

Report for the Royal Commission into
Institutional Responses to Child Sexual Abuse

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SPECIALIST
PROSECUTION UNITS
AND COURTS: A REVIEW
OF THE LITERATURE

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Specialist prosecution units and courts: a review of the literature

Report for the Royal Commission into Institutional Responses to
Child Sexual Abuse

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Preface

On Friday, 11 January 2013, the Governor-General appointed a six-member Royal Commission to inquire into how institutions with a responsibility for children have managed and responded to allegations and instances of child sexual abuse.

The Royal Commission is tasked with investigating where systems have failed to protect children, and making recommendations on how to improve laws, policies and practices to prevent and better respond to child sexual abuse in institutions.

The Royal Commission has developed a comprehensive research program to support its work and to inform its findings and recommendations. The program focuses on eight themes:

1. Why does child sexual abuse occur in institutions?
2. How can child sexual abuse in institutions be prevented?
3. How can child sexual abuse be better identified?
4. How should institutions respond where child sexual abuse has occurred?
5. How should government and statutory authorities respond?
6. What are the treatment and support needs of victims/survivors and their families?
7. What is the history of particular institutions of interest?
8. How do we ensure the Royal Commission has a positive impact?

This research report falls within theme 5.

The research program means the Royal Commission can:

- obtain relevant background information
- fill key evidence gaps
- explore what is known and what works
- develop recommendations that are informed by evidence, can be implemented and respond to contemporary issues.

For more on this program, please visit www.childabuseroyalcommission.gov.au/research.

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Executive summary

The Royal Commission into Institutional Responses to Child Sexual Abuse commissioned this literature review to discern the potential benefits of using specialist prosecution units and courts to deal with child sexual abuse cases. Given the paucity of literature on specialist prosecution units or courts for sex offences, this review considers what can be learned about the advantages and disadvantages of specialist courts generally, and from family violence courts in particular.

Appropriate search terms were used to conduct a detailed examination of more than 200 legal publications. While the notion of a specialist prosecution unit is relatively straightforward, it is much more difficult to define a specialist court. Some jurisdictions identify courts with specialist labels when in reality the court is merely a specialist docket within a generalist court. Many specialist courts do not have specialist judges. Rather, judges work in a specialist jurisdiction for a few weeks or months before moving to other duties. In addition, it is possible to have de facto specialisation within generalist courts. Evaluations of specialist courts need to be read in this context.

According to the literature on specialisation generally, specialist prosecution units and courts bring the generic benefits of specialisation, including efficiency gains from prosecutors and judges gaining expertise by concentrating on a particular subject matter. Specialists can usually work faster than generalists because they are more familiar with the tasks. Specialisation may have benefits not only for the specialist jurisdiction but also for the generalist courts because general criminal law judges and prosecutors will not need to keep up with, or receive training in, aspects of the criminal justice system or the laws of evidence relating to the work of the specialist court. Evidence shows efficiency gains for courts of summary jurisdiction that combine specialisation with effective case management in dockets with high levels of guilty pleas. ‘Problem-solving courts’ are examples of specialist courts of summary jurisdiction. These are courts, such as drug courts, that aim to deal with a particular social problem by focusing on strategies to address the offender’s criminal tendencies and to reduce recidivism. Typically, they require a guilty plea as a precondition for the court dealing with them.

Another generic advantage of specialisation is seen to be improved quality of decision-making. Experts are likely to make more knowledge-informed decisions than generalists, and are less likely to make significant errors of judgment. However, research does not support the claim that specialist judges are likely to be more free from what psychologists term ‘cognitive illusions’ than generalist judges. Other claimed advantages are greater uniformity in decision-making and better case management.

Specialisation brings the risks of inefficient management of judicial resources and difficulty attracting the most capable judges and prosecutors because of the problem of burnout, the narrowness of the work and the lower prestige of some specialist courts. Judicial and prosecuting staff are also said to be at risk of losing objectivity, although the evidence to support this is lacking. Another issue is the level of centralisation that may be needed for a specialist court to function and therefore the travel time for witnesses to reach the court location. Other risks are particular to problem-solving courts.

Summary of research findings

The following summarises what is known about specialist prosecution/court responses to child sexual abuse and to other kinds of sexual assault or family violence.

Question 1: What is known about the existence and efficacy of specialist prosecution/court responses to child sexual abuse?

a) Court responses

The literature review has identified no specialist court that deals only in sex offences against children. A few courts deal with all kinds of sex offences.

The main evidence about the efficacy of specialist court approaches to sex offences comes from South Africa. New York also has specialist Sex Offense Courts, which are also the model for a court set up in Pittsburgh, Pennsylvania. The New York Sex Offense Courts focus almost entirely on sentencing and post-conviction management, particularly for offenders on probation and for registered sex offenders. The Winnipeg Family Violence Court also has some experience of child sexual abuse prosecutions within a broader portfolio of responsibilities as a specialist court.

No published studies have evaluated the benefits of the Sex Offense Courts in New York other than in relation to the initial experience of the Oswego County Court, which had no reported recidivists in its first year. The evidence for the efficacy of the South African Sexual Offences Courts is strong, taking into account the complexities of its multiracial and multicultural society and the scale of its social needs. Evaluations over the years have identified many problems and challenges, not least in following the ambitious blueprint set out for these courts; but overall the evaluations have been positive. While an increase in conviction rates cannot necessarily be regarded as an indicator of success in the administration of justice, the Sexual Offences Courts have clearly made a difference to conviction rates, especially where well supported by services for victims of sexual assault – in particular, the Thuthuzela Care Centres, which conduct initial medical examinations and provide other support to victims in the immediate aftermath of sexual assault.

South Africa has also had the unique experience of largely dismantling its specialist system as a result of a change in government views and priorities. In 2013, the problems that may be attributed to ending specialisation led a Ministerial Taskforce, after a careful review of the evidence, to strongly recommend re-establishing the Sexual Offences Courts. The government accepted the recommendation, and the courts are being re-established.

b) Specialist prosecution units

Specialist prosecution units are a feature of specialist sex offence courts and may also exist independently of such courts. The experience of such specialisation has generally been positive. In particular, the Specialist Sex Offences Unit in Victoria has been positively evaluated and is well supported by professional and client stakeholders.

One comparative study in the US did not find benefits from specialisation. However, it focused on whether specialisation affected the exercise of prosecutorial discretion in terms of whether to reject cases for prosecution, and the reasons for such rejection. The research found that

prosecutors in both jurisdictions chose to prosecute only cases where they were very confident of achieving a conviction. In particular, prosecutors were less likely to take cases to trial where there were victim characteristics, such as risk-taking, that might reduce the willingness of a jury to convict. That research did not explore other advantages of specialisation, such as levels of victim satisfaction with how they were treated.

A persistent theme in all the studies, whether of sexual offences courts, family violence courts or other specialist jurisdictions, is the benefits gained from having one prosecutorial team involved from the inception of the case, with enhanced benefits if the prosecutor works closely with the investigators to build the case from early in the investigation.

Question 2: What is known about the existence and efficacy of specialist prosecution/court responses to sexual/family or other forms of personal violence?

The summary in relation to sex offences is given above. It is difficult to generalise about family violence courts because of the different models and purposes for which they were established. The preponderance of the evidence shows it is more efficient to use a specialist team of prosecutors and court personnel for these matters. The speed with which matters come to trial reduces complainant attrition. In addition, there is some evidence that specialist judicial officers may adopt different sentencing patterns than non-specialists in courts of summary jurisdiction. However, the evaluation of a specialist felony family violence court in New York dealing with the most serious violence offences within a family context did not have different sentencing patterns from courts of general jurisdiction.

Evidence about whether specialist courts reduce recidivism is mixed, but family violence courts established mainly to have a role in managing offenders after conviction do seem to bring some benefits. Judicial officers' active monitoring of compliance with probation conditions and in dealing swiftly with non-compliance are seen as important for reducing recidivism. Behavioural change programs are also beneficial, although the Western Australian experience indicates that specialist courts may not be more effective than generalist courts in reducing recidivism through referring offenders to such programs. Western Australia recently discontinued its family violence courts after it was found that offenders processed in Magistrates' Courts were significantly less likely to re-offend than if processed through specialist courts.

Overall, the evaluations indicate that family violence courts improve the victims' experience of the justice system; however, an evaluation of a specialist family court in Milwaukee shows that a pro-arrest and pro-punishment strategy that is insensitive to victims' wishes concerning prosecution, may actually reduce victim satisfaction with the process (Davis, Smith & Rabbitt, 2001).

In summary, the benefits of having a specialist family violence court depend on the extent to which that court is part of a larger multifaceted and coordinated response to family violence involving, for example, dedicated police and prosecutorial teams, victim support services, well-trained probation officers and effective behavioural change programs (for example, Gover, MacDonald & Alpert, 2003; Ursel & Hagyard, 2008). All of these could be features of a specialist family violence response within a generalist court system operating a specialist docket. The 'value-add' that a specialist court provides, beyond having these dedicated professionals and support services, is twofold. First, a specialist court that is more than just a docket on a particular day has dedicated

resources allowing for speedier resolution of cases and swift return of offenders to court for violation of probation requirements or restraining orders. Second, specialist judicial officers with particular knowledge of the dynamics of family violence add value if, in their role of sentencing and post-conviction monitoring, they hold offenders accountable for their actions and ensure they engage with any change management program in which they agree to participate.

Having a court that only deals with family violence, sufficient to justify employing staff for that work only, and judges with specialist training in family violence who spend a substantial part of the working week dealing with such matters, requires some centralisation of court resources. That is, a choice may need to be made between the benefits of centralisation and those of localisation. In large urban areas, concentrating resources in one court and one location to deal with a particular category of crime is likely to be more feasible than in smaller cities or towns.

Discussion: The advantages and disadvantages of specialisation

The report concludes with a discussion of the advantages and disadvantages of expanding specialist prosecution units and establishing a specialist child sexual offences court. The case for specialist prosecution units is strong, particularly if, as far as possible, one prosecutorial team can take the case from inception to conclusion. A specialist court would be of little value unless it were part of a suite of reforms that aim to improve the quality of justice. Specialist courts that 'work' do so because they have a range of specialist features, services and personnel.

Determining whether a specialist court is justified depends on the purpose or purposes for which specialisation is seen as beneficial. Four purposes are discussed: assisting the prosecution to present its case most effectively; improving the quality of judicial decision-making; reducing case attrition due to victim reluctance to testify; and improving post-conviction dealings with offenders with the aim of reducing recidivism. Specialisation in this field brings particular risks, but the risks can be managed if a specialist court is seen as desirable.

Specialist prosecution units and courts: A review of the literature

I. Introduction

The Royal Commission into Institutional Responses to Child Sexual Abuse commissioned this literature review to ascertain what we can know about the efficacy of specialist prosecution units and specialised courts in the prosecution of child sexual abuse. While the terms of reference for the Royal Commission are limited to child sexual abuse in institutional settings, consideration of issues about reform of the criminal justice system cannot readily be confined to such contexts. Given the paucity of literature on specialist prosecution units or courts in relation just to sex offences, this review considers what can be learned about the advantages and disadvantages of specialist courts generally, and from family violence courts in particular. Family violence courts were selected for examination as many such courts sit across the English-speaking world. They deal with issues of personal violence or abuse in the context of relationships that have some similar characteristics to the relationship between victim and perpetrator in many child sexual abuse cases.

Improving the efficacy of prosecution of child sexual abuse is an important part of any child protection strategy. Convictions for child sexual abuse have consequences beyond the punishment of the offender and a deterrent effect in the community. Criminal record checks provide a basis for preventive measures through Working with Children Checks (Royal Commission, 2015) and other child protection strategies (Myers, 1996; Tewksbury & Connor, 2014).

Despite the importance of the criminal justice system as part of an overall child protection strategy, research in many jurisdictions has shown that only a relatively small minority of cases reported to the police go to court. For example, research conducted by the NSW Bureau of Crime Statistics and Research indicated that only 15 per cent of child sexual 'offence' incidents result in the commencement of criminal proceedings and only about 8 per cent of those incidents result in a conviction (Fitzgerald, 2006).

Even where the alleged offender is identified, relatively few cases lead to conviction. In a South Australian study, Wundersitz (2003) found that of 952 reports examined, 346 (36 per cent) led to the arrest of a suspect. In another 17 per cent of cases, the victim requested no further action (Wundersitz, 2003:3). The 346 sexual offence incident reports did not lead to the arrest of an equivalent number of suspects because in some situations, one person was arrested for several incidents, while in others the same incident led to the arrest of more than one suspect. Taking account of this, 356 'incident apprehensions' were tracked. Wundersitz reported some difficulty in tracking the cases thereafter, but of the cases in which an arrest was made, a quarter apparently didn't proceed further while another 19 per cent were dealt with in the juvenile court jurisdiction (Wundersitz, 2003:4). Of the 200 cases that proceeded to adult court, 43 per cent resulted in at least one guilty finding (although not necessarily in relation to the reported incident); 35 per cent resulted in not guilty outcomes while the remainder had not been finalised (Wundersitz, 2003:6).

In another study of cases in NSW, Parkinson et al. (2002) found that of 117 child sexual abuse cases referred to two Child Protection Units in the late 1980s in which the alleged offender was known, only 45 cases reached trial and 32 cases resulted in a conviction. Interviews with a sub-cohort of 84 of the children and their families indicated that the reasons for not proceeding to trial included that parents wished to protect children, the perpetrator or other family members; the evidence was deemed not strong enough to warrant prosecution; the child was too young; the offender threatened the family; or the child was too distressed to go through the criminal justice process and give evidence.

The paucity of cases that go to court or end up in a conviction is not a problem unique to the prosecution of child sexual abuse. It is, rather, a problem with sexual assault generally. In Victoria, for example, one study showed that fewer than one in six reports to police of rape proceeded to prosecution, while the corresponding figure for incest or sexual penetration of a child was less than one in seven (Victorian Law Reform Commission, 2004:80). The experience of other countries, such as Britain, is similar (Naylor, 2010:663).

It is in this context that the Royal Commission has initiated this research project to review the literature on what can be learned about the benefits or otherwise of specialist courts and prosecution units for cases of sexual assault and family violence. In particular, it focuses on three research questions:

1. What is known about the existence and efficacy of specialist prosecution/court responses to child sexual abuse?
2. What is known about the existence and efficacy of specialist prosecution/court responses to sexual/family or other forms of personal violence?
3. What are the perceived benefits and drawbacks of specialisation?

II. Methodology

Search strategy

The legal literature was searched using the Index to Legal Periodicals and Books and CINCH via INFORMIT, and using two groups of search terms:

1. ("child sexual assault" or "child sexual abuse" or "family violence" or "sexual violence" or "domestic violence" or "sexual assault" or "sexual offence") and ("special* court*" or "special* prosecut*" or "special* juris*")
2. "domestic violence court" or "family violence court" or "sexual offences court"

As many law databases do not include abstracts, titles and excerpts were scanned.

Another four academic databases (HeinOnline, PsycINFO, JSTOR and Scopus) were then scanned, using the above search terms, to identify additional relevant papers.

Inclusion and exclusion criteria

Inclusion

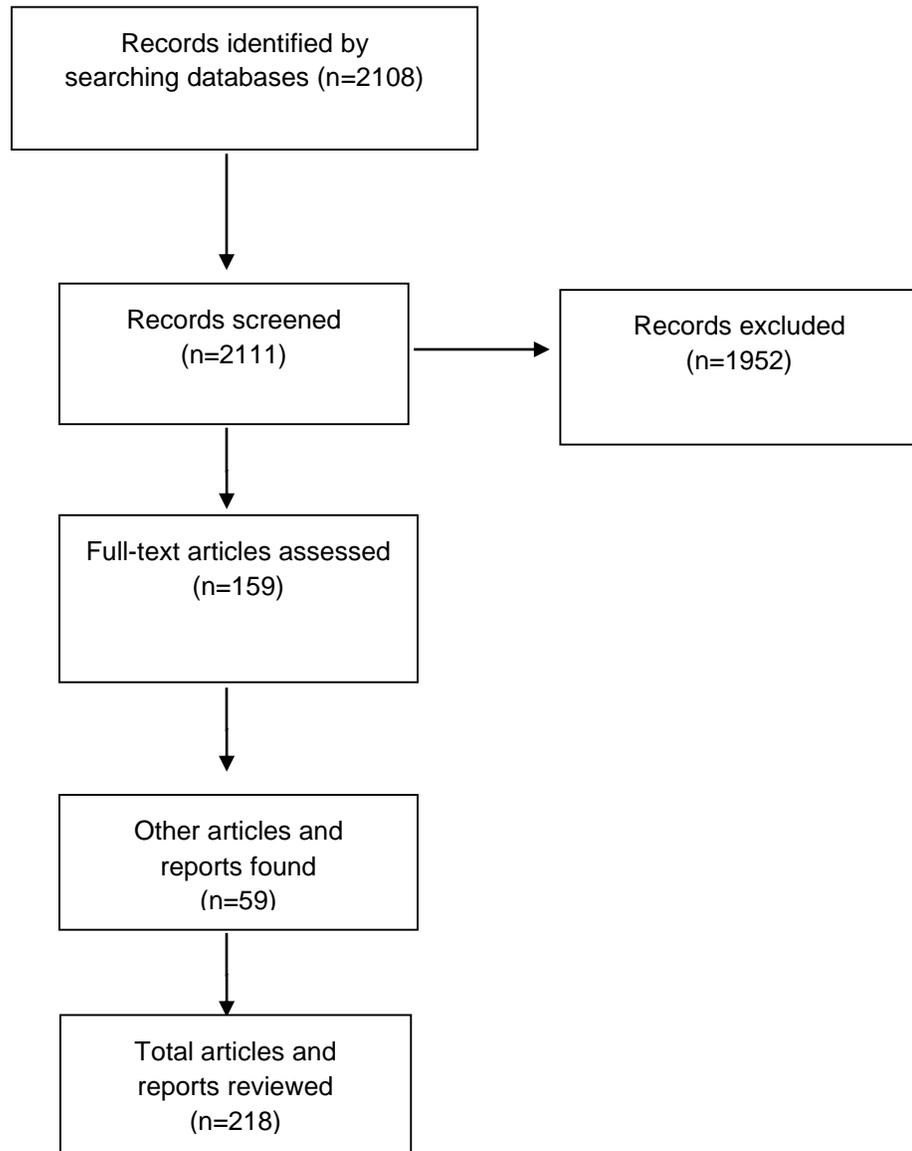
- literature that focuses on specialist prosecution/court responses to child sexual abuse and other forms of violence more generally; for example, family violence or sexual violence against adults
- empirical and commentary papers on this subject.

Exclusion

- literature not from Australia, New Zealand, Canada, the US, the UK or South Africa
- literature published before 1995, unless it seemed particularly relevant.

In reviewing the material found through this search methodology, reference lists were checked for other relevant literature. Grey literature was also searched via Google to supplement the evidence available from academic papers. Grey literature included unpublished government and non-government organisation reports, occasional papers by clearing houses, and other reports by academic and professional organisations.

Results of systematic review



Records were excluded when the article's or paper's title was unrelated to the topic or the abstract indicated that it was not about specialist family violence or sexual offences courts or prosecution units.

The articles and other publications that were identified were mainly about problem-solving courts and in particular, given the search criteria, domestic or family violence courts. Many of these articles were largely descriptive, and some were written by leaders of, or participants in, those initiatives. Baum (2011:27) has observed that '[s]cholarly and quasi-scholarly writing on problem-solving courts is heavily tinged with advocacy, especially by their proponents'. Baum (2011:34) has also observed, with reference to American literature, that:

With a few exceptions, scholars and participants in debates about judicial specialization have not sought to measure its benefits and drawbacks rigorously. When they reach conclusions about the performance of existing specialized courts, they generally rely on assumptions about that performance or rely on anecdotal evidence.

Commenting on evaluations of integrated family violence courts, Birnbaum, Bala and Jaffe (2014:133–34) make similar observations:

Evaluation studies have generally been based on the subjective impressions of professionals about the integrated courts through qualitative surveys alone. Not all of the published outcome evaluation studies have used matched control groups, and many lack a theoretical framework linking the criminal and family processes with the broader structural and systemic barriers in understanding domestic violence post separation.

A further issue is that much of the literature is in the form of articles in professional journals or student-edited academic journals that are not peer-reviewed.

Nonetheless, in recent years an increasing number of empirical studies have provided more robust evidence of efficacy. Mostly these are studies of family violence courts. Some of these are published in peer-reviewed journals while others are evaluation reports commissioned by governments. This literature review focuses on those research reports that have adopted a sound methodology and that allow for either pre-reform and post-reform comparison, or comparison with a control. In relation to specialist sexual offences courts and prosecution units, so little is known that all the available evidence is summarised, including reports documenting the subjective impressions of professionals, and interviews with, or surveys of, victims. To the extent that these studies do not involve appropriate comparators, such data should be treated with caution. However, professionals who have known more than one system may provide reliable insights.

Structure of this report

This review proceeds first by considering what a specialist court is, for while the notion of a specialist prosecution unit is relatively straightforward to understand, it is much more difficult to define a specialist court. Some jurisdictions give courts specialist labels when in reality the court is merely a specialist docket within a generalist court. Many specialist courts do not have specialist judges. Rather, judges work in that specialist jurisdiction for a few weeks or months before moving to other duties. Furthermore, it is possible to have de facto specialisation within generalist courts that are large enough to allow for this. Evaluations of specialist courts need to be read in this context.

The review then considers the literature on the advantages and disadvantages of specialist courts generally before examining the research evidence concerning sexual offences and family violence courts.

Finally, it considers the pros and cons of specialist prosecution units before drawing conclusions about what insights this research evidence has to offer on whether Australia should have specialist child sexual abuse courts or prosecution units.

III. What is a specialist court?

A starting point is to consider what is a specialist court and how this is distinguished from specialist lists or processes within courts that have a general jurisdiction. It should be noted that the literature distinguishes between a specialist court and a speciality court (Payne, 2005). The former is defined by its jurisdiction, the latter by its innovative approach – typically in terms of therapeutic strategies for dealing with the offender’s problems that led to criminal behaviour. Drug courts are an example of a speciality court. Mostly, speciality courts operate at the Magistrates’ Court level. That is, they are courts of summary jurisdiction that typically process a large number of the less serious cases in the criminal justice system.

Although many courts have names that suggest they are ‘freestanding’ specialist courts with their own legislation, buildings and staff, in reality many are just specialised dockets. They may, for example, only operate on one or two days per week within the general court. The judges may be dedicated to that list, but they will also deal with other matters on other days of the week (Australian Law Reform Commission, 2010:1486). This complicates the evaluation of how specialist courts might differ from courts of general jurisdiction because the term ‘specialist court’ may be used to identify a particular process of case management and adjudication for a certain category of case or offender, rather than a different institutional structure.

The American Bar Association has defined a specialist court in the following way:

Specialized courts are typically defined as tribunals of narrowly focused jurisdiction to which all cases that fall within that jurisdiction are routed. Judges who serve on a specialized court generally are considered specialists, even experts, in the fields of the law that fall within the court’s jurisdiction. Such specialized court judges are to be contrasted with judges in general jurisdiction courts, whose caseloads span broad areas of the law and who are considered generalists.’ (ABA, 1996:1)

However, this definition does not apply to all specialist courts. In the criminal law jurisdiction in particular, many specialist courts are staffed by generalist judges who serve for a period in that court, or who in addition to their part-time duties managing a specialist docket, deal with a range of other matters.

There is, in many areas of law, pressure to establish specialist courts, especially in areas of law that are factually or legally complex. In New Zealand, for example, there is currently a debate about whether to establish a specialist commercial court. It is claimed that generalist judges sometimes struggle to understand the factual or legal nuances of complex commercial disputes (Steele, 2015). Tax law is another area where specialisation is sometimes deemed appropriate (Miles, 2015). As King et al. (2014:156) note, there is nothing new about the concept of specialisation in the court system. There has long been a distinction between courts of equity and common law, even if separation is merely by way of different divisions within the one Supreme Court. In addition, specialist jurisdictions have a long history; for example, coroner’s courts, and children’s or juvenile courts. Other forms of specialist court are more recent in the history of

common law jurisdictions. However, family courts are now well-established features of the court system in Australia and elsewhere. A variation on the theme is to have specialist lists within general courts: for example, lists dealing with intellectual property matters, industrial law issues, commercial disputes and building cases.

Criminal courts are a kind of specialist court. There may be a specialist Criminal Division within a general law court, and, as in NSW, for example, a specialist court of appeal. Specialisation in the criminal justice system may take two forms. The first refers to the characteristics of the alleged offender rather than the nature of the crime. Juvenile courts are the most widespread and longstanding example of this, and drug courts are another example.

Courts dealing exclusively with Indigenous defendants are another kind of criminal court that specialises by reference to characteristics of the offender (Harris, 2004; Toki, 2009; Wallace, 2010). These courts focus on sentencing, taking account of the Indigenous person's Aboriginality and involving the Indigenous community in the decision-making process. These courts try to use more culturally appropriate methods of decision-making than occur in the adversarial justice system, and aim to provide diversionary options in sentencing. These courts typically require the defendant to plead guilty as a precondition for being dealt with by the specialist sentencing court (Harris, 2004).

Specialisation by reference to subject-matter is a relatively new phenomenon in the criminal justice system, although Chicago is an example of a city with a long history of establishing specialist criminal courts to deal with certain kinds of crime, such as car theft and shoplifting (Baum, 2011:95). Family violence courts are the most common example of a modern specialist criminal court defined by subject matter. Many family violence courts are integrated – that is, they deal with both the civil and criminal aspects of the case (Koshan, 2014). The Family Violence Court Division of the Magistrates' Court of Victoria, which sits at Ballarat and Heidelberg, is integrated as far as the state–federal divide permits (Australian Law Reform Commission, 2010:1499).

McLeod (2012) observes that specialist criminal courts in the US take many forms and are based on different ideological underpinnings (McLeod, 2012:1592). Broadly speaking, there are three kinds of specialist courts: those seeking efficiency gains; those focused on post-conviction monitoring; and those driven by therapeutic goals. These are, however, not mutually exclusive. As Sloan et al. (2013:4) explain:

Specialty courts often have heterogeneous objectives and approaches; one important distinction relates to treatment. Many types of specialty courts offer therapeutic services, while others do not. Therapeutic courts aim to improve dimensions of personal health such as treating mental health or substance use problems, but not to the exclusion of increased court efficiency. For nontherapeutic specialty courts, the primary goal is to increase court efficiency, such as decreasing time to case resolution through specially trained judges and court staff. Enhanced efficiency may itself improve outcomes since judicial and other administrative delays can lead to uncertainty, stress, disruptions in routines, and even more long-standing adverse outcomes for the parties involved.

Specialist criminal courts as problem-solving courts

Many specialist criminal courts are ‘problem-solving courts’. They are concerned not merely with determining the allegation of crime and punishing the guilty, but with addressing underlying issues that lead to criminal behaviour, and harnessing services to reduce the likelihood of re-offending. Problem-solving courts, therefore, necessarily have a therapeutic dimension (Casey & Rottman, 2005; Freiberg, 2001; Freiberg, 2005). As Bakht (2005:225), explains:

Specifically, courts attempt to deal holistically with cases involving these difficult socio-legal problems by implementing the principles of therapeutic jurisprudence wherein judicial case processing is partnered with treatment providers and community groups to provide follow-up and support for victims and offenders alike in order to reduce recidivism.

A New Zealand example of this is the Waitakere Family Violence Court (Morgan et al., 2008:xiv). The Western Australian Family Violence Court, now abolished, operated in a similar way.

A major feature of problem-solving courts is that they ‘rely upon the active use of judicial authority to solve problems and to change the behavior of litigants. Instead of passing off cases – to other judges, to probation departments, to community-based treatment programs – judges at problem-solving courts stay involved with each case even after adjudication’ (Berman & Feinblatt, 2001:131). They typically use a collaborative approach, working with both government and non-government agencies to help achieve their goals.

The term ‘problem-solving court’ has been challenged because it may be too optimistic to think that courts can actually solve problems. For example, in some cases, a drug court’s intervention might benefit an offender who is able to stop using narcotics, but in many cases less durable outcomes may still represent progress. In addition, the term ‘problem-solving court’ implies that the court must solve the problem and has the means to do so (King, 2010:137). For this reason, Michael King, a Magistrate in Western Australia who has written widely on this area, prefers the term ‘solution-focused courts’ (King, 2009).

Specialisation within general courts

Whether a specialist court is established as a stand-alone court, such as the Family Court of Australia, or as a division of a general court, may in practice be of little importance other than in terms of the level of specialisation that might be available on appeal.

Many general courts specialise within the overall structure. For example, Victoria’s Magistrates’ Court has a Drug Court, a Koori Court, a Family Violence Court, and a Neighbourhood Justice Court, all of which are established as divisions, according to the provisions of the *Magistrates’ Court Act 1989 (Vic.)* Part 2. Several Magistrates’ Courts also have a Sexual Offences List to provide greater consistency in the handling of these cases.¹ Sexual offences are also managed in a separate list in the County Court of Victoria² (County Court, 2014:14). The Federal Court of Australia has a Commercial and Corporations National Practice Area, and cases in some areas

¹ <https://www.magistratescourt.vic.gov.au/jurisdictions/specialist-jurisdictions/sexual-assault/sexual-offences-list>.

² <https://www.countycourt.vic.gov.au/sexual-offences-list-contacts>.

of law requiring particular expertise (such as patents, taxation and admiralty) are allocated to a judge on a specialist panel.³

For this reason, there is not necessarily a clear line of demarcation between a specialist court and a general court. Even in general courts without specialist divisions, work may be allocated according to the individual strengths and interests of particular judicial officers where feasible (Baum, 2009; Mack, Anleu & Wallace, 2012). As Baum (2011:21) notes:

The variable associated most closely with the degree of actual specialization in state courts surely is the population of the area that the court serves, because opportunities for specialization increase with the numbers of cases and judges.

Furthermore specialist courts may in practice be staffed by generalist judges. For example, the Children's Court of New South Wales is a specialist court (with specific legislation and its own buildings) but the magistrates are drawn from the ranks of the Magistrates' Court and typically serve in the Children's Court for a limited time before returning to general Magistrates' Court work. Conversely, the Federal Circuit Court has a wide-ranging federal jurisdiction, but most of its work is in family law and many of its judges are appointed because of their experience in family law. A large number of Federal Circuit Court judges do nothing except family law work, or mainly deal with family law matters, and sit in the same building as the Family Court of Australia.

Similarly, there is no reason why special facilities cannot be established within the general courts. For example, many courts in NSW and other jurisdictions are equipped with closed-circuit television (CCTV) facilities and have been modified in other ways to make them more suitable for child witnesses. It is not financially practicable to equip all court buildings with such facilities, but it is possible, within a general court system, to list most cases involving child witnesses in courts with suitable facilities. This is a matter of resourcing and scheduling rather than of specialisation.

Another variation is to develop specialised processes for police work and case management while still having cases progressing through the general courts. The NSW Domestic Violence Intervention Court Model, trialled in the Campbelltown and Wagga Wagga areas, is an example of this (Rodwell & Smith, 2008).

Child sexual abuse trials typically involve specialised processes. In the last 20 years, throughout Australia (Cashmore, 2008) and other parts of the world (Richards, 2000), changes have been made to the way in which children give evidence in child sexual abuse trials to make it easier for them to testify and to seek to improve the reliability of their testimony. Such strategies include using CCTV to allow children to give evidence away from the main courtroom, using screens if the child gives evidence in the main courtroom so that he or she does not see the alleged offender, using a video recording of an earlier interview either as evidence in chief or as the major part of evidence in chief, and having separate waiting areas for child witnesses. Changes have also been made to the laws on admissibility of children's evidence. Some jurisdictions have special provisions on how child witnesses are questioned at trial; such as those in the *Evidence Act 2008* (Vic), s.41.

³ <http://www.fedcourt.gov.au/case-management-services/case-allocation/individual-docket-system>.

These features of child sexual abuse cases mark out the specialisation of prosecution of child sex abuse within the general courts, at least where the witness is a minor – that is, there are special processes for receiving evidence and special facilities for child witnesses. Although special facilities may not be available in some situations, particularly in rural areas, it will be assumed for the purposes of considering specialist courts or prosecution units in Australia that these general provisions for child witnesses are in place. The question then is what extra features a specialist court dealing with child sexual abuse cases might have? Furthermore, it will be assumed that any specialist court dealing with child sexual abuse will deal with both historic cases and cases in which the complainant giving evidence is a child.

Specialist legal and non-legal staff

A defining feature of a specialist court is its specialist legal staff (who may include the judges) and specialist professional staff who are not lawyers, and who contribute either to the process of gathering evidence or who provide specialist support services. Professional staff may include social workers, psychologists and others who work with the litigant in civil matters, or with the complainant or accused in criminal cases.

IV. The advantages and disadvantages of specialised courts

A substantial amount of literature is available on the advantages and disadvantages of specialist courts generally (see American Bar Association, 1996; Baum, 2011). This analysis focuses on the advantages and disadvantages that are likely to be most relevant when considering setting up a specialist child sexual abuse court. The generic advantages of specialisation must be distinguished from special processes for certain kinds of cases, or special resources available in certain kinds of cases, which could equally be used or provided in a court of general jurisdiction.

Little has been written about the advantages and disadvantages of specialist prosecution units and so this chapter does not deal with these, except to the extent that similar issues arise as for specialist judges. The issues are considered further in relation to the research evidence in section VII.

Benefits

The benefits of specialised courts are to a great extent the benefits of specialisation generally. They are:

(i) Efficiency: There are efficiency gains from prosecutors and judges gaining expertise through concentrating on a particular subject matter (Altbecker, 2003; Baum, 2009:1676). Specialists can work faster than generalists because they are more familiar with the tasks. Altbecker (2003:28) writes:

The most important motivations for the establishment of specialised courts relate to the possibility that these institutions might make the administration of justice more efficient. In this regard, the most important characteristics of such courts is their capacity to attract and utilise persons with appropriate expertise in the prosecution (in the case of criminal trials) and adjudication of matters in which such specialised knowledge is required for the most effective processing of cases. Indeed, even if these courts do not attract personnel with the requisite expertise, it seems plain that the experience of prosecuting and presiding over a range of similar cases will sharpen the skills of the people concerned. Thus both the prosecution and judiciary will become evermore familiar with complex factual issues, as well as with established law and procedure.

That may have benefits not only for the specialist jurisdiction but also for the generalist courts. As the American Bar Association paper (1996:11) explains:

When jurisdiction for a specialized field of the law is assigned to a special court, judges in the general jurisdiction courts no longer have to wrestle with, or expend the effort to remain current on, the issues in that field of the law. With responsibility for remaining current in fewer fields of the law, their research efficiency is increased ... Overall, the efficiency of the court system is enhanced.

When a specialist criminal court is created, general criminal law judges and prosecutors will not need to keep up with, or receive training in, aspects of the criminal justice system or the laws of evidence that pertain specifically to the work of the specialist court.

Baum (2011:32) identifies one of the 'neutral virtues' of specialisation to be increased productivity. Efficiency was the major reason for establishing the early drug courts in the US (Baum, 2011:99; Davis, Smith & Lurigio, 1994). With a rapid increase in arrests for drug offences in the 1980s, several jurisdictions established drug courts to try to ensure better case management and faster processing. The aim was not therapeutic but to manage workloads. The evidence suggested that specialist drug courts could improve the speed of dispositions (Davis, Smith & Lurigio, 1994), although expedited case management techniques in the general courts also had impressive results (Jacoby, 1994).

Evidence shows it is more efficient for courts of summary jurisdiction to combine specialisation with effective case management in dockets with high levels of guilty pleas (Hovda, 2012; Mirchandani, 2005; Smith et al., 1994) or those that make a guilty plea a precondition for dealing with a case in that court, as do most problem-solving courts (Payne, 2005:51). In such courts, which typically deal with a high volume of cases, it can be more efficient to use a 'production line' approach to summary justice, with offenders of a certain category who plead guilty being treated in accordance with standard conditions, and subject to systematised processes for monitoring of compliance with those conditions (Keilitz, 2001:4; Mirchandani, 2005). Other problem-solving courts may take longer because they give more attention to the circumstances of each offender, and monitor progress in rehabilitation more heavily (Freiberg, 2001).

(ii) Quality of decision-making: Another generic advantage of specialisation is seen to be improved quality of decision-making. Experts are likely to make more knowledge-informed decisions than generalists and are less likely to make significant errors of judgment.

Research does not support the contention that specialist judges are likely to be more free from what psychologists call 'cognitive illusions' than generalist judges. Guthrie, Rachlinski & Wistrich (2001:780) explain cognitive illusions as follows:

Psychologists have learned that human beings rely on mental shortcuts, which psychologists often refer to as "heuristics", to make complex decisions. Reliance on these heuristics facilitates good judgment most of the time, but it can also produce systematic errors in judgment. Just as certain patterns of visual stimuli can fool people's eyesight, leading them to see things that are not really there, certain fact patterns can fool people's judgment, leading them to believe things that are not really true. Reliance on these heuristics can create *cognitive illusions* that produce erroneous judgments.

They identified five common cognitive illusions for a research study using a sample of 167 federal magistrates in the US. They tested for the influence of anchoring (making estimates based on irrelevant starting points); framing (treating economically equivalent gains and losses differently); hindsight bias (perceiving past events to have been more predictable than they actually were); the representativeness heuristic (ignoring important background statistical information in favour of individuating information); and egocentric biases (overestimating one's own abilities). They

found that judges were prone to all these cognitive illusions, although in the case of two illusions they were less prone than other experts and laypersons. The study by Rachlinski, Guthrie & Wistrich (2006) of bankruptcy judges found that they were as susceptible to anchoring and framing as generalist judges. The findings were similar for administrative law judges (Guthrie, Rachlinski & Wistrich, 2009).

(iii) Uniformity: It is argued that reducing the number of judges who decide cases in a field of law enhances uniformity in decision-making (Baum, 2009:1675; Baum, 2011). It is said to benefit the development of the jurisprudence and the consistency of statutory interpretation – for example, using a specialist tax court to deal with complex issues of policy and statutory interpretation.

(iv) Improved case management: It has been argued that a trial judge with specialist expertise may be better able to manage cases effectively (ABA, 1996:12). Evidence from the early drug courts in the US shows that differentiated case management improves case disposition, even when drug cases are processed within generalist courts (Davis, Smith & Lurigio, 1994; Jacoby, 1994). That is, there may not be anything intrinsic to a specialist court that it improves case management beyond the differential processing of certain categories of cases.

Risks

(i) Inefficient case load management: Specialisation may reduce the efficiency of the courts in terms of the number of cases they can deal with in any given year. As Kathy Mack and colleagues explain:

A requirement for judicial officers to be generalists ... simplifies administration, as it allows any case to be allocated to any judicial officer. A judicial officer whose expertise is confined to one or only a few aspects of a court's jurisdiction is a less flexible or mobile resource than one who can tackle all aspects of the court's work.' (Mack, Anleu & Wallace, 2012:68)

Mack, Anleu and Wallace (2012) interviewed nine judicial officers and nine court officers or court administrators in Magistrates' Courts from four Australian jurisdictions. Interviewees expressed a preference for generalists:

Generally interviewees did not support specialization being permitted to the extent that individual magistrates would only be capable of doing a particular type of caseload. It was emphasized that each magistrate appointed to a court should retain the capacity to do every type of work handled by that court. Underlying this view appears to be a concern that having judicial officers who were exclusively specialists could adversely impact on a court's ability to cover all types of caseload. Judicial resources need sufficient flexibility to be capable of being allocated to different types of work, depending on the particular mix of the cases before the court at a particular time ... Some interviewees felt that over-specialization can result in magistrates effectively becoming de-skilled, in terms of their ability to tackle work outside their specialty.' (Mack, Anleu & Wallace, 2012:77)

(ii) Difficulty attracting the most capable judges: This risk arises from a number of factors including burnout (ALRC, 2010:1488; Clark, 2007:7) and the narrowness of the work possibly making it harder to attract the most talented lawyers to a specialist career (ABA, 1996:14). Mack et al. write that 'specialization can impact adversely on the judicial workforce, for example, by increasing the

chances of judges becoming “burnt out” or traumatized, for example, as a result of repeated exposure to instances of particularly emotionally difficult jurisdictions, such as domestic violence’ (Mack, Anleu & Wallace, 2012:71). The same could be said of prosecutors. In the American context, Susan Keilitz has observed of family violence courts (Keilitz, 2001:4):

Specialized judges... can experience judicial burnout from the constant flow of difficult and emotionally charged cases. To many judges, assignment to a specialized domestic violence docket is viewed as high-risk, low-benefit, and consequently, undesirable.

A second factor is lower prestige. Writing about judges, the ABA paper says:

Generally, specialized judges are accorded less prestige and status than judges who are generalists. One primary reason is that while specialized judges are required to master dispute resolution in only a narrowly focused area of the law, generalist judges must demonstrate the mental dexterity and intellect to resolve disputes in a broad range of fields of the law. To that extent, the more specialized a court is, the less likely it may be to draw the best possible applicants for judgeships because service on such courts is considered to offer less professional stature than others with broader jurisdiction. (ABA, 1996:15–16.)

The same might be said of prosecutors, who arguably need a diversity of experience in criminal trials and appeals to develop in their careers.

A third factor may be reduced job satisfaction: Mack et al. observed that a ‘lack of variety in judicial caseload may lead to boredom’ (Mack, Anleu & Wallace, 2012:71). This does not seem to be the experience of judges in problem-solving courts, who may choose to serve in that field because of their interest in the work, and who may derive job satisfaction from feeling that they are bringing about positive changes in people’s lives (Chase & Hora, 2000).

(iii) Loss of objectivity: Baum (2009:1678) observes: ‘Stereotypes are another possible effect of judges’ immersion in a particular type of case. If judges hear a succession of similar cases, they may ascribe the attributes of past cases to current cases.’ This is perhaps less an issue when juries are making the factual determinations, not judges. In any case, there does not seem to be research evidence to support this claimed risk. Another potential cause of lost objectivity arises from the nature of problem-solving courts in which judges play a more active role than merely as neutral adjudicators (Bartels, 2009). Shelton (2007:8) explains why there was some opposition to family violence courts:

Applying the collaborative theory of problem-solving courts meant that judges were an integral part of the planning and monitoring of the program together with the prosecutor, probation, victim advocates and domestic violence staff members. Involving judges in that process was seen by some as detracting from the impartiality judges are supposed to maintain and in effect made them part of the prosecution.

(iv) Public access: Another issue is the level of centralisation and dedicated facilities a specialist court may need to function. Zimmer (2009:49) observes that specialist courts may impose ‘an unfair burden on litigants who are located far from the court facility. The larger the physical geography of the country, the more this becomes an issue.’ The inequity of differing capacity to

access specialist services is a concern (Bartels, 2009; Payne, 2005). The problem of serving rural Australia is diminished if judges and prosecutors can travel, but it costs the government more than if permanent generalist judges and prosecution units are used in certain regional centres.

(v) Diminishing the role of the adversarial defence lawyer: This risk has been identified with problem-solving criminal courts that process a high volume of cases with therapeutic aims (Davis, 2003; Meekins, 2006). Meekins (2006:3) argues:

The standard premise behind these courts is the emasculation of the traditional role of the criminal defender as a zealous advocate fighting against the system. Despite the importance of defenders insuring courts adhere to principles of substantive and procedural due process, the defender in specialty courts becomes, in most instances, a collaborator. He collaborates with the judge and prosecutors, thereby taking on a role that works to diminish the effectiveness of the defender overall, decreases the confidence defendants have in the outcome, and supports a culture of ineffectiveness and under-representation.

Hora, Schma & Rosenthal (1999:478) acknowledge this problem for the drug courts. 'Instead of each side attempting to bolster its case for or against the offender, the prosecutor and defense attorney approach a case with the defendant's recovery as the goal,' they write.

(vi) Coercion: A final risk identified with criminal problem-solving courts is the form of coercion in which defendants must waive their right to due process and plead guilty to access the therapeutic alternatives to punishment (Berman & Feinblatt, 2001:134–135; Meekins, 2006). It may be argued, in the US context at least, that the level of persuasion that might be involved in a problem-solving court is no different to the level of persuasion involved in plea bargaining.

V. Specialist sex offence courts

Although there is a lot of interest in specialist sex offence courts, examples are scarce – and specialist child sexual abuse courts don't exist. Courts or dockets for sex offences generally exist in three US jurisdictions: New York, Pittsburgh in Pennsylvania⁴ and Ohio (Richmond & Richmond, 2015:445), although in Ohio there is just one such docket, for juvenile sex offenders.⁵ South Africa also has Sexual Offences Courts. In Manitoba, Canada, the Family Violence Court of Winnipeg deals with many child sexual abuse cases (Cossins, 2006). About 10 years ago, NSW piloted a specialist jurisdiction, but failures in its implementation make this a poor test of the advantages or otherwise of such an approach.

In addition to these initiatives in specialist sex offence courts, certain jurisdictions have had some experience with restorative justice approaches, which have attracted a lot of interest (Daly, 2011; Jülich et al., 2011; Naylor, 2010; Tinsley & McDonald, 2011), although using restorative justice in this context is controversial (Cossins, 2008; Daly, 2008).

New York

In the US, the New York Sex Offense Courts have produced the most documentation. These are a form of problem-solving court, which use similar strategies to family violence courts including judicial monitoring of offenders on probation, and inter-agency collaboration (Thomforde-Hauser & Grant, 2010). The courts take all cases in which felony charges are laid. They do not offer treatment programs as an alternative to punishment and may jail offenders. However, the courts do focus on post-disposition treatment, monitoring and control, with a goal of promoting community safety and reducing recidivism. As Herman (2006) explains:

Sex Offense Courts are not designed as alternatives to incarceration, they are not diversion courts, and they are not treatment/rehabilitative courts. Instead, Sex Offense Courts are more akin to domestic violence courts; defendants do not opt-in but rather all cases of a certain nature or charge are automatically routed for their entire processing and adjudication. Sex Offense Courts, like domestic violence courts, emphasize the need for accountability of the offenders and the increasing of public/community safety.

These courts emphasise post-conviction supervision and management of all offenders on probation or subject to mandatory registration. The judge leads this monitoring, and can deal swiftly with any issues of non-compliance with court-ordered conditions (Thomforde-Hauser & Grant, 2010:5). The courts do not seem to have been particularly innovative in conducting trials. Cossins (2010:303) notes that '[w]hile the Courts do have facilities for vulnerable witnesses to appear via CCTV, this technology is not often used although victims can have a support person present when they give evidence'. The publicly available articles about the New York court say almost nothing about the difficulties of prosecuting sex offences involving children, focusing

⁴ www.pacourts.us/assets/files/newsrelease-1/file-1239.pdf?cb=5934e9.

⁵ Personal communication, 4 November 2015, Sarah Jeu, Supreme Court of Ohio.

instead on offender management after conviction. This may reflect a US practice of screening out a substantial proportion of matters referred for prosecution, where the prosecutor considers that the case has vulnerabilities, whether because of victim characteristics or otherwise (Beichner & Spohn, 2005; Spohn, Beichner & Davis-Frenzel, 2001). US data from 2002 indicates that only 8 per cent of rape or unlawful sexual intercourse cases went to trial, compared with 32 per cent in South Australia. The conviction rate at trial was higher in the US (Daly & Bouhours, 2011:583).

A blueprint and rationale for a sex offences court was given by La Fond & Winick (2004), and the first such court was established in Oswego County in 2005 although this court was just a specialist sex offense docket (Richmond and Richmond, 2015:460). The court took all felony-level cases that, in the event of guilt, would lead to mandatory sex offender registration. In addition, all sex offence cases involving pleas and all sex offenders transferring their community supervision to Oswego County were sent to the Sex Offense Court for ongoing monitoring (Grant, 2007). The court was established to have a designated Sex Offense Assistant District Attorney who handles all registrable sex offence cases; a dedicated, court-based victim advocate from a private non-profit organisation who provides confidential services and counselling; a designated defence bar representative who is in court for every compliance hearing to ensure that defendants have advice and representation; and a dedicated team of probation officers who work with sex offenders and report to the designated court at every compliance date (Grant, 2007:2). The judge, court staff and partner organisations all received initial training in sex offender management. Virtually all offenders on probation are required to return to court weekly, fortnightly or monthly on a graduated schedule in addition to their frequent visits to and from the designated probation officers (Grant, 2007:2–3).

In the first year of operation, 68 offenders were on probation and 65 were in prison. No defendants appearing in the court, including those on bail, were arrested on new charges. The court's initial success in preventing recidivism, at least over a one-year period, led to the establishment of more such courts (Grant, 2007:2–3).

The key features of Sexual Offense Courts are early intervention, post-disposition monitoring, consistency and accountability (Thomforde-Hauser & Grant, 2010). New York has seven Sex Offense Courts and, as at 1 August 2014, they have heard more than 4,587 cases.⁶ These courts are intended to operate on the following principles⁷:

- A dedicated judge handles sex offence cases from identification through to disposition.
- The courts should deal as a minimum with all cases where a felony sex offence that is registrable under the Sex Offender Registration Act is charged, although sex offences in the context of family violence are dealt with by the Domestic Violence Court.
- Judicial monitoring of offenders is central to the role of the court.
- Sex offenders on probation should be listed rapidly, including those whose conditions need to be modified.

⁶ https://www.nycourts.gov/courts/problem_solving/so/home.shtml.

⁷ https://www.nycourts.gov/courts/problem_solving/so/mission_goals.shtml. See also Herman, (2006).

- The court should work with probation and parole agencies to define their participation and encourage them to use pre-sentence investigation reports.
- The court should have available sex offender treatment programs and use polygraph testing to assist the offender in reducing risk-taking behaviors that can lead to re-offending.
- Judges and non-judicial personnel in Sex Offense Courts should be trained to handle complex sexual offenses consistently and comprehensively. They should also receive intensive training that keeps them up to date on research and best practices for issues relating to sexually offending behaviours.
- Each Sex Offense Court should work with local service providers to facilitate victims' access to child abuse and sexual assault advocates who can provide counselling and referral to a multitude of other social services.

Although the origins and purposes of the Sex Offense Courts are well documented, there have been no published evaluations or comparisons with data from generalist courts.

South Africa

South Africa also has specialist Sexual Offences Courts. A pilot project was established in Wynberg in Cape Town in 1993 (Kruger, 2005). Its main focus was reducing secondary victimisation (Walker & Louw, 2003), that is, the additional harm a victim might experience as a witness in the criminal justice system. In this pilot, specialist prosecutors handled the cases in the Sexual Offences Court. Magistrates were assigned to the Court on a rotational basis, presiding for one week out of every six weeks. The Court also had victim support personnel, including child witness intermediaries (Cossins, 2010:296). The South African Human Rights Commission (2002:26) reported the results of a 1997 evaluation:

An extensive evaluation report published after the evaluation rated the court partially successful in eliminating victim trauma, establishing collaboration between various agencies dealing with sexual offences and in improving reporting, prosecution and conviction rates in the Cape Town area. The report called on the Department of Justice to effect a number of improvements to the court to ensure full realisation of the court's objectives.

Based on the successful pilot, more Sexual Offences Courts were rolled out around the country from 2000 onwards (Muller & Van de Merwe, 2004). The South African Human Rights Commission (2002:64) recommended an expansion of the network of specialised Sexual Offences Courts to address serious problems in the capacity of the generalist courts to deal with child sex offences.

The Model Guidelines for prosecutors in child sexual abuse cases require that, in assigning prosecutors to Sexual Offences Courts, emphasis must be placed on the individual prosecutor's experience with children and on any specialised training he or she might have (Muller & Van de Merwe, 2004:138). In 1999, the directives of the National Director for Public Prosecutions stipulated that prosecutors should be selected on the basis of their personal make-up and ability to relate to the victims. They also required that a prosecutor deal with a particular case until its conclusion; that unnecessary delays are avoided; that thorough preparation occurs beforehand; that proper consultations take place with the victim; that the victim is made familiar with the

courtroom and procedures; and that facilities available for children in court are fully utilised (Muller & Van de Merwe, 2004:140). However, research conducted in 2001 showed that some prosecutors had not chosen to work in this area and did not feel well suited to the work; there was also limited or no training for many prior to commencement as sexual offence prosecutors in the specialist court (Muller & Van de Merwe, 2004).

Sadan, Dikweni & Cassiem (2001) evaluated the Wynberg court and another Sexual Offences Court in Cape Town. These were compared to a general jurisdiction Magistrates' Court, equipped with CCTV, but without a dedicated social worker present in court. The researchers reported that child complainants made up approximately 50 per cent of the cases in Wynberg. The Cape Town court dealt with child complainants exclusively. A paucity of data made it difficult to assess whether these courts improved conviction rates, but the researchers concluded overall that the conviction rate for sexual offences in the specialist court was higher than in ordinary regional courts (Sadan, Dikweni & Cassiem, 2001:39). They also thought the Sexual Offences Court reduced secondary trauma for victims, but their discussion of this indicates that this is primarily because of the availability of CCTV and appropriately sensitive medical staff involved in physical examinations. A theme of the interviews conducted was the need for counselling for Sexual Offences Court staff to 'debrief' them about what they experienced in court every day.

A Ministerial Advisory Committee established to report on these courts in 2013 explains the history of the development of the courts thereafter (Ministerial Advisory Task Team, 2013). In 2002, a Blueprint for Sexual Offences Courts was developed (Cossins, 2010:295). It was revised in 2005 (Kruger & Reyneke, 2008; Reyneke & Kruger, 2006). The Blueprint requires that the courts have specially trained and experienced prosecutors with at least three years' experience. Judicial officers must also receive special training. The Blueprint also has requirements for the structure of the courts to avoid contact between the accused and state witnesses, prescribing private consultation areas, separate waiting rooms and intermediary rooms. It also calls for intermediary services, victim assistance and victim support services (Kruger & Reyneke, 2008).

The victim assistance services consist of court preparation officers, victim assistance officers and court supporters. Kruger & Reyneke (2008:51–52) describe them as follows:

Court Preparation Officers focus on familiarising the victim with the courtroom and intermediary room, the trial procedure, the roles of court officials, as well as the role of the victim. In addition, victims are empowered on a psychological level by teaching them stress-reduction and confidence-enhancing techniques. The victim is thus empowered to give evidence, without the merits of the case being dealt with during the preparation ...

Victim Assistance Officers provide victim assistance at Thuthuzela Care Centres (TCCs). These officers "provide frontline emergency containment for the victims upon entry into the criminal justice system". This is achieved by, inter alia, providing information, responding to special needs of the victim, providing court preparation, establishing readiness to testify, maintaining contact with service providers, notifying the victim of the arrest and bail conditions of the accused, determining risk factors and developing a Personal Safety Plan for the victim ...

Another role-player is the Court Supporter, who provides support at court on the trial date. NGOs are often involved in providing support services at court, such as providing meals, and playing with and comforting children while they are at court. Court Supporters also keep witnesses and their families informed of developments at court. Together with court preparation and the attendance to victims' needs, victim assistant services play an important role in minimising secondary victimisation and the trauma associated with the court process.

Finally, the blueprint prescribes a third type of service for victims, namely support services. Owing to the traumatic effects following sexual abuse, counselling services must be provided at each Sexual Offences Court by dedicated social workers and/or NGOs. Support services include the assessment of victims for readiness to testify, testifying in preliminary applications regarding the need to use intermediaries and/or CCTV, and testifying in aggravation of sentence if required. These support services further include the referral of victims for long-term counselling, as well as referral to a shelter when necessary. Apart from victims, support services must also be rendered to prosecutors and the police dealing with sexual offences to avoid burnout.

They observe, however, that 'blueprint-compliant Sexual Offences Courts are a costly and demanding undertaking' (Kruger & Reyneke, 2008:52) and many courts did not meet the blueprint requirements. By 2006, according to figures from the administrative unit responsible for the courts, 69 courts countrywide dealt with sex offences only, of which one-third were deemed to be blueprint-compliant (Kruger & Reyneke, 2008:56–7).

The Thuthuzela Care Centres (TCCs) play an important role in the whole system of sexual assault prosecutions.⁸ The aim of the centres, situated in public hospitals, is to improve the care and treatment of rape victims at all points in the criminal justice system, as well as ensuring the speedy and effective investigation and prosecution of sexual offences cases. The blueprint provides that each TCC should be based inside a health care facility, offer services 24 hours a day and be linked to a Sexual Offences Court (Ministerial Advisory Task Team, 2013:32).

Reyneke & Kruger (2006) summarise the benefits of the Sexual Offences Courts. The courts resulted in more efficient prosecution and adjudication in the various areas. First, the average conviction rate improved substantially to 62 per cent, as opposed to 42 per cent in the ordinary courts. The average conviction rate in some well-established Sexual Offences Courts increased to between 75 per cent and 95 per cent. The turnaround time in the finalisation of proceedings for sex offences was reduced to less than six months, although longer time frames were indicated in a study of the Bloemfontein court (Walker & Louw, 2005a). Secondary victimisation was reduced as a result of the provision of separate waiting rooms for victims, counselling and other such services from other disciplines and intermediary and CCTV facilities. Finally, multidisciplinary training enhanced the skills of court personnel as well as other role-players (Reyneke & Kruger, 2006:93–94).

⁸ 'Thuthuzela' is a Xhosa word meaning 'comfort'. For further information on the centres, see www.unicef.org/southafrica/hiv_aids_998.html.

The success of these courts is also shown in data from the 2006–07 report of the National Prosecuting Authority. It showed that in 2005–06, the conviction rate in dedicated courts linked to a TCC was 38 per cent higher than in other regional courts. In 2006–07, it was more than 33 per cent higher (Kruger & Reyneke, 2008:54).

Of particular note is the record of one Sexual Offences Court in Wynberg that achieved a 95 per cent conviction rate in two successive years (2005–07). This court, linked to a TCC, operated differently to the other four Sexual Offences Courts in Wynberg (Kruger & Reyneke, 2008:62–63). In this court, the prosecutor handled the case throughout, from the time of first appearance to its conclusion. Kruger & Reyneke report that the benefits include the prosecutor's intimate knowledge of the case, which facilitates a proper relationship with the complainant at a very early stage. Unnecessary delays are prevented because the complainant's counselling and referral needs are identified and problematic issues such as DNA analysis are managed quickly. Another positive aspect is that the investigating officer and the prosecutor develop a personalised working relationship. One judge involved in such cases emphasised that a prosecution-driven inquiry is important in aiding a proper investigation and the collection of all possible corroborative evidence as soon as possible (Kruger & Reyneke, 2008:63, fn 174).

Of course, an increase in conviction rates cannot necessarily be regarded as an indicator of success in the administration of justice. A conviction obtained against the weight of the evidence is not a success for the justice system. However, increased conviction rates are reported in the literature as one of the benefits of specialisation, and some Sexual Offences Courts do appear to have greatly improved conviction rates.

Interviews with 44 victims whose cases were heard in one Sexual Offences Court provide some evidence of the success of the court in reducing secondary victimisation. Walker & Louw (2005:239) reported:

The victims generally experienced their participation in the trial itself as positive ... Victims report having to wait for an hour or less before being called upon to testify in 43.9% of the cases. A further 51.2% waited for between 2 and 4 h, while the remaining 4.9% report periods of between 5 and 6 h. Steps were taken to ensure that the victim had minimal contact with the accused or members of the public while waiting to testify. Victims generally appear to have felt fairly safe (17.1%) to totally safe (75.6%) while waiting to testify ... Regarding the more adversarial aspect of the trial, 20% of victims felt that the defence attorney intimidated them during cross-examination. However, 85% of the respondents were of the opinion that sufficient steps were taken to guard against intimidation, while 15% were intimidated by the accused during their time in court ... Approximately one-third of the victims surveyed (31.7%) felt that their personal dignity was insulted during the course of the trial. The majority of complaints in this regard related to the manner in which the victim was cross-examined. In 25% of the cases the victim was upset by the defense attorney's implication that the victim was partially responsible for being sexually assaulted.

While some victims had a negative experience of cross-examination, it is perhaps surprising that the percentage was not higher. Overall, 22 per cent of victims said they were 'totally satisfied' with their experience of the court; 32 per cent reported that they were 'more than satisfied' and 36 per cent were satisfied. Only 10 per cent were dissatisfied (Walker & Louw, 2005:240). It is difficult to

make comparisons across jurisdictions, but these levels of satisfaction contrast with the experience of some victims in Australia (Braun, 2014; Daly, 2011:6–7; NSW Department for Women, 1996). The satisfaction of the victims may be contrasted with the dissatisfaction of the offenders, 54 of whom were interviewed about their perceptions of the Sexual Offences Court (Walker & Louw, 2006). Nearly three-quarters (74 per cent) said they did not think a person accused of a sexual offence would receive a fair trial in the Court for Sexual Offences. A major issue was the perceived dominance of female staff. However, six defence lawyers surveyed reportedly viewed prosecutors as objective, competent and professional in most cases, and judicial officers as impartial (Walker & Louw, 2007:141–42). The four prosecutors surveyed considered that the specialist court had gone a long way towards streamlining the judicial process, and had also reduced secondary victimisation during litigation (Walker & Louw, 2007:138–9). Although defence lawyers had some criticisms, they shared this view (Walker & Louw, 2007:141).

Despite these many signs of success, the Sexual Offences Courts encountered opposition because they were better resourced than other courts, and this was perceived as a serious violation of the constitutional rights of other crime victims to equal protection under the law. Magistrates were also reported to have resisted assignment to these courts because of the stressful work and concerns it would limit career advancement (Bowman & Brundige, 2014:281).

In the mid-2000s, further roll-out of these courts was suspended. They then fell out of favour and in practice, as a result of case flow management protocols, Sexual Offences Courts were no longer dedicated to sexual offence cases. Some still gave sex offences listing priority, while others returned to being generalist courts (Ministerial Advisory Task Team, 2013: 23-24). The closure of Sexual Offence Courts had a deleterious impact on conviction rates. In 2005, Soweto had at least three Sexual Offences Courts achieving conviction rates of between 65 per cent and 73 per cent. They were supported by the work of the Baragwanath TCC. These courts closed between January and March 2008. In 2007, the conviction rate for sexual offences was 78 per cent, but it dropped to 67 per cent after the closures and subsequently fell as low as 45 per cent. The time taken to deal with cases increased after the closure from 8.5 months to 13 months (Ministerial Advisory Task Team, 2013:24–25). Across the country, since the closure of the Sexual Offences Courts, the number of cases referred for prosecution has declined by at least 40 per cent, the number of convictions has dropped by at least 20 per cent and the duration of cases to disposition has increased by at least eight months (Ministerial Advisory Task Team, 2013:26).

As a result of the recommendation of the Ministerial Advisory Task Team (2013:95), Sexual Offences Courts have again been established.⁹ The team concluded that there are ‘sufficient grounds and a compelling need for the re-establishment of the Sexual Offences Courts’.

The evidence for the success of the Sexual Offences Courts in South Africa is considerable despite numerous difficulties, which are described in the various evaluation reports. These include severe resource constraints; workload pressures; inadequate training of many prosecutors and differing levels of motivation; the stress of the work; the limitations of the courtroom facilities; and lack of support services (Kruger & Reyneke, 2008; Ministerial Advisory Task Team, 2013; Muller

⁹ www.saflii.org/za/journals/DEREBUS/2013/163.pdf.

& Van de Merwe, 2004; Sadan, Dikweni & Cassiem, 2001).

At their best, Sexual Offences Courts demonstrably improved conviction rates as part of a coordinated service system that looked after victims from the time of complaint through to trial. They also promoted a cultural change in the criminal justice system. Walker & De Louw (2004:291) observe:

Courts for sexual offences appear to have aligned themselves as institutions aimed primarily at the restoration and maintenance of the victim's dignity. Their current approach would seem to suggest that these courts are to some degree focused on the victim's empowerment through the litigation process ... In order to do this, specialist sexual offences courts have found it necessary to evolve from cold judicial institutions to more accessible and people-oriented ones. This evolution has led to a more multidisciplinary approach within the court system, as well as physical and, to some extent, procedural modifications aimed at ensuring a less traumatic victim experience.

Manitoba

The Family Violence Court (FVC) of Winnipeg, Manitoba, also has some experience dealing with child sexual abuse cases as part of its wider brief as a specialist court dealing with intimate partner violence and child abuse. This court's experience also shows the advantages that might justify having specialist child sexual abuse courts. Cossins (2010:301), citing Ursel & Gorkoff (2001), summarises the main benefits for child sexual abuse prosecutions, as perceived by the authors:

- Court staff are able to keep track of upcoming cases and make sure there are enough courtrooms for child sexual abuse trials, in order to improve disposition times;
- the same prosecutor stays with the case until it is finalised;
- significantly higher conviction rates¹⁰ compared with the National Data for Canada;
- a higher percentage of offenders convicted of child sexual abuse in Winnipeg received a jail sentence (63%) compared to 54% of offenders nationwide;
- a dramatic increase in the length of sentence, with the Winnipeg FVC sentencing 37% of convicted offenders to two years or more, compared with the National Data which showed that only 6% of convicted offenders of child sexual abuse were sentenced to two years or more.

Cossins (2010:302) also notes that the 50 per cent conviction rate in child sexual abuse trials compares favourably with conviction rates in NSW over a similar period. However, it should be noted that the evidence for the efficacy of the Winnipeg court, compared to non-specialist courts in other jurisdictions, is limited as the authors did not have access to the complete national dataset in order to do detailed control tests. Consequently, they caution they they 'can only speculate that specialization is a factor in the difference' (Ursel & Gorkoff, 2001:88).

New South Wales

A pilot program conducted in NSW more than a decade ago provided limited evidence of the

¹⁰ 54 percent (Winnipeg) as against 46 percent (national data). Ursel & Gorkoff did not provide a p-value for significance.

benefits or otherwise of a specialist jurisdiction. This was not a specialist court, since the designated courts continued to hear other criminal matters (Cossins, 2010:285). The pilot program was established in the Sydney West District Court Registry in March 2003 (Rodger, 2003; Cashmore & Trimboli, 2005). It was based on a recommendation of the NSW Legislative Council Standing Committee on Law and Justice in 2002. The Committee recommended that in the pilot:

Cases would be heard by designated judicial officers specially trained in child development and the dynamics of child sexual assault. Prosecutors and court staff would also receive special training. There would be a presumption in favour of the use of special measures, including pre-trial recording of evidence, and electronic equipment would be of the highest standard. The court environment, including the room used for pre-trial recording of evidence, would be appropriately child-friendly and informal.

Cashmore & Trimboli (2005) found that the attempt to improve case management to minimise adjournments and ensure that cases were ready to proceed was marred by a failure to develop practice directions; the late appointment of Crown prosecutors to specific cases; technological problems; and judicial officers and other professionals who were inflexible about introducing measures that could reduce waiting times for child witnesses. Delays were a major problem for child complainants or witnesses.

Technology was upgraded in at least one courtroom at each of the three courts in the specialist jurisdiction. Using a remote and child-friendly witness suite in Parramatta helped witnesses, and using pre-recorded interviews as evidence-in-chief had some benefits. But delays caused by late editing of tapes (often after legal argument), lack of familiarity with the relevant law, technical difficulties and lack of knowledge of how to operate equipment all created problems.

The prosecutors and judges were drawn from the general pool of available personnel and it could not be said as a general proposition that judges were “specially trained in child development and the dynamics of child sexual assault”. Judges involved in the specialist jurisdiction were given a folder of relevant publications and attended several seminars on child sexual abuse matters; prosecution lawyers were given training; but the impact of this was not evident in the observed trials. In summary, Cashmore & Trimboli (2005:64) said:

There was little to distinguish the specialist jurisdiction from the comparison registry ... In fact, there is little evidence that the specialist jurisdiction was implemented as proposed or that the courts at Parramatta, Penrith and Campbelltown actually constituted a specialist jurisdiction in any real sense.

However, it is appropriate to record the different view of the judge responsible for the pilot project, who observed (Ellis, 2005:260):

The system used in the pilot scheme has proven to be an excellent procedure that, although perhaps not without its faults and detractors, provides a far more equitable system for child complainants or witnesses to give evidence than previously existed.

VI. Family Violence Courts

Hundreds of family violence courts operate in Australia, the UK, North America and elsewhere. Across the English-speaking world, family violence courts are far from homogenous (Labriola et al., 2009; Shelton, 2007; Tutty, Ursel & Douglas, 2008; Weber, 2000). Some mainly focus on victim safety and offender accountability (Bakht, 2005; Sack, 2002), while others also try to play a role in bringing about positive change in perpetrators (Gover, MacDonald & Alpert, 2003; King & Batagol, 2010; Walsh, 2001). Some deal only with criminal law aspects, some also deal with protection orders, while others also deal with civil law aspects, notably family law issues (Birnbaum, Bala & Jaffe, 2014). The research evidence is best summarised first in relation to the specialist criminal family violence courts and then in relation to the integrated courts that have both criminal and civil roles, including in relation to family law matters.

Features of family violence courts

Julie Stewart (2011:3–4) has summarised the features of specialist family violence courts as follows:

- strengthened legislation
- interagency coordination and cooperation
- interagency management/advisory structure
- pro-arrest and pro-prosecution policing policies
- specialised police investigation units
- specialist magistrates sitting exclusively in domestic or family violence courts with dedicated listings
- ‘one-stop’ courts for dealing with related criminal, child protection, civil and family law matters
- specialist court processes and procedures focusing on safety and respect for victims of family violence; for example, expedited hearings, reduced delays, safety and security for victims waiting at court
- specialist personnel to assist victims and defendants, including specialised prosecutors, solicitors and social welfare professionals
- systematic case tracking and case management within the court to minimise delay and ensure victim inclusion
- timely delivery of information to victims about their rights and progress of their matters
- advocacy for victims to access those rights, to participate and to be included in the legal process
- early contact with victims and referral to appropriate services
- perpetrator treatment
- data collection, monitoring and evaluation of the model and its components.

However, not all courts that might be regarded as specialist family violence courts have these characteristics. While all promote victim safety, only some seek to achieve therapeutic outcomes in terms of offender behaviour. On this issue, there is an ideological divide. Shelton (2007:10–

11), reviewing family violence courts in the US, argues that such courts do not, and by implication should not, have a therapeutic purpose:

Domestic violence courts ... focus primarily on the victim rather than the offender. The initial emphasis is on the safety of the battered women and any children that are involved. The court also focuses on the accountability of the offender for his own misconduct rather than on exploring the etiology of that conduct. While rehabilitation may be a byproduct of the domestic [violence] court process, its origins lie more in a deterrence theory model.

Others, however, place strong emphasis on a therapeutic approach as part of the strategy of reducing further offending (King & Batagol, 2010) or identify positive results from this strategy (Pitts, Givens & McNeely, 2009; Tutty & Koshan, 2013).

Family violence courts also vary in the extent of judicial specialisation. While some have specialist judges, others have generalist judges who staff the courts on a rotational basis. Tutty and Koshan (2013:733) observe, for example, that most specialist family violence courts in Canada use rotating judges who are educated about the dynamics of family violence.

Because of the heterogeneity of models and processes, generalisations about the benefits of family violence courts can only be made with great caution. Nonetheless, a feature of most of them in North America at least, is that they are high-volume courts of summary jurisdiction administering technocratic justice tied to problem-solving goals (Mirchandani, 2005). They reflect a shift in the role of the courts, clearly evident in the US, from conducting trials to the administrative processing of a large number of cases, along with the residue of trials in high-stakes and intractable cases (Galanter, 2004).

Australia

The South Australian Family Violence Court was the first such court in Australia and was established in 1997 (Payne, 2005:17). It sits once a week in each of the Adelaide, Port Adelaide and Elizabeth Magistrates' Courts. The Australian Law Reform Commission (ALRC), in its 2010 report *Family Violence – A National Legal Response*, described the different family violence courts in Australia and records the evaluations that had been conducted at the time of that report (ALRC, 2010:Chapter 32). The ALRC recommended that state and territory governments, in consultation with stakeholders, should establish or further develop specialised family violence courts within existing courts in their jurisdictions (ALRC, 2010:1505).

Notwithstanding this recommendation, the experience in Australia, though limited, is rather mixed. The Family Violence Court in the ACT Magistrates' Court¹¹ was created in 2011 after a long process of developing a multifaceted and multi-agency Family Violence Intervention Program (Holder, 2008). Before this, there had been a specialist family violence list. The Family Violence Court deals with criminal cases but not protection orders. Some advocacy groups and other stakeholders are calling for greater judicial resourcing and specialisation in the ACT¹² because

¹¹ *Magistrates Court Act 1930* Chapter 4B.

¹² Colley C, 'Could a domestic violence court work in the ACT?' *Canberra Times*, 17 June 2015. www.canberratimes.com.au/act-news/could-a-domestic-violence-court-work-in-the-act-20150617-ghqbqu.html

the ACT court, although enshrined in legislation, is really just a specialist docket (operating one day a week) rebadged as a distinct court. The court management has been criticised for not ensuring that one trained and specialist magistrate is available to hear all the matters in the list.¹³

A pilot program for a Family Violence Court was established in Joondalup, Western Australia, in 1999. The Joondalup court has been described as follows (Kraszlan & West, 2001:197):

The JFVC deals with Violence and Misconduct Restraining Orders, and all criminal matters related to family violence, that is where there is or has been a familial relationship between the parties and/or there is an inter-familial connection between the parties. The court aims to engage the offender in the criminal justice system as early as possible and then monitor their behaviour through conviction, sentencing and community supervision. In conjunction with monitoring the defendant, services are provided to increase the likelihood of the victim remaining in the prosecution process, to increase victim safety and to enhance victim satisfaction with the criminal justice system. Victim services include safety audits/risk assessment and support through the criminal justice system.

The pilot program was characterised as a 'qualified success' in a 2002 evaluation (Law Reform Commission of Western Australia, 2008:131), and the program was then expanded to other sites, resulting in six Family Violence Courts operating as lists within the Magistrates Court as at 2014.

However, an evaluation in 2014 that focused on recidivism had disappointing results. While evidence showed that behavioural change programs brought benefits, the results of the Family Violence Courts were much less impressive than those of the mainstream courts, which referred offenders to similar programs. Specifically, offenders who went through the Family Violence Court and attended a behavioural change program were significantly more likely to reoffend than those who attended the behavioural change program in the mainstream court. Furthermore, the unit cost per offender in the Family Violence Court was 15 per cent higher because of the extra services provided. The results for a specialist court for Indigenous offenders were not significantly different from mainstream courts in terms of recidivism (Attorney-General's Department, 2014). As a consequence of this research, the Western Australian Government announced the abolition of the specialist court. From 1 July 2015, the Family Violence Court has not been taking any new matters. It will be gradually replaced with new Family Violence Support Lists in the Magistrates' Court.¹⁴

England and Wales

In England and Wales, specialist family violence courts have been set up in Magistrates' Courts across the country. They focus, where appropriate, on punitive outcomes while aiming to improve the efficiency, effectiveness and empathy of the criminal justice response to cases of family violence (Burton, 2006). These courts cluster and fast track all family violence cases in designated

(accessed 6 November 2015). See also www.abc.net.au/news/2015-06-16/domestic-violence-expert-panel-call-for-dedicated-magistrate/6550400.

¹³ Ibid.

¹⁴ www.courts.dotag.wa.gov.au/f/family_violence_court.aspx (accessed 6 November 2015).

sessions, but mainly deal with pre-trial work. Early evaluations of five sites were positive in terms of professional responses, but they lacked reliable baseline or comparison court data to determine efficacy (Cook et al., 2004).

Robinson (2008) reports significant variations in the way cases were processed across seven different specialist family violence courts, although the profiles of each court's cases was similar. Some facilitated defendants pleading guilty before a case is listed for trial (21 per cent in one court compared to none in four of the other courts). In other courts, defendants pleaded guilty later in the process (Robinson, 2008:18). There was also considerable variation in sentencing practices.

A 2013 evaluation of specialist family violence courts found widespread support among professionals for the specialist courts (Centre for Justice Innovation, 2013) and the number of convictions had increased substantially since their introduction (which coincided with other policy initiatives). However, the report noted that the evidence-base was very limited as to whether courts with specialist family violence listing arrangements outperformed courts without them. There was also little or no UK evidence about the impact of such courts on victim safety or preventing future abuse. Robinson (2008) reported very mixed views from victims about their experiences of the process and how much it contributed to perceptions of enhanced safety.

North America

From the perspective of North American judges, other justice system practitioners and advocates, the benefits of specialisation are said to include (Keilitz, 2001:5):

- enhanced coordination of cases and consistent orders in different cases involving the same parties
- more comprehensive relief for survivors at an earlier stage of the judicial process
- advocacy services that encourage survivors to establish abuse-free lives
- greater understanding by judges of the dynamics and effects of domestic violence on victims and their children
- more consistent procedures, treatment of litigants, rulings and orders
- increased batterer accountability
- improved batterer compliance with orders
- greater confidence in the community that the justice system is responding effectively to domestic violence
- greater system accountability.

These points represent the *potential* for benefit from such courts. However, Keilitz (2001) found a gulf between aims and implementation.

In a review of two decades of literature on family violence courts in the US, Moore (2009:10) summarised the research findings on the specialist criminal family violence courts as follows:

The research reveals that they are successful in promoting expedited case processing and tend to be associated with increased victim satisfaction and access to services. These courts also appear to increase the use of mechanisms that promote offender accountability such as program mandates, probation monitoring, and judicial monitoring. In fact, research indicates that domestic violence

courts are more likely than are non-specialized courts to enforce court orders through the imposition of sanctions for noncompliance, including probation revocation and incarceration.

Cissner et al. (2013) also attempted to summarise the previous US research and provide a useful table of the findings of previous studies (Cissner et al, 2013:8). They found consistent evidence for improvements in case processing time across the evaluation studies. The evidence supports the view that family violence courts are more efficient than general courts in processing cases and therefore reduce the time taken to reach a disposition. This is perhaps unsurprising if a condition for acceptance by such a court is that the defendant pleads guilty or if additional resources are put into a new court to tackle the problem of family violence.

The impact on recidivism in the US is more mixed, according to Cissner et al. (2013). Studies at four sites showed reduction in recidivism, while three sites produced neither reductions nor increases, and three sites had mixed results depending on the recidivism measure (Cissner et al., 2013:4). The consensus emerging from the available research is that treatment programs may reduce recidivism if they are part of a coordinated response, including a specialist court. Petrucci (2010:131) summarises the evidence as follows:

... it may be important to consider batterers' programs in the larger context of a coordinated community response that includes a specialized domestic violence court with judicial monitoring and consistent sanctions. Studies of domestic violence courts as part of a coordinated community response have come to more positive conclusions about the efficacy of batterers' treatment in lowering subsequent rearrests. In this body of research, recidivism has been consistently lowest for offenders who experienced the coordinated approach. In addition, a greater number of offenders are completing court-ordered treatment. Across study sites that incorporated batterer counselling within specialized courts, offenders who completed their counselling had lower recidivism than offenders who did not. (References omitted.)

Major empirical studies

There are a number of methodologically sound evaluations of specialist trial courts in North America dealing with family violence.

In Brooklyn, New York, a specialist felony domestic violence court was established in 1996 to deal with the most serious cases, classified as felonies. Its goal was to create an effective and coordinated response by bringing together criminal justice and social services agencies (Newmark et al., 2001; Leventhal, 2014). The court deals with virtually all the indicted family violence cases in the jurisdiction. These cases involve very serious matters such as homicide, attempted homicide and aggravated assault, and often involve defendants who have extensive histories of violence. Most of the personnel involved in the court have received extensive and ongoing training in family violence issues, and judges take a leadership role. The court seeks to work in partnership with community agencies. The same judge and prosecutor/advocate team handle each case from committal to trial and each victim has a support person. The Court and partner agencies keep the defendant under close surveillance (in terms of complying with bail conditions) while the case is pending, and afterwards if the offender is placed on probation.

Researchers compared 109 cases dealt with in the specialised jurisdiction with 93 cases indicted from 1995 to early 1996, just before the specialist court was established. The case processing time increased on average from 169 to 216 days, although the researchers attributed this more to the severity of the charges and to the greater proportion of accused who were released on bail than to the nature of the court process (Newmark et al., 2001:54). The conviction rate rose in the specialist court, but the difference did not reach statistical significance, and the increase may have been the result of greater plea bargaining (Newmark et al., 2001:58). There was no difference in sentencing practices (Newmark et al., 2001:64). Thirteen years later, the judge responsible for this court for many years (Leventhal, 2014:10) reported a much reduced recidivism rate:

Over a decade, our probationers in the Brooklyn felony domestic violence court had one-half of the violation rate when compared to the general probation population. We had far fewer dismissals than there have been historically when domestic violence crimes had been processed in conventional courts.

Ursel's evaluation of the Winnipeg Family Violence Court showed that after using the specialist approach, sentencing patterns changed significantly. Prior to the introduction of the specialist court, the most common outcome of a family violence case was a conditional discharge – that is, there were almost no consequences. After specialisation, the most frequent sentence became probation, and the level of incarceration increased substantially (Ursel, 1992:120; Ursel & Hagyard, 2008:111). The mandated treatment programs also improved recidivism rates. Seventeen years on, Ursel and Hagyard (2008:118) concluded from all the evidence that 'specialization has encouraged greater support for the victim and has placed more emphasis on treatment for the abuser'.

In a study of 24 family violence courts in New York State, Cissner et al. found that the average family violence court case took 197 days to reach disposition, compared with 260 days in the comparison sample of general jurisdiction courts (Cissner et al., 2013:43). They also found that the specialist courts that prioritise deterrence, and that both prioritise and use specific policies to sanction offender non-compliance, were most effective in reducing recidivism (Cissner et al., 2013:40). The specialist courts were also more likely to convict male defendants and impose prison sentences (Cissner et al., 2013:45,48). The researchers' comment on conviction and imprisonment rates highlights the potential benefit of specialised training in the dynamics of family violence. They observed:

Achieving more severe case outcomes with male but not with female defendants is largely consistent with the intended impact of the model. In cases of intimate partner violence, males are more often the primary aggressor, more often resort to injurious forms of violence, and often seek to manipulate their female partners and the justice system by filing cross-complaints. One of the intended benefits of having dedicated domestic violence court judges is the special training they receive in the ways that abusive males may attempt to manipulate both their victims and the criminal justice system. This training might well have the effect of yielding more severe case outcomes only among male defendants.

The study by Gover, MacDonald and Alpert (2003) in Lexington County, South Carolina, provides strong evidence of the positive effects of a specialist court both in terms of promoting more rigorous law enforcement and reducing recidivism. Family violence arrests increased significantly after the court was established, and the rearrest rate was significantly lower among defendants dealt with by the family violence court. Being processed through the family violence court decreased the odds of recidivism by 50 per cent (Gover, MacDonald & Alpert, 2003:122). However, it should be noted that the specialist court in Lexington County was only one aspect of a many-pronged and multidisciplinary response to the problem. The Sheriff's Office appointed two full-time investigators and a full-time prosecutor to work as a team on family violence cases, as well as a full-time victims' advocate to assist victims referred to the court. The county's Department of Mental Health also had two dedicated mental health counsellors who assigned treatment programs for perpetrators. There was also a legal advocate for victims present in each court session. The primary emphasis was on treatment options for offenders. While Gover and colleagues attributed the increased arrest rates for family violence to establishing the specialist court (Gover, MacDonald & Alpert, 2003:119), it is possible that it was due to using two full-time investigators and a full-time prosecutor.

Tutty and Koshan (2013) conducted a major evaluation of Calgary's specialist trial court, comparing it with a pre-specialist court baseline. This court had a specialist prosecution team and support services for victims to assist them with the court process. Compared with the baseline, convictions increased over time from 58 per cent to 68 per cent, although the increase was not significant (p -value=0.38). However, a higher proportion of cases were stayed, dismissed for want of prosecution or withdrawn (38 per cent at baseline, 45 per cent in the specialist trial court). The proportion of cases in which the victim gave evidence at trial increased substantially (up from 20 per cent to 49 per cent). This shows that victims increased their engagement with the criminal process when the specialist court was established, and fewer cases were withdrawn because the victim didn't appear. Operating together with the specialist docket for low-risk offenders, more cases across the two courts resulted in guilty pleas and bonds to keep the peace, and there was a modest reduction in recidivism (34 per cent down to 26 per cent). A study of a specialist family violence court in New Mexico that used treatment programs and positive behavioural reinforcement strategies (Pitts, Givens & McNeely, 2009) also showed positive results.

A study of a specialist family violence court in Milwaukee also showed increased victim participation, which may have helped raise the conviction rates (Davis, Smith & Rabbitt, 2001). In Milwaukee, government officials introduced the specialist court with the aim of greatly increasing the speed with which cases were heard. It was hypothesised that speedier handling would lead to fewer ambivalent victims changing their minds about testifying. The special court halved the time taken to bring matters to trial. The researchers observed (Davis, Smith & Rabbitt, 2001:67):

Reduced case-processing time meant fewer demands for victim court appearances: Victims in the pre-specialized court sample were subpoenaed an average of 1.01 times, compared to 0.82 times after the specialized court was formed (p -value=0.08). And while 42 percent of victims failed to comply with a summons to appear in court before establishment of the specialized court, this proportion dropped to 34 percent after the court was created. This difference is marginally

significant (p-value=0.09) and reflects the decreased opportunities for victim failure to appear because fewer victims receive summonses under the expedited case disposition process.

The proportion of convictions rose from 56 per cent to 69 per cent (p-value<0.01), mainly due to more guilty pleas. However, victims were significantly less satisfied with prosecutors in the specialist court compared with prosecutors before the court became specialised. They were also less likely to say that they would return to court if hurt again. It was hypothesised that this was because, in more cases, the victims had not wanted the prosecution to occur or the offender to be jailed.

Integrated family violence courts

The empirical evidence supports the conclusion that an integrated family violence court dealing with the criminal case, restraining orders and parenting issues has benefits. This model of one judge and one family involves a single judge dealing with both the criminal and family proceedings in cases where there is an issue of family violence that either leads to separation (necessitating the establishment of post-separation parenting arrangements) or where the alleged violence occurs post-separation.

The model is not without its challenges (Birnbaum, Bala & Jaffe, 2014), not least because the lawyers involved in the criminal process are not usually the same lawyers as those in the civil process. The prosecutor, of course, has no role in the family law process and the victim's lawyer will have no role in the criminal process. This model can therefore involve inefficient use of lawyers' time, with impacts upon legal aid costs. When one judge hears both cases, it also raises issues about whether the evidence heard in the family law case is admissible in the criminal trial. The major advantages appear to be the greater knowledge the judge has of all aspects of the case and the coordination of victim services.

VII. Specialist prosecution units

Kruger and Reyneke (2008:67) emphasise that the success of a Sexual Offences Court in South Africa depends largely on the prosecutor, who must guide the investigation and conduct the trial. The Ministerial Advisory Task Team (2013:25) also stresses the importance of committed and capable prosecutors:

The prosecution of sexual offences requires a particular type of prosecutor, who is committed to these cases since they are often emotionally difficult to manage. It requires a skill to work with often severely traumatized victims, especially where the victim is a child, and develop a relationship of trust with the victim to ensure the best quality of evidence is presented to the court. Leading of this evidence takes time, skill and patience.

Early research on the specialist prosecutors in South Africa found that the prosecutorial teams were not necessarily specialised. Some had little or no specialist training before commencing the work (although they received training while in the role). While prosecutors were permanently assigned to Sexual Offences Courts, individuals did not necessarily stay in the position for long as they were promoted or reassigned. In that sense, specialisation was somewhat temporary (Muller & Van de Merwe, 2004).

Are the skills of prosecutors enhanced by having specialist prosecution units? In contrast to the voluminous literature on family violence courts, little empirical research has been done to compare the efficacy of specialist prosecution units with a non-specialist approach. However, they are typically a key feature of family violence courts, and to the extent that these courts improve the quality and efficiency of justice, specialist prosecution units may take some share of the credit.

Australia has some experience with dedicated family violence prosecution teams or units. For example, in the ACT, the Office of the Director of Public Prosecutions has a specialist Family Violence Prosecution Team, and while the results of victim surveys are quite difficult to interpret, most victims appeared satisfied with the prosecution team response (Cussen & Lyneham, 2012:84–87).

Specialist units for sexual assaults exist in some jurisdictions. A Specialist Sex Offences Unit¹⁵ was established in Victoria in 2007 to provide a specialised approach to prosecuting all indictable sex offences (including sex offences against children) to minimise the trauma or distress for victims of cases heard in the Melbourne County Court or Supreme Court. Crown prosecutors, solicitors and advocates are co-located and work as a team in the same unit, and specialised training is given to members of the private bar who prosecute most sex offences. Wherever possible, the same solicitor is allocated to handle the matter throughout the proceedings (Williams, 2008). This is a standard feature of specialist prosecution units.

¹⁵ www.opp.vic.gov.au/Our-Work/Specialist-Sex-Offences.

The evidence shows that overall the specialist prosecution unit has been successful. In 2011, an evaluation found that it increased the level of support victims experienced, both before and during the court process (Success Works, 2011:64–69, 78). The evaluation team reported that:

- The specialist model had supported significant internal and inter-agency training and advice to police and other government-based victim support services.
- The specialist unit was supported by all the professionals interviewed, including police.
- Across the life of the reforms, the average time taken to list a sex offence trial from the time the case was first received by the Office of Public Prosecutions declined by 32%, from 469.5 days in 2005/06 to 317.3 days in 2009/10. This occurred despite continual and substantial increases in the number of new sex offence matters received.
- The establishment of the SSOU was recognised by all stakeholders as a significant reform which had made a real difference to the experience of victim survivors and the quality of sexual assault prosecutions.

This is not to say that all victims were entirely positive about their experience with prosecutors, nor that the performance of the unit wasn't criticised. Overall though, the evaluation provided strong validation of the Unit. The work of specialist police prosecutors in the Magistrates' Courts was also evaluated positively (Success Works, 2011:69–70). Around 75 per cent of cases between 2004 and 2009 resulted in convictions, either by plea or trial. The conviction rate declined, however, between 2008 and 2010 (Success Works, 2011:79). For most years analysed, the conviction rate was between 47 per cent and 55 per cent of trials (Success Works, 2011:80).

Specialist prosecution units have been hypothesised to offer a number of advantages. Routine exposure to sex offence cases may result in accumulated experiences that make the specialised attorney better able to assess the strengths and weaknesses of a case; to anticipate and respond to defence tactics; and to communicate more sensitively and confidently with the victim. It is assumed that making a smaller group of attorneys responsible for sexual assault cases means decisions are more consistent and that specialised units will take a more aggressive posture toward sexual assault than non-specialised units (Beichner & Spohn, 2005:462).

However, the evidence to support these assumptions is limited. Beichner and Spohn (2005) examined prosecutorial charging decisions in Kansas City, Missouri, which has a specialised unit for sex offence cases that makes charging decisions and assigns each case to an individual prosecutor. The findings were compared with prosecutorial charging decisions made in Miami, Florida, which does not have a specialised unit for teenage and adult victims of sexual abuse or assault. The authors found that prosecutors' charging decisions were similar in the two jurisdictions. Prosecutors filed charges in 57.5 per cent of all sexual assault cases in Kansas City in which an arrest had been made and in 58.6 per cent of cases in Miami, a statistically insignificant difference.

In Kansas City, of the cases in which charges were initially filed, 14.8 per cent were later 'dismissed' (that is, withdrawn) by the prosecutor. In all, 51 per cent of sexual assault cases in which an arrest was made were either rejected at the initial case screening or filed but later withdrawn. Of the cases that did not end in withdrawal, 76 per cent resulted in guilty pleas and 23

per cent resulted in guilty verdicts. Less than 2 per cent of the cases selected for prosecution resulted in not guilty verdicts at trial.

In Miami, 53 per cent of cases in which an arrest was made were either rejected at the initial case screening or filed but later withdrawn. Ninety-four per cent of the charged cases resulted in a guilty plea. Only four out of 66 cases went to trial, and of those only two resulted in a not guilty verdict. The researchers characterised the process in Miami as a 'system efficiency model of prosecutorial decision making' (Beichner & Spohn, 2005:479), involving high levels of case rejection, early disposal of cases, and high levels of guilty pleas with sentence negotiation a significant factor in inducing guilty pleas.

In both cities, factors other than the sufficiency of the evidence affected prosecutorial discretion. In Kansas City, the likelihood of prosecution was lower if information indicated that the victim had engaged in some kind of risk-taking behaviour such as walking alone at night, hitchhiking, using alcohol or drugs, or willingly accompanying the suspect to his residence. In Miami, information that called into question the victim's moral character – for example, prior sexual activity with someone other than the suspect, ex-nuptial pregnancy or birth, or prior criminal record – decreased the likelihood of prosecution. Such decisions were made in the light of perceived juror resistance to convicting if the victim was not 'pristine'.

Beichner and Spohn nonetheless found differences between prosecution patterns in the two cities. Prosecutors in the Sex Crimes Unit in Kansas City were less likely to engage in plea bargaining and more likely to take cases to trial than their Miami counterparts. Even so, the researchers concluded that the evidence did not support the claimed benefits of specialisation. Beichner and Spohn (2005:490) wrote:

Considered together, these findings call into question all of the aforementioned predicted benefits of specialization as well as two additional assumptions that are often associated with specialized prosecution: (a) that disparity will be eliminated, and fewer personal factors will influence charging decisions; and (b) that specialized units will embody a more aggressive organizational posture toward sexual assault than will nonspecialized units.

They explained this in terms of prosecutors' primary concern, in assessing the evidence, with the likelihood of conviction. In both cities, prosecutors made decisions based on their confidence that a jury would be persuaded by the evidence beyond reasonable doubt, a level of confidence in the outcome that appears to exceed the Australian standard of 'reasonable prospect of conviction'. As Loh (1980:603) has observed, the American convictability standard, as a precondition for prosecution, leaves little room for discretion. Frohmann, in a study of prosecutorial discretion in two specialist sexual assault units in California, also found 'convictability' drove the decision whether to prosecute (Frohmann, 1991). Prosecutors were constantly 'in dialogue with' anticipated defence arguments and anticipated judge and juror responses to the evidence (Frohmann, 1991:224).

A study of a specialised prosecution unit for gang-related homicides in Los Angeles reached different conclusions. In this city, at the time the data was collected, gang-related homicides were allocated to either a specialist prosecution unit or a general one, on the basis of availability. The

specialist unit avoided 'skimming' to establish its credibility. Holding other variables constant, the predicted probability of case rejection was 22 per cent if prosecuted by the specialised unit compared to 51 per cent if not. As the authors noted, violent gang-related cases present a host of issues for prosecuting attorneys such as establishing motives, dealing with multiple suspects, gang intimidation, recalcitrant witnesses, and a neighborhood and youth culture which is opposed to cooperating with authorities (Pyrooz, Wolfe & Spohn, 2011:18).

Cossins (2010:300) reports on the benefits of a specialist prosecution unit in Manitoba:

Staff from the specialist unit believe that prosecutors have a particular advantage over defence counsel because specialisation increases the expertise of Crown prosecutors which has a flow-on effect on the quality of the Crown's case. Specialisation allows prosecutors to establish an appropriate rapport with children who are especially vulnerable and a specialist unit builds up an environment of expertise and support that guards against burnout.

A small study of the experiences of victims and relatives also gives some insights into the quality of the specialist prosecution units in South Africa. Walker and Louw (2005a) interviewed 44 victims. Despite the small number, the authors gave figures as percentages. Thirty-five per cent of the victims were in contact with the prosecutor six to 10 weeks after the incident, while for 60 per cent, first contact took longer than 10 weeks. Ninety-five per cent reported that they were satisfied with the preparatory interview. They felt that the prosecutor had answered their questions and addressed their anticipatory fears of the trial. The great majority (87.5 per cent) felt adequately prepared for trial. The most frequently encountered reasons for satisfaction with the prosecutors were the emotional support received and the victim's belief that the prosecutor was truly advocating for his or her cause. Almost all victims (96 per cent) were satisfied with the way in which the prosecutor led their evidence.

Walker & Louw (2005b) also interviewed 24 family members of victims whose cases were heard in the Court for Sexual Offences in Bloemfontein, South Africa. Most were positive about the quality of their interaction with the prosecutors – all but two reported that the manner in which the prosecutor conducted interviews with victims and their families was satisfactory, and the same number reported that the prosecutor was well prepared or adequately prepared for their role.

While these findings are encouraging, the lack of a control group of non-specialist prosecutors limits the usefulness of this research in evaluating specialist prosecutors. In a small study of victims of sex offences in the ACT, the views of prosecutors were also generally positive (ACT Victims of Crime Coordinator, 2009).

Some qualitative evidence from South Africa points to the benefits of having a specialist commercial crime prosecution unit as part of a specialist court (Altbecker, 2003). The Specialised Commercial Crime Court was established in Pretoria in 1999 to help rectify the perceived inability of the criminal justice system to cope with commercial crime cases. The unit was reported to have a conviction rate of nearly 90 per cent of all closed cases. Altbecker interviewed prosecutors, judges and defence counsel. He found that the benefits of this system arise less from having a specialised court than from the manner in which the Commercial Branch detectives integrate their work with that of the prosecutors of the specialist unit. The prosecutor assigned to a particular

case is involved in the investigation much earlier than in other cases. Indeed, early in the investigation, the detective must present a draft investigation plan to the prosecutor (Altbecker, 2003:37–38). Altbecker notes the risks associated with the investigator and prosecutor having too close a relationship, not least the risk of loss of objectivity, but concludes (Altbecker, 2003:53) overall:

Prosecutors and investigators share an apparently universal sense that, working properly, this approach ensures that cases are properly and speedily investigated. It also ensures that the prosecution is much more prepared for trial than is the case in other parts of the criminal justice system where there is greater distinction between the investigation and prosecution functions.

He also explains (Altbecker, 2003:59):

In the nature of things, a prosecutor who has participated in an investigation and who knows the ins and outs of a case before it comes to court, is going to be much more prepared for trial than one who has not had that privilege. Moreover, given the fact that the prosecutors of the SCCU specialise in the prosecution of commercial crimes and fraud, those that have prosecuted these matters for some time are much more attuned to the evidentiary needs of these cases. They also have a much more developed grasp of the intricacies of both the modus operandi of offenders and the laws against which they offend.

VIII. Discussion: The advantages and disadvantages of specialisation

The Royal Commission is considering the possibility of reforms to the criminal justice system in the context of its terms of reference concerning child sexual abuse in institutional contexts. Should specialist sexual offences courts, or even courts specialising in child sexual abuse prosecutions, be introduced in Australia? Is there a case for further developing specialist prosecution units in Australia? The arguments for and against specialist courts for sex offences are well articulated by New Zealand scholar, Professor Jeremy Finn (2011). They have also been considered by the Victorian Law Reform Commission (Victorian Law Reform Commission, 2004). In any consideration of the benefits of specialist courts or prosecution units, it must be remembered that the ultimate decision-makers in many cases are non-specialist juries.

What insights may be gained from this review of the literature?

A multi-faceted reform agenda

Tutty, Ursel and Douglas (2008:75) observe, in the Canadian context: ‘The term “specialized court” has become a short-hand term for a broad range of related services that support or interact with, the court.’ Any evaluation of the advantages or disadvantages of specialist courts and prosecution units must grapple with the question of what the components of a specialist court might be, what special facilities they have, what services support their work, their level of specialisation and their resources. It would also need to examine what other reforms are made to the criminal justice system and the applicable rules of evidence to deliver just outcomes while reducing or minimising secondary victimisation of complainants.

The National Child Sexual Assault Reform Committee (Cossins, 2010:309–310) recommended that a Child Sex Offences Court be established in each Australian jurisdiction that would:

- have a core group of specialist judges experienced in sexual assault trials, who are also trained in child behaviour and development; the problems of Indigenous complainants and complainants with cognitive disabilities; and sex offender behaviour/treatment options
- rotate specialist judges through the sex offences court to minimise burnout
- include a specialist prosecutorial unit, with prosecutors undergoing the same training as judges
- have an ongoing training program for prosecutors and judges including support services for debriefing to prevent burnout and high staff turnover
- appoint one prosecutor to each child sexual abuse case to maintain continuity from bail to committal through to sentencing
- use specialist listing arrangements and a screening process to identify cases that fall within the child sex offences category
- use case management to reduce delays and arrange pre-trial matters
- exempt children from giving evidence at committal and pre-trial hearings and voir dieres to reduce the number of times a child gives evidence
- using designated courtrooms equipped with state-of-the-art CCTV facilities

- include a remote room outside the court precinct with a waiting room/play area for complainants and support persons
- push for legislation to permit the pre-recording of a child's evidence-in-chief, cross-examination and re-examination, or make it mandatory to use CCTV where pre-recording is not possible, unless the complainant chooses to give evidence in court
- use trained intermediaries to convert defence counsel questions into age/culturally appropriate language for all child complainants and to advise the court on improper questions
- use a child witness service to prepare the child for court and provide pre-trial and post-trial counselling
- introduce a mandatory treatment programs for all child sex offenders
- facilitate ongoing monitoring of defendants on bail, and of offenders post-conviction and post-release via compulsory attendance at compliance hearings
- establish an IT system to track charges, dispositions, sentence, bail and probation conditions, status of the case and actions taken at each hearing.

It also recommended that the establishment of such courts should be accompanied by the introduction of reforms to the rules of evidence, controls over cross-examination and judicial warnings proposed in the Report.

In South Africa, the Ministerial Advisory Task Team (2013:52–53) had a not dissimilar, but also lengthy, list of features that a specialist sexual offences court should have. As the NSW experience shows, partial or ineffective implementation of a specialist court, docket or program won't necessarily yield the benefits that could flow from specialisation.

To improve the quality of justice, a range of features and support services are needed for a specialist court, but the corollary is that it is difficult to assess the benefits of structural separation independently of those features. If 10 factors contribute to an improved quality of justice, nine of which could equally be features of a specialised approach to child sexual abuse prosecutions within a general court system, how does one isolate and evaluate the additional benefit of structural separation? The contrasting experiences of Victoria and the ACT may illustrate the problem. Victoria implemented numerous reforms to the law and system response concerning sex offences following its Law Commission report (Victorian Law Reform Commission, 2004). Those reforms included creating Sexual Offences Lists in both the Magistrates' Court and the County Court. The reforms received a very positive evaluation in 2011, including affirmation of the benefit of the Sexual Offences Lists. It is questionable whether any extra benefit is to be gained from describing the Sexual Offences List as a 'Court' within the existing court structures and judicial allocation arrangements. In the ACT, naming the specialist list as the Family Violence Court, and enshrining this in legislative amendments to the *Magistrates Court Act 1930*, does not seem to have dampened calls for a specialist family violence court.

The question of resources also complicates the evaluation of structural reform. Typically, specialist courts or specialised approaches (Jones, 2002) are developed in response to a particular social problem or category of crime. The government's announced commitment to tackle that problem may well generate additional resources. For example, when the Family

Violence Court Division was established in two locations in Victoria in 2005, the Victorian Government allocated \$5.2 million over four years to resource it, with a separate allocation for the associated offender programs (ALRC, 2010:1499). Evaluations that have indicated, for example, a reduction in processing times for cases have not taken account of whether the specialist court has had resources that, on a per case basis, were greater than the resources devoted to this category of case before the specialist court was introduced.

Purposes of specialist courts

In evaluating the application of this research when considering a specialist court for sex offences against children, the question to ask is why it is thought a specialist jurisdiction is needed. Specialised sexual offences and family violence courts fulfil a range of purposes in Australia and around the world. Payne (2005), in a review of specialist courts in Australia, identifies three kinds of specialist criminal justice courts. In the first, the court works collaboratively with other agencies in case management and program delivery for each offender. The court maintains significant and ongoing contact with the offender to improve their prospects for rehabilitation. The court's role in case determination is secondary to its role in rehabilitation. The second kind of court is diversionary. Judges monitor the success of that diversion as part of their function to determine the outcome, and treatment may be a condition for release prior to final sentencing. Certain drug courts operate in this way. The third kind of specialist court is as a specialist adjudicator – for example, Indigenous courts. Unsurprisingly, these different purposes and models for specialisation require different structures.

The evidence for the efficacy of problem-solving courts such as drug courts and some family violence courts is likely to be of little relevance in assessing the benefits of a specialised court or prosecution unit if the main purpose is to improve the quality of justice leading, where the evidence justifies it, to a conviction. A large proportion of problem-solving courts in the criminal law area are concerned mainly or entirely with post-conviction disposition and offender rehabilitation or management. Typically, they are high-volume courts of summary jurisdiction. The call for specialisation in dealing with child sexual abuse cases arises in a very different context and any such court would have different purposes.

The purposes of a specialist child sexual abuse court might include:

- assisting the prosecution to present its case most effectively
- improving the quality of judicial decision-making in child sexual abuse trials
- reducing case attrition due to victim reluctance to testify
- improving post-conviction dealings with offenders with the aim of reducing recidivism.

(i) Assisting the prosecution to present its case most effectively

Child sexual abuse cases have special features that require particular facilities or processes to allow the prosecution to present its evidence effectively. This is the rationale for introducing special provisions for child witnesses and other vulnerable witnesses, such as CCTV and using a videotaped interview as part of the evidence-in-chief. There is likely to be value in having prosecutors trained in child development and who are able to question children at a developmentally appropriate level. The research supports the case for having specialist

prosecution units for child sexual abuse cases – and the Victorian model may be translatable to other Australian jurisdictions – but the greatest benefits are likely to be found in the level of expertise of individual prosecutors and how well they relate to victims and other witnesses, rather than the structural arrangements for workload distribution within a prosecutorial office. The Winnipeg experience offers some evidence of this. An increase in conviction rates seems to have coincided with the appointment of a committed prosecutor who supervised the specialist prosecutorial unit. Ursel and Hagyard (2008:110) comment that this is ‘yet another indicator that all the best policies won’t necessarily make a difference unless there are committed personnel to carry them out’.

Specialisation can be achieved informally, as well as formally, with prosecutors tending to be assigned certain categories of case or electing to specialise in certain sorts of case. However, to the extent that specialised work practices and better supervision and support can be achieved by establishing a formal division, a specialist unit may bring advantages. The experience of specialist prosecution units that work closely, and at an early stage, with investigators deserves careful examination in determining the optimal operation of such a unit.

(ii) Improving the quality of judicial decision-making

There is strong support for specialised judges in dealing with family violence cases (Karan, Keilitz & Denaro, 1999:76), although many family violence courts have judges presiding on a rotational basis.

The evidence is limited about whether designating specially trained judges to preside over child sexual abuse trials will improve the quality of judicial decision-making. Training may assist judges to identify when a defence question is too complex for the child to understand, for example, and expertise in child sexual abuse may influence consideration of sentencing options. However, judges do not come to the Bench as ‘tabula rasa’. Typically, they bring to the Bench long experience as prosecuting lawyers or defence lawyers, or both. That professional background and experience prior to appointment may shape their approach to rulings on case management or evidence where discretion is involved; their willingness to intervene from the Bench during defence cross-examination of child witnesses; their summing up of cases to a jury; and sentencing decisions. While greater training doesn’t have a downside, an evaluation of its efficacy must take into account the other factors that may shape judges’ approach to their role.

A common pattern in the specialist courts examined was for judges to rotate in and out of these courts; for example, sitting for six months at a time. It would be better therefore to describe them as dedicated judges rather than specialists. They focus on a particular type of case for a time rather than making a career specialising in a certain area.

Nonetheless, three advantages may be put forward for some specialisation, even if judges are only allocated to a specialist court for a set time, or mix their responsibilities in the specialist jurisdiction with other work. The first is that it is possible that there would be advantages to having a specialist judge who acts as fact-finder, as he or she is likely to understand aspects of the evidence of child victims much better if trained in social science knowledge relevant applicable to the assessment of children’s experiences of child sexual abuse (Shackel, 2009a; 2009b; 2011). The second advantage is that while it is likely that a large number of judges would be needed to

handle the volume of child sexual abuse cases, and some rotation would be needed to avoid trauma and burnout, establishing a specialist court or list allows the Chief Judge or equivalent to decline to select judges who are unsuitable to preside over child sexual abuse trials. Something like this happens in England and Wales, where Crown Court judges need a 'sex ticket' to hear sexual offences cases. This involves an assessment of the suitability of judges and providing some specialised and ongoing training. Most Crown Court judges, but by no means all, have this ticket (Finn, 2011:99–100).

Third, it may well be that judges who have some degree of specialisation in these kinds of trials are less likely to make appellable errors in rulings on evidence or in summing up.

(iii) Reducing case attrition

One way to reduce case attrition is to reduce the stress and difficulty for victims in giving evidence. Will specialist courts do more to assist victims than generalist courts? Annie Cossins, writing on behalf of the National Child Sexual Assault Reform Committee (Cossins, 2010:290) comments:

When considering alternative models for the prosecution of child sex offences, if the *sole* aim is to improve the treatment and experiences of child complainants, the available evidence suggests that this can be achieved by prosecuting child sexual assault cases within the same jurisdiction as other criminal cases. However, all other aspects of CSA trials will remain the same in terms of the problems associated with the lack of corroborating evidence, multiple victims and/or multiple offenders, the vulnerability of children to cross-examination, the unregulated nature of cross-examination, the number and complexity of jury directions, the impact of delay in complaint on the conduct of the trial and the centrality of the child's credibility to the trial and its outcome.

That is, real improvements in the experience of child witnesses depend on much more than establishing a specialist court or prosecution team. Several features of the pilot program for a Specialist Jurisdiction in Child Sexual Assault in NSW (Cashmore & Trimboli, 2005) involved modifications to the general law that could have applied whether or not a specialist court had been set up. These included:

- pre-trial hearings between judges and counsel to determine the special needs of the child and readiness to proceed
- a presumption that children will not be required to give evidence at committal hearings to avoid the need to give evidence more than once
- a presumption in favour of using special measures under the *NSW Evidence (Children) Act 1997*.

The evidence from some family violence courts shows that attrition through the complainant's reluctance to testify can be reduced if cases are dealt with quickly. This is an issue of case management and resourcing, but the experience of the Winnipeg court is that a dedicated resource may be better at managing cases to reduce delay in child sexual abuse matters than a generalist court system (Ursel & Gorkoff, 2001). Other evidence shows that witness support services are also important to the willingness of victims to testify (Dawson & Dinovitzer, 2001).

(iv) Improving post-conviction dealings with offenders

Lessons might be learned from the North American specialist sex offence and family violence courts about the role of a specialist court and judiciary in managing offenders after conviction – for example, monitoring compliance with behavioural change programs for offenders who are not imprisoned, monitoring compliance with probation conditions, dealing swiftly with offenders who do not comply with mandated programs and dealing with issues arising from sex offender registration and restrictions on employment.

The risks of specialist courts

(i) Inefficient allocation of judicial resources

In South Africa, inefficient allocation of resources was a problem. The early collapse of cases often led to low court hours in the Sexual Offences Courts (Ministerial Advisory Task Team, 2013:47). It is unlikely that this would be an issue for sexual assault trials in the large capital cities of Australia. Such is the volume of work in the larger jurisdictions, that the next case could be ready to go as soon as a judge becomes available. However, it may be an issue in smaller jurisdictions and regional centres where efficient allocation of judicial resources may best be achieved if all judges are generalists.

While cases can always be queued up waiting for available judges and courtrooms, specialisation may be problematic if a limited number of prosecutors are available who can take a certain kind of case. It is not always easy to predict how long a criminal trial will last. Arguments about admissibility of evidence, or cross-examination of witnesses, may take longer than anticipated; jurors may fall ill, leading to lost hearing days; a jury may need to be discharged and the trial restarted for a variety of reasons; or a jury may take a particularly long time to reach a verdict. If only a limited number of prosecutors are available for a certain kind of case, waiting for a specialist prosecutor to become available may cause delays before a trial can begin. That risk is greatly reduced if some flexibility is allowed about whether generalist prosecutors can run child sexual abuse cases where necessary.

(ii) Difficulty attracting the best prosecutors and judges

Child sexual abuse work is very confronting, and the prosecution of child sexual abuse cases – sometimes involving children as complainant-witness, and sometimes vulnerable and damaged adults – is particularly difficult. However, determining who is ‘the best’ prosecutor or judge depends on context. Some professionals perform better than others in some roles within their spheres of work. Appointing only those who are willing to take on the challenges of a specialist role court might be a useful way of identifying those who do not have the skills, interest or personality to undertake such a role (Mack, Anleu & Wallace, 2012:73).

Some able prosecutors and judges, who might be excellent in dealing with child sexual abuse cases, may not wish to have such a narrowly confined workload. This risk may be managed in three ways. First, there is no reason why prosecutors and judges should not choose either to specialise in one area, or to take a major role in an area while still having a substantial workload in other areas for a minority of the time. That is, specialisation is not an all or nothing proposition.

Second, prosecutors and judges should be allowed, as far as possible, to self-select into specialist roles, subject to competency considerations. Third, it should be accepted that specialisation may be temporary, rather than permanent, and issues such as burnout and the need for career progression may mean that some specialists only stay in the jurisdiction for a limited period, say two or three years.

(iii) Restrictions on subject matter

Another problem with a specialist court is that if its jurisdiction is too narrowly confined, the court may not be able to deal with all aspects of the case. For example, a sexual assault charge may be combined with a charge of breaking and entering. This problem can be avoided if the specialist court has a general jurisdiction but a specialist focus.

IX. Conclusions

Specialist courts in the criminal justice area take many forms and have many different purposes. Most are problem-solving courts operating on a therapeutic justice model. They are also courts of summary jurisdiction processing large numbers of cases. Most, if not all such problem-solving courts, require defendants to plead guilty as a precondition for being dealt with by that court. Many of the courts that deal with family violence or sex offences have a primary orientation towards post-conviction management of offenders, in particular ensuring compliance with the conditions of bail or probation.

These specialist courts yield only limited insights about the potential benefits of specialisation in dealing with child sexual abuse cases because the main focus of recommendations for such specialisation, in the context of dealing with institutional abuse, is in terms of improving the likelihood of conviction in trials where the evidence justifies it.

The evidence for the efficacy of specialist sex offence and family violence courts that focus on post-conviction management may be more useful when considering reforms to the way in which the criminal justice system responds to intrafamilial child sexual abuse. This is because of the complex dynamics of the parent–child relationship in particular and, to a lesser extent, other intrafamilial relationships. The child, or a non-offending parent, may have some kind of ongoing relationship with the offender even after conviction that justifies an orientation in sentencing towards treatment. In contrast, where child sexual abuse occurs in an institutional context, the perpetrator and victim are most unlikely to have any ongoing relationship. In this case, sentencing of offenders may include mandating some form of treatment, but recidivism, at least in institutional contexts, is best prevented by prohibiting convicted sex offenders from working with children.

The research literature provides solid evidence of the benefits of specialist prosecution units. The South African experience shows the potential benefits of specialist sexual offences courts if they form part of an integrated and well-resourced system for supporting complainants and preparing cases for trial. Specialist prosecution units and courts do have associated risks, but those risks can be managed.

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Appendix: Summaries of empirical studies

Reference	Type of study	Findings	Author's conclusions
Birnbaum et al. (2014)	<p>An evaluation of the first Integrated Domestic Violence Court (IDVC) in Canada to hear both criminal and family cases concerning families with domestic violence issues. The study:</p> <ul style="list-style-type: none"> • used a mixed methods approach • examined family and criminal court databases and file reviews, looking at every third family court file between 2003 and 2010 • held semi-structured interviews with 21 stakeholders (judges, the Crown, criminal and family lawyers, community supports, victims and offenders) involved in the Integrated Domestic Violence Court • used an ecological theory to frame the work, which seeks to understand human experience and behaviour within a 'person-in-environment' framework. 	<p>File and database reviews</p> <ul style="list-style-type: none"> • The study was based on 398 closed family court files that had an allegation of domestic violence or included a report about a criminal charge or conviction relating to domestic violence. • <i>Key finding:</i> Despite concerns about domestic violence issues in these cases over the course of the family proceedings, fathers alleged to be abusive partners have increased involvement in the lives of their children. <p>Professional stakeholder interviews</p> <ul style="list-style-type: none"> • All professionals had 10 years or more experience in their profession. • <i>Challenges and benefits of information sharing between the courts:</i> Judges and Crown prosecutors had positive views while lawyers said it depends whether they are representing the alleged abuser or alleged victim. • <i>Challenges and benefits of hearing both matters before one judge:</i> A common concern is whether the judge could truly disregard information they hear in one proceeding that would 	<p>The participants generally report that the Court provides a better approach to dealing with domestic violence post separation, though some concerns were expressed – especially by lawyers representing alleged abusers – about its operations.</p>

Reference	Type of study	Findings	Author's conclusions
		<p>be inadmissible in the other, and, how their decision-making in the criminal matter might affect the family matter and vice versa.</p> <ul style="list-style-type: none"> • <i>Challenges and benefits of having social service supports attached to the court to assist victims:</i> Comments varied. Too many services are uncoordinated, certain services are absent, especially for offenders, and service providers may misuse information. But there were also positive comments. • <i>Does the IDVC provide effective communication and collaboration between the justice system, the clients and the community groups?</i> • Challenges were reported with obtaining legal aid certificates that are adequate for all the court time needed, and the time needed for court preparation and documentation because of hearing both matters sequentially. • <i>Additional thoughts or comments about the IDVC:</i> Many were optimistic and hoped that the goals of the court would be met. Others were uncertain about whether it was meeting its objectives, or expressed concerns about implementation. 	

Reference	Type of study	Findings	Author's conclusions
		<p>Responses of victim and offender</p> <ul style="list-style-type: none"> Both the victims and offenders spoke positively about their experience in the IDVC and about the services associated with it. Comments focused on the process and the impact on their and their children's lives. 	
<p>Cissner et al. (2013)</p>	<p>A quasi-experimental evaluation of 24 domestic violence courts throughout New York State that:</p> <ul style="list-style-type: none"> compared outcomes between matched pairs of defendants processed in the 24 domestic violence courts and 24 conventional courts prior to the opening of specialised courts included a domestic violence sample of cases processed in each domestic violence court during its first two full calendar years included a conventional court sample of cases processed during the two full calendar years preceding the opening of the specialised court used propensity score matching techniques to avoid bias between samples, resulting in 	<p>Impact on re-arrests</p> <ul style="list-style-type: none"> Domestic violence courts did not reduce re-arrests overall. <i>Among convicted offenders:</i> Domestic violence courts appeared to reduce the incidence of re-arrest on any charge (46% versus 49%, non-significant) and significantly reduced the incidence of re-arrest on domestic violence charges (29% versus 32%) <i>Total number of re-arrests:</i> Domestic violence courts showed a significant reduction both on any charges and on domestic violence charges. Domestic violence courts that prioritise deterring re-offending and include policy measures to sanction non-compliant offenders and address victim safety and service needs significantly reduced the incidence of re-arrest compared with domestic violence courts that focus less on these issues. 	<ul style="list-style-type: none"> Evaluation demonstrated a modest positive impact on recidivism among convicted offenders, though not among all defendants. It did not detect a significant overall impact on conviction rates or incarceration sentences, although the domestic violence courts produced significantly more punitive outcomes (higher conviction and incarceration rates) for male offenders. Not all domestic violence courts seek the same goals, follow the same policy model, or achieve the same impacts. Domestic violence courts that prioritise

Reference	Type of study	Findings	Author's conclusions
	<p>identical key characteristics, including criminal histories, current charges and demographic background</p> <ul style="list-style-type: none"> used community level measures (taken from census data) and court policies (drawn from two policy surveys administered to court personnel) in its analyses. Court impacts and the effect of specific policies were analysed in a hierarchical linear modelling framework, which takes into account the possibility that the applicable impacts and dynamics may vary from jurisdiction to jurisdiction. 	<p>Authors could not disentangle which points were most important.</p> <p>Impact on case processing</p> <ul style="list-style-type: none"> Domestic violence courts across the state significantly reduced average case processing times (197 versus 260 days to disposition), indicating increased case processing efficiency. <p>Impact on offender accountability</p> <ul style="list-style-type: none"> Domestic violence courts modestly increased conviction rate (65% versus 61%) and the percentage of sentences that involved jail or prison (32% versus 28%), but these differences were not statistically significant. Domestic violence courts significantly increased the conviction rate among male defendants. They also appeared to increase the rate of jail or prison sentences among convicted males ($p < 0.10$) but not among convicted females. 	<p>deterrence and that both prioritise and implement specific policies to sanction offender non-compliance, while also addressing the needs of victims, are most effective in reducing recidivism.</p>
Gover et al. (2003)	<p>An evaluation of the effectiveness of a local domestic violence court.</p> <p>Quantitative analysis included:</p> <ol style="list-style-type: none"> Time series intervention analysis to examine impact of 	<p>Interrupted time series analysis results</p> <ul style="list-style-type: none"> Indicated that domestic violence arrests increased significantly after the court was established Increased arrests by 5.57 arrests per month, which is a 10% increase in the 	<p>Findings suggest that systematic localised court interventions aimed at domestic violence defendants can enhance enforcement and improve victim safety.</p>

Reference	Type of study	Findings	Author's conclusions
	<p>the Criminal Domestic Violence Court (CDVC) on domestic violence, which:</p> <ul style="list-style-type: none"> • examined monthly frequency of criminal domestic violence between 1997 and 2001 • compared cases before and after the CDVC was established • compared domestic violence arrests with simple and aggravated assault arrests • involved interrupted time series analyses using autoregressive integrated moving average noise models, examining whether the effects of the court had an abrupt permanent effect on criminal domestic violence <p>2. Recidivism analysis of court on individual case outcomes, including:</p> <ul style="list-style-type: none"> • analysis of a random sample of criminal domestic violence cases • a comparison with an historical sample of cases drawn from traditional Magistrates' 	<p>average monthly number of domestic violence arrests.</p> <p>Recidivism analysis results</p> <ul style="list-style-type: none"> • The recidivism rate among 189 defendants arrested for domestic violence before the implementation of the domestic violence courts were compared with that of 197 defendants after the courts began operating. • The rate of re-arrests was significantly lower among defendants processed through the domestic violence courts. • The predicted probability of being rearrested for domestic violence for the comparison group was 18%, and 10% for the CDVC group. 	

Reference	Type of study	Findings	Author's conclusions
	<p>Courts in the same county</p> <ul style="list-style-type: none"> tracking of each case for 18 months after initial arrest. 		
Morgan et al. (2008)	<p>An evaluation of the Waitakere Family Violence Court (WFVC) and protocols.</p> <p>Interpretive phenomenological analysis (IPA) was used to thematically analyse three sets of data, including:</p> <ul style="list-style-type: none"> interviews with 23 participants who work for different government and community agencies involved in the WFVC (Study One) interviews with nine women victims whose partners pleaded guilty to intimate violence offences within the WFVC, were convicted and sentenced to 'come up if called upon' for re-sentencing. This was the most common sentence passed at the WFVC during 2006 (Study Two) interviews with three key informant advocates who had between five and 15 years experience working with victims across Community Victim Services organisations 	<p>Main findings from Study One</p> <ul style="list-style-type: none"> <i>WFVC process:</i> The WFVC takes a problem-solving approach to criminal justice issues; all family violence cases are identified and dealt with in one court on one day; the specific socio-cultural contexts in which violence manifests in families is taken into account; and community services are provided to support victims and to address issues underlying violence for offenders. <i>Victims and offenders:</i> WFVC fast-tracks family violence matters by concentrating them within one court on one or two days; fast-tracking is especially important when defendants plead not guilty; the court maintained relatively high levels of guilty pleas and conviction rates during its first year under the 2005 protocols (as a result, fewer victims were involved in protracted defended hearing processes); victim advocacy services were provided by a three-part Community Victim Services network, which is at the heart of victim safety 	<ul style="list-style-type: none"> The clearest success of the WFVC is its collaboration with the community for over 15 years to produce protocols that are consistent with recent findings on best practice in specialist domestic violence courts internationally. Independent evaluative research needs to be incorporated into community and court collaborations to ensure that all agencies involved in the collaboration can continue to learn best practices for responding to family violence. The whole of the justice sector needs to be more supportive of female victims.

Reference	Type of study	Findings	Author's conclusions
	collaborating with the WFVC (Study Two).	<p>provisions; judicial monitoring enables offenders to demonstrate their commitment to ending the violence; and in the first year of the operation of the current protocols, recommended sentences were used very consistently.</p> <ul style="list-style-type: none"> • <i>Programs:</i> Sentences to supervision are problematic because the policies and practices of the Community Probation Service are not based on specialist understandings of family violence matters; policies that prioritise high-risk offenders and assess risk without the specialist assessment instruments that police and CVS share can mean that offenders are not necessarily suitable for a supervision sentence even though they pose a high risk to a member of their family or intimate partner; and supervision sentences also have consequences for victims – CVS advocates reported that clients were less likely to use independent services if their partner was sentenced to supervision. 	
		<p>Main findings from Study Two</p> <ul style="list-style-type: none"> • <i>Overcoming delay and minimising damage:</i> Results in these areas differ according to guilty and not guilty pleas before the court; the WFVC 	

Reference	Type of study	Findings	Author's conclusions
		<p>strategy of coercing guilty pleas effectively protects victims from the potential harms of defended hearings; some delays in case disposals are related to re-offending; if a defendant is re-arrested before his case is disposed, the hearing of the first matter is delayed; and delays relating to re-offending are obviously related to women's increased risk of harm around arrest</p> <ul style="list-style-type: none"> <li data-bbox="743 835 1154 1297">• <i>A holistic approach and specialisation:</i> The aim of concentrating specialist services in the court is achieved most consistently by collaborating with community-based specialist service providers for victims and offenders; and extra resources for community specialist victim and offender services are needed to ensure that services can be supported. <li data-bbox="743 1308 1154 1871">• <i>Victim safety and offender accountability:</i> In the collaboration between the community and the WFVC, issues about victims' safety and defendants' rights are able to be raised and openly discussed with the judiciary, and in the Family Violence Focus Group; women victim participants reported that their partners did not respect bail conditions – non-association orders didn't protect victims from further harm in these 	

Reference	Type of study	Findings	Author's conclusions
		<p>circumstances; women victim participants reported little positive change in their safety as a result of their partner's attendance at treatment or intervention programmes; and agencies involved did not co-ordinate well enough to ensure that re-offending resulted in re-sentencing to hold the offender accountable for ongoing violence.</p>	
<p>Newmark et. al. (2001)</p>	<ol style="list-style-type: none"> 1. This study used qualitative research methods, including interviews with a number of key court and partner agency personnel; observations of courtroom proceedings; and attendance at coordination meetings. 2. It included pre/post evaluation of how the Brooklyn's Felony Domestic Violence Court (FDVC) model influences case processing, outcomes and recidivism. <ul style="list-style-type: none"> • The study compares (n=93) case characteristics, processing and outcomes for a sample of cases adjudicated in Kings County's Supreme Court before the FDVC was established with a 	<ul style="list-style-type: none"> • The existence of the specialised court seemed to change the types of cases that were brought, in that prosecutors were more likely to indict cases with less severe police charges than before. This may have influenced case processing, disposition and sentencing patterns. • FDVC victims were more likely to be assigned an advocate, and defendants on pre-disposition release were more likely to be required to participate in a batterers' intervention program. • The court itself produced a higher rate of disposition by guilty plea, which saves the system time and money • Interpretations of recidivism findings are severely constrained by limitations in the recidivism data and the pre/post design. • Criminal history, especially criminal contempt of court orders, predicted how well defendants performed pre- and post-disposition. 	<ul style="list-style-type: none"> • Additional research should be conducted to document the development of the specialised domestic violence courts and evaluate their impact. • An evaluation component should be planned when a new court is being planned, so that evaluation can occur proactively rather than retroactively. This would allow evaluators to develop research materials to evaluate the model more thoroughly. • Interviews with victims are the best way to measure repeat domestic violence (at least against that identified

Reference	Type of study	Findings	Author's conclusions
	<p>sample of cases (n=136) adjudicated by the specialised court during the early months of its operation</p> <ul style="list-style-type: none"> It addresses a number of questions around the central issue of the differences in adjudicating felony domestic violence cases under the specialised court model. 		<p>victim), both reported and unreported, for which arrests were and were not made. Resources for this critical step were not available here, but should be prioritised for future research efforts.</p>
Petrucci (2010)	<p>A retrospective descriptive study of one courtroom, which:</p> <ul style="list-style-type: none"> analysed a 1997 cohort of misdemeanour offenders (n = 289) in a California domestic violence court compared the recidivism rate among the 62% of offenders who completed a 52-week counselling program with those offenders who did not complete the program included a four-year statewide recidivism follow-up. 	<ul style="list-style-type: none"> For all types of arrests, rates were lower among program completers versus non-completers (for domestic violence arrests, 15% versus 25%). Logistic regression revealed that completion was predicted by not using drugs, not getting a new case, pleading 'not guilty', and an interaction of not having a concurrent case with not being ordered to a work program. Survival analyses identified key risk periods for arrest, and those with domestic violence priors re-offended soonest, as did those who had problems with drugs or alcohol, or who did not complete counselling. 	<ul style="list-style-type: none"> The research design in this study does not allow solid inferences about whether the program itself contributed to these results. Due to the lack of a randomly assigned comparison group, the cohort approach in which all cases were analysed over a one-year period, with a sizeable sample, does permit cautious generalisation of the findings to settings with similar offender characteristics and similar processes. Unlike much of the current

Reference	Type of study	Findings	Author's conclusions
			<p>research, a significant proportion of offenders enrolled and completed a 52-week batterers' treatment program.</p> <ul style="list-style-type: none"> • Completion of court-ordered batterers' treatment is essential due to its established relationship with lower recidivism rates compared to the recidivism rates of offenders who do not complete counselling. • The domestic violence recidivism rate of 19% (all types of arrests) in a four-year countywide and statewide follow-up among all offenders – and 15% among program completers – suggests that recidivism in this court is among the lowest when compared with other studies.
Robinson (2008)	A multi-site evaluation using mixed methods, including:	<ul style="list-style-type: none"> • Of the 438 cases (n=237 defendants), half resulted in convictions. • Substantial variability was seen in the case 	<ul style="list-style-type: none"> • Findings suggest that traditional performance indicators cannot tell us much about

Reference	Type of study	Findings	Author's conclusions
	<ul style="list-style-type: none"> analysis of data from 438 cases in seven specialist domestic violence courts (SDVCs) in England and Wales interviews with victims and practitioners working in the courts (n=54 practitioners and n=46 victims); plus a literature review and observations from site visits. 	<p>progression practices across the seven SDVCs.</p> <ul style="list-style-type: none"> Sentencing outcomes were significantly different by court location, despite hearing similar types of cases. The location of the court appeared to matter more than key factors such as offence type (assault, harassment, property), as analyses indicated statistically significant differences between courts in terms of their case progression practices, as well as their use of various penalties, whereas offence type was generally unrelated to these performance measures. Bindovers were used in the courts (ranging from 3% to 20% of cases in each SDVC) despite being discouraged by the Crown Prosecution Service and viewed as inappropriate in cases of domestic violence. The timing of case attrition also differentiated the courts, with some SDVCs preferring to use withdrawals or discontinuances rather than proceeding to trial and offering no evidence. Some courts were more successful at obtaining early guilty pleas Custody was used infrequently, community penalties were relatively popular (especially if a perpetrator program was available) and discharges 	<p>the performance of SDVCs, in part because 'success' in a domestic violence case is difficult to define using criminal justice terms alone.</p> <ul style="list-style-type: none"> An alternative approach involving measuring 'quality prosecution' and 'quality sentencing' is offered, which could not only provide a more meaningful assessment of a court's performance, but could also more accurately represent 'what matters' to victims of domestic violence.

Reference	Type of study	Findings	Author's conclusions
		<p>were used at a rate comparable to Magistrates' Courts nationally.</p> <ul style="list-style-type: none"> SDVCs in this study gave out fines at the rate of Magistrates' Courts 30 years ago (in about two-thirds of cases). <p>Victim interviews</p> <ul style="list-style-type: none"> The system was uncoordinated, poorly maintained and inefficient. The experiences of victims with the SDVC process varied quite substantially, as did their desires about what they wanted to happen as a result of the abusive or violent incident coming to police attention. For example, victims had different ideas as to how they might achieve 'safety', the outcome they most often desired from criminal justice intervention. 	
<p>Rodwell & Smith (2008)</p>	<p>An evaluation of the NSW Domestic Violence Intervention Court Model (DVICM), in which:</p> <ul style="list-style-type: none"> data was extracted from two separate databases: the NSW Police Force's Computerised Operational Policing System (COPS) and court outcome data from the Local Court database managed by the NSW Bureau of Crime Statistics and Research 	<p>Police and Local Court outcomes</p> <ul style="list-style-type: none"> The police and Local Court results were mixed. The number of domestic violence reports to the police did not show a consistent upward or downward trend. The proportion of alleged domestic violence offenders charged by Campbelltown and Macquarie Fields Local Area Commands increased after the DVICM began operating, however the increase in Campbelltown 	<ul style="list-style-type: none"> No conclusions are given.

Reference	Type of study	Findings	Author's conclusions
	<ul style="list-style-type: none"> • four pre-DVICM periods and three post-DVICM periods were analysed • cases in Campbelltown, Macquarie Fields, Wagga Wagga and the rest of NSW were examined • a sample of victims from both Campbelltown and Wagga Wagga were interviewed by the primary author following the finalisation of their matter in the Local Court (n=50; response rate of 65.8%) • stakeholder interviews (n=41) were conducted either face to face or over the phone. 	<p>appeared to reflect a trend that began prior to the opening of the DVICM.</p> <ul style="list-style-type: none"> • Wagga Wagga LAC had high charge rates prior to the DVICM operating and these remained high throughout the DVICM's period of operation. However, the increase in charge rates observed in Campbelltown and Macquarie Fields was not restricted to these DVICM sites. The 'rest of NSW' control group also had increased charge rates. • There was limited evidence of the success of the DVICM in Campbelltown and Wagga Wagga Local Courts. • In Campbelltown Local Court, the proportion of good behaviour (Section 9) bonds with supervision handed down for the principal domestic violence offences increased after the DVICM began operating. The proportion of non-conviction (Section 10) bonds also increased. However, the results relating to the Section 9 bonds with supervision were based on a pre-DVICM period that contained unusually low proportions of this penalty. <p>Victim satisfaction</p> <ul style="list-style-type: none"> • Victims were very satisfied with the police response in Campbelltown, Macquarie 	

Reference	Type of study	Findings	Author's conclusions
		<p>Fields and Wagga Wagga LACs.</p> <ul style="list-style-type: none"> Victims were very satisfied with the support they received from the Victims' Advocate in Campbelltown and Client Advocate in Wagga Wagga. At the time of the interview, around four in five reported that they felt safe. The majority of victims said they would report a similar incident to the police in the future. <p>Key stakeholder satisfaction</p> <ul style="list-style-type: none"> The majority believed the DVICM was a successful pilot and that the model should be continued in Campbelltown and Wagga Wagga and also be considered for other locations, with a controlled and staged approach taken to rolling out the model. 	
<p>Tutty (2011, 2013)</p>	<p>An evaluation of Calgary's specialised domestic violence court model, including:</p> <ul style="list-style-type: none"> interviews with 31 key justice and community stakeholders, conducted in late 2007 to 2008 data on more than 6,407 cases from 1998 to 2008, capturing the development of the model over the years from baseline, specialised docket to 	<p>Interviews with key justice and community stakeholders</p> <ul style="list-style-type: none"> Previous justice responses to domestic violence did not seem to treat domestic violence as seriously, as reflected in the lack of accountability that offenders experienced through ineffective interventions such as fines or jail sentences. New courts and the HomeFront agency (providing court support for victims) were developed to provide a specialised response to domestic 	<ul style="list-style-type: none"> Quantitative analysis comparing the data from the baseline period through to the new docket court and the introduction of the trial court support the view that the domestic violence court specialisations are working as anticipated. One obvious advantage is that

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	<p>specialised trial courts</p> <ul style="list-style-type: none"> the characteristics of the accused and victims, criminal history and court outcomes an evaluation of the development of the specialised domestic violence docket and trial courts, comparing these to the characteristics and outcomes of cases addressed before the specialisation interviews with 17 men who attended the mandated Calgary Counselling's 10 Responsible Choices for Men treatment program and another 20 men who underwent mandated treatment through the YWCA Sheriff King program. 	<p>violence cases that was coordinated, specialised and timely.</p> <ul style="list-style-type: none"> The study identified a number of issues, including the high volume of cases, buy-in to the principles of the model, access to treatment, docket delays and staff turnover. The justice and community respondents identified contentious issues including dual charging, police response, lack of communication between civil and criminal court systems and the use of peace bonds. The key stakeholders believe that the specialised justice response has led to a reduction in recanting, increased collaboration among domestic violence stakeholders and victim support from HomeFront to the specialised trial court. For offenders, reduced time to court and treatment, an increase in the number of guilty pleas, and access to treatment were successful outcomes. <p>Evaluation of the court developmental phases</p> <ul style="list-style-type: none"> There were no significant differences between the characteristics of the accused and victims across the three court developmental phases. In comparing the criminal background and incident characteristics across the 	<p>the court deals with the accused much more quickly in the specialised docket court. Using peace bonds with the accused who are willing to admit responsibility for their behaviours and accept mandated treatment has the potential to have them receive counselling while more motivated to change.</p> <ul style="list-style-type: none"> The rates of new criminal charges, at least within a two-year period, have been reduced. Key stakeholders generally supported the justice changes, although some advocates remain sceptical about the capacity of the criminal justice system to keep victims safe, given the widespread nature of this serious problem and the potential cost to victims of actually reporting such abuse.

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		<p>three court developmental phases there was only one important difference across the three time periods: at baseline, a higher proportion of victims reported the incidents to the police.</p> <ul style="list-style-type: none"> • What happened once cases reached the trial court did not change substantially across the court developmental phases. The major differences were that a large proportion of cases were dealt with at docket court and fewer cases proceeded to trial, meaning that the cases that were actually tried could receive more attention. • The analyses show that the domestic violence court specialisations were working as anticipated. 	
		<p>Interviews with men mandated to treatment</p>	
		<ul style="list-style-type: none"> • Some men minimised their own behaviours and blamed their partners. • Some believed that the system was biased against them in favour of victims. Even so, a number of men had positive comments about the way police and probation services handled their cases. • Several men mentioned that the police had dealt with previous instances of domestic violence without laying criminal charges, perhaps indicating some 	

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		<p>under-enforcement of the criminal law.</p> <ul style="list-style-type: none"> All but one of the men completed their batterer treatment programs, and the majority, though concerned about being forced into treatment, reported learning some useful skills and changing their behaviour as a result. 	
Walker (2005)	<p>Explores the perceptions of sexual offence victims following their interaction with the Court for Sexual Offences in South Africa.</p> <p>Includes questionnaires administered in a structured interview (n=44).</p>	<ul style="list-style-type: none"> Interviewees ranged in age from five to 51. Their experiences with police services were positive. In 75.6% of cases police were perceived as approachable and prepared to assist the victim. Of the sample, 31.7% were less than satisfied with how well informed they were of progress and developments during the investigation. Sexual offence victims felt positive about the manner in which they were referred for forensic medical examination. One-fifth of the sample reported waiting more than 24 hours before receiving medical attention. The majority of cases (75.6%) took more than six months to come to trial. The majority of victims (60%) report that their first contact with the prosecutor in their 	<p>These findings point to potential changes to the system to enhance the Courts' functioning and legitimacy among the people who use its services.</p>

Reference	Type of study	Findings	Author's conclusions
		<p>cases occurred more than 10 weeks after the offence had been committed.</p> <ul style="list-style-type: none"> • Victims generally experienced their participation in the trial as positive. • The court only informed half of the victims sampled of the outcome of the trial. • Of those victims whose cases were heard in the Court for Sexual Offences, 78.4% claim to have received no therapy or follow-up services. 	
Walker (2005)	<p>Explores the perceptions of the families of sexual offence victims following their interaction with the Court for Sexual Offences in South Africa.</p> <p>Includes questionnaires administered in a structured interview (n=24).</p>	<ul style="list-style-type: none"> • Slightly more than 87% of the individuals surveyed felt that the police were approachable and helpful. • It was suggested that more female police officers should be used in sexual offence cases. • The families expressed the need for physicians to be more transparent about their findings. • The responses of family members indicate that despite the improvements that the specialised sex courts have made to the efficiency of the judicial system in dealing with sex crimes, the process is still slow and drawn out, with 77.4% of cases reported to have taken more than six months to come to trial • The majority of family members said intimidation, particularly by the offenders 	<p>A need for more effective psychological and social care of victims was identified. Future psycho-legal research possibilities in this largely neglected field are highlighted.</p>

Reference	Type of study	Findings	Author's conclusions
		<p>and their families, was a serious problem before and during the trial.</p> <ul style="list-style-type: none"> • More than half of individuals who were aware of the outcome of the trial, gained this information from the Court for Sexual Offences. • The Court generally failed to make any order or provision for effective therapeutic after-care. 76.2% of victims reported no follow-up visit by social services. 	
Walker (2006)	<p>Explores the perceptions of the perpetrators of sexual offences following their interaction with the Court for Sexual Offences in South Africa</p> <p>Includes questionnaires administered in a structured interview (n=54), with participants either serving sentences imposed by the court or in detention awaiting trial.</p>	<ul style="list-style-type: none"> • Offenders were aged between 19 and 35. • They were generally very positive regarding their interaction with the South African Police Service. • Offenders questioned the efficiency of the Court for Sexual Offences, as the majority reported making more than three court appearances before their cases came to trial. • A significant proportion of the individuals sampled were either not granted bail or were not able to afford the bail they were granted. • Among offenders, 74.1% thought that an individual accused of a sex crime could not receive a fair trial in the Sexual Offences Court. • The apparent absence of specific recommendations or provisions for treating incarcerated offenders may create the perception that the courts are interested 	<p>This research serves as a point of departure for evaluating the Court for Sexual Offences via the perceptions of those individuals most influenced by its decisions. It also provides some comparative data for future investigations and points of departure for critical thinking and hypothesis testing.</p>

Reference	Type of study	Findings	Author's conclusions
		<p>only in the rights of victims and the public to protection and retribution.</p> <ul style="list-style-type: none"> • Offenders included in this sample appeared generally to have been negative about the efficacy, legitimacy and impartiality of the Court for Sexual Offences. 	
Walker (2007)	<p>Explores the perceptions of the professionals involved with the Court for Sexual Offences in South Africa.</p> <p>Includes questionnaires administered in a structured interview (n=16).</p>	<ul style="list-style-type: none"> • Prosecuting attorneys (n=4), defence attorneys (n=6), social workers (n=4) and medical practitioners (n=2) took part in the study. • All had more than 15 years of formal education. • Prosecutors evaluated the police as competent investigators and witnesses; defence attorneys tended to be less impressed by the quality of police work. • Both litigative camps had positive perceptions of physicians acting as expert witnesses in sexual offence cases. The prosecutors were totally satisfied with the physicians' competence as clinicians and as expert witnesses. Defence attorneys, while generally respectful of the physicians' competencies, questioned their level of personal involvement and victim advocacy. • Attorneys of both the defence and prosecution, were generally satisfied with the length of time it took their clients to come into contact with them. But intermediaries and 	<ul style="list-style-type: none"> • The findings suggest that professionals involved with this court tend to be positive in their appraisals of the system. However, the ability of the sex court to remain objective and reduce secondary victimisation is questioned. • Misconceptions about the Court's current ability to contribute to the rehabilitation of offenders and the emotional recovery of the victims were exposed.

Reference	Type of study	Findings	Author's conclusions
		<p>physicians were less satisfied with the time it took for them to come into contact with the victim</p> <ul style="list-style-type: none"> • Intermediaries, physicians and defence attorneys were far more critical of the Court's ability to reduce secondary victimisation than the prosecutors were – due to the time it took to come to trial • Prosecutors and defence attorneys considered the use of intermediaries to facilitate victim testimony via CCTV as inconvenient. • All respondents felt the court could improve its functioning by imposing heavier sentences. • Most of the professionals, with the notable exception of certain defence attorneys, felt the court provided some form of cathartic justice for the victim and generally ensured that therapeutic care was provided for the victims. 	

