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**Taskforce- National Plan
Office for Women
PO Box 7576
Canberra Mail Centre
ACT 2610**

By email to women@fahcsia.gov.au

1st August 2008

Dear Madam or Sir,

Re: National Plan to Reduce Violence Against Women and Children

About National Legal Aid (NLA)

National Legal Aid (NLA) represents the Directors of the Legal Aid Commissions of all Australian states and territories. Legal Aid Commissions provide legal services to socially and economically disadvantaged people. The legal services delivered by Commissions include representing clients who are eligible for legal assistance in federal, and state and territory courts and tribunals, the provision of dispute resolution services as appropriate, and the provision of information, advice, assistance, and education to members of the public.

NLA aims to ensure the protection or assertion of the legal rights of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice
- afford the financial cost of appropriate legal representation
- obtain access to the federal and state and territory legal systems
- obtain adequate information about the law and the legal systems.

Commissions provide services for people who have been affected by domestic and family violence through representation and advice for applications for domestic and family violence orders. These services are also provided in conjunction with other services such as family law and child protection advice and representation.

NLA welcomes a Commonwealth Government commitment to addressing domestic and family violence through a National Plan of Action to Prevent Violence Against Women (NPoA) and sees the role of the Commonwealth Government as important in relation to coordination and success in this area. A NPoA will honour Australia's human rights commitments as a signatory to the Beijing Platform for Action in 1995.

Other submissions

NLA is informed by the Australian Domestic and Family Violence Clearinghouse's submission to the NPoA and supports uniform family violence laws provided they promote best practice. NLA also notes the Amnesty International Australia call for a NPoA positioned within a human rights framework. NLA acknowledges and is guided by the standards set by AIA contained in their publication "Setting the Standard: International Good Practice to Inform an Australian National Plan of Action to Eliminate Violence Against Women". An Australian NPoA should include best practice legislative and policy frameworks that are adequately resourced and sustainable.

Structure of the Australian NPoA

The most value will be obtained if the NPoA is more than a re-statement of the current actions of state governments across Australia. It would be desirable if the NPoA led the national policy agenda and garnered the states to align their responses to best practice in combating domestic and family violence.

Further, it would be preferable that the document contain priority actions which can be implemented and subsequently evaluated.

It is important that the actions contained in the NPoA are sustainable and that states are assisted, supported and funded to implement and report upon their commitments and outcomes.

Role of the Commonwealth Government

The Commonwealth Government plays an important role in policy and legislation reform across Australia in relation to family violence. Underpinning this role are the Australian Government's obligations under international instruments including the Convention on the Elimination of Discrimination Against Women. There is divergence between states in their legal and service responses to domestic and family violence and a clear opportunity for the Commonwealth to be a leading force in seeking a consistent commitment from the States in their responses to family violence.

Access to services in relation to domestic and family violence

Research suggests that people with problems such as domestic violence, divorce, relationship breakdown and personal injuries are more likely to experience additional legal and other problems. Domestic and family violence are often linked for example with separation and general family law problems, homelessness, debt, and criminal justice responses.

People must navigate their way through a fragmented and sometimes deficient legal system which requires them to go through different processes, in different courts, under laws with different purposes, priorities and underlying values.¹ In reality, the "system" operates as a series of parallel universes. Clients don't make the distinction between criminal and family, and the system doesn't make the connection".²

¹ Juliet Behrens, "Meeting the Needs of victims of domestic violence with family law issues: the dangers and possibilities of restorative justice" International Journal of Law in Context, 1, Cambridge University Press, ANU, Canberra, p.218.

² Lund, Kirsten and Dodd, Julie, "Linking Criminal and family Issues in Woman Abuse: Justice Options for Women – Phase Three, Final report", Canada (2003).

There needs to be greater awareness of the current and possible pathways people in domestic and family violence situations utilise in order to access (or not access) legal assistance.

Given the overlap between the legal and non-legal needs of people in domestic and family violence situations a holistic approach which recognises a range of support services should be adopted. Supports to access these services are important, as a range of factors can create barriers to people getting the assistance they need. Factors can include fear of further violence, social isolation by reason of having made a complaint, the difficulty of following through with referral in situations of ongoing upheaval, embarrassment in relation to personal matters becoming public, geographical location, and lack of capacity to pay for services. Services should be clearly identifiable, well resourced, and aware of other providers capable of providing complementary services. This in turn will assist people to have confidence in accessing the services.

In relation to legal services, Commissions are seeing an increasing number of 'working poor' in Australia – those who are financially ineligible for legal aid and who can't afford a lawyer. This has a negative effect on those people.

Key priority areas for the Australian NPoA

There are some key policy issues that have been identified by NLA that could be considered as priority areas for the Australian NPoA.

Homelessness

The Australian Domestic and Family Violence Clearinghouse submission identifies homelessness as a key issue for people escaping domestic and family violence, and this is the experience of many of our clients. Chronic shortages in affordable and crisis housing is the biggest barrier to women and children seeking refuge from domestic and family violence. Many refuges are constrained by exclusionary policies that negatively impact women with no income, older male children and the mentally ill. There has been no growth over the last 10 years in SAAP funded services so that none of the issues around access to services seem to have changed.

NLA supports the strategies and proposals suggested in the National Clearinghouse submission.

Court and legislative responses

There are significant differences between the legislative and court responses across Australian States. Some States have integrated or specialist courts. Some States have intensive case management teams for families who experience domestic violence. We would support the Commonwealth Government benchmarking best practice for court and legislative responses to domestic and family violence and encouraging the States to comply with this best practice. There may be some value in examining the model domestic violence laws that were developed by the Commonwealth some ten years ago taking into account intervening research and experience. Judicial training and leadership in providing an holistic court response to families affected by domestic and family violence is critical.

As both Federal and State Courts have jurisdiction in relation to matters involving domestic and family violence, it is important that there is an integrated response.

Family law reforms

The impact of the 2006 changes to the *Family Law Act 1975* including requirements for compulsory family dispute resolution and less adversarial court processes for children's matters to achieve quality parenting arrangements has not necessarily achieved better outcomes for adult and child victims of domestic violence.

The large volume of matters allocated in the Federal Magistrates Court has meant that some applicants do not necessarily get an opportunity to have their matter heard by a Magistrate at an interim stage with the result that the information related to domestic violence is not considered. There is some concern that sometimes people are being directed into mediation inappropriately.

There is a public perception that the 2006 amendments to the *Family Law Act 1975* guaranteed parents a 50/50 split of time with their children post-separation even though that was not the intention of the legislation and this perception flavours many of the negotiations around parenting arrangements. This can be a significant issue for a parent who has experienced violence and who is negotiating a parenting arrangement.³

Family violence creates issues of risk and of power imbalance in family dispute resolution. Competent legal representation is capable of redressing the imbalance for some. Legal Aid Commissions have family dispute resolution programs (conferencing). Screening is conducted in relation to family violence. Where conferencing is appropriate legal representation during the FDR process is provided by skilled lawyers who are familiar with, and trained in, family violence issues. Access to free full legal representation would help ensure best practice in FDR is maintained and strengthened.

Child Protection

An emerging policy issue is the treatment of domestic violence victims by the child protection systems. Some state police services have mandatory reporting policies so that if an officer attends a domestic violence incident and children are present it is reported directly to the child welfare authority. In some quarters there are concerns that this has made victims of domestic or family violence more reluctant to report matters to police. In other States there is no symmetry or communication between the domestic violence and child welfare legislation and service systems.

³ For further information see R Hunter "Narratives of Domestic Violence" (2006) 28 *Syd LR* 733 at 734; J Dewar and S Parker "Parenting Planning and Partnership: the Impact of the New Part VII of the Family Law Act 1975", *Family Law Research Unit Working Paper No 3*, Griffith University 1999; H Rhoades, R Graycar and M Harrison, "The Family Law Reform Act 1995: the First Three Years", *University of Sydney* and Family Court of Australia 2000.

Conclusion

Thank you for the opportunity to make this submission. If you require anything further from us please do not hesitate to contact us.

Yours sincerely,

A handwritten signature in black ink, appearing to read "H. Gilmore". The signature is written in a cursive style with a prominent initial "H" and a trailing flourish.

Mr Hamish Gilmore
Chairperson
National Legal Aid