

# Practitioner Audit Methodology

Version 1.2  
November 2023

## 1 Title

- 1.1 This Methodology is the 'Practitioner Audit Methodology' (this Methodology).

## 2 Policy Statement

- 2.1 The Legal Services Commission of South Australia (Legal Services) is committed to excellence in service delivery to clients in receipt of legal assistance.
- 2.2 High standards of service delivery are maintained by regular review of the management of client files including the detection, prevention and reporting of departures from service expectations as set out in the Legal Services Commission Act 1977 (the LSC Act), the General Panel Agreement, the Practice Standards and any other applicable legislation, policies, procedures or guidelines (the Practitioner Requirements) noted in Appendix A.
- 2.3 This Methodology sets out the process for audit of service delivery (the Audit) where a practitioner is appointed to a panel of Legal Services (the Practitioner) and has provided services to a client who is in receipt of a grant of legal assistance (the Client).
- 2.4 The Audit will review both a random selection of Client files and files where there is an identified material risk, as set out below.
- 2.5 Where instances of deviation from agreed systems and processes are identified, the Audit will also assist Legal Services in identifying the options to improve systems and controls.
- 2.6 The Audit also supports future compliance and monitoring by incorporating a review of departures from service standards and providing an opportunity for the Practitioner to respond to proposed Audit findings.
- 2.7 In certain cases, an Audit may recommend that the Director take action in relation to the Practitioner pursuant to the General Panel Agreement.

## 3 Responsibility to conduct Audits

- 3.1 The Audit may be conducted by any person holding or acting in the role of Panels Officer.
- 3.2 The Audit will be conducted in accordance with the Audit Calendar at Appendix B.

## 4 Confidentiality

- 4.1 Client files are requested from practitioners in accordance with section 22(1) of the LSC Act.
- 4.2 Any Audit must comply strictly with the confidentiality provisions set out in section 31A of the LSC Act.

## 5 Audit Checklist

- 5.1 The Audit is conducted by reference to the Practitioner Requirements as set out in the audit checklist (the Practitioner Audit Checklist) at Appendix D.

## 6 File Documentation

- 6.1 The Audit will review the Client file.
- 6.2 The Client file includes:
- 6.2.1 Any documentation in relation to the provision of services pursuant to a grant of legal assistance whether held electronically or in printed format (Documentation);
- 6.2.2 Documentation includes records relating to that Client file including:
- commitment certificates and certification of certificates by that practitioner
  - correspondence with Legal Services
  - any record of any communication between the practitioner and any person regarding the Client
  - any document created by the practitioner for the purpose of dealing with the Client file
  - Certificates of Record
  - transcripts in relation to the conduct of the matter in Court
  - communications from the Court or any other person regarding the Client matter
  - complaints or commentary made by the client about service delivery they have received.

## 7 File Selection Process

### Random Selection

- 7.1 A minimum of 60 matters will be selected for audit at random, from all matters finalised by Practitioners in the preceding 12 months, in accordance with the Audit Calendar (the Random Selection) excluding files of Practitioners who are at the independent bar.
- 7.2 The selection should encompass decisions from all areas of law for which grants of legal assistance are made including:
- Family Law
  - Criminal Law
  - Civil Law
  - Child Protection Application
  - Independent Children's Representation
  - Work provided pursuant to a Non-Core Funding Agreement.
- 7.3 Of these Files:
- A minimum of 45 Files will have been managed by Practitioners not employed by Legal Services
  - A minimum of 15 files will have been managed by Practitioners who are employed by Legal Services.

### **Risk Based Selection**

- 7.4 A minimum of 60 matters will be examined in the Audit during the financial year based on areas of Potential Material Risk as defined in 7.6 below (the Risk Based Selection).
- 7.5 Additional matters may be Audited in the event of a particular concern whether this constitutes a Potential Material Risk or not.
- 7.6 Areas of Potential Material Risk are:
  - 7.6.1 Practitioners who claimed costs greater than \$10,000 for that file
  - 7.6.2 Practitioners who claimed costs equal to or less than the total value of \$50,000 in the preceding financial year
  - 7.6.3 Practitioners with a high significance departure or more than one medium significance departure identified on previous Audits
  - 7.6.4 Practitioners where a complaint or concern has been raised with Legal Services
  - 7.6.5 A potential departure from Practitioner Requirements has been identified by Legal Services.
- 7.7 Upon the identification of a practitioner for the Risk Based Selection, a Client file associated with the practitioner will be randomly selected.

## **8 Notification of Audit**

- 8.1 Upon the selection of a Client file to be audited, the Panels Officer may provide the Practitioner with an Audit Notice.
- 8.2 An Example Audit Notice is set out at Appendix C.
- 8.3 The Audit Notice will include timeframes to provide the Panels Officer all requested documentation.
- 8.4 The Panels Officer may request further information at any time to assist with the Audit. Legal Services will cover reasonable costs for the delivery and return of Client files as part of the audit process.
- 8.5 Where the Practitioner does not comply with the timeframe set out in the Audit Notice, the Panels Officer will send a reminder notice to the practitioner stating the consequences if the requested documentation is not received, as well as noting a final deadline without exceptions, for Legal Services to receive any file information.
- 8.6 A practitioner may, in writing, request a maximum number of 3 extensions to provide documentation, however this additional time will be granted at the discretion of Legal Services.

## **9 Audit Timeframes**

- 9.1 Upon receipt of the practitioner's Client file and any associated documentation, the Panels Officer will have a minimum of 30 business days to complete the audit.
- 9.2 Where the Panels Officer requires extra time to complete an audit, the Practitioner will be contacted in writing.

## 10 Audit Compliance

- 10.1 Where no issues or areas of concern have been identified, the Practitioner will be advised that the Client file(s) were compliant with Practitioner Requirements with no further action required. The Client file will then be returned.
- 10.2 A Client file may be deemed compliant but have commentary as appropriate to provide the Practitioner with feedback that will assist in improving future compliance with the Practitioner Requirements.

## 11 Audit Departures - Classification

- 11.1 Any area of departure from Practitioner Requirements that is identified in the course of an audit will be categorised by the Panels Officer as Low, Medium or High Significance.
- 11.2 This categorisation will be made by reference to the following criteria:

### Low Significance

- a. The departure has occurred infrequently or is an isolated occurrence
- b. Implications of the departure are considered to be minimal in terms of the Practitioner's adherence to the Practitioner Requirements
- c. The impact for the client from the identified departure is limited
- d. There is limited probability of recurrence
- e. Systems to address the departure in future are now in place

### Medium Significance

- a. The departure has occurred somewhat frequently or has occurred frequently but in all other regards the criteria for a Low Significance Departure are met
- b. Implications of departure are considered to be moderate in terms of the Practitioner's adherence to the Practitioner Requirements
- c. The impact for the client from the identified departure is moderate
- d. Systems to address the departure in future are not yet in place but are anticipated

### High Significance

- a. The Implications of the departure(s) are considered to be significant in terms of the Practitioner's adherence to the Practitioner Requirements
  - b. The impact for the client from the identified departure(s) is severe
  - c. Any single departure is limited in frequency or impact but taken together the departures represent a systematic departure from the Practitioner Requirements
  - d. A Low or Medium Significance departure has not been addressed or no significant improvement has been made by the time of a follow up audit.
- 11.3 Failure to comply with an Audit Notice will be deemed to be a departure from Practitioner Requirements. The significance attributed to the departure will be considered by reference to the circumstances of the non-compliance.

## 12 Approach to Departures

- 12.1 Legal Services will aim to obtain a clear understanding of the reasons for any departure from Practitioner Requirements and, where appropriate, propose a response that will address any issues arising in that matter and avoid a recurrence of the departure in future.
- 12.2 Legal Services acknowledges that Practitioners are committed to meeting the Practitioner Requirements and that an appropriate first response is generally to engage with Practitioners to maintain awareness of the Practitioner Requirements and provide education to support compliance.
- 12.3 Further steps may be required in circumstances of medium or high significance departures or where a Practitioner has refused to comply with the Practitioner Requirements. This may include:
  - 12.3.1 Further Audit to ascertain the scope of departures from Practitioner Requirements
  - 12.3.2 A formal record of non-compliance being retained against the practitioner
  - 12.3.3 Repayment or offset of monies claimed
  - 12.3.4 Other activity (e.g. Requirement imposed for the practitioner to attend a Continuing Legal Education seminar on a specialised relevant topic)
  - 12.3.5 Referring the matter to the Director for consideration in relation to whether further action is required pursuant to the General Panel Agreement.

## 13 Escalation to other Regulatory Bodies

- 13.1 Legal Services may make a report in relation to any matter identified during an Audit to the Legal Profession Conduct Commissioner ('LPCC') or other regulatory or law enforcement body where Legal Services considers it appropriate to do so.

## 14 Practitioner Notification of Proposed Finding of Departure from Practitioner Requirements

- 14.1 Where Legal Services identifies a departure from Practitioner Requirements and the significance is identified as Medium or High, Legal Services may request a Practitioner response to the identified departure (the Notice of Proposed Finding).
- 14.2 An example Notice of Proposed Finding is provided within Appendix D.
- 14.3 Legal Services may retain a copy of any documents or other materials that evidence the departure.
- 14.4 Any information provided by the Practitioner will be considered by the Chief Legal Officer who will either:
  - 14.4.1 confirm that the response has either allowed Legal Services to conclude that there has been no departure from Practitioner Requirements or that the departure should be identified as Low Significance or
  - 14.4.2 advise of the confirmed Legal Services finding in relation to the Audit.

## 15 Notice of Departure from Practitioner Requirements

- 15.1 Upon the expiry of the timeframes to provide a response to a Notice of Proposed Finding or a response has been received and the Chief Legal Officer has confirmed the audit finding, a formal Notice of Departure from Practitioner Requirements may be sent to the Practitioner. An example Notice of Departure from Practitioner Requirements is at Appendix E.
- 15.2 The Notice of Departure from Practitioner Requirements may require the Practitioner to take certain action(s) within a specified timeframe.
- 15.3 If a Practitioner does not provide evidence of any action within the timeframes specified in the Notice of Departure from Practitioner Requirements, then additional action may be taken by Legal Services, which may include:
- 15.3.1 Further Audit
  - 15.3.2 Repayment or offset of claimed monies by external practitioners
  - 15.3.3 The placement of certain practising conditions which may restrict specific legal services being provided on grants of legal assistance by the practitioner
  - 15.3.4 Other activity (i.e. requirement imposed for the practitioner to attend a Continuing Legal Education seminar on a specialised relevant topic).

## 16 Decision Reconsideration

- 16.1 Where a practitioner receives a Notice of Departure from Practitioner Requirements, the practitioner has a right to have the decision reviewed by either the Director and/or other reviewer within the Legal Services, if appropriate (an Internal Review).
- 16.2 An application for Internal Review can be requested by the Practitioner.
- 16.3 The outcome of the Audit will be reviewed and further information may be requested from the practitioner if necessary.
- 16.4 Following the internal review, a decision will be communicated to the Practitioner, which may include:
- 16.4.1 Confirmation of the Notice of Departure from Practitioner Requirements
  - 16.4.2 Reversal or amendment of the decision taking into consideration further information or practitioner commentary.

## 17 Reporting

- 17.1 The Panels Officer will provide quarterly reporting to the Executive Officer of the Audit, Compliance and Risk Committee of the Legal Services Commission (the ACRC) in relation to Practitioner Audits (the Practitioner Audit Quarterly Report).
- 17.2 A Practitioner Audit Quarterly Report should contain the following, for each completed quarter of a financial year:
- Number of Practitioners on each Panel as at the start of the quarter
  - Number of files audited from the Random Selection
  - Number of files audited from each area of Potential Material Risk in 7.6 of this Methodology

- Summary of any instances where departures were identified
- Breakdown of identified departures by reference to Low, Medium and High Significance
- Rationale if audit targets were not met
- Comments, if any, on Legal Services' internal controls, risk management and governance in so far as they relate to ensuring compliance with the Practitioner Requirements.

## **18 Internal Record Keeping**

18.1 A consolidated Audit Register setting out activity and findings in relation to the Audit will be maintained (the Audit Register). The Audit Register should include (but not be limited) to the following details:

- Name of Practitioner and Firm
- The Audit ID reference number (assigned by the Panels Officer)
- The Legal Services file number
- Type of File Section (Random or Risk-based review)
- Current status of audit (file not received, in progress, or completed)
- The audit outcome, which may include: audit compliance; audit compliance with commentary; departure from Practitioner Requirements, categorised by Significance (Low/Medium/High).

## **19 Methodology Review**

19.1 This Methodology should be reviewed every 2 years and updated as appropriate including where necessary to take account of any changes in the risk profile.

## **Appendix A – Practitioner Requirements**

1. Applicable legislation
  - 1.1 Legal Services Commission Act 1977
  - 1.2 Criminal Law (Legal Representation) Act 2001
  
2. The Panel Agreement and Practice Standards
  - 2.1 The General Panel Agreement and Practice Standards



## Appendix B - Audit Calendar

Month	No Files Random Selection	No Files Risk Based Selection	Review recommendations from preceding month	Reporting
July	5	5	All	ACRC
August	5	5	All	
September	5	5	All	
October	5	5	All	ACRC
November	5	5	All	
December	5	5	All	
January	5	5	All	ACRC
February	5	5	All	
March	5	5	All	
April	5	5	All	ACRC
May	5	5	All	
June	5	5	All	

## Appendix C – Example Audit Notice

[insert practitioner's name]  
[insert Law Firm name]  
[insert Street Address]  
[insert SUBURB] SA [insert Post Code]

[\[practitioner's email address\]](#)

### VIA EMAIL ONLY

Dear [Practitioner's name]

**RE: REQUEST FOR FILE NO. [Legal Services File Number] – [insert client's name]**

Legal Services is calling for files to assess compliance with the Panel Agreement, Practice Standards and legal aid grant conditions.

Your File No. [insert file number] has been selected for review. Could you please deliver all documentation in relation to the provision of services pursuant to a grant of legal assistance whether held electronically or in printed format to Legal Services marked for the attention of the Panels Officer within 14 days from the date of this letter. If electronic only, documentation may be sent by email to [audit@lsc.sa.gov.au](mailto:audit@lsc.sa.gov.au). If required, courier costs will be paid by Legal Services.

Any issues identified during this audit process will be referred to you with an opportunity to explain the concern.

If you have any questions about this request, then please contact the Panels Officer on 8111 5531.

Yours sincerely,

**[Insert Name]**  
**Chief Legal Officer**

## Appendix D – Example Notice of Proposed Finding

[insert Practitioner's name]  
[insert Law Firm name]  
[insert Street Address]  
[insert Suburb] SA [insert Post Code]

[\[practitioner's email address\]](#)

### VIA EMAIL ONLY

Dear [insert Practitioner's name]

**RE: AUDIT OF FILE NO. [insert Commission's file number] – [insert client's name]**

I refer to our email of *[insert date file was requested]* requesting the above file for audit. Thank you for complying with the request.

Through its audit process, the Legal Services Commission (Legal Services) aims to assist practitioners in complying with the General Panel Agreement, the Practice Standards and the Funding Guidelines (Practitioner Requirements).

I am writing to advise that [number] potential departures from the Practitioner Requirements were identified during our audit of the above file.

These concerns were:

[Detail identified departures from the Practitioner Requirements and whether the significance is identified as Low, Medium or High].

I would be grateful for your response in writing to the issues raised within 14 days.

Yours faithfully

**[Insert Name]**  
**Chief Legal Officer**

## Appendix E – Example Notice of Departure from Practitioner Requirements

[insert name of Practitioner]  
[insert Law Firm]  
[insert street address]  
[insert Suburb] SA [insert Post Code]

[\[practitioner's email address\]](#)

### VIA EMAIL ONLY

Dear [Practitioner name],

**RE: AUDIT OF FILE NO. [insert Commission's File Number] – [insert client's name]**

I refer to our email of [insert date] advising you of [number] of potential departures from the Practitioner Requirements were identified during our audit of the above file. These were as follows:

[detail potential departures]

You provided a response on [date] and stated as follows:

[detail response received from Practitioner].

I have considered your response carefully and have concluded:

[detail conclusions, including whether any departures are confirmed, and reasons for conclusions].

[I now request that you take the following actions:

[detail any proposed actions, the date by which those actions are to be taken and any request that the practitioner revert to Legal Services once those actions are complete].

I confirm that the audit of this file is now concluded and I look forward to your response in relation to the proposed actions. Thank you for your assistance.

Yours sincerely

**[Insert Name]**  
**Chief Legal Officer**

## Appendix F –Practitioner Audit Checklist

### 1. General Panel Agreement Requirements

Question Number	Agreement Reference	Question
1.1	2.3	Has the practitioner complied 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?
1.1	2.4	Has the practitioner conducted the case 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?
1.1	2.8	Has the practitioner, in accordance with section 22(1) of the Legal Services Commission Act 1977, disclose to the Commission any information relating to the provision of legal assistance to an assisted person that the Commission may require, including for the purposes of conducting an audit in relation to the expenditure of Commission funds and compliance with the provisions of this Agreement and practice standards?
1.1	2.10	Has the practitioner solicited or poached a legally assisted client from the Commission's in-house practice or from another panel member?
1.1	2.11	Has the practitioner accepted a legal aid assignment on the date of the assignment unless the legal practitioner notifies the Commission within 72 hours of receipt of the assignment that the practitioner is unable or unwilling to accept the assignment?
1.1	2.12	If the case has been transferred from another practitioner, have all relevant files been transferred to the subsequent practitioner as soon as practicable?
1.1	2.13	Has the practitioner submitted tax invoices to the Commission for work in respect of which a commitment certificate has been issued within three months of the conclusion of that work?
1.1	2.14	Has the practitioner refunded the Commission an over payment or incorrect payment received by the legal practitioner from the Commission as soon as possible?
1.1	2.15	Has the practitioner charged the client for any legal work done pursuant to a grant of legal assistance, other than the amount of the client contribution determined by the Commission?

### 2. Rule 16A Australian Solicitors' Conduct Rules adopted and amended by the Law Society of South Australia

Question Number	Rule 16A Reference	Question
2.1	16A.1	Has the practitioner informed the client as to their eligibility for legal aid or any other scheme of legal assistance where the practitioner has reason to believe that such a client may be so eligible?

2.2	16A.3.1 and 3.3	If the practitioner has formed the view that the client has no reasonable prospect of success, has the practitioner informed the Commission and the Client and taken steps to ensure the furnishing of aid is terminated or reduced to reflect the opinion formed?
2.3	16A.3.2 and 3.3	If the practitioner has become aware of a change in financial position or other circumstances of the client that is relevant to the grant of legal assistance, have they informed the Commission and the Client forthwith?
2.4	16A.4	Has the practitioner disclosed to the Court or any third person that a client is assisted by the grant of legal aid or that an application has been or will be made, except on the express instructions of the Client and when such disclosure would be proper or as required by a Court or by statute?
2.5	16A.5	Has the practitioner communicated with the Commission to oppose the grant of legal aid to another party on grounds relating to the overall merits of the matter or by general comment as to the eligibility of the party for aid?
2.6	16A.6	Has the practitioner advised the Commission in writing of any fact or facts that are clearly pertinent to the question of whether aid should be granted or continue to be granted in relation to an opposing party but not urge that aid should not be granted?

### 3. Practice Standards

Question	Standard Reference	Standard Reference 2	Question 2
3.1	<b>General Standard - General Principles</b>	GPS 1	Has the practitioner applied the same skill and care as would be applied to a case for a fee paying client?
3.2.	<b>General Standard - General Principles</b>	GPS 2	Has the practitioner ensured that legal assistance costs are only incurred where necessary and reasonable?
3.3	<b>General Standard - General Principles</b>	GPS 3	Has the practitioner sought to narrow the issues in dispute, resolve the case in a timely fashion and, where appropriate, avoid a fully contested adjudication if possible?
3.2	<b>General Standard - Responsibilities to Clients</b>	GPS 1a	Has the practitioner ensured that, together with all relevant information and supporting documentation— <ul style="list-style-type: none"> <li>i. an application for legal assistance or for an extension of legal assistance?</li> <li>ii. a request for reconsideration or review of a decision concerning legal assistance</li> </ul> is lodged promptly with the Commission and, whenever possible, prior to an event that will incur costs?
3.3	<b>General Standard - Responsibilities to Clients</b>	GPS 1b	Has the practitioner advised the client that accurate, up to date and adequate information is to be provided to the Commission (including any supporting documentation, such as documents required for verification of means)?
3.4	<b>General Standard - Responsibilities to Clients</b>	GPS 1c	Has the practitioner endeavoured to establish contact with, and take instructions from, the client within a reasonable time of receiving an assignment from the Commission, having regard to the nature and urgency of the case?
3.5	<b>General Standard - Responsibilities to Clients</b>	GPS 1d	Has the practitioner communicated effectively with the client by using language appropriate to the client's age, maturity, education and cultural background and, if appropriate, through an interpreter?

3.6	<b>General Standard - Responsibilities to Clients</b>	GPS 1e	Has the practitioner kept the client informed of– <ul style="list-style-type: none"> <li>i. the progress of the case, including any delay or likely delay and the reason for the delay;</li> <li>ii. the prospects for the case;</li> <li>iii. any costs contribution required from the client;</li> <li>iv. the imposition, or potential imposition, of a statutory charge; and</li> <li>v. the implications of the funding cap?</li> </ul>
3.7	<b>General Standard - Responsibilities to Clients</b>	GPS 1f	Has the practitioner responded promptly to– <ul style="list-style-type: none"> <li>i. reasonable requests by the client for information regarding his or her case; and</li> <li>ii. telephone inquiries?</li> </ul>
3.8	<b>General Standard - Responsibilities to Clients</b>	GPS 1g	Has the practitioner attended all court hearings on time and adequately prepared?
3.9	<b>General Standard - Responsibilities to Clients</b>	GPS 1h	Has the practitioner complied with, relevant practice directions?
3.10	<b>General Standard - Responsibilities to Clients</b>	GPS 1i	Has the practitioner maintained continuity of representation throughout the case 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?
3.11	<b>General Standard - Responsibilities to Clients</b>	GPS 1j	Has the practitioner, before closing the file of a non-responsive client– <ul style="list-style-type: none"> <li>i. followed up with the client (or nominated representative) at least twice;</li> <li>ii. complied with court or tribunal requirements governing withdrawal; and</li> <li>iii. notify the Commission?</li> </ul>
3.12	<b>General Standard - Responsibilities to Clients</b>	GPS 1k	Has the practitioner, at the conclusion of a case, provided the client with a clear and comprehensive written explanation of the outcome, including– <ul style="list-style-type: none"> <li>i. the action the client is to take;</li> <li>ii. appeal rights (if any) and relevant time limits; and</li> <li>iii. any final costs contribution required by the Commission and any statutory charge imposed by the Commission?</li> </ul>
3.13	<b>General Standard - Responsibilities to the Commission</b>	GPS 2a	Has the practitioner conducted all dealings with employees of the Commission in a courteous and professional manner and must not make comments of an offensive or adverse nature against the Commission or its employees on social media sites or other webpages?
3.14	<b>General Standard - Responsibilities to the Commission</b>	GPS 2b	Has the practitioner been familiar with and observe the provisions of the funding criteria and other guidelines made pursuant to the Legal Services Commission Act 1977?
3.15	<b>General Standard - Responsibilities to the Commission</b>	GPS 2c	Has the practitioner, when forwarding an application for legal assistance on behalf of a client, certified whether, in the opinion of the legal practitioner, the application is of a type for which assistance may be granted under the Commission's means, merit and guidelines tests?

3.16	<b>General Standard - Responsibilities to the Commission</b>	GPS 2d	Has the practitioner complied with any conditions attached to a grant of legal assistance that are applicable to the legal practitioner?
3.17	<b>General Standard - Responsibilities to the Commission</b>	GPS 2e	Has the practitioner refused the assignment of a case if the current workload of the legal practitioner is such that the case could not be attended to in a timely manner?
3.18	<b>General Standard - Responsibilities to the Commission</b>	GPS 2f	Has the practitioner notified the Commission as soon as practicable after the legal practitioner becomes aware of– <ul style="list-style-type: none"> <li>i. an actual or potential conflict of interest; or</li> <li>ii. any other reason necessitating the withdrawal of the practitioner from the case?</li> <li>iii.</li> </ul>
3.19	<b>General Standard - Responsibilities to the Commission</b>	GPS 2g	Has the practitioner notified the Commission of any circumstances relevant to the continuation of a grant of assistance, including– <ul style="list-style-type: none"> <li>i. a change in the financial circumstances of the client;</li> <li>ii. an adverse change in the prospects of the case;</li> <li>iii. the failure of the client to provide instructions or the withdrawal of instructions by the client;</li> <li>iv. the refusal or failure of the client to accept or act in accordance with legal advice; or</li> <li>v. loss of contact with the client;</li> </ul>
3.20	<b>General Standard - Responsibilities to the Commission</b>	GPS 2h	Has the practitioner obtained written approval from the Commission prior to incurring disbursements (including counsel fees and transcript fees)?
3.21	<b>General Standard - Responsibilities to the Commission</b>	GPS 2i	Has the practitioner only engaged agents or other service providers on the basis that the person will accept payment for services in accordance with the Commission's disbursement fee scale?
3.22	<b>General Standard - Responsibilities to the Commission</b>	GPS 2j	Has the practitioner maintained each client file in such a way that if another legal practitioner were to assume conduct of the case the new practitioner could easily ascertain the client's instructions, the current status of the case (including the progress of negotiations), court proceedings and the legal assistance costs already incurred?
3.23	<b>General Standard - Responsibilities to the Commission</b>	GPS 2k	Has the practitioner informed the Commission of any concerns expressed by the court about the conduct of a legally assisted case;
3.24	<b>General Standard - Responsibilities to the Commission</b>	GPS 2l	Has the practitioner notified the Commission immediately of any circumstances that could give rise to a claim for professional negligence, including a detailed statement in relation to the matter?
3.25	<b>General Standard - Responsibilities to the Commission</b>	GPS 2m	If counsel is engaged (including where another member of the practice appears as counsel), has the practitioner, <ul style="list-style-type: none"> <li>i. ensured counsel is <ul style="list-style-type: none"> <li>- a member of the General Panel; and</li> <li>- if relevant, a member of the appropriate specialist panel;</li> </ul> </li> <li>ii. informed counsel of the grant of legal assistance and the terms on which counsel is engaged;</li> <li>iii. provided a brief to counsel marked with the authorised fees in accordance with the Commission's scale of costs;</li> </ul>



			<ul style="list-style-type: none"> <li>iv. informed the Commission of the name of counsel and the date the brief was delivered to the named counsel; and</li> <li>v. ensured all barrister commitment certificates are forwarded to counsel as soon as possible?</li> </ul>
3.26	<b>General Standard - Responsibilities to the Commission</b>	GPS 2n	<p>When submitting a tax invoice, has the practitioner</p> <ul style="list-style-type: none"> <li>i. provided a progress report or a report on the outcome of the case (whichever is appropriate);</li> <li>ii. complied within a reasonable period with a request by the Commission for further information concerning the legal costs claimed; and</li> <li>iii. ensured the invoice– <ul style="list-style-type: none"> <li>- is submitted within three months of the conclusion of work in respect of which a commitment certificate has been issued;</li> <li>- is in the prescribed form;</li> <li>- is in accordance with the Commission's scale of costs;</li> <li>- is in sufficient detail to enable the Commission to determine that the amount is properly payable; and</li> <li>- does not exceed the amount of funds committed to the case?</li> </ul> </li> </ul>
3.27	<b>General Standard - Responsibilities to the Commission</b>	GPS 2o	<p>Has the practitioner ensured each report to the Commission contains–</p> <ul style="list-style-type: none"> <li>i. details of every court appearance for which payment is sought, including the outcome and any orders made;</li> <li>ii. an outline of the work completed under the grant of legal assistance;</li> <li>iii. the name of the person who appeared as counsel; and</li> <li>iv. any other information the Commission requires or the legal practitioner considers relevant?</li> </ul>
3.28	<b>General Standard - Responsibilities to the Commission</b>	GPS 2p	<p>Has the practitioner avoided any unnecessary expense or waste by ensuring that–</p> <ul style="list-style-type: none"> <li>i. documents are served or filed on time;</li> <li>ii. documents served, filed or given to the client are legible;</li> <li>iii. the client is aware of medical appointments, conferences and hearing dates and understands the importance of attending and attending on time;</li> <li>iv. witnesses are aware of conferences and hearing dates and understand the importance of attending and attending on time;</li> <li>v. court commitments are kept;</li> <li>vi. cases are ready to be heard as soon as practicable;</li> <li>vii. issues in dispute are presented clearly and succinctly;</li> <li>viii. the evidence, including cross examination, is limited to that which is reasonably necessary to advance and protect the client's interests; and</li> <li>ix. time in court is limited to as short a time as is necessary to advance and protect the client's interests?</li> </ul>
3.29	<b>Aboriginal or Torres Strait Islander clients</b>	ATSIPS a	<p>When working with an Aboriginal or Torres Strait Islander client or a client from a CALD background, has the practitioner been aware of any cultural or religious factors that might–</p>

			<ul style="list-style-type: none"> <li>i. influence the client's instructions; or</li> <li>ii. be relevant to the way the case is conducted and the outcome of the case?</li> </ul>
3.30	<b>Aboriginal or Torres Strait Islander clients</b>	ATSIPS b	Has the practitioner ensured that a referral to, or engagement of, a third party service provider is appropriate to the cultural or religious background of the client?
3.31	<b>Mental Illness or Disability</b>	MIDPS a	Has the practitioner maintained am up to date knowledge of mental health and disability issues?
3.32	<b>Mental Illness or Disability</b>	MIDPS b	Has the practitioner approached the case on the assumption that the client is competent and has the capacity to provide instructions and make informed decisions?
3.33	<b>Mental Illness or Disability</b>	MIDPS c	<p>Where it is obvious that the client cannot give instructions, has the practitioner considered</p> <ul style="list-style-type: none"> <li>i. what support the client needs to make a supported decision, including assistance from a third party; and</li> <li>ii. whether it is appropriate and in the client's interest to have a supported or substitute decision maker appointed?</li> </ul>
3.34	<b>Mental Illness or Disability</b>	MIDPS d	Has the practitioner confirmed with the client the client's understanding of the information provided?
3.35	<b>Mental Illness or Disability</b>	MIDPS e	<p>Has the practitioner conducted the case in a manner that does not unnecessarily</p> <ul style="list-style-type: none"> <li>i. caused or increased the client's distrust towards clinicians or other medical professionals involved;</li> <li>ii. caused or increased the client's distrust towards family members or carers; or</li> <li>iii. damaged the client's therapeutic relationship with the treating clinician or other medical professionals involved?</li> </ul>
3.36	<b>Children</b>	CPS 1a	Has the practitioner interviewed or meet with the child in an appropriate location that protects the child's privacy?
3.37	<b>Children</b>	CPS 1b	Has the practitioner considered whether a support person is appropriate when interviewing the child and, if so, ask the child to choose an appropriate support person?
3.38	<b>Children</b>	CPS 1c	Has the practitioner been 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?
3.39	<b>Children</b>	CPS 1d	Has the practitioner identified and address relevant protective intervention issues and the relevance of such issues to the case?
3.40	<b>Children</b>	CPS 1e	Has the practitioner explored and confirm the child's understanding of words and concepts used and of the legal process?
3.41	<b>Children</b>	CPS 1f	Has the practitioner assessed the child's capacity to give instructions to confirm that they can be represented on a direct instructions basis?
3.42	<b>Children</b>	CPS 1g	Has the practitioner encouraged the child to ask questions and answer those questions appropriately?
3.43	<b>Children</b>	CPS 1h	Has the practitioner used language appropriate to the age, maturity, education, cultural background and language proficiency of the child?

3.44	<b>Children</b>	CPS 1i	Has the practitioner been familiar with legislation and case law particularly relevant to children?
3.45	<b>Children</b>	CPS 1j	Has the practitioner been aware of confidentiality and mandatory legislative or ethical obligations when a child makes a disclosure?
3.46	<b>Children</b>	CPS 1k	Has the practitioner been aware of any cultural or religious factors that may be relevant to the outcome of the case, the way the case is conducted and referrals made?
3.47	<b>Children</b>	CPS 2	Has the practitioner, if working with a child client in a family law case, been familiar with and follow Part 1 section 4 and Part 6 of the Best Practice Guidelines for lawyers undertaking family law work (prepared by the Family Law Council and the Family Law Section of the Law Council of Australia)?
3.48	<b>Children</b>	CPS 3a	Has the practitioner, where working with a child client in a criminal law case, made enquiries about the child's living arrangements and any involvement with the child protection system in order to best represent the child?
3.49	<b>Children</b>	CPS 3b	Where a legal practitioner is working with a child client in a criminal law case, has the practitioner advised the child about <ul style="list-style-type: none"> <li>i. child specific defences and any diversionary options available to the child; and</li> <li>ii. sentencing hierarchies, types of orders and the release of criminal records in the Youth Court?</li> </ul>
3.50	<b>Children</b>	CPS 3c	Where the legal practitioner is working with a child client in a criminal law case, do they have up to date knowledge of sentencing principles under the Young Offenders Act 1993?
3.51	<b>Children</b>	CPS 3d	Where the legal practitioner is working with a child client in a criminal law case, have they clearly explained 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?
3.52	<b>Criminal Law</b>	CLPS 1a	Has the practitioner opened and retained a file for the client with a copy of the client's instructions, the police facts, bail conditions, criminal history and the brief?
3.53	<b>Criminal Law</b>	CLPS 1b	Has the practitioner ensured the file contains sufficient records to indicate <ul style="list-style-type: none"> <li>i. the information and advice given to the client; and</li> <li>ii. that appropriate consideration was given to the matters contained in these Practice Standards?</li> </ul>
3.54	<b>Criminal Law</b>	CLPS 1c	Has the practitioner informed the client of the case against him or her and give advice about the applicable law including <ul style="list-style-type: none"> <li>i. the charges;</li> <li>ii. the benefits of an early plea of guilty;</li> <li>iii. the strengths and weaknesses of the prosecution case;</li> <li>iv. whether there is sufficient evidence to prove a prima facie case;</li> <li>v. maximum penalties;</li> <li>vi. whether there is a standard non-parole period;</li> <li>vii. possible defences;</li> <li>viii. the likely time the case will take to be concluded; and</li> <li>ix. the relevant legal process and procedure?</li> </ul>

3.55	<b>Criminal Law</b>	CLPS 1d	Prior to entering a plea, does the practitioner 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?
3.56	<b>Criminal Law</b>	CLPS 1e	Has the practitioner considered whether it is appropriate to negotiate with the prosecutor in relation to different or lesser charges or amendments to the police facts?
3.57	<b>Criminal Law</b>	CLPS 1f	Has the practitioner ensured the facts tendered by the prosecution contain any agreed amendments?
3.58	<b>Criminal Law</b>	CLPS 1g	If a plea of guilty is to be entered, has the practitioner ensured the client reads and signs the instructions and the agreed facts prior to presenting the case in court?
3.59	<b>Criminal Law</b>	CLPS 1h	Has the practitioner obtained proper instructions from the client before presenting his or her case in court, including– <ul style="list-style-type: none"> <li>i. relevant medical history, including any treatment for a psychiatric, psychological or other medical issue and prescribed medication;</li> <li>ii. drug and alcohol history, including attempts at rehabilitation;</li> <li>iii. family background; and</li> <li>iv. any other relevant background information?</li> </ul>
3.60	<b>Criminal Law</b>	CLPS 1i	Has the practitioner determined if the client has a mental health issue or an intellectual disability requiring a psychological or psychiatric assessment and, subject to obtaining approval from the Commission, arrange such an assessment?
3.61	<b>Criminal Law</b>	CLPS 1j	Has the practitioner considered 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?
3.62	<b>Criminal Law</b>	CLPS 1k	Has the practitioner determined whether it is appropriate to request a pre-sentence report;
3.63	<b>Criminal Law</b>	CLPS 1l	If the client is in custody, has the practitioner: <ul style="list-style-type: none"> <li>i. taken instructions on whether the client wants to attend court events in person or by a telephone or video link;</li> <li>ii. assisted the client, where relevant, with– <ul style="list-style-type: none"> <li>– custody management issues;</li> <li>– contacting family members;</li> <li>– any issues in receiving medical treatment;</li> </ul> </li> <li>iii. discussed evidence and case strategy, confidentially and in person where possible, prior to the court date?</li> </ul>
3.64	<b>Criminal Law</b>	CLPS 1m	Following a court appearance (including where the client is in custody), has the practitioner: <ul style="list-style-type: none"> <li>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</li> <li>ii. inform the client, in writing, of the result and effect and (if applicable) the next court date and the obligation to attend?</li> </ul>
3.65	<b>Criminal Law</b>	CLPS 1n	If counsel is briefed, has the practitioner ensured, as far as possible, that he or she <ul style="list-style-type: none"> <li>i. will be available for the entire case;</li> <li>ii. confers with the client at an early opportunity;</li> </ul>

			<ul style="list-style-type: none"> <li>iii. advises the client of the strengths and weaknesses of both the prosecution case and the defence case; and</li> <li>iv. advises of the benefits of an early plea?</li> </ul>
3.66	<b>Criminal Law</b>	CLPS 1o	<p>At the conclusion of a case, has the practitioner:</p> <ul style="list-style-type: none"> <li>i. spoken to the client immediately following the court appearance and confirm the proceedings and the outcome are understood;</li> <li>ii. provided the client with a clear and comprehensive written explanation of the outcome, including– <ul style="list-style-type: none"> <li>– appeal rights, the prospects of an appeal succeeding and the time within which to lodge an appeal; and</li> <li>– advising of the likelihood of legal assistance being available for an appeal and, if so, the potential impact on a statutory charge;</li> </ul> </li> <li>iii. if appropriate– <ul style="list-style-type: none"> <li>– taken instructions for an appeal;</li> <li>– assisted the client to complete an application for legal assistance for the appeal and for a bail application pending appeal; and</li> <li>– assisted the client in lodging an appeal?</li> </ul> </li> </ul>
3.67	<b>Criminal Law</b>	CLPS 1p	If appearing in an appeal, has the practitioner given advice about the law, the likelihood of the appeal succeeding and the possibility of the sentence being increased in sentence appeal proceedings?
	<b>Criminal Law - Briefing Counsel</b>		A legal practitioner briefing counsel in a legally assisted criminal case must provide the brief and instructions to counsel in writing at the earliest opportunity including, where practicable:
3.68	<b>Criminal Law - Briefing Counsel</b>	CLPS 2a	An index of the documents contained in the brief?
3.69	<b>Criminal Law - Briefing Counsel</b>	CLPS 2b	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?
3.70	<b>Criminal Law - Briefing Counsel</b>	CLPS 2c	– the client's instructions?
3.71	<b>Criminal Law - Briefing Counsel</b>	CLPS 2d	– medical and expert reports?
3.72	<b>Criminal Law - Briefing Counsel</b>	2CLPS e	– witness statements?
3.73	<b>Criminal Law - Briefing Counsel</b>	CLPS 2f	– the transcript of Magistrates Court proceedings, if available?
3.74	<b>Criminal Law - Briefing Counsel</b>	CLPS 2g	– copies of any subpoenas issued?
3.75	<b>Criminal Law - Briefing Counsel</b>	CLPS 2h	– advice of the fees payable to counsel in accordance with the Commission's scale of fees?
3.76	<b>Criminal Law - Briefing Counsel</b>	CLPS 2i	– any other relevant information or documents for the particular case?
3.77	<b>Family Law – General Responsibilities</b>	FLPS 1	Has the practitioner recognised family violence as a serious problem and recognised the paramount need to ensure the safety of children and parents at all stages of a family law matter?

3.78	<b>Family Law – General Responsibilities</b>	FLPS 2	Has the practitioner taken a conciliatory rather than a litigious approach to family disputes in order to lessen conflict and reduce impact on the parties and any children?
3.79	<b>Family Law – General Responsibilities</b>	FLPS 3	Has the practitioner ensured 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?
3.80	<b>Family Law – General Responsibilities</b>	FLPS 1a	Has the practitioner adhered to the Best Practice Guidelines for lawyers doing family law work (prepared by the Family Law Council and the Family Law Section of the Law Council of Australia)?
3.81	<b>Family Law – General Responsibilities</b>	FLPS 1b	In matters involving a child, has the practitioner advised the client of the principles set out in 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 child?
3.82	<b>Family Law – General Responsibilities</b>	FLPS 1c	In matters involving child support, has the practitioner 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?
3.83	<b>Family Law – General Responsibilities</b>	FLPS 1d	Has the practitioner advised the client of the benefits of making arrangements for any child in cooperation with the other party rather than through a contested court hearing?
3.84	<b>Family Law – General Responsibilities</b>	FLPS 1e	Has the practitioner considered the appropriateness of family dispute resolution (FDR) for all cases and at each stage of proceedings and, if a case is referred for FDR, approach the case in a manner consistent with the philosophy of FDR, be fully informed about the case and participate constructively in any FDR conference?
3.85	<b>Family Law – General Responsibilities</b>	FLPS 1f	Has the practitioner encourage the client to be open and honest in all aspects of the case?
3.86	<b>Family Law – General Responsibilities</b>	FLPS 1g	Has the practitioner provided 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?
3.87	<b>Family Law – General Responsibilities</b>	FLPS 1h	If necessary, has the practitioner assisted the client by providing referrals to medical professionals, counsellors and social workers?
3.88	<b>Family Law – General Responsibilities</b>	FLPS 1i	Where relevant, has the practitioner advised 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?
3.89	<b>Family Law – General Responsibilities</b>	FLPS 1j	Where appropriate, has the practitioner <ul style="list-style-type: none"> <li>i. explained the role of the Independent Children's Lawyer and any costs associated with such an appointment; and</li> <li>ii. sought 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?</li> </ul>
3.90	<b>Family Law – General Responsibilities</b>	FLPS 1k	Has the practitioner used his or her best endeavours to ensure compliance by the client with section 121 of the Family Law Act 1975 concerning non-publication of family law proceedings by advising the client of the effect of section 121 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?

3.91	<b>Family Law – General Responsibilities</b>	FLPS 1l	If the matter proceeds to hearing, has the practitioner ensured the client understands how evidence is given, how the hearing will be run, and how parties should conduct themselves in court?
3.92	<b>Family Law – General Responsibilities</b>	FLPS 1m	If the other party is self represented, has the practitioner advised the client of how the court and the legal practitioner will deal with the other party during the hearing?
3.93	<b>Family Law - Responsibilities to other parties</b>	FLPS 2	If dealing with a self represented party, has the practitioner informed the self represented party of the information on the Family Court website for people representing themselves?
3.94	<b>Family Law- Responsibilities to Counsel</b>	FLPS 3a	If briefing counsel, has the practitioner provided the brief and instructions to counsel in writing at the earliest opportunity including, where practicable—an index of the documents contained in the brief?
3.95	<b>Family Law- Responsibilities to Counsel</b>	FLPS 3b	Has the practitioner made 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?
	<b>Family Law- Responsibilities to Counsel</b>		Has the practitioner included the following in the brief to counsel:
3.96	<b>Family Law- Responsibilities to Counsel</b>	FLPS 3c	- client instructions
3.97	<b>Family Law- Responsibilities to Counsel</b>	FLPS 3d	- medical and expert reports
3.98	<b>Family Law- Responsibilities to Counsel</b>	FLPS 3e	- witness statements
3.99	<b>Family Law- Responsibilities to Counsel</b>	FLPS 3f	- copies of any subpoenas issued
3.100	<b>Family Law- Responsibilities to Counsel</b>	FLPS 3g	- advice of the fees payable to counsel in accordance with the Commission's scale of fees
3.101	<b>Family Law- Responsibilities to Counsel</b>	FLPS 3i	- any other relevant information or documents for the particular case?