



# Board of Legal Aid NSW

## *Charter*

## Table of Contents

1. Introduction .....	3
2. Authority and Objective of the Board .....	4
3. Review of the Charter .....	5
4. Composition and Tenure of the Board .....	6
4.1 Term of Office .....	6
4.2 Remuneration.....	7
4.3 Alternate Board members .....	7
4.4 Casual Vacancies .....	7
5. Roles and Responsibilities of Board Members .....	8
5.1 Role of the Chairperson .....	8
5.2 Role of the Chief Executive Officer .....	8
5.3 Role of Board Members .....	8
5.4 Management decisions and complaints .....	9
5.5 Removal from or vacation of office.....	9
6. Administrative arrangements .....	11
6.1 Induction and development of Board members .....	11
6.2 Procedure for Board meetings .....	12
6.3 Voting requirements .....	12
6.4 Publication requirements.....	13
6.5 Reporting requirements.....	13
6.6 Review and Evaluation requirements.....	13
7. Relevant legislation .....	15

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# 1. Introduction

This Charter outlines the authority, objectives and powers of the Board of Legal Aid NSW (“the Board”). The Charter details the Board’s composition and the tenure of its members, the roles and responsibilities of key participants and the administrative arrangements.

This Charter is intended to convey in plain words the statutory, common law and general administrative requirements that apply to the Board and any sub-committees. Nothing in this Charter is intended to modify or detract from, rights and obligations Board members have by operation of statute or under general law.

## 2. Authority and Objective of the Board

The Legal Aid Commission of New South Wales (“Legal Aid NSW”) is an independent statutory body established under the *Legal Aid Commission Act 1979 (NSW)* (“the Act”). The principal function of Legal Aid NSW is to provide legal aid and other legal services to the people of NSW. Legal Aid NSW helps people to understand and protect their legal rights. Legal Aid NSW achieves this through advice, advocacy, representation and education, focusing on socially and economically disadvantaged people and communities.

The Board is established under s. 14 (1) of the Act. The Act prescribes the function of the Board and the responsibilities of the CEO. The function of the Board is to establish the broad policies and strategic plans of Legal Aid NSW. The responsibility of the CEO is the day-to-day management of Legal Aid NSW (including managing financial and human resources and the provision of legal aid and other legal services).

### 3. Review of the Charter

The *NSW Government Boards and Committees Guidelines* require the Board have and maintain a Charter outlining its objectives, powers and authorities.

The Board will review the Charter at least every 2 years. The Charter may be amended at any time, for example, if required following a change in government policy or within Legal Aid NSW, upon request, or for any other purpose deemed appropriate. Any changes to the Charter are to be approved by the Board.

The Charter will be published in accordance with NSW Government's Information Management Framework and the *Government Information (Public Access) Act*.

## 4. Composition and Tenure of the Board

The Board consists of ten members appointed by the Attorney General. This includes the Chief Executive Officer and nine (9) part-time members.

Of the nine part-time members:

- one is appointed as Chairperson of the Board
- one is nominated by the NSW Bar Association
- one is nominated by the Law Society of NSW
- one is nominated by Unions NSW
- three are persons who, in the opinion of the Attorney General, possess skills or experience that would benefit the Board
- one is a person who, in the opinion of the Attorney General, represents consumer and community welfare interests, and
- one is a person who, in the opinion of the Attorney General, represents bodies that provide community legal services.

The presence of representatives of interest groups and nominees of specified organisations ensures that the decisions of the Board are based on full and informed discussions in which the views of interested groups are considered.

A Board member may hold another office. In the event there is either a legislative requirement to devote the whole of his or her time to the duties of that other office, or a legislative prohibition on engaging in employment outside the duties of that office, the person is not disqualified from holding that office and the office of a member of the Board, or from accepting any remuneration payable for the role as a Board member.

A Board member may be appointed to the Audit and Risk Committee (“ARC”). To be eligible for appointment to the ARC a Board member must be on the Panel of prequalified individuals as constituted under the Prequalification Scheme: Audit and Risk Committee Independent Chairs and Members (SCM 2421).

### 4.1 Term of Office

A member of the Board (other than the Chairperson) is appointed for a term not exceeding 3 years. The Chairperson is appointed for a term not exceeding 5 years. All Board members are eligible for reappointment, provided they remain qualified.

## 4.2 Remuneration

Each member of the Board is entitled to be paid remuneration as determined by the Attorney General. The rates are set out in the Public Service Commission Directive *Classification and Remuneration Framework for NSW Government Boards and Committees – Policy and Guidelines* (D2012\_005), or as revised.

## 4.3 Alternate Board members

In the event that a Board member (other than the Chairperson) is absent or ill, the Attorney General may at any time appoint a person to act as an alternate Board member. The alternate Board member must hold the same qualifications (if any) and be nominated in the same manner (if any) as the person for whom he or she is the alternate.

The Attorney General may also appoint an alternate for the Chief Executive Officer of Legal Aid NSW (“CEO”) during the absence or illness of the CEO.

An alternate Board member or alternate CEO has, and may exercise, the functions of the person for whom he or she is the alternate. The act and omissions of the alternate Board member or CEO are valid and effectual and have the same consequences as if they had been done by the person for whom he or she is the alternate.

## 4.4 Casual Vacancies

In the event of a vacancy in the office of a Board member, the Attorney General may appoint a person to the vacant office for the balance of his or her predecessor’s term of office.

The person appointed to fill the vacancy must hold the same qualifications (if any) and be nominated in the same manner (if any) as the person whose office has become vacant.

## 5. Roles and Responsibilities of Board Members

### 5.1 Role of the Chairperson

The role of the Chairperson is to lead the activities of the Board and to facilitate the conduct of Board meetings. The Chairperson is also responsible for:

- Ensuring the Board performs its functions, acts within statutory powers and legal obligations, and complies with relevant policies
- Ensuring the individual members make an effective contribution, developing their capabilities and reviewing their performance
- Facilitating the flow of information to members and stakeholders
- Maintaining good relationships and liaising with key stakeholders, and
- Ensuring the provision of appropriate secretarial support.

The Chairperson will preside at all meetings of the Board at which he or she is present, but the procedures for conducting meetings are determined by the Board.

### 5.2 Role of the Chief Executive Officer

The CEO is a member of the Board.

The CEO is responsible for the day-to-day management of Legal Aid NSW in accordance with the broad policies and strategic plans established by the Board. The provisions of the Act applying to Board members do not apply to the CEO.

The role of the CEO on the Board is to assist the Chairperson by contributing to the preparation of material for meetings, providing information to members on the organisation's corporate, strategic and business plans, and reporting on compliance with statutory requirements.

The CEO will preside over Board meetings in the absence of the Chairperson.

### 5.3 Role of Board Members

The role and responsibilities of Board members includes supporting the Board to perform its functions, attending meetings, and participating in decision making processes and undertaking consultation or research to support and promote discussion of the agenda items.



Board members have a duty to discharge their statutory obligations with honesty, integrity, and professionalism, at all times endeavouring to act in the best interests of Legal Aid NSW.

More details on the obligations and behaviour expected of all Board members can be found in the *Code of Conduct*.

#### 5.4 Management decisions and complaints

A member of the Board should not make representations or act on behalf of anyone seeking a review of a management decision. Anyone who is dissatisfied with a management decision should in the first instance be referred to the Chief Executive Officer for due process.

Complaints addressed to the Board about Legal Aid NSW Executive, staff or processes should be forwarded to the Chief Executive Officer within Legal Aid NSW to be managed in accordance with Legal Aid NSW policies and operational procedures.

#### 5.5 Removal from or vacation of office

The Attorney General may remove a Board member from office for inability, misbehaviour or failure to comply with the terms and conditions of his or her appointment.

The Attorney General may remove a Board member from office in circumstances where that member:

- Has become consistently disruptive or obstructive and that behaviour cannot be resolved
- Has a conflict of interest that cannot be mitigated
- Is unable to perform their duties due to illness or other commitments
- Has failed to attend an adequate number of meetings
- Has breached the *Code of Conduct* or the *Lobbyists Code of Conduct*
- No longer meets the membership criteria (eg was appointed as a representative of another entity and no longer represents that entity), or
- Is declared bankrupt or convicted of a criminal offence.

A Board member is deemed to have vacated their office in a range of circumstances specified in Schedule 2 of the Act. For example, a Board member is deemed to have vacated their office if he or she:

- is removed by the Attorney General
- resigns with the approval of the Attorney General

- has died or become mentally incapacitated
- has committed wrongdoing (eg if he or she became bankrupt or insolvent etc., is convicted of a serious indictable offence or failed to disclose a pecuniary interest), or
- has missed three consecutive meetings without leave of the Board.

**Legal Aid Commission Act 1979 - Schedule 2, clause 7:**

A member of the Board shall be deemed to have vacated his or her office:

- a) if he or she dies,
- b) if he or she resigns his or her office by writing under his or her hand addressed to the Minister and the Minister accepts his or her resignation,
- c) if he or she becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,
- d) if the member becomes a mentally incapacitated person,
- e) if he or she is convicted in New South Wales of an indictable offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable,
- f) if the member is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Board or unless the member is excused by the Board for having been absent from those meetings,
- g) if, at any meeting of the Board at which he or she is present and at which any matter in which he or she has a direct or indirect pecuniary interest (otherwise than as a member of, and in common with the other members of, a corporation which consists of more than 25 persons and of which he or she is not a director) is being or about to be considered by the Board:
  - i. he or she fails, as soon as practicable after the relevant facts have come to his or her knowledge, to disclose to the meeting his or her interest in the matter, or
  - ii. he or she takes part in the consideration or discussion of, or votes on any question with respect to, the matter, or
- h) if he or she is removed from office by the Minister.
- i) (Repealed)

## 6. Administrative arrangements

### 6.1 Induction and development of Board members

All Board members must understand their role, public duty and legal responsibilities. Board members will be inducted at the commencement of membership and provided with ongoing development opportunities.

Upon appointment, all new members will receive an induction package that will include:

- Letter of appointment specifying the term of appointment, roles and responsibilities of the member and level of remuneration
- A copy of the Act, *Board Charter* and *Board Code of Conduct* and, where relevant, copies of any Charters relating to sub-committees (eg *Audit and Risk Committee Charter*)
- A schedule of meeting dates and details of attendance requirements and arrangements for notice of absence
- An overview of Legal Aid NSW, the current strategic and operational plans, financial statements and annual report for Legal Aid NSW, and a copy of the Code of Conduct for staff of Legal Aid NSW
- Arrangements for declaring interests, including a pecuniary interest declaration form, and
- A confidentiality undertaking form.

Board members must sign and return a copy of the appointment letter, the *Code of Conduct*, a completed pecuniary interest declaration and a completed confidentiality undertaking form.

New Board members will also be invited to attend a face-to-face induction briefing from the CEO and the Legal Aid NSW Executive.

The Board will also be briefed on their obligations under the *Government Information (Public Access) Act 2009* (NSW).

Development activities for the Board will be available from time-to-time.

## 6.2 Procedure for Board meetings

The Chairperson may convene a meeting of the Board at any time and must convene a meeting on receipt of a written request signed by three Board members.

Six members of the Board need to be present to constitute a quorum, which is sufficient to transact any business of the Board. If a member is unable to participate in person, he or she may participate by telephone or other electronic means that are practically available (eg, video conferencing) with the approval of the Chairperson or the CEO.

The Chairperson will preside at all meetings of the Board at which he or she is present. In the absence of the Chairperson, the CEO will preside over meetings. If both the Chairperson and the CEO are absent, the Board members will appoint a fellow Board member to preside at the meeting.

Board members should attend all meetings (as far as possible) and should not miss more than three consecutive meetings (unless the Board grants leave or excuses the absences). The Board will determine the procedure for members to give notice of absence from meetings.

The procedures for calling and conducting meetings of the Board are to be determined by the Board.

Board meetings will take place at Legal Aid NSW's Central Sydney office and will typically take place every two months, or at least six times a year. Board meetings may be conducted virtually (eg, by teleconference or email), but only in exceptional circumstances such as where an urgent decision is required, and with the approval of the Chairperson or the CEO.

The Board will keep full and accurate minutes of meetings and submit a copy of the minutes to the Attorney General within 14 days of the meeting.

The Board will publish decisions that it determines are of sufficient importance to the public. The manner of publication is to be determined by the Board.

## 6.3 Voting requirements

Decisions of the Board are determined by a majority of votes of the members who are present and voting. A quorum (six Board members) is required for the Board to transact any business. In the event of an equality of votes, the Chairperson (or other presiding member) has both a deliberative vote and a second or casting vote.

Generally, Board members should endeavour to reach consensus decisions. Members who express dissenting views can expect to have their views minuted (consistent with the requirement for accurate minutes), but they should not continue to debate any issue once the vote has been taken.

Board members should vote for or against a decision, and only abstain from voting where there is an actual, perceived or potential conflict of interest or any other sufficient reason to do so.

The *Code of Conduct* sets out questions that may provide guidance to Board members for accountable decision making.

## 6.4 Publication requirements

The Board will publish this Charter and the Code of Conduct, in accordance with the NSW Government's Information Management Framework and the GIPA Act.

The Board will also publish any decisions of sufficient importance to the public and proactively release decisions, unless there is an overriding public interest against disclosure, in accordance with the requirements in the *Government Information (Public Access) Act 2009* (NSW).

The Board will develop guidelines and procedures for publishing information.

The Board will establish a Register of Gifts to ensure transparency regarding gifts or hospitality of nominal value.

## 6.5 Reporting requirements

The Act requires that Legal Aid NSW provide an annual report of its work and activities that also includes a review of all other legal aid services available in NSW. The report must be provided to the Attorney General as soon as practicable after 30 June each year, so the Attorney General can present the report to each House of Parliament.

## 6.6 Review and Evaluation requirements

The Board recognises that the ongoing development and improvement of its performance is critical to effective governance.

A formal review will be conducted every five years to consider whether:

- The Board is fulfilling its functions and objectives
- Members have the appropriate mix of skills, experience and diversity and the Board has an appropriate number of members for the work being performed, and
- Individual members are fulfilling their responsibilities.

The Board may conduct an informal review at any time.

Factors that may be considered as part of an informal review or formal review may include:

- Members participation in and contribution to the objectives and workload
- Meeting attendance and engagement of members
- Any actual or potential conflicts of interest

- Whether there is a clear understanding of the operating environment and the roles and responsibilities of members and key participants involved with the Board, and
- Further development opportunities for members.

## 7. Relevant legislation

The most relevant legislation that applies to the operation of Legal Aid NSW includes:

- *Anti-Discrimination Act 1977 (NSW)*
- *Crimes Act 1900 (NSW)*
- *Disability Discrimination Act 1992 (Cth)*
- *Government Information (Public Access) Act 2009 (NSW)*
- *Government Sector Employment Act 2013 (NSW)*
- *Government Sector Finance Act 2018 (NSW)*
- *Independent Commission Against Corruption Act 1988 (NSW)*
- *Industrial Relations Act 1996 (NSW)*
- *Legal Aid Commission Act 1979 (NSW)*
- *Legal Profession Uniform Law Application Act 2014 (NSW)*
- *Legal Profession Uniform Law 2015*
- *Ombudsman Act 1974 (NSW)*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Public Interest Disclosures Act 1994 (NSW)*
- *State Records Act 1998 (NSW)*
- *Work Health and Safety Act 2011 (NSW)*
- *Workplace Injury Management and Workers Compensation Act 1998 (NSW)*