



DISCOVER

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IMPACT



BRINGING THE LAW INTO ORDER ON DOMESTIC VIOLENCE

The TC Beirne School of Law’s bench book project is providing tools to help the judiciary better protect victims of domestic violence.

There are many ways to hurt somebody, and domestic violence encompasses them all – physical, psychological, sexual and financial abuse, in private and in public, in relationships and often for many years after separation.

University of Queensland Professor of Law Heather Douglas has spent 20 years working in domestic and family violence, and is starkly aware of the stress and trauma faced by victims. The oft-cited statistics around violence against women are shocking.

Nearly one Australian woman is killed each week by a current or former partner, and one in three Australian women has experienced physical violence, with many also experiencing sexual violence or emotional abuse.

These distressing statistics have prompted Professor Douglas’s latest project, the National Domestic and Family Violence Bench Book.

Because there are also many ways to protect somebody: from holding perpetrators accountable to ensuring effective sentencing and legal processes that treat victims with dignity and respect. Judges need tools to help them make the best decisions to provide this protection, and Professor Douglas and the bench book team are working towards providing these tools.

The book has been driven by a joint Australian Law Reform Commission and New South Wales Law Reform Commission

report that found inconsistencies across jurisdictions, both between Commonwealth and state courts, and between the different areas of law. This means victims of domestic violence will be treated differently depending on the state in which their case is heard. And many victims have multiple issues, with some heard in the Family Court, which comes under Commonwealth law, and some in state courts. This means victims, perpetrators, legal teams and judicial officers are dealing with multiple and complicated sets of rules and laws, with scope for inconsistent treatment and orders.

“For example, in Victoria the perpetrator cannot directly cross-examine the victim in a protection order case, but in the family court (which comes under Commonwealth law) they can,” Professor Douglas says.

“There are different rules across the country. That’s unavoidable really. We’re not changing the law here, but we are trying to encourage best practice and consistency within legal limits.”

The bench book, commissioned by Attorney-General Senator George Brandis, is being developed in line with the National Plan to Reduce Violence Against Women and their Children.

A free online open-access resource, the first section went live in August, to be followed by updates in June next year.

“Judges are familiar with bench books as tools,” Professor Douglas says. “They use them for other things as well, such as jury directions and children’s evidence. This will be another one of the tools they have at their disposal.”

Professor Douglas is using her significant experience in family and domestic violence law to create the bench book. As well as drawing on existing research, the process involves looking at cases across Australia, speaking to those involved and finding out what’s worked and what hasn’t. A judicial reference and advisory group that includes representatives from police, government departments and courts reviews the content before the bench book content is released online.

“There are a lot of checks and balances along the way,” she says.

“We’re providing a database of cases that deal with domestic violence across the country, which will act as a repository for judgements dealing with these issues. Judges will be able to look into that database to find best practice for dealing with these cases and perhaps they will change their behaviour in accordance with those best practices.

“It will also benefit victims. Hopefully, they will be dealt with in a more consistent way in each legal process.”

Aside from providing clarity on the best practice around sentencing and judicial processes in domestic violence cases, the bench book will also provide a powerful database of knowledge around domestic and family violence trends and issues.

“This will create a better understanding for judges about some of the myths, misunderstandings and risk factors about domestic violence,” says Professor Douglas.

“Statistics tell us that there is a range of risk factors and some of them aren’t well known, such as the fact that mothers are at particular risk of violence from intimate partners if there are stepchildren in the family.

“There’s an assumption that when people leave their violent partner they’re suddenly safe, but statistics tell us that’s actually the most dangerous time for many women.

“Other issues, such as strangulation and stalking, are particular risks for very serious harm, and it’s important for judges to know that.

“We see some emerging forms of domestic violence such as technology-facilitated abuse, spiritual abuse and systems abuse where perpetrators might use the legal system to inflict abuse on their partner.

“We have included a range of case studies based on interviews with victims to provide judges with examples of these new and emerging behaviours.

“For example, one woman was in a shelter because of domestic violence and was ordered to allow the perpetrator to have some contact with their little girl. In the transfer he embedded a GPS tracking device in the child’s stuffed toy and was able to locate her at the refuge.

“It’s really important for judges to know that that kind of thing is happening, as they might be able to include conditions in protection orders to better protect the victim. Orders should be specifically targeted to the needs of the person being protected.”

Research shows that victims of domestic violence need several court orders to establish their protection, meaning multiple visits to court. Professor Douglas hopes the bench book will make those experiences better for all involved.

“We’ve recommended a whole lot of strategies that judges might use to help people be safe in courtrooms and to make the experience of the courtroom less traumatic for victims,” she says.

“For example, really taking a careful note of where people are sitting in the court room so there’s no direct eye-contact between victims and perpetrators.

“There are other things that judges may be able to learn from each other in terms of how to ensure dignity to people who appear before them. For example, the way they describe the parties in their judgements can make a real difference.

“Hopefully, the experience for victims and perpetrators will be improved.”

The bench book will be updated in 2018 and 2019 as researchers learn from the way judges are engaging with it and find new cases and materials to include.

After all, there are many ways to help somebody, and this ongoing project will push those ways to the forefront, hopefully making shocking domestic violence statistics a relic of the past.

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Timeline:

2010: The Australian Law Reform Commission and New South Wales Law Reform Commission produce a domestic violence report

2011: The National Plan to Reduce Violence against Women and their Children 2010–2022 is released

June 2015: Attorney-General Senator George Brandis commissions the bench book and the Australasian Institute of Judicial Administration engages Professor Douglas to lead the project

August 2016: The first half of the National Family Violence Bench Book goes live

June 2017: The second half of the book is added

2018: Researchers will use feedback to update the site

2019: The bench book will continue to be updated

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