

General Panel Agreement

This **Agreement** is between—

the **Legal Services Commission of South Australia** (Legal Services)

and

(the legal practitioner)

[legal practitioner's full name]

1. It is agreed that—

- 1.1 on the signing of this Agreement by both the legal practitioner and the Director, the practitioner will be appointed to and will remain on the General Panel for the term of the Agreement unless—
- a) the practitioner is removed from the General Panel under the terms of this Agreement; or
 - b) the practitioner ceases employment with his or her employer (in which case the practitioner is eligible to immediately reapply for readmission to the General Panel with current employment particulars);
- 1.2 the legal practitioner will provide services in an assigned legal aid matter in accordance with the provisions of this Agreement, the General Practice Standards and any applicable specific practice standards, and any further conditions stipulated by the Director and attached to this Agreement;

- 1.3 this Agreement operates for a term of three years from the date the Agreement is signed by the Director and, at the expiration of the term of the Agreement, a subsequent Agreement may be entered into;
- 1.4 the legal practitioner may be removed or suspended (where suspension amounts to being temporarily ineligible to provide services in some or all assigned legal aid matters) from the General Panel—
- a) on breach by the practitioner of—
 - i. a term of this Agreement; or
 - ii. a term of the General Practice Standards or a term of any specific practice standards applicable to the particular matter; or
 - iii. any further condition stipulated by the Director and attached to this Agreement; or
 - b) on the commencement of bankruptcy proceedings, disciplinary proceedings (under the *Legal Practitioners Act 1981* or otherwise) or criminal proceedings (other than minor traffic offences) against the practitioner;
- 1.5 a legal practitioner who receives written notice from the Director removing or suspending the practitioner from the General Panel may, within one month of receiving the notice, appeal in writing to Legal Services against the removal or suspension;
- 1.6 notice to a legal practitioner removing or suspending the practitioner from the General Panel will state—
- a) the reason for the removal or suspension;
 - b) whether the removal or suspension is pursuant to paragraph (a) or (b) of clause 1.4; and
 - c) in the case of suspension, the term of the suspension;
- 1.7 a legal practitioner suspended from the General Panel for 12 months or more will be considered to have been removed from the Panel and may, 12 months from the date of the notice of suspension, apply for readmission to the General Panel;
- 1.8 a legal practitioner removed from the General Panel may, six months from the date of the notice of removal, apply for readmission to the General Panel;

1.9 on receiving a written request from a legal practitioner to remove his or her name from the General Panel, the Director will remove the practitioner from the General Panel.

2. It is agreed that as a member of the General Panel the **legal practitioner**–

2.1 will maintain his or her practising certificate and, if it is not maintained, will immediately notify Legal Services in writing and cease working on any matter assigned to the practitioner;

2.2 will, if the practitioner holds a practising certificate with the restriction that the practitioner must complete supervised practice in accordance with rule 11 of the Rules of the Legal Practitioners Education and Admission Council 2018, comply with Legal Services' guidelines specifying the type of matter that may be undertaken by a practitioner holding a restricted practising certificate as published on the Legal Services' website from time to time;

2.3 will comply with the *Legal Practitioners Act 1981*, the *Legal Services Commission Act 1977*, the Australian Solicitors' Conduct Rules adopted and amended by the Law Society of South Australia and, if applicable, the South Australian Barrister Conduct Rules;

2.4 will conduct an assigned legal aid matter to the standard of care and skill expected of a person who regularly acts in the capacity in which the legal practitioner is engaged and who possesses the knowledge, skill and experience of a person qualified to act in that capacity;

2.5 will immediately advise Legal Services, in writing, on becoming aware of bankruptcy proceedings, disciplinary proceedings (under the *Legal Practitioners Act 1981* or otherwise) or criminal proceedings (other than minor traffic offences) commenced against the legal practitioner;

2.6 will immediately advise Legal Services, in writing, if the practitioner commences employment with a new employer or becomes self employed and, if the practitioner wishes to remain on the General Panel, reapply for admission to the General Panel with his or her new employment details;

2.7 will advise Legal Services, in writing, within 14 days of any change to the legal practitioner's e-mail address, business address or other contact details;

2.8 will, in accordance with section 22(1) of the *Legal Services Commission Act 1977*, and within such reasonable timeframe as is requested by Legal Services, disclose to Legal Services any information relating to the provision of legal aid to an assisted client that Legal Services may require, including for the purposes of conducting an audit in relation to the expenditure of Legal Services' funds or compliance with the provisions of this Agreement and practice standards;

- 2.9 will, if practising from a home address, maintain office premises that are separated from the residential part of the premises and suitable for the attendance of clients;
- 2.10 will not solicit or poach a legal aid client from Legal Services' in-house practice or from another panel member;
- 2.11 will be deemed to have accepted a legal aid assignment on the date of the assignment unless the legal practitioner notifies Legal Services within 72 hours of receipt of the assignment that the practitioner is unable or unwilling to accept the assignment;
- 2.12 will, on Legal Services reassigning a matter to another legal practitioner, transfer all relevant files to that subsequent practitioner as soon as practicable;
- 2.13 will submit a tax invoice to Legal Services for work in respect of which a commitment certificate has been issued within three months of the conclusion of that work;
- 2.14 will as soon as possible refund to Legal Services an over payment or incorrect payment received by the legal practitioner from Legal Services;
- 2.15 will not charge the client for any legal work performed on a matter that is subject to a grant of legal aid, or for any other costs associated with that legal work, other than the amount of the client contribution as determined by Legal Services;
- 2.16 is authorised to collect the client contribution the legal aid client is required to pay and retain it unless the file is transferred to a new legal practitioner, at which time any balance of the contribution is also to be transferred to the new practitioner.

3. It is agreed that Legal Services–

- 3.1 will, subject to clause 3.2, on receipt of a tax invoice pay the legal practitioner the cost scale amount as set out on the Legal Services' website from time to time, less any client contribution;
- 3.2 on receiving a tax invoice from the legal practitioner for work in respect of which a commitment certificate has been issued–
 - a) may decline to pay the invoice if the invoice is submitted more than three months after the conclusion of that work; and

- b) will not pay the invoice if the invoice is submitted more than six months after the conclusion of that work unless payment of the invoice is authorised by the Director or authorised delegate;
- 3.3 is not liable for any disbursement, including counsel fees, incurred by the legal practitioner without prior approval from Legal Services;
- 3.4 may reassign a legal aid matter to a subsequent legal practitioner if Legal Services–
 - a) in its absolute discretion, is of the opinion that this should occur; or
 - b) receives a request to do so by the original practitioner or the client,
 and in so doing Legal Services will–
 - c) give notice to the original practitioner of the reassignment; and
 - d) on receipt of a tax invoice within three months of the reassignment, pay to the original practitioner the proportion of the cost scale amount, as set out on the Legal Services’ website from time to time, that reflects the work done by the practitioner prior to the notice of reassignment;
- 3.5 will respond as soon as practicable to a request by the legal practitioner for information relevant to an assignment allocated to the practitioner;
- 3.6 will notify the legal practitioner as soon as practicable of changes to the processes, procedures or policies of Legal Services relevant to an assigned legal aid matter.

signed by–

Signature of legal practitioner

Date

and

On behalf of the

Date

Legal Services Commission of South Australia

Practice Standards

The Legal Services Commission has established a panel of legal practitioners to provide legal aid services (the General Panel).

Clause 1.2 of the General Panel Agreement requires a legal practitioner included on the General Panel to provide services in an assigned legal aid matter in accordance with the provisions of the General Panel Agreement, the General Practice Standards and any applicable specific practice standards, and any further conditions stipulated by the Director and attached to the Agreement.

A legal practitioner who breaches a practice standard may be suspended or removed from the General Panel and any other panel of which the practitioner is a member.

Legal Services has determined that the following general and specific practice standards are to be complied with by a legal practitioner representing a legal aid client.

The General Practice Standards apply to all legal aid matters. Specific practice standards have been developed to apply to particular types of matters and clients with specific characteristics.

The practice standards are designed to ensure the effective, efficient and economic delivery of quality legal services. They apply to both in-house legal practitioners and private legal practitioners acting on a grant of legal aid.

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General Practice Standards

General Principles

1. The General Practice Standards apply to all legal aid matters. A legal practitioner acting for a legal aid client is to—

- a) apply the same skill and care as would be applied to a matter for a fee paying client;
- b) ensure that legal aid costs are only incurred where necessary and reasonable;
- c) seek to narrow the issues in dispute, resolve the matter in a timely fashion and, where appropriate, avoid a fully contested adjudication if possible.

Responsibilities to clients

2. A legal practitioner acting for a legal aid client must—

- (a) ensure that, together with all relevant information and supporting documentation—
 - i. an application for legal aid or for an extension of legal aid; or
 - ii. a request for reconsideration or review of a decision concerning legal aid,is lodged promptly with Legal Services and, whenever possible, prior to an event that will incur costs;
- (b) advise the client that accurate, up to date and adequate information is to be provided to Legal Services (including any supporting documentation, such as documents required for verification of means);
- (c) endeavour to establish contact with, and take instructions from, the client within a reasonable time of receiving an assignment from Legal Services, having regard to the nature and urgency of the matter;

- (d) communicate effectively with the client by using language appropriate to the client's age, maturity, education and cultural background and, if appropriate, through an interpreter;
- (e) keep the client informed of–
 - i. the progress of the matter, including any delay or likely delay and the reason for the delay;
 - ii. the prospects for the matter;
 - iii. any costs contribution required from the client;
 - iv. the imposition, or potential imposition, of a statutory charge; and
 - v. the implications of the funding cap;
- (f) respond promptly to–
 - i. reasonable requests by the client for information regarding his or her matter; and
 - ii. telephone inquiries;
- (g) attend all court hearings on time and adequately prepared;
- (h) be aware of, and comply with, relevant practice directions;
- (i) maintain continuity of representation throughout the matter to the extent possible and if this is not possible explain to the client who will be appointed to represent him or her on the next occasion;
- (j) before closing the file of a non-responsive client–
 - i. follow up with the client (or nominated representative) at least twice;
 - ii. comply with court or tribunal requirements governing withdrawal; and
 - iii. notify Legal Services;
- (k) at the conclusion of a matter, provide the client with a clear and comprehensive written explanation of the outcome, including–
 - i. the action the client is to take;
 - ii. appeal rights (if any) and relevant time limits; and
 - iii. any final costs contribution required by Legal Services and any statutory charge imposed by Legal Services.

Responsibilities to Legal Services

3. A legal practitioner acting for a legal aid client must–

- (a) conduct all dealings with employees of Legal Services in a courteous and professional manner and must not make comments of an offensive or adverse nature against Legal Services or its employees on social media sites or other webpages;
- (b) be familiar with and observe the provisions of the funding criteria and other guidelines made pursuant to the *Legal Services Commission Act 1977*;
- (c) when forwarding an application for legal aid on behalf of a client certify whether, in the opinion of the legal practitioner, the application is of a type for which aid may be granted under Legal Services' Funding Criteria;
- (d) comply with any conditions attached to a grant of legal aid that are applicable to the legal practitioner;
- (e) refuse the assignment of a matter if the current workload of the legal practitioner is such that the matter could not be attended to in a timely manner;
- (f) notify Legal Services as soon as practicable after the legal practitioner becomes aware of–
 - i. an actual or potential conflict of interest; or
 - ii. any other reason necessitating the withdrawal of the practitioner from the matter;
- (g) notify Legal Services of any circumstances relevant to the continuation of a grant of legal aid, including–
 - i. a change in the financial circumstances of the client;
 - ii. an adverse change in the prospects of the matter;
 - iii. the failure of the client to provide instructions or the withdrawal of instructions by the client;
 - iv. the refusal or failure of the client to accept or act in accordance with legal advice; or
 - v. loss of contact with the client;
- (h) obtain written approval from Legal Services prior to incurring disbursements (including counsel fees and transcript fees);
- (i) only engage agents or other service providers on the basis that the person will accept payment for services in accordance with Legal Services' disbursement fee scale;
- (j) maintain each client file in such a way that if another legal practitioner were to assume conduct of the matter the new practitioner could easily ascertain the client's instructions, the current status of the matter (including the progress of negotiations), court proceedings and the legal aid costs already incurred;

- (k) inform Legal Services of any concerns expressed by the court about the conduct of a legal aid matter;
- (l) notify Legal Services immediately of any circumstances that could give rise to a claim for professional negligence, including a detailed statement in relation to the matter;
- (m) maintain continuity of representation throughout the matter to the extent possible and, where this is not possible, ensure that any practitioner to whom an appearance or other task is allocated is a member of the General Panel and, if relevant, a member of the appropriate specialist panel;
- (n) if counsel is engaged (including where another member of the practice appears as counsel)—
 - i. ensure counsel is—
 - A. a member of the General Panel; and
 - B. if relevant, a member of the appropriate specialist panel;
 - ii. make all reasonable endeavours to brief women barristers with seniority and expertise, experience or interest in the relevant practice area in accordance with the *Equitable Briefing Policy* of the Law Council of Australia;
 - iii. inform counsel of the grant of legal aid and the terms on which counsel is engaged;
 - iv. provide a brief to counsel marked with the authorised fees in accordance with Legal Services' scale of costs;
 - v. inform Legal Services of the name of counsel and the date the brief was delivered to the named counsel; and
 - vi. ensure all barrister commitment certificates are forwarded to counsel as soon as possible;
- (o) when submitting a tax invoice—
 - i. provide a progress report or a report on the outcome of the matter (whichever is appropriate);
 - ii. comply within a reasonable period with a request by Legal Services for further information concerning the legal costs claimed; and
 - iii. ensure the invoice—
 - A. is submitted within three months of the conclusion of work in respect of which a commitment certificate has been issued;
 - B. is in the prescribed form;
 - C. is in accordance with Legal Services' scale of costs;
 - D. is in sufficient detail to enable Legal Services to determine that the amount is properly payable; and

E. does not exceed the funding amount committed to the matter;

- (p) ensure each report to Legal Services contains–
- i. details of every court appearance for which payment is sought, including the outcome and any orders made;
 - ii. an outline of the work completed under the grant of legal aid;
 - iii. the name of the person who appeared as counsel; and
 - iv. any other information Legal Services requires or the legal practitioner considers relevant;
- (q) avoid any unnecessary expense or waste by ensuring that–
- i. documents are served or filed on time;
 - ii. documents served, filed or given to the client are legible;
 - iii. the client is aware of medical appointments, conferences and hearing dates and understands the importance of attending and attending on time;
 - iv. witnesses are aware of conferences and hearing dates and understand the importance of attending and attending on time;
 - v. court commitments are kept;
 - vi. matters are ready to be heard as soon as practicable;
 - vii. issues in dispute are presented clearly and succinctly;
 - viii. the evidence, including cross examination, is limited to that which is reasonably necessary to advance and protect the client's interests; and
 - ix. time in court is limited to as short a time as is necessary to advance and protect the client's interests;
- (r) attend any meeting or other training session as required by Legal Services.

Practice Standards relating to clients with specific characteristics

1. Aboriginal or Torres Strait Islander clients or clients from a culturally and linguistically diverse (CALD) background

1.1 A legal practitioner working with an Aboriginal or Torres Strait Islander client or a client from a CALD background in a legal aid matter must–

- (a) be aware of any cultural or religious factors that might–
 - i. influence the client’s instructions; or
 - ii. be relevant to the way the matter is conducted and the outcome of the matter;
- (b) ensure that a referral to, or engagement of, a third party service provider is appropriate to the cultural or religious background of the client.

2. Clients with a mental illness or disability

2.1 A legal practitioner working with a client with a mental illness or disability in a legal aid matter must–

- (a) maintain up to date knowledge of mental health and disability issues;
- (b) approach the matter on the assumption that the client is competent and has the capacity to provide instructions and make informed decisions;
- (c) where it is obvious that the client cannot give instructions, consider–
 - i. what assistance the client needs to make a supported decision, including whether assistance from a third party would be helpful; and
 - ii. whether it is appropriate and in the client’s interest to have a supported or substitute decision maker appointed;

- (d) confirm with the client the client's understanding of the information provided;
- (e) conduct the matter in a manner that does not unnecessarily–
 - i. cause or increase the client's distrust towards clinicians or other medical professionals involved;
 - ii. cause or increase the client's distrust towards family members or carers; or
 - iii. damage the client's therapeutic relationship with the treating clinician or other medical professionals involved.

3. Children

3.1 A legal practitioner working with a child client in a legal aid matter must hold a current Working with Children screening clearance from the Department of Human Services and comply with the following requirements–

- (a) interview or meet with the child in an appropriate location that protects the child's privacy;
- (b) consider whether a support person is appropriate when interviewing the child and, if so, ask the child to choose an appropriate support person;
- (c) be aware that an accompanying adult may not have the child's voluntary and informed consent to be there, or may have a conflict, and act accordingly if this is the case;
- (d) identify and address relevant protective intervention issues and the relevance of such issues to the matter;
- (e) explore and confirm the child's understanding of words and concepts used and of the legal process;
- (f) assess the child's capacity to give instructions to confirm that they can be represented on a direct instructions basis;
- (g) encourage the child to ask questions and answer those questions appropriately;
- (h) use language appropriate to the age, maturity, education, cultural background and language proficiency of the child;
- (i) be familiar with legislation and case law particularly relevant to children;
- (j) be aware of confidentiality and mandatory legislative or ethical obligations when a child makes a disclosure;
- (k) be aware of any cultural or religious factors that may be relevant to the outcome of the matter, the way the matter is conducted and referrals made;

- (l) refrain from charging or recovering any money from the client except with the approval of Legal Services.

3.2 A legal practitioner working with a child client in a criminal law matter must–

- (a) make enquiries about the child’s living arrangements and any involvement with the child protection system in order to best represent the child;
- (b) advise the child about–
 - i. child specific defences and any diversionary options available to the child;
and
 - ii. sentencing hierarchies, types of orders and the release of criminal records in the Youth Court;
- (c) have up to date knowledge of sentencing principles under the *Young Offenders Act 1993*;
- (d) clearly explain to the child the sentence outcome and appeal options which must be considered in the context of the special jurisdictional issues that apply in the Youth Court.

Practice Standards for specific areas of law

Criminal Law Practice Standards

The Criminal Law Practice Standards apply to all legal aid criminal matters.

General Principle

The majority of people appearing in the criminal justice system are disadvantaged. A legal practitioner working in this area should have an understanding of cross-cultural issues and issues facing socially and economically disadvantaged people.

1. Responsibilities to clients

1.1 A legal practitioner acting for a legal aid client in a criminal matter must, in addition to complying with the General Panel Agreement, the General Practice Standards and any other applicable specific practice standards–

- (a) open and retain a file for the client with a copy of the client's instructions, the police facts, bail conditions, criminal history and the brief;
- (b) ensure the file contains sufficient records to indicate–
 - i. the information and advice given to the client; and
 - ii. that appropriate consideration was given to the matters contained in these Practice Standards;
- (c) inform the client of the case against him or her and give advice about the applicable law including–
 - i. the charges;
 - ii. the benefits of an early plea of guilty;
 - iii. the strengths and weaknesses of the prosecution case;
 - iv. whether there is sufficient evidence to prove a prima facie case;
 - v. maximum penalties;

- vi. whether there is a standard non-parole period;
 - vii. possible defences;
 - viii. the likely time the case will take to be concluded; and
 - ix. the relevant legal process and procedure;
- (d) prior to entering a plea have all relevant prosecution evidence, including the charge sheet, the court attendance notice or summons, the police facts sheet, the brief of evidence where appropriate and the client's criminal record;
- (e) consider whether it is appropriate to negotiate with the prosecutor in relation to different or lesser charges or amendments to the police facts;
- (f) ensure the facts tendered by the prosecution contain any agreed amendments;
- (g) if a plea of guilty is to be entered, ensure the client reads and signs the instructions and the agreed facts prior to presenting the matter in court;
- (h) obtain proper instructions from the client before presenting his or her matter in court, including—
- i. relevant medical history, including any treatment for a psychiatric, psychological or other medical issue and prescribed medication;
 - ii. drug and alcohol history, including attempts at rehabilitation;
 - iii. family background; and
 - iv. any other relevant background information;
- (i) determine if the client has a mental health issue or an intellectual disability requiring a psychological or psychiatric assessment and, subject to obtaining approval from Legal Services, arrange such an assessment;
- (j) consider whether a bail application or bail variation is appropriate and, if funded, obtain full instructions in respect of the factors necessary for bail or bail variation;
- (k) determine whether it is appropriate to request a pre-sentence report;
- (l) if the client is in custody—
- i. take instructions on whether the client wants to attend court events in person or by a telephone or video link;
 - ii. assist the client, where relevant, with—
 - A. custody management issues;
 - B. contacting family members; and

- C. any issues in receiving medical treatment; and
 - iii. discuss evidence and case strategy, confidentially and in person where possible, prior to the court date.
- (m) following a court appearance (including where the client is in custody)–
- i. immediately speak with the client and confirm that he or she understands 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. inform the client, in writing, of the result and effect and (if applicable) the next court date and the obligation to attend;
- (n) if counsel is briefed ensure, as far as possible, that he or she–
- i. will be available for the entire matter;
 - ii. confers with the client at an early opportunity;
 - iii. advises the client of the strengths and weaknesses of both the prosecution case and the defence case; and
 - iv. advises of the benefits of an early plea;
- (o) at the conclusion of a matter–
- i. speak to the client immediately following the court appearance and confirm the proceedings and the outcome are understood;
 - ii. provide the client with a clear and comprehensive written explanation of the outcome, including–
 - A. appeal rights, the prospects of an appeal succeeding and the time within which to lodge an appeal; and
 - B. advising of the likelihood of legal aid being available for an appeal and, if so, the potential impact on a statutory charge; and
 - iii. if appropriate–
 - A. take instructions for an appeal;
 - B. assist the client to complete an application for legal aid for the appeal and for a bail application pending appeal; and
 - C. assist the client in lodging an appeal;
- (p) if appearing in an appeal, give advice about the law, the likelihood of the appeal succeeding and the possibility of the sentence being increased in sentence appeal proceedings; and
- (q) if a member of the Complex Criminal Law Panel, complete at least one CPD point each year specifically relevant to the practice of criminal law.

2. Responsibilities to counsel in criminal matters

2.1 A legal practitioner briefing counsel in a legal aid criminal matter must provide the brief and instructions to counsel in writing at the earliest opportunity including, where practicable—

- (a) an index of the documents contained in the brief;
- (b) sufficient observations on the facts to assist counsel in appreciating the issues and the background to the matter and any other observations the practitioner regards as being useful to counsel;
- (c) the client's instructions;
- (d) medical and expert reports;
- (e) witness statements;
- (f) the transcript of Magistrates Court proceedings, if available;
- (g) copies of any subpoenas issued;
- (h) advice of the fees payable to counsel in accordance with Legal Services' scale of fees;
- (i) any other relevant information or documents for the particular matter.

Family Law Practice Standards

The Family Law Practice Standards apply to all legal aid family law matters (including divorce and separation, parenting disputes, property settlements, and child support and maintenance).

General Principles

A legal practitioner conducting a legal aid family law matter should–

- a) recognise family violence as a serious problem and recognise the paramount need to ensure the safety of children and parents at all stages of a family law matter;
- b) take a conciliatory rather than a litigious approach to family disputes in order to lessen conflict and reduce impact on the parties and any children;
- c) ensure that his or her behaviour, comments or attitude do not inflame the dispute between the parties and ensure the practitioner’s own personal emotions or opinions do not influence the advice given to a client.

1. Responsibilities to clients

1.1 A legal practitioner acting for a legal aid client in a family law dispute must, in addition to complying with the General Panel Agreement, the General Practice Standards and any other applicable specific practice standards–

- (a) in matters involving a child, advise the client of the principles set out in Part VII of the *Family Law Act 1975* and assist and encourage the client to pursue options that are in the best interests of the child;
- (b) in matters involving child support, advise the client of the principles set out in section 4 of the *Child Support (Assessment) Act 1989* and assist and encourage the client to pursue options that ensure the child receives a proper level of financial support from his or her parents;
- (c) advise the client of the benefits of making arrangements for any child in cooperation with the other party rather than through a contested court hearing;
- (d) consider the appropriateness of family dispute resolution (FDR) for all matters and at each stage of proceedings and, if a matter is referred for FDR, approach the matter in a manner consistent with the philosophy of FDR, be fully informed about the matter and participate constructively in any FDR conference;
- (e) encourage the client to be open and honest in all aspects of the matter;

- (f) 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;
- (g) if necessary, assist the client by providing referrals to medical professionals, counsellors and social workers;
- (h) adhere to and, where relevant, advise the client of the FCFCOA Family Violence Best Practice Principles (<https://www.fccoa.gov.au/pubs/fl/fvbpp>) and assist the client to avail themselves of the protection offered by those Principles;
- (i) where appropriate–
 - i. explain the role of the Independent Children’s Lawyer and any costs associated with such an appointment; and
 - ii. seek instructions in relation to making an application to the court for the appointment of an Independent Children’s Lawyer for any child of the client;
- (j) use his or her best endeavours to ensure compliance by the client with Part XIVB of the *Family Law Act 1975* concerning non-publication of family law proceedings by advising the client of the effect of that Part and providing information in relation to the sanctions that may be imposed if any material filed in proceedings under the *Family Law Act 1975* is published;
- (k) if the matter proceeds to hearing, ensure the client understands how evidence is given, how the hearing will be run, and how parties should conduct themselves in court;
- (l) if the other party is self represented, advise the client of how the court and the legal practitioner will deal with the other party during the hearing.

2. Responsibilities to other parties

2.1 A legal practitioner must, if dealing with a self represented party, inform the self represented party of the information on the Federal Circuit and Family Court of Australia website for people representing themselves.

3. Responsibilities to counsel in family law matters

3.1 A legal practitioner briefing counsel in a legal aid family law matter must provide the brief and instructions to counsel in writing at the earliest opportunity including, where practicable–

- (a) an index of the documents contained in the brief;

- (b) sufficient observations on the facts to assist counsel in appreciating the issues and the background to the matter and any other observations the practitioner regards as being useful to counsel;
- (c) the client's instructions;
- (d) medical and expert reports;
- (e) witness statements;
- (f) copies of any subpoenas issued;
- (g) advice of the fees payable to counsel in accordance with Legal Services' scale of fees; and
- (i) any other relevant information or documents for the particular matter.

Care and Protection Child Representation Practice Standards

1.1 A practitioner assigned to represent a child in a care and protection proceeding in the Youth Court of South Australia must–

- (a) comply with the General Panel Agreement and General Practice Standards;
- (b) as far as is reasonably practicable, act in accordance with any instructions given by the child or young person;
- (c) if a report or other document that relates to the child or young person is to be used in the proceedings–
 - i. analyse the report or other document to identify those matters considered most significant for determining the best interests of the child or young person; and
 - ii. ensure that those matters are properly drawn to the court’s attention;
- (d) endeavour to minimise the trauma to the child or young person associated with the proceedings;
- (e) facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child or young person;
- (f) enable the child or young person to be involved in decision making, taking into account factors that indicate the appropriate degree of involvement such as–
 - i. the extent to which the child or young person wishes to be involved; and
 - ii. the extent to which involvement is appropriate having regard to the child or young person’s age, developmental level, cognitive abilities, emotional state and views;
- (g) proactively carry out the functions of a child or young person’s legal representative;
- (h) personally attend court hearings and conferences unless counsel has been briefed;
- (i) if briefing counsel, ensure counsel is a member of the Legal Services Commission’s General Panel;
- (j) personally attend to all solicitor work (unless appointed as counsel) related to being a child or young person’s legal representative with the exception of minor discrete tasks which may be delegated if properly supervised;
- (k) respond in a timely fashion to a request from Legal Services for a specific report;

- (l) inform Legal Services of any issues, developments or practice matters arising from a file that may have significance for care and protection matters generally;
- (m) on receiving a matter (unless appointed as counsel)–
 - i. read the file and ensure that copies of all documents and court orders have been provided by the parties; and
 - ii. write to the other parties or their solicitors–
 - A. advising of the practitioner’s appointment as the child or young person’s legal representative; and
 - B. explaining the process for communicating with the child or young person’s legal representative; and
 - iii. meet with the child or young person to explain the role of the legal representative and to discuss how the child or young person will have input into the matter;
- (n) on concluding a matter (unless appointed as counsel)–
 - i. consider whether the child or young person’s legal representative, or another appropriate person, should meet with the child or young person to explain the orders that the court has made; and
 - ii. provide a final report to Legal Services, including a copy of the final order;
- (o) at least once in each year of mandatory CPD points undertake a session of training aimed specifically at care and protection practice.

Independent Children’s Lawyer Practice Standards

1.1 A practitioner assigned as an Independent Children’s Lawyer (ICL) in a matter before the Federal Circuit and Family Court of Australia (FCFCOA) must–

- (a) comply with the General Panel Agreement and General Practice Standards;
- (b) act in accordance with s68LA(5) of the *Family Law Act 1975* (Cth) which provides that an ICL must–
 - i. act impartially in dealing with the parties to the proceedings;
 - ii. ensure that any views expressed by the child in relation to the matters to which the proceedings relate are fully put before the Court;
 - iii. if a report or other document that relates to the child is to be used in the proceedings–
 - A. analyse the report or other document to identify those matters considered most significant for determining the best interests of the child; and
 - B. ensure that those matters are properly drawn to the Court’s attention;
 - iv. endeavour to minimise the trauma to the child associated with the proceedings; and
 - v. facilitate an agreed resolution of matters at issue in the proceedings to the extent to which doing so is in the best interests of the child;
- (c) read and observe relevant Legal Services’ Family Law Funding Guidelines, in particular the provisions in relation to the contribution of parties to the costs of the ICL;
- (d) read and comply with–
 - i. the Guidelines for Independent Children’s Lawyers (see [Guidelines for Independent Children’s Lawyers | Federal Circuit and Family Court of Australia](#)), including meeting the child and providing the child an opportunity to express any views unless the child is under 5 years of age, or the child doesn’t want to meet or express a view, or there are exceptional circumstances; and
 - ii. the FCFCOA Family Violence Best Practice Principles (<https://www.fcfcga.gov.au/pubs/fl/fvbpp>).
- (e) enable the child to be involved in decision making, taking into account factors that indicate the appropriate degree of involvement such as–
 - i. the extent to which the child wishes to be involved; and

- ii. the extent to which involvement is appropriate having regard to the child's age, developmental level, cognitive abilities, emotional state and views;
- (f) proactively carry out the functions of an ICL;
- (g) personally attend Court hearings and FDR conferences unless–
 - i. counsel has been briefed; or
 - ii. circumstances arise beyond the control of the ICL;
- (h) if briefing counsel, ensure counsel is a member of the Legal Services Commission's General Panel and–
 - i. has completed the Independent Children's Lawyer National Training Program; or
 - ii. has a minimum of five years recent post admission experience in family law;
- (i) attend to all ICL solicitor work personally, except minor discrete tasks which may be delegated if properly supervised;
- (j) respond in a timely fashion to a request from Legal Services for a specific report;
- (k) inform Legal Services–
 - i. as soon as reasonably practicable following any order of the FCFCOA to discharge them as ICL in a matter; and
 - ii. promptly of any other issues, developments or practice matters arising from a file that may have significance for ICL matters generally;
- (l) on receiving a matter–
 - i. read the file and ensure that copies of all documents and Court orders have been provided by the parties; and
 - ii. file a Notice of Address for Service and check the Commonwealth Portal for hearing dates and any relevant documents and Court orders not provided; and
 - iii. write to the other parties or their solicitors–
 - A. advising of the practitioner's appointment as the ICL;
 - B. requesting a contribution towards the ICL's legal fees;
 - C. explaining the process for communicating with the ICL; and
 - D. enclosing relevant pamphlets and a waiver form;
 - iv. as appropriate, make arrangements to meet with the child to explain the role of the ICL and to discuss how the child will have input into the matter; and
 - v. consider what actions in line with the National Guidelines for Independent Children's Lawyers need to be followed and seek an appropriate extension of assignment to cover this work;

- (m) on concluding a matter–
- i. consider whether the ICL, or another appropriate person, should meet with the child to explain the orders that the Court has made; and
 - ii. ensure that the final order provides for the discharge of the appointment of the ICL; and
 - iii. provide a final report to Legal Services, including a copy of the final order; and
- (n) at least once in each year of mandatory CPD points undertake a session of training aimed specifically at ICL practice.

Guardianship and Mental Health Representation Practice Standards

1.1 A practitioner to whom a matter is assigned by the Legal Services Commission under the scheme of legal representation established under section 65 of the *Guardianship and Administration Act 1993* or under the scheme of legal representation established under section 84 of the *Mental Health Act 2009* (a **legal representation scheme**) must—

- (a) comply with the General Panel Agreement and General Practice Standards, where applicable, for which purpose a reference in the Agreement or Practice Standards to—
 - i. “an assigned legal aid matter” is to be read as “a matter assigned by Legal Services under a legal representation scheme”; and
 - ii. a “legal aid client” is to include a client represented under a legal representation scheme;
- (b) read and observe the objects and principles contained in the *Guardianship and Administration Act 1993* and the *Mental Health Act 2009*;
- (c) make every attempt to establish contact with and take instructions from the represented client prior to the client’s review or appeal hearing and, when appropriate, attend the hospital, facility or other residence of the client for this to occur;
- (d) ensure all medical notes and files received from SACAT in relation to a client are read prior to the client’s review or appeal hearing;
- (e) in place of General Practice Standard 2(12), when submitting a tax invoice—
 - i. attach an accurately completed case finalisation form;
 - ii. comply within a reasonable period with a request by Legal Services for further information concerning the legal costs claimed; and
 - iii. ensure the invoice—
 - A. is submitted within three months of the conclusion of the review or appeal hearing to which the invoice relates; and
 - B. is in accordance with the scale of fees prescribed under the *Guardianship and Administration Act 1993* or the *Mental Health Act 2009* (whichever is applicable).