

# AGREEMENT FOR THE PROVISION OF SERVICES TO LEGALLY ASSISTED PERSONS

## RECITALS

- A. Legal Aid NSW has established a panel of private legal practitioners pursuant to s51 of the *Legal Aid Commission Act (NSW) 1979* to provide legal services to legally assisted persons in proceedings of a kind described in Schedule 1 (“the Panel”).
- B. Legal Aid NSW and the Lawyer have agreed to enter into a service agreement to make provision for the terms upon which the Lawyer will provide legal services as a member of the Panel, and other related matters.
- C. The parties acknowledge that the relationship between the Lawyer and Legal Aid NSW is governed by the *Legal Aid Commission Act 1979 (NSW)*.

## THE PARTIES AGREE AS FOLLOWS:

### 1 PRELIMINARY

In this Agreement, unless the contrary intention appears:

**Agreement** means this document including all schedules, annexures and attachments;

**Application for legal aid** means an application to Legal Aid NSW for funding for the provision of legal services to the applicant in proceedings of a kind described in Schedule 1, and **legal aid** and **grant of legal aid** have corresponding meanings;

**Assignment** means the allocation by Legal Aid NSW of duty work or a matter to a Lawyer, and **assigned** and **assign** have corresponding meanings;

**Duty work** means participation in a duty lawyer service in proceedings of a kind described in Schedule 1;

**Grants Online** means the Legal Aid NSW web-based system for lodging and tracking legal aid applications, extensions, and invoices;

**Legal services** means services provided in the capacity of a solicitor or barrister;

**Matter** means a case matter for which Legal Aid NSW has made a grant of legal aid to a legally assisted person in proceedings of a kind described in Schedule 1;

**Legally assisted person** means a person to whom legal aid is provided;

**Practice Standards** means the professional practice standards applicable to the provision of legal services to legally assisted persons by the Lawyer under this Agreement, as determined by Legal Aid NSW from time to time after consultation with the Law Society of NSW and the NSW Bar Association;

**The Act** means the *Legal Aid Commission Act 1979* (NSW);

**The Lawyer** means the person named in this Agreement with Legal Aid NSW who holds a current practising certificate issued by the Law Society of NSW, the NSW Bar Association or equivalent interstate organisation.

## 2 DURATION AND APPOINTMENT

### 2.1 Duration of Agreement

2.1.1 This Agreement starts on the date of its execution and continues until the Lawyer is removed from or ceases to be a member of the Panel, whichever is the earlier.

2.1.2 Upon execution of this Agreement legal aid work may be assigned to the Lawyer.

2.1.3 The Lawyer may request in writing to be removed from the Panel. The date from which the Lawyer's removal is to take effect will be one month after the Lawyer's request is received by Legal Aid NSW, unless the parties agree on another date.

### 2.2 Publication of name

Legal Aid NSW may publish the Lawyer's name, firm name, business address and telephone number in a list of members of the Panel. This information will appear on the Legal Aid NSW website and in any other form that Legal Aid NSW considers necessary to assist in the administration of services provided by Legal Aid NSW.

### 2.3 Promotion of membership

The Lawyer may promote herself or himself as a member of the Panel.

## **3 ASSIGNMENTS AND PROVISION OF LEGAL SERVICES**

### **3.1 Acceptance of Assignments**

3.1.1 In the event of assignment of a matter the Lawyer must either act for the legally assisted person pursuant to the grant of aid or immediately advise Legal Aid NSW and the legally assisted person in writing that they do not accept the assignment.

3.1.2 Upon acceptance of each assignment the Lawyer enters into a relationship with Legal Aid NSW which is governed by the Act and any policies made under the Act.

3.1.3 Where the Lawyer accepts an assignment the Lawyer must retain carriage of the matter. Where the Lawyer is unable to retain carriage of the matter the Lawyer must contact Legal Aid NSW immediately and Legal Aid NSW will determine any reassignment of the matter.

### **3.2 Management of Assignments**

3.2.1 Legal Aid NSW is under no obligation to assign any matter or any particular volume or types of matters to the Lawyer.

3.2.2 Legal Aid NSW may assign a matter, including a matter arising from an application for legal aid lodged by the Lawyer, to any member of the Panel, or to any other legal practitioner.

3.2.3 Legal Aid NSW may re-assign any matter previously assigned to the Lawyer to another legal practitioner where it is of the opinion that it is reasonable to do so.

3.2.4 Where Legal Aid NSW re-assigns a matter to another legal practitioner, the Lawyer will, on request by Legal Aid NSW, promptly transfer the relevant file of the legally assisted person to the other practitioner.

### **3.3 Duty Lawyer Service**

The Lawyer will perform duty work in a rostered duty lawyer service if reasonably required by Legal Aid NSW.

## **3.4 Briefing of Counsel**

3.4.1 The Lawyer will not brief counsel in an assigned matter unless authorised in writing by Legal Aid NSW.

3.4.2 If required by Legal Aid NSW the Lawyer will brief:

3.4.2.1 a Public Defender; or

3.4.2.2 where applicable a barrister appointed to any specialist Barrister Panel established by Legal Aid NSW.

## **3.5 Written Reports**

3.5.1 At the conclusion of an assigned matter for which aid has been granted, the Lawyer will advise Legal Aid NSW of the outcome of the proceedings by completing and submitting the File Outcome form in Grants Online. Where any costs or monies have been recovered or any costs orders have been made in favour of or against the legally assisted person, the Lawyer will provide Legal Aid NSW with full details of the relevant orders.

3.5.2 The Lawyer will provide any other information which is reasonably requested by Legal Aid NSW.

## **3.6 Conflicts of Interest**

The Lawyer will notify Legal Aid NSW in writing as soon as practicable after the Lawyer becomes aware that he or she has an actual or potential conflict of interest in any assigned matter.

## **3.7 No Lien**

The Lawyer will not be entitled to any lien or charge over any file, document or other item in connection with the provision of legal services by the Lawyer in a matter.

# **4 GENERAL OBLIGATIONS**

## **4.1 Legal Aid NSW's Obligations**

Legal Aid NSW will:

4.1.1 pay the Lawyer at the Legal Aid NSW applicable fee rates; and

4.1.2 notify the Lawyer in a timely manner of changes to its relevant processes, procedures, policies, guidelines and relevant Practice Standards.

## 4.2 Lawyer's Obligations

The Lawyer will:

4.2.1 maintain a current practising certificate issued by the Law Society of NSW, the NSW Bar Association or equivalent interstate organisation, without any condition, restriction or qualification that would limit or restrict the Lawyer's capacity to provide legal services in assigned matters under this Agreement;

4.2.2 provide legal services in assigned matters in an effective and efficient manner;

4.2.3 comply with the Practice Standards, as amended from time to time, and with the Legal Aid NSW policies, guidelines and administrative requirements relating to applications for and grants of legal aid as amended from time to time;

4.2.4 in all matters relating to the provision of legal services under this Agreement, comply with professional rules made and published by the Law Society of NSW or the NSW Bar Association, as applicable;

4.2.5 at all times act honestly and in good faith in the Lawyer's dealings with Legal Aid NSW;

4.2.6 promptly respond to requests for relevant information from Legal Aid NSW;

4.2.7 provide to Legal Aid NSW the file maintained by the Lawyer in a matter where a written authority to do so is received from the legally assisted person;

4.2.8 accept payment for legal services provided by the Lawyer in assigned matters and duty lawyer services under this Agreement by way of electronic funds transfer, and for this purpose will provide Legal Aid NSW with the necessary details of the Lawyer's account with a financial institution;

4.2.9 comply with the Terms and Conditions of Use of Grants Online, as amended from time to time;

4.2.10 use the Grants Online system to electronically lodge applications for legal aid, applications for extensions of grants of legal aid, requests for transfer of grants, appeals to the Legal Aid Review Committee, File Outcome forms, and invoices for professional fees and disbursements and will establish, at the Lawyer's expense, such facilities as are reasonably required by Legal Aid NSW to enable the Lawyer to do so;

4.2.11 use the Submit Correspondence function in the Grants Online system to communicate with Legal Aid NSW regarding files assigned to the Lawyer;

4.2.12 submit the electronic invoice issued by Legal Aid NSW and claim only for legal services provided in assigned matters and in accordance with Legal Aid NSW's applicable fee rates;

4.2.13 notify Legal Aid NSW immediately in writing if the Lawyer is unable for any reason to provide legal services in any assigned (including duty) matter;

4.2.14 notify Legal Aid NSW in writing of any criminal (except in relation to minor traffic offences), bankruptcy or professional disciplinary proceedings that have been commenced against the Lawyer;

4.2.15 notify Legal Aid NSW immediately in writing of any circumstances that could give rise to a claim for professional negligence by providing a detailed statement;

4.2.16 if the Lawyer is or will be providing legal services in any assigned matter to a child or young person under the age of 18, notify Legal Aid NSW immediately in writing if the Lawyer is convicted of or charged with any of the Disqualifying Offences set out in Schedule 2 of the *Child Protection (Working with Children) Act 2012*;

4.2.17 refrain from charging or recovering any costs from a legally assisted person for work that has been assigned by Legal Aid NSW to him or her, except with the express approval of Legal Aid NSW.

Conduct by the Lawyer that breaches section 41 of the Act constitutes a breach of this agreement and may result in further professional disciplinary penalties.

4.2.18 maintain his or her membership of all Legal Aid NSW Panels to which he or she has been appointed.

Removal or suspension from any Legal Aid NSW Panel as a result of a breach of the relevant service provision agreement or a failure or refusal to cooperate in the carrying out of an audit will amount to a breach of this Agreement.

## 4.3 Restrictions on Right to Practise

If the Lawyer ceases to hold a current practising certificate during the term of this Agreement or if, as a consequence of disciplinary proceedings taken against the Lawyer, he or she is prevented from practising as a legal practitioner, the Lawyer will immediately notify Legal Aid NSW in writing and will cease to provide legal services in all matters.

## 5 AUDITS

### 5.1 Definitions

In this clause 5:

5.1.1 **audit** means an audit referred to in section 52B of the Act;

5.1.2 **person** means a person appointed by Legal Aid NSW (not being a member of the staff of Legal Aid NSW) to carry out an audit;

5.1.3 **irregularity** means:

5.1.3.1 a breach by the Lawyer of this Agreement, the Practice Standards or the Legal Aid NSW policies, guidelines or delegations, or

5.1.3.2 a substantial or unresolved complaint concerning service provision by the Lawyer,

in relation to the conduct of a matter by the Lawyer under this Agreement.

### 5.2 Provision of Documents Within Nominated Period

Where Legal Aid NSW has given the Lawyer notice of intention to carry out an audit of the Lawyer, the Lawyer will within such reasonable period as nominated by Legal Aid NSW or by the person produce for inspection such files, records or documents relating to an assigned matter as Legal Aid NSW or the person requires for the purpose of the conduct of the audit.

## **5.3 Cost of Transporting Documents**

The reasonable cost of delivering files, records or documents between the Lawyer and Legal Aid NSW or the person for the purposes of an audit will be borne by Legal Aid NSW.

## **5.4 Attendance at Lawyer's Place of Business**

If Legal Aid NSW or the person so requests, the Lawyer will allow Legal Aid NSW or the person to attend the Lawyer's place of business to carry out part or all of an audit of the Lawyer.

## **5.5 Notification of Irregularity**

Where as a result of an audit of the Lawyer Legal Aid NSW or the person identifies any irregularity, Legal Aid NSW will notify the Lawyer in writing of the irregularity.

## **5.6 Notice to Remedy Breach**

Without prejudice to or waiver of any other rights Legal Aid NSW may have under this Agreement or the Act arising from an irregularity, Legal Aid NSW may by notice in writing require the Lawyer to take action described in the notice within such reasonable time as specified in the notice to remedy an irregularity identified as a result of an audit.

## **5.7 Where Lawyer owes Money**

Without prejudice to or waiver of any other rights Legal Aid NSW may have under this Agreement or the Act, where, as a result of an audit of the Lawyer, Legal Aid NSW identifies that the Lawyer owes money to Legal Aid NSW, Legal Aid NSW may deduct from future payments to the Lawyer the sum determined by Legal Aid NSW to be owing or direct the Lawyer to pay into a Legal Aid NSW account the amount owing.

## **6 BREACH OF AGREEMENT**

Where under section 52A of the Act Legal Aid NSW or a monitoring committee established under that section gives written notice to the Lawyer of an apparent breach of this Agreement by the Lawyer and directs the Lawyer to provide a written response to the monitoring committee by way of explanation, any written response by the Lawyer to such a notice must be provided within 28 days after receipt of the notice.



## **7 TRANSFER OF FILES FOLLOWING TERMINATION OF AGREEMENT**

Following the termination of this Agreement the transfer of assigned matters will be determined by Legal Aid NSW.

## **8 NOTICES**

A notice or other communication required or permitted, under this Agreement, to be served on or given to a party must be in writing and must be sent to Legal Aid NSW at 323 Castlereagh Street, Sydney or (if by post) PO Box K847, Haymarket NSW 1238 or (if by e-mail) [panels@legalaid.nsw.gov.au](mailto:panels@legalaid.nsw.gov.au) or to the Lawyer at the address recorded for the Lawyer's firm on Grants Online.

## **9 MISCELLANEOUS**

### **9.1 Previous Agreements**

This Agreement supersedes any prior agreement or understanding between the parties in connection with its subject matter.

### **9.2 Severability**

9.2.1 As far as possible all provisions of this Agreement must be construed so as not to be invalid, illegal or unenforceable.

9.2.2 If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of the Agreement remains in force.

9.2.3 If any provision of this Agreement cannot be read down, that provision will be void and severable and the remaining provisions of the Agreement will not be affected.

### **9.3 Variation**

The terms of this agreement may be varied by Legal Aid NSW by providing the Lawyer two months written notice.

## **SCHEDULE 1**

**Proceedings (Recital A and clause 1)**

Proceedings in the Criminal Law jurisdiction of the Local Court and District Court.

**EXECUTION**

Executed on behalf of Legal Aid NSW by the Director Grants.

By clicking on the 'I Agree' button below, I agree to and acknowledge the terms and conditions of this agreement.

SAMPLE