

# Quality Standards

# Quality Standards

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# Definitions

**Act** is the *Legal Aid Commission Act 1979 (NSW)*

**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 lawyer who is a consultant to the Law Practice

The term ‘associate’ includes Nominated and Delegated associates as defined in this agreement.

**court** includes tribunals and other decision makers

**child** means any person under the age of 18

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

**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

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

**Law Practice** is defined by the Act and means:

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

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

**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

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

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

**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

**Nominated Principal** or **Principal of the Law Practice** means the principal or partner of the Law Practice who is the representative for the Law Practice and is a signatory to this Agreement.

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# General Principles

1. The Quality Standards:
  - 1.1. apply to all in-house solicitors and private lawyers who undertake legal aid work
  - 1.2. inform how Legal Aid NSW monitors the delivery and quality of legal aid work
  - 1.3. form part of the Law Practice's obligations in accordance with the Service Agreement.

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# Client Service Standards

## GENERAL

2. When representing a person in a legally aided matter, the lawyer must:
  - 2.1. represent the client in an efficient and effective manner to achieve the best possible outcome
  - 2.2. treat the client with dignity and respect and act in a courteous and professional manner in all dealings with the client
  - 2.3. provide their contact details to the client and set expectations with the client early about how they will communicate with them and the frequency of this communication
  - 2.4. communicate with the client in a way that is easy for them to understand considering their personal circumstances and factors that may reduce their understanding (such as age, cognitive abilities, level of education, proficiency in English)
  - 2.5. consider what the client needs to enable them to understand the process, provide instructions, participate in proceedings, make informed decisions and understand the next steps to take in their case and tailor communication with the client to achieve this
  - 2.6. always act on instructions from the client and undertakings made to the client
  - 2.7. meet with the client as early in the process as possible and:
    - 2.7.1. obtain a personal history from the client to ensure the lawyer is aware of relevant issues affecting the client's legal problem or needs for resolution or referral
    - 2.7.2. provide an overview of the applicable legal principles, the legal process and enough specific information about their case so they know the next steps in their matter, can make informed decisions and understand what is expected of them to assist their case
  - 2.8. consider whether the client has capacity to instruct and, if unsure, consult the Law Society of NSW's publication [When a Client's Mental Capacity is in Doubt](#) and consider whether it is appropriate for a substitute decision-maker to be appointed
  - 2.9. communicate with the client in a timely manner about:

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- 2.9.1. the progress of their matter, including when important events, developments and milestones occur
- 2.9.2. the prospects of their matter
- 2.9.3. the consequences of the client's instructions
- 2.10. respond promptly and in a meaningful way to the client's:
  - 2.10.1. reasonable requests for information about their case
  - 2.10.2. correspondence and, if necessary, inform them if more time is required for a detailed response
  - 2.10.3. telephone enquiries
- 2.11. not interview a client:
  - 2.11.1. in the presence of a child unless there are exceptional circumstances
  - 2.11.2. in the presence of a spouse or partner if there are concerns about domestic or family violence
- 2.12. ensure the client is represented at all court events
- 2.13. if an agent is required to attend a court event, unless there are exceptional circumstances, ensure they are eligible to undertake Legal Aid work and meet the relevant panel requirements, and notify the client of the agent's attendance before the court event
- 2.14. obtain instructions from the client before presenting their case in court, and where possible, speak with the client immediately following a court event, including clients in custody
- 2.15. consider options for settlement and/or the resolution of issues at every stage of the matter
- 2.16. at the conclusion of a matter, provide the client with an explanation (written where practicable) of the outcome, including (as relevant):
  - 2.16.1. a copy of the final orders or written judgment
  - 2.16.2. the action the client is to take
  - 2.16.3. appeal rights and any time limits
- 2.17. maintain continuity of representation where possible
- 2.18. refer the client to support services and other legal services, including referrals to other Legal Aid NSW services, as required.

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## PRIORITY CLIENTS

Priority clients are clients that have high levels of vulnerability and disadvantage and low levels of legal capability (ability to resolve legal problems independently).

### Clients in custody or detention

3. When working with a client in custody or detention, the lawyer must:
  - 3.1. take instructions on whether the client wants to attend court events in person or via AVL
  - 3.2. conduct client conferences about evidence and case strategy in person where possible and prior to the court date
  - 3.3. set expectations with the client early about how you will communicate with them and the frequency of this communication and explain the restrictions and limitations of communication with clients in detention or custody.

### Clients with an acute mental illness, intellectual disability or cognitive impairment

4. When working with a client who has a mental illness, intellectual disability, or cognitive impairment, the lawyer must:
  - 4.1. approach the matter on the assumption the client is competent and has the capacity to provide instructions and make informed decisions
  - 4.2. where it is obvious the client cannot give instructions, consider:
    - 4.2.1. what supports the client needs to make a decision, including assistance from any third party
    - 4.2.2. whether it is appropriate and in the client's interests to have a supported or substitute decision maker appointed.
  - 4.3. conduct the matter in a way that draws on the client's strengths, seeks their direct involvement, ensures their participation and reduces client anxiety and stress, as reasonably practicable
  - 4.4. conduct the matter in way that does not unnecessarily:
    - 4.4.1. cause or increase the client's distrust towards or damage the client's therapeutic relationships with clinicians and/or medical professionals

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- 4.4.2. cause or increase the client’s distrust towards family members or carers.

### **Clients from an Aboriginal or Torres Strait Islander background**

- 5. When working with a client from an Aboriginal or Torres Strait background, the lawyer must:
  - 5.1. communicate and work with the client in a culturally appropriate, sensitive and trauma-informed way
  - 5.2. comply with the [Best Practice Standards for Representing Aboriginal Clients](#).

### **Clients who are children**

- 6. When representing a child, the lawyer must:
  - 6.1. comply with the [Representation Principles for Children’s Lawyers](#) published by the Law Society of NSW
  - 6.2. keep the child informed of decisions made by the court in a way that is age appropriate
  - 6.3. give the child enough time to consider matters and make a decision.

### **Clients experiencing domestic or family violence**

- 7. When working with a client experiencing domestic or family violence in a legally aided matter, the lawyer must:
  - 7.1. assess and be alert to the level of risk to the client’s safety as a result of domestic and family violence (including through evidence of controlling and coercive behaviour, emotional abuse, financial abuse, sexual violence and/or physical violence towards the client)
  - 7.2. use a trauma-informed approach when communicating with the client and conducting the file
  - 7.3. take appropriate steps to prioritise the client's safety, subject to the individual needs of the client
  - 7.4. ensure that any court documents, subpoenaed material or other material does not disclose information about the client that may put them at risk
  - 7.5. ensure contact with the client does not compromise their safety and:
    - 7.5.1. not ask about domestic violence in the presence of a partner or child
    - 7.5.2. ask about potential safety or security issues when arranging an interview

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- 7.5.3. ask how best to contact the client e.g. phone numbers that are safe to call, whether it is safe to SMS or leave a voice message or send mail or emails
- 7.5.4. not put a client's address on the front of the file.
- 7.6. liaise with the client's support networks when preparing their case (subject to the client's consent)
- 7.7. alert the client to the Victims Support Scheme, if appropriate and
- 7.8. refer the client to their local Women's Domestic Violence Court Advocacy Service (1800 938 227) or other suitable social support services, if appropriate.

## **CLIENTS FROM CULTURALLY AND LINGUISTICALLY DIVERSE (CALD) BACKGROUNDS**

- 8. When working with a client from a CALD background, the lawyer must:
  - 8.1. communicate and work with the client in a culturally appropriate and sensitive way
  - 8.2. be aware of any cultural and/or religious factors which may influence a client's instructions
  - 8.3. be aware of any cultural and/or religious factors which may be relevant to the way the case is conducted or the outcome of the case
  - 8.4. use a trauma-informed approach when communicating with the client and conducting the file
  - 8.5. ensure any referrals are appropriate to the cultural and/or religious background of the client and
  - 8.6. ask the client if they would prefer to communicate using an interpreter and, if so, arrange an interpreter, including ensuring there is one available at all court events.

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# Practice Standards

## GENERAL PRACTICE STANDARDS

### Knowledge and compliance with the law

9. The lawyer must:
  - 9.1. comply with the Legal Profession Uniform Law (NSW) and the Legal Profession Conduct Rules
  - 9.2. demonstrate knowledge of and compliance with applicable legislation, regulations, practice notes, practice directions, pre-action procedures, court orders and directions.

### Responsibilities to Legal Aid NSW

10. The lawyer must:
  - 10.1. maintain an up-to-date knowledge and understanding of their obligations to Legal Aid NSW, including its policies and guidelines
  - 10.2. consider options for settlement and/or the resolution of issues at every stage of the matter
  - 10.3. seek orders for costs where appropriate
  - 10.4. take steps to secure the costs of Legal Aid NSW and facilitate the determination and recovery of contributions from clients
  - 10.5. where possible, draft proposed orders or settlement agreements so that Legal Aid NSW can recover any contribution payable to Legal Aid NSW before funds are released to the client
  - 10.6. not demand, take or accept payment or enter into a private costs agreement in respect of work assigned by Legal Aid NSW
  - 10.7. make legally aided files and/or other materials available to Legal Aid NSW on request and within the given timeframe
  - 10.8. notify Legal Aid NSW immediately of any circumstances that could give rise to a claim against Legal Aid NSW or any claim brought against the Law Practice
  - 10.9. notify Legal Aid NSW where there is a conflict of interest and submit a Transfer Request on Grants Online

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- 10.10. promptly return to Legal Aid NSW any matter that they lack the expertise or capacity to undertake and submit a Transfer Request on Grants Online
- 10.11. following the approval of a Transfer Request, send all relevant client and court documents to the newly assigned lawyer
- 10.12. assist Legal Aid NSW to resolve any complaint by providing all relevant information to Legal Aid NSW within the given timeframe
- 10.13. conduct all dealings with employees of Legal Aid NSW in a courteous and professional manner
- 10.14. not make or publish comments of an offensive or adverse nature against Legal Aid NSW or its employees.

### **Responsibilities relating to grants of aid**

#### 11. The lawyer must:

- 11.1. consider Legal Aid NSW eligibility policies and guidelines before applying for legal aid on behalf of a client and make a recommendation as to whether the client:
  - 11.1.1. satisfies Legal Aid NSW eligibility policies and guidelines and
  - 11.1.2. should have their application for aid approved or refused.
- 11.2. apply for funding in accordance with the Legal Aid fee scales
- 11.3. consider the client's ongoing eligibility with reference to Legal Aid eligibility policies and guidelines before submitting any extensions for legal aid on behalf of a client
- 11.4. obtain and retain copies of any information or documents relevant to the application or extensions and the assessment of the client's eligibility for legal aid
- 11.5. apply for legal aid on behalf of a client at least 14 days before the next court event, unless there are reasonable grounds for a later application
- 11.6. ensure that any application for legal aid, extensions of a grant of aid and requests for review are completed accurately and lodged promptly with all relevant information and supporting material
- 11.7. ensure that duty forms are completed accurately, with all relevant information and any supporting material

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- 11.8. apply for a grant of legal aid for any client represented on a duty basis who satisfies Legal Aid NSW eligibility policies and guidelines for a grant of legal aid
- 11.9. comply with the terms and conditions of the grant of legal aid
- 11.10. advise and keep the client informed of the terms and conditions of their grant of legal aid, including:
  - 11.10.1. the scope and any conditions of their grant
  - 11.10.2. any contribution payable by the client
  - 11.10.3. the imposition, or potential imposition, of a statutory charge and
  - 11.10.4. the payment of any costs awarded against the client.
- 11.11. advise the outcome of the previous stage of the matter when requesting an extension of aid for a further stage of proceedings
- 11.12. notify Legal Aid NSW immediately of anything that may affect the client's entitlement to legal assistance or obligation to pay a contribution
- 11.13. notify Legal Aid NSW immediately if, as part of the proceedings, the client has:
  - 11.13.1. recovered or received money, or
  - 11.13.2. recovered or retained an interest in real property, or
  - 11.13.3. been awarded costs,
 so that a contribution can be determined and imposed on the client
- 11.14. at the time of accepting the grant of aid, ensure the Law Practice is available to undertake the work pursuant to the grant of aid
- 11.15. immediately notify the Grants Division and submit a Transfer Request on Grants Online if the Law Practice is not available to undertake the work pursuant to the grant of aid or it otherwise becomes appropriate to cease acting for a client
- 11.16. seek approval from the Grants Division for any disbursements (including interpreters and experts) by obtaining the appropriate grant or extension via Grants Online prior to expenditure on the file
- 11.17. seek approval from the Grants Division before briefing counsel except where briefing counsel to appear as agent and no extension of aid is sought

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- 11.18. ensure that if a [tutor or guardian ad litem](#) is appointed, they receive a grant of aid parallel with any grant made to the client
- 11.19. ensure prompt payment to third parties who have undertaken work pursuant to a grant of aid for that work
- 11.20. promptly 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
- 11.21. 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 by submitting a file outcome form setting out the result of the matter
- 11.22. where a Principal or Nominated Associate is exercising a delegation to determine an application for Legal Aid under section 34 of the *Legal Aid Commission Act*, the Principal or Nominated Associate must determine eligibility in accordance with the Legal Aid NSW eligibility policies and guidelines as published in Policy Online.

## Responsibilities to others

- 12. The lawyer must:
  - 12.1. ensure that dealings with clients, other legal professionals, service providers, the judiciary and other relevant parties are courteous and professional
  - 12.2. when dealing with self-represented parties, take care to communicate clearly and avoid technical language or jargon
  - 12.3. comply with time limitations, procedural steps, the practice directions of the court and any undertakings given to the court
  - 12.4. attend all court events adequately prepared and
  - 12.5. avoid unnecessary expense or waste of time.

## File management

- 13. The lawyer must:
  - 13.1. Ensure all files (including electronic files) are maintained in an orderly manner so that Legal Aid NSW or another lawyer assuming conduct of the matter can quickly and easily understand its factual basis, the client's instructions, the stage the matter has reached and next steps in the matter
  - 13.2. keep all documents on the file in chronological order, including:

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- 13.2.1. correspondence received and sent in relation to the matter
  - 13.2.2. clear and legible file notes of all conferences including information and advice provided to the client
  - 13.2.3. file notes concerning all conferences, views and any other specific attendance
  - 13.2.4. court documents filed, served or issued in the proceedings
  - 13.2.5. correspondence from the Grants Division
  - 13.2.6. receipts or other verifying evidence of all disbursements claimed for payment from Legal Aid NSW.
- 13.3. note all court attendances on the file in chronological order with:
- 13.3.1. date and venue of court appearances and applicable court time
  - 13.3.2. name of the court and judicial officer/tribunal member
  - 13.3.3. the name of the lawyer(s) attending on behalf of the legally assisted person
  - 13.3.4. other parties' representatives
  - 13.3.5. summary of any negotiations and orders or directions made
  - 13.3.6. the date the proceedings have been adjourned to or the outcome of the matter.
- 13.4. retain files in accordance with legislative requirements.

### **Briefing experts**

14. When briefing experts, the lawyer must:
- 14.1. select an expert approved by Legal Aid NSW or seek prior written approval before engaging any other expert
  - 14.2. where appropriate, endeavour to negotiate agreement with the parties about the expert and the matters into which the expert will be requested to inquire
  - 14.3. obtain approval via Grants Online from Legal Aid NSW for the funding of an expert before engaging the expert or making the application to the Court where the costs of the expert are to be paid under a grant of legal aid
  - 14.4. when requesting funding for an expert, provide Legal Aid NSW Grants Division any supporting information as required by the Legal Aid NSW

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guidelines, including why a report is needed, the name of the expert, the agreed cost of the report and any anticipated fees for attendance as an expert witness, as applicable

- 14.5. include details for payment of the expert costs in orders, as applicable
- 14.6. retain a copy of the expert report and tax invoice and provide to Legal Aid NSW Grants Division upon receipt or request.

## Briefing counsel

- 15. When engaging counsel, the lawyer must:
  - 15.1. ensure counsel has the necessary skill, expertise and competence to act in the matter. If the matter is an Indictable Crime, Complex Crime or Appellate Crime matter, counsel must be on the relevant barrister briefing panel, except with prior written approval from the Grants Division.
  - 15.2. make all reasonable and genuine endeavours to brief or select women barristers, in accordance with the [NSW Government Equitable Briefing Policy for Women Barrister](#)
  - 15.3. ensure counsel accepts the relevant terms of the grant of legal aid including the fees payable before engaging their services
  - 15.4. promptly provide counsel with a written brief including a legal analysis of the matter, the client's instructions, any pertinent authorities and any other relevant information
  - 15.5. brief counsel with enough time to allow them to adequately prepare the matter
  - 15.6. ensure that the original brief along with any additional material served throughout the proceedings are sent to counsel as soon as they are received
  - 15.7. where a matter is urgent, or where reading the brief would delay a matter, forward the brief to counsel immediately but ensure the brief is indexed and prepared with as much information as possible
  - 15.8. respond to the advice of counsel in a timely manner including advice as to the preparation of the case
  - 15.9. In accordance with the [Grants Allocation Guidelines](#), where appropriate in criminal law matters:
    - 15.9.1. brief a Public Defender by contacting the Clerk at the Public Defenders Chambers to ascertain availability;

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- 15.9.2. if a Public Defender is not available, retain a copy of the Non-Acceptance of Brief Form on the file before briefing private Counsel.

### Obtaining a merit advice

- 16. When obtaining a merit advice, the lawyer must:
  - 16.1. obtain a merit advice from counsel in a timely manner
  - 16.2. ensure that counsel provides a comprehensive advice, particularly when they consider there is no merit in an appeal
  - 16.3. provide the Grants Division copies of:
    - 16.3.1. grounds of appeal with written submissions and counsel's advice where there is merit
    - 16.3.2. counsel's advice where there is no merit
  - 16.4. confirm in writing via Grants Online that they have discussed the merit of the available grounds of appeal with counsel and that they endorse counsel's findings on merit
  - 16.5. on receipt of the advice or submissions from counsel, lodge an extension request on Grants Online:
    - 16.5.1. seeking a grant of aid for the type of hearing for which counsel found merit
    - 16.5.2. recommending aid be refused where counsel has not found merit.
- 17. In criminal law appeal matters, the lawyer must:
  - 17.1. ensure that counsel other than the trial counsel is briefed, unless the client is responding to a section 5F appeal
  - 17.2. for a section 5F appeal, the trial barrister may be retained to appear in the Court of Criminal Appeal, even if they are not on the Appellate Criminal Law Barrister Panel, however, the instructing lawyer must consult with the Grants Division about whether obtaining a merit advice is required where the trial barrister is not on the Appellate Criminal Law Barrister Panel
  - 17.3. contact the Clerk at the Public Defenders Chambers to ascertain the availability of a Public Defender and:
    - 17.3.1. brief a Public Defender if available

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- 17.3.2. if a Public Defender is not available, retain a copy of the Non-Acceptance of Brief Form on the file
- 17.4. apply to the Registrar of the Court of Criminal Appeal for an extension of time should the six-month period (or an extension previously granted) be about to expire before the merit process can be completed
- 17.5. inform the Solicitor in Charge of the Legal Aid NSW Indictable Appeals practice in writing within seven days where an application for an extension of a Notice of Intention to Appeal is refused by the Court of Criminal Appeal.

## Training

- 18. Lawyers who meet the individual requirements for the following panels must complete the following CPD units each year:
  - 18.1. Care and Protection Panel – representing children (5 units)
  - 18.2. Independent Children’s Lawyers Panel – representing children (5 units)
  - 18.3. Indictable Criminal Law Panel – criminal law (5 units)
  - 18.4. Children’s Criminal Law Panel – representing children (5 units).
- 19. The lawyer must:
  - 19.1. undertake training as required by Legal Aid NSW
  - 19.2. undertake specialist training provided by Legal Aid NSW where reasonably practicable.

## PRACTICE STANDARDS FOR SPECIFIC PANELS

Lawyers providing services under the following panels must also comply with the following:

### Summary Criminal Law, Indictable Criminal Law and Children’s Criminal Law Panels

20. The lawyer must:
  - 20.1. consider whether it is appropriate to apply for:
    - 20.1.1. bail or bail variation
    - 20.1.2. a suppression order
    - 20.1.3. orders for hearings to be conducted in closed court
    - 20.1.4. a discontinuance of the proceedings.
  - 20.2. when participating in the case conference scheme, comply with the principles set out in the current version of the [Best Practice Guide to Mandatory Criminal Case Conferencing](#) co-authored by Legal Aid NSW, the NSW Office of the Director of Public Prosecutions and the Commonwealth Director of Public Prosecutions
  - 20.3. when submitting the claim to the Grants Division for attendance at the case conference, complete the case conference outcome form and submit the case conference certificate
  - 20.4. at the conclusion of the committal proceedings, ensure wherever possible that counsel briefed at committal, whether a Public Defender or private counsel, will continue to be briefed for the trial and or sentence proceedings
  - 20.5. attend all court listings and instruct counsel on each day of a trial
  - 20.6. obtain signed instructions from the client if he or she intends to plead guilty or consent to any order, or where this is not reasonably practicable take clear file notes of advice and instructions
  - 20.7. determine what material needs to be tendered on sentence and obtain those assessments and reports prior to sentencing
  - 20.8. consider cost-effective methods of obtaining material where a psychiatric, psychological or other medical report is appropriate, such as obtaining past reports, reports from a court-based clinical liaison nurse, a report from a treating doctor or a report prepared for another purpose.

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## Mental Health Panel

21. The lawyer must:

- 21.1. comply with the [Guidelines for Mental Health Panel Lawyers](#).
- 21.2. act as the client's direct legal representative in all proceedings, except where appointed as a separate representative in guardianship matters
- 21.3. when appointed as a direct representative in guardianship legal aid work, following the grant of legal aid, liaise with the Tribunal officer and applicant about the provision of documents and listing arrangements
- 21.4. contact the client to arrange a conference to obtain instructions and, when appropriate, attend the hospital, facility or the client's other residence for this to occur
- 21.5. seek to obtain such further evidence as is required and available, in consultation with the Tribunal officer or independently
- 21.6. when acting as separate representative in guardianship legal aid work, contact all parties and explain the independent role of the separate representative
- 21.7. advise the client of the availability of legal aid for matters under the *NSW Trustee and Guardian Act 2009* and *Guardianship Act 1987* for a revocation of a Financial Management and/or Guardianship Orders and
- 21.8. advise the client that Legal Aid NSW will conduct a means and merit assessment to determine whether the revocation orders they seek satisfy Legal Aid NSW policies and guidelines and, where appropriate, assist the client in contacting the Social Worker assigned by Legal Aid NSW.

## Family Law Panel

22. The lawyer must:

- 22.1. adhere to the [Best Practice Guidelines for Lawyers Doing Family Law Work](#) published by the Family Law Council and the Family Law Section of the Law Council of Australia
- 22.2. have regard to the Federal Circuit and Family Court of Australia [Family Violence Best Practice Principles](#) and assist any client affected by the guidelines to understand the protection they offer
- 22.3. consider the appropriateness of family dispute resolution (FDR) for all legal aid work and at each stage of proceedings and approach any FDR fully prepared and in a manner consistent with the philosophy of FDR.

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## Domestic Violence Panel

23. The lawyer must:

- 23.1. be familiar with domestic and family violence screening, risk assessment and safety planning tools and processes (such as the [Domestic Violence Safety Assessment Tool](#))
- 23.2. note potential safety issues and the protocol for safe contact with the client on any relevant forms (including duty forms) and client file
- 23.3. let the court know in advance of arrangements to keep the client safe at court
- 23.4. where the client cannot give instructions, consider whether it is appropriate and in the client's interests to act as amicus curiae
- 23.5. ask for a report from the client's counsellor or health professional if appropriate, subject to the client's consent and having regard to the sexual assault communications privilege
- 23.6. make reasonable attempts to locate evidence such as police reports, medical reports (having regard to the sexual assault communications privilege) and witness statements to support the client's allegations of domestic violence.

## Care and Protection Panel

24. When acting for a child, the lawyer must:

- 24.1. comply with the [Representation Principles for Children's Lawyers](#) published by the Law Society of NSW
- 24.2. comply with the Legal Aid NSW [Working with Children Guide to best practice for Children's Legal Representatives](#)
- 24.3. comply with the [Code of Conduct for legal representatives in Care and Protection Proceedings in the Children's Court of New South Wales as prepared by the Children's Court Advisory Committee](#)
- 24.4. not act as both a direct legal representative and an independent legal representative in the same matter
- 24.5. appear for the sibling group in the capacity of an independent legal representative, unless exceptional circumstances exist, and if children in a sibling group are to be separately represented, make submissions via Grants Online as to why an additional representative is required (unless an order has been made to that effect)

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- 24.6. when representing a child as an Independent Legal Representative or Independent Children’s Lawyer, the lawyer must meet with the child, unless the child is pre-verbal or unless there are exceptional circumstances
- 24.7. when representing a child as a Direct Legal Representative, the lawyer must meet with the child as soon as possible and maintain appropriate contact, communicating with the child and seeking instructions on all relevant issues in the matter
- 24.8. not appear for a sibling group in the capacity of a direct legal representative unless exceptional circumstances exist, and if children in a sibling group are to be jointly represented, make submissions via Grants Online as to why an additional representative is not required or not appropriate (unless an order has been made to that effect)
- 24.9. maintain continuity of representation where possible and if continuity cannot be maintained:
  - 24.9.1. advise the Grants Division immediately so that the matter may be re-assigned (lawyers must not re-allocate the matter to another lawyer directly)
  - 24.9.2. at the first available opportunity explain to the child who will represent them on the next occasion and the contact details for that person.

## Independent Children’s Lawyer Panel

### General

- 25. The lawyer must:
  - 25.1. comply with the Family Court’s [Guidelines for Independent Children's Lawyers](#)
  - 25.2. comply with the Legal Aid NSW Family Law: [Working with Children Good Practice Guide](#)
  - 25.3. meet with the child in accordance with the requirements as set out in the *Family Law Act 1975* (Cth) and if not meeting the child keep a file note providing details as to why that decision has been made, and how the matter has been dealt with by the court
  - 25.4. seek particulars of the child’s circumstances and obtain material filed in the proceedings

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- 25.5. make appropriate inquiries and obtain authorities where necessary to speak to and engage with professionals who have knowledge of the circumstances of a child
- 25.6. make applications for the protection of the interests of a child where the evidence in support of an application will be that of an independent and suitably qualified witness but avoid making applications which are more appropriately made by one of the parties
- 25.7. explain to a litigant in person that you are unable to advise about how a case should be conducted but are able to give information about matters that involve, for example, clarifying court procedures and requirements and confirm the scope of this advice to the other parties
- 25.8. make appropriate referrals to Legal Aid NSW family dispute resolution conferences and actively promote the use of family dispute resolution prior to hearing
- 25.9. if a matter is referred to FDR, cooperate with the Legal Aid NSW FDR Unit about the arrangements for the conference and participate in the conference in a constructive manner consistent with the philosophy of FDR
- 25.10. advise Legal Aid NSW immediately if an order is made for the discharge of the Independent Children's Lawyer and provide a copy of the order and any related judgment to Grants Division.

### **Costs recovery**

- 26. In relation to costs, the lawyer must:
  - 26.1. take steps to recover the costs of the appointment of the Independent Children's Lawyer from each non legally aided party by asking each non legally aided party to pay \$1,815 to Legal Aid NSW at the start of the matter as a contribution towards costs up to the eve of the hearing
  - 26.2. forward any request for a waiver of the contribution with supporting information to Legal Aid NSW Grants Division for determination
  - 26.3. seek contributions to expert reports and any costs associated with the appointment of the expert, including but not limited to court attendance costs, via costs orders in the order appointing the expert
  - 26.4. seek costs of any interim hearings, if appropriate, the final hearing including counsel's fees and reimbursement for conduct money and commercial agent fees

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- 26.5. pursuant to 19.04 of the Family Law Rules, immediately before the first day of the final hearing provide a written statement of the actual costs incurred by the Independent Children's Lawyer up to and including the final hearing
- 26.6. seek approval from the Grants Division if the Independent Children's Lawyer forms the view that a costs application should not be pursued or should be withdrawn, given the circumstances of the matter
- 26.7. notify the Grants Division that the matter is finalised by submitting a file outcome form setting out the result of the matter, any costs application and provide a copy of the final orders.

## **DUTY AND SPECIFIC LIST WORK**

- 27. When accepting legal aid work under a specific list or scheme, the lawyer must comply with the Guidelines relevant to that work.
- 28. When appearing as a duty lawyer in the following legal aid work, the lawyer must comply with the following, as relevant:

### **Domestic Violence Duty Scheme**

- 28.1. the [Guidelines for the Domestic Violence Duty Scheme](#)

### **Care and Protection**

- 28.2. the [Care and Protection Panel Duty Guidelines for Lawyers in Specialist Children's Courts](#)

### **Mental Health Advocacy**

- 28.3. the [Guidelines for Mental Health Panel Lawyers](#)

### **Local Court Duty Solicitor Scheme and Back Up Duty Scheme**

- 28.4. the [Local Court Duty Solicitor Scheme Guidelines](#) and/or the [BUDS Guidelines](#)

### **Children's Court Criminal Law**

- 28.5. the [Children's Criminal Law Duty Guidelines](#) for Lawyers and/or the [BUDS Guidelines](#).

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## **SPECIFIC PRACTICE STANDARDS FOR COUNSEL**

### **Responsibilities to clients**

29. The barrister must:

- 29.1. meet with the client and the instructing solicitor as early as possible and communicate with the client in a way that is easy for them to understand considering their personal circumstances and factors that may reduce their legal capability (such as age, cognitive abilities, level of education, proficiency in English) and
- 29.2. give advice and explain all available options to the client together with the consequences of any decision they make, ensuring that the client (not the barrister) makes the decisions.

### **Responsibilities to Legal Aid NSW**

30. The barrister must:

- 30.1. ensure all correspondence, memoranda, notes of conferences or instructions, telephone notes, are kept on their file in an orderly manner to allow another lawyer, if necessary, to quickly take over the brief
- 30.2. maintain files in an order that will allow someone looking at the file to quickly and easily understand the factual basis of the matter, the client's instructions, attendances at court, conferences, views, prison visits (including a record of the date, start and finish times), and work undertaken in the matter, the stage the matter has reached and any further action that is require
- 30.3. keep detailed file notes of any advice given to a client that is not confirmed in writing
- 30.4. return the brief to the instructing solicitor promptly on completion of the matter or on the barrister ceasing to act and retain or return with the brief all correspondence, memoranda, notes of conferences or instructions, telephone notes, client's instructions, attendances and notations of work undertaken
- 30.5. keep timely and accurate records of work done to enable proper costing of the brief in accordance with Legal Aid NSW fee scales
- 30.6. notify Legal Aid NSW of any actual or potential change in the estimated length of the matter and
- 30.7. 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.

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## Responsibilities to instructing solicitors

31. The barrister must:
  - 31.1. provide advice in a timely manner
  - 31.2. respond promptly to any request for advice on evidence, expert reports or conferences
  - 31.3. manage the case efficiently and effectively, including thoroughly preparing for court hearings and other requirements of the case
  - 31.4. have the case ready to be heard as soon as is practicable
  - 31.5. return briefs promptly if the barrister does not believe they are of sufficient seniority to be able to advise or appear before the Court in the matter.

## Responsibilities to others

32. When dealing with other lawyers, experts, witnesses and staff of Tribunals or Courts or other agencies or institutions, the barrister must:
  - 32.1. conduct all communication in a courteous, prompt and professional manner
  - 32.2. comply with time limitations, procedural steps, the practice directions of the court and any undertakings given to the court
  - 32.3. avoid unnecessary expense or waste of time by ensuring that:
    - 32.3.1. documents are served or filed on time
    - 32.3.2. court commitments are accurately diarised and
    - 32.3.3. the client and witnesses are aware of hearing dates and understand the importance of attending promptly and on time.
  - 32.4. avoid unnecessary adjournments.

## Obligations when assessing merit in criminal law matters

33. If when assessing merit, the barrister forms the view that the Legal Aid NSW Merit Test A is satisfied, the barrister must:
  - 33.1. discuss the relative merit of the available grounds of appeal with the instructing solicitor
  - 33.2. proceed to write the grounds and submissions of the appeal by reference to:
    - 33.2.1. Conviction Appeals

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Whether the proceedings have involved:

- an unreasonable verdict
- a wrong decision on a question of law, or
- a miscarriage of justice.

33.2.2. Sentence Appeals

- Identification of error(s) made in the exercise of the sentencing court's discretion.

33.2.3. High Court Appeals

- Section 35A of the *Judiciary Act 1903* (Cth)

33.3. attach to those grounds and submissions a short note that the barrister has found the appeal has merit.

33.4. provide the Grants Division the grounds, submissions and a short note stating that the barrister has found the appeal has merit.

34. When considering whether an applicant for legal aid has reasonable prospects of success in an appeal before the Court of Criminal Appeal, the barrister should take into consideration that the Court may dismiss the appeal on the basis of the proviso in section 6 of the *Criminal Appeal Act 1912*.

35. If when assessing merit, the barrister forms the view that the Merit Test A is not satisfied, the barrister must provide a comprehensive advice to the instructing solicitor, to be provided to Legal Aid NSW.

36. In an all grounds appeal, if the barrister finds only some limbs of the appeal satisfy the merit test, they must provide a merit advice for the limbs that do not satisfy the merit test.

### Obligations when assessing merit in civil law matters

37. If when assessing merit, the barrister forms the view that the Legal Aid NSW Merit Test A is satisfied, the barrister must:

37.1. provide a comprehensive advice to the instructing solicitor and

37.2. if instructed, write the grounds of appeal.

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# Panel Requirements

## PRINCIPAL OF A LAW PRACTICE

38. The Principal of the Law Practice must have three years post admission experience for their Law Practice to be a member of any panel.

## INDIVIDUAL REQUIREMENTS

39. The Principal may nominate lawyers at their Law Practice to undertake legally aided work provided they satisfy the following individual requirements of the panel to which the work relates, or with written approval of Legal Aid NSW.

### Summary Criminal Law Panel

- 39.1. Two years post-admission experience in criminal law

### Indictable Criminal Law Panel

- 39.2. A solicitor with five years post-admission experience in criminal law, with at least 75% of total workload in criminal law or
- 39.3. Specialist Accreditation in Criminal Law

### Children's Criminal Law Panel

- 39.4. Five years post-admission experience in criminal law and
- 39.5. A current Working with Children Check

### Family Law Panel

- 39.6. Two years post-admission experience in family law

### Care and Protection Panel

- 39.7. Five years post-admission experience in care and protection or
- 39.8. Specialist Accreditation in Children's Law
- 39.9. A current Working with Children Check
- 39.10. Completion of the Legal Aid NSW [Care and Protection: Representing Children module](#) on the Lawyer Education Series
- 39.11. Completion of the Legal Aid NSW [Care and Protection: Representing Parents module](#) on the Lawyer Education Series
- 39.12. Satisfactory completion of the Legal Aid NSW Care and Protection Child Representation Workshop within the last two years, and

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39.13. Provide a satisfactory referee report from a suitable referee confirming five years post admission experience in the Care and Protection jurisdiction

### **Independent Children’s Lawyer Panel**

39.14. Five years post-admission experience in family law, with at least 75% of total workload in family law

39.15. Successful completion of the national ICL training course within the last two years

39.16. Completion of the Legal Aid NSW ICL Nuts and Bolts training course and

39.17. A current Working with Children Check.

### **Domestic Violence Panel**

39.18. Five years post-admission experience in ADVO proceedings

### **Civil Law Panel**

39.19. Two years post-admission experience in civil law

### **Mental Health Panel**

39.20. Two years post-admission experience in mental health advocacy and

39.21. A current Working with Children Check.

## **DELEGATION OF WORK TO LAWYERS WHO DO NOT SATISFY INDIVIDUAL REQUIREMENTS**

40. The Principal and the Nominated Associates may delegate legal aid work (except duty work) from the following panels to Delegated Associates at their Law Practice who satisfy the following conditions:

### **Summary Criminal Law Panel**

40.1. Lawyers with less than two years post-admission experience in criminal law.

### **Indictable Criminal Law Panel**

40.2. Lawyers with less than five but more than two years post-admission experience in criminal law, provided the work is ‘non-complex indictable’ as [defined by Legal Aid NSW](#).

### **Family Law Panel**

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- 40.3. Lawyers with less than two years post-admission experience in family law

### **Care and Protection Panel**

- 40.4. Lawyers with less than five years post-admission experience in care and protection, provided the work is for an adult client

### **Civil Law Panel**

- 40.5. Lawyers with less than two years post-admission experience in civil law.
41. The Principal and the Nominated Associates must not delegate legal aid work in any other circumstance except those set out in Clause 40 unless with prior written approval from Legal Aid NSW.
42. The Principal and the Nominated Associates must comply with clause 46.

### **BARRISTER BRIEFING PANELS**

43. Barristers may apply to be on a barrister briefing panel provided they satisfy the following individual panel requirements:

#### **Indictable Criminal Law Barrister Panel**

- 43.1. Five years' post admission experience in Criminal Law as a solicitor or barrister

#### **Complex Criminal Law Barrister Panel**

- 43.2. Seven years' post admission experience in Criminal Law as a barrister

#### **Appellate Criminal Law Barrister Panel**

- 43.3. Ten years' post admission experience in Criminal Law as a solicitor or barrister, including a minimum of three years' experience as a barrister (dating from the commencement of the Reading Program)
- 43.4. Provide two satisfactory referee reports, one from Senior Counsel and one from a member of the Bar Association.

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# Law Practice Requirements

## CLIENT CARE

44. To provide a quality service for legally aided clients, the Law Practice must have adequate infrastructure in place to:
- 44.1. allow lawyers to communicate and engage with clients in private
  - 44.2. be accessible during business hours
  - 44.3. provide administrative support to manage enquiries during business hours.

## CASE MANAGEMENT

45. The Law Practice must:
- 45.1. have information and communications technology to enable them to conduct business with Legal Aid NSW, including:
    - 45.1.1. electronically lodging all legal aid applications (including extensions) using Grants Online
    - 45.1.2. invoicing and accepting funds electronically
    - 45.1.3. providing progress reports on legal aid work, including submitting a File Outcome form at the conclusion of a matter, via Grants Online
    - 45.1.4. communicating with Legal Aid NSW primarily via Grants Online and otherwise via email
    - 45.1.5. receiving electronic communications from Legal Aid NSW and
    - 45.1.6. access to functioning telephone facilities
  - 45.2. have adequate case management processes to ensure the protection of clients' privacy and to easily identify and report on current legal aid work assigned to the Law Practice and any Associates, including the ability to generate:
    - 45.2.1. lists of legally aided files opened and/or closed from a specified date
    - 45.2.2. lists of the number and types of legal aid work managed by each practitioner in the Law Practice
    - 45.2.3. reports of final outcomes

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- 45.2.4. reports of barrister information
- 45.2.5. reports of claims submitted to Legal Aid NSW for payment.
- 45.3. a secure place to store files for seven years after completion
- 45.4. comply with sections 25 and 26 of the Act, and all privacy laws regarding the collection, use and disclosure of personal information as if the Law Practice was subject to those laws, when it collects, uses or discloses personal information in the course of undertaking legal aid work.

## **Supervision**

- 46. The Law Practice must:
  - 46.1. be responsible for the work undertaken in all legal aid work
  - 46.2. ensure that Associates undertaking legal aid work have the appropriate education, training, skills and experience to do legal aid work in accordance with the Quality Standards
  - 46.3. ensure that Associates undertaking legal aided work assigned to the Law Practice are registered for Grants Online and that their details are up to date and accurate
  - 46.4. regularly review and consider the Associate's caseload to ensure it is manageable
  - 46.5. ensure only nominated and delegated associates undertake legal aid work
  - 46.6. ensure Associates who undertake legal aid work only delegate work as permitted by the Quality Standards and actively supervise all delegated work.

## **Conflict and Complaints Management**

- 47. The Law Practice must comply with the Legal Profession Uniform Conduct Rules made under the Legal Profession Uniform Law and have:
  - 47.1. an adequate system to allow the Law Practice to check for conflicts of interest by name and secondary information, such as address, date of birth, parents' names or other interested/related parties' names
  - 47.2. adequate arrangements to enable lawyers to avoid conflicts of interest where the lawyer's own interest is involved, such as a relevant process, policy or system or relevant records about the conflict and the reasons why the lawyer has decided to continue or cease acting in the matter

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47.3. an internal complaints management process that demonstrates when a Law Practice has:

47.3.1. received a complaint

47.3.2. investigated a complaint

47.3.3. decided on action to be taken

47.3.4. notified the complainant of the outcome of any investigation.

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