

**From Incident to Evidence:
The leap that we need to make in family violence policy in
Australia**

**Jessica Aulich, 2015 ACT Government Audrey Fagan Churchill
Fellowship**

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*Jessica Aulich
November 10, 2016.*

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Executive Summary

Family violence is universally complex and most international jurisdictions are wrestling with the need to establish and implement policy that addresses the problems created by it. We have seen the development of a patchwork of policies in various jurisdictions, some specifically tailored for their local needs, others simply transported internationally from areas where policy seems to be working better. Countries across the world, including Australia, have also had their public policy shaped by critical events, such as celebrity crime. These incidents often have been turning points in the ongoing wave of reform. Moving from these informing incidents to an evidence-based approach requires a re-consideration of research and practice and a multifaceted application of best practice.

This project aimed to examine family violence and domestic violence policy innovations, drawing from three international jurisdictions, California, New York City and Vienna, praised in the literature as good practice policy environments. Visits to each of these jurisdictions were designed to increase understand of these policy innovations with a view to see whether or not there are lessons for Australian policy which is at the early stages of development.

The report has been compiled using data from discussions about innovations in legislation, observing family violence courts in operation, meeting with family violence advocacy groups which are promoting social awareness and change, discussions on policing and training of those who deal with family violence , and consideration of some of the more contemporary research in these fields of research.

No jurisdiction I visited had these issues sorted neatly. The very nature of family violence and its complexities prevents a simple approach, but there are advances in legislation, policing, training for those who work in the sector, and also in protecting victim rights. In every jurisdiction, discussions focused around the need to grow understanding and, in particular, that this should include bringing evidence from the experience of professionals as well as conducting and using data from research. Further, most argued that all professionals working with family violence need to understand the dynamics of relevant relationships and the impact that this has on victim behavior.

Jessica Aulich
Mandolini77@hotmail.com

Conclusions and Recommendations

It is clear from a study of three international approaches to family violence (FV) that more effective FV policies have improved outcomes for victims, families and the community. Policies have been enhanced through strengthening the evidence-base for policy making by focusing on research and drawing experience from those working in the field, through law reform and with other innovations. Australia needs to learn

from these innovations in order to inform policy, as opposed to adopting knee-jerk reactions when incidents create turning points. As well-intentioned as these reactions may be, ultimately they will not be as sustainable as some of the innovative policy making that have been developed in the three case study jurisdictions.

Below, I have listed some major recommendations which can be adopted by Australian policy makers.

1. Policy Informed by Evidence

FV policy should be based on evidence of demonstrated best practice. Trauma informed care, predominant in Australia, needs to be examined for its effectiveness and compared with evidence-based approaches adopted elsewhere.

2. Family Violence Courts

We need to establish specialist FV courts, drawing on the successful experience of other jurisdictions, especially in New York City. The ACT, because of its size, would be a prime location to trial this, with evaluation inbuilt and ongoing.

3. Training

An evidence-base needs to inform training of those in the judiciary and allied professions and to services working with victims, to minimise the impact of the court system on victims. This training should equip participants to better understand victim behavior and better prepare victims to understand their own circumstances.

4. Domestic Violence Orders

Domestic Violence Orders (DVOs) should be meaningful for both the victim and the perpetrator. Breaches should be considered a serious offence and accountability be legally enforced.

5. National Data and Research

A national data system needs to be developed to build an evidence-base for policy development. It should research new programs, collect statistics, gather evaluations on new programs, to inform legislative changes and innovations in this area.

6. Lessons from Past Experience

The FV movement needs to learn lessons from the pioneers who began in this field many of whom are now nearing retirement age. This collective knowledge needs to be harnessed and not lost and be evaluated in the context of present policy discussions.

7. Inclusion

There should be acknowledgement and inclusion of the LGBTI community in policy formation. The voices of men and allies should be noted and valued.

8. Separation from Homelessness

FV needs to be separated from homelessness and have independent funding sources. Homelessness needs to be considered as a byproduct of FV, not the presenting issue.

9. Legislative Implementation

We must learn from successes internationally, and build them into the Australian context. Legislative reform mandates change, but ensuring that the law is followed is the next step and should be factored in at implementation stages.

Unless change is mandated, FV policy will not move forward at the current rate. Mandated change, on its own, does not guarantee that new legislation will be appropriately adhered to and implemented, so that accountability systems need to be in place to support legislative change.

10. Cohesion and Collaboration

Without cohesion and collaboration, between and within sectors, innovation in FV policy will be piecemeal and inconsistent and be limited in reaching the full potential of change.

Jessica Aulich
2015 Churchill Fellow

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1. Introduction

For too long in Australia, family violence has been considered a private matter. At the time I applied for the Churchill Fellowship, one woman per week in Australia was dying at the hands of her partner. In the twelve months it took for the selection process to be complete, this number had increased to two women per week. And this is just the tip of the iceberg and does not factor in those injured, often seriously as a result of FV.

Domestic violence is the leading contributor to death, disability and ill health for women aged 15-44. It is also the principle cause for homelessness for women and their children in Australia.¹ The appointment of Rosie Battie as 2015 Australian of the Year, and in Canberra, a tragic murder involving a woman holding her newborn baby thrust the issue into the spotlight. FV advocates, policy makers, and victims began to recognise that what we were doing was simply not enough.

My Churchill Fellowship was designed to research the way in which three international jurisdictions dealt with the same challenge that confronted Australia. The three research sites were chosen with a view to examining different approaches to policymaking - California because of its deep concerns for the victims and for its consideration of legislative or institutional approaches to the problem; New York City because of the engagement of police in the process and because of its use of special courts and research areas of activity; and Vienna because I had understood that this country was becoming a policy 'beacon' for Europe particularly in passing legislation assisting the police and victims to ensure that victims were able to remain in their homes while cases were being investigated.

Given the complexity of the FV and DV issues, I did not expect that any one of the three jurisdictions would have the 'silver bullet' to resolve the issue and that it was likely that each had something to offer and consider by Australian governments wrestling with the problems involved. This was, in fact, exactly what occurred.

In the following three sections, I have outlined what research I undertook and details of interviews and discussions. I note the steps that have been taken, any evaluations of policy that have been undertaken and consider the issues involved in translating these policies into the Australian environment. First, however, I have sketched a brief summary of the developments in FV in the US to set a background for my research in the two US jurisdictions I visited.

¹ <https://www.whiteribbon.org.au>

2. Historical Perspective of FV in the US

The FV movement in the US began in a similar way to that in Australia, as a byproduct of feminism, led solely by women, for women. A very small network of women approached women in distress and took them to their houses for shelter. At this time women were the victims, men were the perpetrators, and the gendered divide did not allow for the input of critical thinking by men as allies or as victims.

Many countries have an historic turning point. Typically it is a celebrity or public figure embroiled in FV, which becomes highlighted in the media, sparking public debate and in many cases, legislative change.

The OJ Simpson case in America put FV on the map. More than twenty years ago Nicole Brown Simpson and Ron Goldman were stabbed to death outside Simpson's Los Angeles home. Even though OJ Simpson was eventually acquitted of their deaths, the case was a watershed moment for how America thought about FV.²

Prior to this event, America had little understanding of FV. The spike in reporting following these murders indicated that women from all walks of life were beginning to recognise the pervasive danger of FV. This growing awareness was instrumental in getting the *Violence Against Women Act* passed through Congress in 1994. The Act allocated US\$1.6 billion over 6 years and included provisions for mandatory arrest of perpetrators. The victim no longer had the choice about proceeding with charges. This change recognised that FV was a crime, and not a private matter. Since the introduction of this bill, amendments have been made to include dating violence in 2000, the impact on children 2005, and anti discrimination clauses to include tribal populations and the LGBTI community.

Discussions began in 2005 to invite men into the conversation, into shelters, recognizing them also as victims. This has paved the way for men to speak at events including the keynote speaker circuit. However, it also opened a debate about the higher rate of fees that men were charging for speaking and the gendered wage gap that this highlights.

Similarly, Ray Rice, National Football League (NFL) star was recorded punching his wife by an elevator camera. This video went viral and drove the NFL towards developing an FV policy that excludes players for two games following a FV incident. This sparked further debate and a comparison with other crimes such as smoking marijuana, for which the NFL was imposing the harsher penalty of a six-week ban.

Rice's wife chose to stay in the relationship and took to twitter with a hash tag *#why I stayed*, which created harmful narratives pushing the idea that victims are the experts in their own lives and that FV advocacy must exist for those who do choose to leave the relationship. It was one of the biggest conversations about FV in the US.

This field of work began with women only involved. Women were the victims and men were the perpetrators and the gendered divide did not allow for input of critical

² <http://time.com/2864428/kardashian-oj-simpson-domestic-violence/>

thinking by men as allies or as victims. In San Francisco, the landscape has now changed the identity of this field of work. However, when discussing perpetrator programs and initiatives, the team from Sacramento conceded,

We don't know how to get it to stop. We don't deal with 'them', the jails and the perpetrators. It is highly controversial to discuss caring for the perpetrator... Things have definitely changed but we can't measure it very well as we did not have the measurement tools back then that we have today.

The third amendment to the *Violence Against Women Act* (2012) saw a move towards anti-discrimination within the movement. Men and women in the LGBTI community were recognised as victims, and the Act set about ensuring that organisations did not turn away those who did not fall into the stereotype of the victim. The legislation invited men into the FV space, and resulted from a change in thinking that men could be useful as allies to the movement. The idea that the movement should still be run by women was pushed by many who held concerns about the changing shape of this area. Professor Lemon (see section 3.1) told the story of the younger generation of women studying gender issues in the *Berkeley Journal of Law Justice and Women*. Students rallied to have the word women removed, arguing that the gendered lens had become too myopic.

When I asked Professor Lemon if this mandated change was pushed by male lobbyists in opposition to the idea that violence is disproportionately committed by men, there was a reluctant pause. Having worked tirelessly on advising government in relation to the necessary amendments, it may have been politically unwise for her to speak freely on this matter. Others, when I asked their opinion on this, unanimously stated that this change was born from the opposition of angry men.

In Australia we have moved towards a use of more gender neutral language, designed to promote change in attitude. The old term 'batterer' or 'abusers' are no longer used. The California Partnership to End Domestic Violence (see section 3.1) was interested in learning from our choices in this area.

There were some difficulties when the changes in legislation were introduced. Organisations did not have a choice but to change the way they worked. The question that was repeatedly asked was, 'How do we keep people safe if we are taking in men and dykes?'

The changes translated into a more diverse profile of people in shelters, and those in advocacy positions. However, changes were not always embraced wholeheartedly and checks and balances often were limited to the ticking of a box at funding time.

The opportunity for services to learn from one another was taken through the California Partnership and responses were measured and compared. When both staff and clients of shelters were interviewed for feedback on the changes, it appeared that the staff found the changes more challenging than the clients. This peer learning allowed services to draw lessons from others, to make improvements, and track trends. One shelter in Oregon waved the rule that boys above 12 years of age could not enter the shelter with their mothers and paved the way for others to do the same. Evidence showed that keeping the family together far outweighed the issues in

teenage boys reducing the level of safety for other residents. Peer learning through services: it was the staff who had the issue, not the victims.

In both US jurisdictions, there was a strong consciousness of the importance of research as evidence to underpin policymaking. California seemed interested in learning lessons from a 30-year history in FV, but when I asked what steps had been taken towards ensuring retention of the collective knowledge of the pioneers about to retire, they had yet to embrace this. As one interviewee commented, ‘There have been national efforts, but what do we have?’

There is an understanding sector wide that there are gaps in evidence, but the minute funding goes to research, front line services rage, creating a tension between research and practice for their shares of available financial resources. Nevertheless, it appears that significant progress has been made in respect of the policy innovations listed in 2.3 below.

The 20th anniversary of *The Violence Against Women Act* saw celebrations across the FV sector and allied networks. It was a recognition of the distance travelled since its inception and a testimony to the hard, focused work of so many people interested in FV as an issue.

3. California

3.1 Contacts

I met with the team from AEquitas in both San Francisco and New York City. This organisation was established to enable prosecutors and allied professionals to improve the quality of justice in FV cases. The training delivered by ex-prosecutors is visceral, using real cases, bringing together multi-disciplined groups of students to demonstrate the need for collaboration. AEquitas provides training across the US for the FV sector and allied professionals and is specifically designed to expand on existing knowledge, with no restrictions being placed on their audience. The unique nature of funding arrangements allow for the scope to decide to whom they will deliver the training, based on need. Medical practitioners, advocates, law enforcement, judges, housing, probation and parole officers have all been recipients of this innovative approach to training. AEquitas, is designed to strengthen a prosecutor's responses to FV through training. Jane Anderson, a former District Attorney, explained the mission and the gaps in practice.

I interviewed Nancy Lemon, Professor of Law, University of California at Berkeley, a leading authority on FV for more than 35 years, who pioneered its study in law schools and is the author of *Domestic Violence Law*³, the primary textbook on the subject. Since 1988, Nancy Lemon has been teaching the Domestic Violence Seminar at Berkeley Law School (known as Boalt Hall), the first law school class of its kind. She also directs the Domestic Violence Practicum where she engages with her students in 'real life' research. With her students she has authored many amicus briefs⁴ and is frequently approached for input into amendments to legislation.

I met with members of The California Partnership to End Domestic Violence (The Partnership), California's recognised FV coalition. It spans the whole state and has a diverse membership with over 1000 advocates, organisations and allied groups. It has worked at state and national levels for nearly 40 years and has initiated and/or passed over 200 pieces of legislation addressing FV. Through public policy, communications and capacity-building efforts, their goal is to align prevention and intervention strategies to advance social change.

3.2 Key Policy Issues

California presented innovations in law reform, training of those at the "coalface" and advocacy which engages many stakeholders all of which could inform Australian policy. The state of California is especially keen to align prevention and intervention strategies. The blend of multiple approaches makes California an exemplar in FV prevention and intervention.

³ N. Lemon (2013) *Domestic Violence Law* (4th edition), West Academic Publishing, St. Paul (Minn).

⁴ Someone who is not a party to a case and is not solicited by a party, but who assists a court by offering information that bears on the case.

3.2.1 Alignment of prevention and intervention strategies.

A key strategy of the Partnership is to align prevention and intervention strategies. It strives to connect advocates, policy-makers and all stake holders so they can work together towards ending FV. As they write,

Through our public policy, communications and capacity-building efforts, we align prevention and intervention strategies to advance social change. Every day we inspire, inform and connect all those concerned with this issue, because together we're stronger.⁵

The alignment of prevention and intervention could be a useful tool in Australia and fill current gaps in our trends. However, it became clear through interviews and close examination of the issues at the coalface that this goal of alignment was difficult to achieve. What they seek to do and what they actually do is often quite different.

3.2.2 Funding

In California, homelessness is viewed, treated and funded as a separate issue, not linked to FV. The intersection between homelessness and FV is recognised by the Partnership, but generally the links between the two are not being drawn and working relationships between the two sectors are not always good. In a similar way, in Australia homelessness, as a result of FV, is often the presenting issue and dealt with as the primary one. However, many services in Australia inadvertently work with FV under the funding model for homelessness. This can prevent a targeted approach and recognition of the primary issue.

Most services in California including the partnership receive funding through human services and through judicial funding, however, as one interviewee commented

It is never adequate, but we try to protect it, sometimes to the detriment of it. We tick the boxes so that we reach their requests but for fear of disrupting the relationships with funders, we do not guide them towards the reality of what is needed.

This view was consistent in all jurisdictions.

3.2.3 The importance of training

In California, FV programs are required to meet particular government specifications and include core competencies. This coherent approach promotes cohesion in service delivery across the state. Similarly, NGOs must also meet a specified curriculum and work through competencies in order to provide service to clients experiencing FV.

Under the AEquitas training program, participants are grouped and given scenarios such as an actual police report and are asked to deliver justice. A prosecutor works with each group, with the aim to ensure that each group, multi-disciplined with their

⁵ <http://www.cpeFV.org/who-we-are>

own set of skills, restrictions, and focus, gather as much evidence as possible. As they ask for the correct pieces of evidence they are given more information.

The way in which victim behavior is misunderstood has played a part in the way that justice is served. A victim who continues contact with their abusive partner is often seen as inviting the abuse, and begs the age old question of why did she stay? AEquitas works with police, judges, and district attorneys to unpack victim behavior so that cases do not get dropped due to a lack of victim engagement in the judicial process.

The AEquitas training approach has resulted from legal changes. One of these changes is to mandate that prosecutors meet with victims. They are required to make calls and show that they have tried to contact them by mailing letters, emails etc. This helps to prevent a no-show victim. Trained prosecutors become aware that the victim may be afraid, often pressured by the defense team and her perpetrator and they try and alleviate those fears and obstacles. The victim has frequently been subject to the offender exercising power and control making her or him quite dependent. The program seeks to replace dependency with other supports. Intimidation can increase after the perpetrator is arrested which can lead to less commitment to the legal process. The victim is informed immediately of what she can expect and encouraged and supported to appear in court to give evidence.

District Attorneys are required to show evidence that they attempted to contact the victim a minimum of three times if they disengage from the process. All victims have access to a judicially appointed case manager who can assist them in the process of the hearing.

On average, each year 85 new attorneys need to be hired to retain numbers at 250. The retention issues are highlighted in the decline demonstrated in terms of ongoing employment and work conditions, including a 50% reduction in wages from 100k ten years ago to 50k now. In order to address these issues, it was recognised that a training resource needed to be developed.

The move towards specialised trained units has seen an increase in the level of understanding from the District Attorney's (DA) perspective. Specialised police, courts, and DAs allow for a greater empathy, but these units are not employed in every case, and in those that are, not every sector involved has had specialised training. The police may have had the training, but the court not, so the matter may be handled perfectly until it goes court at which point it falls over. Support services may not be in place after the matter has been heard. As one interviewee commented,

There are so many different points in the journey for justice where the process can go badly.

3.2.4 Delta Focus Project

The Delta Focus Project was an example of an innovative, holistic program. The grantees support FV prevention at the national, state and local levels through strategies that address the structural determinants of health at the outer layers, societal and community, of the social-ecological model. This means, that in addition to

addressing individual and relationship factors associated with FV outcomes, grantees support work to change the environments and conditions in which people live, work and play.

It recognises that to do this, economic and social policies as well as processes and norms that shape the health of individuals and communities must be addressed. This may involve strategies that integrate issues related to education, employment, reducing gender bias, and more.⁶

One dimension of the program was using education in schools to improve awareness about FV, ensuring that this education and supporting policies became embedded in the culture of the school. The school had a focus on healthy relationships, and all staff including the football coach and the bus driver were trained in reinforcement.

3.2.5 Specialised FV Police.

There are specialised FV police in California. These law enforcement officers are trained to look for the signs of FV, such as intimidation and other injuries not visible on the body. However, the first responder does not always come from the FV unit, and other non-trained officers whilst mandated to call the FV unit often do not, or cannot wait for their arrival before taking action.

FV protocols in policing are developed with FV specialists and advances include:

- Emergency protective orders
- Lock out or eviction powers given to police
- Mandated reporting
- Removal of weapons
- A licence plate for FV which can be purchased with all money raised going to support groups.

3.2.6 Protection Orders

Protection orders are often viewed in Australia as ‘toothless’. Many breaches of these orders are not followed up and too often the conditions are breached. In San Francisco, protection orders are rigorously enforced with a criminal charge and the potential for one year in jail for those who breach the order. This charge of breaching is often prosecuted because there is then no need for a victim to testify and there is often more substantial evidence than the original crime.

Police awareness and training helps to minimise the impacts of the judicial system. Even with the introduction of training and a greater awareness amongst professionals in relation to the dynamics of FV, it was conceded that the criminal justice system sometimes fails the victim.

3.2.7 Mandatory reporting

⁶ <http://www.cdc.gov/violenceprevention/deltafocus/>

Medical professionals are mandated to report FV, much like our child protection system in Australia. One of the unforeseen issues with this strategy, however, is that sometimes a victim will fear the consequences of reporting and plead for the practitioner to overlook the report.

3.2.8 Collection of Data

State-wide data collection started in 1984 when legislation was passed ensuring that police keep statistics on how many FV calls they receive and weapons used in those incidents. This information is forwarded every month to the state attorney. Other statistics are collected every year with an annual snap shot through agencies who are asked on one random day per year to report in that 24 hours how many calls from victims they received and how many they had to turn away. This is meaningful data in the quest to secure a better evidence base from which to work.

The confidentiality of data generated significant discussions 20 years ago, with the need to protect sensitive information especially across sectors. There now seems to be recognition that privacy in this arena can prevent progress and many will support the idea that FV occurs behind closed doors and should be kept there. A similar cultural shift may need to occur in Australia as we have yet to develop a national data base as organisations tend to keep data confidential to protect the client. This may contribute to a silo effect for the victim, much like having the responsibility to decide if to prosecute their perpetrator.

However, some concerns have been raised by front line staff that lessons from the past may not be as valued. Those that have been working in this area for many years have collective knowledge and expertise that are danger of being lost unless quite specific data collection is undertaken to include this huge repository of experience.

3.2.9 Tribal Courts

An issue that I was unable to follow up in detail related to FV in tribal communities in the US. With 577 individual tribal groups, each having their own tribal-specific policies it was well beyond the scope of my research to examine the FV issues involved. The Tribal Courts that have been established, vary significantly in the ways they approach all legal matters, including FV, and funding usually is provided by the individual tribes.

Funding for the courts is usually provided by the individual tribes. Tribal Courts have jurisdiction over non-tribal members if a crime takes place on their land and they are empowered to sentence those found guilty for terms up to one year in prison.

With the November 2016 release of the Productivity Commission Report, *Overcoming Indigenous Disadvantage*⁷ it is clear that the issue of FV in Australian Indigenous communities needs to be addressed. Certainly, it is one area where detailed research could be conducted in order to better address FV in Indigenous communities in Australia.

⁷ Productivity Commission (2016) *Overcoming Indigenous Disadvantage*, at <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage>

4. New York City (NYC)

4.1 Contacts in NYC

Judge Tandra L. Dawson invited me to sit in the Integrated Domestic Violence Court she has presided over for more than ten years. Prior to and following matters we discussed a number of FV issues in her chambers.

I also visited the Center for Court Innovations, which studies problems within communities and within government systems. It is committed to working towards public trust in justice, reducing recidivism and strengthening the legitimacy of the police. The Center focuses on three aspects, research, operating programs and providing expert assistance. It has a strong commitment to data and analysis and uses this information to inform the development of demonstration projects. Researchers from the Center also conduct process and impact evaluations to document what works and what does not in justice reform.

I met with NYC representatives of AEquitas and continued the discussions I had in California. In particular, I spoke with the CEO, Jennifer Long.

4.2 Key Policy Issues

New York demonstrated advances in the way in which FV is managed, through research and integrated FV courts. Australian courts are consistently full and the pursuit of justice can be challenging for victims. The use of cutting edge research to inform the development and continuing success of the court and other areas of practice, make New York an excellent model for Australia to consider.

4.2.1 Resources made available for research and problem solving (The Center for Court Innovations)

The Center provides hands-on, expert assistance to reformers around the world, including judges, attorneys, justice officials, community organisations, and others. Experts are available to help justice reformers plan and implement new policies, practices, and technologies, advising on proven approaches that have been tested elsewhere and encouraging experimentation.

Founded as a public/private partnership between the New York State Unified Court System and the Fund for the City of New York, the Center creates operating programs to test new ideas and solve problems. The Center's projects include community-based violence prevention projects, alternatives to incarceration, re-entry initiatives, court-based programs that seek to promote positive individual and family change, and many others.

The Center is multi-disciplined and included lawyers, social workers, academics, counselors, educators and more. Partnerships with the court system ensure that research is fed through to the courts so that innovations can be put into practice. The Center can provide advocates to those pursuing justice, educators for students training to be practitioners, and cutting edge research to those in the judiciary in order to support reform.

This was one of the most exciting findings of my research. The Center is an exemplar of how a public-private partnership can drive meaningful change. It provides a model Australia could follow in developing evidence-based policy development. Generally, the US seems open to trying new approaches and there is forward thinking that drives advances.

4.2.2 Decriminalising FV

In the US, as courts get clogged, there is a growing awareness and discussions about over criminalisation. Issues such as alcohol and drug dependency are only now being decriminalised and highlighted as health problems and removed from adversarial processes in order to free up courts.

There is a recognised risk that FV may also be decriminalised. AEquitas is continuing to work to ensure that FV remains a criminal issue and this broader conversation does not undo the years of attempting to ensure that FV is not viewed or treated as a private matter.

Other issues of risk have been considered in the NYC approach. NYC is drawing lessons internationally in order to improve the measurement of risk in FV situations. They use tools to identify high risk and danger to police and to victims, designed in Canada. However, at the 'coal face' there were some concerns expressed that access to these tools was difficult.

4.2.3 Integrated courts (the Integrated Domestic Violence Court)

The New York Integrated Domestic Violence Court (IFV) Court is a coordinated effort by the Supreme, Criminal, and Family Courts to address the issues faced by families affected by family violence. Under the direction of Judge Tandra L Dawson the IFV has been in operation for the last 10 years. The Court is based upon the concept of one judge presiding over all matters to do with the family, criminal, family and matrimony proceedings.

This model aims to promote efficiency and informed judicial decision making and provides a setting for accountability for those who come before the magistrate. There are several advantages of having one family appear before only one judge. It decreases the number of court appearances for litigants, and streamlines proceedings by eliminating inconsistent and conflicting orders. Additionally, having one judge increases the Court's familiarity with the specific overarching issues of FV and how they intersect in different areas. No one matter is viewed in a vacuum without the context of particular circumstances. Victim support is offered throughout the process and all staff of the IFV, including security, are long-term employees of the court, this familiarity reducing the trauma and stress for victims going through the justice system.

The development of the IFV was in accordance with:

- The response of police and prosecutors
- Adaptation of the court system

- Examination of fundamental premises
- The use of focus groups
- Identification of key court components
- Intensive monitoring
- Staffing
- Coordination
- Judicial monitoring
- Intervention programs for perpetrators
- Probation and parole
- Services for victims
- Building of partnerships
- FV technology
- How to address challenges
- How to utilise the results

Perhaps the most important result after the courts first eight years in operation is that no victim linked to an open case in the FVI has been killed. The successful planning and implementation, using the above key performance indicators, has led to the replication of this court in over 30 different US locations.

5. Vienna

5.1 Contacts

I met with a number of people from the Center for Criminal Prevention in Vienna who work closely with police and government to ensure that tight law reforms are being implemented. Austria does have a reputation for being an exemplar in this field, especially in relation to law reform, however, I found some reluctance in discussing the issues with an outsider. My conversations were, therefore, more limited than I had hoped.

5.2 Key Policy Issues

Vienna has a long history of innovations, the key aspect involving lock out laws and a tough legal stance on repeat offenders. A strong legislative framework underpins this country's approach that is designed among other matters to avoid the issue of homelessness for victims. Given that FV is the leading cause of homelessness for women in Australia, there are lessons for Australia in considering law reforms that protect victims from having to leave their homes.

5.2.1 Using a strong legislative framework (*Prevention Against Violence Act 1997*)

In 1997 the *Prevention Against Violence Act* was introduced in Austria. In preparing the Act, experts representing women's NGOs took part in working groups, as well as members of the police, the courts and feminist lawyers. The Austrian government established inter-ministerial working groups with the clear mandate to develop measures to improve the protection of victims of violence in the family. The Act changed the way FV was viewed in a fundamental way, a victim stayed in their home, while the perpetrator had to leave.

5.2.2 Lock out laws

Following the passage of this Act, a subsequent Act (*Security Police Act 1999 s.38a*) was passed in order to formalise the ban on and expulsion of perpetrators from the home. This was designed to protect the victims and deal with one of the compounding issues that often follows FV, with victims being forced to leave their homes and seek shelter elsewhere.

Eviction and barring order regulations are laid down in section 38a of the *Security Police Act*. The following summary of the Act give the police the power to lock out offenders using nine key components⁸. Full details of the Act are at Appendix 1 of this report.

The police are authorised to evict an endangering person from an apartment or house and its immediate neighbourhood, and to forbid the person from returning to or entering it. Such measures are contingent on the foreseeable risk of the perpetrator

⁸ <http://www.evaw-global-database.unwomen.org/en/countries/europe/austria/1999/security-police-act-1999>

committing a dangerous assault on a person who lives in the dwelling, including an assault on life, health or freedom. For example, previous dangerous assaults give rise to the assumption that further assaults are imminent.

The protection extends to all persons living in the dwelling irrespective of kinship and the ownership situation (wife, live-in partner, children, relatives, but also subtenant, co-inhabitants etc.). It is also possible to evict and impose a barring order on any person who is potentially dangerous such as the owner of the dwelling as well as an ex-boyfriend who might 'appear' in the dwelling. In such cases, the police will confiscate the endangering person's keys to the dwelling and request an address for the delivery of judicial writs.

The barring order extends to the dwelling and its immediate surroundings (such as the stairway, drive, garden, underground car park). The police will define the protection zone in such a way as to ensure effective protection, and will inform the endangering person about the details.

The barring order is issued for a period of two weeks, with the police supervising compliance with the order within the first three days. If within these two weeks an application for an interim injunction is filed according to section 382b, the validity of the barring order is extended to four weeks. This gives the court time to decide on the application and ensures constant protection for the endangered person.

For the validity period of the barring order, the endangering person is prohibited from entering the dwelling and the defined protection zone, *not even with the permission of the endangered person*. In the event of non-compliance, the endangering person will be fined up to 360 euro for committing a regulatory offence. If the person threatens or even injures the endangered person, he or she will be prosecuted under criminal law.

Since the inception of the Act, I was informed that family violence has decreased significantly, despite the reluctance at first to adopt the 'lock out' laws. If emergency services are called, or attend for other matters and reasonably conclude there to be an issue of family violence, they can impose a two-week lock out for the offender. The victim has no input into this decision, thereby removing the right to refuse to proceed.

During the two-week eviction period, the victim is contacted by social work services, police investigators and will be offered the level of support needed to leave the relationship permanently. This includes access to money and long-term supported accommodation. The perpetrator is unable to make contact with the victim during this time and breaches of this arrangement can result in a custodial sentence. There are also harsh sanctions for the victim if she or he breaches the orders during this time.

The Centre for Criminal Prevention collates statistics, provides information to police and services and works closely with government to ensure the administration of the Act.

6. Emerging Themes and Transferability to the Australian Context

The complexities of FV present challenges in all the jurisdictions that I visited. In the US, the issue of gun violence is an added complication and there was a general feeling that innovation is held back as a result of the First Amendment and the prevalence of guns in all communities.

All cities expressed the way in which government funding does not stretch far enough, and described parameters that are often restrictive of innovation.

Many discussed the changes in the FV movement and the intersection with feminism creating changes as we live in a different context with different evaluation tools compared with when the movement was in its inception. The wave of reform that accompanied the feminist movement allowed greater opportunities for women. This is not always recognised by young women today as these goals were not fought for during their lifetime.

There is general recognition that men can make valuable contributions to the movement. There is also a recognition that FV covers all genders and the LGBTI community.

The issue of cohesion was forefront in discussions with advocates. Judges, members of the police and trainers all spoke of the need to ensure that a multi-disciplined approach is accompanied by a cohesive model. The idea of collaboration is not new in this discord, but the FV court is a practical example of the way in which differing sections of the law must work together, with the judge providing an overarching view that brings all the components together in a consistent way.

In America as in Australia, historical turning points were also discussed as a way to move public perception and legislation forward as these incidents served as a catalyst for change. In Australia, Rosie Battie was awarded Australian of the Year after her son was murdered in a FV incident. Her tenure in that role highlighted the issue and its endemic nature in Australia and has seen the allocation of more FV funding and an increase in public awareness. These tragic incidents frequently are forming the way in which public policy is made and provides an impetus for governments to take action. At the same time, we need to be careful that the tragedies do not lead to knee-jerk responses, especially in funding initiatives which have not been carefully considered and evidence-based.

All places I visited discussed issues with evidence-based policy programs. Some discussed the value that research is given in the sector, some highlighted the difficulty in measuring this type of crime, and others raised concerns about the difficulties in measuring change when we do not have the same measures we did 20 years ago.

If we can improve the way in which we invest in research, not only financially but in terms of its value, we may be able to shift away from responding to tragedy and move towards evidence based approaches.

Research, such as that conducted through this Fellowship, and other international studies which examine best practice in countries that are leading the way with

violence prevention, intervention, and treatment, need to be analysed for their transferability to the Australian context.

All innovation has challenges. The way in which change is implemented may play a part in the way the legislative amendments are followed. In places that had exceptional laws such as Austria, the next step was to ensure that the laws were followed and become embedded into the working landscape of all practitioners in the field.

Recommendations

1. Policy Informed by Evidence

The way in which services approach FV should be based on evidence of demonstrated best practice. Trauma informed care, predominant in Australia, needs to be examined for its effectiveness and compared with other evidence-based approaches. Value needs to be placed on research in this area and findings taking into account rather than funding well-intentioned but knee-jerk responses to particular events which are often proposed without a strong research and evidence base.

2. Establish Specialised FV Courts

We need to establish specialist FV courts, drawing on the successful experience of other jurisdictions, especially in New York City. The ACT, because of its size, would be a prime location to trial this, with evaluation inbuilt and ongoing.

3. Training

An evidence-base needs to inform training of those in the judiciary and allied professions and to services working with victims, to minimise the impact of the court system on victims. This training should equip participants to better understand victim behavior and better prepare victims to understand their own circumstances.

4. Domestic Violence Orders

Domestic Violence Orders (DVOs) should be meaningful for both the victim and the perpetrator. Breaches should be considered a serious offence and accountability be legally enforced.

5. National Data and Research

A national data system needs to be developed to build an evidence-base for policy development. It should research new programs, collect statistics, gather evaluations on new programs, to inform legislative changes and innovations in this area.

6. Lessons from Past Experience

The FV movement needs to learn lessons from the pioneers who began in this field many of whom are now nearing retirement age. This collective knowledge needs to be harnessed and not lost and be evaluated in the context of present policy discussions.

7. Inclusion

There should be acknowledgement and inclusion of the LGBTI community in policy formation. The voices of men and allies should be noted and valued.

8. Separation from Homelessness

FV needs to be separated from homelessness and have independent funding sources. Homelessness needs to be considered as a byproduct of FV, not the presenting issue.

9. Legislative Implementation

We must learn from successes internationally, and build them into the Australian context. Legislative reform mandates change, but ensuring that the law is followed is the next step and should be factored in at implementation stages.

Unless change is mandated, FV policy will not move forward at the current rate. Mandated change, on its own, does not guarantee that new legislation will be appropriately adhered to and implemented, so that accountability systems need to be in place to support legislative change.

10. Cohesion and Collaboration

Without cohesion and collaboration, between and within sectors, innovation in FV policy will be piecemeal and inconsistent and be limited in reaching the full potential of change.

Appendix 1

Section 38a of the Security Police Act 1999 (Austria)

1. If, based on certain facts, in particular because of a previous dangerous assault, it is to be assumed that a dangerous assault on life, health or freedom is imminent, the members of the police force are authorised to prohibit a person who poses a danger (endangerer) from entering a dwelling where an endangered person lives as well as its immediate surroundings; and, if the endangered person is under the age of 14, furthermore from entering

- a) a school that the endangered person under the age of 14 attends to fulfil the requirements of compulsory education as provided in the Compulsory Education Act, Federal Law Gazette No. 76/1985, or
- b) an institutional childcare facility he/she attends, or
- c) a day nursery he/she attends including an area within a radius of fifty meters.

2. When the ban from home is placed, the members of the police force have to:

- inform the endangerer of the premises to which the ban applies; the scope of the ban under para 1 subpara 1 shall be laid down in accordance with the requirements of an effective preventive protection;
- expel him in case he refuses to leave the area included in the ban under para 1,
- remove all keys to the dwelling under para 1 subpara 1 from the endangerer he has in his possession,
- give him the opportunity to take with him urgently required personal items and inform him of options to find accommodation.

In the event of a ban to return to his own dwelling, it is to be ensured in particular that this interference with the private life of the person affected respects proportionality (section 29). Provided that it becomes necessary that the person affected pays a visit to the dwelling which he has been prohibited from entering, he may only do so in the presence of a member of the police force.

3. The members of the police force are obliged to request the endangerer to disclose a delivery address for the purpose of service of the lifting of the ban from home or of an restraining order under sections 382b and 382e of the Enforcement Act (EO). If he fails to do so, the service of such documents can be effected by deposit without a prior service attempt until such a disclosure is made; this shall be pointed out to the endangerer.

4. The members of the police force are further obliged to inform

- the endangered person about the possibility of obtaining a restraining order under sections 382b and 382e EO and about appropriate victim protection facilities (section 25 para 3) and,
- if persons under the age of 14 are endangered, immediately

- a. the locally responsible child and youth welfare office pursuant to section 37 of the Federal Act on Child and Youth Services 2013 (B-KJHG 2013), Federal Law Gazette I No. 69, and
- b. the head of an institution pursuant to para 1 subpara 2 for which the ban has been imposed.

5. When documenting the placing of a ban from home, not only the circumstances relevant for the intervention are to be considered but also those that may be of importance for a procedure under sections 382b and 382e EO or for the endangerment assessment pursuant to section 22 B-KJHG 2013 by the responsible child and youth welfare office.

6. The security authority shall immediately be informed of the placing of a ban from home and review it within 48 hours. If the security authority establishes that the ban from home should not have been placed, it shall lift it immediately vis-à-vis the endangerer; the endangered person shall immediately be informed that the ban from home will be lifted; if possible, the ban from home shall be lifted and the endangered person shall be informed of the lifting verbally or in writing by personal delivery. The keys removed under para 2 shall be handed back to the endangerer after the lifting of the ban from home; in case of the filing of an application to impose a restraining order under sections 382b and 382e EO, they shall be deposited in the ordinary court.

7. Insofar as a ban from home is placed also for the local jurisdiction of another security authority (sections 8 and 9), it shall immediately be notified. The enforcement that goes beyond the review of the ban from home (para 6) rests with the security authority having local jurisdiction.

8. Members of the police force shall check the compliance of the ban from home at least once during the first three days of its validity. The ban from home shall end two weeks after having been placed. If the ordinary court informs the security authority of the filing of an application to issue a restraining order under sections 382b and 382e EO within this period, the ban from home shall be extended until the date of service of the ordinary court's decision to the opponent, but no later than four weeks from the date of the placing of the ban. In case of a withdrawal of the application, the ban from home shall end two weeks after having been placed, in case of a withdrawal of the application after the extension of the ban from home has taken effect, it shall end as soon as the security authority learns of the withdrawal by notification received from the ordinary court.

9. The ordinary court shall immediately notify the security authority having local jurisdiction of the filing of an application to issue a restraining order under sections 382b and 382e EO and the extent of the application as well as of any withdrawal.