



The views of Australian judicial officers on domestic and family violence perpetrator interventions

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ANROWS acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and future, and we value Aboriginal and Torres Strait Islander histories, cultures, and knowledge. We are committed to standing and working with Aboriginal and Torres Strait Islander peoples, honouring the truths set out in the Warawarni-gu Guma Statement.

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The views of Australian judicial officers on domestic and family violence perpetrator interventions

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Caution: Some people may find parts of this content confronting or distressing. Recommended support services include 1800 RESPECT–1800 737 732 and Lifeline–13 11 14.

Contents

List of figures	4
List of tables	4
Acronyms	5
Key terms	6
Executive summary	8
Key research questions and findings	10
Moving forward	11
Recommendations for policy and practice	12
Introduction	13
Study rationale	14
State of knowledge review	15
Methodology	15
Existing research on perpetrator interventions	16
Suitability of perpetrator intervention programs for domestic and family violence perpetrators	17
Current research on court uses of family violence intervention orders	18
Court and judicial monitoring of compliance with perpetrator interventions	19
International examples of judicial monitoring of compliance	23
Current approaches to judicial training and/or guidelines for incorporating perpetrator interventions into sentencing practice	24
International approaches to judicial education	26
Methodology	27
In-depth interviews	27
Intimate partner homicide cases	30
Documentary and policy analysis	33

Key findings	34
Findings from interviews: Judicial officers' views of perpetrator interventions	34
Findings from the intimate partner homicide case analysis: Perpetrator interventions in the sentencing of intimate partner homicide offenders	65
Conclusions from findings from interview and homicide case analysis data	69
Discussion	71
New frameworks of accountability?	71
Thinking about the judicial role in creating system accountability	71
The value of judicial oversight	75
Barriers to achieving perpetrator accountability	76
Conclusion	79
Moving forward	79
References	81
Cases	86
APPENDIX A	
Intimate partner homicide cases analysed by jurisdiction, perpetrator sex and year	87
APPENDIX B	
Case list of female-perpetrated intimate partner homicide across Australia (excluding Queensland) during 2011-15	89
APPENDIX C	
Process for gaining access to homicide sentencing judgements for each Australian state and territory	90

APPENDIX D	
Family violence intervention orders by Australian state and territory	91
APPENDIX E	
Indicative interview questions	100
APPENDIX F	
Court observations	101

List of figures

Figure 1	Research components	27
Figure 2	Current, prior and breaches of FVIOs (male perpetrators, by jurisdiction)	67
Figure 3	Prior conviction for DFV-related offending (male perpetrators)	68

List of tables

Table 1	FVIOs and FVSNs: Contravention sentences for the period 2009-10 to 2014-15	19
Table 2	Interviewee numbers by role and jurisdiction	28
Table 3	Intimate partner homicide sentencing judgements per jurisdiction to be included in case analysis (sentenced Jan 2011-Dec 2015)	31
Table 4	Intimate partner homicide cases analysed by jurisdiction, perpetrator sex and year	87
Table 5	Process for gaining access to homicide sentencing judgements for each Australian state and territory	90
Table 6	FVIOs by Australian states and territories	91

Acronyms

AIJA	Australasian Institute of Judicial Administration
ALRC	Australian Law Reform Commission
ANROWS	Australia's National Research Organisation for Women's Safety
CCO	Community corrections order
CIJ	Centre for Innovative Justice
COAG	Council of Australian Governments
DFV	Domestic and family violence
DSS	Department of Social Services (Commonwealth)
FDVRT	Family and Domestic Violence Response Team (WA)
FVIO	Family violence intervention order (Vic)
FVOCO	Family violence offender compliance order (Vic)
FVSN	Family violence safety notice (Vic)
JOP	Judicial Oversight Project
MBCP	Men's behaviour change program
NOSPI	National Outcome Standards for Perpetrator Interventions
NSWSC	New South Wales Supreme Court
NTSC	Northern Territory Supreme Court
NTV	No to Violence
PIP	Perpetrator intervention programs
RCFV	Royal Commission into Family Violence (Vic)
SASC	South Australia Supreme Court
SCF	Swift, certain and fair
VSAC	Victorian Sentencing Advisory Council
VSC	Victoria Supreme Court
WASCSR	Western Australia Supreme Court

Key terms

Accountability	A term used in domestic and family violence (DFV) policy and practice guidance most commonly in relation to ensuring perpetrators of family violence are held responsible for their violence by systems (see Spencer, 2016).
Community corrections order (CCO)	A sentence type that involves the release of an offender into the community, with or without a conviction, for a period of time with attached mandatory and program conditions.
Community sentence	Includes community-based orders, intensive correction orders and community corrections orders (CCOs). A community-based order involves the participation by an offender in programs, treatment or training and their supervision by a probation/parole officer. An intensive correction order is a custodial sentence that can be served in the community.
Domestic and family violence (DFV)	Due to variations across Australia in references to domestic and/or family violence, this terminology is used throughout the report for consistency to refer to “domestic violence”, “family violence” and “domestic and family violence”. These differences are detailed in our research brief on key terms of family violence (Monash Gender and Family Violence Prevention Centre, 2019).
Family violence intervention order (FVIO)	A court order to protect a person, their children and their property from a family member’s behaviour. Also referred to as domestic violence order, intervention order, protection order, family violence restraining order, and apprehended violence order.
Family violence safety notice (FVSN)	A police notice available under the <i>Family Violence Protection Act 2008</i> (Vic) to protect a person, their children or their property from a family member’s behaviour.
High-risk	Used to indicate perpetrators of DFV where risk assessment identifies the presence of multiple and significant risk factors that increase the likelihood of further violence (such as previous DFV offending and separation).
Intimate partner homicide	Homicides involving spouses, ex-spouses, persons in current or former de facto relationships, boyfriends, girlfriends, or partners of same-sex relationships.
Judge	Used to refer to County Court and District Court judges.
Judicial officer	Used to refer collectively to justices, judges and magistrates.

Low-end order	A category of sentence type that includes adjourned undertakings, convicted and discharged, and dismissal.
Magistrate	Used to refer to judges located in the Magistrates Court jurisdiction.
Men’s behaviour change program (MBCP)	A group-based perpetrator intervention program for men aimed at ending their use of controlling and abusive behaviours (including physical abuse) and other problematic behaviours in their relationships.
Perpetrator and DFV perpetrator	Refers to perpetrators of DFV. Some literature and interview participants (particularly those working within the criminal justice system) also refer to “offenders”.
Perpetrator intervention	Refers to systems and service responses to perpetrators of DFV from the community sector and within the civil, criminal, child protection and family law systems.
Perpetrator intervention program	Refers to a specific type of perpetrator intervention. Programs may include voluntary or mandated men’s behaviour change programs (MBCPs), case management, and other offender programs and clinical services targeting DFV perpetrators.
Perpetrator of intimate partner homicide	A person who has perpetrated a homicide against their intimate partner.
Protected person	A person who is protected by a family violence intervention order (FVIO) or a family violence safety notice (FVSN); also known as the aggrieved or affected person.
Recidivism	A person’s relapse into criminal behaviour, often after the person receives sanctions or undergoes intervention for a previous crime.
Supreme Court Justice	Used to refer to judges located in the Supreme Court jurisdiction.
Victims/survivors and victim	“Victim/survivor” is used throughout this report to refer to those experiencing DFV, except for in sections regarding analysis of homicide cases where “victim” is used.

Executive summary

This national project explores the views, understandings and practices of judicial officers (justices, judges and magistrates) in relation to domestic and family violence (DFV) perpetrator interventions. Perpetrator interventions are broadly defined here as “systems and service responses to perpetrators of domestic, family and sexual violence from the community sector and within the civil, criminal, child protection and family law systems” (Australia’s National Research Organisation for Women’s Safety [ANROWS], 2019). Perpetrator interventions “engage with a perpetrator directly because of his violence, or risk of perpetrating, domestic, family or sexual violence” (Department of Social Services [DSS], 2015, p. 4). The aim of these interventions is to prevent violence and to change perpetrator “attitudes, beliefs and behaviours in order to prevent them from engaging in family/domestic or sexual violence in the future” (Mackay, Gibson, Lam, & Beecham, 2015a, p. 5).

All forms of perpetrator intervention seek to ensure that perpetrators are held “accountable” for their offending (Spencer, 2016). “Accountability” is related to Outcome 6 in the *National Plan to Reduce Violence against Women and their Children 2010–2022* (Council of Australian Governments [COAG], 2011)—that the perpetrator is held to account for their violence by the criminal justice system and all other services (such as family services and men’s behaviour change programs) (COAG, 2011, p. 29). Accountability broadly means that the perpetrator takes responsibility for their violence and that appropriate sanctions are applied (see Mackay et al., 2015a; Spencer, 2016, for further discussions of accountability).

Perpetrator interventions involve agencies and structures (such as criminal law, criminal justice policies, family law and service agencies). They include all Australian courts. The perpetrator interventions discussed in this report are those available to courts to address DFV. As such, this project focuses primarily on three types of perpetrator interventions:

- sentencing for DFV-related offences
- family violence intervention orders (FVIOs)
- perpetrator intervention programs, including voluntary or mandated behaviour change programs and other offender programs, case management and clinical services targeting DFV perpetrators.

These three types of perpetrator interventions interconnect. The sentencing of a DFV offender is a perpetrator intervention in its own right, and may also take into account other perpetrator interventions that the offender has been subject to previously, such as an FVIO or a perpetrator intervention program.

An FVIO is a court-ordered intervention that aims to stop dangerous and/or abusive behaviour that threatens a person’s safety and security. In some Australian state and territory jurisdictions, participation in a perpetrator intervention program may be ordered as a condition of an FVIO (see Magistrates’ Court of Victoria, 2019, for a full explanation).

Perpetrator intervention programs are also a specific type of perpetrator intervention. The most well recognised and established type of perpetrator intervention program is men’s behaviour change programs (MBCPs). These programs are aimed “at end[ing] men’s use of controlling and abusive behaviours (including violent incidents) and other problematic behaviour in their relationships” (No to Violence [NTV], 2019).

Perpetrator interventions are closely linked to the concept of perpetrator accountability. Perpetrator accountability in turn is linked to the idea of systems accountability and ensuring that those systems, including courts that have view of the perpetrator, contribute to holding them to account. In this respect, systems accountability refers to systems being responsible for

ensuring that perpetrators face appropriate justice and legal consequences for their violence; that perpetrators understand what those consequences mean ... and [that] system[s] respond effectively to perpetrators who do not comply with the mandatory justice and legal consequences and sanctions placed on them (for example an intervention order or an order to attend a behaviour change or other offender programme). (DSS, 2015, p. 6)

While the use of perpetrator interventions in response to DFV has increased in recent years, there is still limited knowledge about how judicial officers view or understand these interventions, and how they use them in their practice. There is also limited knowledge about what judicial officers

believe is the appropriate role for courts in relation to using, facilitating access to, and monitoring compliance with these interventions. This project aims to address this gap in the knowledge, and seeks to better understand judicial views, understandings and practices in relation to perpetrator interventions, as well as how these views may influence overall systematic perpetrator accountability. In order to do so, the project has three main aims:

- to build knowledge of the views, understandings and practices of judicial officers in relation to perpetrator interventions
- to support the development of judicial information and guidance to enhance the effective use of perpetrator interventions in Australian state and territory courts
- to generate new knowledge to understand how judicial officers can effectively use perpetrator interventions to hold perpetrators to account and contribute to enhancing the safety of women and children.

The views, understandings and practices of judicial officers in relation to perpetrator interventions are important because the effective use of such interventions is a key aspect of achieving perpetrator accountability. According to the *National Outcome Standards for Perpetrator Interventions* (NOSPI), “inadequate and poorly targeted perpetrator interventions are a persistent barrier to achieving accountability and lasting behaviour change” (DSS, 2015, p. 3). Judicial officers have a key role in making orders for perpetrator interventions and imposing sanctions for noncompliance. Research has found that perpetrator interventions are more effective when compliance is monitored by the court and when courts respond to noncompliance swiftly (Burton, 2006; Buzawa, Hotaling, Klein, & Byrne, 1999; Edleson, 2008). As such, the practices of judicial officers in relation to perpetrator interventions constitute a key part of courts’ ability to contribute to holding perpetrators to account.

In order to achieve the research aims, the project adopted a multi-method qualitative approach that combined documentary and case analyses with in-depth interviews with judicial officers and a smaller number of perpetrator intervention program providers and other service representatives. Members of the research team also observed DFV courts processes in Melbourne, Sydney and Brisbane, and in the New York

Integrated Domestic Violence Court. While data from these observations are not directly included in the report, the observations were used as contextual background for interviews with judicial officers. Details of the observations can be found in Appendix F.

The research has three key components:

- interviews with judicial officers and other relevant stakeholders
- a review of mentions of perpetrator interventions in sentencing remarks in intimate partner homicide cases
- documentary and policy analysis, including a review of national and international best practice for perpetrator interventions.

All data for the research were collected between October 2017 and December 2018. The primary component of this research involved a total of 60 in-depth interviews (36 conducted with judicial officers, 16 with perpetrator intervention program providers and eight with additional service representatives). Interviews with judicial officers included intermediate criminal court judges, Supreme Court justices and magistrates dealing with DFV matters. The interviews were conducted in all Australian states and territories. The interviews focused on judicial officers’ views about perpetrator interventions; their knowledge of the range of available perpetrator intervention programs; their practices in relation to these programs; and, more broadly, how the interviewees understood the courts’ role in relation to perpetrator accountability as linked to perpetrator interventions.

The interviews were supplemented by an analysis of 5 years of intimate partner homicide (murder and manslaughter) sentencing remarks (1 January 2011 to 31 December 2015) to examine any mentions of perpetrator interventions. Relevant sentencing judgements were identified, accessed and analysed in each state and territory except Queensland, where the researchers were unable to gain access. The objectives were to count whenever and wherever possible the number of perpetrator interventions linked to each intimate partner homicide, and to gain additional insights into judicial views about such perpetrator interventions where these views were available. This dataset was analysed using both quantitative and qualitative methods.

The project also included a review of relevant federal and state government reports and policies focused on perpetrator interventions, such as the report of the Victorian Royal Commission into Family Violence (RCFV, 2016), and *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (the *Not Now, Not Ever* report; Special Taskforce on Domestic and Family Violence in Queensland, 2015). DFV-related sentencing guidelines were reviewed in relation to any references to perpetrator interventions. The focus was on the nature and range of perpetrator interventions available in each state and territory and the mechanisms by which this information was shared with the courts. The *National Domestic and Family Violence Bench Book* (Australasian Institute of Judicial Administration [AIJA], 2017) was reviewed for any material or guidelines relating to perpetrator interventions. Relevant academic literature was reviewed and synthesised. This review was instructive about the range and nature of information on perpetrator interventions available to judicial officers; the range of perpetrator interventions available in each jurisdiction; and the resources available to judicial officers on perpetrator interventions. This material provides background information to this report and informed the development of the indicative interview questions. It is reflected extensively in the State of knowledge review in this report, which examines developments in perpetrator interventions in different states, different policies and approaches in relation to FVIOs, and other policy instruments. A full list of all relevant legislative instruments, arising from this review, for each state's FVIO scheme can be found in Appendix D. The evidence gathered during this review will also support the subsequent knowledge translation activities to be carried out in the next phase of this research, including the development of information on perpetrator interventions for judicial officers.

Key research questions and findings

The research questions reflect the project aims, which focus on building new knowledge about Australian judicial officers' views and practices in relation to perpetrator interventions. Specifically, four research questions guided the research:

- How do judicial officers understand the dynamics and characteristics of DFV?
- What do judicial officers identify as the objectives of court-based perpetrator interventions? How is achievement of

these objectives facilitated by the judicial process?

- What are judicial officers' views about the efficacy of court-based perpetrator interventions?
- What do judicial officers think could be improved or changed in relation to the court use and accessibility of perpetrator interventions?

Our findings on each of these questions contribute new knowledge on judicial officers' views and practices in relation to the availability and utility of perpetrator interventions in DFV matters in each Australian state and territory jurisdiction.

The interviews revealed that there is little uniformity in how judicial officers across Australian states and territories think about perpetrator interventions beyond the broad agreement that victims'/survivors' safety is a priority and a key objective. Overall, judicial views ranged from cynicism about the effectiveness of different types of perpetrator interventions and pessimism about the ability to change behaviour, to confidence that interventions to change the behaviour of DFV perpetrators can be successful. This variation existed both within and across jurisdictions and at every level of the court system. Interviewees indicated that they struggled to keep up with current knowledge about perpetrator intervention programs and their availability. Waiting lists and concerns about whether existing program options were appropriate emerged as a concern in some judicial interviews and were consistently cited as barriers to effective perpetrator intervention and to holding perpetrators to account. The jurisdiction of the Family Court was considered by many interviewees to be another barrier to the effective use of perpetrator interventions, particularly FVIOs, as there is often conflict between the imposition of new civil or criminal court orders and existing Family Court orders. Another critical focus for all interviewees was a perceived need for early engagement with perpetrator intervention programs, since many felt that by the time perpetrators were before the court, it was too late to achieve meaningful change.

Judicial interviewees recognised prior histories of perpetrator interventions as an indicator of risk and a valuable guide as to what might work best in the current circumstance. They noted, however, that information about histories of perpetrator interventions were not consistently presented to the court.

In lower courts, the speed of proceedings (i.e. the short time allocated to hearings due to demand in these courts) meant there was often inadequate information about, and inadequate time to consider, histories of perpetrator interventions. In higher courts, the severity of the offences meant these histories were sometimes considered less important and/or relevant. For many interviewees, such histories were not a specific sentencing consideration, but assisted to inform their assessment of a perpetrator's risk, seriousness of offending, suitability for further interventions and/or need for specific or general deterrence.

Judicial officers indicated that they often used histories of perpetrator interventions as either of the following:

- critical indicators that past interventions have failed and therefore that a harsher response was required, or that the perpetrator was at a higher risk of reoffending
- a factor that was balanced against the severity of offending and/or demonstrated capacity for behavioural change in individual contexts.

The conclusion about limited access to knowledge about perpetrator interventions is supported by the homicide sentencing judgement analysis, where direct discussion of perpetrator interventions occurs in only a limited number of sentencing remarks.

Finally, and in relation to the fourth research question, the judicial interviewees in this project were all aware of their role in holding perpetrators to account for DFV. However, there was considerable variation in how they understood the scope and extent of this role. There were three distinct frameworks put forward about the role of judicial officers in working to ensure that perpetrators were held to account. An important aspect of these frameworks for judicial officers was facilitating systems accountability (i.e. that all aspects of the criminal justice system responded to perpetrators with appropriate sanctions and a clear attribution of responsibility for the violence to the perpetrator). The three frameworks were based on the following three varied approaches to the judicial role:

- the judicial role as narrowly defined and not linked to broader policy goals with regard to perpetrator accountability

- the judicial officer as active case manager
- the judicial officer as a powerful voice in a good position to capture the attention of the perpetrator.

Differences in judicial interviewee views about the boundaries of their roles is an important finding from this project, particularly given the pivoting of responses to family violence across Australia to ensure perpetrator accountability is a key focus and goal of system responses.

Moving forward

The findings of this project illuminate the views of judicial officers about perpetrator interventions and offer new knowledge about how these views might influence the use of these interventions in DFV matters. The effective targeting and use of perpetrator interventions by courts is a key component in ensuring both perpetrator and system accountability. The monitoring of compliance and risk and the ability to respond effectively to any noncompliance rely on a systematic approach to such interventions, where orders, monitoring and outcomes are connected and clear. Our research found that judicial officers held diverse views about the meaning, role and impacts of perpetrator interventions in relation to their own work and in relation to the operation of the civil and criminal justice systems more generally.

The new knowledge generated in this project will inform a subsequent knowledge translation activity undertaken with our project partners to develop information for judicial officers on perpetrator interventions in each Australian state and territory jurisdiction. Knowledge translation is a process of working with stakeholders to ensure knowledge generated by research is disseminated and understood. In this case, a web-based resource for judicial officers will be created based on research findings from this project. While the knowledge translation activity will address the context specific to each jurisdiction, a unified understanding and systematic approach to perpetrator interventions across states and territories is also necessary to achieve consistency at the national level. This should include ongoing conversations about the complexities of the judicial role in achieving perpetrator accountability.

Recommendations for policy and practice

The recommendations made in this report focus on strengthening the ways in which perpetrator interventions (and, linked to this, perpetrator accountability) are built in to the everyday processes of the courts when dealing with DFV matters.

Three recommendations are made.

RECOMMENDATION 1

Consideration should be given to developing judicial guidance on seeking and making use of perpetrator intervention histories in all DFV matters, including in sentencing, to assist in judicial decision-making.

RECOMMENDATION 2

All states and territories should consider developing a regularly updated online register of perpetrator intervention programs to ensure that information is readily available to judicial officers to support decision-making in DFV matters.

RECOMMENDATION 3

Consideration should be given by courts and judicial educational bodies to a broader discussion about the role of judicial officers in creating system accountability, to develop consistent outcomes across jurisdictions and develop national knowledge and practice about perpetrator intervention programs and outcomes.

Introduction

This report presents the findings of the first national examination about how perpetrator interventions are understood and used in domestic and family violence (DFV) matters by judicial officers within court systems across Australian states and territories. Perpetrator interventions are generally defined as “systems and service responses to perpetrators of DFV from the community sector and within the civil, criminal, child protection and family law systems” (Australia’s National Research Organisation for Women’s Safety [ANROWS], 2019). Perpetrator interventions “engage with a perpetrator directly because of his violence, or risk of perpetrating, domestic, family or sexual violence” (Department of Social Services [DSS], 2015, p. 4). These interventions are aimed at stopping the violent behaviour and/or changing perpetrator “attitudes, beliefs and behaviours in order to prevent them from engaging in family/domestic or sexual violence in the future” (Mackay et al., 2015a, p. 5).

According to the *National Outcome Standards for Perpetrator Interventions* (NOSPI), “women’s and children’s safety must be at the centre of interventions with perpetrators of domestic, family and sexual violence” (DSS, 2015, p. 3). Perpetrator interventions are closely linked to the concept of perpetrator and system accountability. Perpetrator interventions

put systems in the position of being accountable for ensuring that perpetrators face appropriate justice and legal consequences for their violence; that perpetrators understand what those consequences mean; that the victim/survivor is informed about the consequences that the perpetrator faces; and that the system responds effectively to perpetrators who do not comply with the mandatory justice and legal consequences and sanctions placed on them (for example an intervention order or an order to attend a behaviour change or other offender programme). (DSS, 2015, p. 6)

Perpetrator interventions involve a broad range of agencies and structures including police, courts, corrections, community legal services, statutory child protection and specialist DFV services, particularly men’s specialist services. This report focuses on perpetrator interventions available to the courts that specifically target DFV. Court-based perpetrator interventions have been in use in most Australian states for some decades. For the purposes of this project, the term “perpetrator

interventions” is defined in line with the *National Plan to Reduce Violence against Women and their Children 2010–2022* (Council of Australian Governments [COAG], 2011). There are a variety of perpetrator interventions in operation across Australian jurisdictions, including general programs, such as fathering programs; men’s behaviour change programs (MBCPs); family violence intervention orders (FVIOs; also referred to as domestic violence orders, intervention orders, protection orders, family violence restraining orders and apprehended violence orders).

This report deals primarily with three types of perpetrator interventions:

- sentencing for DFV-related offences
- FVIOs
- perpetrator intervention programs, including voluntary or mandated behaviour change programs and other offender programs and clinical services targeting DFV perpetrators.

These three types of perpetrator interventions interconnect. An FVIO is a court-ordered intervention that aims to stop dangerous and/or abusive behaviour that is threatening a person’s safety and security. The sentencing of a DFV offender is a perpetrator intervention as it aims to impact upon the perpetrator’s behaviour, communicating that their behaviour is criminal and also socially unacceptable. Sentencing may also take into account other perpetrator interventions to which the offender has previously been subject, such as an FVIO or a perpetrator intervention program.

Perpetrator intervention programs are a specific type of perpetrator intervention, the most well recognised and established of which are MBCPs. This project draws on the ANROWS definition for “perpetrator intervention program”, as a “discrete tertiary [meaning post-DFV incident] program designed to change men’s attitudes, beliefs and behaviour in order to prevent them from engaging in family/domestic or sexual violence in the future” (Mackay et al., 2015a, p. 5). These programs aim to “end men’s use of controlling and abusive behaviours (including violent incidents) and other problematic behaviour in their relationships” (No to Violence [NTV], 2019). In some jurisdictions, participating

in a perpetrator intervention program may be ordered as a condition of an FVIO. Each of these interventions forms part of a broader system of perpetrator accountability.

The project focuses on the key role that judicial officers play in administering these three perpetrator interventions, and how they understand their role in sentencing a DFV offender to a perpetrator intervention. While there has been increasing reliance on perpetrator interventions in responses to DFV, there is limited knowledge about how judicial officers use, manage and view their effectiveness. This knowledge is critical because of the key role played by judicial officers in ordering perpetrator interventions and responding to noncompliance.

Four key research questions guide this research:

- How do judicial officers understand the dynamics and characteristics of DFV?
- What do judicial officers identify as the objectives of court-based perpetrator interventions? How is achievement of these objectives facilitated by the judicial process?
- What are judicial officers' views about the efficacy of court-based perpetrator interventions?
- What do judicial officers think could be improved or changed in relation to the court use and accessibility of perpetrator interventions?

This project addresses these knowledge gaps through qualitative research with judicial officers in conjunction with other methods, in order to illuminate how judicial officers see their role within the justice system as contributing to perpetrator accountability. This is particularly important as national and international research has found perpetrator interventions are more effective when compliance is monitored by the court and when courts respond to noncompliance swiftly (Buzawa et al., 1999; Edleson, 2008). Drawing on a dataset of interviews with judicial officers from all Australian states and territories, the project documents and analyses judicial officers' views on the use, management and value of perpetrator interventions for DFV perpetrators, exploring the strengths and limitations of current approaches nationally. It explores how perpetrator interventions are used by judicial officers at the point of sentence for DFV-related offences, including the

extent to which histories of perpetrator interventions influence the sentencing of intimate partner homicide perpetrators.

Study rationale

The rationale of this study was to explore how judicial officers understood perpetrator interventions as part of their work in courts. The findings of this research provide valuable insight and information about their views, their concerns and their thoughts on potential improvements to support their use of perpetrator interventions to better hold DFV perpetrators to account. Practitioners and scholars in this field have suggested that as the system response to DFV attempts to engage earlier and more proactively with perpetrators, a broader approach will be required for the entirety of the “perpetrator intervention systems” by a wide range of departments, and agencies including the judiciary (Vlais, Ridley, Green, & Chung, 2017, p. 9). This will necessarily include changes in judicial approaches, which are the focus of this report.

State of knowledge review

This section of the report presents a review of what is currently known about judicial officers' understanding of perpetrator interventions that are used in court settings to respond to DFV. It provides an overview of current literature on existing perpetrator interventions across Australia. While primarily focused on Australian research and policy, it summarises key international developments and relevant research in relation to judicial views on perpetrator interventions and their role in enhancing perpetrator accountability. This review provides important context for the primary data collected in this research.

Methodology

Research on the use and efficacy of perpetrator interventions is an evolving and complex field, and there is limited work to date on how judicial officers understand and use these interventions in their work. In this review, we offer a targeted account of key research about perpetrator interventions across Australia and internationally. A scoping review was undertaken (Arksey & O'Malley, 2005, p. 20) to enable the research team to locate relevant research on perpetrator interventions. This was then refined to focus on existing evidence about the types of perpetrator interventions used across Australian courts, and about judicial views on, and use of, these perpetrator interventions.

The research team aimed to summarise findings from a wide range of literature (Arksey & O'Malley, 2005) that informed project objectives, rather than being constrained to the "narrow focus" required by systematic reviews (Collins & Fauser, 2005, p. 103). The scoping review was initially conducted up to July 2017, and revised in September 2019. Key literature was located using a range of national and international databases. The search strategy focused on criminological and sociological collections in databases including:

- Informit
- Scopus
- ProQuest Central
- JSTOR
- Expanded Academic ASAP
- SAGE Journals Online
- CINCH: Australian Academy Database.

Research from other disciplinary perspectives (such as law and psychology) was also included where identified as relevant or snowballed from other key literature and reports. To supplement these sources, Google Scholar was used to identify additional grey literature and academic articles, or access sources identified by snowballing citations.

A snowball approach was used to identify additional relevant literature from database searches and key reports known to the research team. These included the COAG-endorsed NOSPI (DSS, 2015), the Victorian Royal Commission into Family Violence report (RCFV, 2016) and the *Not Now, Not Ever* report (Special Taskforce on Domestic and Family Violence in Queensland, 2015), as well as the ANROWS two-part State of knowledge review (Mackay et al., 2015a, 2015b) and any other relevant, recent reviews located during the scoping review.

Materials located using these methods were examined for relevance to the research questions. Both Australian and international literature was included, with a particular focus on research and developments in comparable jurisdictions (i.e. New Zealand, England, Wales, Scotland, Canada and the United States). Only English-language documents were included. Due to the shifting landscape in literature on perpetrator interventions, the search focused on literature published within the past 15 years but did not exclude research published more than 15 years ago if it was particularly relevant.

Our review of the identified relevant work is organised into eight key themes:

- existing research on perpetrator interventions
- suitability of perpetrator intervention programs for DFV perpetrators
- current research on court uses of FVIOs
- judicial education and views on perpetrator interventions
- court and judicial monitoring of compliance with perpetrator interventions
- international examples of judicial monitoring of compliance
- current approaches to judicial training and/or guidelines for incorporating perpetrator interventions into sentencing practice
- international approaches to judicial education.

We have also acknowledged the body of work being conducted under the ANROWS Perpetrators Interventions Research Stream and noted how some of these projects intersect with the aims and findings of this research. As this stream of work is currently underway, this report is not intended to be an exhaustive review of work produced under the stream but rather a starting point for making connections between individual projects within it.

Existing research on perpetrator interventions

Views on perpetrator interventions in Australian and international literature are largely dominated by two separate but interrelated focuses. One identifies MBCPs as one part of a whole-of-system response to DFV, or one strand in a “web of accountability” working to hold perpetrators to account (see, *inter alia*, Centre for Innovative Justice [CIJ], 2015; NTV, 2016; Spencer, 2016; Vlasis et al., 2017). The second extends indicators of program effectiveness or “success” to include factors beyond the cessation of physical violence (Kelly & Westmarland, 2015). Researchers have long recognised that the indicators to evaluate the “success” of perpetrator interventions, especially in relation to perpetrator intervention programs (which can include a range of activities such as counselling and individual case management) and MBCPs, are still not well established. Given DFV is characterised by a “constellation of violence” where coercion and intimidation accompany physical acts of violence, researchers have pointed out that the cessation of violent physical acts does not necessarily equal the cessation of violent or abusive behaviour (Dobash & Dobash, 2000, pp. 266–267). Furthermore, alternative indicators, such as an improvement in a woman’s wellbeing, may be more critical in defining a successful outcome (Gondolf, 2004, p. 608). Recent Australian research has highlighted the need to develop more targeted programs with robust evaluation strategies built in (Day, Vlasis, Chung, & Green, 2019; Wendt, Seymour, Buchanan, Dolman, & Greenland, 2019).

“Mixed” evidence arising from evaluations of perpetrator intervention programs has resulted in a widespread view that participation in perpetrator intervention programs offers minimal benefit (CIJ, 2015, p. 34). Both Day et al. (2019)

and Wendt et al. (2019) make recommendations focused on enhancing program efficacy and review. It is clear that the framing of data and evidence from perpetrator intervention program evaluations is critical to how key stakeholders, including the judiciary, understand the effectiveness of these interventions, and may assist in more effective processes of judgement at sentencing where perpetrators’ prior disregard for change may be understood as reflecting enhanced risk. As Vlasis et al. (2017) have noted:

To some extent, critical stances taken towards the value of [DFV] perpetrator programs reflect competing narratives about what they are meant to achieve, under what systemic circumstances, and how intervention success is defined and measured. Very different assumptions can be made by different stakeholders concerning these things, leading to very different conclusions about their role and effectiveness. (p. 7)

Perpetrator intervention programs should not be understood as a “panacea ... but, rather, as one part of an integrated, community response to family violence” (CIJ, 2015, p. 38; see also Mackay et al., 2015a, 2015b; Vlasis et al., 2017). This observation confronts the misconception that perpetrator intervention programs, when considered in isolation, are capable of increasing the safety of women and children as well as holding perpetrators to account (Day, Chung, O’Leary, & Carson, 2009, p. 204; Eckhardt et al., 2013, p. 197; Urbis, 2013, p. ii). The importance of this wider lens has been recognised by Mackay et al. (2015a), who state:

Behaviour change programs should be evaluated within the context of an integrated systematic response; the role of the program within this systematic response must be considered as clarity is needed in terms of what these programs aim to achieve and whether there are more appropriate alternatives to address particular perpetrators. (p. 31)

While Wakefield and Taylor (2015) gathered important information on judicial education for DFV, there is limited information on the specific ways a history of perpetrator interventions impacts on the sentencing of individual offenders. While there is research dealing with individual and comparative program evaluations, the extent to which members of judiciary across Australia are cognisant of these

assessments remains unclear. It is also important to note that robust evaluations of all perpetrator interventions nationally and internationally are still nascent. Given this, an integral part of this project was to examine what Australian judicial officers identify as the objectives of court-based perpetrator interventions and how achievement of these objectives is facilitated by the judicial process.

Suitability of perpetrator intervention programs for domestic and family violence perpetrators

The Victorian RCFV heard from various sources of a preference for integrated responses to DFV, including the use of MBCPs, over more punitive custodial sentences (RCFV, 2016, pp. 208–209). Data collected from victims/survivors and community stakeholders and presented to the RCFV by Jesuit Social Services suggest that while in some circumstances prison may be the only option, it should be used as a “last resort to respond to serious recidivist behaviour” (RCFV, 2016, p. 209). This reflects general sentencing principles and was observed to be particularly the case for marginalised communities, as the use of punitive policies in these contexts may accentuate “cycles of entrenched disadvantage” and limit “judicial discretion” to engage perpetrators in more effective responses (RCFV, 2016, p. 209).

An example of engaging high-risk recidivist perpetrators was found in the New South Wales Corrective Services rehabilitation intervention for both custodial and non-custodial perpetrators. The NSW Standing Committee on Social Issues (2012) reported that of 1125 cases, a 21 percent reduction in violent offending was reported after 2 years. Further, a 2009 evaluation of perpetrator intervention program outcomes found that “persistent” or recidivist perpetrators have been proven to have “greater needs” than non-recidivists (Day et al., 2009, p. 209). Day et al. warn against the one-size-fits-all model, noting there is “a need to develop more differentiated service responses determined by a detailed assessment of the nature and causes of the offence, as well as the severity and risk of re-offending occurring” (2009, pp. 208–210). For example, there is a growing body of research that has examined opportunities for engaging

men through a focus on fathering (Healey, Humphreys, Tsantefski, Heward-Belle, & Mandel, 2018; Nancarrow & Modini, 2018), and most recently Day et al. (2019) and Wendt et al. (2019) have explored MBCPs and the need for diverse strategies of engagement.

Research has emphasised resistance of high-risk men (Petersson & Strand, 2017; Salter, 2012) to current intervention strategies and noted the developing prominence of “risk assessment and management” approaches that incorporate “offender surveillance, individualised and comprehensive approaches to treatment, and outcome-orientated partnerships that integrate policing and judicial responses with health and welfare services” (Salter, 2012, p. 1). As Salter explains:

Successful management of high-risk domestic violence offenders may involve combining sanctions in ways that are both punitive and reintegrative, useful for offenders, as well as victims, supported by the range of stakeholders involved in the domestic violence response, and acceptable for the community. (2012, p. 18)

Juodis, Starzomski, Porter, and Woodworth (2014) and Gondolf (2004, 2011, 2012) endorse the combination of perpetrator intervention programs with risk assessment and Risk–Need–Responsivity practices, including programming for treatment-resistant perpetrators and interventions designed to treat co-morbidities related to psychological issues and substance abuse. A recent United States proposal for evidence-based standards for perpetrator intervention programs found that existing interventions for high-risk perpetrators are not having their intended effect, and that in-depth analysis of recidivism may prove instructive in efforts to enhance MBCPs for high-risk perpetrators (Babcock et al., 2016). A 2015 Canadian study examined the impact of a second-responder program for moderate-to-high-risk recidivist DFV perpetrators awaiting trial. The program was designed to intervene within the critical period between “arrest and trial” and is modelled on Risk–Need–Responsivity strategies (Scott, Heslop, Kelly, & Wiggins, 2015). “Significant ... and lasting differences ... in all outcome domains” were reported, with rates of recidivism more than half for men in the comparison group (Scott et al., 2015, p. 273).

Effective perpetrator interventions for high-risk and recidivist perpetrators have been shown to be more complex than those for low-to-medium-risk perpetrators (Salter, 2012). Salter suggests this is due to a typical profile in which a “set of interlocking problems related to mental health, substance abuse and socioeconomic disadvantage ... pose barriers to intervention and treatment” (2012, p. 2). He explains that “[change] may be easier to achieve among violent men who are concerned about the impact of arrest and other domestic violence interventions upon their employment or social status” and, consequently, anti-recidivism initiatives for high-risk perpetrators need to incorporate “social welfare policies designed to address the housing, employment, health and other difficulties” (Salter, 2012, pp. 2–18).

It is increasingly recognised that the management of high-risk and recidivist perpetrator cohorts relies on collaborative and integrated efforts to monitor and ensure compliance. The following section explores the emergence of these interventions and the key role of the judiciary in holding perpetrators to account.

Current research on court uses of family violence intervention orders

Beyond perpetrator intervention programs, our research is interested in FVIOs. As part of our review, we were cognisant of the need to examine current practice in this area, to allow for an understanding of how judicial officers may use and monitor this type of perpetrator intervention.

FVIOs are the most widely used justice response to DFV (Wakefield & Taylor, 2015). While the scope of what constitutes a FVIO differs across Australian state and territory jurisdictions, broadly speaking an FVIO is a civil court order that prohibits the perpetrator (respondent) from engaging in certain behaviours in order to protect the victim/survivor (protected person) and other named persons from harm. In Australia, the types of conditions a judicial officer can impose in an FVIO also vary across jurisdictions, but at a minimum the order specifies the behaviours the perpetrator should not engage in towards the victim/survivor, including threatening and harassing behaviour and violence

(see Appendix D for further information on the FVIO conditions in Australian states and territories). Orders also often prohibit the perpetrator from engaging a third party to perform any of these behaviours. Other common conditions of FVIOs include prohibitions on the perpetrator entering or being near the victim's/survivor's residence, workplace or other named premises; contacting the victim/survivor; intentionally damaging the victim's/survivor's personal property; publishing material about the victim/survivor using digital communication technologies; and possessing firearms. Typically orders restrict the perpetrator from being within a specified distance of the victim/survivor. Some jurisdictions empower judicial officers to order perpetrators to participate in intervention program assessments and, where appropriate, attend intervention programs, including MBCPs, counselling and rehabilitation. On 25 November 2017, the National Domestic Violence Order Scheme was introduced, making all FVIOs automatically recognised and enforceable across Australia. Prior to the commencement of the scheme, FVIOs were only enforceable in the state or territory in which they were issued.

Although FVIOs are civil instruments, it is a criminal offence in all Australian jurisdictions to breach a condition of an FVIO, and penalties including fines and imprisonment apply. Legislation in all states and territories aside from NSW and the Australian Capital Territory specifies the penalties imposed for repeat breaches of FVIOs. These can be found in Appendix D. Three jurisdictions—the Northern Territory, Tasmania and Western Australia—mandate custodial sentences for repeat breaches of FVIOs. The Northern Territory mandates a conviction record and a term of imprisonment of at least 7 days where defendants have previous convictions for a breached FVIO. An exception to this provision is provided where the breach offence does not cause harm to the victim/survivor and the court is satisfied that it is not appropriate to record a conviction and sentence given the circumstances. In Tasmania, fourth and subsequent breaches of FVIOs attract a custodial sentence of no more than 5 years. In Western Australia, judicial officers are required to impose a sentence that includes a term of suspended or immediate imprisonment where the perpetrator has at least two prior convictions for breaches within the last 2 years, unless it would be clearly unjust to do so (*Restraining Orders Act 1997* [WA], s 61A). While the New South Wales legislation does not prescribe

Table 1: FVIOs and FVSNs: Contravention sentences for the period 2009-10 to 2014-15

Sentence type	Imprisonment	Community sentences	Fines	Low-end orders
FVIO contravention	4.1%	5.1%	3.7%	3.7%
FVSN contravention	1.8%	10.2%	1.8%	2.4%

escalating penalties for repeat breaches, it does provide judicial officers with the discretionary power to impose a term of imprisonment where a breach of an FVIO involves an act of violence against a person (*Crimes [Domestic and Personal Violence] Act 2007* [NSW], s 14[4]). This discretionary power does not apply where the perpetrator is a child.

Existing Victorian Sentencing Advisory Council (VSAC) data on FVIOs shows that despite a dramatic increase in attendance at DFV incidents by Victoria Police and FVIO usage in recent years, sentencing practices for breaches of FVIOs continue to be predominantly limited to low-end orders (RCFV, 2016; VSAC, 2015). Analysis by the VSAC (2015) of FVIOs made by the Magistrates' Court of Victoria (MCV) revealed a significant increase in the number and rate of FVIOs made between 2009–10 and 2014–15. The number of FVIOs made over this time period increased by roughly a third, with 17,777 FVIOs made in 2009–10 and 27,478 made in 2014–15, increasing from 328 to 467 per 100,000 people (VSAC, 2015). The number of DFV incidents recorded by Victoria Police in the same time period nearly doubled (VSAC, 2015). In 2009–10, 35,666 DFV incidents were recorded and charges were laid in 22.3 percent of these incidents (VSAC, 2015). Five years later, 70,906 DFV incidents were recorded by Victoria Police in 2014–15, with 38.2 percent of these incidents resulting in charges laid (VSAC, 2015).

Although there has been a significant increase in the volume of DFV matters investigated by Victoria Police and heard by the MCV over the 5-year period studied by VSAC, the resulting quantitative picture of judicial practice in regards to sentencing DFV offences shows little change. Data from VSAC indicate a slight upwards trend in the use of custodial and community sentences, and a decrease in the use of low-end orders including adjournments for FVIO and Family Violence Safety Notice (FVSN) contravention sentencing (see Table 1 for a summary of FVIO and FVSN contravention sentences). The number of low-end orders may be appropriate and fewer adjournments may reflect intensified attention to risk in courts, but quantitative data cannot illuminate the meaning of these patterns. Our qualitative study with judicial officers was designed to create insights into these trends from those administering orders in the courts.

Similar findings about the likelihood of perpetrators receiving a custodial sentence in the presence of concurrent offences were made in New South Wales. A quantitative study by Ringland and Fitzgerald (2010) of DFV-related offences finalised in NSW Local and District Courts between January 2008 and June 2009 found that perpetrators found guilty of a DFV offence were more likely to receive a prison sentence if concurrent offences were determined at the court appearance. The RCFV (2016) highlighted varied court responses to breaches of FVIOs, noting that inconsistencies in sentencing, together with hearing delays, leave victims/survivors responsible for managing their own safety.

Court and judicial monitoring of compliance with perpetrator interventions

Different practices for monitoring compliance with perpetrator interventions are adopted by courts and judicial officers in Australia, informed by different approaches and attitudes to perpetrator interventions as well as the different legislative frameworks. Victorian Magistrate Pauline Spencer writes that “it has long been recognised that perpetrator accountability is a key to victim safety” (2016, p. 225). This is known as the “web of accountability”, and “it is important that criminal courts work as an effective strand in this web” (Spencer, 2016, p. 225). The effectiveness of perpetrator intervention programs relies on the collaboration of both government/corrections and community sectors (Babcock, Green, & Robie, 2004; Gondolf, 2004; NTV, 2016; Urbis, 2013).

According to the CIJ, in Australia “many judicial officers now understand ... the impact that leveraging their authority can have on both victims and perpetrators alike”, citing the success of the “constant court monitoring of offenders” undertaken by specialist drug courts by way of example (CIJ, 2015, p. 60). Collaboration or integration between program providers and the judiciary is particularly relevant to recidivist and high-risk perpetrators. National and international research has found that perpetrator interventions are more effective when compliance is monitored by the court and when courts

respond swiftly to noncompliance (see internationally Buzawa et al., 1999; Edleson, 2008).

Reflecting this, Burton (2006, p. 377) suggested that more effective interventions required “greater involvement of the judiciary in ongoing monitoring of the defendant’s compliance with court ordered perpetrator programmes”. Burton (2006) reported that key United Kingdom stakeholders were in agreement that compliance hearings would be of benefit in specialist court settings, and that such findings echoed those in the United States claiming that courts needed to work alongside probation “to ensure that community penalties are working and that defendants are being held to account” (p. 376).

Problem-solving courts were introduced in Australia more than 20 years ago (Kornhauser, 2018; Schaefer & Beriman, 2019; Spivakovsky & Seear, 2017). While these courts vary in method and jurisdiction, they are aligned in their overall philosophy of targeting contributing factors to offending behaviour (Schaefer & Beriman, 2019). Problem-solving courts in Australia are typically focused on reducing crime related to four main areas: drug and alcohol dependency; forensic mental health; over-representation of Aboriginal and Torres Strait Islander offenders; and domestic violence (Schaefer & Beriman, 2019). Schaefer and Beriman (2019) argue that inconsistency in the definitions of “problem solving” in the judicial context can be problematic when therapeutic jurisprudence, restorative justice and problem-solving justice categories are blurred. Australian problem-solving courts are considered to be relatively young and therefore still negotiating their own identity (Schaefer & Beriman, 2019). In their review of Australian problem-solving courts, Schaefer and Beriman (2019) highlighted the need for judges to be provided with procedural safeguards to ensure “the criminal justice system is not left to the goodwill of individual judges and their own interpretations or enactments of the law” (p. 353). While there is an increasing consensus concerning the role of the judiciary in the management of perpetrator interventions, judicial monitoring of compliance is still limited. According to Magistrate Spencer, there is presently “no specific framework or model for the approach taken by judicial officers when undertaking judicial supervision in Australian courts”, although the development of such a

framework is currently being undertaken by the Centre for Forensic Behavioural Science and the Magistrates’ Court of Victoria (Spencer, 2016, p. 227). Mack and Roach Anleu (2011) acknowledge that these more engaged approaches to judging require different types of communication skills “and greater emotional capacities such as empathy” (p. 1) than conventional adversarial judging alone. Mack and Roach Anleu (2011) describe the key differences in this form of judging as the following:

- working directly with a team (including probation, corrections and other social welfare providers)
- interacting directly with a defendant on a frequent basis
- frequently monitoring program progress
- aiming to address the whole person, rather than a depersonalised offender. (p. 2)

In the case of problem-solving courts for those perpetrators with addictions or mental impairments, Spivakovsky and Seear (2017) flag the potential for increased marginalisation and stigmatisation when long-term, intensive interventions are used. This concern is potentially transferable to family violence perpetrators.

Lim and Day (2016) add to the discussion the importance of offender risk assessments prior to program commencement as opposed to the level of intensive supervision conducted by the court. In a study evaluating reoffending outcomes of participants with a mental illness sentenced through the Magistrates Court Diversion Program in South Australia, changes in reoffending were most closely related to an offender’s level of risk assessed prior to program commencement.

Drawing on local and international research, Spencer (2016, p. 226) summarises the key principles in the court management of DFV perpetrators as follows:

- Continuous risk assessment and safety planning is needed, as well as support for victims with a focus on safety.
- Specific deterrence is more likely to be achieved by increasing the risk of detection through ongoing monitoring of behaviour.
- Risky and/or abusive behaviour needs to be responded to by way of immediate, consistent and firm consequences.

- Early referral of perpetrators should be made into treatment and programs with monitoring of engagement and ongoing behaviour.
- Treatment and programs for perpetrators should respond to identified risks and needs, and include evidence-based programs to change behaviour and individual treatment plans targeted at risk factors such as drug and alcohol abuse, mental illness and homelessness (see also CIJ, 2015; Kelly & Westmarland, 2015; Klein, 2008; Rempel, 2014; Salter, 2012; Turgeon, 2006).

Spencer (2016, p. 226) writes that judicial officers in Australia can implement these principles via a combination of currently available case management and judicial supervision “tools”. Case management “focuses on reducing the time between the family violence incident and the consequence/intervention” and incorporates, among other things, fast-tracking and prioritisation processes (Spencer, 2016, pp. 226–7). While judicial supervision is typically a “characteristic of specialist family violence courts”, it may be “applied ... in mainstream criminal courts” in Victoria via “deferral of sentence and judicial monitoring as a condition of a community corrections order (CCO) either alone or following a term of imprisonment” (Spencer, 2016, p. 227). Judicial supervision can operate as an “accountability approach” or “solution-focused judging” (Spencer, 2016, pp. 227–228). In the case of the former, expectations are established and “consistent and escalating consequences”, including custodial sentences, are delivered for noncompliance (Spencer, 2016, p. 227). This approach is linked to the “swift, certain and fair” (SCF) response, which is based on therapeutic jurisprudence; it takes “an optimistic view” of the perpetrator and focuses on linking them with tailored treatment and supports (Spencer, 2016, p. 228). Spencer suggests that more research needs to be conducted in order to develop an evidence-based framework for judicial supervision (2016, p. 228).

Research in Victoria has found the MCV undertakes some monitoring of perpetrator compliance via “adjourned undertakings”, but this is not a formal strategy: there is no evidence of its systematic adoption in Victoria or its applicability elsewhere. This process involves perpetrators mandated to attend an MBCP returning to court, and if evidence of noncompliance is found, the court initiates breach

proceedings (David & Little, 2009, p. 80). The VSAC also examined judicial supervision of DFV perpetrators, including a comment from one magistrate that in “extreme cases” it may “be appropriate to have the degree of supervision which the Drug Court has over its offenders” and, further, that it might be “the only way in a difficult case to effect change and protection for the victim” (David & Little, 2009, p. 80).

The RCFV reported that “from July 2014 to May 2015, 16.2 percent of registered supervised CCOs contained a judicial monitoring condition” but that “judicial monitoring poses a resourcing issue” (2016, p. 286). Currently Victoria has the Court Integrated Services Program (known as CISP), a case-management program that, while not designed specifically for DFV perpetrators, is increasingly used in such circumstances. The perpetrator must have a co-occurring risk factor (alcohol or drug dependency, physical or mental disability, or inadequate support) in order to be eligible (RCFV, 2016, p. 269).

In the United States, Judge Steven Alm developed the successful Hawaii’s Opportunity Probation with Enforcement (HOPE) program in response to the consistent disregard of probationer noncompliance (Bartels, 2018; Kleiman, 2016). The concept of SCF was born here, with probationers receiving swift, certain and fair sanctions for each violation (e.g. missed appointments and positive drug tests) (Bartels, 2018). As a result, judicial discretion is minimised in favour of predictability (Bartels, 2018). Bartels (2018) outlines the model as follows:

- The *certainty* that all targeted violations will be punished will make an offender less likely to take risks.
- The level of punishment should be *proportionate* to the seriousness of the violation (fairness).
- *Swift* consequences are more effective than delayed ones. (p. 26)

Importantly, HOPE’s focus is on high-risk offenders who have previously shown a history of probation failures (Bartels, 2018). These offenders are identified through validated risk assessment tools used by probation officers or a clear history of multiple probation failures (Bartels, 2018). Alm has described the program as a three-legged stool that

requires the combination of probation officers who believe in rehabilitation and use evidence-based principles; a patient judge who can create a supportive environment; and SCF-proportionate sanctions (Bartels, 2018). In contrast, Schaefer and Beriman (2019) argue that both HOPE and SCF programs are in fact not focused on rehabilitation because they use the strategy of greater control to solve the problem of offending, as opposed to problem-solving courts, which focus on the validated underlying criminogenic needs of the offender.

In Australia, a Compliance Management or Incarceration in the Territory (COMMIT) program based on SCF has been introduced into the Northern Territory (Bartels, 2018; Schaefer & Beriman, 2019). This program has produced some promising results, with an emphasis on intensive case management by probation and parole officers, incorporating assistance with employment, training and housing (Bartels, 2018). Schaefer and Beriman (2019) assert it is important to understand that programs using SCF principles are ideologically and procedurally distinct, even though they share elements of judicial monitoring. Kleiman (2016) explains this is because SCF is not a homogenous “program in a box” (p. 1188); rather, the SCF principles need to be applied to specific situations and to be determined based on local “conditions, institutions, customs, and the opinions and desires of officials and participants” (p. 1188).

The RCFV requested that VSAC produce a report on SCF approaches to sentencing for high-risk DFV perpetrators (Recommendation 83, 68). The SCF approach is identified as follows:

For the criminal justice system to be effective, it must respond to crime in a timely, consistent and fair manner. People who would otherwise engage in criminal behaviour are most effectively deterred when they perceive their chances of being caught as high, and when they believe that sanctions will be imposed sooner rather than later. (Kenny, McGorry, & Ritchie, 2017, p. xvi)

The VSAC made four recommendations:

- swift and certain prosecution of CCO contraventions
- increased use of judicial monitoring
- the expansion of alcohol exclusion powers

- the introduction of a new sentencing order for high-risk DFV perpetrators. (Kenny et al., 2017, p. xviii–xix)

The VSAC noted that CCOs rarely incorporate a judicial monitoring condition, and that currently perpetrator noncompliance can only be addressed through regular monitoring hearings. It recommends

that high-risk family violence offenders receiving a CCO have a judicial monitoring condition imposed, and that the court’s powers at a monitoring hearing are expanded ... to allow the court to sanction the offender for non-compliance with the conditions of the CCO. (Kenny et al., 2017, p. xviii)

Another option offered by the VSAC is a new sentencing order for very serious and/or high-risk DFV perpetrators that is structured on Victoria’s current drug treatment order (Kenny et al., 2017, p. xix). In this scenario, specialised courts

could impose a family violence offender compliance order (FVOCO), requiring the offender to comply with particular conditions while in the community. Violation of the order would attract swift and certain sanctions, including short terms of imprisonment based on the “unactivated” term of imprisonment that forms part of the sentencing order ... The primary aim of the order could be to address and manage risk by ensuring compliance (through swift and certain sanctions). (Kenny et al., 2017, p. xix)

Additionally, given evidence of low completion rates, the VSAC suggests that “a more swift and punitive response to non-compliance with an order to attend a program may be justified” (Kenny et al., 2017, p. 63). The FVOCO is thus designed to “compel attendance” (p. 63). Building from these recommendations, our research sought in part to examine the degree to which judicial officers saw themselves having a role in case management and compliance monitoring when responding to DFV matters. We were also interested in how the different legislative framework that exists in each state and territory jurisdiction shaped judicial views and activities.

Western Australia is an exception to the rule in Australia. It has developed an integrated response to DFV that incorporates multi-agency case management to manage risk and increase

safety in high-risk cases in general court systems. Western Australia’s Family and Domestic Violence Response Teams (FDVRT) are a collaboration between WA Police, the Department for Child Protection and Family Support, and DFV services. The FDVRTs jointly assess DFV incidents and decide, via a triage process, who is best placed to respond. The FDVRTs represent a formal interagency partnership between relevant stakeholders such as Domestic Violence Outreach and Safe at Home, and Family Violence Courts (Department for Child Protection and Family Support, Family and Domestic Violence Unit [WA], 2013, p. 2). Judicial officers receive reports from perpetrator intervention programs that they can specifically use in following court orders or addressing breaches.

In specialist domestic and Family Courts and lists, processes of monitoring are built into court systems. While there are differences in how specialist courts operate, generally in specialist DFV courts or lists there is a “problem solving” and “therapeutic jurisprudence” approach to the treatment of DFV issues (Freiberg, 2007; Jeffries, 2002). These courts and lists have developed out of the recognition that “behavioural and environmental factors contribute to offending” (Hennessy, 2009, p. 67) and that “the justice system is ideally positioned” to address and treat these issues in addition to enforcing accountability of offenders and guaranteeing safety for victims (Stewart, 2011, p. 2). Specialist courts are currently in operation to varying degrees in most Australian state and territory jurisdictions (Fitz-Gibbon, 2016) and are identified by many of those working in the area “as a strategy for achieving best practice” (Australian Law Reform Commission [ALRC], 2010, p. 1486). Parkinson notes that specialisation is motivated by three overlapping concerns—“efficiency gains”, “post-conviction monitoring”, and “therapeutic goals” (Parkinson, 2016, p. 7).

Early studies of these courts and lists cited the following as key motivating factors for their establishment: “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” (Freiberg, 2001, p. 9; cf. Berman and Feinblatt, 2001).

Recent research and reviews in Australia have called for an expansion of specialist courts and lists (see e.g. RCFV, 2016; Special Taskforce on Domestic and Family Violence in Queensland, 2015). A 2017 evaluation of the Queensland Southport DFV Specialist Court concluded that the specialist court model may have served to increase perpetrator accountability (Bond, Holder, Jeffries, & Fleming, 2017). Drawing only from the views of victims/survivors who had interacted with the specialist court, the evaluation found that victims/survivors perceived the specialist court process to have clearly communicated the wrongfulness of the perpetrator’s behaviour (Bond et al., 2017, p. 11). There was no comparison made, however, with those victims/survivors going through non-specialist courts. From the perpetrator viewpoint, the evaluation found that more than half of the perpetrators interviewed believed their behaviour needed to change. Beyond Queensland, the Northern Territory is presently undertaking a pilot program trialling SCF responses to breaches of conditional suspended sentences. The disparity of current practices and knowledge across Australian jurisdictions brings to the fore the opportunity to gather better insights into judicial views and practices around the use of perpetrator interventions in DFV matters in all courts.

International examples of judicial monitoring of compliance

In response to increasing evidence recommending individualised treatments for both high- and low-risk DFV perpetrators, several states in the United States have built judicial monitoring of compliance into court-based responses. The Judicial Oversight Project (JOP), for example, was an initiative conducted with three communities—Dorchester, Massachusetts; Milwaukee County, Wisconsin; and Washtenaw County (Ann Arbor), Michigan—in 1999. It was “designed to test the feasibility and impact of a coordinated response to intimate partner violence that involved the courts and justice agencies in a central role” (Visher, Harrell, Newmark, & Yahner, 2008, p. 495). The trial garnered “positive responses” from key stakeholders, and improvements were recorded in “offender monitoring, consistent sanctioning, and increased supervision”, though this did not result in “victim perceptions” of personal safety or “reductions in repeat violence” across all

sites (Visher et al., 2008, pp. 495–496). In addition to uniform initial responses to DFV offences and coordinated victim services, the JOP incorporated “strong offender accountability and oversight, including ... intensive court-based supervision ... referral to appropriate batterer intervention programs, and ... administrative and judicial sanctions and incentives to influence offender behavior” (Visher et al., 2008, pp. 499–500). There is no information available on why offender behaviour was unchanged.

Visher et al. (2008) noted that perpetrators processed through the JOP “received more severe sentences, with 96 percent receiving probation alone or with jail, compared with 63 of comparison offenders” and that this “clearly reflect[ed] the JOD strategy of heightened supervision of intimate partner violence offenders and attention to victim safety” (p. 509). Perpetrators “were ... more likely to be required to attend a batterer intervention program ... to be ordered to drug testing, and to have weapons restrictions [placed upon them]” (p. 509). The JOP “successfully increased offender accountability overall by adding to court-ordered supervision and monitoring requirements for offenders convicted of intimate partner violence” (Visher et al., 2008, p. 509). In this respect the JOP provides an interesting example of a model whereby judicial officers can be used to enhance perpetrator accountability through a court-based intervention.

Current approaches to judicial training and/or guidelines for incorporating perpetrator interventions into sentencing practice

The recently released *National Domestic and Family Violence Bench Book* (the National Bench Book) (AIJA, 2017) is a useful touchstone in the national context. The National Bench Book has been developed as a direct response to ALRC and New South Wales Law Reform Commission Recommendation 31.2 (AIJA, 2017). The intended function of the National Bench Book is

to provide a central resource for judicial officers considering legal issues relevant to domestic and family violence related cases that will contribute to harmonising the treatment of these cases across jurisdictions along broad principles

and may assist them with decision-making and judgment writing. (AIJA, 2017, 1. Purpose and limitations: Context statements)

The entry on perpetrator interventions states:

When considering referral to a MBCP, the priority should be the safety of the victim and children. Where appropriate, judicial officers should seek evidence of behaviour change following program completion and prior to consideration of further orders. (AIJA, 2017, 8. Perpetrator interventions: Context statement)

The National Bench Book notes that while the outcomes of perpetrator intervention programs remain equivocal, there is broad consensus that they do have some benefit. On the issue of outcomes, the National Bench Book makes the following point:

Most evaluations ... have failed to consider the multiple ways in which these programs contribute towards the safety of women and children, and operate as part of an integrated service system rather than as stand-alone interventions. (AIJA, 2017, 8. Perpetrator interventions: Context statement)

This is resonant with an emerging consensus that measuring success exclusively by decreased recidivism is both reductive and short-sighted (Mackay et al., 2015a, 2015b; Salter, 2012; Shephard-Bayly, 2010; Westmarland, Kelly, & Chalder-Mills, 2010). Researchers have suggested that outcomes should incorporate multiple measures of success, including women’s perceptions of safety, and that program effectiveness “should be evaluated within the context of an integrated systematic response” (Mackay et al., 2015a, p. 31; see also Gondolf, 2004). On referring or mandating attendance at a perpetrator intervention program or MBCP, the National Bench Book notes that although “options ... vary between jurisdictions”, orders to attend MBCPs can be executed via the “conditions” of FVIOs, bail, probation or parole conditions (AIJA, 2017, 8. Perpetrator interventions: Context statement). It should be acknowledged, however, that several evaluations have used these measures of success of behavioural change and found little to no evidence of an impact (see Trimboli, 2017). As such, some caution is necessary when considering perpetrator interventions as part of a suite of sentencing options.

The National Bench Book concludes that MBCPs are to be understood as “part of a renewed focus on building ‘webs of accountability’ for those perpetrating domestic and family violence” (AIJA, 2017, 8. Perpetrator interventions: Context statement). These “webs” or “broader strategies” also include more individualised work, for example,

case management and supplementary individual work with participants; longer and, where appropriate, more intense interventions to bring Australian programs in line with international best practice; strengthened partner support work; support for participants once they complete a program; and working with perpetrators on how their domestic and family violence affects children and harms the mother–child bond. (AIJA, 2017, 8. Perpetrator interventions: Context statement)

The research chosen and cited by the National Bench Book as representative of current thought in the field of perpetrator interventions reflects the view of MBCPs as forming one part of a whole-of-system response, and the recent reconfiguration of “success” as inclusive of factors beyond the cessation of physical violence.

Beyond the National Bench Book, Wakefield and Taylor’s (2015) state of knowledge paper draws on existing literature as well as survey data obtained from 66 judicial officers across Victoria and Queensland. The paper examines sentencing practices and judicial views of DFV in relation to issues such as stranger violence versus DFV, demeanour of victims and perpetrators, protection of children, mutual responsibility for violence, and gender bias (2015, pp. 17–20). They examined judicial officers’ knowledge and understanding of the dynamics of DFV; their views on participating in DFV training; and the usefulness of learning formats for DFV training.

A majority of the respondents (74.5%) “agreed that they were able to engage and convey key messages to perpetrators in their courtrooms” and, further, “that perpetrator programs can reduce the risk of domestic and family violence (70%)” (Wakefield & Taylor, 2015, p. 23). There were “mixed responses” regarding whether judicial officers received sufficient training and whether this training enables “informed decisions” (Wakefield & Taylor, 2015, pp. 26, 29). This result contrasts with a 1998 survey in which 71 percent of magistrates in

Queensland and 90 percent of magistrates in New South Wales believed they were “adequately trained to deal with domestic violence matters” (Carpenter & Field, 2003). A later survey revealed that nearly 25 percent of participants had not received domestic violence training in the 12 months prior (Wakefield & Taylor, 2015, p. 29). Preferences for judicial education topics included (but were not limited to) “addressing perpetrator issues”, “risk factors for domestic and family violence”, “communication in court” (in particular, communication with respondents), and “follow up statistics on cases” (Wakefield & Taylor, 2015, p. 27).

This information suggests a general confidence in judge–perpetrator relations and in the effectiveness of perpetrator intervention programs. Our project aimed to build on this with a more in-depth investigation of judicial officers’ views about their role in using perpetrator interventions as part of a systems response to perpetrator accountability.

Presently, judicial education is provided for by the judiciary and judicial colleges, both at national and state levels. A contemporary example of judicial education is the AVERT Family Violence training program, a course developed with the Family Court of Australia and multiple stakeholders that is available to judicial officers and those who work in family law.

Within Victoria, the Judicial College of Victoria offers a training module called “The Intimate Terrorism of Family Violence”, described as follows: “In response to the increasing caseload of family violence cases across jurisdictions, this 2-day program will assist magistrates to make more informed and consistent decisions in the courtroom.” (Judicial College of Victoria, 2017, p. 6)

At the national level, the National Judicial College of Australia presently offers a program called “Family Violence in the Court”. The CIJ reported that the Victorian Magistrates Court has stipulated all magistrates “will be required to undergo 2 days of specialised training in family violence” (CIJ, 2015, p. 59).

International approaches to judicial education

The United States is known for being at the “forefront” in judicial professional development in DFV (Wakefield & Taylor, 2015, p. 10). The National Judicial Institute on Domestic Violence is a partnership between the US Department of Justice, Office on Violence Against Women, Futures Without Violence and the National Council of Juvenile and Family Court. The institute runs interactive, skills-based DFV workshops for the judiciary three times a year and supports regional adoption of best practice via observations and onsite visits (Wakefield & Taylor, 2015, p. 190).

Additional judicial education in the United States is provided in the *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice* (the Greenbook) (National Council of Juvenile and Family Court Judges, 1999). The Greenbook was released in 1999 and includes specific recommendations for court judges, including some recommendations related to “effective intervention” (Wakefield & Taylor, 2015, p. 11). The Greenbook was evaluated in 2008 and was found to have had a “positive impact on judicial education”, with judges noting increased clarity on issues such as “cross-agenc[y]” interaction and the capacity of perpetrators to “undermine” victims (Wakefield & Taylor, 2015, p. 11; see also The Greenbook National Evaluation Team, 2008).

The National Center for State Courts offers a free, online DFV education program for the judiciary through the American Judges Association. The program was designed in consultation with Futures Without Violence. It utilises interactive capacities and professes to “explore ... the unique dynamics of domestic violence, including assessing lethality and dangerousness, custody and protective orders, special evidentiary issues, and effective sentencing” (National Centre for State Courts, n.d., DV education for judges).

In Canada, the Canadian Judicial Council directs the National Judicial Institute in the development of the judicial education curriculum. The National Judicial Institute currently offers two DFV-related education courses, “Managing Domestic

Violence Cases in Family and Criminal Courts” (a 4-day program) and “Managing the Family Law Domestic Violence Trial” (a 2-and-a-half-day program) (National Judicial Institute, n.d., p. 23).

In the United Kingdom, the Magistrates Association notes that the Judicial College is responsible for developing and overseeing the delivery of national training materials for the judiciary. The Magistrates Association provides “updated training on new legislation and procedures” as required (Magistrates Association, 2019).

In New Zealand, the Institute of Judicial Studies develops the curriculum for judicial training. The courses offered by the institute cater for all levels of judges and address “bench-specific and specialist court education needs”. The courses are broken down into four areas: “the role of the judge; context of judicial function; skills and judge craft; and renewal” (New Zealand. Institute of Judicial Studies, 2017, p. 1). Presently the Institute of Judicial Studies offers a course called “Family Violence”, described as follows:

The aim of the seminar is to educate about best practice given the current understanding of what assists victim safety and prevents recurrence of family violence. Experts from a range of disciplines and backgrounds will present current research about the dynamics of family violence, including its impact on children and the significance of various indicators of worsening offending. A number of practical exercises will give the participants experience in applying this knowledge to the decisions required of judges. (Institute of Judicial Studies, 2017, p. 5)

In reviewing these international developments in judicial education on DFV, we note the need to understand current judicial capacities, views, and understandings of the objectives and use of perpetrator interventions in court settings.

Methodology

The rationale of this study was to explore how judicial officers understood perpetrator interventions as part of their work in courts. The findings of this research provide valuable insight and information about their views, their concerns and their thoughts on potential improvements to support their use of perpetrator interventions to better hold DFV perpetrators to account. Practitioners and scholars in this field have suggested that as the system response to DFV attempts to engage with perpetrators earlier and more proactively, a broader approach will be required for the entirety of the “perpetrator intervention systems” by a wide range of departments, and agencies including the judiciary (Vlais et al., 2017, p. 9). This will necessarily include changes in judicial approaches, which are the focus of this report.

This project adopted a multi-method, qualitative research design that had three components, as outlined in Figure 1.

Drawing on these data, this research offers a grounded empirical contribution to existing knowledge in this area. In doing so, it seeks to support the development of best-practice recommendations and guidelines for judicial use

of perpetrator interventions, and to facilitate the work of national and state-based reviews aimed at improving legal responses to DFV and building a system-wide framework of perpetrator accountability.

In-depth interviews

Semi-structured interviews were used to examine judicial views on court-based use, management and extent of perpetrator interventions for DFV perpetrators. Interviewers used an interview guide (see Appendix E) which was adapted for relevance based on the interviewees’ role and jurisdiction. That is, judicial officers were asked more directly court-focused questions, while other interviewees were asked about their views on, or observations of, judicial officers. In total, 36 interviews (n=36) were conducted either face-to-face or over the phone in all eight Australian state and territory jurisdictions. These interviews were conducted between September 2017 and April 2018 with three levels of the judiciary: criminal court judicial officers from the Magistrates Court jurisdiction (referred to as magistrates); judges from the District and County Court jurisdiction (referred to as

Figure 1: Research components

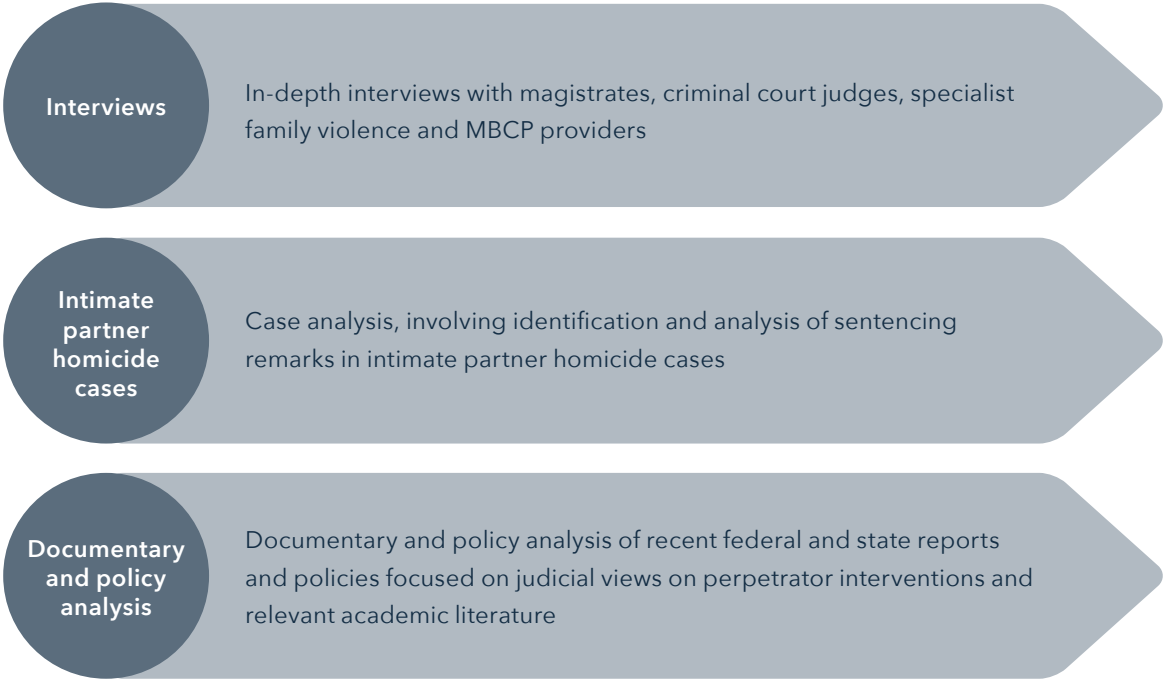


Table 2: Interviewee numbers by role and jurisdiction

Types of interviewees		Jurisdiction								
Role	Description	ACT	NSW	NT	Qld	SA	Tas	Vic	WA	Total
Magistrate	Judges from the Magistrates Court jurisdiction	3	1	2 ^a	3	2	2	4	3	20
Judge	County Court and District Court judges	-	2	-	-	-	-	3	1	6
Justice	Supreme Court justices	1	3	1	2	2	-	-	1	10
MBCP	Workers and consultants from MBCPs or peak bodies ^b	1	-	2	6	3	1	3	-	16
Service	Including women's advocacy services, men's referral services, fathering programs, respondent practitioners and legal practitioners	-	2	-	4	-	-	2	-	8
Total		5	8	5	15	7	3	12	5	60

Note: ^a Judges from the Magistrates Court jurisdiction in the NT were classified in NT as "local court judges".

^b Peak body is the term commonly used across Australia for the head advocacy agency in an area of social activism. In relation to perpetrator interventions, No to Violence (NTV) is the peak body in Victoria and NSW for organisations and individuals working with men to end their use of violence.

judges); and justices from the Supreme Court jurisdiction (referred to collectively as justices). Of those interviewed, eight judges had experience in a specialist DFV court. These included interviewees from South Australia, Victoria, Western Australia and Queensland.¹ In addition to those interviewees with specialist court experience, we also interviewed four judges who worked within quasi-specialist DFV settings (e.g. on DFV lists or as dedicated DFV magistrates). These interviewees were from the Australian Capital Territory, Queensland, Victoria and New South Wales. In our interviewee descriptors, we have not identified in which courts judicial officers worked, as these numbers were small and there was therefore potential for identification.

In addition to the 36 interviews with judiciary, a smaller number of interviews were conducted with MBCP program providers (total n=16). Eight interviews were also conducted with a mix of additional service representatives. This cohort included women's advocacy services, men's referral services, fathering programs, respondent practitioners and legal practitioners identified as having key expertise or knowledge in relation to perpetrator interventions and the courts.

¹ We note that one of the interviewees had previously worked in a specialist family violence court but had moved to a non-specialist court at the time of the interview.

Interviewing is a widely used method in criminological and socio-legal research, providing unique access to the views and experiences of those who practise in the field (Fleming, 2011). In particular, the interviewing of legal practitioners allows researchers to go beyond documentary evidence of court proceedings to gain insights directly from judicial decision-makers (Fitz-Gibbon, 2014, p. 248). The insights gained from interviews with those who operate within the legal system may not otherwise be available from direct observation, and can therefore reveal "reasoning, motivations and processes" that may otherwise be hidden in judicial decision-making (Fitz-Gibbon, 2017, p. 180). It is recognised that interview data can assist in triangulating data from direct court observations and documentary research to enhance the reliability of qualitative research findings (Burton, 2013).

All interviewees were asked for their views about court-based perpetrator interventions (their objectives, accessibility and use); the role of judicial officers in managing compliance; and the need for greater perpetrator accountability and/or intervention options (see Appendix E). Specific prompts addressed the sentencing of DFV perpetrators, including the influence of prior perpetrator interventions on sentencing outcomes. All interviews were digitally

recorded and professionally transcribed. The resulting interview data were uploaded into the QSR NVivo software (Version 11) for qualitative thematic analysis (Sandelowski, 2000).

Qualitative thematic analysis was undertaken to enable the research team to provide “a comprehensive summary of” the interview data “in the everyday terms” used by interviewees (Sandelowski, 2000, p. 336). In order to undertake the qualitative thematic analysis, a preliminary review of the transcripts was conducted individually by all members of the research team to identify emerging topics and common types of views expressed by interviewees. The research team then together reviewed these emerging themes and further subcategorised or grouped topics to establish clear themes to be used for coding the interview data. The interview data were coded comprehensively to these themes using the QSR NVivo software. Extracts of the interview data, organised by themes and subthemes, were then generated and analysed by the research team. Interviewees are quoted at length throughout this report in order to enhance the accuracy and “descriptive validity” of how they expressed their views on the use of perpetrator interventions (Sandelowski, 2000).

The generated empirical data provided significant new insights into judicial officers’ views on perpetrator interventions in Australia, including how these insights should be applied to and considered in the sentencing of DFV perpetrators.

Process of recruitment

A combination of strategies was used to identify and contact potential interviewees. Where the research team did not have established contacts or networks, they had to rely on the “cold call” emailing of potential interviewees, using contact details and information available online. This recruitment method yielded a low number of responses from some jurisdictions. Snowballing strategies were also adopted, for example, recruiting additional interviewees via referrals from those interviewed. Snowballing was an invaluable enabler for contacting relevant people in a number of jurisdictions and tended to yield more interviewees than cold calling via email. However, its success was variable, as it relied on interviewees’ individual networks and relationships with

different stakeholders. For example, in some jurisdictions judicial officers had established relationships with MBCPs and actively encouraged them to engage with interviewers; in others, interviewees were reluctant to refer interviewers to additional contacts, or there was an observable silo between the different cohorts based at the court.

Participation in interviews also relied on candidates’ availability and willingness to participate in the research. Noting that judicial officers in particular had significant demands on their time, the research team offered flexibility in conducting interviews, offering phone interviews where interviewees were unavailable during the time the interviewer was visiting their jurisdiction or where the interviewee was located remotely. Despite this, many individuals contacted by the research team did not respond to requests or otherwise declined to participate. Some judicial officers (particularly in higher courts) declined to participate as they felt they did not commonly deal with DFV matters.

Although the research team sought to sample multiple interviewees from each level of the court in each jurisdiction (aiming for a total of 10–12 interviews in the larger jurisdictions of Western Australia, Queensland, Victoria and New South Wales; and at least five in the smaller jurisdictions of Tasmania, South Australia, Northern Territory and Australian Capital Territory) to ensure the canvassing of a variety of views and perspectives, the method used to identify and contact potential interviewees had to be adapted based on the context of each jurisdiction’s court and service provider networks. Furthermore, recruitment challenges detailed above were more prevalent in certain jurisdictions, meaning that the proportion of interviewees by role in each jurisdiction is not representative. In particular, the research team was unable to recruit interviewees from the Tasmanian and Victorian Supreme Courts or New South Wales and Western Australia MBCPs, which created a gap in data from those jurisdictions. Interviews with representatives from services other than MBCPs occurred in limited numbers in New South Wales, Queensland and Victoria, as these interviewees were only pursued when their perspectives and expertise were identified organically and appeared particularly relevant to the scope of the research project.

Ethics

Ethics approval was received from the Monash University Human Research Ethics Committee.² As part of the ethics process, interviewee anonymity was a key concern. As such, interviewees are referred to throughout this report using an individually assigned pseudonym that combines their jurisdiction and professional role alongside a randomly assigned letter of the alphabet (e.g. ACT Justice A, Vic Magistrate B, Qld MBCP A).

Intimate partner homicide cases

In addition to in-depth interviews, an analysis of 5 years of intimate partner homicide sentencing judgements (hereafter referred to as homicide sentencing judgements) was also undertaken. Specifically, the project aimed to analyse judicial remarks made about perpetrator interventions during the sentencing of perpetrators of intimate partner homicide across Australia. This included analysing all publicly reported murder and manslaughter judgements for the 5-year period 1 January 2011 to 31 December 2015.

These sentencing data provide an evidence base of how perpetrator interventions are referred to in the sentencing of intimate partner homicide offenders. The decision to focus on intimate partner homicides was based in part on the ability to access reported sentencing remarks: these data are not readily available for lower level courts. The researchers recognised that sentencing remarks in intimate partner homicide judgements were a potentially important source of data on judicial approaches to, and views about, perpetrator interventions as a result of the controversial Victorian case of *R v Middendorp* (2010) VSC 202 (see further explanation of the *Middendorp* case under Findings from the intimate partner homicide case analysis in the Key findings section). We did not seek to generalise from these data but we aimed to seek out any additional data about judicial views on perpetrator interventions.

² Monash University Human Research Ethics Committee (MUHREC) approved the project: "Perpetrator interventions in Australia: A national study of judicial views and sentencing practice for domestic violence offenders". Project 8008. Review reference: 2017-8008-8783.

Using the homicide sentencing judgements dataset, the project aimed to document judicial views and approaches to perpetrator interventions as expressed at the point of sentencing. Sentencing remarks were chosen as a dataset for their concrete and direct insight into judicial opinion, belief, attitude and processes. When combined with interview data, they offer a valuable multi-layered insight into judicial officers' views about and use of perpetrator interventions in their work. In the analysis, we considered references made to perpetrator intervention histories in sentencing, including whether a perpetrator intervention program had been completed; whether the offender was the respondent to an FVIO (current or past) and, if so, when the FVIO was granted; and whether there were any recorded FVIO breaches prior to the homicide and, if so, what responses to those breaches were activated. The analysis also noted the purpose of references made to perpetrator interventions in sentencing (e.g. if an intervention was deemed irrelevant, mitigating or aggravating). We do note the limitation of sentencing remarks by their very function. There are no requirements for sentencing judgements to contain comprehensive information about perpetrators, victims or intervention histories. The justice determines what is contained in a sentencing judgement. As such, this dataset is likely to be incomplete.

Intimate partner homicide sentencing judgement identification

To identify cases and locate sentencing remarks, we drew on homicide sentencing judgements from a range of sources, including from publicly accessible legal databases (e.g. Australasian Legal Information Institute [AustLII], LexisNexis) and from court services in Australian state and territory jurisdictions. While the intention was to conduct homicide case analysis nationally, due to access barriers the research team was unable to source sentencing transcripts from Queensland, despite requests to all key relevant agencies. As part of the process of seeking access, we were grateful to the Office of the Deputy Director-General, Justice Services within the Queensland Department of Justice and Attorney-General for providing us with a list of offenders sentenced within the relevant time period and the date of that sentence. Unfortunately, the high cost of securing the relevant transcripts through the private court transcription service meant it

Table 3: Intimate partner homicide sentencing judgments per jurisdiction to be included in case analysis (sentenced January 2011–December 2015)^a

Jurisdiction	Number of male perpetrators of intimate partner homicide cases	Number of female perpetrators of intimate partner homicide cases	Total number of cases	Total number of perpetrators ^b
ACT	1	0	1	1
NSW	35	9	40	44
NT	11	5	14	16
Qld	No sentencing judgments included in analysis			
SA	11	4	14	15
Tas	3	0	3	3
Vic	30	12	40	42
WA	31	12	40	43
Total cases	122	42	152	164

Notes: ^a For a more detailed breakdown of cases analysed by state and territory jurisdiction, perpetrator sex and year, see Appendix A. ^b Several cases identified and analysed within the study period involved more than one perpetrator being convicted of the homicide.

was not possible to include the Queensland remarks in our research. We acknowledge the importance of access to judicial transcripts to facilitate research on the operation and effectiveness of, and needs for reform within, the criminal court system broadly, and sentencing practices more specifically.

A brief description of the process undertaken to gain access to homicide sentencing judgements in each Australian state and territory is provided in Appendix C. As shown in Table 3, through these processes 164 intimate partner homicide cases were identified and their sentencing transcripts analysed to determine the presence and influence of perpetrator interventions, and judicial views of these interventions, in sentencing. This included 122 cases involving a male perpetrator and 42 cases involving a female perpetrator. Seven cases had more than one perpetrator. Cases that involved multiple perpetrators were characterised by sexual infidelity, jealousy, substance abuse and debt, as well as mother and child co-offending against perpetrators with a history of DFV against the victims.

Intimate partner homicide sentencing judgement analysis

Analysis of the intimate partner homicide sentencing judgement dataset was guided by the following question:

do sentencing judges refer to, and take into account, prior histories of perpetrator interventions and/or programs when sentencing for an intimate partner homicide?

To answer this question, a qualitative thematic analysis (Sandelowski, 2000) of the sentencing decision in each of the cases was used to identify relevant information relating to the perpetrator intervention(s), including the history and type of intervention(s) present in the case; the relevance to sentencing in the current matter (i.e. background case context, aggravating, mitigating); and what, if any, weight was assigned to the offender's failure to stop the abuse or change behaviour as a result of prior perpetrator intervention. Each case was reviewed and both quantitative and key qualitative data (such as specific reference to perpetrator interventions) were entered into an Excel spreadsheet. This allowed for qualitative comparison across cases and states.

Judicial remarks about perpetrator interventions and their significance to perpetrator accountability formed a specific focus of the homicide sentencing judgement analysis. Our approach also aimed to capture all remarks made during sentencing that related to perpetrator interventions, including:

- the offender's prior participation in an MBCP
- the offender being listed as a respondent on a current FVIO

- the offender being listed as a respondent on a prior FVIO
- any history of the offender breaching an FVIO.

Perpetrator histories indicating interactions with the civil, criminal and/or Family Court system were also flagged, including:

- if the offender had a prior conviction of DFV-related offending
- if the offender was on bail at the time of the homicide
- if the offender was on parole at the time of the homicide
- where a child custody arrangement between the victim and offender was in place
- where a Family Court order had been made
- where the offender and victim had been involved in Family Court proceedings.

Female-perpetrated intimate partner homicide cases

We identified 42 homicide cases across Australia (excluding Queensland) sentenced during the relevant period (January 2011–December 2015) that involved a female perpetrator (see list of cases at Appendix B).

The majority of female perpetrators (32.5%; n=13) were aged 40–49 years, and 30 percent (n=12) were aged 20–29 years. Manslaughter was the leading verdict for female perpetrators of intimate partner homicide (64.3%; n=27), with murder accounting for 24 percent (n=10) of verdicts. The majority (47.6%; n=20) of non-parole and total sentences for this cohort fell into the 2.1–4 years range, with 40.5 percent (n=17) falling in the 4.1–6 years range. None of the female perpetrators captured in the 2011–15 period were on bail or parole at the time of homicide. Of the 42 female perpetrators, 10 were co-offenders in the commission of the homicide. Of these 10 women, six co-offended alongside a male or males and a female, and four perpetrated alongside a female (two cases of two co-offenders).

In these cases, any mention of perpetrator intervention history and/or other relevant interactions with the civil, criminal

and/or Family Court system were extremely minimal. Additionally, throughout the interviews, our participants did not reflect on female perpetrators and there was no specific MBCP program data available to us on court-ordered female perpetrator interventions. As such, this report focuses on the case analysis findings as they relate to the sentencing of male perpetrators of intimate partner homicide. We note the importance of research that examines court responses to female perpetrators of intimate partner homicide. Based on the limitations of this data, however, we have excluded these homicides from our analysis.

Limitations

There were a number of limitations identified in the process of data collection and analysis in the intimate partner homicide sentencing judgement component of the study. First, the data collection method cannot guarantee all relevant cases of intimate partner homicide have been identified in each of the jurisdictions from which data was collected. For each jurisdiction we have cross-checked the cases identified through media reporting of intimate partner homicide during the same period to try and limit the number of cases that may have been overlooked. Second, there were no cases included from Queensland. Third, data collection required different approaches to be adopted in different jurisdictions. Bringing together different collections of data for each state and territory (excluding Queensland) creates limitations and potential gaps in the dataset, such as a case that has not been made public by the courts. Our objective in analysing existing sentencing judgements was to augment the interview data. The sentencing remarks offer a further source of information about how judicial officers consider perpetrator interventions when drawing conclusions about the culpability and accountability of DFV perpetrators.

Cases with a finding of “not guilty by mental illness” have not been included in this analysis. While such cases may be characterised as instances of intimate partner homicide, these findings are not categorised as sentences by any state other than New South Wales and as such these homicides have been excluded for this research.

Documentary and policy analysis

The documentary and policy analysis undertaken as part of this research will be used specifically to inform the next stage of this project: the knowledge translation and exchange activity. This analysis included the collection of all relevant recent federal and state reports and policies focused on perpetrator interventions (see, inter alia, RCFV, 2016; Special Taskforce on Domestic and Family Violence in Queensland, 2015). Relevant academic literature from the last decade was also reviewed. For each state, we reviewed existing DFV-related sentencing guidelines and looked for any specific references to perpetrator interventions as a relevant consideration in sentencing. As part of this project we documented the range of court-based perpetrator interventions available in each state, and how this knowledge was shared with key stakeholders. National resources such as the National Bench Book (AIJA, 2017) were also consulted.

This material is represented in the State of knowledge review, and provided in the legislative table in Appendix D. It will also be used as a primary resource in conjunction with the qualitative findings to develop our knowledge translation activity.

Key findings

Findings from interviews: Judicial officers' views of perpetrator interventions

This project was focused on judicial understandings, views and practices in relation to DFV perpetrator interventions. We interviewed judicial officers about their views on this aspect of their work. Our questions focused on their understanding of and knowledge about perpetrator interventions; their views about the effectiveness and suitability of perpetrator interventions in holding perpetrators to account; the role of the courts in monitoring compliance of court-ordered perpetrator interventions; and how perpetrator interventions are considered and taken into account in sentencing DFV offenders. We also interviewed some service providers who interacted frequently with these judicial officers. Service providers focused their answers on their observations of the views and attitudes of judicial officers towards perpetrator interventions in their work.

After exploring these questions with both judicial officers and associated service providers, we have grouped our findings under headings aligned with our four research questions:

- How do judicial officers understand the dynamics and characteristics of DFV?
- What do judicial officers identify as the objectives of court-based perpetrator interventions? How is achievement of these objectives facilitated by the judicial process?
- What are judicial officers' views about the efficacy of court-based perpetrator interventions?
- What do judicial officers think could be improved or changed in relation to the court use and accessibility of perpetrator interventions?

How do judicial officers understand DFV?

Interviewees' understandings of the dynamics and characteristics of DFV frequently informed their approach to perpetrator interventions, by influencing their general views on how to use different types of interventions.

Gender and social norms

Many interviewees' views on judicial interventions were grounded in their understanding of the nature and social context of DFV. Some interviewees felt DFV had gendered drivers. These interviewees tended to emphasise that judicial interventions needed to be tailored appropriately to reflect these understandings of gender, and address the power and control dynamics that characterise DFV, in order to be effective. Anger emerged as a common theme in these discussions, with some interviewees noting anger management programs did not adequately address DFV:

Well, I think the fact that one of the reasons for having a specialist court from my point of view is to identify that family violence offences are different from run-of-the-mill violence offences and, because of the different dynamics, because—and I'm not telling you anything, but these are the sorts of things that you have to say again and again in court that it's not a matter of anger management. It's about power and control. You know, it's not about you being drunk. It's about you trying to control, you know. She's not your possession. All of those sorts of—you know, it's like a cracked record, I'm sure. (ACT Magistrate C)

The anger management course is more about reinforcing that it is okay to be angry but this is how you deal with that anger. So it reinforces that there is a reason—you know, you are justified in your reason for being angry. Whereas family violence—if you are not justified in your reason for being angry. It is not just about how you dissipate anger. It is about you shouldn't be angry like that in the first place. You need to change your thinking. It is not her fault. She is not making you angry. (ACT Magistrate B)

Others referred to anger as a significant characteristic of DFV perpetration (though usually within the context of their views about gender and power), which led them to prefer behavioural-change-based perpetrator interventions to court orders:

And you've got [young] men who have not got that sort of tribal Elders in place to give them advice about how to deal with jealousy and anger. And they need referrals more than anybody. Because putting them in a situation where they've got older guys making the same mistakes and learning how to do it better, all those life skills they

get in dealing with jealousy and anger bleed into other arenas of their life. They end up getting employment. It's fantastic. They've got more to benefit from going into it early. (Qld Magistrate A)

If a male is very, very angry about some issue then the violence restraining order is simply going to be ignored. Sometimes the process of obtaining the order is an aggravation to the relationship further so both parties become more and more aggressive towards each other as a part of the court process. So by the time the restraining order is issued, the relationship has become even more volatile or vitriolic, and so the chances of the restraining order then deterring the person from engaging in some behaviour becomes less. There is no absolute to any of these situations but that's a scenario which I'm sure occurs. (WA Judge A)

Two MBCP interviewees and one New South Wales judge reflected on the complexity of the gendered dynamics of DFV when responding to female perpetration:

I think there is certainly an increase in female perpetrated family violence ... but [a female-offender program] would need to look at including a victim of family violence as well, because often, unlike with the males who are more likely to have had childhood experience with family violence, often for women perpetrating family violence, it's part of they're a victim, they're a perpetrator, it's a two-way. (Tas MBCP A)

The reality is we keep having this conversation about it being a gendered crime and it being all about men's respect for women, the reality is we're not going to fix it because that's not actually what the problem is, it's only one symptom. The problem is you know these people are all traumatised, it's all inter-generational trauma that we're seeing, every single one of these men was a victim of trauma at some point in time. Every single one of the women who engage in abusive tactics, same thing. They were a victim of trauma at some point. You know until we start dealing with those issues ... (Qld MBCP D)

It's such a complex area. Difficult. The other thing too is a lot of the conversation is focused on male perpetrators but they're not the only people who are appearing before

the courts ... It's not a crime that's owned by men. (NSW Magistrate A)

Judicial understandings of gender and societal or cultural contexts meant interviewees generally accepted (and encouraged) the use of DFV-specific interventions. One NSW judge said:

There shouldn't be any greater accountability for a domestic violence perpetrator than any other offender. You have to be careful that pendulums don't swing too far one way or another. At the end of the day yes it's shocking that these offences occur in a home, but it's equally shocking for offences to be occurring elsewhere so we have to be careful that we don't create a different class of offender that is outside the principles that apply for all offending. (NSW Magistrate A)

Interviewees who viewed DFV as a societal problem or a deeply ingrained behaviour were frequently sceptical of the effectiveness of judicial interventions to address the behaviour of a perpetrator of DFV. They emphasised preventative responses were necessary so that violence did not occur in the first place. Two justices from the Australian Capital Territory and Queensland commented as follows:

I think perpetrators are a bit similar [to offenders with drug addictions], because it's an attitude, it's a culture, and that's really difficult to eradicate. Even though we think we've moved on in amazing ways ... It's a cultural thing, and that's really difficult to change. (ACT Justice A)

Politicians sell it [protection orders] as being, "Here, we've done something", and it's a really difficult dynamic, violence in relationships, and at the risk of sounding cynical again, the money is better spent on prevention in the first place, so that people are better educated in relationships in the first place. It's got a better chance of success in terms of your bang for your buck at the front end than it does in the back end, with which we deal ... It's not just the offender. It's the dynamic ... (Qld Justice A)

These interviewees were more concerned with ensuring the responses to DFV adequately reflected harms at a societal level, including judicial officers' roles in setting standards for the community:

The standards judges used to, well I was lectured many years ago by a judge who took the view, you've got to give very severe sentences to drug offenders to make it clear to the community that it's unacceptable. Well, I guess I can transfer that in a way to family violence ... I think it is important to say this is not just a bit of excessive ordinary interaction, this is an unacceptable way in our community, to interact with your partner. Whether it be a woman or a man, this is not on. Unless you impose a sentence that declares that. (ACT Justice A)

One Victorian judge reflected on the necessity for legal practitioners to understand the dynamics of DFV, in order to avoid the perpetration of myths in court and achieve better outcomes in the justice system:

I think there's a much greater need for education of the legal profession, of the prosecutors and defence lawyers who are representing people about the realities of family violence ... I think a greater understanding of what's involved in family violence and the dynamics of relationships might lead to better balanced and more informed matters being able to [be] put in mitigation. (Vic Judge C)

Other factors influencing DFV

In addition to gender drivers, many of the interviewed judicial officers felt that other complex factors were involved in DFV and should be addressed in order for any perpetrator intervention to be effective. Factors explicitly identified included poverty, unemployment, a lack of social networks, cultural contexts and substance abuse. In particular, judicial officers singled out cultural contexts and substance abuse as two case factors that complicated court responses to DFV perpetrators.

Judicial officers tended to prefer integrated approaches to interventions that addressed these additional underlying problems alongside DFV offending:

[NSW Judge A:] Before you're trying to solve a particular problem in domestic violence you're trying to solve the social problems associated with their circumstances. A lot of these people are drinking to excess or using drugs but not because they're in a domestic violence relationship but because they've got all these other issues and it may

be that that manifests itself in domestic violence. What it means is that you can't try and solve the domestic violence problem before you solve the other issues and that's a much harder thing to do of course for a far greater expenditure of resources.

[Interviewer:] Much more complex?

[NSW Judge A:] Much more complex, yes, and there's no short-term quick fix. It's really a social problem trying to be sorted in a legal environment that's not really suited to sorting out social problems.

Type or severity of DFV

The dynamics of DFV were understood as complex and multifaceted, and there was widespread acceptance that interventions needed to be tailored to individual circumstances of DFV. Judicial officers addressed both the perpetrator's use of violence, but also victims/survivors' views or safety needs, arguing that there needed to be careful attention to all forms of violence and to the specific needs of each situation:

I'm not suggesting that there's any great empathy for perpetrators, but if it's going to work, it's going to be honest. And we can't just sit around our discussions around the margins. We can't say, "She's a victim, he's a perpetrator. Next time she gets a violence restraining order, he's going to lose it and go stab her and kill her". Because that's where we always focus. And everything's tailored to that extreme end. Nothing in the middle. All the research points that a lot of women, most women, want the violence to stop, and they want assistance to maintain the relationship in that massive grey area. Because it's not always just the punches to the face and the suffocations or the strangulations. It's the financial abuse, the emotional abuse or whatever it might be. The horrible language that they use to each other. Kids in the middle. (WA Magistrate A)

New South Wales interviewees, in particular, emphasised that DFV offending existed on a spectrum, and were concerned that interventions (both judicial and non-judicial) needed to be able to be tailored appropriately to an individual's needs in order to be successful. One magistrate captured this view concisely:

Not all domestic violence offences are the most serious of matters that come before the courts. Sometimes it can be trying to sledge a butterfly with a mallet. I think that's why it's important the courts have that discretion. (NSW Magistrate A)

MBCP professionals echoed the importance of these distinctions for effective judicial work, identifying the need for more programs that could be tailored to different types of DFV. As the following two interviewees note:

You know and then there's situational violence which is I think completely different you know. So yeah I think we need to have conversations around reciprocal violence and it's not just always retaliatory, that's not true. (Qld MBCP D)

... but it would be nice to have a whole raft of programs we could offer to people. Again, like a triage system. (SA MBCP A)

Other judicial officers noted that gauging the seriousness of an individual perpetrator's use of violence was complicated, with one explaining how violence that appeared less severe could still have significant impacts:

That said, sometimes there are occasions where we can at least partially suspend a sentence, or that might appear to be justified on all of the facts. Perhaps the injury is not in the very serious range of injuries, although applying caution to that, of course. It doesn't take very much in the way of force or threatened force to have the perpetrator's desired effect on the victim. (NT Justice A)

These general understandings of the complex features and characteristics of DFV, coupled with their specific views on their ability to change perpetrators' behaviour, underpinned judicial officers' views on the use, effectiveness and desirability of perpetrator interventions—both at a high level, and also in practice.

How do judicial officers understand perpetrator interventions?

Judicial views on perpetrator interventions in this research were diverse and reflected differing ideas about how perpetrator interventions worked, whether they worked and what the key objectives of such interventions were. There were also differing views about the roles of judicial officers in implementing interventions beyond court orders in their everyday work. All of these areas inherently overlapped in interviewees' discussions—for example, an interviewee may have defined behaviour change as the key objective of all perpetrator interventions, yet have been sceptical about the ability to change DFV perpetrators' behaviour, and therefore about the possibility of such interventions being effective. Conversely, another interviewee may have been very optimistic about the ability to change behaviour, but did not view behaviour change as the key measure of an intervention's success.

In this section, we have structured the presentation of our results around three main areas:

- perpetrator interventions as part of the system response to victims/survivors
- judicial officers' history of previous engagement with perpetrator interventions and how these interventions influenced understandings of current risk
- judicial officers' concerns:
 - their knowledge of perpetrator interventions
 - the availability and accessibility of perpetrator interventions.

Perpetrator interventions as part of the system response to victims/survivors

While this project was focused on interventions for all perpetrators, many judicial interviewees focused on women victims/survivors when commenting on interventions they use or observe being used. Improved safety outcomes for victims/survivors were considered a necessary objective of all perpetrator interventions. This was expressed in terms of believing a victim/survivor was “better off” as a result of the intervention (ACT Justice A), and also through judicial interviewees' positive views of interventions that empowered and protected victims/survivors (regardless of the impact of

interventions on perpetrator behaviour). In this context, WA Justice A viewed increased reporting of DFV positively as an indication that victims/survivors were more confident with reporting violence (rather than an indication of increased rates of DFV). Similarly, SA Justice A was very positive about current developments in South Australia, linking increased applications for FVIOs to ongoing societal change:

Reform, I think what we've done is very good. I think the fact that many more orders are taken out, that they're now treated more seriously, that we hesitate before we allow—we don't automatically withdraw the order, or allow victims to withdraw the complaint, we investigate that more carefully. The fact that there is so much—there is a greater stigma now, as a result of everything that has happened, that is attached to inter-relationship violence. All of that will start to work a shift I hope in attitudes, and that's where I think the change will happen over time. I would actually still provide more focus and more resources on empowering women, to make sure that they continue to come forward, get the orders and then insist on getting them enforced. (SA Justice A)

Many of these interviewees stated that they measured the effectiveness of interventions by their ability to ensure the safety of victims/survivors, rather than the impacts of those interventions on the perpetrators of the violence:

It's not just about the person. The person takes up a big part of it but you have also got to consider the effect on the victim. (ACT Magistrate B)

... that's got to be the primary objective, has to ensure the safety of victims. So that's your first objective, make sure victims are safe, then once you achieve that, then say, "Alright, how are we going to protect them from future events, best way to protect them from future events is to change the behaviour of the perpetrator". (WA Justice A)

It's about focusing on what the end result is, and that's the protection of a person who's been subjected to or fears domestic violence. (Qld Magistrate B)

So, if all we do is make women a bit safer then we've achieved something. (Vic MBCP B)

These concerns for improving outcomes for victims/survivors led some interviewees to reflect on the dilemmas they face in determining what will be the most appropriate intervention in terms of impacts on both perpetrator and victim/survivor. This further evidenced that there may be multiple conflicting objectives for judicial officers to consider when using perpetrator interventions. FVIOs, for instance, were considered by many interviewees to have limited effectiveness on victims/survivors' safety in instances where the perpetrator was intent on perpetrating DFV. The success of FVIOs were therefore frequently measured in terms of enhancing victims/survivors' ability to confidently report violence and to rely on the enforcement of those orders. The following quote succinctly linked these concepts:

[The] effect of those orders is it's a lot easier once an order has been made for a person who feels threatened, or potentially threatened, who is the complainant in respect of the order, to seek assistance and protection from the police and the authorities subsequently. It's a marker that's on public record. If somebody, however, is a person who loses control and is apt to behave violently, no number of orders are going to make a difference in the end. That they'll offend because—for whatever reason they choose to. (Qld Justice B)

As this Queensland judge reflects, a key outcome is enhanced support for the complainant once an order is in place:

Well, they play a role—two roles. [T]here is the acknowledgement and there's the denunciation of the person. Which may—just may serve to shame the person into looking into themselves to inwardly gaze and wonder whether they should do something about themselves. The second feature—effect of those orders is it's a lot easier once an order has been made for a person who feels threatened, or potentially threatened, who is the complainant in respect of the order, to seek assistance and protection from the police and the authorities subsequently. (Qld Magistrate A)

There was acknowledgement, however, that orders need to be used carefully, if they are to achieve these types of effects. The following comment on "risk aversion" in police regarding the initiating of orders indicates that sometimes judicial officers take into account concerns other than the safety of

women and children when using perpetrator interventions:

We have had some conversations with police regarding this and there is some talk about trying a different approach, or pilot programs, but I guess it's very hard to work collaboratively because there's too many other dynamics and the police have this kind of risk aversion model. They would sooner handball it straight away into the courts because they don't front up in front of the coroner if there's a death, so there's always that in the back of their thinking. There were a number of senior police officers who were called before the coroner a number of years ago in one particular region and then we were just swamped with intervention orders. Everyone had intervention orders on them and it was just like, "I'm going to make sure that I don't end up in that position". There needs to be some sort of constructive dialogue in the way forward. In that particular region, there seems to be a lot of Intervention Orders put on and then withdrawn, like a week or so later. (SA MBCP A)

This quote suggests the importance of communication between those judicial officers making orders and intervention programs and services.

Consideration of victims'/survivors' views

Although many interviewees emphasised the importance of achieving safety for victims/survivors as a key objective when considering an intervention, they noted that victims'/survivors' views about interventions often differed from those of legal practitioners and/or judicial officers. Frequently, this was characterised as victims/survivors not necessarily wanting a criminal justice response or wanting to remain in a relationship, which may conflict with, for example, an FVIO or imprisonment. Some judicial officers appeared conflicted about the extent to which those views are or should be taken into account when considering appropriate responses to perpetration of DFV, as demonstrated in the following comments:

But, you know, as is often the case and as you would know if you work in the area, even after quite startling repetitive violence perpetrated on victims, they often still want to be with the perpetrator. So, I suppose in those cases, I mean often the police have already taken out a

domestic violence order that just stops them being together while someone is drinking or something like that. So, it won't be completely stopping their contact, although it might be. But usually, I think—often, not in every case, but usually—the victims' wishes are respected, I think. (NT Justice A)

The need to kind of vindicate victims is complicated, because ... not all victims are vengeful, but on the other hand, many victims are ... Yet you've got to be consistent and precautionary in your sentencing, so that just because a victim is vengeful, doesn't mean you sentence more seriously or more severely. Just because a victim is forgiving, you don't sentence any more leniently. But you've got to you know, it's bloody hard sentencing, it's bloody hard. (ACT Justice A)

In comparison, interviewees from three MBCPs and three Victorian judges emphasised the importance of taking victims'/survivors' views into account in order for interventions to be effective, and reflected on situations where lack of knowledge of victims'/survivors' views could result in significant adverse consequences. For example, Vic Magistrate D reflected at length about challenging cases involving Child Protection and socially isolated women from immigrant or refugee communities, where victims/survivors may want the family to stay together but Child Protection may make protection applications (supported by police) to protect the children witnessing DFV, which result in victims/survivors losing access to their children. Similarly, the three MBCP interviewees spoke at length about the negative impacts certain interventions may have, including removing victims'/survivors' primary means of financial support if an intervention results in the perpetrator being removed from the home or imprisoned, or where the victim/survivor has to leave the home and is unable to source housing or other support due to lack of funding.

These significant potential adverse consequences for the victims/survivors led some interviewees to conclude that victims'/survivors' views should inform court-based interventions, rather than be viewed as a barrier to responding to DFV perpetrators:

So I guess what we're saying when we're talking about accountability we need to be asking the women and children

what does that mean for them? What would accountability, what does justice feel like for them? Sometimes justice for the women is just a police officer or a judge saying, “That behaviour is unacceptable. Now we’re going to offer you the opportunity here. We’re going to invite you into a process”, and to actually do it in a way that engages and invites the men into a process or creates a process of change, rather than just doing disembodied pieces of work that actually makes things a whole lot worse for women and children. Because what’s happening in DV court may impact what happens in family law court, which will have huge impacts on DV and stalking and post-separation—all of that. (Qld MBCP A)

When you do this work, what you see is you see a lot of women who say, “I love him and I want him back”. There’s a lot of them. And it doesn’t matter how serious it is ... Now, the thing about that, what you have to do is you have to respect that that’s what she wants to do. We all know it takes anything up to 10 times of serious violence for her to make that final decision to leave. So you’ve got to support her, show her some respect in terms of the choice she’s making ... essentially, what you’re trying to do, if you think about it, if you’ve got a woman who’s saying, “I want to go back to him”, then what you should be doing as the judicial officer is trying to make him change so that it’s safe for her. (Vic Magistrate A)

Of those that emphasised the importance of considering victims/survivors’ views, few discussed how this could best be achieved when using interventions. One Australian Capital Territory judge (ACT Magistrate B) considered victim impact statements as fulfilling the purpose of understanding the victims/survivors’ views, while Qld Magistrate B viewed case management favourably because it prevented victims/survivors from having to repeat their stories in court.

MBCPs as a point of potential intervention for victims/survivors

Many MBCP interviewees discussed their processes for involving victims/survivors when administering MBCPs, either as a way to validate the genuineness of individual men’s behaviour change, or to offer support to ensure the ongoing safety of the victim/survivor. Many noted they provided

contact points or other support for victims/survivors as part of the MBCPs they ran. However, this was always presented as a voluntary opportunity for the victim/survivor, in line with a commitment to respect and support victims/survivors’ views and wishes.

These reflections indicated that MBCP workers perceived their programs and roles to be an important opportunity for communication with victims/survivors, and sometimes as a potential point of support for victims/survivors in terms of engaging with services or otherwise being supported, independently of the MBCPs’ impacts on perpetrators. One Queensland MBCP interviewee effectively summarised these views as follows:

We also then at point of engagement, engage with the partners, and offer them the opportunity to be engaging with us through the entire program. We find that we don’t get a huge take-up, it’s about 40 percent that will take it up ... So, there’s lots of reasons why they won’t engage, but where we can get it we want it ... the benefit of engaging these women is huge, absolutely huge. (Qld MBCP B)

The views of these MBCP workers on how victims/survivors can or should be engaged in MBCPs were reflective of broader views across our interviewees that DFV interventions should consider victims/survivors.

A recurring theme across roles and jurisdictions was the ways in which victims/survivors’ interactions with either perpetrators or legal practitioners (including court processes) may impact the effective use of interventions. In relation to FVIOs, there was a strong theme in Western Australia and South Australia judicial officers’ discussions that victims/survivors frequently “tacitly consent” to breaches of FVIOs. Although some of these judicial officers were sympathetic to victims/survivors in such situations, tacit consent was viewed as a barrier to the utility of FVIOs as an effective intervention and/or as a relevant consideration in sentencing. For example:

[WA Justice A:] But in the cases I’ve dealt with, if there’s been a FVRO in place, it’s been tacitly waived by the victim.

[Interviewer:] And so if it’s been, as you say, “tacitly waived”, that has less of an impact in the sentencing?

[WA Justice A:] It has less of an impact because it's not as if the offender has gone around uninvited and, against the victim's wishes, associated with her; that would be quite aggravating; but in all the cases I've dealt with, although there may have been a previous VRO in place, they've resumed normal domestic relations, with the VRO just sitting there, unused.

Absolutely, I think we have to [hold people accountable]. And it's not always easy because a lot of [breaches] of intervention orders ... there's ... input by the complainant who effectively encourages the breach. So, you know, often the media and people say, look at the pathetic sentences on breach of intervention orders. Well, you know it's tough to impose a difficult sentence when you have repeatedly the alleged victim or the victim coming in and playing their part. (SA Magistrate B)

In other jurisdictions, these views about victim/survivor behaviours created scepticism about the potential positive outcomes of MBCPs:

So there's another risk that many women will minimise it [family violence] even to the agency that's supposed to be looking after her, because they're so desperate for him to succeed and for him to come back to the family and to the children, and things ... So I think there would be—if there were more widespread availability [of MBCPs], they'd probably be popular with our women ... but that doesn't mean there will be any change. That's what we're cynical about. (NSW Service A)

[Victims/survivors] get suspicious and they can be deeply aligned with the men. I mean that's the other thing. We've got [these] men in group, they can be really aligned with them and they're actually not going to have anyone else coming in and interrupting that. (Qld MBCP A)

This NSW judge expressed related views about DFV dynamics that make judicial responses to DFV more complicated:

Well, you know, again it goes to the complex nature of domestic relationships. When you're talking about being in love with someone the courts might try and deal with somebody whose behaviour is completely unlawful but sometimes there are barriers put in place by those who probably need the protection of the courts but they're not

willing to provide the information to the courts to support in assisting turning somebody's behaviours around. It's complex. (NSW Magistrate A)

While these interviewees characterised victims'/survivors' behaviour as a potential barrier to effective use of perpetrator interventions, judicial officers expressed strong sympathy for the difficulties victims/survivors may experience, both in relation to the violence they may be subjected to and the way in which interventions operate. A number of interviewees considered that interventions may undermine or frustrate victims'/survivors' safety or agency when those dynamics are not adequately understood. One Victorian judge suggested a need for jury directions, similar to those used in sexual offences cases, to address myths and understandings about DFV victims/survivors' behaviour, and ensure an appropriate response from the justice system:

But that's actually quite an important mechanism too for making sure that if a person is facing trial that whilst their right to defend themselves is properly protected, that it doesn't go to the extent of perpetuating myths about, you know, she went back so therefore it didn't really happen, those sort of things. Or she asked for it, sort of stuff. (Vic Judge C)

Another judge reflected more on the reasons why victims/survivors may respond to DFV in certain ways, which informed how they viewed interventions in their courts:

People usually take a very long time before they call for police assistance ... Many never have rung the police, and they've waited 14 years, they have an order and they're still not free of it. I've had women who have moved 11 times in—well, the woman who moved 11 times who is top of mind did it in 2 and a half years. And he just will not let up. And she walked into my court incredibly calmly and said, "I've got two daughters. They're nearly to adulthood. I know he's going to catch me up and kill me, but I just want to get them to maturity". And you just sit there going—it is extraordinary how much women park their own terror for the sake of their children. It's just grotesque. So not having adequate resourcing for women like that is a serious issue. And they're the kind of people who are at extreme risk of being murdered. Terrible. (Qld Magistrate A)

Some felt interventions could discourage victims/survivors from seeking help from police at a later time:

The police here have a policy and that's basically that somebody is going to be arrested. So the negative of that is next time that they [the victim/survivor] then have to battle to get the order revoked—if there is another incident, they may be reluctant to call the police. (SA MBCP C)

Although community abhorrence of domestic violence, which is very reasonable, in which we all share, prompts most people to say, “Oh well, it's so terrible, we've got to punish people severely who do it”, that can be quite counterproductive, because, for a couple of reasons. First of all, as I said, the victims usually don't want the perpetrator locked up, because it works badly for them. Secondly, locking up the perpetrator makes behavioural change, I think, harder, and thirdly, of course, one of the big problems in this whole area is underreporting of domestic violence, and it's one of Donald Rumsfeld's known unknowns, we'll never know how much underreporting there is ... If the reason they're not reporting is concern about the consequences of reporting for the perpetrator, then increasing penalties for perpetrators just makes it worse. (WA Justice A)

These judicial officers communicated both an understanding of the complex impacts that DFV and perpetrator interventions may have on victims/survivors, and concerns about how these dynamics could create barriers or undermine the effectiveness of perpetrator interventions. There were diverse views on how and whether victims/survivors' perspectives should influence the use of perpetrator interventions. This created complexities for judicial officers in selecting and administering optimal interventions in order to achieve what most felt was the desired objective for all perpetrator interventions: improved safety for victims/survivors.

Value of understanding perpetrators' histories of violence and assessing risk

Judicial officers were asked how common it was to see perpetrators with histories of interventions and, where this occurred, how they used this information? In terms of frequency, the majority of the interviewed judicial officers suggested it was “not uncommon” for perpetrators to have

histories of perpetrator interventions, or DFV offending more generally. Some interviewees were careful to emphasise, however, that this did not mean all perpetrators had such histories, nor that judicial officers were necessarily aware of those histories when individuals presented in court. Supreme Court justices in particular appeared to have less access to perpetrators' histories of interventions than lower-court judges. As they reflected, such information is not always a focus in the prosecutorial brief in intimate partner homicide cases.

Generally, past interventions or DFV offending were consistently viewed by judicial officers as relevant context. There was less consensus about the extent to which these histories were or should be taken into account. Some judicial officers considered them critical for determining whether harsher responses were required, assessing risk, or identifying whether other interventions were required. Others prioritised the severity of violence or changes over time in individual perpetrators' offending when determining the most appropriate response.

Prior interventions

Overwhelmingly, judges and a smaller number of justices indicated it was “not uncommon” for perpetrators they dealt with to have histories of perpetrating DFV and/or being subject to perpetrator interventions:

[Interviewer:] Is it common for you to sentence someone who's previously been subject to a perpetrator intervention?

[ACT Magistrate C:] The reality is that—yes. I think that it's everything to do with their ingrained attitudes and there are some people that are just vile, vile individuals, and because we've got a small community in the scheme of things, it's not uncommon to see recidivist behaviour.

Sure. Yeah, sure. I mean it's recidivism in its nature isn't it. What we know about family violence is that it repeats itself. (Vic Magistrate D)

It's not uncommon. It's not uncommon. I can't give you exact stats, but it's depressingly not uncommon. (SA Justice B)

One Tasmanian judge did note that they saw variable histories, suggesting there was not one “typical” history for perpetrators of DFV:

There are plenty of frequent flyers, but I distinguish between the frequent flyers who have not had the interventions and those that have and I think there are very few in the latter category, plenty in the former. So not many really who come back having done the Family Violence Offender Intervention Program or Equips [Domestic Abuse Program] or whatever, but there’s tons who’ve been in trouble many times before who haven’t had those interventions ... So there are different kinds of frequent flyers. Those where they’ve been in trouble, they haven’t been—or they’ve been charged, charges have been discontinued. There are those who have just got lots of convictions with no intervention, and there are those with lots of convictions and interventions, and those with only a few convictions and interventions. So it’s not just as simple as looking at them as frequent flyers, there’s lots of different [kinds]. (Tas Magistrate B)

Supreme Court justices considered it was less common for them to be aware of histories of perpetrator interventions, reflecting perhaps the limited presentations of such histories in their jurisdiction, or more limited engagement with interventions (in whichever way they characterised them) in the Supreme Court. Even justices who considered histories of interventions to be commonplace emphasised these were most likely to be seen at the Magistrates Court level:

[Interviewer:] So, when you’re sentencing someone for an intimate partner homicide for example, would they typically have a history of an intervention order?

[SA Justice A:] No, typically there’ll be a history of domestic violence, but not necessarily a history of an intervention order, certainly in the past. I suspect that that’s the new procedures which facilitate bringing an intervention order, that we’ll see that more commonly, but in the past, it’s not common.

I don’t think I’d say it was com[mon], but it has occurred, yes. I mean [in a] recent sentence that I imposed for a domestic murder ... There had been previous occasions of domestic violence, none of which ended up in court, and therefore I don’t think he actually had any prior

interventions. I guess I’d say it happens but it’s not common. (ACT Justice A)

[Interviewer:] Is it common for you to be sentencing or dealing with people who have previously been subject to perpetrator interventions?

[NSW Justice A:] Yes, I think unfortunately it is not uncommon. I take it the term “perpetrator intervention” is relating to the steps taken formal[ly] and informal[ly] with people who have a history of domestic violence ... We’re of course a long way away from the local court which is at the frontline of these matters in practical terms. Although we do see situations that have been before and they still are before the local court when there’s a bail application on because the case is still in the local court. Beyond that, we’re dealing with the consequences, usually, of a serious crime or domestic violence that’s caused injury and, unhappily, death.

[Interviewer:] Does the same go if they’ve [a perpetrator] completed a program? It might not necessarily come up as part of their history?

[Vic Judge C:] It won’t be part of the material the prosecution includes. If it comes up, it’ll be because it has been advanced as a mitigating feature for defence. From my own experience, I don’t think I’ve had a single case where I’ve been told someone before the particular offense or offenses that are before me had done and completed a men’s behaviour change or family violence related program.

We wouldn’t know if they’ve self-referred. You might find out about that if they’re legally represented but it’s very rare for someone to disclose “I’ve been through a perpetrator intervention program previously and guess what here I am back so that didn’t really work”. So you’re not likely to hear that. (NSW Magistrate A)

Most judicial officers indicated it was “not uncommon” for perpetrators to have histories of perpetrator interventions. However, some additionally noted seeing perpetrators with histories of DFV not previously subject to interventions, or whose ongoing violence had not been previously detected:

I think we might have took around 15 or 18 voluntary

intervention orders back in 2012–13. What we actually found with those voluntary intervention orders, the men on those ... had exactly the same behaviour and belief system as the mandated man sitting in the room with them. They had equally long histories, but they were particularly good at what they did because they hadn't been caught ... They had never come to the attention of the criminal justice system. So our intention of trying to get these men as early as possible was farcical because they had been doing this for a long time. We, we did not find one out of the VIOs [voluntary intervention orders] that this was the first time he had used violence. (Qld MBCP A)

About half of the referrals, at least half, it's probably a little bit more, of the referrals that we're getting through now, we can now see on that electronic platform referral whether there's been a history or not, whether she's been referred before. So maybe more than half that have got a "yes" to a history. So this is a big problem. It is ongoing. (NSW Service A)

Interviewees most commonly saw evidence of FVIOs, while evidence of past engagement in MBCPs was more irregular. A small number indicated they frequently saw histories of other interventions or non-DFV offending, including drug and alcohol or anger management programs, or involvement with the Family Court. However, these types of interventions were not discussed at length.

In terms of FVIOs, judicial officers from almost every state and territory, and some MBCPs, stated it was very common for perpetrators to have a history of FVIOs and repeated breaches. This included multiple FVIOs for the same partner, or multiple orders for previous partners:

[Interviewer:] So does that include domestic violence orders? ... Do you see those often coming through? People who have already been subject to a violence order?

[ACT Magistrate C:] Oh yeah. I mean, if they're that sort of person, it would not be uncommon then for them to offend against—I've seen offenders offending against several new partners and it would not be uncommon for those previous partners to have orders. Contravention of a protection order is a very common offence, and it's not uncommon for somebody to have—I've had offenders

that have breached protection orders against—that two partners ago had one because they've got children and he's breached that. You know, if they've got an attitude that they don't care, that the Court's ordered that they not do things, they're not going to just because it's against one or the other. They just try to do what ... suits them. And somebody with that sort of attitude is where you have to come down harder.

Some noted that histories of offending, FVIOs and/or histories of breaching did arise, but were not necessarily typical in the level of offending they dealt with.

When someone comes before us where they're being dealt with for criminal offences of family violence, sometimes we're told and sometimes we're not, whether there has been a history of intervention orders. Sometimes there's no reference to a history of intervention orders but we don't necessarily know whether that means it's because there haven't been any in existence or because the police doing the investigation didn't know or didn't see fit to include that in the material. If we do know about a history of intervention orders, it'll be with respect to the particular victim. We won't know ... We've never known of intervention orders that have been granted in respect of previous partners. (Vic Judge C)

We wouldn't know whether there's been a history of apprehended violence orders [AVOs]. That would only come in AVO application proceedings because often as part of the narrative the police will say there've been AVOs between the parties previously but you wouldn't get that in criminal proceedings. (NSW Magistrate A)

Judges and MBCP interviewees from most states and territories indicated they did see perpetrators with histories of participation in MBCPs. Judicial officers from Western Australia and the Northern Territory said that prior participation in programs was common, while those in Queensland said it was not. Queensland interviewees indicated this may be because FVIOs (which prescribe engagement with an MBCP in Queensland) have only been introduced relatively recently and therefore not enough time had passed to measure the frequency of recidivists.

MBCP workers in most states noted it was common for perpetrators to participate multiple times in their programs. Types of participation ranged from mandated attendance because of prior non-completion or reoffending, to voluntary participation by men wanting refreshers or to maintain relationships with the program.

In contrast, justices tended to indicate they were aware that perpetrators may have histories of MBCP participation but it was not as common or visible in the Supreme Court jurisdiction. This was also commented on by two judges from Victoria and New South Wales who noted that, similarly to FVIOs, their awareness of past MBCP engagement was limited by the material presented to them by legal practitioners.

Relevance of histories

Not all interviewees treated histories of perpetrator interventions as relevant. In fact, one Victorian judge indicated that “certainly there’s no process for using history of intervention orders in Victoria or let alone in the state as relevant to the antecedence of the offender” (Vic Judge C). However, a large proportion of interviewees from multiple jurisdictions explained that they usually treated perpetrators’ histories of engagement with interventions as a relevant consideration when responding to DFV. Many of these emphasised that histories were not necessarily a specific sentencing consideration, but rather contributed to a more general context that informed their assessment of a perpetrator’s risk, seriousness of offending, suitability for further interventions, or need for specific or general deterrence:

I’ve got to be careful about using the word “aggravating factor” ’cause it has a distinct meaning in our Sentencing Act. But certainly his history—and I’m sticking to the gender, his history has relevance to current behaviour, and it’s not, in a strict sense, an aggravating factor that he’s been there and he’s done this before, but what it puts into context is the current offending is not out of character. It places him at a higher level of seriousness in terms of the sentencing process. (WA Magistrate B)

This is sentencing law, I suppose, and we’re not allowed to punish them for their past behaviour but certainly that informs us in a couple of ways. The first is whether we can show them any leniency and, if they’ve got a history of this

sort of behaviour, then leniency, by virtue of that fact, is out the window. General deterrence for family violence matters is always something that is high on the agenda for a purpose of sentencing, but personal deterrence, if you have a recidivist perpetrator, is very significant, and you say well, if you’re not getting the message by now—protection of the community is another issue. (ACT Magistrate C)

One of the factors that we would certainly look at if we were sentencing a person on a charge, which was for want of a better description domestic violence, we would be very keen to look at a number of things. Firstly, whether there’s any previous history and that would include looking at whether there was any previous convictions for assault-type offences. Whether there has been in existence any previous violence restraining orders. What has been the person’s response to those violence restraining orders, have they complied with them or have they breached them. (WA Judge A)

A number of interviewees distinguished different types of histories. One Victorian judge outlined their process as follows:

Well, it depends on how it’s [the history] relevant. Someone who offends in breach of a court order, it is relevant, because it’s an aggravating factor. Someone who has alternatively sought and got treatment, such as done a men’s behaviour program before they’ve come before a court, that can also influence the sentencing outcome, because it goes to their prospects for rehabilitation. (Vic Judge B)

ACT Justice A explained that these considerations were multi-layered and complex when determining appropriate judicial responses for individual perpetrators:

There are three ways in which that [histories of interventions] influences me. One is that it’s part of the history to say, has this person been receptive to an intervention, and have they been effective? So that you then take that in to account in determining the appropriate sentence. For instance there comes a point when you say, “Enough is enough, jail is the only answer”, because there’s been interventions which haven’t worked in the past. There’s that. Secondly, it’s part of the history to identify whether it’s a one-off or whether there have been earlier occasions,

so put the seriousness in to context. Thirdly the nature of the interventions might also indicate whether there are some—well I suppose it’s related to the first, but if the interventions have been partially successful for example. (ACT Justice A)

These three interlinking ways in which histories of interventions influence judicial officers’ considerations were recurring themes in how interviewees defined their relevance—that is, as an indication of the effectiveness of past interventions and therefore whether the violence warranted a harsher response or use of further interventions; or more generally as an assessment of risk.

Overwhelmingly, judicial officers suggested histories of interventions were relevant to determining the severity of their responses to DFV perpetrators. Multiple judicial officers from all jurisdictions except Tasmania and the Northern Territory commented that a history of interventions or DFV offending resulted in harsher outcomes, either to deter the perpetrator or to protect the victim/survivor or community. For some judicial officers this was because past interventions had failed and therefore future interventions were predicted to be ineffective. For others, it was because specific deterrence was necessary to address the particular perpetrator’s conduct and hold them accountable, or that a history of failed interventions and/or escalating offending was an indication that a perpetrator needed to be removed from the community. These views frequently reflected interviewee understandings of the ability of interventions to change perpetrator behaviour and/or the prospects of perpetrator rehabilitation. Vic Magistrate B explained their consideration of prior participation in programs:

If they’ve done one, and they’re charged with criminal offending, I’m much more—I will be more harsh in the way that I deal with them, in terms of sentencing, because in my view, you were given the opportunity to understand what’s expected of you, and to cultivate the tools that would enable you to comply with the law. (Vic Magistrate B)

Similarly, ACT Magistrate C commented that multiple breaches of FVIOs or failed engagement with MBCPs reflected

an ingrained attitude in perpetrators, “and somebody with that sort of attitude is where you have to come down harder” (ACT Magistrate C). Vic Judge A agreed with this view, noting that they were more likely to sentence perpetrators to jail if they had histories of interventions combined with escalating violence. Likewise, ACT Magistrate C, Qld Justice A and NSW Judge A reflected on the need for harsher responses to achieve specific or general deterrence where there has been a history of failed interventions:

General deterrence for family violence matters is always something that is high on the agenda for a purpose of sentencing, but personal deterrence, if you have a recidivist perpetrator, is very significant, and you say well, if you’re not getting the message by now—protection of the community is another issue. (ACT Magistrate C)

Certainly, with violence, at the higher end, that’s typically the case. If you’ve got a fellow who has been violent in one previous spousal relationship, but then in the next one, this happens, well you go, “Well, plainly it’s relevant. This is a person that deserves a heavier-hitting penalty than someone without that sort of history.” They haven’t been deterred by the existence of an order in place. They haven’t been deterred by being convicted of breaches of the order from continuing with domestic violence. (Qld Justice A)

There’s a few problems with that but it also boils down to the fact that they have to understand from a personal point of view that there is a punishment that’s going to flow and that may have some specific deterrents on the individual ... The more they’ve done the less their chance I suppose of avoiding full-time custody. The less they’ve done the more likely I’d be trying to encourage some process whereby the result meant that they would have the benefit of such programs. (NSW Judge A)

These approaches did not exclude the use of further interventions. One Northern Territory justice said that continued use of DFV may indicate the need for both a harsher response and further interventions:

You know, I mean obviously people who have got a significant history of violence towards either the current partner or former partners, they’re not going to get the benefit of more—lenience is not the right word, but they’re

not going to get the benefit of probably things like partially suspended sentences and things like that because, you know—although at the same time, sometimes I mean often it will be a matter for the parole board and if they haven't actually done some sort of program, then they need to do it. You know, they need to do something. They will get out at some stage ... You might be less inclined to give them that opportunity [to do a program], particularly as part of a partially suspended sentence. But that's not to say that they shouldn't, you know, take another program. In fact, they probably should, but it might have to happen through a different mechanism. Perhaps in prison, perhaps as part of parole or something like that. (NT Justice A)

As such, a substantial number of judicial officers viewed histories of perpetrator interventions as relevant considerations, albeit in a range of different ways, when responding to perpetrators of DFV. These views often reflected the judicial officers' implied assumptions about recidivism or rehabilitation as a key measure of success in DFV: "I mean history is always a good judge of what the risk is in future." (Vic Magistrate C).

A history of perpetrator interventions impacted judicial assessments of the risk of future offending, and therefore the type of response necessary for recidivist DFV perpetrators. Approaches to histories of interventions sometimes overlapped with judicial officer understandings about prospects of rehabilitation, which in turn influenced their considerations about deterrence and protection of the community. NSW Judge B epitomised these views:

If they've had the benefit of numerous community-based orders and they're still offending and they're still coming before the court, particularly for serious matters, then that will have an impact upon my assessment of those things—the prospect of rehabilitation, likelihood of reoffending—and therefore the weight to be given to consideration[s] such as deterrence and all those factors that may cause me to conclude that a term of full-time imprisonment is warranted. (NSW Judge B)

This view was also emphasised by other interviewees, including WA Judge A and Vic Magistrate A, who characterised the purpose of interventions in terms of protection of victims/survivors or the community. For those interviewees, prior

interventions and noncompliance by perpetrators often influenced their assessment of whether victims/survivors were "going to be adequately protected" (WA Judge A). Vic Magistrate B approached this in a more complex way, however, noting that an assessment of risk based on histories of offending or prior interventions could be flawed:

I don't think [criminogenic factors] are necessarily an accurate way of identifying risk in a relationship. You might have somebody who has never committed any other offences and who has been systematically violent in their relationship for its entire duration, and the risk that that will occur again is very high. And that won't come up on the risk assessment that Corrections apply, which are more based on—we extrapolate from history as to a person's likelihood of further violence. (Vic Magistrate B)

Despite the general consensus that histories were relevant, their relevance was often qualified by other complex factors such as the severity or type of violence. ACT Justice A exemplified this approach:

I think it [a history of offending] does make it [the offending] more serious. But I don't know, I don't think it would overwhelm other things, such as the ferocity of the attack. If it wasn't a very ferocious attack, if it was close to a manslaughter for example. I don't know if prior interventions would ratchet it up massively, but they would make it somewhat more serious, so that you would be thinking of 20 or 30 years, rather than 10 or 15. If it's more serious, if there's been previous interventions ... I mean it might make a difference of a couple of years or something like that. (ACT Justice A)

Similarly, WA Judge A noted:

There's no magic formula, you have to make a judgement based on a range of factors. Certainly their [a perpetrator's] past history of compliance is extremely relevant but it may also be influenced by the nature of the offence, so how violent has it been. (WA Judge A)

Interviewees who viewed successful outcomes and lasting behaviour change as ongoing processes that required time and significant investment of resources (including from judicial officers), also tended to focus more on the

demonstrated impact of perpetrator interventions on behaviour (rather than the existence of a history in itself) as the most relevant consideration. Conversely, they viewed prior failed interventions as an opportunity for analysing why the intervention had failed, and for tailoring different responses to address a perpetrator's use of DFV. An ACT justice described these nuances when considering a perpetrator's history:

I have taken it into account ... enough is enough sometimes. But you'd try and balance whether for example, it's more difficult with homicide, but we do serious assaults and so on as well. You'd look at things like whether the incidents were moderated, whether they were less serious as a result of interventions ... All those things feed in to the question of, "How are you going to respond in that history?" I mean their history is really important. What frustrates me, is often prosecutors take a very broad-brush approach and say, "There's been three or four occasions. He's had opportunities, the time is up." I think you've got to be more nuanced than that, and you've got to interrogate those opportunities. (ACT Justice A)

This appeared to be a significant theme in the Northern Territory, with other judicial officers from that jurisdiction explaining there was a degree of tolerance for multiple referrals to MBCPs:

I think research shows that it takes a number of brief interventions or goes at things before people start to think that there might need to be a behaviour change. So, for me, it doesn't matter if they've done the program three times before, it doesn't hurt to order them to do it again. Something might click. But I don't have any misapprehension that a 5-day program is going to really change behaviour long-term without a whole range of other things happening. (NT Magistrate B)

Others felt that any participation in behavioural change interventions was positive (even if there was reoffending): these views appeared to inform a more tolerant approach to perpetrators with histories of interventions.

... and it doesn't necessarily then mean that you wouldn't consider them again for another program or that there was something wrong with the program. It's just that they're at different stages. If that program was done 3 years ago and then, 3 years down the track, there's some other issues

or something else has happened and it doesn't mean that, and programs change as well. (Tas Magistrate A)

The significant differences in judicial practice across Australian states and territories, as evident from these remarks, were a central finding of this project. They were also core to our recommendation that consideration should be given in each Australian state and territory, and/or at the national level, to developing judicial guidance on how relevant perpetrator intervention histories in all DFV matters should be presented in sentencing and used to support informed judicial decision-making. One of the notable impacts of judicial officers giving consideration to perpetrator intervention histories in sentencing would be the creation of a more reliable evidence base in this area through the public noting of the extent to which these histories are relevant circumstances for DFV offenders who return to court. While such guidelines are always general and do not diminish judicial discretion, the use of the *National Domestic and Family Violence Bench Book* shows the value of, and need for, these resources. Additional information on perpetrator interventions would support judicial work in this domain and build consistency.

RECOMMENDATION 1

Consideration should be given to developing judicial guidance on seeking and making use of perpetrator intervention histories in all DFV matters, including in sentencing, to assist in judicial decision-making.

Key concerns: Availability of interventions

Judicial officers across all jurisdictions identified that the availability of MBCPs was critical if they were to work effectively to hold perpetrators to account: they referred to there being a lack of targeted programs that could address different needs. This finding is captured in the following comments:

So many of the people that I sentence, they just need so much more than we offer them. I think it would be terrific if there was more available. (Vic Judge A)

I think the ACT is very limited in this respect and it's partly a reflection of our size, as necessary, I think we should partner with bigger jurisdictions to be able to access better programs, but I think whatever programs

are provided, first of all, the Court needs to be aware of what's available and what the philosophy or rationale of the program is, and the aim. (ACT Magistrate A)

In Western Australia, interviewees noted that, beyond an FVIO, there were only two options available to the court in sentencing a DFV perpetrator to a perpetrator intervention—one being a 24-week program and the other a more intensive course offering. One judge explained why this limited range of interventions was perceived as insufficient:

We haven't got a toolbox or a library we can really go to and tailor individual counselling, which a lot of people, of course, need. Now, the group sessions are good, and we do get some good feedback. It takes time for those individuals, but quite frankly, I think we need to be a little bit more innovative around this and a little bit more honest about it. That's the problem that I've been finding, is that there's a real lack of honesty about what's required for perpetrators, but also their partners. And it's because I don't think the goals are being identified enough about where we're heading for the individual—the partner and the perpetrator. (WA Magistrate A)

One Queensland judge reflected on the practical impacts of the limited resourcing and subsequent availability of the necessary programs and responses:

I'm sentencing for breach and they [a program provider] go okay, you've had too many referrals in the space of 3 weeks, stop. So I go, okay, that's a resourcing issue. And from my perspective, because I'm on the Commonwealth Magistrates and Judges Council, I understand separation of powers. So if I make an order, you find the resources. But for me, if you've got people who are breaching, they are going to need a 25-week program because they've moved past that early intervention opportunity. You've got entrenched patterns of behaviour, when they know there are criminal penalties as a consequence. The risk is infinitely higher. So if you're not going to fold in mandated counselling over a 25-week program at that point, you are condemning women to run. So yes, I need more programs. (Qld Magistrate A)

Several judicial interviewees had similar reflections, noting they are cognisant that when referring into MBCPs there may

already be a 6-month waitlist, but that the limited options mean they have no alternative available to them on sentence.

In considering the need for diverse interventions and greater availability, some judicial officers discussed geographical limitations, noting the challenges of ensuring perpetrator interventions are available in rural and remote areas. This Queensland judge commented:

We don't have sufficient funding to provide that service to all of the respondents who come before all of the courts, whether they be remote, rural, or in regional centres. (Qld Magistrate B)

Despite this call for more interventions, there was some acknowledgement by some interviewees of how far the perpetrator intervention space has come in recent years, and that there are significantly increased resources being channelled into perpetrator interventions. As one interviewee commented, "I don't know it's sufficient, [but] it's a hell of a lot better than what we used to have." (SA MBCP B)

Some interviewees linked challenges in the availability of perpetrator interventions to the difficulty of recruiting an appropriately trained workforce. This issue was relevant everywhere but exacerbated outside of metropolitan spaces, as one MBCP provider explained:

One of the issues cuts across all men's behaviour change programs, whether they're rural, remote or otherwise, but it's the skills and expertise. There's a deficit in the sector with the skills and expertise, but more so in the rural and remote area. If we're struggling to get them in the cities, it's going to be a bigger gap out there. The other gap is the training within universities. I don't think that they have got a strong lens on the men's behaviour change, or management of perpetrators in the training, so that's a really big one that we need to be aware of, which creates part of the gap within the skills level for people. (Qld MBCP B)

A second key concern was the need to ensure there is a range of perpetrator intervention options available to cater to perpetrators from various communities, cultures and ethnicities. One judicial officer described the availability of

perpetrator interventions for diverse communities as “vastly under resource[d] and under prepare[d]” (ACT Magistrate A). Similar views were held by MBCP interviewees, with one noting that the current range of interventions available in the ACT “absolutely doesn’t meet the mark at all and it’s not as culturally appropriate as it could be” (ACT MBCP A).

In Western Australia, interviewees specifically noted the lack of perpetrator interventions available outside of Perth and the lack of any programs specifically tailored to Aboriginal or Torres Strait Islander communities:

The reality is, if you’re considering Western Australia, you can’t be city-centric ... you’ve got Aboriginal people in these communities, up to 90, 95 percent and more of that community. So, they may have absolutely no access to any intervention ... there should be capacity within that community being built to deliver their own programs, but, you know, I would say it’s negligible to nothing. Most communities wouldn’t have access to this stuff. And some of those, most violent offences will be occurring in those communities, and some of the most traumatised individuals will be in those communities, on both sides of the equation. (WA Magistrate A)

In the wake of the RCFV (2016), several Victorian interviewees noted the development of trials and new intervention programs aimed at catering to a more diverse range of DFV perpetrators. The development of these programs was still underway at the time of this research, so it is yet unclear as to what extent they will be utilised by the courts and to what degree they may facilitate opportunities for court monitoring of compliance. This development was perceived in Victoria as evidence of change, and of an increasing recognition by government and the wider DFV sector of the need to engage and support a diverse range of interventions and programs as an integral part of a whole-of-community response to DFV.

A small number of interviewees noted the paucity of perpetrator interventions designed to cater for female perpetrators. This Queensland judicial officer explained the lack of court-approved perpetrator interventions for women using DFV:

It’s the development of programs for men only. There are some I think independent programs [for women] that I’m

not all that aware of or I can’t identify, but I understand there are some programs out there, but they’re not part of the authorised programs which have been approved by the Chief Magistrate. There are none accredited that I’m aware of that we could refer people to. (Qld Magistrate B)

Although it is clear that women perpetrate DFV at significantly lower rates than men, some interviewees asked for interventions for female perpetrators. In the recent flurry of reform to the perpetrator sector across several Australian jurisdictions, there have been some trials and new programs developed with this cohort in mind. In Queensland there is

a program that’s specifically designed for women who are deemed to be perpetrators within the system. That’s reasonably ground breaking. It was a response to some issues that have been raised by magistrates over the years about, we’re sending men off to these programs but we don’t have anything to send the women off to so it’s something that arose really I think largely through that demand. (Qld Service A)

However, a review of national and international literature on perpetrator interventions revealed no substantive studies or investigations of perpetrator intervention programs or other types of interventions specifically directed at women as offenders. A number of cautions arise in relation to perpetrator interventions targeted at women. The RCFV (2016) cited issues with police misidentification of women as primary aggressors in DFV, and there is now research examining the prevalence and impact of such a pattern in Australia (Mansour, 2014; Women’s Legal Services Victoria, 2018). Goodmark (2008) has identified similar patterns in the United States, where women who are engaging in self-defence or retaliatory violence are subject to high rates of arrest. Given that the development and systematic evaluation of perpetrator interventions, including MBCPs, is still emerging, best forms of response to women who are primary aggressors will need to be the subject of future research.

The third key concern that arose in relation to availability was the need to have perpetrator intervention options available at the earliest point possible. Particularly in cases involving a young offender and/or a first-time offender, several judicial officers discussed the importance of early intervention and

the need for a suite of early intervention tools to be available to the court. One Queensland judge noted the importance of using effective perpetrator interventions in the Magistrates Court, with the hope of avoiding any escalation of violence:

So there's no referrals to programs out of the District Court. It's here or it's nowhere. So that's unfortunately by the time you've got to that level, you're an entrenched perpetrator. So if you miss the opportunity in the Maggi's [Magistrates] Court, you're in strife. (Qld Magistrate A)

This was also flagged as an issue by several NSW judicial officers, who noted that perpetrator intervention options in that jurisdiction can only be imposed post-sentence, precluding a perpetrator from benefitting from an intervention prior to case finalisation.

In Victoria, the fact that not all courts were able to refer men directly to programs (which are tied to specialist courts) was a source of considerable frustration:

So my view at this point is that we need to decouple the mandated men's behaviour change from the bells-and-whistles-Rolls-Royce-specialist court and actually roll that mandated men's behaviour change out so that there's access at all courts in the intervention order area. (Vic Magistrate D)

Key concerns:

Judicial knowledge of intervention options

Most of the interviewed judicial officers indicated their use of perpetrator interventions beyond court-based orders was limited by a number of factors. Questions about the efficacy of such programs in achieving long-term change was cited by some as part of their decision to focus on the court role and obligations, rather than extending their lens to programs and longer-term outcomes for perpetrators and their families. Others believed programs were critically important and actively collaborated with service providers in the court context to support participation and engagement. Still others bemoaned the lack of information, time and resourcing that impeded both access to programs and their own knowledge about possible pathways for perpetrators. Importantly, no jurisdictional pattern emerged from this data, with judicial officers working in the same court structure expressing quite

different views about knowledge, efficacy and accessibility of programs.

Those judicial officers who identified programs as important often took steps to ensure they had detailed knowledge about the content and outcomes (e.g. attending MBCPs and/or graduations when men completed the required number of sessions). These interviewees were enthusiastic about the possible changes arising from perpetrator intervention programs: some offered reflections on how important it was to recognise successful participation and even willingness to attend as part of building a structure of accountability of and engagement with perpetrators. Some program providers echoed the value of this type of feedback, citing it as demonstrating an effective use of judicial "authority": these instances were cited in both specialist and non-specialist courts—further reinforcing the diversity of views and practices across jurisdictions. One MBCP interviewee suggested:

They could talk to them about their commitment and what they said they would do, and then challenge them, "Well, we can see from your record of attendance that you've actually been missing the men's program. What's your commitment to that? Are you really committed?" Because they would ask those questions, you'd see the men come back with a lot more commitment, so I think they're using their authority in a better way when they've got ongoing engagement with the client at the various court hearings. (Qld MBCP B)

This finding is important: from the data it appears that knowledge of MBCPs and/or the broader suite of perpetrator interventions is still not uniform across all Australian jurisdictions or, indeed, within them. Where judicial officers did have good working knowledge of perpetrator intervention programs, this knowledge had been actively sought out by the individual officers. In addition, knowledge of perpetrator intervention programs was connected by some to better court engagement with those appearing, therefore producing a clearer outcome around accountability. This gap in knowledge can perhaps be understood as a failure in system accountability, since there is a lack of widespread or grounded knowledge about the meaning and impact of a routine and commonly used intervention that is critical in DFV responses. However, those judicial officers who do not see accountability in broad

terms may not have or seek information about perpetrator intervention programs, as they do not see them as central to the exercise of their judicial function.

A small number of MBCPs identified limited judicial understanding of perpetrator interventions as the cause of low uptake of available interventions. This is captured in the following comment by a Queensland MBCP interviewee:

In Queensland there's enough—they're not that prescriptive and there's a wide range to choose from, and magistrates have and still are creative on how they do it, but I just don't think there's the depth of understanding. (Qld MBCP A)

Beyond the availability of an intervention, judicial officers recognised the critical importance of their own understanding of the range of options available, with one interviewee describing judicial knowledge as “equally as important” (ACT Magistrate B) as the availability of an intervention. Judicial officers in each state and territory acknowledged that they did not have sufficient understanding of the perpetrator interventions available in their court and/or jurisdiction. This is captured in the following comments:

It's not clear to the magistrates what is available. We simply refer to Corrective Services with an indication that we'd like the person to undergo ... some kind of intervention ... We're told there might be something but if it is, there's no visibility on it. We would just refer and hope that something useful can be found, but I do think the options are very limited in the ACT—both in terms of what's available, probably the suitability and also the numbers. (ACT Magistrate A)

I think we can always have more [interventions] but I think we're also not very well informed about what other alternatives are available ... as far as programs for perpetrators; I think that we do not necessarily know what's available. (ACT Magistrate C)

We know that there are anger management, men's behaviour change programs around. We don't know much about what they actually involve and we really don't get any creative data than anyone else in the community about how effective they are. The most we can do is say, “We want you to do something”, whatever is available, that will break down the myths that allow and permit violence

towards intimate partners which will provide protection not just while the person's in jail but more importantly after they're released for their intimate partners or the children. (Vic Judge C)

Interestingly, the interview process offered insight into the amount of understanding interviewees had of perpetrator interventions—beyond FVIOs—available in their jurisdiction. Comments such as, “I don't know too much about it [perpetrator interventions] really” (Qld Magistrate C) demonstrate the lack of awareness and understanding of intervention options.

In acknowledging these limits in their own understanding, interviewees across a range of states and territories noted the lack of information about the perpetrator intervention programs currently in operation in their jurisdiction. In addition, many interviewees said programs were short-lived, adding to their uncertainty about what they could order. This lack of availability was considered in relationship to comments reported above about programs for specific needs. Several interviewees described having to seek out the details of available perpetrator interventions themselves: one interviewee described this process of information gathering as “sift[ing] out for yourself” (ACT Magistrate B), while others described informal discussions with corrections personnel or service providers as a way through which to glean more information on perpetrator interventions.

What are judicial officers' views about the efficacy of these interventions?

This section focuses on the value that interviewees assigned to various forms of perpetrator interventions. It addresses the following themes:

- beliefs about the potential for change in DFV perpetrators' behaviour
- perpetrator suitability and risk assessment
- definitions and measurements of success in interventions
- options in sentencing and beyond
- limitations in “civil” options.

Can behaviour be changed?

Interviewees expressed a broad range of views about the ability of interventions to change perpetrators' behaviour—whether it was possible and, if so, the best way to achieve it. There were clear divisions between those who were pessimistic about the ability to change behaviour at all; those who viewed behavioural change as an important or ideal objective, but difficult to achieve via available perpetrator interventions; and those who were optimistic about behaviour change and tolerant of perceived failures of interventions.

A small number of interviewees were sceptical about the ability of interventions to change perpetrators' behaviour, particularly the behaviour of serious offenders, either because they viewed intervention options as ineffective in achieving behaviour change, or because they viewed perpetrators' attitudes as too deeply ingrained to change. SA Justice A and NSW Magistrate A were particularly pessimistic about the ability of court-based interventions to influence perpetrators' behaviour:

This isn't based on judicial experience, and this isn't something I would take into my judging work directly, but I've got to say I have a great deal of pessimism about this. I think the nature of offenders in domestic situations, relation situations, is really difficult to change. (SA Justice A)

Behaviour change is very complex ... That's just my own personal observation and I think some people are prepared to make those changes because there's a defining moment. I don't know that you can make people change just because the court says I must change. (NSW Magistrate A)

More commonly, however, interviewees expressed mixed views about the ability to achieve behavioural change. These were influenced by a variety of factors, such as timing or motivation of perpetrators. NT Magistrate B and NT Justice A viewed MBCPs positively, yet had low expectations of their effectiveness. This was characterised in NT Magistrate B's comments:

I do think about them positively. I'm not sceptical in that way, but as I said, I don't expect them to achieve something that they're not set up to achieve. So, I have no unrealistic expectations about what a 5-day program is all

about. I'm not expecting them to change the behaviour of the defendant. If you were expecting them to make a real difference in relation to that, then I think you would be sceptical, but I don't expect that. (NT Magistrate B)

Other interviewees were more optimistic about the impact of different interventions, but noted it was difficult to determine which individuals would be receptive to those interventions. These views frequently arose in discussions of the suitability of perpetrators for specific interventions (discussed under Determining suitability and assessing risk), but were also part of interviewees' general understandings of interventions. ACT Justice A summarised the complex interactions of different principles and approaches facing judicial officers:

I mean it's a really difficult balance to say people can't change. But we do know and courts frequently say, that past behaviour is the best predictor of future conduct. Again it depends. I would do it a bit similarly to the approach I take to drug addiction for example. Where I've written in the past, that drug addiction is pernicious, it leads to extreme behaviour, it's very difficult to manage. Drug addicts often express to courts, to me, their wish to rehabilitate, and you've got to recognise that there will be many failures. You've got to balance the need to take up that opportunity that someone is rehabilitation-ready and give them a chance, with some rational basis for saying it's going to work now, when it hasn't. (ACT Justice A)

NSW Justice B and NSW Judge A similarly characterised this process as one of the most difficult aspects of determining appropriate responses to DFV perpetrators, despite NSW Justice B being generally optimistic about behaviour change:

Because personally I find assessing prospects of rehabilitation one of the most difficult determinations that one has to make because you're effectively making a prediction as to what might happen in the future. But often an indication of what might happen in the future can be appropriately gauged according to what's happened in the past. So in those circumstances, those interventions become of particular significance. (NSW Justice B)

There is a lot of domestic violence, too much obviously, but not every offender ends up being a recidivist offender. That's one of the hard things is to try and work out which

individual is likely to be someone who responds to the programs and won't come back as distinct from the person who is not going to respond and every time they're in a similar situation they'll react the same way and/or worse. (NSW Judge A)

These moderate views about the ability to change perpetrator behaviour underpinned some interviewee approaches to high-risk recidivist perpetrators. Although these interviewees indicated that rehabilitation may be an ideal outcome for DFV perpetrators, they also communicated it was not always achievable for high-risk individuals, and that more serious offending or histories of failed interventions demonstrated the need for harsher responses. Despite discussing their preference for behavioural change interventions, ACT Justice A noted that "Sometimes people just have to go to jail, and they sometimes have to go to jail for a long time". MBCP providers also offered nuanced views of behavioural change in this context:

I guess one thing that I don't think has really been properly addressed is the diversity of, not just patterns of perpetration but also the severity of it. It means that the range of interventions that are actually required to get, I guess, the kind of outcomes that you see as worthwhile, also varies part of it. (Qld MBCP C)

Related to this, many interviewees identified the perpetrator's willingness to engage with interventions as the key determinant in whether an intervention will be successful. Again, these views were relevant to interviewees' assessments of perpetrators' suitability for certain interventions (particularly in the case of MBCP interviewees), which is discussed under Determining suitability and assessing risk. Interestingly, interviewees' views about whether perpetrators should be compelled to participate in MBCPs were mixed, with some indicating consent was preferable in order to engage perpetrators in MBCPs, whereas others felt perpetrators needed to be compelled to participate. Vic Magistrate B characterised mandated attendance as an effective way to enable people to change their behaviour:

Yes, yep, because—well, there's a significant proportion of men who just don't know what to do next, and who are quite willing to do the program ... The compulsion helps. It just gets them there. They know they have to do

it, and it keeps them there ... And then, for the people who were resistant to going, my view was that it was an educational experience; it would, regardless of who they were and what they'd done, provide them with an insight into their behaviour that would be valuable. (Vic Magistrate B)

Other respondents cited factors that influenced the ability of interventions to bring about behaviour change, including external catalysts for change, such as financial or family pressures (SA MBCP A); perpetrators perceiving the value of the intervention (Qld Magistrate A); the impact of factors such as alcohol and drugs (WA Magistrate A); victims/survivors hindering the processes (NSW Magistrate A); and even the influence of broader patriarchal structures of courts and police (NT MBCP A).

Timing was viewed by numerous interviewees as a critical factor in achieving behaviour change, with many considering behaviour change interventions to be most effective at earlier stages of an individual's offending. These views often informed interviewees' suggestions for reforms that were targeted at earlier intervention or prevention. ACT Magistrate A and Qld Justice A exemplified these conclusions:

When you've got somebody at that point [a repeat offender]—your prospects for changing them are significantly less than if you catch them as a young person. Educating them in schools, mak[ing] sure they're in safe homes in the first place and so on. So, for me, that's where the focus needs to be. (ACT Magistrate A)

And also, the dividends for the community in respect of the risk of subsequent offending—even a pattern of escalating offending, let alone repeat offending, is if the intervention is early in the lifetime cycle, if I can call it, of an offender. Somebody who is mature, set in their ways, and are locked into—in the sense of the repetitive pattern of unlawful activity, it can be very hard to expect a mature person to change their ways. (Qld Justice B)

A distinct theme arose in the responses of Supreme Court justices across all jurisdictions: there was a consensus view that by the time perpetrators reach the Supreme Court the offending is very serious and less likely to be influenced by

interventions aimed at changing behaviour. This was typified by NSW Justice A—“By the time we get to see people it’s usually because the intervention has failed them in a big way”—and in the following response:

Obviously, if you take a step back, there’s a bigger problem and that’s we’re dealing with the milk after it’s been spilt. We’ve already got someone who’s got a propensity to violence towards women. Well, how did that start? How do we stop that starting in the first place, rather than having to backtrack and fix these people up so they won’t behave that way again? (Qld Justice A)

Interviewees otherwise reflected on ideas of timing in a number of ways, including that responsive interventions were more effective (Qld MBCP C), and that interventions required a significant amount of time to have an impact on someone’s behaviour:

But see, the other concern I have, if you make a condition, which I do, you could be setting some people up to fail, they’re just not the right person to go through the process, because it’s either generational, it’s inherent, they’re not going to change their attitude to women, unfortunately, without some stronger measures being utilised, and that’s a process that does involve some time. (Qld Magistrate A)

Timing was discussed in terms of accessibility of interventions as a barrier/enabler to their effectiveness, and in terms of assessing suitability for interventions. In sum, the majority of interviewees had mixed views about whether behaviour change was possible, and whether those perpetrator interventions they had knowledge of could effect that change.

Despite these reservations, a number of interviewees across Australia were positive about the ability of interventions to achieve behaviour change, though many recognised this as a resource-intensive process. These interviewees tended to define the effectiveness of interventions in holistic terms, and expressed more tolerant and hopeful approaches to noncompliance by individual perpetrators. This both influenced, and was influenced by, how they conceptualised “success” in terms of rehabilitation and recognising the amount of resources required to achieve sustained behavioural change. These views were shared by many interviewees:

We can’t condemn those who seem to not be able to change attitudes and perceptions if we don’t give them the opportunity to make a change. (Vic Judge B)

I hold the view which is not necessarily shared by other people, there are some who hold the view that people that offend in this way can never be rehabilitated. I am not of that view. I think that rehabilitation is possible, providing these types of offenders are given the assistance that they obviously need. (NSW Justice B)

Just because the program finishes and then you push them back out into the family unit or whatever—behaviour change is an ongoing process, I think I know that much. (NT Magistrate B)

Given behaviour change occurs incrementally, NT Magistrate B and Vic Magistrate A accepted that they may be required to use multiple interventions before achieving an impact on perpetrator behaviour. This was consistent with NT Magistrate B’s mixed views about the value of MBCPs expressed earlier in this section. As discussed previously, recidivism or noncompliance with an intervention was not characterised as a “failure” by these interviewees, but rather resulted in their continued use of certain interventions: “You’ve got to go back and say, ‘So what’s this about? What are we trying to achieve?’ We’re trying to achieve change.” (Vic Magistrate A)

These judicial officers appeared to invest a lot of resources in tailoring interventions for individual perpetrators, as demonstrated by NT Magistrate A:

It’s very difficult to just give up on a person I guess and often you’ll look more broadly at other contributing factors to the offending behaviour, such as [a] drug and alcohol issue. If they have not been addressed it’s very unlikely that a family violence program—when there are other risk factors that need addressing it’s very unlikely that [a] family violence program is going to be effective. It can affect the sentencing process either by directing the sentence more towards protection of the victim but it can also direct the sentencing process towards a more broad consideration of risk factors and consideration of why there has been a failure of repeat offense, notwithstanding the participation. (NT Magistrate A)

Determining suitability and assessing risk

Judicial interviewees were asked how they determine suitability for perpetrator interventions and to what degree this is dependent on an assessment of risk. Across the state and territory jurisdictions, two main themes emerged in discussions of suitability and risk:

- the re-enrolment of perpetrators in programs following a failure to complete
- the limited time available to give due consideration to individual perpetrator suitability and risk.

For several judges, one common issue was whether a perpetrator who has previously failed to engage in an MBCP or has gone on to reoffend should be reoffered the same opportunity. Most felt that if the MBCP had not been previously effective or had not been utilised by the perpetrator then the program should not be reoffered. In this respect, judicial officers also recognised the value of a perpetrator's place in an MBCP, given the length of waitlists and limited resources. This is captured in the following comments:

If they've already had an opportunity to be engaged in such a program and it doesn't appear to have been effective, then obviously that might influence sentence too. (ACT Magistrate A)

And I might give them another shot. Usually if they haven't participated, they're not going to. And I don't want them taking up a valuable place if they're not going to be compliant. And if they come to the realisation in the future, then they can go back. But usually if people ... engage, they stay the course. But if they don't engage, you can't make them. So they just get the one to 11 conditions. (Qld Magistrate A)

A somewhat concerning theme to emerge from the interviews was acknowledgement of the limited time available to judicial officers to make an individual assessment of the suitability of perpetrators for a perpetrator intervention program. As one judicial officer remarked:

I don't have them for enough time to make that decision. I would rely upon a pre-sentence report to provide that information because I don't sit down and chat to somebody for an hour. I will see somebody in that formal court

setting ... I don't talk directly to them until we come to the actual imposition of the sentence ... So I suppose the short answer is it wouldn't be appropriate for me to make that evaluation based on the very limited contact that I have with the individual. (ACT Magistrate B)

The views here were mixed, however, with some judicial officers explaining their engagement with the perpetrator to determine MBCP suitability. As one NSW judge explained:

Generally I guess I make an assessment as to whether I think he really knows that what he has done is wrong, that it's something that is entirely counterproductive to any kind of relationship. If he doesn't understand those basics then his prospects of rehabilitation are diminished significantly. If he does understand that then it's a question of my assessment of his preparedness to actually be involved in the process and how genuine I think he is in terms of a willingness to learn and change his conduct. (NSW Judge A)

Defining and measuring success

[Interviewer:] Do you think that the current range of intervention options is sufficient?

[SA Justice B:] Do you mean to stop men from killing women?

[Interviewer:] Yeah.

[SA Justice B:] Well. How long is a piece of string?

Interviewees' definitions of successful interventions in the context of DFV offending varied widely. There was little consistency within jurisdictions or among similar roles when defining the effectiveness of DFV interventions, with measures of "success" ranging from prevention, to reduction in recidivism, improving safety outcomes for victims/survivors, demonstrated attitudinal change by perpetrators, or simply ensuring accountability (as defined by each interviewee).

These diverse responses reflected a lack of cohesion nationally among judicial officers about the objectives of perpetrator interventions in both general and individual contexts. In fact, interviewees in similar roles within the same jurisdiction

frequently conceptualised success very differently to each other, suggesting their approaches were highly individualised and grounded in personal understandings of dynamics of DFV, belief in whether behaviour change was achievable, and even basic definitions of “interventions”. This finding reinforces the need for further education for judicial officers about perpetrator interventions—specifically, education focused on types of interventions, available opportunities, and a development in understanding of the judicial officer role in broader systems of perpetrator accountability.

Some MBCP interviewees identified improved victim/survivor safety outcomes as the critical measure of effectiveness of MBCPs. This was characterised by the following comment:

And the measure of success, a successful outcome is what changes for her, not how he presents in the program. That’s great if he’s articulating shifts and critical thinking, but our ultimate outcome is what’s changed for her and the kids as a result of him being in that program. So that’s how we measure success. That’s the summary. (Qld MBCP A)

Some judicial interviewees expressed deep cynicism that the court was able to implement effective interventions at all, because the fact that a matter was reaching the court was an indication that interventions had already failed. These interviewees’ understandings appeared to be informed by their scepticism that behaviour change was possible and views that courts had a limited and distinct role in ensuring accountability:

Well, I guess, to pull back, I guess the question is for me then ... “Well, okay, so everything’s stuffed. Is there anything the court can do to make it better?” But in all honesty, I doubt that there is. I mean, you can raise judges’ consciousness of what needs to be done, but we all know, generally speaking, the nature of the problem. (Qld Justice A)

I think to really get to grips with the underlying problems and change someone round, would take a huge effort. And, I think the proportion of cases in which you could successfully do it, once they’ve got to the stage of actually committing violence are fairly small. (SA Justice A)

So many of the people that I sentence, they just need so much more than we offer them. I think it would be terrific

if there was more available. But, at the level of crime that I deal with, I don’t turn to those [interventions]. (Vic Judge A)

On the other hand, a substantial number of judicial officers in multiple jurisdictions identified rehabilitative outcomes as the key objective of interventions, although their views differed about whether and how different interventions could effectively achieve this. ACT Justice A, Qld Magistrate A and Vic Judge A drew explicit connections between rehabilitative interventions resulting in sustained protection for the community, as characterised by this comment:

Rehabilitation is the best protection of the community and if it can be achieved, it’s obviously in the public interest ... Some of the family violence interventions can be pretty confronting and so on. But, it’s obviously in some senses better than going to prison and ultimately if it works, then everyone’s better off. He’s better off, the community’s better off, she’s better off, although she’s probably run away and got another partner by then. (ACT Justice A)

WA Magistrate A and Qld Justice A highlighted that multiple, sometimes conflicting, objectives underpinned judicial considerations when responding to perpetrators of DFV. This meant that success was difficult to measure, and that approaches to interventions needed to be more nuanced:

But here, in family violence space, you’re dealing with children, you’re dealing with extended family, you’re dealing with the partner and their dysfunctions. So, it’s not as easy as simply having this one identified goal. (WA Magistrate A)

I had a case not so long ago ... the whole family was in the background, all his kids, and mum, all pleading with me not to send him to jail. “We don’t want to lose him.” Now, I sent him to jail. So, was that a productive outcome for that family? No. They’ll have greater economic problems with him in jail. For all of his problems, he’s obviously a much-loved father. So, that dynamic, the idea that the court can deliver some silver bullet solution is just nonsense. He went to jail because the demands of general deterrence require that someone goes to jail for something like that. (Qld Justice A)

Whereas MBCPs were frequently (but not always) viewed as more effective at managing earlier stages of offending and were measured by their impact on behaviour change, custodial sentences were often viewed as last resorts where other interventions had failed and where violence was severe, rather than as interventions in themselves:

It is a difficult area. And it's frustrating in one sense that you end up with cases where, if it's a murder case, well it's just misery all around. If the partner's been murdered, the children are often left behind. The offender is going off to jail for a long time. And it's a context in which we see these people are all not successes in any early intervention. (NSW Justice A)

The divergence in views on measuring success may reflect a lack of established evidence or best practice for using different interventions. Three Victorian judges and WA Justice A reflected on the need for further evidence about the efficacy of perpetrator interventions, though their views ranged from scepticism of interventions due to this lack of evidence, to optimism that this was an “evolving” space and “we just need to start testing to see whether things actually work” (Vic Magistrate D).

[Interviewer:] How do you think we can measure success, in terms of these sort of programs and interventions?

[ACT Magistrate A:] When you say “we”, I think the Court's measure of success is recidivism, but in terms of that measure outside, I would have thought a clear reflection of attitudinal change by the person would be an important indicator.

Despite the lack of consensus generally about defining “success” in relation to perpetrator interventions for DFV, clear themes emerged where interviewees considered either decreased recidivism, behavioural change, and/or better outcomes for victims/survivors as key measures of the effectiveness of interventions. However, again, there were diverse views about the extent to which each of these indicators could be measured and, particularly in respect to behavioural change, how that could best be achieved and/or demonstrated. These views were evidenced by both judicial officers and MBCP providers reflecting on their work:

The first time that the parties would be before you, it

would be a great deal of sadness, a great deal of concern, upset, very troubling times. But on the second occasion or third occasion ... where an aggrieved would have clearly a completely different demeanour and would smile. Imagine smiling in a court room where you're there initially because of your partner's behaviour? That was a pretty powerful message to me that behavioural programs, when people are held accountable, work. (Qld Magistrate B)

The other side of that is where they use those reports where the behaviour hasn't really changed, but they say they've got reports saying, you know, “He understands. He engages well. He helps other people on the course. He's become a peer mentor and he ticks all the boxes”, but he's abusive and controlling and you've [no] way of gauging that as well, so that kind of balances it out a little bit I think, in some respect. (SA MBCP A)

However, some judicial officers thought that behaviour change was difficult to achieve and sustain in the long term, particularly when using one-off interventions, thus making it difficult to assess the impact of interventions on an individual's behaviour. These disparate views often reflected the underlying differences in interviewee understandings of DFV dynamics and beliefs in the ability of interventions to change behaviour (as discussed further in the section Can behaviour be changed?). Some judicial officers viewed any engagement with an MBCP (regardless of completion) positively and some MBCPs encouraged repeated engagement with programs, as they viewed behaviour change as an incremental process. For those interviewees, “success” was defined by ongoing engagement, rather than a specific outcome:

It's always impressive if they've finished the program. The program is hard, you know, I know it's hard, it's a challenge. If they've got through, they've done a 6-month program, that's impressive. Any of the programs are impressive. If they've committed to eight things of counselling, that's impressive. I keep the threshold pretty low about that. I think we've got to appreciate the backgrounds and the issues. If they can complete a program, you're doing a good job. (SA Magistrate B)

So it doesn't surprise me that it takes two and three times ... But you'll often see a change, so you know that the counselling is chipping away very slowly at that behaviour.

So for me, I don't see that—often people say, “Well, how would you evaluate that. Wouldn't that be a fail?” And I say, “No”. It's like everything, you're slowly chipping away [at] those people. (Vic Magistrate A)

Indeed, multiple MBCP interviewees and a New South Wales service took care to emphasise that completion of MBCPs specifically should not be used as a sole measure of success when considering behavioural change interventions:

The court's informed then about any attempted change in behaviour, and one of the things we emphasise is that it's a moment in time. Anything can happen when he walks out that door that can change his behaviour again, that might make him revert. (Qld MBCP B)

Once he's completed the program—it really just gives an indication that he's understood the material and he's completed the program. As I often say to guys, “Getting your licence doesn't necessarily make you a good driver. Doing the course is not going to, you know. It's only if you apply that which you learn.” (SA MBCP A)

Related to these concerns was widespread agreement that a perpetrator's willingness to engage in any form of intervention was a key determinant of the effectiveness of that intervention—mainly for MBCPs, but also FVIOs. It is beyond the scope of this project, which is focused on the views of judicial officers, to examine the relationship between perpetrator willingness and efficacy in FVIOs: this is one of the limitations in perpetrator intervention knowledge more broadly. However, interviewees did consider this factor and indicated that their assessments of “success” in this context were again defined by their understandings of the ability of interventions to change perpetrators' behaviour and rehabilitative prospects:

Now whether an intervention program can work in respect of the particular person will depend, really, on their motivation and what self-equipment they have to take the benefit of what a program may offer. And also how intensive it is and how well resourced it is. (Qld Justice B)

You always think well, maybe there's something more that can be done. The problem at the end of the day is you have to have someone who's prepared to comply with the court order. (NSW Justice A)

Views were more mixed about using recidivism as a measure of success. Three judicial officers in Queensland and the Australian Capital Territory (ACT Justice A, Qld Magistrate A and Qld Justice B) explicitly indicated reducing recidivism as a key measure of the effectiveness of current interventions, although Qld Justice B noted that “it takes a while for the results to demonstrate themselves, either in the outcomes of reduced offending or outcomes where there is no change in offending rates”. In contrast, WA Justice A reflected at length about the flaws in using recidivism to measure the effectiveness of strategies such as specialist courts or programs in the context of DFV:

You've got to be really cautious about using recidivism as a measure of success of those courts, for lots of reasons ... The first is that they're not just about recidivism. They're about better managing what is fundamentally a social problem, so it's not just about reoffending ... even though, quantitatively, they might look the same, in terms of the nature of the offence, you've got to dig down and qualitatively look at the character of the violence. The other thing is, when you're measuring recidivism, often the measures are very blunt ... You've got to look at frequency of reoffending, and severity of reoffending. So that if you've reduced the frequency of reoffending, and the degree of violence that's been caused, you've had a win. But if it's a really blunt measure, and just “any kind of offending”, even if it's a DV offending, you're not really measuring the success of the program. (WA Justice A)

Options for sentencing

Several of the interviewed judicial officers spoke about the importance of having a suite of options available to the court in sentencing a DFV perpetrator, as captured in the following comment:

I've always thought that the more options a court has the better and I include in that the more “multiple options”—that is, rather than having to select one option as distinct from another. At times it would be good to be able to have multiple options. (NSW Judge A)

In the Australian Capital Territory for example, one judge described the value of using interventions as an incentive for perpetrators to avoid incarceration:

You give them something to achieve. You give them a goal and you give them a time period. If they achieve the goal then you suspend the sentence. If they haven't achieved the goal, then they go to jail ... It is an incentive-based way of getting people to behave appropriately and to change their ways. And, for the right person, that can be quite powerful. (ACT Magistrate B)

To this end, interviewees from most states and territories noted that the current range of perpetrator interventions available to the court in the sentencing of DFV perpetrators is not sufficient. These interviewees explained that not only were current interventions under-resourced, limiting accessibility and availability, but there was need for a greater range of sentencing options. Interviewees described the current range of available interventions as “barely scratch[ing] the surface” (NT Magistrate A) and as providing “absolutely not” enough options (NT Magistrate B). This view was shared by MBCP interviewees, with one respondent commenting that the current range of sentencing options for DFV perpetrators was “definitely not” sufficient to cater to people from diverse communities, and “clearly not” enough (NT MBCP B).

One of the sentencing options most commonly raised was the imposition of program completion as a condition of a probation order. This approach has been adopted recently in some courts, including the Brisbane Magistrates Court, and was positively commented upon by MBCP interviewees. One participant noted that by having attendance at an intervention program attached as a condition of an order, the failure to attend then attracts a criminal consequence, an outcome which serves to incentivise perpetrator participation and completion in programs (Qld MBCP C). Similarly, several interviewees noted the value of being able to attach program completion as a condition of an order in the specialist family violence division courts (e.g. at Heidelberg Magistrates' Court in Victoria). The powers available to compel program completion in the Victorian Family Violence Division Courts was described by one judge:

So there would be the final intervention order, an order made that they undertake an eligibility assessment with the respondent practitioner in the Family Violence Division ... I would simply make the order, and they were compelled. And then, if they didn't complete the

program, there would be a referral from the deliverer of the program back to the police, to say that—well, back to the court, initially, and the court would send it on to the police, and the police would charge them with non-compliance, and then they'd come before us with regard to a criminal charge. (Vic Magistrate B)

This provides important recognition of promising practice in specialist family violence court settings. In light of the RCFV's (2016) recommendation that all family violence matters be heard within a specialist court setting within 5 years, this is particularly notable, and points to the value of more expansive judicial powers in relation to ensuring compliance with a court-ordered perpetrator intervention.

There were only a small number of interviewees who talked about broader possibilities for changing current models. For example, one Queensland program provider noted:

I think it's Colorado [that] have a model where exits happens when they, there's a number of what they call, possible indicators. So, things that you can see and hear from the guy who's involved in the program, will give you some sense. But it doesn't mean that it's the right thing that's done, changes happening. And also, the intensive intervention varies according to the assessed risk-level at any point in time. So, it can be given monthly, additional, individual sessions or weekly individual additional sessions, depending on the risk level. So, that's an interesting model. (Qld MBCP B)

Another interviewee raised the great potential of residential programs that had run previously in Western Australia in terms of achieving long-term change. The sustained relationship that was created in this context was seen as critical in achieving the program's positive outcomes. Again, the availability of a broad range of options in criminal jurisdictions and how this impacts outcomes was noted by this interviewee:

[They were] running one of the original family violence courts in Joondalup, and what they had is, of course, they had their residential program. Now that's the Rolls Royce program. That is extremely expensive to run, but that's a fabulous program. Because they're in a residential, they come back to see the judge, of course it's in the criminal, not in the civil, they come back to see the judge, they have

team meetings with social workers and people managing them. (Vic Magistrate A)

Overall, judicial views on perpetrator interventions were varied and reflected multifaceted understandings of DFV, perpetration and recidivism. There was considerable diversity in interviewees' views about the availability, value and utility of perpetrator interventions, which influenced their use of them and impacted the collection of data about such interventions. This variability means opportunities to further embed accountability in terms of perpetrator completion of specified programs, the efficacy of specific types of interventions, and courts having all relevant information about the circumstances of the alleged offending and the likelihood of change are not fully realised.

The limitation in “civil” options

Judicial officers in a number of jurisdictions reflected on the challenges in working across civil and criminal domains in managing DFV. There was consistent acknowledgement across interviews that the possible conditions that could be applied to an order were limited. Many observed that they only saw respondents again if there was a breach of an order. One interviewee observed that the aim was to get “consistency in the crime and try and get consistency in the sentencing as well as consistency in the civil” (Vic Magistrate A), but was of the view that the current structures did not support this objective effectively.

A number of judicial officers specifically identified the distinction between civil and criminal options for perpetrator interventions as making no sense to them in terms of this area of law. This was particularly raised in reference to post-sentencing options:

The challenge is that those options are more readily available in the criminal law space and not as readily available in the intervention order space. It doesn't make sense. People come before me and I go well if it becomes a criminal matter, like he breaches the order, then we can start to mandate things and hold him accountable, making him engage in different things like alcohol counselling, but at the intervention order stage we can't. (Vic Magistrate C)

In New South Wales, interviewees focused on these issues because, at the time of interview, they only had options to use perpetrator interventions in an order post-sentencing:

That's a problem with the current system. But I understand that there may be changes because in about September of this year [2018] there is a sentencing reform package that the New South Wales Government is going to put in place and, as I understand it, it'll be rolled out in about September of this year which does, as I understand it, change things considerably so that even where somebody is brought into custody and they're on remand for [a] domestic violence or family violence matter the intention is that Corrective Services will intervene immediately and put together a case plan. (NSW Judge A)

Similar issues were identified in South Australia: again, interviewees welcomed proposed changes, although they expressed some concerns about governance and resourcing:

No, we don't have post-sentence options [for perpetrator interventions] at this stage, but that's being reviewed and there are new legislation enacted which will start in March [2018], where there will be a post-sentence option as well. Ours is all pre-sentence at the present time, but this is going to create some interesting dynamics post-sentence because who's going to monitor it [compliance], who's going to then breach if they don't and what services are going to be available? That's still unclear at this stage. (SA MBCP A)

In other jurisdictions still, the development of post-sentencing intervention options was also an aspiration:

I just think if you gave—here we're talking about supervising options, or supervising people post-sentence, I think supervising post-sentence, if there was a range of helpful rehabilitative options, would be a really good way to go about it. (Tas Magistrate B)

In Queensland, there was a concern that recent changes to remove the term “voluntary” from the legislation had not been supported by the inclusion of consequences. This gap meant that the court was seeking an alternate route to have the matter relisted, when breaches did occur:

We don't have stats, but what they're doing is providing

notices of completion. But also importantly with the legislation change on the 30th of May last year [2017], the form changed from voluntary intervention orders to intervention orders. So now there's this Section 74 requirement for intervention orders [to] have to be complied with. And if they are not adhered to, the program provider has got an obligation to notify the court. And the Commissioner of Police, if people aren't going to the program. Now the joke about that, if it is a joke, is that there are no consequences proscribed in the legislation. Our Act has had several reincarnations. And because it's an evolutionary thing, we keep finding new issues. So what we're trying to do is find a mechanism to have [the] matter relisted before the court. (Qld Magistrate A)

A similar concern to the issue in Queensland was raised about recent reforms in Western Australia, where legislation had expanded the options for dealing with breaches of FVIOs. In the view of the following interviewee, the legislative drafting seemed to have left a gap in terms of accountability:

[We can now impose] a partial sentence of imprisonment and a partial sentence of suspended term of imprisonment. But there appears to have been an oversight, we can't attach any conditions to the part that's suspended so we just say they can be released but we can't impose any conditions of rehabilitation or supervision. So we've actually written to the government pointing out this apparent oversight in the legislation and suggesting that they need to amend it. (WA Judge A)

What do judicial officers think could be improved or changed in relation to perpetrator interventions?

Interview discussions about improvements relating to perpetrator interventions predominantly centred on accessibility; specification of programs for diverse community and cultural groups; and the issues created by jurisdictional gaps and distinctions. We address these under the following headings:

- building in preventative strategies
- use of “fatherhood” as a tool
- programs that work with cultural diversity
- family law challenges.

Building in preventative strategies

There was a significant amount of discussion about the need for “relationships education” to be better supported in schools. Many interviewees felt that by the time people appear before the courts, it is too late to create substantive change or achieve better forms of safety.

Yes, there might be greater information available to judicial officers about the psychology of domestic violence and so on, and that's helpful, but that hasn't changed the underlying principles that these criminal matters, and we're talking about criminal prosecutions and the power and balance et cetera ha[ve] been recognised for decades in case law. But that doesn't—when you've got somebody at that point—your prospects for changing them are significantly less than if you catch them as a young person. Educating them in schools, mak[ing] sure they're in safe homes in the first place and so on. So, for me, that's where the focus needs to be. (ACT Magistrate A)

And can I just add one more thing? The other thing is pre-emptive programs. Before I even see these people, before they come to court and do these terrible things, we need programs for young people in schools, for young people in the community, in relation to family violence. Perpetrator programs are, most of the time, too late. We need respectful relationships training for young people from a very early age in relation to what is appropriate behaviour and what is not, and how to deal with that. So, it's pre-emptive. (NT Magistrate A)

In the context of these comments, some interviewees also discussed the paucity of programs for adolescents, where preventative options might have offered a better pathway to reduce longer-term negative outcomes. One judicial officer felt there were further professional development opportunities for the legal profession to be better informed about “the realities” of DFV.

I think there's a much greater need for education of the legal profession, of the prosecutors and defence lawyers who are representing people about the realities of family violence. In some ways, judges get more education about these things than practitioners do and so we often see

stuff that is, in a sense, perpetuation of myths about family violence that are still quite broadly held in the community but they're unquestioned and unchallenged assumptions. (Vic Judge C)

Use of "fatherhood" as a tool

A number of judges among those who were positive about the potential of MBCPs identified a focus on men's fathering as a useful mechanism to encourage participation and to hold perpetrators accountable:

[Some programs] ... really target everything through the lens of a child. In court fathers will always say, "I love my child. It's just the mother." And blame the mother. It's all focused on the mother. So what they do is they turn it around and so it's all focused on the child. So what they'll do is they'll say to someone, "Look, you've said that you're not going to give the mother money. You're not going to let her just splash it around. But you realise, that means your child can't go to that sports activity, that child can't go on a camp, that child can't do these things." Now when you say that to them, it's very different, "Oh no, I really want my son/daughter to be able to do those things." (Vic Magistrate A)

While there has been recognition of the importance and value of fatherhood as a mechanism to achieve long-term perpetrator change, there has also been concern about the extent to which such approaches fail to hold perpetrators to account for their actions and, importantly, for the gendered attitudes underpinning those actions (Heward-Belle, 2016, 2017). In the long term, as is consistently recognised in prevention approaches and evidence, the gender biases reflected in "blam[ing] the mother" must be challenged to achieve safety for women and children as well as sustained social change that will prevent DFV occurring. In mobilising fatherhood, judicial officers are using tools at hand to seek outcomes and accountability, but it is worth considering that other accountability costs may emerge in such approaches.

Programs that work with cultural diversity

In most of the jurisdictions, there was tension between judicial officers who felt they had enough knowledge of and options for MBCP referral and those who considered that

such opportunities needed to be expanded. As discussed previously, this difference can be linked in part to diverse judicial views about the judicial role in what some described as "therapeutic jurisprudence" (see further King, Freiberg, Bagatol, & Hyams, 2014).

What I want to see is more information about what is available to me as a sentencing option because I can say, "yes", that we need more intervention. But, to be fair, that is because I am really not clear on what we have already got and whether we are missing people and people are falling down the cracks. What I also don't know, which I think is vital to really answer your question, is what our recidivism rate is. Are these programs that we are putting people on successful in curbing their behaviour? And I don't know the answer to that. (ACT Magistrate B)

However, across these divisions, there was considerable support among judicial officers for the development of perpetrator intervention programs that addressed cultural difference. This was alongside consistent recognition of the need for perpetrator interventions that were both relatable and directed at achieving measurable and context-specific change. Aboriginal and Torres Strait Islander communities were identified as key communities. There was recognition of specialised intergenerational trauma needs that were impacting familial structures in these communities, and consequent recognition that these communities had the relevant knowledge to achieve change. Many interviewees saw the lack of culturally appropriate programs as a critical gap:

I am a big believer in [the Winnunga model] as a way forward and then trying to get people into networks. I won't say into groups but into networks where that attitude is reinforced. So people that that person is going to respect, and this is why it works so well in [Winnunga], because there is already Aboriginal and Torres Strait Islander people. There is already that cultural respect as part of that culture, and it's one of the strengths of the culture. Whereas we used to have that I think in mainstream Australian culture. We used to have that but it's dying out now. We have this whole cult of youth, and everybody is an individual, and—the "me-generation" coming through. (ACT Magistrate B)

I think the judicial[y] is aware or alive to the fact that you need specialised programs. I think most judges would think for instance with Indigenous offenders that you need programs that are culturally appropriate and service providers that have some sort of cultural competency. I don't know that that exists as widely as it should. For instance with Indigenous offenders what I'd like to see is programs that are run by Indigenous people who understand the community from where that person comes, not related to them and not related to the victim because that causes all sorts of problems, but has an understanding of the community, the cultural issues, intergenerational trauma. (NSW Judge B)

Certainly, more remote rehabilitation and I mean rehabilitation in a very broad sense for perpetrators, dealing with all risk factors as well as violence programs. Remote programs need to be bolstered. There's very little by way of adolescent programs available. (NT Magistrate A)

There was recognition among interviewees that victims/survivors in immigrant and refugee communities who were newly arrived in Australia would benefit from perpetrator interventions being more culturally informed. This would more effectively address perpetrator behaviour change and also support victims/survivors experiencing violence within specific cultural contexts. As ACT Magistrate B observed, without such programs there was a potential that women who are immigrants and/or refugees would not be offered the kind of support they could use effectively:

Also very important because often they do come from quite different male/female cultural roles and then they are stranded here in Australia almost with us having a perception that yes, of course a woman can do that. She is completely free to do that whereas the cultural reality is she is not free to do that at all if there is a man there. (ACT Magistrate B)

Particularly the CALD women who are socially isolated who come here through refugee status and through camps and have been together all this time ... the families [are] under incredible pressure, there's a family violence incident, he's removed from the home, Child Protection are saying, "You're not allowed back in the home", and it's like what are we doing for those families, like what are

we doing to respect her wishes where she wants to try to keep her family together, what are we doing to support them? (Vic Magistrate D)

Family law challenges

Across all states, judicial officers shared concerns about the contradictions and lack of connection between the *Family Law Act 1975* (Cth) and consequent orders and FVIOs arising in courts outside of the Family Court and in relation to child protection. There was a widely shared view that these gaps and/or inconsistencies were creating difficult situations, reducing perpetrator accountability in a range of ways and, in some instances, reducing the capacity of the courts to deal effectively with the complexity of issues arising in the context of DFV. In the section regarding MBCPs as a point of potential intervention for victims/survivors, a number of interviewees mentioned tacit breaches by women. The inability of family law to adequately and effectively address DFV, as supported by the recent report *A Better Family Law System to Support and Protect those Affected by Family Violence* (Standing Committee on Social Policy and Legal Affairs, 2017), is clearly connected to these views about tacit breaches, and many interviewees acknowledged that this intersection was full of contradictions.

I guess the first place that I would start would be child protection, domestic violence, and family law, because one of the things that we see is that there might be a family law order in place, or they've been to mediation and there's a plan in place. The domestic violence order might say one thing, the child protection order might say something different. So, with the current review, the federal review of the family law systems, I'm very aware that they're looking to try and establish a family law court within a specialist domestic violence court. It would be good if we could bring a child protection lens into that, so where there's domestic violence, child protection, and family law all happening, which we know the majority of the time there's either two or three going on, if they were overseen by the same magistrate or same judge, you would actually give a better outcome, because you're going to have all the information and not bits and pieces. (Qld MBCP B)

I've got a wish list about the legislation. I've got a wish list about there being someone who sits in this court and

manages between Federal Circuit Court, and all the Family Court stuff and us, so there's better communication, so the intervention orders don't get used as a backdoor way to deal with children in the Family Court, so that they know about our intervention orders and they have our information. (SA Magistrate B)

Findings from the intimate partner homicide case analysis: Perpetrator interventions in the sentencing of intimate partner homicide offenders

This section presents the findings from the case analysis of sentencing judgements in intimate partner homicide cases over a 5-year period. As indicated in the Methodology section of this report, analysis of the intimate partner homicide sentencing judgement dataset was guided by the question: do sentencing judges refer to, and take into account, prior histories of perpetrator interventions and/or programs when sentencing for an intimate partner homicide? As such, this component of the research aimed to:

- document the extent to which prior perpetrator interventions were cited at sentencing in intimate partner homicide
- understand for what purpose perpetrator interventions are referred to in the sentencing of intimate partner homicide perpetrators.

In order to achieve these aims, we drew on our analysis of sentencing remarks gathered for 164 intimate partner homicide perpetrators from all Australian states and territories (excluding Queensland). All perpetrators were sentenced in the period from 1 January 2011 to 31 December 2015. The analysis of these sentencing remarks offered an opportunity to build knowledge about the court-based use, efficacy and outcomes of perpetrator interventions, as well as the extent to which judicial officers reference perpetrator interventions in sentencing decisions.

The decision to examine mentions of perpetrator interventions in homicide sentencing remarks arose from the *Middendorp*

case.³ *Middendorp* was an intimate partner homicide case that ignited debate surrounding the operation and eventual abolition of the offence of defensive homicide in Victoria (see, inter alia, Fitz-Gibbon, 2012; Toole, 2013). Luke Middendorp fatally stabbed his estranged partner Jade Bownds in the back multiple times. He was subsequently found guilty of defensive homicide and sentenced to 12 years imprisonment. In sentencing Middendorp, His Honour referred positively to Luke Middendorp's attendance at a voluntary program targeted at men leaving prison. The program is designed to assist men to "successfully" transition back into the community and was considered positively when sentencing. His Honour stated:

One of the purposes of sentencing is that the offender be exposed to rehabilitation so that he is better able to fit into society upon his release ... I note, too, Mr King's report of your positive involvement in 2006 in the Link Out program conducted by Brosnan Youth Services and his confidence in your rehabilitative prospects. I will have regard to this in fixing a relatively short non-parole period. (Middendorp, per Byrne J, at 23)

That Middendorp's involvement in this program could be described as "positive" and that it provided confidence in his rehabilitative prospects was of concern because his stabbing of Jade Bownds had occurred after that program. Also of relevance to this study, although perhaps not as unique, Middendorp was the respondent to a FVIO at the time of his use of lethal violence, and was also in breach of bail conditions set 2 months prior and a good behaviour bond imposed earlier the same year. As stated by the judge in sentencing:

Your presence at Rosser Street on the night in question was a breach of the bail you had been granted but 2 months earlier. This condition was doubtless inserted to prevent what in fact happened. To this I might add that your conduct was in breach of the intervention order of 20 December 2007. Finally, your conduct almost certainly breached the good behaviour bond imposed upon you in May 2008. It is important to note these factors. The first two in particular represent the efforts of the law to protect you from the consequences of your violent behaviour and to protect Ms Bownds from this behaviour.

³ R v Middendorp (2010) VSC 202 (Middendorp).

If the community is to place any store upon these legal protections, would-be offenders must be aware that criminal behaviour committed in breach of court orders carries an extra dimension of gravity. (Middendorp, per Byrne J, at 20)

However, this case was found to be somewhat atypical in that judges in intimate partner homicide cases did not commonly refer specifically to perpetrator interventions in their sentencing remarks.⁴

Specifically, in the course of our case analysis of intimate partner homicide cases, we found less than half of the sentencing remarks made direct reference to a prior perpetrator intervention that had been imposed on the offender.⁵ In cases where the judge did refer to a prior perpetrator intervention, it was often referred to only briefly and with little or no reference to the justice's assessment of the appropriate sentence. While this limits the value of the intimate partner homicide dataset for understanding the use and efficacy of perpetrator interventions, our primary objective was to better understand judicial views about these interventions and the role they play in broader systems of accountability. Failure by the prosecution to include the number of interventions (such as FVIOs, perpetrator intervention programs, or breaches of or noncompliance with FVIOs and perpetrator intervention programs) in a perpetrator history means that sentencing may be undertaken without important information about the offender's behaviour leading up to the offence of intimate partner homicide. Additionally, such information—as was the case in the Victorian Coronial Inquest into the death of Luke Batty (Gray, 2015)—would offer the opportunity for identification of systems gaps and issues that could be addressed or remediated (Gray, 2015). We address this contention more fully in the discussion on new frameworks of accountability.

In this section, we outline the results of our analysis of intimate partner homicide sentencing remarks. Given the well

4 See further our critical review of the *Middendorp* case and judgement completed as part of the Australian Feminist Judgments Project (Maher, 2014; see also Fitz-Gibbon, Tyson, & McCulloch, 2014).

5 As outlined in the Limitations section, this data does not reflect actual numbers of perpetrator interventions in cases of intimate partner homicide, but rather the number of times that the perpetrator intervention was referenced by the judge in sentencing.

established gendered nature of intimate partner homicides, this analysis was alive to the likely differences in the degree to which histories of perpetrator interventions are presented in cases of intimate partner homicide perpetrated by a male versus a female offender. However, the very low number of female-perpetrated homicides sentenced within the period precluded these cases from being included in the analysis.

MBCPs

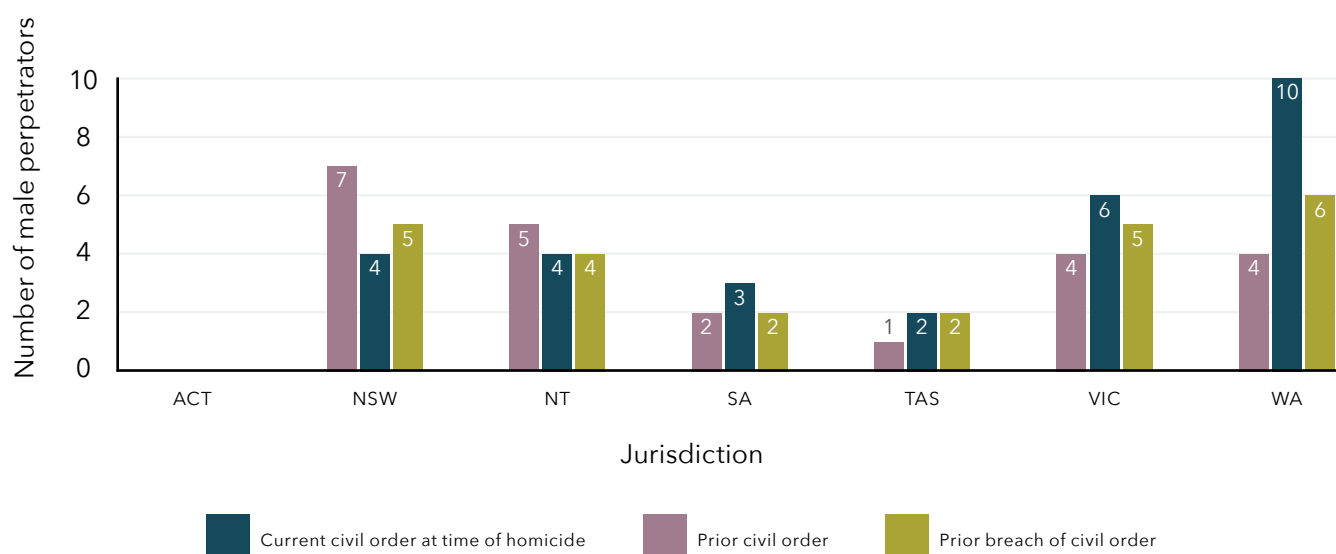
In the sentencing period analysed, there were only three homicide cases where the judicial officer noted that the perpetrator had been ordered previously to undertake an MBCP.⁶ In these three cases the perpetrator's later use of lethal violence was positioned on sentence as a clear indicator of the failure of the MBCP to elicit any change in their behaviour and propensity for violence. As stated by the sentencing judges in two of these cases:

In July 2010 you were dealt with by the Adelaide Magistrates Court in relation to an aggravated assault against Ms Towers. For this offence you escaped conviction but were placed on a bond to be of good behaviour for 12 months. It was a condition of that bond that you undertake a domestic violence program. That program must have fallen on deaf ears as you were again charged with aggravated assault against Ms Towers in November 2012. (R v Michael Suve McDonald [2014] SASC No. SCCRM-14-69, per Stanley, at 2)

Ms Martin [psychologist] considered that you presented a relatively high risk of future violence and noted that you had completed a family violence program in the past but did not appear to have made any gains from the program. She considered that the prognosis for change was poor. (The State of Western Australia v Hill [2014] WASCSR 52, per Corboy J, at 51)

As DFV systems across Australia pivot towards the perpetrator and consequently MBCPs become a more frequently used perpetrator intervention, the question emerges as to how judicial officers *should* refer to MBCPs if offenders are brought back to court following participation. It also raises

6 See R v Michael Suve McDonald (2014) SASC No. SCCRM-14-69; The State of Western Australia v Hill (2014) WASCSR 52; The State of Western Australia v James Bill Payet (2014) WASCSR 88.

Figure 2: Current, prior and breaches of FVIOs (male perpetrators, by jurisdiction)

the question as to whether judges should be required to report back to the MBCP and/or funding body as to the perpetrator's subsequent use of lethal violence.

FVIO histories in the sentencing of homicide offenders

Beyond MBCPs, this component of the research also sought to identify the extent to which judges referred to FVIOs in the sentencing of offenders convicted of intimate partner homicide. In doing so, we identified three points of analysis from the sentencing judgements analysed:

- offender listed as a respondent on a current FVIO
- offender listed as a respondent on a prior FVIO
- offender history of breaching a FVIO.

For male-perpetrated intimate homicides sentenced within our period, there were 23 cases where the judge noted that the offender was the respondent to an FVIO at the time of the homicide, 29 cases where the judge noted that the offender had been listed previously as a respondent on an FVIO and 24 cases where the judge specifically noted that the perpetrator had a prior breach of an FVIO. As illustrated in Figure 2, these case features were not specific or unique to any one jurisdiction and were spread across the Australian states and territories.

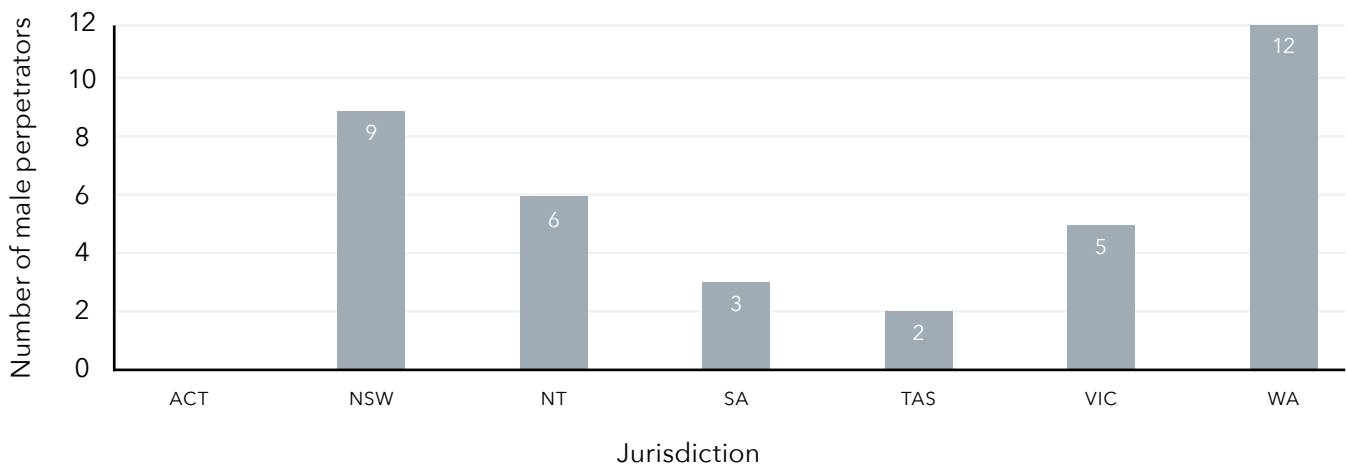
Our qualitative analysis of the sentencing judgements examined how judicial officers made use of prior perpetrator interventions that were cited. The following perpetrator FVIO histories were positioned in sentencing as an aggravating feature of the homicide:

The offence is made more serious because it was committed whilst you were on an intensive supervision order. (The State of Western Australia v Hodder [2013] WASC SR 211, per Jenkins J, at 23)

In December 2012, a DVO was taken out by Police under which the deceased was the protected person. That DVO was against you. It was valid for a year and was still in place at the time you fatally stabbed the deceased. The DVO required, amongst other things, that you not approach or be in contact with your former partner when you are drinking or intoxicated. An aggravating factor which I take into account in relation to sentencing you for manslaughter is that you were in breach of that DVO. It is a matter for sad reflection that if you had obeyed and respected the DVO, you would not have been in a position to have stabbed the deceased on 1 August 2013 as you did. (The Queen v Jasmine Raymond [2015] NTSC SCC 21333592, per Barr J, at 6–7)

You killed Sherry Robinson in breach of an intervention order requiring you to stay away from her and her home. Not only must courts endeavour to deter persons from seeking to resolve domestic conflict by means of violence, they must also make it abundantly clear that the use of weapons and the resort to violence and flagrant breach of intervention orders will be met with severe punishment. (The Queen v Bradley Irvin Carolus [2011] VSC 583, per Hollingworth J, at 11)

A final feature of the offence that heightens its gravity is the fact that the offender murdered Ms Pearson when he was subject to conditional liberty, being on bail for the earlier assault upon her together with the related offences,

Figure 3: Prior conviction for DFV-related offending (male perpetrators)

and when subject to a court order which restrained his conduct towards Ms Pearson. (*R v Archer* [2015] NSWSC 1487, per Wilson J, at 111)

In some homicide cases captured within our period, the prior presence of an FVIO was used by the sentencing judge to specifically demonstrate the perpetrator's propensity for violence:

You have demonstrated, Mr Gardiner, a complete lack of respect for women in the violence which you have displayed towards two of your former partners. You have had restraining orders placed on you in respect of both women. (*R v Jason Lee Gardiner* [2012] SASC No. SCCRM-11-334, per Anderson T, at 5)

The offender has a record of previous convictions, including convictions for serious personal violence offences. The offender has five prior convictions for assault occasioning actual bodily harm and contravening domestic violence orders. The Crown tendered statements of the facts of two of those earlier incidents. They reveal a disturbing history of violence and nastiness towards previous partners. (*R v James* [2013] NSWSC 1560, per McCallum J, at 37)

Prior conviction for DFV-related offending

There were a number of offenders within our sample who in sentencing were noted as having had a prior conviction for DFV-related offending. Specifically, over the period studied there were 37 cases where the judge identified in sentencing that the male perpetrator had a prior conviction for DFV-related offending (see Figure 3). Within this cohort, there were several cases where multiple prior convictions were recorded against the one offender, meaning that for the period studied there were 44 DFV-related convictions attributed to 37 male perpetrators.

Bail and parole

There were a small number of homicide offenders within our sample who were identified by the judge during sentencing as having been on bail or parole at the time of the intimate partner homicide. Specifically, there were nine cases where the judge stated in sentencing that the perpetrator was on bail at the time of the intimate partner homicide. The nine cases were spread across Victoria (n=1), South Australia (n=2), and New South Wales (n=6). There were no notable differences in how bail was referred to in sentencing across the three jurisdictions. Perhaps unsurprisingly, judges predominantly referred to an offender's bail status for the purpose of noting it as an aggravating feature in the case. This is illustrated by the sentencing remarks in *Archer* and *Mahon*:

A final feature of the offence that heightens its gravity is the fact that the offender murdered Ms Pearson when he was subject to conditional liberty, being on bail for the earlier assault upon her together with the related offences, and when subject to a court order which restrained his conduct towards Ms Pearson. This is a matter of serious aggravation ... (*R v Archer* [2015] NSWSC 1487, per Wilson J, at 111)

At the time he committed this offence, Mr Mahon was on bail on the charges of assault occasioning actual bodily harm and common assault. The terms of his bail required him to be of good behaviour while awaiting the disposition of those charges. His failure to comply with that condition of bail is an aggravating factor in this case of some significance. (*R v Mahon* [2015] NSWSC 25, per Garling J, at 77–78)

In several cases, the justice noted that the bail status flagged failure on the part of the prior intervention to keep the victim safe, further noting that the offender had received prior warnings from the court for related behaviour but had

continued to disregard the law. This sentiment is best captured in the judicial remarks made on sentence in *McDonald*:

Parliament has enacted laws designed to provide protection to those subjected to domestic violence and has recognised that crimes involving violence and assault are aggravated in a domestic situation. Sadly, Ms Towers was failed by the systems put in place to protect her. You had a history of committing acts of violence against Ms Towers and disregarded the bail conditions and intervention order put in place to shield her from your abuse. (R v Michael Suve McDonald [2014] SASC No. SCCRM-14-69, per Stanley J, at 7–8)

There were also three cases within the period studied where the justice identified at sentencing that the offender (all of whom were male) was on parole at the time of the intimate partner homicide. In two of these cases the male offender had killed his female intimate partner,⁷ and in one case the male had killed his male intimate partner.⁸ These cases were finalised in the South Australia and New South Wales Supreme Courts. Remarks made in sentencing regarding the offender's parole status largely referred to how it impacted on the setting of a non-parole period in the current case and to aggravate the culpability of the offender.

Opportunities for intervention in the Family Court

This analysis highlights where the opportunities for greater judicial intervention may lie, and how those may contribute to building a system whereby perpetrators are held to account at all points of interaction with the legal system (criminal, civil and family law included). Our analysis identified a number of cases where there was an interaction with the Family Court prior to the act of homicide.⁹ Two relevant points of intervention were identified here:

- where a Family Court order had been made

- where the offender and victim had been involved in Family Court proceedings.

These two points of intervention with the Family Court were identified as present in the histories of 10 offenders sentenced within our sample period. Specifically, there were three offenders who were listed on a Family Court order and there were seven offenders whom the judge identified that had been previously involved in Family Court proceedings. All three of the offenders listed on Family Court orders were male, while a history of Family Court proceedings was cited in two cases involving a female perpetrator and five cases involving a male perpetrator.

The family law system has been consistently identified as a site of risk for women experiencing DFV, in that the period leading up to and immediately following a DFV proceeding can contribute to an escalation of intimate partner violence (Wilcox, 2010). The homicides here demonstrate that risk, but also they point to the critical role that family law judges and others involved in the family law system can play in offering an intervention that may act to subside, reduce and/or prevent future acts of harm. It is also well established that the lack of connection between the Family Law Courts (and consequent orders) and FVIOs arising in other court settings creates gaps in knowledge and reduces perpetrator accountability (Wilcox, 2010). The absence of any significant discussion of Family Court orders in these cases bears this out and serves to “invisibilise” the system as a site of risk.

Conclusions from findings from interview and homicide case analysis data

There is a valuable opportunity to map the use and track the impact of interventions through intimate partner homicide data as well as case data related to lower court offences. Specific references made in sentencing to the types of interventions undertaken by the perpetrator of fatal violence would allow courts, agencies and judicial officers to have a clearer view of what interventions are unsuccessful, and the locations where failure to follow up (such as failure to apply criminal sanctions to repeated breaches of FVIOs) resulted in homicide.

⁷ See R v Damien Charles Bugmy [2011] NSWSC 357; R v Sean Lee King (2013) NSWSC 801.

⁸ See R v David Richard Fraser (2011) SASC No. SCCRM-10-123.

⁹ Counts of Family Court orders or Family Court proceedings were attributed to the perpetrator where they related to children of the perpetrator's relationship with the victim or with another partner, but only attributed to the victim where orders or proceedings were with a different partner to avoid multiple counts of these points of intervention.

Given intimate partner homicide cases represent the worst possible outcomes for our justice system and society, and that perpetrator interventions of all types are an important tool, systematic data collection and evaluation of the relationship between perpetrator interventions and intimate partner homicides at this point in the court system offers an important opportunity. Building such a dataset, we argue, is a critical aspect of achieving long-term change in the everyday security of those affected by DFV. As both our interview data and case analysis has suggested, while judicial officers see perpetrator interventions as important, they are seeking better information and understandings about these to support their work.

Additionally, Wakefield and Taylor (2015) found that a majority of judicial officers were confident about their ability to convey key messages to perpetrators—a critical form of perpetrator intervention; however, they were less certain about the adequacy of their training in determining what forms of perpetrator interventions were optimal. Such a dataset is not yet available due to limitations in perpetrator interventions generally. Creating this would ensure judicial officers were more consistently informed about what perpetrator interventions beyond the court room were available in their jurisdiction, supporting the application of more-targeted and tailored interventions. This was a key finding from our interviews. Such an approach would mean that information about prior interventions would become a more routine part of briefs and court discussions, and patterns of efficacy would emerge and could be assessed. These would not have to be tied to individual perpetrators, but over time could at least contribute to a database of efficacy in terms of recidivism. Data could be gathered on which programs, when attended or completed, resulted in fewer later offences or court appearances. Such a list would allow judicial officers, for example, to see that those enrolled in different programs were completing those programs and were less frequently being charged with breaches of orders.

The judicial officers in this study presented diverse views about DFV, perpetration and recidivism, and the availability, value and utility of perpetrator interventions. In our view, creating a central register would assist in tracking the success of perpetrator interventions and support informed decision-making. These opportunities build on key findings from our

interviews with judicial officers and go to the core of the following recommendation

RECOMMENDATION 2

All states and territories should consider developing a regularly updated, online register of perpetrator intervention programs to ensure that information is readily available to judicial officers to support and inform their work in relation to DFV.

Discussion

New frameworks of accountability?

Perpetrator interventions, ranging from court FVIOs to MBCPs, have been a key part of DFV responses for a number of decades in Australia and other comparable jurisdictions, such as the United States and the United Kingdom. Sentences for intimate partner homicides (and sentencing generally) are also an intervention, as they signal court and community attitudes to perpetrator accountability for lethal acts of violence. However, systematic evaluation of how all of these different types of interventions and programs change women's, children's and family safety outcomes are still limited.

Our analysis of sentencing remarks in intimate partner homicides across five states and two territories in Australia in the 5 years from 2011–15 found little direct reference to perpetrator interventions undertaken by the defendant prior to the homicide (see the section Findings from the intimate partner homicide case analysis). There is the possibility that there were no previous interventions in these cases and therefore that the recording of no prior perpetrator interventions is an accurate reflection of the offender histories. However, there is also a possibility that information on perpetrator histories of intervention were, and are, not viewed as relevant to sentencing for a homicide offence in the Supreme Court.

In the small number of cases where perpetrator histories were mentioned, they indicated that defendants in some cases may have experienced a number of such interventions. Importantly, too, judges made reference to this information in sentencing. This finding accords with findings from our interview data, where judicial officers observed that they were not always apprised of prior interventions, but that they generally saw these as valuable contexts for assessments of risk and for determining what types of intervention might be most effective in achieving enhanced safety for women and children.

Our findings suggest that a more comprehensive approach to perpetrator interventions across the court system, both civil and criminal, would offer a number of key benefits. Judicial officers would be more consistently informed about what perpetrator interventions beyond the court room were

available; information about prior interventions would become a more routine part of briefs and court discussions; and patterns of efficacy would emerge and could be assessed. This shift would align to recent reconfigurations of approaches to perpetrators that have increasingly emphasised accountability as a key concept underpinning all forms of intervention. All social and criminal justice systems are now seen as having a role in holding perpetrators to account by condemning all forms of violence, with particular emphasis on violence against women and DFV; ensuring all agencies and services are responsive to reports of such violence; and reinforcing the role that all actors within the criminal justice and court systems have in creating the “web of accountability” (Spencer, 2016). In our analysis of judicial views, it became clear that there were very diverse views among the interviewees about judicial roles in this web of accountability. This is the focus of the final section of this report.

Thinking about the judicial role in creating system accountability

Perpetrator accountability was the focus of a number of interview questions (see Appendix E). These questions asked about how judicial officers were able to hold perpetrators to account using existing legislation, criminal processes and available MBCPs. However, underpinning these discussions were significant variations in views of judicial roles and responsibility in creating system accountability. These differences centred on how judicial officers understood their own responsibilities and role. While there was little dispute about the importance of holding perpetrators to account for their actions, there was a wide variety of views about the role of judicial officers in this process. In analysing this data, it became clear that interviewees worked from differing and distinct views about their role in the process of managing FVIOs and other court-imposed perpetrator interventions.

In discussions of perpetrator accountability, a number of key themes emerged around influences on judicial responses to notions of perpetrator accountability and how best to achieve it. Judicial officers' reflections were influenced by their views on the role of courts as a form of intervention, distinctions between civil and criminal domains that impacted

processes and monitoring, and resource concerns. Of critical importance, however, were their views about judicial roles and responsibilities in holding perpetrators to account, and, more broadly, judicial responsibilities to the DFV response system and the community.

Judicial officers' views about perpetrator interventions as used in everyday judicial work were varied, reflecting multifaceted understandings of DFV, perpetration and behaviour change. Importantly, there was common recognition among the 36 judicial officers who were interviewed of the gendered underpinnings of DFV, and therefore shared views about the causes of such violence. However, there was considerable diversity in views about the availability, value and utility of perpetrator interventions, which influenced their use.

These highly individualised understandings of and approaches to DFV perpetrator interventions ranged from cynicism about the effectiveness of perpetrator interventions and pessimism about their ability to change perpetrator behaviour, to confidence in interventions being able to create behaviour change in DFV perpetrators. Importantly, these understandings were critically important in how the achievement of perpetrator accountability was defined and enacted by these judicial officers in their roles as officers of the court. It became apparent that judicial officers saw their use of perpetrator interventions as part of their jurisprudence. To this end, some judicial officers described interventions as a central but complex aspect of their work. However, there was considerable diversity in participants' views on judicial roles and how these shaped judicial responsibilities and accountabilities. Our findings are reflected in three distinct conceptual frameworks:

- **Judicial role as independent and clearly defined:** Active monitoring of particular perpetrators as a form of intervention was seen as undesirable given the independence of the judicial role.
- **Judicial officer as active case manager:** The judicial role was understood as active, with oversight of orders and interventions forming part of judicial work. Importantly, this active role is identified as enhancing the effectiveness of perpetrator interventions in current national and international research (on this see further Buzawa et al., 1999; CIJ, 2015; Edleson, 2008; Spencer, 2016).

- **Judicial officer as a powerful voice:** Many judicial officers recognised their strength as voices against DFV (see also Wakefield & Taylor, 2015).

Given the significant state and national focus on effective responses to DFV, consideration should be given to a review of judicial education in relation to perpetrator intervention, both conceptually and practically, and to a broader, sustained discussion about the complex roles of judicial officers in overall system accountability. From our interview data, judicial officers see themselves as having responsibilities to those impacted by DFV (victims/survivors in particular); to the broader community in terms of repudiating all forms of violence, but especially gendered violence; as well as their specific obligations to hold perpetrators to account. Although the views of judicial officers were diverse, overall the interviewees saw themselves contributing to system-wide, shared accountability to those impacted and affected by DFV. We outline the relevant findings below.

Recent national and international discussion of effective DFV responses and perpetrator interventions stress the importance of perpetrator accountability (Kelly & Westmarland, 2015; RCFV, 2016). This emphasis recognises that past responses to DFV have often meant that, firstly, women must take responsibility for their own safety in a range of ways (e.g. not staying in abusive relationships, developing safety plans, seeking support for themselves and their children); and, secondly, those perpetrating violence have generally received less attention and, most troubling, been excused from full responsibility for their actions. There is now widespread acceptance that holding perpetrators accountable, by using all relevant service and criminal justice responses, is a critical part of changing the patterns and prevalence of DFV and its devastating impacts.

Judicial role as independent and clearly defined

Some judicial officers were clear that their role was defined by the relevant legislation and their need to act as independent arbiters. These interviewees were adamant that a higher level of involvement (such as active monitoring of particular perpetrators) was outside the scope and remit of their role,

and impossible due to resourcing constraints. They saw their responsibility as confined to a careful and appropriate application of the law with a focus on procedural fairness. While they often recognised the importance of monitoring perpetrator behaviour and working to assess any change in behaviour and attitudes, they had a strong focus on the expertise and remit of other system actors to undertake such responsibilities (examples given included corrections, MBCP providers, case managers and counsellors). Based on their analyses of both roles and expertise, this group of interviewees were clear that they did not support extended notions of judicial responsibility for holding DFV perpetrators to account.

Judge as active case manager

Other judicial officers understood their role as requiring a more proactive stance in the oversight of particular orders as part of their work. These interviewees often worked where specialised court structures for DFV were in place, or specialisations had emerged, and these structural conditions defined the scope of their judicial work. However, others who did not work in such systems also subscribed to this broader view of the judicial role and to a broader notion of accountability. They made frequent references to the operation and success of drug courts, where standing before the same judicial officer and accounting for monthly testing was understood as a critical aspect of best practice. Some expressed regret that in the civil context of FVIOs they had only limited options. In jurisdictions where there were no designated lists or specialist courts, judicial approaches ranged from urging men to participate in MBCPs and/or using the length of an order as a tool for oversight, to setting up return dates for final orders that would ensure their continued oversight of program outcomes for particular perpetrators. This approach was referred to, as reported by one service provider, as “informal case management” by the presiding magistrate.

Most service providers were of the view that this more active model of judicial monitoring was of benefit in terms of perpetrator accountability. One judicial interviewee was clear that while there was a division among judicial officers, this more activist approach was an important development of

the judicial role in achieving change and effective perpetrator accountability in DFV matters. This judicial officer said:

So I think the task of a judicial officer has very much changed, it's very much what you want to put into it. There is no doubt that we have a divide in terms of judicial officers' views on whether we should stick with our traditional role of being a sentencing officer of the court, or whether we're prepared to effectively take this on. (SA Magistrate B)

Judicial officer as a powerful voice

A number of judicial officers identified that clear statements made during court processes about the unacceptability of violence against women served an important function in achieving perpetrator accountability. These judicial officers indicated that having perpetrators in front of them, concerned and paying attention to the outcomes of their case, gave them a key opportunity to denounce all forms of DFV. Of note is that those judicial officers subscribing to this view came from both the “judge as active case manager” and “judge as independent” cohorts, despite their fundamentally divergent views of the judicial role. Examples of senior members of the judiciary who adopted this approach also emerged from the homicide sentencing judgement data analysis, in which several judicial officers took the opportunity at sentencing to make statements on violence against women:

Violence by men towards women, especially spouses, is an extremely serious and prevalent problem in the Northern Territory. Women who have the courage to leave their partners are particularly at risk of this form of violence. General deterrence plays a most significant role in sentencing for cases of this kind. (The Queen v Darren Ashley [2014] NTSC SC 21218788, per Blokland J, at 8)

General deterrence is a most important factor in sentencing for any unlawful killing, especially where the victim has been in a relationship with the offender. Conflicts between partners, no matter how emotionally hurtful and difficult, must be resolved peacefully. Domestic violence continues to be a significant cause of violent death and serious injury in our community and the courts must impose sentences that reflect the community's abhorrence and intolerance of such offending, particularly where it results in the

death of the victim. (*The State of Western Australia v Anderson* [2015] WASCSR 102, per Corboy J, at 45–46)

The death of the deceased is another example of the extremely prevalent violence perpetrated by men in our society against women to whom they are married or with whom they share a relationship of domestic intimacy. This malignant cycle of domestic violence is given significant publicity and media attention without corresponding or equivalent success in its prevention. To the extent that a sentence in a case such as this can operate to deter its repetition in another similar case, then it should be formulated and calculated to do so (*R v Cullen* [2015] NSWSC 768, per Harrison J, at 32).

The community expects the law to protect victims of domestic violence. Courts have long considered offending involving domestic violence as serious. Indeed, the High Court recently said: “A just sentence must accord due recognition to the human dignity of the victim of domestic violence and to the legitimate interest of the general community in the denunciation and punishment of a brutal, alcohol-fuelled destruction of a woman by her partner.” Parliament has enacted laws designed to provide protection to those subjected to domestic violence and has recognised that crimes involving violence and assault are aggravated in a domestic situation. Sadly, Ms Towers was failed by the systems put in place to protect her (*R v Michael Suve McDonald* [2014] SASC No. SCCRM-14-69, per Stanley J, at 4–5).

There were several homicide cases within the period of study in which powerful judicial statements specifically dealt with the high prevalence of violence against women in Aboriginal communities. The analysis revealed that this judicial voice was particularly apparent in the jurisdictions of Western Australia and the Northern Territory:

This court sees far too many homicide cases involving exceptional violence by an Aboriginal person against their partner, often in a context of sustained alcohol abuse, and often the culmination of a preceding pattern of violent abuse. The expression “domestic violence” does not properly convey the horror and tragedy of these cases, which often involve the physical domination of a weak

and vulnerable person by a stronger and more powerful person (*The State of Western Australia v Churchill* [2014] WASCSR 219, per Martin CJ, at 27).

I have said the problem of domestic violence within all settings, but particularly within Aboriginal communities, appears to be an intractable one. It is one well beyond the scope of the criminal law and judges to resolve, but we do have our part to play. People need to understand, even if drunk, that there are significant consequences to acting in the way that you did, that cause another person to lose their life. (*The State of Western Australia v Byrne* [2015] WASCSR 67, per McKechnie J, at 19)

Taking away somebody’s life is one of the most serious crimes anyone can commit. I have to give you a sentence that says just how much the court and the whole community disapproves of violent crimes like this and that will discourage other men from doing the same thing. Drunken violence is far too common in our community. It is particularly common, unfortunately, in Aboriginal communities and vulnerable Aboriginal women, vulnerable people of all kind, deserve the fullest protection that the law can give them. I have to think about passing a sentence that tries to teach you that what you did is totally unacceptable. It does not matter if your wife disagrees with you. It does not matter if she does not do what you want her to do. It is not right to bash her and it is as wrong as it can be to bash her to death. If you do these things, you will be punished. A man should use his strength to protect his wife, not to bully her and hurt her. (*The Queen v Conway Stevenson* [2015] NTSC SCC 21353266, per Kelly J, at 7–8)

We also see in the interview data that judicial officers made use of court opportunities, either in sentencing for intimate partner homicide or in statements to the perpetrator, to reassert the unacceptability of violence against women and of DFV:

I think that it is part and parcel of the processes almost of the domestic violence programs and it’s something that I can do I guess as a judge. It only takes a few minutes to point that out to someone, I mean, it does embarrass them, it does stop and make them think and especially if I say something along the lines of “I was acting like you

that is if I was just doing what I could because I had the power to do it why wouldn't I just give you the maximum penalty because I don't like men who hit women?" and I say "Obviously the answer to that is I have to be reasonable." (NSW Judge A)

For this interviewee, support for perpetrator interventions was envisaged as an integrated and important part of their role:

I think the important thing is for there to be that leadership and authority that comes with the magistrate's role. So if the magistrate is saying, "This is valuable, this is important, this affects—this work supports my work, which is in turn the application of the law, which is in turn the standards of the community", that's important. So I would say that you need a magistrate or a judicial officer who is championing that approach, who is saying, "This is valuable work". I don't think you can sit there in court and then say, "Over to you". I think that the system loses—the process loses a lot if you don't indicate that you're invested in the outcomes that they get from that program. (Vic Magistrate B)

In our analysis, the differences articulated by judicial officers about how to define and create systems accountability were central in determining their actions, approaches and, to some extent, views about possible behaviour change and perpetrator interventions reforms. In the following sections we identify, where possible, best practice across Australian jurisdictions.

The value of judicial oversight

Judicial officers who supported extended notions of oversight and accountability were very positive about the change that could be achieved by making the perpetrator "accountable to us" (Vic Magistrate C). This view, which occurred across jurisdictions and was shared by both judicial officers and MBCP providers, cited the value of the magistrate being able to directly engage a perpetrator who returned to court and sought further adjournments or did not complete a program. A number of factors were identified as contributing to better practice in this instance. First was the deeper knowledge gained when perpetrators returned to the same magistrate, which meant that plausible excuses about failure to attend

program sessions, for example, could not be recycled by the perpetrator.

The second factor identified was the development of judicial expertise among officers who monitored such cases and the consequent "specialisation", whether this was formally identified or not. As one interviewee said, experience means that the "red flags" about the likelihood of breaches or unwillingness to change abusive behaviour become more visible and obvious.

The third factor cited by most of these interviewees was that they were able to influence or call to account those attending court and that having perpetrators appear before the same judicial officer as previously did give matters some additional "weight" and meaning. One interviewee spoke positively about proposals to embed this process in new legislation for an Indigenous court. This judge reflected that having perpetrators reappear before the same judge was especially valuable where the context of the DFV was complex and influenced by systematic processes of disadvantage, such as in Australian Aboriginal and Torres Strait Islander communities:

We can't do it at the moment because we don't have the legislation in New South Wales. One of the proposals of the proposed Walama Court, which is this Indigenous sentencing court that we're hoping to get set up at some stage in the future, is to allow or to give the judge the power after they impose the final sentence if it's a community-based order to bring the person back before the court, say, on a weekly basis to monitor their progress. (NSW Judge B)

Support for specialisation beyond Aboriginal and Torres Strait Islander communities, where particular expertise would be required, appeared to be mixed. Differences in judicial approaches appeared to influence whether or not specialisation was a valued form of judicial expertise. Those who felt committed to perpetrator interventions as part of their practice sought out knowledge and information about them. They often developed their own checklists about "things to watch for" and focused on developing practices they considered to work better. Service providers too observed differences in judicial approaches related to this "informal" specialisation.

Barriers to achieving perpetrator accountability

All of those interviewed identified resources as a key barrier against effective accountability. In particular, consistent and timely access to programs was an important and fundamental aspect of this. Delays at any stage of the referral process meant that “the loop” of accountability was not being closed. Judicial officers were clear that they could not specifically look at such delays in making orders, but there was frustration that the court hearing was a lost opportunity if there was no timely follow-up in terms of these perpetrator interventions.

The lack of accessibility in rural areas was also cited as a key concern. As one judge explained:

The rural areas need more help. I think there needs to be transport assistance. That’s what there needs—there needs [to be] transport assistance, I mean they really try hard to make sure there’s an after-hours one. (SA Magistrate B)

In terms of judicial work, time was the resource most often cited as a particular concern. Existing pressures and schedules impacted opportunities for judicial officers to absorb presented material, seek additional information or clarification, and consider the options that were optimal in each specific case. Other research has revealed the demand on magistrates and the time pressures that impact their work (Roach Anleu & Mack, 2017), perhaps most importantly DFV lists (Gelb, 2016; Hawkins & Broughton, 2016) where urgent access to court is recognised as critical. For some, judicial resources were “too costly” to be used in managing compliance with FVIOs. For others, resources were inhibiting their ability to do as much as they would have liked, such as being able to ensure perpetrators appeared before the same magistrate (or one well briefed by a “managing” magistrate), to ensure both family circumstances and the attitude and actions of the perpetrator were readily recognised and formed part of the deliberations. In general, views on resources were linked to attitudes towards the judicial role in accountability. Those who strongly aligned themselves with the court’s role as independent arbiter were less likely to cite resource constraints as a barrier to achieving effective perpetrator accountability. Conversely, as evident in the quote below,

those who saw the value in “judicial monitoring” expressed regret that they were not able to achieve greater levels of accountability and oversight:

We don’t do it well enough at all. We just don’t have the resources, really, to be—nor do we have a structure for bringing people back. So in the civil space, we don’t have any mechanism for that. So we send them off to the men’s behaviour change program. Provided that we don’t get notification that they didn’t complete it, we don’t see them again. (Vic Magistrate B)

Another interviewee reflected similarly, and positively, on the value of judicial monitoring, discussing the different options presented by programs run for traffic offenders, where information on attendee monitoring, reporting and follow-up were made available to the court:

We have in Queensland a traffic offender program called “QTOP”, so Queensland Traffic Offender Program. Where they go so many nights for so many lectures and accident victims talk to them, police officers talk to them, fires [firefighting personnel] talk to them and lawyers talk to them. They’re making their notes and they make summaries and make observations. And it’s always nice when they hand up these things to us and we say, “Well yes, I can see that course had some effect on that person”. We don’t tend to get that in the DV space. So I think that could be an added thing. (Qld Magistrate C)

Another theme to emerge strongly was the barrier created by inconsistency—both in judicial practice and, perhaps on a more fundamental level, in inconsistent understandings of the role of judicial officers in broader accountability. Many judges, whether or not they subscribed to an expanded role for judicial oversight of perpetrator monitoring, recognised there was considerable variation within jurisdictions and that this impacted on achieving accountability, however variously that was defined. Differing knowledge and approaches to orders were commonly discussed by MBCP providers and judicial officers. This service provider interviewee indicated that some of these differences were based on judicial preference, rather than in any legislative or court framework:

Magistrates choose to mandate someone or not, to start with. There’s different rules of thought around that. You

might have heard some magistrates that are happy to mandate someone's attendance despite this person not pleading guilty or anything like that, not admitting the offense. Some magistrates are still happy to mandate their attendance at the assessment and then on to the program. However, some other magistrates aren't happy to do that, unless the guy wants to do the program or unless the guy has pleaded guilty then it's up to the magistrate. (SA MBCP B)

These differences were noted as creating issues with regard to fairness in outcomes. Given the additional divergence in the amount of time and forms of oversight available to judicial officers, this was a matter of concern for many interviewees. For those who valued the development of knowledge and skills in the management of perpetrator interventions, this inconsistency between judicial officers and its impacts created a particular area of frustration and worry, as good, existing processes were likely to become inactive. These concerns were evident in SA Magistrate B's remarks:

It is just the left hand doesn't know what the right hand is doing, and it's exhausting, you know. And it can't be personality-based. It can't be that when I step out of this space, everyone goes, "I knew [interviewee's name] really well." It can't be about me. It's got to be here for the next 10, 20 years. And that's what upsets me, it is all personality-based. (SA Magistrate B)

Again, there was no observable pattern in terms of jurisdictions or particular court contexts. Some interviewees expressed the view that some judicial officers are reluctant to dedicate time and effort to this commonplace yet complex area of law. A part of this reluctance may be attributed to views on judicial roles and responsibilities and how well they align with the purpose of perpetrator interventions. As one judge observed:

There are a number of magistrates who don't want to sit in this jurisdiction, who have quite openly said to me that they don't view themselves as agents of social change, or social constructs, so their job is purely legal. They see it as purely a legal matter, so not willing to engage in therapeutic jurisprudence as such. (SA Magistrate A)

These differences in view about the judicial role had material impacts on everyday practices in courts. For instance, while some judicial officers interviewed saw a rule change focused on second adjournments as creating ineffective and bureaucratic process, others viewed it as an opportunity to do "case management" and to "take control" of matters:

We had the Magistrates' Court criminal rules I think, were changed a few years ago to require that any second adjournment had to go into court before a magistrate and then the magistrate had an opportunity to do some case management. Many of my colleagues complained about that, that it was slowing down their day in court and all they were doing was becoming adjournment givers. I take a very different view to that because the adjournments will go on and on and on, and nobody takes control of it and it's particularly important in family law, family violence, but it's important across the board. So I will, if they come, it's my practice to always be saying, "Well look you need to be ready next time". Sometimes I'll stand it down and say, if they haven't got a lawyer and say, "Okay you go out there, ring up your lawyer, come back in, get them to text the court and so there's an appointment being made", so I'll take control to that level if I can. (Vic Magistrate C)

Although there are different practices across jurisdictions with regard to the conditions that can be imposed on FVIOs, several interviewees noted the value of imposing MBCP completion as a condition to ensure perpetrator accountability.

While there was varied support for active judicial monitoring and oversight in making perpetrators accountable, those interviewees that did support this notion argued that active judicial engagement offered benefits both directly in terms of the perpetrator, and more broadly in terms of the overall operation of the system. Judicial officer awareness of perpetrator interventions influenced the type of orders imposed and what the officers were able to communicate about possibilities for change. Where relationships existed between judicial officers and those providing services and programs to perpetrators, program attendance, for example, was a part of court discussions and, in the eyes of some, enhanced accountability for the perpetrator.

Although we began this project with a focus on perpetrator accountability and the effective use of perpetrator interventions, our interview data in particular has required we recognise all actions of judicial officers in this domain as perpetrator interventions of one type or another. Many interviewees saw the discharge of these responsibilities as part of the process of holding perpetrators to account. We would argue this broader definition of the role of judges in creating system accountability, and the different ways in which judicial officers understand it, is a critical finding from this research. In partnership with the AIJA, we plan to explore this in our knowledge translation activity.

RECOMMENDATION 3

Consideration should be given by courts and judicial educational bodies to a broader discussion about the role of judicial officers in creating system accountability, to develop consistent outcomes across jurisdictions and develop national knowledge and practice about perpetrator intervention programs and outcomes.

Conclusion

This study investigated the views of judicial officers across Australian states and territories about perpetrator interventions. Our homicide sentencing judgement analysis revealed few references to perpetrator interventions in the history of intimate partner homicide perpetrators or in judicial assessments of risk and responsibility on sentencing, while our interviews found little uniformity beyond the broad agreement that victims'/survivors' safety was a priority and key objective.

The overall picture of judicial views ranged from cynicism about the effectiveness of different types of perpetrator interventions and pessimism about the ability to change perpetrator behaviour, to confidence that interventions to change the behaviour of DFV perpetrators can be successful. This variation existed both within and across jurisdictions and at every level of the court system. Interviewees indicated that they struggled to keep up with knowledge about perpetrator intervention programs and the availability of these programs. Concerns about waiting lists and whether existing program options were appropriate emerged in some judicial interviews, and these issues were consistently cited as barriers to effective perpetrator interventions and to holding perpetrators to account.

The jurisdiction of the Family Court was considered by many interviewees to be another barrier to the effective use of perpetrator interventions, particularly FVIOs, as there is often conflict between the imposition of new civil or criminal court orders and existing Family Court orders. Another critical focus for all interviewees was a perceived need for early perpetrator intervention prevention programs, as many felt that by the time perpetrators were before the court it was too late to achieve meaningful change. There was more consistency in judicial understandings of the gendered dynamics and complex characteristics of DFV, but these understandings were translated into different approaches to perpetrator interventions. A critical finding was that awareness of perpetrator intervention programs in each jurisdiction and context was variable, which created further barriers to the effective use of such interventions.

Informed by the findings of this research, we have made three recommendations.

RECOMMENDATION 1

Consideration should be given to developing judicial guidance on seeking and making use of perpetrator intervention histories in all DFV matters, including sentencing, to assist in judicial decision-making.

RECOMMENDATION 2

All states and territories should consider developing a regularly updated online register of perpetrator intervention programs to ensure that information is readily available to judicial officers to support and inform their work in relation to DFV.

RECOMMENDATION 3

Consideration should be given by courts and judicial educational bodies to a broader discussion about the role of judicial officers in creating system accountability, to develop consistent outcomes across jurisdictions and develop national knowledge and practice about perpetrator intervention programs and outcomes.

Moving forward

A number of key structural issues surrounding the court system emerged as central in this study. These related to the interactions of civil and criminal instruments in relation to perpetrators, and importantly to the role of the family law system as a current and troubling gap in ensuring the safety of those affected by DFV. While these were not a focus of this research, they are clearly an area for future investigation. However, these matters are outside the scope of recommendations from this research, which focused on judicial officer views about perpetrator interventions and how to build structures that enhanced perpetrator and systems accountability.

The recommendations made here have focused on enhancing the ways in which judicial officers can make optimal use of existing perpetrator interventions, and to strengthen processes of review and evidence-gathering regarding the

efficacy of perpetrator interventions. In particular, there is an opportunity to reinforce and harness the power of judicial commentary on the unacceptability of all forms of DFV through everyday interactions in the courts. We note that the landscape for perpetrator interventions across Australia is changing rapidly and that the plethora of reforms present both opportunities and challenges. The findings from this research illuminate the valuable role that judicial officers can play in enhancing perpetrator accountability, acting in that role as a critical point of intervention.

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The Queen v Darren Ashley (2014) NTSC SC 21218788.

The Queen v Jasmine Raymond (2015) NTSC SCC 21333592.

The State of Western Australia v Anderson (2015) WASCSR 102.

The State of Western Australia v Byrne (2015) WASCSR 67.

The State of Western Australia v Churchill (2014) WASCSR 219.

The State of Western Australia v Hill (2014) WASCSR 52.

The State of Western Australia v Hodder (2013) WASCSR 211.

The State of Western Australia v James Bill Payet (2014) WASCSR 88.

APPENDIX A

Intimate partner homicide cases analysed by jurisdiction, perpetrator sex and year

Table 4: Intimate partner homicide cases analysed by jurisdiction, perpetrator sex and year

State	Total cases	Total perpetrators	Total male perpetrators	Total female perpetrators
ACT	1	1	1	0
2011	0	0	0	0
2012	0	0	0	0
2013	0	0	0	0
2014	1	1	1	0
2015	0	0	0	0
State	Total cases	Total perpetrators	Total male perpetrators	Total female perpetrators
NSW	40	44	35	9
2011	8 ^a	9	6	3
2012	6	6	5	1
2013	9 ^b	10	8	2
2014	9 ^c	11	9	2
2015	8	8	7	1
State	Total cases	Total perpetrators	Total male perpetrators	Total female perpetrators
NT	14	16	11	5
2011	3	3	1	2
2012	2	2	2	0
2013	2 ^d	4	2	2
2014	3	3	3	0
2015	4	4	3	1
State	Total cases	Total perpetrators	Total male perpetrators	Total female perpetrators
SA	14	15	11	4
2011	5	5	3	2
2012	3	3	2	1
2013	1	1	1	0
2014	2	2	2	0
2015	3 ^e	4	3	1

State	Total cases	Total perpetrators	Total male perpetrators	Total female perpetrators
Tas	3	3	3	0
2011	0	0	0	0
2012	1	1	1	0
2013	0	0	0	0
2014	1	1	1	0
2015	1	1	1	0
State	Total cases	Total perpetrators	Total male perpetrators	Total female perpetrators
Vic	40	42	30	12
2011	13	13	11	2
2012	7	7	3	4
2013	7	7	5	2
2014	4	4	2	2
2015	9 ^f	11	9	2
State	Total cases	Total perpetrators	Total male perpetrators	Total female perpetrators
WA	40	43	31	12
2011	6	6	4	2
2012	6	6	2	4
2013	5	5	4	1
2014	13 ^g	16	13	3
2015	10	10	8	2
Total cases	152	164	122	42

Notes: ^a 1 case had 2 perpetrators

^b 1 case had 2 perpetrators

^c 1 case had 3 perpetrators

^d 1 case had 3 perpetrators

^e 1 case had 2 perpetrators

^f 1 case had 3 perpetrators

^g 1 case had 4 perpetrators

APPENDIX B

Case list of female-perpetrated intimate partner homicide across Australia (excluding Queensland) during 2011–15

- Director of Public Prosecutions v Kerr* [2014] VSC 374.
- Director of Public Prosecutions v Williams* [2014] VSC 304.
- R v BURNS, Renae* [2013] NSWSC 1851.
- R v Cassandra Lee Dodd* [2011] No. SCCRM-11-183.
- R v Catherine Therese Collyer* [2012] No. SCCRM-11-196.
- R v Charles* [2013] VSC 470.
- R v Chen* [2012] NSWSC 1000.
- R v Creamer* [2011] VSC 196.
- R v Downie* [2012] VSC 27.
- R v Edwards* [2012] VSC 138.
- R v Evans; R v Rawlinson; R v Proud* [2014] NSWSC 979.
- R v Helen Ryan; R v Coralie Coulter* [2011] NSWSC 1249.
- R v Hudson* [2013] VSC 184.
- R v Johnston* [2015] VSC 16.
- R v Karen Dianne Black* [2011] VSC 152.
- R v Kells* [2012] VSC 53.
- R v Lane* [2013] NSWSC 1808.
- R v Lindholm, Trabert and Ryan* [2015] VSC 739.
- R v Pitt* [2012] VSC 591.
- R v Rajini Narayan* [2011] No. SCCRM-10-66.
- R v Silva* [2015] NSWSC 148.
- R v Tristan Kay Castel and Jason Bucca* [2015] No. SCCRM-14-46.
- Regina v Quealey* [2011] NSWSC 42.
- The Queen and Alfreda Dixon* [2011] SCC 21041556.
- The Queen and Bronwyn Buttery, Christopher Malyschko, Zak Grieve* [2013] SCC 21140102, 21136198 and 21136195.
- The Queen and Jasmine Raymond* [2015] SCC 21333592.
- The Queen and Patricia Tyson* [2011] SCC 21043219.
- The Queen and Shannon McMillan* [2013] SC 21139977.
- The State of Western Australia v Boyd* [2012] WASCSR 191.
- The State of Western Australia v Broadbent* [2014] WASCSR 48.
- The State of Western Australia v Butt* [2012] WASCSR 190.
- The State of Western Australia v Byrne* [2015] WASCSR 67.
- The State of Western Australia v Churchill* [2014] WASCSR 219.
- The State of Western Australia v Dooley* [2014] WASCSR 98.
- The State of Western Australia v Flett* [2012] WASCSR 77.
- The State of Western Australia v Hodder* [2013] WASCSR 211.
- The State of Western Australia v Russell-Miles* [2011] WASCSR 16.
- The State of Western Australia v Samson* [2012] WASCSR 169.
- The State of Western Australia v Williams* [2011] WASCSR 53.
- The State of Western Australia v Woodley* [2015] WASCSR 114.

Process for gaining access to homicide sentencing judgements for each Australian state and territory

Table 5: Process for gaining access to homicide sentencing judgments for each Australian state and territory

Jurisdiction	Process for gaining access to homicide sentencing remarks
ACT	Sentencing remarks were located onsite by researchers in the Supreme Court Library.
NSW	Sentencing remarks were publicly available through the AustLII database.
NT	Access to sentencing remarks was easily negotiated. The Supreme Court requested a USB from researchers, which was sent. The USB was checked by the NT IT team and the remarks were uploaded onto the USB and returned via post.
SA	Some difficulties were encountered in gaining access to sentencing remarks. Multiple attempts to negotiate access through the Supreme Court were unsuccessful. The Supreme Court reported it did not grant open access to sentencing remarks and that it could not allow access to internal databases. It also could not provide a list of relevant homicides cases. Researchers established a contact at the Office of Public Prosecution (OPP), and requested access to a list from the OPP of all murder and manslaughter cases resolved by way of plea or guilty verdict during the time period being studied for this research. The OPP supplied this. Researchers conducted a media search to eliminate cases of non-intimate partner homicides, which were outside the scope of the study. The OPP then advised researchers that the sentencing remarks required were held by the Supreme Court and it would need to receive the list to facilitate access to the transcripts of the sentencing remarks. Researchers contacted the Supreme Court and were advised of an intention to charge a fee for access to the sentencing transcripts. This included a search fee for each file of \$23.60 and a per page fee of \$7.90 (electronic copy) or \$10 (hard copy). Soon after researchers spoke with the Chief Justice of the Supreme Court, who granted access to the Registry without such fees and supplied researchers with a letter stating that data were to be supplied. Monash University received the remarks via email 10 days later.
Tas	Sentencing remarks were publicly available through the AustLII database.
Vic	Sentencing remarks were publicly available through the AustLII database.
WA	Remarks were gathered onsite by Monash University researchers who were granted access to the internal Supreme Court database, after signing an undertaking with the court. Researcher access was monitored.

APPENDIX D

Family violence intervention orders by Australian state and territory

Table 6: FVIOs by Australian state and territories

Jurisdiction	Legislation	Conditions	Offences and penalties
Australian Capital Territory	<i>Family Violence Act 2016</i> (ACT)	<ul style="list-style-type: none"> a. Condition prohibiting the respondent from being on premises where the protected person lives. b. Condition prohibiting the respondent from being on premises where the protected person works. c. Condition prohibiting the respondent from being on premises where the protected person is likely to be. d. Condition prohibiting the respondent from being in a particular place. e. Condition prohibiting the respondent from being within a particular distance from the protected person. f. Condition prohibiting the respondent locating or attempting to locate the protected person. g. Condition prohibiting the respondent from contacting the protected person. h. Condition prohibiting the respondent from doing anything defined in the legislation as “family violence”. i. Condition prohibiting the respondent from causing someone else to do something mentioned in paragraphs (f) to (i). j. Condition prohibiting the respondent from taking possession of stated personal property that is reasonably needed by the protected person or a child of the protected person. k. Condition requiring the respondent to give the protected person stated personal property that the respondent possesses that is reasonably needed by the protected person or a child of the protected person. l. Condition requiring the respondent to take part in a program of counselling, training, mediation, rehabilitation or assessment. m. Exclusion conditions that prohibit the respondent from being on premises where the protected person lives. 	<p>Contravention offence: 500 penalty units or imprisonment for 5 years or both.</p>

Jurisdiction	Legislation	Conditions	Offences and penalties
New South Wales	<i>Crimes (Domestic and Personal Violence) Act 2007</i> (NSW)	<ol style="list-style-type: none"> 1) Condition prohibiting the defendant from approaching the protected person. 2) Condition prohibiting the defendant from entering any premises occupied by the protected person, any place where the protected person works and any premises or place frequented by the protected persons. 3) Condition prohibiting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs. 4) Condition prohibiting or restricting the defendant from locating or attempting to locate the protected person. 5) Condition prohibiting the possession of all or any specified firearms or prohibited weapons (within the meaning of the <i>Weapons Prohibition Act 1998</i>) by the defendant. 6) Condition prohibiting the defendant from destroying or deliberately damaging or interfering with the protected person's property. 7) Condition prohibiting specified behaviour by the defendant that might affect the protected person. 8) Condition prohibiting the defendant from assaulting, threatening, stalking, harassing or intimidating the protected person and intentionally or recklessly destroying or damaging any property that belongs to the protected person. 9) Ancillary property recovery orders. 10) Measures to protect children and young persons in proceedings. 11) Condition prohibiting the inclusion of the protected person's address in any orders. 	<p>Contravention offence: Imprisonment for 2 years or 50 penalty units, or both.</p>

Jurisdiction	Legislation	Conditions	Offences and penalties
Northern Territory	<i>Domestic and Family Violence Act 2007</i> (NT)	<ol style="list-style-type: none"> 1) Condition restraining the defendant from committing domestic violence against the protected person. 2) Orders to ensure the defendant accepts responsibility for the violence committed against the protected person and to encourage the defendant to change his or her behaviour. 3) Ancillary orders prohibiting the defendant from engaging in specified conduct or requiring the defendant to take specified action. 4) Premise access order requiring the defendant to vacate state premises or restraining the defendant from entering certain premises. 5) Order to terminate or create a new tenancy agreement (replacement residential tenancy). 6) Order for rehabilitation program. 7) Condition prohibiting the inclusion of protected person's residential address in orders. 8) Condition prohibiting the publication of personal details of a protected person or witness. 	<p>Contravention offence: 400 penalty units or imprisonment for 2 years.</p> <p>Mandatory conviction and imprisonment for at least 7 days if the defendant has previously been found guilty of a DVO contravention offence.</p> <p>Publication of names and identifying information about children: 200 penalty units or imprisonment for 1 year.</p> <p>Publication of personal details: 200 penalty units or imprisonment for 1 year.</p> <p>Failure to report domestic violence to a police officer: 200 penalty units (defence of reasonable excuse applies).</p>

Jurisdiction	Legislation	Conditions	Offences and penalties
Queensland	<i>Domestic and Family Violence Protection Act 2012 (Qld)</i>	<ol style="list-style-type: none"> 1) Standard orders impose conditions that the defendant: <ol style="list-style-type: none"> a) must be of good behaviour and not commit domestic violence against the aggrieved or any named person b) if the order includes a named person who is a child, must not expose the child to domestic violence or commit domestic violence against the child. 2) Other conditions necessary to protect the aggrieved and any named person from domestic violence e.g. exclusion from aggrieved's usual place of residence. 3) Conditions relating to the behaviour of the respondent: <ol style="list-style-type: none"> a) committing domestic violence against aggrieved or a named person b) approaching or attempting to approach aggrieved or a named person c) contacting, attempting to contact or asking someone to contact the aggrieved or a named person d) locating, attempting to locate or asking someone else to locate the aggrieved person or a named party where their whereabouts are unknown to the respondent e) any of the above behaviour towards a child of the aggrieved or a child who usually lives with the aggrieved. 4) Conditions relating to property: <ol style="list-style-type: none"> a) return, access or recover property b) requiring a police officer to supervise the return, access or recovery of property. 5) Condition limiting contact between parent and child. 6) Ouster condition that prohibits the respondent from entering, approaching or remaining at named premises or the aggrieved's usual place of residence. 7) Return condition to allow the respondent to recover property if an ouster condition is in place. 8) Supervision by police officer of ouster condition or return condition. 9) Condition for protection of unborn child. 	<p>Contravention offence: 120 penalty units or 3 years imprisonment.</p> <p>Contravention where respondent has previous conviction for domestic violence: 240 penalty units or 5 years imprisonment.</p> <p>Contravention of police protection notice: Maximum penalty: 120 penalty units or 3 years imprisonment.</p> <p>Contravention of release conditions: Maximum penalty: 120 penalty units or 3 years imprisonment.</p>

Jurisdiction	Legislation	Conditions	Offences and penalties
South Australia	<i>Intervention Orders (Prevention of Abuse) Act 2009</i> (SA)	<p>a) Condition prohibiting the defendant from being on, or within the vicinity of, premises at which a protected person resides or works.</p> <p>b) Condition prohibiting the defendant from being on, or within the vicinity of, specified premises frequented by a protected person.</p> <p>c) Condition prohibiting the defendant from being in a specified locality.</p> <p>d) Condition prohibiting the defendant from approaching within a specified distance of a protected person.</p> <p>e) Condition prohibiting the defendant from contacting, harassing, threatening or intimidating a protected person or any other person at a place where the protected person resides or works.</p> <p>f) Condition prohibiting the defendant from damaging specified property.</p> <p>g) Condition prohibiting the defendant from taking possession of specified personal property reasonably needed by a protected person.</p> <p>h) Condition prohibiting the defendant from causing or allowing another person to engage in the conduct referred to in any of paragraphs (e) to (g).</p> <p>i) Condition requiring the defendant to surrender specified weapons or articles that have been used, or where there is some reason to believe might be used, by the defendant to commit an act of abuse against a protected person.</p> <p>j) Condition requiring the defendant to return specified personal property to a protected person.</p> <p>k) Condition requiring the defendant to allow a protected person to recover or have access to or make use of specified personal property and to allow the person to be accompanied by a police officer or other specified person while doing so.</p> <p>l) Condition imposing any other requirement on the defendant to take, or to refrain from taking, specified action.</p> <p>m) Surrender of the weapons or articles or other measures designed to minimise the risk of the defendant using or threatening to use the weapons or articles to commit an act of abuse against the protected person.</p> <p>n) Order assessment for intervention program.</p> <p>o) Order for firearms surrender.</p> <p>p) Order setting out the date after which defendant may apply for variation or revocation.</p>	<p>Contravention offence: Maximum penalty \$10,000 or imprisonment for 2 years.</p> <p>Contravention offence relating to intervention programs under section 13: Maximum penalty \$1250; expiation fee \$160.</p> <p>Landlord not to allow access to excluded defendant: Maximum penalty: \$10,000.</p> <p>Publication of report about proceedings or orders: A natural person—\$10,000; a body corporate—\$120,000.</p>

Jurisdiction	Legislation	Conditions	Offences and penalties
Tasmania	<i>Family Violence Act 2004</i> (Tas)	<p>1) Condition requiring the defendant to vacate premises, not enter premises, or only enter premises on certain conditions, whether or not that person has a legal or equitable interest in the premises.</p> <p>2) Condition requiring the defendant not possess firearms specified in the order or forfeit or dispose of any firearms in his or her possession.</p> <p>3) Condition requiring the defendant to submit to being electronically monitored by wearing and not removing, or always carrying, an electronic device which allows:</p> <ul style="list-style-type: none"> a) the Commissioner of Police; or b) a police officer, State Service officer, State Service employee or other person, or a person of a class of persons (whether police officers, State Service officers, State Service employees or other persons), authorised by the Commissioner of Police to find or monitor the geographical location of the person. <p>4) Order to terminate or create a new tenancy agreement (replacement residential tenancy).</p>	<p>First offence: A fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 12 months.</p> <p>Second offence: A fine not exceeding 30 penalty units to imprisonment for a term not exceeding 18 months.</p> <p>Third offence: A fine not exceeding 40 penalty units or to imprisonment for a term not exceeding 2 years.</p> <p>Fourth or subsequent offence: imprisonment for a term not exceeding 5 years.</p>

Jurisdiction	Legislation	Conditions	Offences and penalties
Victoria	<i>Family Violence Protection Act 2008</i> (Vic)	<ol style="list-style-type: none"> 1) Condition prohibiting the respondent from committing family violence against the protected person. 2) Condition excluding the respondent from the protected person's residence in accordance with Section 82 or 83. 3) Condition requiring the use of personal property in accordance with Section 86. 4) Condition prohibiting the respondent from approaching, telephoning or otherwise contacting the protected person, unless in the company of a police officer or a specified person. 5) Condition prohibiting the respondent from being anywhere within a specified distance of the protected person or a specified place, including the place where the protected person lives. 6) Condition prohibiting the respondent from causing another person to engage in conduct prohibited by the order. 7) Condition revoking or suspending a weapons approval held by the respondent or a weapons exemption applying to the respondent as provided by Section 95. 8) Condition cancelling or suspending the respondent's firearms authority as provided by Section 95. 9) Condition prohibiting contact with child. 10) Suspension or cancellation of firearms authority etc. 11) Conditions about arrangements for contact with child if there is not a <i>Family Law Act 1975</i> (Cth) order. 12) Order to assess eligibility for counselling. 13) Order to attend counselling. 	<p>Contravention of FVSN: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.</p> <p>Contravention of notice intending to cause harm or fear for safety: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.</p> <p>Contravention of FVIO: Level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both.</p> <p>Contravention of order intending to cause harm or fear for safety: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.</p> <p>Persistent contravention of notices and orders: Level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum) or both.</p>

Jurisdiction	Legislation	Conditions	Offences and penalties
Western Australia	<i>Restraining Orders Act 1997</i> (WA)	<ol style="list-style-type: none"> 1) Condition prohibiting a person from committing family violence. 2) Condition prohibiting a person from exposing a child to family violence. 3) Condition prohibiting a person from behaving in a manner that could reasonably be expected to cause a person seeking to be protected to apprehend that they will have family violence committed against them. 4) Condition restraining a person from being on or near premises where a person lives or works or other specified premises. 5) Condition restricting a person from approaching within a specified distance of another person. 6) Condition prohibiting a person from stalking or cyber-stalking the person seeking to be protected. 7) Condition prohibiting a person from communicating, or attempting to communicate, (by whatever means), with the person seeking to be protected. 8) Condition prohibiting a person from preventing the person seeking to be protected from obtaining and using personal property. 9) Condition prohibiting a person from distributing or publishing, or threatening to distribute or publish, intimate personal images of the person seeking to be protected. 10) Condition prohibiting a person from causing or allowing another person to engage in any of the above conduct. 11) Condition prohibiting a person from possessing firearms or firearm licences. 12) Behaviour management order to assess eligibility of the respondent and, if appropriate, require the respondent to attend a program. 	<p>Breach of FVRO: A fine of \$6000 or imprisonment for 2 years, or both.</p> <p>Repeated breach of restraining order: where a person bound by an FVRO has at least 2 previous convictions for related offences within a 2-year period: The court must impose a sentence that includes a term of suspended or immediate imprisonment, unless it would be clearly unjust to do so.</p> <p>Disclosure offences:</p> <p>Disclosure by eligibility assessor of any information obtained during the course of conducting an eligibility assessment to any person who is not entitled to receive or have access to the report: A fine of \$1000.</p> <p>Disclosure of any information contained in an eligibility report to any person who is not entitled to receive the report: A fine of \$1000.</p>

Jurisdiction	Legislation	Conditions	Offences and penalties
Western Australia (cont)			<p>Disclosure by a behaviour change program provider of any information in a report under Section 10V to any person who is not entitled to receive or have access to the report: A fine of \$1000.</p> <p>Disclosure of any information in a report under Section 10V to any person who is not entitled to receive or have access to the report. A fine of \$1000.</p>

Indicative interview questions

- 1) How do you use and determine the suitability of perpetrator interventions in the sentencing of family violence offenders?
 - a) What perpetrator interventions are used in your jurisdiction/court?
 - b) Are there some perpetrators that you would determine not suitable for a perpetrator intervention?

- 2) Is it common for you to sentence persons who have previously been subject to a perpetrator intervention?

- 3) Do histories of perpetrator programs and/or intervention orders influence subsequent sentencing practices in cases of high-risk and recidivist family violence offenders?

- 4) In cases of intimate partner homicide, is it common for offenders to have a history of perpetrator interventions (including perpetrator programs and intervention orders)?
 - a) Does this influence your assessment of their future risk and/or likelihood to reoffend?
 - b) Does a history of perpetrator interventions influence an assessment of an offender's character for the purposes of sentencing?

- 5) In your current practice, are you involved in managing perpetrator compliance with interventions?

- 6) Do you think magistrates/judges should be involved in case management and/or perpetrator program completion oversight? In practice, how could this be achieved?

- 7) Is there a need for greater perpetrator accountability? How could the courts achieve this?

- 8) Do you think the current range of perpetrator interventions available to the court to use in sentencing family violence offenders is sufficient? How would you like to see these expanded and/or limited?

- 9) Do you think the current range of perpetrator interventions is sufficient to cater for perpetrators from diverse communities (CALD, Aboriginal and Torres Strait Islander, young persons, persons with disability)?

- 10) Areas for future reform and different intervention options.

APPENDIX F

Court observations

As noted in our methodology discussion, three researchers undertook observations over a 6-day period between March 2018 and June 2018 in four Australian courts: the Sydney Downing Centre Local Court (NSW), Brisbane Magistrates Court (Qld), Melbourne Magistrates' Court and Heidelberg Magistrates' Court (Victoria); and in the New York City Family Court in July 2018.¹ While the focus of this project is on judicial understandings of perpetrator interventions and how these are used in the administration of family violence matters, a review of the court contexts in which these discussions took place assisted us in our interviews with judicial officers and in interpreting the data derived from these.

Security and comfort

There was considerable variation in court organisation and court practice, with key differences centering on how physical spaces allowed for the security and comfort of those appearing in diverse family violence matters. Courts that were specialised in some way, either with a specific division or a family violence list, were generally set up with greater regard to the security and comfort of those coming before the court. Separate spaces, where advice could be given to those attending and private discussion could occur, and the option for applicants and respondents to enter court separately were provided in some locations only but appeared to contribute to a calmer court atmosphere and interactions. In instances where options for privacy were limited, such as the use of a floating screen beyond which those affected by family violence could sit, our observations suggested that the atmosphere inside and outside the court was somewhat negatively affected by this arrangement.

In addition, specialist courts appeared to have more visibly available support services (clearer designations around which windows to approach, or specific offices set aside for prosecutions, etc.). These types of settings appeared to produce a more systematic and comfortable movement of people through the court spaces.

¹ Observations at a New York Integrated Domestic Violence Court site were included in the court observation phase of the research given evidence from the RCFV (2016) and academic research (see Fitz-Gibbon, 2016) that these courts represent a best practice model for court responses in family violence matters. These court observations were part of a separate activity not funded by ANROWS.

Given greater recognition of cumulative trauma as an impact in experiences of family violence and ongoing discussions about improving court experiences, the management of physical spaces presents as an important opportunity for improvement.

Judicial engagement and communication practice

There was considerable diversity observed in courtroom exchanges and approaches, but in most of the Australian courts, the magistrates addressing orders and breaches went to considerable trouble to work with applicants and respondents to ensure better understanding of the processes that were occurring. In many instances, this included offering information about what could not be addressed in the current proceedings, and where further information and advice might be sought. The salience of this finding is reflected in other data in this project, where the intersection of civil and criminal processes was consistently identified as a cause of confusion and concern for all involved. Given that pressure on court time was also consistently identified as an issue, structures that provide advice and resourcing prior to court entry are likely to have beneficial effects on both the use of time and the experiences of all concerned. It was notable that in some instances where those who were seeking orders or variations or addressing breaches were privately represented, lawyers introduced a more adversarial approach to the discussion of matters. This often extended matters and intensified some of the exchanges. Where duty lawyers were involved, there was often a more comfortable set of exchanges that facilitated easier exchanges overall.

New York Integrated Domestic Violence court observations

During the course of this project, there was an opportunity for observation at the New York (NY) Family Court located in downtown Manhattan (New York City [NYC], NY, US). The model of family and family violence response in operation here is a fully integrated one, often referred to as the "one family, one judge" model (see further Fitz-Gibbon, 2016). Multiple courts and independent support agencies are located in one single building, together addressing a very broad range of matters,

including civil protection orders, juvenile matters, custody, child relinquishment, child support, and orders sought for adolescents (Persons in Need of Supervision). On entry to the building, there were a significant number of pamphlets provided for support organisations, very clear directions to each different type of matter, and sets of definitions for all processes and legal terms. In this model, applicants and respondents are not faced with the need to distinguish civil and criminal matters, and other types of family intervention such as respite or child protection orders are also available under this roof. In effect, all forms of family difficulty are captured here.

The provision of security and comfort is a critical part of the court's approach (which has other court locations in other boroughs of NYC, such as Brooklyn). There is screening and security for entry into the building (offered by New York Police Department officers). These police officers were heavily armed with guns and batons evident (the convention for NYC police) but the officers were kindly in their interactions with all those entering and exiting the building. Once security was cleared, movement between different areas and floors was free. Independent service providers are present—distinct agencies such as the Red Cross have offices—and a range of court-provided supports (such as a childcare centre) are provided onsite. There is a specific safe area—Safe Horizons—where women can wait and be escorted to the relevant court by a court officer. Safety planning is also available in this location.

All initial orders were created in a central petition room where people were supported to fill in relevant documentation; these were then processed and further actions taken. Processing was relatively efficient in this room, with people making petitions and then also receiving orders after hearings in the courts. These were delivered to people in this room: names were called, only the applicant could go in with a support worker, and they then came out with orders, such as exclusion from the home or other outcomes. All court officers and ancillary support services were efficient but kindly. People were reassured about missed names, times or documentation and there were consistent checks to ensure all relevant people were still present.

Generally, people were directed to the courtroom in small batches, so there was not significant crowding outside any location. There were plentiful and comfortable seats outside every location. In addition, there were different floors for different types of legal activities, which meant the floors above the entry and petition room were always relatively quiet.

Options for court reform

A key observation from the NY Integrated Domestic Violence Court structure is that there were no jurisdictional and structural distinctions between family violence matters and other types of family need. This structure meant that families' needs in relation to both protection from violence and other issues (which may have included family law—housing, for example—or family counselling) were addressed simultaneously. This approach may be useful to consider in Australia where family law and DFV processes do not interact.

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