

Family Advocacy And Support Services Scheme

# National Guidelines

*March 2017*



This service is being funded by the  
Commonwealth Government of Australia

## Background

Under the Third Action Plan of the *National Plan to Reduce Family Violence against Women and their Children 2010-2022*, legal aid commissions (LACs) have been funded to establish integrated duty lawyer and family violence support services in family law courts registries nationwide to strengthen services for families affected by family violence.<sup>1</sup>

## Aims

The aims of the Family Advocacy and Support Services (FASS) are to:

- Provide assistance to families affected by family violence, both victims and alleged perpetrators, including to move between state and federal based court systems;
- Work closely and co-operatively with the family law courts and court staff to support the safety of service users and their children affected by family violence, and
- Work co-operatively with all stakeholders to support the safe, effective and efficient resolution of matters.

FASS services cannot be provided in non-family violence matters.

## Services provided by FASS

Risk identification will be undertaken with each service user.

Service users will be informed about FASS and how services can work together on their matter including being informed about information sharing arrangements for that purpose.

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<sup>1</sup> In the Northern Territory, services will be primarily delivered from the Darwin and Katherine Local Courts due to demand for services at these locations. Family law duty lawyer services will continue to be provided at the family law courts and may be provided in accordance with this protocol. Establishing the services at the local courts will allow the Family Advocacy and Support Services to engage with victims and perpetrators of family violence at an earlier stage.

## FASS social support services

Family violence support services will be provided by the FASS social support workers.

Assistance from the FASS social support worker, where appropriate, will include:

- risk assessment
- engaging in a safety planning process
- liaising with the family law courts' registry and security staff about the implementation of any court safety plan
- assessment of a service user's social support needs
- information, non-legal advocacy and support for service users before, during and after court
- referral of service users in relation to their social needs and co-ordination in relation to use of those services
- liaison with the court to obtain copies of court orders and other notices from the registry on behalf of service users
- advocacy on the day on behalf of the service user with stakeholder organisations, e.g. housing services, Centrelink, victim support services, and where appropriate police in relation to the bringing of an application for a family violence protection order
- assistance to transition between the Commonwealth family law, state/territory family violence and state/territory child protection jurisdictions.

The social support workers will be mindful of any existing relationships between service users and other social or therapeutic service providers, and will take account of such relationships in determining the nature and extent of the service to be provided and any referrals to be made.

The social support workers will not provide legal advice or legal assistance to service users.

## FASS duty lawyer services

Assistance from the FASS duty lawyer may include:

- Legal advice, information and referral in relation to family law, family violence protection orders, and care and protection;
- Referral to family dispute resolution conference where appropriate;
- Appropriate referral (in a range of civil law issues e.g. housing, credit/debt, immigration etc.) and in relation to criminal law matters arising;
- Gathering information and evidence about family violence, including by assisting with drafting subpoenas and applications for family and/or expert reports;
- Preparing documents including Notices of Risk and in Western Australia Form 4s in relation to child abuse and family violence.

Subject to service demands and priorities:

- Document preparation and representation in relation to matters including representation in the following matter types:
  - recovery orders
  - Family Law Watchlist orders
  - applications by third parties, such as grandparents
  - applications to protect witnesses who have been affected by family violence in giving evidence
  - urgent interim proceedings regarding children
  - urgent proceedings in relation to property
  - relocation orders, and
  - forced marriage matters;
- Negotiations including the drafting of consent orders;
- Advocating on behalf of service users with other stakeholders, e.g. advocacy with police for a police application for a family violence protection order where appropriate;
- Working with the FASS social support workers, including in relation to advocating for delivery of non-legal services where appropriate.

## Prioritisation of matters for duty lawyer services

The assistance provided by the FASS duty lawyer is driven by the immediate needs of service users. This means that on some days a service user with a particular issue may be assisted but on another day they may not because other people with more pressing or urgent issues are presenting for assistance.

In determining whether to provide assistance in a matter and, if so, the level of assistance to be provided, the following will be considered inter alia:

- whether there are urgent and/or issues of significant risk affecting the children or the safety of the unrepresented party;
- whether there are specific issues relating to family violence which impact upon the unrepresented party's capacity to appear on their own behalf;
- whether there are other special circumstances which impact upon the unrepresented party's capacity to appear on their own behalf such as disability, literacy, language barrier, cultural issues or geographical location;
- whether a conflict of interest exists;
- whether the unrepresented party is seeking assistance for a matter for which legal aid is available under the LAC's policy guidelines;
- whether it appears likely that the unrepresented party could not afford the cost of representation but would also likely fall outside the LAC's means test;
- whether the unrepresented party does not satisfy the LAC's means test and has been referred to or had the opportunity to obtain alternate legal representation;
- whether the unrepresented party has already been refused a grant of legal aid;
- whether the assistance is an appropriate expenditure of public funds;
- whether the assistance sought amounts to an abuse of process;
- whether the unrepresented party has previously obtained assistance from a duty lawyer in relation to these or other family law proceedings.

Assistance will not normally include:

- completion of complex documentation and affidavits in non-urgent matters;
- representation for contravention applications and final hearings;
- ongoing assistance where the unrepresented party does not satisfy the LAC's means test and has been referred to or had the opportunity to obtain alternate legal representation.

## Other matters to be taken into account in FASS service delivery

### Best Practice

All family lawyers are subject to the general law and to the professional conduct and practice rules operating in their state or territory.

FASS duty lawyers will also have training and expertise in responding to matters involving family violence and will operate in accordance with:

- the Family Violence Best Practice Principles developed by the Family Court of Australia and the Federal Circuit Court of Australia<sup>2</sup>, and the Family Violence Policy of the Family Court of Western Australia;
- the Best Practice Guidelines for lawyers doing family law work prepared by the Family Law Council and Family Law Section of the Law Council of Australia,<sup>3</sup> and
- the requirements of the respective state or territory LAC.

### Discrete Assistance<sup>4</sup>

Discrete assistance may be provided in both Commonwealth and state/territory family law matters.

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<sup>2</sup> Edition 4 December 2016, Commonwealth of Australia 2016.

<sup>3</sup> 2nd edition, October 2010.

<sup>4</sup> Defined by the National Legal Assistance Data Standards Manual to include; information, referral, legal advice, non-legal support, and legal task.

## Applicability of the National Duty Protocol

Whilst FASS duty representation services may encompass services beyond those specified in the National Duty Lawyer Protocol<sup>5</sup> that Protocol is relevant to the extent applicable, and notably in relation to:

### Conflict of interest

- all steps are to be taken to avoid situations in which a conflict of interest exists or could be perceived to exist, and
- issues relating to potential conflicts of interest will be dealt with on a case-by-case basis, having regard to the relevant professional and statutory obligations and any policy guidelines developed by the LAC on conflict of interest.

### Use of interpreters

It is acknowledged that in situations where the court has identified the need for interpreter assistance, the court will endeavour to arrange for an interpreter to attend to assist a party.

Where an interpreter is not available and the FASS duty lawyer considers that the unrepresented party will be disadvantaged by the absence of an interpreter, the FASS duty lawyer may:

- request the court to authorise and book the services of an interpreter for the unrepresented party, or
- arrange the use of an interpreter service by telephone.

If the situation arises where the service user requires an interpreter for a court appearance and an interpreter is not available, assistance by the FASS duty lawyer will normally be limited to providing the unrepresented party with general information and, if appropriate, indicating any limited instructions to the court and seeking an adjournment of the matter.

If the service user requires the use of an interpreter and the court has arranged an interpreter, the FASS duty lawyer should enquire whether the services of that interpreter can be used to provide the duty lawyer or discrete assistance service.

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<sup>5</sup> February 2007, entered into by the Commonwealth Attorney-General's Department, National Legal Aid, Family Court of Australia, Family Court of Western Australia and the Federal Magistrates Court as it then was.