
Threats, Domestic and Family Violence and Workplace Safety in the Courts

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Threats to judicial officers and court staff may be common and serious. They may often involve violations of court orders and may be associated with domestic and family violence. While substantial research has been conducted on threats made by perpetrators against their current or former intimate partners and on workplace threats experienced by those working in domestic and family violence support services, the issue of workplace violence directed at judicial officers and other court-based staff is limited, especially in the Australian context. This article examines existing knowledge about workplace threats and violence to judicial officers and other court staff and considers appropriate reporting protocols and responses to this type of behaviour.

INTRODUCTION

Threats, particularly those involving threats to kill or to do harm, are both common and may be serious. Threats may violate court orders and be associated with domestic and family violence (DFV) and other crimes.¹ Despite their prevalence, threat offences have received limited attention as a discrete form of offending. The first empirical analysis of threat offences recorded and sentenced in Victoria between 2012 and 2019 found the majority of threat offences occurred in the context of DFV.² The most common recorded threats in this context were threats to destroy or damage property, threats to kill, and threats to inflict serious injury.³ Judicial officers and other court staff may also be threatened by court users.

For example, on 27 June 2003, Peter Schaffer's girlfriend was appearing in New South Wales Sutherland Local Court regarding her application for bail. A decision was made to refuse bail and Schaffer telephoned the Court and spoke to the Court Registrar, stating "[t]he decision's fucken wrong, she shouldn't be in there, she's fucken innocent. The fucken magistrate Clugston has got it wrong. You have got to get it listed again before four o'clock, if you don't I'm going to kill someone. I know where that Clugston lives, unless he releases her, then so be it ... If you don't get her out today, I told you I am going to kill someone".⁴ While Schaffer was found guilty of threatening to cause injury to a magistrate⁵ and sentenced to a term of imprisonment of three years with a non-parole period of 18 months, many threats to judicial officers and court staff are likely not formally documented.

There is significant research about the use of threats by perpetrators against their intimate partners.⁶ Similarly, workplace threats of violence and the safety of those working in DFV support services is a

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¹ Sentencing Advisory Council, *Threat Offences in Victoria: Sentencing Outcomes and Reoffending* (State of Victoria) (iv) <[https://www.sentencingcouncil.vic.gov.au/sites/default/files/2021-06/Threat Offences in Victoria Sentencing Outcomes and Reoffending 0.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2021-06/Threat%20Offences%20in%20Victoria%20Sentencing%20Outcomes%20and%20Reoffending%20.pdf)>.

² Sentencing Advisory Council, n 1, iv.

³ Sentencing Advisory Council, n 1, 17–18.

⁴ *R v Schaffer* (2005) 153 A Crim R 372; [2005] NSWCCA 193.

⁵ *Crimes Act 1900* (NSW), s 322(c).

⁶ See also Joseph Lelliott, Phylcia Lim and Maeve Lu, "Dousing Threats and the Criminal Law in Queensland: Do We Need a New Offence?" (2021) 46(4) *Alternative Law Journal* 282; see generally Australasian Institute of Judicial Administration (AIJA), *National Domestic and Family Violence Bench Book* <<https://dfvbenchbook.aija.org.au/home>>.



well-examined area.⁷ However, there is a scarcity of research exploring workplace violence experienced by judicial officers and others who work in the courts. Notably, a significant proportion of cases coming before Australian courts involve DFV. For example, reports suggest that in the family courts between 65% and 79% of matters involve DFV, causing some to suggest that the “average” family law case involves DFV.⁸ In the magistrate’s and local courts DFV is also part of the everyday work of magistrates. For example, in Queensland alone in the year 2023–2024 magistrates’ courts dealt with over 42,000 applications to vary or make DFV protection orders and over 21,000 contraventions of these orders.⁹ Given the association between DFV and threats, it is likely that those working in courts that deal with large numbers of DFV cases are at risk of being threatened.

Increasingly coercive control is recognised as a common dynamic underpinning DFV. Australia’s National Plan to End Violence against Women and Children 2022–2032 (the National Plan) explains that coercive control “describes someone’s use of a pattern of abusive behaviours against another person over time, with the effect of establishing and maintaining power and dominance over them”.¹⁰ A variety of behaviours are associated with coercive control including physical and sexual abuse, monitoring, psychological abuse and threats. Systems abuse is also recognised under the National Plan as an aspect of coercive control, where it is defined as “the manipulation of legal and other systems by perpetrators of DFV, done so in order to exert control over, threaten and/or harass a current or former partner”.¹¹ Systems abuse often involves inappropriate use of court proceedings¹² and as part of this may encompass threats, harassment and, potentially, assaults of judicial officers and other court staff by litigants who may be trying to control legal proceedings.¹³

Under model Work Health and Safety laws in Australia a workplace must take reasonable preventive measures to manage the risk of violence and aggression occurring in the workplace.¹⁴ It is also increasingly recognised that psychosocial hazards cause harm.¹⁵ Threats, violence and aggression experienced by judicial officers and other court staff create psychosocial hazards. The World Health Organisation has placed workplace psychological violence on par with physical violence regarding its effect on victim-survivors.¹⁶ The responsibility of workplaces to have robust responses to worker’s psychological safety is now recognised in the literature and increasingly in legislative responses.

In this article we explore what is known about workplace threats and violence experienced by judicial officers and other court-based staff who often work on DFV-related cases. We begin by providing further consideration of systems abuse and then review the available literature before considering appropriate responses. We conclude with recommendations for further research.

⁷ See, eg, Cathy Humphreys, Jasmine Isobe and Margaret Kertesz, “‘Who’s Got My Back?’: Worker Safety in the Context of Domestic Abuse” (2023) 29(3) *Child and Family Social Work* 1.

⁸ Miranda Kaye, “Accommodating Violence in the Family Courts” (2019) 33 *Australian Journal of Family Law* 100,100; see also Federal Circuit of Family Court of Australia, *FCFCOA Annual Reports 2022-23* (Commonwealth of Australia, 2023) 26 <<https://www.fcfcoa.gov.au/sites/default/files/2023-11/FCFCOA%20Annual%20Report%202022-23.pdf>>.

⁹ Queensland Courts, *Queensland Courts’ Domestic and Family Violence (DFV) Statistics* <<https://www.courts.qld.gov.au/court-users/researchers-and-public/stats>>.

¹⁰ Commonwealth of Australia, *Australia’s National Plan to End Violence against Women and Children 2022-2032* (Commonwealth of Australia (Department of Social Services), 2022) 37.

¹¹ Commonwealth of Australia, n 10, 133.

¹² *AJIA*, n 6, [3.1.11].

¹³ Amelia Hill, “Justice Ministry under Pressure to Curb Attacks on Family Court Judges”, *The Guardian*, 23 February 2013 <<https://www.theguardian.com/law/2013/feb/27/judges-threatened-abused-family-courts>>.

¹⁴ See generally Safe Work Australia, *WHS Duties* <<https://www.safeworkaustralia.gov.au/safety-topic/hazards/workplace-violence-and-aggression/whs-duties#:~:text=Duties%20under%20the%20model%20WHS%20laws&text=This%20means%20you%20must%20do,health%20and%20safety%20of%20workers>>.

¹⁵ Peter Roussos, “The Psychosocial Risks and Impacts in the Workplace Assessment Tool: Construction and Psychometric Evaluation” (2023) 13(2) *Behavioral Science* 104.

¹⁶ Janet Kathleen Kempf et al, “Incidence of Client-initiated Workplace Violence amongst Counselors: A National Study” (2023) 101(4) *Journal of Counseling & Development* 475, 476.

SYSTEMS ABUSE

It can be challenging for courts to identify and manage systems abuse.¹⁷ Equal access to justice and fair hearing are key principles of the legal system and must be protected.¹⁸ Many actions and behaviours by a litigant may be both lawful and abusive and a judicial officer may have to determine what action to take where the action is abusive but at the same time possibly legal.¹⁹ Examples of systems abuse can include multiple applications for variations of conditions and appeals of protection orders; adding the victim-survivors' relatives as parties to the litigation; making spurious complaints against lawyers and judges and filing multiple spurious applications in multiple courts.²⁰ Actual or apprehended bias "strikes at the validity and acceptability of the trial and its outcome"²¹ yet claims of judicial bias can also be a tactic of coercive control and a form of systems abuse.²² As we observed earlier threats to judicial officers and court staff may be one aspect of a person's efforts to control proceedings. Understanding systems abuse as a tactic of coercive control can assist court staff and judicial officers to recognise, understand and respond to systems abuse.²³

The failure of legal actors to censure and regulate legal systems abuse "grants the offending party carte blanche – they are free to continue to engage in dominating and coercive tactics in the knowledge that they are unlikely to be sanctioned by the state".²⁴ In their analysis of systems abuse Miller and Smolter conclude that legal advocates and litigants (but also court staff and judicial officers), should document behaviours suspected to be systems abuse because such behaviours can be "easily overlooked and justified as individuals' legitimate attempts to exercise legal rights"²⁵ or potentially in the case of threats a one-off incident and not part of a pattern of abusive behaviour. In cases where there are multiple judges involved with the case it may be particularly easy for an abusive litigant to minimise or provide an apparently legitimate explanation for their behaviour, if previous similar incidents are not documented.²⁶ While the issue of multiple judges is ameliorated to some extent in the family courts by utilising a general approach of allocating a judicial officer to each case,²⁷ systems abuse may lead to changes in the judge involved, for example because proceedings where there is systems abuse may be extremely lengthy.

In other sectors, researchers have found that perpetrators of DFV, frequently men, often abuse practitioners. Such tactics may include vexatious or fictitious complaints to managers, authorities and professional organisations about practitioner conduct.²⁸

Writing in the United States (US) context, Calhoun argues that threats and attacks on judges differ from threats made to other professionals in several ways.²⁹ Calhoun argues that those who threaten or attack

¹⁷ Ellen Gutowski and Lisa Goodman, "Coercive Control in the Courtroom: The Legal Abuse Scale (LAS)" (2023) 38(3) *Journal of Family Violence* 527, 535.

¹⁸ Heather Douglas, "Legal Systems Abuse and Coercive Control" (2018) 18(1) *Criminology & Criminal Justice* 84, 96.

¹⁹ See, eg, *Baron v Walsh* [2014] WASCA 124.

²⁰ Susan Miller and Nicole Smolter, "'Paper Abuse': When All Else Fails, Batterers Use Procedural Stalking" (2011) 17(5) *Violence Against Women* 637; Linda Neilson, "Assessing Mutual Partner-abuse Claims in Child Custody and Access Cases" (2004) 42(3) *Family Court Review* 411; Douglas, n 18, 87.

²¹ *Charisteas v Charisteas* (2020) 354 FLR 167; [2020] FamCAFC 162.

²² Yves-Marie Morissette, "Querulous and Vexatious Litigants as a Disorder of a Modern Legal System" (2019) 24(3) *Canadian Criminal Law Review* 265.

²³ Douglas, n 18, 96.

²⁴ Vivienne Elizabeth, "Custody Stalking: A Mechanism of Coercively Controlling Mothers Following Separation". (2017) 25(2) *Feminist Legal Studies* 185; Douglas, n 18, 95.

²⁵ Miller and Smolter, n 20, 641; Kathryn Spearman et al, "Post-separation Abuse: A Literature Review Connecting Tactics to Harm" (2024) 21(2) *Journal of Family Trauma, Child Custody & Child Development* 145, 152.

²⁶ Miller and Smolter, n 20, 638.

²⁷ Federal Circuit Court and Family Court of Australia, *Central Practice Direction: Family Law Case Management* <<https://www.fcfcfa.gov.au/fp/fam-cpd#cpd3>>.

²⁸ Gutowski and Goodman, n 17, 527; Humphreys, Isobe and Kertesz, n 7, 9.

²⁹ Frederick Calhoun, "Violence toward Judicial Officers" (2001) 576(1) *The ANNALS of the American Academy of Political and Social Science* 54, 58–60.

a judicial officer are often angry or concerned about a specific case, though they are not necessarily irrational or mentally ill.³⁰ The perpetrator of violence or threats and the judge usually know each other, having met in the courtroom. Judges often make consequential decisions alone, and not as part of a decision-making body like a legislature. Calhoun suggests these factors make judges more visible, susceptible and vulnerable than other public figures.³¹

PREVALENCE

Prevalence of Threats and Violence Experienced by Judges and Judicial Officers

In Australia, scholarly research examining the prevalence of threats experienced by judicial officers is limited. Some Australian studies have examined the source and impacts of stress on judicial officers,³² along with strategies to manage work-related stress.³³ However, this review identified only one Australian study that examined judicial officers' exposure to threats of harm and other potential stressors, including vicarious trauma and vilification.³⁴

In 2019, O'Sullivan et al. surveyed 205 current and retired members of New South Wales (NSW) State courts to examine the prevalence and impact of three types of traumatic stress: personal threats, vicarious trauma, and vilification. Results showed that over half of respondents (125; 61%) reported experiencing aggressive behaviour or threat of physical harm to themselves, their family or property.³⁵ The most common threats included offensive language (100; 49%), threats of harm (86; 42%) and offensive gestures (84; 41%). Though less frequent, more severe threats were also reported, including threats to kill (47; 23%), threat to harm family (22; 11%), threat to harm staff (16; 8%), threat to harm children (10; 5%), threats to kill family (7; 3%), and threats to kill children (5; 2%). The authors underscored the number of death threats demonstrates the seriousness of what judicial officers face, noting that these figures are higher than those reported in the US context.³⁶

Research conducted internationally indicates that threats and violence experienced by judicial officers are common. In the United Kingdom, the fourth and most recent Judicial Attitude Survey found that among salaried judges, 27% were sometimes concerned about their personal safety in court, and 19% outside of court.³⁷ Similar trends appear in the United States. Chamberlain and Miller interviewed nine judges serving in a district court (one of whom worked in family law matters). Their overarching research question was "when judges describe their work experiences, do they make comments that indicate

³⁰ Frederick Calhoun, *Hunters and Howlers: Threats and Violence against Federal Judicial Officials in the United States, 1789-1993* (United States Marshals Service, 1998).

³¹ Calhoun, n 29, 61.

³² See, eg, Michael Kirby, "Judicial Stress" (1995) 2(3) *Judicial Review* 199; Sharyn Roach Anleu and Kathy Mack, *Performing Judicial Authority in the Lower Courts* (Palgrave Socio-Legal Studies, 2017); Carly Schrever, Carol Hulbert and Tania Sourdin, "The Psychological Impact of Judicial Work: Australia's First Empirical Research Measuring Judicial Stress and Wellbeing" (2019) 28(3) *JJA* 141; Carly Schrever, Carol Hulbert and Tania Sourdin, "Where Stress Presides: Predictors and Correlates of Stress among Australian Judges and Magistrates" (2021) 29(2) *Psychiatry, Psychology and Law* 290; Carly Schrever, Carol Hulbert and Tania Sourdin, "The Privilege and the Pressure: Judges' and Magistrates' Reflections on the Sources and Impacts of Stress in Judicial Work" (2024) 31(3) *Psychiatry, Psychology and Law* 327; Russ Scott and Ian Freckelton, "Vicarious Trauma among Legal Practitioners and Judicial Officers" (2024) 31(3) *Psychiatry, Psychology and Law* 500.

³³ Sharyn Roach Anleu and Kathy Mack, *Judging and Emotion: A Socio-legal Analysis* (Routledge, 2021).

³⁴ Kevin O'Sullivan et al, "Judicial Work and Traumatic Stress: Vilification, Threats, and Secondary Trauma on the Bench" (2022) 28(4) *Psychology, Public Policy, and Law* 532.

³⁵ O'Sullivan et al, n 34, 537-538.

³⁶ See, eg, Donald J Harris et al, "Violence in the Judicial Workplace: One State's Experience" (2001) 576(1) *The ANNALS of the American Academy of Political and Social Science* 38; David Flores et al., "Judges' Perspectives on Stress and Safety in the Courtroom: An Exploratory Study" (2009) 45(3) *Court Review* 76.

³⁷ Cheryl Thomas, *2022 UK Judicial Attitude Survey* (UCL Judicial Institute, 2023) 57.

they experience STS (secondary traumatic stress), safety concerns, and burnout?”³⁸ Many expressed significant concerns for their safety and the safety of their families inside and outside of the court due to threats experienced by themselves or their colleagues.³⁹ They reported receiving both direct and indirect threats received both in person and via letters.⁴⁰ Flores et al’s survey of 163 US trial judges found that 33% of respondents feared reprisal or concerns for their personal safety.⁴¹ Those who experienced threats reported receiving threatening letters or calls, death threats, bomb threats, verbal and physical confrontations, threats to family, and false accusations.⁴² Earlier research by Harris et al found that of 1,029 Judges surveyed in Pennsylvania, 52% reported some form of threat, including inappropriate communication, threatening communication, being inappropriately approached, and physical assault.⁴³ The study noted that while annual rates of physical assault are low (1.8%), this translates into a 31% risk of threats or assault over a 20-year judicial career.⁴⁴

High-risk Contexts for Client-perpetrated Threats/Violence

Research suggests that specific events or contexts can increase the risk of workplace violence or threats. Complex court cases, particularly those involving DFV, are identified as high-risk. Additionally, workers who interact with clients who have a history of violence or emotional vulnerability face a heightened risk of experiencing workplace violence and threats from these clients.

O’Sullivan et al observed that Local Court magistrates in NSW report facing threats more frequently than their higher court counterparts, attributing this to magistrates’ direct interactions with litigants. Local Court magistrates often manage high caseloads involving “complex hardship”, such as DFV, and often engage with self-represented (or unrepresented) litigants. This direct interaction between judicial officers and parties can diminish the “barriers to disrespectful behaviour”.⁴⁵ The study noted that most threats occurred in person, either inside the courtroom or outside the court.⁴⁶

Research on child protection workers similarly highlights an elevated risk of workplace violence during high-stress events, such as child removal or court hearings.⁴⁷ Radey et al found that emotionally intense situations, compounded with heightened power and control dynamics, can increase the likelihood of client-perpetrated violence in these contexts.⁴⁸ This study linked the high prevalence of violence in child protection work to the nature of the work, which often involves high-stakes interactions (eg potential child removal) and clients with complex histories, including violence, mental illness and substance abuse.⁴⁹

³⁸ Jared Chamberlain and Monica Miller, “Evidence of Secondary Traumatic Stress, Safety Concerns, and Burnout Among a Homogeneous Group of Judges in a Single Jurisdiction” (2009) 37(2) *The Journal of the American Academy of Psychiatry and Law* 214, 217.

³⁹ Chamberlain and Miller, n 38, 219.

⁴⁰ Chamberlain and Miller, n 38, 219.

⁴¹ Flores et al, n 36, 83.

⁴² Flores et al, n 36, 84–85.

⁴³ Harris et al, n 36, 40.

⁴⁴ Harris et al, n 36, 42.

⁴⁵ O’Sullivan et al, n 34, 542.

⁴⁶ O’Sullivan et al, n 34, 537.

⁴⁷ Melissa Radey, Lisa Langenderfer-Magruder and Lisa Schelbe, “‘Business as Usual’: Child Protective Services Workers’ Perceptions and Experiences of and Responses to Client-perpetrated Violence” (2022) 37(3–4) *Journal of Interpersonal Violence* 2101; see also Charles Horejsi, Cindy Garthwait and Jim Rolando, “A Survey of Threats and Violence Directed against Child Protection Workers in a Rural State” (1994) 73(2) *Child Welfare: Journal of Policy, Practice, and Program* 173; Brian Littlechild, “The Stresses Arising from Violence, Threats and Aggression Against Child Protection Social Workers” (2005) 5(1) *Journal of Social Work* 61; Srinika Jayaratne et al, “A National Study on Violence and Harassment of Social Workers by Clients” (1996) 20(1) *Journal of Applied Social Sciences* 1.

⁴⁸ Radey, Langenderfer-Magruder and Schelbe, n 47, 2104.

⁴⁹ Radey, Langenderfer-Magruder and Schelbe, n 47; see also Glenn Shields and Judy Kiser, “Violence and Aggression Directed toward Human Service Workers: An Exploratory Study” (2003) 84(1) *Families in Society* 13; Hanae Kanno and Christina E

Underreporting

As we observed earlier, there is a dearth of evidence about the prevalence or experience of threats and violence made to judicial officers and other court staff. In part this may be due to formal underreporting. Underreporting may exist for a range of reasons including normalisation of threatening behaviour from parties, minimisation of danger and lack of concern for safety; workers, including judicial officers, taking personal responsibility for their safety; lack of appropriate processes for reporting; lack of clarity about the reporting process; and a sense that there is no value in reporting because of poor or no response from management. We discuss these issues in turn below.

Individuals Choosing Not to Report

Research indicates that some judicial officers perceive threats as normal or just part of the job. In a US study by Harris et al judges described threats and outbursts from defendants, or their friends or family members, as routine, viewing them as justified by those facing legal consequences.⁵⁰ For instance, “Judge D” in Harris et al stated “I do not take this personally ... people need to vent, and I understand that”.⁵¹ The study further revealed that 42% of judges who had experienced “inappropriate” approaches (this was not defined by the study authors) did not modify their work routine, and 25% who were physically assaulted reported no change to their routine.⁵² In Australia, O’Sullivan et al observed that 81% of judicial officers who received threats of harm reported being somewhat concerned and 27% reported being more than somewhat concerned.⁵³ Similarly, Flores et al found that most judges did not express excessive concerns for their personal safety.⁵⁴ However, Chamberlain and Miller’s study revealed that many of the nine interviewed judges expressed significant concern for their own safety or those close to them.⁵⁵

Harris et al suggest that normalisation of threatening behaviour may desensitise judges and court personnel to warning signs, potentially reducing the likelihood of reporting incidents. Underreporting may, in turn, limit monitoring high-risk individuals, making escalation more difficult to detect.⁵⁶ This study also highlights risks for court workers when perpetrators are involved with multiple courts at both state and national levels,⁵⁷ where limited communication between courts may enable DFV perpetrators to use coercive control against women, their children and their supporters.⁵⁸ This may involve threats and harassment directed toward judicial officers adjudicating cases across different courts.

Underreporting of workplace violence is also common in other professions, similarly often due to normalisation and minimisation of such incidents. Kempf et al for instance, found that only 1,005 of 2,051 counsellors who experienced workplace threats of violence reported the incident to their organisations.⁵⁹ Across various studies, many counsellors viewed workplace violence as part and parcel of the job.⁶⁰

Newhill, “Social Workers and Battered Women: The Need to Study Client Violence in the Domestic Violence Field” (2009) 18(1) *Journal of Aggression, Maltreatment & Trauma* 46; Anna Robson, Jill Cossar and Ethel Quayle, “Critical Commentary: The Impact of Work-related Violence towards Social Workers in Children and Family Services” (2014) 44(3) *The British Journal of Social Work* 924.

⁵⁰ Harris et al, n 36, 44.

⁵¹ Harris et al, n 36, 44.

⁵² Harris et al, n 36, 43.

⁵³ O’Sullivan et al, n 34, 537; see also Safe Work Australia, *Psychosocial Hazards* <<https://www.safeworkaustralia.gov.au/safety-topic/managing-health-and-safety/mental-health/psychosocial-hazards>>.

⁵⁴ Flores et al, n 36, 84.

⁵⁵ Chamberlain and Miller, n 38, 219.

⁵⁶ Harris et al, n 36, 44.

⁵⁷ Harris et al, n 36, 44.

⁵⁸ Douglas, n 18, note in recognition of this concern see the new harmful proceedings orders introduced into Pt XIB of the *Family Law Act 1975* (Cth), in 2024.

⁵⁹ Kempf et al, n 16.

⁶⁰ See, eg, Debanjan Bhattacharjee, “Workplace Violence in Healthcare: Towards a Psychosocial Perspective. Aggression and Violent Behavior” (2021) 58 *Aggression and Violent Behavior* 101573; Julia Morphet, Debra Griffiths and Kelli Innes, “The

Radey et al argue that organisational culture can reinforce this belief among workers,⁶¹ which may lead workers to tolerate, accept or ignore workplace violence.⁶²

Lack of Organisational Response to Reporting

Agency culture and organisational factors can play a significant role in low reporting rates. Research shows that underreporting is often associated with inadequate managerial follow-up, fear of retribution, and time constraints.⁶³ Radey et al. found that agencies frequently neglected to address reported incidents of violence, leaving workers to continue interacting with violent clients. The authors characterise this as a “suck it up, buttercup” mentality,⁶⁴ casting those unable or unwilling to tolerate such behaviour as too fragile for the profession.⁶⁵ Similarly, Humphrey’s et al observed that child protection practitioners often faced inadequate managerial responses to threats and harm.⁶⁶ These findings suggest that even in agencies with formal reporting mechanisms, inadequate handling may discourage staff from reporting workplace violence.

CONSIDERATIONS TO ENHANCE THE SAFETY OF JUDICIAL OFFICERS

Relying on self-help measures for worker safety may be insufficient for workers, clients and organisations. Further, if threats and violence are not appropriately responded to, this may send a message of tacit approval to the perpetrator that their behaviour is in some way condoned by the court. This could lead the perpetrator to escalate their abuse potentially compromising the safety of staff and others, including victim-survivors.

Although this section examines various organisational responses, we first discuss personal strategies workers adopt to ensure their safety and consider why individualised personal responses, by themselves, may not be ideal. Generally, the literature suggests that organisational and systemic changes are needed to optimise the prevention of workplace threats and violence, and to protect workers should threats be made.

Personal Responses

Research shows that workers, including judicial officers, often adopt self-help measures for protection against threats. O’Sullivan et al found that judicial officers commonly sought support from colleagues (75%), court security (58%), or the Head of Jurisdiction (31%) in response to threats and related distress,⁶⁷ while the utilisation of professional wellbeing resources was rare.⁶⁸ In the United States, Flores et al observed that 70% of judges with safety concerns implemented precautionary measures including purchasing a mobile phone, enhancing existing courtroom security, increasing security at

Trouble with Reporting and Utilization of Workplace Violence Data in Health Care” (2019) 27(3) *Journal of Nursing Management* 592.

⁶¹ Radey, Langenderfer-Magruder and Schelbe, n 47, 2119.

⁶² Kempf et al, n 16, 475; see also James Phillips, “Workplace Violence against Health Care Workers in the United States” (2016) 374 *New England Journal of Medicine* 1661.

⁶³ Michael Olasoji et al, “Views of Mental Health Nurses on Responding to Clinical Aggression on General Wards” (2024) 33 *International Journal of Mental Health Nursing* 2102, 2103.

⁶⁴ Radey, Langenderfer-Magruder and Schelbe, n 47, 2119; see also Siobhan Laird, *Child Protection: Managing Conflict Hostility and Aggression* (Bristol University Press, 2013); Josianne Lamothe et al, “Violence against Child Protection Workers: A Study of Workers’ Experiences, Attributions, and Coping Strategies” (2018) 81 *Child Abuse & Neglect* 308; Brian Littlechild, “The Nature and Effects of Violence against Child-protection Social Workers: Providing Effective Support” (2005) 35 *British Journal of Social Work* 387.

⁶⁵ Radey, Langenderfer-Magruder and Schelbe, n 47, 2119.

⁶⁶ Humphreys, Isobe and Kertesz, n 7, 9.

⁶⁷ O’Sullivan et al, n 34, 539.

⁶⁸ O’Sullivan et al, n 34, 539.

home, buying mobile phones for family members, and acquiring a firearm.⁶⁹ Chamberlain and Miller reported that judges mitigated potential retaliation among litigants by demonstrating patience, providing reasons for their decisions, and expediting decision-making to alleviate “frustration ... and a feeling of helplessness”.⁷⁰ Despite having taken several precautions for many years and adapting to safety concerns,⁷¹ participants in the Chamberlain and Miller study expressed ongoing safety concerns.⁷²

Leaving workers responsible for defining, addressing, documenting, and handling threats and violence increases their responsibility and may elevate the risk of harm to themselves and others. This approach can also silo information about potentially dangerous individuals, may have adverse impacts to service delivery and if personal responses fail may leave organisations vulnerable. For example, a child protection worker’s preoccupation with personal safety could distract the worker from focusing on child safety.⁷³ Moreover, the absence of organisational rules and guidance can hinder workers’ effectiveness, as they make individual, time-consuming determinations for each case.⁷⁴

Organisational Policies and Procedures

Implementing clear organisational policies and procedures to address workplace threats and violence represents a significant systemic change that can enhance worker safety.

Scholars advocate for clear definitions of client-perpetrated threats and violence and procedures in various high-risk sectors. In their systematic review on factors contributing to work-related violence, Sheppard et al suggest that systemic changes could include the development of policies, procedures and manuals to respond to violent and aggressive behaviour, alongside clear delineation of roles and responsibilities in managing workplace threats and violence.⁷⁵ Radey et al emphasise that workers should be equipped with the knowledge about how to respond in scenarios involving potential violence or received threats.⁷⁶ Policies should also articulate procedures to respond to violent incidents, ensuring worker support and the prevention of future incidents. Furthermore, Radey et al propose that policies are developed with the input of staff at all levels of the organisation.⁷⁷

Humphreys et al found that Australian specialist health care practitioners working in domestic abuse felt physically safe in the confines of their workplace where they felt organisational policies “had their back”.⁷⁸

Reporting and Information Sharing

Effective reporting and information sharing are essential for enhancing safety and mitigating the risks associated with workplace threats and violence. O’Sullivan et al recommend establishing protocols to protect against email-based threats and vilification. They propose creating a state-wide database to collect data on threats and vilification, implementing mandatory reporting requirements, and providing regular reports to each head of jurisdiction.⁷⁹ Other studies, such as by Tsantefski et al highlight the

⁶⁹ Flores et al, n 36, 85, 87.

⁷⁰ Chamberlain and Miller, n 38, 219.

⁷¹ Chamberlain and Miller, n 38, 219.

⁷² Chamberlain and Miller, n 38, 219.

⁷³ See, eg, Vaughan Bowie, Bonnie S Fisher and Cary Cooper, *Workplace Violence* (Routledge, 2012).

⁷⁴ Radey, Langenderfer-Magruder and Schelbe, n 47, 2120.

⁷⁵ Diane Sheppard et al, “Factors Contributing to Work-related Violence: A Systematic Review and Systems Perspective” (2022) 154 *Safety Science* 105859.

⁷⁶ Radey, Langenderfer-Magruder and Schelbe, n 47, 2121.

⁷⁷ Radey, Langenderfer-Magruder and Schelbe, n 47, 2121.

⁷⁸ Humphreys, Isobe and Kertesz, n 7, 9.

⁷⁹ O’Sullivan et al, n 34, 540–541.

importance of documenting patterns of threats and violence perpetrated by individuals to address information fragmentation, which can undermine accurate risk assessment and management.⁸⁰

Risk Assessments and Protocols

Risks assessments and protocols for responding to threats and incidents of violence are recommended by most studies. Research emphasises the importance of collecting data pertaining to threats and facilitating information sharing regarding the potential risk perpetrators of violence pose to both staff and others.

In response to the high number of death threats received by judicial officers, O'Sullivan et al proposed several measures to enhance safety. These include regular, documented safety audits of court precincts and courtrooms conducted by safety experts,⁸¹ safety audits of judicial officers' homes, guidance regarding personal safety during travel, and orientation for new appointees on domestic safety and security. Chamberlain and Miller also suggest that judges should be able to communicate safety concerns and request enhancements in response to specific threats; for instance, one judge in their study requested the presence of an armed bailiff in the courtroom after receiving a threat.⁸²

Training

Training is another crucial component to organisational responses, equipping individuals with the skills to safely respond to threats and incidents of violence and understand organisational policies and reporting protocols.

Chamberlain and Miller advocate for providing judges with personal safety programs that enhance vigilance and defensive skills.⁸³ In the context of child protection services, Radey et al suggest that training could encompass strategies for managing potentially violent incidents and effectively documenting such occurrences.⁸⁴ Tsantefski et al emphasise the necessity of training among child welfare and DFV workers,⁸⁵ recommending that it address mental health issues associated with DFV, warning signs of perpetrator lethality,⁸⁶ and the use of technology in both perpetration and response to violence.

Supportive Workplace Environment and Leadership

Judicial officers emphasise the need for effective resources and supportive workplace environments to address traumatic stress, highlighting the importance of collegial support, security measures, and leadership.

O'Sullivan et al found that in addressing traumatic stress arising from threats, vilification and secondary trauma, judicial officers reported that the most effective resources included good security measures, collegial support, and the support of the head of jurisdiction.⁸⁷ Judicial officers expressed a preference for counselling and therapy services of their own choosing rather than those allocated through department-wide programs, along with access to annual mental health assessments.⁸⁸ They also advocated for enhancing existing peer support and mentoring programs.

⁸⁰ Melissa Tsantefski et al, "Worker Safety in High-risk Child Protection and Domestic Violence Cases" (2023) 39(5) *Journal of Family Violence* 973; see also Humphreys, Isobe and Kertesz, n 7.

⁸¹ See also Chamberlain and Miller, n 38, 222.

⁸² Chamberlain and Miller, n 38, 222.

⁸³ Chamberlain and Miller, n 38, 222.

⁸⁴ Radey, Langenderfer-Magruder and Schelbe, n 47, 2121.

⁸⁵ See, eg, Rachel A Fusco, "It's Hard Enough to Deal with All the Abuse Issues: Child Welfare Workers' Experiences with Intimate Partner Violence on Their Caseloads" (2013) 35(12) *Children and Youth Services Review* 194; Cathy Humphreys, Lucy Healy and Susan Heward-Belle, "Fathers Who Use Domestic Violence: Organisational Capacity Building and Practice Development" (2019) 25(S1) *Child & Family Social Work* 18; Kanno and Newhill, n 49; Robson, Cossar and Quayle, n 49.

⁸⁶ See, eg, Deeanna M Button and Brian K Payne, "Training Child Protective Services Workers about Domestic Violence: Needs, Strategies, and Barriers" (2009) 31(3) *Children and Youth Services Review* 364.

⁸⁷ O'Sullivan et al, n 34, 542.

⁸⁸ O'Sullivan et al, n 34, 540.

Chamberlain and Miller noted that many judges may be too preoccupied to recognise the physical and emotional repercussions of secondary traumatic stress, safety concerns, and burnout.⁸⁹ They emphasised the importance of leadership and supportive workplace environments to prevent and relieve stress associated with work. In their analysis, they suggested that leaders should promote stress prevention and relief as integral components of the trial process.⁹⁰

Ensuring Systematic Reporting

An important aspect underpinning all of these suggestions is ensuring reporting systems are methodical and staff are confident that reports are monitored and appropriately responded to. Reporting processes need to be simple, not time consuming and safe for workers to use. Even apparently minor threats and instances of violence should be reported. Many behaviours that underpin coercive control may seem trivial when viewed as a single instance but seen together it may be possible to identify a pattern of abuse⁹¹ and increased risk.⁹² This highlights the need for good oversight of reports to ensure that escalating risk, including coercive control, can be identified and addressed. Information sharing across agencies that log reports may also be valuable to make visible patterns of abuse. While there should be a general commitment to information sharing within and across courts and potentially beyond, for example with police and other agencies, to ensure high-risk individuals cannot hide behind multiple courts and agencies – specific protocols need to be developed about how and when reports can be shared across courts and agencies.

IMPLICATIONS AND POTENTIAL IMPACTS FOR COURTS AND JUDGES

For staff and judicial officers, there are many good reasons to ensure systems for reporting threats and harm, and responses to threats of harm, are robust and fit for purpose.

The first reason is a generally applicable one to any workforce. As indicated at the commencement of this article, threats, violence and aggression experienced by judicial officers and other court staff are potentially harmful psychosocial hazards.⁹³ Evidence shows that exposure to psychosocial hazards can result in work-related stress for employees, and this can affect their efficiency in performing tasks leading to poorer performance, more absences from work, reduced job satisfaction and reduced organisational commitment.⁹⁴ The responsibility of workplaces to have robust approaches to protecting workers' psychological safety is recognised in the literature and increasingly in legislative responses.

One aspect⁹⁵ of poor performance that may result from judicial experiences of psychosocial stress from threats, violence or aggression, may be reflected in decision-making.⁹⁶ Decision-making includes whether to adjourn or stand down a matter, whether to delay or seek more information or evidence and what outcomes are appropriate. For example, Chamberlain and Miller found that half of the judges indicated that fear of violence could impact their decision.⁹⁷ Several judges who participated in their study said that while they may suspect a defendant is dangerous or may retaliate, they must be cautious not to let that influence their decisions. One respondent in the Chamberlain and Miller study said, “the institution needs to provide an environment where the judges are free to issue appropriate sentences under the law. Not to have something where any decision is influenced out of physical harm [or threat]”.⁹⁸ In the

⁸⁹ Chamberlain and Miller, n 38, 221.

⁹⁰ Chamberlain and Miller, n 38, 221.

⁹¹ Evan Stark, *Coercive Control: The Entrapment of Women in Personal Life* (OUP, 2007).

⁹² New South Wales Domestic Violence Death Review Team, *Report 2019-2021* (New South Wales Government, 2020).

⁹³ Roussos, n 15; Kempf et al, n 16, 476.

⁹⁴ See, eg, Kempf et al, n 16, 482; Tsantefski et al, n 80, 974.

⁹⁵ Although we note a number of other factors may contribute to judicial stress, for example workload, public scrutiny, isolation, lack of resources etc. see articles by Schrever, Hulbert and Sourdin, n 32.

⁹⁶ Monica Miller et al, “An Examination of Outcomes Predicted by the Model of Judicial Stress” (2018) 102(3) *Judicature* 51, 53.

⁹⁷ Chamberlain and Miller, n 38, 219.

⁹⁸ Chamberlain and Miller, n 38, 219.

context of determining cases where there is evidence of DFV, compromised decision-making may have significant implications for ongoing safety of judicial officers, but also court staff, victim-survivors and their children.

Notably, in some situations, for example where a judicial officer must make decisions about child protection, parenting orders, DFV protective orders or sentencing, the allegation that one of the parties has made threats to harm, or has harassed others may be relevant to the decision. Such information may be evidence of coercive control or systems abuse and an aspect of DFV and may indicate risk and future safety concerns. If an alleged threat is to be considered in decision-making, natural justice and procedural fairness would generally demand that the person accused of the threats or violence be given the opportunity to respond to the allegation, especially if the implications of taking the threat or violence into account may impact on the decision or are serious in other ways.⁹⁹ It is therefore important that such considerations are built into any reporting and response process and policy.

The best approach to reporting and response is not necessarily clear and may depend on the jurisdiction and what resources are available. Procedures and protocols need to identify what and where to report and need to indicate when it is appropriate to escalate a concern to security officers, or to police and when information should be shared, and with who.

It is also crucial to acknowledge the potential for unintended and negative consequences of reporting and response processes. While not identified in previous research on these issues, a further matter influencing a person's decision to report may be the risk of being subpoenaed to give evidence in formal proceedings (eg a criminal case) in the future. This may be a concern especially for those working in legal environments such as courts, who are more likely to be aware of this possibility. Consideration should be given to whether reporting can be anonymised in some cases to protect the reporting party from being subpoenaed. For example, in some contexts, such as child protection, the reporter is not identified to the person being complained of.¹⁰⁰ However as noted earlier, in the context of court proceedings, there are natural justice considerations which must be balanced with the protection of the complainant and other stakeholders.

The potential for systems abuse should also be considered. Humphreys et al highlight that strategies employed by men who threaten victim-survivors can be directed toward practitioners, including vexatious or fictitious complaints regarding their conduct.¹⁰¹ Complaints made about judicial officers may result in bias claims and applications for recusal of the judge, these are costly and time consuming but clear processes exist to deal with this issue.¹⁰² However, similar complaints about other court staff could have negative career and reputational ramifications if processes are unclear. In Humphreys et al, DFV practitioners reported a lack of policies addressing this issue. They reported that in contexts where all complaints made by a client were required to be investigated, irrespective of the complainant's history, this could result in unintended consequences for the complainant.¹⁰³

THE WAY FORWARD – CONCLUSIONS

Unrepresented litigants are increasingly common, as are allegations of DFV,¹⁰⁴ especially in the magistrates/local courts and in the family courts.¹⁰⁵ Many judicial officers and other court staff interact

⁹⁹ See generally Rebecca Ananian-Welsh, "The Inherent Jurisdiction of Courts and the Fair Trial" (2019) 41(4) *Sydney Law Review* 423.

¹⁰⁰ See generally, Australian Government, National Office for Child Safety, *Make a Report* <<https://www.childsafety.gov.au/make-report>>.

¹⁰¹ Humphreys, Isobe and Kertesz, n 7, 9.

¹⁰² See generally Australian Law Reform Commission, *Judicial Impartiality – The Law on Judicial Bias: A Primer*, Background Paper J11 (December 2020).

¹⁰³ Humphreys, Isobe and Kertesz, n 7, 9.

¹⁰⁴ O'Sullivan et al, n 34, 542; Sentencing Advisory Council, n 1, iv.

¹⁰⁵ Jane Wangmann, Tracey Booth and Miranda Kaye, "'No Straight Lines': Self-represented Litigants in Family Law Proceedings Involving Allegations about Family Violence" (Research Report No 24/2020, ANROWS, 2020) 9 <<https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2020/12/04063846/MJ.18.01-Wangmann-RR-SelfRepresentation.pdf>>.

with a high number of DFV perpetrators (and the perpetration of DFV may be ongoing). In matters involving DFV, important flashpoint issues about safety, parenting and property are often being considered and judicial officers and other court staff may interact with parties over long periods of time on a variety of matters. These factors may heighten the risk of threats and violence being perpetrated against judicial officers and other court staff.

Threats and violence from court users toward court staff are a potential psychosocial hazard that require an institutional approach. The perpetration of threats and violence may also underpin exacerbation of violence and heightened risk for court staff, but also for others. To ensure safety at work in the courts and to ensure that courts are not seen as ignoring possible coercive control, systems abuse and escalation of risk, it is important that clear and consistent reporting processes and associated responses are developed. Judicial officers and court staff should be expected to report threats of harm and violence, even where they may appear trivial. In developing such processes consideration must be given to a range of issues including how information about threats and violence is shared across courts, and other systems, how natural justice and procedural fairness is ensured for alleged perpetrators and how to protect court staff from any potential negative consequences of reporting.