

Victim experience of court processes - Other Bench Books

NSW

Judicial Commission of NSW, [Equality before the Law: Bench Book \(2022\)](#).

This bench book discusses the challenges faced by a range of vulnerable groups (Aboriginal people, people from CALD backgrounds, people of a particular religious affiliation, people with disabilities, children and young people, women, GLBTIQ people, and older people) in their experience of court processes. The discussion is mostly not specific to proceedings relating to domestic and family violence matters, however the practical guidance provided to judicial officers is likely to be useful in those proceedings.

QLD

Supreme Court of Queensland, [Equal Treatment Bench Book \(2nd ed, 2016\)](#).

- Chapter 14 of the bench book recognises that women maybe disadvantaged generally in legal proceedings. It notes that: 'The fact that a majority of legal aid approvals are for criminal matters, in respect of which male applicants are heavily over-represented, means that less funding is available to women in family disputes, in which they represent the vast majority of applicants. A potential consequence of being unable to receive legal aid funding is the increased pressure to settle proceedings out of court, even if the terms of the settlement are inadequate. In addition, where women are at a disadvantage in terms of bargaining power (due to a lack of independent means, amongst other factors) there is an increased likelihood that women will not advocate for their rights or will be unable to advocate effectively' (p.167).
- Under 'C Domestic violence and the court process', there is a discussion of the obstacles women may face in prosecuting perpetrators of domestic violence. It notes that domestic violence is prosecuted far less often than it occurs and reasons for this include fear of further violence or other revenge from the perpetrator, feelings of shame or embarrassment, belief that the incident was too trivial or unimportant, previous negative experiences of reporting (e.g., to health professionals), a continuing emotional attachment to the perpetrator, and issues relating to children from a relationship with the perpetrator (p.173).
- The bench book also notes other issues relating to access to justice experienced by women in the legal system including: (pp.167-170).
 - Issues with accessing legal aid;

- > A lack of childcare facilities in most courts, as well as difficulty making outside arrangements;
- > Recognition of power imbalances in alternative dispute resolution processes;
- > Issues for women as witnesses and the need to consider alternative approaches to giving evidence;
- > The need to be aware that women may be excluded through the use of gender-specific language.

Vic

Judicial College of Victoria, [Family Violence Bench Book \(2014\)](#).

3.1 discusses the court's power to make vexatious litigation restraint orders. 3.7 discusses the court's power to make a costs order where the application was frivolous, vexatious or made in bad faith. 5.8.6 notes that judicial officers and court staff should consider modifying their usual approach to effective communication with parties and assessing credibility and competence of witnesses when dealing with affected family members or respondents with disabilities.

WA

Department of Justice (WA), [Equal Justice Bench Book \(2nd edition September 2021\)](#).

Chapter 10 includes very useful pointers for judges about how to deal with victims of domestic violence. Guidelines include: emphasising that domestic violence is not the victim's fault, avoiding repetition of unfounded myths about domestic violence, understanding that sex workers and women who are not in a heterosexual relationship can also be victims of domestic violence.

Chapter 13.3 'Children and family, domestic and sexual violence' provides useful practical considerations around dealing with children in Family Court proceedings, restraining order matters, family and domestic violence and sexual assault, evidentiary issues, the effects of prolonged abuse, directions to the jury and sentencing and other decisions.

International

Neilson, Linda C, [Domestic Violence Electronic Bench Book \(National Judicial Institute, 2020\)](#).

Chapter 7: Perpetration Characteristics and Litigation Tactics 'discusses options in response to the rationalizations and litigation tactics of domestic violators who engage in the coercive, controlling, dominating aspects of domestic violence in order to gain the upper hand in family and child protection litigation.'

Section 7.4: Perpetrator litigation tactics discusses the use of litigation to control or harass: '[p]rotracted litigation not only forces the targeted parent into continuing contact with the domestic violator, it also depletes resources, increases stress, and interferes with recovery from DV'. The section goes onto consider judicial responses to litigation tactics, including:

- > Explicit findings in judgments relating to and denouncing the misuse of litigation;
- > Engaging in coordinated case management and information sharing;
- > Exercising the court's authority to prevent abuse of process by declaring a litigant to be vexatious;
- > Potential cost options (e.g. interim cost orders);
- > Appeal options (i.e. appealing orders is a litigation tactic; responses include requiring security for costs or requiring the appellant to comply with existing orders before entertaining the appeal);
- > Avoiding orders that enable harassment and control;
- > Additional options in response to excessive litigation (e.g. cost orders to pay for targeted parent's legal representation; prohibit the presence of the abusive party during discovery of documents)

Section 5.3: Detection and prevention of intimidation in discovery proceedings and hearings notes the continued tactics of intimidation and harassment targeted persons may experience in court, emphasising they may be quite subtle. Some possible judicial responses to such actions are identified:

- > Monitoring cross examination, and ensuring this is conducted by a lawyer;
- > Redirecting perpetrator's testimony to relevant issues;
- > Enabling the victim to testify without directly facing the perpetrator (e.g. via video link of from behind a screen);
- > Providing separate waiting rooms for the parties;
- > Staggering the parties' entrances and exits;
- > Allowing a support person to assist the victim.

It should be noted that '[s]tressful surroundings can exaggerate underlying psychological reactions and harm produced by domestic violence. Witnesses are being asked to recount traumatic abuse and violence by persons who breached an intimate trust. In such circumstances, it is particularly important for lawyers and service providers, particularly male professionals, to put the witness at ease and to ensure that all questions are phrased in a non-threatening, non-accusatory manner' (Section 5.3.3).