV 2016, Volume III Chapter 16: 158, 161). The ALRC (2010: 1509) report specifies this development should take place 'within existing courts in their jurisdictions', noting that they do not recommend 'the establishment of a separate stand alone court'. These reports make many recommendations for improvement across all aspects of SDFVCs. Two key areas of note include:

1. Ameliorating the detrimental effects to victims caused by confusion related to navigating 'the intersection of domestic and family violence and family law' (NNNE 2015: 251).
2. The impact of perpetrator programs given disappointing results related to recidivism (Parkinson 2016: 27; ALRC 2010: 1511).

Relevant reports call for integrated legal and court services in the interests of prioritising the safety of women and their children and a re-evaluation and redesign where necessary of perpetrator (or offender) programs.

### International Context

SDFVCs have been operating in the United States from as early as the 1980s (Eley 2005: 114) and have proliferated internationally since this time. The ALRC (2010: 1491) Report states that international 'jurisdictions have adopted various models of specialised family violence courts' but makes particular mention of the 'New York model' for its inclusion of Integrated Domestic Violence Courts (IDVCs).

There is a large amount of literature seeking to identify key aspects of successful International SDFVCs (for England and Wales see Robinson 2008 and the Centre for Justice Innovation Report 2013; for the US see Moore 2009 and Cissner et al. 2013). In a comprehensive review of SDFVCs in the US, Moore (2009: 10) concluded that 'research reveals that they are successful in promoting expedited case processing and tend to be associated with increased victim satisfaction and access to services'.

Court practitioners have been critical of studies that measure the success of 'court intervention programs' by exclusive 'reference to the wellbeing of participants' (Cussen & Lyneham 2012: 19). In addressing this, the report by Cussen and Lyneham (2012) drew on the evaluative methods of four key studies (three international and one national) to identify 'three key areas' that can be used 'to measure the success of domestic violence courts'. They are:

- 'bringing more perpetrators to justice;
- improving the support, safety and satisfaction of victims; and
- increasing public confidence in the criminal justice system' (ibid).

In his review of the international SDFVCs Parkinson (2016: 32) notes that '[t]he empirical evidence supports the conclusion that an integrated family violence court dealing with the criminal

case, restraining orders and parenting issues has benefits'. The model Parkinson refers to is the 'one judge and one family' and 'involves a single judge dealing with both the criminal and family proceedings' (ibid).

### Further Research

Numerous aspects related to the day-to-day operation and outcomes of SDFVCs require scrutiny and ongoing evaluation. The ALRC expressed concern about the challenges of ensuring accessibility of specialised services. Given how resource intensive SDFVCs are it is inevitable that 'some victims of family violence—especially those in regional and remote communities' will be left out (ALRC 2010: 1487). Stewart (2010: 2) has pointed to 'an apparently uncritical acceptance of the appropriateness of therapeutic jurisprudence and restorative justice as judicial responses to domestic violence'. She argues that this trend continues despite a lack of evidence supporting perpetrator program outcomes, and that it is accompanied by a diminishment in the area of 'victim safety and support' (ibid).

Parkinson's (2016: 13-5) recent review of SDFVCs identifies six 'risk' areas for ongoing monitoring. These include difficulties attracting capable judges, a loss of objectivity for those working in such a narrow field, and risks related to coercion when using a therapeutic justice model.

The numerous action plans and policy rollouts currently taking place across Australia will require ongoing monitoring and evaluation. Jeffries (2002: 37-9) describes a useful three-stage model for future research including a 'descriptive analysis' of SDFVCs, an evaluation of participant satisfaction and a 'comparative evaluation' of outcomes between traditional and specialist courts.

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