

Aboriginal  
Family Violence  
Legal Service



*The Aboriginal Family Violence Legal Service (AFVLS) is a program of Djirra.*

### **What is a conflict of interest?**

All lawyers and law practices in Australia are required by the Australian Solicitors Conduct Rules to avoid actual and perceived conflicts between duties owed to current and former clients. The Aboriginal Family Violence Legal Service (AFVLS) has the right and the duty to decline to provide assistance where there is an actual or perceived conflict of interest.

A conflict of interest will generally arise where:

- AFVLS has acted for the other party in a dispute in the past (for example the perpetrator of violence or other party in the current case was previously victim of violence whom the service has assisted) or an AFVLS employee has acted for another party when employed in a previous position (for example if an employee has previously been employed by the Department of Human Services)
- AFVLS has acted against the prospective client in the past
- there is a personal conflict of interest through AFVLS staff connections (for example a staff member is a close friend or relative of the other party)
- AFVLS provides direct assistance to victims of family violence and sexual assault who:
  - 1) approach AFVLS first
  - 2) meet our eligibility criteria
  - 3) with whom there is no actual or perceived conflict.

The duty to avoid conflicts is much stricter in matters involving family disputes. This includes family law, family violence and child protection.

The duty to avoid a conflict of interest is a continuing and ongoing duty. This means that even if there was no conflict at the beginning of a matter, but a conflict emerges later, AFVLS must immediately stop acting for a client, or for both clients, and refer one or both to other legal services.

### **Who makes decisions about conflict of interest?**

The conflict of interest rule requires AFVLS to do a conflict check before giving any legal advice either by telephone or face to face, or agreeing to provide other legal assistance. If there is an actual or perceived conflict between a prospective client and a current or former client (or with a staff member), AFVLS lawyers must decline to provide assistance. This includes giving initial legal advice.

In this case, we will notify the affected persons of the conflict and assist them to obtain alternative legal assistance.

Sometimes the lawyer will discuss a conflict situation with the Legal Service Manager, who has the final decision.

**Is there a less strict approach to the conflict rule?**

The rule to avoid conflict is applied strictly, especially in family disputes or when AFVLS offers a duty service, or a legal matter is urgent.

In some circumstances, a person who otherwise meets our eligibility criteria, but has been declined assistance from AFVLS due to a conflict of interest may request that the Legal Service Manager reconsider the facts and circumstances of the particular conflict of interest situation.

In doing so, the AFVLS Legal Service Manager will consider all the facts and circumstances in accordance with the Australian Solicitors Conduct Rules, and our client's right to confidentiality and safety. The Legal Service Manager's decision is final.