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13 May 2011

Ms Amanda Head  
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Dear Justice Ryan

**Re: Draft Best Practice Principles for Use in Parenting Disputes when family violence or abuse is alleged**

I refer to your letter to National Legal Aid dated the 7th April 2011 enclosing the draft Best Practice Principles, "the draft Principles" inviting feedback on those draft Principles. Our feedback follows:

**Overview and context**

NLA is generally supportive of the draft Principles.

NLA is aware that the Family Law Legislation Amendment (Family Violence and other Measures) Bill 2011 ("the Bill") is currently the subject of an inquiry by the Senate Legal and Constitutional Affairs Legislation Committee. NLA also understands that the Family Court of Australia would like the draft Principles to be finalised and to be available for use as soon as possible. NLA is supportive of this approach and a review of the (draft) Principles following any enactment of the Bill.

NLA welcomes the extension of the draft Principles to all cases involving family violence or child abuse regardless of whether a notice alleging family violence or abuse has been filed.

The Chisholm Report<sup>1</sup> recommended that;

“ the family law courts review the extent to which judicial officers ... use and benefit from the (Best Practice Principles), and consider any measures that might lead to the Principles becoming more influential”

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<sup>1</sup> Family Courts Violence Review - A report by Professor Richard Chisholm 27 November 2009, p. 17

The Full Court in *Oakley & Coope*<sup>2</sup> also identified the relevance of the Principles in proceedings where abuse is alleged to have occurred and referred to them as being "essentially a check list for the trial judge".

NLA agrees that the draft Principles serve such a purpose. We are also pleased that the Principles are now intended for use by all agencies involved in the family law system, and for all cases involving family violence and abuse. We suggest that it would be very helpful if the launch of the Principles could be accompanied by more training for judicial officers and practitioners about their content.

NLA's view is that there is a need for integrated service delivery which requires:

- improved systems for information sharing,
- collaborative professional approaches,
- coordinated case management.

Initiatives including joint or cross training across all agencies and disciplines will facilitate the cultural shift required to promote collaborative and coordinated working arrangements.

The issuing of the Principles will support the move towards improving integrated service delivery.

### **Comments on the Principles**

Page 3 of the draft Principles contains a definition of family violence and commentary. This definition may need to be amended to reflect the Family Law Legislation Amendment (Family Violence and other Measures) Bill 2011 (the Bill) if it is enacted.

We are pleased that the draft Principles highlight that the Family Law Act does not require independent verification of allegations of family violence. There is also ongoing concern that victims of family violence not be discouraged from disclosing family violence for fear that this might lead to a finding that they had exposed children to family violence. This concern should at the least be addressed in the education and training strategies that might accompany the launch of the Principles.

NLA is aware that the statutory framework outlined from page 6 of the draft Principles might also be subject to amendments arising from the Bill. Notably, in the event that section 60CC(2A) is included, the court will be in a position to give clear guidance to prioritise a child's safety in the event that there is a conflict between the considerations.

NLA is of the view that the draft Principles from page 8 will provide an excellent checklist for both trial judges and practitioners of the current legislative framework

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<sup>2</sup> *Oakley & Cooper*, [2009] FamCAFC 133, at paragraph [60]

and the matters for consideration when determining issues in dispute where family violence is an issue. They are also a useful way to identify how proceedings might best be conducted in Court. Whilst we note that the draft Principles do not include amendments arising from the Bill, NLA wishes to comment on the potential adoption of Subdivision BA and sections 60CH and 60CI into the 'checklist'.

NLA supports the introduction of these new provisions. The requirement for parties to provide the family courts with information in relation to the existence of child welfare orders or arrangements relating to other children will facilitate the ability of the courts to identify and assess any risk of harm to the children the subject of proceedings, including the question of whether child protection authorities should be invited to intervene in proceedings. As we proposed in our response to the Exposure Draft and Proposal 8-2 of the ALRC/NSWLRC Consultation *Family Violence; Improving Legal Frameworks (July 2010)*, there must be processes (including memoranda of understanding with other courts, child protection authorities and the police) to obtain copies of relevant orders. From experience, courts should not rely on self-disclosure. Access to information of this kind will ensure more appropriate decisions.

Whilst the draft Principles as they apply to orders for family and other expert reports require consideration of therapeutic intervention that may assist a perpetrator to live without violence, the draft Principles could also usefully elaborate upon the considerations that may need to be made in relation to the victim/s.

It is the experience of many Legal Aid Commission lawyers that in cases involving family violence, a victim's parenting capacity is often affected. A consideration of what intervention might be appropriate to assist a parent to improve or restore their parenting capacity would be a useful enquiry, and possibly one well received by victims of violence.

NLA notes that the court sees the interim hearing stage as being the platform for assessing risk but not making findings. We however take the view that it is appropriate in cases involving allegations of risk of harm to children that a determination in relation to a child's exposure to abuse, neglect or family violence be made before consideration is given to the benefit to the child of having a meaningful relationship with both parents. The need for this determination should logically lead to a specific hearing to determine whether any interim or procedural orders are appropriate, to enable evidence about the allegations to be obtained, and to ensure as far as possible the safety of family members. We are concerned that allegations of family violence are not currently tested and determined as a matter of course before interim orders for children to live with or spend time with parents and others are made, and believe that the current s60K and its proposed successor mandate such a hearing, at least when a Form 4 is filed.

Earlier we expressed the view that initiatives including joint or cross agency training involving professionals from relevant agencies will facilitate the cultural shift required

to promote collaborative and coordinated working arrangements. We make this comment particularly in light of the 'PPP' screening tool proposed to be used to make assessments of risk. NLA is of the view that training for all family law practitioners on the use of this screening tool would be invaluable.

### **Conclusion**

Thank you for the opportunity to comment on the draft Principles.

Should you require any further information please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Crockett', written in a cursive style.

Andrew Crockett  
Chair  
National Legal Aid