



LGBTQ+ domestic and family violence victim-survivors' experiences of remote court hearings during the COVID-19 pandemic: The gendered dimensions of safety, independence and visibility

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Abstract

There was a significant uptake of remote court hearings during the COVID-19 pandemic for family violence intervention order applications in Victoria, Australia. Remote court hearings can alleviate the burden associated with victim-survivors appearing in court and confronting their alleged perpetrator, and facilitate the efficiency of justice processes. Most research on remote justice models that facilitate victim-survivors' protection or participation has accounted for practitioner observations, leaving a gap in understanding of how victim-survivors experience remote hearings. Drawing on interviews with 11 lesbian, gay, bisexual, transgender and queer (LGBTQ+) domestic and family violence victim-survivors who participated in remote family violence intervention order hearings in Victoria during the pandemic, this article reveals that while remote hearings can promote feelings of safety, control and procedural justice, the process can also work to invisibilise some victim-survivors. Ultimately, we find that these tensions reflect

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the gendered dimensions and experiences that monopolise the intervention order process more generally.

Keywords

Civil law, court safety, COVID-19, domestic and family violence, procedural justice, protection orders

Introduction

The risks of engaging with the legal system as a victim-survivor of domestic and family violence (DFV) are well documented (see, *inter alia*, Graycar, 2002; Iliadis et al., 2021; Reeves, 2021), and there is often the possibility of ‘secondary trauma’.¹ In the Australian State of Victoria, courts have introduced a range of protective measures that might mitigate these risks, such as separate waiting rooms for victim-survivors and offenders and the use of technology and screens to protect the victim-survivor from the offender’s view. A notable technological innovation is the ability of victim-survivors to join court hearings remotely via a virtual platform or telephone. Although remote court appearances have existed in Australian courts since the 1990s, their use intensified during COVID-19 when most courts were required to move online (Pfitzner and Fitz-Gibbon, 2021).

Proponents argue that remote court testimony may reduce the psychological burden associated with victim-survivors’ appearing in court and testifying, which in turn alleviates the distress and harm associated with confronting a perpetrator (see Yamagata and Fox, 2017). Despite these potential merits, debate abounds as to whether these promises can be realised, and in particular, whether remote court participation can improve victim-survivors’ procedural justice experiences by enabling them to feel better heard and protected and to experience a greater sense of agency during court hearings associated with applications for intervention orders² (see, for instance, McKay, 2022; Woodlock et al., 2022; Yamagata and Fox, 2017). Notably, there is limited research on victim-survivors’ lived experiences of remotely accessing justice systems for protection from DFV, and little to no attention afforded to examining the unique experiences of diverse victim-survivor communities, particularly, lesbian, gay, bisexual, transgender/gender diverse and queer (LGBTQ+) cohorts.

Studying diverse groups is important because social identities, such as gender, sexuality, ethnicity, disability, migrant and/or refugee status, shape the rights of people in communities and their access to justice systems. Neutral considerations of access to justice dilute the everyday experiences of minoritised people. Recognising these pivotal and under-researched considerations, our research draws on interview data to explore the experiences of 11 LGBTQ+ people who engaged with Victoria’s family violence intervention order (FVIO) system during the pandemic and participated in remote hearings.

This article begins by outlining the barriers to engaging with the legal system for DFV victim-survivors, including what is known about LGBTQ+ victim-survivor experiences. We then provide a methodological overview before presenting the findings of this study. We found that, on the one hand, participants felt that the remote court proceedings enabled them to feel a greater sense of safety and security and even offered a sense of

independence and economic security. Conversely, other participants felt that this medium further amplified the barriers and harm associated with engaging the legal system. Ultimately, participants identify merit in technology-enabled remote court hearings for intervention orders, but the risks must be acknowledged and positioned within the gendered dimensions and experiences outlined in this study. Although this article draws on a small sample of LGBTQ+ victim-survivor experiences that are not generalisable to the broader population, the data presented offers in-depth insight into an under-researched and hard-to-reach population and their experiences at a unique point in the DFV legal response trajectory following the COVID-19 pandemic. The article therefore presents important implications for further research on LGBTQ+ victim-survivor experiences in court and the increasing use of technology in the courtroom.

Barriers to legal engagement for victim-survivors of domestic and family violence

DFV victim-survivors experience a range of barriers associated with engagement in the legal process. Research shows that victim-survivors' often express confusion about the legal process and receive a lack of information about the case, its progression and their expected level of involvement (see Kirchengast et al., 2019). These experiences are noteworthy in a system where victim-survivors of gender-based violence often feel blamed and disbelieved by State authorities (Epstein and Goodman, 2019). Economic barriers to accessing the law, such as the cost of legal representation, the cost of childcare and the time taken off work to attend court, are overwhelmingly felt by women, who are more likely to be the primary carers of children, in insecure employment and who also make up the majority of DFV victim-survivors (Corrie, 2016; Shoener, 2016; Smallwood, 2015). Further, the court environment has been found to be physically and emotionally unsafe for DFV victim-survivors, who are often required to confront their alleged perpetrator in the courtroom, sometimes sharing a waiting room with them before their hearing (Roberts et al., 2014). These factors often lead to victim-survivors' withdrawal from the legal process, despite ongoing safety concerns.

The use of intervention orders became a popular legal mechanism for the protection of DFV victim-survivors in recognition of the limitations and failures of the criminal law's response (Douglas, 2008). Intervention order applications are heard and imposed within the civil law system (unless breached, which then amounts to a criminal proceeding), which necessitates a lower burden of proof than criminal convictions, making them easier to obtain. However, limitations to intervention orders prevail. This is in part due to the low levels of charges for breaches (Douglas, 2007) and the lower burden of proof in the intervention order system, which has meant that orders have become a tool frequently used by perpetrators *against* victim-survivors (Nancarrow et al., 2020; Reeves, 2021). In addition, studies have found that the fast-paced nature of intervention order hearings, and the ability for an order to be made without any evidence being tested (consent orders), tends to mystify applicants and respondents³ alike. While the process may differ, victim-survivor reservations about the legal process tend to be similar across the criminal and civil law responses to DFV.

LGBTQ+ victim-survivors' experiences in court

While the above discussion outlines what is broadly known about how DFV victim-survivors experience the Australian court system, this body of literature is mostly defined by cisgender heterosexual women's experiences, and less is known about how LGBTQ+ victim-survivors experience the court system. The 'public story' of DFV (Donovan and Hester, 2010) positions DFV as something that involves predominantly physical violence committed by cisgender men against cisgender women in heterosexual relationships. While this public story of DFV has been critical to raising awareness of the plight of many women victim-survivors, it:

. . .invisibilises women as perpetrators and men as victims, and fuels myths that [domestic violence and abuse] between women will not be as harmful or risky as that from a man towards a woman, and that in male same-sex relationships, men are naturally aggressive and can defend themselves. (Donovan and Barnes, 2020: 561)

The invisibilisation of LGBTQ+ victimisation experiences in mainstream discourses leads LGBTQ+ victim-survivors to face unique barriers to formal help-seeking, with State systems often ill-equipped to understand and respond to diverse relationship dynamics (Donovan and Barnes, 2020; Guadalupe-Diaz and Jasinski, 2017). Further, studies have shown that both the broader community and DFV system professionals are less likely to view LGBTQ+ DFV as equally as serious as different-gender DFV due to its divergence from the public story of DFV. This serves as a further barrier to help-seeking and may shape LGBTQ+ victim-survivors' experiences of formal help-seeking (for discussion, see Messinger, 2017).

LGBTQ+ people are less likely to report DFV to the police and have matters proceed to court (Calton et al., 2016). Although a growing body of literature has documented LGBTQ+ communities' reasons for seeking or not seeking help – and their experiences with frontline police responses – there is a dearth of research that has examined victim-survivors' court experiences (Miles-Johnson and Ball, 2022). Research that *has* considered LGBTQ+ victim-survivors' court experiences draws attention to the historical context and relationship between LGBTQ+ communities and the law (Andreano, 2020; Miles-Johnson and Ball, 2022). In the United States, for example, the availability of legal protection (e.g. intervention orders) for same-sex couples from DFV has been staggered, and until recently, these protections were not built into legislation in some states (Morin, 2014). This provided a legal basis for the continued invisibilisation of LGBTQ+ DFV in court and limited their equal access to DFV protections afforded to cisgender heterosexual individuals (Morin, 2014). At the same time, LGBTQ+ individuals have been over-criminalised in other areas. For example, transgender individuals are criminalised at disproportionate rates, and encounter a range of discriminatory attitudes and practices when engaging with the court system (Goodmark, 2013; Mitchell et al., 2022). Such experiences outside of the DFV sphere impact on individuals' willingness to engage with the legal process when they are seeking protection from DFV (Goodmark, 2013).

Court actors have been found to adopt discriminatory attitudes towards LGBTQ+ victim-survivors' and/or show a lack of understanding of LGBTQ+ DFV (Andreano,

2020; Freeland et al., 2018; Goodmark, 2013). Supporting these attitudes and understandings is the cis-normative and heterosexist operation of DFV legal systems internationally. For example, Pertnoy (2012) has reflected on the use of expert testimony in DFV cases, and in particular, the use of ‘battered women’s syndrome’ as a defence, which relies on heteronormative understandings of DFV. They argue that ‘this places a large hurdle before a gay man or lesbian; the task of proving they are in a similar circumstance of a battered woman in a heterosexual relationship’ (Pertnoy, 2012: 565). The impacts of this ‘legal invisibility’ (Hudson, 2019) are demonstrated by the higher use of mutual intervention orders for same-sex relationships compared to opposite sex relationships, reflecting the views of the police and the judiciary that same-sex DFV is ‘mutual’ and/or ‘less serious’ (Andreano, 2020). As argued by Andreano (2020: 1053), ‘this perpetuates a cycle of criminalisation of LGBT victims, reinforces negative stereotypes and disproportionately limits the freedoms of queer victims’.

LGBTQ+ victim-survivors’ additionally must contend with the many known barriers to legal engagement as experienced by cisgender heterosexual women. For example, an Australian study on LGBTQ+ experiences of legal help-seeking found that participants reported feeling uninformed about the court process; that they were not taken seriously by professionals; and that the process was stressful and emotionally depleting (Leonard et al., 2008). More recently, Hill et al. (2020) found that 57.1 per cent of LGBTQ+ individuals who had experienced DFV and reported it to a lawyer, a legal service and/or the court system felt supported, compared to 45 per cent who had reported to the police. Despite these findings, there is minimal qualitative evidence about how LGBTQ+ victim-survivors engage with DFV court processes and their perspectives of safety measures, such as technology-enabled remote hearings.

Method

This article draws on the findings of a larger study on LGBTQ+ victim-survivors’ experiences with Victoria’s FVIO system. The broader study involved an online survey and follow-up interviews with LGBTQ+ DFV victim-survivors. Information about the study was distributed on social media outlets, through relevant organisational networks and by the LGBTIQ Legal Service in Melbourne. This article presents the experiences of 11 victim-survivor participants who had attended court remotely (via video link or telephone) at least once during the COVID-19 pandemic regarding an FVIO. While a notably small sample, the qualitative interview data provides rich insight into hitherto unexamined experiences of LGBTQ+ victim-survivors with the DFV legal system.

The semi-structured interviews ran for around 45 minutes and took place over the phone or Zoom. Two participants were interviewed in-person. Participants were asked about their involvement with the FVIO system; the impact of the FVIO system on their safety and well-being; experiences with key services and contact points (including the court system), views on the effectiveness of the FVIO system, and possible areas for system improvement.

Ethics approval was received through the Monash University Human Research Ethics Committee (approval no: 32169).

Study participants

Five participants identified as men (including one trans man), four as women and one as non-binary. Five participants identified as gay, three as lesbian, three as queer and one as bisexual. Some participants identified as having more than one sexuality. The acronym 'LGBTQ+' is used in this article to best reflect the identities of participants. Participants were permitted to select their own pseudonyms, and these have been used accordingly throughout the article.

Data analysis

The qualitative interview data were thematically analysed in NVivo 12 to develop a detailed description of victim-survivors' court experiences COVID-19. Drawing on Bates (2017), we engaged in an inductive approach to coding involving descriptive coding, narrowing coding and reorganisation into main themes. This process was cyclical, with researchers constantly moving from data to description to analysis (Miles and Huberman, 1994).

Findings

Our analysis identified three tensions regarding remote hearings in the DFV context: safety and protection; independence and the alleviation of economic barriers; and voicelessness and invisibilisation. As is made clear in the analysis below, these themes emerged as gendered. The former two themes, for instance, are dominated by the experiences of women in the study who experienced remote hearings in a far more beneficial way when compared to the men participants, whose experiences are dominant in the last theme – voicelessness and invisibilisation.

Safety and protection

Some participants in the study reported feeling a greater sense of safety when participating in remote hearings during the FVIO process and likened this experience to regaining a sense of control that they felt they had lost as a result of the victimisation and its impacts. Rose, for instance, noted that remote participation enhanced her feelings of safety:

It's . . . been quite good not having to face him because [in] the last court case . . . , I was required in there [in court] but I said I just can't face him. I don't want to have to even look at him . . . (Rose, woman, lesbian)

Another participant who had been listed as a respondent on an FVIO despite self-identifying as the predominant victim-survivor in their relationship, felt that the option of participating online enabled them to attend the hearing and avoid a final order being made by default in their absence:

Thankfully for me everything was online. This helped me to feel safe. If I had of been required to attend the court with the true perpetrator I may have not gone which would have not been in my favour. (Sandy, non-binary, gay/lesbian)

Sandy and her partner Willow (interviewed separately) were seeking protection from Willow's ex-partner's current partner and spoke about feeling safe and in control when participating in court online:

It gave us a lot of control, it gave [Willow] a lot of control. She could have her camera off, could have the thing turned away so she didn't have to see [other party], but she could be there and hear it all because it's really difficult to encapsulate . . . I think for us it meant that [Willow] could easily have myself and a support person, usually a family member or a friend, there. We were in our home, we were in our safe and comfortable space. It was excellent, to be honest, to be able to be televised in. I think if we had to go into a court, if [Willow] had to face [the other party], I mean, it was traumatic anyway, but that would've been even more highly traumatic. . . . (Sandy, non-binary, gay/lesbian)

Willow's account echoed Sandy's sentiments of remote court proceedings fostering psychological safety for victim-survivors:

The experience meant that I could have [Sandy] sitting across from me right where I could see her, and my sister sitting next to me holding my arm, and you could have that cast of thousands if you needed to. Because I could barely speak. I'm not good at public speaking at the best of times anyway. So from that perspective being in a safe space [was helpful] . . . (Willow, woman, queer)

However, Willow also recognised that it is 'really hard to speak to a judge when the person who's causing this is on another screen right there', and Rose (woman, lesbian) still described the experience as 'daunting', demonstrating that the remote setting cannot fully alleviate the fear held by victim-survivors in the courtroom, and that these fears cannot be minimised as they may still impact on interactions with judges. Research demonstrates that victim-survivors, particularly women, who outwardly display emotion – or in the eyes of the law, 'too much' emotion – are at risk of being disbelieved (Epstein and Goodman, 2019; Gribaldo, 2014). Thus, it is important to consider the role of victim-survivor fear, distress and comfortability during the court process and its relationship to perceived credibility.

Independence and the alleviation of economic barriers

Another key theme emerging from this study is the ways in which participating online afforded greater independence and an alleviation of economic barriers to engagement. Attending court is time-consuming and where adjournments occur and/or there are multiple hearings (as is common in FVIO matters), time commitments are exacerbated (Victorian Royal Commission into Family Violence, 2016). For in-person hearings, parties are often required to attend court all day waiting for their matter to be heard, even if said matter only takes a few minutes. As such, parties may have to request time off work,

arrange childcare and cover travel costs – burdens that disproportionately impact women (Shoener, 2016; Smallwood, 2015). A participant in this study, Lacey Adams, spoke about the benefits of not having to take a day off work to attend court in-person – remembering of course, that participants experienced online hearings at a time when many were working from home:

. . . when you go to court, you don't know when you're going to get called. You might be there all day or you might be first up, so it's so nice just being able to have the thing on in the background – and I didn't even take the day off work. I just worked and then when it was my time to have my 15 minutes of fame, you know, like Microsoft Teams and did the court appearance. It was so much better. (Lacey Adams, woman, bisexual)

This reflection stands in contrast to Lacey Adams' previous experience of attending court in-person. At the time, she was homeless and forced to bring her belongings in suitcases to court – Lacey described this experience as 'awful':

I went to the police station first because they're right beside the courthouse and I was like, 'Look I'm homeless. Is there any way you can store these somewhere for me out the back? I'll pick them up while I'm done in court'. And they're like, 'No, sorry, we don't provide that service'. I'm like, 'Fucks sake'. I'm like, 'What am I supposed to do with them?' And so I had to take them to court with me through the metal detectors and bloody get my suitcases strip searched and yeah, it was a nightmare. (Lacey Adams, woman, bisexual)

The contrast between Lacey's two experiences offers a clear example of the ways in which the remote court process can alleviate some of the often gendered barriers to legal system engagement. When Lacey was later able to participate online, she had access to housing and was in employment. The ability to participate online minimised interruptions to work and subsequent concerns about housing insecurity.

Participants spoke about online hearings allowing them to continue with everyday life. For Rose, this was about the ease with which she could engage with the court and the minimal time commitment expected:

For me as well, I can do my daily stuff and then just link up to a computer that's right here on my benchtop or my phone if I'm out. There was one day one of the ladies from the [location redacted] Magistrates Court had to get me to do something. She rang me on my phone. We could connect like this [via the phone] and it was done. Part of that was done to move that case on to then get it into court sooner than later. It's fantastic in that regard. (Rose, woman, lesbian)

Willow similarly reflected on the ability to engage in daily life – and in this case, caring for children – with no major disruption:

The idea of having them online is brilliant. I requested to have the one tomorrow online because my son's got to have a general anaesthetic in the morning and I was just like I can't, I need to be at home, and we've got the baby and things as well. There was no issue with that at all, and they were just like, 'We'll list it for two o'clock'. They were really good about making sure it was done at a time that suited me. (Willow, woman, queer)

Several participants reported a greater sense of independence via online hearings. However, one participant, Ross, felt that the online court process mirrored the in-person hearing, where he had to wait all day for his hearing to be heard:

It was a long process because we had to sit on the call—I mean, I'm sure it'd be the same if I was in court all day, but we had to sit on this call and hear everybody else's cases being called up. So, you'd hear everything and they tell you to be available from 9:00 in the morning until 5:00 and sometimes you're just sitting next to a phone for five hours waiting for your name to be called up. So, yeah, it was very, very long. (Ross, man, gay)

Ross' experience suggests that the remote hearing experience is not universal, and that remote participation may be unable to fully alleviate the pressures associated with legal system engagement. Unlike other participants who made the most of being able to wait in their home, work, and undertake other errands and/or care for children, Ross' account suggests that he felt unable to do this. This may be due to the advice he was given, his lack of familiarity with the court process (in contrast to, for example, Willow), the inconsistency across how these hearings were run, or it may be that other participants, all of whom were women bar one assigned female at birth (AFAB) non-binary participant (Sandy), felt increased pressure to have to juggle work and childcare, in ways that were less relevant to Ross, who did not have children and was in secure employment.

The tensions of participating remotely are also captured in a remark made by Willow, who while citing benefits of remote participation, also noted the ways in which independence created barriers to accessing the law. In particular, she noted that the remote setting limited opportunities to engage with key services that are more readily available and co-located in physical court settings:

I hadn't had a chance to get a lawyer because it happened so quickly. So I spoke to a duty lawyer on the phone and also this was during COVID so I had to really—there was no family violence advocate that had contacted me, even though I know that they have them for both respondents and applicants no one made contact with me. You have to request it. Because it was all online and it was in COVID you couldn't just go anywhere. So I didn't really speak to anyone beforehand, and it all happened really quickly, and then I thankfully was able to request a duty lawyer. I had a friend doing research for me trying to figure out what to do in this online space for it, and I spoke to them and they gave me some language to use and gave me things that I needed to say. . . (Willow, woman, queer)

Thus, we see that while remote hearings created a sense of independence in victim-survivors, this independence may also mean a lack of professional support that is so critical to navigating the legal system (Fitzgerald and Douglas, 2020).

Voicelessness and invisibilisation

Some participants, particularly men participants, felt that remote court participation created barriers to engagement with the legal system in different ways. A common narrative from this small group of victim-survivors was a sense of lacking a voice during the online court process. For example, Ross stated:

I listened a lot in court. I never really got a chance to speak. It was only literally just to say my name, that was it, because it was all over video and links. So, yeah, the only thing I ever got to say was my name and all I had to do was listen. What I listened to, I found interesting, but I never had a conversation with the magistrate, ever. . . And I was never asked, like no one ever asked me what my thoughts were or anything like that and that was hard. (Ross, man, gay)

Here, it is important to reflect on the expectations that victim-survivors may have about legal system engagement. For example, research has shown that some victim-survivors' benefit from having a voice in the legal process and that this is associated with enhanced perceptions of procedural fairness (Manikis and Iliadis, 2022). However, like the criminal legal system, the civil intervention order system is not designed to offer voice to the person identified as the victim-survivor. Most prominently where the application has been police-initiated, victim-survivors have a minimal role to play. While participating remotely may increase a sense of invisibility, as discussed below, in-person hearings are not guaranteed to offer a 'voice' to the victim-survivor.

A lack of voice was not the sole contributor to participants' feeling of invisibility. Participants also described being unable to 'show' their victimisation. This is captured in the account of Oisín:

Online is absolutely useless. It's such a barrier to getting the person – you had to physically be there with the people for them to see your fear, to hear it in your voice, to get the truth of the matter. . . . We have a few years now and they're still continuing to do online because [of] cost cutting measures, it's easier, whatever, but we are letting people just slip through the cracks because someone can't present on a Zoom. It's such a barrier to getting the truth across. It should be illegal to be honest, Zoom or such serious things as a court case. It's bizarre. (Oisín, man, queer)

Oisín went on to speak about human 'cues' for how victimisation is communicated to another person:

You never want to be in the room with the person that has abused you. That notwithstanding, you actually need to be – humans we communicate so many cues that you can't pick up. It could be a foot that doesn't stop tapping that might get you over the edge. . . . It's all the encompassing anxiety, nerves, the tears that you can't hear when you're on silent. Just they have to gauge what's happening. You can't do that on Zoom. (Oisín, man, queer)

Echoing Oisín's sentiments, Chris also spoke about the role of body language:

I advocated for it to be done in person. That's how much I felt that it was so disconnected. I wasn't being heard. The judge couldn't understand – I feel half of the thing is body language as well, and you can't get that over a Zoom meeting, or even at – some of them were just telephone, and I feel you couldn't get that over. (Chris, man, gay)

In contrast, Sandy, reflecting on their partner Willow's experience, felt that the sense of safety and control that came from the hearing being remote allowed Willow to 'show' victimisation in a way that may have not been possible in an in-person hearing:

I think if we had to go into a court, if [Willow] had to face [the perpetrator], I mean, it was traumatic anyway, but that would've been even more highly traumatic. The first mention, as I said, we didn't have a lawyer and [Willow] represented herself. I think only the very fact that we were online was she able to maintain her composure. I don't know if she [would have] spoken as clearly and succinctly as she did if we were in person. I think, for me, that was a benefit. (Sandy, non-binary, gay/lesbian)

For some participants, a sense of invisibility was exacerbated by the hetero- and cis-normative assumptions underpinning the legal system's understanding of DFV. For example, Chris cited the magistrate getting him and the other party mixed up because they were both men:

[The magistrate] did not have an idea of what was going on. Was confusing me and [the other party]. And then [the other party] would start yelling at the judge, would start yelling at me, and the judge just had no control of the courtroom, so to speak. And basically, he started confusing me and saying that I was the one speaking, where I had not spoken a word. And it was very – every time we've done tele-hearings, I've never felt like I was heard. But this one in particular was just not heard at all. And because the judge couldn't see who was actually speaking, he just – and having two guys, he just didn't know what to do. (Chris, man, gay)

We see the ways in which Chris was invisibilised as a victim-survivor not only by a disconnected and dysfunctional online hearing, but also by the magistrate's heteronormative understanding of DFV – getting the two male parties confused and mistaking Chris for the perpetrator. Thus, participants' negative experiences of remote court hearings highlight broader issues with the disconnectedness of the remote medium, while at the same time exacerbating some of the challenges faced by LGBTQ+ victim-survivors participating in a hetero- and cis-normative legal system (Andreano, 2020; Leonard et al., 2008).

Discussion and conclusion

This article offers insights into LGBTQ+ DFV victim-survivors' experiences with remote court hearings during the COVID-19 pandemic. While the victim-survivors in this study faced unique barriers and challenges when engaging with the legal system during the pandemic (Andreano, 2020; Freeland et al., 2018; Mitchell et al., 2022), their experiences present broader implications for victim-survivors' engagement with the legal system. In particular, the article considers the ability for remote hearings to address key barriers to engaging with the law, such as feelings of being unsafe and lacking control; time and economic burdens; and feeling seen and heard in the courtroom. The findings speak to what McGlynn and Westmarland (2019) refer to as 'kaleidoscopic justice', whereby justice is 'a pluralistic, lived, evolving experience' (p. 197) and 'different elements of the kaleidoscope will have greater significance and resonance for each victim-survivor' (p. 196).

Despite participants reflecting a range of non-heterosexual relationships and non-cisgender identities, this study suggests that gender may be at the heart of online experiences, shaping what victim-survivors want from the law, and what the law is able to offer

them. Participants who reported largely positive and beneficial experiences of remote court hearings, were mostly women – suggesting that in this study, the ‘kaleidoscope’ of different experiences of ‘justice’ (McGlynn and Westmarland, 2019) were influenced by gender norms and realities. Feminist legal theory has long highlighted the structural barriers that women face in engaging with the law (see, for example Graycar, 2002). These experiences are not unique to cisgender and heterosexual women – lesbian, bisexual, trans, gender diverse and queer women face many of these barriers in addition to those specific to their gender and/or sexual identity. For example, women in same-gender relationships who report DFV often have their experiences downplayed or illegitimised based on the misguided assumption that ‘two women cannot really hurt one another . . . in part because women are not big or strong enough to inflict serious harm’ (Hassouneh and Glass, 2008: 320). With these gendered stereotypes in mind, the court process and legal setting are in themselves unsafe—an (un)safety that is exacerbated by the common requirement to attend court alongside the perpetrator.

Participants who spoke positively about remote court hearings centred on the alleviation of safety concerns. For these participants, the concept of safety was closely tied to a sense of *control* – not simply a regaining of control after an abusive relationship, but also a gaining of control in a system that often denies it (Bailey, 2010). Examples of safety through control included a range of self-protective measures adopted by participants, such as turning their camera off, having friends and family in the room with them, and/or being in a safe space. Bar the second example (to an extent), these self-protective measures are not available to victim-survivors attending court in-person, demonstrating the opportunities that remote hearings create for the safety and empowerment of victim-survivors. What is perhaps interesting in these accounts is the underpinning theme of wanting *less* visibility – with technology creating a barrier between themselves and the law, allowing them to choose how they engage. The feminist legal theory project is built upon the notion that women are invisible in the legal system, which was built by and for men (Graycar, 2002; Hudson, 2006). Thus, feminist efforts have in part been focused on increasing the visibility of women in the law. While this work is critical, the current study reveals a somewhat paradoxical tension between visibility and invisibility – that is, perhaps victim-survivors want and need a level of invisibility. However, it can be argued that the law’s recognition of the safety needs of women, which may include invisibility, actually reflects an enhanced commitment to the visibility of women. In other words, when the law caters to the justice needs of women victim-survivors, it is showing that it understands and recognises women’s experiences, their safety needs and their trauma. That is not to suggest, however, that in this study the use of remote hearings reflects such a recognition – the medium shift was used in response to the COVID-19 pandemic. Notwithstanding, women’s experiences in this study emphasise the valuable role that technology can play in overcoming some of the gendered barriers to engaging with the law.

The potential benefits of harnessing technological innovations to improve victim-survivors’ access to and experiences with the law is reflected in participants’ descriptions of increased independence and autonomy granted to them by not having to attend court in-person. Here we see the ways in which online hearings allowed participants to navigate some of the gendered economic barriers to legal system engagement. Most of the

women (and one AFAB non-binary person) in this study reported that remote court participation alleviated economic barriers with participants able to work, care for children and engage in daily life in ways that are limited by traditional in-person court hearings. Compared to the men participants (of which only one reported having children), three of the four women and the one AFAB non-binary participant cared for children. These same participants spoke about the economic pressures of legal system engagement, and the ways in which remote hearings made it far easier to ‘juggle’ multiple responsibilities in comparison to in-person court attendance. While a 2013 report shows that lesbian couples are significantly more likely to parent children than gay couples (33% vs 11%) (Dempsey, 2013), it is nevertheless significant that LBTQ+ women’s experiences are shaped by heterosexist and patriarchal structures (e.g. women as primary carers) in ways that are less apparent for GBTQ+ men – and that this potentially influences their experiences and perceptions of remote hearings. It is important to note that one participant cited a lack of connection to key court services as a negative consequence of increased independence, which may be reflective of the challenges faced by the court system in having to promptly, and without warning, shift to a remote delivery model.

This article also explored the disadvantages of remote hearings, which were predominantly shaped by a sense of voicelessness and invisibility and were largely experienced by participants who were men. Some of these participants felt that the online environment inhibited their ability to have a voice in proceedings. As argued by Elsrud et al. (2017: 683) ‘having a voice – being able to share with the court a truthful and desired image of self – is part and parcel of being seen, heard and listened to’. Similarly, McGlynn and Westmarland (2019) identify ‘voice’ as a key element of victim-survivor perceptions of justice, with participants in their study tying it to a sense of control when navigating the criminal legal system. Aligning with previous research on criminal law proceedings (see also Iliadis, 2020), for some participants a voice is what they expected and felt they needed in order for the process to be fair and perhaps even therapeutic. While the online setting may have further inhibited the ability of victim-survivors to have a ‘voice’ in proceedings, it is perhaps likely that these same participants would have been let down by the traditional in-person process. A lack of voice is not unique to online hearings and is consistent with the civil intervention order setting more broadly (Campbell et al., 2021). This speaks to the observations of Elsrud et al. (2017) on the ways in which court ritual – in this case, the limited role of the victim-survivor in intervention order hearings – has a silencing effect.

Participants’ feelings of *invisibility* were far more grounded in the unique remote experience. McKay (2022: 205), speaking of the use of video links for criminal defendants, argues that remote hearings ‘fail to convey court space environmental cues so that remote participants lose their sense of connection with other key actors’. What was striking was the ways in which men participants described being unable to ‘show’ their victimisation via an online medium (see also, Yamagata and Fox, 2017). As noted above, research has shown that women victim-survivors are often expected to present in a particular manner in a legal context – as Moore and Hoffeler (2019: 85–86) note:

Demeanour is, itself, swelling with emotion and kept under tight surveillance in courts. As such, the victim, as she appears, must embody the drop-down menu of ‘officially approved

emotions' to secure a successful prosecution. She must be compliant, submissive, consistent, sombre, sad and respectful.

While cisgender heterosexual women are forced to contend with this ill-informed and patriarchally enforced model of the perfect DFV victim-survivor (Epstein and Goodman, 2019), the system has largely reinforced the image of women as (passive) victims, and it is important to consider how LGBTQ+ men are even further from this image and from the victim-survivor presented in the 'public story' of DFV (Donovan and Barnes, 2018; Donovan and Hester, 2010). As a result of this discourse, LGBTQ+ men may feel that they must work harder at 'showing' that they are a victim-survivor. Presenting online, according to some participants, stifles this performance. We say 'performance' here not to suggest that these participants were *not* victim-survivors. Instead, we acknowledge that victim-survivors, particularly those from marginalised groups who are aware that they might be at an increased risk of being disbelieved or distrusted, may feel that they must show their victimisation in ways that align more closely with the stereotypical assumptions about victim-survivors perpetuated in society and reproduced in the legal system.

Thus, we see here how the men participants needed to be heard and seen in ways that women participants did not. Women spoke about turning their cameras off to feel safer, whereas men wanted the court to see their whole body and how they display their victimisation and their trauma. For men, wanting an in-person hearing may still be about control and trying to regain control after an abusive relationship, but control looks different for different people (McGlynn and Westmarland, 2019). In considering men's desire to 'show' victimisation, it is also worth reflecting on the benefits that cisgender men, including *gay* cisgender men (of which most of our men participants were), reap in the patriarchal legal system (see, Ball, 2013). To feel the need to 'show' victimisation speaks to a confidence that is far less commonly observed in research on the experiences of women victim-survivors. It speaks to a confidence held by men that when they tell their story and show their victimisation, through their language and body, that they will be believed – that displays of emotion will *benefit* them. While the men's confidence might speak to the patriarchal system in which they live, the lived experiences of these men simultaneously also offer insight into how same-gender couples are invisibilised in a heteronormative DFV legal system.

Ultimately, there appears to be merit in remote court hearings, as identified by participants. Although, their potential consequences ought to be understood within the broader context and parameters of the legal system and the barriers inherent within it. Findings in this article provide a critical starting point for understanding how LGBTQ+ victim-survivors view and experience remote court hearings and ongoing research involving a larger and broader cohort of victim-survivors in different settings is needed to further understand how their experiences of procedural justice can be enhanced in a system that has long been critiqued for minimising, silencing and potentially invisibilising victimisation. Further, the findings of this study underline the importance of gender in understanding experiences of justice, including within an LGBTQA+ DFV context where cisgender and heterosexual rules, norms and practices may be emphasised and reinforced in particular formal settings and processes, such as those pertaining to the law.

Declaration of Conflicting Interests


The author(s) declared no potential conflicts of interest with respect to the research, authorship and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship and/or publication of this article.

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Notes

1. Secondary trauma, also referred to as secondary victimisation or harm, describes how one's engagement with the law exacerbates the harm already experienced.
2. Intervention orders are variously referred to as restraining orders, civil protection orders or domestic violence orders across Australian jurisdictions.
3. In the intervention order system, the 'applicant' or 'affected family member' refers to the person believed to be the predominant victim-survivor in the relationship. The respondent is believed to be the perpetrator. We note, however, as was the case in the study sample, that some victim-survivors have been misidentified as respondents in the intervention order system.

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