

domestic violence are consistent with the Queensland Government's policy commitment of application of the criminal law to criminal assault in the home, and empowerment of victims of domestic violence through the remedies available under the Domestic Violence (Family Protection) Act 1989 and the provision of information and assistance.

The Dispute Resolution Centres Act 1990 specifies in Section 5.2(2) that domestic violence offences are not suitable for police referral to Dispute Resolution Centres.

DEFINITION OF DOMESTIC VIOLENCE

The Council adopts the definition of domestic violence tendered by the Queensland Domestic Violence Council in its submission to the Dispute Resolution Centres Council.

"Domestic violence was defined by the Queensland Domestic Violence Task Force in its 1988 report "Beyond These Walls", as the physical, emotional or sexual abuse of one partner of a couple by the other. Most commonly, women are the victims of violence or abuse from their male partner, but a small number of victims are men.¹

Domestic violence may include:

- *punching, hitting, slapping, shoving, throwing objects, pulling hair, twisting limbs, choking and other forms of physical assault;*
- *use of weapons;*
- *threats, intimidatory behaviour;*
- *damage to property such as to cause fear in the observer;*
- *sexual assault or abuse;*
- *intentional deprivation of basic needs, for example, food, basic financial resources, contact with other human beings;*

¹For ease of expression in this document the feminine is used in relation to victims and the masculine pronoun in relation to perpetrators. The Dispute Resolution Centres Council acknowledges that some victims of domestic violence are male.

- *verbal abuse of a kind which impairs an individual's ability to function normally;*

The term "domestic violence" thus includes both behaviours which attract the sanction of the criminal law and other behaviours, which while falling short of a criminal status, are detrimental to the subject.

Domestic violence involves the abuse of an unequal power relationship and is characterised by the fear of the victim; attempts by the perpetrator to exercise control over the victim; and damage, whether of a physical or psychological nature, to the victim."

POLICY

1.1 Cases involving current domestic violence will not generally be accepted for mediation in recognition of the following factors:

- Continuation of violence or abuse is not mediatable. No-one should have to bargain for his/her personal safety.
- Mediation may endanger the victim, the mediators or others in the environs, e.g. staff.
- The victim is unlikely to be able to negotiate arrangements in her best interests if she has a long-standing history of acquiescing to her partner's wishes and she is in fear of him. Her interests may be better protected by legal representation.
- The integrity of the mediation process cannot be sustained in the face of serious domestic violence. Mediators may be forced to relinquish their neutrality or the confidentiality of the mediation session as a consequence of the actions of the abusive or violent partner in order to protect the victim of domestic violence.

1.2 Cases where there has been a history of domestic violence should also be treated with caution and assessed carefully for suitability for mediation. Domestic violence generally has long-lasting psychological repercussions. Many victims still live in fear of their partners years after the relationship has ended.

1.3 Mediation may be appropriate where:

- 1 The violence or legal remedies to the violence are not the subject matter of the mediation, eg, withdrawal of a protection order; and
- 2 Conduct of a mediation does not entail a breach of any restraining order, i.e., a protection order under the Domestic Violence (Family Protection) Act 1989 or a non-molestation injunction under the Family Law Act; and
- 3 The Co-ordinator is satisfied that the danger to all parties is minimal; and
- 4 Staff have made an assessment that the mediation is freely chosen by the victim on the basis of an informed decision.

PROCEDURAL GUIDELINES

Intake

- 2.1 Intake staff will explore for the possibility of domestic violence in all intakes involving couples. Intake interviews must always be conducted separately with each partner.

Intake staff should be aware that neither victims nor perpetrators of domestic violence are likely to voluntarily disclose the domestic violence and both are likely to minimise its significance where it is admitted. The perpetrator of domestic violence is particularly unlikely to admit to violent or abusive behaviour unless he has been forced to by a criminal charge or the imposition of a protection order.

Intake Officers need to raise the issue in a confident, comfortable manner which includes specific questions.

An example of a line of inquiry is:

"Are you comfortable about sitting down and talking to your spouse with the mediators?"

"You don't have any fears then that things will get out of hand or that

your partner might become violent?"

"We need to ask these questions to make sure that you will feel comfortable at the mediation. Many women/people have been threatened or hit by their partners and this is important for us to know in arranging the mediation."

"Has your partner ever attacked you?"

"Are you afraid of him?"

"Has he made any threats?"

Where the Intake Officer is concerned about the possibility of domestic violence, it is appropriate for Co-ordinators to supplement the Intake Officer's contact with the parties with a further telephone or personal interview. A face to face interview may be preferable.

- 2.2 Where there is a history of domestic violence, the Intake Officer should ascertain whether the victim is aware of her legal rights and referral options, and provide information accordingly. Crisis Care (07)365 9999 or (008) 177 135 (toll free country areas) can assist with telephone counselling referral or further information 24 hours a day. You should also offer to post one or both of the booklets "Domestic Violence Who Are the Victims?" (for victims) or "Do You Want Your Family Living In Fear?" (for abusive men). **Never** send an unsolicited brochure to a perpetrator as it may lead to reprisals against the victim. Only forward it where the man has agreed to accept a brochure, or forward it to the victim to pass on at a time of her choosing.
- 2.3 Where there is a history of domestic violence, the Centre Co-ordinators should approve decisions to proceed with mediation. Mediators should of course be informed and prepared by staff.
- 2.4 If a protection order is in existence, staff should view it prior to the mediation occurring to ensure that the Program is not complicit in the commission of a breach of the Domestic Violence (Family Protection) Act 1989. A party may be able to visit the centre to show staff a copy of the order. Alternatively, they could post a photocopy.

When shown a copy of an order, check that the order does not prohibit contact between the parties. If the order prohibits contact, parties should be advised to return to the court to apply for a variation of the order to enable the mediation to go ahead. Either of the parties can do this by obtaining from the court a copy of Form 7 under the Domestic Violence (Family Protection) Act 1989, completing and lodging it with the Clerk of the Court, and obtaining a hearing time. Copies of Form 7 will be held at offices of the Community Justice Program.

The Court can make very specific, tailor-made orders, e.g., it can prohibit contact except for the purpose of counselling or mediation, or access visits.

Staff of the Program should never encourage disputants to have the order revoked fully. A protection order can only be imposed by a court where it is satisfied that on the balance of probabilities, domestic violence has occurred and is likely to recur.

Clearly, evidence has been tendered to a court to this effect.

In examining the protection order, staff should also note the existence of any prohibitions relating to firearms as this may indicate that life-threatening violence has previously occurred or has been threatened.

- 2.5 The attached flow-chart outlines response options at intake.
- 2.6 Intake officers should always consult with Co-ordinators in managing intake where domestic violence is involved.
- 2.7 Care should be taken to process cases in a manner which does not create further risk of violence to the vulnerable party.

In particular:

- Staff of the Community Justice Program should never reveal to a party that domestic violence has been disclosed by the other party.
- The Program should always assume responsibility for declining mediations under the domestic violence policy rather than telling one party that the other is reluctant to attend.

This means that in some instances the Program will refuse or withdraw from a mediation without providing a reason.

2.8 In assessing the suitability of the matter for mediation, the Intake Officer and Co-ordinator should consider the following factors:

- which party initiated the recourse to mediation;
- the attitude of the violent or abusive partner to contact between staff and his partner. Circumstances where the perpetrator seeks to control the interaction between parties and the Program should be viewed as concerning;
- whether the victim has expressed a clear wish to proceed with mediation;
- whether the victim has chosen to come to mediation and has not been sent to mediation by anyone in a position of authority or influence over her (such as by a magistrate or a judge or by a body awarding legal aid);
- whether she has a clear understanding of what happens and what will be required of her in mediation;
- whether she understands clearly the alternatives to mediation;
- whether she is under any type of duress, persuasion or pressure either from the perpetrator or anyone connected with him, or anyone else;
- whether her capacity to make decisions is in any way affected by the violence or abuse;
- whether she has received independent legal advice where appropriate.

2.9 Any doubts concerning the role of domestic violence in a case should be resolved in favour of the victim's safety, i.e., by non-acceptance of the case for mediation.

Mediation

- 3.1 The mediation should be carefully conducted to balance the power between the parties. Mediators should be alert to all attempts at control made by the perpetrator during mediation and should ensure that the victim is heard and participates equally.
- 3.2 Mediators should bear in mind that reaching agreement should not be the primary or absolute concern. It may not be possible or appropriate to reach agreement when domestic violence is involved.
- 3.3 Mediators should be prepared to terminate the mediation if necessary and to make appropriate referrals to ensure the safety of the victim.
- 3.4 Where domestic violence is disclosed during mediation, mediators should address the issue directly, expressing concern both about the violence and about its impact or the ability of the couple to mediate on equal terms.

In many cases it will be appropriate at this point to meet in private session with each of the parties.

In some instances the victim may wish to terminate the mediation at this point. Appropriate referrals should be offered and arrangements made to ensure that she can depart the premises safely. This may involve staggering departure times, i.e., enabling the victim to leave first.

Where both parties choose to continue with the mediation, the mediators must make it clear that the violence itself is not mediatable and neither is the relinquishment of actions designed to safeguard the victim, e.g., withdrawal of a protection order. As with victims who choose to terminate the mediation, the mediators should ensure that victims are encouraged to take steps to protect themselves and obtain any other needed services.

- 3.5 Where domestic violence is disclosed during the course of a mediation, this should be reported to the Centre Co-ordinator at the first available opportunity. The Co-ordinator will review the mediators' actions with a view to establishing whether any further action is required, i.e., assistance to either party, discussion with Director or Assistant Director etc.

3.6 Section 5.4 of the Dispute Resolution Centres Act 1990 outlines exemptions to the secrecy provisions of the Act. This section provides for disclosure of information "where there are reasonable grounds to believe that disclosure is necessary to prevent or minimise the degree of injury to any person or damage to property."

Where staff or mediators hold ongoing fears for the safety of a disputant, this should be discussed with the Director who shall make a determination concerning the exercise of this provision in consultation with members of the Dispute Resolution Centres Council. The preference of the Council is that disputants be encouraged to report matters to the authorities themselves and to take all other necessary steps to ensure their own safety.

