

# Legal Assistance for Families: Partnership Agreement



**ABORIGINAL  
LEGAL SERVICE**  
NSW/ACT Ltd



**Communities  
& Justice**

**Legal Aid**  
NEW SOUTH WALES

## Legal Assistance for Families: Partnership Agreement (LAFPA)

An agreement focused on working collaboratively to achieve the best and safest outcomes for families. This agreement is relevant and applicable to all families who have contact with the child, youth and family division of the Department of Communities and Justice (DCJ).

### Acknowledgement of Country

We acknowledge the Traditional Custodians of the lands on which we make this agreement and do this work. We pay respect to their Elders past, present and emerging.

### Statement of intention

LAFPA heralds the beginning of a new collaborative relationship between Legal Aid NSW (Legal Aid), the Aboriginal Legal Service (ALS) and DCJ. It also consolidates existing processes in the one place.

All organisations recognise that they are working to achieve the same ultimate goal – to keep children safe at home with their families.

Children and families who come into contact with all of these organisations can be vulnerable and require assistance from highly skilled practitioners at the earliest opportunity to ensure the best possible outcomes are achieved.

The interests of children, young people and families are best served when arrangements for their care and protection are resolved in a timely manner and ideally through early intervention assistance rather than litigation.

Early intervention legal work for the purposes of this document includes any and all work done with a family outside of a formal court process. It can include working with a family in response to a report of significant harm, representation and/or advice in relation to alternative dispute resolution, discussion around temporary care arrangements, contact mediations, discussions around adoption (up to the stage of a hearing) and section 90 applications.

Early intervention work by all organisations helps to reduce the acrimony that often results from litigation and fosters cooperative relationships between caseworkers, carers, children and families.

A co-operative working relationship between all organisations aims to keep practice child-centred and avoid the duplication of effort and resources.

This partnership agreement sets out the expectations that all organisations have for their employees when working alongside each other.

### Key principles

- Respect.
- Communication.
- Early Intervention.
- Family-led decision making and agency.

All organisations agree to review the schedules to this agreement (and the objectives themselves if necessary) every six months in the first 12 months and then on an annual basis to ensure that they continue to meet the needs of vulnerable families. The review process will involve obtaining feedback from legal practitioners, DCJ practitioners, families, communities and other relevant stakeholders. All organisations agree that they want to be accountable to the objectives of this agreement and intend to evaluate the implementation and effectiveness of these objectives regularly.

### Objective one: regular opportunities to collaborate and communicate

All organisations recognise the importance of regular communication and collaboration to assist vulnerable children and families. All organisations agree to participate in quarterly working group meetings to share information and collaborate.

All organisations agree that the Director of the Family Law Division at Legal Aid, the Director of Child Protection at DCJ and the Principal Solicitor (Care & Protection/Family Law Practice) at ALS shall attend the working group (the LAFPA working group) and that they will additionally nominate one senior practitioner from each organisation to participate in each working group.

All organisations agree that other persons (including external practitioners) can attend these meetings as agreed between the parties.

Both parties agree that the working group should focus on:

- a. early intervention with families prior to a child or young person's removal/assumption into care
- b. developing relationships and mapping contact and escalation points between the parties
- c. identifying opportunities to work collaboratively and to share information
- d. identifying any training opportunities including joint training opportunities
- e. measuring the enablers and barriers to implementing this approach
- f. any other issues considered to be of importance by the working group
- g. transparent and open communication in relation to policy and decision making, and
- h. assessing the effectiveness of this agreement.

All organisations encourage their staff to work with their local offices and districts to make local arrangements for working groups and develop tailored implementation plans based on the individual needs of their local areas. It is expected that staff from all organisations will ensure that feedback about the agreement is provided to their relevant director/principal solicitor to ensure that any issues can be addressed quickly and efficiently in the larger working group.

## **Objective two: to prioritise early intervention work**

### *DCJ's Obligations*

- Ensure that DCJ practitioners (including caseworkers and managers casework) are aware of LAFPA and its objectives.
- Ensure that training is developed and delivered jointly with Legal Aid and the ALS that explains LAFPA and highlights the benefits of early collaboration and the referral process.
- Ensure LAFPA and its objectives are embedded into casework practice.
- Where the family's consent is given, ensure that referrals are made for legal advice for an individual or a family to Legal Aid or ALS at key flash points including but not limited to:
  - o when active casework commences with a family (including when a document like a safety plan has been developed, a family action plan is being agreed to by a family or a family is agreeing to execute a document like a temporary care agreement)
  - o when a family group conference is being contemplated (or any other form of alternative dispute resolution is being offered to families)
  - o before the filing/signing of a care plan by consent, parental responsibility contract, parenting capacity order, temporary care arrangement or when any discussions with a family are occurring which involve a child leaving the care of a parent (including informal arrangements, referrals for advice relating to the commencement of family court proceedings or ADVO proceedings), and
  - o where practicable, before the commencement of section 90 proceedings, transfer proceedings pursuant to s\chapter 14A, adoption proceedings, parents patriae proceedings (including secure accommodation proceedings).

Referrals are to be made using the 'Early Intervention Referral Form' which is schedule 1. Schedule 2 is a visual representation of all organisations expectations of key referral points.

### *Legal Aid and ALS's Obligations*

- Ensure that front line employees (including legal officers and other relevant staff) are aware of LAFPA and its objectives.
- Ensure that training is developed and delivered in conjunction with DCJ and ALS that explains the objectives and highlights the benefits of early collaboration and the referral process.
- Ensure LAFPA is embedded into relevant practice and procedure manuals.
- Establish clear referral pathways for families to be referred to legal advice with a view to this advice being provided wherever possible by offices closest to the family or units best able to meet the needs of the family.
- Confirm the receipt of the referral and likely turnaround time for the provision of the legal advice.
- Triage the provision of legal advice based on the information provided by DCJ and the client and prioritise the giving of advice as soon as is reasonably practicable based on the urgency of the individual family's situation.

### Objective three: to embed the electronic provision of initiating applications

#### DCJ's Obligations

- a. Ensure that Legal Aid and ALS are provided with new applications as early as possible (no less than 24 hours after filing unless there are exceptional circumstances) to the appropriate email address as set out in schedule 3.
- b. Ensure that reasonable attempts are made to ascertain and provide contact telephone numbers for parents and children (if the child is over 12) at the same time as the provision of new applications.
- c. Ensure that both Legal Aid and the ALS are provided with the information as set out in schedule 4.

#### Legal Aid NSW & ALS's Obligations

- a. In accordance with the protocol entered into in 2016 by ALS and Legal Aid, the ALS will determine representation first, in accordance with the principle of self-determination and consistent with the principles in the *Children and Young Persons (Care and Protection) Act 1998*. Thereafter, Legal Aid will apply its policies.
- b. Ensure that new applications are allocated to any private practitioners involved in proceedings prior to the first Court event.
- c. Take all necessary precautions to prevent the reproduction or copying of new applications, except to the extent reasonably necessary for the provision of legal aid and other legal services to the persons to whom the new application relates, including:
  - o forwarding electronic copies of new applications to its personnel and private practitioners on a need-to-know basis
  - o take all necessary precautions to prevent loss, unauthorised access to, unauthorised copying, misuse, modifications or disclosure of new applications, including by treating the new applications received from DCJ under these principles in accordance with the 'Sensitive: Personal' classification
  - o unless Legal Aid is required by law or the Legal Aid Functional Retention and Disposal Authority (FA 272) to retain the new applications, Legal Aid will use its best endeavours to destroy or cause to be destroyed (in such a manner as to prevent its retrieval, recovery or reconstitution) all copies of new applications which are in its possession, custody, power or control seven (7) years after last providing the person whom is subject of the new application with legal aid or legal services in respect of the offence for which the new applications were provided
  - o complying and ensuring its personnel comply with any obligations imposed by privacy legislation
  - o complying and ensuring its personnel comply with the privilege provisions in the *Legal Aid Commission Act 1979 (NSW)*, and
  - o complying with all relevant security and other requirements specified in their respective legislative and administrative frameworks and guidelines, including the NSW Cyber Security Policy (or any policy that may replace it).

### Objective four: To give precedence to alternative dispute resolution (ADR)

All organisations agree ADR (including contact and adoption mediations and ADR pursuant to section 37 of the act) provides important and valuable opportunities for the organisations to work with families to achieve the best possible outcomes for children and young persons.

All organisations are committed to continuing to work collaboratively and on an ongoing basis in relation to processes, policies and procedures concerning:

- contact mediations

- pre and post-filing adoption mediations, and
- other family dispute resolution (FDR) or ADR models.

### *Alternative Dispute Resolution*

The primary means by which ADR is offered to families who are both participating and not participating in court processes by DCJ is by way of Family Group Conferences (FGC). The primary means by which ADR is offered to families by Legal Aid NSW is by way of lawyer assisted FDR.

### *Family Group Conferences*

It is not envisaged that legal representatives will attend at FGC that are convened outside of court proceedings. This does not prevent parents, children, young people and other interested family, kin and significant others from seeking confidential legal advice prior to or during an FGC. All referrals should be made for legal assistance in accordance with objective 2 of this partnership agreement.

Both organisations agree that there will be some matters where a family member or a child/young person may benefit from having or request that a legal representative be present at an ADR, whether this be an FGC or a lawyer assisted mediation funded by Legal Aid.

Both organisations agree to consider the appropriate form for ADR on a case-by-case basis and particularly in matters where there are concerns about domestic and family violence.

The attached schedule 5 outline the practices and procedures for each model of ADR.