

Victim experience of court processes

Where a victim is a party to domestic and family violence related proceedings, their experience of court processes is likely to be improved where the judicial officer has a good **understanding of domestic and family violence**. Researchers have identified a range of judicial behaviours that may have the effect of either exacerbating a victim’s experience of domestic and family violence (also known as secondary abuse) or helping to empower a victim to regain control of their circumstances, wellbeing and future. Studies have found that respectful and inclusive approaches may positively affect victims’ mental health as well as their sense of satisfaction [Fleury 2002] with court processes. The following tables highlight a number of common victim experiences and suggest proactive approaches by judicial officers to improve satisfaction and minimise the risk of secondary abuse.

Judicial conduct of proceedings

Experiences	Proactive approaches
Sense of limited opportunity to speak and be heard [Kaye 2019]	<ul style="list-style-type: none"> ➤ Ask about victim’s fears, concerns and needs, both personal and relating to children eg child support ➤ Allow victim opportunity to raise other issues, and ask questions to clarify ➤ Convey clear message that victim has been heard and respected, and that the process and outcome have the force of judicial authority
Sense that abuse minimised, denied or made light of [Roberts et al 2014], or of being blamed for abuse [Ptacek 1999]; a sense of being on trial [Laing 2013]	<ul style="list-style-type: none"> ➤ Recognise the complexity, seriousness and possible financial impact[Braaf & Meyering 2009] of the victim’s circumstances and experiences and the impact on children’s wellbeing and safety ➤ Where possible facilitate the use of screens, phone or video evidence where victim fears having to testify against perpetrator or being in perpetrator’s presence[Vulnerable witness provisions (Australia)] ➤ Demand high standards of probity and respectful demeanour from all legal representatives acting in the proceedings ➤ Avoid labelling behaviours as ‘relationship conflict’ or ‘couple fighting’ that can be resolved through couple-counselling, reconciliation, separation or the making mutual orders [Hunter 2006] ➤ Avoid routine approach to duration of orders; consider how long they are needed[Hunter 2006] having regard to the victim’s particular circumstances and experiences ➤ Avoid routine approach to shared parental responsibilities; consider how violence impacts on children’s wellbeing and safety, and parents’ respective capacity to care for children

<p>Sense that greater concern for perpetrator than for protection of victim and children [Ptacek 1999], and that perpetrator not being held accountable for actions [Braaf & Meyering 2009]</p>	<ul style="list-style-type: none"> > Avoid familiar or colluding demeanour towards perpetrator > Emphasise that court will not tolerate violence and abuse > Question perpetrator's possible misuse of court processes (systems abuse) eg where multiple applications for adjournment; cross applications that publicly shame victim, seek to trivialise the victim's experiences, or seek an advantage in Family Court proceedings; applications that seek to have matters heard separately > Impose sanctions for perpetrator's breach of orders or systems abuse appropriate to level of seriousness and harm caused > Encourage victim to return to the court if they need to
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Legal representation

Experiences	Proactive approaches
<p>Absence of, or inability to access, or refusal of legal representation resulting in self-representation for victim and/or perpetrator</p>	<ul style="list-style-type: none"> > Explain to party/ies the possible consequences of self-representation including unfamiliarity with court processes, having to deal directly with the other party's legal representative, an imbalance of bargaining power between parties, consent orders or inappropriate outcomes, perpetuation of abuse through court process[Kaspiew et al Survey of Family Law Practices 2015] > Where victim is self-represented, consider whether the victim's fear of the perpetrator diminishes or negates their capacity to cross-examine the perpetrator and jeopardises the court's ability to receive the necessary evidence in order to make decisions for the safety and protection of victims and children[Vulnerable witness provisions (Australia)] > Where perpetrator is self-represented, consider the likely adverse impact on the victim and the victim's evidence of the perpetrator's direct cross-examination and whether steps should be taken to protect the victim from further abuse by the perpetrator while ensuring procedural fairness and access to justice (eg screens, video link) [Vulnerable witness provisions (Australia)] > Ask questions of self-represented party/ies to ensure understanding of nature and effect of orders/outcomes > Demand high standards of probity from legal representatives > See "Judicial conduct of proceedings" above

Courthouse and courtroom

Experiences	Proactive approaches
<p>Sense of intimidation arriving at court</p> <p>Lack of safety</p> <p>Lack of privacy [JCCD, The Path to Justice (ATSI) 2016, JCCD, The Path to Justice (CALD) 2016]</p> <p>Lack of safe waiting areas [Ptacek 1999]</p> <p>Fear of or actual confrontation with perpetrator/family and friends [Roberts et al 2014]</p> <p>Long waiting times</p>	<ul style="list-style-type: none"> ➤ Consider introducing ‘greeters’ at courts [JCCD, The Path to Justice (ATSI) 2016, JCCD, The Path to Justice (CALD) 2016] ➤ Consider whether there is space available to establish a safe room (eg such as using an existing interview room) ➤ Consider segregating waiting area ➤ Consider (improved) waiting area security ➤ Ensure court staff trained in safety and risk procedures appropriate to managing court precinct ➤ Consider separate entries to court for victims and perpetrators. ➤ Consider seating parties and witnesses so as to prevent eye contact between perpetrators and those they target ➤ Where possible, facilitate the use of screens, phone or video evidence where victim fears being in perpetrator’s presence [Vulnerable witness provisions (Australia)] ➤ Consider whether victims are safe to leave the court and whether it is possible for security officers /police to escort victims to their transport ➤ Consider splitting court days into morning and afternoon sessions so waiting is limited to half a day [JCCD, The Path to Justice (ATSI) 2016, JCCD, The Path to Justice (CALD) 2016].
<p>Lack of facilities/services for children, people with special needs [Ptacek 1999], for example:</p> <p>Appropriate space</p> <p>Appropriate access</p> <p>Communication: it may be assumed that interpreters are not needed, or there may be cross-cultural communication issues, for example for Aboriginal and Torres Strait Islander people who don’t speak English as their first language, communication may be difficult, and they may find non-verbal expression and body language confusing or intimidating [DPMC, Communicating with ATSI Audiences 2016]; for culturally and linguistically diverse people who wear a form of headscarf, it may be wrongly assumed that they are of the Muslim faith</p>	<ul style="list-style-type: none"> ➤ Consider whether there is space available to establish a room appropriate for children while parties wait for/participate in proceedings ➤ Ensure that all areas are accessible by wheelchair ➤ Ensure appropriate interpreter or translator services are provided ➤ Make court interpreter policies publicly available [JCCD, The Path to Justice (ATSI) 2016] ➤ Consider whether information about legal options can be made available in different forms, eg written, visual, aural ➤ Consider whether support person can be made available ➤ Consider playing educational videos in court waiting areas [JCCD, The Path to Justice (ATSI) 2016] ➤ Consider whether Aboriginal and Torres Strait Islander elders or cross-cultural liaison officers [JCCD, The Path to Justice (CALD) 2016] may be needed to assist with communication issues or the practicalities of giving sworn oral evidence [JCCD, The Path to Justice (ATSI) 2016].

<p>Lack of information about processes [Gillis et al 2006] and options, and lack of appropriate court support [Ptacek 1999]</p>	<ul style="list-style-type: none"> > Ensure information about legal options made available in appropriate form > Consider whether support person can be made available > Consider whether representatives from local support services can be available in the court precinct for referrals
<p>Unfamiliar, intimidating and demeaning environment [Gillis et al 2006]</p> <p>Bureaucratic and indifferent treatment by court staff [Ptacek 1999]</p>	<ul style="list-style-type: none"> > Consider introducing ‘greeters’ at courts [JCCD, The Path to Justice (ATSI) 2016] > Ensure that court staff speak to and treat victim and children respectfully, take steps to alleviate victim’s fears where possible, and follow safety and risk procedures
<p>Exclusion from courtroom in response to safety concerns resulting in sense of marginalisation and lack of participation in process [Kaspiew et al Survey of Family Law Practices 2015]</p>	<ul style="list-style-type: none"> > Consider how courtroom layout and presence/absence of particular individuals may accommodate victim’s presence in courtroom while alleviating safety concerns