

Safety and protection of victim and witnesses - Key Literature

Australia

Alford, Amanda, 'Presentation by Australian Law Reform Commission Legal Officer' (Speech delivered at the National Aboriginal Family Violence Prevention Legal Service Annual Conference, Melbourne, 23 November 2012).

The speech draws information obtained as a result of consultations and submissions undertaken by the Australian Law Reform Commission. It highlights some of the difficulties faced specifically by Indigenous people in attending or participating in court proceedings. These include: logistical difficulties, including transportation and movement between communities; fear of giving evidence in open court; feelings of shame, blame and privacy concerns associated with not wanting issues publicly aired as well as community/family pressure through presence in court; language barriers and difficulties in giving oral evidence, including judicial attitudes towards the necessity of interpreters; and the potential for cross-examination of a victim by a person who has allegedly used violence.

Chisholm, Richard, *Family Courts Violence Review : A Report* (2009).

This report was referred to in the Family Court of Australia and the Federal Circuit Court of Australia's *Family Violence Plan 2014-16*. The report refers to the Family Court's *Safety at Court Protocol* which provides overarching guidance for ensuring the safety of court clients (page 154). This protocol contains a series of defined steps that must be followed where it is brought to the Court's attention that a client has safety concerns.

In essence, this involves engaging the client and:

- > providing information about support options (including referrals to police and domestic violence agencies as appropriate);
- > determining the level of need;
- > checking for a family violence order or Notice of Child Abuse or Family Violence; and
- > explaining the safety options available. These can include:
 - > familiarisation visits,
 - > separate waiting areas,
 - > separate interviews,
 - > staggered arrivals and departures,

- > telephone, video link or CCT attendance,
- > security guard escort,
- > police attendance and
- > the presence of a support person at Court’.

Once the options have been discussed with the client and an approach agreed upon, a safety plan will be drawn up by a Client Services Officer and placed in the Court’s electronic case management system (page 155).

Court Network, [Submission to Royal Commission into Family Violence \(Victoria\), June 2015.](#)

Court Network recommends: providing a safe space for women to wait and receive support and advice; implementing creative solutions such as creating a ‘window’ for the woman to leave the court while the respondent is finalising paperwork; exiting the court through a back door (page 15).

Day, Andrew, Sharon Casey, Adam Gerace, Candice Oster and Deb O’Kane, [The forgotten victims: prisoner experience of victimisation and engagement with the criminal justice system – Research report \(ANROWS, 2018\).](#)

The following summarises the key aspects of this research report:

Premise

Many women in prison have experienced intimate partner violence. As this form of violence is often intergenerational and entrenched, women in prison are widely considered to be at particular risk of ongoing victimisation following release from custody. And yet, their support needs often go unrecognised, and it is likely that a range of barriers exists that prevent ex-prisoners from accessing services.

Approach

This research documents data from interviews with and surveys of 22 women incarcerated in Adelaide Women’s Prison, as well as interviews with 12 key South Australian agencies and service providers, to arrive at an understanding of help-seeking behaviour and how this might inform service responses. The analysis is positioned within a review of current help-seeking theories that highlight how a wide range of individual, socio-cultural and structural factors can complicate a woman’s decision to seek help when concerned for her personal safety, noting that the circumstances and personal histories of women in prison increase the barriers to effective help-seeking when they face violence following release.

Key observations

- > The interviews with the women prisoners revealed their:
 - > lack of awareness of when they should seek external support
 - > lack of knowledge of available services
 - > pervasive sense of mistrust and under-confidence in existing services
 - > sense that better approaches can be developed drawing on the strengths of women, their peers and families.
- > Women's experience of formal and informal support-seeking (positive and negative) often determine how they define intimate partner violence and whether they decide to seek to change their circumstances.
- > Agencies and service providers expressed a range of views about the services that should be made available to women leaving prison, and these views were commonly shared by the women prisoners interviewed. It was acknowledged by both groups that services are not always visible or accessible to the women. There was also no sense that any integrated pathway for identifying and managing risk currently exists.

Conclusions

- > Need identified for all jurisdictions: to clearly identify women in prison as a particularly vulnerable group who are likely to be at elevated risk of ongoing victimisation and intimate partner violence and who face significant barriers preventing them from accessing the types of services that may help them to keep safe; and take a specialised and integrated approach in addressing their needs. Successful models of reintegration are discussed.
- > Need identified for people with lived experience of incarceration to be part of the service framework (design, delivery and governance) in the community sector.
- > Need identified for services and programs to reflect an understanding of the role violence in the lives of people who seek help (ie trauma-informed care)

Limitations

This research did not make conclusions about different cohorts of women prisoners having specific needs, for example women from Aboriginal and Torres Strait Islander cultural backgrounds.

Department of Justice, Northern Territory Government, *Report: Review of Vulnerable Witness Legislation* (2011).

Although this report is specifically about vulnerable witness legislation in the Northern Territory, it is useful in terms of highlighting the types of protection that may be able to be offered to vulnerable witnesses in other jurisdictions (i.e. which may include victims of domestic violence).

For example vulnerable witnesses may:

- > give evidence by way of a closed circuit television from a place outside of the courtroom;
- > give evidence in the courtroom from behind a screen so that they cannot see, or be seen by, the alleged offender;
- > be accompanied by a friend, relative or other support person while giving evidence; and
- > have the court closed while giving evidence.

In some cases other possibilities for protecting a witness include:

- > a recorded statement may be admitted into evidence as all or part of the witness's evidence in chief;
- > the examination of a vulnerable witness may be undertaken in a special sitting of the court, which is recorded...;
- > when a vulnerable witness is giving evidence, the court must be closed;
- > time limits within which proceedings must be commenced and
- > a prohibition on cross-examination of a complainant in sexual offence proceeding by an unrepresented defendant.

In the Northern Territory there are specific protections for children and vulnerable witnesses which include:

- > the court must be closed where the only protected person in the matter is a child, and while a vulnerable witness gives evidence;
- > evidence of children must be given by written or recorded statement;
- > a child cannot be cross-examined; and
- > a vulnerable witness is entitled to given evidence by way of audio visual link and be accompanied by a support person.

Douglas, Heather and Tanja Stark, *Stories from Survivors: Domestic Violence and Criminal Justice Interventions* (2010).

This research draws on interviews with 20 women who had experienced domestic violence, many of whom gave evidence in domestic violence-related court proceedings. Some of the women reported:

- > Speaking out in court was the first time many women spoke publicly about their abuse;
- > Some women felt that they were in danger when they went to court (p 70);

- > That court staff should be properly trained about domestic violence;
- > It would be helpful if court staff could advise when the violent partner had left court (p 71);
- > It was extremely stressful waiting in the court foyer for their matter to be called. Some women experienced further intimidation and abuse from their former partners while waiting for their case to be called on while others were worried that further trouble might arise;
- > When they had access to safe rooms to wait they felt much safer and less intimidated (p 73);
- > Different access points to the court for victims and offenders (p 74).

Family Court of Australia, *Family Violence Best Practice Principles*, 4th edition (2016)

These Best Practice Principles are designed to provide practical guidance to courts, legal practitioners, service providers, litigants and other interested persons in cases where issues of family violence or child abuse arise in the Family Court. Statement of Principle on pp. 2-3 refers to the entitlement of all people visiting the courts to feel safe and the responsibility of the courts to ‘take all appropriate measures to ensure the safety of their users’ (page 3). These appropriate measures may include the creation of an individually tailored safety plan where necessary:

‘A safety plan is a document that can be varied at any time and which includes a variety of options available to a person to ensure their safety at court. These include:

- > attendance by electronic medium,
- > attendance with support persons,
- > staggered attendances,
- > use of security entrances and,
- > where necessary, security personnel.

All court staff are able to prepare a safety plan. Safety planning is one of the strategies that may be implemented to ensure that a person who fears for their safety remains protected from harm. A safety plan for attendances at court events is but one component of safety planning that needs to be incorporated into the individual’s overall plan for their safety’ (page 3).

Field, Rachael, ‘FDR and victims of family violence: Ensuring a safe process and outcomes’ (2010) 21(3) *Australasian Dispute Resolution Journal* 185.

The author identifies that family dispute resolution (FDR) is a positive first-stop process for family law matters, particularly those relating to disputes about children. However the author identifies a range of issues that arise for victims of family violence in FDR that can make it dangerous and unsafe:

- > because of the power and control dynamic in cases involving domestic violence it is very difficult to

achieve party self-determination in matters where there is a history of family violence. (p6)

- > because family violence is about a perpetrator's use of power and control over the victim, it is very difficult for a victim of violence to confidently represent, and negotiate for, their own interests, or those of the children (p6)
- > some victims may not identify violence as they feel that mediation is the only affordable option (p7)
- > separation is particularly dangerous so there should not be an assumption that because the parties are separated the violence has ended (p7).

The author suggests that safety in mediation can be improved where parties understand and are properly informed about mediation, when they are well-prepared and have legal advice.

George, Amanda and Bridget Harris, *Landscapes of Violence: Women Surviving Family Violence in Regional and Rural Victoria* (Deakin University School of Law's Centre for Rural Regional Law and Justice, 2014).

Drawing on interviews with survivors of domestic violence and support workers this report considers the experiences of and outcomes for women survivors of family violence in regional and rural Victoria. Of particular relevance, this report looks at women's experience of the court setting and draws attention to a number of issues surrounding safety and protection for women:

- > Fear of giving evidence, shame and public exposure: 'While shame and fear are feelings that many women in cities experience when taking a family matter to court, in smaller communities such feelings can prevent women making the decision to seek protection and safety from the court. The relative anonymity of city courts is not available to rural and regional women' (page 84).
- > 'The use of court-based video-link facilities can reduce the fear and distress experienced by being in the physical presence of the defendant. However, lawyers and workers said that even in newer courts this technology is infrequently used' (page 85).
- > Leaving court: 'Leaving court after a hearing can be an intimidating and dangerous time for women applicants, regardless of whether they have an order. Perpetrators may use their network of family or friends to intimidate or attack survivors' (page 86).
- > Children at court: 'There is an urgent need to address the issue of children coming to court in intervention order matters, both to shield them from any further exposure to harm through hearing about family violence and to ensure that women are able to get the best outcomes from their applications. None of the courts the researchers visited have dedicated areas for children' (page 87).

Jordan, Lucinda and Lydia Phillips, *Women's experiences of surviving family violence and accessing the Magistrates' Court in Geelong, Victoria* (Centre for Rural Regional Law and Justice, Deakin University Australia, 2013).

In looking at women's experiences of applying for FVIOs at the Geelong Magistrates' Court, this report highlights women's experiences of the court building. It notes that '[c]onsistently, participants pointed to the need for the Geelong Magistrates' Court to provide separate waiting areas and separate entry and exit points for women appearing for FVIO applications. Workers in particular agreed that the promotion of the safe room at the court would be beneficial, as many applicants were unaware of this facility' (p 21).

Kaye, Miranda, 'Accommodating Violence in the Family Courts' (2019) 33(2) *Australian Journal of Family Law*, 100-121

This article argues that allegations of family violence are 'the new normal' in family court matters in Australia and calls for the family law system to prioritise victim safety. It presents findings from a study with independent children's lawyers from Victoria and New South Wales, highlighting their views on issues of family violence, self-representation, safety, and physical court premises, which are in contrast to the recommendations of the recent Australian Law Reform Commission into the family law system, which failed to address the safety of court users. There needs to be a shift in thinking from providing 'special' arrangements to victim safety being the standard approach.

Loddon Campaspe Community Legal Centre, *Will Somebody Listen to Me? Insight Actions and Hope for Women Experiencing Family Violence in Regional Victoria* (2015).

The Loddon Campaspe Community Legal Centre (LCCLC) provides family violence duty lawyer, advice and ongoing case work across the Loddon and Campaspe region. This project examines the experiences of women who have experienced family violence and the legal system, and aims to improve their safety, social and health outcomes. 190 women were surveyed at Bendigo, Echuca, Maryborough, Kyneton and Swan Hill Magistrates' Courts and in-depth conversations were undertaken with 27 women as part of this project (page 8). As part of examining court structures and processes, the report looks at the safety of women at court. It notes that:

- > '[t]here was an overwhelming consensus with the women about the lack of court safety and privacy. The women felt that the fear they hold at facing the offender in court is not understood. None of the women felt safe or particularly comfortable waiting for their case and in the court room' (page 68).
- > 'For many women this fear had an impact on their capacity to disclose their lived experiences to either the lawyer or magistrate in a way that did them justice. They recommended well-signed supervised waiting areas for applicants and respondents, and separate entrances and exits...The lack of court

safety in all the courts compounds the chronic fear these women have felt for a long time' (page 69).

- The report also highlights that a lack of adequate security systems is also a concern for women. 'While police are in the precinct they do not have a consistent presence throughout the court space' (page 70).

Loughman, Janet, 'Protecting vulnerable witnesses in family law' (2016) 3(1) *Law Society of NSW Journal* 26.

This article considers the traumatic impact of cross-examination of vulnerable witnesses by perpetrators of violence (page 26).

Lynch, Denise and Lesley Laing, '*Women get lost in the gaps' – Service providers' perspectives on women's access to legal protection from domestic violence* (2013).

Drawing on focus groups with service providers in NSW, the authors identify the need for a well-designed and appropriately located 'safe room' (a separate room, in the courthouse, specifically for women applying for ADVOs) for both women and workers (ideally with direct access into the court room and an adjoining room for solicitors and a bathroom and kitchen). Some interviewees noted that safe rooms sometimes are too small; are located in areas defendants commonly walk past (for example to get to the men's toilets or be some distance from the court room) (page 14).

Queensland, Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (2015).

Drawing on submissions and consultations this report identified issues with courtroom safety including being re-traumatised by the requirement to repeat the story of the abuse and having to face perpetrators in and outside the court room (lack of separate waiting areas, particularly in remote areas (p 268).

Roberts, Donna, Peter Chamberlain and Paul Delfabbro, 'Women's Experiences of the Processes Associated with the Family Court of Australia in the Context of Domestic Violence: A Thematic Analysis' (2015) 22(4) *Psychiatry, Psychology and Law* 599.

Drawing on interviews with 15 women who had left abusive relationships and who had, or were currently, engaged with the Federal Family Court process the authors identify, relevant to safety and protection, fear and anxiety as another core theme in the sample results and was evident in several contexts: 'fear of the ex-partner, anxiety around attending court, and how their thoughts and feelings impacted on the children' (page 607).

Salter, M., Conroy, E., Dragiewicz, M., Burke, J., Ussher, J., Middleton, W., Vilenica, S., Martin Monzon, B., & Noack-Lundberg, K., "A deep wound under my heart": Constructions of complex trauma and implications for women's wellbeing and safety from violence (Research report, 12/2020). Sydney: ANROWS.

Complex trauma refers to multiple, repeated forms of interpersonal victimisation and the resulting health problems and psychosocial challenges. Women with experiences of complex trauma are a significant but overlooked group of victims and survivors of gender-based violence in Australia. They often have interlinked health and safety needs, and are frequently in contact with crisis services and police. This research project sought to develop a comprehensive picture of how complex trauma is being constructed in public policy and practice, and how it is viewed by women with experiences of complex trauma. It found that at the policy level, complex trauma overlaps with frameworks on violence against women and mental health. However, the impact of complex trauma is not comprehensively addressed by these frameworks, which contributes to the fragmented response to women in distress. The research demonstrated that there is a strong need for a whole-of-government commitment to the implementation and coordination of trauma-informed practice across sectors.

Sarre, Rick and Alikki Vernon, 'Access to Safe Justice in Australian Courts: Some Reflections upon Intelligence, Design and Process' (2013) 2(2) *International Journal for Crime, Justice and Social Democracy* 133.

This article examines broadly the issue of safety in courts in Australia. The report collected data from three Australian state jurisdictions (Victoria, South Australia and Western Australia) and one federal jurisdiction (Family Court of Australia) over a three period from 2009-2012.

Four safety and security aspects were identified as most important to addressing and managing risk:

- > improving the communication and the sharing of information across security personnel within courts and across jurisdictions and states;
- > security personnel working collaboratively and cooperatively with court staff and the judiciary on 'safety planning';
- > encouraging more thorough reporting of critical incidents; and
- > implementing proactive (not just reactive) approaches to reducing or avoiding incidents in or around the courts' (page 135).

The report notes the Family Court's approach to involve the victim in the process of risk assessment through the development of a 'safety plan' is viewed as an advance on reactive strategies that were adopted on the day of the hearing without planning or specific measures put in place (like staggered arrivals, separate waiting areas, security guard escort, and so forth' (page 137).

In terms of court design, the report notes that older courts, designed for functionality rather than safety,

continue to provide safety concerns (page 140). In other court buildings, the general layout of entrances and exits is raised as being an issue, especially in domestic violence cases. However, even more than improved security measures and separate entrances/exits is having separate rooms for people to retreat to. These should be standard and known to individuals before they reach the building (page 141). Finally, the report notes that importance of developing policies and procedure manuals regarding safety and security in and around courts, and to provide ongoing training to court staff (p 142).

Sentencing Advisory Council, *Sentencing of Adult Family Violence Offenders Final Report No. 5* (2015).

The report considers the role of specialist family violence lists or courts in dealing with family violence offences. In relation to court safety it notes some special arrangements for victim safety: Some courts will also include specially designed rooms and separate entrances to ensure the safety of victims, and may offer facilities which enable vulnerable witnesses to give evidence remotely.

Offender programs: Some courts have the capacity to order or refer an offender to a program which aims to educate the offender and address personal issues to prevent re-offending, usually through counselling. Some courts have offender support workers to engage and refer offenders to behavioural change programs.

Wendt, Sarah, Donna Chung, Alison Elder and Lia Bryant, *Seeking help for domestic violence: Exploring rural women's coping experiences – State of knowledge paper* (ANROWS, 2015).

This literature review focuses on the unique experiences and specific barriers faced by women experiencing family or domestic violence in rural and remote areas. It notes that women living in socially and geographically isolated places often cope with domestic and family violence by themselves for long periods of time (p 1). See p5-6 which discusses the structural barriers and cultural factors that prevent rural women from disclosing, including that 'self-reliance was so valued and upheld in families that to disclose or ask for help about domestic and family violence was perceived as a failure or shameful' (p 6).

The review notes that effect of social and geographical isolation is particularly important for Indigenous women's ability to disclose, and that the small and tight-knit nature of Indigenous communities can influence decisions to report (p 10).

Pages 10-12 discuss the particular barriers for culturally and linguistically diverse women (such as racism, lack of access to interpreters, and cultural isolation), those identifying as LGBTIQ (such as discrimination, homophobic or transphobic attitudes, and a lack of specialist services), and women with disabilities (such as relying on the abuser for transport, and a lack of specialist services).

Women's Services network (WESNET), *Domestic Violence in Regional Australia: A Literature Review – A Report for the Commonwealth Department of Transport and Regional Services (2000).*

Lack of confidentiality also presents a unique set of circumstances for women living in rural and remote areas. Given the stigma attached to domestic violence in rural and remote communities, the public attention often afforded to women seeking legal protections, including write-ups in the local newspaper, is a major deterrent for women (p 17).

International

Coy, Maddy et al, *Picking up the pieces: domestic violence and child contact* (Rights of Women and CWASU, 2012).

Section 5 of this report presents quantitative and qualitative data on women and legal professional's experience of legal proceedings. Pages 41-45 summarise issues surrounding women's safety at court. 'Three quarters of women (74%, n=23) said they had concerns for their safety while attending court. Some feared that they would be in physical danger, being fully aware of their ex-partners' capacity for violence. Many perceived that their ex-partners 'took advantage of the fact that they were required to be present in order to be intimidating' (Kaye et al, 2003: 7; see also Rights of Women, 2011)' (page 41).

Several women reported their ex-partners 'staring' at them throughout the proceedings and in some cases, judges and other courtroom personnel failed to recognise this act of aggression. In addition, women were particularly fearful of leaving the courtroom at the close of proceedings (page 42).

Special measures have been developed in the criminal courts to provide women with protection during proceedings namely, separate waiting rooms are provided and sometimes separate exits for victims and witnesses. However, 'almost half of legal professionals (47%, n = 35) reported that special facilities were not advertised for vulnerable and intimidated court users' (page 43).

When asked what could be done to improve their safety while at the courtroom, many suggested that safe spaces and measures to avoid seeing their ex-partner would have made a significant difference (page 44).