

Working with clients* who have experienced domestic and family violence

Best practice guidelines for lawyers

1. The safety of clients, children & workers is paramount

1.1 Identify if any domestic and family violence protection orders exist and if there have been any breaches. Record these details on the file

Practice points:

- Allocate extra time to investigate domestic and family violence allegations.
- Ask about behaviours rather than using terminology the client may not understand or relate to.

1.2 When seeing a client ask about and document on the file any potential safety or security issues

Practice points:

- Use the risk assessment pro-forma to decide what safety precautions are necessary for the client and yourself.
- Review the risk assessment during the key stages of the court process eg interim hearing, pre-hearing conference, before day one LATs or trial.

1.3 When preparing material for a court hearing ensure all allegations of domestic and family violence are included, where appropriate

Practice points:

- Consider attaching the domestic and family violence order or the application to the affidavit material.

1.4 Include all details of domestic and family violence when applying for legal aid

Practice points:

- Attach a copy of the domestic and family violence order or application. Consider if a Notice of Abuse or Family Violence [Form 4] is needed.

1.5 Take appropriate precautions for the client's safety

Practice points:

- Ensure the client will not see their ex-partner at your office.
- Always ensure there are no identifying documents/files left in view or accessible to the other parties at any time.
- Consider the logistics of getting your client to and from your office and court, and accompany them if necessary.
- Ensure clients use separate exits and arrive/leave at staggered intervals during a family law conference.
- Accompany your client to a conference or meet them at an independent place so they are not waiting to start a conference with their ex-partner.
- Ask for a separate room during a family law conference.
- Do not give out a client's address or that of their relatives or friends without their permission.
- Do not give out refuge contact telephone numbers or street address.
- If it is not safe to call a client at home, ensure this is recorded on the file.
- Let a court know well in advance about arrangements that may need to be made to keep your client safe at the court. Do this in writing if necessary.
- Familiarise yourself with the court safety procedures and protocols.
- If your client threatens the other party's safety or that of their solicitor, consider telephoning the other solicitor and when in doubt contact the Queensland Law Society's Lawcare for expert advice.

1.6 Take appropriate precautions for your own safety

Practice points:

- If you are seeing a client away from the office, arrange to call the office when you arrive and at another time such as when you are leaving.
- If you are working at a Legal Aid Queensland office, know where the distress buttons are in the conference and interview rooms.
- If you are working at a Legal Aid Queensland office and a physical incident occurs, complete a workplace health and safety incident report, notify Legal Aid Queensland and make a file note.
- If a client threatens you, notify Legal Aid Queensland or appropriate authorities or a colleague and make a file note.

2. Violence is a crime whether it occurs in public or in private

2.1 Give clients appropriate information about legal options to address domestic and family violence

Practice points:

- Tell clients domestic and family violence is a crime, whether it happened in public or in private.
- Give clients accurate and realistic information about their options to address the domestic and family violence.
- Make the distinction between the civil and criminal ramifications of a domestic and family violence order and explain this fully to the client.
- Assist the client to make a complaint to the police.
- Be aware of referral options for support services

Refer:

- Tell the client how to apply for a domestic and family violence order under the *Domestic and Family Violence Protection Act 1989* or make a complaint to the police under the Criminal Code 1899.

3. Actively involve clients in assessing their own legal needs and making decisions about their future

3.1 During the initial interview fully inform clients of the legal process

Practice points:

- Send a letter in plain English explaining the process when inviting a client to attend an interview.
- Provide appropriate written material to the client at the initial interview so they have something to take away and read.
- Always let the client make-up their own mind and provide them with enough information to assist them to make-up their own mind.

3.2 Do not put pressure on a client to agree to conditions in a conference if an agreement would jeopardise their safety and continue the domestic and family violence

Practice points:

- Do not pressure the client to make a decision in a conference or when organising a conference.
- Ensure clients understand they have the right not to agree to resolve the matter in a conference.
- Accept the client's decision even if this means there is no resolution.
- Raise all issues if you think it will help.
- Ensure the client has a full understanding of the agreement's terms and implications.

- Reality test agreements to ensure that they are workable. Place agreements in context, ask the client to think of possible scenarios to ensure they fully understand the agreement's possible ramifications.

3.3 When self-assessing a legal aid application, do not grant aid for a conference when there are domestic and family violence allegations

Practice points:

- Legal Aid Queensland's guidelines exclude conferences as an option where domestic and family violence is an issue and "where the power imbalance between the victim and the perpetrator is so great that the victim will be unable to negotiate effectively, even with the assistance of a solicitor".
- Ensure you ask the client about their ability to negotiate when you are discussing applying for aid.

4. It is important to work collaboratively with other services that support clients who have been affected by domestic and family violence

4.1 When giving legal information to clients also provide information about services that could address their other needs and those of their children

Practice points:

- Ensure you have know or can find out about appropriate non-legal support and referral services and ensure this information is provided to the client, eg regional domestic and family violence services, refuges, sexual assault services, children's contact centres, Legal Aid Queensland database.

* Clients are all parties to a dispute.

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Best practice guidelines for lawyers (continued...)

- If in doubt, contact a relevant Legal Aid Queensland specialist unit such as Women's Legal Aid, the domestic violence unit, family lawyers and the social work team.

4.2 *When preparing a client's case, ensure there is appropriate liaison with the client's support networks*

Practice points:

- If a client is seeing a counsellor or health professional, consider asking for a report from them if the client agrees, it would help your case and not breach their privacy.
- Make arrangements for a refuge worker or support worker to sit with the client when they are giving instructions or when they are appearing in court.

5. All clients should be treated with respect

5.1 *Do not be judgemental in your response when interviewing clients and hearing their experience of domestic and family violence*

Practice points:

- Listen, respond respectfully and behave sensitively when clarifying or asking for further details of alleged abuse or domestic and family violence or cultural practices.

5.2 *Make reasonable attempts to locate evidence to support a client's allegations of domestic and family violence when representing a client at court.*

Practice points:

- Collect appropriate police reports, medical reports and statements from possible witnesses.
- Ensure you know each court's processes.

- When organising specialist reports check the background and experience of the people you engage.

6. Legal Aid Queensland services should be accessible and equitably delivered to all clients affected by domestic and family violence

6.1 *When preparing for a conference or a court hearing, ensure cultural issues are addressed*

Practice points:

- Do not make assumptions about a client based on their cultural background.
- If relevant, contact established migrant/refugee welfare services for cultural information or for support for a client, such as the Immigrant Women's Support Service (IWSS).
- Use the internet to get current international evidence on the political and social situation in other countries eg country reports.
- Contact established Indigenous welfare services for information about culture and for support for the client.
- Trained interpreters should be offered if you believe language is an issue.
- Legal Aid Queensland will fund interpreters.
- Always check that a client from a non-English-speaking background is comfortable to proceed without an interpreter, even if they have declined one on a previous occasion. Attempt to make the necessary arrangements so the conference can proceed, such as organising a telephone interpreter.
- If possible, use separate interpreters if both parties to a dispute are from non-English-speaking backgrounds, especially during shuttle conferences.

- Try to get an interpreter of the same gender as the client and check whether the client has any preference.
- Try to use the same interpreter every time.
- Allocate extra time in an interview if there will be an interpreter.
- Remember, domestic and family violence has an impact whatever the case involved.
- Where appropriate, try to talk with other people involved in the case such as doctors, health professionals, caseworkers and carers and where necessary apply for aid for a specialist report.

7. Develop & maintain your knowledge of the social context of domestic and family violence including power, control and gender

7.1 *Have a knowledge of the relevant sociological, psychological and political perspectives explaining domestic and family violence in the home*

Practice points:

- Ensure you are informed about the current theoretical perspectives on domestic and family violence against women and children.
- Attend relevant professional development opportunities to keep your knowledge base current.
- Engage report writers and professionals that have a knowledge of the current sociological, psychological and political perspectives explaining domestic and family violence in the home where there are domestic violence allegations.

Notes: