

# Training Session Plan

## Judicial Officers Professional Development in Family Violence

**AVERT**  
FAMILY VIOLENCE



**Collaborative Responses in  
the Family Law System**



**Australian Government**  
Attorney-General's Department

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## Training Session Plan - Judicial Officers

**Program Title:** Judicial Officers Professional Development in Family Violence

**Program Length:** Activities can either be integrated into existing NJCA Modules; or incorporated into other judicial education events; or become a stand-alone domestic violence program.

**Intended Participants:** Australian Judicial Officers

### Program Learning Outcomes:

- Demonstrate knowledge of family violence dynamics and prevalence
- Evaluate impact of violence on adult victims and children who witness violence
- Resolve difficult evidentiary issues and apply an understanding of domestic violence to judicial fact-finding
- Identify barriers to accessing/ achieving justice in DV cases
- Define culture and cultural competence, enhance respect for the dynamics of difference, and identify ways in which culture is relevant in the courtroom
- Recognise cultural misinformation and avoid assumptions about a person or facts of a situation based on misinformation
- Identify and evaluate potential biases that might influence courtroom demeanour or interpretation of facts and making of decisions in DV cases
- Identify common decision-making points where understanding DV might affect how you make decisions and what you decide
- Assess the impact of domestic violence on cases involving parenting arrangements, applications for protection orders, sentencing etc.

### National Curriculum Framework:

The activities and materials that have been developed are aligned with:

- NJCA's National Standard for Professional Development
- NJCA's National Curriculum Framework

Underlying the National Curriculum, and providing the basis for its structure, is a concept called *the judicial role*<sup>1</sup>. The curriculum has, as its core, eight elements, each of which reflects an aspect of *the judicial role*.

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<sup>1</sup> Christopher Roper, 'A Curriculum for Professional Development for Australian Judicial Officers (National Judicial College of Australia, 2007) 3.



The topics for judicial education are:

- Evidence and Family Violence (7 activities)
- Assessing the Credibility of Witnesses (4 activities)
- Court Craft (2 activities)

### **Handouts for the Program:**

A folder containing the following papers:

- AVERT Discussion Paper: *Dynamics, Dimensions and Impact of Family Violence*
- AVERT Discussion Paper: *Legal Frameworks*
- AVERT Discussion Paper: *Responding to Diversity*
- AVERT Discussion Paper: *Screening, Risk Assessment and Safety Planning*
- AVERT Discussion Paper: *Prevention Strategies: Involving and Engaging Perpetrators*
- AVERT Discussion Paper: *Multidisciplinary Collaboration and Integrated Responses to Family Violence*
- Family Court of Australia: *Best Practice Principles for use in Parenting Disputes when Family Violence or Abuse is Alleged.*

### **Facilitator Skills:**

An understanding of adult learning principles is critical in enabling judicial educators to ensure transference of learning has occurred at a level that will lead to a change in practice. Skilling trainers to ensure that their approach to delivery provides adequate opportunity for the practical application of learning content, is a key feature of successful programs.

An understanding of instructional design principles also enables judicial educators to ensure that content and delivery methodologies will positively impact on participants.

The fact that the majority of programs are delivered by judges provides a key platform from which to develop the ability to consolidate learning by integrating principle with the practice of judging. For example, their expertise allows for the ability to draw from 'real' judicial experience to demonstrate a learning point.

### **Facilitator Preparation:**

It is essential for the facilitator to view all the video resources and read all the papers that the facilitator intends to use, which are indicated in the session plan, prior to facilitation of the program.

In particular facilitators should review the following materials (found in detail on pages 4 – 7 below) that have been developed specifically to assist judicial educators:



- Background Brief No. 1** - National Curriculum Framework for Judicial Professional Development
- Background Brief No. 2** - Approaches to Judicial Education and Family Violence
- Background Brief No. 3** - Social Context Frameworks for Judicial Education and Family Violence

Family violence can be an emotional and controversial topic in many groups. Therefore practicing ways of responding to anticipated reactions that the facilitator may predict could arise, will assist the facilitator to create a quality education experience.

Facilitators will also need to prepare their own PowerPoint and some Handouts, which can be drawn from the facilitator notes. A template PowerPoint is provided but each facilitator has his or her own preference for presenting this material and consequently that aspect of program preparation has been left for the facilitator. In this way each facilitator will be sure they have individually decided what to present.

**All exercises, fact sheets, PowerPoints, discussion papers and course evaluation forms can be found on the website under Resources/ By Topic.**

Points to emphasise are indicated in the session plans as well as in the detailed outline of training exercises, which provide the basis for the development of specific PowerPoint presentations or handout notes.

Program timing in the session plan is a rough estimate and is based on a group of between 20 – 25 participants. However, the level of participation of each group necessarily impacts the amount of time that each activity will take. It is envisaged that each facilitator will know which exercises need to be missed if the program is running over time.

In many cases various sections of the Video Resources have been broken up into chapters (e.g. Scenarios; Overview of Family Law system). The appropriate chapters for specific exercises within the training programs are indicated as required. Chapters are listed under Resources/ By Type on the website. Click on the chapter required to start viewing.

### **Program Structure**

This program is a series of learning activities and resources that are drawn from the larger *AVERT Family Violence Training Package*. The specified activities are designed especially for judicial officers. These activities are arranged in topics rather than as a sequenced training program, as it is envisaged that training for judicial officers in relation to family violence will be part of broader training events, which are not solely about family violence. In this way judicial educators can incorporate the activities identified in this program within a wide range of professional training events.



## Background Brief No. 1 – The National Curriculum Framework Approach – National Judicial College of Australia

### Collaboration with the NJCA

The various sessions contained in the AVERT Multi-Disciplinary Training Package in Family Violence for Australian Judicial Officers were developed in close consultation with the National Judicial College of Australia (NJCA).

### Overview of the Framework

Each of the sessions is aligned with the NJCA's *National Curriculum Framework*<sup>2</sup>. The curriculum has, as its core, eight elements, each of which reflects an aspect of *the judicial role*. The curriculum provides programs which help judicial officers *perform their judicial role*. The performance of that role, for the purposes of this curriculum, comprises –

- Applying the law
- Managing cases, the court room and one's work
- Making decisions and giving reasons for decisions
- Displaying appropriate standards of judicial conduct
- Understanding the relationship between the judiciary and society
- Keeping abreast of developments in knowledge and in public policy that impact on the law
- Using technology, in and outside the courtroom
- Managing one's health and well-being.

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<sup>2</sup> Christopher Roper, 'A National Standard for Professional Development for Australian Judicial Officers' (National Judicial College of Australia, 2006); Christopher Roper, 'A Curriculum for Professional Development for Australian Judicial Officers' (National Judicial College of Australia, 2007).



## Background Brief No. 2 – Elements of Effective Judicial Professional Development Programs

### Overview:

“Effective judicial education encompasses much more than knowledge transmission and includes skills development and contextual awareness, flowing from understanding of the complex and multi faceted role of judges”<sup>3</sup>

The design and delivery of professional development activities for judicial officers in complex social issues such as family violence and sexual assault has occurred through many different forums for a number of years both internationally and locally.

However evaluations of family violence programs have shown that judicial education is most effective when it is implemented in the following ways:

- The education process is court-led, independent, non-doctrinaire, voluntary and designed for all members of the court
- The objectives of the education process are: to provide information and promote awareness of problems and solutions; to develop and integrate practical judicial skills; and to promote analysis and critical self-reflection
- The program development process involves members of the court
- The program is presented by members of the judiciary, academia, the legal profession, law reformers, criminologists, educators and other experts
- The program is designed in multiple sequenced segments to consolidate learning and integrate principle with the practice of judging
- The educational model is workshop-based, interactive and self directed, applying a range of adult learning techniques.

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<sup>3</sup> Hon. Justice Thea Herman and Professor T. Brettel Dawson, ‘Engaging Canadian Judges in International Cooperation Activities’ (2006) *Transnational Judicial Dialogue*



## Background Brief No. 3 - Social Context Approaches to Family Violence Judicial Professional Development Programs

### Overview:

Increasingly, professional development programs in relation to family violence, particularly in various Australian and Canadian jurisdictions, are being designed and delivered within a 'social context' framework:

"We believe that effective judicial education encompasses much more than "knowledge transmission" and includes skills development and contextual awareness, flowing from understanding of the complex and multi-faceted role of judges. This is reflected in our principle of 'three dimensional judicial education' and in course programs which are designed to integrate elements of law, judicial skills, and social context"<sup>4</sup>

It has been argued that social context approaches contribute to ensuring improved impartiality in judicial decision making, particularly in issues such as family violence and sexual assault:

"Justice must also be delivered in a responsive manner, one that takes account of the social context, and the different perspectives of those who seek it. Justice must also be delivered in an impartial manner, one which is free from prejudice or false assumptions about cultural difference. In a world marked by pluralism, in communities where diversity is so prevalent, the judge must become the interpreter of difference. The judge must become the one who understands every voice"<sup>5</sup> (Hon. Beverley McLachlin – retired former judge of the Canadian Supreme Court)

### Key Features of the Social Context Approach

- Built from the premise that understanding social context and integrating it into judicial processes and judicial decision-making is mandated by law
- Was developed in synergy with jurisprudential developments explicitly recognising the legitimacy of contextual inquiry in judicial decision-making

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<sup>4</sup> See Transitional Judicial Dialogue, 2006 Session: Judicial Education and Knowledge in an Era of Globalization – 'Engaging Canadian Judges in International Cooperation Activities' Hon. Justice Thea Herman and Professor T. Brett Dawson November, 2006

<sup>5</sup> Remarks of the Right Honourable Beverley McLachlin, P.C. On the Occasion of the 2<sup>nd</sup> International Conference on the Training of the Judiciary November 1, 2004





- Has proceeded on the basis that social context education is a long-term process not an inoculation. The long-term goal is integration of social context into all forms of judicial education as an automatic part of the landscape
- Has been enhanced by community input and involvement and fostered by the support of judicial leaders.

### **Complemented by judicial commitment to contextual inquiry**

A critical aspect of social context approaches also involved recognition that **conscious contextual inquiry** should become an accepted step towards judicial impartiality. Such an approach to judicial education is aimed at ensuring that substantive law, judicial skills and social context are integrated together in programming.

### **Objective of Social Context Approaches:**

Assist Judicial Officers to:

- Understand the nature of diversity, the impacts of disadvantage and the particular social, cultural and linguistic issues that shape the persons who appear before them
- Explore their own assumptions, biases and views of the world with a view to reflecting on how these may interact with judicial process
- Examine relevant research and community experience in order to enhance processes of judicial reasoning
- To provide jurisprudential and analytical tools to enable judges to examine the underlying basis of legal rules and concepts to ensure that they correspond with social realities and conform to the requirements of equality before the law.

### **Additional Resources**

- Dawson, T. Brettel (2004) *'Ten Principles' of Effective Judicial Education* National Judicial Institute (Canada) accessed at [http://www.nji.ca/nji/internationalforum/JudicialEducation\\_Revised%20BD.pdf](http://www.nji.ca/nji/internationalforum/JudicialEducation_Revised%20BD.pdf)
- Doyle, J (2005) 'The National Judicial College of Australia' 16(1) *Commonwealth Judicial Journal* 16.
- Family Court of Australia (2009) *Best Practice Principles for use in Parenting Disputes when Family Violence or Abuse is Alleged* [http://www.familycourt.gov.au/wps/wcm/resources/file/eb6f1303a17fe3c/FVBPPApril2009\\_V2.pdf](http://www.familycourt.gov.au/wps/wcm/resources/file/eb6f1303a17fe3c/FVBPPApril2009_V2.pdf)
- Judicial College of Victoria (2007) 'Back to School for Judiciary' 81(11) *Law Institute Journal* 31.



**SECTION ONE – Evidence and Family Violence**

TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
50 mins	<p><b>Activity One - Expert Evidence and Family Violence – Some Challenges for Judicial Officers</b></p> <p><i>This activity is aimed at exploring with participants the range of challenges presented by expert evidence in relation family violence, with particular reference to ‘Social Context Evidence’ and ‘Single Expert Evidence’.</i></p> <p><b>Facilitated Discussion:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Facilitator presents PowerPoint: ‘Social Context/Framework Evidence’ and its implications for Judicial Officers</li> <li><input type="checkbox"/> Facilitator emphasises that it is important to examine the context in which proceedings about violence occur</li> <li><input type="checkbox"/> 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</li> <li><input type="checkbox"/> Facilitator writes up some of the key challenges (some examples are given in the <i>Expert Evidence and Evidentiary Challenges</i> Exercise)</li> <li><input type="checkbox"/> Facilitator ends by screening The Hon Diana Bryant, Chief Justice, Family Court of Australia (on evidence)</li> </ul>	<p>Exercise: <i>Expert Evidence and Evidentiary Challenges</i></p> <p>PowerPoint: ‘Social Context/Framework Evidence’ and its implications for Judicial Officers</p> <p>Opinion Piece Overview of Family Law System by The Hon. Diana Bryant, Chief Justice, Family Court of Australia on DVD 3</p>
60 mins	<p><b>Activity Two: Evidentiary Challenges of Proving Allegations of Family Violence</b></p> <p><i>This session aims to highlight the range of barriers that present for victims of family violence in providing the court with evidence in relation to psychological and emotional abuse and explores the ways in which these barriers might be further compounded by diversity/difference.</i></p> <p><b>Facilitated Discussion:</b></p> <p>‘Proving Emotional and Psychological Abuse’</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Facilitator presents the following information:  <i>Some state’s legislation expressly refers to emotional or psychological abuse as a form of family violence.</i></li> </ul>	<p>Exercise: <i>Evidentiary Challenges of Proving Allegations of Family Violence</i> (includes Tip Sheets: <i>Giving Evidence in relation to Family Violence</i>)</p> <p>Case Scenarios for Small Group Discussion (From Exercise sheet)</p>



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	<p><input type="checkbox"/> Facilitator then divides the room into small groups, allocating each group with one of the following scenarios:</p> <ul style="list-style-type: none"> <li>■ The witness is newly arrived to the country (less than a year). She has spent six years in a refugee detention camp before arriving in Australia.</li> <li>■ The witness has an intellectual disability and has complex communication needs</li> <li>■ The witness is an Indigenous woman from remote Queensland</li> </ul> <p>(Hand out Tip Sheets, from <i>Evidentiary Challenges of Proving Allegations of Family Violence Exercise</i>)</p> <p><input type="checkbox"/> The facilitator invites judicial participants in each group to consider the following questions as they might apply to their particular scenario:</p> <ul style="list-style-type: none"> <li>■ What are the evidentiary challenges that might present?</li> <li>■ What is the role of the judicial officer (if any) in addressing the barriers/challenges that victims of family violence might experience in presenting evidence of psychological and emotional harm?</li> </ul> <p><input type="checkbox"/> Facilitator invites feedback.</p> <p>It is important that the facilitator reads <i>the AVERT Paper Dimensions, Dynamics and Impact of Family Violence</i> as part of the preparation for this discussion.</p>	<p>Fact Sheet: <i>Emotional and Psychological Abuse and its Impact</i></p> <p>Refer to Fact Sheet <i>Case Law Example: Evidence and FV: Amador &amp; Amador</i></p> <p>Copy of <i>Family Court of Australia - Best Practice Principles for use in Parenting Disputes when Family Violence or Abuse is Alleged</i> (see reference at end of this program)</p> <p>AVERT Discussion Paper: <i>Dimensions, Dynamics and Impact of Family Violence</i></p>
<p><b>90 mins</b></p>	<p><b>Activity Three - Evidentiary Challenges – Inconsistent and Conflicting Evidence</b></p> <p><i>This session explores scenarios where allegations of violence and abusive conduct sworn by one parent are denied or counter claimed by the other.</i></p> <p><b>Facilitator’s note:</b> It is important to note that people who have experienced Family Violence and whose safety may be at risk are not required to attend Family Dispute Resolution. Legal advice should be encouraged so that people can understand the options available to them. It is possible to apply under section 60i(9) of the Family Law Act for an exception so that participation in Family Dispute Resolution is not required where there has been Family Violence or there is a risk of violence.</p>	<p>Scenario <i>Gary and Bronwyn’s Story</i> on DVD 4</p> <p>AVERT Paper: <i>Dimensions, Dynamics and Impact of Family Violence</i></p>



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	<p>The other option is to attend an intake and assessment interview at a Family Relationship Centre or other Family Dispute Resolution provider to examine whether or not Family Dispute Resolution is appropriate.</p> <ul style="list-style-type: none"><li><input type="checkbox"/> The facilitator screens <i>Gary and Bronwyn's Story</i></li><li><input type="checkbox"/> The facilitator then invites general responses and discussion to the following questions:<ul style="list-style-type: none"><li>■ What happens when people have discrepancy in their stories of violence?</li></ul></li><li><input type="checkbox"/> The facilitator may wish to ensure that the following key points are made:<ul style="list-style-type: none"><li>■ It is not unusual for perpetrators to abuse their partners in secret, to hit their partners on parts of the body where bruising does not show, to lie about the occurrence of their violence, and/or to isolate their partners from potential support or assistance.</li><li>■ It is also not unusual for victims of domestic violence to feel shame around the occurrence of violence and to deny its occurrence. Victim/survivors often try to hide the violence from the children to protect them from the knowledge of it</li><li>■ Denial, ambivalence, withdrawal, and emotional swings can be the result of being a victim of severe trauma</li><li>■ Where the parties' relationship exhibits a pattern of violence, the court's understanding of the pattern can provide insight into the parties' behavior and inform efforts to promote safety</li><li>■ When confronted with their violent behavior, perpetrators commonly avoid responsibility by denying that it occurred, lying about it, minimizing its nature or significance, or blaming it on outside factors such as stress, drunkenness, or provocation from the victim.</li></ul></li><li><input type="checkbox"/> In summarising, the facilitator highlights that understanding the nature and dynamics of family violence and a person's experience of family violence assists judicial decision makers with a greater understanding of what may appear to be irrational responses.</li></ul>	



TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
60 mins	<p><b>Activity Four: Weighing Up the Evidence</b></p> <p><i>This session seeks to highlight how judicial assessments of evidence presented may inadvertently be informed by a range of assumptions, myths and stereotypes.</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Participants are divided into small discussion groups. An equal number of groups are given one of two categories of evidence:           <ul style="list-style-type: none"> <li>■ <b>Category One</b> - The evidence in the first category is evidence usually associated with ‘relatively strong probative weight’. This includes a criminal conviction; a final protection order by contest; a final protection order at which the defendant did not appear; and direct witness accounts of violence or injuries.</li> <li>■ <b>Category Two</b> – The evidence in the second category—evidence of ‘less probative weight’—includes a final protection order made by consent or consent without admissions; an interim protection order granted in the absence of the respondent; and sworn or unsworn hearsay accounts of family violence.</li> </ul> </li> <li><input type="checkbox"/> The facilitator directs each of the small groups to reach agreement at their respective tables in terms of how they would weigh up the probative value of various pieces of legislation.</li> <li><input type="checkbox"/> In highlighting how judicial assessments of evidence may inadvertently be informed by a range of assumptions, myths and stereotypes, the facilitator may make reference to some of the following issues:           <ul style="list-style-type: none"> <li>■ Perceptions by some that protections orders have limited evidentiary value in issues relating to the making of parenting orders</li> <li>■ Assumptions that contact is always in the best interests of the child</li> <li>■ Assumptions made by some that protection orders are sometimes sought for strategic advantage in family law matters, rather than because a person necessarily needs protection from family violence.</li> <li>■ A perception that men and women (particularly) make false allegations of family violence.</li> </ul> </li> </ul>	<p>AVERT Paper: <i>Dimensions, Dynamics and Impact of Family Violence</i></p> <p>PowerPoint: <i>Categories of Evidence</i></p>



TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
	<ul style="list-style-type: none"> <li><input type="checkbox"/> The facilitator could encourage participants to discuss what the impact of these assumptions would be on the outcome of cases.</li> </ul>	
<p><b>50 mins</b></p>	<p><b>Activity Five - Controversies in Expert Evidence – The Parental Alienation Syndrome (PAS) vs Alienated Child</b></p> <p><i>This activity aims to highlight the complexities associated with contested evidence within psychology of law, and its broader social and political implications</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Facilitator hands out <i>Parental Alienation Syndrome vs Alienated Child</i> Fact Sheet which provides an overview of the concepts.</li> <li><input type="checkbox"/> Facilitator discusses the current application of PAS in the Australian context, particularly reference to recent decisions made within the family law context:               <ul style="list-style-type: none"> <li>■ Irish &amp; Michelle [2009] FamCA 66</li> <li>■ Wang &amp; Dennison (No 2) [2009] FamCA 1251</li> </ul> </li> <li><input type="checkbox"/> Facilitator highlights that the role that allegations of PAS play in unjustifiably discrediting mothers is increasingly being recognised.</li> </ul>	<p>Fact Sheet: <i>Parental Alienation Syndrome vs Alienated Child</i></p> <p>Case Materials (at end of <i>Parental Alienation Syndrome vs Alienated Child</i> Fact Sheet)</p> <ul style="list-style-type: none"> <li>■ Irish &amp; Michelle [2009] FamCA 66</li> <li>■ Wang &amp; Dennison (No 2) [2009] FamCA 1251</li> </ul>
<p><b>60 mins</b></p>	<p><b>Activity Six - Evidence Relating to Family Violence and its Impact of Violence on Children - Assessing ‘Best Interests of the Child’</b></p> <p><i>Case study seeks to highlight issues relating to family violence and its impact on children and explores the associated complexities relating to contact issues.</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Facilitator distributes case study involving issues related to state protection orders and parenting arrangements.</li> <li><input type="checkbox"/> Participants are guided through a series of questions including:               <ul style="list-style-type: none"> <li>■ What considerations should be given to the existence of protection orders in matters relating to parenting orders?</li> <li>■ What is the impact on children of experiencing or being aware of violence toward a parent?</li> <li>■ How should evidence of family violence be construed in relation to the parenting capacity of the perpetrator?</li> <li>■ In what circumstances should the court give consideration to a child having no direct contact</li> </ul> </li> </ul>	<p>Exercise: <i>Sam’s Story Case Study</i></p> <p>Expert Discussion <i>Impact on Children</i> by Dr Jennifer McIntosh &amp; Professor Lawrence Moloney on DVD 4</p> <p>Also refer to and have a copy for participants, the ‘Integrated findings’ section of McIntosh et al (2010) <i>Post Separation parenting arrangements: patterns and development outcomes for infants and children</i> (Reference at end of this program)</p>





TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
	<p>with the non-resident parent?</p> <ul style="list-style-type: none"> <li>■ What role should courts play in minimising possibilities of post separation violence, particularly in relation to parenting orders?</li> </ul> <p><input type="checkbox"/> Facilitator invites feedback from each group and show <i>Impact on Children</i> Expert Discussion between Dr. Jennifer McIntosh and Professor Lawrence Moloney</p> <p><b>Emphasise:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The act of separation does not end the violence and abuse for victims of family violence;</li> <li><input type="checkbox"/> Social science literature has overwhelmingly established the links between family violence and the harm caused to children</li> <li><input type="checkbox"/> Children who are exposed to violence and conflict require their own attention and support to recover and re-establish a “protective cocoon”.</li> <li><input type="checkbox"/> The old assumptions that children don’t notice or get over it quickly are significantly refuted through research over the past 20 years.</li> <li><input type="checkbox"/> Infants and pre-school children are seriously impacted by violence including neurologically harmed</li> <li><input type="checkbox"/> Children who are compliant and well behaved should not be assumed to be ok, rather compliance maybe a sign of fear and trauma.</li> <li><input type="checkbox"/> violence to a partner may involve a significant failure in parenting – failure to protect the child’s carer and failure to protect the child emotionally</li> </ul>	
60 mins	<p><b>Activity Seven – Child Refusal</b></p> <p><i>This activity examines a case study (within the context of past family violence witnessed by the child) where the child is refusing to see the non resident parent and explores the implications of existing obligations on the residential parent to take ‘an active role to positively encourage contact’</i></p> <p><b>Note to Facilitator</b> – this exercise utilises the same Case Study as in the previous exercise. It is possible to adapt the exercises so they are run as one concurrent exercise or as two separate ones.</p>	Exercise: <i>Sam’s Story Case Study</i>



TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Facilitator gives a copy of the case study to each participant</li> <li><input type="checkbox"/> Facilitator invites participants to consider the following questions:               <ul style="list-style-type: none"> <li>■ To which extent should a parent (with previous experiences of being subjected to violence be expected to have '[a]n active role with an obligation to positively encourage access'</li> <li>■ If one parent was Indigenous and the other not, would that influence the degree to which the residential parent (non Indigenous) encourages the child's contact– eg. How should the risk of cultural dispossession for the child be taken into account?</li> </ul> </li> </ul> <p><b>Emphasise:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The context of the overall situation is highly relevant to decision making, e.g., history of violence</li> <li><input type="checkbox"/> There may be a risk of failing to meet and actually undermining the child's developmental needs or even causing emotional abuses and damage directly through contact or as a consequence of the contact.</li> <li><input type="checkbox"/> The child might have post-traumatic anxieties or symptoms the proximity of the non-resident violent parent might re-arouse or perpetuate</li> <li><input type="checkbox"/> Australian research studies demonstrate the exploitation of child contact and handover arrangements by violent fathers to continue the abuse of child and adult victims.</li> <li><input type="checkbox"/> The FLA recognises the importance of children keeping a connection with their Indigenous culture after family breakdown and separation. (See section 60CC of the Family Law Act 1975) but this must be weighed against the best interests of the child principle.</li> </ul>	





TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
60 mins	<p><b>Activity Seven: Cultural Evidence and the Cultural Expert</b></p> <p><i>This activity seeks to explore the increasing trend towards experts from social science and humanities disciplines being called upon to provide ‘cultural evidence’ particularly in cases involving family violence and child abuse.</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The facilitator screens the relevant DVD segment where Jaber expresses concern about the cultural upbringing of his children in the event that he is not given contact with his children.</li> <li><input type="checkbox"/> The facilitator invites feedback from participants in relation to the situation of Jaber and Zahra. What sort of cultural information would be needed to gain an accurate understanding of the issues for this family. Given the not uncommon experience of ‘cultural experts’ simply reinforcing the notion that gender related violence is culturally condoned, an understanding of the basis upon which a witness is deemed to be an expert is important.</li> <li><input type="checkbox"/> The facilitator highlights that Courts, particularly in Canada, have developed screening criteria for expert evidence, particularly in family violence contexts.</li> <li><input type="checkbox"/> <b>Participants are invited to develop a criteria against which ‘cultural evidence’ can be assessed.</b></li> </ul> <p><b>Emphasise:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> So called ‘cultural evidence’ can often act to reinforce stereotypes by generalising about whole groups of people</li> <li><input type="checkbox"/> Culture should not be seen to be an excuse for violence</li> <li><input type="checkbox"/> Calls for cultural accommodation within courts are complex and are indeed gendered in their expression</li> <li><input type="checkbox"/> A balance has to be struck between the importance of providing these children with knowledge of their religious and cultural background and the substantial risks of direct contact with their father.</li> </ul>	<p>Scenario Jaber &amp; Zahra’s Story on DVD 2</p> <p>Professional Commentary Judy Saba on DVD 2</p> <p>AVERT Paper: <i>Responding to Diversity</i></p>



**SECTION TWO – Assessing the Credibility of Witness**

TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
45 mins	<p><b>Activity One: Barriers to Credibility for Family Violence victims</b></p> <p><i>This activity is designed to explore how unconscious preconceived notions of ‘victim’ behaviour can impact on assessments of witness credibility</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The facilitator invites participants to describe the attributes of a victim of family violence. This can either be discussed in small groups or as part of a brainstorm session</li> <li><input type="checkbox"/> The facilitator then explores whether the description ascribed would change if the victim:               <ul style="list-style-type: none"> <li>■ Was deaf and using sign language</li> <li>■ Had a history of mental illness</li> <li>■ Had drug and alcohol abuse issues</li> </ul> </li> </ul> <p><b>Emphasise:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> There are considerable mythologies associated with expectations that victims fit preconceived notions of the ‘typical victim’</li> <li><input type="checkbox"/> Individuals react to the experience of being subjected to family violence as similarly as individuals react to any experienced event - with a complete lack of uniformity</li> <li><input type="checkbox"/> Assumptions about the appropriate and inappropriate conduct/reactions of victims of family violence can have negative and unjust consequences and contribute to the escalation of violence in some circumstances.</li> </ul>	<p>AVERT Paper: <i>Dimensions, Dynamics and Impact of Family Violence</i></p>
40 mins	<p><b>Activity Two: Demeanour, Appearance and Credibility</b></p> <p><i>This activity aims to highlight that demeanour can be a highly unreliable basis from which to assess credibility, particularly when there is enhanced opportunity for cross cultural misunderstanding and unconscious preconceptions and stereotypes about particular cultural and religious groups.</i></p>	<p>AVERT Paper: <i>Responding to Diversity</i></p>



TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Using the PowerPoint <i>Demeanour Case Scenarios</i> facilitator presents the following scenario to participants:               <ul style="list-style-type: none"> <li>■ <i>A Muslim woman seeking a protection order gives evidence to the court. She is wearing the niqab which is a garment that covers all facial features except for the eyes; it is often worn for religious reasons.</i></li> </ul> </li> <li><input type="checkbox"/> The facilitator invites participants to discuss the scenario by considering the following points:               <ul style="list-style-type: none"> <li>■ Cultural differences in meanings of behaviour, for example as to eye contact, might cause misunderstandings. Imprecise translation and the impossibility to translate certain cultural meanings of words may result in wrong judgments about inconsistency.</li> <li>■ Numerous studies have shown that visual facial cues do not materially help to determine whether someone is telling the truth</li> </ul> </li> </ul> <p><b>Emphasise:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Demeanour can be a highly unreliable basis from which to assess credibility</li> <li><input type="checkbox"/> Overall witness demeanor has been increasingly discredited as a tool to determine whether a witness is telling the truth in the judicial setting.</li> </ul>	
<p><b>40 mins</b></p>	<p><b>Activity Three: Trauma and its impact on Demeanour</b></p> <p><i>This activity aims to look at the impact of trauma and physical disability on demeanor</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The facilitator presents Anj's testimonial as an example of a scenario involving a witness who seems to be having considerable difficulties in presenting evidence.</li> <li><input type="checkbox"/> As a group, discuss how victims without an obvious disability may not present as credible witnesses. Her details of actual events may seem vague and she may also occasionally contradict her evidence, and at times appear to be justifying to the court why the violence may have occurred.</li> <li><input type="checkbox"/> Participants are invited to explore the pitfalls that might be associated with issues around reliability of</li> </ul>	<p>PowerPoint : <i>Demeanour Case Examples</i></p> <p>Testimonial: <i>Anj</i> on DVD 5</p>



TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
	<p>evidence by victims of family violence and sexual assault.</p> <p><b>Emphasise:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> A victim of family violence may have survival strategies which appear maladaptive, illogical, and unstable and this will impact on the manner in which evidence is given</li><li><input type="checkbox"/> The neurobiology of trauma impacts on the way that traumatic events such as family violence and sexual assault are recalled and conveyed</li></ul>	
<b>40 mins</b>	<p><b>Activity Four: Jacob's Testimonial</b></p> <p>The facilitator screens the Testimonial: <i>Jacob's Story</i></p> <ul style="list-style-type: none"><li><input type="checkbox"/> Facilitator invites participants to consider Jacob's body language and assess the implications in a situation where Jacob is providing evidence of his abuse.</li></ul> <p><b>Emphasise:</b></p> <ul style="list-style-type: none"><li><input type="checkbox"/> The effects of living with the violence that Jacob reveals, noting that living with his father's abuse of his mother impacts separately from being physically abused himself.</li><li><input type="checkbox"/> Relate Jacob's issues to the PowerPoint: <i>Impacts of Family Violence on Children</i>.</li></ul>	<p>Testimonial: <i>Jacob</i> on DVD 5</p> <p>PowerPoint: <i>Impacts of Family Violence on Children</i></p>



**SECTION THREE – Court Craft**

TIME	ACTIVITY SEQUENCE & FACILITATOR NOTES	RESOURCES REQUIRED
60 mins	<p><b>Activity One: The Role of Courts in Challenging Violence Against Women</b></p> <p><i>This activity aims to explore the role of the courts in challenging violence against women, particularly against the backdrop of requirements of impartiality and neutrality. It also seeks to draw out discussion in relation to concepts of unconscious bias in decision making.</i></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The facilitator invites participants to consider the following question:           <ul style="list-style-type: none"> <li>■ What role do our Courts and Judicial Officers have (if any) in challenging violence against women?</li> </ul> </li> <li><input type="checkbox"/> The facilitator then shows the Opinion Piece by Danny Blay</li> <li><input type="checkbox"/> Facilitator invites participants to comment on the key messages conveyed by Danny Blay. Notice in particular that perpetrators tend not to disclose their violence and the court process constitutes a crisis that offers a key moment for them to be invited to consider the impacts of their behaviours.</li> <li><input type="checkbox"/> With Danny Blay’s Opinion Piece in mind, invite participants to consider a scenario involving the following issues:           <ul style="list-style-type: none"> <li>■ The victim is unrepresented and the perpetrator is represented by an experienced counsel</li> </ul> </li> </ul> <p>Facilitators might want to ensure the following key issues are raised:</p> <ul style="list-style-type: none"> <li>■ That court craft not only involves judicial skill sets, but also a social and interpretive process as part of problem solving.</li> <li>■ Judges are the most visible leaders of the court and are in a unique position both to prevent and to eliminate biased behaviour in court.</li> <li>■ Court craft also involves intervening to stop the biased behaviour of others, particularly of Counsel, whether the bias is intentional or unintentional.</li> <li>■ Self awareness, including awareness of particular prejudices, is a critical competency and part of the suite of court craft skills.</li> </ul>	<p>Opinion Piece: <i>Danny Blay ‘Working with People who use Violence’</i> on DVD 3</p>



## References

Family Court of Australia (2009) *Best Practice Principles for use in Parenting Disputes when Family Violence or Abuse is Alleged*

[http://www.familycourt.gov.au/wps/wcm/resources/file/eb6f1303a17fe3c/FVBPPApril2009\\_V2.pdf](http://www.familycourt.gov.au/wps/wcm/resources/file/eb6f1303a17fe3c/FVBPPApril2009_V2.pdf)

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