

Best practice guidelines for lawyers working with respondents in domestic violence proceedings

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, including an understanding of the gendered nature of 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 any potential safety or security issues on the file.

Practice points

- Use Legal Aid Queensland's domestic violence risk assessment resources to decide what safety precautions are needed for you and any other person who may be at risk of further domestic violence. Document this on the file.
- Do not give legal advice that may compromise the safety of your client, the aggrieved or others.
- Review the risk assessment during key stages of the legal process eg the interim hearing, hearing review, family dispute resolution conference and before day one of the trial.

Guideline 2.2: Use domestic violence risk assessment resources

Practice points

- Attend risk assessment training so you can identify risks in domestic violence proceedings.
- Use Legal Aid Queensland's risk assessment resources and referral pathways where appropriate (link:<http://laqintranet/policies/legal-services-and-case-management/Pages/Domestic-violence-risk-assessment-resources.aspx>)

Guideline 2.3: Take appropriate precautions for the safety of people who may be at risk of further harm.

Practice points

- Ensure the client understands the protection order's conditions and provide advice that helps prevent future acts of domestic violence. Advise the client that any further acts of domestic violence would breach the protection order or increase the protection order's conditions.
- Ensure the client will not see the other party at your office.
- Do not leave documents or files where they can be read or accessed by your client, especially if the documents contain personal information like phone numbers and addresses, which could be used to locate the other party.
- Do not provide information to your client that could risk the other party's safety.
- Consider the logistics of your client arriving and leaving court events or conferences, and take steps to protect the safety of the other party and yourself.
- Consider allowing the other party to arrive earlier and leave first during a family dispute resolution conference.

- Go with your client to their family dispute resolution conference or meet them at an independent place so they are not waiting with the other party.
- Ask for a shuttle conference during family dispute resolution, so your client and the other party are not in the same room during the mediation process.
- Do not give out refuge telephone numbers or addresses.
- If the client makes threats to the safety of the other party or their lawyer, consider contacting the lawyer to tell them about the threats. If you have any doubts about when to contact the lawyer for the other party and what to disclose, contact the Queensland Law Society's Ethics Centre or Law Care service for expert advice. You should also ask your principal lawyer or supervisor for assistance.

Guideline 2.4: Identify if the client has any protection orders against them and if there have been any breaches. Record these details on the file.

Practice points:

- Allocate extra time to examine and discuss domestic violence allegations.
- Ask about behaviours rather than using terminology the client may not understand or relate to.
- Ask questions about police involvement, previous court matters or violent behaviours.
- Focus on specific behaviours the client says occurred and tell them why the behaviours are considered domestic violence.
- Provide specific examples of the client's behaviour from information they have provided.

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Guideline 2.5: Take appropriate precautions for your own safety.

Practice points:

- Familiarise yourself with the court safety procedures and protocols including the Queensland Courts Domestic Violence Protocol.
- Ensure you are confident using safety and security features when having contact with clients who may become emotional or angry (eg security buttons, locks on doors, positioning within room, notifying security staff).
- If you are seeing the client away from the office, use Legal Aid Queensland's risk assessment resources to assess the location's safety before the interview happens and consider taking a second person with you.
- Call your office when you arrive at an offsite interview with your client and when you are leaving, so your colleagues know where you are and when to expect you back at the office.
- 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 is threatened or occurs, complete a workplace health and safety incident report, notify the Human Resources team and document the incident in an incident report.
- 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 own safety as you leave the building, eg carry a personal duress alarm or leave the building with colleagues.

Guideline 2.6: Representing respondents to protection orders

Practice points:

- Be aware of the Queensland Courts Domestic Violence Protocol and safe room facilities.
- Follow individual court processes and ask court support workers for information about these processes.
- It is inappropriate to use domestic violence mentions as an opportunity to mediate parenting plans or arrangements.
 - Where there are outstanding parenting issues, refer the parties to Legal Aid Queensland's family dispute resolution service, a contact centre or a Family Relationships Centre for mediation.
- Respect the aggrieved party's right to safety at court by following court rules and the protocols for using safe rooms.
- Provide appropriate information about voluntary intervention order (VIO) programs to respondents at mentions, including referral information.

Guideline 2.7: In a family dispute resolution conference, do not put undue influence on the other party to agree to conditions if it would jeopardise their safety and facilitate domestic violence.

Practice points:

- Ensure you are aware of any current protection orders and how the protection order conditions will affect parenting arrangements.
- Ensure clients understand they have the right not to agree to parenting arrangements if they are not comfortable with the outcomes.

- Ensure the client has a full understanding of the parenting 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.
- Suggest parenting arrangements that reduce exposure to conflict and prioritise the safety of women and children.

Guideline 2.8: Consider whether applying for legal aid for a family dispute resolution conference is appropriate if there are domestic violence allegations.

Practice points:

- Legal Aid Queensland's guidelines for granting aid (see the Grants Handbook for more details) exclude family dispute resolution conferences as an option where domestic violence is an issue and "where the power imbalance between the aggrieved and the respondent 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 at a family dispute resolution conference. When you are providing legal advice, discuss the option of a shuttle lawyer-assisted conference.

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Principle 3. Facilitate accountability

Guideline 3.1: Understand the process for obtaining a voluntary intervention order, voluntary intervention order programs and referral processes.

Practice points:

- Review Part 3 Division 6 of the Domestic and Family Violence Protection Act 2012 (Qld) which covers the basis for making a voluntary intervention order and the way in which a court can make one.
- Understand your local court's voluntary intervention order process, and voluntary intervention order programs operating in your area and the referral processes in order to provide clients with current information.

Guideline 3.2: Provide accurate information about behaviours described as domestic violence under the Domestic and Family Violence Protection Act 2012 (Qld).

Practice points:

- Identify incidents of domestic violence in a protection order application or other relevant documents and provide information about alleged behaviours that are domestic violence.
- Encourage clients to develop an awareness of their behaviours that are considered to be domestic violence.
- Remind clients that regardless of context, domestic violence behaviours are never justified.
- Remind clients that violent and controlling behaviours are solely the responsibility of people using those behaviours.

Principle 4. Acknowledge violence is a crime

Guideline 4.1: Give clients appropriate information about legal options to address domestic violence.

Practice points:

- Acknowledge violence is a crime, whether it happened in public or in private.
- Provide clients who disclose the use of violent and controlling behaviours with referrals to relevant behavioural change programs.
 - Referrals to 'couples counselling' or anger management programs are not appropriate for people who use domestic violence.
- Give the client accurate and realistic legal advice about the potential criminal and civil consequences of domestic violence.
- Provide legal advice about the distinction between the civil and criminal ramifications of a protection order.
- Provide thorough legal advice about court processes, the client's options for consenting 'without admissions' or responding to protection order applications and the possible outcomes of their options.
- Explain to your client that an adverse finding made by the court at a domestic violence hearing can have consequences on other legal matters they may have.
- Provide legal advice about what constitutes a breach of a protection order and how they are prosecuted.

Principle 5. Respect diversity

Guideline 5.1: Ensure you are familiar with cultural issues.

Practice points:

- Do not make assumptions about the client based on their background.
- Domestic and family violence cannot be excused because of cultural, religious, social or other factors and remains unlawful whether considered "culturally appropriate" to the person using violence.
- Domestic violence exploits inequalities between the parties involved and cannot be excused as tradition or part of a culture.
- Consider current international information about the political situation, social situation and cultural norms in the client's country of origin relevant to domestic violence.
- Consider referring the client to established migrant/refugee or Indigenous welfare services, disability support services, or gay or lesbian organisations for relevant information and support.
- If the client has a disability, check how that might impact on them giving instructions, understanding legal advice and legal information, and coping with the court process.

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Guideline 5.2: Ensure language requirements are met before the 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 need an interpreter, support worker or social worker.
- Be aware of Legal Aid Queensland's Language Services Policy. Key policy points include:
 - Trained interpreters should be organised if you think language is an issue or the client has requested an interpreter.
 - Always check 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.
 - 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.

Principle 6. Respond collaboratively

Guideline 6.1: When giving legal information to the client also provide information about services that could address their other needs.

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 for advice.