

Exercise

Expert Evidence and Evidentiary Challenges

AVERT
FAMILY VIOLENCE



**Collaborative Responses in
the Family Law System**



An Australian Government Initiative

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Expert Evidence and Evidentiary Challenges Exercise

Discuss the particular challenges for judicial officers posed by the presentation of expert evidence relating to family violence?

Purpose:

- To explore the range of challenges presented by expert evidence in relation family violence, with particular reference to 'Social Context Evidence' and 'Single Expert Evidence'
- To assess the difference that a family violence informed assessment of evidence would make to the process of judicial decision making.

Materials required:

- PowerPoint Presentation - *Social Context/Framework Evidence*
- DVD Segment – *Legal Panel / Chief Justice Bryant, Family Court of Australia*

Process:

1. Facilitator presents powerpoint: '***Social Context/Framework Evidence***' and ***its implications for Judicial Officers***
2. Facilitator then asks judicial participants to identify the particular challenges for judicial officers posed by the presentation of expert evidence relating to family violence. This can either be done in pairs or as a group brainstorm activity.
3. Facilitator writes up some of the key challenges, which may include:
 - Perceived bias of the 'expert'- they are also commentators and opinion-givers
 - Assessing difference between evidence-based expert opinion and personal bias
 - Is objective expert evidence possible or even desirable?
 - Assessing the input of the single expert witness – responding to allegations of 'bias'
 - Difficulties in knowing who are the appropriate experts (particularly local experts)
 - Assessing psychological evaluations/forensic psychological assessments
 - The perceived difficulty of obtaining access to appropriate social science experts in cases where their expertise can be admitted as evidence



Key things to draw out of the Discussion:

- Social framework opinion evidence often assists the fact finder in understanding the evidence or in determining a fact relevant to material issues
- The growing emphasis on 'Social Context/Framework Evidence' is seen by some as creating particular challenges
- Expert social context evidence may include a presentation on the nature and dynamics of family violence/abusive relationships
- Social framework evidence remains critical in family violence cases to explain victim behaviour, e.g. Why the victim minimises or denies the violence or stays in the relationship despite the violence

Additional Readings/Materials

- Edmond, Gary (2003) 'After Objectivity: Expert Evidence and Procedural Reform' 25(2) *Sydney Law Review* 131
- Freckelton, Ian; Reddy Prasuna; Selby, Hugh (1999) *Australian Judicial Perspectives on Expert Evidence: An Empirical Study* Australian Institute of Judicial Administration Inc.: Carlton, Vic .
- The Hon Justice Peter McClellan Chief Judge at Common Law Supreme Court of New South Wales (2006) '*Expert Evidence – Aces Up Your Sleeve*' Industrial Relations Commission Of New South Wales Annual Conference 20 October 2006