

THE HON T F BATHURST
CHIEF JUSTICE OF NEW SOUTH WALES
JUDICIAL RESPONSES TO DOMESTIC VIOLENCE
DOMESTIC VIOLENCE PANEL
ROYAL AUSTRALASIAN COLLEGE OF SURGEONS
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1. Good evening. It is a pleasure to be here amongst such highly esteemed company to discuss an extremely important and pervasive issue. Domestic violence is a particularly heinous crime that has been estimated to affect over 100,000 Australians in some form. Despite the high numbers of victims of domestic violence, its nature and scale and its dreadful impact, it is still one of the most common and least reported crimes.
2. Today I will provide a few brief remarks on the strategies in place and future initiatives in regard to judicial responses to domestic violence.
3. It was only in 1983, 10 years after I started practicing as a solicitor, that New South Wales introduced legal reforms to provide for separate definitions of domestic violence offences, the provision of court protection orders, and encouraging police to lay charges for domestic violence offences. Since then, there have been many legal reforms aimed at modernising and strengthening the law with the aim of providing long-term security for victims of domestic violence.¹
4. Given the number of victims and perpetrators of domestic violence who now come into contact with the courts, it is clear that the courts, and judges in particular, have the potential to have a large impact on the protection of victims and their recovery. As such, there is a clear need for judicial training

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¹ *Crimes (Domestic Violence) Amendment Act 1983 (NSW)*.

and education on domestic violence. Indeed, the Australian Law Reform and New South Wales Law Reform Commissions have recommended that magistrates and other professionals coming into contact with the family court and criminal legal systems receive education to provide a greater understanding of how and when domestic violence offences should be prosecuted, how to administer protection orders and risk assessment procedures.²

5. In Australia, there are a number of initiatives in place for judicial education on domestic and family violence. For example, the *AVERT Family Violence* training was developed in consultation with the Family Court, legal practitioners, Indigenous and culturally and linguistically diverse leaders, and social work educators. The training program is available for both judicial officers and others working in the family law system such as counsellors, court staff and lawyers. The goal of the training is to provide an understanding of domestic violence, including its impacts and prevention strategies. The training is on topics such as engaging perpetrators of domestic violence, screening, risk assessment and safety planning. The training also encourages a multidisciplinary approach; educating on the role of other professionals such as social workers and encouraging collaboration between different professionals.³
6. There are also other professional development programs for judicial officers and other court professionals on topics related to domestic violence such as risk assessments, child protection, counselling and mediation services. Further, the Local Court Bench Book, published by the Judicial Commission of New South Wales contains sections on apprehended domestic violence

² Australian Law Reform Commission and New South Wales Law Reform Commission, 'Family Violence – A National Legal Response, Final Report' (ALRC Report No 114, NSWLRC Report No 128, October 2010) available at http://www.alrc.gov.au/sites/default/files/pdfs/publications/ALRC114_WholeReport.pdf.

³ AVERT Family Violence, Collaborative Responses in the Family Law System, 'Avert Family Violence Facilitator's Manual' (Commonwealth of Australia, 2014) available at http://www.avertfamilyviolence.com.au/wp-content/uploads/sites/4/2013/06/AVERT_Facilitators_Manual_for_web2014.pdf.

orders⁴ and evidence by domestic violence complainants.⁵ The Commission's 'Equality Before the Law' bench book also contains a large section on domestic violence and sexual assault, including directions to judges to "develop an understanding of the nature of family and domestic violence and its impact on women" and not to "repeat in court any of the unfounded assumptions and myths about domestic violence". The section also contains information regarding domestic violence and strategies for handling cases that may involve domestic violence.⁶

7. While these measures are important, there are also clearly many ways in which the court system can improve and provide better support to victims and reduce the risk of domestic violence. Some examples of suggested strategies include:

- Evaluating and improving pre-existing education and training programs;
- Developing guidelines on domestic violence which prioritise women's safety, make the court hospitable to victims of domestic violence and focus on the needs of children; and
- Developing specialised systems within existing court systems so that victims can be better connected with the police, prosecutors and other support persons.

⁴ Judicial Commission of NSW, 'Local Court Bench Book: Apprehended Violence Orders' (March 2016) available at http://www.judcom.nsw.gov.au/publications/benchbks/local/apprehended_violence_orders.html.

⁵ Judicial Commission of NSW, 'Local Court Bench Book: Evidence by Domestic Violence Complainants' (March 2016) available at http://www.judcom.nsw.gov.au/publications/benchbks/local/evidence_by_domestic_violence_complainants.html.

⁶ Judicial Commission of NSW, 'Equality Before the Law Bench Book' (2006) available at <http://www.judcom.nsw.gov.au/publications/benchbks/equality/benchbook.pdf>.

8. The recently released final report by the Royal Commission into Domestic Violence in Victoria may also provide guidance for us in New South Wales to reform the judiciary's response to domestic violence.⁷
9. Ultimately, there are a number of ways in which the judiciary can support victims of domestic violence and play a part in reducing domestic violence. It is important for us to constantly evaluate and improve existing initiatives so that the legal system is able to provide a suitable response to this pervasive crime.

⁷ See Royal Commission into Family Violence, 'Summary and Recommendations' (Victorian Government Printer, March 2016) available at http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/RCFV_Full_Report_Interactive.pdf.