



WORKING WITH CLIENTS AFFECTED BY DOMESTIC AND FAMILY VIOLENCE

A guide for family law practitioners

December 2021

CONTENTS

PART I – INTRODUCTION	3	4. Preparing a case	18
Background	4	4.1 Communicate appropriately with other parties	18
Objective	4	4.2 Compile relevant evidence	18
How to use the guide	5	5. Attending court or dispute resolution	20
Terminology	5	5.1 Be aware of procedural and ethical requirements	20
PART II – OVERARCHING PRINCIPLES	7	5.2 Prepare ahead for court or a dispute resolution event	20
PART III – APPLYING THE PRINCIPLES	9	5.3 Be mindful of safety at the event	21
1. Before taking instructions	10	PART IV – RISK ASSESSMENT AND SCREENING TOOLS	22
1.1 Maintain an understanding of domestic and family violence	10	1. Sample screening questions	23
1.2 Understand the barriers to disclosing	10	Direct questions	23
1.3 Be familiar with relevant services and programs	12	Open questions	23
1.4 Take appropriate precautions for your safety	12	2. Assessing risk	24
2. Taking instructions	13	Risk Factors	24
2.1 Identify barriers to disclosure	13	Risk Assessment Tools	24
2.2 Engage interpreters or other support services where required	13	APPENDIX 1 – RESOURCES AND SUPPORT SERVICES	25
2.3 Use direct and open screening questions	14	1. Information resources	26
2.4 Assess the client’s level of risk	14	Training	26
2.5 Ensure the safety of the client and any children	15	Resources	26
2.6 Ensure your own safety	15	2. Support services	27
3. Providing advice and referrals	16	Emergency assistance	27
3.1 Provide appropriate initial advice	16	Legal information and assistance	27
3.2 Provide referrals to relevant legal and non-legal services	17	Non-legal support	28
		APPENDIX 2 – DEFINITIONS	29

Disclaimer: This publication provides general information of an introductory nature for practitioners working with clients and children who are affected by domestic and family violence. It is a general guide only and is not exhaustive of issues which may be encountered. This publication is not intended and should not be relied upon as a substitute for legal or other professional advice. While every care has been taken in the production of this publication, no legal responsibility or liability is accepted, warranted or implied by The Law Society of New South Wales, the authors or any person associated with the production of this publication, and any liability is hereby expressly disclaimed.

Copyright © 2021 The Law Society of New South Wales, ACN 000 000 699, ABN 98 696 304 966. This publication is generally based on a separate publication produced by the Queensland Law Society entitled “Domestic and Family Violence Best Practice Guidelines”, dated July 2016. The Law Society of New South Wales has adapted the Queensland Law Society’s publication to provide for relevant legal requirements within the state of New South Wales, as at December 2020. This publication is not intended to be a best practice guide.

The Law Society of New South Wales would also like to acknowledge the contributions of the Legal Aid NSW Domestic Violence Unit to this publication.

Except as permitted under the *Copyright Act 1968* (Cth), no part of this publication may be reproduced without the specific written permission of The Law Society of New South Wales.

Last updated December 2021



PART I INTRODUCTION

PART I – INTRODUCTION

Domestic violence can affect anyone, regardless of age, gender or wealth, where they live or their cultural background.

Background

This document has been developed to assist practitioners, primarily those practising in family law, to work with clients and children who are affected by domestic and family violence. It draws on similar guidelines entitled “Domestic and Family Violence Best Practice Guidelines” developed by the Queensland Law Society in direct response to Recommendation 107 of the Queensland Taskforce Report ‘Not Now Not Ever – Putting an End to Domestic and Family Violence’.¹ The Law Society of NSW wishes to contribute to the community wide responsibility for putting an end to domestic and family violence and has adapted the Queensland Law Society guidelines to inform practitioners in NSW, whether acting for victims, or for defendants or perpetrators.

Extensive research undertaken and published by Australian government funded bodies such as Our Watch, Australia’s National Research Organisation for Women’s Safety (ANROWS), the Australian Institute of Family Studies, the Australian Law Reform Commission, the NSW Law Reform Commission, the Victorian Royal Commission and the Queensland Taskforce has been drawn on to develop and inform this guide. Practitioners can consult these resources in more depth to enhance their practice of the law in the context of domestic and family violence.²

The Law Society of NSW acknowledges that domestic and family violence is pervasive, complex and can happen in many contexts. Domestic violence is extremely common in the New South Wales community. More than 31,000 domestic violence related assaults were reported in New South Wales in the 12 months up to December 2019.³

Anyone can become a victim of domestic and family violence. While men can be victims of domestic and family violence, the majority of people who experience domestic and family violence are women, and to this extent it has a gendered nature.⁴ Australian Bureau of Statistics data indicates that both men and women in Australia experience substantial levels of violence. Australian women are more likely to experience physical and sexual violence in their home, at the hands of a male partner or former partner, while men are more likely to experience violence at the hands of a male stranger. In 2016 one in two women and one in four men had experienced sexual harassment.⁵

Between 2002-2012, 488 women were killed by an intimate partner, and 99 women were killed by an intimate partner in the two years from 1 July 2012 to 30 June 2014, which equates to nearly one woman every week.⁶

Some sections of the community are at greater risk of experiencing domestic and family violence. For example, Aboriginal and Torres Strait Islander women, women with a disability and women from culturally and linguistically diverse backgrounds are more likely to experience heightened risk or vulnerability.⁷

Domestic and family violence is not restricted to physical violence alone but also extends to a variety of ways in which one partner might attempt to control and dominate the other. These can include injury, threats against the person, the children, or pets, forcing the person to engage in sexual activity, deprivation of liberty, damaging property, attempting to exert emotional control through threats or attempts of self-harm, unauthorised surveillance of a person including electronic surveillance, withholding access to income or assets, restricting access to religious or cultural activities, verbal abuse, isolating the person from family and friends and other means of creating an atmosphere of fear and intimidation.⁸

A child will be considered to have been exposed to domestic and family violence where the child has observed violence perpetrated against a family member or member of the child’s household. Sixty-five per cent of women who had children in their care when they experienced violence by a current or former partner reported that the children had seen or heard the violence.⁹ A wide range of negative developmental effects have been observed in children who have been exposed to domestic and family violence.¹⁰

Objective

The guide is intended primarily for lawyers – particularly early career lawyers – in the family law jurisdiction. It can be used in relation to clients who are victims of violence, clients who have committed or allegedly committed acts of violence, or clients who are in both categories. Guidance may also be relevant to practitioners in the domestic violence jurisdiction.

Legal practitioners may encounter domestic and family violence in a diverse range of matters, particularly in family law and apprehended domestic violence order matters, but also in areas such as criminal law, child protection, immigration, housing and tenancy, consumer credit disputes, partnership disputes, wills, and estate planning and other aspects of elder law.

The guide does not set out best practice or provide an exhaustive list of solutions to every issue that may arise. It aims to identify key issues, and to help practitioners to comply with key professional obligations, in the context of domestic and family violence issues. Practitioners should exercise their experience and judgment in applying the guide to their particular matter at hand and to their particular client's circumstances.

Professional obligations as set out in the Legal Profession Uniform Law [Australian Solicitors' Conduct Rules 2015 \(Conduct Rules\)](#) apply to solicitors in all areas of practice and provide the framework within which practitioners deal with matters involving domestic and family violence. In complex circumstances where it seems conflicting obligations under the Conduct Rules apply, options for practitioners include referring to the guidance materials on the Law Society of NSW website (Ethics Committee section), calling the Law Society Ethics Helpline on 9926 0114 or seeking the guidance of the Ethics Committee.¹¹

How to use the guide

Part II of this guide provides a set of overarching principles to consider when working with clients affected by domestic and family violence.

Part III provides guidance on how to apply the overarching principles at each of the major stages of a family law matter:

- 1 Before taking instructions
- 2 Taking instructions
- 3 Providing advice and referrals
- 4 Preparing a case
- 5 Attending court or dispute resolution.

Where relevant, guidance is also provided on the relevance of domestic violence law and proceedings to family law proceedings.

Guidance relating to one stage of the matter will often be relevant at other stages. For example, the knowledge and expertise developed by the practitioner at stage 1 (Before taking instructions) should also be applied at stages 2-5. At stage 5 (Attending court or dispute resolution), if the practitioner takes further instructions from the client and gives further advice, the guidance relating to stages 2 (Taking Instructions) and 3 (Providing advice and referrals) will be relevant.

Part IV provides sample screening questions and risk assessment tools which practitioners can use and adapt to their circumstances when taking client instructions.

Appendix 1 lists information resources for practitioners and support services to which clients can be referred.

Appendix 2 sets out key legislative definitions.

Terminology

In this guide, the term *victim* refers to a person who is the victim or complainant or alleged victim of domestic and family violence. Some people who experience violence prefer the term "victim" and others prefer the term "survivor". In this document, the term "victim" is intended to be inclusive of both victims and survivors. It is acknowledged that every person's experience is unique and individual to their circumstances.

Both the terms *perpetrator* and *defendant* are used in this guide.

The term *perpetrator* is used when referring to a person who has had findings made against them that they use or have committed acts of domestic and/or family violence.

The term *defendant* is used when referring to a person who has allegations made against them that they use or have committed acts of domestic and/or committed acts of domestic and/or family violence. There may also be domestic and family violence related charge matters or ADVO applications against the defendant.

This guide recognises the importance of the presumption of innocence and the role of the judicial process in the administration of justice.

Victims who are also perpetrators or defendants

Context is important to the use of terminology. The history of the relationship, the context of power and control and where the responsibility for fear and intimidation lies are crucial to determining who is a victim of domestic or family violence. A defendant may primarily be a victim of domestic and family violence rather than an abuser, or may have been acting in self-defence against abuse. A person who is a victim may also be abusing a third person.

Domestic violence and family violence

Domestic violence occurs when one person tries to dominate and control another person in a family-like or domestic relationship.

Domestic violence involves an abuse of power and can take the form of:

- physical violence;
- sexual abuse;
- emotional or psychological abuse;
- coercive and controlling violence;
- verbal abuse;
- stalking and intimidation;
- technology-facilitated abuse, including intimate image abuse;
- social and geographic isolation;
- financial abuse;
- cruelty to pets;
- damage to property; or
- threats to be violent in these ways.

Domestic violence usually features a repeated pattern of behaviour with the dominant purpose of controlling the other person. The major impact is fear.

There is no one legal definition of domestic violence in Australia. Each state and territory has its own definition relating to applications for apprehended domestic violence orders (or their equivalents) and the *Family Law Act 1975 (Cth)* (FLA) has its own definition. For the purpose of this guide, the definition of “domestic violence offence” in the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* (CDPVA) and the definition of family violence in the FLA are used.¹²

What is the difference between “domestic violence” and “family violence”?

The terms “domestic violence” and “family violence” are often used interchangeably. They both generally refer to violence between two or more people who are in a domestic relationship.

The CDPVA defines “domestic relationship” broadly. The FLA refers to “family violence”. This definition of family violence changed in 2012 and includes a wide range of types of abuse.

The term “family violence” is preferred by some Aboriginal and Torres Strait Islander people, as it reflects an understanding of family-related violence beyond that between intimate partners. “Family” in this context incorporates a concept of “kinship” central to Aboriginal community and society. The concept is recognised in NSW in the *Children and Young Persons (Care and Protection) Act 1998*¹³ which defines “kin of a child or young person” as “a person who shares a cultural, tribal or community connection with the child or young person that is recognised by that child or young person’s family or community”.¹⁴

Some Aboriginal and Torres Strait Islander women prefer the term domestic violence as it differentiates violence in intimate relationships from that in the wider community. For more about this distinction, see the ANROWS paper on “Existing knowledge, practice and responses to violence against women in Australian Indigenous communities”.¹⁵



PART II OVERARCHING PRINCIPLES

OVERARCHING PRINCIPLES

The following overarching principles apply to working with a client who is involved in domestic or family violence:

- 1. Communicate effectively and appropriately**
- 2. Prioritise safety**
- 3. Be thorough in your preparation**
- 4. Facilitate the administration of justice**
- 5. Work with other services.**



PART III

APPLYING THE PRINCIPLES

1. BEFORE TAKING INSTRUCTIONS

It is important for family law practitioners to develop and maintain their understanding of domestic and family violence, the possible barriers to a client disclosing domestic and family violence, and the options for referring the client to relevant legal or non-legal support services. This knowledge will need to be applied throughout the course of the matter.

1.1 Maintain an understanding of domestic and family violence

KEY POINTS

- Maintain your understanding of current sociological research on domestic and family violence.
 - Be in a position to conduct a risk assessment of your client.
- In addition to staying up to date on the law and legal processes relating to family and domestic violence, maintain your knowledge of sociological research in this area. Understand, for example, the impact of power and control aside from physical violence and the impact of domestic and family violence on children.
 - Make use of relevant professional information resources.¹⁶ Attend relevant continuing professional development opportunities to keep your knowledge current.
 - Understand the risk factors in order to be in a position to assess the risk of domestic and family violence to your client, and be familiar with information tools such as risk assessment tools and screening questions.¹⁷ Consider attending risk assessment training so that you can identify and assess risks of domestic and family violence in your practice.

1.2 Understand the barriers to disclosing

KEY POINTS

- Understand the importance of your client disclosing domestic and family violence in which they or their family members are involved.
 - Understand that some clients may experience particular barriers to disclosing domestic and family violence, for example this may be the case for children, the elderly, people experiencing disability, Aboriginal and Torres Strait Islander people and people who identify as LGBTIQ or culturally and linguistically diverse.
- Recognise that people may respond to domestic and family violence in different ways, and that for each client there may be barriers to disclosing, or fully disclosing, domestic or family violence.
- ### Older clients and clients experiencing disability
- Possible barriers for older clients and for those experiencing disability to reporting domestic and family violence include:
 - reliance on the defendant or perpetrator for care;
 - fear of being moved from their home or aged care facility;
 - fear of retribution; and
 - shame or embarrassment about being abused at the hands of a carer.
 - When acting for an older client, be aware that domestic and family violence may be perpetrated by adult males or females against their elderly parents and may take the form of psychological or financial abuse.

LGBTIQ clients

- Be aware of barriers that may be faced by lesbian, gay, bisexual, transgender or intersex (**LGBTIQ**) people recognising and reporting domestic violence.¹⁸

Aboriginal and Torres Strait Islander clients

- Aboriginal and Torres Strait Islander women are more likely to experience violence, and to suffer more serious violence, than non-Indigenous women. ANROWS has identified that Aboriginal and Torres Strait Islander women are:
 - in NSW, between 2.2 and 6.6 times more likely to experience violence than non-Indigenous people;¹⁹
 - 11 times more likely to die from assault than non-Indigenous people;²⁰ and
 - 35 times more likely to be hospitalised than non-Indigenous people.²¹
- There are cultural, historical and socio-economic considerations when advising Aboriginal and Torres Strait Islander clients affected by domestic violence or family violence. The trauma inflicted on the Stolen Generations, high rates of incarceration and entrenched poverty are some examples of the issues to consider and acknowledge.
- As discussed above,²² Aboriginal and Torres Strait Islander notions of “family” incorporate the concept of kinship which is important when considering family violence in Aboriginal or Torres Strait Islander communities.
- Like other clients, Aboriginal and Torres Strait Islander victims may be reluctant to disclose violence unless a relationship of trust has been established. Consider the need for consultation with, and referral to, culturally safe services and community supports.
- Where appropriate, discuss with the client whether they would like an Aboriginal or Torres Strait Islander support person to accompany them to their appointment with you.
- For guidance on meeting professional obligations when working with Aboriginal and Torres Strait Islander clients, see the Law Society of NSW publication [Working with Indigenous clients](#).

Culturally and linguistically diverse clients

KEY POINTS

- Understand and explore cultural and religious issues that may impact on your client’s experience of domestic violence.
 - Ensure that interpreters are available for non-English speaking clients.
 - Offer referrals to support services.
-
- Develop or expand your knowledge of the different religions and cultures in your community to avoid misconceptions and stereotyping.
 - Domestic and family violence cannot be excused on the grounds of cultural, religious or social factors, and remains unlawful. All people have a human right to live free from violence.²³
 - Information about cultural norms within the client’s own community (whether they are the victim or the defendant or perpetrator) may assist in understanding their risk of domestic and family violence. Information about the political situation, social situation and cultural norms in the client’s country of origin may also be relevant.
 - Be aware of the possible relevance of culture, religion, education, socio-economic background and refugee experiences. For example, people of some backgrounds may:
 - smile when recounting their experience of domestic and family violence, which may be appropriate behaviour in their cultural context and used to “save face” and maintain self-esteem and dignity;
 - not report the domestic and family violence because of distrust of people in authority; or
 - be unwilling to discuss events of domestic and family violence in front of community elders.
 - Women from some cultures may be unwilling to provide full instructions to male lawyers about sexual violence and other sensitive matters.
 - Consider, with the client’s consent, referring the client to specialised support services such as a migrant or refugee service.

Children

- Be aware that neglect, direct physical, sexual and emotional abuse of children may co-exist in households where domestic and family violence occurs.
- The risk of harm to children can be just as great whether or not the child is living with a defendant or perpetrator of family violence; their safety is directly linked to the safety of the non-offending parent.²⁴ The fact that the child is no longer living with a defendant or perpetrator does not mean they now feel sufficiently safe to discuss their views or preferences freely with others.
- There is a tendency for some child victims who have experienced living in situations of domestic and family violence to minimise the impact that the violence has had and the continued risks they may still face. In situations of stress or fear, a child's lack of protest or comment does not necessarily indicate consent and could reflect high levels of fear about stating their preferences.
- Children can be groomed by defendants or perpetrators and may be intimidated by a defendant or perpetrator even when they appear not to be so.
- Research conducted by the NSW Bureau of Crime Statistics and Research and Youth Justice NSW²⁵ indicates that adolescents can be family violence perpetrators or defendants. There are substantially more adolescent females charged compared with adult females. Adolescent perpetrators or defendants are likely to be experiencing mental health issues and trauma and often they are victims of family violence themselves. These circumstances may lead to a reluctance to disclose family violence.
- The young person's victim is much more likely to be a parent, carer, or other family member than an intimate partner, which can make it harder for the parent to disclose the violence they are experiencing from their child, particularly when it is sexual violence.
- Be aware of the information sharing and mandatory reporting obligations that apply to children where there are child protection concerns or concerns of a serious threat to a domestic violence victim.²⁶

1.3 Be familiar with relevant services and programs

KEY POINTS

- Maintain current awareness of legal assistance services, non-legal support services and programs that assist with behaviour change.
- Be familiar with relevant legal assistance services that can provide free legal advice or assistance to clients in matters involving domestic and family violence.²⁷
- Be aware of interpreter services that could assist in situations where there are language barriers.
- Familiarise yourself with the range of non-legal support services available online, by phone or in your local area which could assist the client with crisis care, accommodation, financial assistance or other practical needs, and be in a position to refer your client to these services.²⁸
- Be aware of behaviour change programs available to defendants and perpetrators and be in a position to discuss and make a referral where appropriate.²⁹

1.4 Take appropriate precautions for your safety

KEY POINTS

- Review your social media presence.
- Ensure safety measures are in place for yourself and in your office environment.
- Protect your personal information by being conscious of social media posts, mobile phone usage, your listing on the electoral roll and transport arrangements.
- Be familiar with the safety protocols of your employer and any workplace emergency and safety procedures, including if you are working in a government setting. If appropriate, consider taking steps such as gaining access to a personal alarm.
- Be aware of the impact of vicarious trauma, and be familiar with the support available to legal practitioners.³⁰

2. TAKING INSTRUCTIONS

2.1 Identify barriers to disclosure

KEY POINTS

- Identify if the client is fearful or reluctant to disclose domestic and family violence, or if they are unaware of having experienced it.
- Be aware that domestic and family violence may not necessarily be disclosed at the first interview.

- When taking instructions in a family law matter, disclosure of any domestic or family violence will be important to the conduct of the matter and the safety of those concerned. However, practitioners must also consider their duty to act on the client's lawful, proper and competent instructions ([Conduct Rule 8](#)). It will be necessary to develop skills in encouraging the client to disclose while respecting their right not to do so.
- Be aware that there may be particular barriers to the client disclosing.³¹ This may result in the client presenting as fearful and at times incoherent and they may provide an incomplete account of abuse.
- Understand that trauma affects people in different ways. Its impact may be that the client appears shut down and depressed and it may be difficult to obtain detailed instructions. Or the client may be very animated and elevated and shout or struggle to give a coherent narrative.
- Domestic and family violence may not be disclosed until a relationship of trust has been developed. Sexual violence may be particularly difficult for a victim to disclose, and some forms of domestic and family violence may not become clear until the client has an opportunity to reveal the pattern of abuse. It may reassure the client if they are aware of the professional duty of confidentiality ([Conduct Rule 9](#)). Consider also whether the client would prefer to be interviewed by a female or male solicitor.
- Allow sufficient time to take a full history from the client and where possible, have more than one meeting and ask the more personal questions in a subsequent interview. If the appropriate amount of time is not available, consider a referral to a support service to assist the client in relaying details of the abuse.³²

- The client may not identify that they have experienced domestic violence. They may be unaware that certain behaviours constitute domestic violence or they may minimise their experiences. Communicate clearly to the client about what constitutes domestic violence and discuss its many forms.

2.2 Engage interpreters or other support services where required

KEY POINTS

- Ensure the client has legal capacity to give instructions.
 - Ensure interpreters are used where required.
 - If the client has a disability, ensure they have capacity to give instructions.
 - Make referrals to appropriate services.
- In accordance with the obligation to follow instructions that are lawful, proper and competent ([Conduct Rule 8](#)), ensure you are satisfied the client has legal and mental capacity to provide instructions.³³
 - If the client has an intellectual or cognitive disability, consider how it might impact their capacity to give instructions, understand legal advice and participate in the court process. Where necessary, ensure the client has appropriate services available to assist and support them.
 - In all cases, consider barriers that may limit the client's understanding of complex legal language and meaning and adapt your communication with the client accordingly. For example, the client may require an interpreter, support worker or social worker.

- In relation to using an interpreter:
 - Always check whether the client would like to use an interpreter, even if they have declined to use one on a previous occasion. Ask if the client would prefer a male or female interpreter.
 - National Accreditation Authority for Translators and Interpreters (“NAATI”) Level 3 accredited interpreters should be used.³⁴
 - Legal Aid NSW and Community Legal Centres can arrange for free interpreting services to clients. Community Legal Centres provide free interpreting services to clients.
 - Interpreters should be independent to the parties – where possible do not engage friends or neighbours, including for Aboriginal and Torres Strait Islander clients who may prefer a family member.
 - Allow extra time for taking instructions. Speak in short bites (a few sentences at most) and the pause to allow the interpreter to interpret.
 - When using a face to face interpreter, sit opposite the client and speak to the client not the interpreter.
 - When using a telephone interpreter, talk to the client and when you have finished say “interpreter,” so the interpreter knows you want them to interpret.

2.3 Use direct and open screening questions

KEY POINTS

- Ask both direct and open questions and listen to the answers.
- Respond in ways that do not suggest the client is to blame.
- Recognise how the experience of domestic violence and trauma can impact a client’s instructions and decision-making and allow for that in your process of taking instructions.

When taking instructions, consider asking specific screening questions to identify and encourage disclosure of domestic and family violence. These may include both direct questions (that require a yes/no answer) and open questions (that require a descriptive answer).³⁵

- Direct questions can encourage the client to disclose incidents which might not otherwise be disclosed.
- Open ended questions can elicit detail about the history of domestic or family violence. Examples include: “Tell me about your relationship”, “What was your relationship like?”, “What happened if you

did not agree about something?”, “How did you feel when (partner’s name) did that?”.

- Ask about behaviours rather than using terminology the client may not understand or relate to. In accordance with your obligation to provide clear and timely advice ([Conduct Rule 7](#)), use plain language and check the client understands the information you provide to them.
- Listen patiently and respond respectfully and sensitively at all times, including when clarifying or asking for further details of abuse, domestic and family violence or cultural practices. Try different questioning styles and show compassion. Acknowledge that it can take great courage to disclose domestic and family violence.
- Ask questions neutrally, in a way that does not imply or presuppose the answer or put words into the client’s mouth.
- Do not ask the client questions in a way that implies judgment or suggests the client is to blame. For example, ask: “Has your partner ever stopped or tried to stop you trying to leave?” as opposed to “Why didn’t you just leave?”.

2.4 Assess the client’s level of risk

KEY POINTS

- Identify the level of risk of harm to your client.
- Ensure you do not inadvertently act in furtherance of domestic or family violence.
- Assess the level of risk of harm to the client by considering risk indicators and making use of a formal risk assessment tool.³⁶ Document any safety risks on the file.
- Identify if the client has a current apprehended domestic violence order for their protection (checking as well whether the order extends to naming children as protected persons), and if so what orders are in place for their protection and if there have been any breaches and document this on the file. Ask whether there have been any apprehended domestic violence orders in the past for their protection and whether there were breaches.
- Consider reviewing the risk assessment when you become aware of new information that may indicate a change in the level of risk.
- Be aware of the possibility of a defendant or perpetrator attempting to use the legal process to manipulate the victim, exert control and continue the domestic and/or family violence. Reduce the risk of inadvertently furthering this behaviour by testing your instructions as appropriate.

2.5 Ensure the safety of the client and any children

KEY POINTS

- Identify secure and confidential methods of communication with the client.
 - Consider risks to the safety of children.
 - Ensure your file prioritises the client's safety.
- Having regard to the level of risk of harm to your client, be conscious of your obligations of confidentiality and disclosure in circumstances where the client, the other party, a child or others may be at risk. Practitioners must maintain the confidentiality of their clients' information; however an exception allows disclosure "for the purpose of preventing imminent serious physical harm" ([Conduct Rule 9.2.5](#)).
 - Seek instructions on, and record:
 - safe contact details for the client;
 - safe ways and times to contact the client (being aware, for example, of any shared phone accounts or shared electronic calendars);
 - the security of letters sent to your client's home address;
 - the security of emails and the ability of the other party to access them from another computer, for example if they are aware of the password;
 - which telephone numbers are safe to use and safe times to call the client; and
 - the best time to serve documents on the other party.
 - In circumstances where it is not safe to call the client at home, make alternative arrangements for contacting the client (if possible) and record these on the file. Remove any number that is not safe to call, insecure email address, or other address from the file and any computerised document management system to avoid any inadvertent disclosure by staff members.
- Consider the legal implications of your client moving out immediately or remaining in the property, with safety as the overall consideration.
 - In cases where there are allegations of domestic and family violence, make inquiries about the presence and safety of children.
 - Be aware that the client may, for a range of reasons, minimise or be unaware of the level of risk to their children and may make statements such as, "I don't think he would ever hurt the children." Be prepared to discuss the effect of violence on children (even if they have not witnessed it directly) in the context of the FLA definition of "family violence".
 - Do not record confidential information about your client on the front cover of the file.
 - Ensure that relevant staff in your office are aware of the safety concerns of the client.

2.6 Ensure your own safety

KEY POINTS

- Let your office/colleagues know if you are meeting a client off site.
 - Consider using a personal alarm.
 - Take appropriate steps if a client threatens you or a physical incident occurs.
- If you are seeing the client away from the office, consider conducting a safety assessment of the location prior to the interview taking place.
 - At an offsite interview, take safety precautions, such as arranging to call your office when you arrive and when you are leaving, so your colleagues know where you are and when to expect you back at the office.
 - If a client threatens you or a physical incident occurs, notify your supervisor and consider if the appropriate authorities need to be notified. Consider whether you need to terminate your retainer ([Conduct Rules 12 and 13](#)).

3. PROVIDING ADVICE AND REFERRALS

3.1 Provide appropriate initial advice

KEY POINTS

- Assist the client to minimise risk to their own safety and that of others.
- Ensure the client is aware of your professional responsibilities to the court and to the client.
- Advise the client of their rights and what to expect in the court process.
- Advise on any other relevant causes of action.
- If acting for a defendant or perpetrator, assist them to consider the impact of their behaviour on the other family members and themselves, if appropriate.

Advice on safety

- When giving the client initial advice about their options at law to address domestic and family violence or about parenting orders, consider the safety of the client and of others including children who might be at risk.
- When working with a child who may be a victim of domestic and family violence, ensure a support person is offered to them.
- Inform the client about how to make a report to the police, about police applications for an apprehended violence order and about how to make a private application for an apprehended violence order under the CDPVA. Inform the client about Domestic Violence Liaison Officers available through NSW Police.
- Advise the client about ways of minimising safety risks, for example by:
 - saving important phone numbers into their mobile phone under a safe name or pseudonym;
 - changing any important account passwords, such as for email, banking services and cloud-based services;
 - changing the setup for shared online accounts or shared calendars;
 - backing up any important or personal data that has shared access;
 - turning off their GPS location settings on their mobile phone; and
 - possibly obtaining a second phone, “safe phone” or private listing which can be used as a contact point.

- Be aware of any obligations you have not to disclose information to your client which may place the other party at risk (for example, where you are prohibited by court order).

Legal advice — victims

- A practitioner’s concerns for the safety of the client do not override the duty to follow the client’s lawful, proper and competent instructions ([Conduct Rule 8](#)). Ensure the client has sufficient information and advice to enable them to provide informed decisions about the conduct of the matter. Consider providing appropriate written material at the initial interview so they have information to take away and read, after assessing it is safe to do so.
- Where necessary, however, ensure the client understands that a practitioner’s duty under [Conduct Rule 8](#) is subject to a paramount duty to the court and the administration of justice ([Conduct Rule 3](#)), and that a practitioner must at all times deal frankly and honestly with the court ([Conduct Rule 19](#)). Advise the client to comply with all court orders at all times, and not abuse court processes by unnecessary delays ([Conduct Rules 17, 20 and 21](#)).
- Inform the client about requirements for disclosing domestic and family violence as part of the family law proceedings. For example, advise disclosing allegations in the mandatory [Notice of child abuse, family violence or risk \(Federal Circuit and Family Court of Australia\)](#) and in affidavits.
- If necessary, advise the client of the consequences of providing false evidence ([Conduct Rule 20](#)). Where relevant, advise that a court does not require corroborative evidence to make a finding about domestic and family violence (*Amador v Amador* [2009] FamCAFC 196).
- Be aware of provisions under Part 13A of the [Crimes \(Domestic and Personal Violence\) Act 2007 \(NSW\)](#) and the Domestic Information Sharing Protocol which create exceptions to privacy laws in NSW to allow certain government agencies and non-government service providers (such as certain medical services) to share information about victims and perpetrators or defendants where there are child protection concerns and/or if a victim is under serious threat. Part 13A does not permit information relating to a perpetrator to be shared with the victim. It operates in conjunction with mandatory reporting obligations under the [Children and Young Persons \(Care and Protection\) Act 1998 \(NSW\)](#).
- Consider whether any other causes of action are established, such as a personal injuries claim or victims compensation claim.

Legal advice — defendants and perpetrators

- Consider the potential impact on the client’s family law matter (or other matter in which you are instructed) if the client has allegations of domestic and family violence made against them. As relevant, consider explaining apprehended violence order conditions, orders being made on a “without admission” basis, and also the possible effect of an apprehended violence order on the application of the presumption of equal shared parental responsibility pursuant to [s 61DA of the FLA](#) and the ability to hold a licence under the [Security Industry Act 1997 \(NSW\)](#) and under the [Firearms Act 1996 \(NSW\)](#).
- Advise the client about the implications on the client’s family law matter of any future conduct which may result in an apprehended domestic violence order.
- As stated above, when taking instructions the practitioner’s starting point is their obligation under [Conduct Rule 8](#) to follow a client’s lawful, proper and competent instructions. However, where the client instructs you to make submissions or lead evidence which is inconsistent with their instructions, ensure the client understands the practitioner’s paramount duty to the court which includes a duty not to “deceive or knowingly or recklessly mislead the court” ([Conduct Rule 19](#)) and a duty not to condone false or misleading evidence ([Conduct Rule 24](#)).
- As relevant, advise on the effect of [Conduct Rule 21.1](#) requiring a practitioner to ensure that advice to invoke the coercive powers of the court is reasonably justified by the material then available to the practitioner; is appropriate for the robust advancement of the client’s case on its merits; and is not made principally in order to harass or embarrass a person.
- Where the nature of the domestic or family violence is such that the alleged conduct may amount to criminal conduct, advise the client to see a criminal lawyer, particularly where anything amounting to an admission is to be made. Alternatively, if your legal practice extends to criminal law, consider seeking the client’s instructions to advise in relation to the conduct. If you are advising on both family and criminal matters, consider what is lawful in relation to the other matter. In particular, the client should receive advice about their right to silence when the conduct alleged may amount to criminal conduct and should weigh that up against any obligation to disclose in the family law matter.

3.2 Provide referrals to relevant legal and non-legal services

KEY POINTS

- Consider referring the client to appropriate support services, whether as a victim, defendant or perpetrator of domestic violence so that appropriate care can be provided and contemporaneous records of any incidents made.
- As appropriate, provide your client with information and referrals to legal and non-legal social support services in their local area.³⁷ These may include:
 - support services that can address concerns about their, or their children’s, safety, or concerns about the defendant or perpetrator;
 - medical and other support services following domestic violence incidents, to ensure that appropriate care is provided and contemporaneous records made of any injuries or harm; and
- When working with a defendant or perpetrator, consider a referral to a counselling or Men’s Behaviour Change Program. This may be appropriate where cogent evidence from doctors or allied health professionals suggests the client has mental health or substance dependency issues. Where possible, provide referrals to related support programs addressing the relevant issues in a holistic fashion.
- Ensure the client is aware of the benefits of obtaining legal advice and being legally represented at any legal events. If the client is in difficult financial circumstances, where appropriate, make them aware of the legal assistance services available to them.
- Acknowledge, however, that legal options may not be the only, or best, response ([Conduct Rule 7.2](#)) to resolve their difficulties.

4. PREPARING A CASE

4.1 Communicate appropriately with other parties

KEY POINTS

- Be conscious of your professional obligations regarding communication with other parties.
 - Take steps to ensure your client's safety and the safety of children.
-
- Be conscious of your professional obligations regarding communication with other parties, particularly where they may have experienced domestic and family violence. All communications must be with any relevant legal representative rather than their client ([Conduct Rule 33](#)).³⁸
 - When dealing with an unrepresented party, suggest that the person seek legal advice. You should do this whether the other party is a victim, perpetrator or defendant.
 - Consider the safety of the client when serving the other party with your client's legal documents or court application. If you have not one so already, take instructions on safe times and methods of serving documents. This is particularly important if the client is still living in the home with the other party.
 - Do not give out the client's address or contact details, or that of their relatives or friends, without the client's permission.

4.2 Compile relevant evidence

KEY POINTS

- Compile all relevant evidence having regard to any detrimental effects on the client's matter and their safety or wellbeing.
 - Consider the role of children in the court proceedings, whether it is necessary or appropriate for children to give evidence and the role of an Independent Children's Lawyer.
-
- Allow time to gather evidence from sources external to your client to corroborate your client's evidence about domestic and family violence allegations. Relevant evidence may include:
 - appropriate police reports, medical reports and statements from witnesses;
 - electronic evidence from mobile phones, emails and social media; and
 - information available from the Department of Communities and Justice, including any investigation conducted.
 - Ensure affidavits have any relevant apprehended domestic violence orders and applications attached.
 - Discuss with the client the need to consider evidence that may be generated in the future, such as medical records, photographs, diary entries and social media posts.
 - Consider any adverse implications of the production of medical records to the court. These may include undermining a therapeutic relationship, influencing a recovery process, compromising the confidentiality of the records and putting a victim of violence at risk of further violence.
 - Before issuing a subpoena, consider the purpose of the evidence sought and whether a subpoena is required to achieve that purpose.
 - Understand that it is rare for a child to give evidence in court in family law proceedings, and that leave must be obtained in order to do so.

Instructing experts

- If the client is seeing a counsellor or health professional or is supported by a social support service, consider asking for a report if it would assist their case. Obtain the client's instructions to do so first.
- Engage report writers and professionals who have knowledge about the current sociological, psychological and legal perspectives explaining domestic and family violence, and who have appropriate safe physical environments to conduct interviews for assessments.
- If a family report or social assessment report is being prepared, consider the qualifications of the expert witness to assess the impact and effects of domestic and family violence on the parties and the children. Consider also the directions to be provided to the expert. Refer to the [Australian Standards of Practice for Family Assessments and Reporting](#) and to the suggested directions in the [Family Violence Best Practice Principles](#) (noting these publications were prepared before the commencement of the Federal Circuit and Family Court of Australia).
- If the client is required to participate in a family report or social assessment report, inform the client about the process. It may be appropriate for the client to discuss their concerns about the children's safety with the assessor.
- Consider whether it is necessary to obtain an independent family violence report, having regard to the Family Violence Best Practice Principles.³⁹
- Raise any concerns about a child's ability to communicate at family report or social assessment report interviews with the assessor, so arrangements can be made to enhance the child's ability to communicate. Recognise that a child may be intimidated by a defendant or perpetrator's presence in the waiting room, even if no interaction between the defendant or perpetrator parent and the child is planned in the assessment process. Where necessary arrange a safety plan.

Involvement of children and the Independent Children's Lawyer

- When considering evidence about any child who has experienced domestic and family violence, including evidence of any negative impacts on their development, consider how best to manage sensitive information that may place a child at risk of harm if that information became available to one or both parents: for example, the knowledge that a child has reported abuse by a parent or indicated a preference not to have contact with a parent.
- Consider whether a children's counsellor or support worker should be present at interviews with children. This would not be appropriate, for example, at a family consultant meeting.
- Consider and understand the role of the legal representative for the child, and the need to balance the requirements of court processes with children's rights.⁴⁰
- Consider when to ask the court to appoint an Independent Children's Lawyer (ICL) to represent the children's interests in the proceedings. Consider what information the ICL may need to be able to fulfil their role of assisting the court to determine what is in the children's best interests. Inform the ICL of any particular needs or issues in relation to the children and ensure where possible the ICL can meet the children so the children's views can be expressed.

5. ATTENDING COURT OR DISPUTE RESOLUTION

5.1 Be aware of procedural and ethical requirements

KEY POINTS

- Be aware of the court's powers in family law proceedings to make orders having regard to safety considerations, particularly with respect to cross-examination.
- Encourage the client to give honest evidence and avoid coaching them.
- Be aware of any court-based programs that may be in place

- Be aware of the court's powers to dispense with the rules of court, and make directions about the conduct of proceedings in a way that promotes the main purpose of the rules.
- Be aware that the court can make orders that an unrepresented party cannot personally cross-examine another party at interim and/or final hearing. Parties who are not permitted to personally cross-examine another party can engage private legal representation or apply to the Commonwealth Family Violence and Cross-Examination of Parties Scheme for legal representation.⁴¹
- Where the court permits personal cross examination by an unrepresented party, be familiar with alternative protections that can be put into place (e.g. cross-examination by audio-visual link).⁴²
- Be aware that a child who is required to give evidence may be easily intimidated as a witness and they may understand repeated questions as an indication that they have responded incorrectly to the question, and may become confused or seek to provide alternate answers which they hope will be their preferred answer.
- The evidence given about domestic or family violence may have an important bearing on the outcome of a family law matter, and it is appropriate to ensure the client understands this. However, when preparing the client for court or a dispute resolution event, practitioners must have regard to their professional duty not to coach a witness.⁴³ Encourage the client to be honest and to give evidence in their own words.
- Be aware of any court-based programs or processes relating to family violence risk. For example, registries involved in the courts' Lighthouse

Project may offer parties the option of completing a confidential online questionnaire using *Family DOORS Triage*. This process is used to assess the risk of family violence, to triage cases according to risk and to make appropriate referrals to support services. Cases identified as "high risk" are prioritised and may be placed on the Evatt List. Cases ineligible for the Evatt List include those where parenting and property orders are sought together, child maintenance or support proceedings and contravention applications. Any information provided during the screening process is inadmissible in any court or proceedings, unless it indicates that a child under the age of 18 is at risk of abuse.⁴⁴

5.2 Prepare ahead for court or a dispute resolution event

KEY POINTS

- Continually review risk assessment and prepare in advance security measures for attending court.
- Consider the client's needs in terms of accessibility and support services such as interpreters.
- Incorporate a review of the risk assessment into your preparation for each stage of the proceedings, including before primary dispute resolution, when preparing for interim hearing, pre-hearing / pre-trial and before the first day of any hearing or trial.
- Recognise that domestic and family violence can take place at court or dispute resolution events and that safety risks can increase during these events.
- Take instructions well in advance about the client's safety concerns around attending court or a dispute resolution event. If appropriate, consider alternatives to face-to-face round table settlement conferences or mediations, such as telephone, video or shuttle conferences.
- With your client's consent, and if appropriate, arrange for a support worker to sit with your client when they are giving instructions or appearing in court.
- Familiarise yourself and the client with the court safety procedures, utilising safety rooms, and available services.⁴⁵

- Consider the logistics of getting the client to and from your office and legal events, including:
 - whether there is a need for the client to use a separate exit and the parties arriving/leaving at staggered intervals;
 - whether to accompany the client to court or legal events or meet them at a neutral place so they are not waiting with the other party; and
 - whether the client may need to plan for a safe return home.
- Let the court and/or dispute resolution service know well in advance about safety arrangements that may need to be made for the client. Do this in writing and check with the court to ensure arrangements have been actioned. Be mindful that you may need to do that for each court event as safety plans may not automatically carry over.
- Be aware that some clients have limited finances and consider referrals to appropriate support to ensure they can travel to attend these events.⁴⁶
- Inform the court or dispute resolution service as early as possible if your client requires an interpreter and if your client would prefer an interpreter of a specific gender.

5.3 Be mindful of safety at the event

KEY POINTS

- At the court or dispute resolution venue, take steps to ensure the safety of the client and your own safety throughout the event.
- In the court or dispute resolution environment, be mindful of the safety of all involved in the proceedings, particularly children.
- Where possible, limit the line of sight between parties in any courtroom where there are allegations of domestic and family violence (for example, place someone or yourself physically in the direct line of sight).
- If the client is afraid of the other party, take steps to minimise the risk that they will see or be exposed to the other party and utilise safety rooms where they are available.
- Consider safety options available to the client as regards evidence (for example, giving evidence remotely by AVL) and whether an order can be sought prohibiting the direct cross-examination of the client by the defendant/perpetrator.
- Be prepared to make use of safety and security features when having contact with clients who may become emotional or angry: for example, using security buttons, locks on doors, positioning within the room or notifying security staff.
- Ensure there are no identifying documents or files left in view of, or accessible to, the other party at any time. This is part of the obligation to ensure the confidentiality of client information ([Conduct Rule 9](#)).
- Consider protecting your own safety as you leave the court or building: for example, by leaving through a separate exit, carrying a personal duress alarm or leaving the building with colleagues.



PART IV RISK ASSESSMENT AND SCREENING TOOLS

1. SAMPLE SCREENING QUESTIONS

Direct questions

When taking instructions, *direct questions* can be effective in identifying whether domestic and family violence has occurred.

Ask about physical abuse

- Has your partner ever done things like push you, hit you, slap you, kick you or punch you?
- Has your partner ever hurt your children?
- Has your partner ever hurt your pets?

Ask about verbal abuse

- Does your partner yell at you or the children?
- Does your partner call you names which are unkind or abusive?

Ask about psychological or emotional abuse

- Does your partner humiliate you or put you down?
- Does your partner humiliate your children?
- Has your partner threatened you, or your children or your pets?

Ask about sexual violence

- Has your partner ever forced you to have sex or forced you to do sexual things that you didn't want to do or which make you feel scared or uncomfortable?

Ask about technology-assisted abuse

- Has your partner ever monitored you – where you go and who you see or your social media or email or phone?
- Has your partner ever recorded, shared, or threatened to share intimate images of you (even if they are doctored images)?

Ask about other forms of abuse (including coercive control)

- Has your partner tried to control what you do or where you go, or your relationships with family and friends?
- Has your partner ever thrown items around the house or damaged things in the house or things you own or care about?
- Does your partner control your finances?

Ask about fear

- Have you ever felt unsafe because of something your partner has done or threatened to do?
- Do you think your children ever feel unsafe?
- Do you feel unsafe returning home today [or leaving here today]?

Other questions

- Have you ever had to call the police?
- Have the police ever come to your house because of violence? Did you call the police or did someone else call the police?
- Have you ever left the house to stay with family or friends or at a refuge?
- Have you ever had an AVO for your protection?

Open questions

Open questions are useful for obtaining more detail about particular events or circumstances. Ask open questions to obtain further detail about the violence after asking direct questions. For example:

- You told me that [name] once punched a hole in the wall and then threw a frypan across the kitchen. Can you tell me a bit more about that day?
- You told me that [name] likes to have dinner at 6pm each night. What happens if dinner isn't ready at that time?
- You told me the police came to your house one night.
- Can you tell me a bit about what happened that night before police arrived?
- What happened when police arrived?
- What did the police say? Do?
- What happens when things don't get done at home?
- How do the finances work between you and [name]?
- How do you respond (or feel) when [name] does.....?

2. ASSESSING RISK

Risk Factors

Once you have established that the client is experiencing or has experienced domestic and family violence, it is important to identify and assess risks to the client.

Factors which increase risk can include:

- choking;⁴⁷
- sexual assault;
- escalation in the frequency or severity of violence;
- obsessive, jealous or controlling behaviours;⁴⁸
- seeing the victim as a target of blame;
- stalking;⁴⁹
- use of weapons;⁵⁰
- access to weapons;⁵¹
- past breaches of Apprehended Violence Orders;
- threats or fantasies to damage property or to harm or kill a parent, child, family member or pet;
- plans to harm or kill victim;
- actual harm towards pets;
- actual harm towards children;
- pregnancy;⁵²
- separation;⁵³
- victim's assessment of their own safety;
- court proceedings (in particular parenting proceedings);⁵⁴
- step child in the family;⁵⁵
- threats or attempts by the perpetrator to self-harm or suicide;⁵⁶
- perpetrator has history of mental illness in particular depression, thought disorders, paranoia, personality disorders, emotional instability, rage or angry outbursts;
- perpetrator has history of substance use issues or excessive use of alcohol;⁵⁷
- perpetrator has experienced a recent stressful event such as separation, unemployment, financial difficulties, a disruption to a relationship or loss of contact with children;
- the start of a new relationship by the victim; and
- the birth of a new child to the perpetrator or to the victim in a new relationship.

The above list is not exhaustive; it provides a guide to assist in recognising risk indicators rather than a checklist.

For more information about identifying and assessing risk when assisting clients affected by domestic and family violence – see [Legal Aid NSW's tip sheet on Screening, Identifying Risk and Responding to Domestic and Family Violence](#). This tip sheet also provides guidance about assessing risk when working with clients who may have perpetrated domestic and family violence.

Risk Assessment Tools

Using a structured risk assessment tool may assist you in assessing the level of risk to your client.

The [Family DOORS App](#) is an evidence-based screening framework for keeping families safe, which is designed to assist professionals including family law practitioners, counsellors, psychologists and social workers.

The [Domestic Violence Safety Assessment Tool](#) (DVSAT) is a structured risk assessment tool used in NSW. It is designed to assist service providers and police to consistently and accurately identify the level of threat to victims of domestic and family violence. The use of a common tool by different service providers can be important as it leads to the consistent identification of threat and promotes a shared understanding of domestic violence, its indicators, dynamics and consequences. The [DVSAT Guide](#) provides information on how to use the DVSAT.

Cornell University Clinic has developed a [Technology Assessment Questionnaire](#) (CETA) to detect technology abuse.

APPENDIX 1 RESOURCES AND SUPPORT SERVICES

1. INFORMATION RESOURCES

Training

The [Education Centre Against Violence](#) offers a range of trauma informed training to assist workers to evaluate their practice and explore the complexities of domestic and family violence and to improve their capacity to better support victims.

The [Mental Health Coordinating Council](#) offers training in trauma informed care and practice.

Resources

[1800 RESPECT for professionals](#)

[ANROWS](#)

[Australian Standards of Practice for Family Assessments and Reporting](#)

[Best Practice Guidelines for Lawyers doing family law work, Family Law Section of the Law Council of Australia](#)

[DV Alert](#)

[Family Violence Best Practice Principles \(Family Law Courts\)](#)

[Family Violence Law Help](#)

[Legal Aid NSW Domestic and Family Violence Resources](#)

[National Domestic and Family Violence Bench Book](#)

[Law Society of NSW Professional Responsibility Resources \(including Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015\)](#)

[Law Society of NSW Ethics Committee Guidance](#)

[Law Society of NSW resources on Working with Indigenous clients.](#)

[Women's Legal Service NSW Resources](#)

2. SUPPORT SERVICES

Emergency assistance		
NSW Police	Emergency assistance in relation to domestic and family violence	000 or 112 from mobiles
Legal information and assistance		
Family Advocacy and Support Service (FASS)	Integrated duty lawyer and social support service for families affected by domestic and family violence	1800 113 277 or 1300 003 277 (for women / men) 9219 6300 (for duty lawyer assistance)
Family Violence Law Help Website	Information about family violence, family law, child protection, and family advocacy and support services	1800 737 732
Women's Domestic Violence Court Advocacy Service	Information, court advocacy and referral for women in domestic violence situations and assistance with getting an ADVO. WDVCAS receive referrals of all domestic and family violence reports made to NSW Police about women and children under Safer Pathway.	1800 WDVCAS or 1800 938 227
Victims Services	NSW Department of Communities and Justice support and assistance for victims of crime. Victims Services receive referrals of all domestic and family violence reports made to NSW Police in relation to men under Safer Pathway.	1800 633 063 1800 019 123 (Aboriginal Contact Line)
1800 RESPECT	Counselling, information and referral (24 hours, 7 days)	1800 RESPECT or 1800 737 732
Domestic Violence Line, Family and Community Services NSW	Assistance with emergency accommodation and referrals to counselling, health and legal services (24 hours, 7 days)	1800 656 463
Domestic Violence Unit, Legal Aid NSW	Legal advice, assistance, referral and representation as well as social work support to victims of domestic and family violence	02 9219 6300
Women's Legal Service NSW	Legal advice, assistance, referral and representation for women with a focus on family law, domestic violence and sexual assault.	(02) 8745 6900 1800 810 784 (Domestic Violence Legal Advice Line)
Law Access NSW	Legal assistance and referral over the phone. Victims of domestic violence are priority customers for advice.	1300 888 529
Legal Aid NSW	Legal advice and representation for clients without the financial capacity to instruct a private solicitor.	1300 888 529
Community Legal Centres NSW	Details of Community Legal Centres across NSW	

National Family Violence Prevention Legal Services	The NFVPLS is a forum of service providers who provide specialist, culturally safe legal services and supports to Aboriginal and Torres Strait Islander victim/ survivors of family violence across Australia. Details for each local service provider can be accessed from the NFVPLS website.	FVPLS Locations
Independent Children's Lawyers	National Legal Aid's National ICL website	National ICL Website
Non-legal support		
Link2Home	Referrals to homelessness services across NSW (24 hours, 7 days)	1800 152 152
Salvation Army Court Chaplains	Court support for domestic and family violence victims and their families and to defendants or perpetrators.	Sydney Salvos website
Domestic Violence Line, Family and Community Services NSW	Assistance with emergency accommodation and referrals to counselling, health and legal services (24 hours, 7 days)	1800 656 463
LGBTIQ Specialist Services	ACON Inner City Legal Centre, Safe Relationships Project	ACON – Another Closet 1800 244 481
MensLine	Phone support and referral for male victims and perpetrators of domestic violence	1300 789 978
Men's Behaviour Change Programs NSW	Men's Behaviour Change Programs (MBCPs) work with men who use violence and abuse with (ex) partners and their children. A list of accredited service providers in NSW can be accessed from the MBCP NSW website.	MBCP Website
Translating and Interpreting Service	Telephone and on-site interpreting service For interpreter and relay services for the hearing impaired refer to or the National Relay Service.	131 450 ris.prebook@homeaffairs.gov.au
National Relay Service	Service that allows people who are deaf, hard of hearing and/or have a speech impairment	Voice relay number: 1300 555 727
Women NSW - Women's Financial Toolkit	Toolkit for women to access free, confidential and reliable information to help improve their financial literacy	Women's Financial Toolkit website
National Debt Helpline	Free telephone legal advice and financial counselling to NSW consumers on credit, debt and banking matters	1800 007 007

APPENDIX 2 DEFINITIONS

APPENDIX 2 – DEFINITIONS

The *Crimes (Domestic and Personal Violence) Act 2007* (NSW) does not provide a definition of domestic violence, but does provide a definition of a “domestic violence offence”. The *Family Law Act 1975* (Cth) provides a definition of “family violence”.

Crimes (Domestic and Personal Violence) Act 2007 (NSW)

- [Section 4 – Meaning of “personal violence offence”](#)
- [Section 5 – Meaning of “domestic relationship”](#)
- [Section 7 – Meaning of “intimidation”](#)
- [Section 8 – Meaning of “stalking”](#)
- [Section 11 – Meaning of “domestic violence offence”](#)
- [Section 16 – Court may make an Apprehended Domestic Violence Order](#)

Family Law Act 1975 (Cth)

- [Section 4AB – Definition of Family Violence etc](#)

Endnotes

1. Special Taskforce on Domestic and Family Violence in Queensland, [Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland](#) (2015).
2. See also Australasian Institute of Judicial Administration, [National Domestic and Family Violence Bench Book](#) (2020) which draws upon this body of research and is a helpful resource for practitioners.
3. See [DV Violence Statistics reported at December 2019](#). The NSW DV statistics is reported [here](#).
4. Special Taskforce on Domestic and Family Violence in Queensland, [Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland](#) (2015), 7, 49, 72-73.
5. Australian Bureau of Statistics, [Personal Safety Australia](#), Statistics for family, domestic, sexual violence, physical assault, partner emotional abuse, child abuse, sexual harassment, stalking and safety (2016).
6. Australia's National Research Organisation for Women's Safety Limited, [Violence against Women: Accurate use of key statistics](#) (2014) 5.
7. [National Domestic and Family Violence Bench Book Vulnerable Groups](#)
8. Taskforce Report Section 2.2, pp. 68-70.
9. Violence against Women: Accurate use of key statistics, p. 8. [Resource](#) published by [ANROWS](#)
10. Taskforce Report Section 2.5, p. 77, Section 5.7
11. See the [Law Society of NSW website](#).
12. See Appendix 2.
13. <?> Section 12 refers to an obligation to provide opportunities to "Aboriginal and Torres Strait Islander families, kinship groups, representative organisations and communities" to take part in decisions made under the Act. Section 13 refers to placing Aboriginal children in statutory out-of-home care "with a member of the child's extended family or kinship group" maintaining their connection to family, community and culture.
14. Children and Young Persons (Care and Protection) Act 1998 (NSW) s 3.
15. A Olsen and R Lovett, Existing knowledge, practice and responses to violence against women in Australian Indigenous communities: State of knowledge paper (ANROWS Landscapes, 02/2016).
16. See Part V.
17. See Part IV.
18. For example, resources are provided by the LGBTIQ Domestic Violence Interagency at "Another Closer"; for contact details see Appendix 1.
19. A Olsen and R Lovett, Existing knowledge, practice and responses to violence against women in Australian Indigenous communities: State of knowledge paper (ANROWS Landscapes, 02/2016) 12.
20. *Ibid*,13.
21. *Ibid*.
22. See discussion of "What is the difference between domestic and family violence?" in Part I above.
23. See, for example: United Nations [Universal Declaration of Human Rights](#) (1948) Article 10; United Nations [Convention on the Elimination of All Forms of Discrimination against Women](#) (1979); United Nations [Convention on the Rights of the Child](#) (1989).
24. See, for example: Shea Hart, A. (2011) Child safety in Australian Family Law: Responsibilities and challenges for social science experts in domestic violence cases. *Australian Psychologist*, 48 (2011), 31-40; Bromfield, L. (2010) Domestic violence and assessing risk to children. National Child Protection Clearinghouse, Australian Institute of Family Studies. Jaffe, R.G.; Lemon, H.K. & Poisson, S.E. (2003) *Child Custody and Domestic Violence: A call for safety and accountability*. Thousand Oaks, Ca., Sage Publications.
25. K Freeman, Domestic and family violence by juvenile offenders: offender, victim and incident characteristics: NSW Bureau of Crime Statistics and Research Bureau Brief No. 136 (2018); Youth Justice NSW Domestic and Family Violence Strategy 2019-2022.
26. See further 3.1.
27. See Appendix 1.
28. *Ibid*.
29. *Ibid*.
30. For example, the Law Society of NSW [Solicitor Outreach Service](#) and the Law Council of Australia's [Mental health and wellbeing](#) portal.
31. See 1.2.
32. See Appendix 1.
33. In relation to mental capacity, see Law Society of NSW, '[When a Client's Mental Capacity is in Doubt – A Practical Guide for Solicitors](#)' (2016).
34. See interpreter services listed in Appendix 1.
35. Sample screening questions are provided in Part IV.
36. Risk assessment tools are listed in Part IV.
37. See Appendix 1.
38. See further Law Society of NSW, [NSW Guidelines for contact with complainants in apprehended domestic violence order proceedings](#) (2016).
39. [Federal Circuit and Family Court of Australia, Family Violence Best Practice Principles](#) (2016) 17 (noting this publication was prepared before the commencement of the Federal Circuit and Family Court of Australia).
40. The [Law Society of New South Wales Representation Principles for Children's Lawyers – 4th Edition](#); [National ICL Website](#). See also N. Ross, "Different Views? Children's Lawyers and Children's Participation in Protective Proceedings in New South Wales, Australia" (2013) 27(3) [International Journal of Law, Policy and the Family](#) 332.
41. [Family Law Act 1975 \(Cth\)](#) s 102NA.
42. [Family Law Act 1975 \(Cth\)](#) s 102NB.
43. [Conduct Rule](#) 24.
44. The Lighthouse Pilot commenced in the Federal Circuit Court of Australia on 7 December 2020 in Adelaide, and in Brisbane and Parramatta on 11 January 2021, and continues to operate in the Federal Circuit and Family Court of Australia.
45. For example, Women's Domestic Violence Court Advocacy Service, Family Advocacy and Support Services, the Domestic Violence Duty Scheme and the Legal Aid NSW Domestic Violence Unit and Women's Legal Service NSW. See Part V.
46. For example, the Salvation Army Sydney City Court Chaplains provide court support for domestic and family violence victims and their families. See Part V.
47. Glass, Nancy, et al, '[Non-fatal Strangulation is an Important Risk Factor for Homicide of Women](#)' (2008) 35(3) *Journal of Emergency Medicine* 329.
48. Office of the State Coroner (Qld), [Annual Report 2013-2014](#) (2014).
49. McFarlane, Judith, Jacquelyn Campbell and Kathy Watson, 'Intimate Partner Stalking and Femicide: Urgent Implications for Women's Safety' (2002) 20(1-2) *Behavioral Sciences and the Law* 51.
50. Refer to Folkes, Stephanie, N, Zoe Hilton and Grant T Harris, 'Weapon Use Increases the Severity of Domestic Violence but Neither Weapon Use Nor Firearm Access Increases the Risk or Severity of Recidivism' (2012) 28(6) *Journal of Interpersonal Violence* 1143. A Canadian
51. *Ibid*.
52. Legislative Council Standing Committee on Social Issues, Parliament of New South Wales, [Domestic Violence Trends and Issues in NSW](#) (Report No 46, 2012).
53. Office of the State Coroner (Qld), [Annual Report 2013-2014](#) (2014).
54. Kaspiew, Rae, et al, '[Experiences of Separated Parents Study](#)' (*Evaluation of 2012 Family Violence Amendments*)' (Report, Australian Institute of Family Studies, 2015).
55. Campbell, Jacquelyn, et al, '[Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study](#)' (2003a) 93(7) *American Journal of Public Health* 1089.
56. Campbell, Jacquelyn, et al, '[Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study](#)' (2003a) 93(7) *American Journal of Public Health* 1089.
57. Phillips, Janet, and Penny Vandenbroek, '[Domestic, Family and Sexual Violence in Australia - An Overview of the Issues](#)' (Research Paper, Parliamentary Library, Parliament of Australia, 2014).

THE LAW SOCIETY OF NEW SOUTH WALES

170 Phillip Street, Sydney NSW 2000, DX 362 Sydney

ACN 000 000 699 ABN 98 696 304 966

lawsociety.com.au

T +61 2 9926 0333 F +61 2 9231 5809

E lawsociety@lawsociety.com.au

