

# Domestic violence is relevant for the non-family/DV lawyer

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Even if you have never accepted a family law retainer or sought a domestic violence order, it is highly likely that you will see clients who are suffering from domestic violence. Chances are you have also had clients whose interactions with the law have been impacted by domestic violence. Why is this? One in five Australian women have or have had a partner who was physically or sexually violent. Given those sad statistics, the odds of never having such a client are pretty low.<sup>1</sup>

At the request of the Law Society Northern Territory CPD Committee, LeMessurier Harrington Consulting conducted a panel discussion to explore the importance of being able to identify clients involved in domestic violence situations and understanding how this could influence instructions or the handling of a matter. Sue Harrington moderated an expert and insightful panel comprised of:

- Tass Liveris – President of the Law Society Northern Territory
- Sue Phoo – previous Managing Solicitor of the Domestic Violence Legal Service
- Susan Crane – Executive Officer of Dawn House Women’s Shelter.

The panel responded to a hypothetical client scenario. The issues were considered from different perspectives and some of the matters covered are addressed below.

**How could a client's domestic violence experience impact their interaction with the law?** A client who is currently suffering from domestic violence may be coerced into giving instructions relating to the drafting or contesting of a will, taking or defending legal proceedings or signing mortgage, guarantee, sale or purchase documents. If a lawyer can identify this, then they may be able to assist in avoiding the perpetration of a wrong against the client or take action to contest the validity of a contract that has already been entered into. Lawyers may also be able to help clients access extra protections under the law such as immunity from social security repayments, visa provisions or priority housing.<sup>2</sup>

It is not uncommon for domestic abuse victims to be pressured into being part of a fraud or other criminal act or to ‘take the fall’ for an act they

did not commit such as a driving or drug offence. Once again, an insightful lawyer could raise a defence or mitigation on behalf of their client in criminal proceedings. Sadly, it may be that this client would also make a poor witness because, like many post-traumatic stress sufferers, they could find it hard to give a sequential account of historical events. This fact may influence how litigation or a criminal matter is handled.

Alternatively, it may become evident that a client is a perpetrator of domestic violence and is trying to use the law as a tool for domestic abuse. Lawyers have a duty to promote the proper administration of justice and not to assist with a fraud or an abuse of legal process. In certain circumstances, lawyers will need to decline to act.

### **What factors could be indicators of domestic violence?**

Often domestic abuse victims are embarrassed about the situation they are in or are not in a position to disclose what is happening. There are various behaviours, scenarios or combinations of circumstances that could raise the question of domestic violence in the mind of an alert lawyer.

<sup>1</sup> According to the Australian Bureau of Statistics Women’s Safety Australia 1996.

<sup>2</sup> This article is specifically for the non-family/DV lawyer but of course there are various legal avenues to pursue that directly tackle domestic violence including seeking a Domestic Violence Order.



While it is true that certain groups have a higher documented rate of domestic abuse (such as Aboriginal or pregnant women or women with a disability), domestic abuse crosses all boundaries. In fact, the lawyer of a private, white, middleclass woman may be the only person who gains an insight into her hidden situation. Although the vast majority of victims of domestic violence are female, this is not always the case.

A critical flag for solicitors can be the instructions they are given. If the instructions do not pass a reality check, do not appear to be in a client's interests or if they do not make sense, then it is appropriate to delve further. If a client appears disengaged when making a big or risky decision, it is wise to consider if they are being forced into giving the particular instructions or signing documentation.

Solicitors may observe obvious signs such as bruising or excessive clothing that seems inappropriate for the weather; however, there can also be more subtle indicators of trauma. Clients that are clearly sleep deprived, fearful, full of self-doubt, have difficulty making decisions,

are forgetful or have trouble giving a sequential account of events may actually just be tired, a first-time mum or an overloaded businesswoman; however, they may also be exhibiting classic signs of someone suffering from domestic abuse.

If a client's partner is domineering, making all the decisions, talking over the client or is absent but sending constant text messages, it is possible the client is not a 'free agent'. Similarly, if clients are constantly checking everything said with their partner or even willing to accept fault for all problems, it could be that they are feeling unsafe.

**How would identifying domestic violence help a lawyer with their attitude towards and management of a client?**

If a lawyer believes that a client is or has recently suffered domestic violence and has some insight into the consequences of this, they will have a more understanding attitude, will seek to listen carefully, be patient and give the extra time needed to explain situations and gain instructions. A lawyer in this situation will be less likely to write off a client who is hard work or forgets appointments or advice.

Extra thought is needed on how to communicate helpfully. This will include asking more questions if a client is passive and does not take initiative as well as putting more information in writing. It is important for the lawyer to get instructions on what phone numbers to call and where to send letters or emails.

The appropriate setup of interviews will also need to be considered. Solicitors should diplomatically seek to see their clients on their own and arrange an independent interpreter if required.

**When would a solicitor have to make a mandatory report?**

The *Domestic and Family Violence Act* (DFVA) s 124A and the *Care and Protection of Children Act* (CAPAC) s 26 impose universal reporting requirements, which also apply to lawyers. The Law Society has put together an extensive guideline called 'Mandatory Reporting Laws', which can be obtained if requested. In summary, this guideline states that mandatory reporting requirements abrogate client legal privilege in specific instances and lawyers who comply do not breach their professional code of conduct.

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There is a relatively high reporting bar for domestic violence under the DFVA. There needs to be belief on reasonable grounds and real or likely serious harm and/or a serious or imminent threat to life or safety. There is also a defence of reasonable excuse for not reporting, which includes a reasonable belief that someone else has reported the matter.

If a client were a victim, a practical way of handling the matter would be to encourage the client to make a report; however, solicitors may find themselves with a conflict of interest if they need to act against their client's wishes or could become a witness.<sup>3</sup> If this occurs it is wise to seek professional advice about the obligations. Lawyers should only breach confidentiality to the extent required by the specific laws and should otherwise protect their clients' legal privilege and confidential information. They should also keep very good records.

**Where could a lawyer refer a client suffering from domestic violence for support?** While a non-family or DV lawyer will not be able to give specific legal advice directed at responding to the domestic violence, the value of understanding what help is available to clients and giving appropriate referrals for both legal and personal support should not be underestimated. It is good to have one or two referrals to pass on to clients. There are a number of excellent services and a quick online search will provide details for specific areas. For example, in Darwin, Dawn House is a

Women's Shelter (08 8945 1388) that provides crisis accommodation for women with accompanying children and also offers a range of community services and referrals. Other support services in the NT include:

- Domestic Violence Legal Service: (08) 8999 7977
- Darwin Aboriginal and Islander Women's Shelter Inc. (DAIWS): (08) 8945 2284
- North Australian Aboriginal Family Legal Service (NAAFLS): 1800 041 998.

If a client is not ready to take action, then referring them to an informative website could be useful, such as the Commonwealth Government Human Services site: <http://www.humanservices.gov.au/customer/subjects/domestic-and-family-violence>

It is important to know that the most dangerous period for domestic violence sufferers is when they seek to leave the matrimonial home or just afterwards. At least one Australian woman dies per week as a result of domestic violence.<sup>4</sup>

**Macro responses** The panel discussion finished with Tass Liveris outlining some of the ways that lawyers, law societies and the Law Council have contributed and can continue to contribute to reducing domestic violence and its effects. Lawyers and legal practices donate time for duty solicitor work in this area. A great deal of thought is being put into the issue on the national stage. The Law Council has set up a domestic and

family violence working group and the Council of Australian Governments (COAG) has agreed to a national cooperative effort to reduce family violence. Thirty million dollars has been set aside for a national campaign to help reduce family violence and possibly to help support services. Discussions are being undertaken in relation to the development of a national DVO register, national standards for perpetrator services and, among other things, new laws to cover the use of technology to abuse.

In the Northern Territory the Department of Attorney-General and Justice has developed the Domestic and Family Violence Reduction Strategy 2014–17 called Safety is Everyone's Right. Law Societies also have a critical role in lobbying governments to ensure there is adequate funding for legal aid so that those suffering from domestic violence can get the legal support they need.

**Duty to clients** Not every lawyer will be involved on a macro level assisting with changes to laws, securing adequate legal aid funding or improving community attitudes; however, all lawyers have a duty to their clients to identify the issues relevant to their matters and to communicate well with them. Being informed about the prevalence of domestic violence and the potential impact this can have on a victim's interaction with the law will help lawyers serve their clients compassionately and professionally.

<sup>3</sup> Rule 13 of The Rules of Professional Conduct and Practice

<sup>4</sup> Australian Institute of Criminology (AIC), 2013