

## Different treatment of Domestic Violence in Different Courts –

How can lawyers be up-skilled to secure fair outcomes

Susan Davitt  
Family Lawyer  
Solicitor in Charge  
Fairfield Legal Aid  
(02) 9727 3777

## Introduction

- “It is trite that identifying family violence is perhaps the single most important component to appropriately responding to it.....from the perspective of the legal profession the problem is lack of particularity about family violence allegations”
- “Lawyers simply must do more”
- “The preparation and presentation of evidence about family violence, and its subsequent assessment by the bench, must emphasise corroboration as the cornerstone of credibility”

*Dr. Tom Altobelli*  
*Family Violence and Parenting: Future Directions in Practice*  
*June 2009*

- Legal Aid NSW profile
- Training and Challenges
- Family Violence Specialist Network

## Legal Aid NSW

- Central Sydney office plus 21 regional offices
- 912 staff (2009)
- 50% lawyers (431)
  - Half criminal lawyers
  - Quarter family lawyers
  - Slightly less quarter civil lawyers

### Others include

- Grants officers
- Social workers
- Policy workers
- Conference organisers
- Women's Domestic Violence Court Advocacy Program (WDVCAP)
- Domestic Violence Practitioner Scheme (DVPS)
- Administrative support
- Learning and Development Unit

## Improving services to people experiencing domestic and family violence

- All staff
- Managers through to legal support staff
- Private lawyers (including DV Practitioners)
- Services – broad ranging
  
- Crime, family, civil litigation
  
- Outreach advice services
- Mental Health Unit
- Older Persons Unit
- Prisoners Legal Service
- Homeless Persons Unit
- Family Dispute Resolution Unit
- Community Legal Education
- Publications
- ADR unit
- WDV CAP

## Achievements to Date

- Late 2007 – commence review
- Late 2008 – internal report broad ranging recommendations
- 2009 Executive decide guiding principles, goals and strategies
- One of these staff training
- 2010 External consultant advises about training needs (Matrix attached)

LEGAL AID NSW DOMESTIC AND FAMILY VIOLENCE TRAINING MATRIX – DRAFT V2<sup>1</sup>

	Legal Aid DV Policy/Guidelines; legal aid DV policies	Recording domestic violence in CASES or ATLAS	Awareness / Identification / Safety - Basic	Information and referral	Legal - basic [will link to dv guidelines]	Legal - ADVO advanced [will link to DVPP standards]
	Definitions of dv, guiding principles, legislation, legal aid policies relevant to DV		Prevalence and impact of dv, identifying dv keeping clients safe, issues for particular groups eg aboriginal clients, older people,	Information resources; Knowledge of legal and non-legal services, e.g.WDVCAS, CARS, DVSS, Police, Victims' Services; Appropriate referral incl. referral for particular groups eg aboriginal people	What is an ADVO; difference between ADVO and APVO; difference between police and private ADVOs, interaction between ADVOs and family law, victims compensation, immigration, ethical issues, Law Society guidelines, conflict policy	Conditions; Evidence, Court, Safety, Links to Fam law, Links to WDVCAS, Applying for legal aid, Legislation [WDVCAP has run training in this and has additional information]
LSOs/CSOs	✓	✓	✓	✓		
Fam violence specialists	✓	✓	✓	✓	✓	?
Family lawyers	✓	✓	✓	✓	✓	?
Criminal lawyers	✓	✓	✓	✓	✓	
Civil lawyers	✓	✓	✓	✓	✓	
Grants lawyers and staff	✓	✓	✓	✓	✓	
Private practitioners general	✓	✓	✓	✓	✓	
Lawyers doing ADVOs incl DVP panel, pro bono	✓	✓	✓	✓	✓	✓

23 Mar 2010

<sup>1</sup> The training matrix doesn't include specialist training in dv and family law, child protection, dv defendants, victims compensation, immigration. Doesn't include training providers. Possible training providers include Legal Aid NSW staff, WDVCAP, Women's Legal Services, Education Centre Against Violence, private trainers, e-training. Could do regional training in partnership with CLSD regions.

People don't always identify that they are in a domestic violence situation. It is not your role to ask a client about this. However, you might find this out because they have an ADVO in place, or it might come up when you are talking to a client.

Follow these tips to assist in giving the client a safe place, a correct referral and the right information.

**Note:** Legal aid is available for ADVO applicants through a private solicitor. The local WDVCAS may be able to help with finding a private solicitor.

Legal aid is available to ADVO defendants in exceptional circumstances.



## Domestic violence

- ➔ **Client safety:** If appropriate, check that the client is safe now and that it is safe for them to go home.
- ➔ **If the client is distressed** offer them a private space to wait.
- ➔ **Check advice sheet:** Note (discreetly) if there is domestic violence on the advice sheet.
- ➔ **Client contact details:** If they are a victim of domestic violence, ask the client the best way to contact them. Note this on the advice sheet and/or file.
- ➔ **Link the client to non-legal support services if necessary.** You may need to contact the service first to make sure that they can assist the client.

## Staff Tip Sheet

- ➔ **Confidentiality:** Be aware of the need for confidentiality and discretion when you are talking to the client.

- ➔ **Give the client information about domestic violence.** The following brochures may be of assistance: Apprehended Violence Orders (Information for Defendants; Information for Applicants); Domestic Violence Offences and Domestic Violence: how to get help at court.



Jan 2010

## Domestic violence: Where to refer clients



### Women's Domestic Violence Court Advocacy Services (WDVCAS)

Information, court advocacy and referral for women in domestic violence situations and assistance with getting an ADVO.

### Women's Legal Services Domestic Violence Advice Line: 8745 6999

Rural free call: 1800 810784

Casework, legal advice and advocacy for women experiencing domestic violence.

### LawAccess NSW: 1300 888 529

Legal assistance and referral over the phone to applicants and defendants including assistance with applying for legal aid. Victims of domestic violence are priority customers for advice.

### NSW Police: 000 or 112 from mobiles

Police will respond to incidents of domestic violence and apply for ADVOs on behalf of victims of domestic violence. Police are required to take action if a person discloses information about a crime e.g. domestic violence assault.

### Department of Community Services Domestic Violence Line: 1800 656 463

Assistance with emergency accommodation and referrals for counselling, health and legal services. 24 hours 7 days.

### Mensline: 1300 789 978 (24 hours, 7 days)

Phone support and referral for male victims and perpetrators of domestic violence.

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WDVCAS	TELEPHONE	LOCAL COURTS COVERED
Blue Mountains	(02) 4782 4155	Katoomba, Lithgow, Bathurst, Mudgee
Burwood	(02) 9744 1866	Burwood
Central Coast	(02) 4304 6941	Gosford, Wyong, Woy Woy
Central West	(02) 6361 3345	Orange, Parkes, Forbes, Cowra
Far South Coast	(02) 6492 5002	Bega, Narooma, Eden, Batemans Bay, Moruya
Far West	(08) 8087 2053	Broken Hill, Wilcannia, Wentworth
Hunter	(02) 4940 8766	Newcastle, Toronto, Belmont, Raymond Terrace
Hunter Valley	(02) 4934 5332	Maitland, Singleton, Cessnock, Muswellbrook, Kurri Kurri
Illawarra	(02) 4228 1499	Wollongong, Port Kembla, Albion Park, Kiama
Macarthur	(02) 4640 7333	Campbelltown, Camden, Picton
Macquarie	(02) 8833 0922	Parramatta, Ryde
Mid-North Coast	(02) 6555 2042	Port Macquarie, Wauchope, Taree, Forster, Gloucester
New England	(02) 6771 4221	Armidale, Walcha, Tamworth, Gunnedah, Glen Innes
North Coast	(02) 6650 0302 or 1800 174 466	Coffs Harbour, Kempsey, Bellingen, Grafton, Macksville
North West	(02) 6752 7135	Maree, Boggabilla, Inverell, Mungindi
North West Sydney	(02) 4587 9997	Blacktown, Windsor
Northern Rivers	(02) 6621 1045	Tweed Heads, Murwillumbah, Mullumbimby, Byron Bay, Ballina, Lismore, Casino, Kyogle
Northern Sydney	(02) 8425 8707	Hornsby, Manly, North Sydney
Riverina	(02) 6964 6432	Griffith, Leeton, Hillston, Hay, Lake Cargallico
South Coast	(02) 4423 8507	Nawra, Moss Vale
South Eastern	(02) 6299 3835	Queanbeyan, Cooma, Goulburn
South West Sydney	(02) 9601 6988 or 0419 494 680	Liverpool, Fairfield, Bankstown
Southern	(02) 6021 3059	Albury, Holbrook, Finley, Deniliquin
Southern Sydney	(02) 9589 1200	Sutherland, Kogarah
Sydney	(02) 9287 7505 or 0447 174 698	Downing Centre, Newtown, Waverley, Balmain
Wagga Wagga	(02) 6921 6227	Wagga Wagga, Narrandera, Young, Tumut, Coolamundra
Western	(02) 6884 7388	Dubbo, Nyngan, Wellington, Bourke, Brewarrina, Cobar, Narramin, Warren, Gilgandra
Western Sydney	(02) 4731 5098	Penrith, Mount Druit

## Guidelines for Lawyers

Identifying if domestic violence is an issue

Ensuring client safety

Advising clients about their legal options

Providing information and referrals

- Plan training about these issues to all plus
- LA policies
- WDVCAP
- Domestic Violence Practitioner Scheme
- Specific legal issues
  - ADVOs for applicants and defendants
  - Interaction between ADVOs and family law
  - Migration law
  - Victims compensation
- Funding for Domestic and Family Violence Solicitor
- Funding to expand Domestic Violence Practitioner Scheme

## Training Challenges

- Family lawyers – immediately relevant
- Civil lawyers – advise and represent range of practice issues
  - Women seeking resident status – family provisions Migration Act
  - Homeless persons
  - Elder abuse
  - family relationships/guarantors/guardianship
- Criminal lawyers -
- Local courts
  - Breaches of ADVO's (protection orders), associated charges
  - Possibly different perspectives
  - Possibly different perspectives
  - Usually act against police
  - Concerns for fair trials for defendants
  - Agree
  - Assist clients if relationship with court advocacy workers, domestic violence practitioners and information about basic services
  - Identified as training need
  - Qld. LA experience – awareness training with legal issues lawyers more likely to attend

## Family Violence Specialist Network (FVSN)

- 20 family lawyers,
- Aboriginal family lawyer
- crime, civil lawyer
- Care and protection, child support lawyer
- CARS (social worker)
- ADR
- WDVCAP
- Regional Administrative Coordinator
- Grants
  
- Training to improve skills – awareness and legal issues

## Education Centre Against Violence (ECAV) NSW Health

### Training about

- Understanding domestic and family violence –  
Definitions and Typologies, Dynamics, perpetrator tactics and  
victim responses, effects and impacts
- Identification  
Screening, barriers to disclosures,  
assessing risk
- Responding  
Interviewing to facilitate disclosure, assisting victims  
to talk about their experiences

- Increased engagement with govt and non-govt agencies
- Increased use of resources within organisation
- Contribute to format of training for organisation
- Contribute to law reform submissions
- Contribute to responses to recommendations from  
2008 review
- Eg LA brochure explaining services  
(attached)



**Domestic Violence Services funded by Legal Aid NSW**

**Women's Domestic Violence Court Advocacy Services (WDVACS)**

This service can help women and children to get information about domestic and family violence, and support women and children before, during and after the court process for obtaining an ADVO. You can contact your local WDVACS by calling LawAccess NSW on 1300 888 529.

**The Domestic Violence Solicitor Service (DVSS)**

These are lawyers paid by Legal Aid NSW who have expertise in domestic and family violence. They can help you with an ADVO matter and provide advice and referrals for other legal problems such as family law, victims compensation or debt. The DVSS only operates in some Local Courts. Contact your local WDVACS coordinator or call LawAccess NSW on 1300 888 529 for more information.

**Who else can help?**

**LawAccess NSW 1300 888 529** A telephone service which provides free information, referral and in some cases legal advice. LawAccess NSW can also assist with details of Local Courts and a local WDVACS service. [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au) TTY 1300 888 529.

**Domestic Violence Advocacy Service 8745 6999** or **1800 610 784** A specialised legal service for women experiencing domestic violence. It provides information to women on their legal rights and their right to access available services. [www.womenlegalnsw.au](http://www.womenlegalnsw.au)

**Community Legal Centres NSW** Call 9212 7333 to find a centre near you. [www.cclc.org.au](http://www.cclc.org.au)

**Women's Legal Service NSW 9749 7700** A community legal centre which provides women with a range of free legal services. [www.womenlegalnsw.au](http://www.womenlegalnsw.au)

**Indigenous Women's Legal Contact Line 1800 639 784** Provides free legal information, advice and assistance to Aboriginal and Torres Strait Islander women to find a lawyer.

**Wirriga Bajra Aboriginal Women's Legal Centre 9569 3847** or **1800 686 587** A community legal centre for Aboriginal women, children and youth living in New South Wales which provides free legal and information, advice and assistance on issues relating to violence against Aboriginal women, children and youth. [www.wirrigabajra.org.au](http://www.wirrigabajra.org.au)

**Local Court Chamber Service** They can help prepare an application for an Apprehended Domestic Violence Order. Check [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au) for Local Court contact details, or call LawAccess 1300 888 529.

**Child Support Agency 131 272** Administers the Child Support Scheme, and provides information and support to separated parents to transfer payments for the benefit of their children.

**Domestic Violence Line 1800 656 463** 24 hours 7 days. Provides telephone counselling information and referrals for people who are experiencing or have experienced domestic violence.

**Family Relationships Online and Family Relationship Centres 1800 659 321.** Provides all families (whether together or separated) with information services that can assist them to manage relationship issues, including agreeing on appropriate arrangements for children after parents separate. [www.familyrelationships.gov.au](http://www.familyrelationships.gov.au)

**☎** If you are hearing or speech impaired you can contact Legal Aid NSW on TTY 9219 5126 or through the National Relay Service (NRS) on 133 677.

**🗣** Translating and Interpreting Service (TIS) provides free interpreters if you do not speak English. TIS can help you talk to us in your language. Call TIS on 131 450.

Copies of this brochure are available from Publications, Legal Aid NSW on 9219 5028 or the Child Support Service on 9633 9916. You can also order online: [www.legalaid.nsw.gov.au/publication](http://www.legalaid.nsw.gov.au/publication)

**Disclaimer:** While every effort has been made to ensure that the information in this brochure is as up-to-date and accurate as possible, the law is complex and constantly changing and you are advised to seek expert advice when faced with specific problems. If you are likely to be involved in court proceedings or legal action you should obtain advice from a lawyer. Legal Aid NSW disclaims all liability for errors or omissions of any kind, or for any loss or damage, in whole or in part, arising from any person relying on any information in this brochure.

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**Legal Aid NSW Offices**

**Bankstown**  
Civic Tower  
Level 3  
Cnr Rickard Rd  
& Jacobs St  
Bankstown 2200  
Tel: 9707 4355

**Blacktown**  
Level 2  
Kildare Court  
13-17 Kildare Rd  
Blacktown 2148  
Tel: 9621 4800

**Barwood**  
Level 4, 74-76  
Barwood Rd  
Barwood 2134  
Tel: 9747 6155

**Campbelltown**  
Level 4  
171-179 Queen St  
Campbelltown 2560  
Tel: 4628 2922

**Coffs Harbour**  
41 Linn St  
Coffs Harbour 2450  
Tel: 6651 7899

**Dubbo**  
64 Talbragar St  
Dubbo 2830  
Tel: 6885 4233

**Fairfield**  
Level 2  
Fairfield Chase  
25 Smart St  
Fairfield 2145  
Tel: 9727 3777

**Gosford**  
Level 2  
37 William St  
Gosford 2150  
Tel: 4324 5611

**Liamore**  
Level 4  
29 Moleworth St  
Liamore 2480  
Tel: 6621 2062

**Liverpool**  
Level 4  
Interlink Centre  
47 Scott St  
Liverpool 2170  
Tel: 9601 1200

**Marilyn**  
Ground Floor  
39 East Eplanade  
Marilyn 2095  
Tel: 9777 1479

**Newcastle**  
51-55 Bolton St  
Newcastle 2300  
Tel: 4929 5402

**Norwa**  
35-37 Berry St  
Norwa 2541  
Tel: 4422 4151

**Orange**  
Suite 4  
95 Byng Street  
Orange 2800  
Tel: 6362 8022

**Parramatta**  
Level 5  
91 Philip St  
Parramatta 2150  
Tel: 8991 1600

**Penrith**  
93 Henry St  
Penrith 2750  
Tel: 4732 3077

**Sutherland**  
Ground Floor  
3-5 Sopleton Ave  
Sutherland 2232  
Tel: 9521 3733

**Sydney**  
Ground Floor  
313 Castlereagh St  
Sydney 2000  
Tel: 9219 5000

**Tamworth**  
Level 1  
424-426 Peel St  
Tamworth 2340  
Tel: 6764 6322

**Wagga Wagga**  
Ground Floor  
Best Place,  
Morrow St  
Wagga Wagga 2650  
Tel: 9721 6558

**Wollongong**  
Ground Floor  
73 Church St  
Wollongong 2500  
Tel: 4228 8279

**Specialist Services**  
Child Support Service  
1800 451 784 or  
9632 9916  
Family Dispute Resolution Service  
9219 5118 or  
9219 5119

**Family law Domestic and family violence**

**Are you experiencing domestic violence?**

**How Legal Aid NSW can help you**



**Legal Aid**  
NEW SOUTH WALES

May 2010

**How can Legal Aid NSW help me?**

**If you are experiencing domestic or family violence, you can get help from Legal Aid NSW. As well as providing help in obtaining protection from the violence, you may need help with other legal problems.**

**You can obtain free legal advice and assistance for a range of legal problems at Legal Aid NSW, and if you are eligible for a grant of legal aid, a lawyer may represent you in court.**

**The types of problems Legal Aid NSW can assist with include:**

**Family law:**

- Dispute about children, divorce and dividing property;
- Child support;
- Children's Court matters about the care and protection of children; and
- Family dispute resolution (mediation) to help resolve disputes about children.

**Criminal law:**

- Applications for Apprehended Domestic Violence Orders (ADVOs); and
- Representation for defendants in exceptional cases.

**Civil law:**

- Financial problems such as ceasing the mortgage, credit and debt, and housing;
- Immigration issues such as residence applications where the marriage or relationship has broken down due to domestic and family violence; and
- Information and referral on victims' compensation.

Phone your nearest Legal Aid NSW office or check the Legal Aid NSW website at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au) for information about the times and locations of our free advice sessions and court duty services.

**Can I get a lawyer to represent me?**

**Yes, if you satisfy a number of tests, we will provide legal representation. The tests include:**

**1. Means test**

This test looks at your income and assets. Legal Aid NSW also takes into account the income and assets of any other person who would be likely to give you financial assistance.

Your income includes your Centrelink payments, salary or wages. Costs such as rent, child support and income tax will be taken into account. Your assets include your home or other substantial assets. There is a means test indicator on the website at [www.legalaid.nsw.gov.au/meansindicator](http://www.legalaid.nsw.gov.au/meansindicator) to help you work out whether you may be financially eligible for legal aid.

**2. Merit test**

This looks at whether your case has a reasonable chance of success in court. The merit test does not apply to most domestic violence cases.

**Can I get legal aid for any type of case?**

Legal Aid NSW does not represent people in every type of case. Talk to a Legal Aid NSW lawyer or LawAccess NSW about whether legal aid is available for your type of problem.

**Can I get a lawyer to represent me in my domestic violence case?**

The police now represent most people seeking Apprehended Domestic Violence Orders (ADVOs) in the Local Court. In these cases the police prosecutor will represent you. If you applied for your ADVO privately through the Local Court Registry, the Women's Domestic Violence Court Advocacy Service (WDVACS) can refer you to a lawyer.

The WDVACS can refer you to Domestic Violence Duty Solicitor if there is one in your Local Court. If there is no Domestic Violence Duty Solicitor the WDVACS can help you to apply for legal aid.

**Can an ADVO defendant get legal aid?**

The person an ADVO application is made against is called the defendant. A defendant in an ADVO application can only obtain a grant of legal aid in exceptional circumstances. More information is available from a local Legal Aid NSW office or from LawAccess NSW.

**What happens if I make a complaint about domestic violence to the police, but then the police also bring a complaint against me?**

This is often called a cross application. It means that as well as you making a complaint, the defendant has made a complaint against you, and the police have then made an ADVO application against you. In these circumstances, you are also a defendant. Cross applications can be complicated and it is important to obtain legal advice or contact your local WDVACS.

You may be able to obtain a grant of legal aid to defend the cross-application, especially where Legal Aid NSW is satisfied that you have been experiencing domestic or family violence. For more information, talk to LawAccess NSW, Legal Aid NSW or your local WDVACS.

**What if I am refused a grant of aid?**

If your application for a grant of aid has been refused, you will be sent a letter and an appeal form, telling you what your application was refused and your rights to appeal to the Legal Aid Review Committee.

See the tab called *Appeal a Legal Aid Decision* on the right hand side of the Legal Aid NSW website at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au) for more information about appeals.

**Will I get a lawyer who works at Legal Aid NSW?**

If you qualify for a grant of legal aid, Legal Aid NSW will pay for your lawyer. That lawyer can be employed directly by Legal Aid NSW or can be a private lawyer paid by Legal Aid NSW. If Legal Aid NSW has a conflict of interest, you will be represented by a private lawyer.

**What is a conflict of interest?**

Sometimes a lawyer employed by Legal Aid NSW may not be able to give you legal advice or represent you because the other party has been or is currently assisted by a Legal Aid NSW lawyer. This creates a potential conflict of interest.

A conflict of interest does not mean that you are not eligible for legal aid. If a Legal Aid NSW lawyer is unable to help you because of a conflict of interest, you will be referred to another lawyer who can assist you.

To find out about our advice sessions and court duty services call Legal Aid NSW or LawAccess NSW. Details on back cover.

**Legal Aid**  
NEW SOUTH WALES

[www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)



## Conclusion

- Awareness/identification as first step – Begun process with FVSN
- To be followed by training across board