

## Legal Aid NSW Domestic and Family Violence Policy

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## 1. AIM

Domestic and family violence impacts on many Legal Aid NSW clients. Legal Aid NSW aims to provide a high quality, integrated and consistent response to these clients. This policy provides a framework to inform Legal Aid NSW services to people in domestic violence situations.

All Legal Aid NSW staff should be aware of and understand this policy.

## 2. BACKGROUND

Legal Aid NSW carried out a review of its services to people in domestic violence situations in 2008. The terms of reference were to report on:

1. Legal Aid NSW services to people who have been or are in domestic violence situations;
2. Legal Aid NSW relationships with key domestic violence service delivery partners; and
3. 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.

The resulting *Report on Legal Aid NSW services to people in domestic violence situations*<sup>1</sup> made 48 recommendations aimed at improving services to people in domestic violence situations.

Following on from this report, Legal Aid NSW agreed to implement a range of strategies to improve services to people in domestic and family violence situations. Central to these strategies was the development of a policy framework to ensure a consistent, client focused approach. This policy is the core element of that framework.

## 3. CONTEXT

Domestic and family violence is a serious and prevalent problem in Australia. The overwhelming majority of victims are women and children. Children are particularly vulnerable to the effects of domestic and family violence. Access Economics estimated the total number of victims of domestic and family violence in Australia in 2002–03 to be around 408,100, of which 87% were women; and that around 263,800 children were living with victims of domestic and family violence.<sup>2</sup>

Domestic and family violence has significant and long lasting effects on its victims, including poverty, social exclusion, poor health and homelessness. The impact of violence may include economic costs, such as the costs of bringing perpetrators to justice, the costs of medical treatment or support services for victims, and losses in productivity. Domestic and family violence can be lethal, resulting in deaths of women, children and family members. The National Homicide Monitoring Program showed that 13% homicides in 2005 to 2006, either the victim or the perpetrator had a history of domestic violence.<sup>3</sup>

Because of the range of behaviours it encompasses, domestic and family violence often precipitates a cluster of complex, interrelated and ongoing legal events for both victims and defendants: protection order applications, criminal prosecutions, family law matters, care and protection proceedings, housing, social security, credit/debt problems and victim's compensation.

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<sup>1</sup> Legal Aid NSW *Report on Legal Aid NSW services to people in domestic violence situations* 2008, Sydney: Legal Aid NSW

<sup>2</sup> Access economics, *The cost of domestic violence to the Australian economy*, 2004  
<http://www.accesseconomics.com.au/publicationsreports/getreport.php?report=23&id=27>

<sup>3</sup> Davies, M and Mouzos, J. 2007, 'Homicide in Australia: 2005-06 National Homicide Monitoring Program Annual Report', *Research and Public Policy Series No. 77*, Australian Institute of Criminology  
[http://intranet/Policies/WorkingWithClients/Documents\\_Domestic\\_family\\_violence/Legal\\_Aid\\_NSW\\_Domestic\\_and\\_Family\\_Violence\\_Policy.doc](http://intranet/Policies/WorkingWithClients/Documents_Domestic_family_violence/Legal_Aid_NSW_Domestic_and_Family_Violence_Policy.doc)

In order to deal with these problems people must navigate their way through a fragmented legal system which requires them to go through different processes, in different courts, under laws with different purposes, priorities and underlying values. It is therefore essential that Legal Aid NSW provides an integrated approach to the delivery of services to people in domestic and family violence situations in NSW.

The legal system is limited in the extent to which it can provide lasting solutions to domestic and family violence. Legal responses must be part of a coordinated approach which encompasses prevention, early intervention, crisis management and long-term assistance.

#### **4. DEFINITIONS OF DOMESTIC AND FAMILY VIOLENCE**

It is important that Legal Aid NSW staff have a good working knowledge of current legislative and non-legislative definitions of domestic and family violence and how they apply in different contexts.

There is no commonly agreed upon definition of domestic and family violence in Australia or NSW. The Australian Medical Association defines domestic violence as:

*... an abuse of power. It is the domination, coercion, intimidation and victimisation of one person by another by physical, sexual or emotional means within intimate relationships<sup>4</sup>*

Central to all definitions is the understanding that domestic and family violence is defined according to the consequences it causes, not the place where it is happening. Domestic and family violence involves different types of behaviours including physical violence, psychological or emotional abuse, sexual violence, verbal abuse, social abuse, stalking, cyber abuse, intimidation or harassment and financial abuse.

Numerous types of relationships are recognised within the category of 'domestic relationship' including marriage and de facto partnerships, intimate personal relationships, same sex relationships, living or having lived in the same household, long term residents in the same residential facility; carers, relatives, and extended family or kin in the case of Aboriginal Australians and multicultural communities. It does not matter whether the relationship is past or current.

The term 'family violence' is used instead of 'domestic violence' in some jurisdictions including the Family Court and in Aboriginal communities where it includes kinship relationships.

#### **Legislative definitions**

The *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* doesn't specifically define domestic violence but acknowledges that: "domestic violence extends beyond physical violence and may involve the exploitation of power imbalances and patterns of abuse over many years."

Under the *Family Law Act 1975 (Cth)*, 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."

Section 23 of the *Children and Young Persons (Care and Protection) Act 1998 (NSW)* refers to domestic violence as an indicator that a child may be 'at risk of harm' and includes the following circumstances:

"the child or young person has been, or is at risk of being, physically or sexually abused or ill-treated,

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<sup>4</sup> Australian Medical Association, *AMA Position Statement: Domestic Violence*, 1998.

<http://www.ama.com.au/node/452>

[http://intranet/Policies/WorkingWithClients/Documents Domestic family violence/Legal Aid NSW Domestic and Family Violence Policy.doc](http://intranet/Policies/WorkingWithClients/Documents%20Domestic%20family%20violence/Legal%20Aid%20NSW%20Domestic%20and%20Family%20Violence%20Policy.doc)

(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”

The multiplicity of definitions highlights the many forms that domestic and family violence may take. While it is important to know about relevant legislative definitions, staff are encouraged to take broader definitions of domestic and family violence into account when determining whether a person may be affected by domestic and family violence.

## 5. LEGAL SERVICES TO PEOPLE IN DOMESTIC AND FAMILY VIOLENCE SITUATIONS

Legal Aid NSW provides a broad range of criminal, family and civil law services to people in domestic and family violence situations. While the majority of these are not specifically targeted at domestic and family violence victims and alleged offenders, this is an issue in many client matters, either as a predominant or underlying problem. There are a range of other free legal services available to people in domestic and family violence situations in NSW.

Legal matter	Legal Aid NSW services	Other legal services
Domestic violence assault charges – defendants	<ul style="list-style-type: none"> <li>Information, referral, community legal education, advice and representation* to defendants charged with domestic violence related offences through both in-house and assigned practitioners.</li> </ul>	<ul style="list-style-type: none"> <li>LawAccess NSW</li> <li>Aboriginal Legal Service</li> </ul>
Domestic violence assault charges – victims	<ul style="list-style-type: none"> <li>Information, referral, community legal education and advice to victims.</li> <li>Information, advice and representation (subject to the special disadvantage test) for victim’s compensation matters.</li> </ul>	<ul style="list-style-type: none"> <li>LawAccess NSW</li> <li>Community Legal Centres</li> <li>Victims Support Line</li> <li>Family Violence Prevention Legal Services</li> <li>Police</li> </ul>
ADVOs – defendants	<ul style="list-style-type: none"> <li>Information community legal education, referral and advice for defendants through duty solicitor service.</li> <li>Legal representation for defendants for an ADVO matter in exceptional circumstances.</li> <li>Representation for breaches of ADVOs.</li> </ul>	<ul style="list-style-type: none"> <li>LawAccess NSW</li> </ul>
ADVOs – applicants	<ul style="list-style-type: none"> <li>Information, community legal education, referral and advice for applicants.</li> <li>Representation for private applicants (applications made by an individual rather than the police).</li> <li>Domestic Violence Solicitor Scheme provides a duty solicitor scheme in 13 courts.</li> <li>Information, referral and court advocacy through the Women’s Domestic Violence Court Advocacy Program.</li> </ul>	<ul style="list-style-type: none"> <li>LawAccess NSW</li> <li>Local courts</li> <li>Community legal centres</li> <li>Domestic Violence Advocacy Service</li> <li>Family Violence Prevention Legal Services</li> <li>Police</li> </ul>
Family law	<ul style="list-style-type: none"> <li>Information, community legal education, advice, minor assistance, dispute resolution and representation in family law matters. Clients may include victims of domestic and family violence or alleged perpetrators.</li> </ul>	<ul style="list-style-type: none"> <li>LawAccess NSW</li> <li>Community Legal Centres</li> </ul>
Care proceedings	<ul style="list-style-type: none"> <li>Information, community legal education, referral and advice.</li> <li>Duty solicitor services and representation for children and parents care matters before the NSW Children’s Court.</li> </ul>	<ul style="list-style-type: none"> <li>LawAccess NSW</li> <li>Community legal centres</li> <li>Aboriginal Legal Service</li> </ul>

Legal matter	Legal Aid NSW services	Other legal services
Civil law issues including credit/debt, social security, migration status, loss of housing.	<ul style="list-style-type: none"> <li>Information, community legal education, advice and representation</li> </ul>	<ul style="list-style-type: none"> <li>LawAccess NSW</li> <li>Community legal centres</li> </ul>

## 6. GUIDING PRINCIPLES

The following principles guide Legal Aid NSW services to people in domestic and family violence situations. These principles are informed by human rights principles, particularly those articulated in the *Declaration on the Elimination of Violence against Women*.<sup>5</sup> They are also informed by the *Crimes (Domestic and Personal Violence) Act 2007 (NSW)* and the Legal Aid Queensland *Best practice guidelines framework*.<sup>6</sup>

Legal Aid NSW programs, services, policies, procedures and training should take these principles into account where relevant.

1. All people have a right to live free from violence and be safe in their relationships and in their own homes.
2. Domestic and family violence is a crime. Acts of domestic and family violence and their consequences are the sole responsibility of the perpetrator.
3. Domestic and family violence is predominantly perpetrated by men against women and children. It is a manifestation of historically unequal power relations between men and women.
4. Domestic and family violence has a significant impact on children.
5. Domestic and family violence prevents victims from participating fully and equally in society.
6. Domestic and family violence occurs in all sectors of the community. However, it has a disproportionate impact on women who are already disadvantaged, particularly Aboriginal women, women from culturally and linguistically diverse backgrounds, women with disabilities, women in same-sex relationships and older women.<sup>7</sup>
7. Client and worker safety is a priority.
8. Clients are treated with dignity, respect and sensitivity.
9. Services are provided in a way that empowers clients.
10. Staff have appropriate skills to deal with people in domestic and family violence situations.
11. Domestic and family violence is best addressed through co-ordinated legal and social responses to both victims and perpetrators.

<sup>5</sup> United Nations, *Declaration on the Elimination of Violence against Women*, 1994, [http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.48.104.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.res.48.104.en)

<sup>6</sup> Legal Aid Queensland 2008, *Best practice guidelines framework*, 2<sup>nd</sup> edition, <http://www.legalaid.qld.gov.au/NR/rdonlyres/FAFD8539-3B9D-402F-B890-B725F37D39F/0/Framework2ndedition.pdf>

<sup>7</sup> It is important to recognise that domestic violence can occur within a range of relationships. However, as violence is predominantly perpetrated by men against women, we generally refer to women as the victims of domestic violence. [http://intranet/Policies/WorkingWithClients/Documents Domestic family violence/Legal Aid NSW Domestic and Family Violence Policy.doc](http://intranet/Policies/WorkingWithClients/Documents%20Domestic%20family%20violence/Legal%20Aid%20NSW%20Domestic%20and%20Family%20Violence%20Policy.doc)

12. Research and evidence informs the planning of appropriate legal responses to clients in domestic and family violence situations.

## **7. LEGISLATION**

Key State and Commonwealth legislation relevant to domestic and family violence includes:

- *Crimes (Domestic and Personal Violence) Act 2007 (NSW)*
- *Victims Rights Act 1996 (NSW)*, in particular, the Charter of Victims Rights
- *Crimes Act 1900 (NSW)* in relation to domestic violence related criminal offences
- *Family Law Act 1975 (Cth)* (especially sections 60, 68 and 69 relating to the relevance of family violence in family law matters)
- *Children and Young Persons (Care & Protection) Act 1998 (NSW)* (see especially sections 22, 23, 27, 29 and 29A relating to children at risk of harm)
- *Victims Support and Rehabilitation Act 1996* (concerning victim's compensation)
- *Criminal Procedure Act 1986 (NSW)* (provisions for circle sentencing).

## **8. CO-ORDINATION**

Domestic and family violence is best addressed through co-ordinated legal and social responses to both victims and perpetrators. The following processes have been developed to ensure a co-ordinated response by Legal Aid NSW.

The Domestic and Family Violence Committee is an internal committee of Legal Aid NSW. It assists with ensuring a coordinated approach to planning and delivering domestic and family violence services by Legal Aid NSW. This committee has representation at Director (or Director appointed representative) level from all Divisions, representation from the Women's Domestic Violence Court Advocacy Program and Aboriginal Services, and external representation as appropriate. It meets regularly and reports to the Executive on a six monthly basis.

Legal Aid NSW participates in external committees relating to domestic and family violence as appropriate (See Attachment 1 for a list of committees). Representation on external committees is decided by the CEO in consultation with the Domestic and Family Violence Committee.

Legal Aid NSW works in partnership with other agencies to meet the needs of people in domestic and family violence situations subject to ethical and privacy considerations.

## **9. PLANNING**

Legal Aid NSW uses an evidence based approach to services to clients in domestic and family violence situations. Planning for any new initiatives is done in consultation with relevant divisions and is underpinned by consultation, research and data.

Legal Aid NSW reviews services to clients in domestic and family violence situations on a regular basis as part of the strategic planning process.

## **10. TRAINING**

Legal Aid NSW provides training to relevant staff in working with people in domestic and family violence situations. This training is informed by a regular needs analysis and evaluation.

## **11. POLICY REVIEW**

The policy will be reviewed annually and as required. The Strategic Planning and Policy Division is responsible for reviewing this policy.

## ATTACHMENT 1: LEGAL AID NSW REPRESENTATION ON DOMESTIC AND FAMILY VIOLENCE COMMITTEES

Committee name	Description	Contact person	Legal Aid NSW representative
Apprehended Violence Orders Legal Issues Coordinating Committee (AVLICC) - NSW Attorney General's Department	To examine and identify legal, policy and procedural barriers to the provision of adequate criminal justice system services, and to ensure co-ordination of services to persons seeking protection from personal and domestic violence.	Rebekah Rogers Rebekah_Rodger@agd.nsw.gov.au	Michelle Jones Vaughan Roles Christine Hall
Cross-Agency Risk Assessment & Management (CARAM) Project - NSW Health	To advise on the development of a cross-agency risk assessment tool.	Tracy Hales	Michelle Jones
Domestic Violence Court Intervention Model (DVICM) Senior Officers Group - NSW Attorney General's Department	To advise on the implementation of the DVICM	Carolyn Thompson Carolyn_Thompson@agd.nsw.gov.au	Brian Sandland
Domestic Violence Senior Officer's Group - Department of Premier and Cabinet	To facilitate coordination and integration of interagency responses to domestic and family violence and oversee the implementation and evaluation of the NSW Domestic and Family Violence Strategic Framework.	Nicole Lawless nicole.lawless@dpc.nsw.gov.au	Richard Funston
Intersectoral D&FV Education and Training Project - NSW Health	To coordinate training and promote consistency among agencies that provide services to people affected by domestic violence	Sarah Stewart Sarah.Stewart@swahs.health.nsw.gov.au	Michelle Jones
Same Sex Domestic Violence Interagency Steering Group	To advise on the development, implementation and evaluation of an SSDV action plan	Kate Duffy Kate_duffy@clc.net.au	Bev Lazarou
Standardised DV brochure - NSW Attorney General's Department	To advise on the development of a domestic violence brochure	Katie Perry Katie_perry@agd.nsw.gov.au	Michelle Jones
Staying Home Leaving Violence - Community Services	To advise on the operation of the Staying Home Leaving Violence project.	Maria Kissouri Maria.Kissouri@community.nsw.gov.au	Michelle Jones
Victims Service Delivery Enhancement Program (SDEP) Steering Committee	To ensure key government agencies participate in the development of the SDEP and address any implementation issues that may arise.	Mandy Young Mandy_young@agd.nsw.gov.au	Monique Hitter Richard Funston