

# Draft Practice Standards for men's domestic violence behaviour change programs

Legal Aid NSW submission to  
the Department of Justice

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## About Legal Aid NSW

The Legal Aid Commission of New South Wales (**Legal Aid NSW**) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are socially and economically disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners. Legal Aid NSW also funds a number of services provided by non-government organisations, including 32 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

Legal Aid NSW provides criminal law services to defendants charged with domestic violence offences, including children and young people under 18 who are assisted by the Children's Legal Service. Legal Aid NSW represents child respondents in Apprehended Domestic Violence Order (**ADVO**) applications and adult respondents where there are exceptional circumstances.

The Legal Aid NSW Domestic Violence Unit (**DVU**) assists clients who have experienced domestic and family violence with both their legal and non-legal needs. The DVU is made up of specialist lawyers and social workers who connect with clients at crisis point. The DVU provides legal advice and representation in a range of areas including ADVOs, family law, care and protection, housing, social security, credit/ debt problems, Victims Services financial assistance matters and criminal law. The DVU is primarily providing services to victims of domestic and family violence in the South West Sydney community.

Legal Aid NSW thanks the Department of Justice for the opportunity to comment on the draft Practice Standards for Men's Behaviour Change Programs (**the Practice Standards**).

If you require any further information about this submission, please contact Louise Pounder, Senior Legal Project Manager, Strategic Planning, Policy and Community Partnerships, on email: [louise.pounder@legalaid.nsw.gov.au](mailto:louise.pounder@legalaid.nsw.gov.au)

## Introduction

In the Introduction to the Practice Standards, under the heading “transition arrangements for the new standards”, the text could make clearer that current accredited providers can continue to operate during the transition period (that is, that their 6 month self-assessment would occur during the transition period while they continue to operate).

We make some further specific comments below about the Practice Standards.

## Principle 1: The safety of victims and children

### Standard 1.1

We support the general rationale of Practice Standard 1.1, but the term ‘critical incident’ may need to be reconsidered or at the least defined, given its specific meaning in the NSW Police Force context.<sup>1</sup> Practical examples of what is meant by this term would also assist.

We suggest that the third dot point, regarding responding to criminal acts, be tightened to refer either to “relevant” criminal acts, or to criminal acts which threaten or impact the safety of the victims and/or their children (rather than unrelated criminal acts).

### Standard 1.2

Legal Aid NSW supports the use of the Domestic Violence Safety Assessment Tool (**DVSAT**) in assessing the level of threat to a victim of domestic and family violence. The use of the DVSAT by government and non-government service providers will help achieve greater consistency in risk assessment, and facilitate referrals to Women’s Domestic Violence Court Advocacy Services and Safer Pathway.

However, in our view, it is not presently clear how it is intended that the DVSAT is to be used by providers of men’s behaviour change programs (**MBCP**). For example, it is not clear whether DVSAT will be completed using information requested from the victim, or from other sources of information.

The NSW Government DVSAT assessment tool guide (**the Guide**) states that both “government and non-government service providers are strongly encouraged to complete the DVSAT for any victim of intimate partner violence **with whom they are working**” (p7, emphasis added). Page 9 of the Guide further provides that that service providers should complete the DVSAT during or after discussion with a victim.

We therefore suggest that Standard 1.2 be amended to make clear that the process for conduct of DVSAT assessments will conform with the Guide. Legal Aid NSW would also

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<sup>1</sup> See NSW Police Force Critical Incident Guidelines, 2017, available at: [http://www.police.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0020/420392/Critical\\_Incident\\_Guidelines\\_2017\\_Public\\_document.pdf](http://www.police.nsw.gov.au/__data/assets/pdf_file/0020/420392/Critical_Incident_Guidelines_2017_Public_document.pdf)

recommend that program providers receive appropriate training about the conduct of DVSA assessments.

### Standard 1.3

Legal Aid NSW supports the requirement to refer all victims and children deemed to be at serious threat to Safer Pathway. We suggest that the Practice Standards could include more information about Safer Pathway, including referral processes to Local Coordination Points. This information could be included in an appendix.

We note that all Women's Domestic Violence Court Advocacy Services are Local Coordination Points already, so victims at serious threat can, and should, be referred for support, even in areas where Safer Pathway has not yet commenced. This should also be noted in the Practice Standards.

We note the prohibition on a designated support worker being the program's group facilitator on page 8 of the Practice Standards (where a support service is provided by the program provider). We support that prohibition, due to the potential conflict of interest issues that could arise. However, similar issues may arise where the support worker is part of the same organisation providing a program to the perpetrator. This could include an increased risk of confidential information being inadvertently shared. We suggest the Practice Standards note these risks, and that program providers should take steps to ameliorate them.

On page 8 of the Practice Standards, which deals with information sharing, we suggest that there be a further bullet point which refers to the sexual assault communications privilege provisions of the *Criminal Procedure Act 1986* (NSW).<sup>2</sup> In other words, sharing of information by program providers and support services must be consistent with these provisions. The sexual assault communications privilege protects the privacy of a sexual assault victim's confidential counselling, medical and other therapeutic records by restricting their disclosure and use in court, or to the accused.

Legal Aid NSW is mindful of the complex legal framework around privacy and information sharing in the context of domestic and family violence. We therefore suggest that the training of program providers referred to in Standard 1.8 cover this topic.

### Standard 1.4

Standard 1.4 creates a positive obligation for program providers and support services to provide certain information to victims, including on topics which may be distressing to them. Currently, the victim has no way to opt out from the process. We recommend the Standard make provision for a victim to elect not to receive information.

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<sup>2</sup> These are found in Part 5, Division 2 of the *Criminal Procedure Act 1986* (NSW).

## Standard 1.6

We consider that Standard 1.6 could provide better guidance to providers about when information sharing must occur. It currently states that providers must have procedures in place to share information relating to the participant “where there is an indication of increased risk to the safety of victims and children”. The concept of “increased risk” is not defined and will arguably be open to varying interpretation.

We therefore suggest that it may be helpful to amend this Standard by:

- tying it back to Standard 1.3,
- referencing legislation governing this issue, or the general principles regarding information sharing in the context of domestic and family violence, and
- making clearer that where there is a serious risk to the safety of victims and children, program providers can report to the police.

## Standard 1.8

Standard 1.8 requires that facilitators’ training address “how the criminal justice system and ADVOs operate.” We suggest that the training also include some minimal understanding of how the family law system operates. There is a high incidence of family violence in family law matters, and with the introduction of the Family Advocacy and Support Services in family law court registries in NSW, referrals of parties in family law matters to MBCP are likely to increase.

We note our earlier suggestion that program providers receive training about the legal framework around information sharing and privacy.

## Principle 3: Evidence base and evaluation

### Standard 3.4

Practice Standard 3.4 again uses the term “critical incident”. We reiterate our suggestion that this term be defined, or another term considered.

### Standard 3.5

While we support the emphasis on evidence-based programs which are subject to evaluation, we consider it unlikely that self-assessment by MBCPs will in itself be sufficient; external independent evaluations of programs should also take place.

Standard 3.5 indicates that program evaluation “must rely on multiple sources of verification including police reports”. The term “police reports” should be clarified, as it is not clear whether the Standard is referring to reports of alleged violence on COPS, actual proven breaches or offences, or some other information received from police.

## Standard 3.6

Standard 3.6 states that program providers will be required to collect data “in accordance with the minimum data set requirement outlined in the practice guide”, but it is not clear which “practice guide” is being referred to. We suggest that this be clarified.

## Principle 5: Accountability

### Standard 5.1

This Standard indicates that the assessment should include the participant’s “current or previous court proceedings or orders, charges of convictions, and any reports required by statutory or other bodies” (bullet point 6). It is not clear which reports are referred to here; we suggest this reference be clarified or limited.

The last bullet point also indicates that the assessment should include the participant’s “willingness to accept any policies regarding limited confidentiality, the program providers’ need to share information and respond to criminal acts and breaches of court orders”. This same phrase appears on page 16. We query whether the reference to “limited confidentiality” is too broad, and whether it could ultimately deter some otherwise willing participants if they do not understand what confidentiality they are forgoing. In our view, it would be preferable to tie the limitations on confidentiality back to the safety of the victim and her children, and note that information sharing will always occur in accordance with applicable legislative frameworks (again, tied back to Standard 1.3). Once again, program providers would benefit from training in respect of this aspect of privacy law.

Standard 5.1 also indicates that a potential participant may be unsuitable to participate in a program if he is “...charged with a new criminal offence after commencement of the program”. We suggest that this should be limited to either a “relevant” offence or “domestic violence offence” to avoid unrelated offences resulting in an otherwise suitable participant being removed from the program.

Standard 5.1 finally states that “[i]f a prospective participant is assessed as not being suitable for group work, then he must be appropriately referred”. However, there is no guidance about where such men should be referred to.

### Standard 5.7

We suggest that the list of referrals also include referrals to services to assist with problem gambling.

### Standard 5.8

We support the requirement to provide feedback to referring agencies when a participant completes a program.