

Civil law case management standards

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Introduction

These case management standards have been prepared to assist Legal Aid Queensland (LAQ) staff and preferred suppliers who practise in the civil jurisdiction. They cover the following areas of practice:

- anti-discrimination matters
- veterans matters
- NDIS matters.

They represent the minimum work necessary to be undertaken in representing the client. The objective of these standards is to assist officers in achieving an efficient and effective practice.

Compliance with the standards is a prerequisite to ensuring consistency of service delivery to clients, and is therefore an important requirement of undertaking legal aid work.

These case management standards should be read in conjunction with and not in substitution of the rules and practice directions of any courts which may issue from time to time.

Case management standards for domestic violence matters and child protection matters are now included in the Family Law Case Management Standards. Parts D-H of these *Civil Law Case Management standards* list the relevant *Family Law Case Management Standards* sections for lawyers to refer to.

Part A — General

A1. Initial interview

The first contact with a client who subsequently obtains a grant of aid for a civil law matter is often via a legal advice interview. The lawyer is to explain the legal process and procedure relating to the client's matter. Some client information will be obtained at this interview but there is generally insufficient time to obtain detailed instructions.

A2. Grant of aid

Approving authority

The approving authority of a grant of aid is LAQ. Generally, the date aid is effective is the date the application is received by LAQ. A grant of aid must exist before any work can be done on the file. The lawyer should check the approval letter to determine the nature and appropriateness of the grant of aid. Where the grant of aid is subject to an initial contribution, the lawyer must not commence work until appropriate arrangements for the payment of the contribution have been made with the client.

Grant of aid confirmation should be provided to the other party or parties to proceedings in line with the Legal Aid Queensland Act 1997 s 28. This is an ongoing responsibility where the parties to proceedings change.

Payment

LAQ will pay the lawyer in accordance with LAQ's set schedule of fees less the initial contribution from the client (where applicable). The schedule of fees includes the *Scale of fees*, rules for payment of accounts and claiming guidelines provided by LAQ. The lawyer is to explain to the client the policy in relation to retrospective contributions and ensure the client signs and returns the *Payment of costs* form prior to commencing work on the file.

A3. Management of the client and file

Following approval for a grant of aid, an initial letter enclosing a Client information sheet — Annexure A — should be sent to the client by the lawyer. The client must be informed of their obligations and rights in relation to costs payable for work to be done on behalf of the client and any rights to recovery of costs from another party to proceedings.

The lawyer must communicate regularly with the client. The lawyer should copy and forward to the client relevant substantive correspondence sent or received on behalf of the client.

The lawyer must be aware of and comply with the Best practice guidelines for lawyers working with people who have experienced domestic violence. The guidelines are attached as Annexure B.

The lawyer must be aware of and comply with the Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients. The guidelines are attached as Annexure F.

The lawyer must be aware of and comply with the Guidelines for working with interpreters. The guidelines are attached as Annexure G.

The lawyer must be aware of and comply with the Best practice guidelines for working with children and young people and its supporting framework. A copy of the guidelines and framework are attached at Annexure I and J.

A4. Counsel

In selecting counsel from the private bar, all reasonable endeavours should be made to:

1. Identify female counsel in the relevant practice area;

2. Genuinely consider engaging such counsel;
3. Regularly monitor and review the engagement of female counsel; and
4. Periodically report when called upon on the nature and rate of engagement of female counsel.

When applicable, briefs to counsel must contain the following:

- a. a logical and chronological index
- b. instructions to counsel
- c. copy of all relevant material
- d. the brief should be marked "Legal Aid Brief" and include details of the aid available for counsel if the client is represented by an in-house lawyer, or the LAQ pro forma invoice if the client is represented by a private lawyer.

In-house lawyers, when briefing counsel, must comply with the In-house lawyers briefing counsel policy, which can be found on the LAQ intranet (Legal Aid Queensland staff access only).

A5. Completion of matter

The client is to be advised of the outcome of the matter and provided with any relevant documentation before a file is closed. A final letter enclosing a sealed copy of any orders is to be forwarded to the client. If appropriate, the letter should also contain relevant advices with respect to time limitations (including appeal time limits), the consequences of breaches of the orders and any follow-up matters.

The lawyer should notify LAQ of the outcome of a file when submitting their final account for payment and finalising the file.

A6. Initial/final contribution

The lawyer must ensure the initial or final contribution has been paid or arrangements entered into for the payment of the final contribution.

A7. Appeal

The lawyer should consider the appropriateness of any orders which have been made and the potential merit for appeal or judicial review. If appropriate the matter should be discussed with the client including:

- the time frame for an appeal
- risk of a less favourable outcome
- potential liability for costs if unsuccessful
- effect of appeal on the execution of order

and all time limits must be observed.

Part B – Case management standards specific to anti-discrimination matters

B1. Interview

At the initial interview with the client, the lawyer should:

1. Administrative and legal requirements

- a. ascertain whether an interpreter is required and utilise interpreters in accordance with the Language Services Policy
- b. obtain full particulars of all other parties, including current address if possible
- c. identify any possible conflicts and act according to the Conflicts of Interest Policy
- d. explain the lawyer's role, and the limitations of that role
- e. explain the client's role
- f. identify all relevant time limits, advise client regarding all relevant time limits and act to secure clients' interests within those time limits
- g. obtain authorities and request copies of any documentation relevant to the matter
- h. explain the legal processes and procedures specific to anti-discrimination matters
- i. obtain a comprehensive account of the circumstances surrounding the complaint of discrimination and outcomes sought by the client. Following this interview, the lawyer is to prepare a statement of the client which must be signed by the client
- j. provide referrals on other relevant and available legal remedies eg personal injury, work cover, workplace health and safety complaints etc.

2. Non-administrative or legal requirements

- a. be prepared to work with or through interpreters, support workers and friends or family where appropriate, but be sure to encourage the client to participate to the greatest possible degree
- b. be sympathetic to the emotions and concerns the client may have, and be prepared to divert from the usual process if these emotions or concerns dictate
- c. be familiar with other needs or issues that may be addressed and be prepared to offer meaningful advice and referrals
- d. be focused in your approach to obtaining sufficient information to properly represent the client, and do not allow the interview to become side-tracked.

B2. Witnesses and supporting evidence

The lawyer is to obtain signed statements from all relevant witnesses as required and relevant to each stage of the complaint.

B3. Lodging a complaint

When lodging a complaint to the Human Rights Commission (AHRC)/Anti-Discrimination Commission Queensland (ADCQ), the submission should include a summary of the relevant facts that prove discrimination.

Where a complaint has already been made to the Commission, the lawyer should consider whether the client has adequately presented their case and whether additional information should be provided to clarify relevant issues including whether the appropriate respondents have been named.

B4. The conciliation conference

The following action is required for a conference:

- a. Prior to the conference, discuss with the client any monetary and non-monetary outcomes sought by the client. Research decided tribunal cases and ADCQ/AHRC case studies/conciliation registers and advise the client about possible outcomes including quantum.
- b. Prior to the conference:
 - i. for complaints to ADCQ: request the commissioner's permission in writing to represent the client at the conciliation conference under section 163 of the *Anti-Discrimination Act 1991 (Qld)*
 - ii. for complaints to AHRC: advise the Commission in writing that it is your intention to seek consent of the person presiding at the conciliation conference to represent the client at the conference (section 46PK(5)(a)) of the Australian Human Rights Commission Act 1986 (Cth)
- c. Arrange for the client to attend for a brief interview for 15 to 30 minutes prior to the conference time to confirm the issues and concerns of the client and the confidentiality provisions of the conciliation conference, and remind the client of the conference procedure.
 - i. During the conference the lawyer should:
 - ensure the following issues are addressed:
 - the relevant facts
 - the impacts of the discrimination on the client, and
 - how the respondent/s conduct contravenes the legislation
 - ii. whether the client or the lawyer addresses the issues is a matter for professional judgment. The lawyer should supply necessary details omitted by the client
 - iii. ask for a private meeting if the client becomes distressed or otherwise requires legal advice
 - iv. if the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted
 - v. at private meetings during the conference, carefully explain options and proposals discussed during the conference to the client and give the appropriate legal advice. The consequences of agreement or failure to reach agreement on any current and future grant of aid should also be discussed. The client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement. Reality test all proposals for agreement with the client including risk of costs if complaint proceeds
 - vi. ensure that any agreement reached is explained in detail to the client and is fully understood by the client.

B5. Confirm outcome with client

- a. If an agreement was reached by the parties, the lawyer is to write a letter to the client confirming the agreement and enclosing a typed copy of the agreement.
- b. Where no agreement is reached, advise client in writing of time limits for referring complaint to the Queensland Civil and Administrative Tribunal (QCAT) or Queensland Industrial Relations Commission (QIRC), or lodging application in the Federal Circuit Court of Australia (FCC) or Federal Court following termination of the complaint by the AHRC regardless of whether they will be legally aided for those proceedings.

B6. Preparation for proceedings in the QCAT, QIRC, FCC or Federal Court

Preparation at QCAT/QIRC:

The lawyer should:

- a. apply for and receive relevant grants of aid before acting for the client in QCAT/QIRC
- b. follow directions of QCAT/QIRC in a timely manner
- c. inform the client in writing of all directions made by QCAT/QIRC including:
 - i. filing dates, and
 - ii. dates on which they must attend QCAT/QIRC, confirming their need to attend
- d. as directed, prepare application for leave to represent the client at QCAT/QIRC and ensure the client is aware that leave must be sought and what the consequences of refusal are
- e. where leave to represent the client at QCAT/QIRC is refused, assist the client, within the boundaries of the grant of aid, to prepare their case and represent themselves
- f. prepare complainant's contentions to be settled by counsel
- g. take statements from all relevant witnesses at an appropriate stage
- h. consider whether expert evidence is appropriate, and if so, apply for grant of legal aid and organise report/s
- i. consider whether a grant of aid should be obtained for counsel to appear at the compulsory conference and apply for it
- j. make necessary applications for notice/s requiring witness to attend or produce document or thing and arrange conduct monies
- k. inform witnesses of hearing dates and ensure they have a copy of their statements, that they are available for giving evidence and arrange times for their attendance to minimise waiting time
- l. liaise with the other parties/their legal representatives as required.

Preparation at FCC/Federal Court

The lawyer should:

- a. apply for and receive relevant grants of aid before acting for client in FCC/Federal Court
- b. file application (FCC)/originating application (Federal Court)
- c. follow directions of the court in a timely manner
- d. inform client in writing of all directions made by the court including:
 - i. filing dates, and

- ii. dates on which they must attend the court, confirming their need to attend
- e. if pleadings (points of claim/statement of claim) are directed by the court, prepare them for settling by counsel
- f. consider whether expert evidence is appropriate, and if so, apply for grant of legal aid and organise report/s
- g. take affidavits from all relevant witnesses at an appropriate stage
- h. consider whether a grant of aid should be obtained for counsel to appear at the mediation and apply for it
- i. issue necessary subpoenas, together with conduct monies
- j. inform witnesses of hearing dates and ensure they have a copy of their affidavit, that they are available for giving evidence and arrange times for their attendance to minimise waiting time
- k. liaise with the other parties/their legal representatives as required.

B7. Alternative dispute resolution at QCAT/QIRC/FCC/Federal Court

QCAT/QIRC – compulsory conference

- a. Where leave to represent client is obtained from QCAT/QIRC, attend at compulsory conference, with counsel (where appropriate and a grant of aid obtained) and client
- b. Be prepared to identify and clarify the issues in dispute, identify questions to be decided by QCAT/QIRC and where appropriate, offer solutions to the dispute without proceeding to hearing
- c. Ask for a private meeting if the client becomes distressed or otherwise requires legal advice
- d. If the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted
- e. At private meetings during the conference, carefully explain options and proposals discussed during the conference to the client and give the appropriate legal advice. The consequences of agreement or failure to reach agreement on any current and future grant of aid should also be discussed. The client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement. Reality test all proposals for agreement with the client including risk of costs if complaint proceeds
- f. Ensure that any agreement reached is explained in detail to the client and is fully understood by the client
- g. If an agreement is reached by the parties, the lawyer is to write a letter to the client confirming the agreement and enclosing a typed copy of the agreement.

Mediation in FCC/Federal Court

- a. Attend at mediation (where ordered), with counsel (where appropriate and a grant of aid obtained) and client
- b. Be prepared to identify and clarify the issues in dispute, identify questions to be decided by the court and where appropriate, offer solutions to the dispute without proceeding to hearing
- c. Ask for a private meeting if the client becomes distressed or otherwise requires legal advice
- d. If the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted
- e. At private meetings during the mediation, carefully explain options and proposals discussed during the mediation to the client and give the appropriate legal advice. The consequences of agreement or failure to reach agreement on any current and future grant of aid should also be discussed. The client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement. Reality test all proposals for agreement with the client including risk of costs if complaint proceeds

- f. Ensure that any agreement reached is explained in detail to the client and is fully understood by the client
- g. Where agreement is reached, liaise with other party/s for filing of consent orders
- h. If an agreement is reached, the lawyer is to write a letter to the client enclosing a copy of the signed agreement and the consent orders (where relevant).

B8. Brief counsel

The lawyer should retain and brief counsel as soon as practicable. The brief to counsel must include all relevant documentation. Instructions to counsel should set out the appearance dates, the basic premise of the case and list the witnesses to be called, whether complainant's contentions/pleadings need to be settled and the date for filing, and fees payable under LAQ's Scale of Fees.

B9. Conference with counsel

The lawyer should consider the appropriateness of conferences with counsel and arrange them as early as practicable with counsel and the client.

B10. Attend at the hearing at QCAT/QIRC/FCC/Federal Court and instruct counsel

The lawyer should ensure all witnesses are available for giving evidence and arrange times for their attendance to minimise waiting time. The lawyer should take accurate records of the proceedings including witness names and times of hearing.

After the hearing is concluded write to the client informing them of the outcome and provide sealed copies of orders made or advising of the expected date of judgment if known.

Ensure all accounts are finalised in a timely manner.

B11. Appeals

Following final judgment being delivered by the court or tribunal, write to the client informing them of the orders made and reasons for judgment, supplying copies of both sets of documents if they are available.

Consider the appropriateness or otherwise of appeal and inform the client of their options in relation to appeals including relevant time limits.

B12. Enforcement

Following a resolution by agreement or by judgement the lawyer is to advise the client of enforcement options, prospects of success and merits of any enforcement action.

Where appropriate the lawyer is to assist the client to apply for a grant of aid to enforce the agreement/judgment, taking into account the respondent's assets and the prospects of success of an enforcement action.

B13. General matters

At each stage of the application the lawyer is to advise the client on prospects of success and merits of their claim and comply with all relevant Grants policies.

At each stage of the application the lawyer must assist the client, where appropriate, to apply for all relevant grants of aid.

B14. Legal Costs and Legal Aid Queensland Grants Policy

The lawyer must ensure compliance with relevant legislative requirements in relation to legal costs.

The lawyer must explain to the client, the client's liability for costs in the various jurisdictions.

The lawyer must explain to the client and ensure compliance with Legal Aid Queensland's Grants policies in relation to payment of costs, issuing of initial contributions, issuing of retrospective contributions and the payment of costs under any payment of costs agreement.

Part C – Acting in parenting and property matters

C1. Client’s statement

The lawyer must obtain a signed copy of the client’s statement. The statement must clearly nominate the contention/hypothesis relied on, in respect to any pension claimed and provide the reasons why such contentions/hypothesis is raised including examples if the contention/hypothesis points to a habit such as smoking or diet.

C2. Checklist

The lawyer must complete the Administration of war veteran’s matters checklist (Annexure E). The lawyer must complete and return the checklist to LAQ before consideration may be given to a request for legal aid for stage two of a matter.

C3. Specialists’ reports

It is a condition of LAQ authorisation to obtain a report, that the lawyer is to provide the specialist with the text of any relevant Statement of Principles and request the report also includes an assessment in reference to the relevant Statement of Principles. The specialist must certify the report was prepared with reference to the Statement of Principles and certify the number of hours spent to provide the report.

Part D — Acting in domestic violence matters

Refer to Part E of the [Family Law Case Management Standards](#)

Part E – Acting as a domestic and family violence duty lawyer

Refer to Part F of the [Family Law Case Management Standards](#)

Part F – Acting in child protection matters

Refer to Part G of the [Family Law Case Management Standards](#)

Part G – Acting as a child protection duty lawyer

Refer to Part H of the [Family Law Case Management Standards](#)

Part H – Acting as a separate representative — child protection

Refer to Part I of the [Family Law Case Management Standards](#)

Part I – Acting in NDIS external reviews

Lawyers working in this area should be familiar with:

- *National Disability Insurance Scheme Act 2013*
 - <https://www.legislation.gov.au/Details/C2013A00020>
 - National Disability Insurance Scheme (Supports for Participants) Rules 2013
 - <https://www.legislation.gov.au/Details/F2013L01063>
- National Disability Insurance Scheme Rules and in particular
 - National Disability Insurance Scheme (Becoming a Participant Rules) 2016
 - <https://www.legislation.gov.au/Details/F2018C00165>
- Operational Guidelines
 - <https://www.ndis.gov.au/Operational-Guidelines>

- COAG principles to determine the responsibilities of the NDIS and other service systems dated 27 November 2015
 - <https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>
- Explanatory memorandum for the legislation and rules and
- Administrative Appeals Tribunal and Federal Circuit Court decisions (refer to LAQ database for NDIS decisions)
- *Administrative Appeals Tribunal Act 1975*
 - <https://www.legislation.gov.au/Details/C2017C00107>
- Administrative Appeals Tribunal Regulations 1975
 - <https://www.legislation.gov.au/Details/F2015L00959>
- Practice Directions, Guides, Guidelines and policies of the Administrative Appeal Tribunal
 - <http://www.aat.gov.au/resources/practice-directions-guides-guidelines-and-policies>

and in particular, Review of National Disability Insurance Scheme Decisions Practice Direction.

I.1 Notifying NDIA, AAT and Disability Advocate that the grant of aid has issued

Once the grant of legal aid has issued, the lawyer representing the client is to notify in writing:

- the relevant registry of the Administrative Appeals Tribunal - in relation to the notification to the AAT that LAQ is representing the client the email /letter is to be forwarded to the registry and the District Registrar
- the NDIA and
- the Disability Advocate (if there is one acting on behalf of the client) that you represent the client.

The lawyer is to write to the client confirming:

- CAP funding has been granted
- the limits of the grant of legal aid and
- that legal aid is granted in stages and that at the completion of each stage, an extension of legal aid must be applied for; which means LAQ:
 - will assess the merit of the matter proceeding to the next stage according to applicable guidelines and
 - will only authorise the lawyer to complete work in the stage for which the approval is given and
 - will approve the predetermined costs set for the grant of aid for each stage of the matter.

I.2 Considering client's legal capacity

The lawyer representing the client must consider the legal capacity of the client and make relevant inquiries regarding decision making for that client if there are issues relating to the client's legal capacity.

The lawyer is to refer to the Queensland Handbook for Practitioners on Legal Capacity and take appropriate and relevant action as required.

<https://qai.org.au/queensland-handbook-for-practitioners-on-legal-capacity/>

In relation to representing children the lawyer is to be aware of the role of the person/s who have parental responsibility/guardianship for a child or the person appointed by the CEO of the NDIA to replace the person with parental responsibility. The lawyer is to familiarise themselves with the provisions of ss 5, 9, 74, 75, 76, 77 and 99 of the *National Disability Insurance Act 2013*.

In relation to representing persons with a disability the lawyer is to be aware of the role of plan nominees and correspondence nominees appointed under sections 86 and 87 of the *National Disability Insurance Act 2013*. The lawyer is to familiarize themselves with the provisions of ss 5, 9, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99 of the *National Disability Insurance Act 2013*.

I.3 Obtaining evidence

Aid will not be granted unless the client has already lodged the external review application with the AAT.

Upon a grant of legal aid issuing the lawyer acting on behalf of the client must:

- a. write to the client or parent, guardian or nominee as referred to in paragraph I.2 requesting that they sign relevant authorities
- b. request the NDIA provide a copy of the T documents
- c. obtain from the client/parent, guardian or nominee or disability advocate all documentation relevant to the claim:
 - i. all letters confirming decisions of the NDIA
 - ii. copy of the plan/original decision of the NDIA
 - iii. all relevant medical and other expert evidence
 - iv. all relevant invoices and quotes for disability support equipment etc
 - v. internal review application
 - vi. internal review decision
 - vii. copy of application to the AAT
 - viii. any other material relevant to the external review including but not limited to:
 1. all orders, notices, letters and directions issued by the AAT in relation to an appeal
 2. all documents filed in the proceedings by the client and the NDIA
 3. copies of correspondence between the support officer and the NDIA and
 4. any documentation including statements, emails, letters etc which detail the client's instructions to the support officer.
- d. identify what medical and other expert reports and evidence is required and obtain same
- e. identify what other evidence is required – quotes for equipment etc.

I.4 Seeking an adjournment

If the lawyer considers that it is necessary to seek an extension of time for filing of material in accordance with notices, orders or directions issued by the AAT or an adjournment of a case conference, conciliation, fast tracked hearing, jurisdictional hearing or hearing, the lawyer is to obtain the client's, parent's, guardian's or nominee's instructions and consent to the adjournment and:

- fully explain the advantages and disadvantages associated the any adjournment
- consider the impact of an adjournment on the current plan before the AAT and obtain the consent of the client to seek extensions/amendments to the plan under section 26 of the *Administrative Appeals Tribunal Act 1975*

- notify the disability advocate of the client's instructions
- obtain, if possible, consent to the adjournment from the NDIA
- write to the AAT registry requesting the adjournment setting out reasons supporting the request, proposed time frame and impact on the plan before the AAT. The lawyer is to contact relevant witnesses and establish time frames for filing of statements, reports etc or availability for hearing etc or
- if the NDIA does not consent to the adjournment write to the AAT seeking a directions hearing on the matter.

When requesting the AAT to grant an extension/adjournment the AAT will require you address the following issues:

- a. the reason provided for not complying with the requirement or direction
- b. the amount of notice being given in requesting the extension/adjournment
- c. impact any significant delays in progressing the application
- d. whether any listed event will need to be moved
- e. the length of additional time requested and
- f. whether the NDIA opposes or supports the extension/adjournment.

I.5 Working with the Disability Advocate

NDIS Appeal Support Advocates (support advocates) are funded by the Department of Social Services to support clients through the review process. Legal Aid commissions are funded to provide legal representation to participants who seek an external review of an NDIA decision through the Administrative Appeals Tribunal where the matter is novel and complex.

Support advocates and lawyers are not decision makers (ie they are not legally appointed substitute or supported decision makers, carer, guardians, parents or nominees).

Not all clients will have the support of a support advocate, however, if a client is being supported by a support advocate the lawyer representing the client must work effectively and supportively with the support advocate.

The level of involvement of the support advocate will depend on:

- the instructions of the client
- the vulnerability of the client
- the level of ability of the client to manage and participate in the process
- whether the client has a carer, guardian, parent or nominee and that person's ability to manage and participate in the process
- the vulnerability of the carer, guardian, parent or nominee
- where the client is located
- any difficulties in communicating directly with the client.

While the support advocate cannot provide legal advice the support advocate can support a client, in consultation with the lawyer by:

- explaining and providing information about the NDIS, Pricing Guides, Operational Guidelines etc
- explaining and providing information about the review process, including what is involved in appealing to the AAT
- referring to the relevant Legal Aid Commission where legal issues are highlighted and an application has been made to the AAT, for a determination to be made as to whether legal services are warranted.

Upon CAP funding being approved, the support advocate will:

- notify the lawyer of the name and contact details of the support advocate who will be primarily responsible for representing the client
- in consultation with the lawyer, obtain the client's full instructions
- brief the lawyer about the impact of the client's disability, social issues impacting the client and matters relating to the client's vulnerability
- in any correspondence from the support advocate to the lawyer include the client or carer/guardian/parent/nominee
- provide the lawyer with details of the dates (past and future) of all case conferences, conciliations and hearings and any other future critical dates
- provide to the lawyer all relevant documentation in the support officer's possession relating to the external review including:
 - all letters confirming decisions of the NDIA
 - copy of the plan/original decision of the NDIA
 - all relevant medical and other expert evidence
 - all relevant invoices and quotes for disability support equipment etc
 - internal review application
 - internal review decision
 - copy of application to the AAT
 - any other material relevant to the external review including but not limited to:
 - all orders, notices, letters and directions issued by the AAT in relation to an appeal
 - all documents filed in the proceedings by the client and the NDIA
 - copies of correspondence between the support officer and the NDIA
 - any documentation including statements, emails, letters etc which detail the client's instructions to the support advocate
- identify and provide contact details for the client's medical and other specialists
- identify and provide details of other relevant evidence required for the external review including – costings and quotes for equipment, services, items in the pricing guide etc
- help manage client expectations in accordance with the lawyer's legal advice
- help to prepare documents and witness statements
- help to obtain client statements, reports from doctors, therapists and other experts
- help to obtain quotes for equipment and services and
- attend and provide support throughout the external review process at AAT conferences, conciliations and hearings.

The lawyer representing the client must:

- provide legal advice to the client
- comply with all professional obligations under codes of ethics, regulations or other relevant industry standards
- clarify the level of support the client, or the carer, guardian, parent or nominee seeks from the support advocate and act on the client's instructions
- always seek and obtain instructions from the client or the carer/guardian/parent/nominee, and not the support advocate

- if the client instructs that they no longer wish to be represented by the support advocate, act on those instructions
- notify the support advocate of the name and contact details of the lawyers who will be primarily responsible for representing the client
- consult, as appropriate, with the support advocate regarding the NDIS, Pricing Guides, Operational Guidelines etc
- in accordance with the client or the carer/guardian/parent/nominee's instructions:
 - keep the support advocate informed of all relevant conference, conciliation and hearing dates
 - keep the support advocate informed of the progress of matter and where appropriate include and cc into all correspondence with client or the carer/guardian/parent/nominee
 - manage the client's expectations
 - work with the support advocate (as the client's or the carer, guardian, parent or nominee's support person) to:
 - identify:
 - the relevant facts
 - the relevant legal issues, legislation and cases
 - identify outcomes sought by the client
 - prepare documents and statements
 - obtain client statements, reports from doctors, therapists and other experts
 - obtain quotes for equipment and services
- resolve any conflicts with the support advocate in a timely fashion and in accordance with the client's or carer/guardian/parent/nominee's instructions.

I.6 Initial interview

The initial interview with the client subsequent to the granting of aid, the lawyer should:

1. Administrative and legal requirements

- a. ascertain whether an interpreter is required and utilise interpreters in accordance with the *Language Services Policy*
- b. ascertain whether the client has or wants a support person, family member, guardian etc and as appropriate obtain the client's consent for this person to be present during the initial interview
- c. ascertain whether the client has or wants an NDAP disability advocate and as appropriate obtain the client's consent for this person to be present during the initial interview
- d. identify any possible conflicts and act according to the *Conflicts of Interest Policy*
- e. explain the lawyer's role, and the limitations of that role
- f. explain the client's role
- g. if the initial interview occurs in the context of an initial advice session clearly explain the limitations of advice, that a grant of aid has not yet been made and how the client is to apply for legal aid for representation
- h. identify all relevant time limits, advise client regarding all relevant time limits and act to secure client's interests within those time limits
- i. obtain authorities and request copies of any documentation relevant to the matter
- j. explain the legal processes and procedures specific to NDIS matters

- k. obtain a comprehensive account of the legal issues, circumstances surrounding the external review, and the outcomes sought by the client
- l. subsequent to this interview, the lawyer is to prepare a lived experience statement for use at the case conference and to identify evidence to be obtained
- m. provide referrals on other relevant and available legal remedies eg social security, consumer law etc.

2. Non-administrative or legal requirements

- a. be prepared to work with or through interpreters, support persons, carers, family members, guardians and disability advocates where appropriate, but be sure to encourage the client to participate to the greatest possible degree
- b. be sympathetic to the emotions and concerns that the client may have, and be prepared to divert from the usual process if these emotions or concerns dictate
- c. be familiar with other needs or issues that may be addressed and be prepared to offer meaningful support, advice and referrals
- d. be focused in your approach to obtaining sufficient information to properly represent the client, and do not allow the interview to become side tracked

1.7 Jurisdictional hearing

The lawyer representing the client must apply for and receive relevant grants of aid before acting for the client on a jurisdictional hearing in the AAT.

Jurisdictional hearings are held to determine whether the AAT has jurisdiction to hear a matter on threshold questions relating to the application, eg extension of time to lodge application whether there is a reviewable decision.

If counsel is being briefed ensure:

- a. a grant of aid has been obtained
- b. the brief is delivered in a timely manner
- c. counsel is informed of fee payable and the work covered by the grant of aid
- d. the invoice for the appearance is forwarded to counsel.

The lawyer should ensure all relevant evidence and witness statements have been obtained, filed and served in accordance with any directions of the tribunal and, in any case, in advance of the hearing. All witnesses must be advised in advance of the date and time of the hearing and arrangements made to ensure they are available for giving evidence. Arrange times for their attendance to minimise waiting time. As permitted by the tribunal arrange for evidence to be provided by telephone link where the witness must otherwise travel to provide evidence.

If the witness is an expert, the lawyer is to ensure:

- a. a grant of aid has been obtained and
- b. the expert is informed of fee payable and the work covered by the grant of aid.

The lawyer should ensure that outlines of submissions are prepared, filed and served in accordance with any directions of the tribunal and, in any case, in advance of the hearing.

The lawyer should take accurate records of the proceedings including witness names and times of hearing.

After the hearing is concluded the lawyer is to meet with the client and explain the outcome of the hearing including if the decision has been reserved what this entails.

The lawyer is to confirm the outcome in writing to the client, provide sealed copies of orders made or advising of the expected date of the decision if known.

Ensure all accounts (counsel, expert etc) are finalised in a timely manner.

1.8 The case conference

The lawyer representing the client must apply for and receive relevant grants of aid before acting for the client at the case conference in the AAT.

A case conference is an informal private meeting to discuss whether the client and NDIA can reach agreement. The case conference is conducted by the conference registrar and usually occurs 2 to 4 weeks after lodging the application.

If the lawyer intends seeking an adjournment they must do so in advance of the conference, have the client's instructions and have a good reason.

To prepare for a case conference:

- a. write to the NDIA and request confirmation they have provided all reasons upon which the internal review decision was based
- b. prior to the case conference, discuss with the client outcomes sought by the client; research decided tribunal cases and advise the client about relevant legal issues and possible outcomes
- c. advise the client that case conferences and conciliations are confidential
- d. be prepared with dates and times for the obtaining and filing of medical reports, witness statements etc which will be relevant to the issuing of any directions should the matter fail to settle at the case conference
- e. obtain, where possible all relevant evidence, in advance of the case conference and file copies of all evidence in the AAT and serve upon NDIA
- f. advise the client of the purpose and procedures relevant to a case conference; the lawyer is to advise the client of confidentiality of the case conference process
- g. during the case conference the lawyer should:
 - i. ensure the following issues are addressed:
 - the relevant facts
 - the relevant legal issues, legislation and cases
 - identify outcomes sought by the client.
 - ii. decide whether the client or the lawyer addresses the issues. (this decision is a matter for professional judgement; the lawyer should supply necessary details omitted by the client)
 - iii. ask for a private meeting if the client becomes distressed or otherwise requires legal advice
 - iv. if the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted
 - v. at private meetings during the conference, carefully explain options and proposals discussed during the case conference to the client and give the appropriate legal advice; the consequences of agreement or failure to reach agreement on any current and future grant of aid should also be discussed; the client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement; reality test all proposals for agreement with the client
 - vi. ensure that any agreement reached is explained in detail to the client and is fully understood by the client
- h. if the matter does not settle at the case conference directions will issue for the future hearing of the application including a conciliation conference date.

I.9 Fast-tracked hearing

The lawyer representing the client must apply for and receive relevant grants of aid before acting for the client at a fast-tracked hearing in the AAT.

Applicant can ask for a fast-tracked hearing after the case conference but only if:

- a. all the relevant:
 - i. medical and expert evidence
 - ii. quotes and invoices
 - iii. statements of witnesses and
 - iv. witnesses

necessary for a decision to be made about an application will be available by the date of the hearing

- b. the AAT is satisfied that a fast-track hearing would not disadvantage the applicant or the NDIA

Before requesting a fast-tracked hearing ensure items i to iv above are available.

Obtain the client's written instructions to request a fast-tracked hearing after fully explaining the advantages and disadvantages of proceeding to a fast-tracked hearing.

Contact the NDIA and seek their support for a fast-tracked hearing.

Make request to AAT for fast tracked hearing.

Comply with matters set out in Clause I.11.

I.10 Conciliation

The lawyer representing the client must apply for and receive relevant grants of aid before acting for the client at a conciliation in the AAT.

Conciliation is an informal, private meeting at which the applicant and the NDIA talk about the application and try to reach agreement. It is a form of alternative dispute resolution that is used by the AAT to review National Disability Insurance Scheme decisions.

To prepare for a conciliation:

- a. write to the NDIA and request confirmation they have provided all reasons upon which the internal review decision was based
- b. prior to the conciliation, discuss with the client outcomes sought by the client; research decided tribunal cases and advise the client about relevant legal issues and possible outcomes
- c. advise the client that case conferences and conciliations are confidential
- d. be prepared with dates and times for the obtaining and filing of medical reports, witness statements etc and which will be relevant to the issuing of any directions should the matter fail to settle at the conciliation
- e. obtain, where possible all relevant evidence, in advance of the conciliation and file copies of all evidence in the AAT and serve upon NDIA
- f. as permitted by the tribunal arrange for parties to attend by telephone link where the witness must otherwise travel to provide evidence
- g. advise the client of the purpose and procedures relevant to a conciliation; the lawyer is to advise the client of confidentiality of the conciliation process
- h. during the conciliation the lawyer should:
 - i. ensure the following issues are addressed:
 - the relevant facts
 - the relevant legal issues, legislation and cases

- identified outcomes sought by the client
 - ii. whether the client or the lawyer addresses the issues is a matter for professional judgement. supply necessary details omitted by the client
 - iii. ask for a private meeting if the client becomes distressed or otherwise requires legal advice
 - iv. if the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted
 - v. at private meetings during the conciliation, carefully explain options and proposals discussed during the conciliation to the client and give the appropriate legal advice; the consequences of agreement or failure to reach agreement on any current and future grant of aid should also be discussed; the client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement; reality test all proposals for agreement with the client
 - vi. ensure that any agreement reached is explained in detail to the client and is fully understood by the client
- i. If the matter does not settle at the conciliation, directions will issue for the future hearing of the application.

I.11 If matter settles at the case conference or conciliation

- a. If the matter settles:
- i. draft agreement
 - ii. have client confirm in writing agreement with the draft
 - iii. forward to the NDIA for approval
 - iv. seek client's written instructions to any changes sought to the wording/content of the agreement
 - v. submit minute of agreement to the AAT for approval.
- b. Once the AAT has approved the order send a copy to the client. If a new plan is to issue ensure the new plan implements the approved order of the AAT.

I.12 Hearing

The lawyer should:

- a. apply for and receive relevant grants of aid before acting for the client at a hearing in the AAT
- b. follow directions of the AAT in a timely manner
- c. inform the client in writing of all directions made by the AAT including:
 - i. filing dates for evidence and statements and
 - ii. dates on which they must attend AAT, confirming their need to attend
- d. If counsel is being briefed ensure:
 - i. a grant of aid has been obtained
 - ii. the brief is delivered in a timely manner
 - iii. counsel is informed of fee payable and the work covered by the grant of aid and
 - iv. the invoice for the appearance is forwarded to counsel
- e. ensure all relevant evidence and witness statements have been obtained, filed and served in accordance with any directions of the tribunal and, in any case, in advance of the hearing
- f. comply with any direction by the AAT to provide a Hearing Certificate

- g. ensure all witnesses are advised in advance of the date and time of the hearing and arrangements are made to ensure they are available for giving evidence; arrange times for their attendance to minimise waiting time; as permitted by the tribunal arrange for evidence to be provided by telephone link where the witness must otherwise travel to provide evidence
- h. if the witness is an expert, ensure:
 - i. a grant of aid has been obtained and
 - ii. the expert is informed of fee payable and the work covered by the grant of aid
- i. ensure that outlines of submissions are prepared, filed and served in accordance with any directions of the tribunal and, in any case, in advance of the hearing
- j. take accurate records of the proceedings including witness names and times of hearing
- k. after the hearing is concluded, meet with the client and explain the outcome of the hearing including if the decision has been reserved what this entails
- l. confirm the outcome in writing to the client, provide sealed copies of orders made or advising of the expected date of the decision if known
- m. ensure all accounts (counsel, expert etc) are finalised in a timely manner.

1.13 Appeals

Following final judgment being delivered by the AAT, write to the client, parent/guardian/nominee and disability advocate informing them of the orders made and reasons for judgment, supplying copies of both sets of documents if they are available.

Consider the appropriateness or otherwise of appeal and where appropriate consider obtaining counsel's opinion on prospects of success of an appeal.

Inform the client, parent/guardian/nominee and disability advocate of their options in relation to appeals to the Federal Circuit Court (FCC)/Federal Court and provide advice explaining:

- a. that appeals to the FCC/Federal Court are on questions of law only
- b. prospects of success of the appeal
- c. risk of costs if applicable
- d. relevant time limits and
- e. need to apply for an extension of the grant of legal aid.

Lawyers before appealing matter to the Federal Court need to familiarise themselves with:

- the Federal Court Rules - [Federal Court Rules 2011](https://www.legislation.gov.au/Series/F2011L01551) (Cth) <https://www.legislation.gov.au/Series/F2011L01551>
- the Federal Court Act - [Federal Court Act of Australia 1976](https://www.legislation.gov.au/Series/C2004A01586) (Cth) <https://www.legislation.gov.au/Series/C2004A01586> and
- the Court's [Practice Notes](http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes) <http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes> and in particular the Administrative and Constitutional Law and Human Rights National Practice Note

There are no specific practice notes in relation to NDIS appeals beyond decisions from the AAT falling into the practice note above.

The practice note covers:

- commencing proceedings
- urgent applications both original and interlocutory
- case management including:
 - first case management hearing

- outline of case
- pre-trial case management hearing
- additional requirements for Administrative law cases
- alternative dispute resolution
- discovery
- evidence
- witnesses
- interlocutory steps
- consent orders involving Federal tribunals and
- pre-trial steps.

There is also a central practice note and general practice notes that are to be followed when conducting matters in the Federal Court.

It is intended that once we have run NDIS matters in the Federal Court that these standards will be updated to reflect what happens in practice.

I.14 Preparation for proceedings in the Federal Circuit Court of Australia or Federal Court

Preparation at FCC/Federal Court

The lawyer should:

- a. obtain client's instructions to proceed with an appeal to the Federal Court or FCC
- b. apply for and receive relevant grants of aid before acting for client in FCC/Federal Court
- c. file application (FCC)/originating application (Federal Court) within relevant time limit
- d. follow directions of the court in a timely manner
- e. inform client in writing of all directions made by the court including:
 - i. filing dates and
 - ii. dates on which they must attend the court
 - iii. , confirming their need to attend
- f. if pleadings (points of claim/statement of claim) are directed by the court, prepare them for settling by counsel
- g. consider whether expert evidence is appropriate, and if so, apply for grant of legal aid and organise report/s
- h. take affidavits from all relevant witnesses at an appropriate stage
- i. consider whether a grant of aid should be obtained for counsel to appear at the mediation and apply for it
- j. issue necessary subpoenas, together with conduct monies
- k. inform witnesses of hearing dates and ensure they have a copy of their affidavit, that they are available for giving evidence and arrange times for their attendance to minimise waiting time
- l. liaise with the other parties/their legal representatives as required.

1.15 Alternative dispute resolution in the FCC/Federal Court

Mediation in FCC/Federal Court

The lawyer should:

- a. attend at mediation (where ordered), with counsel (where appropriate and a grant of aid obtained) and client
- b. be prepared to identify and clarify the issues in dispute, identify questions to be decided by the court and where appropriate, offer solutions to the dispute without proceeding to hearing
- c. ask for a private meeting if the client becomes distressed or otherwise requires legal advice
- d. if the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted
- e. at private meetings during the mediation, carefully explain options and proposals discussed during the mediation to the client and give the appropriate legal advice; the consequences of agreement or failure to reach agreement on any current and future grant of aid should also be discussed; the client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement; reality test all proposals for agreement with the client including risk of costs if complaint proceeds
- f. ensure that any agreement reached is explained in detail to the client and is fully understood by the client
- g. where agreement is reached, liaise with other party/s for filing of consent orders
- h. if an agreement is reached, the lawyer is to write a letter to the client enclosing a copy of the signed agreement and the consent orders (where relevant).

1.16 Attend at the hearing at the FCC/Federal Court and instruct counsel

The lawyer should:

- a. apply for and receive relevant grants of aid before acting for the client at a hearing in the FCC/Federal Court
- b. follow directions of the FCC/Federal Court in a timely manner
- c. inform the client in writing of all directions made by the FCC/Federal Court including:
 - i. filing dates for evidence and statements and
 - ii. dates on which they must attend FCC/Federal Court, confirming their need to attend
- d. If counsel is being briefed ensure:
 - i. a grant of aid has been obtained
 - ii. the brief is delivered in a timely manner
 - iii. counsel is informed of fee payable and the work covered by the grant of aid and
 - iv. arrange for the invoice for the appearance to be forwarded to counsel.
- e. ensure all relevant evidence and witness statements have been obtained, filed and served in accordance with any directions of the court and, in any case, in advance of the hearing
- f. ensure all witnesses are advised in advance of the date and time of the hearing and arrangements made to ensure they are available for giving evidence; arrange times for their attendance to minimise waiting time; as permitted by the court arrange for evidence to be provided by telephone link where the witness must otherwise travel to provide evidence
- g. if the witness is an expert, ensure:
 - i. a grant of aid has been obtained and
 - ii. the expert is informed of fee payable and the work covered by the grant of aid.

- h. ensure that outlines of submissions are prepared, filed and served in accordance with any directions of the Court and, in any case, in advance of the hearing
- i. take accurate records of the proceedings including witness names and times of hearing
- j. after the hearing is concluded, meet with the client and explain the outcome of the hearing including if the decision has been reserved what this entails
- k. confirm the outcome in writing to the client, provide sealed copies of orders made or advising of the expected date of the decision if known
- l. ensure all accounts (counsel, expert etc) are finalised in a timely manner.

I.17 Brief counsel

The lawyer should retain and brief counsel as soon as practicable. The brief to counsel must include all relevant documentation. Instructions to counsel should set out the appearance dates, the basic premise of the case and list the witnesses to be called, whether complainant's outline of submissions needs to be settled and the date for filing, and fees payable under *LAQ's Scale of Fees*.

I.18 Conference with counsel

The lawyer should consider the appropriateness of conferences with counsel and arrange them as early as practicable with counsel and the client. The lawyer must notify the client or parent/guardian/nominee and the disability advocate of the dates and time of any conference with counsel.

I.19 General matters

At each stage of the application the lawyer is to advise the client on prospects of success and merits of their claim and comply with all relevant Grants policies.

At each stage of the application the lawyer must assist the client, where appropriate, to apply for all relevant grants of aid.

I.20 Legal Aid Queensland legal costs and Grants policy

The lawyer must ensure compliance with relevant legislative requirements in relation to legal costs.

The lawyer must explain to the client, the client's liability for costs in the various jurisdictions.

Part J – Acting in appeals to the General Division of the Administrative Appeals Tribunals – Commonwealth Benefits

Lawyers working in this area should be familiar with:

- [Social Security Act 1991](#)
- [Social Security Administration Act 1999](#)
- [Social Security Guide – Guides to Social Policy Law](#)
- [A New Tax System \(Family Assistance\) Act 1999](#)
- [A New Tax System \(Family Assistance\) \(Administration\) Act 1999](#)
- [Family Assistance Guide – Guides to Social Policy Law](#)
- [Australian Guide to Government Payments](#)
- Explanatory memorandum for the legislation and rules
- Administrative Appeals Tribunal and Federal Circuit Court decisions
- [Administrative Appeals Tribunal Act 1975](#)
- [Administrative Appeals Tribunal Regulations 1975](#)
- [Practice Directions, Guides, Guidelines and policies of the Administrative Appeal Tribunal](#)

Specific to disability support pension:

- [Social Security \(Tables for the Assessment of Work-related Impairment for Disability Support Pension\) Determination 2011](#)
- [Guidelines to the Tables for the Assessment of Work-related Impairment for Disability Support Pension \(the Tables\)](#)
- [Social Security \(Active Participation for Disability Support Pension\) Determination 2014](#)

J.1 Notifying, Client, AAT and Lawyer for the Secretary of Human Services (Centrelink) that the grant of aid has issued

Once the grant of legal aid has issued, the lawyer representing the client is to notify in writing the extent of our retainer:

- the relevant registry of the Administrative Appeals Tribunal
 - requesting confirmation of any listed conference or hearing dates
 - requesting delay in listing hearing (if appropriate) whilst legal aid is investigating, and
 - asking that any filed material additional to the T docs is provided in due course.
- Centrelink’s legal representative (“Centrelink”)
 - requesting a copy of the T docs if a client authority is already held.
- the client
 - requesting signature of any authorities required
 - confirming the limits of the grant of legal aid, and

- confirming that legal aid is granted in stages and that at the completion of each stage, an extension of legal aid must be applied for which means LAQ will assess the merit of the matter proceeding to the next stage according to applicable guidelines.

J.2 Considering client's legal capacity

The lawyer representing the client must consider the legal capacity of the client and whether there is sufficient capacity to give instructions to continue acting

and whether taking a statement will not be productive, relevant or probative to the issues in dispute.

The question of capacity should be revisited throughout the conduct of the matter.

The lawyer is to refer to the [Queensland Handbook for Practitioners on Legal Capacity](#) and take appropriate and relevant action as required.

J.3 Investigation

Upon a grant of legal aid issuing the lawyer must:

- request Centrelink provide a copy of the T documents,
- consider what and when any further expert evidence should be obtained,
- consider whether any vacation/adjournments/extensions should be sought for current listing dates and/or directions,
- consider whether client should make a new claim (eg disability support pension) and advise accordingly (the question of a new claim should be revisited throughout the conduct of the matter),
- ensure that necessary grants of aid are approved before commissioning any expert reports.

Upon concluding the investigation, the lawyer must:

- If there is no merit:
 - advise outcome of investigation
 - next options available to client
 - assist with withdrawal application if appropriate, and
 - close file in compliance with the civil law case management standards.
- If there is merit:
 - apply for extension of aid for representation including aid for counsel.

J.4 Case conferences

A case conference is informal and confidential - what is said cannot be used at the hearing.

Conferences are run by a Tribunal Member or Conference Registrar and the lawyer for Centrelink attends. Conferences are usually by phone.

Conferences concern:

- what is happening with the appeal,
- whether the appeal can be settled or some of the issues resolved,
- timetabling the case to hearing.

The lawyer is to:

- consider whether it is beneficial for the case and or the client for the client to attend the conference.

- Advise the client about the purpose of conferences and obtain their informed instructions as to whether they are attending.
- Advise the Tribunal as to who is attending any conference and contact details.

If the lawyer is to seek an adjournment, they must do so in advance of the conference and in compliance with the relevant practice direction.

Consider your realistic objectives in attending the conference and prepare accordingly.

Keep a file note of the conference, its outcomes, next steps and any agreements made by the parties.

J.5 If matter settles

If the matter settles Centrelink's representative will draft an agreement.

The lawyer is to:

- review the agreement
- explain the agreement to the client and how it will be implemented
- forward the agreement to the client for them to sign or obtain their written instructions to sign the agreement
- forward the signed agreement to Centrelink or advise acceptance of terms with Centrelink
- once the AAT has approved the order send a copy to the client.

J.6 Hearing

The lawyer should:

- apply for and receive relevant grants of aid before acting for the client at a hearing in the AAT
- manage compliance with directions of the AAT
- brief counsel and ensure:
 - a grant of aid has been obtained
 - the brief to counsel includes all relevant documentation
 - instructions to counsel set out the appearance dates, the basic premise of the case, whether client's SFICs (Statement of Facts, Issues and Contentions) need to be settled and the date for filing,
 - the brief is delivered in a timely manner
 - counsel is informed of the fee payable and the work covered by the grant of aid, and
 - the invoice for the appearance is forwarded to counsel
- ensure all legal arguments (Statement of Facts, Issues and Contentions) and relevant evidence and witness statements have been obtained, filed and served in accordance with any directions of the tribunal and, in any case, in advance of the hearing
- prepare in consultation with counsel a brief for the Member in accordance with the practice direction
- ensure all witnesses are advised in advance of the date and time of the hearing and arrangements are made to ensure that they are available for giving evidence
- if the witness is an expert, ensure:
 - a grant of aid has been obtained and
 - the expert is informed of the fee payable and the work covered by the grant of aid

- ensure that an outline of submissions is prepared, filed and served in accordance with any directions of the tribunal and, in any case, in advance of the hearing
- take accurate attendance notes of the proceedings including witness names and times of hearing
- after the hearing is concluded, meet with the client and explain the outcome of the hearing and, if decision is reserved, the outcome once the decision issues
- confirm any decision or outcome in writing to the client, provide sealed copies of orders made
- ensure all accounts (counsel, expert etc) are finalised in a timely manner.

J.7 Appeals

Consider the appropriateness or otherwise of appeal and where appropriate consider obtaining counsel's opinion on prospects of success of an appeal.

Inform the client of their options in relation to appeals to the Federal Court and provide advice explaining:

- that appeals to the Federal Court are on questions of law or procedural fairness only
- prospects of success of the appeal
- risk of costs
- relevant time limits, and
- the procedure to apply for a grant of legal aid for representation.

Lawyers before appealing matter to the Federal Court need to familiarise themselves with:

- the [Federal Court Rules - Federal Court Rules 2011 \(Cth\)](#)
- the [Federal Court Act - Federal Court Act of Australia 1976 \(Cth\)](#)

and

- the [Court's Practice Notes](#)

in particular the Administrative and Constitutional Law and Human Rights National Practice Note

J.8 Preparation for proceedings in the Federal Court

The lawyer should:

- obtain client's instructions to proceed with an appeal to the Federal Court
- apply for and receive relevant grants of aid before acting for client in the Federal Court
- file originating application within relevant time limit
- follow directions of the court in a timely manner
- inform client in writing of all directions made by the court including:
 - filing dates and
 - dates on which they must attend the court, confirming their need to attend
- if pleadings (points of claim/statement of claim) are directed by the court, prepare them for settling by counsel
- consider whether expert evidence is appropriate, and if so, apply for grant of legal aid and organise report/s
- take affidavits from all relevant witnesses at an appropriate stage
- consider whether a grant of aid should be obtained for counsel to appear at the mediation and apply for it

- issue necessary subpoenas, together with conduct monies
- inform witnesses of hearing dates and ensure they have a copy of their affidavit, that they are available for giving evidence and arrange times for their attendance to minimise waiting time
- liaise with the other parties/their legal representatives as required.

J.9 Alternative dispute resolution in the Federal Court

Mediation in Federal Court

The lawyer should:

- attend at mediation (where ordered), with counsel (where appropriate and a grant of aid obtained) and client
- be prepared to identify and clarify the issues in dispute, identify questions to be decided by the court and where appropriate, offer solutions to the dispute without proceeding to hearing
- ask for a private meeting if the client becomes distressed or otherwise requires legal advice
- if the client starts to interrupt when someone else is speaking, quietly remind them that interrupting is not permitted
- at private meetings during the mediation, carefully explain options and proposals discussed during the mediation to the client and give the appropriate legal advice; the consequences of agreement or failure to reach agreement on any current and future grant of aid should also be discussed; the client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement; reality test all proposals for agreement with the client including risk of costs if complaint proceeds
- ensure that any agreement reached is explained in detail to the client and is fully understood by the client
- where agreement is reached, liaise with other party/s for filing of consent orders
- if an agreement is reached, the lawyer is to write a letter to the client enclosing a copy of the signed agreement and the consent orders (where relevant).

J.10 Attend at the hearing at the Federal Court and instruct counsel

The lawyer should:

- apply for and receive relevant grants of aid before acting for the client at a hearing in the Federal Court
- manage compliance with directions of the Federal Court
- brief counsel and ensure;
 - a grant of aid has been obtained
 - the brief to counsel includes all relevant documentation
 - instructions to counsel set out the appearance dates, the basic premise of the case, whether client pleadings need to be settled and the date for filing,
 - the brief is delivered in a timely manner
 - counsel is informed of the fee payable and the work covered by the grant of aid, and
 - the invoice for the appearance is forwarded to counsel
- ensure that outlines of submissions are prepared, filed and served in accordance with any directions of the Court and, in any case, in advance of the hearing
- take accurate attendance notes of the proceedings including witness names and times of hearing

- after the hearing is concluded, meet with the client and explain the outcome of the hearing and, if decision is reserved, the outcome once the decision issues
- confirm any decision or outcome in writing to the client, provide sealed copies of orders made
- ensure all accounts (counsel, expert etc) are finalised in a timely manner.

J.11 General matters

At each stage of the application the lawyer is to advise the client on prospects of success and merits of their claim and comply with all relevant Grants policies.

At each stage of the application the lawyer must assist the client, where appropriate, to apply for all relevant grants of aid.

J.12 Legal Aid Queensland legal costs and Grants policy

The lawyer must ensure compliance with relevant legislative requirements in relation to legal costs.

Part K – Acting in consumer protection matters

Lawyers working in this area should be familiar with the relevant Acts, Regulations, Regulator Guidance, case law and ombudsman guidance in the following areas of practice:

- Time limits and capacity to contract
 - Limitation of Actions Act 1974(Qld)
 - s 79 of the Judiciary Act 1903 (Cth)
 - s 5(2) Sale of Goods Act 1896 (Qld)
 - Uniform Civil Procedure Rules 1999 (Qld)
- Consumer Credit:
 - National Consumer Protection Act 2009
 - National Credit Code (sch 1)
 - National Consumer Credit Protection Regulations 2010
 - Australian Securities and Investments Commission Act 2001
 - ASIC Regulatory Guides particularly RG 209
 - Banking Code of Practice
 - Customer Owned Banking Code of Practice
 - Mortgage and Finance Association of Australia's Code of Practice
 - Regulator: Australian Securities & Investment Commission
 - Ombudsman: Australian Financial Complaints Authority
- Banking
 - E-payments Code
- Securities

- Property Law Act 1974 (Qld)
- Personal Property Securities Act 2009
 - Personal Property Securities Register
- Bankruptcy:
 - Bankruptcy Act 1966
 - Bankruptcy Regulations 1996, particularly 6.03
 - Regulator: Australian Financial Security Authority
- Debt Collection:
 - Uniform Civil Procedure Rules 1999
 - Section 60(1) Social Security Act 1991
 - Section 90 UCPR and Sch 1 Civil Proceedings Act 2011
 - Section 116 Bankruptcy Act 1966
 - Debt collection guideline for collectors & creditors
 - Debt Collectors (Field Agents and Collections Agents) Act 2014
 - Centrelink Code of Operations – Recovery of debts from income support payments
- Consumer Law:
 - Competition and Consumer Act 2010
 - The Australian Consumer Law (sch 2)
 - Particularly unsolicited sales, unfair terms, consumer guarantees
 - Competition and Consumer Regulations 2010
 - Regulator: ACCC
 - Door to door sales/unsolicited consumer agreements
 - Competition and Consumer Act 2010 (Cth)
 - Sections 69, 70, 71, 72 of the Australian Consumer Law (ACL)
 - Competition and Consumer Regulations 2010 (Cth), reg 81
 - Do Not Call Register Act 2006 (Cth)
 - Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth)
 - Privacy Act 1988 (Cth)
 - Fair Trading Act 1989 (Qld)
- Credit Reporting:
 - Privacy Act 1988
 - Privacy (Credit Reporting) Code 2014
 - Regulator: Australian Information Commissioner
- Insurance:
 - Insurance Contracts Act 1984(Cth)
 - General Insurance Code of Practice 2020
- Telecommunications:

- Telecommunications Consumer Protections Code (TCP Code)
- Telecommunications (Consumer Protection and Consumer Standards) 1999 (Cth) (especially see the Universal Service Obligations)
- Regulator: Australian Communications and Media Authority
- Ombudsman: Telecommunications Industry Ombudsman
- Cars
 - Motor Dealers and Chattel Auctioneers Act 2014
 - Section 50A Fair Trading Act 1989 (lemon law)
 - Queensland Civil and Administrative Tribunal Act 2009
 - Regulator: Office of Fair Trading
 - Complaints: OFT, QCAT
- Training
 - Regulator: Australian Skills Quality Authority
 - Ombudsman: VET Student Loans Ombudsman, Queensland Training Ombudsman
- Gym
 - Fair Trading (Code of Practice-Fitness Industry) Regulation 2003
- Solar Panels
 - Solar Retailer code of conduct
 - Regulator: ACCC and see Clean Energy Regulator
- Holiday credits/timeshare
 - Australian Securities and Investments Commission Act 2001
 - ATHOC Code of Practice
- Dating agencies
 - Introduction Agents Act 2001 (Qld)
- Utilities:
 - Rates
 - Local Government Act 2009
 - Local Government Regulation 2012
 - Energy
 - Customer hardship policy guideline
 - Regulator: Australian Energy Regulator
 - Ombudsman: Energy & Water Ombudsman Queensland
 - Body Corporate
 - S 145(6) Body Corporate and Community Management (Standard Module) Regulation 2008
 - Regulator: Office of the Commissioner for Body Corporate and Community Management
 - Water

- South East Queensland Water (Restructuring) Act 2007
- SEQ Water Supply Code
- Ombudsman: Energy & Water Ombudsman Queensland
- Tolls
 - Ombudsman: Tolling Customer Ombudsman

K.1 Notifying client of extent of retainer

Once the grant of legal aid has issued, the lawyer representing the client is to open the file in accordance with Part A of these Case Management Standards – civil law. The lawyer should obtain the client's authority, request any documents in the client's possession and advise the scope of the retainer.

If court proceedings are threatened or on foot, the lawyer will advise the client or take steps to protect the client's interests by:

- obtaining written advice from the other party that it will not take further action pending investigation outcome; or
- lodge a complaint with the relevant ombudsman scheme.

The lawyer will ensure that each grant of aid to progress the matter is obtained as necessary.

K.2 Investigation

Upon receipt of client authority, the lawyer will apply to the other party pursuant to the Privacy Act or National Credit Code (or other relevant legislation) for a copy of all documents relevant to the dispute.

The lawyer will analyse documents received to identify breaches of the relevant law and codes of practice and to develop a strategy for the matter.

Lawyers will take a preliminary view as to causes of action and obtain any third-party documents or apply for a grant of aid for expert reports as necessary.

The lawyer will determine whether the matter is suitable for internal dispute resolution or whether it is appropriate to lodge a dispute in an ombudsman scheme.

Upon concluding the investigation, the lawyer must:

- If there is no merit:
 - advise outcome of investigation.
 - next options available to client,
 - consider and make appropriate referrals (such as financial counselling),
 - assist with a settlement offer if appropriate, and

close file in compliance with the civil law case management standards and K. 10 below.

K.3 Statement

The lawyer will determine whether a statement from the client or any other party is necessary and if so, obtain the statement and ensure the client/third party has the opportunity to review, correct and adopt the statement by:

- where the person is literate:
 - obtaining the person's email acceptance of the statement after opportunity to read and correct it or obtaining the person's signature to the statement.
- where the person has limited literacy:

- by reading the statement to the person, recording file notes supporting this and, having afforded the client the opportunity to correct it, detailing the client's amendments to the statement and acceptance of the statement.

K.4 Internal Dispute Resolution

The lawyer will advise the client whether an IDR complaint is necessary to advance the resolution of the dispute having regard to:

- the urgency of the matter
- whether lodgement with an ombudsman scheme is necessary to stop further court proceedings or preserve an 'at risk' asset; and
- the necessity to comply with ombudsman scheme rules by exhausting IDR first unless exempted.

The lawyer will make an IDR complaint by:

- Identifying the appropriate contact person and or role and the address (usually found on the ombudsman website) for the IDR complaint.
- Drawing a complaint sufficient to identify the grounds of the complaint, any necessary evidence held and proposing a solution.
- Obtain the client's informed instructions to the IDR complaint.
- Communicating any response to the client as soon as practicable and provide advice and option to settle or advance the dispute to the client.
- Consider if a chronology should be prepared in anticipation of further dispute.
- Consider if a list of documents ought to be prepared and attend to this.
- Ensure that the client is informed to provide any further documents now identified.

K.5 External Dispute Resolution

The lawyer will determine the optimal forum for any dispute and lodge a dispute with an ombudsman scheme upon the client's authorisation and in accordance with the terms of reference, rules or procedures in place with the relevant ombudsman scheme. (EDR)

The lawyer will:

- explain to the client:
 - the EDR process
 - relative merits of accessing the scheme as opposed to court proceedings
 - inform the client of realistic range of outcomes possible
 - ensure the client is informed of the need to proceed to surrender or sell assets, keep up with loan repayments or otherwise preserve their best interests pending outcome of the dispute; and
- in accordance with a developed case strategy, provide necessary information to the EDR scheme having regard to relevant statute, caselaw, codes of conduct and guidance from the scheme as to a fair outcome in the matter; and
- utilise chronologies, lists of documents as an aid to advocate the client's position if deemed useful.

Where submissions have been received from the respondent, the lawyer will:

- explain to the client the issues raised by the respondent; and
- advise client about possible outcomes and revised prospects if relevant.

The lawyer will consider if further submissions are appropriate having regard to whether they are necessary to clarify or further explain matters in dispute.

If further submissions are made, the lawyer ought to provide a copy to the client and/or if required (because of new factual material) obtain instructions prior to submitting.

Conciliation conference

The lawyer should consider requesting a conference where it is in the client's interests. Alternatively, the EDR scheme may require one and the lawyer should consider if there is any reason that the conference is inappropriate (given the client's vulnerability – see Language Services Policy) and respond to such request accordingly.

The following action is required for a conciliation conference:

- Prior to the conference, discuss with the client the conference procedure and confidentiality provisions and any monetary and non-monetary outcomes sought by the client.
- Research decided cases and published EDR guidance and advise the client about possible outcomes and remedies.
- During the conference, ensure the client has an opportunity to be heard and their issues addressed.
- Use break-outs to reality test and to ensure the client is freely proposing and accepting any concessions and or settlement offers.
- Ensure any settlement reached is viable, sustainable and appropriate.

Following the conference, if an agreement is reached by the parties, the lawyer should write a letter to the client confirming the agreement and facilitate acceptance of the agreement.

Following the conference, where no agreement is reached, advise the client in writing of further EDR process (Recommendation, Determination), and the client's and the respondent's options in relation to accepting the Recommendation or Determination.

EDR process – recommendation and determination

Where the matter proceeds to a Recommendation by the relevant EDR scheme, the lawyer should:

- a. Inform the client of the relevant process.
- b. Inform the client of the client's options in relation to accepting the Recommendation.
- c. Inform the client about the respondent's options in relation to accepting the Recommendation.
- d. Where further submissions or information is sought for the purposes of the Recommendation, or the client has the opportunity to respond to matters raised by the respondent, the lawyer should:
 - i. Consider whether further submissions or information are necessary or desirable to clarify the issues in dispute.
 - ii. Draft any further submissions, obtaining further instructions where necessary.
 - iii. Obtain instructions to submit the further submissions along with any additional supporting documentation or material.
- e. Discuss possible outcomes and prospects with the client;
- f. Once the Recommendation is received, the lawyer should:
 - i. Write to the client and provide a copy of the Recommendation,
 - ii. Confirm the relevant time limits for accepting or rejecting the Recommendation, and
 - iii. Communicate the client's acceptance or rejection of the Recommendation to the EDR Scheme in writing.

Where the matter proceeds to a Determination by the relevant EDR scheme, the lawyer should:

- a. Inform the client of the relevant process.

- b. Inform the client of the client's options in relation to accepting or rejecting the Determination and further legal options (including court proceedings).
- c. Inform the client about the respondent's obligations in relation to accepting the Determination.
- d. Where further submissions or information is sought for the purposes of the Determination, or the client has the opportunity to respond to matters raised by the respondent, the lawyer should:
 - i. consider whether further submissions or information are necessary or desirable to clarify the issues in dispute
 - ii. draft any further submissions, obtaining further instructions where necessary\
 - iii. obtain instructions to submit the further submissions along with any additional supporting documentation or material; and
 - iv. discuss possible outcomes and prospects with the client.
- e. Once the Determination is received, the lawyer should:
 - i. Write to the client and provide a copy of the Determination.
 - ii. Confirm the relevant time limits for accepting or rejecting the Determination.
 - iii. Communicate the client's acceptance or rejection of the Determination to the EDR scheme in writing, and
 - iv. If the Determination is rejected, write to the client and confirm further legal options (including court proceedings) and relevant time limits.

K.6 Brief Counsel

Aid is required to brief counsel either because a specific issue at law requires an opinion or as a prerequisite to aid for court proceedings.

Once a grant of aid is obtained, the lawyer should retain, and brief counsel as soon as relevant documents and the client statement is to hand once a grant of aid has been obtained. The brief to counsel must include all relevant documentation. Instructions to counsel should set out the appearance dates (where applicable), the basic premise of the case and the limit of the grant (to provide an opinion on the application of the law to the facts and/or prospects and/or the appropriate forum for litigation).

Lawyers are referred to A4. Counsel in the Case Management Standards (Civil).

Further briefs or supplementary briefs for court should include names witnesses to be called (where applicable), whether contentions/pleadings need to be settled and the date for filing, and fees payable pursuant to Legal Aid Queensland Scale of Fees.

K.7 Litigate

Aid for court, choice of forum

Lawyers need to consider whether it is appropriate to commence or continue proceedings in a regional court or request a consent transfer of proceedings to Brisbane.

It is also possible to enter a conditional defence where the proceedings have been instituted in the wrong forum.

Lawyers note the Public Sector Code of Conduct to be economical and ensure appropriate use of public resources.

When it is not appropriate for a Brisbane forum, lawyers need to apply for grants of aid to travel. The lawyer will need to apply for the appropriate grants after investigating travel costs and considering the LAQ's travel policy.

Urgent applications for injunctive relief

The lawyer should apply for aid for counsel to stay enforcement and/or set aside an order where such application becomes necessary.

Upon identifying that appropriate urgent relief is likely to be attained and will lead to a sustainable benefit to the client and/or public interest, the lawyer will inform the client that urgent action is viable and urgently apply for a grant of aid.

The lawyer will obtain an undertaking as to damages prior to filing any proceedings.

The lawyer will inform the client of the costs consequences of proceeding with the application.

Where there is no significant factual dispute between the parties, the lawyer will, if time is limited, prepare the relevant court documents including an affidavit in order to preserve the client's interests without first attending to the usual requirements to obtain documents and formal statements.

Where there is a factual dispute the lawyer will obtain evidence in support of the client's assertions as to that dispute (if it is likely to be relevant to the judicial consideration of the application) to exhibit to an affidavit.

Once the urgent hearing is over, the lawyer will consider the necessity to file court documents or investigate matters prior to any return date where the usual pre-litigation inquiries could not be made before the urgent hearing.

The lawyer will obtain instructions and apply for an extension of aid as required.

Where there is a court required mediation

The lawyer has a duty to become familiar with the court rules and practice particular to mediation in the jurisdiction where the mediation may take place.

The lawyer will consider requesting aid specific for the mediation.

The lawyer will explain the purpose and process of the impending mediation to the client. The lawyer will explain outcomes likely to eventuate from the mediation.

The lawyer will:

- a. Ensure that if the client or lawyer is to appear by telephone or video link this is arranged with the approval of the court.
- b. Attend at mediation, with counsel (where appropriate and a grant of aid obtained) and client.
- c. Be prepared to identify and clarify the issues in dispute, identify questions to be decided by the court and where appropriate, offer solutions to the dispute.
- d. Ask for a private meeting if the client becomes distressed or otherwise requires legal advice.
- e. At private meetings during the mediation, carefully explain options and proposals discussed during the mediation to the client and give the appropriate legal advice. The consequences of agreement or failure to reach agreement on any current and future grant of aid should also be discussed. The client should be encouraged to compromise wherever it is appropriate, but not forced to reach agreement. Reality test all proposals for agreement with the client including risk of costs if matter proceeds.
- f. Ensure that any agreement reached is explained in detail to the client and check that the client understands the agreement.
- g. Where agreement is reached, ensure adequate notes of the agreement are kept and liaise with other party/s for formal settlement agreements and or filing consent orders.
- h. If an agreement is reached, the lawyer is to write a letter to the client enclosing a copy of the signed agreement and the consent orders (where relevant).

Instruct counsel at a hearing

The practitioner should ensure all witnesses are available for giving evidence and arrange times for their attendance to minimise waiting time. The practitioner should take accurate records of the proceedings including witness names and times of hearing.

The lawyer will facilitate and ensure counsel accounts are processed for payment.

K.8 Resolve dispute

Consent orders

Where a hearing date is vacated by consent or there is interim or final consent orders lawyers will ensure that all necessary documents are attended to in a timely manner.

Prior to any agreed outcome, the lawyer will advise the consequences of settlement upon the continuation of the dispute and prospects of success if the matter continues.

The lawyer will ensure that the client is given opportunity to consider their circumstances prior to accepting any settlement offer or recommendation.

If a matter resolves by agreement, recommendation, determination, court order or otherwise the lawyer will explain the obligations of the resolution for the client and provide a copy of any relevant orders.

K.9 Appeal rights

Consider the appropriateness or otherwise of appeal and where appropriate consider obtaining counsel's opinion on prospects of success of an appeal.

Inform the client of their options in relation to appeals and provide advice explaining:

- whether an appeal will be a hearing de novo or confined to questions of law or procedural fairness only
- prospects of success of the appeal;
- risk of costs
- relevant time limits; and
- the procedure to apply for a grant of legal aid for representation.

K.10 Complaint to a Regulator

The lawyer will assess the appropriate regulator in relation to the complaint.

The Lawyer will advise the client of the advantages and disadvantages of lodging a complaint with a regulator before the complaint is made.

In particular, the lawyer will explain the likelihood of the complaint directly benefitting the client before making the complaint.

The complaint will be made in a timely manner and with confirmed instructions from the client.

The complaint will contain sufficient information to enable the regulator to determine whether an investigation should ensue and the nature of any breaches of legislation.

K.10 Close File

The lawyer will complete a checklist and comply with A5 of these civil case management standards.

The lawyer will return original client documents and advise on how long Legal Aid Queensland will store the file.

The lawyer will advise any time limits and referrals which may be relevant at this time.

The lawyer will advise the client which documents the client should retain in the event there are further difficulties.

The lawyer will consider any credit reporting consequences for the client upon closure of the file.

The lawyer will consider whether it is appropriate to write a deidentified case study for the file on the basis of assisting with systemic policy change.

Document effective date

December 2020

Annexures

- A. Client information sheet
- B. Best practice guidelines for lawyers working with people who have experienced domestic violence
- C. Administration of war veteran's matters checklist
- D. Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients
- E. Guidelines for working with interpreters
- F. Best practice guidelines for working with children and young people
- G. Best practice guidelines framework: Working with children and young people