

Best practice guidelines for lawyers

Working with people who have experienced domestic violence

Principle 1. Improve your understanding

Guideline 1 - Develop and maintain your own knowledge of the social context of domestic violence including power, control and gender.

PRACTICE POINTS:

- Continually update your knowledge about the current theoretical perspectives on domestic violence.
- Attend relevant professional development opportunities to keep your knowledge base current.
- Engage report writers and professionals who have knowledge about the current sociological, psychological and political perspectives explaining domestic violence.

Principle 2. Prioritise safety

Guideline 2.1 - When seeing a client ask about and document on the file any potential safety or security issues.

PRACTICE POINTS:

- Use a risk assessment tool to decide what safety precautions are necessary for you and the client.
- Review the risk assessment during the key stages of the legal process such as interim hearing, pre-hearing, family dispute resolution conference and before day one of trial.

Guideline 2.2 - Take appropriate precautions for the client's safety.

PRACTICE POINTS:

- Ensure the client will not see the other party at your office.
- Always ensure there are no identifying documents or files left in view or accessible to the other party at any time.
- Consider the logistics of getting the client to and from your office and court, and accompany them if necessary.
- Ensure the client uses a separate exit and arrives/leaves at staggered intervals during a family dispute resolution conference.

- Accompany the client to a family dispute resolution conference or meet them at an independent place so they are not waiting with the other party.
- Ask for a separate room during the family dispute resolution conference.
- Do not give out the client's address or that of their relatives or friends without the client's permission.
- Do not give out refuge contact telephone numbers or street addresses.
- If it is not safe to call the client at home, ensure this is recorded on the file and in LAQ Office.
- Let a court know well in advance about safety arrangements that may need to be made at the court for the client. Do this in writing if necessary.
- Familiarise yourself with the court safety procedures and protocols including the Queensland Courts domestic violence protocol.
- If the client makes threats to the safety of the other party or their solicitor, consider contacting the other solicitor to inform them of the threats and, when in doubt, contact the Queensland Law Society's LawCare service for expert advice.

Guideline 2.3 - Identify if the client has any protection orders and if there have been any breaches. Record these details on the file.

PRACTICE POINTS:

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

Guideline 2.4 - When preparing material for a court hearing ensure all domestic violence allegations are included, where appropriate.

PRACTICE POINTS:

- Attach the protection order or the application to the affidavit material.
- Consider if a Notice of Child Abuse, Family Violence or Risk of Family Violence [Form 4] is needed.

Guideline 2.5 - When preparing a client's case, ensure there is appropriate liaison with the client's support networks.

PRACTICE POINTS:

- If the client is seeing a counsellor or health professional, consider asking for a report from them if the client agrees and if it would help the client's case and does 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, if the client gives permission.

Guideline 2.6 - Include all details of domestic violence when applying for legal aid.

PRACTICE POINTS:

- Attach a copy of the protection order, application for a protection order or any breaches, and provide information about domestic violence.

Guideline 2.7 - Take appropriate precautions for your own safety.

PRACTICE POINTS:

- If you are seeing the client away from the office, use a risk assessment tool to conduct a safety assessment of the location prior to the interview taking place.
- Take safety precautions by arranging to call your office when you arrive and when you are leaving.
- If you are working at a Legal Aid Queensland office, know where the distress buttons are in the interview 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 2.8 - When representing the client at court, make reasonable attempts to locate evidence to support the client's allegations of domestic violence.

PRACTICE POINTS:

- Collect appropriate police reports, medical reports and statements from witnesses.
- Ensure you know the court's processes.
- When organising specialist reports check the background and experience of the witness you engage.

Principle 3. Facilitate empowerment

Guideline 3.1 - Keep the client fully informed throughout the legal process.

PRACTICE POINTS:

- When you are inviting a client to come to an interview, send them a letter (written in plain English) explaining the legal process and listing which documents they should bring with them.
- Provide appropriate written material to the client at the initial interview so they have information 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 an informed decision.
- Make the client aware about Victim Assist Queensland's services.

Guideline 3.2 - Do not put pressure on a client to agree to any conditions in a family dispute resolution conference if it would jeopardise their safety and continue the domestic violence.

PRACTICE POINTS:

- Do not pressure the client to make a decision in a family dispute resolution conference or when organising a family dispute resolution conference.
- Ensure clients understand they have the right not to agree to conditions if they are not comfortable with the outcomes.
- 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 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.

Guideline 3.3 - Consider whether applying for aid for a family dispute resolution conference is appropriate if there are domestic violence allegations.

PRACTICE POINTS:

- Legal Aid Queensland's guidelines exclude family dispute resolution conferences as an option where domestic violence is an issue and "where the power imbalance between the aggrieved and the perpetrator is so great that the aggrieved 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 legal aid.

Principle 4. Foster respect

Guideline 4 - Be non-judgemental in your response when interviewing the client and hearing their experience of domestic violence.

PRACTICE POINTS:

- Listen, respond respectfully and behave sensitively when clarifying or asking for further details of abuse, domestic violence or cultural practices.
- Support the client's concerns about their safety.
- Do not frame questions in a way that invites blame. For example, ask: "What was happening that contributed to you staying?" or "What were some of the difficulties for you in leaving?" as opposed to "Why didn't you just leave?"
- If the client is angry or depressed, validate their feelings by acknowledging their distress, eg: "I understand you are feeling angry/upset about ...". Your response should be genuine and you should clarify/restate the interview's purpose.

Principle 5. Acknowledge domestic violence is a crime

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

PRACTICE POINTS:

- Acknowledge that domestic violence is a crime, whether it happened in public or in private.
- Give the client accurate and realistic information about their options to address domestic violence, both criminally and civilly.
- Make the distinction between the civil and criminal ramifications of a domestic violence order and explain this fully to the client.
- Assist the client to make a complaint to the police and consider if a support person should accompany the client (if the client agrees).
- Inform the client how to apply for a domestic violence order under the *Domestic and Family Violence Protection Act 2012* or how to make a complaint to the police under the *Criminal Code 1899*.
- If in doubt, contact a lawyer or social worker from the Violence Prevention and Women's Advocacy team.

Principle 6. Respect diversity

Guideline 6.1 - Ensure you are familiar with cultural issues.

PRACTICE POINTS:

- Do not make assumptions about the client based on their background.
- Obtain current international information about the political situation, social situation and cultural norms in the clients' country of origin relevant to domestic violence.
- Consider contacting established migrant/refugee or Indigenous welfare services, women's disability support services or gay or lesbian organisations for relevant information and support. Be aware when contacting these agencies that some communities are small and your inquiry may affect the parties.

- If the client has a disability, check how that might impact on them giving instructions, understanding legal advice and coping with the court process.
- Recognise that people may respond to domestic violence in different ways.
- Be aware of the impact of culture, religion, education, socioeconomic background and refugee experiences. 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.
- 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.
- Allocate extra time when an interpreter or support worker is involved in a matter.

Guideline 6.2 - Ensure language requirements are met prior to interview.

PRACTICE POINTS:

- 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.

Principle 7. Respond collaboratively

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

PRACTICE POINTS:

- 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

Training

The Queensland Centre for Domestic and Family Violence Research offers regular videolink seminars to keep practitioners current in their knowledge and understanding of domestic violence. A free and regular newsletter is also sent out to subscribers. www.noviolence.com.au/reader.html

Useful contacts for referral

- DV Connect is a 24/7 service offering advice on domestic violence matters Ph: 1800 811 811 (women and children only)
- Department of Communities Regional Domestic Violence Services www.communities.qld.gov.au/communityservices/violence-prevention/contacts/regional-domestic-and-family-violence-services
- Mensline – Seven days, 9am to midnight. Confidential telephone counselling, referral and support service for men. Ph: 1800 600 636