



**Australian Government**  

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**Attorney-General's Department**

**Social Inclusion Division**

Family Violence Prevention Legal Services

**Solicitor's Workshop**

**Report**

Canberra

10 and 11 March 2009

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## Executive Summary

The annual solicitors' workshop for Family Violence Prevention Legal Services (FVPLS) unit solicitors was held at the Heritage Hotel in Canberra on 10 and 11 March 2009. The last workshop was held in March 2007.

The workshop was facilitated by Luke Piotrowicz (FVPLS Senior Program Officer, Policy and Procedures) and Debbie Bargallie (FVPLS Assistant Director Policy and Procedures). The workshop was opened with welcome presentations and an overview by Kym Duggan, Assistant Secretary Indigenous and Community Legal Services Branch of the Social Inclusion Division and Margaret Beattie, Director of the FVPLS program. A workshop dinner was held at the Hotel Heritage Restaurant on the evening of 10 March 2009 attended by workshop participants.

A feature of the workshop was the combination of structured sessions from prominent external stakeholders as well as Department staff. Another prominent feature was active discussion and debate by participants throughout the workshop both in specially designed groups and open forums.

Most of the topics under discussion were chosen to reflect the feedback from solicitors following previous workshops and seminars. Of great interest was the initial session conducted by Judy O'Rourke from the Domestic Violence Clearing House. Her overview of the role and resources of the Clearing House was well received by participants who welcomed the opportunity to connect with professional, contemporary and easily available research materials, journals, articles and case studies. Ms O'Rourke also left a wide range of sample materials for participants to read through and retain.

Mirjana Wilson of the ACT Domestic Violence Crisis Service, one of Australia's first service providers to utilise an integrated approach, provided participants with a framework model implemented by their centre. This framework has also been adapted in other jurisdictions including as Victoria and Tasmania. Her outline of the Centre's crisis shift workers role and duties was quite thought provoking, particularly their consistent use of particular terminology such as 'the person subject to violence' in place of 'victim' and 'the person using violence' in place of 'perpetrator'.

The second day of the workshop opened with a detailed presentation and vigorous discussion regarding the role of the Family Court. The presenters Angela Filippello and Leisha Lister from the Family Court of Australia were able to answer many of the queries and concerns of participants. Following on from this theme, two FVPLS Program solicitors, Vanessa Lethlean and Terrance Duff, provided much sought after information with their presentations on victims of crime compensation and managing conflicts of interest (respectively).

Another dynamic presentation followed with Karen Wilcox from the Domestic Violence Clearing House discussing the complex issues of protection orders and recent changes to legislation relating to family violence. Her comprehensive presentation enabled participants to compare and contrast the many changes occurring within various State and Territory jurisdictions as well as international trends. The second day finalised with a robust group discussion on selected and topical case studies which highlighted complexities, common issues and innovations developed to manage increasing and difficult caseloads.

At the cessation of both days of the workshop, Department staff provided an overview of the day's events and outcomes and highlighting common themes and issues. The final day also

included open discussion regarding the participant's views of the workshop, feedback on topics and presenters, and ideas for the next workshop scheduled for 2010. Overall, the feedback from the group was most positive, particularly as the sessions and speakers chosen had been responsive to solicitor's requests on topics. A more detailed analysis of the feedback is provided in Appendix A which examines the evaluation forms collected after the close of the workshop.

The following report provides detailed information on individual sessions and presentations.

## **1. The FVPLS Program and History**

- 1.1** The Department provides funding for FVPLS units to assist Aboriginal and Torres Strait Islander adults and children living in rural and remote areas who are victims-survivors of family violence and sexual abuse, or who are at immediate risk of such violence. The FVPLS program improves access to legal services and provides holistic and culturally appropriate responses. The primary function of FVPLS units is the provision of legal assistance, casework, counselling, court support, information and referrals, and community promotion.
- 1.2** FVPLS units are generally controlled by Aboriginal and Torres Strait Islander communities. Local Aboriginal and Torres Strait Islander communities take a lead role in the development of the units through representation on management committees, steering committees and auspice bodies.
- 1.3** The FVPLS program was established in 1998 with an allocation of \$4.8 million by the Aboriginal and Torres Strait Islander Commission (ATSIC). The program was piloted in Kempsey, and later a further 12 units were established in predominately remote and rural areas of high need around Australia. The FVPLS program was transferred to the Department with the closing of ATSIC / ATSI in 2004–05.
- 1.4** In 2004–05, the Australian Government approved an expansion of the FVPLS program, \$22.7 million over four years, to allow an increase in FVPLS units from 13 to 26. In 2006–07, the Government announced a further increase in funding, \$23.6 million over four years, for another expansion of the Program from 26 to 31 FVPLS units. This funding is also to be used to expand additional FVPLS units in 2007–08, allowing for a second FVPLS funded solicitor to provide a wider range of legal services (in civil and family law matters), and the Early Intervention and Prevention Program (EIPP). NB There are changes to the FVPLS program Guidelines for 2009-10.
- 1.5** The Department developed the EIPP as a means to deliver programs in rural and remote Indigenous communities, which prevent the occurrence of family violence and sexual abuse by changing the behaviours and attitudes of individuals and the community. Focus areas for the program include, but are not limited to: Preventing self-harm, suicide and substance abuse, strengthening community resolve against family violence, building self-esteem, supporting family units, developing community role models, and stopping family violence recidivism.
- 1.6** As part of the development of the Program, the Department engaged the Crime Research Centre (CRC) at the University of Western Australia to identify regions in rural and remote Australia that were most in need of Indigenous family violence services, determined on a range of statistical indicators including police, hospital and court data, the availability of complementary services in an area, and feedback from key stakeholders. The CRC report published in December 2004 ranked 21 areas in rural and remote Australia most in need of a FVPLS unit. The five additional FVPLS units in rural and remote areas of Australia are Broome Local Government Area, Port Lincoln Local Government Area, Broken Hill Local Government Area, Tennant Creek Local Government Area, and the South-West of Western Australia.

## **2. Welcome by the Attorney-General's Department**

### ***Margaret Beattie, FVPLS Program Director, Attorney-General's Department***

- 2.1** Margaret welcomed all participants to Canberra and to the workshop, and acknowledged the traditional owners of the land on which the workshop was taking place, the Ngunnawal people.
- 2.2** Margaret stated that the FVPLS Program conducted a series of workshops to bring together varying groups such as coordinators, managers and solicitors to enable interaction and a sharing of ideas and information. For example, a National Conference was scheduled for September this year which would bring together coordinators and Board members to discuss changes in policy and procedures. A series of workshops was also conducted for Sexual Assault workers covering training and development; Community Legal Educators would be attending a workshop next week following their training with HREOC and a Certificate IV course for ECAV had been conducted in Sydney. Comprehensive reports would follow each of these workshops and conferences.
- 2.3** In this current workshop, Margaret aimed to discuss relevant changes to the program and materials which had been produced to assist solicitors in their work. She informed the group that the operational framework of the Program was reviewed on an annual basis - this year's review was due in July. It was anticipated that there would be substantial changes to reporting requirements including the development of a Client Management System which would enable consistency of approach across all units. A pilot of the system is currently being run in the Melbourne Family Violence Unit is thus far going well.
- 2.4** The new Client Management System will be similar to that currently being utilised by the CLS but will use differing codes. A discrete system will be housed within each Unit but will enable the Department to collate statistics for reporting purposes (although not confidential client details). Monthly uploads will be sought from Coordinators which will enable the Department to compile varying reports.
- 2.5** Margaret also hoped to discuss the role of the Community Legal Education (CLE) workers and the synergy which existed between their work and that of solicitors. She emphasized that there should be no 'stepping over roles' and expertise but instead CLE workers should be made aware of what solicitors could and could not do, when they should refer to solicitors and when it was more appropriate to utilise external legal providers.

### ***Kym Duggan, Assistant Secretary Indigenous Law and Justice Branch***

- 2.6** Kym welcomed the participants and began his remarks by acknowledging the tremendous challenge they faced in their daily work. He felt the Program had reached a watershed in marking its tenth anniversary including achievements such as agreed benchmarks and standards for service delivery. He reiterated the Government's commitment to the program and the high priority placed on the issue by the Department and the Minister for Home Affairs. However, he also conceded that we all needed to continue to show the Program's worth and value for money. An examination of the structure of the Program was underway as well as assessments of current submissions for funds.
- 2.7** Kym felt strongly that in many situations, the service provided by solicitors was the only representative voice for the victims of domestic violence. Solicitors played a vital role in the

overall coordination of the service, especially at a State and Territory level in such mechanisms as Domestic Violence Steering Committees.

- 2.8** Kym mentioned the National Indigenous Framework which operated through COAG and his hope that the FVLPS program would have a representative voice in this mechanism. Applications had closed for the National Indigenous Advisory Body and Kym was hopeful that members of solicitor's Boards had applied.
- 2.9** A complicating and often frustrating issue was the differing laws within each State and Territory jurisdiction. This fact further emphasized the importance of solicitors becoming active within varying State and Territory committees and structures. Kym remained committed to bringing solicitors, coordinators and members of the Boards together annually to share ideas and concerns but particularly to discuss regional issues and thereby establish a vibrant regional information network.
- 2.10** Kym mentioned a recent initiative in W.A where the Country Lawyers Program saw lawyers employed by the legal Aid Commission undertaking a compulsory 2/3 years service in a regional location. This has resulted in a further 7/8 lawyers now available for the Program. The program also includes mentors and professional development. There is a possibility the program may be conducted in other jurisdictions in the future. Kym welcomed any ideas from the group regarding ways to both attract and retain legal staff in regional locations.
- 2.11** The issue of determining the quality of our service was raised by Kym who conceded that no firm conclusions regarding the best methodology had been determined as yet. While client surveys were often used, they were not considered to be accurate measures. Discussions with key stakeholder groups such as Police and the Courts may be another avenue to consider.
- 2.12** Kym apologised for the length of time taken in providing the new Client Management System but felt the time had been necessary in ensuring any 'bugs' were eliminated. The infrastructure for a rollout was now in place as well as training facilities. The full rollout was due to start in Melbourne in April following on from their pilot period, and other Units would follow in May.
- 2.13** Kym requested feedback from the group regarding their relationship with staff from his Branch and the level of support solicitors received. He would like to ensure that the relationship continues to improve and in this vein is encouraging his staff to visit Units as much as possible.
- 2.14** The Family Court had been invited to speak at the workshop as Kym felt this would be an important mechanism to ensure FVPLS solicitors remained connected to the broader legal framework and also so that our clients retain a voice within the general family law environment. Kym reiterated the importance of solicitors maintaining a dialogue with such important interlocutors as the Family Court.
- 2.15** Kym also mentioned that the Government is undertaking a thorough evaluation of all legislation including a review of the Family Law Act – Kym's Branch is responsible for evaluating the violence provisions. The Australian Institute of Family Studies has undertaken research which will provide the Government's evaluation process with empirical data. The Government is currently aware of some major problems such as Protection Orders but the review will provide a more definitive approach to improving provisions and definitions. The evaluation report is due to be finalised in September 2009 – Kym encouraged Units to make submissions to the Review.

- 2.16** As a side issue, Kym mentioned a recent survey on submissions to Magistrates which concluded an overuse of generalisations which were not helpful in assisting Courts to understand cases. This hampers magistrates ability to make decisions in domestic violence prosecutions. For example, wording in a submission such as ‘there has been a history of violence throughout the relationship’ did little to assist judges and magistrates. Kym felt strongly that the profession (solicitors) could commit to improved standards and levels of quality, providing more cogent and direct supporting evidence in such situations to strengthen our submissions and enable magistrates to make better balanced judgements. He suggested that the training of Family Consultants and Family Report Writers would be a relevant issue to pursue with the Family Court representatives during their presentation.
- 2.17** In response to a question regarding appropriate lines of communication, Kim stated that solicitors could contact the Department in Canberra direct but suggested always copying in the Coordinators as a courtesy. He felt it vital that solicitors developed positive and cooperative relationships with their Coordinators so that both understood and supported their respective roles.
- 2.18** A question was raised regarding access to Family Relationship Centres – Kym replied that the services these Centres provided are available to defacto married (couples married under traditional law only) as well as married couples undergoing separation and divorce. The Centres also had Indigenous Liaison Officers. The Family Court’s jurisdiction extended to any couples, whether legally married or not, who had children but the Court’s jurisdiction was only enlivened with an application to the Court, eg intervention or access orders. If solicitors experienced difficulties in accessing Family Relationship Centre services for their clients Kym requested they notify his Branch. The Parent Wellness Program was another resource and was designed to deal with high conflict needs, and is available throughout Australia.
- 2.19** The complex area of mental health issues was next raised by the group who advised that these concerns were common as was the problem of accessing appropriate services, particularly for repeat offenders in domestic violence. Repeated Domestic Violence Orders (DVO) were issued creating a cycle of mental health issue, violence, DVO and so forth. The absence of Mental Health Liaison Officers had exacerbated the situation. Kym mentioned that a proposal regarding mental health issues had been developed by the Law Reform Group and he believed a position paper had been developed. Kym undertook to take up the issue with them, particularly as the links to the FVPLS were obvious and the Department’s funding of the group could facilitate a linking of the two areas.

### **3. Finding and accessing information on Indigenous specific issues relating to family violence, using the Domestic Clearing House research facilities**

#### *Judy O'Rourke Domestic Violence Clearing House, University of NSW*

- 3.1** Judy advised the group that the Clearing House was established five years ago under Federal funding and while situated within the University of NSW, had Australia-wide coverage. The role of the Clearing House was to contribute to the prevention of domestic violence through direct support of advocates, service providers and stakeholders.
- 3.2** Judy was responsible for information collation, research and dissemination. Their website was the first point of entry, but Judy was also able to source articles, books and journals. She was also able to utilise the resources of the University library. If solicitors had specific requests, they could contact Judy and she would email or fax information to them. (Judy distributed sample copies of information provided by the Clearing House, and also her contact details).
- 3.3** A new area of research undertaken is adolescent violence directed towards parents. New surveys were currently available, particularly focussing upon adolescent sons perpetrating violence against their single mothers.
- 3.4** The Clearing House publishes key articles and publications as well as a newsletter four times a year. Judy is the editor of a monthly e-newsletter which provides information on recent books and new research and journal articles. (Judy provided the group with subscription application forms for the monthly e-newsletter.) The Clearing House engages academics to produce Issues Papers on specific topics of interest, eg the issue of agencies looking at only mothers or children but not both; and Julie Stubbs (domestic violence peaks).
- 3.5** Judy stated that their website front page changed monthly and provided a direct link to Indigenous resources including news, newspaper articles, conferences, events, grants, scholarships, books, resources and journal articles. They were able to provide key resources in key areas such as policy and advocacy.
- 3.6** The Clearing House utilises two databases – one for research and resources (5000 items) and the other examining good practice. They have attempted to keep things simple and user friendly by using clear headings – eg ‘legal issues’ results in 465 pieces of information sorted by date and requiring the user to scroll through the journal articles and reports. Judy is able to access the full text of articles if requested. They are working on an easier system which will trial the use of a new page breaking subject headings down even further, eg ‘legal issues’ into ‘legal issues + child protection’ (12 items). Users can also use the search key, and using an ampersand to connect two subject areas, this will narrow the search as well. Judy is available to assist anyone experiencing difficulties accessing information.
- 3.7** The website also houses publications and submissions – eg homelessness, issues papers (hard copies available free of charge), newsletter online, stakeholder papers, research reports and topical papers (only electronic copies available; policy and legislation – by State or Territory, family + domestic violence legislation, updated as laws are amended, overlap with the Australian Centre for the Study of Sexual Assault (ACSSA) website based in Melbourne. While various committees on domestic violence are not currently listed on their website, Judy can provide information over the phone or by email.

- 3.8** In terms of current research, Judy highlighted the issue of the impact domestic violence has upon children as a major topic. Victoria and Tasmania are utilising an integrated approach to the issue and have undertaken substantial research – the Tasmanian system has recently undergone an evaluation (their system includes ‘3 offences + automatic arrest). Current evidence is pointing to the failure of segregated systems and that 89 percent of interpersonal violence is perpetrated by men against women. Cathy Humphries is a major writer/researcher in the field.
- 3.9** In response to a question regarding research on the issue of parental access following domestic violence, Judy emphasized the importance of being able to provide extensive information to the Courts to aid their decision making in custody and access cases. There is substantial evidence and research regarding the trauma experienced by children who witness domestic violence and that a holistic approach is warranted.
- 3.10** A further question was raised regarding the latest trend in research relating to the effect of violence on children. Judy explained that the issue of children witnessing their mother being beaten caused them to experience hurt and emotional damage, particularly in the long term. The effects on health and learning and their ability to concentrate is an area being examined. Kym Duggan also added that this research and science-based information was vital in presenting evidence to the Courts, eg there are permanent affects upon the developing brain of a twelve to eighteen month old child.

***Further questions put to Kym Duggan:***

- 3.11** Cultural practices – Kym explained that some cultural perspectives and practices could not feasibly be raised in Court. Issues that are traditionally men’s business and the practices surrounding adolescent boys attaining manhood cannot be raised by or in front of women. In terms of how these issues can best be addressed by Courts, Kym stated that the Department had asked the Federal Court to discuss cultural awareness training, particularly such issues as whether or not judges require further training in regional areas. There was also the possibility of raising sensitive women’s by speaking directly to traditional elders (male) about the problem and seek their advice. In land claims, evidence has been given by groups of men and women together as a method of alleviating concerns. Kym also recommended using Boards as a link to the communities and to work through their established communication mechanisms.
- 3.12** Types of matters we (solicitors) can take on – eg where a child has been removed by State authorities but we are acting for the parents. Kym stated that we should always act for the victim of domestic violence (usually the mother). We need to ask the question ‘are you the victim of domestic violence?’ although Kym recognised that many people don’t understand what domestic violence may mean or not wish to divulge its existence. Another complicating factor is their fear that if they admit to experiencing violence they risk having their children removed by State welfare authorities. However, Kym reiterated the need to ask the question and to acknowledge there are usually multiple issues underlying any responses, including violence.
- 3.13** Conflict of interest cases – eg a child is removed from both parents, we are acting for both parents who are also perpetrating violence upon each other. The response from the floor was that we can not act for both parents as this will result in potentially conflicting advice. Our emphasis should be child protection so we are not able to act for anyone placing a child at risk – we must consider the child as our priority and should brief out and find other

solutions for the parents. We also need to keep in mind our image in the community as we may be perceived in ‘taking sides’.

- 3.14** Women as perpetrators of violence – the response was that this should also be briefed out, although it was acknowledged that often this violence is in self defence which may only appear at a later stage in the investigation.

#### **4. Family violence, clients in crisis and working with support networks to achieve results**

*Presented by Mirjana Wilson, Domestic Violence Crisis Service (DVCS), ACT*

- 4.1 Mirjana introduced her Service by explaining that it was the first in Australia to offer an integrated approach and has existed for over 22 years. The Service covers Indigenous clients, refugees and a total cross section of the Canberra community.
- 4.2 They have developed a best practice set of guidelines in what began as a feminist perspective but is now also closely aligned to the criminal justice system:
  - to advocate for clients
  - promote the unacceptability of domestic violence and abuse
  - and to recognise the impact upon peoples' lives
- 4.3 Mirjana stated that safety of their clients and staff is the number one priority, and to improve the quality of life of their clients. The Service has made a conscious decision to use the terms 'people who are subjected to violence' instead of 'victim' and 'people who use violence' rather than 'perpetrator'. (see also paragraph 4.21) Their Service also focuses upon those who have witnessed the violence such as children, other family members, friends, neighbours and work colleagues.
- 4.4 They have an MOU with the AFP which enables the Service to attend incidents alongside AFP officers. DVCS workers must wait outside until the AFP has ensured physical safety of all involved, and the woman has actually invited the Service in – the worker is required to point out to the client that the Service is entirely separate from the AFP. They also provide training and the latest information and research on domestic violence issues for the AFP.
- 4.5 The Service has an advocacy role within the criminal justice system including liaison with the DPP, Immigration and Legal Aid. They will even find placements for pets. They will do whatever needs to be done to ensure client safety. As an indication of frequency of service, Mirjana stated that she had recently 31 incidents with the AFP over a three night period.
- 4.6 The Service is a part of the ACT Family Violence Intervention Program (FVIP) which is pro-arrest and pro-charge and has the presumption against bail. They provide early victim support and ensure that clients are kept informed throughout the process of what is happening, eg Court dates. The Service also participates in data collection and research. The FVIP consists of the DPP, AFP, ACT Department of Corrective Services, the ACT Department of Justice + Community Services, Victims of Crime and Legal Aid as well as the Service. The group undertakes case management and coordination, as well as providing a rehabilitation program for offenders (one to one counselling).
- 4.7 In the ACT, the AFP are able to make a charge without a statement from the person experiencing domestic violence but it is usually more helpful to have one as this avoids the possibility that she may become a 'hostile' witness in the future if she has by then changed her mind about the charges.
- 4.8 Mirjana felt that 10-15 percent of the domestic violence experienced in the ACT was in fact broader family violence not just partner violence. The current trend is for younger

children to be engaging in violence, and for the effects of racial oppression and drug abuse to be apparent.

- 4.9** She highlighted varying definitions of violence including a model of violence wheel which she uses in AFP training sessions to ensure the officers have a deeper understanding of the big picture and underlying issues in domestic violence.
- 4.10** Recent changes to ACT Human Rights legislation had resulted in greater difficulty in obtaining DVO's – which are now about an immediate threat to physical danger. The Service assists woman in completing the forms required to obtain a DVO, and Mirjana feels that the fact that women must apply for the orders themselves is in fact providing them with a sense of empowerment. Service workers are also able to act as witnesses in Court proceedings.
- 4.11** Service staff see themselves as crisis workers and as advocates or the voice of their clients, eg with ACT Housing, Immigration Department. They do not take sides in a conflict with eg the Child Protection Services but will explain what the woman is trying to say. They strictly work to a Code of Practice which guarantees client confidentiality although clients are advised that workers may be legally obliged to reveal certain facts to the Child Protection Service. A protocol exists regarding the exchange of information between member agencies within the FVIP.
- 4.12** Domestic violence is seen as a gender issue, with 93-97percent of violence being perpetrated by males. Mirjana stated that while women also use violence, it is usually expressed differently and different forms are used. Questions needed to be asked around the issue of 'situational couple fights' versus 'endemic domestic violence'. Also, clusters of other behaviours needed to be examined and the behaviour over time and history of the relationship. Research had shown that 10-35 separate incidents of violence occur before the domestic violence comes to the attention of authorities. History is often the best indicator of future behaviour and risk.
- 4.13** The participants noted that it is only when children are being removed or there is a potential loss of a home that people will seek legal advice. Mirjana agreed and added that minimalisation or trivialisation of violence is a common symptom and coping mechanism often accompanying lack of power. The Service had developed a cooperative working relationship with the Child Protection Services (CPS) including joint case reviews done on a fortnightly basis. CPS had initially viewed children witnessing violence as emotional abuse but after much work by the Service they now have a greater appreciation of the potential physical effects such as brain damage and the subsequent serious implications. Workers will refer clients to Legal Aid if appropriate.
- 4.14** In response to a question regarding the stressful nature of their work, Mirjana stated that workers are able to debrief with colleagues and undergo internal supervision on a monthly basis, alongside external supervision from psychologists. There is also more than one worker per case. At this point it was also made clear to participants that the department provides funding for external debriefing to every FVPLS unit.
- 4.15** Workers make it clear to clients that they are not there to enforce CPS instructions or safety plans, but they will attend any meetings between clients and CPS if that is the clients wish. Mirjana stated several times that workers do not see themselves as 'experts in the client's life' but rather to support them through the process.

- 4.16** They have 8 crisis workers on staff who all work in shifts, and additionally workers who cover education, youth and the FVIP. Safety protocols exist to cover workers who must work in teams and only attend an initial incident with the AFP present. Subsequent or follow up visits are conducted by telephone or in a neutral place such as a café. They do not offer long term counselling but will refer to other service providers if this is required.
- 4.17** Mirjana discussed the factors which may indicate the risk of domestic violence which are used in determining the level of risk for clients and to devise a suitable safety plan with them as they then have to manage the plan. The safety plan may include keeping a list of important telephone numbers (000, friends, nearest shelter) nearby, providing children with a key/code word to alert them to leave the house and go to neighbours or friends, asking the neighbours to call police if they hear noises, keeping a bag packed ready for flight.
- 4.18** Mirjana then went on to highlight varying emotional messages a person subjected to violence may experience such as powerlessness, fear, anxiety, inability to parent adequately, hopelessness and a heightened sense of responsibility for all that has occurred. The potential impact upon solicitors is that women will be unable neither to make lucid decisions nor to give instructions.
- 4.19** Disclosure of domestic violence was seen by Mirjana as a major turning point for women seeking assistance, particularly when the woman stops talking about her partner's need to access services such as drug rehabilitation ('he'll be OK once he's in rehab'). Increased contact with service providers is also another indication that the woman is ready to disclose the violence. Non-disclosure has been exacerbated by recent changes to the Family Law Act leading the women being increasingly concerned that if they reveal the violence they run the risk of losing custody of their children. Mirjana mentioned the example of Sudanese women where leaving their partners is not an option due to cultural or religious constraints.
- 4.20** Mirjana noted that many women receive threats of violence from extended family members even if the person using the violence is in prison, particularly if there is a housing shortage. The extended family may also apply for custody of the children. Spousal homicide is most likely to occur once the woman has left as this precipitates a major shift in the power balance.
- 4.21** Following on from client evaluations conducted in 1997, the Service decided that they need to more clearly show that they were listening to their clients and respecting them. As a result, they decided to change their terminology from 'victim' to 'person subject to violence' and from 'perpetrator' to 'person using violence'. This was to ensure that workers did not make assumptions about their clients and would take account of their age, gender, vulnerabilities, culture and to listen to their individual circumstances. Mirjana described this as going on their client's journey, not leading it. Subsequently, guiding principles were also established to ensure best practice. Indigenous best practice was also included to meet the diverse needs of the ACT Indigenous community and reflecting the Service's integrated approach.
- 4.22** In the ACT criminal justice system, Mirjana stated that one in five males will re-assault their partner while matters are proceeding through the Courts (FVIP statistics). They have a 20-25 percent success rate with men undertaking mandated rehabilitation programs although while physical abuse declines other forms of abuse tend to rise. Rehabilitation programs were voluntary and initially conducted by the ACT Department of Corrective Services and Relationships Australia but have since been changed to mandatory cognitive skills based programs run exclusively by the Department and with a lower success rate.

- 4.23** Participants mentioned a mentor program for men being conducted in Townsville with outstanding results, and where partners are included in the program as well. Judy O'Rourke mentioned that little research has been undertaken in Australia as yet on the effectiveness of varying rehabilitation programs, while some exists in the US, UK and Canada. Mirjana added that in the ACT experience one on one counselling had proven more effective particularly where the violence was deeply entrenched or there were cultural issues. The group work approach also offered perpetrators the opportunity to collude or 'compare notes'.
- 4.24** Circle sentencing – some has been used in the ACT with a pilot program conducted in 2005-05. The program was not continued thereafter and finding elders had been a challenge. NT participants noted that some community members there had been keen to use circle sentencing but had also seen the need for domestic training to accompany this, particularly for magistrates and elders and indigenous workers. Much support was required and judgements needed to be made regarding which matters would be appropriate for the model versus Court.

## **5. Discussion of potential topics for next conference – Attorney-General's Department**

### *Issues suitable for the next Conference – ideas sought by Debbie Bargallie*

- 5.1** Expectations of each Unit from the Departmental perspective – the Department will clearly articulate their expectations of each Unit including their ideas regarding best practice across the program.
- 5.2** Regulation 7 – a presentation regarding the reading and analysis of Family Reports – possibly using Stephen Ralph (Darwin) as guest speaker.
- 5.3** CLSIS Case Management System – discussion regarding consistency and uniformity in definitions eg ‘advice’. The Department responded that we will not be using their codes and will advise you in due course re what the new system will comprise. We will be adapting CLSIS to our particular needs and will also advise you on definitions. We will also be determining reporting requirements as part of the Whole of Government streamlining currently underway which seeks to reduce red tape in government. Debbie welcomed feedback from participants regarding the types of codes needed, eg definition of ‘occasional service’.
- 5.4** Domestic violence legislation – a discussion regarding the variations from State to State. It was also suggested that before the next conference, each participant should prepare a brief outline of legislative changes in their jurisdiction to bring to the conference in 2010.
- 5.5** Family law – with a focus on family violence.
- 5.6** Role of the solicitor – relationship to the Coordinators, legal education role, Departmental expectations and the crossover with the CLE worker.

## **6. The Family Court of Australia**

### *Presentation by Angela Filippello (Principal Registrar) and Leisha Lister*

- 6.1** Angela opened the session by explaining that their policies and strategies are available in a variety of their publications (which she distributed to the group) as well as Magellan work available on the internet.
- 6.2** Angela described the background to changes in family law in Australia. The Senate enquiry led by Senator McKiernan examined interpretation of the Family Law Act and found major deficiencies in the area of domestic violence with serious ramifications for the treatment of children in particular.
- 6.3** Alastair Nicholson then developed a strategy document which evolved into the report ‘Family Violence Strategy’ and included recommendations for judges to adopt case management principles, a more aggressive method to deal with cultural issues and domestic violence, to develop networks with communities and to culminate in reports. Angela acknowledged the contribution of many workshop participants to the Nicholson report, and also recognised that a degree of disconnect still existed between the Court and many solicitors. However, she felt strongly that we should work together to push for further reforms and initiatives. The Court now has regular training for their staff in domestic violence and mental health issues as part of an integrated strategy for staff development, which is seen as a priority.
- 6.4** Leisha advised that their Cultural Diversity + Family Violence Strategy had been launched and this had led to intensive training for all staff undertaken by Relationships Australia and Migrant Centres. The training programs have focused on cultural awareness, family violence, cultural diversity and Indigenous issues. After a pilot program was conducted, the training was initially run as separate units. However, it is now conducted as an integrated course over a five day period. Staff needed to experience the course in an integrated format to better reflect the nature of their daily work.
- 6.5** The Court has developed networks in each Registry to ensure they receive feedback from community groups. Clear client service standards have also been developed which highlight the key questions to ask, eg the fears experienced by clients in attending Court
- violence,
  - safety plans;
  - mental health issues – asking the client if they have existing support services and if not referral to the mental Health Unit.

Following an independent audit after the training program was implemented, results showed an improved level of understanding amongst staff regarding where they should refer clients to services which are available to them, and ensuring clients have access to these services.

- 6.6** The CEO of the Court is strongly committed to the highest standards of client service delivery and supports staff training and improved practices. Leisha mentioned that their training also covers judges and registrars, and in local courts the magistrates, as well as staff within their National Enquiry Centre (1800 telephone number) who receive an average of 1000 calls per day. The CEO of the Family Court is a member of the Australian Courts Administration Group and in this forum he has raised the issue of family violence training

for the State Court system. In the interim, the Family Court has Regional Registry Managers who actively engage with State Courts to information share.

- 6.7** In terms of service delivery, there is some overlap in Family Law as it relates to family violence and child protection, safety plans (S60k) and the shared parenting amendments of 2006. In S60(I) parties are able to seek parenting orders and attend family relationship centres for any dispute resolution issues. Angela mentioned a group of family consultants (counsellors, dispute resolution officers) established by Justice Moore and which included Indigenous staff to assist clients' interrelationship with the Court.
- 6.8** Participants raised the issue that many Judges, Reg 7 report writers and independent children's lawyers lacked knowledge regarding Aboriginality and did not know the right questions to ask their clients. By way of example, a case was raised where a Reg 7 writer in a S66.2.f report regarding an Indigenous child, had written only one and a half lines about the child living with his non-Aboriginal father, displaying no understanding of the complexity and diversity of issues involved, and culminating in the judge's response that the child was 'half-white'. This was a common occurrence and many solicitors felt quite disillusioned that their voice was not being heard. The ICL is funded by Legal Aid and undertake minimal work with indigenous children. The view of participants was that there should be specialist ICL's and judges who deal with these children, as well as specially trained Reg 7 report writers. Leisha undertook to raise the issue regarding report writer allocations to see whether the better writers could be allocated to deal with indigenous cases.
- 6.9** Leisha noted, however, that less than 1 percent of their clients identified themselves as indigenous, which in turn led to missed opportunities to assist them, so it was important that solicitors ensured their clients ticked this box on forms. Kim Duggan added that ongoing training for Reg 7 writers is currently being looked at to ensure the overall quality remains high. The Reg 7 report itself was crucial evidence so ongoing training of writers was imperative.
- 6.10** Participants raised the issue of introducing competencies for Court writers, ICL's and external writers which would include family violence components. There was concern that the current one week intensive training course for ICL's did not include cultural issues but Kym Duggan felt that the course could be expanded. Leisha also stated that she was aware that someone was looking at the issue of accreditation for independent report writers but she was unsure who was doing this. Kym noted that the Judicial College of Australia and the Legal Aid Commission were both avenues for specialised training and as the Federal Government funded these bodies it may provide some leverage. He asked participants to provide him with any feedback on these issues.
- 6.11** The group felt that a one week training course was insufficient to adequately cover Indigenous issues and this was of great concern given the weight that the family reports carried within the Courts. Angela responded by asking that any feedback regarding report writer's performance should be passed to Dianne Gibson, Coordinator of Family Consultants and Dispute Services. In cases where the reports have not yet been released and there are extreme issues, they will pull the report from the writer. However, if the report is before the judge as evidence, then it becomes inappropriate for action to be taken at that stage. Any complaints are taken seriously.
- 6.12** The issue of Aboriginal facilitators and mediators being employed at FRC's was raised by participants with concern that none were employed in these roles within NSW. Kym responded that he had a list of the 15 Aboriginal facilitators/mediators across Australia

which he could provide to the group, but he also requested any concerns regarding this scheme should be raised with his area as his Branch had responsibility for the workers within the Department.

- 6.13** Angela reiterated that the Federal Magistrates Court and the Family Court are only involved once a matter has been filed. In response to a question regarding extension of circuits, Angela stated that the Federal Magistrates Court had opted to undertake circuits and the Federal Court has thus removed itself from this role. The issue of possible amalgamation of the Courts is still being examined by the Federal Government.
- 6.14** Participants raised the issue of family violence being handled differently due to specific provisions and amendments. Angela advised that the Australian Institute of Family Studies is currently undertaking research into this issue. While an effort has gone into improving the training of judges and Court Officers, and while Angela is certain her staff are committed to maintaining high standards of client service, they are awaiting the outcome of the research to direct further efforts. The Australian Law Forum also provides feedback, and is chaired by the CEO of the Family Court.
- 6.15** Leisha discussed a recent senate estimates question put to the Court regarding the number of allegations of family violence and how many are subsequently substantiated. This was extremely difficult to answer, and also reflects the wider community attitude regarding what is an allegation and what is actually substantiated. Kym described 300 existing case files regarding allegations, which were serious but the way they were pleaded meant that the domestic violence component could not be taken into account by the Judge without further investigation. Poorly written affidavits and lack of evidence were still major problems. In support of this, Leisha stated that statistics could be very misleading, eg in 100 allegations lodged, if 20 are substantiated this does not necessarily mean that 80 were not substantiated but simply they may have been poorly prepared and lodged by the lawyer.
- 6.16** Angela discussed the introduction of S60(k) – where applications involving family violence were received a Form 4 was also required which was referred to the Registrar to determine a listing for additional action. They have found that the use of Form 4 is not as prevalent as they had hoped. In those cases with a Form 4, 99 percent are dealt with within 7 days. While Form 4's have existed since November 2006, in over 2500 applications for parenting orders only 258 Form 4's were lodged. The Form 4 acts as a trigger for the Court regarding allegations of violence and ensures questions such as 'have you got a safety plan' and 'have you access to services' are asked of clients. Child psychologists are able to access the Form 4 to check that appropriate provisions are in place to ensure the safety of the child and family. Counter staff are also trained to ask clients when they lodge applications if there are any issues of family violence present.

## 7. Managing potential conflicts of interest

*Presented by Terence Duff, Thiyama-li FVPS Moree NSW*

- 7.1 Terry noted that the earliest case regarding conflict of interest appeared in England in 1815, namely Lord Clinton 1815/ 34ER5/5 and comprised a House of Lords discussion regarding the relationship between a solicitor and client. Our present day relationships are not marred by commerce considerations but there are some aspects of potential conflict of interest. In *Spinacode Pty Ltd v Look Software Pty Ltd* [2001] VSC 287 (17 August 2001), a company was set up and had solicitors acting on their behalf. The company was then wound down and their solicitors attended shareholder's meetings. However, the solicitors then went to act for the shareholders – the case also contains legal principles covering prerequisite circumstances regarding significant conflict, duty and personal interest, confidence in jurisdiction and misuse of information (paragraphs 30-33 refer). Questions raised in this case included the information you hold as a solicitor, how you use this information, is it considered confidential, possible damage to the client, loyalty to the client and whether or not the Court should intervene. The case eventually went to the Court of Appeal.
- 7.2 Terry cited a second case of *Billington and Billington (No.2)* [2008] FamCA 409 (6 June 2008), which referred to number 8.03 Family Law rules, that a lawyer cannot act where there are conflicting interests. The case involved a firm of solicitors who acted for the husband. However, a solicitor changed sides but as he had been briefed and given instructions, the husband sought an injunction relief to prevent him acting for the wife. The solicitor was required to agree to 5 undertakings, namely that he not speak to persons in the other firm regarding the husband nor disclose information; not involve himself or view correspondence regarding the husband; not convey any information regarding the husband as a result of his previous employment in the firm. The case went to appeal – the Court examined the solicitor's involvement and public interest actions, paragraph 30, rule #8.03 – need to identify what information really is confidential and continues to be and is relevant. Paragraph 32 – refers to other such cases, and paragraph 35 refers to protection of confidence of former clients.
- 7.3 *Grimwade v Meagher* (1995) 1 VR 446, 452– civil case. Meagher was a prosecutor in a criminal matter which went to the Court of Appeal. Grimwade's conviction was overturned and the Judge was highly critical of the Crown citing the perception of bias against Meagher. The case raises issues of conflict of interest in a non-commercial realm and weighed in the trust and confidence of clients.
- 7.4 Terry noted that the Law Society of NSW has rules which are different to other jurisdictions:
- (i) acceptance of a retainer – establishes a professional relationship with a client and presumes we will act with honesty, confidentiality, diligence and loyalty
  - (ii) confidentiality – not disclose any information without client permission or legal obligation during or after retention of services
  - (iii) acting against former clients – the person may rightly conclude there is a real possibility information may be used to their detriment
- 7.5 Avoiding conflict of interest – (i) obtaining consent – in writing; (ii) if two parties in same firm, loyalty is to both but can't serve two masters; (iii) community perception – injunctive

relief – the Court takes into account what a reasonable person would think/do; (iv) use of conflict registers.

- 7.6** Disciplinary cases – eg *McDonalds Estate v Martin* (1990) 3 SCR 1235, Supreme Court of Canada – probate case where solicitors were acting for various parties. There are three main competing principles involved – (i) maintaining a high level of integrity; (ii) the litigant should have freedom of choice, and (iii) mobility within the profession.
- 7.7** Terry cited the ‘cone of silence’ where an oath by a solicitor in a law firm not to disclose any information in regards to a previous client otherwise placing that lawyer in a conflict of interest with other clients of the same law firm. In the *McDonalds v Martin* case the judge raised the notion of setting up a ‘Chinese Wall’ to effectively screen and prevent communication between the ‘tainted’ lawyer and other members of the firm; and a ‘Cone of Silence’ which is achieved by means of a solemn undertaking by the ‘tainted’ lawyer not to disclose any information.
- 7.8** Proforma written retainer/agreement – no consistent proforma across Units appears to exist, although participants all stated that most use a form of client agreement. Terry stated that he has a signed agreement between solicitors and clients which states their name, the matter, when it should finish (ie when communication ceases) and costs. Solicitors must ensure they obtain informed consent but need to also understand what that means – does the client fully understand the ramifications, how safe is it, is it negligent, is the client protected. The groups are interested in participating in an on-line forum to discuss the issue further.

## **8. Victims of Crime Compensation Matters**

*Presented by Vanessa Lethlean, Central Australian Aboriginal Family Legal Unit, Alice Springs, NT*

- 8.1** Vanessa opened her session with a series of client stories (see Appendix A for copy of her PowerPoint presentation). She felt that representing victims of crime for compensation was a core priority for legal practice, and she is mindful of the public liability insurance need to discharge our duties in advising clients of their potential rights.
- 8.2** There are currently 80 applications for compensation in the NT. The advantages in representing such cases include:
- (i) the need to holistically and comprehensively address client's needs and pick up on all matters
  - (ii) avoid re-victimising or re-traumatising clients
  - (iii) greater opportunity to promote discussion regarding counselling, family violence, and to build rapport
  - (iv) you may get other referrals from other family members
  - (v) recognises that violence is real
  - (vi) the money gives women a level of independence.
- 8.3** Vanessa discussed advocacy work with victims of crime legislation, noting that the Courts are able to seek restitution from offenders. This can cause problems for the victim but the Government is really only interested in cost recovery and see it as a deterrent to offenders. Vanessa asked that where safety is an ongoing risk, that recovery should not be sought and especially as the offenders are usually not pecunious.
- 8.4** Participants noted that the maximum in NSW is \$50,000 – the argument used that sums are kept low to make it easier for victims, which in turn goes against the argument for cost recovery. Vanessa stated that the sums in the NT are now \$7500 - \$40,000 under new legislation.
- 8.5** Participants also noted that often the compensation funds go to other family members not necessarily the victim alone. Vanessa acknowledged this and felt this was a sensitive issue - she recommended that the victims apply for financial counselling particularly if the award is eg \$100,000. Vanessa ensures her clients understand that all discussion between them and the solicitor are strictly confidential, and that monies can be transferred into their own bank account or held for them in the Unit's account. In NSW, if under 18 years of age, the monies automatically go into a trust fund and can only be accessed for educational purposes (this is also the case in W.A).
- 8.6** Vanessa also recommended that solicitors record time limits on file and in diaries and manage these files appropriately. External advice may also be appropriate. Their Unit will be lodging appeal cases and run test cases, as it is currently difficult to determine how decisions are made regarding actual monies paid – ie how is it decided to pay either a low amount on the scale or a higher amount.

## **9. Intervention orders and recent changes to laws relating to family violence – a national perspective**

*Presented by Karen Wilcox, Domestic Clearing House, NSW*

- 9.1** Karen noted that the views expressed in her presentation would be her own and not necessarily reflect those of the Clearing House. Her work in this particular area began in 2008. She has undertaken a review of the Tasmanian Family Violence Act 2006, which she considers to be one of the better pieces of legislation, particularly with regard to protection orders. Since the passage of the Tasmanian legislation there has been a raft of law reforms across Australia.
- 9.2** Protection Orders – NSW Local Court issues 32,000 Apprehended Domestic Violence Orders per year compared to Canada who issue in the hundreds. Civil orders – in NSW police dominate applications, which is not the case in Victoria. Criminal orders contain breach enforcement and bail provisions.
- 9.3** Victoria – their preamble is very comprehensive and recognizes cultural diversity but maintains respect for victims and recognizes the unacceptability of violence. The definition has expanded to include emotional and psychological violence, tormenting behaviour, controlling behaviour and causing fear. It is also an act of family violence if a child has to comfort their mother or clean up after a dispute. Victim safety is a priority and victim safety orders can be issued by Police.
- 9.4** NT – mandatory reporting is in existence and in fact, the NT is the only jurisdiction to have this regulation. Three weeks ago the amendment was passed which states that any adult who becomes aware of serious harm about to be inflicted upon another person, it is now mandatory for that adult to report the matter. This also covers lawyers (only exception is if the lawyer believes the matter has already been reported). The penalty for not reporting is 200 points/units. This follows the Coroner's report of 2006 of the death in custody of an Indigenous woman who had reported domestic violence 29 times but not action had been taken even though her imminent death was suspected.
- 9.5** ACT – a system will begin at the end of March 2009 whereby the respondent is sent a copy of the victim's application and has 7 days to sign and endorse the form. If he does not sign, the application crystallises into a final order. The ACT Domestic Violence Agencies Act 2006 covers information sharing and an integrated response and overrides the privacy Act. The ACT has three types of orders – emergency (short term), interim (Until heard) and final.
- 9.6** Tasmania – PFVO's are final orders and for low risk cases are issued by Police which eliminates Court time. When examining bail, the Court must consider the potential risk to the victim.
- 9.7** NSW – children must be included in orders for adults and this is unpopular with judges who often don't comply. Police apply for the protection orders and there is an exception to the presumption against bail.
- 9.8** W.A – S20 – allows for a cooling off period which has proven popular within Indigenous communities. The Police can apply within 24hrs without the consent of the victim (72 hrs they do need the victim's consent)

- 9.9** Participants were concerned at the extent of police powers – to which Karen responded that some 95percent of police had received domestic violence training.
- 9.10** Karen felt that the 2006 legislative changes had largely been the result of political lobbying and were not based upon best practice or evidence based. The Department had now requested to see all of the studies completed with their evidence and literature reviews before any further decisions were made.
- 9.11** The overseas experience regarding protection orders was quite different. Most countries have them within family law. In the USA, you must have separated from your partner to obtain an order. They have Violence against Women Act with associated resourcing and appropriation bills.
- 9.12** In general – the NT have argued some cases on the basis of emotional abuse alone. In Tasmania the Police and victim are automatically notified if the perpetrator is released on bail (this is the only jurisdiction which does this). Karen will check the varying duration of protection orders from State to State and advise the group.

## **10. Case studies – group sessions**

### ***Participants separated into four groups to discuss a topical case and then share the outcomes with the wider group***

- 10.1** Group One – discussed a case involving trying to obtain a Domestic Violence Order (DVO) when the client will not communicate with the solicitor. The circumstances included hearsay evidence, daily beatings of the woman and a long history of violence against her coupled with Police inaction. The existing DVO was due to expire within a month and attempts were made to speak to the woman's extended family in an effort to get her to speak to the solicitor, Eventually a non-contact DVO was sought, with the Unit taking on the role the Police would not. Subsequently, the perpetrator committed suicide.
- 10.2** Group Two – the case involved FACS and DoCS and challenging them with positive outcomes. Their premature intervention led to withdrawal of Court orders. The FACS allegations were unsubstantiated. Early advocacy was good and included alternative care options which were put to FACS. Another positive aspect was knowing the local FACS workers and where they fitted into the community. A complaint was lodged with the Ombudsman and Children's Commissioner. Comments from participants – CPS are becoming increasingly aggressive in making an assessment report and removing children under order (eg Parenting Supervision Order, Removal Order etc). CPS will take the (long) previous history of a case into account In S.A the Guardianship of Minors Act orders are often done as the first option.
- 10.3** Group Three – the case revolved around culturally appropriate work and sensitivities. Strategies included being aware of the issues and when travelling always take an interpreter. Recognize the diversity of clients and be aware of the location of meetings, eg family members may suddenly turn up, seek neutral surroundings, and be aware of the physical surroundings (eg history of the building). Understand cultural practices and that people's expectation will vary, eg female solicitors cannot speak to some men or look them in the eye. Understand tribal groups and ensure you have contacted the right people to introduce you to the wider community.
- 10.4** Work at their speed of communication and to their agenda and utilise such creative mechanisms as mobile play groups, camps, Sister Day Out, Wombat Pit Cookout. Ensure you work with other agencies – eg solicitor spoke to independent lawyer regarding male ceremonies children needed to go through. As a result, the lawyer decided to travel to the homelands to see and talk about cultural issues with the community, which had a huge positive impact upon them. Ask questions of the agencies on behalf of clients and to ensure the client won't be 'railroaded'. Use relevant elders and community leaders and advocate for more judicial training – judges should sit under trees and talk to the people about whom they make decisions.
- 10.5** Group Four – their case was a family law issue where a mother and child had parenting orders. The father wanted to stay overnight but was a drug user. The solicitor submitted evidence to this effect. The ICL ordered a random urine test on both the mother (who was clear) and the father (showed drug use). The solicitor obtained consent orders without a trial after making it apparent he would be using a doctor to explain the father's test results at trial.

## **11. Final comments and conclusion of workshop**

*Presented by Margaret Beattie, Attorney General's Department*

**11.1** Margaret stated that in the 2008-09 financial year there were two sub programs:

- (i) Early intervention – 13 programs including Relationships Australia (W.A), YMCA (Darwin), Brave Hearts (Cairns) and Family Violence Units (Melbourne)
- (ii) Community Legal Education Workers – 15 workers (13 currently operating) over 4 years and now in its second year of funding. An evaluation will be conducted after the four year period – if it is negative the program will lapse, and if positive it will reoccur.

**11.2** In 2009-10, the Family Violence Program will exist as one program only which will result in the early intervention and CLE worker programs having one budget through the Family Violence Units and the Boards.

**11.3** There will be a review of the operational framework (the last one was in 2006) for new program working agreements. A Working group including Board members and some solicitors will assist in the draft report. The new framework will clearly articulate the various roles of the auspice body, the Coordinator and solicitor. The auspice body has a contract with the Government while the Coordinators act as bridges between staff, the Board of Management and the auspice body. There is a need for a Steering Committee to support family violence issues and to ensure regular interaction with staff.

**11.4** The use of a 'professional friend' concept is being explored as an additional member of the Board of Management to provide professional expertise. This may lead to the Board of Management changing its constitution. Many organisations are not moving quickly enough in terms of the CATSIA Act which has a 30 June 2009 cut-off date. There will not be funding if changes are not made by this date.

**11.5** Reporting requirements will change and the current trial of CLSIS in Melbourne will assist. CLSIS will only provide quantitative data – Canberra will continue to provide qualitative data internally through the internal audit process and mapped against the service standards developed under the new operational framework. The Federal Government has released new requirements to streamline reporting across all agencies. Reporting will be easier and condensed with a data dictionary and more sensible choices through improved definitions and deletion of phrases such as 'occasional service'. It is expected that the new operational framework and reporting requirements will commence on 1 July 2009. Participants will receive 10 hard copies of relevant documents and related emails. All Indigenous reporting will fall under the new reporting requirements leading to greater consistency and clarity.

**11.6** There is also a review of Program Funding Agreements underway with small changes expected to contracts. Kym is currently examining the usefulness of client surveys and the possibility of undertaking stakeholder surveys to gauge performance and client service standards.

**11.7** If complaints are made against an organisation, Margaret's area will visit to assess the situation. If the complaints are serious, Grant Controllers may be brought in to examine organisational policies and procedures and the capacity of the Board to prioritise and report. The Controllers provide initial assistance after undertaking an assessment of the

problems (eg cheque books being left around, private use of agency assets, family being employed instead of experts, business problems, lack of expertise) which may lead to eg governance training and a schedule of follow up visits by the Controller to see how the organisation is progressing. If necessary, the Controller will make further recommendations requiring the Board to implement or if the Controller decides, an administrator may be appointed. Margaret wished to avoid problems escalating or landing in the media.

- 11.8** Participants raised the issue of feeling a lack of control, eg if there is no receptionist available for three days – Margaret responded that this is an issue which should be managed by the Coordinators, and discussed with them in the first instance.
- 11.9** Margaret is currently examining a pilot of a Legal Practice Manager Certificate/Diploma for Coordinators including a module on the multi-functional aspects of our work.
- 11.10** Organisations must apply for funding on an annual basis and it is likely that there will be competitive applications in any one year. The Department makes the assessment as to which is the best preferred service for a particular area.
- 11.11** In 2009-10 Margaret stated they would become increasingly proactive in program management and in assessing performance against service standards, value for taxpayer dollars and expecting Units to operate with staff to these service standards. Feedback letters are currently being sent to all Units (second round) with copies to Coordinators. These should be registered and raised at Board of Management meetings with the expectation of a response by a certain date.
- 11.12** In response to a question regarding intra-office debates, eg over the limits of practice, who would assist with interpreters – Margaret responded that these types of issues should be raised with program Officers (the Coordinators will be able to advise who that is each Unit has an assigned Program Officer).
- 11.13** A question regarding requests from the Board was raised – should these be filtered or come through the Coordinators. Margaret responded by explaining that these should be discussed with the Program Officers and will be fully articulated in the new framework document. Solicitor positions are separate from those of Coordinators – most solicitors are not Indigenous, and as the communities and organisations wanted Indigenous representation they filled the Coordinator roles. The two positions should work as two separate entities but work strongly in collaboration and cooperation. The Coordinator has overall daily responsibility for the operations of the organisation and ensures quarterly reports are finalised and deadlines met.
- 11.14** Responsibility for legal administration, eg payment of FOI requests – Margaret stated that this was the responsibility of the Principal Solicitors.
- 11.15** Legal training – Margaret explained that it was the solicitor’s role to source the training which should be managed through the Coordinators. Each Unit has been allocated \$5000 for staff training and a further \$5000 for debriefing – all Units receive the same amounts.
- 11.16** Participants felt that minimum qualification levels should be set for each role within the Units – Margaret advised that this issue is currently being examined within the context of the new framework. They are also preparing a list of the standard resources each solicitor should have available to them with the possibility of the Department bulk buying these to

avoid duplication and to save costs. Legal resources can be a separate line item in budgets, so solicitors need to put in requests through a submission.

- 11.17** Participants asked who their supervisor was – Margaret clarified that the Coordinators are their daily manager while the CEO of the organisation is the overall manager. The Principal solicitor is the manager of all legal matters while the Coordinators have overarching responsibility for operations, budgets, quarterly reporting.
- 11.18** Definition of a perpetrator – this is being constantly discussed and is usually a case by case issue. Margaret stated that normally the Principal Solicitor would make the final assessment where there is some question.
- 11.19** CLE workers – Margaret discussed the role of the CLE workers – while 15 positions have been funded; only 13 are on the ground thus far. Funding applications for next year are being examined and some positions may be relocated as a result. The expectation is that CLE workers should spend 80-90 percent of their time outside of the office and in the field, eg conducting workshops for the elderly, schools, women’s + men’s groups. Training and materials had been supplied by HREOC but the workers should also function in cooperation with solicitors (who should explain their role and areas of potential cross over).
- 11.20** A workshop for CLE workers will be held in Canberra next week to discuss the materials and content they are delivering and their further needs and concerns. If solicitors feel that something is missing they can raise this with Margaret’s area. Their role is to educate the community and the current review will closely examine where the current positions are located, if these are effective in delivering what is needed, are they out of the office undertaking their roles, and so on. Margaret stated that significant training had been provided for CLE workers and that training and development would continue.
- 11.21** The new operational framework will contain significant changes to recruitment practices and policies, eg including Departmental staff in selection panels. Margaret’s area has prepared selection documentation to assist Units and this has also enabled consistent standards and levels to be established across the Units, eg which Awards are applicable.

*In closing the Workshop, Margaret thanked all participants and presenters for their valuable contributions to the workshop, and wished everyone a safe journey home.*

## ***Appendix A – Evaluation***

In total there were 30 participants at the February 2009 Solicitor’s workshop. One solicitor was not present on the second day. In total 25 evaluations were received.

### **Conference Content**

In this section

- three selected excellent,
- eleven selected very good
- eight selected good, and
- two selected satisfactory,

### **Quality of the presentations**

In this section:

- three participants selected excellent,
- 15 selected very good,
- six selected good, and
- one Satisfactory

### **Aspects of the workshop participants disliked:**

- Domestic Violence Clearing House presenter was taken off topic (Judy O’Rourke)
- Presentation by Domestic Violence Crisis Service would have been better for other FVPLS staff.
- The event was rushed at times
- Content could have had greater legal focus at times.
- Accommodation was not ideal

### **Aspects of the workshop participants liked:**

- Introductory session with Debbie Bargallie helped to relax everyone and develop conversation
- Heavy subject matter covered in a light manner,
- Domestic Violence Clearing House provided good information (both days)
- Good food and accommodation
- Family court presentation
- Many positive comments about presentations by FVPLS solicitors. Very useful.
- Group discussions provided good opportunity to review the event.

Generally participants were satisfied with the Workshop. The positive feedback greatly outweighed the negative.

## ***Appendix B – Victims of Crime Compensation - PowerPoint Presentation***

### **What stories do our client's tell?**

'**Jasmine**' was married Aboriginal way at age 20 and has 3 adult children. Jasmine's husband assaulted her throughout the marriage causing a broken jaw, arm, leg and ribs, multiple lacerations, scars, a ruptured spleen and the death of an in-utero baby. After 25 years of abuse, Jasmine has obtained a Restraining Order.

'**Brigette**' is the mother of a 4 year old boy, recently separated from her Aboriginal way husband as a consequence of his violence towards her and her son. The husbands' family have threatened to assault Brigette if she does not return to her husband. The paternal grandmother has taken the child. Brigette has obtained a Recovery Order.

'**Mary**' is 17. She has been in a promised marriage with an older man for some years. Mary did not consent to the marriage and does not consent to sexual relations with her husband who also physically assaults her. Mary's family are unable to intervene to help her. Mary has not reported the physical assaults or sexual assaults to police, and has been unable to separate from her promised husband or obtain a Restraining Order.

'**Maureen**' is a child who was repeatedly sexually assaulted by a male relative for 8 years. Maureen was exiled from her community when the sexual abuse became public. She was unable to complete her schooling or access culturally appropriate counselling, and is at risk of substance abuse. Maureen received assistance under the Crimes (Victims Assistance) Act.

### **1. Why represent victims of family violence in crimes compensation matters?**

As family violence legal prevention services our primary focus is to provide Indigenous woman, children, and men who are victims of family violence, including sexual abuse, with legal advice and casework assistance, and related services including initial counselling, support, and referral.

In accordance with the Operational Framework, our priority areas of law are family violence restraining orders, sexual assault, child protection, criminal compensation, and family law where the legal matters relates to family violence.

### **2. Representing victims of family violence in crimes compensation matters is a core priority for our legal practices.**

In the Northern Territory there are currently two application processes – judicial applications commenced under the now repealed C(VA) A which require finalisation and where awards are assessed in accordance with common law damages, and administrative applications post 1 July 2007 under the VCAA which are assessed in accordance with a table of scheduled injuries and specified compensable acts or compensable injuries.

CAAFLUAC currently has about 80 applications for crimes compensation – for Indigenous victims of family violence from Alice Springs, Tennant Creek, Ntaria, Papunya and Yuendumu.

Current matters include female child victims' of sexual assault with multiple applications under the old legislative scheme and adult victim's of family violence. Approximately 90 to 95 percent of the applicants at CAAFLU are female, some with historical offences of sexual assault and or family violence which require applications for an extension of time.

### 3. **What benefits flow from representing clients in criminal compensation applications?**

- Having attended a justice, advisory and referral centre for Indigenous victims of family violence the client's legal and potential legal rights are comprehensively addressed by one lawyer in a holistic and multidisciplinary way.
- The client is not required to repeatedly retell their story to different service providers which necessitates revisiting the traumatic events and is retraumatising in and of itself.
- Assuming the client has attended in relation to a one off stand alone matter – A broader ongoing relationship is established between the client and the service provider. This facilitates further and or subsequent requests for assistance from the client in related and or future matters. It also leads to clients' promoting the service to others – friends and family - which assists the service reaches others who may not have otherwise sought legal assistance.
- In a strong, ongoing and respectful relationship there are more opportunities to seek to address a client's related non-legal matters, for example referral to counseling, the impact of family violence upon children, and the benefits of perpetrators attending an Indigenous family violence offenders program.
- Upon finalisation, there is recognition that the family violence, which constitutes an offence, occurred, and the injuries are real. This can be particularly significant where the outcome of criminal proceedings was a not guilty verdict, where criminal proceedings were restricted to one or more specified offences in a context of repeated and ongoing assaults, or the criminal charges were omnibus charges for example maintaining an unlawful sexual relationship which is established with evidence of several offences.
- Upon finalisation, a component of financial assistance is paid to the client. In some instances this can be extremely significant, for example we have had awards of \$100,000.00, many awards of \$25,000.00, many awards between \$25,000.00 and \$100,000.00, and also many below \$25,000.00. The financial independence this provides clients with is occasionally glorious to see – for example a mother for the first time having a 4WD of her own that she could take the children to school in, visit family at a remote community in, and go out and collect bush tucker in – when previously her partner had not permitted her to go anywhere without his permission.

### 4. **The stories of clients inform submissions on policy and law reform**

An example of this is ongoing advocacy at caaflu regarding the level of offender involvement in applications for financial assistance. Under the new administrative scheme **an offender may be/is notified of an award of assistance to an applicant.**

In our experience this level of offender involvement creates a barrier to Indigenous victims of family violence pursuing an award of financial assistance. It may also lead to further violence against a victim and cause some meritorious potential applicants to not apply for an award of financial assistance.

Noting that almost all of our clients are subject to a lack of community support in reporting family violence, have mental injuries as a consequence of the family violence, and, are subject to fear of and or actual recrimination from an offender and or the offenders' extended family members for having reported family violence – we have, and continue to make submissions regarding notification to an offender of an award of assistance.

We have advocated for no notice in specified sexual assault and domestic violence matters where such notice would increase the risk of assault to the applicant, and objective evidence supports the risk of further assault.

**5. We understand the Government is of the view that recovery following notification is a deterrent to further offending – and whilst this position is a prerogative of the Government we question its logicity**

An example of the potential impact of the level of offender involvement is indicated in the following cases.

**Mary** was repeatedly sexually abused over many years. The sexual abuse resulted in a pregnancy and birth of a child. When the abuse became public following police investigation and court proceedings, Mary was ostracized and unable to remain in her home community. Mary has received an award of financial assistance. Notification to the offender of the award to Mary is likely to reignite anger about Mary having reporting the abuse, and the offender's conviction and imprisonment in goal. It will also revictimise Mary, and undermine attempts to restart her life in another community and address trauma.

Another example of the impact of pursuing recovery from the offender is 'Sally's' Story. **Sally** is a minor, 13 years old. Sally was sexually assaulted by 'Peter' who was convicted of one count of sexual intercourse with a child under the age of 16 years, contrary to section 127(1)(a) of the Criminal Code. Prior to the conclusion of court proceedings, Sally was threatened by members of Peter's extended family that she was 'dead meat if he goes to jail'. Sally attends school and lives in a community where she has ongoing contact with members of Peter's extended family. An award of assistance has been accepted by the litigation guardians of Sally, her parents. Of note, if the offender had been unidentified Sally would be entitled to the assistance without the concerns which arise from recovery. Importantly, this family is of the view that relocation is the only answer to safety concerns that would arise from providing notice to the offender.

**6. Managing applications for crimes compensation**

As with any other legal matter time limits must be diarised and stringently observed. At CAAFLU this mean resubmitting files for one month before the time limit expires, seven days before the time limit expires and then the day before the time limit expires. Once court dates are allocated these are entered into the court diary and an appropriate resubmit date is entered. Of interest:

- We obtain (pro bono) legal advice on quantum on complex matters to facilitate in house carriage of complex compensation matters.
- We appeal inadequate and unreasonable awards and are committed to test case litigation to advance our client's interest under the new administrative scheme.
- We strongly recommend (and facilitate) that applicants about to receive significant awards obtain free financial advice before an award is available.

## Appendix C – Workshop Agenda

### Solicitor's Workshop Day 1 – Tuesday 10 March 2009

Time	Session
9:10-9:45	<b>First Session:</b> <b>Margaret Beattie</b> , Director, FVPLS Program Welcome, overview and introduction to the Solicitor's Workshop
9:45-10:45	<b>Second Session:</b> <b>Debbie Bargallie</b> : Participants 30 second introductory spiel
10:45-11:00	<b>Morning Tea</b>
11:00-12:30	<b>Third Session:</b> <b>Judy O'Rourke</b> – Domestic Violence Clearing House Finding and Accessing information on Indigenous specific issues relating to family violence. Utilising the Domestic Violence Clearing House research facilities.
12:30-13:30	<b>Lunch</b>
13:30-15:00	<b>Fourth Session:</b> <b>Mirjana Wilson</b> - Domestic Violence Crisis Service, family violence, clients in crisis and working with support networks to achieve results
15:00-15:15	<b>Afternoon Tea</b>
15:15-16:45	<b>Fifth Session:</b> <b>Mirjana Wilson</b> - continued - Domestic Violence Crisis Service
16:45-17:00	<b>Sixth Session:</b> Review and close of the day's activities
6:00	Workshop Dinner Hotel Heritage Restaurant, Ground Floor

### Solicitor's Workshop Day 2 – Wednesday – 11 March 2009

Time	Session
9:00-9:15	Introduction to Day 2 and overview of the previous day and preview of the issues that will be covered today.
9:15-10:45	<b>First Session:</b> <b>Angela Filippello</b> and <b>Leisha Lister</b> - Presentation by the Family Court of Australia
10:45-11:00	<b>Morning Tea</b>
11:00-12:30	<b>Second Session:</b> <b>Vanessa Lethlean</b> - Central Australian Aboriginal Family Legal Unit, Alice Springs NT. Victims of crime compensation matters <b>Terrance Duff</b> - Thiyama-li Family Violence Prevention Legal Service – Moree NSW. Managing potential conflicts of interest
12:30-13:30	<b>Lunch</b>
13:30-15:00	<b>Third Session:</b> <b>Karen Wilcox</b> - Domestic Violence Clearing House Intervention orders and recent changes to laws relating to family violence- a National perspective
15:00-15:15	<b>Afternoon Tea</b>
15:15-16:15	<b>Forth Session</b> Discussion and presentation session – Solicitors divided into 5 groups. Review of case studies, present one to the group for a 5 minute discussion
16:15-17:30	<b>Conclusion of Workshop:</b> Group discussion including: Future directions, possible content for the next Solicitor's workshop. Further information that may be required on topics covered in the workshop. Looking towards the future, Issues that could be covered in the next FVPLS Solicitors Workshop

## *Appendix D – List of Workshop Participants*

Name	FVPLS
Bree Teh	Katherine
Victoria Whitelaw	Melbourne
Marylin Wright	NPY
Peter Dickerson	Tennant Creek
Vanessa Lethlean	Alice Springs
Olivia Henderson	Alice Springs
Rebecca McIlveen	Broken Hill
Bartlomiej Gorwa	Broken Hill
Sara Crane	Bourke and Walgett
Natalie Neumann	Bourke and Walgett
Marcia Sullivan	Mt Isa
Hemal Perera	Forbes
Lyndal Gowland	Forbes
Deirdre Berge	Forbes
Mark Forth	Port Augusta
Leslie Kirkwood	Fitzroy Crossing
Amanda Spalding	Port Lincoln
Geoffrey Clarke	Kempsey
Ruth Layton	Albany
Terrance Duff	Moree
Sonya McIntosh	Roma
Carina “Mary” Martin	Kalgoorlie
Kyle Martin	Kununurra
Deborah Brackenreg	Darwin
George Yip	Darwin
Juergen Kaehne	Cairns
Annemarie McDonell	Townsville
Mark Colwell	Broome
Tom Allen	Broome
Ross Blenkinsop	Geraldton
Nina dowdec	Darwin