



10 April 2009

Attn: The Manager
Violence Prevention Co-ordination Unit
Office for Women's Policy
Department of Premier and Cabinet
GPO Box 5341
Sydney NSW 2001

By email: vcpu@dpc.nsw.gov.au

Dear Manager,

Combined Community Legal Centres Group (NSW) Inc comments on the development of the NSW Domestic and Family Violence Strategic Framework

The Combined Community Legal Centres Group (NSW) Inc (CCLCG) is the peak body for 39 community legal centres across NSW. Our members provide a variety of free legal services to disadvantaged clients and communities across the State including legal advice, casework, referral, community legal education, resources and law reform activities. A significant proportion of our work is to provide specific assistance and support to those affected by domestic violence including legal advice and representation, as well as assistance with family law, and victims' compensation. Our members also include generalist centres, as well as a range of specialist legal services such as the Women's Legal Services NSW (incorporating the Domestic Violence Advocacy Service and Indigenous Women's Program) and Wirringa Baiya Aboriginal Women's Legal Centre. This submission has been prepared by Women's Legal Services NSW with contributions from Wirringa Baiya Aboriginal Women's Legal Service and the Inner City Legal Centre, on behalf of the Domestic Violence / Victims Compensation Committee of the CCLCG.

CCLCG welcomes the opportunity to contribute to the development of a Strategic Framework for Domestic and Family Violence for NSW (hereafter referred to as the "Strategic Framework"). We strongly support the development of a co-ordinated approach to address domestic and family violence. While there has been a range of attempts in NSW to develop a co-ordinated approach, the ability to achieve this has been hampered by limited resources, the lack of a coherent strategy to address violence against women and an emphasis on time limited project funding. This means the response to those who have experienced domestic violence remains ad hoc and inconsistent across regions and across agencies.

Combined
Community
Legal Centres'
Group (NSW) Inc
www.nswclc.org.au

c17, 99 Jones Street
Ultimo NSW 2007
Tel: 02 9212 7333
Fax: 02 9212 7332
ABN: 22149415148

We have structured this submission as follows:

1. Key principles that should inform the Strategic Framework
2. Priority areas for improvement that should be addressed in the Strategic Framework
3. Improving assistance to particular groups
4. Developing a research agenda

We have set out below the key principles that we recommend should underpin the development of an effective strategic framework. However, we emphasise that any such framework should have at its core the elimination of violence against women, not merely to respond to, or reduce, domestic and family violence.

1. What are the key principles that should guide the strategic framework on domestic and family violence in NSW?

Key recommendation 1:

CCLCG recommends that any strategic framework for responding to domestic and family violence should be guided by a number of key principles. These are, that the Strategic Framework should:

- be based on a human rights approach
- develop a sustainable, co-ordinated and integrated approach
- have a client-focused approach to service provision
- be adequately resourced and supported
- be informed by international and local good practice
- include quantifiable targets and assign responsibilities
- involve active consultation with Aboriginal women and services, in rural and remote as well as metropolitan areas
- have as a central focus the specific needs of those groups in the community who experience particular disadvantage
- incorporate a system for ongoing accountability and improvement.

(a) The Strategic Framework should be based on a human rights approach

A human rights approach to challenging violence against women has at its core the recognition that the right to safety and the right to live free from violence are fundamental human rights. There is an onus on State governments such as New South Wales to ensure that human rights are protected and promoted, including via service provision, laws and education.

The framework also needs to be based on an understanding of the gendered nature of violence against women. Violence against women is predominately perpetrated by men and is a means of maintaining power and control over women¹. The objects of the NSW *Crimes (Domestic Violence and Personal Violence) Act 2007* (NSW) recognises that this is the case.

¹ Mouzos, J and Makkai, T. (2004), 'Women's Experiences of Male Violence: Findings from the Australian Component of the International Violence Against Women Survey IVAWS', *Research and Public Policy Series No. 56*, Australian Institute of Criminology, Canberra.

(b) The Strategic Framework should provide for a sustainable, co-ordinated and integrated approach

An integrated response is essential. No one department, sector or even level of government is solely responsible for this issue. However all have a role in promoting the right of all to live free of violence and working to ensure that occurs. The Victorian experience² in developing an integrated response to domestic violence demonstrates that the key elements are a high level of leadership, a commitment by both government departments and non-government agencies to work together, and the resources to enable this to occur.

Leadership and coordination for the strategic framework should come from a Ministerial committee which should include the Ministers for Women, Police, Community Services, Health, Education, Housing, Ageing and Disability and the Attorney General. Adequately resourced and with a high level of commitment, such a committee could ensure that the Ministers and their departments work together and with joint priorities to ensure the safety of those who have experienced domestic violence.

Key recommendation 2:

CCLCG recommends that a ministerial level committee be established to ensure leadership and co-ordination of the implementation and operation of the Strategic Framework.

(c) The Strategic Framework should have a client-focused approach to service provision

In order for the Strategic Framework to avoid repeating the deficiencies in the current system, it needs to take a client focused approach. Those who have experienced domestic violence and seek assistance may have contact with a range of government and non-government services to meet particular needs, such as the police, the courts, Centrelink, refuges or Department of Housing regarding more permanent accommodation, and a range of health services. It is also likely that they will need assistance with ongoing legal needs – for example in relation to family law, immigration status, debt, victims compensation, and other issues related to the experience of domestic violence. This involves contact with a diverse range of systems and organisations, many of whom do not work together well from the perspective of those who have experienced violence.

Those who have experienced violence are at a real risk of failing to get their needs met and of further victimization. Historically, there has been a tendency in NSW for government departments to ‘silo’ and plan in isolation. This results in systems that primarily meet the needs of the department rather than those of the community members seeking assistance. A client-focused approach challenges this by shifting the focus to achieving outcomes for clients and the community, rather than for a department or organization.

The experience in other jurisdictions is that the development of an integrated approach to domestic violence requires the development of protocols for the sharing of information between departments and organisations. CCLCG recommends that clear guidelines be

² Office of Women’s Policy, Victoria, (2005) *Reforming the Family Violence System in Victoria: Report of the Statewide Steering Committee to Reduce Family Violence*, Melbourne.

developed for the sharing of information between government departments and NGOs that are based on the principle that the use of the information is to be beneficial to the client. Concerns about privacy should be addressed and where possible service users should have control over the disclosure of information about themselves.

As part of a client focused approach, CCLCG recommends that the strategic framework should support the establishment of a network of integrated and holistic services across NSW for women who have experienced domestic violence. The function of these services is to ensure that women who are experiencing violence will be able to get both immediate and ongoing assistance. Some areas in NSW have services (including Women's Domestic Violence Court Advocacy Services - WDVCS) that fulfil this function but most are under-resourced and currently spend a lot of their time assisting women to negotiate and manage failures in the systems tasked with protecting them. Also most services are only able to provide very short-term assistance. We refer you to section 2(c) for further discussion of how these services should be structured.

(d) The Strategic Framework should be adequately resourced including the provision of legal services

Adequate resourcing of the Strategic Framework is essential and should involve resourcing at two levels. Firstly, the resourcing of the infrastructure needed to develop an integrated response to domestic violence. Secondly, the funding of substantive services needs to be addressed (generally, increased) as many existing services involved in delivering services to women who have experienced violence are chronically under funded.

It is essential to adequately fund the 'co-ordinating' infrastructure needed for an integrated approach. Based on international good practice, the Australian Domestic and Family Violence Clearinghouse recommends a benchmark for this of \$50,000 per 10,000 people³. The Victorian strategy allocated \$40.6 million over a three-year period to implement their development of an integrated domestic violence strategy⁴. Similar levels of funding are likely to be required in NSW. The Discussion Paper identifies that the annual cost to the NSW economy of domestic violence is approximately \$2.8 billion⁵. Therefore it would be a false economy to not resource the strategy adequately.

The funding of substantive services also needs to be addressed. This includes legal services, refuges, counselling and health services to enable those who have experienced violence to access services when needed. Those who have experienced domestic violence also have a range of immediate and ongoing legal needs which, if not addressed, can serve to prevent them from leaving situations of violence or place them at further risk of victimization. See comments in section 2(c) regarding access to legal assistance.

³ Australian Domestic and Family Violence Clearinghouse, (2008) *Submission to the National Plan of Action to Prevent Violence Against Women*, Sydney at page 3.

⁴ Office of Women's Policy, Victoria, (2006) *A New Approach to Family Violence. Frequently Asked Questions: Family violence funding announcement*, Melbourne.

⁵ Office for Women's Policy, New South Wales (2008) *Discussion Paper on NSW Domestic and Family Violence Strategic Framework*, Sydney at page 63.

(e) The Strategic Framework should be informed by international and local good practice

The Strategic Framework should be developed with reference to both international and local good practice. In relation to international good practice we refer to Amnesty International's document '*Setting the Standard*'⁶ which describes good practice standards for implementing a human rights approach to the elimination of violence against women. While this document refers to the development of a National Plan of Action, the principles it articulates are equally applicable to a Strategic Framework at the state level. Amnesty International argues that to work to eliminate violence against women, any strategy should be structural, strategic and sustained, and should be focused on prevention, provision and prosecution. CCLCG supports this approach.

(f) The Strategic Framework should include quantifiable targets and assign responsibilities

The Strategic Framework should set targets to be achieved within specific timeframes. These targets should address both short-term and long-term goals, and could be used as indicators for measuring progress. Ministers, departments and services responsible for reaching targets should be clearly identified in the Strategic Framework and performance should be monitored by an independent body. Progress reports should be provided regularly to Parliament and released publicly.

Targets could be set for the reduction of domestic homicides, the rates of homelessness for women and children due to domestic violence, and the recidivism of domestic violence offenders. Targets could also be set for an increase in the numbers of women and children remaining safely in the family home when the violent perpetrator leaves, the rate of reporting for domestic violence and sexual assault, the rate that women and children subjected to violence access health care, support and legal services, and the rate of successful prosecution of perpetrators.

(g) The Strategic Framework should involve consultation with Aboriginal women and services, in rural and remote as well as metropolitan areas

Indigenous women are disproportionately affected by domestic violence. In comparison to non-Indigenous women, they are 10 times more likely to die due to assault and 35 times more likely to be admitted to hospital for family violence related injuries.⁷ Aboriginal women who are victims of violence (including sexual assault) face many additional barriers to accessing assistance. For this reason, it is important that the Office for Women consults widely with Aboriginal women and Aboriginal services for victims of violence in rural and remote as well as metropolitan areas.

⁶ Amnesty International Australia (2008) *Setting the Standard: International Good Practice to inform an Australian National Plan of Action to Eliminate Violence Against Women*, Sydney.

⁷ Al-Yaman, F. Van Doeland, M. and Wallis M, (2006) *Family Violence Among Aboriginal and Torres Strait Islander Peoples*, Australian Institute of Health and Welfare, Canberra.

In particular, the Strategic Framework should provide for better resourcing of, and improved access to, legal and other services for Aboriginal women. In our experience, Aboriginal women will only access a service once a relationship of trust has developed between that service and the Aboriginal community. The disadvantage, discrimination, dispossession, the stolen generations and poor experiences of Aboriginal people with the police, courts, Department of Community Services and legal services in the past, continue today for many Aboriginal people, particularly Aboriginal women. See section 3(a) for further comment.

(h) The Strategic Framework should support the development of inclusive and accessible services

The Strategic Framework needs to focus on ensuring that services are accessible to those groups in the community that face particular disadvantage and isolation. Many existing services are not used by certain groups at the rates that should be expected including women with disabilities, older women, women from CALD communities, women from recently arrived and refugee communities, women in same sex relationships, transgender women and intersex women. The Strategic Framework needs to ensure that issues related to access are addressed at the planning stage and not as an 'add on' and should involve active consultation with these groups.

(i) The Strategic Framework should incorporate a system for ongoing accountability and improvement

The Strategic Framework should establish a process for ongoing systemic improvement. This is in addition to measuring progress against targets and should focus on identifying systemic problems in the responses of government departments and other organizations to domestic violence.

Part of this should be a process to examine domestic violence related homicides. The NSW government recently announced that it will fund a body to review domestic violence related deaths for the past five years. While this is to be commended, there is need to establish a process for examining the circumstances and systemic failures involved in any future deaths that may occur as a result of domestic violence.

Key Recommendation 3:

CCLCG recommends the establishment of a domestic violence deaths review panel to investigate future deaths in addition to the review of the deaths that have occurred in the last 5 years.

2. Priority areas for improvement that should be addressed by the strategic framework on domestic and family violence in NSW?

The development of a Strategic Framework for domestic and family violence provides an opportunity for the State government to address a range of entrenched problems in the existing system.

(a) Issues with the Police response to domestic violence

While the NSW Police have introduced policies and procedures to address many of the concerns that were raised in the 2006 NSW Ombudsman's report⁸, there continues to be problems with police practice. The Strategic Framework must directly address these as a priority. It is our experience that many women who have experienced domestic violence receive negative responses from the police, which is a significant disincentive to future reporting that in turn places these women at further risk.

There is a lack of consistency in response to reports of domestic violence by police between and within local area commands. This includes police failure to act on reports of violence, failure to apply for Apprehended Domestic Violence Orders (ADVOs) and the failure to charge offenders when charges would have been indicated by policy and the legislation. There are also repeated failures to act on reported breaches of ADVOs, delays in responding to incidents and inadequate victim follow up.

We have ongoing concerns with police taking out ADVOs on behalf of male partners against women defendants where there has been a history of domestic violence against the woman from those partners. In these circumstances the police risk becoming party to the ongoing intimidation of the woman through the justice system. These situations usually have their origin in the inability of the police to adequately assess which party is most at risk. This should be addressed by police receiving ongoing training on domestic violence issues and the development of a "primary aggressor" policy.

The ability of police to gather evidence and obtain comprehensive statements from women in relation to domestic violence varies greatly. There are many reasons for this. For example, there may be issues with the police not utilizing interpreters when needed and making inappropriate cultural assumptions. At a broader level, the police preparation of briefs of evidence for criminal prosecutions and ADVO applications are also of variable quality. The outcome is that there is a failure to properly put the situation of a victim to the court, which can lead in turn to a response that underestimates the risk that the victim faces.

There also continues to be a poor relationship between Aboriginal communities and the police, which greatly inhibits Aboriginal women's willingness to report domestic violence. Our Aboriginal clients often complain of poor responses when they actually do report domestic violence to police. While we submit that there has been an improvement in relationships with the Aboriginal community in some local area commands the over-all relationship continues to be poor. Any improvement in relationships, when it comes to the issue of domestic violence, is often attributed to the work of individual officers, mostly committed Domestic Violence Liaison Officers (DVLOs), as opposed to an over-all change in attitude across the command.

⁸ NSW Ombudsman (2006) *Domestic Violence: Improving Police Practice*, Sydney.

Aboriginal communities have been consulted numerous times about what the issues are, and what needs to be done, to improve the relationship between police and Aboriginal communities. We recommend that the government needs to implement the recommendations stated in the reports it has commissioned. These reports include:

- “*Domestic Violence: improving police practice*” (2006) see pages 59 to 69.⁹
- “*Working with Aboriginal Communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006)*” (April 2005)¹⁰
- “*Breaking the Silence: Creating the Future*” (2006)¹¹, in which the Aboriginal Child Sexual Assault Taskforce considered the barriers to police addressing child sexual assault and made a number of recommendations to reduce or remove these barriers (see pages 149 to 158).

Many of the issues outlined above are perpetuated by the inadequate allocation of resources to, and within, the police for responding to domestic violence. This impacts on the ability of the NSW police to adequately monitor the practice of general duties officers and to create real cultural change to improve their response to domestic violence.

There is a need for proper supervision of police practice in response to domestic violence. At the local area command level, 123 DVLOs (some of whom are part time) across the State perform a large part of the supervisory function. Even with the 25 new DVLO positions promised for 2009/2010, this level of staffing is nowhere near international good practice. In comparison, The Metropolitan Police covering the Greater London area (with a population of 4 million people in a very small area), has over 500 police officers specifically tasked with investigating and responding to domestic violence backed up by a comprehensive accountability regime for their equivalent of general duties officers.¹²

There is also a need to put in place tools and processes which raise the accountability of general duties officers. In several other jurisdictions¹³, work has been put into the development of assessment tools for police and other organisations to improve their ability to proactively protect victims of domestic violence. Domestic violence is characterized by a pattern of abusive behaviour and violence. Risk needs to be assessed, and responses provided with an understanding of this pattern. Appropriate assessment tools can support officers in focusing on this pattern of abusive behaviour in its full context.

⁹ See note 8.

¹⁰ NSW Ombudsman, (2005) *Special Report to Parliament: Working with Local Aboriginal Communities: Audit of the Implementation of the NSW Police Aboriginal Strategic Direction (2003-2006)*, Sydney.

¹¹ NSW Aboriginal Child Sexual Assault Taskforce. (2006). *Breaking the silence: Creating the future. Addressing child sexual assault in Aboriginal communities in NSW*. NSW Attorney-General's Department, Sydney.

¹² Campbell, G. (A/Detective Superintendent) Metropolitan Police Service UK *Working Together for a Safer London*, Presentation to Better Policing, Better Outcomes: Changing Police Culture to prevent domestic violence and homicide Forum, 9 December 2009, Australian Domestic and Family Violence Clearinghouse, Sydney.

¹³ See note 12.

Key Recommendations:

4. CCLCG recommends greater resourcing for the police to respond effectively to domestic and family violence including increasing the availability of DVLOs
5. CCLCG recommends that the NSW Police develop a means for uniform assessment of risk and police response to guide and monitor the use of police discretion in responding to victims of domestic violence and that this should be informed by international best practice.

(b) Response of the courts to domestic violence

The Strategic Framework will need to function to improve practices in the Local Courts. A range of issues arise regularly which need to be addressed, including:

- inconsistent responses by Magistrates to applications for ADVOs
- inconsistent responses by court staff to those seeking to make private ADVO applications
- reduced chamber registrar availability in many courts
- Magistrates effectively insisting that women negotiate parenting plans within the process of getting an ADVO
- failure by magistrates to exercise their power to vary parenting orders to support the ADVO and a victim's safety.

The effective imposition of parenting plans on women with children who are in need of protection through an ADVO is particularly serious. Many magistrates will require the applicant to negotiate parenting arrangements as part of the process of making orders. This appears to have its origin in the reluctance of magistrates to deny time spent with children to defendants. It is highly stressful and potentially dangerous for applicants to be put in this position. It would often be more appropriate for magistrates to recommend that the parents use the family law processes that have been established to develop appropriate arrangements rather than forcing an 'agreement' at the local court. In addition, there is reluctance by magistrates to use their powers under s68R of the *Family Law Act 1975* (Cth) to vary parenting orders on the making of an ADVO.

There has also been discussion of the role of specialist domestic violence courts. CCLCG is of the view that there should be the development of a specialist jurisdiction within the Local Court to respond appropriately to domestic violence. This would require magistrates with particular training and skills. It would also require the development of processes and court guidelines for the conduct of matters that ensure that matters are dealt with quickly and in a way that acknowledges the seriousness of domestic and family violence. There is a need to ensure that these types of court services are available across the state and in rural & remote areas.

Currently, in many rural and remote areas, courts lack even basic facilities such as a safe room for victims of domestic violence or even a private room for victims to instruct their solicitors. This acts as a significant deterrent to the victims of domestic violence in attending the court in associated criminal or ADVO matters. As the victim is generally the key witness

in these proceedings, this frequently results in the unsuccessful prosecution of the criminal matter, and the failure or withdrawal of the ADVO application.

Key Recommendations:

6. CCLCG recommends a program of ongoing judicial education about domestic violence, the impact of violence and the role of the courts in providing protection to victims and children.

7. CCLCG recommends that guidelines be developed for judicial responses to the overlap between domestic and family violence, family law and child protection for the Local Courts.

(c) Improving Access to legal assistance and support services

Access to legal assistance is crucial for women who have experienced domestic violence and must be improved. Those who have experienced domestic violence also have a range of immediate and ongoing legal needs which, if not addressed, can serve to prevent them from leaving situations of violence or place them at further risk of victimization. These legal needs arise both at the time of initial disclosure of domestic violence and in the post separation period. In the current system, although there may be a lot of information available about people's legal rights and entitlements, the major gap is in people's ability to get actual assistance or representation to access their legal rights.

The current provision of accessible legal assistance across the State to those experiencing domestic violence is at best poor. The reason for this is the chronic under funding of accessible legal services such as community legal centres in the context of a significant increase in demand. For example the number of domestic violence matters dealt with by community legal centres in NSW increased from 3,094 matters in 2004 to 4,480 matters in 2007. This is an increase of just under 45% for this period¹⁴.

The funding of specialist legal services for those who have experienced domestic violence is also inadequate. The Domestic Violence Advocacy Service has not received any additional funding apart from CPI increases since its commencement despite increased demand on its services. The NSW government recently announced some expansion in the Women's Domestic Violence Court Advocacy Schemes funded through Legal Aid, however these services focus on the immediate needs of women seeking ADVOs and are still very limited in what they can provide outside of that. It is essential that the provision of legal services to women experiencing family violence be addressed through the development of the Strategic Framework.

The post-separation period is one of the most dangerous times for women victims of domestic violence and affordable or free legal services are critical to keeping women safe. There are a

¹⁴ Law and Justice Foundation of NSW, *Data Digest Online (DDO) - CLC Legal Matters Trends Report*, 27 February 2009. Note: 2008 data for NSW Community Legal Centres was not available at the time this report was generated. Produced with the permission of the Law and Justice Foundation and the Combined Community Legal Centres Group (NSW) Inc. *This data is not for further distribution except by permission of these two organisations.*

number of particular areas of concern related to the provision of legal services that we would like to comment on:

Family Law

Access to domestic violence legal services is a particular issue for women who are involved in family law proceedings and do not meet the Legal Aid means test, either because of their assets – which may not be accessible to them – or their income. As mediation may not be appropriate for victims of domestic violence, and as high conflict relationships are more likely to lead to family law litigation, victims of violence will be disproportionately represented in family law litigation.

The cost of family law litigation is another barrier to victims of domestic violence paying for a private lawyer to represent them in an ADVO hearing. Women who are representing themselves in the family court often have very little time or inclination to go on to represent themselves in further court proceedings. The family law process can be used by perpetrators to continue committing acts of violence and intimidation against their former partners.

The legal aid means test should be abolished for women who are victims of domestic violence in ADVO or ancillary matters including family law parenting matters.

Private ADVO matters

There are limited legal services available to women seeking private ADVOs. In NSW, the Domestic Violence Solicitor Scheme operates in some, but not all, courts to assist women at the mention stage. However, means testing removes support for women just as they reach the most complex and arguably most crucial time for representation in the ADVO process: the hearing.

There is limited value in supporting an applicant through court mentions if she is not prepared or is unable to self represent at the hearing, or if she loses a hearing which she may have otherwise won with legal representation. Even if an applicant successfully represents herself at a hearing, the process can place unnecessary stress and trauma on someone who is already a victim of violence. Having to rely on self or pro bono representation to secure protection against violence undermines the efficacy of the legal aid system, which should prioritise such human rights issues.

Domestic Violence and Immigration law

Women who have an insecure immigration status in Australia and are subject to domestic violence are particularly vulnerable. This includes women on temporary spouse visas, fiancé visas, secondary applicants on student visas, and secondary applicants on temporary work visas. Many women in this situation are not aware of their rights or of support services. These women may also face significant barriers to getting assistance due to their recent arrival and / or language issues. Some victims of domestic violence who have temporary residence (or are “unlawful non-citizens”) feel “trapped” in their domestic situation because they cannot return to their countries of origin safely following separation from their partner, and/or may face separation from an Australian-citizen child if they leave their partner and Australia. Attention should be paid to expanding the range of options for these women for support as they are often unable to access income support and are highly vulnerable to exploitation. There are

limited options for assistance with this. Specialist services such as the Immigration Advice and Rights Centre and the Domestic Violence Team at Immigrant Women's Speakout Association are under-resourced and overworked.

There are a range of issues that directly affect women who are experiencing domestic violence and are not Australian citizens or permanent residents. While we recognize that the State government does not have jurisdiction in relation to Australia's immigration laws, we recommend that as part of the Strategic Framework representations should be made to the federal government to improve the situation of women on temporary visas who are subject to domestic violence in Australia. Area of concern include:

- the domestic and family violence provision (safeguards) in immigration law, only apply to victims of domestic / family violence who hold or apply for *certain* types of visas. These provisions should be extended to other visa subclasses.
- the requirement, under the domestic violence provisions, that the perpetrator of the violence be the (former) visa sponsor. This is too restrictive: the provisions should cover circumstances where other family members are the perpetrators but the sponsor is facilitating/ encouraging the violent conduct.
- the requirement that a fiancé visa holder has married the perpetrator (visa sponsor) in order to be eligible for consideration under the domestic violence provision. This requirement should be removed.

There is a further issue relating to the evidence of domestic violence which can be provided to the Department of Immigration. One acceptable form of evidence is via statutory declarations (using Form 1040) provided by those designated as 'competent persons' in the *Migration Act*. We have concerns regarding the general quality of the statutory declarations provided by some 'competent persons' and the reluctance of some 'competent persons' to make a 1040 declaration. The NSW government can have a direct role in improving this as most 'competent persons' that will be approached to write statutory declarations for women on spouse visas are health and allied professionals. These are likely to be staff of hospitals, community health centres, Department of Community Services staff, and staff of refuges and other domestic violence support services. For many women on temporary visas, subject to violence, the ability to obtain a Form 1040 statutory declaration and the quality of that declaration can be key factors in approving their permanent residency under the domestic violence provision. As such, the Strategic Framework should promote awareness by relevant professionals that the preparation of these declarations is part of normal quality advocacy for a woman experiencing domestic violence.

Provision of support services

Meeting the legal needs of those who have experienced violence does not occur in isolation from their other needs for assistance. There are also significant problems with access to counselling and support services. Long waiting lists in most regions across the State make it almost impossible for women to access more ongoing assistance for themselves and their children. In regional, rural and remote areas this is a significant issue as the services that may exist often only provide services to particular sections of the population. For example, Aboriginal women in rural and remote areas have very few counselling options available to them.

There is also a need to ensure that services prioritise their accessibility to women who have experienced domestic violence. One of the barriers to women seeking assistance in many areas is that there is no service that clearly identifies domestic violence as an issue. In this case they are left to seek assistance from a range of generalist (usually health) services. As part of a client focused approach, CCLCG recommends that the strategic framework should support the establishment of a network of integrated and holistic services across NSW for women who have experienced domestic violence. CCLCG has already made this recommendation to Legal Aid as part of their review of services to people who have experienced domestic violence.

We recommend that these services should be available across the State and should:

- be responsible for a geographic area based on local courts, police jurisdictions or geographical access;
- have a focus on accessibility;
- work in conjunction with the courts and police in that area;
- meet domestic violence victims' support and legal representation needs throughout the legal process, including ADVO hearings;
- be able to assist women to get income support, accommodation, assistance for their children, and counselling.
- be able to provide legal assistance for other related matters such as family law.
- be able to refer to alternative services in cases of conflict of interest;
- undertake community development and education work at a local level;
- contribute to law reform and policy work from a grounding in practice.

Key Recommendations:

8. CCLCG recommends that the legal aid means test should be abolished for women who are victims of domestic violence in ADVO or ancillary matters including family law parenting matters.

9. CCLCG recommends the establishment of regionally based holistic domestic violence services across the State offering ongoing legal and other assistance.

(d) Victims Compensation

The NSW Attorney General has recently announced a proposal to 'streamline' the process for applying for victim's compensation. There is no clarity at the moment about what exactly is being recommended. A number of changes have been flagged including changes that will limit an applicant's ability to have legal assistance with preparing the application, imposing limits on out-of-time applications for victims of domestic violence and /or sexual assault and limiting applications for "related acts".

It is our experience that applications for victim's compensation are rarely straightforward, especially for clients who have experienced domestic violence, sexual assault and child sexual assault. These types of criminal violence, by their very nature, are complicated, hidden and messy. Victims may also be able to make more than one claim for unrelated acts of violence

and this requires considerable analysis of the facts and legislative provisions to determine how many claims applicants may be entitled to make.

Further many of our clients experience considerable barriers to accessing their legal entitlements and rights, because:

- due to the nature of the violence they have suffered, they are often highly traumatised, which impairs their ability to communicate effectively and accurately, without significant time and support;
- they are Aboriginal and for cultural and historical reasons are reluctant to divulge details of abuse and will only do so if there is a relationship based on trust and absolute confidentiality;
- they are from culturally and linguistically diverse backgrounds where there are significant language and cultural barriers to overcome in gaining comprehensive and accurate instructions;
- they have physical, intellectual and psychiatric disabilities which hamper their ability to provide detailed instructions about their history of violence without significant time and support;
- they have low-rates of literacy;
- they have out-of-time applications, and / or
- they may have multiple applications relating to various acts of violence and / or multiple offenders.

Key Recommendation 10:

CCLCG is very concerned about the proposal to 'streamline' the victim's compensation process and recommends that the potential impact of any proposed changes to the victims compensation scheme be assessed through the Strategic Framework to ensure that they do not disadvantage victims of domestic violence and sexual assault.

3. Improving the response of the system to women who are most at risk of not getting assistance

There is no doubt that a system that gets it right for the most disadvantaged and those who are most likely to experience barriers in accessing services and assistance, will work for the majority of the population. Therefore the Strategic Framework needs to directly address the issues of those groups in the community most at risk of systemic failures.

(a) Aboriginal Women

Aboriginal women are significantly over-represented as victims of domestic violence, therefore it is essential that the strategic framework addresses the particular systemic issues faced by Aboriginal women. At the federal level, it has been recommended that government create a national-level body to undertake research, build capacity and drive policy efforts to

end violence against Aboriginal women.¹⁵ While we acknowledge that the Federal Government is in the process of creating a national Indigenous law and justice advisory body we support the call for a body that is solely focused on the issue of violence against Aboriginal women. We submit that if the Federal Government fails to establish a national body solely focused on ending violence against Aboriginal women, then the New South Wales government should lead the way by establishing a state-level body to undertake such responsibilities.

There is also a need for properly funded and resourced holistic services if Aboriginal women and children who are victims of violence are able to be free of violence and live in safety. It is not enough to focus on providing a service in relation to one aspect of the situation for an Aboriginal woman who is a victim of violence.

It needs to be acknowledged, that in relation to Aboriginal women in particular, building trust by services can take a long time and it is essential that local Aboriginal women be employed in services to engage with and support the clients. Any funding of services (for example, refuges, specialist violence services, family support, counselling and legal) must be long term and not done in a piece-meal fashion with the need to constantly apply for new funding every 6 to 12 months. Therefore, we recommend that as part of the Strategy, a dedicated stream of funding be established to build the capacity of established Aboriginal services that work with Aboriginal women experiencing domestic violence to better respond to increased demands for services and support, and ensure long-term sustainability of culturally appropriate projects that support Aboriginal women who experience domestic violence, or seek to prevent domestic violence.

Culturally appropriate legal support and education is a key factor in encouraging Aboriginal women to report domestic violence and follow through with criminal court proceedings, as well as to seek court orders to protect themselves and their children, such as ADVOs or parenting orders. This legal support needs to have an emphasis on representation and advocacy.

The range of Aboriginal specific legal options for women are still very limited. While there are two state-wide Aboriginal women specific legal services, namely Wirringa Baiya Aboriginal Women's Legal Centre and the Indigenous Women's Program of Women's Legal Services, which focus on assisting Aboriginal women who have experienced domestic violence, both are greatly under-resourced to perform the vast work that needs to be done. There are also seven federally funded Family Violence Prevention Legal Services in some regional communities in the state but there are significant parts of the NSW where there is no such service. For example, there is no family violence prevention legal service in metropolitan Sydney, despite it being the home of the largest Aboriginal communities in New South Wales, if not Australia. A small number of community legal centres have Aboriginal access workers who seek to improve access to the service by their local Aboriginal communities, but these workers work on a broad range of legal issues affecting the Aboriginal community.

The Aboriginal Legal Services (NSW / ACT) offer little assistance to Aboriginal women who are victims of violence. Its core business continues to be the legal representation of

¹⁵ Amnesty International Australia (2008) *"Setting the Standard: International Good Practice to inform an Australian National Plan of Action to eliminate Violence Against Women"* at page 16.

Aboriginal people facing criminal charges. We submit that community legal centres need to be much better funded to improve the service they can provide to Aboriginal women who have experienced domestic violence, both in terms of advocacy and community legal education.

There also continues to be a severe lack of counselling services generally, particularly culturally appropriate counselling for Aboriginal women who have experienced domestic violence. This is even more pronounced in rural and regional areas, as recognized by the discussion paper. Through our victims compensation casework it is evident that many Aboriginal women who have been victims of domestic violence are suffering from significant psychological disorders including depression, anxiety and post-traumatic stress disorder. This in turn hampers their ability to parent, work in paid employment and engage with the legal system.

The inability of Aboriginal women to access 'mainstream' services is a consequence of persistent racist attitudes about Aboriginal people which still exist in the police and other services such as health, refugees, accommodation services, legal services, housing and courts administration. There is often a profound lack of Aboriginal cultural awareness in services that should be working with Aboriginal women who have experienced violence. This lack of awareness has two results. Firstly, it means that Aboriginal women are treated inappropriately and thus discouraged from using the service again. Secondly, non-Aboriginal workers, due to their lack of cultural awareness, are reluctant to work with Aboriginal clients in case they do treat the client inappropriately and are thus branded as racist.

An effective way of directly challenging this is the employment of Aboriginal women across the spectrum of services that support Aboriginal women who have experienced domestic violence. There are many benefits to this including encouraging more Aboriginal women to access non-Aboriginal service, Aboriginal workers being able to share their cultural knowledge and community knowledge to educate non-Aboriginal workers about their local culture and community and to ensure that the service-delivery is more culturally appropriate across the service. We recommend that the Strategic Framework needs to address the ongoing training and mentoring of Aboriginal women workers, especially for workers in less well-funded services.

Key Recommendations:

11. CCLCG recommends that if the Federal Government fails to establish a national body focused on capacity building, policy direction and research to end violence against Aboriginal women, then the New South Wales government should lead the way by establishing a state-level body to undertake such responsibilities.

12. CCLCG recommends the expansion of the range of legal assistance and advocacy options for Aboriginal women.

13. CCLCG recommends that Aboriginal cultural awareness training should be mandatory for all services that work with Aboriginal women who are victims of domestic violence. Furthermore, this training needs to be comprehensive, relevant to the service provision, and regularly provided.

14. CCLCG recommends the expansion of strategies that encourage the employment of Aboriginal women workers in services that are tasked with assisting those who have experienced violence.

15. CCLCG recommends that resources be put into the development of more counselling services for Aboriginal women who have experienced violence.

(b) Women from CALD backgrounds

Women from culturally and linguistically diverse (CALD) backgrounds face particular barriers accessing appropriate assistance for experiences of domestic violence, for example:

- not necessarily identifying domestic violence as a crime;
- a lack of information in community languages about their rights;
- a lack of information in community languages about support services, or where to go for assistance;
- language barriers even once the women has approached the police or another service; and
- cultural barriers, such that workers and police may not treat them in a culturally appropriate way.

Note the 'category' CALD women also includes women who are deaf or living with a hearing impairment and use Auslan as their first language. Many of these women face similar barriers.

We refer to the recommendations from the report *A Long Way to Equal*¹⁶. There is a need to ensure that appropriate and accessible information is available for women about their rights in relation to experiences of violence. To achieve this the strategy will need to go beyond written material as some women, as in all communities, have low literacy in their own language. Particular focus needs to be given to emerging and refugee communities.

There is an urgent need to ensure that workers who have initial contact with newly arrived migrants and refugee women have ongoing training about responding to disclosures of domestic violence and referring appropriately. CALD women can face significant disadvantage if they are unable to get adequate assistance and their position is relatively complex. The interaction between immigration law and experiences of domestic violence can lead to women on temporary visas (such as temporary spouse visas) being vulnerable to further violence.

There are particular issues for CALD women who have limited English in both reporting assaults and negotiating the legal justice system. The police are often unable to access interpreters, either through lack of availability or budgetary constraints. The consequences of this can be very serious, as matters are not dealt with by charge when they should be or statements are incorrect or incomplete. Further the provision of interpreters at court is essential.

¹⁶ Women's Legal Services NSW (2007) *A Long Way to Equal: An Update of "Quarter Way to Equal": A Report on Barriers to Access to Legal Services for Migrant Women*, Sydney.

There is also a need for police, court staff and the judiciary to have training about the specific issues that CALD women may face. There should be ongoing training for interpreters about gender sensitivity and interpreting for those who have experienced domestic violence.

Key Recommendations:

16. CCLCG recommends ongoing training for police, court staff and the judiciary about the specific issues that CALD women may face.

17. CCLCG recommends that the availability of interpreters be ensured and that interpreters receive appropriate training about domestic violence.

18. CCLCG recommends appropriate information and resources be provided for women from emerging and refugee communities who are experiencing domestic violence.

(c) Women living with disabilities

The strategy will need to directly respond to the needs of women who live with disabilities and experience domestic violence. Women with disabilities face particular challenges to getting assistance for domestic violence and experience violence at much higher rate than other groups. One of the significant problems for women living with disabilities is the tendency of the system tasked with supporting them to be unable to meet multiple needs simultaneously and to operate from a client focused approach. There is a tendency to divide up people's needs along the lines of service priorities rather than client priorities. For example a disability service or mental health may fail to fully respond to disclosures of violence, while a domestic violence service may be unable to respond to the particular accommodation needs a women with a disability may have.

This may be further compounded by someone's relative dependence on others those with disabilities may experience, fears about the impact of disclosure of violence, poverty and lack of economic independence, social isolation, lack of appropriate services, failure by services to address violence, vulnerability within care settings and major barriers in accessing the services available to respond to both legal and other assistance.

There is a very real risk that the needs of people living with disabilities will again be left off the agenda in the development of the Strategic Framework. The Strategic Framework needs to ensure that issues related to access for people living with disabilities are addressed at the planning stage and not as an 'add on' and should involve active consultation with these groups.

Key Recommendations:

19. CCLCG recommends that services for those who have experienced domestic violence (in particular refuges, crisis and legal services) be provided with resources to adequately address the needs of women with disabilities who are experiencing domestic violence.

20. CCLCG recommends training for those who work in mental health and disability services about responding appropriately to domestic and family violence.

(d) Older Women

Older women also face particular difficulties accessing support around experiences of domestic violence. There may be associated with actual impact of violence, threats by family members to have them placed in care, financial abuse, social isolation, and the effects of previous abuse and the failure of the system to respond appropriately. This is compounded by systemic failures such as the shortage of crisis accommodation for women.

Key Recommendation 21:

CCLCG recommends that services for those who have experienced domestic violence (in particular refuges, crisis and legal services) be provided with resources to adequately address the needs of older women who are experiencing domestic violence.

(e) Women in Rural and Remote Communities

In rural and remote areas, access to legal services is extremely limited. For women experiencing domestic violence there are also major barriers to obtaining other services such as emergency accommodation or counselling. We have discussed previously the impact of a lack of availability of legal assistance and representation, however the impact is particularly severe for those living in regional, rural or remote communities.

In practical terms, this lack of legal support is particularly problematic in the case of urgent matters (for example, in applications for recovery orders following a child abduction by a perpetrator). There is also a particular issue for Aboriginal women where Legal Aid frequently does not provide a service to the geographic area, and the Aboriginal Legal Service usually does not provide representation for victims due to conflicts of interest. In addition, the Aboriginal Legal Service does not generally act in areas of law applicable to victims of domestic violence, such as family law.

Private solicitors face similar conflicts of interest in acting for victims in small communities, particularly due to their limited number. For example, in Brewarrina, only one private solicitor will travel to the area to appear in the Local Court. CCLCG submits that Aboriginal specific legal services for victims be established in remote areas currently not serviced by a local Family Violence Prevention Legal Service.

The lack of services generally can have a profound effect on the ability of women to report violence and be safe. It also places a greater duty on those services that are in the community to respond appropriately and supportively to women who disclose violence. In many areas it is the health services that will be the first point of contact for disclosures and they need to be able to respond effectively. The establishment of local area domestic violence services will be very important in rural and remote areas.

Key Recommendation 22:

CCLCG recommends that Aboriginal specific legal services for victims be established in remote areas currently not serviced by a local Family Violence Prevention Legal Service.

(f) Women in Same Sex Relationships

The most unique aspect in female same sex domestic violence (SSDV) relationships is that the abuser is a woman. This is frustrating for victims, particularly when all community awareness campaigns and support services portray the aggressor as male. Lesbian victims, in this instance, may not identify with female victims portrayed in campaigns.

Women who have experienced violence in a same sex relationship may also fear homophobic reactions from police and service providers when they report violence. 'Outing' can also be used as a tactic of violence by perpetrators.

Key Recommendation 23:

CCLCG recommends that Police and service providers should undergo SSDV training and be aware of the unique issues surrounding domestic violence in same sex relationships.

(g) Transgender women

Transgender women are frequently isolated from their families and support networks and may have fewer options of places to disclose domestic violence. Many transgender women have had negative experiences with the police, and fear that they may be outed or exposed to discrimination if they report violence and their transgender status is discovered.

Additionally, many women's support and accommodation services are not accessible to transgender women. The lack of available support means that many transgender women do not report domestic violence.

We believe that police and service providers need to take a consistent and inclusive approach when assisting transgender women who have experienced domestic violence.

(h) Intersex women

Intersex women may have particular difficulties and needs when dealing with domestic violence. We believe that in any domestic violence strategy, it is important that intersex women are consulted and an inclusive approach be taken.

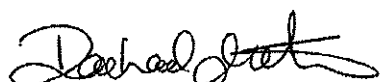
4. Developing a Research Agenda

In order to be effective, a research agenda should be at a national level. We note that the discussion paper focuses on two areas of research - the development of a qualitative

description of a domestic violence referral pathway in the existing system and quantitative research into the numbers of service users and an associated cost benefit analysis. While both of these proposed research areas have value in identifying gaps and failures in the existing system, we are of the opinion that the true value of this research is in its value to inform the development of an integrated and co-ordinated approach through the Strategic Framework. The research should not be used as a means to identify potential avenues of cost cutting. As discussed, there is an urgent need to ensure that the Strategy and services for those who have experienced violence are adequately resourced.

We thank you for the opportunity to contribute to this process and look forward to further consultation regarding the actual form of the Strategic Framework. If you would like to discuss any of the issues raised in our submission in more detail please contact Felicity Martin at Women's Legal Services NSW on (02) 9749 7700 or felicity_martin@clc.net.au, or Rachael Martin from Wirringa Baiya Aboriginal Women's Legal Centre on (02) 9569 3847 or rachael_martin@clc.net.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rachael Martin', with a stylized flourish at the end.

Rachael Martin
Co-Convenor, Domestic Violence / Victims Compensation Committee
Combined Community Legal Centres Group (NSW) Inc