Report on Legal Aid NSW services to people in domestic violence situations

25 Nov 2008
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Acknowledgment

The Review is grateful for the invaluable assistance of many Legal Aid NSW staff who provided their time and detailed contributions to the various drafts. The contributions and guidance of the Review Consultative Committee and the CEO are also gratefully acknowledged. Special thanks goes to Richard Funston for his extensive editorial advice and support throughout the Review.

Abbreviations

ABS       Australian Bureau of Statistics
ADR       Alternative Dispute Resolution
AJAC      Aboriginal Justice Advisory Council (NSW Attorney General’s Department)
ALS       Aboriginal Legal Service (NSW/ACT) Limited
ALRC      Australian Law Reform Commission
ATSI      Aboriginal and Torres Strait Islander
AVO       Apprehended Violence Order (generic)
ADVO      Apprehended Domestic Violence Order
APVO      Apprehended Personal Violence Order
BOCSAR    NSW Bureau of Crime Statistics and Research
CALD      Culturally and Linguistically Diverse
CARS      Client Assessment and Referral Service (Legal Aid NSW)
CCLCG     Combined Community Legal Centre Group
CLC       Community Legal Centre
CLE       Community Legal Education
CLS       Children’s Legal Service (Legal Aid NSW)
CLSD      Cooperative Legal Service Delivery Program
CROC      United Nations Convention on the Rights of the Child
DoCs      NSW Department of Community Services
DCS       NSW Department of Corrective Services
DPC       NSW Department of Premier and Cabinet
DVAS      Domestic Violence Advocacy Service (Women’s Legal Services))
DVICM     Domestic Violence Intervention Court Model
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>DVSS</td>
<td>Domestic Violence Solicitor Scheme (Legal Aid NSW)</td>
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<td>FDR</td>
<td>Family Dispute Resolution</td>
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<tr>
<td>FVPLS</td>
<td>Family Violence Prevention Legal Service</td>
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<tr>
<td>GLBT</td>
<td>Gay, Lesbian, Bi-Sexual and Transgender</td>
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<tr>
<td>ICL</td>
<td>Independent Children’s Lawyer</td>
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<td>LAQ</td>
<td>Legal Aid Queensland</td>
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<tr>
<td>LAWA</td>
<td>Legal Aid Western Australia</td>
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<tr>
<td>MCATSIA</td>
<td>Ministerial Council on Aboriginal and Torres Strait Islander Affairs</td>
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<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>NLAF</td>
<td>NSW Legal Assistance Forum</td>
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<td>NSWPF</td>
<td>NSW Police Force</td>
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<tr>
<td>PILCH</td>
<td>Public Interest Law Clearing House</td>
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<tr>
<td>SAAP</td>
<td>Supported Assistance and Accommodation Program</td>
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<tr>
<td>SPPD</td>
<td>Strategic Planning and Policy Division (Legal Aid NSW)</td>
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<tr>
<td>SSDV</td>
<td>Same-Sex Domestic Violence</td>
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<tr>
<td>TARS</td>
<td>The Accommodation Rights Service</td>
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<tr>
<td>TRU</td>
<td>WDVCAP Training and Resource Unit (Women’s Legal Services)</td>
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<tr>
<td>VLA</td>
<td>Victoria Legal Aid</td>
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<tr>
<td>WDVCAP</td>
<td>Women’s Domestic Violence Court Advocacy Program (Legal Aid NSW)</td>
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<tr>
<td>WDVCAS</td>
<td>Women’s Domestic Violence Court Advocacy Service</td>
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<tr>
<td>WLS</td>
<td>Women’s Legal Services</td>
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<td>Wood Inquiry</td>
<td>Special Commission of Inquiry into Child Protection Services in NSW</td>
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Executive Summary

Over the last 30 years, increasing attention has been paid at the international, national and local level to domestic violence.

Through international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and the Convention on the Rights of the Child (1989) domestic violence has been reconceptualised from a social problem to a human rights issue and corresponding principles and strategic actions set out to assist signatory States, such as Australia to address this issue.

Domestic violence is behaviour which deprives or restricts another person from exercising their basic human rights, their right to equality, security, liberty, integrity and dignity, causing them physical, sexual, psychological, social, economic, legal and cultural harm. Many of these rights are recognised in Commonwealth, State and common law.

In Australia domestic violence is a serious and prevalent problem which affects mainly women and children. The Crimes (Domestic and Personal Violence) Act NSW 2007 which provides for the legal protection of victims of domestic violence recognises that it is a crime “predominantly perpetrated by men against women and children” but also provides for the protection of people that may be vulnerable in other kinds of domestic relationships.¹

This report looks at:

- The legal consequences of domestic violence and the legal needs arising from those consequences;
- How Legal Aid NSW responds to people in domestic violence situations both as an organisation and through the different practice areas; and
- How these responses could be improved.

Information on the prevalence and impacts of domestic violence is provided in Appendices C and D. It also looks briefly at the legal systems in which these services operate and the challenges these pose for Legal Aid NSW.

Australia’s primary response to domestic violence is through the criminal justice system – arrest, prosecution, punishment, protection orders and in some cases, court-ordered treatment for defendants. In 2007, nearly 35,000 protection applications were made in NSW, the majority (70%) for women.

Increasingly attention is being focused on the family law and child protection jurisdictions and the need to respond to the harm caused by domestic violence, particularly to children, while in a number of civil law areas such as credit and debt and

¹ See s.9 (3) (b) of the Crimes (Domestic and Personal) Violence Act 2007, which recognises in its objects to ‘that domestic violence is predominantly perpetrated by men against women and children.’
immigration, domestic violence is acknowledged as a significant factor that may impact on a person’s ability to exercise their legal rights.

Because of the range of behaviours it encompasses, domestic violence often precipitates a cluster of complex, interrelated and ongoing legal events: protection order applications, criminal prosecutions, family law matters (separation and divorce, relationships with children and property issues), care and protection proceedings, housing, social security and credit/debt problems and victim’s compensation.

In order to deal with these problems people must navigate their way through a fragmented and sometimes deficient legal system which requires them to go through different processes, in different courts, under laws with different purposes, priorities and underlying values. In reality, the ‘system’ operates as a series of parallel universes.

The most effective way for Legal Aid NSW to assist is to provide holistic, client focused legal responses. As an organisation whose services are structured along jurisdictional lines, Legal Aid NSW faces particular challenges:

- Acknowledging the legal needs of people in domestic violence situations and accepting services to this client group as part of its core work;
- How to ‘fit’ ADVOs which are hybrid legal remedies into services which are split along jurisdictional lines;
- Dealing with the conflict implications of providing ADVO services in a way that doesn’t cause victims of domestic violence to miss out on services;
- Providing services which take into account the broader social and economic consequences of domestic violence on clients; and
- How to respond holistically to clients in domestic violence situations whose needs cut across different practice areas.

At a policy level, Legal Aid NSW needs to ensure that its policies take into account evidence of the impact domestic violence has on social disadvantage and its relevance as an indicator of social exclusion. The establishment of a centralised Domestic Violence Unit within Legal Aid NSW is recommended as a key strategy to help bring this together.

**Conduct of the review and methodology**

Bill Grant, the former CEO of Legal Aid NSW, commissioned the review of Legal Aid NSW services to people in domestic violence situations. Louise Blazejowska, from the Strategic Planning and Policy Division in Legal Aid NSW was appointed to undertake the Review.

The reviewer consulted in-house Criminal, Family, Care and Protection and Civil solicitors as well as staff from the Strategic Planning and Policy Division and the Client...
Assessment and Referral Unit. A schedule of consultations, submissions and feedback to the Review is attached at Appendices A and B.

External stakeholders included: the NSW Chief Magistrates Office, Local Courts, New South Wales Police Force, Cooperative Legal Service Delivery Program partners, Community Legal Centres, Women’s Domestic Violence Court Advocacy Service Coordinators, Legal Aid Queensland, the Family Violence Division of the Victorian Magistrates Court, the Chief Commissioner Victoria Police and the Same Sex Domestic Violence Working Group.

Research, case studies and Legal Aid NSW policy files were also examined.

The report is based on the opinions and ideas expressed by people consulted in this review and on directions suggested by research and previous Legal Aid NSW work in this area.

Terms of reference

- Legal Aid NSW current services to people who have been or are in domestic violence situations;
- Legal Aid NSW relationships with key domestic violence service delivery partners (both internal and external); and
- Legal Aid NSW role in improving access to justice for people who have been or are in domestic violence situations through its participation in research, policy and justice system service delivery initiatives.

Review consultation committee

- Richard Funston, Director Strategic Planning and Policy
- Brian Sandland, Director Criminal Law
- Judith Walker, Director Family Law
- Monique Hitter, Director Civil Law
- Tracey Bosnich, A/Director Grants
- Mary Whitehead, A/Director Grants
- Anne Corbett, Legal Staff Development and Education Coordinator, Criminal Law, Head Office
- Annmarie Lumsden, Executive Officer to the CEO
Executive Summary

Terminology used in the report

In this report the term ‘victim’ is used as it is more familiar to Legal Aid NSW staff. A person who has applied for an ADVO is referred to as the ‘applicant.’ Because of the gendered nature of domestic violence, this report generally refers to men as alleged offenders and women as the victims, except where other types of domestic relationships are being discussed.³

A person against whom an ADVO is or has been sought or who is or has been charged with a domestic violence offence(s) is referred to as the ‘defendant.’ Otherwise they are referred to as the alleged offender.

The term ‘Aboriginal’ is used throughout the report to describe Indigenous Australians living in NSW as it is the term which is generally preferred, except when quoting from other reports which use different terms such as ‘ATSI.’

When referring to domestic violence orders made in NSW, the term ADVO is used. Throughout the report other terms such as ‘protection order’ (Qld), or ‘family violence order’ (Cwlth) are used depending upon how they are defined in the jurisdiction to which the discussion relates. The term ‘protection order’ is used as a generic description of orders made throughout Australia and overseas.

³ Based on Local Court statistics for ADVO matters, 2007.
List of recommendations

Recommendations which have already been or are in the process of being implemented.

<table>
<thead>
<tr>
<th>Number</th>
<th>Recommendation</th>
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<tr>
<td>3</td>
<td>That Legal Aid NSW work to achieve improvements to justice system responses to the specific needs of children/young people exposed to domestic violence.</td>
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<tr>
<td>8</td>
<td>That Legal Aid NSW adopt a cross-jurisdictional, whole of organisation approach to the development of legal policy positions and responses to domestic and family violence.</td>
</tr>
<tr>
<td>12</td>
<td>That Legal Aid NSW prioritise the finalisation of MoUs with Local Courts and NSWPF in relation to the operation of the WDVCAP.</td>
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<tr>
<td>25</td>
<td>That training/information be provided to Legal Aid NSW staff on agencies that can provide assist people in domestic violence situations and on the need to make ‘warm referrals.’</td>
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Recommendations which could be implemented by Legal Aid NSW at no cost or which are cost neutral.

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<tr>
<th>Number</th>
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<tr>
<td>1</td>
<td>That in consultation with the Program areas, SPPD develop a set of working definition(s) of domestic and family violence for Legal Aid staff for inclusion into relevant operational documents. Training on these definitions should be included in a domestic violence awareness training package for all staff which includes an analysis of the dynamics of domestic violence.</td>
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<tr>
<td>2</td>
<td>That in-house and private practitioners on duty rosters in Local Courts be consulted by the Director Crime on a regular basis about police arrest and prosecution practices and that the Director Crime and the WDVCAP Unit meet on a regular basis.</td>
</tr>
<tr>
<td>4</td>
<td>That Legal Aid NSW keep itself informed of research on the prevalence and context of male experiences of domestic violence for the purpose of developing appropriate service responses.</td>
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<tr>
<td>5</td>
<td>That Legal Aid NSW seek the assistance of the Law and Justice Foundation of NSW to develop a legal event checklist for staff providing assistance to people in domestic violence situations.</td>
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<tr>
<td>6</td>
<td>That Legal Aid NSW commit to the NSW Government’s policy of prevention and early intervention through an increased focus on the development of resources on domestic violence and the provision of CLE and outreach advice services on domestic violence.</td>
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### List of recommendations

<table>
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| 7      | That Legal Aid NSW endorse a human rights approach to the provision of services to people in domestic violence matters, which acknowledges:  
  b) The gendered nature of domestic violence and its disproportionate impact on women;  
  c) The impact of exposure to domestic violence on children;  
  d) The need to adopt a holistic, multi-pronged approach to the provision of services to victims of domestic violence, alleged offenders and defendants. |
| 9      | That Legal Aid NSW undertake a mapping exercise which identifies potential points of contact and appropriate referral pathways to legal assistance for people in domestic violence situations. |
| 10     | That Legal Aid NSW develop client focused holistic service delivery strategies for people with domestic violence related matters which also ensure that people with domestic violence related matters are given greater priority. |
| 11     | That Legal Aid NSW work through the NSW Legal Assistance Forum (NLAF) to improve collaboration, mutual understanding and referral arrangements between local courts, Legal Aid NSW WDVCASs and other legal services. |
| 13     | That Legal Aid NSW request that NLAF establish a specific working group the aim of which is to examine, report and make recommendations on the provision of publicly funded legal services to people in domestic violence situations. |
| 14     | That Legal Aid NSW discuss new opportunities with CLCs for collaborative service delivery and legal policy reform on domestic violence issues. |
| 15     | That the Director, Aboriginal Services consult with the NLAF’s Aboriginal Working Group on Access to Civil Law for Aboriginal Clients as to whether Legal Aid NSW Aboriginal family violence service delivery proposal should be revisited. |
| 16     | That Legal Aid NSW develop a communication strategy to inform Legal Aid NSW staff and domestic violence stakeholders about the services it provides to people in domestic violence matters. |
| 17     | That Legal Aid NSW adopt a leadership role on the development of good practice in NSW in addressing the legal needs of people in domestic violence situations through the development of Best Practice Guidelines. |
| 18     | That the best practice guidelines for the practice areas also include best practice guidelines for the CAR Unit. |
| 19     | That Legal Aid NSW incorporate into its Client Service Charter the requirement for staff to enquire about domestic violence where appropriate and that this be promoted to staff as necessary to ensure client safety. The Charter should be clearly on display at the front counter of all Legal Aid NSW Offices. |
| 22     | That WDVCAP data be disseminated bi-annually to the Program areas for service delivery planning and legal policy development. |
| 24 (a) | That Legal Aid NSW outreach services provide information to people in domestic violence situations on the availability of legal aid for domestic violence related matters and WDVCAS services and that the quality and access of these services be enhanced through:  
  a) Links with the WDVCAP and other domestic violence services and community workers; |
<p>| 26     | That Legal Aid NSW family law practitioners hold regular stakeholder meetings with local domestic violence service providers, where possible, by attending existing forums such as local domestic violence committee meetings or Court User Forums. |</p>
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<tr>
<td>27</td>
<td>That the CLSD Program continue to encourage the participation of domestic violence related services at CLSD meetings and the discussion of local and systemic issues concerning the delivery of legal services to people in domestic violence situations.</td>
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</tbody>
</table>
| 28 (b) | That Legal Aid NSW:  
   b) Accept the issuing of a private ADVO application by a Local Court under Part 10, Division 3 of the Crimes (Domestic and Personal Violence) Act 2007 as sufficient evidence of merit for the purpose of an initial grant of legal aid for an AVO matter and that Legal Aid NSW staff be trained in this requirement; |
| 30     | That Legal Aid NSW:  
   a) Establish a specialist panel for the provision of legal representation services in ADVO matters which includes defended hearings;  
   b) Develop clear policies for the operation of the DVSS be established as outlined in WLS submission;  
   c) Remove the requirement for DVSS solicitors to undertake pro bono hearings. |
| 32     | That Legal Aid NSW:  
   a) Assist the Same-Sex Domestic Violence Interagency Committee (or relevant organisation) to develop an appropriate court advocacy model for gay men in domestic violence situations;  
   b) Reinforce WDVCAP policy on assisting women victims in SSDV situations. |
| 33     | That Legal Aid NSW work with the Law Society of NSW to explore the possibility of developing best practice guidelines for practitioners in ADVO and domestic violence related criminal charge matters. |
| 34     | That the Family Law Program’s CLE brochures on family law address concerns about eligibility, types of family law matters undertaken by Legal Aid NSW, conflict and where to get help. |
| 36 (a) | That the Government Law Group:  
   a) Develop accessible information about the availability of its migration services for visa applicants experiencing family violence; |
| 37 (b) & (c) | That Legal Aid NSW:  
   b) Invite Victim Services to provide information to Legal Aid NSW on its services through presentations at conferences and other forums;  
   c) Examine opportunities for collaborative work with Victim Services in relation to CLE/training and publications especially for Aboriginal and CALD people. |
| 38     | That Legal Aid NSW:  
   a) Develop a working definition of what constitutes a ‘domestic-violence-related death’ for the purpose of identifying potential matters. This should also be included in the Glossary of Terms; and  
   b) Promote the services of the Coronial Inquest Unit to domestic violence stakeholders. |
| 43     | That Legal Aid NSW establish a training committee to assess the need and plan cross-jurisdictional training for in-house and assigned practitioners. |
| 44     | That Legal Aid NSW look at training opportunities with other agencies. |
List of recommendations

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| 45 | That the CLE Unit in conjunction with the Program areas of Legal Aid NSW:  
   a) Establish a core group of legal staff from both genders to undertake domestic violence CLE training;  
   b) Ensure that CLE sessions on domestic violence for Aboriginal and CALD communities are culturally appropriate; and  
   c) Ensure that CLE sessions are followed up with assistance services and referrals. The WDVCAP Unit could assist in developing a referral resource for CLE presenters on domestic violence. |
| 46 | That Legal Aid NSW review its publications on domestic violence and their distribution. |
| 47 | That Legal Aid NSW provide information pages and resource links on domestic violence on its website. |
| 48 | That Legal Aid NSW develop workplace strategies aimed at addressing domestic violence. |

Recommendations which would require additional resources.

Table 3: Recommendations requiring additional resources

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<tr>
<th>Number</th>
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<tr>
<td>20</td>
<td>That Legal Aid NSW develop a general screening and risk assessment tool similar to that used by LAQ as well as training in client interview techniques. This training should be made available to both in-house and assigned practitioners in direct contact with clients.</td>
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<tr>
<td>21</td>
<td>That Legal Aid NSW add specifications into the ATLAS system which would allow the collection of data on the numbers of duty services for domestic violence related charges and the gender of clients in those matters.</td>
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<tr>
<td>23</td>
<td>That Legal Aid NSW support LawAccess NSW to enhance access to its telephone legal advice line for ADVO applicants while at court.</td>
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| 24 (b) | That Legal Aid NSW outreach services provide information to people in domestic violence situations on the availability of legal aid for domestic violence related matters and WDVCAS services and that the quality and access of these services be enhanced through:  
   b) The provision of training to Legal Aid NSW solicitors on domestic violence related legal issues to enable them to provide broad advice during these services. |
| 28 (a) & (c) | That Legal Aid NSW:  
   a) Make provision for an additional payment in its fee scales for ADVO matters for the provision of assistance in making an ADVO application, including advice and drafting of an ADVO application;  
   c) Review legal aid fees and policies to ensure they provide reasonable remuneration for the costs of providing services in ADVO matters. |
<p>| 29 | That Legal Aid NSW broaden its legal aid policies on grants to defendants in ADVO matters, subject to detailed costings and adequate Government funding. |
| 31 | That Legal Aid NSW develop a detailed costed proposal for the expansion of legal representation services for people in domestic violence matters. |
| 35 | That the Family Law Program develop a simple domestic violence screening and risk assessment tool for family law and care and protection matters based on the LAWA model. |</p>
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<th>Number</th>
<th>Recommendation</th>
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| 36 (b) & (c) | That the Government Law Group:  
  b) Provide CLE to refuge and WDVCAS workers to enable them to prepare the necessary forms of evidence for family violence related immigration matters;  
  c) Seek additional funding from the Commonwealth Government to enable the Government Law groups to expand its services to people in family violence matters under its IAAAS contract. |
| 37 (a) | That Legal Aid NSW:  
  a) Expand the ‘special disadvantage’ test to specifically include Aboriginal people so that Aboriginal people (both applicants and respondents) have greater access to legal aid assistance for victim’s compensation matters; |
| 39 | That Legal Aid NSW develop a fully costed proposal for the establishment of a specialist Domestic Violence Unit. |
| 41 | That Legal Aid NSW review the role, structure, resources and reporting functions of the WDVCAP Unit, the provision of training and resources to WDVCAS staff, the structure of the WDVCAS Network within the WDVCAP and the need for an up-to-date evaluation of the effectiveness of the WDVCAP. |
| 42 | That Legal Aid NSW develop a comprehensive training program on domestic violence for legal and non-legal staff. |
List of recommendations
1. Overview

**Legal aid funding for domestic violence related legal services**

Under its funding agreement with the Commonwealth, Legal Aid NSW can only spend Commonwealth funds on matters ‘arising under Commonwealth law’ and in accordance with Commonwealth Priorities and Guidelines. The Legal Aid NSW Board decides legal aid policy on how State funds shall be spent.

The current Commonwealth/State funding arrangements have real implications for the provision of services to people in domestic violence matters who often present with a range of legal problems involving both Commonwealth (family law matters) and State law (criminal/ADVO and care and protection matters).

Having to confine a service to either Commonwealth or State law matters for funding purposes diminishes the capacity of Legal Aid NSW to respond in integrated, innovative ways to individual and community need for assistance. It also adds unnecessary complexity to the process of applying for legal aid and for reporting to funders, and is confusing for both people seeking legal aid assistance and practitioners assisting them.

**Legal aid services to defendants**

For the last 30 years Legal Aid NSW Criminal Law Program has operated a state-wide practice which provides legal information, advice and representation to defendants charged with domestic violence related offences through both in-house and assigned practitioners.

The rationale for providing this assistance has always been clear – because of the serious consequences that may follow from a criminal charge: the risk of imprisonment and its consequent social and economic costs on the accused.

In the last decade a number of legislative and procedural changes have reinforced the need for these services to continue and expand:

- Changes to the Bail Act 1978 (such as s.9(d)(1)) which make it more difficult for defendants to obtain bail in respect of a serious personal violence offence; Section 9A also removes the presumption in favour of bail for many persons accused of domestic violence offences; and

- Changes to sentencing law (s.21A of the Crimes (Sentencing Procedure) Act 1999) which outline a number of aggravating factors to be taken into account on sentencing, a number of which would arise in a domestic violence matter.

**Family law and care and protection legal services**

The Family Law Program and the Care and Protection legal service have for 30 years operated a state-wide practice which provides legal information, advice, minor assistance and representation to either children, victims or the alleged domestic offenders in family law and care and protection matters.
These services are quite extensive. The Care and Protection legal service for example, either provides in-house or funds a private solicitor to act for every child in every care matter before the NSW Children’s Courts. It also funds the vast majority of legal representatives for parents in these proceedings.

Both programs have a strong focus on domestic violence by virtue of the prevalence of domestic violence as an issue for their clients.

**Domestic violence specific services**

The development of specific Legal Aid NSW services to victims of domestic violence has been more ad hoc. The majority are provided by external agencies under the auspices of Legal Aid: through the community grants programs (the Community Legal Centre Program and the Women’s Domestic Violence Court Advocacy Program) or through assignments of legal aid to private practitioners to undertake duty work in ADVO matters.

**Legal Aid in Apprehended Violence Order matters**

In 1982 when the NSW Government passed the *Crimes (Domestic Violence) Amendment Act*, the [then] Legal Aid Commission of NSW responded by providing legal aid to people seeking legal protection from an AVO and for private prosecutions for domestic violence offences.

**Domestic Violence Advocacy Service**

In 1982 Legal Aid NSW also took on the administration of funding for the first Women’s Legal Service in Australia followed in 1985 by NSW Government funding for the Domestic Violence Advocacy Service.

**Women’s Domestic Violence Court Advocacy Program**

In 1995 Legal Aid NSW became responsible for administering NSW Government funding for the establishment and administration of the (then named) Women’s Domestic Violence Court Assistance Program (WDVCAP).

The aim of the WDVCAP was and still is to assist women and children to obtain legal protection from domestic violence through an ADVO with the help of legal representation, specialised assistance from social welfare professionals and referrals to appropriate services for their other needs. The Program initially funded 26 Women’s Domestic Violence Court Assistance Schemes (WDVCASs) and now funds 33 WDVCASs servicing 62 Local Courts across NSW.

When the Program was established the community sector which had developed the WDVCAS model envisaged that specialised legal representation would form an integral part of each service. Among the benefits of a fully integrated model was a dramatic increase in the number of successfully obtained orders, a reduction in the number of reported breaches and positive feedback from clients.\footnote{Prior to the operation of the scheme only 18.4% of unrepresented applicants and 37.5% of represented applicants obtained final orders. After several years operation this figure rose to 76.4%. The withdrawal/dismissal rate of ADVOs in 2007 was 40%.}
Instead the NSW Government decided to allocate funding to community agencies to employ service Coordinators and other non-legal staff. Legal representation was not factored into the funding or structure of services. WDVCASs that operate in areas with a high percentage of Aboriginal or CALD people are funded to employ Specialist Aboriginal and CALD Workers.

As a result, WDVCASs have to secure legal representation through other avenues such as police, pro bono legal representation, and community legal centres. Some have the benefit of a Legal Aid NSW Domestic Violence Solicitor Scheme (DVSS) (see below).

Wirringa Baiya Aboriginal Women’s Legal Service

In 1997 Legal Aid took on the administration of funding for the Aboriginal Women’s Legal Resources Centre, the first Aboriginal women’s specific legal service in Australia. The service, which is state-wide, provides assistance with the help of two solicitors and a community educator to Aboriginal women and children in domestic violence and related legal matters.

Domestic Violence Solicitor Scheme

In 1999 Legal Aid NSW piloted the Domestic Violence Solicitor Scheme (DVSS) in five Local Courts.

It was established to help fill the gap in legal services in the WDVCAP through the funding of duty solicitor services attached to WDVCASs and provides legal representation for all women ADVO applicants at mentions and at hearings through a grant of legal aid or on a pro bono basis.

The pilot demonstrated a number of benefits: improved cost-effectiveness over individual grants of legal aid (of the 276 women represented, 85% were eligible for legal aid), improved court outcomes, confidence and a reduction in stress for clients, improved access to legal advice on related legal matters and a reduction in the rate of withdrawals of ADVOs. The DVSS was subsequently made permanent and expanded to 12 Local Courts. It has not been expanded since then.

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1. Overview
2. What is domestic and family violence?

Legal Aid NSW definitions

Legal Aid NSW does not have a working definition of ‘domestic’ or ‘family violence’ in any of its operational documents.

Commonly used definitions

While there is no single common definition of domestic violence, central to all of them is the understanding that domestic violence is defined ‘… according to the consequences it causes, not the place where it is happening.’ Domestic violence involves different types of behaviours: physical violence, sexual violence and psychological or emotional violence and financial abuse.

Sometimes the terms ‘domestic’ and ‘family’ violence are used interchangeably despite their different meanings and the context in which they have developed.

In Aboriginal communities family violence is the term which is generally used. Family means the whole family, including the extended family. The Aboriginal and Torres Strait Islander Commission (ATSIC) described it as:

“The beating of a wife or other family members, homicide, suicide and other self-inflicted injury, rape, child abuse and child sexual abuse, incest and the sale of younger family members for misuse by others as a way of obtaining funds for drink or gambling.”

Legislative definitions

Crimes (Domestic and Personal Violence) Act 2007

The Crimes (Domestic and Personal Violence) Act 2007 (‘the Act’) doesn’t define domestic violence but acknowledges that:

“(d) domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years.”

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2. What is domestic and family violence?

**Family Law Act 1975 (Cwlth)**

Under the *Family Law Act 1975*, family violence:

“ … means conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family reasonably to fear for, or reasonably to be apprehensive about, his or her personal wellbeing or safety.”

**Children and Young Persons (Care and Protection) Act 1998 (NSW)**

Section 23 of this *Act* refers to domestic violence as an indicator that a child may be ‘at risk of harm’ and includes the following circumstances:

“(c) the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,

(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,”

**Other definitions**

Dr Rosemary Hunter’s ‘Narratives of Domestic Violence’ provides an excellent analysis of the dynamics of domestic violence:

“(3) …Physical assaults and sexual abuse reinforce other tactics such as emotional abuse, isolation, minimisation, denial and blaming the target of the violence …

(4) … Many women describe the emotional abuse, ‘mental cruelty’ and fear as the worst aspects of domestic violence … fear does not go away” …

(7) Violent men routinely deny, minimise, and excuse their violence (for example by reference to anger, stress, insecurity, or alcohol), or blame their partner for provoking the violence. However, violence is a deliberate strategy designed to undermine their partner’s ability to act autonomously …

(10) The effects of violence are cumulative. Women understand all of their partner’s actions in the context of prior violence and controlling behaviours. They become experts at ‘reading the signals’ – cues that signify danger that may not be evident to anyone else. Their perceptions of danger are accurate. “Many women describe a certain ‘look in the eye’ that signals extreme danger …”

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2. What is domestic and family violence?

It is important that Legal Aid staff understand the dynamics of domestic violence and have a solid working knowledge of current definitions of domestic and family violence (legislative and non-legislative) and how they apply in different contexts.

**Recommendation 1:** That in consultation with the Program areas, SPPD develop a set of working definition(s) of domestic and family violence for Legal Aid staff for inclusion into relevant operational documents. Training on these definitions should be included in a domestic violence awareness training package for all staff which includes an analysis of the dynamics of domestic violence.
2. What is domestic and family violence?
3. The legal needs of people in domestic violence situations

The scope of legal needs

Perhaps the most comprehensive examination of the legal needs of women victims of domestic violence is the ALRC Report ‘Equality Before the Law.’ It examined the impact of domestic violence in a broad range of legal areas as well as the barriers women experience in enforcing rights relating to:

- Redress through victim’s compensation;
- Housing: public and private tenancy law and family law property issues;
- Financial entitlements: maintenance, social security and child support;
- General credit and debt and social security liabilities arising from the relationship and from financial abuse; and
- Applications for permanent residence in Australia.

In relationships where children are involved there will also be impacts on parenting orders and/or claims about the ability of a parent to care for their children in care and protection proceedings.

If you break domestic violence down into its different elements it is possible to see how specific behaviours can result in different legal issues for both victims and alleged offenders.

When a victim attempts to assert a right which has been impacted on by domestic violence there will be a corresponding impact on the alleged offender’s rights.

The following table tries to illustrate this relationship while at the same time acknowledging that the relationship between domestic violence and its legal consequences is not necessarily a simple or linear one.

<table>
<thead>
<tr>
<th>Behaviour</th>
<th>Impact on Victim</th>
<th>Legal Rights Impacted (examples)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical violence, Sexual violence</td>
<td>Physical/psychological harm</td>
<td>- Criminal charges</td>
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<td></td>
<td></td>
<td>- Protection orders</td>
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<td>- Intergenerational violence and crime</td>
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<td>- Violent communities</td>
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<tr>
<td>Emotional violence</td>
<td>Psychological harm, suicide, impact on ability to care for children</td>
<td>- Tort law</td>
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<td></td>
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<td>- Parenting restrictions/family law proceedings</td>
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<td></td>
<td></td>
<td>- Care proceedings</td>
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<tr>
<td></td>
<td></td>
<td>- Victim involvement in crime</td>
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</tbody>
</table>
3. The legal needs of people in domestic violence situations

<table>
<thead>
<tr>
<th>Behaviour</th>
<th>Impact on Victim</th>
<th>Legal Rights Impacted (examples)</th>
</tr>
</thead>
</table>
| Financial abuse | Economic harm          | • Credit/debt issues/financial liability  
                     |                         | • Social security fraud   
                     |                         | • Loss of inheritance    
                     |                         | • Unjust contracts       |
| Social abuse    | Social harm and deprivation | • Loss of property and housing  
                     |                         | • Threats to migration status     
                     |                         | • Discrimination          |

**Applications for legal protection through ADVOs**

ADVO proceedings are commenced by an application notice under Part 6 of the *Local Courts Act 1982* and can be commenced in one of two ways, through the Chamber Registrar at the Local Court (‘private applications’) or through the police (‘police applications’).

Any person over the age of 16 years can apply to a Local Court for an ADVO against a person with whom they are in a domestic violence relationship. A police officer must apply for an order where the officer suspects that a domestic violence offence or a stalking offence has been, or is likely to be, committed, or where the applicant is under the age of 16 years.

There may be a number of reasons in the past as to why police may have exercised their discretion not to initiate proceedings: the victim may not have wanted to give evidence against their partner for fear of retaliation; financial dependence, concern for children and the hope that the violence would cease. To address this NSW has introduced legislation limiting police discretion to arrest and prosecute a defendant when a victim may be ‘reluctant’ for an application to be made (ss.27 & 49 of the *Act*).

Detailed guidelines and procedures for the commencement and handling of ADVO matters by Local Courts and Police are contained in the Local Courts Domestic Violence Policy and Client Service Standards (2002, reviewed in 2005) and NSWPF Domestic and Family Violence Standing Operating Procedures (‘DV and FV SOPs’). At the time of writing of this report, a review of the DV and FV SOPs had been completed and will be implemented at the completion of the Special Commission of Inquiry into Child Protection Services in NSW.

**Barriers to obtaining effective legal protection**

In March 1990, Redfern Legal Centre established a service delivery model which was designed to address the high withdrawal/dismissal rate of AVO applications made by women at Redfern Local Court. Prior to the operation of the service, known as the Redfern Women’s Domestic Violence Court Assistance Scheme, only 18.4% of unrepresented applicants and 37.5% of represented applicants obtained final orders.

The aim of the service was to provide a holistic response which acknowledged that women experiencing domestic violence have complex legal and social welfare needs.
which need to be addressed together for them to get a positive court outcome. The service was evaluated in 1991.\textsuperscript{11}

The Report found that women needed not only the expertise of a lawyer to help them negotiate the AVO system and provide them with advice on related legal issues, they also needed the professionalism of social welfare workers who could provide them with advice, information and local assistance on practical and emotional issues like housing, financial support and counselling.

Within two years of operation 76.4\% of women assisted by the Scheme were obtaining final orders and were able to access ongoing help with breaches of orders and other ongoing problems. In 2007/08 the WDVCAP, which was based on the Redfern model, provided 42,194 services to women. During this period 73.7\% of clients assisted by a WDVCAS obtained a final ADVO.\textsuperscript{12}

### Dual arrest

In recent years an unexpected consequence of proactive policing policies in domestic violence has been a rise in the number of dual arrests, that is, where both parties at the scene, usually a man and a woman are both charged and/or applications for ADVOs made against both of them.

The NSW Ombudsman’s December 2006 report, ‘Domestic Violence: Improving Police Practice,’ identified the problem of ‘dual arrest’ and identification of an offender as a real issue for police.\textsuperscript{13}

\textbf{Note: } In recognition of these concerns, in March 2008 Legal Aid NSW amended its policy in relation to grants of legal aid in ADVO matters so that aid could be made available to defendants in ADVO matters and persons in cross-applications where Legal Aid is satisfied that the person applying is a victim of domestic violence. [\textit{Criminal Guidelines 1.9.2 & 1.9.3}]

\textbf{Recommendation 2: }That in-house and private practitioners on duty rosters in Local Courts be consulted by the Director Crime on a regular basis about police arrest and prosecution practices and that the Director Crime and the WDVCAP Unit meet on a regular basis.

### WDVCAS access to legal advice

While WDVCAS workers are very clear about their role in not providing legal advice, their core work is assisting clients to negotiate various legal processes. This often raises individual casework and systemic legal issues. Currently, WDVCASs do not have access to a centralised source of legal advice that can provide them with the assistance they need.


\textsuperscript{12} Data captured from the WDVCAP Database, July 2008.

\textsuperscript{13} NSW Ombudsman, \textit{Domestic Violence: Improving Police Practice}, December 2006.
When issues do come up, WDVCAS workers typically turn to DVSS solicitors (though they are not funded to provide advice outside of their rosters), the DVAS and other CLCs (who likewise are not specifically funded to do this), and staff in the WDVCAP Unit (who may or may not have legal qualifications).

It is not appropriate for LawAccess NSW to take this role on because its role is to assist individuals rather than service providers but it should be built into the structure of the WDVCAP or another dedicated source within Legal Aid NSW.

Women’s experiences in ADVO and family law proceedings

Legal Aid NSW staff and assigned practitioners do not work in isolation but within specialised jurisdictional systems. They need to be skilled not just in identifying their client’s legal needs, but in being able to advocate for their clients within the contexts of these jurisdictions and the challenges they pose.

Professor Rosemary Hunter’s study, referred to previously provides an extensive analysis of the gap between the objectives of protection orders and their implementation by the courts. There are also concerns that AVO matters are becoming more complex.

There are also challenges in the family law and care jurisdictions:

- Perpetrators using family law proceedings to maintain power and control over their female victim and continue their abuse; and

- Women not being believed or being accused of raising allegations of violence to manipulate court proceedings. Despite a great deal of research validating women’s claims the myth still persists that many women raise allegations out of vindictiveness and/or in order to frustrate the father’s application for access to his children;

- Understanding interaction between ADVO proceedings and the implications for their clients.

Staff need to be and are supported to deal with these challenges through training, seminars, conferences and staff meetings and the development of resources to assist

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16 Rae Kaspiew, Empirical insights into parental attitudes and children’s insights into Family Court litigation, (2007). Dallam, S. J.; Silberg, J. L. Myths that place children at risk during custody litigation, (2006). The six myths they identify and evidence which counters them include:

1. False allegations of sexual abuse during custody disputes;
2. That a history of battering has nothing to do with child abuse;
3. The perception that custody transfers to abusive parents are rare;
4. That fit mothers do not lose custody;
5. Parental alienation syndrome;
6. Children are more likely to be abused in the care of a woman than a man.

them in their work. The American Bar Association, for example, has produced a reference guide for practitioners representing victims of domestic violence titled ‘Custody Myths and How To Counter Them.’

The interaction between ADVOs and family law proceedings

Since 1 July 2006, family law courts have been required to assess whether there will be an order for shared parental responsibility. Family violence is a factor which can rebut the presumption of equal shared parental responsibility.

The 2006 Family Law amendments allow for transcripts of proceedings in any other court (such as ADVO proceedings) to be admitted into evidence in cases involving parenting orders. This could be a problem for victims in the 40% of ADVO matters in NSW that do not result in a final order and could also make it more likely that the other party will contest their ADVO application where family law proceedings are pending.

A further issue concerns the need to ensure that Local Courts draft conditions on ADVOs which are consistent with subsequent parenting orders but which do not expose the victim to further violence. Where there is an inconsistency an ADVO condition will yield to the parenting orders. State courts, however, rarely use their powers to vary existing Family Court orders in order to make them consistent with the protection considered necessary through an ADVO.

Young people as defendants in domestic violence matters

Children exposed to violence in the home are at an increased risk of going on to commit or experience violence. The 2006 report ‘Breaking the Silence: Creating the Future,’ by the NSW Aboriginal Child Sexual Assault Taskforce described the impact on Aboriginal children of exposure to family violence:

“… These children saw violence being used to cope with a range of situations and as a way of relating to others. They get the message that this is an acceptable way to behave …. This can lead to expulsion from schools and incarceration, further separating children from their communities and ensuring the violence continues into the next generation.”

The majority of ADVO applications before the Children’s Court involve young people whose parents or siblings are seeking orders against them. The CLS observes that these young people come from family environments where ‘domestic violence is rife.’

The imposition of an ADVO in these situations creates a ‘lose–lose’ situation for young people. Firstly, it will affect their perception of the justice of the situation and secondly,
because they are young and often immature, they are likely to find it difficult to comply with an order restricting their behaviour.\textsuperscript{22}

In Canada the Centre for Children and Families in the Justice System has developed a handbook for juvenile justice workers which provides information on how to identify and respond to young people who have experienced and/or perpetrated domestic violence.\textsuperscript{23}

\textbf{Recommendation 3:} That Legal Aid NSW work to achieve improvements to justice system responses to the specific needs of children/young people exposed to domestic violence.

\textbf{Men as victims of domestic violence}

Research on men as victims of domestic violence is still limited. A useful Clearinghouse paper on this issue, ‘Men as Victims of Domestic Violence’ looks at available data about men’s experiences as victims of domestic violence and the implications for service providers. The paper acknowledges the tension often expressed around the issue, that:

“… some argue that there has been a reluctance to address and acknowledge men’s victimisation for fear that it may take away from the acknowledgement of the seriousness of violence and abuse experienced by women.

This often goes hand-in-hand with concerns that acknowledging men as victims will direct funds away from the stretched resources currently available to women and children who experience domestic violence.”\textsuperscript{24}

\textbf{Recommendation 4:} That Legal Aid NSW keep itself informed of research on the prevalence and context of male experiences of domestic violence for the purpose of developing appropriate service responses.

\textbf{The Occurrence of Clusters of Legal Needs in Domestic Violence Situations}

Legal needs research clearly shows that domestic violence often precipitates clusters of complex, interrelated and ongoing legal events and that family and domestic violence events tend to co-occur.\textsuperscript{25,26}

\textsuperscript{22} ibid.
\textsuperscript{25} Law and Justice Foundation of NSW’s report, Justice made to measure: NSW legal needs survey in disadvantaged areas, (2006).
This clustering suggests that legal responses which deal with issues in isolation and which do not address interconnected legal issues will be inadequate and could exacerbate a victim’s situation.

Last year PILCH Vic Inc. published a report which found that women who are homeless as a result of family violence find it difficult to access legal assistance, particularly for matters that are not considered ‘crisis matters’ such as getting an intervention order or contesting a custody order.27

It also found that ‘post crisis legal issues’ (tenancy protection, credit and debt, fines, immigration) were often left unresolved until they turned into ‘crisis’ matters resulting in eviction proceedings or extreme financial distress, making it more likely that the person would return to their abusive relationship.

The scope of legal responses

The ALRC’s Report made two significant findings about legal responses to domestic violence:

- There is a tendency to see domestic violence as relevant only to criminal or quasi-criminal law; and
- Despite this there are many possible responses to violence against women and a variety of legal contexts in which violence emerges as an issue.28

Using current legal research it should be possible to develop a ‘checklist’ or prompt for legal service providers which outlines the legal issues likely to be experienced by a client and possible service responses. The Law and Justice Foundation of NSW which has developed legal event checklists for its legal needs research could be asked to assist in the development of a checklist for Legal Aid NSW.

**Recommendation 5:** That Legal Aid NSW seek the assistance of the Law and Justice Foundation of NSW to develop a legal event checklist for staff providing assistance to people in domestic violence situations.

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3. The legal needs of people in domestic violence situations

**Legal issues for defendants**

Under Legal Aid NSW policies, defendants are not entitled to legal representation for an ADVO matter except in exceptional circumstances. As a result, defendants have to either:

- Negotiate orders on their own with the Domestic Violence Liaison Officer (DVLO) or victims’ solicitor (if they have one); or
- Try to get some advice from a Legal Aid duty solicitor, subject to their availability; or
- Obtain private legal representation.

There is general acknowledgement among those involved in the court process that when defendants have had the benefit of legal advice court outcomes are more likely to be positive. The current Chief Magistrate in NSW comments in his submission to this Review that:

“In the Court’s experience, defendants who are unrepresented in AVO proceedings often do not understand the nature of the proceedings or the legal ramifications of an AVO. Receiving legal advice may assist the efficiency of the Court and despite the necessary explanations given in Court, bring about greater compliance with orders or reduce the incidence of breach.

The Court is not aware of policies or support that is available to families or to defendants, for example, referral to or access to services that assist in finding accommodation etc.”

Apart from the possible criminal consequences of a breach, ADVOs have other consequences which defendants need to be aware of:

- Housing issues: where the defendant has decided to move out of the home or where an exclusion order is made; and
- Impacts on their employment arising from the consideration of an ADVO in child-related employment and restrictions on the use of firearms.

Consequences like these, particularly for young people whose behaviour has been played out against a background of family violence or which relates to a ‘passing event’ in the young person’s life can be profound. “Once you are ‘on the books’ you are there forever.”

**The impact of other domestic violence initiatives**

Since 2004, a number of different models of police/civilian crisis support have been established by different government agencies in NSW. Key differences between the models centre on whether support is provided by a government or non-government
agency or and whether police and the support workers are co-located. Some of these programs are locally based while others are being expanded state-wide.

Examples are the Staying Home Leaving Violence Program, Police/Women’s Refuge Partnership Against Domestic Violence Project at Taree, the Domestic Abuse Response Team (DART) at Wyong/Tuggerah, and the DVICM at Wagga and Campbelltown.

In the DART project, crisis support is provided to families with children by DoCS staff.

While a number of benefits have been documented from these projects, Legal Aid NSW staff, WDVCAS workers and clients would benefit from a clearer understanding of the functions of these services and the roles of workers attached to them. Clients of these services could also benefit from access to legal advice on domestic violence related legal issues.

Legal Aid NSW needs to continue to work with other agencies to establish effective links with other domestic violence related initiatives and to work out ways in which they can work cooperatively and collaboratively together to provide integrated assistance to people in domestic violence situations.

The need for early intervention

The NSW Government has expressed its commitment to an increased focus on prevention and early intervention in agency policymaking and resource allocation. Domestic and family violence is one of the three priority areas targeted for action. Prevention and early intervention is described as:

“…from taking action to prevent a problem emerging through to taking action early in the life of a problem to stop it from getting worse or to limit its impact.”

Recommendation 6: That Legal Aid NSW commit to the NSW Government’s policy of prevention and early intervention through an increased focus on the development of resources on domestic violence and the provision of CLE and outreach advice services on domestic violence.

3. The legal needs of people in domestic violence situations
4. International, Commonwealth and State obligations to address domestic violence

**International obligations**

While human rights instruments are not enforceable unless implemented into domestic law, Legal Aid NSW has an obligation to comply as a result of Australia reporting requirements under those instruments which Australia has ratified and contributes to these reports via the NSW Government to the Commonwealth Government to bodies such as the UN CEDAW Committee.

**Convention on the Elimination of Discrimination against Women**

Having ratified an international instrument some argue that the State has a duty to exercise due diligence to ensure their provisions are upheld.33 Support for this argument can be found in some judicial decisions, such as the case of T & S [2001] FamCA 1147 (14 March 2001), where the Honourable Chief Justice Nicholson found that lack of legal aid or representation to a woman who was a victim of domestic violence in Family Court proceedings, could constitute a breach of Australia’s obligations under CEDAW and said:

“I consider that her lack of representation involved discrimination against her in these proceedings that is of serious concern. No doubt the same could be said in respect of a man if the circumstances were to be reversed, but there are fewer examples of battered men in male/female relationships.”34

The challenge for organisations like Legal Aid NSW is to translate “the rhetoric and formality” of international legal mechanisms into appropriate legal programs, policies and services.35

**Reconciling the rights of defendants and victims**

It is important that in all Legal Aid NSW discussions on domestic violence the rights of victims and defendants not be seen or portrayed as competing or conflicting (with the exception of ethical conflicts), but as rights that can be accommodated in a holistic, multi-pronged approach.

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34 As a result of T & S, Legal Aid NSW has included a reference to T & S considerations in its Procedures Manual.

35 Craven, op cit at p.1.
The European Convention on the Compensation of Victims of Violent Crimes points out that measures to help victims ‘need not necessarily conflict with other objectives of criminal law and procedure, such as the reinforcement of social norms and the rehabilitation of offenders, but may in fact assist in their achievement and in an eventual reconciliation between the victim and the offender.’

**Recommendation 7:** That Legal Aid NSW endorse a human rights approach to the provision of services to people in domestic violence matters, which acknowledges:


b) The gendered nature of domestic violence and its disproportionate impact on women;

c) The impact of exposure to domestic violence on children;

d) The need to adopt a holistic, multi-pronged approach to the provision of services to victims of domestic violence, alleged offenders and defendants.

### Commonwealth and State legal policy obligations

#### Charter of Victims Rights

Legal Aid NSW is required to report to the NSW Victim’s of Crime Bureau, which is responsible for monitoring the implementation of the Charter of Victims Rights, on its compliance with Charter obligations which sets out the rights of victims to:

- Be treated with courtesy, compassion and respect;
- Information about, and access to, welfare, health and counselling services;
- Privacy and protection; and
- Information about the criminal justice system.

#### Commonwealth Government policy

The Commonwealth Government recently appointed a National Council to Reduce Violence Against Women and Children which had its first meeting in July 2008. The role of the National Council is to oversee the development of a National Plan to Reduce Violence Against Women and Children.

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The Family Pathways Branch at the Commonwealth Attorney General’s Department has been consulting with Legal Aid NSW and other agencies to find better ways to address family violence within the family law system.

All of Legal Aid NSW practice areas should be encouraged to contribute their expertise so that the full range of legal issues relevant to people in domestic violence situations can be explored and factored into any resulting proposals developed through these fora.

**Recommendation 8:** That Legal Aid NSW adopt a cross-jurisdictional, whole of organisation approach to the development of legal policy positions and responses to domestic and family violence.

**NSW Government policy**

**The NSW State Plan**

Under the NSW State Plan, domestic violence is a Government priority area. Priority areas for Legal Aid NSW are:

- Enhancing working relationships between police, Local Courts and legal services; and
- Improving criminal justice system responses and support services to victims of domestic and family violence including expansion of the Women’s Domestic Violence Court Advocacy Program.

Legal Aid NSW reports on its progress in implementing these initiatives on a quarterly basis through State Plan Priority Status Reports.

In March 2007, the then Premier, Morris Iemma, announced a number of reforms and initiatives aimed at addressing domestic violence to support the State Plan, including the expansion of the WDVCAP. This was followed by an announcement on June 19 2007, that the WDVCAP would receive an additional $2.7 million for the 2009/2010 financial year.

**Department of Premier and Cabinet’s Violence Prevention Coordination Unit**

Earlier this year the Department of Premier and Cabinet established within its NSW Office for Women’s Policy a Violence Prevention Coordination Unit. The role of the Unit is to lead and coordinate government policy in relation to the prevention of domestic and family violence.

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37 *NSW State Plan* at p.28.
Legal Aid NSW obligations to address domestic violence

As the ALRC pointed out, the entitlement of women and children at risk of violence to legal assistance is no less than the entitlement of defendants in criminal law matters at risk of incarceration.38 There are a range of reasons for Legal Aid NSW enhancing its focus on services to victims of domestic violence situations:

- The prevalence of domestic violence as a presenting issue in NSW Local Courts;
- The level of social and economic disadvantage women and children in particular experience, such as poverty and homelessness; and
- Domestic violence, by its very nature, contributes to the social exclusion of victims and defendants.

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5. Pathways to Legal Aid NSW

The Law and Justice Foundation of NSW found in its report, ‘Justice made to measure: NSW’ that traditional legal services are used very rarely – in only 12% of cases where people actually seek help with a legal problem. The rest sought help from non-legal sources such as friends and family, medical, health, counselling and welfare and other sources.

In order to improve client access to its services, Legal Aid NSW needs to utilise existing networks of non-legal professionals accessed by people in domestic violence situations such as housing, counselling, family and health services as a gateway to its services.

Training strategies, networking, and the development of simple and efficient referral systems or protocols with other services would assist. The Client Assessment and Referral Unit’s Community Liaison and Referral Officer could assist in collating and disseminating referral information.

LAQ recently commenced a project aimed at identifying initial contact points and effective referral pathways to LAQ services for clients experiencing domestic violence depending upon where they present to and what their main legal issue(s) is. A copy of the draft LAQ Protocol is attached at Appendix E. It might be useful for Legal Aid NSW to undertake a similar exercise and to undertake this in conjunction with the legal event checklist initiative recommended earlier in this report.

Priority assistance should also be considered for people with ADVO and domestic violence related family law matters as well as those with urgent civil law matters such as loss of housing and applications for permanent residence. In offices where appointments are required to be made for advice, priority appointments could be given and/or efforts made to ensure they can be seen without appointments.

For clients needing further legal assistance the challenge is to move from single problem focused approaches to more client focused approaches. Increasingly Legal Aid NSW is establishing new service initiatives to address the specific clusters of legal needs experienced by priority client groups such as prisoners, Aboriginal people, older persons and people experiencing homelessness. Specific services should be considered for people in domestic violence situations or their needs factored into existing services.

**Recommendation 9:** That Legal Aid NSW undertake a mapping exercise which identifies potential points of contact and appropriate referral pathways to legal assistance for people in domestic violence situations.

**Recommendation 10:** That Legal Aid NSW develop client focused holistic service delivery strategies for people with domestic violence related matters which also ensure that people with domestic violence related matters are given greater priority.
Initial contact points

In NSW, there are a number of legal and community agencies and networks that people in domestic violence situations come into contact with that could be used as referral points for clients. Some major ones are listed below.

LawAccess NSW

Legal Aid NSW relies on LawAccess NSW as a first port of call for legal information and advice to clients with potential legal issues and then to ‘triage’ them into other services, such as Legal Aid NSW when they need more intensive legal assistance. LawAccess NSW prioritises advice to clients who are at risk of harm from domestic violence. They also provide advice to defendants as there are limited free sources of assistance for defendants as the following tables show.

[While the number of calls has gone up significantly since 2005, the overall number of callers assisted since then has increased as a result of an increase in resources]

![Figure 1: Calls to LawAccess NSW regarding ADVOs and domestic violence family law 2002/03–2007/08](image1)

![Figure 2: Calls to LawAccess NSW regarding ADVOs and domestic violence family law 2002/03–2007/08 by gender](image2)
5. Pathways to Legal Aid NSW

Referrals to Legal Aid NSW

LawAccess NSW makes referrals to Legal Aid offices to assist with family law or civil issues.

The review has highlighted some confusion for LawAccess NSW about what Legal Aid NSW will do for clients needing assistance in AVO matters.

LawAccess NSW is keen to explore training opportunities for its staff on domestic violence. With the introduction of the WDVCAP Core Training Program and the Criminal Law Program’s Domestic Violence Workshops more training is becoming available. Legal Aid NSW training on domestic violence issues needs to be continually enhanced. As it does so, opportunities for LawAccess NSW staff will also be increased.

Telephone helplines

Legal Aid NSW should work with telephone advice lines known to be accessed by people in domestic violence situations on an ongoing basis to ensure they have up-to-date information on services and resources.

- The Department of Community Services operates a domestic violence crisis line 24 hours a day on 1800 656 463. In 2006/07 it received more than 23,000 calls. While it doesn’t provide legal advice, it is a major referral service for women in NSW in need of assistance;\textsuperscript{39}
- Mensline: Mensline Australia is a national 24-hour telephone counselling and referral service for men, generally considered to have a professional and responsible approach to its work with men who have a problem with family violence. Their website is at \url{http://www.menslineaus.org.au/};
- Lifeline: A national 24-hour telephone service. Lifeline answers around 450,000 calls per year from people needing emotional support on issues including abuse and violence and provides telephone counselling and information about other support services.

Contact with justice system agencies

Courts

The main issues raised by Local Courts to the Review were:

- Lack of awareness of the connection between the WDVCAP and Legal Aid NSW as manager of the WDVCAP funding program;
- Lack of staff awareness of the availability of legal aid for people in domestic violence situations; and
- Operational issues concerning working relationships between Local Courts and WDVCASs.

\textsuperscript{39} NSW Department of Community Services, Annual Report 2006/07, \url{http://www.community.nsw.gov.au/DOCSwr/ assets/annual_report07/achieve_pei.htm}.
In the 1990’s the NSW Attorney General’s Department developed a pro forma MoU for implementation between Local Courts and WDVCASs which attempted to address operational issues such as referrals and use of court facilities. Currently, not all WDVCASs have MoUs with the Local Court/s at which they service and of those that do, some are out of date and incomplete.

The WDVCAP Unit has commenced a joint review of MoUs between Local Courts and WDVCASs with the aim of establishing a standardised central agreement which ensures a consistent, state-wide approach to the provision of Local Courts’ and WDVCASs’ services to victims of domestic violence in relation to referrals, use of court facilities, communication and dispute resolution, data and information exchange and shared training.

At the time of writing, discussions between Legal Aid NSW and the WDVCAP and a draft MoU were close to completion.

Referrals between Local Courts and Legal Aid NSW

Local Courts Domestic Violence Policy and Client Service Standards (2002, reviewed in 2005) makes clear the role of court staff in providing direct assistance to victims in private ADVO applications. However, there is some uncertainty among Legal Aid NSW staff and WDVCAS workers about the grounds on which Local Courts make a decision to accept a private ADVO application or to refer the client to police for assistance.

Local Courts staff would benefit from a greater awareness of Legal Aid NSW services, where this can be obtained throughout NSW and from understanding the importance of clients obtaining advice on related legal issues which may have an impact on the outcome of ADVO proceedings.

Given the relevance of these issues for other legal service providers it would be useful if Legal Aid NSW could work through a forum like NLAF to improve collaboration, mutual understanding and referral arrangements between local courts, Legal Aid NSW and other legal services and WDVCASs.

**Recommendation 11:** That Legal Aid NSW work through the NSW Legal Assistance Forum (NLAF) to improve collaboration, mutual understanding and referral arrangements between local courts, Legal Aid NSW WDVCASs and other legal services.

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40 Local Courts Domestic Violence Client Service Project *Domestic Violence Policy and Client Service Standards*, July 2002.
Police

Research in the UK on the occurrence of legal events has found that where domestic violence is reported in combination with divorce or child-related problems, domestic violence tends to occur first.\footnote{Pleasence, P, Buck, A, Balmer, N, O’Grady, A, Genn, H & Smith, M, Causes of action: civil law and social justice, Stationery Office, Norwich, UK.}

While there is no similar research in NSW, police and Local Courts data indicate that the majority of people experiencing domestic violence first come into contact with the legal system through police and/or courts. It is critical that police and Local Court services make effective referrals for related legal needs at this point.

Police referrals to LawAccess NSW and Legal Aid NSW

Feedback to the Review from NSWPF highlights police (DVLO) concerns and suggestions for improving referrals to Legal Aid NSW including:

- Client referrals. There are concerns that only victims who expressly give permission to Police are able to be referred to other service such as WDVCASs. This has only recently become an issue. The imposition of formal requirements for consent would mitigate against a significant percentage of victims getting access to referral services;\footnote{Feedback from the, Prosecutions Coordinator, Domestic and Family Violence Team, NSWPF, via email, dated 18 June 2008.}

  \[\text{Note: Legal Aid is currently seeking to resolve whether there are legal issues that prevent disclosure of victim details without consent}\]

- Perceived lack of Legal Aid facilities available in country areas;
- Perceived lack of Legal Aid available in regard to Family Law matters and for defendants in ADVO matters such as cross-applications; and

  \[\text{Note: Legal Aid is available in cross-applications}\]

- Defendants needing access to advice as early as possible so they don’t turn up at court and have to adjourn their matter in order to get advice.

Legal Aid NSW should develop a range of communication strategies for improving police awareness of Legal Aid NSW and LawAccess NSW services: presentations at DVLO training and conferences, the inclusion of contacts and links to Legal Aid NSW information on the NSWPF website and the inviting police to Legal Aid conferences as presenters and participants.
Support for clients wishing to make privately initiated ADVO applications

ADVOs are unique in that they attempt to address the lack of ‘fit’ between criminal justice processes and the legal and non-legal needs of victims of domestic violence. The strengths of ADVOs lie in the fact that:

- They recognise the fact that victims may want the violence to stop, but not the relationship;
- ADVOs can be obtained more quickly in comparison to slower moving criminal justice processes though with the introduction of recent Practice Directions requiring domestic violence related criminal charge matters to be completed within three months of the incident this is now less of an issue;
- The standard of proof required is the ‘balance of probabilities’ rather than the higher standard of ‘beyond reasonable doubt’;
- Conditions can be tailored to the victims’ situation; and
- The criminal justice system is incident-specific while domestic violence comprises a pattern of behaviour usually committed over periods of time.

Since the establishment of AVO legislation persons in need of protection have been able to make their own applications (s.15). As a result of legislative, policy and procedural changes police currently initiate 91% of ADVO applications as compared with 50% 10 years ago.

Many women, particularly Aboriginal or CALD women prefer not to approach police because they want greater control over the process and believe their safety or relationship with their family and community would be compromised if police were become involved. Others prefer police intervention because it places responsibility for taking action on the State and not themselves.43

The right to make a private application needs to be acknowledged as valid and continuing. Victims seeking advice on legal protection should be advised of the options available to them for initiating an application. Those that choose to take this option should be supported to do so and informed of legal aid and other services that can help them through the process.

Relationship between NSWPF and the WDVCAP

In recent years a number of operational issues have arisen between WDVCASs and NSWPF which would benefit from formal clarification.

In response to this the WDVCAP Unit has been negotiating with NSWPF the terms of a formal MoU covering the full range of the various aspects of their working relationship, including how services should be delivered in cooperation with each other.

43 NSW Department for Women, Dubay Jahli: Aboriginal Women and the Law Report, (1994). See also the No Licence to Abuse in Anyone’s Culture, forum held by the WDVCAP CALD Specialist Workers at Bankstown Town Hall, May 2007. Overseas research make similar findings in other jurisdictions, for example, J. R. Gillis et al, Systemic Obstacles to Women’s Participation in the Judicial System, Violence Against Women, Volume 12 Number 12, December 2006 1150-1168, Sage Publications.
shared training and data exchange. At the time of writing, these negotiations were close to completion.

**Recommendation 12:** That Legal Aid NSW prioritise the finalisation of MoUs with Local Courts and NSWPF in relation to the operation of the WDVCAP.

**Other legal service providers – Community Legal Centres**

People in domestic violence situations are a significant client group for Community Legal Centres (CLCs). There are 35 CLCs operating across NSW. Legal Aid NSW administers State and Commonwealth funding for CLCs throughout NSW.

They comprise 19 ‘generalist’ Centres providing legal services to their local communities and 17 specialist centres; nine generalist CLCs receive WDVCAP funding to operate a WDVCAS.44 Two specialist centres, Women’s Legal Services NSW and Wirringa Baiya Aboriginal Women’s Legal Service, focus on the needs of women and children experiencing domestic violence.

CLCs and other domestic violence legal services are well placed to become a service delivery option which complements and supplements Legal Aid NSW role. It would be useful if Legal Aid NSW and CLCs could work together to ensure clarity around the provision of casework and legal representation services to people in ADVO and family law matters (where Legal Aid NSW has a conflict) and services to male defendants.

Given the relevance of these issues to other legal services it may appropriate to work through these issues through a broad based forum such as NLAF.

**Recommendation 13:** That Legal Aid NSW request that NLAF establish a specific working group the aim of which is to examine, report and make recommendations on the provision of publicly funded legal services to people in domestic violence situations.

**Recommendation 14:** That Legal Aid NSW discuss new opportunities with CLCs for collaborative service delivery and legal policy reform on domestic violence issues.

44 CLCs with WDVCASs are: Redfern Legal Centre; Marrickville Legal Centre; Macquarie Legal Centre; Hawkesbury-Nepean Community Legal Centre; Macarthur Legal Centre, South West Sydney Community Legal Centre; Elizabeth-Evatt Community Legal Centre; Northern Rivers Community Legal Centre, Far West Community Legal Centre.
Other legal service providers – Aboriginal specific legal services

In NSW there are several Aboriginal specific legal services providing services in family violence matters – Wirringa Baiya Aboriginal Women’s Legal Centre (a state funded CLC) and the Commonwealth funded Aboriginal Legal Service (NSW/ACT) Ltd, Family Violence Prevention Legal Services and Women’s Legal Service’s Indigenous Women’s Program. WDVCASs that operate in areas with a high percentage of Aboriginal people are funded to employ Specialist Aboriginal Workers.

Aboriginal Legal Services

The Aboriginal Legal Service (NSW/ACT) Ltd (‘the ALS’) while predominantly a criminal law practice employs two Victims of Family Violence Contact Officers. These officers act as the first point of contact for Aboriginal people who are victims of family violence (regardless of age or gender). Though based at the ALS’s Griffith and Wagga Wagga offices Contact Officers will travel to other areas to provide assistance.

Family Violence Prevention Legal Services

The role of the FVPLS is to provide casework and other legal and support services to Aboriginal adults and children at immediate risk of harm from family violence, including sexual abuse. FVPLSs operate at Broken Hill, Forbes, Kempsey, Moree, Walgett and Bourke. The last two are operated by Women’s Legal Service.

Better lines of communication could exist between Legal Aid NSW and the FVPLSs. Problems in communication are in part related to the fact that FVPLSs are run by different agencies and operate in remote locations (mostly with no Legal Aid office present).

Relationships between Legal Aid NSW and Aboriginal specific legal services

Generalist services providing assistance to Aboriginal communities and Aboriginal specific family violence services are spread variously across NSW and operate from different policy and operational frameworks. At a practical level, there is great scope for the establishment of formal communication mechanisms to enable services to work more closely together.

In 2006 Legal Aid NSW developed a proposal to build the capacity of Aboriginal family violence services in NSW to be more collaborative and effective through an NLAF type forum which looks at issues such as referral protocols, collaborative service planning and cross-agency training.

The Director, Aboriginal Services at Legal Aid NSW has advised that he would be interested in bringing this proposal to the NLAF Aboriginal Working Group, which he chairs, to discuss whether it should be revisited.

Recommendation 15: That the Director, Aboriginal Services consult with the NLAF’s Aboriginal Working Group on Access to Civil Law for Aboriginal Clients as to whether Legal Aid NSW Aboriginal family violence service delivery proposal should be revisited.

Women’s Domestic Violence Court Advocacy Services

Through the WDVCAP Annual Conference and more recently, the new WDVCAP Core Training Program, sessions aimed at increasing awareness of Legal Aid NSW services for WDVCAS and other domestic violence workers, police and Local Courts have been developed. More needs to be done and it needs to be embedded in the work of the WDVCAP Unit.

Services for people who are homeless

Homeless person’s services are a key link between people experiencing homelessness as a result of domestic violence and legal assistance. Several Legal Aid NSW family law offices advised they have a close working relationship with their local women’s refuge. The Government Law Group also has close links. Many WDVCASs rely on workers from women’s refuges to provide assistance to their clients at court on AVO list days.

Greater use could be made of peak representative bodies such as the NSW Women’s Refuge Movement Resource Centre (the central contact for the network of 53 NSW women’s refuges) and the Tenant’s Union (the peak non-government organisation for tenants and the main resource service for the State’s Tenants Advice and Advocacy Services), to disseminate information and obtain feedback on Legal Aid NSW services.

Recommendation 16: That Legal Aid NSW develop a communication strategy to inform Legal Aid NSW staff and domestic violence stakeholders about the services it provides to people in domestic violence matters.

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46 Law and Justice Foundation of NSW, No Home, No Justice report, op cit at p.182.
6. Working with clients affected by domestic violence

Best practice service delivery

“Generic aspects of good or promising practices can be extracted from a variety of experiences around the world. Common principles include: clear policies and laws; strong enforcement mechanisms; motivated and well-trained personnel; the involvement of multiple sectors; and close collaboration with local women’s groups, civil society organizations, academics and professionals.”

In 2002 Legal Aid Queensland (LAQ) developed a set of Guidelines for Working with Clients who have been affected by Domestic Violence to assist front office staff, lawyers, independent children’s lawyers, conference chairs and family report writers in their work and to ensure consistent, high quality responses across the organisation. These are part of LAQ’s Violence Against Women Strategy which was developed in response to concerns about the manner in which the legal system deals with clients affected by domestic violence and are based on the following Best Practice Principles:

- An understanding of violence as a gender and power issue;
- Working in a way that empowers clients who have experienced violence;
- Prioritising the safety of clients and workers;
- Acknowledging the criminal nature of violence; and
- Encouraging collaboration and coordination of services.

Each Guideline is one page only and includes practice points to help translate the principles into action. An example can be found in Appendix F.

For the Family Law Program it would not be difficult to distil their existing practice standards, which include guidance on working with people in domestic violence situations into a set of Best Practice Guidelines.

Best Practice Guidelines should deal with issues relevant to other categories of victims covered by the Crimes (Domestic and Personal Violence) Act 2007.

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49 UN Secretary-General, Report of the Secretary-General, In-depth study on all forms of violence against women, (6 July 2006) at p.81; http://daccessdds.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement.


Recommendation 17: That Legal Aid NSW adopt a leadership role on the development of good practice in NSW in addressing the legal needs of people in domestic violence situations through the development of Best Practice Guidelines.

Best practice models of service delivery in courts

Over the last few years, domestic violence courts have been established in some Australian jurisdictions, in the United States and the UK. These have been developed in response to increasing calls for integrated court responses to violence which focus on the need to:

- Promote the safety of persons;
- Increase the accountability of persons who are violent;
- Encourage behavioural and systemic changes; and
- Increase the protection of children.

Legal Aid NSW is involved in initiatives in NSW through the pilot Domestic Violence Court Intervention Model (DVICM) at Wagga and Campbelltown Local Courts and is currently working with the Staying Home Leaving Violence Program which aims to enable women in ADVO matters to stay in their homes, to develop collaborative working relationships.

In Victoria Magistrates in the Family Violence Division of the Magistrate’s Court which was established by legislation in 2004 can deal with a range of legal matters arising from family violence situations, such as criminal proceedings for summary offences and victim’s compensation applications.

Emphasis is placed at all stages of the process on defendants and victims accessing legal advice for related legal issues and services have been established to meet these needs, such as the defendant’s solicitor, provided by Legal Aid Victoria, and the victims’ solicitor (for private applications). These are part of a network of eight dedicated family violence community lawyer positions funded by the Victorian Government.

The establishment of the defendant support worker position is critical. Their role is to provide on the spot assistance and referrals to defendants requiring crisis accommodation and to men's behaviour change programs (which have received specific funding but to date have not been evaluated).

The success of the Family Violence Division is very much the result of strong judicial leadership and efforts to ensure that all staff involved in the operation of the court ‘speak the same language.’


In some overseas jurisdictions ‘one family–one judge’ courts have been established in which a single judge is assigned with the authority to handle criminal, protection order and family law matters. These types of courts have been found to “simplify the court process for families in distress, by creating an environment where litigants no longer have to navigate multiple court systems simultaneously and by reducing the risk that they will receive conflicting court orders.” As New York State’s Chief Judge, Judith S. Kaye has commented:

“One possible judicial response to the current situation is to continue to process domestic violence cases as any other kind of case, and to continue to observe systemic failures. Another response, however – the problem solving response – is to try to design court programs that explicitly take into account the special characteristics that domestic violence cases present.”

Recommendation 18: That Legal Aid NSW keep itself informed about best practice court responses to domestic violence in other jurisdictions.

Identifying domestic violence as an issue

Given its prevalence in NSW, Legal Aid NSW staff need to be alert to the fact that domestic violence may be an issue for a client, even where it may not be apparent.

In LAQ, the need to enquire as to whether a client is in a domestic violence situation is stressed to staff at every stage of a client’s contact with LAQ services and has been formally incorporated into its Client Service Charter.

Recommendation 19: That Legal Aid NSW incorporate into its Client Service Charter the requirement for staff to enquire about domestic violence where appropriate and that this be promoted to staff as necessary to ensure client safety. The Charter should be clearly on display at the front counter of all Legal Aid NSW Offices.

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Screening and risk assessment

Identifying domestic violence as an issue for a client is the first step. Then what? Screening and risk assessment is a growing area for many government agencies who are turning to the use of specific tools. There are strengths and dilemmas involved in formal risk assessment methods as highlighted in two recent reports from the US and Australia.

In 2004 the Women’s Legal Aid Unit in LAQ implemented a simple screening and risk assessment tool, the aim of which is to assist staff to assess whether a client is at low, medium or high risk of domestic violence, and then to provide them with information and referral options to assist them to address their safety needs (for example, advice on getting legal protection, reporting to police, whether they require medical attention, where they may be able to get safe accommodation).

A similar tool would be useful for Legal Aid staff. It would not be appropriate to use this in relation to clients charged with domestic violence related offences.

Recommendation 20: That Legal Aid NSW develop a general screening and risk assessment tool similar to that used by LAQ as well as training in client interview techniques. This training should be made available to both in-house and assigned practitioners in direct contact with clients.

Data collection

Accurate collection of data concerning services provided to people in domestic violence situations is essential in helping Legal Aid NSW to:

- Know more about this client group and understand what services are being accessed and whether initiatives aimed at improving access are working;
- Assist in service delivery planning, resource allocation and legal policy reform; and
- Enhance opportunities to seek further funding for domestic violence related matters.

Legal Aid NSW Client Information Database should be able to collect data on:

- The numbers of grants of legal aid for duty/case ADVO matters (by gender and by applicant/defendant);
- The cost of grants of legal aid in duty/case ADVO matters (by gender and by applicant/defendant);

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• The numbers of grants of legal aid for duty/case domestic violence related criminal charge matters (by gender); and
• The cost of grants of legal aid for duty/case domestic violence related criminal charges (by gender).

The WDVCAP Database which collects data on the provision of WDVCAS services collects information on:
• Client demographics (e.g., Aboriginal, CALD, relationship with defendant);
• Legal and social welfare needs (e.g. family law orders, referrals); and
• Other legal and operational issues (police referrals to the WDVCAS, weapons used by the defendant).

This should be disseminated to the Program areas for their information and consideration in service delivery planning and legal policy development.

Recommendation 21: That Legal Aid NSW add specifications into the ATLAS system which would allow the collection of data on the numbers of duty services for domestic violence related charges and the gender of clients in those matters.

Recommendation 22: That WDVCAP data be disseminated bi-annually to the Program areas for service delivery planning and legal policy development.
7. Legal advice

**Face–to–face legal advice**

Face–to–face advice is available free of charge from Legal Aid NSW through:

- In-house advice clinics;
- Outreach advice services.

**Advice to ADVO defendants**

Legal Aid NSW in-house duty services are not sufficiently resourced to conduct comprehensive in-house advice services at every court. It is even more of a problem since the introduction of Practice Directions imposing tight time frames for the conduct of criminal matters.\(^{60}\)

The most desirable option to address this, but one which is currently not feasible would be to increase the resources to the Criminal Law Division to provide a higher level of service both at courts and for office-based services. Training would need to be provided to encourage assigned practitioners on duty rosters to regard the provision of advice as a core component of their work.

A more feasible option would be to establish arrangements at court to enable ADVO defendants to telephone LawAccess NSW and fax their ADVO application to them so that they can obtain general advice.

**Advice to ADVO applicants at court**

Advice is theoretically available to ADVO applicants through the duty solicitor at court but it very much depends on the workload on the day as to the extent and quality of the advice given.

In practice it is more likely that they will be referred to the police (in a serious matter) or the Court registry to institute ADVO proceedings (in a less serious matter). There is usually no family law solicitor at court so if family law issues are involved, the client will have to be referred to the Legal Aid NSW office or to a private solicitor.

Advice may also be provided by the Domestic Violence Solicitor Service (DVSS) however, this service is available at only 12 Courts. The result is that in the majority of ADVO matters at court, access to legal advice on ADVO related issues is limited if non-existent.

Again, it may be possible to provide applicants at court with access to LawAccess NSW’s telephone advice services for general advice.

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\(^{60}\) For example, Local Court of NSW Practice Note 3 of 2008 concerning procedures to be adopted for all domestic violence matters listed at certain specified Local Courts, which requires accused person’s to enter a plea on the first mention or on an adjourned date of not more than seven days.
While the extent of need for legal advice at court is unknown, there are potentially 32,000 ADVO applicants (and 32,000 defendants) in Local Courts each year who might benefit from general legal advice. This could assist them to obtain appropriate conditions on their orders and might encourage those with related legal issues to seek further legal advice.

During the review LawAccess NSW expressed an interest in looking at ways in which access to their legal advice services could be enhanced and made accessible to people attending court in ADVO matters. Consideration should be given to supporting LawAccess NSW to provide such a service. This would likely require additional funding.

**Recommendation 23**: That Legal Aid NSW support LawAccess NSW to enhance access to its telephone legal advice line for ADVO applicants while at court.

### Advice services at Legal Aid NSW offices

Advice is available to applicants at Legal Aid NSW offices but the quality and level of advice provided on domestic violence matters is variable and jurisdictionally split.

One suggestion is that clients needing advice in ADVO matters be given appointments with criminal law solicitors (provided they are given more detailed training on ADVO matters and identifying family law issues), but that if there are complex related family law issues, the client be referred to a family law solicitor.

The dilemma for criminal law staff is that if the matter is serious, they should refer the client to the police so that charges can be laid and an ADVO sought. Another complicating factor is that the solicitor may/will be conflicted out of acting for the defendant given their role in advising the applicant.

Alternatively, clients could be referred to the family law advice clinics, but again, staff would need to be provided with more detailed training on ADVOs. This might be a better option as the client can also be provided with detailed family law advice if required. Family law lawyers have also suggested that clients requiring urgent advice could be given priority access to Legal Aid NSW family law telephone advice services.

Generally it would not be appropriate for the Civil Law Program to take on the advice role unless the client’s main presenting issue is a civil law one.

In all cases, Legal Aid NSW staff need to be mindful of the possibility that a client may have additional legal issues relevant to the other Program areas and the need to make referrals for further assistance.

### Specialist outreach services

Legal Aid NSW provides extensive generalist family and civil law outreach services at a range of community centres throughout NSW. In order to improve access for people in domestic violence situations to these services, services could be conducted at women’s health centres or refuges.

Legal Aid NSW also provides specialist outreach services to various special needs groups such as prisoners, people requiring assistance on child support, Aboriginal
people, people experiencing homelessness and older people. All these services could incorporate a specific focus on domestic violence legal issues and disseminate legal information and information on services.

Training should also be provided to legal staff conducting clinics to increase their ability to provide broad advice on domestic violence related legal issues.

**Recommendation 24:** That Legal Aid NSW outreach services provide information to people in domestic violence situations on the availability of legal aid for domestic violence related matters and WDVCAS services and that the quality and access of these services be enhanced through:

a) Links with the WDVCAP and other domestic violence services and community workers; and

b) The provision of training to Legal Aid NSW solicitors on domestic violence related legal issues to enable them to provide broad advice during these services.

**Referrals**

The ability to make effective referrals for clients with socio-legal needs is particularly critical in domestic violence situations.

Lawyers, in particular those in the general family law and care and protection practices felt it would be useful to have a larger referral list of independent services that they could refer clients to for social/welfare assistance.

Because of the broad nature of the work they do and their links with local services, WDVCASs could be a major referral point for women with multiple social welfare issues. Family Law solicitors acknowledge that the program could improve its links with WDVCASs as a means of ensuring that WDVCAS clients obtain family law assistance.

Wherever possible ‘warm referrals’ (referrals in which the referrer introduces the client to the referee) should be made.

**Recommendation 25:** That training/information be provided to Legal Aid NSW staff on agencies that can provide assistance in domestic violence situations and on the need to make ‘warm referrals.’

**Recommendation 26:** That Legal Aid NSW family law practitioners hold regular stakeholder meetings with local domestic violence service providers, where possible, by attending existing forums such as local domestic violence committee meetings or Court User Forums.
Cooperative Legal Service Delivery Program

The CLSD Program which is managed by Legal Aid NSW, is a regionally-based approach to legal service delivery in NSW that aims to improve outcomes for disadvantaged clients with legal needs by building cooperative and strategic networks of key legal services and community organisations.

The CLSD Program is now operating in eight regions across NSW and most include organisations involved in providing domestic violence related services such as CLCs, ALSs, WDVCASs, Family Relationship Centres, Local Courts and the Family Court.

CLSD meetings are useful forums for discussing specific referral and service delivery issues and for raising local and systemic issues impacting on domestic violence service delivery. Systemic issues are fed via the Director, SPPD to the Legal Aid NSW Executive and to the NSW Legal Assistance Forum (NLAF) which has the capacity to take on issues at a broader level.

**Recommendation 27:** That the CLSD Program continue to encourage the participation of domestic violence related services at CLSD meetings and the discussion of local and systemic issues concerning the delivery of legal services to people in domestic violence situations.
8. Criminal law matters

Grants of legal aid in ADVO matters

Legal Aid NSW policy on the availability of legal aid in ADVO matters is set out in Legal Aid NSW Policies, Chapter 4: Jurisdiction, under State criminal matters. It provides that, subject to Legal Aid NSW means test, legal aid is available to:

Table 5: Legal Aid NSW policy on the availability of legal aid in ADVO matters

<table>
<thead>
<tr>
<th>Applicants</th>
<th>Defendants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available to applicants in ADVO matters when the application relates to a protected person who lives in a domestic relationship as defined under Legal Aid NSW policy. As of March 2008, Legal Aid NSW policy has been extended to include all categories of person coming within the definition of ‘domestic relationship’ under s.5 the Crimes (Domestic and Personal Violence) Act 2007, with the exception of s.5(d), which includes a person who ‘is living or has lived in the same household as the other person.’ Legal aid is also available in ‘cross-application’ matters where the applicant for legal aid is an applicant in associated apprehended domestic violence proceedings and there are exceptional circumstances as outlined above (such as where Legal Aid NSW is satisfied that the applicant for aid is a victim of domestic violence). Legal aid is not available in ADVO matters if:</td>
<td>Available to defendants in ADVO matters in ‘exceptional circumstances,’ for example where:</td>
</tr>
<tr>
<td>• Legal Aid NSW is satisfied that the application for an order is frivolous or vexatious, or</td>
<td>• The applicant for legal aid is a person who has a physical, psychiatric or intellectual disability, and</td>
</tr>
<tr>
<td>• There are no reasonable prospects of success, or</td>
<td>• Other options for resolving the matter have been unsuccessful or are not appropriate; or</td>
</tr>
<tr>
<td>• If the application is made by a police officer.</td>
<td>• Legal Aid NSW is satisfied that the defendant in the Apprehended Domestic Violence Order proceedings is a victim of domestic violence. Legal Aid NSW will be satisfied that a defendant is a victim of domestic violence if any of the following criteria are satisfied:</td>
</tr>
</tbody>
</table>

The recent inclusion in the ‘exceptional circumstances’ category of victims of domestic violence who are defendants, has been regarded by other service providers, such as CLCs as a positive step.61

61 Combined Community Legal Centre Group (CCLCG) Submission to the Review, 3 June 2008 at p.6.
A further positive step is the clarification of the policies to allow solicitor of choice for private ADVO applicants.

Legal Aid Commission policies in relation to grants of legal aid for protection order matters (only) in other States and Territories do vary but in many ways are quite similar. Generally, other legal aid commissions give applicants in protection order matters priority for assistance.

Grants of legal aid for ADVO applicants

The consultations to the Review have raised a number of issues in relation to Legal Aid NSW ADVO Policy for applicants.

Awareness of the availability of legal aid for applicants

A persistent myth in the community, justice and legal services sector is that legal aid is not available in ADVO matters. The WDVCAP Unit frequently receives comments and complaints from service providers that their clients have been advised that legal aid is not available for ADVO matters.

Exceptional circumstances

LAQ provides grants of legal aid to potential protection order applicants to enable them to make an application for an order. This includes assistance in drafting an order. The benefits of doing this in NSW would be that it should encourage better quality private ADVO applications and enable more would-be private applicants to commence proceedings and obtain legal representation.

Merit

In LAQ if the Registrar at the Court has in their discretion determined that a protection order application should be made, no further inquiry is made by LAQ Grants staff as to the merit of a legal aid application.

It is recommended that Legal Aid NSW adopt the same approach for the following reasons:

- Local Courts have already accepted the making of a determination based on the information disclosed by the applicant;
- Because of the very nature of domestic violence, many applicants will not be able to provide corroborating evidence; and
- To ask an applicant for additional evidence would be to ask more than a court would require. In many cases, a sworn statement from the witness is accepted as sufficient evidence of their application.
The means test

Two submissions to the Review commented on the impact of the means test on women’s ability to access grants of legal aid in ADVO matters, particularly in relation to defended hearings.62

In its submission, Women’s Legal Services (‘WLS’) argues that Legal Aid NSW should remove the means test for ADVO matters or at least look at increasing the allowable income threshold for the means test.

“Victims of violence should not have to pay for their protection. Providing legal aid to women victims of violence seeking protection is consistent with a human rights framework and the NSW Government’s commitment to reducing violence, particularly violence against women. While the Domestic Violence Solicitor Scheme (DVSS), where it operates, ensures that women are assisted at the mention stage, means testing removes their support just as they reach the most complex and arguably most crucial time for representation in the ADVO process: the hearing. … As the post-separation period is one of the most dangerous and high risk times for women victims of domestic violence, affordable or free legal services are critical to helping women realise the safety objectives of ADVO legislation.”63

In 2007, 3,133 private ADVO applications (from both males and females) were made. Based on the estimates made in the DVSS pilot in 1999, which found that 85% of women represented in the pilot were eligible for legal aid, 2,663 of applicants would be eligible. Even if these estimates are still accurate, not all those who would be eligible would necessarily apply.

Grants of legal aid for conferences

Generally, a hearing in an ADVO matter is funded in the same way as any other summary hearing. Solicitors acting in ADVO matters for a legally aided client will be paid for court appearances and preparation of the matter. Approval has to be sought for additional client conferences and for any conferences with witnesses.

However, women who have experienced domestic violence are often reluctant to disclose the full extent of the violence at their first meeting with a legal professional. It may take two or three meetings before a level of trust is established to allow full disclosure of the grounds for the ADVO, particularly in cases where the violence has been severe and protracted and which may include disclosures about sexual assaults.

The current funding arrangements inhibit the process of obtaining adequate instructions on which an ADVO application could be made and/or defended. DVSS solicitors have advised that when working with an interpreter, this restriction is quite unrealistic.64

Provided funds are available, the structure of grants for ADVO matters should to changed to allow for additional client conferences.

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63 Women’s Legal Services submission to the Review, dated 2 June 2008, at p.4.

64 Women’s Legal Resources submission, ibid at p.7.
Grants of legal aid for ancillary matters

WLS also points out that clients in ADVO matters may be faced with interlocutory proceedings in the Local Court or District Court such as responding to subpoenas to produce documents and/or items such as computers, or deal with asserting a claim for sexual assault.

In WLS’ experience, there is an unmet need for legal assistance in these proceedings. This is because in police applications or prosecutions, the DPP or police do not represent victims in subpoena proceedings.

On 1 July 2008 the Courts and Crimes Legislation Amendment Act 2008 amended the Act to provide for a right of appeal against the dismissal of an application for an AVO by the Local or Children’s Court. Legal Policy Branch should give advice on whether the legal aid guidelines need to be amended to enable legal aid to be granted in such matters.

**Recommendation 28: That Legal Aid NSW:**

a) Make provision for an additional payment in its fee scales for ADVO matters for the provision of assistance in making an ADVO application, including advice and drafting of an ADVO application;

b) Accept the issuing of a private ADVO application by a Local Court under Part 10, Division 3 of the Crimes (Domestic and Personal Violence) Act 2007 as sufficient evidence of merit for the purpose of an initial grant of legal aid for an AVO matter and that Legal Aid NSW staff be trained in this requirement;

c) Review legal aid fees and policies to ensure they provide reasonable remuneration for the costs of providing services in ADVO matters.

Grants of legal aid for ADVO defendants

Currently, criminal law practitioners are in the difficult position of being able to provide legal aid representation until conviction, but not for the negotiation of the ADVO which may follow the conviction. While technically legal aid lawyers are entitled to walk away at this point, generally they will provide assistance.

Consideration should be given to rewording the policy as a positive statement (“Legal Aid is available to defendants subject to …”) in order to encourage more defendants and/or practitioners to apply and/or broadening the ‘exceptional circumstances’ test to include potential detriment to the defendant.

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65 Police and courts are required to consider making an AVO against a defendant where there are concurrent criminal proceedings (ss.49 (1) (c) & s.81 of the Crimes (Domestic and Personal Violence) Act 2007, which states that: “A court may make an apprehended violence order against a defendant even though proceedings have been commenced against the defendant for an offence arising out of the same conduct as that out of which the application for the order arose.”
A more costly option would be to broaden legal aid policy to allow defendants in all ADVO matters (subject to the means and merit tests) access to legal aid. This would involve an investigation of merit in every application and an extra back-up duty solicitor at every domestic violence list day, at least in each of the busy local courts as well as increased resources to the Grants Division.

This would have significant resourcing implications and could not be supported within the current Criminal Law budget.

**Recommendation 29:** That Legal Aid NSW broaden its legal aid policies on grants to defendants in ADVO matters, subject to detailed costings and adequate Government funding.

The Domestic Violence Duty Solicitor Scheme

Since 1999 the Domestic Violence Solicitor Scheme (DVSS) has been providing legal representation to private applicants in ADVO matters at a number of metropolitan and Central Coast Courts (Waverley, Burwood, Bankstown, Liverpool, Fairfield, Campbelltown, Sutherland, Kogarah, Blacktown, Penrith, Gosford, Woy Woy, Wyong).

DVSSs operate as an adjunct to WDVCASs using solicitors from the private profession, who are rostered to attend court on AVO list days to represent private ADVO applicants and provide legal advice to all WDVCAS clients, police assisted and private on ancillary matters, such as family law.

**Solicitor participation in DVSSs**

According to the information provided to an internal review of the DVSS in 2006 around 25 private practitioners were participating in DVSS rosters.

Frequency of private practitioners’ participation in DVSSs varies considerably, from attending one court once every 6 weeks to attending at least once a week across four courts. A common pattern of commitment by solicitors to their DVSS is to attend at one court on a list day every two or four weeks. These arrangements should be reviewed.

**The cost of the DVSSs**

Currently, it is not possible to provide accurate costings for the DVSS as claims and client data relating to DVSS matters are not distinguishable from other criminal law duty matters. Legal Aid NSW should consider developing a specific format for DVSS solicitors to submit their claims for payment so that these costs can be distinguished.

In their submission to the Review, WLS, based on staff observations of DVSS work, raised a number of concerns about the operation of the DVSS:

- Concerns about the consistency, quality and level of their work;
- The recruitment of DVSS solicitors being left up to individual WDVCASs;
- The lack of continuity in service provision, in particular between a mention and a defended hearing (which requires a grant of legal aid);
- The impact of conflicts of interest between rostered clients and their private practice;
To address these concerns WLS have recommended, among other things:

- DVSS selection criteria that includes capacity to work with disadvantaged clients and understanding of the dynamics of domestic violence;
- Requirement and support for DVSS solicitors to undertake a minimum number of hours of relevant continuing legal education each year;
- Continuity of service for clients as a priority in the design and funding of the DVSS; and
- Clear policy on solicitors’ responsibilities, including clarification on:
  - Whether the client is a client of WDVCAS or DVSS;
  - The role of the solicitor in discussing the solicitor/client relationship;
  - The level and nature of support a WDVCAS can provide a DVSS solicitor;
  - The responsibility of a DVSS solicitor for the work that flows from mentions; and
  - File keeping procedures.66

**Recruitment of DVSS solicitors**

Solicitors are selected and appointed to rosters at Local Courts by the Coordinators of WDVCASs providing services at those courts. The selection process is informal and, until recently, has not involved representation by Legal Aid NSW. This is neither appropriate nor consistent with Legal Aid NSW policies in relation to other duty services.

After discussion with the Grants Division at Legal Aid NSW it is recommended that the operation of the DVSS be made consistent with the processes for selecting legal practitioners in other Program areas through the establishment of a specialist panel for the provision of duty legal services for applicants in ADVO matters. WDVCAS Coordinators could have input into this process.

**Training of DVSS solicitors**

Currently Legal Aid NSW has no control over the quality of services delivered by DVSS solicitors and is unable to impose any requirements on them in relation to appropriate training or qualifications.

The establishment of a specialist ADVO panel would provide greater quality control as it entails the development of Practice Standards and training, duty solicitor guidelines, a service agreement and the establishment of procedures to determine the qualifications and suitability of practitioners seeking to join the panel. It would also enable Legal Aid NSW to monitor the cost of DVSS services and facilitate the electronic lodgement of applications for grants of legal aid in ADVO matters.

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66 Women’s Legal Resources submission, ibid, at pp.5–6.
It would also enable centralization of the establishment and co-ordination of the duty rosters through the Duty Roster Coordinator, Professional Standards, Grants Division.

**Pro bono work**

Since the establishment of the DVSS, there has been a ‘requirement’ that DVSS solicitors undertake a defended hearing for free in exchange for their work on the DVSS roster on three occasions. The reasons for this requirement cannot be found in any documentation. It does not apply to any other duty service.

**Recommendation 30:** That Legal Aid NSW:

- Establish a specialist panel for the provision of legal representation services in ADVO matters which includes defended hearings;
- Develop clear policies for the operation of the DVSS be established as outlined in WLS submission;
- Remove the requirement for DVSS solicitors to undertake pro bono hearings.

**Gaps in service delivery to people in ADVO matters**

Matching between high volume courts and DVSSs shows that DVSSs have been placed in metropolitan Local Courts with the highest workloads.

There are however some gaps. Data on the top 15 Local Courts by ADVO workload in 2007 highlights the need for services at courts such as Kogarah, Mt Druitt, Parramatta, Newcastle and the Downing Centre.

Both NSWPF and Local Courts have raised the lack of legal aid representation for private applicants in regional areas as a major concern. There is also concern that private solicitors were often conflicted out of providing assistance to applicants. However, in many cases the numbers of applicants at these courts can be quite low which raises issues about the feasibility of establishing stand-alone DVSS type services.

One option would be to develop a ‘cluster’ model of DVSS representation across a number of WDVCASs. This would require further investigation in terms of demand, the availability of appropriate solicitors and whether a cluster model is feasible. Consultations would need to be held with the local private profession, CLCs, ALSs, Legal Aid NSW offices, police and Local Courts.

**NSW Police Force policy on representation**

Current NSWPF policy on representation in private ADVO matters states ‘on a request, seek leave to appear to help unrepresented complainants of AVOs.’

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67 Email feedback from Local Courts, dated 19 August 2008.
While the assistance of police prosecutors is very helpful, it is not appropriate for Legal Aid NSW to rely on police prosecutors to fill the gap in legal representation services for legally aidable private ADVO applicants.

**Duty scheme**

A further option is to establish an ADVO duty scheme in Local Courts in the same way as the criminal duty scheme operates in courts where a Legal Aid NSW salaried solicitor is not available. The only difference between this and the DVSS is that DVSSs are linked to a WDVCAS.

A duty scheme might be able to operate in areas without a WDVCAS where there is sufficient demand and could be coordinated by the local Law Society and funded by Legal Aid NSW in the same way as other duty services.

Quality control of the services could be ensured through the establishment of a specialist ADVO panel as suggested above for all solicitors doing ADVO matters. The potential for conflict for solicitors also providing duty criminal law services would need further investigation.

**Domestic Violence Advocacy Service**

The DVAS provides legal representation for victims of domestic violence (particularly those cases for which legal aid is not available), for defended hearings, appeals, test cases and ancillary matters.

Discussions should be held between the WLS and Legal Aid NSW to ascertain the potential for the DVAS to attend other courts where there are no DVSSs and to undertake more defended hearings.

**Pro bono solicitors**

Given the importance and complexity of ADVO work and the lack of control over the quality of pro bono services, it seems timely to reconsider whether reliance on pro bono legal representation in ADVO matters is acceptable. Given the significant implications for clients in ADVO matters, legal representation for people in domestic violence situations should be considered core work by Legal Aid NSW.

**Salaried WDVCAS solicitors**

The employment of salaried solicitors within the WDVCAS model would be consistent with the original service model and would address a long-standing gap in this area. It is an option that is supported by WDVCAS workers and most of the people on the Consultative Committee to this Review.

It is also consistent with the Family Violence Prevention Legal Service (‘FVPLS’) model which provides funding for salaried solicitors and court assistance workers. Salaried FVPLS solicitors attend the Local Court on ADVO list day and also provide family law, care and protection and victim’s compensation advice and assistance.\(^\text{68}\)

\(^\text{68}\) Women’s Legal Resources submission, ibid, at p.7.
The main concern with such a model is the cost for each WDVCAS given the small numbers of private ADVO applicants requiring assistance each year. Accountability and supervision mechanisms would also need to be worked out. WDVCAS Service Providers are generally non-legal organisations. Other options aimed at making this more feasible include:

- Increasing the range of work undertaken by WDVCAS solicitors to include family law, care and protection, housing and victims compensation; and
- Attaching a solicitor to a cluster of WDVCASs (to ensure an adequate volume of work).

**Recommendation 31:** That Legal Aid NSW develop a detailed costed proposal for the expansion of legal representation services for people in domestic violence matters.

**Establishment of services for Gay, Lesbian, Bi-sexual and Transgender (GLBT) People**

In discussions with the Same-Sex Domestic Violence Interagency Committee, the following issues were raised:

- Lack of awareness in GLBT communities of Legal Aid NSW policies regarding conflict and the availability of legal aid in APVO matters (which may be a preferred option for GLBT clients);
- Lack of awareness of the right to make a private ADVO application;
- The need for a court advocacy service for gay men. Several years ago the Inner City and Redfern Legal Centres established a pilot service at Waverley Local Court but it was discontinued because lack of demand;  

69 Email advice from Inner City Legal Centre, 23 June 2008.

- Lack of WDVCAS Coordinator awareness about policies providing for assistance to lesbian women who are victims of SSDV. Provided these policies are adhered to and effective services provided, the Committee advised that it would encourage lesbian women who are victims of SSDV to access WDVCASs for assistance;
- Concerns about the ability of WDVCAS staff to appropriately identify whether a potential client is the victim or alleged offender and entitled to WDVCAS assistance.

The Committee suggested recommendations relating to:

- Information and community legal education for GLBT people on:
  - Legal aid policies on AVO matters and the impact of conflict of interest; and
  - Their right to apply for private ADVOs;
Legal Aid NSW assistance in developing a court advocacy model for gay men, possibly through a partnership approach with Legal Aid NSW;

• Training for DVSS solicitors and WDVCAS staff on GLBT issues and reinforcement of WDVCAP policy on assistance for lesbian women.

**Recommendation 32:** That Legal Aid NSW:

a) Assist the Same-Sex Domestic Violence Interagency Committee (or relevant organisation) to develop an appropriate court advocacy model for gay men in domestic violence situations;

b) Reinforce WDVCAP policy on assisting women victims in SSDV situations.

**Legal representation in criminal charge matters involving victims**

The educational and communication needs of lawyers involved in representing victims of domestic violence charged with criminal offences against an alleged offender is best highlighted in the case of *R vs. Robyn Bella Kina*, Queensland Court of Appeal, 29 November 1993 (unreported) which found that difficulties of communication between Ms Kina, an Aboriginal women convicted of the murder of her partner and her legal representatives meant they failed to raise evidence of the history of violence thereby resulting in a miscarriage of justice.

The Victorian Law Reform Commission in its 2004 review of defences to homicide also made recommendations concerning the need for professional and judicial education in relation to family violence.  

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Behaviour change or ‘perpetrator’ programs

Several Legal Aid NSW staff who have had input into this Review commented that they would like to be able to refer clients charged with domestic violence offences to credible programs aimed at reducing their rate of re-offending.

Legal Aid NSW staff need to be aware of the current availability of such programs and research on their effectiveness. Professor Lesley Laing summarises concerns about perpetrator programs in this way:

“Does working with individual men suggest that the problem lies solely with one identified group of ‘deviant’ individuals and obscure the role of social structures and attitudes which perpetuate violence against women (Ashcroft, 2000)? Do perpetrator programs take scarce resources away from services for women and children?
Do they lull women into a false sense of hope that the men who abuse them can change, and thus work against the core goal of enhancing women’s safety?”

In NSW the Department of Corrective Services (DCS) Domestic Abuse Program operates a program in conjunction with the Domestic Violence Court Intervention Model (DVICM) pilot. The program is targeted at offenders convicted of a domestic violence offence who are currently in custody, or are serving a Parole or Court Order whilst supervised by DCS. It is the only known recurrently Government funded men’s program in this area.

There are other ‘men’s programs’ operating around NSW run by individual professionals or charitable organisations but little information exists on how they operate or whether they have been evaluated.

ADVOs and family law matters

Lawyers interviewed for the Review felt it would be useful if Local Courts practitioners could be provided with basic family law training which would help equip them to identify potential family law issues for criminal law clients and make appropriate referrals.

A resource that some criminal law solicitors have found useful has been the Family Law Program’s 2007 paper ‘Mate – You Need to See a Lawyer: What a criminal lawyer needs to know about developments in Family Law.’

Law Society of NSW Guidelines for Contact with the Complainant in Apprehended Domestic Violence Matters and Criminal Matters (2004)

In 2004 the Law Society of NSW developed guidelines to assist practitioners when acting for clients involved in ADVO and criminal matters. The Guidelines deal with issues such as practitioners’ duties not to influence witnesses and the integrity of evidence. The legislative references and terminology used in the Guidelines are out of date, and the category of persons referred to as legal representatives for a ‘complainant’ do not include Legal Aid NSW or CLC practitioners, only police prosecutors and the DPP.

72 Interview with Inner City Local Courts on 15 May 2008.
It is timely that these be revised. The Guidelines could go further and adopt best practice guidelines such as those developed by LAQ for their legal staff. Best practice guidelines have been developed by the NSW Law Society in other specialist legal areas such as children’s legal services.

**Recommendation 33:** That Legal Aid NSW work with the Law Society of NSW to explore the possibility of developing best practice guidelines for practitioners in ADVO and domestic violence related criminal charge matters.
9. Family law matters

Grants of legal aid in family law matters

In determining whether to grant aid in a family law matter (including for an interim order or injunction) the existence of domestic or family violence (specifically, whether a child's safety or welfare is at risk and/or the applicant's safety is at risk) is a relevant factor in deciding whether the matter is urgent and should be given high priority.74

The Family Law Procedures Manual provides (in relation to duty solicitor assistance) that priority be given among other things to:

“T and S considerations – whether there are specific issues relating to family violence which impact on the duty client’s capacity to appear on their own behalf.”75

In relation to care and protection proceedings, legal aid in these matters is not currently subject to a merit test. Therefore there is no need to prioritise matters.

The Family Law Program is aware that there are misunderstandings about the differences between the different Legal Aid NSW family law services, in particular that case work representation means continuous representation in a matter and acknowledges the need for better community information.

Conflict

Many clients, WDVCAS and other community workers, legal service providers and justice system staff do not understand Legal Aid NSW conflict guidelines. There is a lack of understanding that even when Legal Aid NSW is conflicted out of providing in-house assistance, assistance can still be provided to the client, provided they are eligible for legal aid. In such cases the matter is assigned out.

Recommendation 34: That the Family Law Program’s CLE brochures on family law address concerns about eligibility, types of family law matters undertaken by Legal Aid NSW, conflict and where to get help.

Identifying domestic violence in family law matters

 Courts exercising jurisdiction under the Family Law Act 1975 (‘FLA’) are required to ensure that orders made take into account the best interests of the child as a paramount consideration. This includes a consideration of whether children are protected from physical or psychological harm and from being subjected to or exposed to abuse, neglect or family violence (s.60 CC (2)(a)).

74 Legal Aid Family Law Policies 2.2.1.
In doing this courts are required to consider additional matters such as the existence of a family violence order (s.60 CC (3(k)) and ensure that any orders it makes are consistent with any family violence order and do not expose any person to an unacceptable risk of family violence.

Parties to the proceedings are required to notify the court of any family violence order made in another court. In cases of significant violence the Family Court can request that the Department of Community Services intervene in the family law proceedings.

To a large extent it is incumbent on lawyers handling matters involving family violence to identify it as an issue for their client and to gather admissible evidence for the court to enable it to make appropriate orders.

The importance of being able to identify family violence is emphasised to family law staff in several ways:

- Through the establishment of the Independent Children’s Lawyer (‘ICL’) service. This service is provided to the Family and the Federal Magistrates Courts at the court’s request. The solicitors undertaking ICL work are experienced and specifically trained to ensure that admissible evidence is provided to the Court. Their work is undertaken within the framework of the nationally agreed Guidelines for Independent Children’s Lawyers and Family Violence Policy issued by the Chief Justice of the Family Court;  

- Through the Family Law Procedures Manual at 4.3.10. The Manual emphasises the role of the lawyer in:
  - Recognising that family violence is a serious problem and being non-judgmental;
  - Considering orders that should be sought to protect a client;
  - Considering ways in which the client’s location can be kept confidential;
  - Even where family violence does not emerge as an issue at the initial interview, keeping the possibility of violence under review at all times; and
  - Ensuring security arrangements are in place for the client at court.

Family lawyers also play a crucial role in ensuring that court processes do not further victimise their clients. Senior family lawyers at Legal Aid NSW felt that all family lawyers and the Independent Children’s Lawyers would benefit from detailed training on domestic violence related issues including:

- The dynamics, prevalence and impacts of domestic violence;
- Identifying domestic violence and working with clients experiencing domestic violence;

• Presenting evidence on family violence;
• Myths and facts about family violence in the family law jurisdiction; and
• Research into the handling of family violence matters in the family and care jurisdictions.

In developing a course for Legal Aid NSW the expertise of social workers, welfare workers and counsellors in the area of domestic violence should be sought.

State domestic violence provisions are included in the professional induction program for new family law/care lawyers. However senior family lawyers at Legal Aid NSW acknowledge the need to have a better understanding of what’s happening in Local Courts in relation to ADVOs and family law matters as many practitioners no longer practice in Local Courts since the establishment of the Federal Magistrates Court.

**Screening and Risk Assessment in Family Dispute Resolution Matters**

Legal Aid NSW runs its own lawyer assisted Family Dispute Resolution (FDR) Program where the client receives a grant of aid and this covers the cost of the dispute resolution practitioner even if only one party is funded. This is different to what happens in the Family Relationship Centres where lawyers are not a part of the conferencing process.

The FDR practitioners on the Legal Aid NSW FDR Panel are re-accredited annually and have to comply with both practice and approval standards.

The safeguards built into the 2006 changes to the *Family Law Act* to protect victims of family violence from further abuse emphasise that mediation and substantial child contact are reliant on the detection of family violence through screening and risk assessment. Parties are exempted from attending FDR where domestic violence is a factor. In such cases the party or their lawyer is able to take the matter directly to court.

The need to identify family violence in FDR matters is reinforced in the Family Law Division’s Procedures Manual. The Manual provides that unless there are ‘exceptional circumstances,’ conferencing should not occur, for example:

- Where “a party indicates that a conference is not appropriate because of family violence, or there is current and ongoing violence in the relationship, or there has been a history or pattern of family violence, unless the conference organiser is satisfied that the victim is both willing to attend and able to participate and negotiate on a reasonably equal footing”;

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78 Presentation given by Anne Corbett, Legal Staff Development and Education Coordinator, Criminal Law, Head Office.
9. Family law matters

- Where “attendance at, or participation in, a conference would constitute a breach of an apprehended violence order or other protective order of the court.”

The FDR Unit also has its own Policies and Guidelines on Assessment of Matters for FDR and uses a formal Screening/Intake Assessment Checklist for Clients and Lawyers to determine whether FDR is suitable in a particular matter and if so, whether any particular arrangements need to be put in place for the conference.\(^{80}\)

Where a family dispute resolution practitioner considers (as a result of the presence of family violence) that it would not be appropriate to conduct FDR they can issue a certificate under s.60I 8 of the *Family Law Act 1975* to this effect.

Where it is decided that a conference will go ahead, arrangements may need to be put in place in order to ensure the safety and capacity of the victim to participate such as a telephone conference or shuttle mediation which involves the FDR practitioner shuttling between the parties who are in different rooms during the negotiations. Many victims are satisfied with a face to face mode with the added support of their lawyer and the mediator.

Legal Aid NSW considers that its conferencing model provides a valuable alternative to victims whose only other option may be court proceedings in which they will have to face the other party. It is generally accepted that there are significant benefits when both parties are represented particularly in matters involving family violence.

Many domestic violence workers including WDVCAS workers continue to have concerns about the capacity of domestic violence victims to participate on an equal footing in FDR despite the safeguards that are put in place and may be reluctant to make referrals to this service. These concerns should be discussed openly with the FDR Unit and if necessary, addressed.

It would be useful if the FDR Unit were to provide training to WDVCAS workers on their processes for identifying, screening and handling FDR referrals involving domestic and family violence and for the FDR Unit and the WDVCAP Unit to work together to address any issues of concern.

**Grants of Aid for Family Dispute Resolution**

A concern raised by Local Courts is that when courts refer a client to Legal Aid to apply for a grant of legal aid for FDR, clients are being advised that they need to arrange for a private solicitor to apply for the grant on their behalf, even though there may be no solicitors in the area who do legal aid work.\(^{81}\)

Conference organisers now provide parties with details of the Family Law Legal Aid panel in their area.

One submission to the Review suggested that grants of legal aid be made available to potential FDR applicants in order to obtain advice prior to FDR and also prior to their attendance at Family Relationship Centre. For clients with a grant of legal aid it

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\(^{80}\) Legal Aid NSW ADR Unit, *Confidential Conference Intake Assessment Checklist For Lawyers and Confidential Conference Intake Assessment Checklist For Clients.*

\(^{81}\) Email feedback from Local Courts, dated 19 August 2008.
includes advice prior to their conference. Otherwise advice is available for free from Legal Aid NSW office advice clinics.

Screening and Risk Assessment in General Family Law Matters

Practitioners are now required under the Family Law Act to make decisions about whether parties to a family law dispute involving children:

- Have made a ‘genuine effort’ to resolve their dispute through processes such as FDR; or
- Whether the FDR practitioner considers the matter is appropriate for dispute resolution. This decision can be made prior to a conference being held or during a conference.

The amendments highlight the need for in-house and assigned family law practitioners to be alert to the possibility of domestic violence and the level of risk to a client when considering and explaining options.

In September 2007 Legal Aid Western Australia introduced a ‘DV data tick box’ which requires staff to screen all family law matters and record on its client database whether the matter involves family and domestic violence (‘FDV’) or allegations of FDV. LAWA staff felt strongly that they needed to know as early as possible whether family law matters involve FDV, so that they can appropriately manage and support these clients.

The development of a similar tool at Legal Aid NSW is worth considering.

Recommendation 35: That the Family Law Program develop a simple domestic violence screening and risk assessment tool for family law and care and protection matters based on the LAWA model.
9. Family law matters
10. Civil law matters

Given the broad range of civil law problems dealt with by the Civil Law Program, only the major specialty areas of relevance to people in domestic violence situations have been examined in this Review.

Domestic violence related debt

Commonly known as ‘sexually transmitted debt’ this refers to a transaction in which one party accepts responsibility for another party’s debt primarily because of their emotional dependency upon them or because they have been coerced into consenting to the transaction. The liability may be as a co-borrower, guarantor or even sole borrower. In some cases, the liable party does not stand to gain any direct benefit from the transaction. In some circumstances it is possible to have such debts overturned, either as unjust contracts or on contract law principles.

Domestic violence can also have an impact on women making claims for child support, either by failing to make claims for fear of retribution from their partners or ex-partners, or making claims to which they are not entitled as a result of partner or ex-partner pressure. The Civil Law Program has recently successfully defended a client in such a matter.

It can be quite difficult, without being too intrusive, for Civil Law staff to identify whether a Centrelink or other debt matter has resulted from a domestic violence situation. Training for staff on identifying such matters could help staff elicit whether domestic violence is an issue.

Migration matters

Threats of deportation as a means of inducing women to stay in abusive relationships are a significant problem for immigrant women.

The Government Law Group is funded under its Immigration Advice and Application Assistance Scheme contract to provide migration advice and application assistance to ‘eligible, needy’ immigration clients and includes assistance to people applying for permanent residence whose spouse or partner relationship has broken down as a result of family violence.82

The major concerns raised in the Review about the migration service were:

- Lack of awareness of the service; [Note: As a result of this Review the Government Law Service has a permanent spot on the WDVCAP Core Training Program];

82 Agreement between the Commonwealth of Australia and the Legal Aid Commission of New South Wales in relation to Services for Immigration Advice and Application Assistance (IAAAS) 2008.
• The small size of the service and its location in Head Office, limiting its ability to address unmet demand for casework services, particularly in rural and regional areas; and
• Delays in being able to access immigration advice appointments.

One simple suggestion made to the Review was that a flyer be developed in a number of languages that says simply “if you are on a spouse visa and are a victim of domestic violence you can do something about it and not lose your visa” with a contact number for LawAccess NSW.

The Government Law Group has good relationships with individual refuges and has assisted refuge workers prepare the required forms of evidence for visa applicants in Family Violence Provision matters. It acknowledged that its relationship with WDVCAS workers could be improved. CLE could be undertaken with refuges and with WDVCAS workers at conferences and meetings as a way of spreading these skills.

**Recommendation 36:** That the Government Law Group:

a) Develop accessible information about the availability of its migration services for visa applicants experiencing family violence;

b) Provide CLE to refuge and WDVCAS workers to enable them to prepare the necessary forms of evidence for family violence related immigration matters;

c) Seek additional funding from the Commonwealth Government to enable the Government Law groups to expand its services to people in family violence matters under its IAAAS contract.

**Victims’ compensation**

The need for assistance in this area has been reiterated in submissions to this Review, especially in relation to Aboriginal applicants and respondents in restitution matters.

Other issues raised by Victim’s Services to the Review included:

• Consideration by Legal Aid NSW of an expansion to the ‘special disadvantage’ test to refer specifically to Aboriginal people so that more Aboriginal people can access legal aid assistance for victim’s compensation matters;

• Greater awareness by Legal Aid NSW staff of the services provided by Victim Services, especially, their counselling services;

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83 Meeting with the Government Law Group, Legal Aid NSW, 13 March 2008. Also Central West CLSD Strategic Service Delivery Plan 2007-08.

84 Comment from LawAccess NSW.

85 Email suggestion from Jenny Lovric, Legal Aid NSW CLSD Program Manager, dated 26 March 2008.

86 Meeting with Victim Services, 13 May 2008.
• Improved communication between Legal Aid NSW and Victim Services about Legal Aid NSW policies; and
• Opportunities for collaborative work with Victim Services in relation to CLE/training and publications especially for Aboriginal and CALD people.

Recommendation 37: That Legal Aid NSW:

a) Expand the ‘special disadvantage’ test to specifically include Aboriginal people so that Aboriginal people (both applicants and respondents) have greater access to legal aid assistance for victim’s compensation matters;

b) Invite Victim Services to provide information to Legal Aid NSW on its services through presentations at conferences and other forums;

c) Examine opportunities for collaborative work with Victim Services in relation to CLE/training and publications especially for Aboriginal and CALD people.

Older persons legal service

Since its establishment in April 2008 staff of the Older Persons Legal and Education Program has been conscious of a growing awareness among older people and service providers of elder abuse, in particular financial abuse. The service has developed a series of fact-sheets on this and other legal issues impacting on older people.

The service is also keen to get involved in casework involving elder abuse including ADVOS matters and to develop better referrals between the services such as WDVCASs, the Older Women’s Network and the Country Women’s Association.

Services to men in elder abuse situations in need of legal protection should also be considered. Consideration should be given to whether the role of DVSS solicitors should be expanded to include other people in domestic violence situations such as men suffering elder abuse.

Homeless persons outreach clinics

Legal Aid NSW has established a network of homeless persons outreach clinics. These clinics are conducted in collaboration with the Homeless Persons Legal Service (HPLS), an initiative of the Public Interest Law Clearing House (PILCH). The clinics provide advice, minor assistance and casework services to homeless people and deliver CLE to community workers on areas of law that particularly affect homeless people, such as fines, debt, housing, mental health orders and social security.

Homeless persons outreach clinics are conducted at places frequently visited by people experiencing homelessness in Coffs Harbour, Kempsey, Gosford, Newcastle, Wollongong, Nowra, Parramatta and Mt Druitt.

One suggestion provided to the Review is that the service also works with women’s refuges. Ideally clinics should also involve the expertise of a family law practitioner.
Clinic legal staff should be trained on ADVO and victims’ compensation issues. They could also be encouraged to develop specialist expertise in housing issues impacting on people in domestic violence situations. 87

**Coronial inquest unit**

The majority of domestic violence related homicides become the subject of criminal charges and do not go through the coronial process. Some, however, do where there the cause of death is not clear or where there is insufficient evidence to identify a person of interest for possible criminal proceedings.

The Legal Aid NSW Coronial Inquest Unit can play an important role in prompting the Coroner’s consideration of systemic issues leading up to the death and possible recommendations from the Coroner to address these issues.

Subject to the means, merit and availability of funds test, legal aid is available for Coronial Inquests:

- When a Coronial Inquest is a preliminary step to civil proceedings (such as wrongful death) and the proceedings contemplated is one which legal aid is available for; or
- Where the matter is a ‘public interest matter.’ 88

An examination of matters referred to the Coronial Unit in Legal Aid NSW highlights that of the dozens of matters referred to the Unit since its establishment very few appeared to involve domestic violence. Nevertheless it would be useful for the Unit to have a working definition of what constitutes a ‘domestic violence related death’ to help identify such matters more easily.

In overseas jurisdictions, domestic violence related deaths generally refer to deaths by intimate partners and/or family members where domestic violence has been a concern in the history of the persons involved. It also includes victims who, as a result of the violence kill an alleged offender, a rival sexual partner and/or ‘collateral’ victims such as other family members or friends and victim-suicide cases.

**Recommendation 38:** That Legal Aid NSW:

a) Develop a working definition of what constitutes a 'domestic-violence-related death' for the purpose of identifying potential matters. This should also be included in the Glossary of Terms; and

b) Promote the services of the Coronial Inquest Unit to domestic violence stakeholders.

---

87 Meeting with the A/Director, Civil Law Program, Monique Hitter.
11. Establishment of a Legal Aid NSW domestic violence unit

Consistent with the terms of reference for this Review, it is timely for Legal Aid NSW to examine ways in which core legal aid services could be enhanced to more effectively meet the needs of people in domestic violence situations.

One option is the establishment of a specialist legal service, like the Children’s Legal Service and the Prisoners’ Legal Service, which is dedicated to addressing the legal needs of people in domestic violence matters.

In LAQ a Domestic Violence Unit has existed since 1993. It currently employs three lawyers who provide holistic outreach and complex casework services to people (including men) in domestic violence situations including protection order applications, family law, child protection and victim’s compensation. Most of the Unit’s lawyers have come from generalist private practices where they have been exposed to a number of jurisdictions.

The Unit has developed resources for clients and legal aid staff including publications, Best Practice Standards for legal and non-legal staff, gender awareness training, CLE and training for the judiciary and refuge workers. The Unit is based in the family law practice in LAQ. In terms of Legal Aid NSW equivalents the cost of establishing a Unit (salaries only) which is similar in structure to the Unit in LAQ would be as follows:

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<thead>
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<th>Position</th>
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<tbody>
<tr>
<td>Legal Officer, Grade V</td>
<td>$96,293</td>
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<tr>
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<tr>
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<td>Clerk Grade 1/2</td>
<td>$50,356</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$382,970</strong></td>
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</table>

A specialist unit within Legal Aid NSW would play a critical role in consolidating and facilitating improved responses to domestic violence across the organisation.

It should address the interests of the full range of categories of persons covered by Legal Aid ADVO policies, both victims and defendants. Its functions could include:

- The provision of advice and legal representation in ADVO matters, particularly defended hearings and appellate work;
- The provision of legal advice to Legal Aid NSW staff (for example, staff providing advice in outreach clinics) and WDVCAS workers;
- Facilitating cross-jurisdictional expertise (family law-ADVO matters);
- Developing and providing high quality professional training for Legal Aid NSW staff and DVSS solicitors and other agencies;
• Coordinating legal policy reform and research; and
• Developing best practice in legal service delivery.

Strategies would need to be put in place to ensure that casework did not overwhelm the other functions of the Unit.

Advantages in establishing a Unit identified during the Review include:

• The need for legal representation in private ADVO matters is quite small, and would not be a sufficient reason to justify the establishment of a specialist service;

• Conflict: Legal Aid NSW is developing firewalls/Chinese walls that would allow the delivery of specialist domestic violence services to the maximum number of clients;

• If the nature of the work is cross jurisdictional, funding needs to be allocated from both State and Commonwealth budgets.

The potential benefits that could be achieved for clients in terms of improved service delivery are significant.

**Recommendation 39:** That Legal Aid NSW develop a fully costed proposal for the establishment of a specialist Domestic Violence Unit.
12. Client assessment and referrals

The Client Assessment and Referral (CAR) Unit comprises a number of consultants whose role is to provide clinical expertise and professional skills in the management of legally aided clients with socio-legal needs. They act in a consultancy role to the Program areas and provide psycho-social assessment and reports for legal staff to assist them in the conduct of their matters.

Legal Aid staff in the practice areas should continue to use CAR as an important resource when dealing with clients for whom domestic violence is an integral component of their legal problem.

CARS has provided a number of reports over the years to the different Program areas on domestic violence related matters including family law and care matters, Centrelink fraud and in criminal law matters where women in domestic violence situations have killed their violent spouses.

To assist family report writers in their handling of matters involving domestic and family violence, LAQ has developed a set of Best Practice Guidelines. The development of best practice guidelines for the CAR Unit would help ensure consistent responses to clients across all areas of Legal Aid NSW.

**Recommendation 40:** That best practice guidelines for the practice areas also include best practice guidelines for the CAR Unit.
13. The Women’s Domestic Violence Court Advocacy Program

Effectiveness of the WDVCAP

In 1998 Legal Aid NSW commissioned an independent evaluation of the WDVCAP which had then been operating for two years. The report found the WDVCAP to be highly successful and made a number of recommendations for further improvement to the program.\textsuperscript{89}

It is now 10 years since the full Program was formally evaluated. Since then, the WDVCAP Unit has relied mainly on quantitative data to measure its effectiveness.\textsuperscript{90} Client and stakeholder feedback is however critical. It may be timely once the implementation of the current restructure of the WDVCAP is finalised for a qualitative and quantitative evaluation of the WDVCAP to be undertaken. Funding would need to be secured for this.

Strategic advice on the WDVCAP

The WDVCAP Advisory Committee provides advice to the CEO on the strategic management of the program. It comprises representatives from the WDVCAS Network, the Legal Aid NSW Board, NSW Police, the NSW Attorney General’s Department, and key community agencies such as WLS, Wirringa Baiya Aboriginal Women’s Legal Service and Immigrant Women’s Speakout.

Unlike the CLC Funding Sub-committee, the WDVCAP Advisory Committee has no formal status within Legal Aid NSW and does not provide regular reports to the Board. The WDVCAP Unit is currently considering a proposal to restructure the WDVCAP Advisory Committee as a Legal Aid NSW Board sub-committee under s.68 of the \textit{Legal Aid Commission Act 1979}.

Placement of the WDVCAP within Legal Aid NSW

During the course of the review the question of whether the WDVCAP should remain with Legal Aid NSW was raised.

Because of the quasi-legal nature of the service it is important that the WDVCAP be administered by a legal service organisation both as a means of maintaining the service’s focus on legal issues and as a means of keeping the justice system’s focus on domestic violence as a legal issue.

It is also consistent with the increasing formation of collaborative partnerships between legal service providers and community organisations aimed at improving community

\textsuperscript{89} Bradfield Nyland Group, \textit{Evaluation of the Women’s Domestic Violence Court Assistance Scheme}, August 1998 at p.4.

\textsuperscript{90} Data captured from the WDVCAP Database, July 2008.
access to legal services such as the Civil Law Program’s specialist outreach services and the Cooperative Legal Service Delivery Program.

**Funding and management**

The WDVCAP Unit employs a full time Program Manager (Clerk Grade 7/8), two Project Officers (Clerks Grade 5/6) (one temporary), and a part time Clerical Officer (Clerk Grade 1/2).

Until about two years ago, the main focus of the WDVCAP Unit was limited to allocating funding to WDVCAP Service Providers, analysing their financial performance and dealing with occasional management issues. The Unit operated very much in isolation from the Program areas.

Since then, synergies between the WDVCAP, other community funded programs (the CLC Program and CLSD) and the Program areas have been identified. This has resulted in a major increase in the number of joint meetings, forums and collaborative projects undertaken by the WDVCAP Unit with Legal Aid NSW and external stakeholders.

The WDVCAP Unit has become a key growth area for Legal Aid NSW, with a concomitant increase in the Programs’ level of managerial capacity and responsibility. The grading of current positions within the Unit, given the high level of skills and experience required to manage the range of complex issues and projects involved should be reviewed.

**Establishment of a WDVCAS secretariat**

For several years now the WDVCAS Network, the WDVCAP Unit and more recently, the Combined Community Legal Centre Group (CCLCG) have acknowledged the need for an independent WDVCAS secretariat.

Since the establishment of the WDVCAP the WDVCAS Network has been meeting quarterly as an opportunity for training, information exchange and professional support and to discuss common issues of concern. It has no formal status within the WDVCAP.

The WDVCAP Network has been a strong advocate for legal policy reforms for WDVCAS clients.

CLCs and tenancy services have their own independent peak bodies which provide strategic, policy and administrative support. They also oversee the work of management, technical advice and coordination. All of these tasks, to the extent that this is possible, are currently undertaken by the WDVCAP Unit with the WDVCAS Network’s assistance.

By establishing a secretariat, Legal Aid NSW could further improve service provision to domestic violence victims and encourage consistent standards for WDVCASs.
Funding, infrastructure and location of services

In the 2007 State Budget, the NSW Government announced that funding would be increased by 64% in 2009-10 to enhance the Program.

Since the establishment of the WDVCAP the location and structure of WDVCASs has not been reviewed despite significant changes in demand throughout NSW.

With the assistance of the WDVCAP Advisory Committee the WDVCAP Unit is examining a range of data to determine a list of priority locations to be funded. The locations review is also looking at broader WDVCAP framework issues such as sustainability of services and equity of access.

Training and professional support

Currently the WDVCAP is trialling a professional support initiative for WDVCAS Coordinators with the establishment on a trial basis of a Mentoring Project Officer. The position which was established in November 2007 has been extended until June 2009.

Since the relinquishment by Women’s Legal Services of the training and resource function of the WDVCAP, this function has been brought in-house and a new WDVCAP Core Training Program developed for WDVCAS workers. Feedback on the new training program has been positive. A proposal on how the training and resource functions of the WDVCAP could be incorporated into the Program on a permanent basis is currently being developed.

Training for seconded workers, DVSS and other legal aid funded solicitors representing applicants in ADVO matters is also being developed.

A further issue is WDVCAP workers access to in-house Legal Aid NSW training. Unlike CLC and ALS staff, WDVCAS workers must pay for in-house training.

Information management and data collection

In 2006 data collection mechanisms were completely overhauled and a new WDVCAP database established. The WDVCAP database system is web-based and conceptually links the provision of WDVCAS services more clearly to ADVO and criminal charge processes and court outcomes.

The database has greatly improved the ability of WDVCASs to record and manage client data and assess their service’s performance. It has also enabled Legal Aid NSW to extract reports on the performance of specific services and the Program generally, and to identify systemic issues.

The database has recently been revised and an updated system commenced on 1 September 2008.

Recommendation 41: That Legal Aid NSW review the role, structure, resources and reporting functions of the WDVCAP Unit, the provision of training and resources to WDVCAS staff, the structure of the WDVCAS Network within the WDVCAP and the need for an up-to-date evaluation of the effectiveness of the WDVCAP.
14. Training and development

A major theme throughout this Review has been the need for specific training on domestic violence issues. Training is a fundamental starting point for effective responses.

The main needs identified in this area are:

- General domestic violence awareness training for all staff (legal and non-legal, in-house and assigned) on the dynamics of domestic violence, its prevalence and impacts;
- Specific training for legal practitioners (both in-house and assigned) to improve their skills in:
  - Understanding the legal needs of people in domestic violence situations;
  - Interview techniques designed to elicit information on the existence of domestic violence;
  - Screening and risk assessment;
  - Referrals; and
  - Cross-jurisdictional training to enable practitioners to give broad legal assistance;
- Training opportunities with other agencies: Legal Aid NSW contributing its expertise to other agencies such as LawAccess NSW, NSWPF, Local Courts and other legal service providers.

This could be facilitated through the establishment of a training committee with responsibility for assessing cross-jurisdictional training needs and planning its delivery to in-house and assigned practitioners.

**Recommendation 42:** That Legal Aid NSW develop a comprehensive training program on domestic violence for legal and non-legal staff.

**Recommendation 43:** That Legal Aid NSW establish a training committee to assess the need and plan cross-jurisdictional training for in-house and assigned practitioners.

**Recommendation 44:** That Legal Aid NSW look at training opportunities with other agencies.
15. Community legal education and publications

Community legal education

Community legal education on domestic violence issues are at the highest on the list of requests from external organisations to Legal Aid NSW CLE Unit. The review identified a big role for CLE on the operation of the Family Law Act to correct misunderstandings about the impact of family violence on ‘mandated shared care.’

The main barrier confronting the delivery of CLE on domestic violence is access to cross-jurisdictional expertise on domestic violence issues. Gender of presenters is also a factor which needs to be considered in ensuring the appropriateness of presentations. A core group of legal staff from both genders with cross-jurisdictional expertise is needed to undertake this work.

Interactive workshops should be encouraged. Sessions need to be followed up with assistance services and good referrals on domestic violence issues.

Recommendation 45: That the CLE Unit in conjunction with the Program areas of Legal Aid NSW:

a) Establish a core group of legal staff from both genders to undertake domestic violence CLE training;

b) Ensure that CLE sessions on domestic violence for Aboriginal and CALD communities are culturally appropriate; and

c) Ensure that CLE sessions are followed up with assistance services and referrals. The WDVCAP Unit could assist in developing a referral resource for CLE presenters on domestic violence.

Publications

The Publications Unit has recently assisted in the update of two information pamphlets on domestic violence, one for applicants in AVO matters and one for defendants (both in domestic and personal violence).

There is also a brochure on domestic violence offences. These have been distributed widely to Local Courts and to NSWPF. The dissemination of Legal Aid NSW domestic violence pamphlets should be reviewed to identify other opportunities for broad distribution.

The WDVCAP Unit also produces a plain English brochure and Aboriginal specific publication on WDVCAS services (available in 15 community languages). This brochure is has recently been updated and redesigned. Other basic information on
the WDVCAP has also been produced in several different formats (a wallet card and posters).

An area identified through this Review is the lack of awareness of the availability of legal aid in ADVO applications and the impact of conflict. Consideration should be given to whether the range and format of Legal Aid NSW publications on domestic violence should be expanded and/or revised.

**Recommendation 46:** That Legal Aid NSW review its publications on domestic violence and their distribution.

### Internet information

The WDVCAP Unit is currently in the process of developing a new resource link for domestic violence workers which will include the revised WDVCAP Policies and Service Agreements and as well as other information and links.

**Recommendation 47:** That Legal Aid NSW provide information pages and resource links on domestic violence on its website.
16. Legal policy responses to domestic violence issues

It the last few years there has an increasing legal policy focus at Commonwealth and State on domestic violence. Increasingly all the Program areas are being encouraged to contribute expertise and information to various reports, forums and discussions.

Until recently responding to State issues fell mainly on the WDVCAP Unit while responsibility for family law issues was undertaken solely by the Family Law Program. It is important that all areas of Legal Aid NSW keep each other and the Executive informed of their communications with other agencies and seek the involvement of other Program areas in discussions requiring an organisational response.

Agencies which have a major focus on domestic violence related service delivery include: National Legal Aid, the Commonwealth Attorney-General’s Department, the Criminal Law Review Division at the NSW Attorney General’s Department, DoCs, which operates a number of domestic violence crisis intervention programs, the Violence Prevention Coordination Unit in the Department of Premier and Cabinet and the NSW Police Force.
16. Legal policy responses to domestic violence issues
17. Human resources

For victim/employees, the workplace offers an opportunity to access information and support that may not otherwise be accessible. Human resource strategies which could be developed include strategies aimed at:

- Ensuring the safety of employees who disclose that they are affected by domestic violence and providing staff and management training on how to ‘recognise, respond, and refer’ to staff at risk;
- Ensuring safety and minimising risks to clients affected by domestic violence and to staff exposed to violence through their work;
- Taking a leadership role in promoting common understandings of domestic violence and the need to prioritise the safety of victim/clients; and
- Supporting domestic violence prevention programs within the workplace (Legal Aid NSW already participates in ‘White Ribbon Day’ activities).³⁹¹


Recommendation 48: That Legal Aid NSW develop workplace strategies aimed at addressing domestic violence.

³⁹¹ In 1999, the United Nations General Assembly declared November 25 the International Day for the Elimination of Violence Against Women (IDVAW) and the White Ribbon has become the symbol for the day. Each November 25th hundreds of thousands of white ribbons are worn by men and women across Australia in recognition of the day.
17. Human resources
## Appendix A

### List of consultations

Table 7: List of consultations

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geraldine Read &amp; Liz Biok</td>
<td>Solicitors, Government Law Group, Civil Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Kylie Beckhouse</td>
<td>Senior Solicitor, Family Litigation, Family Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Teresa O’Sullivan</td>
<td>Solicitor Advocate, Coronial Inquest Unit, Civil Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Deborah de Fina</td>
<td>Solicitor-in-Charge, Care &amp; Protection, Family Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Dina Lioumis</td>
<td>Regional Program Coordinator, Family Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Karen Clogher</td>
<td>Prosecutions Coordinator, Domestic and Family Violence Team, NWPFG</td>
</tr>
<tr>
<td>Warwick Allan, Vanessa Viaggio, &amp; Nancy De Castro</td>
<td>Same-Sex Domestic Violence Working Group, NSW Attorney General’s Department</td>
</tr>
<tr>
<td>Lyn Mitchell</td>
<td>Counselling Coordinator, Victims of Crime Bureau, Victim Services, NSW Attorney General’s Department</td>
</tr>
<tr>
<td>Paul Johnson</td>
<td>Solicitor-in-Charge, Inner City Local Courts, Criminal Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Elaine Harrison</td>
<td>Solicitor-in-Charge, Family Dispute Resolution, Family Law, Legal Aid NSW</td>
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<tr>
<td>Eloise Riches</td>
<td>A/Solicitor-in-Charge, Family Dispute Resolution, Family Law, Legal Aid NSW</td>
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<tr>
<td>Richard Kozanecki &amp; Helen Shaw</td>
<td>Senior Legal Officers, Indictable, Criminal Law, Legal Aid NSW</td>
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<tr>
<td>Debra Maher</td>
<td>A/Solicitor-in-Charge, Children’s Legal Service, Legal Aid NSW</td>
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<tr>
<td>Tracey Bosnich, Steven Doumit, &amp; Angelique Barnes</td>
<td>Senior staff, Grants Division</td>
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<tr>
<td>Bridget Thomson</td>
<td>Court’s Policy Officer, Chief Magistrate’s Office</td>
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<tr>
<td>Kylie Nicholls</td>
<td>A/Assistant Director, Court Services, NSW Attorney General’s Department</td>
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<tr>
<td>Jane Pritchard</td>
<td>Director, LawAccess NSW</td>
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<tr>
<td>Emma Kerr</td>
<td>Solicitor, LawAccess NSW</td>
</tr>
<tr>
<td>Noreen Toohey</td>
<td>Magistrate, Family Violence Court Division, Ballarat Magistrates Court, Victoria</td>
</tr>
<tr>
<td>Bez Robertson</td>
<td>Applicant Support Worker, Family Violence Court Division, Ballarat Magistrates Court, Victoria</td>
</tr>
<tr>
<td>Anne Goldsborough</td>
<td>State Supervising Magistrate for Family Violence and Family Law, Victoria</td>
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## Appendix A — List of consultations

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Christine Nixon</td>
<td>Chief Commissioner, Victoria Police</td>
</tr>
<tr>
<td>Family Violence Team</td>
<td>Court Registrar, Police Prosecutor, Victim Solicitor WLS, Victim Support and others, Melbourne Magistrates Court, Victoria</td>
</tr>
<tr>
<td>Lyndsay Brooker &amp; Aideen McGarrigle</td>
<td>Manager, Legal Policy Unit &amp; Senior Legal Policy Officer, Legal Policy Unit, SPPD, Legal Aid NSW</td>
</tr>
<tr>
<td>Miranda Jakich</td>
<td>Publications, Coordinator, Legal Aid NSW</td>
</tr>
<tr>
<td>Kirsten Cameron</td>
<td>Coordinator, Community Legal Education Legal Aid NSW</td>
</tr>
<tr>
<td>Lauren Finestone</td>
<td>Senior Solicitor, Older Person’s Legal Unit, Civil Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Scott Hawkins</td>
<td>Director, Aboriginal Services, Legal Aid NSW</td>
</tr>
<tr>
<td>Danielle Castles</td>
<td>Manager, Client Assessment and Referral Unit, Legal Aid NSW</td>
</tr>
<tr>
<td>Susan Wojciechowski &amp; Gretta Bettridge</td>
<td>Department of Corrective Services</td>
</tr>
<tr>
<td>Kirsten Bowman</td>
<td>Business Performance Analyst, Legal Aid NSW</td>
</tr>
<tr>
<td>Tracey de Simone</td>
<td>Strategic Policy Coordinator, LAQ</td>
</tr>
<tr>
<td>Sonya Watson &amp; Annette Fuller</td>
<td>Women’s Legal Aid – Women’s domestic violence court assistance service, LAQ</td>
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<tr>
<td>Linda Debenham</td>
<td>Coordinator, Domestic Violence Unit, LAQ</td>
</tr>
<tr>
<td>Raquel Aldunate</td>
<td>Social Worker, Women’s Legal Aid, LAQ</td>
</tr>
<tr>
<td>Nicky Davies</td>
<td>Director Family Law Services, LAQ</td>
</tr>
<tr>
<td>Cathy Carr</td>
<td>Manager, Grants Operations, LAQ</td>
</tr>
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## Appendix B

### List of formal submissions and informal input

Table 8: List of formal submissions and informal input

<table>
<thead>
<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Graeme Henson, Chief Magistrate</td>
<td>Local Courts, NSW</td>
</tr>
<tr>
<td>Patricia Lawson, Governor</td>
<td>District 24, Zonta International</td>
</tr>
<tr>
<td>Helen Poynton, Member</td>
<td>Port Macquarie Hastings Domestic Violence Committee</td>
</tr>
<tr>
<td>Edwina MacDonald, Law Reform Coordinator, &amp; Janet Loughman, Principal Solicitor</td>
<td>Women’s Legal Services NSW</td>
</tr>
<tr>
<td>Helen Campbell, Chair</td>
<td>NSW Combined Community Legal Centre Group</td>
</tr>
<tr>
<td>Gemma Roberson, Manager</td>
<td>Port Macquarie Hastings Women and Children’s Refuge</td>
</tr>
<tr>
<td>Gaby Marcus, Director</td>
<td>Australian Domestic and Family Violence Clearinghouse</td>
</tr>
<tr>
<td>Julie Stewart</td>
<td>Project Officer, WDVCAP Unit, Legal Aid NSW</td>
</tr>
<tr>
<td>Bev Lazarou</td>
<td>Project Officer (Mentoring), WDVCAP Unit, Legal Aid NSW</td>
</tr>
<tr>
<td>Karen Clogher</td>
<td>Prosecutions Coordinator, Domestic and Family Violence Team, NSWPF</td>
</tr>
<tr>
<td>William Hutchins</td>
<td>Senior Solicitor, Prisoners Legal Service, Criminal Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Susan Emery</td>
<td>Solicitor, Civil Litigation, Civil Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Sarah Burke</td>
<td>Regional Program Coordinator, Civil Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Helen Shaw</td>
<td>Senior Solicitor, Indictable, Criminal Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Louise Smith</td>
<td>Executive Officer, National Legal Aid</td>
</tr>
<tr>
<td>Rev. Harry Herbert</td>
<td>Board Member, Legal Aid NSW Board</td>
</tr>
<tr>
<td>Phil Taylor</td>
<td>Chair, Legal Aid NSW Board</td>
</tr>
<tr>
<td>Sue Maddrell</td>
<td>General Manager, MigrantLINK Australia Ltd</td>
</tr>
<tr>
<td>Tony Lynch</td>
<td>Solicitor, Indictable, Criminal Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Jenny Lovric</td>
<td>Program Manager, CLSD, SPPD, Legal Aid NSW</td>
</tr>
<tr>
<td>Norman O’Dowd</td>
<td>Solicitor-in-Charge, Bankstown Legal Aid Office, Legal Aid NSW</td>
</tr>
<tr>
<td>Ruth Pilkinton</td>
<td>Senior Solicitor, Child Support Service, Family Law, Legal Aid NSW</td>
</tr>
<tr>
<td>Alex Wearne</td>
<td>Solicitor Advocate, Parramatta Legal Aid Office, Legal Aid NSW</td>
</tr>
<tr>
<td>Brian Fenn</td>
<td>Registrar, Albury Local Court</td>
</tr>
<tr>
<td>Jane Fuller</td>
<td>Legal Officer, Family Law, Orange Legal Aid Office, Legal Aid NSW</td>
</tr>
</tbody>
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## Appendix B — List of formal submissions and informal input

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
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</thead>
<tbody>
<tr>
<td>Christine Lovell-Jones</td>
<td>Solicitor, Lismore Legal Aid Office, Legal Aid NSW</td>
</tr>
<tr>
<td>Cathy Henry</td>
<td>Newcastle Law Society President</td>
</tr>
<tr>
<td>Karen Sivyer</td>
<td>Regional health Counsellor for the Midwestern Area, Registered Psychologist</td>
</tr>
<tr>
<td>Kylie Nicholls</td>
<td>A/Assistant Director, Court Services, NSW Attorney General's Department</td>
</tr>
</tbody>
</table>
Appendix C

The prevalence of domestic violence

The Australian Domestic and Family Violence Clearinghouse which is funded by the Commonwealth Government, has an enormous database of publications on the prevalence and impact of domestic violence in Australia and overseas. Many of these can be accessed on-line at http://www.austdvclearinghouse.unsw.edu.au. The Clearinghouse also writes papers on emerging issues which can be accessed on this site.

Through a heightened awareness more informed and effective legal service delivery responses to victims, children exposed to violence, alleged offenders and defendants can also be developed.

Studies on the prevalence of domestic violence

Australian research indicates that women are more likely to be victims of domestic violence and men the alleged offenders.

“Unequivocally … this society is still beset by high levels of domestic and family violence. The violence has significant and sometimes devastating outcomes for victims, including homicide, homelessness and poor social, mental and physical health outcomes. Moreover it is apparent that certain social groups, for example, women, children, Indigenous women or women with disabilities, have a heightened vulnerability to violence in the home perpetrated by an intimate partner.”

Report on Legal Aid NSW Services to People in Domestic Violence Situations

Appendix C — The prevalence of domestic violence

**Reported domestic violence assaults in NSW**

According to the 2005 NSW study 2005 BOCSAR study Trends and Patterns in Domestic Violence Assaults, domestic assaults accounted for 35%–40% of all assaults recorded by police each year from 1997 to 2004. The rate increased steadily from 1997 until 2002, but has remained relatively stable since then, as the following chart shows:

![Figure 3: NSW Bureau of Crime Statistics and Research, Recorded incidents of domestic violence related assaults in NSW from April 1998–April 2008](image)

**Victim and alleged offender demographics**

Most victims of recorded domestic assaults were aged between 20 and 39. The majority were female (71.1%) and the majority of offenders male (80.4%). Almost half of all victims under 15 were abused by a parent or guardian.

**Areas with high rates of recorded domestic assaults**

In general, the recorded incidence of domestic assault was higher in areas that have a higher percentage of Indigenous residents, a higher percentage of sole parents under 25 years of age, a higher percentage of public housing, a higher male unemployment rate and higher rates of residential instability.

**Times of increased risk**

The incidence of domestic assault peaks between three pm and midnight, with the highest number of assaults occurring between six pm and nine pm. More domestic assaults occur in January than any other month of the year, with the highest number being recorded on the first of January.

Women are also at greater risk of domestic violence during pregnancy. The 2005 ABS Personal Safety Survey found that 36% of women had experienced violence during pregnancy, 17% of women for the first time during pregnancy.

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Local Courts data on Apprehended Domestic Violence Orders

AVO proceedings represent Local Courts’ most significant workload outside the hearing of criminal offences. AVOs can be either domestic (ADVOs) or personal (APVOs). Only data concerning ADVOs is examined in this report.

Since the introduction of AVOs in New South Wales 26 years ago, the number of ADVO applications has increased significantly from 22,148 applications in 1995 to 34,729 in 2007.

![ADVO Applications 1999-2007](image)

Figure 4: ADVO Applications 1999–2007 in NSW Local Courts

The proportion of private to police applications has also changed dramatically. Ten years ago, every second ADVO application was made through the chamber magistrate. In 2007, police initiated an average of 91% of ADVO applications across NSW, as the following chart shows:

![ADVO Applications 1999-2007](image)

Figure 5: ADVO Applications 1999–2007 in NSW Local Courts, by Police and private applications

There are significant variations across NSW with police applications varying from 56% (Murwillumbah) in some Local Courts, mostly the smaller ones, to 96-98% in larger courts such as Parramatta and Sutherland.
Appendix C — The prevalence of domestic violence

Final Orders

Applicants can withdraw from proceedings before a final order is made. If the police apply for an order, only they can withdraw the application.

Since 1999, the withdrawal and dismissal rate of ADVO applications has slowly been decreasing, from nearly 48% in 1999 to around 40% in 2007, as shown below.

![ADVO Withdrawal Rate 1999-2007](image)

Figure 6: ADVO withdrawal rate 1999–2007 in NSW Local Courts

Local Courts data does not distinguish between those matters in which a formal application is made to withdraw and those which are dismissed for example, because the victim is not at court. Data on matters dismissed after a defended hearing are kept separately and are quite low (2%).

Deeper analysis of Local Courts data is necessary to identify the actual causes of the withdrawal/dismissal rate.

Demographic information about applicants

Local Courts collect statistics on the number of ADVO applications made each year in relation to males, females and children. It does not provide a gender/age breakdown of ADVO defendants.

The following chart shows the number of ADVO applications from 1999-2007 in relation to males, females and children.

![ADVOs by Gender/Age 1999-2007](image)

Figure 7: ADVOs by gender/age 1999–2007 in NSW Local Courts
The numbers and proportions of males, females and children has remained fairly consistent with women representing the largest group of persons in need of protection (70% or 21,000 applications per year), males (20% or 5,100 applications per year), then children (10% or 3,400 applications per year).

[Local Court statistics record only those applications made separately for children. They do not include children named on an adult’s order or who are included in the category of persons afforded protection under an adult’s order because the adult has a domestic relationship with them.]

Amendments introduced into the Crimes (Domestic and Personal Violence) Act in March 2008 aim to provide additional measures for the support and protection of children. Section 38 requires a court when making an ADVO for an adult to include any child/ren with whom the adult has a domestic relationship unless there are good reasons for not doing so, in which case the court must state its reasons.

Court data does not currently disaggregate between domestic violence assaults and other domestic violence offences though this may change with the recent requirement to record an offence as ‘domestic violence’ related under s.12 of the Act.

**Family law proceedings**

“A child will almost always benefit from a meaningful relationship with both parents in the absence of violence, abuse, or very high conflict. Where there is ongoing violence or intractable conflict, the interests of the child may best be served by restricting the contact with the non-resident parent or preventing it entirely.”

A major difficulty for the Family and Federal Magistrates Courts is assessing the veracity of allegations of family violence. In many cases often because of the very nature of family violence it is difficult for the court to assess.

The Australian Institute of Family Studies report ‘Allegations of Family Violence and Child Abuse in Family Law Children’s Proceedings’ found that many of the allegations of violence made in children’s proceedings in the Family Court and Federal Magistrates Court were at the ‘severe’ end of the spectrum; yet a considerable number of allegations were accompanied by “a low level of specificity, low levels of corroborative evidence and either denials or a complete absence of responses.”

In these cases the skills of solicitors in gathering admissible evidence is vital to enable the court to make a full examination of the effect of violence on children and make appropriate orders to meet the child’s best interests. Research conducted by Professor Hilary Astor however has raised real concerns about the capacity of lawyers generally to identify violence in family law matters.

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The child protection system

DoCs has a statutory responsibility under the Children and Young Persons (Care and Protection) Act 2000 to respond to reports of child abuse and neglect and requests for assistance in NSW. Reports to DoCs’ 24-hour Helpline can be made by members of the community or by mandatory reporters such as teachers, health workers or police.

Sections 8 and 9 of the Act set out the principles that guide decision making under the Act which must be applied by DoCs. These must also be applied by the Children’s Court when an application for an order relating to the care of a child is made. The Act provides that the best interests of the child are the paramount consideration when making any decision about the child.

After receiving a report DoCs must first assess whether it involves an immediate safety threat or other risk of harm.

If DoCs is satisfied after its investigation and assessment that the child or young person is in need of care and protection it can intervene in a range of ways such as providing family support and other preventative services to removing a children from their family. If the allegations in the report contain potentially criminal conduct, police may be involved in investigating and prosecuting possible criminal charges. Police can also apply for an AVO for the protection of children and young people.

In 2006/07 DoCs received 286,000 child protection reports.

According to evidence recently given to NSW Parliament one in three reports made to the Docs Helpline listed domestic violence as an issue while one in five listed drug and alcohol problems.  

Commissioner Wood commented in response to the same information earlier this year in NSW that despite the sheer number of reports, domestic violence generates “the least response.”

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97 NSW Parliament, Hansard, 22 October 2008, Question Without Notice to the Minister for Community Services, Ms Linda Burney at p.42.  
98 Wood Inquiry, op cit at p.9.
**Domestic violence related deaths**

In 2004-05 intimate partner homicides accounted for 22% of all homicides while family homicides accounted for 18%. Domestic violence is a primary factor in 58% of these and had a recorded history of domestic violence.  

Men perpetrate around 75% of Australian domestic homicides. A significant proportion of the 25% committed by women were committed after a protracted history of severe violence by the deceased partner.  

A NSW Child Death Review Team report tabled in 2008 in State Parliament found that from 1996 to 2005 child deaths from fatal assault were rare (1.4% of child deaths), but when they did occur the overwhelming majority (95.8%) of fatal injuries were inflicted by parents, spouses, domestic partners or other family members. Domestic violence was present in 50% of cases.  

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Appendix D

The impacts of domestic violence

Long term effects of violence on women victims

Research tells us that:

- The influence of violence can persist long after the violence itself has stopped and for some time after a victim has separated from a violent partner. The effects include financial disadvantage, damaged relationships with children and further victimisation through the legal system;\(^{102}\)
- The more severe the violence, the greater the impact on the victim’s physical, emotional, and mental health;\(^{103}\) and
- The impact over time of different types of violence and of multiple episodes of violence appears to be cumulative.\(^{104}\)

Children witnessing domestic violence

Australian studies also show a high percentage of children are exposed to domestic violence. The ABS Personal Safety Survey found that:

- 49% (111,700) of people who experienced violence from their current partner had children in their care, of whom 27% (60,700) said the children had witnessed the violence; and
- Of the 61% who had children in their care during previous incidents of violence, 36% said the children had witnessed the violence.

\(^{102}\) Dr Isla Evans, Battle-scars: Long term effects of prior domestic violence, (2007) Centre for Women’s Studies and Gender Research, Monash University.

\(^{103}\) Brian Draper, MD, Jon J Pfaff PhD, Jane Pirkis, PhD, John Snowdon, MD, Nicola T Lautenschlager, MD, Ian Wilson, PhD, Osvaldo P. Alemeida, MD, PhD for the Depression and Early Prevention of Suicide in General Practice Group, The Long term Effects of Childhood Abuse on the Quality of Life and Health of Older People: Results from the Depression and Early Prevention of Suicide in General Practice Project, (2007) reported in JAGS 2007, by the American Geriatrics Society.

Appendix D — The impacts of domestic violence

An excellent summary of current research on the impact of domestic violence on children is Cathy Humphreys’ 2007 paper ‘Domestic Violence and Child Protection: Challenging Directions for Practice.’ Generally, children living with domestic violence have higher rates of depression and anxiety, trauma symptoms and behavioural and cognitive problems than those who do not.

Studies highlight the urgent need for effective early intervention strategies to stop the violence. Early intervention may also prevent the negative effects of domestic violence passing on from generation to generation.

Aboriginal people

In 1994 the NSW Department for Women report ‘Dubay Jahli: Aboriginal Women and the Law Report’ found that domestic violence was a priority concern for Aboriginal women in NSW and documented the numerous barriers Aboriginal women face in accessing legal protection including poor access to legal services, both specialised and mainstream, poor responses from services, intimidation of the court process and lack of support services.

Other barriers are contending with myths around Aboriginal family violence: that violence in Aboriginal communities is ‘normal’ or culturally acceptable and that Aboriginal women don’t want to do anything to stop the violence.

In 2001 a BOCSAR study found that Aboriginal women are between 2.2 and 6.6 times more likely to become victims of violent offences (ranging from assault to murder) than NSW women as a whole. Most violent offending against them and their children is committed by Aboriginal men. ABS data in 2004 reconfirmed the extent of the problem in NSW.

The link between domestic violence and the risk of victims becoming entrenched in crime was one of the disturbing findings in the 2003 study ‘Speak Out, Speak Strong’ by AJAC on the needs of Aboriginal women in prison. The Report found that 70% of the Aboriginal women interviewed said they had been victims of domestic violence and child sexual assault and as a result were more likely to use drugs and be involved in drug-related crime.

In 2007/08, 12% of WDVCAS clients were recorded as Aboriginal women. Aboriginal people comprise 2.2% of the NSW population.

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**Elder abuse**

A major concern for the researchers of the Law and Justice Foundation of NSW’s 2004 report ‘The Legal Needs of Older People in NSW’ was the prevalence of elder abuse, particularly for older people in nursing homes and in residential aged care facilities. The abuse they suffer includes:

- Financial abuse (e.g., abuse of power of attorney, theft, pressure to change their will or to become guarantors);
- Psychological abuse (e.g., social isolation, verbal abuse, treating them like children);
- Physical abuse, including violence, physical restraint and neglect;
- Sexual abuse;
- Neglect (e.g., inadequate food, shelter, clothing, medical care/assistance, hygiene, medication); and
- Multiple abuses — different kinds of abuse occurring at the same time or on a continuum within a single relationship of trust.  

The type of abuse they suffer also tends to vary according to the nature of the relationship with their abuser, that is, whether their abuser is an adult child, spouse, other family member, friend, carer or institution.

The prevalence of elder abuse has recently been highlighted in a report by the Office of Aged Care Quality and Compliance, an aged-care watchdog, which looked at 3,947 cases of abuse and mistreatment of the elderly in nursing homes from July to December 2007: 418 complaints involved reportable assaults including unreasonable use of force and unlawful sexual contact.

**People in same-sex relationships**

Two recent studies highlight the severity of domestic violence in gay, lesbian, bisexual and transgender (GLBT) communities: ‘Private Lives: A report on the health and well-being of GLBTI Australians’ and a ‘Fair’s fair’ by the NSW Same Sex Domestic Violence Interagency Working Group.

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Same sex domestic violence has specific characteristics:

“Individuals in same sex relationships can experience additional abuse through homophobic and heterosexist perpetrator tactics. The threat of disclosing an individual’s sexuality as leverage for control is specific to same sex domestic violence, and can have a significant social and psychological impact.”

13.8% of respondents who reported one or more forms of abuse in their current relationship had children under the age of 16 in their care. This was more common for women than men.

Key recommendations from the report include:

- Wide implementation of training and development programs for service providers and key agencies (police, local courts, magistrates) to enable an effective response to people experiencing SSDV; and
- The allocation of funding for specific and specialised services in counselling, housing and emergency accommodation, court assistance and sexual assault.

In 2007/08, 2% of clients assisted by WDVCASs where lesbian status was recorded were lesbians.

**People with disabilities**

The 2006 Convention on the Rights of Persons with Disabilities ratified by Australia in 2008, recognises that women and girls with disabilities are often at greater risk, both within and outside the home of violence, of injury or abuse, neglect or negligent treatment, maltreatment or exploitation. There is however a shortage of Australian research in this area.


- The prevalence of violence against women with disabilities is generally higher than for the general female population;
- Violence experienced by women with disabilities is likely to be more frequent and severe;
- Most perpetrators of violence against women with disabilities are known to them (such as service users, service providers or family members); and
- Women with disabilities are especially disadvantaged in their access to the criminal justice system and gender based violence support services.

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112 *Fair’s fair*, ibid at p.2.
113 *Fair’s fair*, ibid at p.2.
114 CEDAW *Concluding Comments* February 2006: 3, 5.
Factors that increase their vulnerability include: the victim’s inability to physically escape a situation, lack of adaptive equipment, social stereotypes of vulnerability, increased risk in institutional settings, increased exposure to medical settings and dependence on perpetrators for survival activities.\textsuperscript{115}

Women with Disabilities Australia and the Intellectual Disability Rights Service (IDRS) have developed several useful resources for educating service providers on domestic violence issues for people with disabilities such the IDRS ‘Opening the Doors: Supporting women with an intellectual disability’ (1999) resource kit for domestic violence workers and IDRS True Stories page on their website.\textsuperscript{116}

In 2007/08, 9% of WDVCAS clients where disability status of the client was recorded had an intellectual, mental health and/or physical disability.

**Women from culturally and linguistically diverse backgrounds**

Over 20% of people living in NSW speak a language other than English at home [ABS Census: 2006]. However a 2006 review of the research relating to family and domestic violence in CALD communities documented the difficulties in obtaining accurate statistics on the extent and nature of the problem in CALD communities.\textsuperscript{117}

The problems in obtaining information about CALD issues are the same as those that make this group particularly vulnerable to violence: language difficulties, family loyalties, shame and mistrust of outside help, lack of education and the availability of support. Other issues are lack of knowledge of their rights under Australian law and isolation. Immigrant women in particular may be fearful of deportation.

A further issue is the myth that violence against women is more likely to occur within some cultural groups and that they are bound by their culture to accept the violence. Myths like these discourage women from seeking assistance.

The 1994 ‘Quarter Way to Equal’ report published by the Women's Legal Resources Centre made 53 recommendations aimed at achieving greater access to the courts for women from non-English speaking backgrounds. ‘A Long Way to Equal,’ a 2007 update of the 1994 report, found that barriers still exist for migrant and refugee women and made a number of recommendations such as stronger working relationships with CALD community organisations.\textsuperscript{118}

\begin{footnotes}
\item Intellectual Disability Rights Service website: \url{http://www.idrs.org.au/violence/true-stories.html}.
\item Bonar, Maria; Roberts, Debra, Western Australia. Department of Community Development. Family and Domestic Violence Unit (2006); Online at \url{http://www.community.wa.gov.au/NR/rdonlyres/F99C99BA-66BB-47A4-A2F2-C9A73AE360F1/0/CaLDliteraturereview.pdf}.
\end{footnotes}
Homelessness

Many women and children become homeless as a result of escaping domestic violence. The path into homelessness often appears to start after women have experienced violence for a sustained period of time.  

Homeless adults and children experience poorer health, education opportunities and outcomes and loss of connection to other family and community. They also become more visible to law enforcement agencies. Women and children living in caravan parks (common places for women to flee) are particularly vulnerable to other forms of violence.

According to a 2002 report by Robyn Edwards, exclusion orders, orders within an ADVO which remove the defendant from the family home are not commonly used. Data on exclusion orders is not collected by Local Courts.

A number of programs aimed at making it safer for women to stay in their own homes are in various stages of implementation around the country such as the ‘Staying Home, Leaving Violence Program’ which is funded by DoCs. It is premised on women obtaining an exclusion order from the court. The program is being progressively rolled out across NSW.

Defendants (including young people) may be rendered homeless by the enforcement of exclusion orders as well as orders which contain ‘do not approach’ and ‘not to contact’ provisions.

As part of their Women’s Safety Strategy, the Victorian Government has sought to address the accommodation needs of men having to leave home as a result of family violence by providing specific funding for crisis accommodation.

The costs of domestic violence


In terms of health costs the study found that the total value of suffering and premature death for women associated with domestic violence was $6.1 billion. 83% of this cost was borne by women aged 18 to 54 years, with over $3.1 billion associated with depression and anxiety. It also estimated that:

- Costs incurred in providing services to children affected by domestic and family violence: estimated at $220.3 million;
- The annual cost associated with the legal system response to domestic violence was estimated at around $298 million; and

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120 Dr Andy Marks, Residents at risk: Stories of “last report” caravan park residents in NSW, (May 2008), St Vincent de Paul Society Social Justice Research, at p. vii.
The cost of providing temporary accommodation, including government costs and the costs to victims was estimated at $88.1 million.

Clearly measures aimed at enhancing legal responses to domestic violence and at preventing or reducing the legal consequences of this problem could have a significant impact in reducing the enormous health and economic costs to the community.
Appendix E

Legal Aid Queensland: Referral pathways for legal advice (draft)
Appendix F

Legal Aid Queensland: Best practice guidelines for lawyers
Appendix F — Legal Aid Queensland: Best practice guidelines for lawyers

Working with people who have experienced domestic and family violence

Best practice guidelines for lawyers

1. The safety of clients, children & workers is paramount

1.1 Identify if any domestic and family violence protection orders exist and if there have been any breaches. Record these details on the file

Practice points:
- Allocate extra time to investigate domestic and family violence allegations.
- Ask about behaviours rather than using terminology the client may not understand or relate to.

1.2 When seeing a client ask about and document on the file any potential safety or security issues

Practice points:
- Use the risk assessment pro-forma to decide what safety precautions are necessary for the client and yourself.
- Review the risk assessment during the key stages of the court process eg. initial hearing, pre-hearing conference, before day one LATS or trial.

1.3 When preparing material for a court hearing ensure all allegations of domestic and family violence are included, where appropriate

Practice points:
- Consider attaching the domestic and family violence order or the application to the affidavit material.
- Include all details of domestic and family violence when applying for legal aid

Practice points:
- Attach a copy of the domestic and family violence order or application. Consider if a Notice of Abuse or Family Violence (Form 4) is needed.

2.5 Take appropriate precautions for the client’s safety

Practice points:
- Ensure the client will not see their ex-partner at your office.
- Always ensure there are no identifying documents/files left in view or accessible to the other parties at any time.
- Consider the logistics of getting your client to and from your office and court, and accompany them if necessary.
- Ensure clients use separate exits and arrive leave at staggered intervals during a family law conference.
- Accompany your client to a conference or meet them at an independent place so they are not waiting to start a conference with their ex-partner.
- Ask for a separate room during a family law conference.
- Do not give out a client’s address or that of their relatives or friends without their permission.
- Do not give out refuge contact telephone numbers or street address.
- If it is not safe to call a client at home, ensure this is recorded on the file.
- Let a court know in advance about arrangements that may need to be made to keep your client safe at the court. Do this is writing if necessary.
- Familiarise yourself with the court safety protocols and procedures.
- If your client threatens the other party’s safety or that of their solicitor, consider telephoning the other solicitor and when in doubt contact the Queensland Law Society’s Lawyer for expert advice.

2.6 Take appropriate precautions for your own safety

Practice points:
- Tell the client how to apply for a domestic and family violence order or if there is a complaint to the police under the Domestic and Family Violence Protection Act 1999.
- Actively involve clients in assessing their own legal needs and making decisions about their future

3.1 During the initial interview fully inform clients of the legal process

Practice points:
- Send a letter in plain English explaining the process when inviting a client to attend an interview.
- Provide appropriate written material to the client at the initial interview so they have something to take away and read.
- Always let the client make their own mind and provide them with enough information to assist them to make up their own mind.

3.2 Do not put pressure on a client to agree to conditions in a conference if an agreement would jeopardise their safety and continue the domestic and family violence

Practice points:
- Do not pressure the client to make a decision in a conference or when organising a conference.
- Ensure clients understand they have the right not to agree to resolve the matter in a conference.
- Accept the client’s decision even if this means there is no resolution.
- Raise all issues if you think it will help.
- Ensure the client has a full understanding of the agreement’s terms and implications.

Reality test agreements to ensure that they are workable. Place agreements in context, ask the client to think of possible scenarios to ensure they fully understand the agreement’s possible ramifications.

3.3 When self-assessing a legal aid application, do not grant aid for a conference if there are domestic and family violence allegations

Practice points:
- Legal Aid Queensland’s guidelines exclude conferences as an option where domestic and family violence is an issue and “where the power imbalance between the victim and the perpetrator is so great that the victim will be unable to negotiate effectively, in the presence of a solicitor”.
- Ensure you assess the client’s ability to negotiate when you are discussing applying for aid.

4. It is important to work collaboratively with other services that support clients who have been affected by domestic and family violence

4.1 When giving legal information to clients also provide information about services that could address their other needs and those of their children

Practice points:
- Ensure you have know or can find out about appropriate non-legal support and referral services and ensure this information is provided to the client, eg regional domestic and family violence services, legal aid specialist services, children’s contact centres, Legal Aid Queensland database.

If in doubt, contact a relevant Legal Aid Queensland specialist unit such as Women’s Legal Aid, the domestic violence unit, family lawyers and the