

## Victim experience of court processes - Key Literature

### Australia

**Braaf, Rochelle, and Isobelle Barrett Meyering, 'When Does It End? The Continuation of Family Violence through the Court Process, Financial Outcomes for Women and Good Practice' (Paper presented at Australasian Institute of Judicial Administration Family Violence Conference, Brisbane, 1-3 October 2009).**

Working with eight services across Queensland, South Australia and Victoria, the authors conducted interviews and focus groups with approximately forty staff and sixty female clients who have experienced abuse. It identifies a number of issues women experience with the court system, including access to and satisfaction with Legal Aid and legal representation, and financial costs. In terms of their experience of the court process generally, women commented on feeling disempowered and lacking faith in the courts due to safety issues and not feeling as if they were being heard (p3), and perpetrators not being held accountable by the courts (p4).

**Douglas, Heather, 'Domestic and Family Violence, Mental Health and Well-Being, and Legal Engagement' (2017) *Psychiatry, Psychology and Law* (online).**

This article draws from interviews with a group of diverse women who have engaged with the legal system after experiencing domestic and family violence (DFV). The study sought to investigate how women's experiences of legal processes 'affected their mental health and well-being' (p 1). Almost all the women experienced some type of mental health issue directly attributable to DFV (p 5). Many women engaged preventative measures prior to attending court, including pre-court counselling, contacting mental health practitioners, and taking prescribed medication (p 2). Other women self-medicated and avoided seeking help fearing that proof of mental health concerns may lead to negative court outcomes (p 2). Many women highlighted attending court (pp 5-6), having to face the perpetrator in court (pp 6-8), and giving evidence (pp 8-9) as negatively affecting their mental health (p 10). A number of suggestions are made for improving women's experiences in court, including:

- > minimising the frequency with which victims are required to attend court (p 10);
- > allowing women to give evidence remotely (p 10);
- > minimising contact between the victim and abuser, through ensuring there are safe waiting spaces (p 10), and staggering attendance and departure times of the parties (p 11);
- > providing effective training to court personnel regarding the dynamics of DFV (p 11); and
- > ensuring cross-examination, and legal proceedings in general, are not misused by the abuser (p 11).

**Douglas, Heather, ‘The Criminal Law’s Response to Domestic Violence: What’s Going On?’ (2008) 30(3) *Sydney Law Review* 439.**

This article draws on a study of criminal prosecutions of breaches of domestic violence protection orders in Queensland, Australia and explores the process of criminal intervention in the context of domestic violence. See especially at p457 describing the added stress victims are likely to experience in the court process for domestic violence matters due to the fact that ‘...breach defendants were more likely to be legally represented than in other criminal matters heard in the magistrates courts; there were more returns to court for breach of domestic violence matters than other criminal matters and there was a reduced rate of pleading guilty compared to other offences’ (p457).

**Hunter, Rosemary, ‘Narratives of Domestic Violence’ (2006) 28 *Sydney Law Review* 733.**

See ‘Judicial ‘Knowledge’ About Domestic Violence’ (from p754) drawing on observations of court proceedings the author notes that magistrates varied greatly in being supportive or minimising harm, affirming or not affirming women, with some questioning why the applicant stayed with her abuser (p755). Several themes emerge from this court observation study:

- > magistrates’ emphasis on physical violence, especially recent incidents, as discrete incidents rather than patterns of abusive behaviour;
- > understanding relationship conflict as the cause of violence (resulting in obligations to leave, encouraging reconciliation, making mutual orders, and providing potentially insufficient duration of orders);
- > approaching inconsistency around child contact by allowing an exception to protection orders to exercise child contact;
- > denying and minimising violence through reactions to stories; engaging in narratives that frame women as ‘bad mothers’ or strategically using intervention orders for the purposes of family law proceedings.

**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.

**Jordan, Lucinda, and Lydia Phillips, 'Women's Experiences of Surviving Family Violence and Accessing the Magistrates' Court in Geelong, Victoria' (Report, Centre for Rural and Regional Law and Justice, Deakin University, 2013).**

Drawing on interviews with 37 women who had survived family violence and 23 workers supporting women survivors this research considers among other things the experience of court processes in relation to domestic violence. Of particular relevance is section 3. The research found:

- > many women felt they had a limited opportunity to speak and be heard (from p23)
- > women who reported magistrates were 'fair described magistrates as demonstrating compassion and understanding family violence (from p24)
- > some women reported their partners made cross applications which they described as 'a game to further manipulate and shame them' (from p26)
- > women had a strong perception that family law was over-emphasised at the expense of their protection (from p27)
- > women reported that undertakings were ineffective and inappropriate (from p28)

**Kaspiew, Rae, et al, 'Responding to Family Violence: A Survey of Family Law Practices and Experiences' (Report, Australian Institute of Family Studies, October 2015).**

This report presents the findings of Responding to Family Violence: A Survey of Family Law Practices and Experiences (Survey of Practices). This report draws on surveys and interviews with professionals (n653) (judicial officers and registrars, lawyers and non-legal family law professionals) working across the family law system and telephone interviews with parents (n2,473) who used family law system services in the period of approximately 12 months preceding August 2014. The report considers allegations of false reports of family violence and tactical use of domestic violence protection orders in family law proceedings ([8.2]; p174). The report considers the question of further abuse of victims of family violence through legal processes [8.3]. Some extracts of quotations include:

- > 'We are seeing the courts being used increasingly for frivolous matters and it does to some extent seem that the courts are increasingly being used as a continuation of abuse for victims of domestic and child abuse. The legal aid funding, which cannot be divorced from this analysis, is also being used in matters where there does not seem to be any merit and often the other party who is the victim experiences a great deal of difficulty in obtaining legal aid funding.' (L18, lawyer)(p177)
- > 'Victims tend to be excluded from courtrooms because of their safety concerns (which is unhelpful because they don't get to hear what the judicial officer says, and it feels like marginalisation which is kind of a repeat of the abusive tactics). There needs to be better resourcing of these matters to ensure victims can fully participate.' (L402, lawyer)' (p177)

**Laing, Lesley, *'It's Like this Maze You Have Make Your Way Through': Women's Experiences of Seeking a Domestic Violence Protection Order in NSW* (Faculty of Education and Social Work, University of Sydney, 2013).**

Draws on interviews conducted with 40 women who were asked about their experiences in obtaining an Apprehended Violence Order (AVO) in Sydney. Chapter 2 explores the experiences of 'Going through the legal process', including applying for an AVO, going to court (facing the perpetrator and the importance of court support), and the risk of using the law. Women commonly felt that facing the offender in court was a 'challenge' and often that they were the ones 'on trial', the experience was particularly challenging when women were not sure about the processes (p26). Chapter 3 looks at 'Key issues from women's perspectives' and identifies the importance of the appropriate response and support, and issues involved in the process of prosecution. Further chapters explore the issues with intersecting, and fragmented legal systems, and identify themes around 'struggling to be heard' and 'senses of injustice'.

**Ragusa, Angela, 'Rural Australian Women's Legal Help Seeking for Intimate Partner Violence: Women Intimate Partner Violence Victim Survivors: Perceptions of Criminal Justice Support Services' (2012) 28(4) *Journal of Interpersonal Violence* 685.**

This study draws on 36 in-depth face-to-face interviews. Findings reveal police and court responses reflect

broader social inequalities and rurality exacerbates concerns such as anonymity and lack of service. It finds that police and the criminal justice system play an important role in de-stigmatizing intimate partner violence and legitimating its unacceptability.

**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' (2014) 22(4) *Psychiatry, Psychology and Law* 599.**

Draws on interviews conducted with 15 women to examine the psychological impact of the Family Court process on women who have left abusive relationships. Women reported that the experience of engaging with the court process caused considerable distress. Principal themes related to fear of the ex-partner and having to confront him at hearings, constantly reliving the relationship via affidavits, and the insensitivity of some legal professionals to the difficulties experienced by women confronted with these experiences.

**Women's Safety and Justice Taskforce (2021) [Hear her voice volume 2](#) (Brisbane, Women's Safety and Justice Taskforce).**

See pp 206- 229 where the Taskforce reports on submissions it received about judicial officers.

Examples of unsatisfactory treatment of victims by judicial officers are listed at p209 and include:

- > judicial officers refusing to grant protection orders and instead, telling victims to go to the family courts.
- > judicial officers refusing to put any protection orders in place unless the respondent came to court and then placing the burden on the victim to go away and collect further evidence to get protection.
- > a judicial officer requiring victims to provide a letter from a medical practitioner before they would allow the victim to make an application that the victim not be cross-examined by the perpetrator.
- > judicial officers applying the law inconsistently, including in relation to coercive control.
- > a judicial officer who described a perpetrator placing surveillance cameras throughout the house to watch the movements of the victim as merely being signs of an unhealthy relationship breakdown rather than domestic violence.
- > a victim making her own application felt unable to pursue it due to a lack of support and inconsistent guidance from the judicial officer.
- > a judicial officer who, without speaking to the aggrieved, dismissed an application for a protection order on the basis that the respondent had contacted the court to advise that they were overseas and unlikely to return.

## International

**Epstein, Deborah, and Lisa A Goodman, 'Discounting Credibility: Doubting the Testimony and Dismissing the Experiences of Domestic Violence Survivors and Other Women' (2018) 167 *University of Pennsylvania Law Review* (forthcoming).**

This article addresses the ways in which the credibility of female victims of intimate partner violence is discounted through their experiences of legal and social services (pp 3-4). The authors conclude that women's experiences are frequently discounted, which itself can have further traumatic impacts. Judges and other professionals often discount women's stories of abuse as implausible, particularly where the victims suffer from psychological trauma that may impact memory and comprehension (p 7). Women who suffer traumatic brain injuries (pp 9-11) or PTSD (pp 11-3) as a result of domestic violence are particularly susceptible to relaying inconsistent stories. The authors also find that cultural assumptions resulting in the prioritisation of physical over psychological violence causes judges and other authority figures to expect 'real' survivors to also prioritise physical harm, while in reality, victims may feel more significantly impacted by psychological abuse (pp 17-20).

Moreover, the results of the study indicate that gatekeepers often unjustly discount women's personal trustworthiness, based on perceptions of their demeanour (pp 21-5), their perceived motive (pp 25-32), and their social location (pp 32-7). Even women who are able to overcome initial scepticism often find that the systems intended to provide assistance dismiss the importance of their experiences (p 37). In spite of meaningful progress, 'the criminal justice system continues to discount important aspects of women's experiences and to trivialize some of the harmful consequences that policies focused primarily on offender accountability often impose on survivors' (p 38). Ultimately, 'the arbiters of justice and social welfare adopt and enforce legal and social policies and practices with little regard for how they perpetuate patterns of abuse' (p 1).

These experiences of minimisation often echo women's previous experiences of abuse (p 46). The impacts of this discrediting are multifaceted: the dismissal itself constitutes its own injury, which can compound the harm such women experience directly from the abuse (pp 47-50); additionally, this instinctive devaluing of women's testimony becomes an independent obstacle to attempts to obtain safety and justice (pp 50-2). The authors conclude that credibility discounting is widespread and pervasive, and requires genuine institutional reform (p 59). Particularly, actors must be aware of these internalised assumptions, and seek to engage more openly with victims (see pp 54-6).

**Fleury, Ruth, 'Missing Voices: Patterns of Battered Women's Satisfaction with the Criminal Legal System' (2002) 8(2) *Violence Against Women* 181.**

This research explored intimate partner violence survivors' patterns of satisfaction with the criminal legal system response. 178 female survivors of intimate partner male violence from three sites were interviewed after a domestic violence-related court case closed. This article's introductory discussion highlights how a

victim's sense of control over the prosecution and court system enhances their sense of satisfaction with the system. This study supports this assertion, and includes an assessment of women's satisfaction with a number of aspects of the criminal justice system, including the police and courts.

**Gillis, Joseph, et al, 'Systemic Obstacles to Battered Women's Participation in the Judicial System: When Will the Status Quo Change' (2006) 12(12) *Violence Against Women* 1150.**

The present study presents research from focus groups conducted in Canada with 20 abused women. It examines the experiences of women victims in domestic violence cases and the barriers they faced in dealing with the justice process. In particular generally women described a lack of knowledge of what to expect from court proceedings and actual court proceedings as intimidating, impersonal and demeaning (p1160).

**Klein, Andrew, 'Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges' (National Institute of Justice (US), 2009).**

This report reviews research in the United States on domestic violence to determine what works best in protecting victims and stopping abuse. The section on judicial responses (from p52) is helpful. It recommends:

- > Judges should strive to create user-friendly, safe court environments for petitioners, be sympathetic to the parties before them, but firm with respondents once abuse has been determined. Thus, victim concerns are validated, and respondents' abusive behaviors are clearly condemned. (p60) (Based on limited studies on the impact of judicial demeanour.)
- > Judicial attention before trial to address the risk to victims posed by alleged abusers will result in quicker case resolution and decrease re-abuse by defendants who fail to show for trial. (p62) (based on multiple studies).
- > Judges should respond to noncompliant abusers immediately to safeguard victims. (p72) (based on multiple studies).

**Miller, Susan L, and Nicole L Smolter, "'Paper Abuse": When All Else Fails, Batterers Use Procedural Stalking' (2011) 17(5) *Violence Against Women* 637.**

Using data from interviews with women who have exited violent relationships, attorneys, and practitioners/policy specialists, this research note explores the continuation of control as women encounter "paper abuse." It observes that women exiting violence may confront frivolous lawsuits, false reports of child abuse, and other system-related manipulations that force contact, and financially burdens them. The section 'Limits of protection orders for paper abuse' (from p643) identifies some ways in which the court system itself re-victimises victims of abuse – e.g. in one instance a woman was required to act out the

abuse, and then the protection order request was dismissed anyway.

**National Judges Association, *Domestic Violence and the Courtroom: Knowing the Issues... Understanding the Victim* (n.d).**

This resource provides practical guidance for judges in engaging with victims of domestic violence in the courtroom, including information on how judges can improve the court experiences of victims, such as:

- > listening carefully;
- > recognising coping mechanisms, such as denial and minimisation;
- > acknowledging that victims may be overwhelmed by court proceedings;
- > being proactive in ensuring victims are aware of their options;
- > ensuring victims are given effective, meaningful opportunities to contribute to proceedings;
- > minimising aspects of the court experience that may be intimidating for victims, including through implementing safety strategies (p 1).

**Ptacek, James, *Battered Women in the Courtroom: The Power of Judicial Responses*. (Northeastern University Press, 1999).**

This book was one of the first to look at the role of judges in the domestic violence protection order process. Ptacek approaches the issue using three inquiries. He asks: “What do judges do with their authority in restraining order hearings? How do judges interpret their role in responding to woman battering? What effect do judges have on women seeking restraining orders?” (ix).

Ptacek’s research was conducted primarily through interviews. He consulted widely with women in shelters, staff at shelters, feminist lawyers, judges, court support staff, and criminal justice researchers. He focused on two courts in Massachusetts that are considered to treat battered women with respect and take seriously their allegations. However, Ptacek identifies types of judicial behaviour can negatively affect victims in court. This form of abuse is sometimes referred to as ‘secondary abuse’.

Ptacek has illustrated the judicial responses reinforce women’s entrapment in a diagram available [here](#) and extracted in the table below.

Neglecting women’s fears	<ul style="list-style-type: none"><li>&gt; ignoring women’s fears</li><li>&gt; lack of safe waiting areas in courthouse</li></ul>	<ul style="list-style-type: none"><li>&gt; lack of coordination with police and probation</li><li>&gt; inadequate training of court personnel</li></ul>
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Courtroom intimidation	<ul style="list-style-type: none"> <li>&gt; inattention to the impact of a courtroom on victims</li> <li>&gt; bureaucratic and indifferent treatment of abused women</li> </ul>	<ul style="list-style-type: none"> <li>&gt; failure to provide women with information about their legal options</li> </ul>
Condescending or harsh demeanour	<ul style="list-style-type: none"> <li>&gt; patronising displays of authority</li> <li>&gt; harsh or hostile remarks</li> </ul>	<ul style="list-style-type: none"> <li>&gt; racist attitudes toward women of colour</li> <li>&gt; bias against unmarried women</li> </ul>
Furthering women's isolation	<ul style="list-style-type: none"> <li>&gt; failure to provide advocates</li> <li>&gt; lack of resources for non-English speakers</li> </ul>	<ul style="list-style-type: none"> <li>&gt; lack of resources for deaf and disabled women</li> <li>&gt; lack of coordination with community resources</li> </ul>
Minimising, denying, and blaming	<ul style="list-style-type: none"> <li>&gt; mirroring batterers' actions by making light of the abuse</li> <li>&gt; saying the abuse didn't happen</li> </ul>	<ul style="list-style-type: none"> <li>&gt; saying she caused it</li> <li>&gt; making her feel guilty</li> <li>&gt; saying it's just a "lovers' quarrel"</li> </ul>
Neglecting the needs of children	<ul style="list-style-type: none"> <li>&gt; failing to see how batterers manipulate women through their children</li> </ul>	<ul style="list-style-type: none"> <li>&gt; no space in the courthouse for children</li> <li>&gt; lack of concern for safety of children</li> </ul>
Colluding with violent men	<ul style="list-style-type: none"> <li>&gt; showing greater concern for defendants than for women seeking protection</li> </ul>	<ul style="list-style-type: none"> <li>&gt; unwillingness to impose sanctions on batterers</li> <li>&gt; joking and bonding with defendants</li> </ul>
Blindness to the economic aspects of battering	<ul style="list-style-type: none"> <li>&gt; ignoring women's requests for child support and restitution</li> </ul>	<ul style="list-style-type: none"> <li>&gt; bias against women on welfare</li> </ul>

Conversely, Ptacek has also illustrated how the judicial responses that empower battered women in a diagram available [here](#) and extracted in the table below.

Prioritising women's safety	<ul style="list-style-type: none"> <li>&gt; asking about women's fears</li> <li>&gt; asking about weapons</li> <li>&gt; confiscating weapons</li> </ul>	<ul style="list-style-type: none"> <li>&gt; training court personnel on battering</li> <li>&gt; making a safe space for women to wait for hearings</li> </ul>
Making the court hospitable to abused women	<ul style="list-style-type: none"> <li>&gt; providing a separate restraining order office</li> <li>&gt; informing women of their legal options</li> </ul>	<ul style="list-style-type: none"> <li>&gt; providing translators</li> <li>&gt; making the building handicap accessible</li> </ul>
Supportive judicial demeanour	<ul style="list-style-type: none"> <li>&gt; listening to abused women</li> <li>&gt; asking questions</li> </ul>	<ul style="list-style-type: none"> <li>&gt; looking women in the eye</li> <li>&gt; recognising the complexity of women's circumstances and choices</li> </ul>

Connecting women with resources	<ul style="list-style-type: none"> <li>&gt; Providing advocates for battered women</li> </ul>	<ul style="list-style-type: none"> <li>&gt; developing relationships with shelters, batterers' programs, and community services</li> </ul>
Taking the violence seriously	<ul style="list-style-type: none"> <li>&gt; communicating through words and actions that the court will not tolerate battering</li> </ul>	<ul style="list-style-type: none"> <li>&gt; encouraging women to return to the court if they need to</li> </ul>
Focusing on the needs of children	<ul style="list-style-type: none"> <li>&gt; demonstrating concern for the safety of children</li> <li>&gt; making space in the courthouse for children</li> </ul>	<ul style="list-style-type: none"> <li>&gt; recognising the effects of battering on children</li> </ul>
Imposing sanctions on violent men	<ul style="list-style-type: none"> <li>&gt; imposing sanctions for violating court orders</li> <li>&gt; refusing to joke and bond with violent men</li> </ul>	<ul style="list-style-type: none"> <li>&gt; correcting institutional bias toward men</li> </ul>
Addressing the economic aspects of battering	<ul style="list-style-type: none"> <li>&gt; asking whether women need child support</li> </ul>	<ul style="list-style-type: none"> <li>&gt; connecting women with community resources around housing and financial assistance</li> </ul>