



## **National PII Scheme for CLCs**

# Professional Indemnity Insurance Risk Management Guide

**A Guide to assist Centres in meeting the National  
Professional Indemnity Insurance Scheme Requirements**

**JULY 2005**

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# 1 Introduction

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## 1.1 The National Professional Indemnity Insurance Scheme

Community legal centres (CLC or centres) in Australia belong to a National Professional Indemnity Insurance (PII) Scheme, and are covered by a Master Insurance Policy, which indemnifies them against claims of negligence and defamation. The policy covers all CLC workers, paid and unpaid, legal practitioners and non-legal practitioners, and management committee members. The policy is limited to claims arising from the centre's professional practice (legal advice and services).

The PII Committee in each state and territory administers and oversees the implementation of the National PII Scheme. It is a requirement of inclusion in the National PII Scheme that centres adhere to and meet a set of mandatory legal practice requirements. These mandatory requirements aim to limit the likelihood of a negligence claim being made against a centre, and are set out in this *Risk Management Guide* (the *Guide*).

While this *Guide* relates to best practice and managing risk, it is important to be aware that legislative requirements vary between states / territories.

In addition, this *Guide* incorporates the Commonwealth Government's Community Legal Services Standards 2001, and addresses the attributes required to comply with those standards.

It is important to note that compliance with this *Guide* is not absolute protection against claims. Each centre must examine and develop its own procedures to minimise any risk of claims. All centres must comply with the legal practice requirements set out in this *Guide* in order to remain eligible for inclusion in the National PII Scheme. If a centre is not able to meet these requirements, it must urgently contact the PII representative to discuss concerns.

The PII Committee in each state or territory – comprised of the Responsible Person of each centre – is responsible for dealing with legal practice issues, both as they affect the National PII Scheme and as they arise generally in centres. A PII representative is elected every year. The PII representative convenes a minimum of two meetings per annum, administers the National PII Scheme and oversees the annual Cross Check procedure (see below). The PII representative represents their state or territory on the National PII Network.

The PII Committee can request that a centre which has not sufficiently complied with the requirements in this *Guide* put in place mechanisms to comply as a prerequisite for inclusion in the following year's insurance coverage. In the most serious cases where a systemic error is not rectified, a centre may be excluded from the National PII Scheme.

## 1.2 How to use this Guide

As this *Guide* contains the agreed mandatory legal practice requirements for centres, all centre workers (staff and volunteers, legal practitioners and non-legal practitioners) and management committee members must be familiar with its requirements.

This *Guide* is to be read in conjunction with the *Background Information and Scheme Structure* (previous section), which contains more detail about the issues dealt with in this *Guide*, as well as a number of other legal practice issues.

The *Guide* is also to be read in conjunction with the *Cross Check Questionnaire* (*Appendix 1* of the *National Risk Management Guide*) which is the mechanism by which centres are monitored for compliance with the *Guide*.

The national PII Network intends that this *Guide* and the *Cross Check Questionnaire* will be updated regularly. Please raise any comments at the PII Committee.

### 1.3 Relationship between this Guide and the Commonwealth Community Legal Centres Service Standards 2001

The Commonwealth Service Standards, which are included as a Schedule in the CLC Service Agreement, took effect from 1 July 2002.

There are nine Service Standards in all:

- Information and referral
- Provision of advice
- Casework
- CLE
- Law reform and legal policy
- Accessibility
- Organisational management
- Management of information and data
- Assessing client satisfaction and managing complaints

Although several of these standards are relevant to PII, the stated attributes do not have a relationship to PII, so for the purpose of this *Guide*, the only Standards that are addressed are 'Provision of advice' and 'Casework'.

The attributes of those Service Standards are identified throughout the *Guide* by an asterix (\*).

### 1.4 Glossary of Terms used in this Guide

#### **Casework**

Any matter for which the centre is taking ongoing responsibility (as opposed to one-off advice, information or referral), and a file is opened.

#### **Client / Litigation Agreement or Letter of Engagement**

Whenever casework is undertaken (see above) it is recommended that the client be provided with written information confirming the nature and extent of the work that the centre has agreed to do on behalf of the client. This may be done by way of a Letter of Engagement or a Client / Litigation Agreement. In some cases, for example where work is undertaken on a duty solicitor basis, or very quickly to meet a deadline, it will be appropriate to provide a client with written confirmation of work that has been undertaken.

#### **Legal Advice**

The provision of initial or one-off legal advice. This may include a referral to a more appropriate agency, but is distinguished from referral only. Legal advice relates to information given to the client which is based on a full consideration of the particular facts in their case and an assessment of whether, or how, the law might apply in the particular case.

#### **Legal Information**

Legal information is generally said to be provided where information about the relevant law or a particular legal process is given in general terms only. It does not involve a consideration of the specific merits of the individual client's problem and an assessment of the application of the law in their case. The distinction between advice and information is not always easy to draw.

#### **Legal Practitioner**

For the purpose of this *Guide* and the *Cross Check Questionnaire*, 'legal practitioner' refers only to a person who holds a current practising certificate.

#### **Management Committee**

The board of management and / or governing body of the centre. The management committee must ensure that all staff and volunteers are responsible to them and familiar with this *Guide*.

**Nominated Person (NP)**

A centre employee – whether a legal practitioner or not – with expertise in a particular area of law or a volunteer legal practitioner who, in the opinion of the Responsible Person, is suitably experienced and has undergone appropriate training, who is delegated responsibility for supervising advice given and/or work undertaken in that area of the centre's practice. (For example, a person in a centre's tenancy service who is delegated the responsibility for supervising the work of other tenancy workers).

The Nominated Person is directly responsible to the Responsible Person who is in turn directly responsible to the management committee.

**Project**

A specialist service provided by a centre or auspiced by a centre that has a separate identity and is staffed by workers who may or may not be legal practitioners. For example, tenancy services, mediation services, court support schemes, welfare rights services, financial counselling services. See paragraph 3.7 of this *Guide*.

**The Responsible Person**

Each centre must nominate a 'Responsible Person' who shall ensure that the *Risk Management Guide* is implemented. The Responsible Person can also develop policies and procedures to give effect to the *Risk Management Guide*.

In the states / territories in which the legal profession Act requires the employment of a 'Principal Solicitor' the centre shall nominate that person as the Responsible Person. In the states / territories in which there is no legislative requirement for the employment of a Principal Solicitor it is recommended that wherever possible, the managing or senior employed legal practitioner should be nominated as the Responsible Person.

## 2 Compliance Regime

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### 2.1 Insurance

For information on the National PII Scheme see the previous section of this *Guide* – *Background Information and Scheme Structure*.

### 2.2 Notifications

#### 2.2.1 Insurers

When a centre becomes aware of a claim or potential claim against it, the centre must notify the insurers in writing. The notification must be made during that financial year and no later than 30 June each year at which time the insurance is renewed. Failure to notify the insurers of a claim of which you have knowledge or should reasonably have been aware by this date may result in the insurers refusing to pay the claim.

**From 1 July 2002 onwards, the Insurer is:**

■ **CGU**

GPO Box 4609  
Melbourne VIC 3001  
PHONE 03 9601 8700  
FAX 03 9602 5255

See...

- *Background Information and Scheme Structure* (the first section of this *Guide*) for discussion about the Insurance Policy
- *Appendix 2* for a copy of the current CGU policy
- *Appendix 4* for a copy of the notification form

#### 2.2.2 PII Representative/s

In addition, the centre must discuss potential notifications with the state or territory PII representative before informing the insurer and then forward the representative a copy of any resulting notification. As the insurance company will deal directly with the centre that has made the notification, the centre must also advise the PII representative of the outcome of the notification and/or claim.

### 2.3 Cross Check

An annual Cross Check procedure is coordinated by the PII Committee, to monitor each centre's compliance with the mandatory requirements in this *Guide*. The Cross Check procedure is carried out using the *Cross Check Questionnaire* which is completed by staff and volunteers from each centre, assisted by 'Cross Checkers' from other centres.

All centres covered by the National PII Scheme are Cross Checked in this manner, and the completed Questionnaires are assessed by the PII representatives who write a report to each centre and a general report to the PII Committee advising of the most common systemic faults.

The Cross Check is designed to check centres' systems for ensuring that the mandatory requirements are met. It is not intended to be a substantive check of the advice that is given. The Responsible Person in each centre is responsible for the substantive correctness of all advice and ongoing casework, and is responsible for implementing systems and procedures by which that can be checked. The Cross Check simply checks that the Responsible Person has put in place those procedures.

## 2.4 Confidentiality

Cross Checkers sign an undertaking on the *Cross Check Questionnaire* that any client and Centre information obtained during the Cross Check process will be kept confidential as part of the PII Committee processes.

The PII representative/s undertake to keep any notifications received by centres confidential, including the fact of a notification by a centre, the name of the centre or the name of the legal practitioner with responsibility for the file.

Further, discussions regarding a particular centre issue at a PII Committee meeting and/or with the PII representative are confidential.

## 3 Mandatory Legal Practice Requirements

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### 3.1 Supervision of Legal Practice by the Responsible Person

#### 3.1.1 Different Models

All centres must have a Responsible Person who has ultimate responsibility for the conduct and supervision of the centre's legal practice. There may be several different models for how a centre's legal practice is structured, depending on the size of the centre and the nature of work it carries out.

#### 3.1.2 Supervision

- The Responsible Person retains overall responsibility for the centre's legal practice and must ensure that the practice is properly supervised.
- The Responsible Person must determine the level of supervision required of each worker and volunteer in the centre, having regard to the following:
  - experience of the worker or volunteer
  - knowledge of the worker or volunteer
  - complexity of the legal work being undertaken
  - any other relevant matter
- If the Responsible Person is on leave, or resigns from the centre and there is no immediate replacement, the centre must make arrangements for another suitably qualified legal practitioner to be responsible for the centre's compliance with the *Risk Management Guide*. The person may be another legal practitioner at the centre, a member of the management committee who is a legal practitioner, a legal practitioner from another CLC or a locum. Centres should ensure that they comply with the legal profession legislation in their state / territory.
- The state / territory PII representative must be advised of any change in the Responsible Person.

#### 3.1.3 Supervision of Staff and Volunteers

- It is the responsibility of the Responsible Person to supervise all caseworkers (legal practitioners and non-legal practitioners) and volunteers (legal practitioners and non-legal practitioners).
- It may be necessary and appropriate for the Responsible Person to delegate their supervisory responsibility over a discrete area of the legal practice to a Nominated Person (NP) [see Glossary] with expertise in the requisite area of law.
- All advice or casework of volunteers must be checked by a Responsible or Nominated person, unless the volunteer is a Nominated or Responsible Person.
- Any staff or volunteer giving advice or doing casework must have timely access to the Responsible Person (or the appropriate Nominated Person). In the event that the Responsible Person (or Nominated Person) is not immediately available and the person is not sure about the advice to be provided or course of action to be taken, then:
  - the client must be informed that the advice/course of action will require checking
  - the advice/course of action must be checked within 24 hours or as soon as reasonably possible
- In relation to ongoing casework, the day-to-day management or supervision of each file must be the responsibility of an employed worker.

- Where deemed appropriate or necessary by the Responsible Person, workers must attend regular case conferences at appropriate intervals, usually weekly. The case conference is a supervision tool, the purpose of which is to:
  - determine what matters the centre will undertake on an ongoing basis
  - monitor caseloads
  - discuss difficult cases
  - detect any problems
  - monitor limitation dates
  - ensure that the quality of the service is maintained
- As soon as it has become apparent that incorrect or incomplete advice has been given to a client, the following steps must be taken:
  - the caseworker responsible for providing the inaccurate/incomplete advice must be alerted to this fact
  - the client must be advised of the correct advice by telephone and/or in writing
  - the new advice must be recorded

#### **3.1.4 Workloads must be monitored**

The management committee and the Responsible Person must ensure that centres are mindful of their limits and resource constraints and do not take on more work than staff can handle. Casework must be kept within reasonable limits taking into account staffing levels and available resources. Workload must be continually monitored and reviewed to ensure that it is kept at a manageable level.

#### **3.1.5 Guidelines for centres' work must be developed**

Centres must have written guidelines about the type of work (advice and casework, community legal education and law reform) they will, and will not, take on. In relation to casework, the guidelines should include the level of assistance that will be provided to clients. All workers and management committee members must be familiar with these guidelines and procedures must be developed to ensure that they are complied with.

The guidelines must take account of the following:

- the particular knowledge and expertise of the Responsible Person and centre staff
- the capacity of the centre to take on certain work (including workloads)
- the resources of the centre
- other criteria as determined by the centre (eg. target/priority client groups)
- the risks associated with certain types of work (eg. wills, personal injuries, property matters)

#### **3.1.6 Practising Certificates and Other Qualifications**

To practice as a lawyer a person must be admitted to practice and have a current practising certificate from their Law Society. Legal practitioners should be familiar with the legal practice legislation of the relevant state / territory, and ensure that all requirements are met.

Advice about immigration issues should only be provided by a Registered Migration Agent. Legal practitioners also need to register before providing such advice. The Responsible Person is responsible for ensuring that these formal requirements are met.

### **3.2 Dealing with Monies**

Centres that accept money from or on behalf of clients – as controlled monies or on trust – must ensure that there are adequate procedures for dealing with and accounting for it. Centres must refer to their Law Society's rules for details of their requirements.

### 3.3 Provision of Legal Advice

**Note:** Those requirements which are also an attribute of a Community Legal Service Standard are identified by an asterisk (\*).

#### 3.3.1 Duty of Confidentiality\*

The duty of confidentiality means that legal practitioners may not disclose any client information which has come to them in their professional capacity and in the legitimate course of their professional employment. This duty is binding on all staff and volunteers within the Centre. All Centre workers and volunteers must be aware of this duty.

#### 3.3.2 Intake Procedures

The following information must be recorded for all clients upon intake, including telephone and face-to-face advice and advice given at outreach programs:

##### A. Client's contact details\* (name, address and/or telephone number)

The client's contact details (name, address and/or phone number) must be recorded unless exceptional circumstances exist. Exceptional circumstances may include where the client is unable to provide this information for reasons of homelessness, accommodation in a refuge, mental illness, etc.

Where a client is unable or refuses to provide those details, the client must be told that the centre will not be able to correct, update or add to the advice given upon checking of the advice. In addition, that advice to the client must be recorded on the advice sheet, together with a record that the client refused or was unable to provide those details.

##### B. Matter type/s

##### C. Name of other party/parties\*

The name of the other party must be recorded. Where the name of the other party is unknown that must be recorded. Where the other party is a government agency, the police or a business, that must also be recorded.

Where a client refuses or is unable to provide the name of the other party, the adviser must consider whether it is safe to give any legal advice and, if not, should refuse to advise without the information.

(See also **E. Management of potential for conflict of interest by categories of clients and categories of other parties**).

##### D. Indication that a conflict of interest check has been performed\*

A conflict of interest check must be done before giving any legal advice, unless it is clear no conflict could arise. All centres must have policies dealing with conflicts of interests for the protection of their clients, potential clients and the centre. Staff must be trained to look for conflicts of interest and the subject must be covered during the orientation of new paid and unpaid workers who will have any contact with clients, and reinforced regularly.

A conflict of interest check must be done prior to advising a client or giving the caller any telephone advice. If a centre cannot act for someone because of a conflict of interest, the caller must be told that the centre is unable to assist them and an appropriate referral must be made. In explaining conflicts of interest, centres should be mindful of their duty of confidentiality.

It must be recorded on the advice sheet that a conflict of interest check has been carried out. Some centres stamp the core data/advice sheet indicating the check has been done, others write 'conflict check done' on the core data/advice sheet. Centres could also incorporate a relevant field into their database to indicate that a conflict check has been done or is not applicable.

The fact that the other party is a former client of the centre may not give rise to a conflict of interest. It is a matter for professional judgment whether an actual or potential conflict of interest exists.

(See also **E. Management of potential for conflict of interest by categories of clients and categories of other parties**).

### **E. Management of potential for conflict of interest by categories of clients and categories of other parties**

A centre may manage the potential for conflict of interest in some of its client activities by policies and procedures relating to categories of clients and categories of other parties. Where such management is undertaken **C** and **D** (on previous page) may be satisfied by recording the category of the other party and recording that a conflict check is not applicable.

The Responsible Person shall be responsible for such management policies and procedures. The policies and procedures shall take into account the particular circumstances of the centre's region /clients in order to identify real risk of conflict of interest. The policies and procedures and their implementation are open to scrutiny by PII Cross Checkers and PII representatives.

Management of the potential for conflict of interest by categories is not appropriate for casework files of a centre.

Client activities of centres that may be appropriate for management by category include the provision of advice. For example, where advice is sought about tenancy and the centre does not advise landlords as landlords, the other party may be recorded as 'Private landlord' and the conflict check recorded as 'N/A'.

### **F. File number**

All client information must be readily retrievable. Centres must have a file system which allows all client matters to be located by name and file number. If the matter becomes an open file, it must then be noted as such on the centre's file system.

#### **3.3.3 Instructions recorded**

##### **A. Outline of client's problem/instructions\***

This must be legible and recorded in sufficient detail so that the nature of the client's enquiry is clear.

#### **3.3.4 Advice Recorded**

##### **A. Professional basis for advice must be disclosed**

Unqualified persons must not hold themselves out as a solicitor, barrister or legal practitioner or otherwise imply that they are a solicitor, barrister or legal practitioner. This means that workers who provide advice but who do not have a current practising certificate must ensure their clients know that they are not a legal practitioner. They must tell the client what their status is with words to the effect of 'I am not a legal practitioner, I am a law student' or 'I am a tenancy worker'.

##### **B. Outline of advice given to client\***

This must be legible and recorded in sufficient detail so that it is clear to anyone who reads it what advice was given to the client.

##### **C. Limitation date\***

A client may approach a centre with a number of different problems, or a number of causes of action may arise out of the same set of facts (eg. victims compensation, workers compensation, personal injury claim). The client must be advised of all relevant limitation dates or if the precise date is not known, the relevant limitation period.

There should be an indication on the advice sheet / file that the client has been advised of relevant limitation dates.

If the centre is not able to advise in any particular area of law, the client must be told that advice must be obtained in relation to those areas where the centre is unable to advise and, as limitation dates may apply, that advice should be sought immediately.

**D. Date and signature of person giving advice**

The person giving the advice must record their name, and sign and date the advice sheet.

**E. Telephone advice**

Where advice is given over the telephone, and any relevant papers cannot be sighted, the person giving advice must preface their advice with a warning to the effect of 'I cannot be certain without seeing all the documents'. This warning must be recorded.

**F. Email advice**

There are a range of legal, regulatory and other issues that centres providing advice by email need to consider. Centres must develop policies and procedures for dealing with email enquiries that incorporate legal requirements and quality standards.

Centres may wish to provide advice by email so as to increase accessibility, for example to persons with a disability. Even if a centre decides not to provide legal assistance by email, it must still develop policies and procedures for dealing with people who may make contact via email.

**3.3.5 Advising Third Parties**

Centres must not provide advice to third parties (that is, to a person who requests advice on behalf of another person) unless exceptional circumstances exist. The primary reason for this is that it is not possible to be certain that the third party is giving correct or complete instructions, nor is it possible to be certain that the advice given will be relayed accurately.

There may be some exceptional circumstances where it is appropriate to provide advice to third parties, for example, to a person caring for a person with dementia or some other disability or a parent inquiring on behalf of a young child.

**3.4 Open Files****3.4.1 Advice and Casework Guidelines**

In determining whether to take on a matter as an ongoing casework file, reference must be made to the centre's advice and casework guidelines (See previous).

**3.4.2 File Number**

The matter will already have been given a file number (see 3.3.2 Intake Procedures). It is now necessary to indicate on the centre's file system that the file has been opened as an ongoing casework file.

**3.4.3 Letter of Engagement or Client / Litigation Agreement**

Whenever ongoing casework is undertaken and a file is opened, it is best practice (but not a mandatory requirement) that it have a Client / Litigation Agreement or a Letter of Engagement. See definition in Glossary.

**3.4.4 Limitation Date**

Matters to which a limitation date/s applies must have the date marked prominently on the file. If no limitation date is applicable, this must be noted prominently on the file as 'N/A'. Similarly, if the limitation date has expired, this must be prominently indicated as 'Expired'.

Limitation dates must also be recorded and monitored in the centre's file review system.

In matters where the centre is only acting for the client in one of a number of possible actions, it must be noted on the file that the client has been advised of the limitation dates for all possible causes of action.

### 3.4.5 File Management

#### A. Front of file information

The following information must be recorded prominently on all casework and advice files or other appropriate record (eg. advice sheets):

- Name, address and telephone number of client
- Name of the other party
- Indication that a conflict check has been done
- Matter type
- File number
- Limitation date (see previous)
- Name of worker responsible for file

The following information must be recorded in the file when a new casework file is opened:

- Outline of the client's problem
- Outline of the advice given
- Date file opened
- Date instructions first received
- Date advice given

#### B. File notes

File notes must be made of all telephone or face-to-face attendances with the client or any other person spoken to in relation to the matter. The file notes must be dated, indicate the circumstances in which the note was made (eg. face-to-face, or telephone), be signed or initialled by the person making the file note, and 'spiked' on the file.

#### C. Incoming or outgoing calls

Records must be made of all incoming and outgoing calls made on the file, by the person with the conduct of the file and any other person who works on the file. Messages taken from callers must be 'spiked' on the file.

#### D. Correspondence, court documents, evidence and disbursements

Copies of all correspondence in a matter, including emails, should be kept on the file. Keep files in a sensible and logical order, with court documents and evidence separated from file notes and correspondence. File notes and correspondence should be secured to the file in chronological order. Disbursements should also be kept together and separate from other documents.

#### E. File Movement Register

It is suggested that centres keep a File Movement Register so that all staff know where to find files that are not filed.

#### F. File ownership and removal

Client files belong to centres and/or clients. Centre staff and volunteers do not own client files and must not treat them as their property. When the employment relationship ends, the files remain with the centre.

## 3.5 File Closure

### 3.5.1 Closing Files

Before a file is closed, it must be reviewed by Responsible or Nominated Person to ensure that the following requirements have been complied with:

#### A. The client is advised in writing:

- that the file will be closed
- that the file will be destroyed after seven years (see below at 3.5.2)
- of relevant limitation dates

#### B. The following administrative process has been completed:

- any original documents provided by client are returned to the client
- all bills have been paid, trust statements sent and unused trust monies returned and accounted for
- the date the file is closed (and its location) is recorded
- The file is closed on the Centre's file system

It is easier to dispose of files after seven years if they are given a new number when they are closed, as the time period runs from the date of closure.

There must either be a record on the file that the above things have been done (for example by way of a checklist) or an explanation as to why they have not been done.

### 3.5.2 Keeping Files

All files must be kept for a minimum of seven years from the date that the file is closed.

Centre staff must be aware that it may be a requirement that some files be kept longer. In relation to any client suffering a legal disability (such as being under 18 or suffering an intellectual disability or mental illness) consideration should be given to whether it is prudent to retain the file beyond the seven year period for any reason.

Files containing instructions for wills, and original wills and powers of attorney must not be destroyed. If the centre retains the original will it must not be kept on the file, rather it must be kept in a secure place with a will register.

For further suggestions of best practice, refer to the Document Destruction Checklist attached at the end of this section of the *Risk Management Guide*.

## 3.6 File Review

### 3.6.1 File Review System

The centre must have a comprehensive file review system (whether electronic or other form). The system must record the limitation date for each ongoing file (and appropriate forewarnings of that date) where applicable. The system must also record a regular review date for each file, or must ensure by some other method that all files are regularly reviewed.

The system must be accessible at all times at the centre. This is to ensure that correspondence is sent or attended to, court dates and limitation dates are not missed and other necessary action is taken on the file.

Whatever system is used, it is essential that:

- each file is reviewed at an appropriate interval
- court dates are recorded
- on the review date a check is done to ensure that any necessary action is completed
- checks to ensure that limitation dates are not missed must occur well in advance of the expiry of the limitation date

- there are procedures in place to ensure that a date or action to be taken is not missed due to the absence of a particular person
- there is a formal system in place to ensure that files are reviewed in the absence of a legal practitioner or caseworker

Diary entries/file review system must record the name of the file and/or client, as well as the name of the staff member responsible for the file.

### 3.6.2 Correspondence

All correspondence must be attended to promptly and appropriate action taken.

Incoming correspondence must be placed in the appropriate person's in-tray which must be checked every day. It must not be placed in the file, where it may not be seen until the file is next reviewed, which may not be for some period of time.

### 3.6.3 Case Conferences

It is recommended that case conferences be held on a regular basis at appropriate intervals.

## 3.7 Specialist Projects Auspiced by Centres

Several centres auspice various specialist Projects, including Women's Domestic Violence Court Assistance Schemes (WDVCAS), Tenancy Advice Services, Welfare Rights and Children's Court Support Schemes. Different models operate in different centres. The workers in these Projects are covered by the National CLC Professional Indemnity Insurance Scheme and therefore must comply with the requirements of this *Guide* (see all of above).

Particular attention must be paid to the following:

- Any work done by the Project (advice or ongoing casework) must be opened as files of the centre and given a file number. For example, where a WDVCAS worker advises a woman in a police-initiated AVO it must be recorded as a centre file.
- Projects must use the centre letterhead (which may then have a sub-heading in the name of the Project).
- Project workers must sign correspondence over their stated position (eg. Tenancy Worker).
- Project workers must check legal documents such as Deeds of Release, Affidavits, Statutory Declarations, etc with the Responsible or Nominated Person.
- Where appropriate, project workers must advise clients (eg. in the letter of engagement) that there may be other legal ramifications in the matter and refer them to legal practitioners at the centre for that advice.
- The Project is subject to the annual Cross Check of the centre.

## 3.8 Volunteers

The legal work of volunteers must be supervised by the Responsible Person (or Nominated Person). All new volunteers must participate in a training and orientation program.

An orientation package must be given to each new volunteer which includes:

- access to this *Risk Management Guide*
- policies and procedures of the centre, including office procedures, advice and casework guidelines

Each centre is encouraged to provide an ongoing training program for volunteers to keep them up to date with changes at the centre, developments in the relevant areas of law, and so on.

### **3.9 Publications**

Information in any brochures or publications produced by a centre must be checked by the Responsible or Nominated Person for accuracy prior to distribution.

The publication must contain a disclaimer as to the reliability of information contained in the publication and the need for the reader to obtain legal advice in relation to their particular circumstances.

### **3.10 Community Legal Education (CLE)**

Centres undertaking CLE activities must make it clear that the information provided in those sessions is in the manner of general legal information, not legal advice, and accordingly must not be relied upon or applied by participants in their own cases. Participants must be advised that each set of circumstances needs to be looked at individually and they must seek individual legal advice if they have a legal problem.

Similarly, legal advice must not be given by workers conducting CLE sessions, as such sessions are not appropriate for obtaining sufficient and comprehensive instructions upon which to provide advice.

The Responsible Person or Nominated Person must ensure that the content of CLE sessions is accurate and up to date, and workers conducting such sessions are aware of the law of defamation.

### **3.11 Law Reform**

The Responsible Person or Nominated Person involved in law reform activities must ensure that the content of legal submissions and other documents prepared by the centre is legally accurate and does not contain any defamatory material.

### **3.12 Media**

The Responsible Person must ensure that the content of a press release is correct and not defamatory, and ensure that all workers who may speak with the media are aware of the issues around defamation.

# Document Destruction Checklist

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**PLEASE NOTE** that requirements regarding document destruction vary from jurisdiction to jurisdiction and states should make requisite modification where required.

## Scope of this checklist

This checklist applies to the destruction of documents relating to the provision /conduct of:

- **A. Casework where a file is opened**
- **B. Legal advice where no file is opened**

## Age of documents

For the purposes of this checklist:

- The age of a file will be determined by the last date on which the file was closed
- The age of an advice sheet will be determined by the date of the advice

## The following steps will be followed prior to any file being destroyed

- 1.** Files, advice sheets and related documents (eg. copy of summons, which may be attached to an advice sheet, in respect of which advice was sought) which are proposed to be destroyed will be provided to Responsible Person.
- 2.** With the exception of the following, the Responsible Person may authorise for destruction any files, advice sheets and related documents, which are over seven years old:
  - a. Any original documents belonging to the client**  
Such documents will include documents provided to the centre by the client; or documents obtained by the centre and which have been paid for by the client – in this regard it is recommended that wherever possible all documents belonging to the client should be returned to the client at the conclusion of a matter; or alternatively the centre should decline to accept documents belonging to the client, agreeing to take photocopies of such documents instead.
  - b. original wills\***
  - c. original powers of attorney\***
  - d. original copies of titles\***
  - e. files, advice sheets or related documents** relating to instructions for wills and power of attorney\*
  - f. files, advice sheets or related documents** relating to persons who were under a mental disability at the time of presenting at the centre for assistance. In this regard, the centre is entitled to assume that a person was not under a mental disability where no indication of the same appears on the file. An indicator of a person's disability may be express or implied from the nature of a matter otherwise.
  - g. files, advice sheets or related documents** relating to persons who were under the age of 18 years at the time of presenting at the centre for assistance.
  - h. files, advice sheets or related documents** in respect of which:
    - the centre has received a notice of intended litigation against it whether or not such litigation has in fact commenced.
    - the centre is subject to litigation, which has commenced.
- 3.** Files, advice sheets or related documents identified in items **2(a) – (d)** are to be kept indefinitely. Such documents should be clearly marked accordingly or stored separately.

*Document Destruction Checklist continues overleaf >*

## Document Destruction Checklist continued

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- 4.** Files, advice sheets or related documents relating to persons who were under the age of 18 years at the time of presenting at the centre, must be retained for at least a further seven years from the date when the person turned 18, or such longer period as determined by clause 3. Such documents should be clearly marked accordingly or stored separately.
- 5.** Once the Responsible Person has identified a file, advice sheet or related document as ready for destruction, such may be destroyed.
- 6.** Where necessary, a record will be kept of files/advice sheets destroyed<sup>+</sup>.

### NOTES

- \* While it is not recommended that centres receive instructions for wills or powers of attorney, or retain original copies of these documents, or instructions relating to the same, or original titles, it is noted that some centres do have such documents, having performed work in relation to these areas in the past. It is for this reason that such are included in the checklist.
- + It is noted that the requirement to keep a record of files/advice sheets destroyed is not necessary in all jurisdictions.