

Best practice guidelines for family dispute resolution practitioners

Working with people who have experienced domestic violence

Principle 1. Improving your understanding

Guideline 1 - Be aware of the different contexts and complexities involved with domestic violence when facilitating an agreement.

PRACTICE POINTS:

- Be aware that domestic violence can be very subtle. Take cues from the client where the other party begins to control and manipulate the process.
- Attend relevant professional development opportunities to keep your knowledge base current.

See Notes section for further information.

Principle 2. Prioritise safety

Guideline 2.1- When facilitating a conference and domestic violence is raised, the conference should be a 'shuttle' conference.

PRACTICE POINTS:

- Before the family dispute resolution conference starts, check with parties and/or their solicitor if domestic violence is an issue or whether any protection orders (or breaches) exist.
- If domestic violence is an issue, the conference must start as a shuttle conference.
- If domestic violence is an issue, explain Legal Aid Queensland's policy about shuttle conferences to both solicitors and/or clients.
- Ensure there is capacity for another room if needed.
- Only move to a face-to-face conference if the aggrieved person chooses to and if you are sure they feel no pressure to do so and there are no safety concerns.
- Ensure all clients are comfortable with the physical environment before the conference starts.

Guideline 2.2 - The issue of domestic violence is never mediated.

PRACTICE POINTS:

- Ensure the issue of domestic violence is not an agenda item for dispute resolution as this is not the forum to discuss if domestic violence has occurred or whether the parties should apply for protection orders.

Guideline 2.3 - Take appropriate precautions for the clients' safety.

PRACTICE POINTS:

Ensure no identifying documents/files are left in view or are able to be accessed by any of the parties during a conference.

Guideline 2.4 - Take appropriate precautions for your safety.

PRACTICE POINTS:

- If you are working at a Legal Aid Queensland office, know where the distress buttons are in the interview and conference rooms.
- If you are working at a Legal Aid Queensland office and a physical incident occurs or is threatened, complete a workplace health and safety incident report, notify Legal Aid Queensland and document the incident appropriately.
- If a client threatens you or a physical incident occurs, notify your supervisor and consider if the appropriate authorities need to be notified.
- Protect your personal information (eg be conscious of social media posts, your listing on the electoral role and transport arrangements).
- Protect your own safety as you leave the building.

Guideline 2.5 - Continually reality check any proposed parenting orders or plan.

PRACTICE POINTS:

- Read all information on the file to assess risk. If it identifies that the children or the parties are at risk of harm, end the conference and note the reason for ending it on the file.
- If in any doubt talk to the management

of dispute resolution services. In your introductory remarks, ensure you have complied with the "adviser's obligations in relation to best interests of the child" (s60D) and "obligations of advisers" (s63DA) in the *Family Law Act 1975*.

Principle 3. Facilitate empowerment

Guideline 3.1 - Fully inform clients about the family dispute resolution conference process.

PRACTICE POINTS:

- Explain how the conference will work.
- Use plain language; avoid legal jargon.
- Check the client understands your information.
- Inform the client of the process for issuing of Section 60I certificates.
- Be aware that repeating your obligations as an adviser can put pressure on some clients to accept an agreement, even if it is not suitable for their circumstances.
- Be aware not to talk over the client; allow them to talk.
- Allow the client to make up their own mind.
- Ensure the client has an understanding of the terms and implications of the agreement they are signing.

Guideline 3.2 - When mediating, allow the client to make up their own mind.

PRACTICE POINTS:

- End the family dispute resolution conference if you believe a client cannot negotiate due to fear, a power imbalance, mental illness or lack of capacity to give instructions or understand the process.
- Ensure the reason for ending the conference is added to the file.

Guideline 3.3 - Give clients appropriate information about their options to address domestic violence.

PRACTICE POINTS:

- If a client is unrepresented, give them time and facilities to be able to access advice and referral options.

Principle 4. Foster respect

Guideline 4 - Do not be judgemental in your response when a client recounts their experience of domestic violence during a conference.

PRACTICE POINTS:

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

Principle 5. Acknowledge violence is a crime

Guideline 5 - Give clients appropriate information about their options to address domestic violence.

PRACTICE POINTS:

If a client is unrepresented, consider a break in the alternate dispute resolution conference for the client to seek legal advice.

Principle 6. Respect diversity

Guideline 6.1 Ensure you are familiar with cultural issues.

PRACTICE POINTS:

- Do not make assumptions about a client based on their background.
- Recognise that people may respond to domestic violence in different ways.
- Be aware of the impact of culture, religion, education, socioeconomic background, refugee experiences etc.
- Seek information from appropriate sources to help you gain a better understanding of cultural issues relevant to domestic violence.
- For example, people from some backgrounds:
 - may smile when recounting their experience of domestic violence. This is appropriate behaviour in their cultural context and is used to "save face" and maintain self-esteem and dignity
 - may not report because of lack of trust of people in authority

– won't discuss events of domestic violence in front of community elders.

- Stay up to date with current international information on the political and social situations of culturally and linguistically diverse clients relevant to domestic violence so you have an understanding of how this might impact on the family dispute resolution conference.

Guideline 6.2 - Ensure that language considerations have been met prior to the family dispute resolution conference taking place.

- Consider the barriers that may limit the client's understanding of complex legal language and meaning and adapt your practice accordingly. For example the client may require an interpreter, support worker or social worker.
- Be aware of Legal Aid Queensland's Language Services Policy:
 - trained interpreters should be organised if you think language is an issue or the client has requested an interpreter
 - always check that a client from a culturally and linguistically diverse background is comfortable to proceed without an interpreter, even if they have declined to use one on a previous occasion
 - organise a telephone interpreter for any interviews
 - Legal Aid Queensland will fund interpreters
 - use separate interpreters for both parties in a dispute
 - ask if the client would prefer a male or female interpreter
 - allocate extra time when an interpreter or support worker is involved in a matter.
- Interpreters must be independent to the parties – don't use friends or neighbours.
- Interpreters must not be part of the negotiations. Their role should be only to interpret for the client.

Best practice guidelines for family dispute resolution practitioners continued

Working with people who have experienced domestic violence

- Check with the conference organiser that the necessary arrangements have been made for the use of an appropriate interpreter so the family dispute resolution conference can proceed.
- The family dispute resolution conference should be terminated if the interpreter does not meet the client's language needs.

Principle 7. Respond collaboratively

Guideline 7.1 - When giving information to clients also provide information about services that could address their other needs and those of their children.

PRACTICE POINTS:

- Facilitate clients obtaining referrals to other organisations and sourcing information about their and their children's situation.
- If in doubt about services available in your region, ask the conference organiser for the referral folder at the Legal Aid office or contact a lawyer or social worker in the Violence Prevention and Women's Advocacy team.
- Ensure you know or can find out about appropriate non-legal support and referral services and ensure this information is provided to the client, such as domestic violence services, refuges, children's contact centres and other organisations listed in Legal Aid Queensland's online organisations directory www.legalaid.qld.gov.au/legalinformation/Pages/Organisations.aspx
- If in doubt, contact a lawyer or social worker in Legal Aid Queensland's Violence Prevention and Women's Advocacy team.

Notes

If you require further information about these guidelines please contact Legal Aid Queensland's Violence Prevention and Women's Advocacy team on 07 3238 3425.

Training

- Free training and development activities are available through the Federal Attorney General's department www.familyrelationships.gov.au/ProfessionalResources/FPN/Pages/default.aspx
- The Australian Mediation Association (AMA) offers low cost seminars with special guests presenting on current topics in mediation.
Ph: 1300 633 428
www.ama.asn.au
- The Queensland Centre for Domestic and Family Violence Research offers regular videolink seminars to keep practitioners current in their knowledge and understanding of family violence. A free and regular newsletter is also sent out to subscribers
www.noviolence.com.au/reader.html

LEGAL AID QUEENSLAND HAS AN EXTENSIVE RESOURCE LIBRARY AVAILABLE.

Useful contacts for referral

- DV Connect is a 24/7 service offering advice on family violence matters Ph: 1800 811 811
- Family Relationships Advice Line Ph: 1800 050 321
- Family Relationships Online www.familyrelationships.gov.au/Pages/default.aspx
- Department of Communities Regional Domestic Violence Services www.communities.qld.gov.au/communityservices/violence-prevention/contacts/regional-domestic-and-family-violence-services
- Queensland Health has some resources and information sheets online, including for Indigenous women, and information on services www.health.qld.gov.au/sexualassault
- Multicultural Development Association offers a range of settlement services to refugees www.mdainc.org.au/