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Family Law First Aid

First response for church leaders, executives and senior staff

Eustacia Yates, Special Counsel

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LAWYERS

Introduction

Corney & Lind Lawyers Pty Ltd

➤ Mid size law firm – 18 lawyers + 30 staff

➤ Our focus areas

Schools & Education

Not for Profit & Charity

Commercial

Employment & Discrimination

Personal Injury

Commercial & Construction Litigation

Migration & Visas

Family Law

Criminal & Traffic

Estate & Elder Law

➤ Our lawyers travel to you if needed

➤ Specialist lawyers committed to delivering “*just redemptive outcomes®*” with care and integrity

➤ Based right next to the CBD opposite the RBWH transport hub



Who is Eustacia?

- Degree in Law
- Degree in Arts (Political Science)
- Graduate Diploma in Divinity (Malyon College, ACT)
- Has been in Legal Practice for 7 years
- Has worked outside the legal profession
- Strong experience in family law and domestic violence – and presently heads up our Family Law Team.

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The plan for today

- ❖ What is “family law”
- ❖ Equipping people to recognise and respond
- ❖ What might come up for you in your churches ... Some scenarios
- ❖ Family Law First Aid:
 1. Safety First
 2. Practical Help
 3. Refer. Refer. Refer.

What is family law?

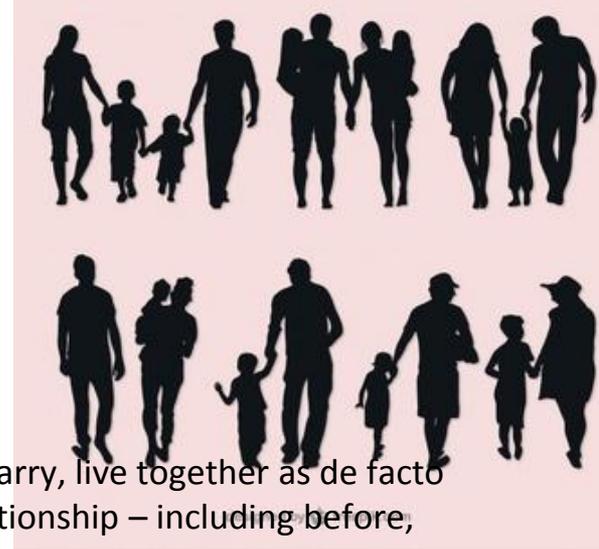
From QLS website:

Family law regulates the legal obligations and responsibilities of couples who marry, live together as de facto partners or have children together. Family Law can apply at any time in the relationship – including before, during and after the relationship.

Issues covered by family law

Australia's family law system helps people resolve legal issues that arise from a family relationship. Such issues, include:

- living arrangements and time a child spends with parents, a grandparent or any other person concerned with the care, welfare and development of a child
- the issues concerning the care, welfare and development of a child
- the property and financial arrangements between a couple: before, during and after a relationship
- the financial support from one member of a couple to the other after a relationship ends – spousal maintenance
- any financial support for children after a relationship ends – ie child support
- any financial support for adult children after a relationship ends – ie adult child maintenance
- ending a marriage – ie divorce/annulment.





Special mention - Domestic and Family Violence

In Queensland this means looking initially at the *Domestic and Family Violence Protection Act 2012* (“the Act”)

A Relevant Relationship

The Act provides that the person suffering the violence has to be in a relevant relationship with the person perpetrating the violence. The relevant relationships are:

1. A family relationship. For example: brother-sister, brother-father, mother-son, sister-sister, child-parent, aunt-nephew etc.
2. An informal care relationship. For example: paid or volunteer carers who come into the home to provide care services.
3. A spousal relationship or a de facto relationship.
4. An engagement relationship. For example: a couple who are engaged to be married but not living together.
5. A couple relationship. For example: a couple who are dating, but do not live together and are not married.



Certain Behavior

The Act provides that domestic violence exists where one person in a relevant relationship engages in behavior with the other person, which is:

- a. Physically or sexually abusive
- b. Emotionally or psychologically abusive
- c. Economically abusive
- d. Threatening
- e. Coercive, which means they compel or force the other person to do (or not do) something
- f. In any way that controls or dominates the other person, causing them to fear for their own safety or wellbeing, or the safety and wellbeing of someone else.



The Act specifically gives the following behavior as examples of domestic violence:

- causing personal injury to the other person or threatening to do so
- Coercing the other person to engage in sexual activity or attempting to do so
- Depriving the other person of their liberty or threatening to do so
- Threatening the other person with death/injury, or the death/injury of their child, or someone else
- Threatening to commit suicide or self-harm so as to torment, intimidate or frighten the other person
- Threatening to or actually causing the death of, or injury to, an animal, (whether or not the animal belongs to the person to whom the behavior is directed, so as to control, dominate or coerce the person



- Unauthorized surveillance of the other person, which means the unreasonable monitoring or tracking of their movements, activities, or interpersonal associations without their consent, including for example, by using technology. Example:
 - Reading a person's SMS messages
 - Monitoring a person's email account or internet browser history
 - Monitoring a person's account with a social networking internet site
 - Using GPS device to track a person's movements
 - Checking the recorded history in a person's GPS device
- Unlawfully stalking the other person

In addition, if someone in a relevant relationship gets another person (outside the relationship, for example a pastor) to engage in any of the above behavior, they will have committed domestic violence.



Current Statistics regarding DV and churches

From <https://www.abc.net.au/news/2017-07-24/how-to-navigate-the-research-on-domestic-violence/8738738>:

There is very little Australian research on the nature and prevalence of domestic abuse in church communities, unlike other countries, and most is dated.

As Australian National University researchers Naomi Priest, Mandy Truong and Nicholas Biddle write [in The Conversation](#)*: "Comprehensive, independent Australian data regarding domestic violence within churches are long overdue."

But there is clear evidence it exists inside church communities. There are three Australian surveys, and one relevant analysis. These found:

At least one in five husbands who abuse Christian wives go to church regularly.

A 1992 study of 1,704 women who were part of Anglican and Uniting Churches undertaken by Glenys Conrade of the University of Queensland found 3.3 per cent reported they had been abused in the past 12 months.

Twenty-two per cent of perpetrators went to church regularly, and 14 per cent were part of the church leadership; a majority never went. Dr Conrade concluded: "The number of victims who had spoken to ministers of religion about the abuse suggested that the clergy were inextricably involved with this issue."

The only other Australian study shows a higher rate of church attendance among perpetrators than the 1992 study.

In 1993, Dr Conrade studied 766 males and 1,284 females who attended mass in Catholic churches in the Brisbane Archdiocese. She found about 40 per cent of perpetrators (male and female) attended church regularly and a "very small minority" were part of leadership. (The smaller proportion of domestic abusers in leadership may relate to the fact that in the Catholic church priests are not allowed to marry.)

* <https://theconversation.com/domestic-violence-and-australian-churches-why-the-current-data-have-limitations-81467>



An [anonymous survey of 148 Sydney Anglican rectors](#)* by the Sydney Diocese's Domestic Violence Task Force in 2016 asked rectors how many cases of domestic violence they'd seen in the past five years (2.25 per rector), and how many had involved a pastoral response (1.5 per rector). Rectors reported eight in 10 perpetrators were male.

Analysts assume abuse occurs to the same degree inside the church as outside.

In the absence of quantitative Australian data, one [academic](#), Leonie Westenberg of the University of Notre Dame, suggests we apply the UK model here, based on qualitative research.

In 2006, a study by the UK Anglican Archbishops' Council [found](#) that the "incidence of domestic abuse within church ... congregations is similar to the rate within the general population".

In a paper titled [When She Calls for Help — Domestic Violence in Christian Families](#)** , published in Social Sciences in Oct 2017, Ms Westenberg finds that, "abused Christian women are more likely to remain in or return to unsafe relationships, citing religious beliefs to support avoidance of 'family break-ups' despite abuse."

She outlines the fact that quantitative research on the prevalence of domestic violence is fraught because of definitional and methodological issues — along with, we'd add, confusion about the definition of risk factors and related terms like "sporadic", "regular" or "nominal".

Ms Westenberg writes:

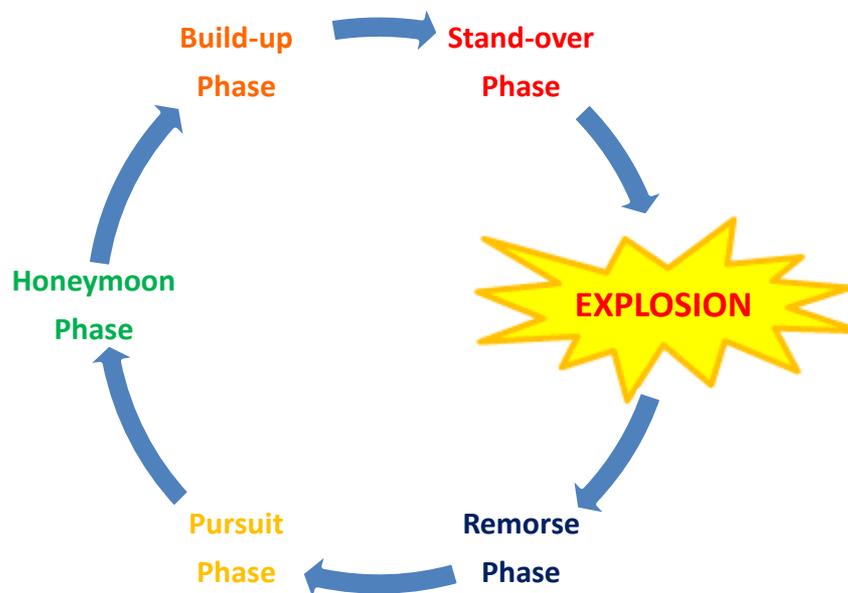
"This failure to provide an accurate picture of Intimate Partner Violence (IPV) relevant particularly to research on Christian families. For example, Knickmeyer et al. (2016) describe the failure of studies on religious affiliation and domestic violence in Canada and the US to identify the role of patriarchy in IPV, focusing instead solely on denominational relationships, if any. However, qualitative research (see, for example, research by Knickmeyer et al. (2016) with women from different Christian denominations; data collected by Levitt and Ware (2006) in the Memphis, Tennessee area of the US; and Nason-Clark (2009) in Atlantic Canada) supports the findings [that]... the prevalence of domestic violence in Western Christian families correlates with the prevalence of such violence in the general population. What differs, however, is what has been called the added "vulnerability" of Christian women, who speak of both abuse and marriage in spiritual overtones (McMullin et al. 2012). Such women use religious language to describe why they remain in or return to relationships that involve domestic violence, citing the undesirability of divorce, the need to love and honour husbands, and the power of forgiveness and prayer to generate change in the abuser. It is the religious language that perpetuates and/or tolerates domestic violence (Nason-Clark 2009)."

*<http://enit-syd.sds.asn.au/assets/Documents/synod/Synod2016.Ordinary/Book1.StanComReportToSynod2016.bookmarked.pdf>

**<https://www.mdpi.com/2076-0760/6/3/71/htm>

Equipping people to recognise and respond to DV

The cycle of violence:



Do you know the difference between genuine remorse, repentance, and the usual stage of the DV cycle?



Equipping people to recognise and respond

Why don't they leave if it is so bad?

- Fear of not being believed
- Feel embarrassed or ashamed that they are experiencing violence
- They have usually lost their confidence and find it hard to trust anyone
- They may have had poor responses if they have spoken to someone previously
- Fear of the offender minimizing the incident to the police and others
- Fear of increased abuse, violence or physical restrictions
- Fear of being left with no financial security or home
- Fear of being alone or isolated
- Fear of shame by exposing the family to outside scrutiny
- Fear of how the church family will react
- Told that the Bible says they should stay
- Believe that it will never happen again
- Fear that if they separate, the risk will be even higher

Scenarios you might come across...

- Johnny's parents are divorced. There are Court Orders in place saying he lives with mum. Dad turns up to collect him from youth group ...
- Sarah has separated from her partner. They both used to attend the church, and even though they are now separated both of them are still coming to church ...
- A member of the congregation discloses that they are the victim of the violence during counseling or a pastoral care meeting ...
- A member of the congregation comes to you and says he doesn't have contact with his wife or children, and can't contact them because of a Protection Order, but wishes to take steps to open a dialogue and reconcile with his wife ...
- A member of the congregation comes to you and says that their spouse wants to separate and they want you to talk to them ...



First Aid

When you become aware that there is or has been a separation, a divorce, or that domestic violence is occurring in your church – you have entered the “space in-between”.

Pastors are uniquely positioned to do incredible good here, but also uniquely positioned to do incredible harm.

Disclosure
or
Discovery



Ideal
Outcome

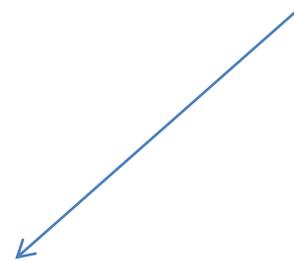
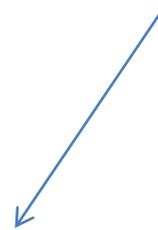
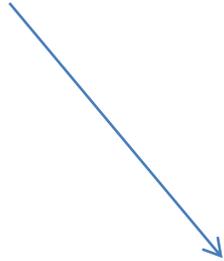
Theological training

Beliefs

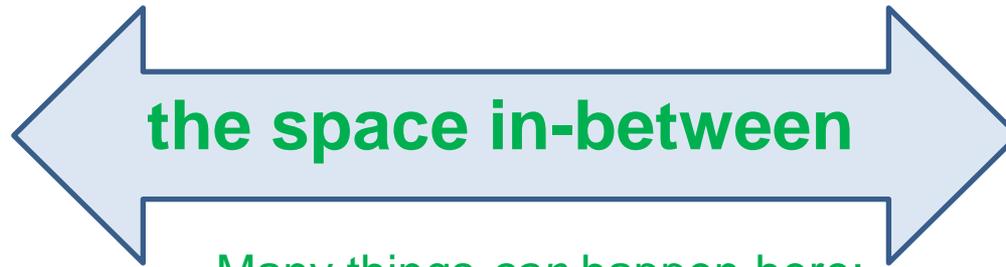
Family of origin

Personal convictions

Denomination



Disclosure
or
Discovery



(Your)
Ideal
(Theological)
Outcome

- Conversations
- Advice
- Decisions
- Referrals
- Prayers
- Ministry
- Encouragement

First Aid Responses

When you recognise you have a family law or DV issue, apply first aid:

1. Safety
2. Practical Help
3. Referral /
Seek Help





1. Safety First

If you or another person are in immediate danger, call 000, irrespective of whether there are Court Orders in place.

Recommended responses:

- Are you safe? Do you need a safe place to stay? Do you want me to come and collect you/the children/the dog?
- Do you have a plan to keep safe? How can I help?
- Offer reassurance that you will support and care for the person
- Be **very** cautious about advising victims of DV about withdrawing protection order applications or returning home
- Consider mandatory reporting obligations





The do's and don'ts of creating a safe environment

Do –

- Keep up-to-date records of contact details for members and regular attendees
- Ensure appropriate risk management protocols are in place for staff, members, and church activities
- Appropriately document any incidents and/or interactions

In relation to discoveries/disclosures about violence in any relationship –

- Believe them
 - The majority of those who do report, will only do so once
 - For those who do report again, there is likely a long time period between reports
 - False reporting is believed to be around the 2% mark
 - Listen
 - Reassure – this is NOT your fault, this behavior is not ok

Don't –

- Be complicit in a criminal act, for example, breaching (or assisting someone to breach) a Protection Order
- Act as an inter-mediatory
- Don't give legal advice. This includes advising them to withdraw applications for Protection Orders, or advising them to return home.



- Don't judge them. Or minimize what they are telling you. You certainly won't know everything, and most likely they will not tell you the worst of it.
- Don't give advice with the "theological end goal" in mind
- In cases of DV, don't be neutral: For example, *"I'm not sure I should get involved"*, *"I don't want to take sides"*, *"we must be careful to love both of you"*, *"how do I know if you (or him?) is telling the truth?"*

"It is not possible to be truly balanced in one's views of an abuser and an abused woman. As Dr. Judith Herman explains eloquently in her masterwork *Trauma and Recovery*, "neutrality" actually serves the interests of the perpetrator much more than those of the victim and is not neutral. Although an abuser prefers to have you wholeheartedly on his side, he will settle contentedly for your decision to take a middle stance. To him, that means you see the couple's problems as partly her fault and partly his fault, which means it isn't abuse."

- Lundy Bancroft, textbook used [Why does he do that? Inside the minds of Angry and Controlling Men](#) for the QUT Graduate Certificate in Domestic Violence.



2. Practical Help

Please don't ignore practical needs in favor of trying to achieve a desired theological outcome.

“What good is it, my brothers and sisters, if someone claims to have faith [or the best, most well-thought out theological position on marriage] but has no deeds? Can such a faith save them? Suppose a brother or sister is without clothes and daily food? If one of you says to them, “Go in peace; keep warm and well fed,” [“marriage is sacred, return and live with love for your husband”] but does nothing about their physical needs, what good is it? In the same way, faith by itself, if it is not accompanied by action, is dead.”

James 2:14-17 [with my inserts]

Where there are family law issues, there are always many other practical issues...

Very often the net result of *one* separation is that there are *many* practical issues which arise at the same time. For example, it is not uncommon for most or all of the following be attended to in the first 3-6 months of a separation:

- figuring out how to financially support themselves
- negotiating with the “bread-winning” spouse to get money to live on, on an interim basis
- trying to get a handle on the exact financial position of the family
- figuring out a new budget
- opening a bank account
- closing joint accounts
- notifying service providers, such as doctors, physios, dentists
- having to go shopping for another set of everything since the kids are going between houses (eg school uniforms, pj's)
- mail re-direction
- finding a new place to live – making rental applications, looking at open homes
- moving house
- getting a house ready for sale
- supporting the children with extra appointments with counsellors, therapists, school, etc

- dealing with the emotional fallout and opinions of friends and family about the separation
- making interim parenting arrangements
- seeing a lawyer, perhaps for the first time in their life
- writing a resume
- finding a job/having to change jobs
- buying a new car/transferring car ownership
- buying everything necessary to furnish a second house – kitchen equipment, white goods etc
- making a new Will
- dealing with government bureaucracies such as Centrelink, perhaps for the first time

If there is DV involved, there will also likely be Court appearances, and medical visits.

Even if you are not the partner that wants to separate, you will have to deal with much of the above, and often all at the same time. The level of family and personal admin that is required is mammoth. And all this occurs at a time when the parties are experiencing grief, shock, and perhaps fear, as well as supporting the children through the same emotions.

Please do not underestimate the power of the practical in helping someone early in the separation process. Good decisions early can change the course of a matter. Practical support can lead to better outcomes for everyone, and are a more appropriate witness.

Churches are uniquely placed to be loving and supportive spaces. I urge you to consider how your church can support people in practical ways, particularly by way of co-ordination:

- Grocery shopping
- Transport – for the person or their children
- Assistance with making appointments
- Mail service
- Home cleaning
- Emergency meals
- Emotional support
- Assistance them to link in with existing church activities and groups, for example home groups/youth groups/playgroups /men's shed etc
- Invite them for a meal / take them a meal
- Court support

Questions to ask:

What do you need? Could you use ...? Would you like me to pick you/them up? Can I send that email for you? Would you like me to go with you/arrange for someone to go with you? Can I look after the dog/cat/fish/bird for a few weeks?

3. Refer. Refer. Refer.

It best to keep an up-to-date referral list of services offered online and in your local area.

At a minimum, I would suggest having a list of referrals for the following service providers:

- Counselling services
- Doctors / Health Services
- Food Banks
- Emergency Accommodation Services
- DV services
- Community Legal Centres
- Law Firms
- Transport
- Divorce recovery groups
- Pet minding services/volunteers

Note: This might be a good volunteer task!

Where possible, develop links and relationships with these service providers.

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