

Domestic Violence Practice Standards

This document sets out practice standards for lawyers appointed to the Legal Aid NSW Domestic Violence Panel (the DVP) to assist individuals experiencing domestic and family violence in relation to Apprehended Domestic Violence Order (ADVO) proceedings and the broad range of legal problems precipitated by domestic and family violence.

These practice standards also apply to in-house Legal Aid NSW solicitors.

Lawyers who are appointed to the panel are eligible to receive grants of aid and assigned work from the Grants Division, including case matters and duty work.

Legal Aid NSW may audit panel lawyers for compliance with practice standards. Continued inclusion on the panel is conditional on compliance with these practice standards.

“Lawyer” means a legal practitioner, being a person who holds a current practising certificate issued by the Law Society of NSW, the NSW Bar Association or equivalent interstate organisation.

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1. General Principles

Domestic and family violence can and does affect people of all cultural, social and economic backgrounds. Victims of domestic and family violence are predominantly women and children. They are priority clients of Legal Aid NSW.

Domestic and family violence affects some women and children in disproportionate and/or in more complex ways. Women, women who are pregnant, children, indigenous women, culturally and linguistically diverse women and women with disabilities have a heightened vulnerability to domestic and family violence.

In many cases they will have experienced some or all of the following: physical, verbal and sexual violence, ongoing threats to their physical and/or emotional safety, lack of access to the legal system, social and geographical isolation, lack of family and community support, inadequate income support and credit/debt issues, housing insecurity, health issues, threats to immigration status and encounters with the family law and child protection systems.

The DVP is a specialist panel. Lawyers appointed to the DVP are expected to have specialist knowledge and skills including:

1. Specialist knowledge and skills in adopting a trauma-informed approach to providing services to clients subject to actual and/or threatened violence and with complex legal and/or social needs;
2. Expertise in relation to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) and in conducting Apprehended Domestic Violence Order proceedings; and
3. Demonstrated capacity to provide legal assistance in relation to the broad range of legal problems precipitated by domestic and family violence.

The Women's Domestic Violence Court Advocacy Program

Women's Domestic Violence Court Advocacy Services (WDVCASs) are funded by Legal Aid NSW under the Women's Domestic Violence Court Advocacy Program (WDVCAP) to assist women and children experiencing domestic violence to obtain legal protection through an Apprehended Domestic Violence Order (ADVO).

Funding is provided to incorporated, not for profit non-government Service Provider organisations through a triennial Service Agreement with Legal Aid NSW to employ staff to deliver WDVCAS services to the WDVCAP's Priority Client Groups.

WDVCASs deliver the following services to their clients:

- Information;
- Assistance and referral; and
- Court advocacy.

Legal Aid NSW Domestic Violence Duty Scheme

The Domestic Violence Duty Scheme is funded by Legal Aid NSW. Legal Aid NSW is responsible for the appointment of Domestic Violence Duty Scheme lawyers.

The Domestic Violence Duty Scheme currently provides duty services to WDVCAS clients in a number of Local Courts throughout the Sydney Metropolitan Region and across regional areas of NSW.

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The aim of the Domestic Violence Duty Scheme is to work in partnership with the WDVCS to provide trauma-informed, holistic, high quality and client-focused service which:

1. Assists individuals experiencing domestic violence to obtain effective protection through an ADVO
2. Provides advice and assistance in resolving related legal problems which victims of domestic and family violence often experience in particular in family law and care and protection issues, housing, social security, credit/debt problems, immigration, victim's support and criminal law, subject to a client's needs
3. Facilitates their access to a network of professional services that can assist them with their other legal and social/welfare needs.

In particular, Domestic Violence Duty Scheme lawyers provide the following services to clients subject to their needs:

- Legal advice, assistance and referrals for individuals experiencing domestic and family violence (including protected persons in police-initiated Apprehended Domestic Violence Orders) in relation to the broad range of legal problems precipitated by domestic and family violence such as family law, care and protection, housing, social security, credit/debt, immigration, victim's support and criminal law. This may include:
 - explaining the effect of an ADVO and the court process
 - ensuring that applications and orders sought are appropriate
 - negotiating with defendants to obtain orders by consent
 - providing advice and/or negotiating arrangements in family law matters where appropriate
 - advocating and/or making an application under section 68R of the *Family Law Act 1975* where appropriate.
- Legal advice and representation for individuals who are seeking a private ADVO (including cross applications); and
- Legal advice and representation for defendants to applications for ADVOs where the client is also a protected person in an associated ADVO (cross application), or where it appears that the client is a victim of domestic violence.

Domestic Violence Duty Scheme lawyers are required to competently provide the services outlined above as appropriate to the client's needs and to comply with the standards set out in the Duty Roster Guidelines for Domestic Violence Duty Scheme lawyers.

Grants of legal aid in ADVO and related family, civil and criminal law matters

Subject to the relevant Legal Aid NSW Grants policy and means test, a grant of legal aid is available to individuals seeking a private ADVO. A grant of legal aid is also available to defendants to applications for ADVOs where the client is also a protected person in an associated ADVO (cross application), or where Legal Aid NSW is satisfied that the client is a victim of domestic violence. Wherever possible, DVP lawyers should assist clients to make applications for legal aid and represent them in such matters.

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Legal Aid may also be available for domestic and family violence related family, civil and criminal law matters. Wherever possible, lawyers should assist clients to make an application for legal aid in such matters.

2. Responsibilities to Clients

2.1. Client Safety

A lawyer representing a client in a legally aided domestic violence matter will:

- 2.1.1 Be familiar with domestic and family violence screening, risk assessment and safety planning tools and processes (such as the [Domestic Violence Safety Assessment Tool](#)).
- 2.1.2 Assess and be alert to the level of risk to the client's safety as a result of domestic and family violence (including through evidence of controlling and coercive behaviour, emotional abuse, sexual violence and/or physical violence towards the client).
- 2.1.2 Take appropriate steps to prioritise the client's safety, subject to the individual needs of the client and in consultation with the WDVCS.
- 2.1.3 Ensure contact with the client does not compromise their safety. The lawyer must:
 - (i) Not ask about domestic violence in the presence of a partner or child.
 - (ii) Ask about potential safety or security issues when arranging an interview.
 - (iii) Ask how best to make contact with the client e.g. phone numbers that are safe to call, whether it is safe to SMS or leave a voice message, postal address.
 - (iv) Not put a client's address on the front of the file.
- 2.1.4 Note potential safety issues and the protocol for safe contact with the client on the advice sheet or client file.
- 2.1.5 Familiarise themselves with court safety procedures and protocols.
- 2.1.6 Inquire if the client would like to use AVL facilities (if available).
- 2.1.7 Let the court know in advance of arrangements to keep the client safe at court.

2.2. Preparation of client's case - where client is eligible for legal aid

A lawyer representing a client in a legally aided domestic violence matter will:

- 2.2.1 Observe the principles governing the lawyer/client relationship and the confidentiality of instructions provided by the client.
- 2.2.2 Meet with the client as early in the process as possible and communicate with the client in a way that the client understands using language appropriate to the age, maturity, education and cultural background of the client.

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- 2.2.3 Use a qualified interpreter where necessary, after obtaining approval from the Grants Division (where an interpreter's costs are not otherwise covered by the Court).
- 2.2.4 Give advice and explain all available options to the client together with the consequences of any decision made by the client. Explain to the client a matter to the extent reasonably necessary to permit them to make informed decisions regarding the matter and to advise their clients of what they are expected to do to assist their case.
- 2.2.5 Ensure that the client makes the decision, not the lawyer making the decision for the client.
- 2.2.6 Be respectful of the client's choices of legal options.
- 2.2.7 Check whether there is an ADVO in place.
- 2.2.8 Check whether there are any parenting plans or Family Law Court orders in place.
- 2.2.9 Alert the client to the need to gather and protect evidence of violence such as police reports, medical reports and witness statements.
- 2.2.10 Ask for a report from the client's counsellor or health professional if appropriate, subject to the client's consent.
- 2.2.11 Make reasonable attempts to locate evidence such as police reports, medical reports and witness statements to support the client's allegations of domestic violence. Possible steps may include (subject to safety considerations of the client):
- urging the client to visit their GPs to have a record made of any injuries;
 - advising the client to obtain photographs of any injuries immediately after any violent episode (preferably with some evidence of the date on which the photographs were taken);
 - asking the client for the names and addresses of any witnesses to the violence, intimidation or harassment and taking statements from them or asking the client to obtain written statements from them; and
 - encouraging the client to keep a diary or record of events which has been contemporaneously signed and dated.
- 2.2.12 Ensure there is appropriate liaison with the client's support networks when preparing their case (subject to the client's consent).
- 2.2.13 Alert the client to the Victims Support Scheme if appropriate.
- 2.2.14 Be familiar with local support services and facilitate warm referrals to such services as appropriate.
- 2.2.15 Provide written materials (brochures and other material) to the client as appropriate.
- 2.2.16 Advise the client of the availability of legal aid and, where appropriate, submit an application for legal aid on behalf of the client via [Grants Online](#).
- 2.2.17 Obtain from the client adequate instructions as to the current status of the matter in order to apply for a grant or for an extension of legal aid.
- 2.2.18 Assist the client in obtaining a grant of legal aid by providing Legal Aid NSW with all information relevant to the application or extension.

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- 2.2.19 Promptly comply with reasonable requests by a client for information regarding their matter.
- 2.2.20 Provide a meaningful reply to all correspondence, reply promptly to all urgent matters and advise clients that a detailed response for advice may require more time.
- 2.2.21 Respond to all telephone inquiries promptly.
- 2.2.22 Keep the client informed of the progress of their matter in a timely manner and ensure that the client is aware of the stages through which a matter progresses in the court system.
- 2.2.23 In all communications with clients, use language that is clearly understandable, free of jargon and calculated to assist the resolution of the matter, not to inflame emotions or antagonize.

2.3. Legal representation

A lawyer representing a client in a legally aided domestic violence matter will:

- 2.3.1 Provide representation in accordance with the Legal Profession Uniform Legal Practice (Solicitors) Rules 2015 or Legal Profession Uniform Conduct (Barristers) Rules 2015 as applicable.
- 2.3.2 Act as the client's direct representative in all proceedings unless the lawyer determines that the client is incapable of giving instructions (see detailed commentary in the Law Society of New South Wales' [Client capacity guidelines: civil and family law matters](#)).
- 2.3.3 Where the client cannot give instructions the lawyer will consider whether it is appropriate and in the client's interests to act as amicus curiae.
- 2.3.4 Obtain prior instructions from the client before presenting their case in court. If there is insufficient time, the lawyer should adjourn the matter for such time as is necessary for the client to give proper instructions.
- 2.3.5 Advise the client at the first reasonable opportunity, if a possible delay in the progress of the matter becomes apparent.
- 2.3.6 Attend all court events in a timely manner, allowing adequate time to prepare.
- 2.3.7 Read and observe the objects and principles listed in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).
- 2.3.8 Be familiar and comply as appropriate with [Local Court Practice Note No 2 of 2012 – Domestic and personal violence proceedings](#).
- 2.3.9 Ensure the client is represented at all court events, making all reasonable efforts to meet with the client and attend court personally on behalf of the client so as to ensure continuity of representation.
- 2.3.10 Ensure that where the lawyer is unable to appear personally on a particular occasion that any agent engaged is a member of the panel, that every effort is made beforehand to inform the client and that the agent is properly briefed before the appearance.
- 2.3.11 Provide or make available to the client copies of relevant documents filed in the proceedings and any decisions or terms of agreement.

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- 2.3.12 Advise the client about the appeal process, appeal prospects and time limits for appeal.
- 2.3.13 Continue to represent the client notwithstanding any conflict that may occur with a WDVCS that results in the WDVCS being unable to provide assistance to the client.

3. Responsibilities to Legal Aid NSW

A lawyer acting in a domestic violence matter subject to a grant of legal aid will:

- 3.1 Comply with these practice standards.
- 3.2 Comply with the provisions of the [Legal Aid Commission Act 1979 \(NSW\)](#) and the [policies and guidelines](#) of Legal Aid NSW (as amended).
- 3.3 Comply with the [Terms and Conditions of use of Grants Online](#) (as amended).
- 3.4 Comply with any best practice guidelines of Legal Aid NSW concerning domestic and family violence.
- 3.5 Comply with the terms and conditions of the grant of legal aid.
- 3.6 Be responsible for that matter and accountable to Legal Aid NSW for any breach of these practice standards including for any work undertaken in the matter by another lawyer or employee of that (your) firm.
- 3.7 Ensure that any applications for legal aid, extensions of the grant of aid and requests for reconsideration and review are lodged promptly with all relevant information and supporting material to enable a decision to be made without delay.
- 3.8 Seek approval of the Grants Division for any disbursements prior to expenditure on the file by obtaining the appropriate grant or extension via Grants Online.
- 3.9 Review all files on completion of the matter to ensure all necessary steps have been taken before notifying the Grants Division that the matter is finalised. When submitting the final claim to the Grants Division the lawyer must complete the file outcome form setting out the steps involved in completion of the matter and the result in the matter.
- 3.10 Ensure prompt payment to experts, witnesses and other third parties who have undertaken work pursuant to a grant of aid for that work.
- 3.11 Reassign all pro forma invoices for Counsel's fees to the barrister who has been briefed so that the barrister can claim directly from Legal Aid NSW.
- 3.12 Provide the file in a matter to Legal Aid NSW where a written authority is received from a client to hand over the file.
- 3.13 Seek orders for costs where appropriate.
- 3.14 Notify Legal Aid NSW immediately of any circumstances that could give rise to a claim for professional negligence and provide a detailed statement in relation to the matter.
- 3.15 Where Counsel receives an offer of a direct access matter from Legal Aid NSW, Counsel may decline to accept the assignment if, the case is too complex or it is

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otherwise inappropriate to do the work without the involvement of an instructing solicitor.

- 3.16 Take steps to avoid a potential conflict of interest, not act where a conflict exists and notify Legal Aid NSW and the WDVCAS (where relevant) where a conflict exists.
- 3.17 Undertake any domestic and family violence training as required by Legal Aid NSW.

4. Responsibilities to Others

When dealing with other lawyers, experts, witnesses and the staff of the Courts or other agencies or institutions, the lawyer will:

- 4.1 Conduct all communication in a courteous, prompt and professional manner.
- 4.2 Comply with timetables, time limitations, procedural steps, and any undertakings given to the Court.
- 4.3 Avoid unnecessary expense or waste of time by ensuring that:
 - (i) documents are served or filed on time;
 - (ii) documents served, filed or given to the client are legible;
 - (iii) the client is aware of medical appointments, conferences and hearing dates and understands the importance of attending promptly and on time;
 - (iv) witnesses are aware of conferences and hearing dates and understand the importance of attending promptly and on time;
 - (v) court commitments are accurately diarised.

5. Duty Work: The Domestic Violence Duty Scheme

Domestic Violence Duty Scheme lawyers are required to competently provide the services outlined above as appropriate to the client's needs.

A lawyer appointed to the Domestic Violence Duty Scheme appearing on a duty day will:

- 5.1 Attend the court on a rostered basis where the WDVCAS provides services.
- 5.2 Comply with the Duty Roster Guidelines for Domestic Violence Duty Scheme Lawyers (as amended).
- 5.3 Be available for court attendance, as arranged and rostered by the WDVCAS Coordinator.
- 5.4 Attend the relevant court on each rostered AVO list day at 9 am, unless otherwise agreed with the WDVCAS coordinator for the court.
- 5.5 Be present in the safe room or the relevant court room at all times or immediately available to the WDVCAS Coordinator.
- 5.6 Provide legal advice and representation to WDVCAS clients as outlined above.
- 5.7 Notify the WDVCAS Coordinator if it is necessary to leave the court precinct for any reason prior to the completion of duty work.

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- 5.8 Give priority to WDV CAS clients.
- 5.9 Not represent defendants on the lawyer's rostered list day, unless such individual is also a protected person in an associated ADVO (cross application), or where it appears that the client is the primary victim of domestic violence.
- 5.10 Ensure that adjournments for further mention(s) coincide with an AVO list day when a Domestic Violence Duty Scheme lawyer will be present.
- 5.11 Should a matter progress to a defended hearing, the duty lawyer who obtains a date for the defended hearing:
 - (i) Is responsible for submitting an application for a grant of legal aid on behalf of the client via Grants Online; and
 - (ii) Should appear for the client for whom they have appeared on a duty basis with a grant of legal aid, if eligible;
 - (iii) Should continue to appear on behalf of the client in any subsequent appeal to the District Court with a grant of legal aid, if eligible.
- 5.12 Provide details of outcomes of all ADVO proceedings (mentions and hearings) to the WDV CAS Coordinator, and provide the Coordinator with a copy of orders made for the client.
- 5.13 Work co-operatively at all times with WDV CAS staff, police officers (in particular, Domestic Violence Liaison Officers and police prosecutors) and court staff.
- 5.14 If time permits, debrief with the WDV CAS Coordinator on the AVO list day before leaving court.

6. File Management

A lawyer representing a client in a domestic violence matter subject to a grant of legal aid must ensure that:

- 6.1 Files must be maintained in an orderly manner so that Legal Aid NSW may effectively audit the file if required, and to ensure that another lawyer assuming conduct of the matter may quickly and easily understand its factual basis, the client's instructions, the stage the matter has reached and all further action required to run the matter in line with the practice standards.
- 6.2 All documents including:
 - (i) correspondence from the Grants Division in relation to the grant of legal aid; and
 - (ii) correspondence received and sent in relation to the matter
 are kept on the file in date order.
- 6.3 Court documents filed, served or issued in the proceedings are kept in a separate bundle on the file in date order.
- 6.4 Clear and legible file notes are kept of all telephone conversations, conferences, interviews, meetings with clients or witnesses and experts and include:

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- (i) date;
 - (ii) name of person spoken to; and
 - (iii) relevant details of the conversation.
- 6.5 Clear and legible file notes are kept of information and advice given to a client that is not confirmed in writing.
- 6.6 All court attendances are noted on the file in date order with:
- (i) Coram;
 - (ii) date and venue of court appearance;
 - (iii) the name of the lawyer attending on behalf of the legally assisted person;
 - (iv) details of other parties' representative/s;
 - (v) summary of any negotiations and orders or directions made;
 - (vi) start and finish time/s of the court attendance; and
 - (vii) the date proceedings have been adjourned to or the outcome of the matter.
- 6.7 All Conferences, views, and any other specific attendances must be noted on file including at a minimum, details of the length and type of attendance and the date on each occasion.
- 6.8 Receipts or other verifying evidence for all disbursements claimed for payment from Legal Aid NSW are retained in a separate section of the file.