

# Civil Law Practice Standards



This document sets out practice standards for lawyers representing legally aided parties in civil law matters in state and Commonwealth jurisdictions throughout New South Wales.

These standards apply to in-house Legal Aid NSW solicitors and private lawyers acting in legally aided civil law matters.

Lawyers who are appointed to the General Civil Law Panel (the panel) are eligible to receive grants of aid and assigned work from the Grants Division.

Legal Aid NSW may audit panel lawyers for compliance with practice standards. Continued inclusion on the panel is conditional on compliance with these practice standards.

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# 1 Responsibilities to Clients

A lawyer or advocate representing a legally aided client in a civil law matter will:

- 1.1 Provide representation in accordance with the Law Society of NSW Professional Conduct and Practice Rules.
- 1.2 Advise the client of the availability of legal aid and, where appropriate, assist the client to complete an application for legal aid.
- 1.3 Obtain from the client adequate instructions as to the current status of the matter in order to apply for a grant or for an extension of legal aid.
- 1.4 Assist the client in obtaining a grant of legal aid by providing Legal Aid NSW with all information relevant to the application or extension.
- 1.5 Observe the principles governing the lawyer/client relationship and the privacy of instructions provided by the client.
- 1.6 Use a qualified interpreter where necessary after obtaining approval from the Grants Division.
- 1.7 Meet with the client as early in the process as possible and communicate with the client in a way that the client understands using language appropriate to the age, maturity, education and cultural background of the client.
- 1.8 Promptly comply with reasonable requests by a client for information regarding their matter.
- 1.9 Provide a meaningful reply to all correspondence, reply promptly to all urgent matters and advise clients that a detailed response for advice may require more time.
- 1.10 Respond to all telephone inquiries promptly.
- 1.11 Keep their clients informed of the progress of their matter in a timely manner and ensure that the client is aware of the stages through which a matter progresses in the court system.
- 1.12 In all communications with clients, lawyers are to use language that is clearly understandable, free of jargon and calculated to assist the resolution of the matter, not to inflame emotions or antagonize.
- 1.13 Give advice and explain all available options to the client together with the consequences of any decision made by the client. Lawyers must ensure that their clients make the decisions, not the lawyer making the decision for the client.
- 1.14 Explain to the client a matter to the extent reasonably necessary to permit them to make informed decisions regarding the matter and to advise their clients of what they are expected to do to assist their case.
- 1.15 Obtain prior instructions from the client before presenting their case in court/tribunal. If there is insufficient time, the lawyer should adjourn the matter for such time as is necessary for the client to give proper instructions.

- 1.16 Advise the client at the first reasonable opportunity, if a possible delay in the progress of the matter becomes apparent.
- 1.17 Attend all court events in a timely manner; allowing adequate time to prepare.
- 1.18 Ensure the client is represented at all court events and that any agents engaged are members of the panel.
- 1.19 Ensure that the client is aware of the difference between an approval for funding under section 33 of the *Legal Aid Commission Act 1979* (the merit assessment process) and a grant of aid for the hearing.
- 1.20 Consider options for settlement at every stage of the proceedings.
- 1.21 Provide or make available to the client copies of relevant documents filed in the proceedings and any decisions or terms of agreement.
- 1.22 Observe the client's instructions and make procedural decisions with a view to advancing the client's matter.
- 1.23 Advise the client about the appeal process, appeal prospects and time limits for appeal.

## 2 Responsibilities to Legal Aid NSW

A lawyer or advocate acting in a civil law matter subject to a grant of legal aid will:

- 2.1 Comply with these practice standards.
- 2.2 Comply with the provisions of the [Legal Aid Commission Act 1979 \(NSW\)](#) and the [policies and guidelines](#) of Legal Aid NSW (as amended).
- 2.3 Comply with the [Terms and Conditions of use of Grants Online](#) (as amended).
- 2.4 Comply with the terms and conditions of the grant of legal aid.
- 2.5 Be responsible for the matter and accountable to Legal Aid NSW for any breach of these practice standards including for any work undertaken in the matter by another lawyer or employee of the (your) firm.
- 2.6 Ensure that any applications for legal aid, extensions of the grant of aid and requests for reconsideration and review are lodged promptly with all relevant information and supporting material to enable a decision to be made without delay.
- 2.7 Advise of the outcome of the previous stage when requesting an extension of the grant for a further stage of proceedings.
- 2.8 When submitting a pro forma invoice, advise the current status of a matter and whether the proceedings are concluded. A copy of the pro forma invoice should be retained on the lawyer's file.
- 2.9 Seek approval of the Grants Division for any disbursements prior to expenditure on the file by obtaining the appropriate grant or extension via Grants Online.

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- 2.10 Review all files on completion of the matter to ensure all necessary steps have been taken before notifying the Grants Division that the matter is finalised. When submitting the final claim to the Grants Division the lawyer must complete the file outcome form setting out the steps involved in completion of the matter and the result in the matter.
- 2.11 Ensure prompt payment to experts, witnesses and other third parties who have undertaken work pursuant to a grant of aid for that work.
- 2.12 Reassign all pro forma invoices for Counsel's fees to the barrister who has been briefed so that the barrister can claim directly from Legal Aid NSW.
- 2.13 Provide the file in a matter to Legal Aid NSW where a written authority is received from a client to hand over the file.
- 2.14 Seek orders for costs where appropriate.
- 2.15 Notify Legal Aid NSW immediately of any circumstances that could give rise to a claim for professional negligence and provide a detailed statement in relation to the matter.

### 3 Responsibilities to Others

When dealing with other lawyers, Counsel, experts, witnesses and the staff of the Tribunals or Courts or other agencies or institutions, the lawyer will:

- 3.1. Conduct all communication in a courteous, prompt and professional manner.
- 3.2. Comply with time limitations, procedural steps, and any undertakings given to the Tribunal or Court.
- 3.3. Avoid unnecessary expense or waste of time by ensuring that:
  - (i) documents are served or filed on time;
  - (ii) documents served, filed or given to the client are legible;
  - (iii) the client is aware of medical appointments, conferences and hearing dates and understands the importance of attending promptly and on time;
  - (iv) witnesses are aware of conferences and hearing dates and understand the importance of attending promptly and on time.

### 4 The Merit Assessment Process

A lawyer instructing Counsel to obtain a merit advice will:

- 4.1 Instruct Counsel with adequate experience for a section 33 merit advice unless other Counsel is nominated by Legal Aid NSW.
- 4.2 Inform Legal Aid NSW as to the name of private Counsel and the date of delivery of the brief.
- 4.3 Ensure that an opinion on merit is received from Counsel in a timely manner. If an unacceptable delay occurs the lawyer must consider briefing alternate Counsel.

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- 4.4 As soon as the merit advice is received submit a copy to Legal Aid NSW for consideration of further aid.
- 4.5 As soon as the merit assessment process is complete inform the client whether aid has been granted.
- 4.6 Not instruct Counsel who undertook the merit advice for the substantive proceedings without prior approval of Legal Aid NSW.

## 5 File Management

A lawyer acting in a civil law matter subject to a grant of legal aid must ensure that:

- 5.1 Files must be maintained in an orderly manner so that Legal Aid NSW may effectively audit the file if required, and to ensure that another lawyer assuming conduct of the matter may quickly and easily understand its factual basis, the client's instructions, the stage the matter has reached and all further action required to run the matter in line with the practice standards.
- 5.2 All documents including:
  - (i) correspondence from the Grants Division in relation to the grant of legal aid; and
  - (ii) correspondence received and sent in relation to the mattermust be kept on the file in date order.
- 5.3 Court documents filed, served or issued in the proceedings must be kept in a separate bundle on the file in date order.
- 5.4 Clear and legible file notes are kept of all telephone conversations, conferences, interviews, meetings with clients or witnesses and experts include:
  - (i) date;
  - (ii) name of person spoken to; and
  - (iii) relevant details of the conversation.
- 5.5 Clear and legible file notes are kept of information and advice given to a client that is not confirmed in writing.
- 5.6 All court attendances are noted on the file in date order with:
  - (i) Coram;
  - (ii) date and venue of court appearance;
  - (iii) other parties' representative/s;
  - (iv) summary of any negotiations and orders or directions made;
  - (v) start and finish time/s of the court attendance; and
  - (vi) the date proceedings have been adjourned to or the outcome of the matter.
- 5.7 Receipts or other verifying evidence for all disbursements claimed for payment from Legal Aid NSW are retained in a separate section of the file.