

Panel Service Agreement

For Legal Aid NSW Panel Law Practices

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BACKGROUND

The principal function of Legal Aid NSW is to provide legal aid and other legal services in accordance with the *Legal Aid Commission Act 1979* (“the Act”).

- A. Legal aid may be provided by Legal Aid NSW by such means as it may determine as set out in section 11 of the Act.
- B. Legal Aid NSW has decided:
 - (a) to appoint the Law Practice to particular Panel/s having regard to the requirements set out in Legal Aid NSW’s Quality Standards and this Agreement; and
 - (b) that the nominated Associates are suitable to undertake legal aid work in accordance with the individual requirements set out in Legal Aid NSW’s Quality Standards and this Agreement.
- C. The Law Practice will warrant the accuracy of representation made on its behalf by the Principal and warrant the Principal as authority, including by delegation, to bind the Law Practice.
- D. This Agreement sets out the terms on which Legal Aid NSW and the Law Practice have agreed that the Law Practice and its Associates will undertake legal aid work on a Panel or Panels for the provision of that legal aid work.

PARTIES

The Parties to this Agreement are:

the Legal Aid Commission of New South Wales (**Legal Aid NSW**)
(ABN 81 173 463 438)

and

the Law Practice.

AGREED TERMS

1 Definitions and Interpretation

Definitions

1.1 In this Agreement the following words have the definitions:

Agreement means this document and the Legal Aid NSW Quality Standards

assign or assignment means the allocation of a grant of aid or a disbursement grant to an Associate or Law Practice to perform legal aid work

audit means to collect, examine and evaluate information to determine compliance with specified requirements, procedures and standards

assisted person means a client who is receiving the benefit of a grant of aid or minor assistance and advice

Associate means “associate” as defined by the *Legal Profession Uniform Law (NSW)*, namely a person who is one or more of the following:

- a principal of the Law Practice
- a partner or employee of the Law Practice
- a legal practitioner who is a consultant to the Law Practice

The term ‘associate’ includes nominated and delegated associates as defined in this agreement.

ceasing to allocate work means Legal Aid NSW will cease to allocate new legal aid work to the Associate or a Law Practice

criminal proceedings does not include proceedings relating to minor traffic offences

Delegated Associate means a lawyer at the Law Practice who does not satisfy the individual requirements of a panel but satisfies the requirements to be delegated legal aid work

duty work means participation in a duty lawyer service funded by Legal Aid NSW

grant of aid means the funding of legal services by Legal Aid NSW

Grants Online is the online system administered by Legal Aid NSW that is used to assign, transfer, and pay for legal aid work to a Law Practice

Law Practice is a “law practice” defined by the *Legal Profession Uniform Law (NSW)* as:

- a sole practitioner (including a barrister)
- a law firm
- an incorporated legal practice, or
- an unincorporated legal practice

legal aid work means:

- legal services provided to a legally assisted person including any court appearance under a grant of legal aid
- duty work

legal practitioner means an Australian legal practitioner as defined by the *Legal Profession Uniform Law (NSW)* who holds a current Australian practising certificate

Nominated Associate means a lawyer at the Law Practice nominated by the Principal to undertake legal aid work who satisfies the individual requirements of a panel and has been approved by Legal Aid NSW

notifiable incident means an incident that requires notification under the *Work Health Safety Act 2011* (sections 35-37)

Panel is a list maintained by Legal Aid NSW of law practices, who meet the criteria to conduct legal aid work in accordance with the Legal Aid NSW Quality Standards and the Act

Panel Members means law practices who are eligible to undertake legal aid work after appointment to one or more panels

Principal of the Law Practice means the principal or partner of the Law Practice authorised as the representative for the Law Practice

Privacy Legislations means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Health Records Information and Privacy Act 2002* (NSW)

Quality Standards means the Legal Aid NSW Quality Standards that form part of this Agreement

sole practitioner means Australian legal practitioner who engages in legal practice on his or her own account

removal of legal aid work means Legal Aid NSW will remove existing legal aid work and files from the Law Practice and/or Associate and cease to allocate new legal aid work

removal from a Panel means the Law Practice will not be permitted to undertake any legal aid work on that Panel

working with children check clearance means an authorisation that is in force under the *Child Protection (Working with Children) Act 2012* to engage in child-related work.

Interpretation

- 1.2 Unless expressed to the contrary, in this Agreement:
- headings are for convenience only and do not affect interpretation
 - words in the singular include the plural and vice versa
 - if a word or phrase is defined, its other grammatical forms have corresponding meanings.

Warranty of accuracy & authority

- 1.3 The Law Practice warrants all representations and undertakings made by the Principal including but not limited to the representations within the Application to Legal Aid NSW to be a Panel Member and warrants the Principal as having authority, including by delegation, to bind the Law Practice.

Nature of agreement

- 1.4 The Law Practice agrees it will perform legal aid work assigned by Legal Aid NSW as an independent service provider and not as an employee.
- 1.5 The parties acknowledge and agree that nothing in the Agreement creates any employment, partnership, agency or joint venture relationship between the parties.
- 1.6 A party does not have the authority to bind the other party or incur any liability or make any representation on behalf of the other party.

2 Duration of Agreement

- 2.1 This Agreement commences on the date of its execution (whether physically or electronically) by both parties.
- 2.2 When the Agreement commences, the Law Practice will be appointed to a Panel or Panels and notified in writing.
- 2.3 Neither commencement of this Agreement nor appointment to a Panel entitles the Law Practice or an Associate to assignment of:
- (a) any legal aid work;
 - (b) any particular matter;
 - (c) any particular volume of matters; or
 - (d) any particular types of matters.
- 2.4 This Agreement automatically terminates when the Law Practice ceases to be on any Panel. Such termination does not prevent a subsequent agreement between Legal Aid NSW and the Law Practice.

3 Conduct of legal aid work

- 3.1 The Law Practice must ensure that Associates undertaking legal aid work comply with:
- 3.1.1 with the *Legal Aid Commission Act*,
 - 3.1.2 the *Legal Profession Uniform Law (NSW)* and the *Legal Profession Conduct Rules*,
 - 3.1.3 the Quality Standards as amended from time to time,
 - 3.1.4 the *Work Health and Safety Act 2011 (NSW)* and associated regulations made under that Act,
 - 3.1.5 policies and guidelines for Panel Members, and
 - 3.1.6 the Legal Aid NSW policies and guidelines stipulated by Legal Aid NSW, as they apply to employees, to the extent that such policies can apply to a solicitor in private practice.
- 3.2 Without limiting clause 3.1.4, the Law Practice must take reasonably practicable steps to:
- 3.2.1 risk assess the legal aid work,
 - 3.2.2 provide appropriate information, training, instruction and supervision to Associates undertaking the legal aid work,
 - 3.2.3 consult with its Associates and other persons in relation to any risks associated with the legal aid work, and
 - 3.2.4 notify Legal Aid NSW immediately of any health and safety Notifiable Incidents arising from the performance of legal aid work. Notifications are to be sent to PLQS@legalaid.nsw.gov.au.
- 3.3 The Law Practice must ensure that only nominated Associates undertake legal aid work except where delegated Associates are permitted in accordance with the Quality Standards or prior approval is obtained from Legal Aid NSW.
- 3.4 The Law Practice must ensure that only the Principal and Nominated Associates exercise the delegation to determine applications for legal aid under s34 of the *Legal Aid Commission Act 1979 (NSW)*.
- 3.5 The Law Practice must facilitate investigations and/or audits in relation to any legal aid work assigned to the Law Practice or Associates undertaking legal aid work.

4 Assignment of legally aided matters

- 4.1 When legal aid work is assigned to the Law Practice or an Associate, the Law Practice through its Associate must within one (1) working day:
- (a) commence acting for the legally assisted person; or
 - (b) notify Legal Aid NSW and the legally assisted person of unavailability to do that work.
- 4.2 If the Law Practice through its Associate commences acting for a legally assisted person, then unless clause 4.3 or clause 4.4 applies, the Law Practice must retain carriage of the matter. To ensure consistency of service to the client it is expected that an Associate will represent the client for the entire carriage of the matter.
- 4.3 If the Law Practice is unable to retain carriage of the matter, the Law Practice must immediately notify Legal Aid NSW through a Transfer Request via Grants Online and follow the instructions of Legal Aid NSW, including the Law Practice providing Legal Aid NSW within seven (7) days a reason why the matter is requested to be re-assigned.
- 4.4 Legal Aid NSW may reassign any matter previously assigned to the Law Practice or an Associate in accordance with the re-assignment policy.
- 4.5 If Legal Aid NSW reassigns a matter, the Law Practice must, on request by Legal Aid NSW, promptly transfer the file as directed by Legal Aid NSW.

5 Obligations of the Law Practice

Standards of work

- 5.1 The Law Practice must ensure that any Associate undertaking legal aid work:
- 5.1.1 undertakes legal aid work in an effective and efficient manner and ensure all legal aid work is performed to a high professional and ethical standard;
 - 5.1.2 acts honestly and in good faith in all dealings with Legal Aid NSW;
 - 5.1.3 promptly respond to requests from Legal Aid NSW for information or documents, including but not limited to a notification for audit; and
 - 5.1.4 performs the work safely and follows all health and safety procedures notified to them by the Law Practice

Client care

- 5.2. The Law Practice must maintain effective systems for client care, case management, staff supervision and professional business conduct that conform with any requirements set out in the Quality Standards.

File management

- 5.3. The Law Practice must:
- 5.3.1 maintain a record of all working with children check clearances for their staff, where it is required by law.
 - 5.3.2 ensure the Associates permitted to undertake legal aid work are notified and give express consent to the sharing of information between Legal Aid NSW and the Law Practice. The information may relate to personal and sensitive information. The Law Practice must maintain this record of consent from each of its Associates and Principals.

Grants and fees

- 5.4 The Law Practice must:
- 5.4.1 undertake legal aid work at the Legal Aid NSW fee scales that are published on the Legal Aid NSW website.
 - 5.4.2 obtain the prior written approval from Legal Aid NSW through Grants Online before briefing counsel or incurring any costs or disbursements in a legally aided matter.
 - 5.4.3 use the Grants Online system to lodge applications for legal aid, applications for extensions of grants of legal aid, requests for transfers of grants, appeals to the Legal Aid Review Committee, File Outcome forms, and invoices, and to communicate with Legal Aid NSW about matters assigned to the Law Practice and Associates.
 - 5.4.4 comply with the [Terms and Conditions of Use of Grants Online](#).

Notifications to Legal Aid NSW

- 5.5. The Law Practice must immediately notify Legal Aid NSW in writing if:
- 5.5.1 a nominated Associate leaves the Law Practice.
 - 5.5.2 an Associate who undertakes legal aid work 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 and is or will be providing legal services in any assigned matter to a person under the age of 18.

- 5.5.3 an Associate who undertakes legal aid work has a working with children check clearance refused, cancelled, revoked or interim barred.
- 5.5.4 bankruptcy or professional disciplinary investigation or proceedings has been commenced against any Law Practice, or Associate who undertakes legal aid work, or any circumstances that could give rise to a claim for unsatisfactory professional misconduct or professional misconduct.
- 5.5.5 an Associate who undertakes legal aid work: is charged with any criminal offences except traffic offences that are not major traffic offences as defined in section 4 of the *Road Transport Act 2013 (NSW)*; or is subject to a final Apprehended Violence Orders (AVO) under *Crimes (Domestic and Personal Violence) Act 2007 NSW* or equivalent across Australian States or Territories.
- 5.5.6 a court, tribunal or professional body expresses concern about the conduct of a matter during any legal proceedings.
- 5.5.7 a court, tribunal or professional body investigates a Law Practice or Associate who undertakes legal aid work.
- 5.5.8 a finding of workplace misconduct is made by an investigating body concerning an Associate who undertakes legal aid work.
- 5.5.9 the Law Practice entity or ABN changes or if the Law Practice will be wound up or merged with another Law Practice.

6 Publication and promotion

- 6.1 The Law Practice may promote the Law Practice as a Legal Aid NSW Panel member and Associates undertaking legal aid work as eligible to undertake legal aid work but they may not use the Legal Aid NSW logo.
- 6.2 Legal Aid NSW may publish the name and contact details of the Law Practices who are Panel Members and Associates who are permitted to undertake legal aid work.

7 Obligations of Legal Aid NSW

- 7.1 Legal Aid NSW will pay the Law Practice for legal aid work at the Legal Aid NSW fee scales as published on the Legal Aid NSW website.

- 7.2 Legal Aid NSW will notify the Law Practice in a timely manner of changes to the Quality Standards.

8 No lien

- 8.1 The Law Practice is not entitled to a lien over any papers, files or documents received by the Law Practice while undertaking legal aid work.

9 Audits

- 9.1 Legal Aid NSW may, at any time and in relation to any legal aid work assigned to the Law Practice or an Associate, carry out an audit of the Law Practice or an Associate in respect to any one or more of the following:
- 9.1.1 claims for payments;
 - 9.1.2 compliance with this Agreement;
 - 9.1.3 complaints about legal aid work undertaken by the Law Practice or an Associate; and
 - 9.1.4 for quality assurance.
- 9.2 When Legal Aid NSW gives the Law Practice notice of its intention to carry out an audit, the Law Practice must produce for inspection all files, records or documents requested by Legal Aid NSW and within a reasonable time period nominated by Legal Aid NSW.
- 9.3 If Legal Aid NSW so requests, the Law Practice must allow Legal Aid NSW to attend the premises of the Law Practice to carry out part or all of any audit of the Law Practice or an Associate.
- 9.4 The Law Practice must comply with any reasonable direction of Legal Aid NSW to take particular action or to resolve an issue identified by Legal Aid NSW during an audit in a specified time frame.
- 9.5 In addition to any other rights Legal Aid NSW may have, where as a result of an audit, Legal Aid NSW identifies that the Law Practice owes money to Legal Aid NSW, Legal Aid NSW may direct the Law Practice to pay to Legal Aid NSW the amount owing within 14 days, failing which, Legal Aid NSW may deduct from future payments to the Law Practice the amount determined by Legal Aid NSW to be owing.

10 Removal from a Panel where no Breach of Agreement

- 10.1 Legal Aid NSW may remove a Law Practice as a Panel member from a Panel or all Panels if:
- 10.1.1 the Law Practice requests the removal, unless Legal Aid NSW is satisfied that the Law Practice must remain as a Panel member until the conclusion of any existing legal aid work;
 - 10.1.2 the Law Practice no longer exists or is wound up;
 - 10.1.3 the only nominated Associate can no longer undertake legal aid work;
 - 10.1.4 there are no eligible Associates at the Law Practice to undertake legal aid work;
 - 10.1.5 the Law Practice fails to comply with Panel conditions, limitations or restrictions imposed by the Law Practice under clause 11.4.3;
 - 10.1.6 the Law Practice fails to respond to notices under clauses 9.2 and/or 11.3 of this Agreement and all reasonable attempts to make contact have been made by Legal Aid NSW.
- 10.2 Legal Aid NSW may deem an Associate ineligible to undertake legal aid work if the Associate does not meet the individual requirements for the relevant Panel or fails to meet any other requirement under this Service Agreement for eligibility to be on a Panel.
- 10.3 Before Legal Aid NSW removes a Law Practice from the Panel or deems an Associate ineligible, unless that removal is at the request of the Law Practice, Legal Aid NSW will give the Law Practice 14 days to provide written submissions in response to the notice.

11 Legal Aid NSW's rights where Breach of this Agreement

Investigation of the Breach

- 11.1 Legal Aid NSW in its absolute discretion may cease to allocate and/or remove existing legal aid work from a Law Practice or direct the Law Practice to remove the work from an Associate while Legal Aid NSW investigates a potential breach of this Agreement.
- 11.2 In addition to any other power, Legal Aid NSW may remove a Law Practice from one or more Panels or deem an Associate ineligible to undertake legal aid work, if, in the reasonable opinion of Legal Aid NSW, the Law Practice or its Associate has:

- 11.2.1 failed to maintain the Quality Standards;
- 11.2.2 behaved in a way that has the potential to bring Legal Aid NSW into disrepute;
- 11.2.3 behaved in a way that renders the Law Practice or Associate unable to deliver legal aid services to the required standard;
- 11.2.4 behaved in a way that sexually harasses or assaults a client or family representative, a Law Practice employee or colleague, or other member of the legal profession;
- 11.2.5 failed to accept the allocation of assigned matters without reasonable cause;
- 11.2.6 behaved in a way that causes Legal Aid NSW to lose confidence in the Law Practice or Associate;
- 11.2.7 behaves in a way that requires Legal Aid NSW to investigate the Law Practice or Associate relating to conduct or circumstances that have caused, or have the potential to cause detriment, loss or harm to:
 - a) Legal Aid NSW or its reputation;
 - b) Legal Aid NSW funds; and/or
 - c) an assisted person, and/or
- 11.2.8 failed to comply with health and safety legislation
- 11.2.9 otherwise breached any terms of this Agreement.

Process following an investigation

- 11.3 If, in the reasonable opinion of Legal Aid NSW, the Law Practice is in breach of any term of this Agreement, Legal Aid NSW will give:
 - 11.3.1 the Law Practice written notice of the breach, the actions it plans on taking and the reasons for any proposed action
 - 11.3.2 Law Practice 14 days to provide written submissions in response to the notice
- 11.4 If the Law Practice fails to respond to the clause 11.3 notice to the satisfaction of Legal Aid NSW, Legal Aid NSW may take any of the following actions:
 - 11.4.1 provide support and intervention to the Law Practice;

- 11.4.2 allow an Associate to continue to undertake legal aid work with conditions, limitations or restrictions;
 - 11.4.3 allow the Law Practice to remain on a Panel/s with conditions, limitations or restrictions;
 - 11.4.4 remove existing legal aid work and/or cease to allocate work for a period of time;
 - 11.4.5 deem an Associate ineligible to undertake legal aid work;
 - 11.4.6 remove the Law Practice from a Panel, some Panels or all Panels; and/or
 - 11.4.7 take any such further action it considers appropriate, including taking no further action.
- 11.5 There is no internal right of review in relation to an action taken under this clause.
- 11.6 Legal Aid NSW will ordinarily refuse an application by a Law Practice that has been removed from a Legal Aid NSW Panel or by an Associate deemed ineligible to undertake legal aid work where the application is made within three years of the decision by Legal Aid NSW to remove the Law Practice or where the Associate has been deemed ineligible, but will consider any special circumstances which may arise in respect of a particular application.

12 Variation

- 12.1 This Agreement may be varied by Legal Aid NSW in its absolute discretion by providing the Law Practice with one month's written notice.
- 12.2 The Law Practice may apply to Legal Aid NSW for approval for another Associate to carry out legal aid work during the term of this Agreement. Such Associate must not commence legal aid work until Legal Aid NSW has provided written approval.

13 Transfer

This Agreement cannot be transferred or assigned to another Law Practice.

14 Privacy

- 14.1 The Law Practice must, when it collects, uses or discloses personal information in the course of undertaking legal aid work, comply with the Privacy Legislation, relating to the collection, use and disclosure of personal information that applies to Legal Aid NSW as if the Law Practice was subject to those laws.
- 14.2 The Law Practice agrees to comply with any direction of Legal Aid NSW in respect of compliance with the Privacy Legislation.
- 14.3 Where a Party becomes aware of any breach or possible breach of this clause, that Party must immediately notify the other Party of the breach. For the avoidance of doubt, a breach by a party under this clause constitutes a breach of this Agreement.

15 Confidentiality

- 15.1 Subject to clause 15.2, each party agrees not to disclose the confidential information of the other party without the prior written approval of such other party.
- 15.2 A party may disclose the confidential information of the other party to the extent that the confidential information is:
- 15.2.1 Reasonably required by any persons performing obligations in relation to the Agreement;
- 15.2.2 Already in the public domain; or
- 15.2.3 Authorised or required by law to be disclosed.
- 15.3 Where a Party becomes aware of any breach or possible breach of this clause, that Party must immediately notify the other Party of the breach. For the avoidance of doubt, a breach by a party under this clause constitutes a breach of this Agreement.

16 Notice

- 16.1 Any notice to or by a party under this Agreement must be in writing and signed by an authorised officer of the sender.
- 16.2 Any notice to the Law Practice must be sent to the email address as nominated by the Law Practice in the Law Practice's panel application form and as per Grants Online. Any notice to Legal Aid NSW must be sent to PLQS@legalaid.nsw.gov.au or any other email address as notified by Legal Aid NSW from time to time.

- 16.3 A notice will be regarded as given and received:
- 16.3.1 if delivered by email, when sent to the addressee's nominated email address;
 - 16.3.2 if delivered by hand when delivered to the addressee;
 - 16.3.3 if sent by post, three (3) business days from and including the date of postage.

17 Insurance and Indemnity

- 17.1 The Parties to this Agreement are individually responsible for ensuring that the appropriate professional indemnity and public liability insurance is held and maintained to cover the liability under this Agreement.
- 17.2 Each party will produce evidence of professional indemnity and public liability insurance if requested.

18 General

18.1 Governing Law and Jurisdiction

This Agreement will be governed by and construed according to the laws of New South Wales and the parties agree to submit to the jurisdiction of the Courts of that State.

18.2 Entire Agreement

The Agreement represents the entire agreement between the parties and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing.