

Practice Standards

About these Practice Standards

The Legal Aid Commission (ACT)(Legal Aid ACT) has established a panel of private legal practitioners to provide legal services to legally assisted persons (the General Panel).

Under subsections 31E(5) and (6) of the *Legal Aid Act 1977* (the Act) the Commission may determine criteria for the appointment of practitioners to a panel, including practice standards.

Clause 10.4 of the Legal Aid ACT General Panel Services Agreement requires the practitioner to comply with certain practice standards.

Following consultation with the ACT Law Society and ACT Bar Association the Commission has determined the following Practice Standards for legal practitioners representing legally assisted clients.

The Practice Standards set out strategies to ensure the effective, efficient and economic delivery of quality legal services and apply to both private practitioners and in-house Legal Aid ACT practitioners (wherever the context allows).

The General Practice Standards apply to all legally assisted cases, while the Criminal Law and Family Law practice standards apply to cases of those types.

Continued membership of the General Panel is dependent on compliance with the Practice Standards.

‘Guidelines’ means the guidelines determined by the Commission under section 12 of the Act.

Otherwise terms used in the Practice Standards have the same meaning as in the ACT Legal Aid General Panel Services Agreement.

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General Practice Standards

The General Practice Standards apply to all legally assisted cases.

General Principles

- Practitioners should apply to legally assisted cases the same skill and care they would apply to a case for a fee paying client.
- Practitioners should ensure that costs are not incurred unnecessarily or unreasonably.
- Practitioners should use their best endeavours at all times to seek ways to narrow the issues in dispute, resolve matters in a timely fashion, and avoid litigation if possible.
- Practitioners should avoid proceedings, or adducing evidence, that may increase distrust or animosity between the parties without achieving any significant benefit for the client.

1. Responsibilities to Clients

Practitioners acting for legally assisted persons must:

Standard of service

- 1.1 provide an efficient, ethical and high quality service in accordance with the applicable professional conduct and practice rules;

Applications for legal assistance

- 1.2 advise the client of the availability of legal assistance and, when appropriate, assist the client to complete an application for legal assistance;
- 1.3 obtain from the client adequate instructions about the current status of the matter in order to apply for a grant of legal assistance;

- 1.4 when appropriate assist the client to obtain a grant of legal assistance by providing Legal Aid ACT with all relevant information and supporting documentation;
- 1.5 ensure that any applications for extensions of assistance and requests for reconsideration or review of decisions concerning legal assistance are lodged promptly, and whenever possible prior to any event that will incur costs, together with all relevant information and supporting documentation;
- 1.6 inform the client of the client's obligations in relation to the grant of legal assistance;

Communicating with the client

- 1.7 ensure that contact is established and a meeting arranged with the client within a reasonable time of receiving an assignment having regard to the nature and urgency of the case;
- 1.8 communicate with the client in a way that the client understands using language appropriate to the client's age, maturity, education and cultural background and explain the meaning of technical terms;
- 1.9 use a qualified interpreter when appropriate and with Legal Aid ACT's prior approval;
- 1.10 comply promptly with reasonable requests by the client for information regarding their matter;
- 1.11 respond promptly to telephone inquiries and correspondence concerning the matter;
- 1.12 keep the client informed of the progress of the matter in a timely way and ensure that the client is aware of the stages through which a matter progresses in the court system;
- 1.13 provide the client with copies of relevant documents concerning the matter;
- 1.14 at the conclusion of a matter provide the client with a clear and comprehensive written explanation of the outcome, including any actions the client is to take and any appeal rights and relevant time limits;
- 1.15 provide the client with information and advice about their matter to the extent reasonably necessary to permit them to make informed decisions regarding the

matter, and advise clients of what they are expected to do to assist the conduct of the case;

2. Responsibilities to Legal Aid ACT

Practitioners acting for legally assisted persons must:

Provision of legal assistance

- 2.1 comply with the relevant practice standards;
- 2.2 be familiar with and observe the provisions of the Act and the regulations and guidelines made under the Act;
- 2.3 when submitting applications for assistance ensure that:
 - 2.3.1 accurate, up to date and adequate information is provided to Legal Aid ACT, including supporting documentation (including documents required for verification of means);
 - 2.3.2 the application for assistance is signed by the applicant and by the practitioner;
 - 2.3.3 they certify in the application whether in their opinion the application satisfies the reasonableness criteria in subsection 28(4) of the Act, and is of a type for which assistance may be granted under the Guidelines;
- 2.4 comply with the conditions of the grant of legal assistance and the assignment;
- 2.5 seek an extension of assistance for any work not covered by the grant of legal assistance that is necessary for the proper representation of the client, before undertaking that work;
- 2.6 inform Legal Aid ACT of any circumstances of which they are aware that might be relevant to the client's continued eligibility for legal assistance;
- 2.7 keep Legal Aid ACT informed of the progress of the matter and provide all relevant information necessary for Legal Aid ACT to make decisions concerning the granting of legal assistance and whether legal assistance should continue to be provided;
- 2.8 provide Legal Aid ACT with any information reasonably requested in relation to a legally assisted matter, including the services provided to the assisted person and costs incurred in the matter;

- 2.9 maximise the use of information and communications technology in dealings with Legal Aid ACT on behalf of clients.

Electronic lodgement (when available)

- 2.10 utilise the online lodgement facility (eGrants) for applications of legal assistance, requests for extensions of assistance and invoices for fees and disbursements when required by Legal Aid ACT;
- 2.11 maintain on file a hard copy of any electronically lodged application signed by the legally assisted person and the practitioner, and a hard copy of relevant supporting documentation;
- 2.12 comply with Legal Aid ACT's requirements concerning the use of the electronic lodgement facilities, including the use of user IDs and passwords;

Contributions

- 2.13 take reasonable steps to recover any contributions the assisted person is required to pay towards the cost of providing legal assistance and retain the contributions on account of legal costs in the assigned matter;
- 2.14 inform Legal Aid ACT if the assisted person neglects, refuses or is unable to afford to pay part or all of a contribution;

Disbursements

- 2.15 obtain prior written approval for incurring disbursements (including counsel's fees and transcript fees) not covered by the grant of legal assistance;

Briefing counsel

- 2.16 if engaging counsel:
- 2.16.1 inform counsel of the existence of the grant of legal assistance and of the terms upon which counsel is engaged;
 - 2.16.2 provide a brief to counsel marked with the authorised fees in accordance with the Legal Aid Scale of Costs;

Legal costs

- 2.17 submit to Legal Aid ACT within 21 days of the conclusion of the case, an invoice for professional costs and disbursements:
 - 2.17.1 in the prescribed form;
 - 2.17.2 in accordance with the Legal Aid Scale of Costs;
 - 2.17.3 in sufficient detail to enable Legal Aid ACT to determine that the amount is properly payable;
 - 2.17.4 that does not exceed the amount of funds committed to the case;
- 2.18 when submitting invoices provide a progress report or report on the outcome of the case;
- 2.19 comply within a reasonable period with a request by Legal Aid ACT for further information concerning the legal costs claimed and, if requested, provide a bill of costs in taxable form;
- 2.20 accept only the payments they are entitled to under section 32A of the Act for performing services on behalf of the assisted person;
- 2.21 retain out of any money received on the assisted person's behalf in an assigned matter sufficient to cover the cost of the matter and:
 - 2.21.1 notify Legal Aid ACT of the amounts received and retained;
 - 2.21.2 disburse the retained funds as directed by Legal Aid ACT;
- 2.22 take all reasonable steps to recover costs ordered in favour of the assisted person and notify Legal Aid ACT if the recovery of costs is unlikely;
- 2.23 avoid taking any action, giving any advice, or entering into any agreement (without the express approval of Legal Aid ACT) that could prejudice Legal Aid ACT's right to recover legal costs in the matter from the assisted person or a third party;
- 2.24 on completion of the assigned matter give Legal Aid ACT:
 - 2.24.1 a report on the outcome of the matter, including details of any order for costs;
 - 2.24.2 an invoice in compliance with clause 2.17; and
 - 2.24.3 an account of all money received and paid on behalf of the assisted person during the assignment;

File management

- 2.25 maintain client files so that:
 - 2.25.1 if another practitioner has to assume conduct of the matter the current status of the matter is easily ascertained, including the progress of negotiations, court proceedings and the legal costs incurred to date;
 - 2.25.2 all correspondence is filed in date order;
 - 2.25.3 all communications concerning the grant of legal assistance are kept separate from other file documents;
 - 2.25.4 all court documents are kept separate from other file documents;
 - 2.25.5 adequate file notes are kept of all telephone conversations and other attendances, including court attendances and a summary of any negotiations, orders made, directions given and time spent;
 - 2.25.6 comprehensive and legible file notes are kept of instructions, attendances, other relevant events, and information or advice provided to the client that is not confirmed in writing;

- 2.26 review all files on completion of the case to ensure all necessary steps have been taken before advising Legal Aid ACT that the case is finalised;

Reporting

- 2.27 provide a written report to Legal Aid ACT at the conclusion of each stage of a grant and a final report on the conclusion of the matter;

- 2.28 ensure reports contain details of court appearances for which payment is sought including outcomes and orders made, an outline of the work completed under the grant of legal assistance, and any other information that Legal Aid ACT reasonably requires or that the Practitioner considers relevant.

- 2.29 notify Legal Aid ACT of any circumstances relevant to the continuation of assistance, including:
 - 2.29.1 an adverse change in the prospects of the case;
 - 2.29.2 the client fails to provide instructions or withdraws instructions;
 - 2.29.3 the client refuses or fails to accept or act in accordance with legal advice; or
 - 2.29.4 the Practitioner loses contact with the client;

File audits

- 2.30 comply with requests by Legal Aid ACT for files to provided for the purpose of a compliance audit (refer to the Compliance Audit Requirements at <http://www.legalaidact.org.au/>);
- 2.31 keep timely and accurate records of work undertaken to enable a proper costing of the file;
- 2.32 maintain files in an order that allows Legal Aid ACT's audit staff to readily understand the factual basis of the matter, the client's instructions, notes of attendances, the stage the case has reached, and further action required;

Use of agents and other service providers

- 2.33 ensure wherever possible when appointing agents that the agent is a member of the General Panel or an equivalent panel maintained by another legal aid commission;
- 2.34 only engage agents or other service providers on the basis that they will accept payment for their services at Legal Aid ACT's applicable rates of payment;

Fee exemptions

- 2.35 ensure that an exemption is claimed in respect of any disbursements or fee in respect of which exemption is available under Section 93 of the Act (Legal Aid ACT will not reimburse the practitioner in respect of any payments for which exemption could have been claimed);

3. Dealings with others

- 3.1 conduct all dealings with other practitioners, parties, witnesses and court staff in a courteous and professional manner;
- 3.2 take care in dealings with self represented parties to communicate clearly and avoid technical language or jargon;

Family Law Practice Standards

The Family Law Practice Standards apply to all legally assisted cases involving matters under the *Family Law Act 1975*.

General Principles

Practitioners are to recognise family violence as a serious problem and the paramount need to ensure the safety of children and parents should be considered at all stages of a family law matter.

Practitioners should take a conciliatory rather than a litigious approach to family disputes in order to lessen conflict and negative impacts on the parties and any children involved.

Practitioners should ensure that their behaviour, comments or attitude do not inflame the dispute between the parties and that their own personal emotions or opinions do not influence the advice given to a client.

4 Responsibilities to clients

A practitioner representing a client (other than a client who is a child) in a family law dispute must:

- 4.1 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. (www.lawcouncil.asn.au);
- 4.2 advise the client in matters involving children, of the principles set out at Section 60B of the *Family Law Act 1975* and assist and encourage the client to pursue options that are in the best interests of the children;
- 4.3 advise the client in matters involving child support, of the principles set out at Section 4 of the *Child Support (Assessment) Act 1989* and assist and encourage the client to pursue options that ensure children receive a proper level of financial support from their parents;
- 4.4 advise the client as to the benefits of making arrangements for children in cooperation with the other party rather than through a court hearing;

- 4.5 consider the appropriateness of alternate dispute resolution (ADR) for all matters and at each stage of proceedings, and if a matter is referred to ADR approach the matter in a manner consistent with the philosophy of ADR, be fully informed about the matter and participate constructively in any ADR conference;
- 4.6 encourage the client to be open and honest in all aspects of the case;
- 4.7 provide the client with copies of all applications, affidavits and reports filed in the proceedings and a sealed copy of any order or agreement, or a copy of any judgment;
- 4.8 where appropriate, advise the client of the Family Court Chief Justice's guidelines for dealing with matters involving domestic violence and assist the client to avail themselves of the protection offered by those guidelines;
- 4.9 where appropriate, assist the client by providing referrals to medical professionals, counsellors and social workers;
- 4.10 where appropriate, seek instructions from the client in relation to making an application to the court for the appointment of a representative for the children;
- 4.11 explain to the client the role of the independent children's lawyer and any costs associated with their appointment;
- 4.12 use best endeavours to ensure compliance by clients with Section 121 of the *Family Law Act 1975* concerning non-publication of family law proceedings, advise the client of the effect of Section 121, and warn them of the sanctions that may be imposed for the publication of any material filed in proceedings commenced under the *Family Law Act 1975*;
- 4.13 where the matter proceeds to hearing, ensure that the client understands how evidence is given, how the hearing will be run, and how parties should conduct themselves in court;
- 4.14 if the other party is acting for themselves, advise the client of how the court and the practitioner will deal with the other party during the hearing;

5 Representing a child

A practitioner appointed to represent a child must:

- 5.1 have undertaken the National Independent Children’s Lawyer training program designed by the Family Court of Australia, the Family Law Section of the Law Council and National Legal Aid;
- 5.3 be a member of any Independent Children’s Lawyers panel established by Legal Aid ACT; and
- 5.2 comply with the Guidelines for Independent Children’s Lawyers endorsed by the Chief Justice of the Family Court of Australia and the Federal Magistrates Court;

6 Dealings with other parties

6.1 in all dealings with self represented parties inform that party of the information on the Family Court website for people representing themselves.

7 Briefing counsel in family law matters

- 7.1 A practitioner briefing counsel in a family law matter must promptly provide briefs and instructions to counsel in writing, including where practicable, the following legible documents:
 - 7.1.1 an index of documents contained in the brief;
 - 7.1.2 observations on the facts to counsel sufficient to assist counsel in appreciating the issues, and the background of the matter;
 - 7.1.3 such other observations as the practitioner may regard as being useful to counsel;
 - 7.1.4 the client’s instructions;
 - 7.1.5 medical and expert reports;
 - 7.1.6 statements of witnesses;
 - 7.1.7 copies of any subpoenas issued; and
 - 7.1.8 a back sheet marked with the fees payable to counsel in accordance with the Legal Aid Scale of Costs;
- 7.2 attend at all conferences and court proceedings unless counsel agrees otherwise.

8 Duty lawyer services

When acting as a duty lawyer in family law proceedings in the Family Court or Federal Magistrates Court a practitioner must:

- 8.1 observe the Family Law Duty Lawyer Scheme National Protocol published by the Commonwealth Attorney-General's Department in conjunction with National Legal Aid, the Family Court of Australia and the Federal Magistrates Court;
- 8.2 following a duty lawyer appearance promptly send to Legal Aid ACT:
 - 8.2.1 a completed duty lawyer report form and invoice for the attendance;
 - 8.2.2 any application for legal assistance taken from the client together with supporting documentation in accordance with the General Practice Standards;
 - 8.2.3 any other relevant documents obtained from the client or another party;
- 8.3 following a duty lawyer appearance return to the client copies of documents obtained from the client or another party and (if more than one copy of a document is available) also send a copy to Legal Aid ACT.

Criminal Law Practice Standards

The Criminal Law Practice Standards apply to practitioners handling legally-assisted criminal cases or acting as a duty lawyer on behalf of Legal Aid ACT.

General Principles

The majority of people appearing in the Criminal Justice System are disadvantaged and practitioners should have an understanding of cross-cultural issues and issues facing socially and economically disadvantaged people.

9 Responsibilities to clients

A practitioner representing an accused person in a criminal matter must:

- 9.1 obtain proper instructions from the client before presenting their case in court;
- 9.2 advise the client promptly if it appears that there may be a delay in the progress of the case;
- 9.3 inform the client of the case against them and advise the client on the applicable law, procedure and practice, including the charges, potential penalties, and the likely time their case will take to be concluded;
- 9.4 ensure that before entering a plea the practitioner has all relevant prosecution evidence including the charge sheet/court attendance notice/summons, the police facts sheet, the brief of evidence where appropriate and the client's criminal record;
- 9.5 following a court appearance (including where the client is in custody):
 - (i) immediately speak with the client and confirm that they understand the result and any orders made by the court (unless this is not possible due to lack of time because of other court commitments that day); and
 - (ii) send a letter to the client confirming the results and their effect and (if applicable) informing them of the next court date and their obligation to attend;
- 9.6 consider the appropriateness of a bail application;

- 9.7 maintain continuity of representation throughout the case, but where this is not possible notify Legal Aid ACT and explain to the client who will be appointed to represent the client on the next occasion;
- 9.8 obtain instructions from the client and give advice about the law, the benefits of an early plea of guilty, maximum penalties, whether there is a standard non-parole period, the possible defences, and the legal process and procedure;
- 9.9 advise the client of the strengths and weaknesses of the prosecution case;
- 9.10 keep the client adequately informed of the progress of the matter, and give realistic advice on prospects having regard to the evidence;
- 9.11 obtain instructions from the client about whether they are being treated for any psychiatric, psychological or medical issues, whether they are prescribed any medication, and obtain background information relating to the medical history;
- 9.12 determine if the client has mental health issues or an intellectual disability requiring a psychological or psychiatric assessment, and subject to obtaining approval from Legal Aid ACT, arrange such an assessment;
- 9.13 consider whether a bail application or bail variation is necessary and obtain full instructions in respect to the factors necessary for bail or bail variation;
- 9.14 obtain signed instructions from the client if they intend to plead guilty;
- 9.15 open and retain a file for the client with copies of the police facts, bail conditions, criminal history and the brief;
- 9.16 comply with the relevant practice directions when a matter is listed for defended hearing;
- 9.17 advise the client on the evidence in the brief and whether there is sufficient evidence to prove a prima facie case;
- 9.18 advise the client of any relevant defences available to the charges and if the client wishes to enter a plea of guilty despite a possible defence obtain signed instructions where practical;

- 9.19 advise on the right to make an election and the consequences of not making an election;
- 9.20 determine whether to brief counsel at the committal stage, subject to the approval of Legal Aid ACT, which can be given in exceptional circumstances;
- 9.21 try to ensure wherever possible that counsel briefed at committal will be briefed for the trial and or sentence proceedings;
- 9.22 once a matter is completed a practitioner must:
 - 9.22.1 speak to the client immediately following the court appearance and confirm the client understands the proceedings and the outcomes;
 - 9.22.2 provide the client with a written report:
 - (i) explaining the outcome;
 - (ii) advising of the right to appeal, the prospects of an appeal succeeding and the time within which to lodge an appeal;
 - (iii) advising of the likelihood of legal assistance being available for an appeal;
 - 9.22.3 if appropriate:
 - (i) take instructions for an appeal;
 - (ii) assist the client in lodging an appeal;
 - (iii) assist the client to complete an application for legal assistance for the appeal and for a bail application pending appeal.

10 Briefing Counsel in Supreme Court matters

A practitioner briefing counsel in a criminal matter to be heard in the Supreme Court must:

- 10.1 if the matter subsequently becomes a plea, obtain approval from Legal Aid ACT to brief counsel for the sentence proceedings;
- 10.2 if the matter is committed for sentence, obtain approval from Legal Aid ACT to brief counsel for the sentence proceedings;
- 10.3 promptly provide briefs and instructions to counsel in writing, including where practicable, the following legible documents:
 - 10.3.1 an index of documents contained in the brief;
 - 10.3.2 observations on the facts to counsel sufficient to assist counsel in appreciating the issues, and the background of the matter;

- 10.3.3 such other observations as the practitioner may regard as being useful to counsel;
 - 10.3.4 the committal for sentence documents or the indictment;
 - 10.3.5 the client's instructions;
 - 10.3.6 medical and expert reports;
 - 10.3.7 statements of prosecution witnesses;
 - 10.3.8 statements of defence witnesses;
 - 10.3.9 transcript of Magistrates Court proceedings if available;
 - 10.3.10 copies of any subpoenas issued; and
 - 10.3.11a back sheet marked with the fees payable to counsel in accordance with the Legal Aid Scale of Costs;
- 10.4 ensure that counsel confers with the client at an early opportunity, advises the client of the strengths and weaknesses of both the prosecution case and the client's case, and advises as to the benefits of an early plea;
 - 10.5 consider whether to negotiate with the prosecutor on different or lesser charges in full satisfaction of any indictment;
 - 10.6 attend at all conferences and court proceedings unless counsel agrees otherwise;
 - 10.7 seek an extension of assistance prior to ordering a transcript of trial proceedings.

11 Appearing at Sentence

A practitioner appearing in a sentence matter in the Supreme Court must:

- 11.1 obtain prior instructions from the client and where a plea of guilty has been entered, have the client read and sign the instructions to plead guilty, and the agreed facts before presenting their case in court;
- 11.2 consider whether it is relevant or necessary to have any matters placed on a schedule under Part 8 of the *Supreme Court Act 1933* taken into consideration on sentence;
- 11.3 advise the client about the appeal process, appeal prospects and time limits for appeal;
- 11.4 explain the Legal Aid ACT policy on granting legal assistance for appeals.

12 Supreme Court Appeals

A practitioner appearing in a Supreme Court appeal must:

- 12.1 obtain instructions from the client and give advice about the law, the likelihood of the appeal succeeding and the possibility of the sentence being increased in sentence appeal proceedings;
- 12.2 seek a grant of legal assistance for the appeal;
- 12.3 open and maintain a separate file for the client with copies of the documents from the lower court proceedings and Notice of Appeal;
- 12.4 in conviction appeals provide advice on and determine whether any fresh evidence is to be called or whether an application will be made for evidence to be given;
- 12.5 not brief counsel unless approval has been obtained from Legal Aid ACT.

13 Duty lawyer services

- 13.1 Duty lawyer work encompasses:
 - providing information;
 - providing legal advice;
 - taking instructions on first appearances and if appropriate entering a plea of guilty;
 - mentioning matters;
 - bail applications;
 - bail variations.
- 13.2 When acting as a duty lawyer a practitioner must:
 - 13.2.1 comply with any duty lawyer guidelines determined by Legal Aid ACT;
 - 13.2.2 give priority to clients in custody;
 - 13.2.3 obtain all relevant material from the client, and where necessary the prosecutor, including the police facts, details of bail conditions and the client's criminal history;
 - 13.2.4 advise the client of the nature of the charges and any defences;

- 13.2.5 read the police fact sheet to the client, advise the nature of the proceedings and their possible outcomes along with the potential effect on the client including victim's compensation restitution if appropriate;
 - 13.2.6 advise on the right to make an election and the consequences of not making an election in respect of indictable offences;
 - 13.2.7 consider whether a bail application or bail variation is necessary and obtain full instructions in respect of the factors necessary for bail or bail variation;
 - 13.2.8 take the client's bail conditions and instructions for any variation application;
 - 13.2.9 speak to the client immediately following the court appearance and confirm the client understands the proceedings, the outcome and the requirements of any penalty imposed;
 - 13.2.10 where a client has been charged with an offence which is strictly indictable or where an election can be made, explain the committal procedure to the client;
 - 13.2.11 where a matter has been adjourned and the practitioner will not be appearing on the next return date, send client's documents to Legal Aid ACT no later than two working days prior to the next court appearance;
 - 13.2.12 advise a client remanded in custody of their rights in relation to making a further bail application or applying for a bail review;
 - 13.2.13 explain appeal rights and processes and advise on prospects;
- 13.3 following a duty lawyer appearance promptly send to Legal Aid ACT:
- 13.3.1 a completed duty lawyer report form and invoice for the attendance;
 - 13.3.2 any application for legal assistance taken from the client together with supporting documentation in accordance with the General Practice Standards;
 - 13.3.3 any other relevant documents obtained from the client or the prosecutor;
- 13.4 following a duty lawyer appearance return to the client copies of documents obtained from the client or the prosecutor and (if more than one copy of a document is available) also send a copy to Legal Aid ACT.