



# FORTRESS OR SANCTUARY?

ENHANCING  
COURT SAFETY  
BY MANAGING  
PEOPLE, PLACES  
AND PROCESSES

REPORT ON STUDY FUNDED BY  
AUSTRALIAN RESEARCH COUNCIL,  
LINKAGE PROJECT, LP0882179

SEPTEMBER 2014



SUPREME COURT OF VICTORIA

**Watercolour:** Noëlle Herrenschmidt

COMMONWEALTH LAW COURTS, MELBOURNE

(FRONT COVER)

**Architect:** Paul Katsieris, HASSELL

**Watercolour:** Noëlle Herrenschmidt



#### RESEARCHERS

**Prof David Tait**, University of Western Sydney  
**Prof Prasuna Reddy**, University of Newcastle  
**Prof Graham Brawn**, University of Melbourne  
**Prof Warwick Sarre**, University of South Australia  
**Prof Debra Rickwood**, University of Canberra  
**Prof Deborah Blackman**, University of NSW  
**A/Prof Gregory Missingham**, University of Melbourne  
**Prof Anne Wallace**, Edith Cowan University  
**Professor Kate Auty**, University of Melbourne  
**A/Prof Alice Richardson**, University of Canberra

#### RESEARCH TEAM INCLUDED:

**Dr Emma Rowden**  
**Dr Alikki Vernon**  
**Vivienne Topp**  
**Tess Simson**  
**Mira Taitz**  
**Imogen Beynon**  
**Mythily Meher**  
**Melissa Spencer**

#### PROJECT PARTNERS

Western Australian Dept of the Attorney General  
Family Court of Australia and Federal Circuit Court of Australia  
Magistrates' Court of Victoria  
South Australia Courts Administration Authority  
MyriaD Consultants  
PTW Architects  
Connley Walker Pty Ltd  
Lyons Architects  
And subsequently: New Zealand Ministry of Justice

#### PHOTOGRAPHS FEATURED ARE COPYRIGHT ©:

**Diane Jones**, PTW Architects  
**Frank Greene**, FAIA, CGL Ricci Greene Associates.  
**Jay Farbstein**, PhD FAIA, Jay Farbstein & Associates.  
**Wayne Martin AC OR**, Chief Justice of Western Australia  
**Ray Warnes**, Executive Director, Court and Tribunal Service, Department of the Attorney General, Western Australia  
**Paul Katsieris**, Katsieris Origami  
**Dr Emma Rowden**  
**Jean-Paul Miroglio**  
**Tess Simson**  
**John Kirk-Anderson**, Fairfax NZ  
**Mark Forth**, Mark Forth & Associates  
**Kawai Yeung**  
**Scott Wojan**

Layout by Madeleine Rowe





#### MANCHESTER CIVIL JUSTICE CENTRE

*New courthouses like the Manchester Civil Justice Centre offer an imaginative and welcoming face to the city, while offering a safe and professional environment to its users.*

**Architect:** Denton Corker Marshall

**Photo:** Wayne Martin

## INTRODUCTION

This study reports on research about a major problem of contemporary society - security and safety - in the context of court buildings and justice processes.

The project brings together the experience of people who work in, or who have contact with, courts across Australia and New Zealand, including judicial officers, court executives and managers, registry and front-line staff, support workers and advocates, prosecutors and defence lawyers, court planners and architects, security consultants and workers, and many others. The research team is drawn from architecture, psychology, sociology, human resource management and law. The project was funded as part of an Australian Research Council Linkage grant, LP0882179.

Justice partners include the Family Court of Australia and Federal Circuit Court of Australia, The Western Australian Department of the Attorney General, the South Australian Courts Administration Authority and the Victorian Magistrates' Court, with the New Zealand Ministry of Justice and District Court also contributing to the project. Other industry partners were architecture firms PTW and Lyons, security consultants Connley Walker and training company, MyriadD Consulting.

## BACKGROUND TO THE ISSUES

Security is a central preoccupation of contemporary society. Borders, water supplies, energy provision, restaurant sanitation, pharmaceutical goods, health funding, the design of cars, prams and skateboards – all these issues are seen as having an important ‘security’ dimension. Facilities are increasingly required to be resistant to fire, bombs, floods, earthquakes and terrorists. Airports set the standard for physical security with identity checks and screening of people and bags, designed to protect the safety of passengers, staff and facilities. Many other public and private facilities regulate flows of people and goods into their spaces. At the same time psychological and cultural safety issues are being placed on the agenda of many organisations. The needs of children, victims, people at risk of harm from others (or themselves) are being addressed as part of the ‘duty of care’ such organisations are assuming to those who come into their jurisdiction. This responsibility extends as much to those who operate the court as court users (see note on opposite page for definitions).

Court buildings, like other public buildings, may face threats ranging from graffiti or vandalism to being rammed by a vehicle or destroyed by a bomb. They may also face potential natural disasters like earthquakes or flooding. Disgruntled litigants may send parcels containing dangerous materials, or send phone or written messages threatening to cause damage.

Court processes meanwhile vary considerably in the types of security challenges they face, ranging from everyday incivilities in a high-volume magistrates’ court to intimidation of witnesses or jurors in trials of organised crime figures, or interpersonal hostility of intimate enemies in child custody or child protection matters.

Court users may be anxious as a result of waiting in crowded corridors with uncertain court appearance times, on top of being in an unfamiliar environment and facing an unknown outcome. They may face a risk of being attacked or shadowed, in dark corridors outside restrooms or leaving the court building. Family and supporters, including gang members, may cause disruption, or instil fear in others.

Court staff may be stressed as a result of working with difficult clients, taking the flak after unfavourable decisions, working in noisy environments, feeling unsupported by their supervisors or organisations and not being trained fully to respond to challenging situations. Judges and prosecutors, child protection workers or social workers, counter staff and security staff: any of these may be targeted by dissatisfied clients. The most likely behaviour they experience will be angry outburst or insults, but on rare occasions they may be subjected to physical violence.

Many of these threats are low risk, but they are



#### PONTOISE COURTROOM

*Law, enforced by the courts, provides the foundation for a secure society. Drawn from the writings of Rousseau, this message confronts court visitors in this courtroom in Pontoise on the outskirts of Paris.*

**Architect:** Henri Ciriani  
**Photo:** Diane Jones

part of the safety and security landscape of courts. The challenge for those planning security is to develop risk management strategies that balance highly unlikely events - but ones with catastrophic consequences - with everyday events with relatively minor consequences. In a sense the types of threat are so different that it is questionable whether they should be included in the same policy discussion. After all, what does a bomb threat have in common with an insult, graffiti on a toilet wall or a heated confrontation between gang members?

In terms of the impact on court users and those who operate the court, the answer is fear, frustration and anxiety. Court participants may be unable to carry out their business in a calm and orderly manner. If those involved in court processes are afraid, it increases the risk that vulnerable people will not feel protected by the law, litigants will distrust the credibility of the process, witnesses may feel pressured to tell their stories in particular ways, jurors may be constrained from delivering a just verdict, and observers may question the integrity of the court process. These, in turn, have the potential to deepen the broader community's lack of confidence in the criminal justice system as a whole.

So security is not just about court users or buildings, critical though they are to the delivery of justice. Court staff, whether behind a Bench, a registry counter or a broom, also feature prominently in the

story. Court procedures themselves may contribute to improving the experience of court users, the safety of staff and the integrity of the process. Finally, courts play a wider security role for the community as a whole, in protecting rights established by law, and helping to create a safer community.

*Note: In this study 'court users' are defined as lay people who use court services or appear as witnesses, litigants or accused in court, plus families, friends and visitors. Those who run the court, provide professional or volunteer services are considered 'court operators' or 'service providers'.*

## A THEORETICAL FRAMEWORK

The title of the project – ‘Fortress or Sanctuary: people, processes and places’ - neatly captures two of the major ways of thinking about security policy in the court context. Should courts be seen as impregnable strongholds, impervious to external attack? Or would a more useful metaphor be a place of refuge, a shelter for those who need the law to protect them against violent partners or unfair business dealings? A courthouse designed for terrorism or organised crime trials might incorporate the type of physical protection that is conjured up by the image of a fortress, with domestic violence or family courts being most readily thought of as a sanctuary. The two contrasting views are illustrated by the Pohutakawa tree set in the courtyard of the Manukau District Court in South Auckland (see page 75), providing sanctuary for those waiting, and the high security court in Düsseldorf, with its bomb-proof roof helipad for protected defendants and witnesses (see page 11).

While the images of fortress or sanctuary provide a tantalising glimpse into the metaphors of security, a more developed typology can be found in the work of French philosopher Frédéric Gros<sup>1</sup>. He distinguishes four dimensions of security:

- Freedom from danger and harm
- A personal quality of assurance and freedom
- A state activity involving protecting rights and maintaining order; and

---

<sup>1</sup> Gros, Frédéric. *Le principe sécurité*. Gallimard, 2013.

- Control over uncertainty

The taxonomy places classical philosophy in a conversation with contemporary issues. For the purposes of this study, the framework, slightly modified to emphasise its relevance to this specific area of policy, allows us to analyse court security issues in a systematic and comprehensive way.

The four types of security in this taxonomy are:

1. Secure society
2. Secure person
3. Secure environment
4. Secure process



#### HIGH SECURITY COURTHOUSE, DÜSSELDORF

*A helipad for protected witnesses or terrorism suspects, a bomb-resistant roof and surveillance over the surrounding countryside: this is the setting for some of Germany's most secure terrorism trials, including one of an al Qaeda cell.*

**Design and construction:** Bau- und Liegenschaftsbetrieb NRW  
Düsseldorf

**Photo:** Jay Farbstein



NEW COURTHOUSE, MONTPELLIER

*Clear signposting, bright colours and generous provision of natural light makes it easy for users of the Montpellier court to find their way around this building.*

**Architect:** Bernard Kohn  
**Photo:** Jean-Paul Miroglio

## A SECURE SOCIETY

First, a **secure society** is one in which citizens are protected from violence, their individual and property rights are respected and social order is maintained. Courts, together with policing, prosecution and intelligence services, prisons and community corrections, and a whole network of other agencies, play their part in maintaining the peace and protecting rights. One question that arises in terms of this aspect of security is whether courts do in fact contribute to improving community protection. For example, do intervention orders curb violence in the home or workplace? Does the imprisonment of dangerous criminals make the streets safer? Do court and tribunal interventions contribute to curtailing fraudulent business practices, or help to ensure that applicants for professional registration, political asylum, mental health orders or small claims are treated promptly and fairly? This dimension of security is far more than just pragmatic; it taps into public trust and political legitimacy. Are justice decision-makers seen as impartial and fair, will warring parties trust the justice system to arbitrate their grievances, and do justice participants regard the processes they experience as legitimate? Protecting citizens while they are inside the court precincts is part of the court's duty to protect, but this will count for little if the system is seen as arbitrary or unjust by justice participants. The credibility of courts and justice processes more generally is therefore

more than just a public relations issue. They touch at the heart of the effectiveness of justice. A secure society, in the terms suggested by Gros, is one in which justice processes are accepted as legitimate by the majority of citizens.

Those who administer the courts on a day-to-day basis might have little control over these wider forces, but they are affected by them. For example, the decriminalisation of public drinking in the 1970s reduced the role of courts in managing minor public order offences, while no-fault divorce meant that courts could avoid ruling on adultery allegations. On the other hand members of outlaw biker gangs, and human rights groups, feel that conspiracy laws in some states are unbalanced. Some men's groups feel the same way about the Family Court, as do communities most impacted by counter-terrorism laws. But court staff are required to treat all court users with courtesy, something that may be difficult when the person they are dealing with disputes the very laws and the processes within which the staff are working. In this context symbolic gestures by courts can become relevant to enhancing the credibility of the justice system, contributing to security in this wider sense. This might include, for example, scheduling court sessions around Moslem prayer times – as happened in the Parramatta terrorism trials - or inviting family members to sit with Indigenous defendants in remote witness rooms.



#### COMMONWEALTH LAW COURTS, MELBOURNE

*Wide corridors, large windows and views over Flagstaff Gardens: users of the Commonwealth Law Courts in Melbourne find the spaces reassuring, if at times overwhelming.*

**Architect:** Paul Katsieris, HASSELL  
**Watercolour:** Noëlle Herrenschildt

## A SECURE PERSON

Second, a **secure person** is someone who possesses the self-assurance that allows them to act freely and perform their duty effectively. *Ataraxia* is the key Greek term Gros uses, drawing on Epicurus, a word indicating an inner tranquillity based on discipline and simplicity. A person who has this quality of *ataraxia* is able to remain calm in the face of pressures from the outside world as well as manage their own emotions. A secure person in a court context would be someone who is well-informed, competent and psychologically ready to perform their role in the justice process. This definition highlights the importance of information, communication, training and support to achieve this type of security. Rather than security being seen as something external to the real processes of courts, it can be understood as being a central characteristic of the justice process, one that enables participants to carry out their assigned role, whether it be as a court staff member, a witness or defendant in a case, or as a practitioner. While security in this sense implies skill and knowledge, it also requires a calm state of mind and serene environment in which reason can flourish.

So what contributes to enhancing self-assurance? For the Greek and Roman philosophers Gros was examining, this was a quality of a person resulting from self-control and understanding; for court

participants it is also likely to be associated with features of the external world such as speedy and credible processes, access to support services, and generous court spaces. While this dimension of security certainly draws attention to what might be called cultural and psychological safety, the focus is on capacity to perform, whether as a judge, a witness or family support worker.

Decision-makers, whether tribunal members or judicial officers, might be secure, in this sense, if they are appropriately trained and experienced in the issues relevant to the jurisdiction, whether that be domestic violence matters, trade practices or mental illness. This assurance might be increased by knowing that lay participants (whether victims, defendants or litigants) know their rights and can follow the proceedings, that information tendered is accurate and can be tested, and that hearing room facilities are adequate for purpose. They would feel more confident in carrying out their duty if they knew that that the orders made would be respected, resources required to carry out these orders would be provided, and the staff involved in implementation were competent and professional. The self-assurance of decision-makers would be enhanced by knowing they would not be censured for making decisions that were legally correct but politically unpopular.

A similar argument can be made for all the other participants. Defence lawyers would be more



*Justice in medieval times might be enacted under a tree. Security in a modern society involves a more complex division of labour. This tree in Melbourne's Flagstaff gardens symbolically divides federal jurisdiction on the right - the Commonwealth Law Courts - from state authority on the left - the County Court with the Dome of the Supreme Court peeking over the top.*

**Watercolour:** Noëlle Herrenschmidt

secure if they had been able to prepare their cases thoroughly and receive instructions from their clients in good time. Court security staff would be more secure if they are given adequate notice of a high-risk group of clients coming to court, if they are well-trained and if they have access to good communication facilities. Registry staff might be more secure if they did not have to deal with long queues and inefficient processes. However – and this is the important point – the security of any one participant is dependent on a network of interdependencies. Each relies on the goodwill, training, preparation and support of others. So even though this form of security may be experienced as an individual state of mind, calmness and ability to act, its achievement relies on the affordances made possible by suitable processes and environments.

## A SECURE ENVIRONMENT

Third, a **secure environment** is one where there is freedom from harm and danger. This is the most commonly understood dimension of security and safety. Danger can be seen as the potential for harmful incidents to occur. Risk is a calculation of the relative likelihood that such events will occur within a specified timeframe. The concept of ‘incident’ is central to this understanding of security; it is an event that can be observed and recorded

which threatens persons or property, or undermines the stable functioning of a system, in this case a court. For some of the philosophers Gros reviews, including Hobbes and Rousseau, this aspect of security underlies the foundation of the modern state, and provides legitimacy for government. Gros sees this type of security as ‘objective’, a feature of the external world, which he contrast with the internal state of tranquillity represented by the *ataraxia* of a secure person.

The objective risk to courts can be to the building itself or facilities within it, the information and communications system and the processes that rely on them, the integrity of data, or to people associated with the court in some way. Harms can include physical injury or disease, whether produced by natural disasters, faulty building design and maintenance, accidents like falls or running into objects, or deliberate action by others. Danger can come in the form of mail packages, epidemics, computer viruses, or concealed weapons. Harms can also be emotional or psychological, resulting from threats or intimidation, uncivil exchanges at registry counters, insults or shouting, excessive waiting or uncertainty.

Some perceived harms may result from legal processes themselves – excessive delays, having to divulge private information, being cross-examined in a hostile manner, or being confused by a complex



#### ENTRANCE TO COMMONWEALTH LAW COURTS

*The process of moving thousands of people into court each day can be a challenge. A long walkway alongside running water, trees and a wall of colour provides a safe and welcoming entrance to the Melbourne Commonwealth Law Courts.*

**Architect:** Paul Katsieris, HASSELL

**Watercolour:** Noëlle Herrenschmidt

system. Some harms are the intended outcome of legal decisions - incarceration, having children removed, fines that in some cases may deepen poverty. In a civil dispute one party typically loses; in family disputes sometimes both parties feel they have lost. Protective tribunals may authorise involuntary detention or treatment.

In the context of institutions whose job includes inflicting (what might be experienced as) harm at least on some participants, it is to be expected that legal processes and decisions should produce some anxiety and stress. The goal for courts and tribunals in terms of this aspect of security, is therefore to minimise risk, to balance the efficient delivery of justice with the minimizing of harm. Harms resulting from legal decisions can be classified (from a court's point of view) as unavoidable, but from the perspective of court staff and support workers such decisions may result in angry clients who abuse fines counter staff, threaten child protection workers or intimidate other parties to their case. However, harms resulting from lengthy delays, accidental meetings between warring parties, and unintelligible processes can be classified as avoidable, at least in principle.

Minimizing risk can involve transforming court spaces and processes. A waiting area that has to be used by both parties in an acrimonious dispute is potentially more dangerous than a waiting facility

that provides for separate spaces, even if no actual harm occurs. A scheduling system that minimizes waiting times – where courtrooms, video links or interpreters are booked for specific times, for example – may reduce this form of danger further.

## A SECURE PROCESS

Fourth, **secure processes** provide control over flows, reducing flux or uncertainty. The examples Gros gives include food security or energy security, in which continuity of supply is critical for society to function effectively, with regulation of quality also a key feature. Courts are increasingly developing charters that establish benchmarks that resemble food standards – they define what constitutes an acceptable level of service and product quality, a grievance mechanism and a system of monitoring and regulation. Managing flows of people and information is core business for courts. Within court buildings bottlenecks may occur when too many cases are scheduled at the same time, when processes are too slow or when resources are inadequate. But they may also result from funnelling people through narrow spaces, or slowing the flow at critical points. In lower level courts, the majority of time court users spend in court involves waiting, which increase risks of incidents with others and anxiety. In family courts, cases can take

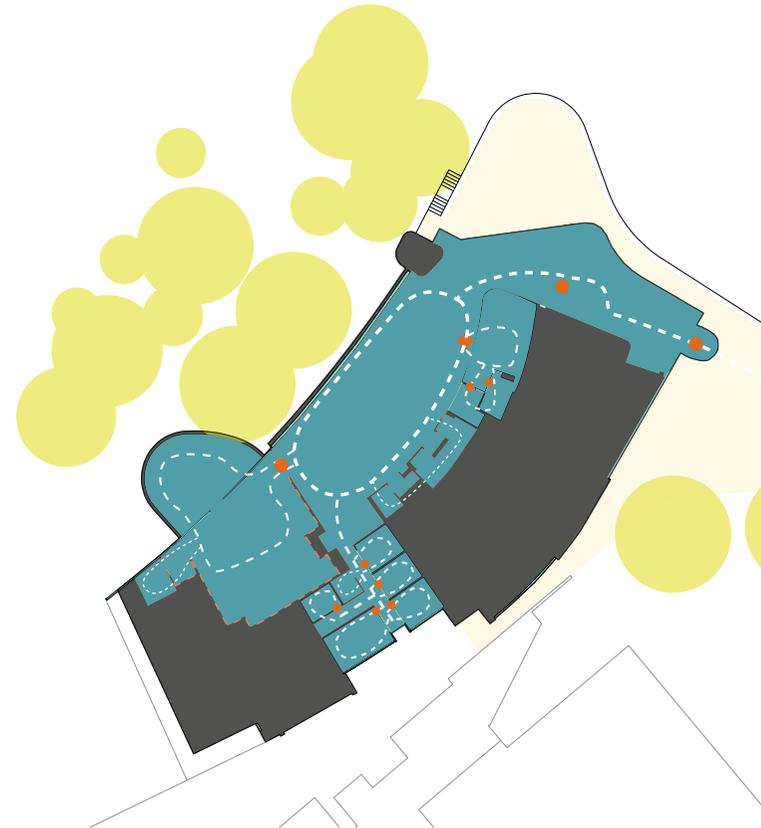


#### COLLINGWOOD NEIGHBOURHOOD JUSTICE CENTRE

The circulation pattern on the first floor level permits users and visitors to move easily between internal and external spaces. The courtyard provides for waiting in the fresh air; a glazed airlock allows people to view into the public gallery of the courtroom before entering. The shallow plan is easily understood by court users.

**Architect:** Lyons Architects

**Photos:** Diane Jones



#### COFFS HARBOUR COURTHOUSE

The new courthouse design provides a choice of movement paths on the ground floor. The court users move from the entry along an elongated path (to permit time and space to adjust psychologically) which offers views out to the surrounding landscape. The multi-purpose courtroom at the west end of the public hall has a glazed airlock modelled on the Collingwood Neighbourhood Justice Centre

**Architect:** PTW Architects

#### KEY

- THRESHOLD
- - - PUBLIC ACCESS

years to resolve so managing the flow of people, documents and emotions through the system is a major challenge. With domestic violence victims, moving from car parks to secure waiting areas to courtrooms and back to parking areas may create considerable anxiety. Jurors should move through the building without accidental meetings with witnesses or family members of the accused. Conceptualising security in terms of managing flows (rather than just avoiding incidents) provides a dynamic and proactive approach to policy development.

Framing the issue as one of avoiding incidents tends to lead to stopping things – putting up barriers, restricting access, excluding high-risk groups or individuals, taking away potential weapons, avoiding particular types of process. Framing the issue in terms of regulating flows by contrast tends to suggest things should be sped up – increase timeliness of hearings, reduce delays, shorten queues, increase speed of processing matters, and provide customised pathways. At least some incidents can be understood as products of a failure to regulate flows.

For a litigant or witness, an integrated pathway through the complex court process may make the journey less stressful and more intelligible. Witness support staff and domestic violence workers may sometimes provide such a service for those under their protection, while lawyers may do this for their

clients. A typical court journey can involve finding a park, walking to the court entrance, being screened, meeting a companion, finding out where to go, working one's way through the public circulation system, approaching the counter, mediation room or courtroom, waiting, participating in a courtroom interaction, getting information or a decision, and exiting. If these activities are integrated into a coherent pathway the process may be more efficient and less stressful. Pathways may become simpler – expedited tribunal processes to settle disputes rather than full civil courts, for example – or avoiding in-person attendance altogether through fuller use of on-line scheduling, video appearances and administrative fines.

At a macro level, security of supply means identifying future need for services, and providing new or enhanced facilities when they are required. Part of the reason for overcrowded waiting areas, delays in getting matters resolved and finding suitable areas for hearings or meetings is that the security of supply for these facilities has not been obtained. Not all of the flows can be predicted: Parliament may vary the types of matter brought before courts and tribunals, crime rates or litigation levels may go up or down, while demands for child protection or domestic intervention orders may expand, or more rarely, contract.

To bring together this discussion about security, we



#### 'THE QUALITY OF MERCY', MELBOURNE COUNTY COURT

A series of suspended glass panels undertaken by Dunedin-born Colin Lanceley. It provides a playful representation of *Justitia*, broken chains and a bird flying free. It can be seen as an invitation to court users to relax, and respond to the invocation of freedom suggested by the artworks.

**Artist:** Colin Lanceley

**Watercolour:** Noëlle Herrenschmidt

can say that providing court security does include managing risk, which aims to reduce the number of security incidents in court buildings. Seeing the task also as one of managing flows of people and processes allows us to identify the critical points and places where stress may be alleviated. However, for courts to succeed in their core business of delivering justice, participants must be 'secure' in themselves: properly informed, able to participate effectively in the process and free from fear of intimidation. The ultimate purpose of justice processes achieved by self-assured participants is to maintain a 'secure society', producing not just individual justice but trust in the rule of law and legitimate authority. All of these are in a sense 'aspirational'; it is no more possible to achieve all of these forms of security than it is to have a completely just legal system or a totally peaceful society. In a policy review like this, however, an attempt is made to identify the extent of progress towards the specified goals, and identify the policies that may contribute to this change.

This multi-dimensional way of thinking about security is somewhat wider than conventional incident-driven perspectives. It has the advantage of bringing together individual and collective interests, physical and psychological harm, placing courts within their statutory responsibilities to protect citizens and implement the law, and locating risk within the dynamic framework of flows. Nevertheless, this framework is not a definitive definition of security,

any more than any other taxonomy. Rather, it is a useful scaffold around which to structure discussion and develop a more holistic approach to security challenges. This report provides recommendations that will inform future policies about security in courts and tribunals.

## HISTORICAL AND POLICY CONTEXT

### THE EVOLVING LANDSCAPE OF JUSTICE INSTITUTIONS

The landscape of justice institutions in Australia has changed considerably since the 1970s, partly though not entirely in keeping with international trends. Court functions and services have expanded and become more specialised. Tribunals, more developed in Australia than most other countries, have proliferated and then consolidated, taking some functions away from courts and meeting new needs. Legal services and prosecution offices have been professionalised, while advocacy organisations have taken on a larger role. Meanwhile greater attention has been paid to co-ordinating and streamlining the governance of court and tribunal services.

From about 1975 the number and variety of courts and tribunals operating in Australia has expanded greatly. In 1976 the Family Court of Australia began operations, followed the next year by the Federal Court of Australia. In 1980 Victoria created a separate children's court jurisdiction, providing recognition for a children's court system that had been in operation since 1906. In 1989 NSW set up a dust diseases tribunal, to address the lengthy delays in getting compensation for victims of asbestosis and other dust-related diseases. However, the first recognised 'speciality court' to appear in Australia was the South Australian Family Violence court, in

1997<sup>1</sup>. This was followed in 1999 by the first special purpose drug court in NSW, while in the same year South Australia opened both an Aboriginal sentencing court and a mental impairment court. Most other states and territories followed soon after with their own variants of these special jurisdictions. Responding to special challenges faced in its region, in 2005 the Northern Territory established a narrower form of drug court, an Alcohol Court with a brief to address dependency and rehabilitation issues; the court was later subsumed under a more general drug court.

While most of these problem-solving courts, as they came to be known, tended to focus on a particular issue, the Collingwood Neighbourhood Justice Centre in Melbourne took a more holistic approach. Opening in 2007, it brings a range of both court and tribunal functions together with community and social services. As with drug courts, the neighbourhood justice centre represented part of an international movement, twinning Melbourne with Brooklyn in New York and North Liverpool in England and Wales. One of the philosophical principles inspiring many of these courts – particularly relevant to this study – is that they are designed to be 'therapeutic', aimed to address the underlying cause of the offending behaviour (rather than simply allocate

---

<sup>1</sup> Payne, Jason. *Specialty courts in Australia: Report to the Criminology Research Council*. Australian Institute of Criminology, 2005.



#### VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

*Access to justice was increasingly provided through the expanding tribunal sector in the 1980s and 1990s, such as the planning list of the Victorian Civil and Administrative tribunals shown here. Processes were generally less formal than courts, lawyers were often not necessary and decisions made by panels including members expert in the issues under review.*

**Watercolour:** Noëlle Herrenschmidt

punishment), acknowledge and involve victims and use a process that communicates effectively is readily understandable to lay participants. Many of the innovative courts were initially considered pilot projects, limited geographically or to a narrow group of offenders and victims. Some court innovations did not last, with Aboriginal sentencing mental health and drug courts being discontinued in Queensland in 2012 under a conservative government.

The tribunal sector saw even more dramatic changes. In 1975 an Administrative Appeals Tribunal (AAT) was set up to review Commonwealth government decisions. In the following decades, the number of tribunals expanded greatly. Other AATs were set up to review state government decisions, with offices of ombudsmen developing alongside them to examine a range of decisions of governments, public transport authorities, telecommunication, water or energy companies, banks and insurance companies, and other agencies against whom individual consumer might have a complaint. Protective jurisdiction had been largely managed through cumbersome state Supreme Court procedures; tribunals would dramatically increase access to legal protection over property, health care and personal matters<sup>2</sup>. In 1979 South Australia set up mental health and guardianship boards to protect

---

<sup>2</sup> See Carney, Terry, and David Tait. *The adult guardianship experiment: Tribunals and popular justice*. Federation Press, 1997.

the interests of vulnerable people, followed shortly by Victoria. Tribunals developed to hear disputes about residential tenancies, domestic building, consumer matters, equal opportunity, privacy and professional registration. By 2013 NSW alone had some 30 tribunals or similar bodies, some 20 of which were merged into a super-tribunal belatedly following the example of four other Australian jurisdictions.

New Zealand had a somewhat different history in terms of court organization. With a unitary form of government there is no federal jurisdictions. With its scattered population, New Zealand has 47 separate court buildings to maintain (about the same as Victoria which has 50% more population). Many functions that in Australia were assumed by tribunals – planning and guardianship for example – are retained by courts in New Zealand. Tribunals were established however for tenancy matters in 1986 and disputes in 1988. What distinguishes New Zealand from Australian justice processes is the greater reliance on family group conferences or other restorative justice approaches, and the central role given to Maori cultural practices in courts like the drug court.

While in Australia the number of courts and tribunals grew there were also attempts to coordinate management of the different jurisdictions, exemplified by the development of a Court Administration Authority in South Australia in 1993,



#### ADELAIDE COURTS

*The growing role of the Commonwealth in family matters after 1975 saw new court buildings for federal jurisdictions around the country. Sometimes they nestled beside older court buildings, as in Adelaide's Victoria Square.*

**Commonwealth Law Courts Architect:** David Vidler and Mariano DeDuonni, HASSELL

**Adelaide Magistrates Court (formerly Supreme Court of South Australia) Architect:** Richard Lambeth

**Photo:** Tess Simson

an independent statutory authority. The 2014 Victorian model did not create an independent authority, but it separated courts from the Department of Justice and, unlike South Australia, also included the tribunal system within its orbit, and included explicit representation from both the Children's Court and the Coroner's Court. Court administration, it might be said, had come of age.

Alongside courts and tribunals, other parts of the justice system were experiencing change. The federal government created a legal aid service for federal law matters in 1974, while state legal services were consolidated into legal aid commissions in Victoria in 1978 and NSW the following year. Aboriginal legal aid services, which had begun with volunteers in 1970, expanded into both urban and remote areas, while the first general community legal centre opened in the Melbourne inner suburb of Fitzroy in 1972. Diversionary or restorative processes that for the most part kept offenders out of court were introduced; family group conferences were developed in Wagga Wagga in NSW in 1991 and spread quickly to Western Australia and South Australia. An independent prosecution service was developed in Victoria in 1982 and other jurisdictions shortly thereafter.

Community organisations and advocacy groups also began to play a more prominent part in justice processes, with crime victims' organisations

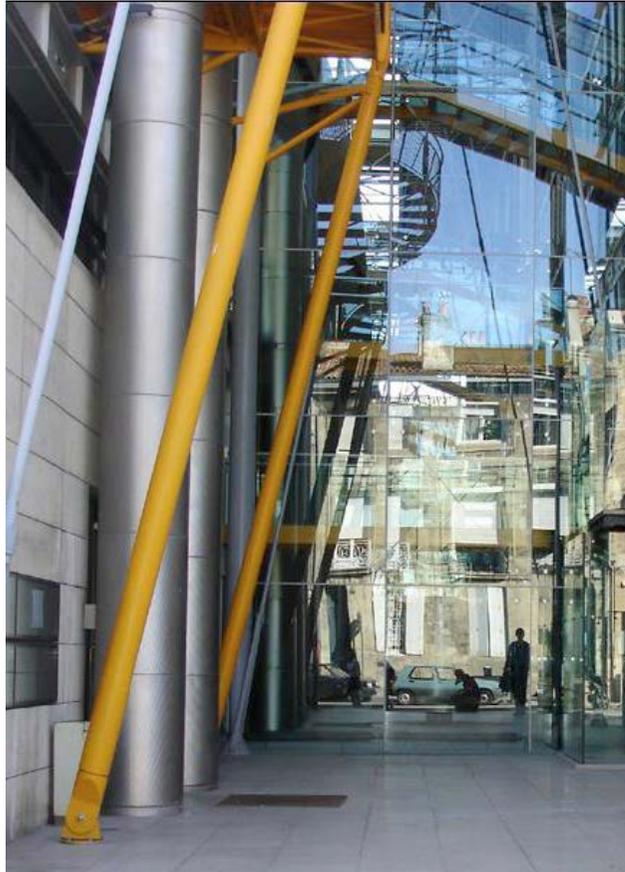
established in 1979 in South Australia and Victoria<sup>3</sup>. In federal jurisdictions advocacy groups for veterans and refugees developed. Mental health, domestic violence and Indigenous support workers could be increasingly found in state court buildings, and in three courts in Victoria an integrated services model ('Court Integrated Services Program') was introduced in 2006 to provide case management for selected offenders, and referral to a range of community services and treatment options.

In conjunction with the evolution of new forms of court and justice processes, a widespread program of court building was instigated.

## COURT BUILDING PROGRAMS

From the 1980s Australia saw a growth in court building programs unprecedented since colonial times. In 1980 the High Court building in Canberra was completed. Buildings to accommodate the Commonwealth jurisdictions were provided in Brisbane, Canberra, Melbourne, Adelaide and Parramatta. In central Sydney the Family Court received its own building while a high-rise building was constructed to be shared by the Federal and

<sup>3</sup> Adam Sutton. *Victims of Crime; An Overview of Research and Policy, South Australia. Office of Crime Statistics, Attorney General's Department, 1988.*



#### NEW COURTHOUSE, BORDEAUX

*The new courthouse in Bordeaux provides a strong visual link to the surrounding city. The courtrooms comprise 'pods' that provide another local link – they resemble the wine vats that has made the region internationally famous.*

**Architects:** Richard Rogers + Partners  
**Photo:** Diane Jones

High courts and the state Supreme Court. Sydney and Adelaide residents could watch as one of their historic department stores was transformed into a court building. Victoria built a new County Court, Children's Court and Magistrates' Court in the downtown legal precinct, near the new Commonwealth Law Courts, [seven] new suburban courts and [five] court buildings elsewhere in the state. All the other states experienced a similar frenzy of court building activity to accommodate the new needs. In Western Australia new court buildings were developed in South Hedland (1999), Rockingham (2000), Fremantle (2001), Albany (2006), Perth District Court (2008) and Kalgoorlie (2013). Multi-function justice facilities that provided access to courts via video links were developed in four other regional centres. New courts made striking contributions to the cityscape or townscape, such as the Commonwealth Law Courts in Adelaide.

As courts and tribunals expanded, a wider diversity of spaces was required. In the Family Court of Australia, and its junior partner, the Federal Magistrates' Court of Australia (later the Federal Circuit Court), much of the work of the court was done at registry counters, by family support officers or on the phone, so the need for public service areas and call centres became critical. In magistrates' courts, some space was found for victim support services, Aboriginal services, legal aid, interpreters and a range of other services. While courts could

be seen as continuing to carry out their primary roles of adjudication and protecting rights, they began to see themselves increasingly as service providers. Court staff, whose role had previously tended to focus on serving the judiciary, were increasingly seen as addressing the needs of the public<sup>4</sup>. This is illustrated in the sign on a door on a Montreal court, indicating both the increasingly important role of meeting rooms and the way courts were seeking to protect the rights of vulnerable court users (see page 26).

New court buildings began to reflect changed sensibilities about the nature of the law, the place of the public and a more 'Australian' approach to justice. At a conference in 1988, the Chief Justice of the Federal Court announced that the key principle of court design should henceforth be reconciliation rather than authority. Colours for courtroom furnishings were increasingly borrowed from the local landscape. Art works paid homage to Aboriginal heritage, emulating trends from across the Tasman. 'Transparency' became the mantra for new court buildings, with more natural light flooding into courtrooms and stronger visual links to parks, trees and cityscapes.

Attitudes of court planners and architects to natural light has shifted across the generations. Nineteenth

<sup>4</sup> Parker, Stephen. *Courts and the Public*. Australian Institute of Judicial Administration, 1998.



century courtrooms had natural light – they had to, or participants could not see<sup>5</sup>. With the development of the fluorescent light in the 1950s, courtrooms tended to become internal, and avoided natural light. The Children’s Court in Montreal, built during that period, has internal courtrooms, but on the other hand, magnificent views over the mountain from waiting areas. The Children’s Court in Melbourne, by contrast, does have views of nature from courtrooms, but its waiting areas are internal.

## THE CHANGING SECURITY ENVIRONMENT

Paradoxically, at the same time as there was an increasing emphasis on accessibility and transparency in design, court buildings were becoming more closed. A new security consciousness was developing that resulted in entrance screening, remote monitoring, duress alarms in courtrooms, separate circulation zones for different participants and a range of other measures designed to cope with possible threats. The ultimate expression of this was found in the Parramatta trial

<sup>5</sup> In a celebrated book on court architecture, Katherine Fischer Taylor describes how a sentence was passed on a prisoner in the Palais de Justice in 1870s Paris. The accused was in darkness. *Theater of Criminal Justice: The Palais de Justice in Second Empire Paris*. (Princeton University Press, 1993)

courts with five separate circulation systems. The earlier approach to security was recalled by one magistrate:

*When I first started here in this old building that was on this site, the public had access generally to all the corridors, there was no screening and in fact my chambers, believe it or not, and it is hard to believe in the modern age, were directly opposite the Justices of the Peace room where all offenders went to sign their bonds and bails. Even in those days, probably out of sheer naivety, I was not particularly concerned about security.*

Reflections about past court security arrangements provide a range of narratives: society was simpler then, people are more dangerous today, or in the example cited, there were real dangers that we have since become aware of. Even if actual risks to justice participants have not changed, perceptions of risk have become heightened.

In part this security awareness reflected a wider public attitude about security after terrorist attacks overseas. But the form of the response was also shaped by particular local court-related incidents. As one court manager put it, ‘with security issues really – it always takes an incident to make everyone more aware of it.’

### CHILDREN’S COURT, MONTREAL

*As courts and tribunals take on a service responsibility to their users, they confront systemic issues of discrimination or violence. The Quebec Ministry of Justice provides financial support and facilities within court buildings to organisation involved in the struggle against homophobia.*

**Photo:** Emma Rowden

Speaking of Australia's new Parliament building, architecture professor Kim Dovey says :

The profound changes to the practices of power in this building need to be seen in contrast to the provisional parliament building. This intimate 'cheek by jowl jumble of corridors' where 'gossip literally buzzes around the corridors' was systematically eradicated through a combination of security considerations, political vanity and bureaucratic segregationism

Kim Dovey (1999). *Framing Places: Mediating power in built form*, Routledge, P.96

Courts underwent a similar transformation, with even higher levels of segregation than parliaments. In the parliament building politicians were kept apart from the people they represented; in courts judges, court staff, protected witnesses and jurors were increasingly kept away not just from the public but each other.

One famous incident, seared into the consciousness of judges and court officials alike, was the assassination of Judge David Opas of the Family Court outside his Sydney home in 1980. Another Family Court judge was injured and his wife killed in a bomb attack on their home in 1984. Both of these tragic deaths occurred at home, not in or near a court building. Home is also a more risky place for clients of family or domestic violence courts; in the 30 years since 1984 roughly 1400 people have been killed in Australia by their intimate partner at home, while none at all have been killed at court. (In New Zealand, there was one such death at court, described below)<sup>6</sup>.

One of Australia's most celebrated hitmen, Chopper Read, entered a courtroom at random in Melbourne's County Court in 1978 and tried to take

<sup>6</sup> This estimate is a projection of three years data from Jack Dearden and Warwick Jones, *Homicide in Australia: 2006–07 National Homicide Monitoring Program annual report*, Australian Institute of Criminology, Appendix F (66 intimate partner homicides for 2006-7), and Andy Chan and Jason Payne, *Homicide in Australia: 2008–09 to 2009–10 National Homicide Monitoring Program*, Australian Institute of Criminology, p 6 (122 intimate partner homicides for the two year period, 2008 to 2010) and table 4 (143 of 185 domestic homicides, the group that includes the 122 intimate partner homicides, were at the victim's home, the offender's home or another home). If we take the lower of the two annual estimates, the 2008-2010 figure of 61 intimate partner homicides per year for 30 years, and assume that 143/185 or 77 per cent of these were 'at home', we get an estimated total of 1415 such deaths over the period. If we take the higher rate from 2006-7 of 66 such deaths per year, we get a figure of 1530.

a judge hostage, wearing a denim jacket and armed with a sawn-off shotgun which had been hidden in his trousers. According to the tipstaff, the judge 'bravely pushed the gun aside, stood and went through the bench door with 'Denim' in hot pursuit. At this point, the judge turned to face the assailant and gave him a hefty kick in the knackers.' The tipstaff pushed Read against the door frame and grabbed the barrel of the rifle, while police rushed in to help<sup>7</sup>. This was one of the incidents that made screening for weapons a priority. It was not an isolated incident.

Melbourne was also the scene in 1980 of a double slaying in the Supreme Court<sup>8</sup>, after judgment was handed down in a civil matter about a bank account. One of those killed was an interpreter and a prominent member of the Albanian community. It followed the assassination the previous year of a notorious robber, Raymond "Chuck" Bennett, on the steps of the old Melbourne Magistrates' Court. His assailant escaped through a gap in the back fence of the court and was never apprehended<sup>9</sup>.

The slaying of a senior health official in Adelaide by

<sup>7</sup> 'Chopper v Trotter: day of judgment', *The Age*, December 1 2013, <http://www.theage.com.au/victoria/trotter-v-chopper-day-of-judgment-20121130-2am3m.html>, last accessed March 15 2014.

<sup>8</sup> 'Two die, 3 hurt in court shooting', *Canberra Times*, 22 May 1980

<sup>9</sup> Tony Wright, 'Suppression orders, gangster style', *The Age*, 23 April 2011



#### SUPREME COURT, VICTORIA

*The ornate and impressive appearance of Victoria's Supreme Court did not deter an aggrieved litigant from carrying out a double murder in its precincts in 1980.*

**Watercolour:** Noëlle Herrenschmidt



**KING STREET COURTS, SYDNEY**

*Duress alarms can be effective in summoning security assistance when required, at least when they are connected to a security station and tested regularly.*

**Architect:** PTW Architects  
**Photo:** Scott Wojan

a deregistered psychiatrist – outside an elevator - led to enhanced custody centre facilities in a heritage building as well as more extensive intelligence process for anticipating possible issues . The escape of nine prisoners from the Supreme Court of Western Australia in 2004 led to tightened security over persons in custody. A hostage situation in an Adelaide courtroom in 1999, in which a former policeman being sentenced for armed robbery jumped out of the dock and threatened to kill a court stenographer, led to the strengthening of duress procedures in court.

Several other incidents involving defendants have recently occurred in Australian courts. In 2008 a man charged with stealing a car at knifepoint tried to flee the courtroom by jumping the dock in Fremantle and was wrestled to the ground by the police prosecutor and guards<sup>10</sup>. In 2011 an alleged bushfire arsonist jumped the dock after his bail was revoked by a Melbourne magistrate. It took ten minutes and one protective services officer, two prison guards, a police prosecutor, a police informant and four security guards to subdue the man<sup>11</sup>. In 2012 a man accused of stealing a Xbox and toiletries in

10 ABC News, 24 June 2013, <http://www.abc.net.au/news/2008-06-24/accused-man-jumps-court-dock/2482804>, last accessed April 16 2014.

11 Herald Sun, April 15 2011, <http://www.heraldsun.com.au/news/court-guards-battle-accused-arsonist-as-he-jumps-from-the-dock-at-melbourne-magistrates-court/story-e6fr7jo-1226039836467>. Last accessed March 15 2014.

Rockhampton jumped out of the glass-framed dock after he correctly guessed that the magistrate was about to refuse him bail<sup>12</sup>. In 2013 a young man being sentenced for murder in Sydney leaped out of the jury box where he was seated and tried to attack his co-accused seated in the dock by throwing a ‘stapled wad of court papers’ at him.<sup>13</sup> In Moree the same year a man jumped out of the dock after being refused bail, and caught a taxi outside the court to effect his escape<sup>14</sup>. After being sentenced to prison for stealing a car, in 2014, a 14 year old boy fled a Perth court past security staff and disappeared<sup>15</sup>.

Other incidents included a social worker being threatened with a knife in 2008 in the Victorian Children’s Court, and in the ACT Supreme Court in 2010 a prosecutor was attacked by a mentally ill offender<sup>16</sup>.

12 Emma McBryde , The Morning Bulletin , 22 Oct 2012, <http://www.themorningbulletin.com.au/news/prisoner-jumps-court-room-dock/1590577/>, last accessed March 15 2014.

13 Sydney Morning Herald, August 15, 2013, <http://www.smh.com.au/nsw/murderer-lunges-at-coaccused-as-violence-erupts-in-sydney-court-20130815-2ry0w.html>, last accessed March 15 2014.

14 The Northern Daily Leader, August 23, 2013, <http://www.northerndailyleader.com.au/story/1729526/accused-escapes-moree-court-flees-in-a-taxi/>, last accessed March 15 2013.

15 Amanda Banks, Security breach as teen flees court, The West Australian, November 22 2013, <http://au.news.yahoo.com/a/19972521/>, last accessed March 15 2014.

16 Several of the following incidents are recounted in Sarre, Rick, and Tim Prenzler. “Issues in courtroom security: A key



OLD COURTHOUSE, MONTEPELLIER

*One way of managing unruly or potentially dangerous defendants in the courtroom is placing a glass screen around the dock. Whether this reduces risk or merely increases fear is a matter of hot debate as court administrations transform courtroom such as this one in the old jury court in Montpellier.*

**Architect:** Charles Abric (1854)

**Photo:** Diane Jones

New Zealand had its own share of in-court incidents. In 1990, a judge had her face slashed badly in the Otahuhu Youth Court by a 16 year old boy with a machete; in 1998, a man stabbed to death his former partner in a waiting room at the Palmerston North Family Court, while in Dunedin District Court gang members stabbed a man in the head. In 2005 a lawyer was hit with a chair by a member of the public in the Porirua District Court. In 2006 a judge in the Nelson District Court was punched by an accused person who jumped out of the dock: the accused said he intended stabbing the judge with a pencil but could not get it out of his pocket<sup>17</sup>. In 2007 in the foyer of the Wellington District Court a Mongrel Mob member stabbed a member of the Black Power gang in the neck, while in the Napier District Court in 2013 another Mongrel Mob member, appearing on a charge of possessing an imitation firearm, was punched by a stranger and returned to stab him with a pocketknife later that day<sup>18</sup>. In the latter case, the use of a blade, the accused reported to police, was an accident: he had a corkscrew as a weapon in the courthouse, not a knife, and said he “only intended to hold the corkscrew in his hand to prevent his knuckles from breaking when he hit the

role for the private sector in Australia and New Zealand.” *Security Journal* 25.1 (2012): 25-37.

17 Christchurch Court News, <http://courtnews.co.nz/story.php?id=3674>, last accessed March 15 2014.

18 TVNZ News, September 26, 2013, <http://tvnz.co.nz/national-news/gang-member-accidentally-used-blade-in-stabbing-5591158>

victim”. Finally two incidents of self-harm: in 2009 in the Wellington District Court a convicted person in the dock awaiting sentence stabbed himself using a knife concealed in his sock<sup>19</sup>, and in 2010, an offender sliced her arm with a razor blade in the New Plymouth District Court<sup>20</sup>.

This list of incidents (while not fully comprehensive) does confirm that real physical dangers do exist in courtrooms and court buildings more generally. Knives seem to be the most common weapon. Types of hearing where a risk exists vary from bail applications to trials to sentencing hearings. People at risk include the person themselves (self-harm), judicial officers, court staff, social workers and other professionals, prosecutors and lawyers, and other parties in a matter. People who are in an ongoing situation of conflict with someone could be at particular risk. But a story that can be repeated in almost every criminal courthouse in every jurisdiction – as seen from the incidents described above – is a defendant ‘jumping the dock’.

One of the most noticeable security additions to many modern courtrooms has been the installation of glass screens around docks. One of the first was in Brisbane, in the Farr case in 1994, where the accused had assaulted court staff during a

19 3News, 30 June 2009

20 Stuff.co, [www.stuff.co.nz/national/crime/3347244/Accused-cuts-arm-in-court](http://www.stuff.co.nz/national/crime/3347244/Accused-cuts-arm-in-court)



#### KING STREET COURTS, SYDNEY

*There are more subtle ways of stopping people jumping the dock than glass screens. One of the methods used in NSW courts, invisible to the jury, involves a ledge that folds down over the lap of the accused when seated.*

**Architect:** PTW Architects  
**Photo:** Scott Wojan

previous hearing<sup>21</sup>. When these security features were challenged in the Victorian and NSW Supreme courts, where no such risk was established, the presiding judges ordered the glass removed. A more subtle constraint was installed in Sydney's King Street Courts for Supreme Court matters – when the accused is sitting in the dock a wooden ledge comes down to limit escape attempts. On one occasion security staff had forgotten to put down this ledge, and had fallen asleep; the defendant took the opportunity to stand up and, targeting the jury, threw fruit that he had secreted in his pockets during the lunch break.

Tribunals meanwhile had been dealing with their own safety issues in lower-key ways. A party to a guardianship hearing before the Victorian Guardianship and Administration Board had leaned over the table and tried to strangle the presiding member; the Board's response was to introduce a second table for the parties, using distance to reduce risk. In Perth, similar fears led to strategically-placed pot plants between the member's area and the public<sup>22</sup>.

Not all measures taken in response to incidents seem to directly address the security issue that

21 *R v. Farr* [1994] QCA 266, 2 (Austl.).

22 Kennedy, L and Tait, D (1994) *Court Perspectives Architecture Psychology and Law Reform in Western Australia*, 52 Western Australian Lay Reform Commission, 1066

inspired them. In one suburban courtroom, according to one of the staff working there, a person with a gun approached the service counter; the person who was threatened jumped the counter to get out of danger. As a result of this incident a glass barrier was placed at the counter to avoid anyone else getting over the counter. In another incident, again reported by one of the service staff, a visitor had set fire to himself close to the waiting area; as a result of this a glass screen was placed around the waiting area. In a Federal Court foyer in Sydney in 2008 a woman involved in an immigration matter threatened to kill herself with a knife and a pair of scissors; the court's response was to review the security measures in the temporary building with a view to introducing an x-ray machine. This example illustrates the way in which psychological issues are sometimes addressed with physical measures.