

Chapter 2: Working with clients experiencing domestic violence

Responding effectively to clients experiencing domestic violence requires knowledge of the physical and emotional consequences of the violence, an understanding of appropriate and inappropriate responses, and safety planning.

Issues to be aware of working with clients

Trauma-informed lawyering

Sarah Katz and Deeya Haldar describe trauma-informed lawyering as the practice of putting the realities of the client's traumatic experiences at the forefront and adjusting your practice to reflect that experience.⁵ It is important to acknowledge the prevalence and the impact of trauma and to attempt to create a sense of safety for your clients.

The practice also includes employing self-care to counterbalance the effect the client's trauma experience may have on the practitioner (vicarious trauma). Setting appropriate boundaries with your clients and creating a safe space in which practitioners can talk about the effects of working with clients who have trauma histories can help to protect against vicarious trauma.

Gender awareness

Domestic violence is predominately perpetrated by men against women. See **Chapter 1: Introduction to Domestic Violence** for more information.

Aboriginal and Torres Strait Islander clients

Aboriginal and Torres Strait Islander women are far more likely to experience violence, and to suffer more serious violence, than non-Indigenous women.⁶

ANROWS has identified that Aboriginal and Torres Strait Islander women are:

- ▶ two to five times more likely to experience violence than non-Indigenous people;
- ▶ five times more likely to be homicide victims than non-Indigenous people; and
- ▶ 35 times more likely to be hospitalised than non-Indigenous people.⁷

It is important to be culturally sensitive when responding to Aboriginal and Torres Strait Islander people who may have experienced domestic violence. Ask whether your client identifies as Aboriginal or Torres Strait Islander and, if they do, ask whether they would prefer to be referred to an Indigenous-specific service. Each woman will have her own preference, with some preferring to use a mainstream service and others preferring an Indigenous-run service.

For a more detailed understanding of the existing research on Indigenous family violence see the ANROWS research publications which are a developing body of research knowledge. For example, 'Existing Knowledge, Practice and Responses to Violence against Women in Australian Indigenous Communities: State of Knowledge Paper', *Landscapes* (2016) 2.⁸

Cross-cultural issues

Some of your clients may suggest to you that domestic violence is 'normal' in their culture or religion. This is often what perpetrators of violence say to justify their behaviour. Victims may come to believe them, especially if they have seen friends or family experience domestic violence. Sometimes victims use this line when they are trying to assist the perpetrator to avoid charges, or in an effort to have an AVO or charges withdrawn or dismissed. However, when you talk to religious scholars or community elders they do not accept the proposition that violence is promoted, accepted or condoned in their faith or culture.

A useful way to respond to this suggestion is that it is not acceptable to be violent to a stranger and it is no different for people in domestic relationships. It is the community that are saying this behaviour is unacceptable and that's why there are laws against

5 'The Pedagogy of Trauma-Informed Lawyering', *Clinical Law Review* (2016) 22:359

6 M Willis, 'Non-disclosure of Violence in Indigenous Communities', *Trends and Issues in Crime and Criminal Justice* (2011) 405, Australian Institute of Criminology, Canberra, 1

7 ANROWS, *Indigenous Family Violence: Fast Facts*, May 2014

8 http://media.aomx.com/anrows.org.au/s3fs-public/FINAL%202016_3.2%20AIATSIS%20Landscapes%20WEB.pdf

it. You can remind them it is the police who decide whether or not to take any action. The police are tasked with enforcing the law and the community expect them to enforce the law to everyone equally.

Minimisation

People who have experienced domestic violence often minimise their experience by saying things like 'he only threatened me' or 'he just gave me a little push'. This may be because they have experienced violence regularly and the behaviour has become normalised. In some instances, particular behaviour may pale in comparison to other instances of abuse your client has experienced. Your clients may minimise their experience because they believe there isn't any corroborating evidence and therefore it not worth telling you about it.

Despite the minimisation, it is important for you to name it for what it is and say that is a criminal offence. Asking your client how the perpetrator's behaviour made them feel will tell you about your client's level of fear.

Taking instructions

Taking instructions from a client who has experienced domestic violence requires particular skill to elicit the relevant information.

Preparing your client for their appointment

Make sure your client is in a safe, quiet and private place. It is important to try to prevent children from seeing their parent upset (which is almost inevitable when giving detailed instructions about domestic violence), so try to obtain instructions during school time or arrange someone to look after younger children so your client can focus on giving instructions instead of tending to their children.

Suggest that your client go out or meet friends or family and do something nice (even if it's just going for a walk) after the appointment, as it will be difficult for her to relive traumatic events in her life.

Explaining confidentiality

Perpetrators of violence often threaten victims that Family and Community Service (FACS) will remove their children if they disclose what's been happening to them and therefore victims are often reluctant to tell their story.

Before taking initial instructions tell your clients that solicitors are not mandatory reporters in re-

lation to child protection, and everything they tell you will remain strictly confidential. However, it's also important to tell them that other organisations are mandatory reporters.

Limiting traumatisation

It is important to take thorough instructions the first time you speak to your client and make thorough notes so you don't have to revisit your client's story multiple times.

You can also minimise the trauma of your client retelling her story by getting information from relevant documentation such as police statements or court documents so that your client does not have to retell every detail of their story.

Be conscious that it may take some time over many consultations for a client who is affected by trauma to relate their history to you. Some may never feel OK about telling everything that has happened, but if their legal case depends on as much disclosure as possible then creating the environment and opportunity to provide a full history is crucial.

Screening, risk assessment and safety planning

Screening, risk assessment and safety planning are all essential aspects of identifying and responding to clients who have experienced domestic violence. The essentials are covered below, but there is also a range of resources available to draw upon to inform your practice such as:

- ▶ Detection of Overall Risk Screen (DOORS) is a resource developed by the Commonwealth for use by family law practitioners;⁹
- ▶ Domestic Violence Safety Assessment Tool (DVSAT) is a resource developed as part of the integrated domestic and family violence response in NSW.¹⁰
- ▶ Common Risk Assessment Framework (CRAF) is a resource developed as part of the integrated domestic and family violence response in Victoria.¹¹

9 The Family Law DOORS, available at www.familylawdoors.com.au

10 NSW Government, *Domestic Violence Safety Assessment Tool (DVSAT) Guide*, available at www.domesticviolence.nsw.gov.au

11 Common Risk Assessment Framework (CRAF), available at: www.dvrcv.org.au/training/family-violence-risk-assessment-craf

Screening for domestic violence

It is good practice to screen for domestic violence in all matters by asking direct questions. Research shows that clients appreciate being asked. As a minimum, ask about physical abuse, emotional abuse and fear. For example, you could start by saying, 'I've just got a few questions that we ask all our clients':

- ▶ *Has Alex ever hurt you or threatened to hurt you?*
- ▶ *Does Alex ever humiliate you or put you down?*
- ▶ *Have you ever felt afraid of Alex?*

Some examples of additional ways to explore her answers are:

- ▶ *I know these questions are very difficult to answer, but I do need to ask. Have you ever felt worried about your safety?*
- ▶ *Can you talk more about how things are at home?*
- ▶ *What happens when things don't get done at home?*
- ▶ *How do the finances work between you and Alex?*
- ▶ *How does Alex respond when you xxx?*
- ▶ *How do you respond when Alex does xxx?*

Responding to a disclosure

Your immediate response and attitude when a client discloses domestic violence can make a difference. Don't ask:

- ▶ *Why don't you leave?*
- ▶ *What could you have done to avoid this situation?*
- ▶ *Why did he hit you?*

Just being listened to can be an empowering experience for a client who has been abused. Validate her experience and her decision to disclose, for example:

- ▶ *That must have been frightening for you.*
- ▶ *I understand it could be very difficult for you to talk about this.*

Emphasise the unacceptability of violence, for example, 'Violence is unacceptable. You do not deserve to be treated this way.' Be clear that your client is not to blame. Avoid suggesting that the client is responsible for the violence or that they are able to control the violence by changing their behaviour.

Risk assessment

Once you have screened for domestic violence, you should undertake a risk assessment and do a safety plan.

Risk assessment involves assessing the likelihood of the occurrence of violence and the likely severity of that violence ie the level of risk to safety in the family.

Risk assessment and safety planning should be undertaken regularly with clients since risks will change and safety plans will vary depending on what else is happening in your client's matter and what their current needs are. It is important for both you and the client to know that as the balance of power changes in the relationship, the risk to the person who has experienced violence and their children (and pets) may increase.

Identifying risk has three broad aspects to it:

- ▶ *identifying your client's perception of fear;*
- ▶ *using evidence based risk indicators; and*
- ▶ *applying your professional judgment.*

Client's perception of fear

The victim's perception is the strongest most reliable indicator. This perception of fear is taken from the information gathered during the screening process (direct and indirect questioning). It is important to be aware that a victim may minimise rather than overstate concerns.

Evidence based risk indicators

Knowledge of evidence based risk indicators assists in knowing when to raise red flags. Evidence based risk factors include:

- ▶ Presence of guns
- ▶ Previous use of a weapon
- ▶ Threats with weapons
- ▶ Threats to kill
- ▶ Previous serious injury
- ▶ Sexual assault
- ▶ Strangulation
- ▶ Stalking
- ▶ Threats of suicide
- ▶ Obsessiveness / extreme jealousy or dominance
- ▶ Threats to kill or actual harms of pets
- ▶ Drug and alcohol use (particularly in combination with an untreated mental health issue)

- ▶ Less than 6 months separation
- ▶ Pregnancy

Risk Assessment Tools

The Risk Indicators are generally contained in Risk Assessment Tools. These tools contain a list of indicators that, if present, show an increased likelihood that severe violent acts could occur. Often these tools are used as the leading source of risk assessment. However best practice suggests that risk assessment be carried out in a semi non-directive conversation (information about victim fear and to assist the formation of professional judgment), and the risk assessment tool be used to confirm/challenge the judgment of the professional.

However, risk assessment tools such as DOORS, DVSAT and CRAF (see above and below) can be used to guide your questions to your client after your initial screening questions and/or as a checklist to make sure you have covered the most important risk factors. The tools can be useful for people less experienced or confident in undertaking a risk assessment or to double check against professional judgment or that “gut feeling.”

DOORS is an online checklist for clients to complete on their own and was developed in 2012 by the Commonwealth for use by family law practitioners. It screens for safety and mental health risks, parenting stress, and developmental risk for children and is available for free from the Attorney General's Department (Family Law Division)

The DVSAT was developed by the NSW Government as part of their integrated domestic violence response. It includes a list of 25 questions that screen for current and past violence, particular risk factors such as financial difficulties, substance abuse, firearms, pregnancy and sexual assault:

1. Has your partner ever threatened to harm or kill you?
2. Has your partner ever used physical violence against you?
3. Has your partner ever choked, strangled or suffocated you or attempted to do any of these things?
4. Has your partner ever threatened or assaulted you with any weapon (including knives and/or other objects)?

5. Has your partner ever harmed or killed a family pet or threatened to do so?
6. Has your partner ever been charged with breaching an apprehended violence order?
7. Is your partner jealous towards you or controlling of you?
8. Is the violence or controlling behaviour becoming worse or more frequent?
9. Has your partner stalked, constantly harassed or texted/emailed you?
10. Does your partner control your access to money?
11. Has there been a recent separation (in the last 12 months) or is one imminent?
12. Does your partner or the relationship have financial difficulties?
13. Is your partner unemployed?
14. Does your partner have mental health problems (including undiagnosed conditions) and/or depression?
15. Does your partner have a problem with substance abuse such as alcohol or other drugs?
16. Has your partner ever threatened or attempted suicide?
17. Is your partner currently on bail or parole, or have they served a time of imprisonment or recently been released from custody in relation to offences of violence?
18. Does your partner have access to firearms or prohibited weapons?
19. Are you pregnant and/or do you have children who are less than 12 months apart in age?
20. Has your partner ever threatened or used physical violence toward you while you were pregnant?
21. Has your partner ever harmed or threatened to harm your children?
22. Is there any conflict between you and your partner regarding child contact or residency issues and/or Family Court proceedings?
23. Are there children from a previous relationship present in your household?

24. Has your partner ever done things to you, of a sexual nature, that made you feel bad or physically hurt you?
25. Has your partner ever been arrested for sexual assault?

In applying the DVSAT, assessment of risk is based on the number of 'yes' answers with 1-11 deeming a person 'at threat' and 12 + 'yes' answers deeming a person at 'serious threat.' It also includes a section for assessment based on professional judgment

If a client is deemed at 'serious threat', they are referred to a safety action meeting (SAM) which is a regular meeting of local service providers that aims to prevent or lessen a serious threat to a victim of domestic violence through targeted information sharing. SAMs are progressively being rolled out across the State. By the end of March 2018, SAMs will operate from 43 sites: Albury, Armidale, Ashfield/Burwood, Bankstown, Bathurst, Blacktown, Blue Mountains, Bourke, Broken Hill, Campbelltown, Coffs Harbour, Deniliquin, Dubbo, Far South Coast, Goulburn, Gosford, Griffith, Hunter Valley, Illawarra, Lismore, Liverpool, Moree, Mt Druitt, Newcastle, Newtown, Northern Beaches, Nowra, Orange, Parramatta, Penrith, Port Macquarie, Queanbeyan, St George, Sutherland, Tamworth, Taree, Toronto, Tweed Heads, Wagga Wagga, Walgett, Waverley, Wollongong and Wyong.

A version of the DVSAT is used by police. When Police respond to a domestic violence incident they are required to complete a DVSAT and where the victim answers yes to 12 or more questions they are deemed to be 'at serious threat' and should be referred to a SAM.

Safety Action Meetings

A SAM is part of a broader integrated domestic violence strategy *Safer Pathways*. For further information go to www.domesticviolence.nsw.gov.au and the NSW Government publication *It Stops Here: Safer Pathway Overview* from which the service delivery map on the following page has been sourced.

A SAM is a regular meeting of local service providers that aims to prevent or lessen a serious threat to victims of domestic violence through targeted information sharing.

The legal framework for information sharing is contained within Part 13A of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (CDPVA),

which allows service providers to share information for the purpose of preventing or lessening a serious threat to a person's safety. In limited circumstances Part 13A allows service providers to share information about a victim without their consent where it is necessary to prevent or lessen a serious threat to their safety, or the safety of their children or other persons.

SAMs are chaired by a senior police officer and attended by key government and non-government service providers working with victims of domestic violence and perpetrators in the local area. Neither victims nor perpetrators attend the meetings, which are designed to allow service providers to commit to actions to support victims and reduce the threat to their safety. Members share information to develop a tailored safety action plan for victims at serious threat and their children. A safety action plan is a list of actions that service providers can take to reduce the threat to a victim's safety. The meetings do not result in a plan or a document with which the victim must comply. For more information refer to the *Safety Action Meeting Manual* at domesticviolence.nsw.gov.au.

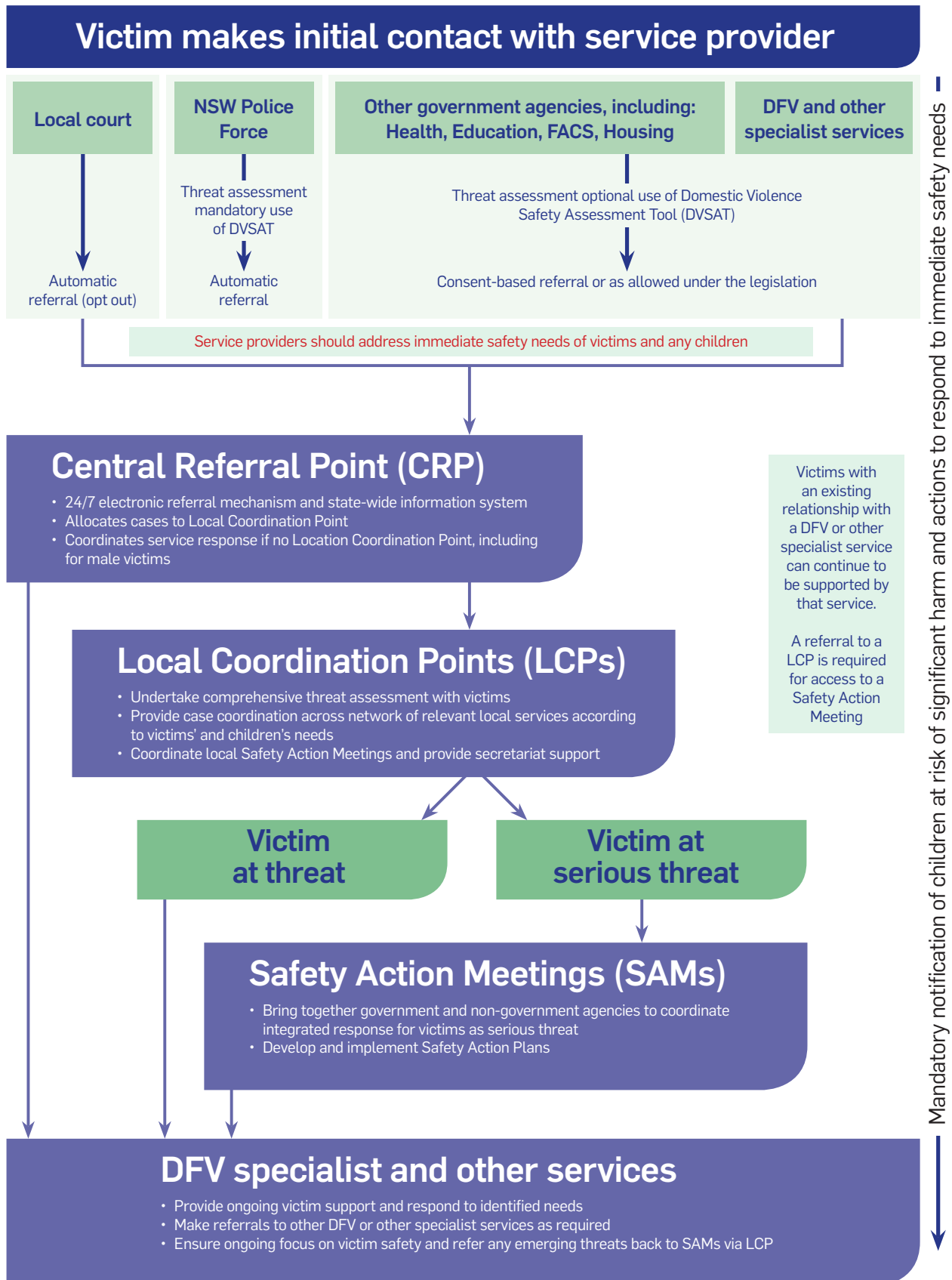
Before referring a client you should explain to her that once she is the subject of a SAM her information will be shared with other service providers such as police, Family and Community Services (FACS), NSW Health, the Department of Education, and Corrective Services.

Practitioner tip

If FACS becomes aware that a child or young person is in need of care and protection it may take action it believes is necessary to protect the child or young person. Police may charge the perpetrator or the victim with an offence if they become aware a crime has been committed. Centrelink may take action against a victim or perpetrator if they become aware of previously undisclosed information.

If your client consents to being referred to a SAM you should refer them to their Local Coordination Point. There is a Safety Action Meeting Referral Form that can be filled in and given to your Local Coordination Point. Further information about SAMs and Local Coordination Points, including a copy of the referral form is available online.¹²

12 www.crimeprevention.nsw.gov.au/domesticviolence/Documents/It%20stop/Safety_Action_Meeting_manual.pdf.



Safety planning

Safety planning is intended to optimise your client's safety and may change depending on their changing circumstance. 1800RESPECT, the National Sexual Assault, Domestic Family Violence Counselling Service, developed the following safety planning checklist:

Safety at home

- ▶ Responding is everyone's business. Let neighbours who you trust know to call the police on 000 if they hear fighting, shouting or noises. Some people who live in flats or apartments have coded stomps or tapping to alert their neighbours to get help.
- ▶ Have somewhere to go if you need to get out. In your wallet or mobile contact list keep phone numbers of family and friends.
- ▶ Have your own mobile phone and plan (preferably prepaid) so that you can stay in touch with people and calls can't be checked from the phone bill or call logs.
- ▶ Get an escape plan ready for when you feel that things might get out of control.

Making an escape plan

- ▶ Plan and practise quick emergency exit routes from all the rooms in your house/flat.
- ▶ Have a small escape bag somewhere with spare keys, important papers, a special toy for the kids and some spare cash in case you need to leave in a hurry. If you need prescription medicines, keep a spare script in your escape bag.
- ▶ Leave spare copies of keys, important papers, photocopies of bank cards and credit cards etc. with a family member, friend or someone you trust.
- ▶ If you have any mobility issues or disabilities, arrange in advance for a friend to come straight away if you ring or text them. Some people use a code word, agreed on in advance. That way you can call even if the perpetrator can hear you.
- ▶ If it's safe, keep a diary of abusive or frightening incidents. These can help if you need to get a protection order.

Collecting useful numbers

Consider gathering some useful addresses and numbers like:

- ▶ local taxi services (accessible taxi services, if you need them).
- ▶ the crisis phone line in your state or territory.
- ▶ the closest crisis contact centre.
- ▶ the address of the local police station.
- ▶ Remember you can always call 1800RESPECT on 1800 737 732.

Safety after separation

- ▶ If you have separated from your partner, get outdoor lights, extra window or door locks, or gates if you can. Police will often do a 'security upgrade' check for you and give you ideas about increasing safety for your particular house or flat. Some domestic and family violence services or police services have funds available to help with costs.
- ▶ Change your mobile number and have it set on 'private'. Use a different SIM card if you need to communicate about children.
- ▶ Ask government agencies, utilities companies, law firms, doctors, schools etc. to keep your details private.
- ▶ Get a PO Box for important mail or keep your home address private.
- ▶ Talk to a domestic and family violence service, a community lawyer or the police about getting a protection order if you don't already have one. These can alert police to some of the dangers in advance. They can also be written to prohibit the abuser from coming to your workplace.

Safety in public or at work

- ▶ Park your car in a busy public place. Avoid underground car parks, or if you have to use them, get someone to walk you to your car.
- ▶ If you see your partner or ex, get into a public or busy place as soon as possible.
- ▶ If you have separated from your partner, ask your boss if you can have calls and visitors screened through reception. If you work in a public space, such as a shopping centre, talk to the security staff and show them your ex's photo.

- ▶ If you have separated from your partner, try to change your routines regularly. Where possible, catch different trains or trams, leave home or work at different hours, shop in different places or online.
- ▶ Tell your boss or security staff of any protection orders that prevent the abuser from coming near your work. Keep a copy of your order at work or in your bag.

Safety on the Internet

- ▶ Use a public computer (library, community centre) or a friend's computer that your abuser can't access.
- ▶ Change or delete your Facebook account and your kids' accounts, or review your privacy settings to restrict access. People can accidentally give away details of where you are living or where you will be.
- ▶ Change your email account. Make it hard to trace – don't use your name and birth year in the account name.
- ▶ Have a computer technician check your computer for spyware or keystroke logging programs.

Helping kids

- ▶ Help your kids to know when there are warning signs of danger.
- ▶ Keep the conversation practical like other safety conversations you might have around natural disaster planning, fire safety, etc.
- ▶ Practise emergency escape routes – talk about these at the same time as you talk through a fire or hurricane drill.
- ▶ Teach your children that it is not their responsibility to stop the abuser when they are angry or violent.
- ▶ Teach your children who they can call or where they can go in an emergency. This includes how to call 000 and ask for the police, and how to give their address.
- ▶ Tell schools or childcare centres about the violence, along with school parents you can trust. They can keep a look out for signs of escalation and also help with caring for your child's emotional needs. A community of care helps

keep kids safe. Give the school or childcare centre a copy of your protection order, and a photo of the perpetrator so they know who to look out for.

Practitioner tip

Ask your client for safe numbers and times to call.

Check if it is safe to leave a message on these numbers.

Do not leave messages with family members or on voicemail until your client has instructed you that it is safe.

Be prepared not to say who you are if someone other than your client answers the phone. You can say, 'Sorry wrong number' or 'I'm calling to do a survey. I'll call back later,' for example.

Use a private number in case the perpetrator is checking her phone.

Only send letters by post and/or email when your client has instructed it is safe.

Time the sending of letters to the other party and prepare your client so they can prepare and take extra precautions in case the letter inflames the other party. For example avoid sending an email to the other party on a Friday afternoon.

If you lose contact with your client, take steps to check if she is safe. You can ask police to do a 'welfare check'.

Support services

It is important to connect your client with all relevant support services. See **Chapter 14: Referrals and Contacts** for referrals to financial, housing and other support services.