

Case management standards — criminal law

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Introduction

These Case Management Standards have been prepared to assist Legal Aid Queensland staff and preferred suppliers who practice in the criminal jurisdiction.

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 pre-requisite 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 statute law, rules and practice directions of any courts which may issue from time to time.

Practitioners appearing as duty lawyers in the magistrates and childrens court in Queensland should also refer to LAQ's [Criminal Law Duty Lawyer Handbook](#) for useful practical guidance.

Part A — General

A1. Initial interview

At the initial interview, the practitioner is to explain the legal process and procedure relating to the client's matter. This should include an explanation of the criminal justice process, the client's options in respect to their hearing and sentencing. In addition, when relevant, the nature and responsibilities of community service, fines, probation orders etc should be explained.

A2. Grant of aid

Approving authority

The approving authority of a grant of aid is Legal Aid Queensland (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 Practitioner 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 Practitioner must not commence work until appropriate arrangements for the payment of the contribution have been made with the client.

Payment

LAQ will pay the practitioner in accordance with LAQ's set schedule of fees less the initial contribution from the client (where applicable). The schedule of fees includes the scales of fees, rules for payment of accounts and claiming guidelines provided by LAQ.

A3. Management of the client

Client information

Following approval for a grant of aid, the practitioner is to provide the client with the information contained in the *Client information sheet* attached as Annexure A. If the matter is urgent and it is not appropriate to send the Information Sheet to the client, the Information Sheet must be given to the client by the practitioner at the first available opportunity. An appropriate record must appear on the file.

Communications

The practitioner must communicate regularly with the client. The following sample letters to clients are attached as annexures:

- *Letter to client confirming appointment* (Annexure B)
- *Letter to client advising of next court date* (Annexure C)
- *Letter to client advising of sentence listing* (Annexure D).

Bail application

The practitioner must give ongoing consideration to the client's bail position and communicate about bail issues with the client throughout the case. Upon receipt of a bail decision, the practitioner must communicate the results to the client. A sample copy of a *Bail instructions* document is attached as Annexure E.

Aboriginal and Torres Strait Islander clients

The practitioner must be aware of and comply with the *Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients*. A copy of the Best practice guidelines is attached at Annexure F.

The practitioner 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 Annexures G and H.

Interpreters

The practitioner must be aware of and comply with the *Guidelines for working with interpreters*. The guidelines are attached at Annexure I.

Protocol

Practitioners should be aware of the existing *protocol between LAQ and the Crime and Corruption Commission (CCC)* regarding clients who are or have been in witness protection. A copy of the protocol is attached at Annexure J.

A4. Management of the file

Prosecution material

All relevant prosecution material must be obtained by the practitioner. In a lower court matter, examples include bench charge sheets, QP9's, criminal history, police brief, record of interview. In a higher court matter, examples include indictment, criminal history, record of interview, depositions, police and/or committal briefs.

In cases involving child exploitation material (CEM) the practitioner must refer to the LAQ guidelines relating to the handling of CEM. The guidelines are attached in Annexure K.

Defence material

The practitioner must obtain all relevant defence material sufficient to conduct the client's matter. The practitioner must obtain a signed, dated and witnessed copy of the client's instructions which includes details of all charges against the client and details of how the client wishes to plead and where appropriate the reasons why. Sample copies of client *Committal instructions*, *Trial instructions* and *Plea of guilty instructions* are attached at Annexures L, M and N. The practitioner must obtain a signed, dated and witnessed copy of the client's statement. Any potential witness statements should be included with the client's statement. Where appropriate, comments on depositions should be obtained. Sample *Authority by client* and *Authority for release of medical records* documents are attached at Annexures O and P for reference.

Personal particulars record of client

A signed, dated and witnessed personal particulars statement must be obtained from the client. The type of information which it may contain include details concerning the client's education, employment, criminal history, relevant family information and character/work references. A sample *Personal statement* is attached at Annexure Q. Refer also to the *Penalties and Sentences Act*, Sections 11 and 12.

Bail application

The file must demonstrate, on an ongoing basis, that bail issues have been considered. If an application is to be mounted, it must comply with the requirements of Criminal Practice Rules 1999. When applying for a grant of aid for a bail application, the practitioner is required to provide sufficient information in order to enable LAQ to assess the merit of the application. Upon receipt of a bail decision, the practitioner must communicate the results to the client and note the file accordingly.

Other pending matters

The practitioner should inform the Magistrate of a nexus or link with his/her client's cases before the higher courts.

Ex officio indictments

The practitioner must provide a Certificate of Readiness to the ODPP within one month of receipt of the proposed ex officio indictment and agreed schedule of facts.

Pre trial review

Prior to the trial review, the practitioner must confer with the client, brief counsel, confer with counsel and confer with the prosecution to determine the way forward. The practitioner must be in a position to confirm conferencing and the status of considerations at the trial review where a trial date should be listed.

Electronic mentions

Where possible the practitioner should consider using out-of-court means to dispense of routine matters previously considered by mentions, i.e. electronic mentions.

Instructing agents

The practitioner must complete a *District/Supreme Courts Callover Memo* (higher courts memo) where instructing an agent to appear at mentions in the higher courts. The practitioner must forward the completed higher courts memo to the agent by close of business on the day prior to the mention. A *District/Supreme Courts callover memo* is attached at Annexure R.

Negotiation with ODPP

All submissions to the ODPP must be in writing and their quality to be such that the true issues are identified. Submissions to the ODPP should be made in a timely manner, e.g. prior to the first trial review date.

Expert witnesses

The practitioner must disclose expert evidence (such as psychological reports) to the prosecution in accordance with S.590B of the Criminal Code, where it is intended to adduce expert evidence in relation to an issue in the trial or sentence. A sample *Psychiatrist letter* is attached at Annexure S. In a sentence, contact should be made with the court to determine whether the sentencing judge requires copies of expert reports so that these can be provided to the court at least two days prior to sentencing.

Communications

The file must demonstrate on-going written and oral communication.

Finalisation

The finalised file must contain all documentation supporting the practitioner's claim for payment rendered to LAQ.

Court procedures

The practitioner must be aware and comply with criminal practice rules and practice directions as issued by the court.

Comparative sentences database

Following completion of the matter, the practitioner is required to provide LAQ with comparative sentence information for specific serious crime matters. LAQ is the determining authority for the type of matters which should be reported.

Pro forma instruction sheet

A *Lower court plea of guilty pro forma instruction sheet* is attached at Annexure T.

A5. 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 ordered index
- b. Observations to counsel demonstrating legal acumen in analysis of the case and material and identifying and commenting upon relevant issues, and clear 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 practitioner, or the LAQ pro forma invoice if the client is represented by a private practitioner.

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

A6. Completion of matter

The client is to be advised of the outcome, the penalties imposed and appeal options before the file is closed. A sample *Final letter* to a client is attached at Annexure U.

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

A7. Initial / Final contribution

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

A8. Appeal

The practitioner must consider potential merit for appeal. If merit is considered, the practitioner must assist the client to complete and lodge the appeal notice and the Legal Aid Application Form.

A9. Checklist

Should the practitioner choose to use a checklist for the file, a sample copy of a *Criminal practice checklist* is attached as Annexure V.

Part B — Case management standards specific to duty lawyer

B1. Duty lawyer services

Legal Aid Queensland's duty lawyer services offer free, initial legal advice and representation to people charged with criminal and some traffic offences, who are on bail or in custody in Queensland.

B2. The duty lawyer

The duty lawyer must be a lawyer with a current practising certificate and duty lawyer accreditation approved by Legal Aid Queensland. Separate accreditation is required for magistrates and childrens courts. Practitioners undertaking legal work in juvenile crime must also have complied with the requirements of Legal Aid Queensland's youth crime accreditation training.

B3. Arrival

Duty lawyers must arrive at the court in sufficient time to view the prosecution brief of evidence (QP9), see prospective clients, take instructions and provide advice. Duty lawyers must attend to defendants in custody and in the court precincts.

B4. Preparation

There is generally a room made available for the duty lawyer to interview clients. The duty lawyer should get a copy of the court list (if available) from the prosecutor or court staff. The duty lawyer should have access to:

- a supply of Criminal law duty lawyer forms and Criminal law duty lawyer session reports
- a Duty Lawyer Handbook
- the *Criminal Code*
- the *Summary Offences Act 2005*
- the *Bail Act 1980*
- the *Penalties and Sentences Act 1992*, and
- Legal Aid Queensland application forms.

B5. Instructions

Duty lawyers should deal with clients the same day and not remand matters because the client or matter is difficult. Duty lawyers must be aware of and comply with the *Criminal practice guideline: Taking instructions from clients*. A copy of the guideline is attached at Annexure W.

Duty lawyers must complete a *Criminal law duty lawyer form* and record their client's instructions and their advice to clients. Client's instructions will depend on their decision in their matter, eg basic instructions taken on a guilty plea in a straight forward matter might include:

- client's version of events
- financial and employment background
- family and marital status
- previous convictions
- summary of court submissions.

Where practicable, duty lawyers should have the client sign the completed form. Where it is not practicable to obtain the client's signature at the time of taking instructions, the following procedure should be adopted:

- a) The duty lawyer should explain to the client it is preferable the client has the opportunity to peruse the duty lawyer form and confirm by signature the client's instructions and that an adjournment of the matter will be required for that process to occur.
- b) The duty lawyer should explain to the client that if the client wishes to waive the opportunity to peruse and sign the document so as to have their matter dealt with as soon as possible, the client's instructions may, where practicable, need to be confirmed by other means, eg by another appropriate person witnessing the instructions.
- c) The duty lawyer should record on the duty lawyer form and have the client verbally confirm:
 - i. if the instructions between the client and the duty lawyer are to be witnessed, that the client consents to the instructions being witnessed
 - ii. that the client wishes to have their matter dealt with as soon as possible and therefore waives the opportunity to read and sign the written record of the client's instructions
 - iii. the client's instructions as to their plea.
- d) Any witness to instructions should be asked to sign the duty lawyer form as witness of the client confirming those instructions.
- e) The duty lawyer must request that the presiding magistrate ask the client how they plead to each charge, as required by s 145(1) of the *Justices Act 1886*, rather than having the duty lawyer enter pleas on the client's behalf.

B6. Case conferencing

Duty lawyers for defendants can engage in case conferences with prosecution representatives to discuss issues in dispute and resolve proceedings in line with the Criminal Jurisdiction Reform Administrative Arrangement. Duty lawyers should attempt to negotiate with prosecutors, if reasonably practical and considering their service demands.

Duty lawyers can negotiate for straight forward issues such as:

- amending, substituting or withdrawing charges
- reaching a common agreement on the factual basis for a plea.

Due to the limitations of duty lawyer services, different duty lawyers will often appear on separate occasions for defendants. This means complex, prolonged negotiations will be impractical.

Duty lawyers should not attempt case conferencing for matters requiring complex and lengthy negotiations. These matters should be adjourned and defendants should be advised to apply for legal aid or get private legal representation.

For more information on case conferencing, read Practice Direction 9 of 2010, issued by the Chief Magistrate.

B7. Pleas and remands

Duty lawyers can enter guilty pleas, make bail applications or request remands for clients. Duty lawyers should not conduct trials or committals, or apply for extradition proceedings requiring more preparation in the time available. For more information, read the duty lawyer guidelines.

B8. Acting for co-defendants

Duty lawyers who intend to act for co-defendants must ensure that they comply with the ethical obligation to act in the best interests of their clients. When seeking to act for two or more co-defendants, a duty lawyer must:

- be satisfied of the requirements of Rule 11 of the Australian Solicitors Conduct Rules; and
- have regard to the legal authorities which interpret ethical practice in relation to acting for co-accused, such as *R v Pham* [2017] QCA 43.

B9. Prosecutors

If it is possible to get details of clients requiring a duty lawyer, the duty lawyer should ask the prosecutor to provide a QP9 form containing an accurate summary of the offences and details of any previous convictions known to the police, so meaningful instructions can be taken from the client. Duty lawyers should check with the prosecutor the names of defendants appearing and their instructions to enter a plea or ask for a remand.

B10. Bail

For clients in custody, duty lawyers should consider applying for bail. If applying for bail, ask the prosecutor if the application will be opposed, or if they will be requesting any bail conditions.

Record bail instructions on the Criminal law duty lawyer form, or if the application is refused, attach the form to the Legal aid application form.

B11. Applications for legal aid

The duty lawyer should consider if it is appropriate to take a Legal aid application form from the client. Complete the Legal aid application form and the relevant Legal Aid Queensland checklist with enough details for a Legal Aid Queensland officer to decide the application.

B12. Appearance

Announce your appearance as duty lawyer on each case. After each appearance, record the following information on the Criminal law duty lawyer form:

- the result of the client's plea
- the next appearance date, the purpose of the appearance and the court location (and then give the client the original slip), and
- the result of any bail application, and if refused, the reasons for the refusal.

B13. After court

After all appearances, the duty lawyer should consider if an application for bail should be lodged in the Supreme Court or if an appeal should be lodged as a result of any penalties imposed.

If the duty lawyer considers a Supreme Court bail application should be lodged, complete the Supreme Court bail checklist and Legal aid application form and return them to Legal Aid Queensland for processing.

If the duty lawyer considers an appeal should be made, the duty lawyer should:

- consult and discuss this option with the client — the advice must be recorded on the
- Criminal law duty lawyer form
- where possible, attend the cells/watch-house to see clients remanded in custody, and complete Legal aid application forms or legal advices as needed
- ensure the Legal aid application form and Notice of appeal are lodged,
- check if the client wants to proceed with the appeal and if they do, complete or arrange for a Notice of appeal and a Legal aid application form to be completed, and
- provide any information needed to assist with any application for bail pending appeal.

B14. Administrative requirements

The duty lawyer must complete any necessary administrative work within three working days of the appearance. This includes:

- completing the Criminal law duty lawyer session report
- returning the Criminal law duty lawyer forms and Criminal law duty lawyer session reports to Legal Aid Queensland (this applies to duty lawyers providing services on behalf of tender firms/consortiums)
- arranging for Legal aid application forms, bail applications and/or Notices of appeal to be processed
- attending any follow-up work from appearances or visiting people in custody, and
- advising the legal representatives of any legally-aided person (represented by the duty lawyer that day) of court dates and/or other relevant developments.

Part C – Case management standards specific to juvenile crime

Practitioners undertaking juvenile crime work must be approved by Legal Aid Queensland. To be eligible to undertake legal work in juvenile crime, practitioners must have either attended (face-to-face or by webinar) Legal Aid Queensland's youth crime accreditation training or viewed the on-line youth crime accreditation material and given an undertaking to attend the next available Legal Aid Queensland youth crime accreditation training. Practitioners must also 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 Annexures G and H.

C1. Preparation

The practitioner must obtain prosecution material and take instructions from the client. The practitioner must ensure that any instructions taken from young clients are taken independently and confidentially and without the influence of the wishes expressed by parent/s or guardian/s. The practitioner must consider diversionary options such as cautions or youth justice conferences as a sentencing outcome. The practitioner should ensure that the client is advised of his/her rights of elections and rights generally. The practitioner should specifically be aware of the age of the client, particularly in relation to capacity issues, in considering a client's defences and/or sentencing outcomes. The practitioner should liaise with the Court Services Officer from the Department of Children, Youth Justice and Multicultural Affairs for bail accommodation, previous criminal history and performance on orders.

C2. Prosecutors

The practitioner must consult with the prosecution and Court Services Officers from the Department of Children, Youth Justice and Multicultural Affairs before the commencement of any court proceedings. The practitioner must specifically consult with the Court Services Officers from the Department of Children, Youth Justice and Multicultural Affairs who prosecute breach of court orders under the Youth Justice Act, before the Children's Court Magistrate.

C3. Bail

The practitioner must liaise with Family Service Officers within the detention centre and/or the Departmental Officer at the Regional Office, if the client is in detention. The practitioner must give ongoing consideration to the client's bail position. In the case of clients refused bail, the practitioner should also consider seeking a conditional bail program through the Department of Children, Youth Justice and Multicultural Affairs and review the refusal of bail position at each court appearance.

C4. Communication with the parent/s or guardian/s

The practitioner can explain to the parent/s or guardian/s the nature of the charges, the court proceedings, and the consequences of those court proceedings, with the consent of the client. If Counsel is briefed, the instructions to Counsel should contain a reference to the presence of the parent/s or guardian/s. Where possible, the practitioner is to advise the parent/s or guardian/s of all court dates and request their attendance. In the event that the parent/s or guardian/s cannot attend, the practitioner must take instructions as to the reason for their non-attendance.

C5. Court appearances

The practitioner must obtain the client's signed, dated and witnessed instructions to plead guilty or to have a committal or to have a trial. The practitioner should obtain signed, dated and witnessed instructions at each stage of the proceedings, including details of advice provided to the client on the client's rights of election and rights generally. Any potential witness statements should be included with the client's statement. Where appropriate, comments on depositions should be obtained. The practitioner must, at the arraignment of the client, have signed instructions on the plea of guilty. The practitioner should also obtain sufficient information to advise the court whether a pre-sentence report is required.

C6. After court

The practitioner should consider, in any case, whether a sentence review/s.222 appeal or Court of Appeal Notice should be lodged. If the practitioner considers a sentence review or appeal should be made, the practitioner must consult with and discuss this option with the client. If merit is considered, the practitioner must assist the client to complete and lodge the appeal notice and the Legal Aid Application Form. An Application for Legal Aid should be forwarded to Legal Aid Queensland with sufficient information so that the merits of a sentence review/s.222 appeal or Court of Appeal Application can be assessed.

Annexures

- A. Client information sheet
- B. Letter to client confirming appointment
- C. Letter advising client of next court date
- D. Letter to client advising of sentence listing
- E. Bail instructions
- F. Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients
- G. Best practice guidelines for working with children and young people
- H. Best practice guidelines framework: Working with children and young people
- I. Guidelines for working with interpreters
- J. Protocol between LAQ and CCC regarding clients on witness protection
- K. Guidelines relating to the handling of child exploitation material
- L. Committal instructions
- M. Trial instructions
- N. Plea of guilty instructions
- O. Authority by client
- P. Authority for release of medical records
- Q. Personal statement
- R. District/Supreme Court callover memo
- S. Psychiatrist letter
- T. Lower court plea of guilty — pro forma instruction sheet
- U. Final Letter
- V. Criminal practice checklist
- W. Criminal practice guideline — taking instructions from clients

Contact

Coordinator, Preferred Supplier Strategy
Legal Aid Queensland
GPO Box 2449 Brisbane QLD 4001
Email: psupp.coordinator@legalaid.qld.gov.au
Phone: 07 3917 0402 or 07 3917 0467
Fax: 07 3917 0549

Annexure A — Client information sheet

1. Your legal representative will:

- explain our services and how you can use them
- be courteous and approachable
- listen to you, treat you as an individual and try to meet your special needs
- use language you can understand
- ensure your confidentiality
- provide up-to-date, accurate and appropriate information, advice and representation
- discuss your legal problem and help you understand your options, including availability of legal aid.

2. As a legal aid client, you should:

- tell us when you change your address or phone number
- keep your legal appointments or phone us if you are unable to attend
- be open and honest when talking about your legal problem
- ask if you do not understand what is happening in your case
- check all instructions carefully before signing documents
- tell us about any changes in your financial circumstances
- provide information and documents when asked.

Your legal representative is:

The firm name is:

Telephone number:

Costs

Initial Contribution

Depending on your income and assets, you may be asked to pay something towards the costs of your case. This is called an initial contribution. This contribution must be paid before your Legal Representative can start handling your case.

Retrospective Contribution

If you receive money or preserve your right to money or property as a result of your case, you may be asked to pay back all or some of what Legal Aid Queensland spent on your case. This is called a retrospective contribution. If necessary, your legal representative will give you an estimate of how much you will have to pay.

If you are not satisfied with the service, you should:

1. Talk to your Legal Representative who is responsible for your case.
2. If you are still dissatisfied with the service after talking to your Legal Representative, please contact your Legal Representative's supervising solicitor.
3. If you are still not satisfied with the service after talking to your Legal Representative or supervising solicitor, you can write a letter to the Chief Executive Officer of Legal Aid Queensland outlining the details of your complaint.

Annexure B: Letter to client confirming appointment

Legal disclaimer

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Our Ref:
Date:

Telephone:
Facsimile:
E-mail:

Private & Confidential
(CLIENT)
(ADDRESS)

Dear (CLIENT)

Your criminal law matter
Your appointment

We have made an appointment for you to meet with (LAWYER), from our (TEAM if appropriate). Your appointment is as follows:

Date:
Time:
Address:

Please contact (LAWYER) if you cannot keep this appointment and we will arrange another appointment.

Would you please bring your copy of your Bench Charge Sheets to the interview if you have it.

If you have any questions, please contact (LAWYER) on (PHONE)

Yours sincerely

(NAME)
(POSITION)
(FIRM)

Annexure C: Letter to client advising of next court date

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Our Ref:
Date:

Telephone:
Facsimile:
E-mail:

Private & Confidential
(CLIENT NAME)
(ADDRESS)

Dear (CLIENT),

Your criminal charge

Your matter has been adjourned for a further court date.

Your matter has been set down for (COURT TYPE) at the (COURT) on (DATE) at (TIME).

Your bail will continue until the next court date.

Do I need to attend my next court date?

You must personally attend the court at your next court date unless we advise you otherwise. If you do not appear in court when you are required, the court may issue a warrant for your arrest. Your legal aid may end if a warrant is issued. If for some reason these arrangements change, we will contact you to advise that you do not have to attend court on this day.

What do I need to do now?

Please let us know if you change your address or telephone number.

If you do not have a personal telephone number, please give us the telephone number of a friend or relative we can leave a message with.

If you have any questions, please contact (LAWYER) on (PHONE NUMBER).

Yours sincerely

(LAWYER NAME)
(POSITION)
(FIRM)

Annexure D: Letter to client advising of sentence listing

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Our Ref:
Date:

Telephone:
Facsimile:
E-mail:

Private & Confidential
(CLIENT)
(ADDRESS)

Dear (CLIENT)

Your criminal law matter
Sentence date

The court will sentence you for your criminal law matter as follows:

Court:

Address:

Date:

Time:

Charge:

Do I have to attend court?

You must attend court for your sentence.

What do I need to do now?

To help us prepare for your sentence, you should give us any references you want us to give the court for you.

We have enclosed our *Suggestions for Referees* brochure that outlines what each reference should address. We have also enclosed a self-addressed envelope so you can send us any references to obtain.

If you have any questions, please contact (LAWYER) on (PHONE)

Yours sincerely

(NAME)
(POSITION)
(FIRM)

Enc. Suggestions for Referee brochure
Self-addressed envelope

SUGGESTIONS FOR REFEREE

Guide to the contents of the reference:

- Your full name;
- Your occupation;
- A brief paragraph setting out your own background;
- How you have come to know our client, and for how long (eg. socially, through work, relative etc);
- The fact that you know our client is to appear in court in relation to criminal charges;
- Any comments you can make about our clients honesty, integrity etc and the circumstances under which you have dealt with our client which allow you to make comments about our client's character;
- Details of any other positive attributes you feel our client has in addition to honesty and integrity;
- Your awareness of our client's interaction with other persons, either in business, social activities or community activities;
- Details (if you are aware of these) of future plans our client has (eg. work, family, community service etc).

Please note:

- The reference should be addressed to the Presiding Judge/Magistrate.
- The reference should not normally extend beyond one page.
- The reference should be written in your own words.
- The reference may be handwritten, but a typed reference is preferable, if possible.
- The reference should be signed by you, and dated.
- You should **not**, in your reference, canvass what the appropriate penalty should be.

Annexure E: Bail instructions

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BAIL INSTRUCTIONS

FILE NO/FILE MANAGER/EXT NO.		
FULL NAME OF CLIENT	SURNAME:	FIRST NAMES:
DATE AND PLACE OF BIRTH	DATE OF BIRTH:	PLACE OF BIRTH:
LOCATION and LENGTH OF TIME IN CUSTODY		
USUAL PLACE OF RESIDENCE		
IF BORN OVERSEAS, WHERE, AND YEAR OF ARRIVAL IN AUSTRALIA		
FIRST LANGUAGE	interpreter required? Yes/No	Is an
CHARGES ON WHICH BAIL IS SOUGHT		
NEXT COURT APPEARANCE	Date: Place:	
LAST COURT APPEARANCE	Date: Place:	
HAS BAIL BEEN REFUSED? If so, when, where, and by whom? REASON FOR REFUSAL		
DOES CLIENT WANT TO VARY PRESENT BAIL CONDITIONS?	Details	

Name and station of arresting officer (This is essential information)	
Was Record of Interview taken?	
Admissions made?	
Co-accused? Does co-accused have bail on these charges?	
<p><i>The instructions I have given in this form are true and correct to the best of my knowledge. Should Legal Aid Queensland consider making an application for bail on my behalf, I have no objection to certain aspects of my case (as they relate to bail) being discussed with any person considered necessary, except as otherwise indicated on this form. I authorise Legal Aid Queensland to obtain a copy of my criminal history.</i></p>	
Signed by Applicant:	Date:
Bail Instructions Taken By	

<i>Summary of Police allegations</i>	
Any other outstanding charges? If so, give details, including (a) nature of charges (b) at which courts are they listed (c) next court date for each matter (d) when bail is granted on each matter (whether bail granted on those charges).	
<p>SHOW CAUSE: The client is in a show cause situation if they are charged with any of the following:</p> <ul style="list-style-type: none"> (a) an indictable offence which is alleged to have been committed whilst they were on bail for, or at large after having been charged with, another indictable offence; (b) an indictable offence during which it is alleged that they used or threatened to use a firearm, offensive weapon or explosive substance; or (c) an offence against the Bail Act. <p>Is the client in a <i>show cause</i> situation? If so, give details (in particular breaches of bail):</p>	

SURETY

<p>A surety is a person who guarantees the client's appearance in Court by either providing a cash deposit or promising to pay the amount set if the client fails to appear. The surety should either have money in the bank or own real estate (preferably unencumbered). Property such as cars, caravans, and furniture are not acceptable. The surety must be at least 18 years old and have no convictions for indictable offences. The interviewer should not contact the surety. Does the Client have any surety or sureties?</p>	
Name:	Relationship to Client:

Address:	Phone No.:
Nature of Surety:	Amount Available:

CRIMINAL HISTORY (Particularly any branches of the *Bail Act*, e.g. failing to appear)

ACCOMMODATION AND RESIDENTIAL HISTORY

At what address would the client live if released on bail?	
With whom, and what is their relationship to the client?	
Contact telephone number for that address and/or a number at which any of the residents can be contacted	
Most convenient police station for reporting.	
Details of residential history, giving addresses and length of residence at each place, for at least TWO years, going back in time from when client taken into custody.	

EMPLOYMENT HISTORY Give details of any job the client could go to if released on bail.

Contact name and phone number for potential employer	
Indicate whether the employer knows, or may be advised of, client's charges.	
Give details of previous employment over last TWO years, including name of employer, type of work, length of employment.	

Give details of unemployment benefits received over the last 2 years	

OTHER INFORMATION

Does the client have a passport? If so, where is it presently located?	
Has the client travelled overseas (including NZ) in the past 10 years? If so, where?	
If the client is young, the court may require a curfew. Is the client prepared to accept this?	
Is the client able to swear on the Bible to the truth of their affidavit? If not, would they prefer to affirm, or do they have other requirements?	
Does client have a drug or alcohol problem?	
Has client attended rehab or would they be willing for attendance at rehab to form part of the conditions of bail? Give details of any previous rehab undertaken incl. when where & name of Dr. If willing to undertake rehab on release, give details	

Any other information which may be relevant, i.e. medical or family difficulties. Indicate whether client is willing to attend school or undergo drug/alcohol rehabilitation. Remember, it is better to give too much information, rather than not enough.

PLEASE ENSURE THAT THE CLIENT AND THE INTERVIEWING OFFICER SIGN AT THE BOTTOM OF PAGE 1.

FILE MANAGER

Have bench charge sheets been ordered/obtained?	
---	--

Has a criminal history been ordered/obtained?	
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SAMPLE

Best practice guidelines for lawyers providing services to Aboriginal and Torres Strait Islander clients

1. Respect the diversity of Aboriginal and Torres Strait Islander cultures

- 1.1 *Recognise that Aboriginal and Torres Strait Islander cultures differ.*
- 1.2 *Treat each culture respectfully in interactions with Indigenous clients.*
- 1.3 *Recognise that there may be some cases where a cultural expert report is required*

Practice points

- Be aware that being Aboriginal or Torres Strait Islander is not dependent upon skin colour.
- Understand that not using traditional language or practising customs does not diminish a person's standing as being Aboriginal or Torres Strait Islander.
- Understand that there are cultural differences which impact on how lawyers effectively advise and represent Aboriginal and Torres Strait Islander clients.

2. Principles for effective communication with Aboriginal and Torres Strait Islander clients

- 2.1 *Recognise that providing a quality service to Aboriginal and Torres Strait Islander clients involves taking into account communication barriers.*

Practice points

- Understand the historical and current experiences of Aboriginal and Torres Strait Islander clients with the Australian justice system and the need to develop trust and rapport with clients.
- Understand that English may not be the first or second language for some Aboriginal and Torres Strait Islander clients.
- Understand that effective communication with Indigenous clients can be achieved through the use of interpreters.
- Develop networks with relevant agencies which could provide support to lawyers on communication with Aboriginal and Torres Strait Islander clients.
- Be aware that asking direct questions of Aboriginal and Torres Strait Islander clients is not considered culturally appropriate and may lead to gratuitous concurrence. Direct questions should be avoided wherever possible.
- Be aware that some non verbal features of communication including avoiding direct eye contact and silence can be misinterpreted.

- Be aware that pronunciation, grammar and sentence structure differ and could lead to miscommunication.
- Use plain English and seek clarification from Aboriginal and Torres Strait Islander clients to ensure no misunderstanding or miscommunication has occurred.
- Where appropriate, use other strategies such as use of diagrams to communicate court and litigation processes.

3. Recognise Aboriginal and Torres Strait Islander clients may not respond to mail or may be difficult to contact

Practice points

- Be aware that mail sent to clients in remote communities may take longer to reach a client and that some mail will be addressed care of the post office in the community.
- Be aware that for some Indigenous clients responding to mail can present challenges and self-addressed stamped envelopes should be provided to assist clients.
- Be aware that access to public telephones in some remote communities is limited and that clients may not be able to contact their lawyer.
- Be aware of agencies who can assist a practitioner in contacting their client.



Best practice guidelines for lawyers providing services to Aboriginal and Torres Strait Islander clients

4. Recognise Aboriginal and Torres Strait Islander clients may have a different concept of 'time'

4.1 *Recognise that differing concepts of time can have an impact on instructions provided about when an event occurred and may also impact on attendance at appointments, meetings and court appearances.*

Practice points

- When seeking instructions about when an event occurred, recognise that some Aboriginal and Torres Strait Islander people will not provide a date but reference an event to what was happening at the time it occurred.
- Recognise that family and community commitments may have priority over punctual attendance at appointments, meetings and court.

5. Ensure the client has a clear understanding of the service to be provided

Practice points

- Provide clients with clear information about the client/solicitor relationship.
- Provide clients with information about the tasks that must be done and who has responsibility for doing them.

6. Understand traditional lore and cultural imperatives may take priority over commitments including attending court and appointments

6.1 *Understand the cultural significance for Aboriginal and Torres Strait Islander clients to participate in traditional lore practices.*

Practice points

- Understand the significance for Aboriginal people to participate in Aboriginal cultural practices such as attending sorry business, men's and women's business and the impact these can have on providing legal services.
- Understand the need for Torres Strait Islander people to participate in cultural practices such as Coming of the Light ceremonies, tomb openings and other significant cultural events.
- Be aware that some Aboriginal people respect traditional lore by not speaking the name of a deceased person for a period of time.
- Be aware that Aboriginal people require permission to take photographs.
- Be aware that where a photograph has been taken and a death occurs, the photograph must be removed from public circulation for a specified time during sorry business.
- Be aware that Indigenous communities close for cultural and ceremonial reasons.

7. Understand there are differing structures of Aboriginal and Torres Strait Islander families

7.1 *Understand that Aboriginal and Torres Strait Islander family structures differ greatly and the value of family relationships is high.*

Practice points

- Understand the nature of Aboriginal kinship systems and have an awareness of cultural family obligations that exist for Aboriginal clients.
- Be aware of past and current legislation, policies, and practices which have impacted on Aboriginal and Torres Strait Islander people and their families.
- Understand that there may be a cultural requirement for family and extended family members to support an Aboriginal or Torres Strait Islander client through the legal process.
- Be aware of the Torres Strait Islander practice of traditional adoption and the Family Court of Australia's process for recognising



Best practice guidelines for lawyers providing services to Aboriginal and Torres Strait Islander clients

8. Understand the central role of community in the lives of Aboriginal and Torres Strait Islander clients

8.1 *Understand that Aboriginal and Torres Strait Islander community structure has an impact on representing Aboriginal and/or Torres Strait Islander clients.*

Practice points

- Understand and respect the role of Elders in the client's community.
- Understand the role of community justice groups including their role in sentencing and providing cultural advice about their community.
- Be aware of the role of community justice groups to resolve disputes within communities by mediation.

9. Understand the circumstances and limited resources available to Aboriginal and Torres Strait Islander clients particularly those living in remote and regional communities

9.1 *Understand that clients living in remote and regional communities have limited access to resources and services which can impact on representing and advising a client.*

Practice points

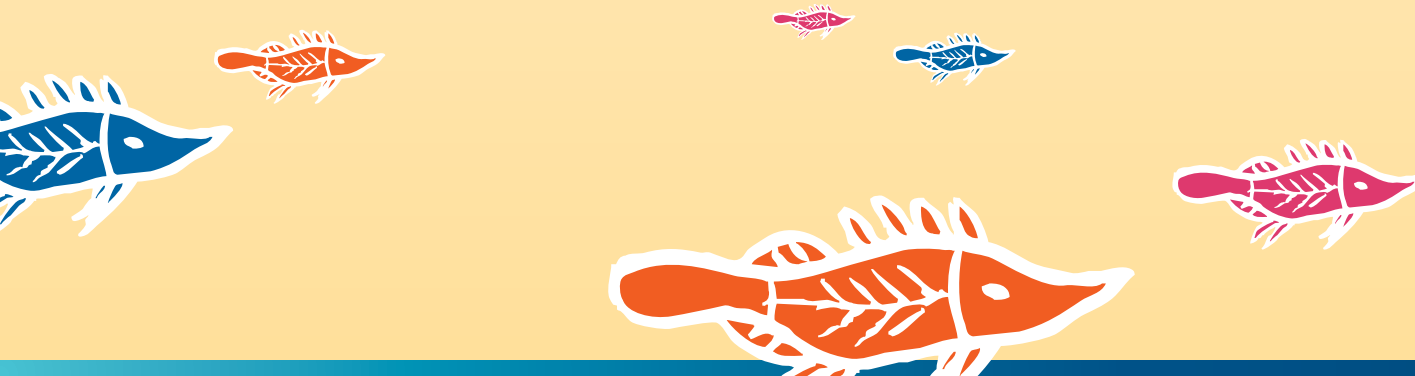
- Be aware of what services and resources are available within the client's community.
- Refer clients to existing services which can be reasonably accessed by the client.

10. Understand the complex causes of Aboriginal and Torres Strait Islander over-representation in the criminal justice system as both defendants and victims

10.1 *Understand that there are many factors leading to Aboriginal and Torres Strait Islander clients coming into contact with the criminal justice system.*

Practice points

- Be aware of the recommendations made by the Royal Commission into Aboriginal Deaths in Custody 1987.
- Be aware of the recommendations made by the Aboriginal and Torres Strait Islander Women's Taskforce on Violence 1998.



Best practice guidelines for working with children and young people

1. Understand the child or young person

Guideline 1.1: Understand social context and respect diversity: Respectfully ask questions to help you understand the issues and experiences that may impact on the child or young person and the way they interact with you.

Practice points

- The child or young person's social context, stage of development and own life experience can impact how they communicate with you and their behaviour. For example:
 - A child or young person who has experienced abuse may have difficulty trusting adults.
 - A child or young person's prior experience of the child protection system may impact on the way they engage with the legal process.
- Be aware that children and young people have varying levels of family/carer support and can experience a range of issues that impact on their ability to engage with you and the legal process, including abuse/neglect, mental illness, substance abuse, different types of disability, homelessness, domestic violence (either personally or in their family) and young parenting issues.
- If a child or young person has a disability, consider how that might impact on them accessing offices or courts/tribunals, giving instructions, understanding legal information and advice and coping with legal processes.
- If the child or young person has experienced domestic and family violence, you should also follow the best practice guidelines for working with people experiencing domestic violence.

- Be aware of the impact culture, religion, education, socio-economic background, refugee experiences etc can have on the child or young person's behaviours and their legal issue.
- When working with children and young people who are:
 - from an Aboriginal or Torres Strait Islander background, you should also use Legal Aid Queensland's *Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients* noting in particular the need to avoid gratuitous concurrence (where a person agrees with everything being said to show a willingness to engage) when taking instructions.
 - from culturally and linguistically diverse backgrounds, you should also apply Legal Aid Queensland's Language Services Policy arranging an interpreter when required.

Guideline 1.2: Knowledge of social science theories: Be aware of the social science research relevant to working with children and young people.

Practice points

- If you regularly work with children and young people, make sure you are up to date with current research about the stages of child development and other relevant social science research that impacts on your area of practice. This knowledge supports your understanding and your effective advocacy when you need to argue or challenge social science evidence.
- Use appropriate and relevant social science evidence as required in litigation.
- Seek out publications and reports that detail children and young people's views about their experiences of working with lawyers and dealing with legal systems to understand concerns they might have.
- Attend relevant professional development opportunities to keep your knowledge current.

2. Communicate effectively

Guideline 2.1: Manage regular communication: Expect phone numbers and addresses to change, especially for a child or young person who does not live in stable accommodation, is homeless, in the child protection system or experiencing violence or abuse at home. Ensure you have "safe" addresses and phone numbers.

Practice points

- Ask the child or young person where they would like any mail sent and check regularly to see whether the postal address and phone number remains current and safe. Record a note on the file and in the client database if any contact details have changed.
- If you have to send them material, provide self-addressed envelopes and clear instructions about what you want the child or young person to do if you need them to return documents (like a signed client authority).
- Check whether email is a better way to communicate with them and ask for an email address that they regularly check and is safe to use.
- If you are going to call the child or young person's mobile phone, let them know if that call will appear as a 'private number' and give them a time frame within which to expect a call. Children and young people may not answer a call from a private number.

Best practice guidelines for working with children and young people

- Remember a child or young person who attends school may only be available before and after school hours.
- Recognise family, school, after school activities, work and community commitments may affect their availability and may take priority over attending appointments, meetings and court. You need to discuss this issue with the child or young person and any associated adults in advance so you can make appointments at appropriate times.
- Make clear to the child or young person when they must attend any meetings/mediations or court/tribunal dates.

Guideline 2.2: Building rapport and trust: **Communication tips.**

Practice points

- Before interviewing or meeting with the child or young person, develop a plan for how you will manage your communication:
 - Clearly establish the interview or meeting's purpose.
 - Carefully consider what information you need to share and what information is necessary at that point in time for the child or young person to share with you.
 - Think about how you are going to explain key legal concepts, policies or processes in a way they can understand.
 - Ensure you are fully informed about their situation and have read all of the available material to give the child or young person a sense of confidence that you have adequately prepared, which will assist in building trust.
 - Plan your interview and use your time efficiently. You may need to allow for breaks. Accept that a child or young person may be distressed by the process or may experience difficulty concentrating for long periods of time.
- When you are meeting or interviewing a child or young person consider the following:
 - If possible, choose a comfortable setting for the interview and make sure the space is welcoming and appropriate for them.
 - Introduce yourself and explain the meeting or interview's purpose.
 - Discuss how an associated adult/support person will be involved, how client confidentiality will be managed and whether information will be shared with that person.
 - Use plain language, avoid legal jargon and use age appropriate language. Carefully explain what legal terms mean in a way the child or young person can understand.
 - Familiarise yourself with the resources available to help you communicate with the child or young person including Legal Aid Queensland factsheets.
 - Check the child or young person understands your information. Just because you might need to repeat your explanations, or if the child or young person doesn't understand straight away, doesn't necessarily mean they cannot understand the concepts. If one way of explaining doesn't work, try another way. Think about providing examples.
 - Ask simple and clear questions.
 - When seeking instructions about when an event occurred, recognise that a child or young person may not be able to provide a date but might reference an event that is meaningful to them (like their birthday, school holidays or Christmas) to events that were happening at the time.
- Respect any silences. Give the child or young person time to answer your questions and allow time for them to ask their own questions.
- When acting as a direct representative, always let the client make up their own mind and provide them with all relevant information to help them make an informed decision. Understand that the client may have capacity to instruct on some but not all issues.
- Ask the child or young person if they have any worries about you sharing the information that is being discussed with other people. Discuss with them how that will be managed depending on the legal representation model that applies.
- Visual aids like diagrams, flowcharts and pictures may be helpful to communicate the key issues discussed.
- Be prepared to adapt your process as needed. What works for one child or young person may not work for another.

Best practice guidelines for working with children and young people

3. Deliver quality legal services

Guideline 3.1: Professionalism: The same level of professional competence and diligence is required when assisting or representing a child or young person as is required for an adult.

Practice points

- Understand the decisions made in legal processes can be just as life changing for a child or young person as they are for adult clients. These decisions can affect their liberty, who they will live with, what contact they have with their parents, siblings and other family members, and where they go to school. All of these decisions can have long term consequences.
- Appropriately prepare for and manage ongoing interactions with the child or young person as you would for an adult client by:
 - reading all the relevant materials involved in their matter
 - reviewing all the relevant policies and procedures that apply to their situation
 - knowing the relevant law that applies
 - advising them of all the available options including review and appeal rights and how to make a complaint if they need to in relation to their legal matter or the service they received. Provide appropriate written information to support their understanding.

Guideline 3.2: Maintain professional boundaries: Be clear about your role and how you can help.

Practice points

- Make sure the child or young person has a clear understanding of the service to be provided:
 - Explain your role and what you will do for them. It is important to follow through and do what you say you will do or inform them if anything changes.
 - Be clear about what you cannot do for them.
- If you are a lawyer provide clear information about:
 - the client/lawyer relationship, including how confidentiality applies and how it will be managed with the adults involved, such as parents, youth workers, government officers, detention centre workers and the courts.
 - the role of everyone involved in their matter.
 - the decisions the court or tribunal has to make and what information they consider when making those decisions.
 - how and when their views and wishes can be made known to the decision maker or when the decision maker might ask them questions.
 - the tasks that must be done and who is responsible for doing them. If the child or young person has tasks to complete, talk to them about whether they need any help to complete them and try to suggest options to assist them.
 - any upcoming court/tribunal appearances, including what they will be about and whether they are required to attend. Explain who will be there and ask them whether they have any concerns (including safety) about attending. Ask how

they will get there and whether there is someone who can help them get to the court/tribunal if needed. If they have never been to a court/tribunal before, think about arranging a visit in advance or meeting them a bit earlier to show them around. Give them a reasonable idea about how long it will take and suggest they bring something to occupy themselves and to eat and drink.

- estimate how long the different stages in the legal process will take (including things that may be beyond your control).
- what happens next.
- when your role will end.

Guideline 3.3: Make appropriate referrals: Provide the child or young person with information about services that could address their other needs.

Practice points

- Ensure you know or can find out about appropriate legal and non-legal support and referral services such as youth agencies, housing, social support, income support, child advocates from the Office of the Public Guardian and other organisations listed on Legal Aid Queensland's online organisations directory.
- When necessary provide the child or young person, and with their knowledge and consent, any associated adult/support persons, with information about referrals. If appropriate make a direct referral.

Best practice guidelines for working with children and young people

Guideline 3.4 Manage associated adults/support people:
Manage your interactions with the associated adults/support people who may be involved in the child or young person's life such as parents, guardians, foster or kinship carers, departmental officers, youth workers, teachers, family friends or child advocates from the Office of the Public Guardian.

Practice points

- The child or young person may rely on their parents, guardians, foster or kinship carers, youth workers or other associated adults to attend appointments or for support during the legal process. In some instances, they may want that adult to attend meetings with a lawyer or the adult may insist that they do. Recognise that this may make them comfortable when meeting you for the first time or during the legal process. Alternatively, be aware that involving associated adults may make it difficult to engage with the child or young person.
- Be respectful and cautious when managing your interactions with associated adults/support people, especially parents, guardians or foster or kinship carers, particularly when those relationships may go through periods of conflict or disagreement. Understand those relationships will remain important after your professional relationship with the child or young person has ended.
- Consider how the model of legal representation being used impacts on your interactions with these associated adults/support people. When required, talk to the child or young person about any concerns and consider carefully how you will manage issues such as seeking consent for the child to attend counselling, or sharing information about what is happening in the legal process. If you are acting as a direct representative you should get clear instructions from the child or young person about what information, if any, you will share with a support person.
- When an associated adult/support person attends with a child or young person, the lawyer must consider how to manage the associated adult/support person from the outset, making clear:
 - they are giving legal advice to the child or young person, not the adult. Where appropriate, preferably with the child or young person's knowledge and consent, provide any associated adult with referrals for their own independent legal advice.
 - legal professional privilege only applies to their relationship and conversations with the child or young person. It does not extend to the associated adult/support person who can be called on to give evidence of conversations that would be otherwise covered by legal professional privilege.
 - how the adult will be involved in the interview and when they will need to leave.
 - how they intend to manage any information sharing with the adult after talking this through with the client and, when required, getting their consent to do so.
- an associated adult/support person may be a potential complainant or witness in the matter involving the child or young person. For example, a youth worker from a residential facility accompanying a child or young person in out of home care to an interview with a lawyer may be a complainant in relation to wilful damage or assault charges arising from an incident in that facility.

Best practice guidelines framework

Working with children and
young people



CEO foreword

I am pleased to present the first edition of Legal Aid Queensland's *Best practice guidelines for working with children and young people*. Our organisation recognises children and young people under 18 are especially vulnerable in their interactions with the legal system.

These guidelines aim to help Legal Aid Queensland staff and preferred suppliers work effectively with children and young people. The framework and guidelines cover the theoretical underpinnings for working effectively with children and young people, but also include practical tips for:

- managing communication
- conducting interviews and meetings
- managing expectations and setting professional boundaries
- referrals
- managing interactions with family members and support people.

I'd like to take this opportunity to thank everyone who participated in our consultation process for this project, including members of the judiciary, youth justice agencies, the legal profession and of course, Legal Aid Queensland staff. Your input and feedback was greatly appreciated.

I encourage everyone who works with children and young people to make these resources part of their everyday work practices.



Anthony Reilly
Chief executive officer
Legal Aid Queensland

April 2015



Background

Legal Aid Queensland is a key agency in delivering legal services to children and young people in Queensland especially those from disadvantaged socio-economic backgrounds.


Legal Aid Queensland provides legal information, advice and representation to children and young people in a range of legal areas including youth justice, child protection and family law.

Legal Aid Queensland recognises children and young people under 18 are especially vulnerable in their interaction with the legal system because:

- they may not be aware of their legal rights or how to access legal services that can help them
- they often find it hard to identify and explain their legal problems
- they may not be able to effectively advocate for themselves
- legal systems do not always appropriately recognise or support their participation.

Our *Best practice guidelines for working with children and young people* are designed to help Legal Aid Queensland staff and preferred suppliers provide a high quality service to children and young people and to ensure the assistance we are providing is appropriate and respectful. In doing so, it is hoped children and young people feel they have been given an opportunity to be heard and meaningfully participate in the legal processes affecting them.

This framework outlines why it is important to have *Best practice guidelines for working with children and young people*. It also explores some relevant threshold issues of which Legal Aid Queensland staff and preferred suppliers who work with children and young people should be aware before applying the guidelines.



Legal Aid Queensland's best practice response to working with children and young people

The *Best practice guidelines for working with children and young people* apply to all Legal Aid Queensland staff including client information officers (who answer the legal information line and work on the front counters at our offices), grants officers, litigation support officers and legal officers.

The guidelines are also intended to apply to lawyers from private law firms working as preferred suppliers for legally aided children and young people.

These guidelines are necessarily broad to ensure they are applicable across all areas of law including criminal, child protection and family law matters.

The guidelines are integrated into our case management standards. The case management standards set the minimum standards for the conduct of files for Legal Aid Queensland lawyers. Preferred suppliers who provide legal services on our behalf are also required to comply with these case management standards.

Solicitors and barristers (referred to as lawyers in these guidelines) are also ethically bound to follow established professional rules as set out in the *Australian Solicitor Conduct Rules 2012* and *Barrister's Conduct Rules 2011* (Queensland).

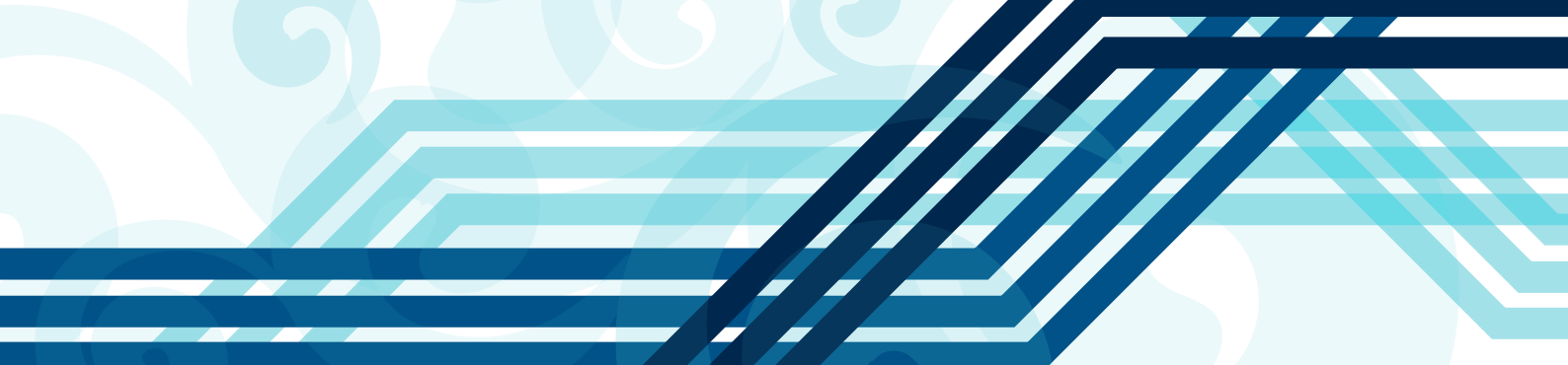
Why “children and young people”?

The United Nations Convention on the Rights of the Child defines a ‘child’ as a person under 18. In both child protection and family law, a child is a person under 18. In Queensland, under the criminal law a ‘child’ is a person under 17. The *Family and Child Commission Act 2014* increases the age for young people transitioning out of the child protection system from 18 to 21. The youth services sector considers a young person to be under 25.

The Australian Institute of Health and Welfare (AIHW) Report *Young Australians: their health and wellbeing* defined the term ‘youth’ as:

*“...12–24 years, includes the three main stages of adolescence—early, middle and late—in which physical, intellectual, emotional and social changes take place. While the actual age of each stage is different for each individual, youth is the period when the balance of influences on young people’s behaviour shifts from the decisions and actions of their parents and guardians to their own and that of their peers. The environment and experiences of childhood years, however, are still important in youth development...”*¹

1. AIHW 2011 *Young Australians: their health and wellbeing* p.1



The term ‘young person’ has been adopted in these guidelines to recognise the increasing maturity and capacity of children and young people to make decisions that develops over time. It also recognises young people can come to Legal Aid Queensland for assistance when they are parents themselves or parties to litigation such as applying for a domestic violence order.

When is a child or young person old enough to instruct a lawyer?

This is a common question posed to lawyers who work with children and young people.

There is no legislation in Queensland that sets a specific chronological age for when a child or young person is considered competent to instruct a lawyer.

Lawyers acting as direct representatives are required to assess an individual child or young person’s capacity to instruct a lawyer. In conducting that assessment the English House of Lord’s decision commonly known as *Gillick*², which considered a child or young person’s capacity to consent to medical treatment, provides a useful practice framework.

In that case Lord Scarman found:

*Parental rights clearly do exist, and they do not wholly disappear until the age of majority. Parental rights relate to both the person and the property of the child—custody, care, and control of the person and guardianship of the property of the child. But the common law has never treated such rights as sovereign or beyond review and control. Nor has our law ever treated the child as other than a person with capacities and rights recognised by law. The principle of the law, as I shall endeavour to show, is that parental rights are derived from parental duty and exist only so long as they are needed for the protection of the person and property of the child.*³


His Lordship also said:

*The underlying principle of the law...can be seen to have been acknowledged in the case law. It is that parental right yields to the child’s right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision.*⁴

2. *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] 1 AC 113; [1985] 3 All ER 402.

3. *Ibid.*, p.183-184.

4. *Ibid.*, p.186.



The *Gillick* decision has been accepted as part of Australian common law by the High Court decision of *Secretary, Department of Health and Community Services V JWB and SMB* (commonly known as Marion's case)⁵. The majority of the High Court in Marion's case found a child or young person:

*"...is capable of giving informed consent when he or she achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed."*⁶

Beyond determining capacity to instruct a lawyer, a child or young person's age and maturity are relevant to the substantive areas of law that affect them. For example:

- In criminal law the legislation is solely focused on determining whether a child or young person is criminally responsible. Section 29 of the *Criminal Code* (Qld) provides that a child under 10 cannot be held criminally responsible. The doctrine of 'doli incapax' presumes a child under 14 is not criminally responsible. This presumption can be challenged by the prosecution if it can prove beyond reasonable doubt that, at the time of the offence, the accused child had the capacity to know what they had done was wrong.
- By contrast, in child protection and family law, no fixed chronological age determines the application of the law to a child/young person's circumstances:
 - In child protection, the *Child Protection Act 1999* defines a child/young person as a "party for the purposes of proceedings"⁷. Section 108 of the *Child Protection Act 1999* provides that a child/young person may be represented by a lawyer during proceedings.
 - In family law, s. 65C of the *Family Law Act 1975* provides that a child can make an application for a parenting order. Rule 6.08 (2) of the *Family Law Rules 2004* provides that a child or young person does not require a case guardian if the court is satisfied the child understands the nature and possible consequences of the case and is capable of conducting the case.


In child protection and family law, each matter involves the decision maker weighing up all the relevant factors to be considered. The child or young person's views and wishes are only one of those relevant factors. In practice, greater weight may be placed on the child or young person's views and wishes as they mature.

Determining the capacity to instruct a lawyer is a separate issue. However, many of the circumstances that inform the assessment of a child or young person's capacity to instruct a lawyer will also be relevant to determining these substantive legal issues.

5. (1992) 175 CLR 218

6. Ibid p.219.

7. See Schedule 3 Dictionary



Parkinson and Cashmore, who both write extensively about the legal representation of children and young people particularly in the area of family law, argue:

- children’s development is dynamic, interactional and profoundly affected by their experiences and relationships with those that are significant in their lives and by their perceptions of and reactions to those experiences and relationships
- their capacities are affected by context and depend on the support they receive in developing that capacity and the extent to which they are allowed to participate in making decisions.⁸

In certain jurisdictions there are specific rules dealing with the evidence of children and young people.⁹

Lawyers who work with children — direct and best interests representatives

It is important to recognise lawyers working with children or young people may have different professional relationships and obligations depending on the nature of their role.¹⁰

Direct representatives are lawyers who receive and act on instructions that come directly from the child or young person, regardless of what the lawyer considers to be in their best interests.

A direct representative owes the same duties of confidentiality and competent representation to the child or young person as is due to an adult client and the relationship is subject to legal professional privilege.


A direct representative commonly appears in youth justice matters. They can also appear in child protection matters and less commonly in family law disputes.

A direct representative must make an initial and ongoing assessment of the child or young person’s capacity to instruct a lawyer.

8. Parkinson and Cashmore (2009) *The Voice of a Child in Family Law Disputes* Oxford University Press, p.4.

9. For example see s. 100B of the *Family Law Act 1975*

10. Please note that the *Public Guardian Act 2014* created a role of child advocate mainly for relevant children as defined by that Act in child protection. These positions are with the Office of the Public Guardian.



Best interests representatives are lawyers who are appointed by a court or tribunal to act impartially and make submissions in the best interests of the child or young person. They are not bound to act on the child or young person's instructions but they must put the child or young person's views before the court or tribunal.

A best interests representative commonly appears in child protection matters (known as separate representatives) and private family law disputes (known as independent children's lawyers).

Legal Aid Queensland's case management standards provide guidance to lawyers acting as best interests representatives about meeting with children and young people during the course of litigation, explaining the legal processes and the options for presenting children and young people's views and wishes to the court or tribunal. In family law matters, Legal Aid Queensland's case management standards refer to National Legal Aid's *Guidelines for Independent Children's Lawyers* (2013) which have been endorsed by the Chief Justice of the Family Court of Australia, the Family Court of Western Australia and the Federal Circuit Court of Australia.

Using the best practice guidelines

The guidelines encompass three overarching best practice principles that form the basis of a holistic service delivery approach to working with children and young people as clients:

1. Understand the child or young person

This principle acknowledges each child or young person is a unique individual with their own social and cultural context. To work effectively with them you need to find out about the issues that may impact on their ability to engage with you and the legal system.

2. Communicate effectively

This principle focusses on how to appropriately adapt your communication to engage with individual children and young people.

3. Deliver quality legal services

This principle highlights the importance of maintaining professional standards and boundaries when working with children and young people.

The three best practice principles are supported within the guidelines by practical tips for working with children and young people for Legal Aid Queensland staff and preferred suppliers.



Making a compliment or complaint

If a client would like to provide feedback about a service they received from Legal Aid Queensland, there is a compliments and complaints process. The client, or an advocate on their behalf, can call us on **1300 65 11 88** or email complaints@legalaid.qld.gov.au. Staff can process the compliment or complaint over the phone or via email, and will forward the feedback to a senior staff member in the appropriate area for action and response.

Feedback can be given anonymously. However, if the client would prefer a response to their feedback, and/or to be notified of the outcome, contact details will need to be provided. We encourage feedback from our clients and members of the public to ensure business excellence and best practice for our clients.

Annexure I

Guidelines for working with interpreters

Assessing the need for an interpreter

- If a non-English-speaking client has difficulty communicating in English, they should be provided with an interpreter. When a client requests an interpreter (eg by displaying a Queensland Interpreter Card, or asking in another way) an interpreter should be provided. The Queensland Interpreter Card assists non-English speakers to inform Queensland Government agency staff that they require an interpreter. The card is similar in size and quality to a business card and identifies the language for which an interpreter is required. Multicultural Affairs Queensland distributes this card.
- If a client does not ask for an interpreter, it may be difficult to assess if an interpreter is required. Even if a client can have a basic conversation in English, it does not mean they understand written English or have the skills to understand complicated legal information. If you have any doubt about a person's ability to communicate in and comprehend English, an interpreter should be used.
- A qualified interpreter helps both parties to communicate. It is acceptable to use an interpreter even if the client or an accompanying family member or support person thinks the person does not need an interpreter. You should explain the benefits of using an accredited qualified interpreter to the client, including the fact they are bound by a Code of Ethics and should maintain confidentiality and respect privacy.
- Having an accredited interpreter present will be crucial when swearing affidavits or statutory declarations and obtaining "informed consent", etc. Not providing an interpreter in these situations could lead to costly mistakes, complaints or litigation.
- When assessing the need for an interpreter, consider factors such as gender, ethnicity and dialect, literacy levels, hearing impairment or other communication difficulties. How comfortable a client is in the interview will have an impact on your outcome.

Preferences for engaging interpreters

- It is preferable to engage an interpreter accredited by the National Accreditation Authority for Translators and Interpreters (NAATI). The highest level of NAATI accreditation is Conference Interpreter (Senior) and Conference Interpreter. This level is required if organising an international conference.
- For most public sector usage, the second highest level of accreditation is sufficient. This is known as 1st preference – Interpreter (formerly level 3). It is preferable to use an interpreter with this level of accreditation for legal matters.
- Where an interpreter at the preferred level is not available, the other levels are as follows:
 - 2nd preference – Paraprofessional Interpreter (formerly level 2)
 - 3rd preference – NAATI Recognised or other interpreter registered with the Translating and Interpreting Service (TIS).
- Non-qualified interpreters should not be used unless the situation is urgent and a qualified interpreter is unavailable.
- Inquire about the client's gender and language preferences and provide their preferred interpreter if possible, although availability of particular interpreters may be an issue.
- The majority of accredited interpreters in Queensland are qualified at the para-professional level. In languages of small communities or recently arrived communities, there may be no accredited interpreters and only a small number of recognised interpreters.

- Access to qualified interpreters in regional and rural Queensland is often limited to telephone interpreters through TIS Eastern, although some qualified interpreters are available for on-site work in regional centres such as Cairns and Townsville. Current availability of accredited interpreters can be checked through the Manager, TIS, and the NAATI Regional Officer for Queensland. Additionally NAATI and the Australian Institute of Interpreters and Translators (AUSIT) produce directories of accredited practitioners. Both directories are available on their respective websites.
- You should use the most qualified interpreter available for complex interpreting work that may have serious implications for the client.

Practices to avoid

- Friends and family members should not be used as interpreters, unless there is no other practical option. Obtaining a qualified interpreter over the telephone will generally always be a practical option. Children and young relatives are not appropriate interpreters in any context.
- Both clients and family members may be embarrassed when family members act as interpreters. In these situations communication may be distorted or changed because of a lack of competence in English or the other language or bias on the part of the family member or advocate. However, the client may feel more comfortable with a family member, bilingual associate or worker being present for support, along with the qualified interpreter.
- Qualified interpreters are trained to maintain confidentiality, impartiality and accuracy as part of their code of ethics. This code is not binding on relatives or friends, or bilingual staff.
- Bilingual staff who are not qualified interpreters may assist with communication with clients in certain circumstances. But as the general rule, qualified interpreters should be used for the reasons outlined above and to establish the independence of the process.
- If a client refuses professional interpreter services, preferring to use an accompanying child, relative or friend, staff should be trained to provide an appropriate response, for example: “non-qualified interpreters may compromise or misinterpret important communication”. Staff should advise clients that our policy is to use qualified interpreters and emphasise this policy helps everyone involved in the communication process.

Arranging an interpreter

- Qualified interpreting services can be accessed either over the phone (solely through TIS) or on-site, where the interpreter is physically present. Audiovisual access through videoconferencing networks is also possible.
- TIS is Legal Aid Queensland’s preferred supplier for translating and interpreting services.

To arrange a TIS National phone interpreter, complete the phone interpreter booking form on the TIS National website – www.tisnational.gov.au

TIS interpreters can only be arranged using the TIS National website booking forms.

Note:

In January 2015, TIS National commenced a new automatic online booking system for on-site interpreters. Initially this service will co-exist with the current system and apply to on-site interpreters only. However, the system will eventually be extended to cover phone interpreters and the previous system will be phased out.

- Other sources of translators and interpreters are:
 - Deaf Services Queensland (for AUSLAN and other deaf community interpreters). Pre-book by fax on an Interpreter Request Form on (07) 3392 8511 or phone 1300 123 752 (office hours) or (07) 3018 0333 (after hours).
 - A list of NAATI accredited interpreters is available through the current NAATI Directory or from the NAATI Regional Office, Brisbane on (07) 3393 1358. The NAATI website address is: www.naati.com.au
 - The International Association of Conference Interpreters (AIIC) on (02) 6633 7122. The AIIC website address is: www.aiic.net
 - Private interpreting and translating agencies are available through the Yellow Pages under “interpreters”.

What to consider when requesting an interpreter

When requesting an interpreter:

- Give as much notice as possible.
- Establish gender and language/dialect preferences from the client and request these from the provider.
- Request the same interpreter where continuity and client confidence is important.
- Always check the interpreters’ NAATI identity cards and accreditation details before commencing the session.

Paying for interpreting services

- Legal Aid Queensland is responsible for budgeting for, and paying for, interpreters. Clients do not have to pay for interpreters.
- Interpreting services can be requested from Legal Aid Queensland by either the client or the lawyer providing the services to the client.
- The use of an interpreter is one factor that may be taken into consideration when determining if a matter is a ‘complex matter’ for the purpose of granting aid.
- The TIS charging policy and rates are available from TIS Finance Administration on 1300 304 604 or at tis.finance@immi.gov.au
- Rate details recommended by AUSIT, the professional association of interpreting/translating practitioners are available by calling AUSIT Queensland on (07) 3356 8255.

Most effective interpreting mode

- Telephone interpreting is cost-effective, readily available regionally, and can be used for most languages through the TIS national network. It is more immediate, anonymous and preserves confidentiality and privacy. The disadvantage is the difficulty for all parties when visual cues are absent.
- On-site interpreting is more appropriate in legal and counselling contexts. It offers a more complete and detailed communication option with the possibility of continuity with the same interpreter. Continuity can be a vital factor in confidential and sensitive matters, such as those relating to violence against women.
- Videoconferencing networks can be used in legal and other contexts to include a qualified interpreter at another location. Video conference interpreting also offers a practical option when sign language interpreters are not available locally.

Accountability

- Professionally qualified interpreters are required to observe their own professional obligations and comply with relevant codes of ethics and professional conduct to maintain confidentiality, accuracy and impartiality. The AUSIT Code of Ethics for Interpreters and Translators is endorsed by NAATI and can be obtained from local AUSIT representatives.
- Staff should verify the identification details of TIS and other interpreters by checking their identity card and accreditation details. Unsatisfactory performance by TIS interpreters should be brought to the attention of TIS Client Liaison and Promotions on 1300 655 820 or at tispromo@immi.gov.au

Skilling staff in working with interpreters

- Legal Aid Queensland staff and preferred suppliers are expected to be familiar with this policy and attend training about working with interpreters.

Protocol between Legal Aid Queensland (LAQ) & Crime and Corruption Commission (CCC)

Proceedings involving the QLD Witness Protection Program

Section 36(1) of the *Witness Protection Act 2000* (the WP Act) states:

“36 Offence of disclosure about particular person or the program

(1) *A person must not knowingly, directly or indirectly, disclose or record information about a relevant person or the witness protection program that may threaten—*

(a) the security of a relevant person, or

(b) the integrity of the program or other witness protection activities of the commission.

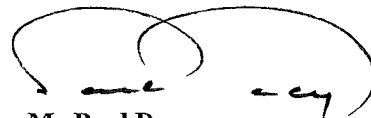
Maximum penalty—10 years imprisonment.”

The CCC and LAQ have established the following protocol for proceedings involving persons who are or have been in the witness protection program:

1. Where a current protectee is to appear before the courts and the CCC considers it appropriate – the CCC shall inform LAQ ahead of the proceedings that the person is in the witness protection program. LAQ should continue to seek authority from the CCC pursuant to s36(2) of the WP Act to disclose a protected person’s status to counsel and others where necessary.
2. In all cases where LAQ becomes aware that a person who is or has been in the witness protection program is to appear in court – LAQ shall inform the CCC’s Official Solicitor (07 3360 6358), Deputy Official Solicitor (07 3360 6803) or Operations Coordinator, Operations Support (07 3360 6270) as soon as reasonably possible. If necessary, an adjournment should be sought to allow the CCC to be informed.
3. For both circumstances 1) and 2) above – LAQ and the CCC will liaise with the Office of the Director of Public Prosecutions or Police Prosecutions Corps where necessary regarding making submissions to have the court closed and/or material before the court sealed and identities protected in any subsequent judgment.



A J MacSporran QC
Chairperson
Crime and Corruption Commission



Mr Paul Davey
Acting Chief Executive Officer
Legal Aid Queensland

Annexure K — Guidelines for handling child exploitation material matters (CEM)

Background

Child Exploitation Material (CEM) can have a traumatic impact on staff who are exposed to viewing it, or who deal with cases involving CEM, in the course of their employment. People who may be exposed to viewing CEM include Legal Aid Queensland staff, as well as preferred suppliers.

The following guidelines for the handling of CEM have been developed in accordance with other relevant best practice guidelines from the Queensland Police Service and the Office of the Director of Public Prosecutions (Qld). The following guidelines are mandatory for LAQ staff members and preferred suppliers.

Obligations

LAQ has a responsibility under the *Work Health and Safety Act 2011 (Qld)* (hereafter referred to as “the Act”), as well as the *Work Health and Safety Regulations 2011 (Qld)* to manage health and safety risks. Pursuant to s. 4 of the Act, health includes psychological health (see section 4 of the Act).

LAQ has a responsibility to manage health and safety risks ‘so far as is reasonably practicable’ (see section 19 of the Act). The content contained within this Annexure attempts to mitigate the risks associated with CEM.

Application

(A) LAQ employees

The following guidelines apply to all LAQ staff who act in matters where child exploitation material is a feature of the matter:

1. Working on a matter involving CEM by a staff member is entirely voluntary on the part of the staff member. The following applies:
 - i. If a staff member does not wish to work on a matter involving CEM, the Principal Lawyer of the team within which the staff member works, and the Director, Criminal Law Services, must be notified. Another practitioner will then be allocated to the case.
 - ii. Decisions by staff to undertake work on matters involving CEM, including decisions not to work on matters involving CEM, must be documented by the Director, Criminal Law Services.
2. A decision to view CEM would almost always occur as a result of receiving instructions to do so by a client. Any decision to view CEM must be discussed with the Director, Criminal Law Services.
3. Any viewing of CEM must be undertaken in the company of the nominated law enforcement representatives (ie. the Queensland Police Service, Australian Federal Police, the Office of the Director of Public Prosecutions (Qld), or Office of the Director of Public Prosecutions (Cth)).
4. Any viewing of CEM must not exceed 3 hours in total duration in any 24 hour period. The 3 hours must be completed by midday on any given day.
5. Any staff member who views CEM must notify the Principal Lawyer of the team within which the staff member works, and the Director of Criminal Law Services, within 24 hours of viewing the material.

6. Any practitioner viewing CEM must undertake Psychological Debriefing between 72 hours and 14 days after viewing the CEM. This includes:
 - a. An initial review; and
 - b. Any further Psychological Debriefing at the discretion of the practitioner or the counsellor.
7. Any staff member who undertakes work on a matter involving CEM, but who does not actually view any CEM in the course of the preparation of the matter, can access Psychological Debriefing if they wish to do so. It should be noted, however, that Psychological Debriefing is not mandatory where viewing of CEM has not occurred.
8. LAQ's Human Resources Department, in consultation with the Director, Criminal Law Services, will make arrangements to facilitate a staff member attending Psychological Debriefing.
9. LAQ's Human Resources Department will maintain records to ensure no in-house practitioner views CEM in excess of 30 hours in any calendar year.

(B) Preferred suppliers

The following guidelines apply to all preferred suppliers who act in matters where child exploitation material is a feature of the matter:

10. Working on a matter involving CEM by a preferred supplier is entirely voluntary on the part of the preferred supplier. The following applies:
 - i. If a preferred supplier does not wish to work on a matter involving CEM, the Director of the Grants division must be notified. Another preferred supplier will then be allocated to the case.
 - ii. Decisions by preferred suppliers to undertake work on matters involving CEM, including decisions not to work on matters involving CEM, must be documented by the Director of the Grants division.
11. A decision to view CEM would almost always occur as a result of receiving instructions to do so by a client.
12. Any viewing of CEM must be undertaken in the company of the nominated law enforcement representatives (ie. the Queensland Police Service, Australian Federal Police, the Office of the Director of Public Prosecutions (Qld), or Office of the Director of Public Prosecutions (Cth)).
13. Any viewing of CEM must not exceed 3 hours in total duration in any 24 hour period. The 3 hours must be completed by midday on any given day.
14. Psychological Debriefing must be considered by a preferred supplier for any staff member of their firm who views CEM.
15. It is recommended by LAQ that preferred suppliers consider maintaining a register of the viewing of CEM by their staff.

Annexure L: Committal instructions

Legal disclaimer

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R -v- (CLIENT)

File No: (FILE NUMBER)

MAGISTRATES COURT COMMITTAL INSTRUCTIONS

I, **(CLIENT)**, born (DOB) of **(ADDRESS)** in the State of Queensland, instruct my legal representative at Legal Aid Queensland that:

1. I understand I have been charged with the following offence:
2. I confirm my legal representative has explained to me the elements of the charge.
3. I confirm my legal representative has taken me through the _____ in relation to the charge.
4. I have no comments about this material and I have no issues about the conduct of the police who investigated these matters.
5. I confirm I understand the evidence and allegations against me in relation to the charge, including the strengths and weaknesses of the prosecution case.
6. I understand my matter is next listed for (COURT TYPE) at the (COURT) on (DATE)
7. I confirm I have had my rights explained to me by my legal representative and I understand that I:
 - 7.1. am presumed innocent of the charge;
 - 7.2. have the right to make the prosecution prove that I am guilty of the charge by proving beyond a reasonable doubt all the elements of the offence which it alleges against me.
8. I confirm that my legal representatives have explained to me my options about committal proceedings.
9. I understand that I have the following options:
 - 9.1. to request that the Director of Public Prosecutions (DPP) produce an ex officio indictment so I can plead "Guilty" in the District/Supreme Court. I understand that if the Director agrees to this option I will not have a committal hearing ; or
 - 9.2. to have a Registry committal where:
 - 9.2.1. the clerk of the court receives all the evidence by way of written statements
 - 9.2.2. I do not attend court

9.2.3. I enter a plea of "Guilty" and my matter is sent to the District/Supreme Court for sentence, or

9.2.4. I enter no plea at this stage or I enter a plea of "Not Guilty" and my matter is sent to the District/Supreme Court for trial

9.3. to have a "full hand up" committal hearing where:

9.3.1. my legal representative does not cross examine any witnesses and does not test the strength of the prosecution case;

9.3.2. the Magistrate receives all evidence by way of written statements and;

9.3.3. the Magistrate decides whether there is sufficient evidence for my matter to be transferred to the District / Supreme Court

9.3.4. I enter a plea of "Guilty" and my matter is sent to the District/Supreme Court for sentence, or

9.3.5. I enter no plea at this stage or I enter a plea of "Not Guilty" and my matter is sent to the District/Supreme Court for trial

9.4. to apply to have a committal hearing where:

9.4.1. there is cross examination by my legal representatives of some or all of the Crown witnesses;

9.4.2. the prosecution evidence is tested by my legal representative; and

9.4.3. the Magistrate decides whether there is sufficient evidence for my matter to be transferred to the District / Supreme Court

I understand that, unless the prosecution agree to cross-examination of witnesses, my lawyer will have to make an application to the court to have a committal and provide the court with reasons as to why they should be permitted to cross examine witnesses. I understand that the court will decide whether or not the witnesses can be cross examined.

I understand that if the court does not permit my lawyers to cross examine witnesses, my matter will proceed by way of "full hand up" committal as described above.

9.5. I understand that if I choose option 9.3 or 9.4 and the magistrate decides that there is sufficient evidence, I can:

9.5.1. enter no plea and be committed for trial to the District / Supreme court

9.5.2. enter a plea of guilty and be committed for sentence in the District / Supreme court

9.5.3. enter a plea of not guilty and be committed for trial to the District / Supreme court

10. My lawyer has explained to me the nature of an alibi. I understand that if I intend to rely on an alibi, I must notify my lawyer as soon as possible, and my lawyer has to notify the prosecutor within 14 days of my committal.

11. I understand that, if my matter proceeds by way of committal, my grant of legal aid will continue and that I have an ongoing obligation to contact Legal Aid if my financial situation changes.

12. I know that if my matter proceeds to the higher court there is no absolute guarantee that negotiations with the prosecution about charges or penalties will be honoured by them.

13. I have been advised by my legal representative of the provisions of the *Penalties and Sentences Act*. I understand that if I am later to be found guilty or plead guilty to the offence in the Court,

that I may not receive the benefit of a reduction in my sentence from the Sentencing Judge if I require the complainant or other witnesses to give full evidence, or be made available for cross examination at committal proceedings. I understand that having a hearing may reduce any benefit I may get for a plea of guilty. I understand that this is because:

13.1. the requirement for the complainant to give evidence may be regarded as causing them anguish and stress; and

13.2. this decision may indicate a lack of remorse on my part to the Judge who ultimately sentences me.

14. I understand that if I am found guilty or plead guilty to the charge, that I may be sentenced to a term of imprisonment. I also understand that the court will impose any sentence it deems appropriate and is not bound by the submissions made by the Prosecutor or my legal representative in relation to the penalty it should impose.

15. I understand and acknowledge that while I have received legal advice from my legal representative, the decision as to how I wish to proceed with my charge is entirely my own and that no one can take this right from me.

16. I confirm I understand my rights, the options available to me, and the evidence and allegations against me. Having considered these matters, I instruct my legal representative of my own free will and without coercion, threat, promise or inducement that I would now like to proceed as follows:

.....

.....

.....

.....

.....

.....

.....

17. I confirm I fully understand the instructions I am giving and do not require any more time to seek further legal advice or to think more about my instructions.

Signed:.....

Dated:/.../....

Signed:.....

Dated:/.../....

.....
Name of witness

Annexure M: Trial instructions

Legal disclaimer

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R -v- (CLIENT)

File No:

TRIAL INSTRUCTIONS

I, **(CLIENT)**, born on (DOB) of (ADDRESS) in the State of Queensland, instruct my legal representative at Legal Aid Queensland as follows:

1. I understand I have been charged with:
2. I understand it is alleged that on Type Summary of allegations.
3. I confirm I have previously been taken through the Brief of Evidence in relation to the charge and have had the opportunity to discuss and make comments on the Brief of Evidence with my legal representative.
4. I confirm I participated in a conference with my solicitor and barrister on (DATE) at (TIME) at (LOCATION).
5. I confirm that during the conference my legal representatives discussed the:
 - 5.1. evidence and allegations against me
 - 5.2. strength of the prosecution case and possible difficulties with my version of events and
 - 5.3. weaknesses of the prosecution casein relation to the charge.
6. I confirm I have had my rights explained to me by my legal representative and I understand that I:
 - 6.1. am presumed innocent of the charge and
 - 6.2. have the right to make the prosecution prove that I am guilty of the charge by proving beyond a reasonable doubt all the facts, allegations and evidence which it alleges against me in relation to the charge and
 - 6.3. have the right to plead "Not Guilty" and have my matters heard by a Judge and jury in the District Court or
 - 6.4. have the right to plead "Guilty" and have my matters heard by a Judge in the District Court
7. I confirm I understand my rights, the options available to me, and the evidence and allegations against me. I have also been advised about any defences that may be available to me.

8. Having considered these matters, I instruct my legal representative of my own free will and without coercion, threat, promise or inducement that I would like to **plead not guilty** to the charge and **proceed by way of a trial at the District Court**.
9. I understand that if I am found guilty or plead guilty to the charge, that I may be sentenced to a term of imprisonment. I also understand that the court will impose any sentence it deems appropriate and is not bound by the submissions made by the Prosecutor or my legal representative in relation to the penalty it should impose.
10. I understand that the prosecution will present its case against me by calling witnesses who will be questioned by the prosecutor and who will then be cross-examined by my legal representative.
11. I confirm that my legal representatives have explained to me the process in which a jury is selected.
12. I instruct that I delegate the selection of the jury to my barrister.
13. I confirm I have been shown and perused the jury list.
14. I give these instructions after having considered my rights of my own free will, free from inducement or threat by anyone.
15. I confirm I fully understand the instructions I am giving, do not require time to seek further legal advice, and have had sufficient time to consider my decision.

Signed:

Dated:

Signed:

Dated:

Name of witness:

Annexure N: Plea of guilty instructions

Legal disclaimer

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R -v-

File No:

SENTENCE INSTRUCTIONS

I, , of , in the State of Queensland, instruct my legal representative at Legal Aid Queensland as follows:

1. I understand I have been charged with:
2. I understand it is alleged that on Type Summary allegations.
3. I confirm I have previously been taken through the Brief of Evidence in relation to each charge and have had the opportunity to discuss and make comments on the Brief of Evidence with my legal representative.
4. I confirm I participated in a conference with my solicitor and barrister on at [time] at [place] .
5. I confirm that during the conference my legal representatives discussed the:
 - 5.1. evidence and allegations against me
 - 5.2. strength of the prosecution case and possible difficulties with my version of events
 - 5.3. weaknesses of the prosecution case and
 - 5.4. defences that may be available to me

in relation to each charge.

6. I confirm I have had my rights explained to me by my legal representative and I understand that I:
 - 6.1. am presumed innocent of each of these charges and
 - 6.2. have the right to make the prosecution prove that I am guilty of each of these charges by proving beyond a reasonable doubt all the facts, allegations and evidence which it alleges against me in relation to each charge and
 - 6.3. have the right to plead "Not Guilty" and have my matters heard by a Judge and jury in the District Court or
 - 6.4. have the right to plead "Guilty" and have my matters heard by a Judge in the District Court
7. I understand that I can only plead guilty if I accept all the evidence and allegations against me in relation to each charge, and that should I choose to plead guilty that I am indicating this to the Sentencing Judge.
8. I confirm I understand my rights, the options available to me, and the evidence and allegations against me.

9. Having considered these matters, I instruct my legal representative of my own free will and without coercion, threat, promise or inducement that I would like to **plead guilty** to all the charges and **proceed by way of a Sentence at the District Court**.
10. I understand that by pleading guilty to some or all of these charges, that I may be sentenced to a term of imprisonment. I also understand that the court will impose any sentence it deems appropriate and is not bound by the submissions made by the Prosecutor or my legal representative in relation to the penalty it should impose.
11. I give these instructions after having considered my rights of my own free will, free from inducement or threat by anyone.
12. I confirm I fully understand the instructions I am giving, do not require time to seek further legal advice, and have had sufficient time to consider my decision.

Signed: Dated: .../.../...

Signed: Dated: .../.../...

Name of witness

Annexure O: Authority by client

Legal disclaimer

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AUTHORITY

To:

(LAWYER)
(FIRM)
(ADDRESS)

I, (CLIENT NAME) born (DOB) hereby authorise you to discuss my charge with the following person:

Name:

Date of birth (if known):

Address:

Telephone:

Relationship to Me:

I understand that by providing this authority, the person I've nominated above will be made aware of confidential information regarding my matter.

I further understand that I can withdraw this authority at any time.

DATED :

SIGNED :

ADMIN/54036 /

Annexure P: Authority for release of medical records

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AUTHORITY

TO:

(NAME)
(ADDRESS)

I, (CLIENT) born (DOB), of (ADDRESS) hereby authorise and request you to supply to Legal Aid Queensland such information as they may request relating to my medical, psychiatric, or psychological condition and treatment.

I further authorise the release of hospital or other clinical records required by any medical practitioner, psychiatrist or psychologist, who has been requested to prepare a report for Legal Aid Queensland.

I further authorise Legal Aid Queensland to supply to any person who has been engaged to prepare a report relating to my medical, psychiatric, or psychological condition and treatment, such information and documentation as they may deem necessary to assist in the preparation of such report.

DATED :

SIGNED :

WITNESSED :

Annexure Q: Personal statement

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PERSONAL STATEMENT

NAME:

ADDRESS:

AUSTRALIAN CITIZEN?

☐ Yes

☐ No

(If no, what are the details of any visa, and consider if s. 501 of the *Migration Act (Cth)* is relevant? Consider potential effects of sentence but refer on for specific immigration advice)

DATE OF BIRTH:

AGE:

0

AGE AT TIME OF
OFFENCE:

MARITAL STATUS:

DEPENDANTS:

BAIL CONDITIONS:

TIME IN CUSTODY:

CHARGES:

FINANCIAL VALUE OF PROPERTY INVOLVED IN THE OFFENCE/S:

Total Value:

\$

Initialled:

Witnessed:

LESS Property recovered:	\$	
Outstanding amount:	\$	<u>\$ 0.00</u>

PLEA: Guilty

FAMILY AND BACKGROUND: (NB: if client discloses they were the victim of childhood sexual or serious physical abuse, refer client (with their consent) for personal injuries or National Redress Scheme advice (if this is relevant, file must be permanently retained after closure))

EDUCATION DETAILS:

EMPLOYMENT HISTORY:

HEALTH:

ALCOHOL AND DRUGS:

HOBBIES / SPORT / COMMUNITY INVOLVEMENT:

FINANCIAL SITUATION:

Income:

Salaries / Wages	\$	
Benefits / Allowances	\$	
Other Income	\$	
Total Income	\$	<u>\$ 0.00</u>

Expenditure:

Rent / board	\$
Loans	\$

Initialed:

Witnessed:

Food	\$
Living expenses	\$
Transport	\$
Child care	\$
Other	\$
Total Expenditure:	\$ 0.00
Income less Expenditure	\$ 0.00

ABILITY TO PAY:

- a fine ☐ Yes ☐ No
- restitution ☐ Yes ☐ No
- compensation ☐ Yes ☐ No

CRIMINAL HISTORY (NB obtain copy of the criminal history and take instructions on relevant previous entries):

See attached

ATTITUDE TO AND EFFECT OF CHARGES:

FUTURE PLANS:

SENTENCING OPTIONS:

PLEA:

I instruct Legal Aid Queensland to represent me and to plead Guilty on my behalf.

EVIDENCE OF CHARACTER:

- Community involvement
- Acts of generosity or assistance to others
- Names of referees
- Possible witnesses
- Any demonstration of remorse. (Eg. apology to the witness)

Initialled:

Witnessed:

PSYCHOLOGICAL REPORTS:

See attached

MEDICAL REPORTS:

See attached

ABILITY TO TAKE AN OATH:

I give these instructions of my own free will, without undue influence or coercion by any party.

Taken at

DATED this day of, 2022.

Signed:

Witnessed:

Name of witness:

Initialed:

Witnessed:

Annexure R: District/Supreme Court callover memo

The District/Supreme Court call-over forms can be found here:

- District/Supreme Court callover request form - matter is not ready to list for trial
- District/Supreme Court callover request form - matter is ready to list for trial
- District/Supreme Court callover request form - matter is ready to list for trial

Annexure S: Psychiatrist letter

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Our Ref:
Date:

Telephone:
Facsimile:
E-mail:

(NAME)
ADDRESS:

Dear Doctor (NAME)

CLIENT NAME:
DOB:

Thank you for agreeing to examine and prepare a report on our above named client, who has been charged in the court with the following offence:

We **enclose** all the relevant material in our possession, namely:-

- a)
- b)

Could you please prepare a report considering the following issues:

1. Whether, in your opinion, (CLIENT) suffers from any mental disease, natural mental infirmity, or other relevant condition
2. If so, the nature of such condition, its duration and severity, and your prognosis
3. Whether, in your opinion, our client was of "unsound mind" at the time of the alleged offence. Section 109 of the *Mental Health Act 2016* defines "unsound mind" to mean "a state of mental disease or natural mental infirmity described in the Criminal Code, section 27(1), or a state of mind described in the Criminal Code, section 28(1) for which the Criminal Code, section 27(1) applies. Section 109(2) of the *Mental Health Act 2016* states '*unsound mind*' does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence'. Section 27 of *The Criminal Code*, in turn, refers to "such a state of mental disease or natural mental infirmity as to deprive the person of capacity to understand what the person is doing, or of capacity to control the person's actions, or of capacity to know that the person ought not to do the act or make the omission"

To satisfy this test, it is sufficient if the person is deprived of only one of these capacities. However, to satisfy the test, the person must have been deprived of the capacity, and it is not sufficient if the relevant capacity was only impaired.

Would you please give your opinion as to whether it is more probable than not that our client was deprived by a mental disease or natural mental infirmity of any one or more of those capacities (please specify which) at the time of each of the alleged offence.

Further, if our client was affected by alcohol or illicit drugs at the relevant time, in the absence of such alcohol or drugs, was her mental state sufficient to deprive her of one of the three (3) capacities described above. In other words, was the mental disease such that, by virtue of the disease alone, our client was deprived of one of those capacities.

4. Whether, in your opinion, (CLIENT) is currently "fit for trial". This is not defined in the *Mental Health Act 2016*.

The test for whether a person is fit to plead at their trial and to instruct counsel is contained in the following passage from *R -v- Presser* 1958.00 VR 45:

"He needs, I think, to be able to understand what it is that he is charged with. He needs to be able to plead to the charge and to exercise his right of challenge. He needs to understand generally the nature of the proceeding, namely, that it is an inquiry as to whether he did what he is charged with. He needs to be able to follow the course of the proceedings so as to understand what is going on in court in a general sense, though he need not, of course, understand the purpose of all the various court formalities. He needs to be able to understand, I think, the substantial effect of any evidence that may be given against him; and he needs to be able to make his defence or answer to the charge. Where he has counsel, he needs to be able to do this through his counsel by giving any necessary instructions and by letting his counsel know what his version of the facts is and, if necessary, telling the court what it is. He need not, of course, be conversant with court procedure and he need not have the mental capacity to make an able defence; but he must, I think, have sufficient capacity to be able to decide what defence

he will rely upon and to make his defence and his version of the facts known to the court and to his counsel, if any."

Under the previous *Mental Health Act* of 2000, fitness was defined as "fit to plead at the person's trial and to instruct counsel and endure the person's trial, with serious adverse consequences to the person's mental condition unlikely." While there is no definition of fitness in the *Mental Health Act 2016*, serious adverse consequences to the person's mental condition are still relevant to fitness.

If you are of the opinion that our client is unfit for trial, could you please state whether you believe the unfitness is of a permanent nature.

5. Your opinion regarding the future management of our client including whether she requires any hospitalisation, treatment, or counselling. Specifically, could you state whether the Mental Health Court should make a forensic order or treatment support order under Division 2 or 3 of the *Mental Health Act 2016*, if our client is found of unsound mind in relation to the alleged offence or is found unfit for trial, the unfitness being of a permanent nature.

Under the Act, the Court may make a forensic order (mental health) or a forensic order (disability). When making either order, the court must decide the category of the order and, if the category is inpatient, any limited community treatment for the person. In deciding whether to make a forensic order, the Court must have regard to the treatment and care of forensic patients and the assessment and management of risks relating to forensic patients receiving treatment in the community. Under sections 138 and 139 of the *Mental Health Act 2016*, the court may order limited community treatment or decide the category of a forensic order is community only if the court considers there is not an unacceptable risk to the safety of the community because of the person's mental condition (including the risk of serious harm to other persons or property).

Under a forensic order the Court may impose conditions it considers appropriate such as a condition that the person not contact a stated person, and can make recommendations it considers appropriate about particular intervention programs.

Under section 143 of the *Mental Health Act 2016*, provided the Mental Health Court considers a person's unsoundness or unfitness is not due to an intellectual disability, and the court considers the person does not need treatment and care for any mental illness, then the court must make a treatment support order if the court considers a treatment support order, but not a forensic order, is necessary because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property. The court may impose conditions it considers appropriate in a treatment support order. Under section 145, if a court makes a treatment support order for a person, the court may only decide the category is inpatient if the court considers the person's treatment and care needs, the safety and welfare of the person, or the safety of others cannot reasonably be met if the category of the order is community. If the category ordered is inpatient, the court may approve limited community treatment having regard to the purpose of limited community treatment.

If our client is found unfit for trial and the unfitness is not of a permanent nature the Court must make a forensic order or a treatment support order. The court may order limited community treatment or decide the category of a forensic order is community only if the court considers there is not an unacceptable risk to the safety of the community because of the person's mental condition (including the risk of serious harm to other persons or property).

6. Any other matters you consider relevant.

We envisage that you will be interviewing (CLIENT) on our behalf and any information obtained by you may well be used in the preparation of the case. All such information, therefore, should remain confidential to the defence. Furthermore, our retainer is on the condition that you will not consent to further examine and/or report on our client in relation to the current charges at the request of any other party, without our express consent in writing. We confirm that our retainer is on the condition that any information viewed or obtained by you in the course of your involvement with this case, including the fact that we have engaged you, should remain confidential and should not be disclosed to any other person based on client legal privilege.

Upon receipt of the report we undertake to pay your fees at the applicable Legal Aid scale which is \$1000 per hour. Please contact the writer immediately if the amount approved is unlikely to cover the cost of assessment and report so that additional funding approval can be arranged.

Should you require any further information, please contact (LAWYER) on (PHONE)

Yours sincerely

(NAME)
(POSITION)
(FIRM)

SAMPLE

Annexure T — Lower court plea of guilty pro forma instruction sheet

These instructions are a guide only. Practitioners need to ensure the contents of instructions are appropriate to the circumstances of any given case.

R -v- Client

File number:

Plea of guilty instructions

I,

(name of client) in the state of Queensland, instruct my

legal representatives at

(firm) as follows:

1. I understand I have been charged with the following offences:

1.1.

2. I understand the allegations against me are that:

2.1.

3. I have received advice from my legal representatives about the nature of the charge, the evidence the prosecution intends to place before the court, and the possible penalties for conviction of this offence.

4. I understand which courts this matter can be heard in and that I have the right to plead not guilty to this charge.

5. I instruct Legal Aid Queensland I want to plead guilty to this charge and have it dealt with by a magistrate.

6. I understand by pleading guilty I am accepting the prosecution case that I am guilty of this offence and that my legal representative will indicate this to the court.

7. I make this plea of my own free will, have considered the matter fully, and do not need any further time to think about my decision or to get further legal advice.

8. I have been advised of the range of likely penalties but understand the court is not bound to follow any suggested penalty from the prosecution or defence.

Initialled..... Date/.../

Witnessed Date/.../

9. I have had 'probation' and 'community service' explained to me and would consent to an order for either of these if it were offered to me.

10. I understand a possible outcome of my plea of guilty is that a term of imprisonment may be imposed on me.

11. I do not want to have a contested sentence as I understand that by contesting the allegations and requiring witnesses and/or the complainant be cross-examined, I may lose any benefit I would receive for my plea of guilty.

Signed.....

Client

Date/.../

Signed.....

Date/.../

.....

Witness

Annexure U: Final letter

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Our Ref:
Date:

Telephone:
Facsimile:
E-mail:

Private & Confidential
(CLIENT)
(ADDRESS)

Dear (CLIENT)

Your criminal law matter
Your sentence

We appeared on your behalf at your (COURT TYPE) before the (COURT) at (TIME) on (DATE).

The court sentenced you as follows:

What was the result?

Offences:

Penalty:

[OPTIONAL]: The court took into account that you had already served (TOTAL NUMBER OF DAYS) from (DATE) to (DATE) and declared that this is to be counted as time already served towards the sentence imposed.

[OPTIONAL]: The court ordered that you be released from jail on parole on (DATE). You will be released on parole unless you have any outstanding charges you do not have bail for, or you are serving a sentence for other matters.

If you are not released from jail and are unsure why, you should first speak to Sentence Management at the jail. If necessary, you should then contact us for further advice.

After you are released on parole, you will remain under the supervision of Queensland Corrective Services until the end of your sentence.

The court recorded a conviction.

The court recorded a conviction for the following offence:

(INSERT OFFENCE/S)

This means that you may have to declare this offence when applying for jobs or travelling overseas. If this arises in the future you should get legal advice.

[OPTIONAL]: Because your matter proceeded by way of an ex officio indictment, the following charges remain outstanding in the (COURT) at (LOCATION):

(INSERT CHARGES)

These charges are listed for an ex officio mention on (DATE) at (TIME)

At that time we will tell the Magistrate at (LOCATION) that your charges have been dealt with in the Magistrates Court at (LOCATION). The Magistrates Court will then dismiss the charges against you.

[OPTIONAL]: Your conviction in this matter constitutes a conviction for a serious child sex offence as defined under the *Penalties and Sentences Act 1992* (Qld). This means that if you are convicted of a serious child sex offence committed after insert date of conviction for current serious child sex offence the mandatory sentence imposed on you will be life imprisonment.

We confirm that you are required to report under the *Child Protection (Offender Reporting) Act 2004* for (TIME PERIOD) from your sentence date / release from custody. Failure to do so can result in a fine or a period of imprisonment. We advise you to contact the Police and ask to speak with Child Protection Offender Registry Unit if you have any questions about your obligations. If you are unsure about when you need to make your initial report, please contact our office immediately.

Can I appeal against my sentence?

You have the right to appeal against your sentence. Your solicitor has considered your sentence and does not recommend you appeal.

To appeal against your sentence, you must lodge a Notice of Appeal in the District Court by (INSERT DATE). You may also lodge the notice with the jail's general manager.

You should also lodge a new legal aid application for your appeal. We will process your application and let you know if legal aid is approved.

If you have any questions about your sentence or your right of appeal, please phone (LAWYER) on (PHONE)

Offender Levy

As a result of your sentencing proceedings, you will be liable to pay an offender levy. The offender levy is payable by every adult who has been sentenced in Queensland and is an administrative fee to help pay for the cost of law enforcement and administration. You should receive some documentation about this. It can be paid at the court registry on the day it is applied, or through the State Penalties Enforcement Registry. It is not a sentence in itself and does not form part of your sentence. You do not have to pay the offender levy if you have lodged an appeal against your conviction or sentence, but if your appeal is not successful you will have to pay the levy.

Conclusion

As your court proceedings have ended, we will close our file. Thank you for your instructions.

Yours sincerely

(NAME)
(POSITION)
(FIRM)

Annexure V — Criminal practice checklist

Action	Yes	No	N/A
Approved grant of aid			
Initial letter to client			
Client information sheet			
Bail requirements			
Prosecution material			
Options explained to client (including options under the Human Rights Act 2019)			
Statement of fact			
Signed instructions obtained			
Personal statement			
Witness statements			
Criminal history			
Character references			
Restitution			
Sentencing options (probation etc)			
Outcome explained			
Appeal rights advised			
Final letter sent to client			
Initial contribution recovered			
Completed LAQ requirements			

Practitioner: _____ Date: _____

Annexure W — Criminal practice guideline — Taking instructions from clients

Background

1. It is fundamental to the lawyer-client relationship that a lawyer must rely and act on the lawful, proper and competent instructions of their client ([ASCR rule 8](#)).

The function of taking a client's written instructions is three-fold:

It provides a concise summary of the allegations, advice given, options open to the client, potential consequences, and specific directions a client is providing as to how they wish their matter to progress.

The existence of written instructions will often remove the need for an appellate court to consider competing versions from applicants and their legal representatives (by way of oral evidence) about the circumstances and advice under which a plea is given. Some examples of cases in which the existence or absence of instructions was pivotal include:

[R v Williams \[2012\] QCA 139](#) at 33

[R v BCJ \[2012\] QCA 316](#) at 20

[R v Verall \[2012\] QCA 310](#) at 28, 29, 39 and 51

[R v McGrane \[2012\] QCA 29](#) at 30-32

[R v Nerbas \[2011\] QSC 41](#) at 30-31, 43

[R v Mamea \[2010\] QCA 127](#) at 8-10

[R v Bourke \[2009\] QDC 62](#)

[R v Gearn \[2004\] QCA 115](#) at 17

[R v Au \[2004\] QCA 330](#) at 22 and 26.

2. The process of executing the document assists the client to appreciate the significance of exercising their legal rights in making a choice as to how the matter will proceed.
3. It provides an independent record which can be provided to the client, or an appellate court or disciplinary body if the matter is later contested.

The Queensland Court of Appeal has explicitly recognised the importance of signed witnessed instructions on many occasions, including in [R v Allison \[2003\] QCA 125](#), when the court made the following observations:

"McMURDO P: All experienced practitioners in the criminal law recognise the wisdom of ensuring instructions, changes in instructions and especially instructions as to the plea are in writing and witnessed to avoid subsequent costly and distressing investigations such as those undertaken here...I emphasise that signed instructions properly witnessed by the barrister's instructing clerk would almost certainly have avoided this whole unfortunate exercise."

Professional and ethical obligations:

It will always be a matter for an individual lawyer/duty lawyer to decide the circumstances in which they are prepared to act on a client's instructions. It may be, as technology advances, that other options, including the use of tablets and digital signatures, become available. As it stands, lawyers/duty lawyers will need to assess the options discussed below.

While it is desirable to assist with the efficient progression of matters through the courts, lawyers/duty lawyers must never act in circumstances where they believe it is not appropriate to do so. Whether the matter is a duty lawyer plea, or a murder trial, the standard of competence that a member of the public is entitled to expect of a reasonably competent lawyer is the same. Time pressures or inexperience will not bear on the objective test as to what will amount to unsatisfactory professional conduct¹.

Where a grant of legal aid exists

The following options exist:

1. Best practice is taking written instructions face-to-face from the client which are signed by the client and witnessed by the lawyer².
2. Situations will arise where this is not possible. In these situations, lawyers should consider the alternatives below:
 - 2.1. Schedule a videoconference with the client. Fax the instructions to the client. Read through the instructions with the client and watch them sign the document. Request the document be faxed back to you.
 - If the client is being produced at the sentence, they can execute another document annexing the faxed instructions.
 - If the client is not being produced at the sentence, request they post the hard copy back to you. On receipt of the instructions, you can mark the document to indicate it is the same document you read through with the client in the videoconference.
 - 2.2. Send the written instructions to the prison. This will ensure legal professional privilege is maintained. A videoconference can then be scheduled for the client to go through the instructions. You can watch the client sign the document and request it be returned via pre-paid post. On receipt of the signed instructions, you can mark the document to indicate it is the same document you read through with the client in the videoconference.
 - 2.3. If a fax is unavailable, hold a videoconference with the client. Draft and read their instructions to them and advise them a copy will be sent to them. Send instructions in the post and hold a further

¹ [Legal Services Commissioner v Anderson \[2009\] LPT 1](#)

² A grant of legal aid for a higher court matter automatically includes 2 conference grants (at time of drafting worth \$165 each). A prison visit grant of \$177 is also available for higher court or summary matters on application.

videoconference to go through the instructions. Have the instructions returned as per point 2.2 above.

- 2.4. If you adopt step 2.3, and there is some reason you cannot schedule a second videoconference, ask the client to sign and return the instructions via pre-paid post. The client should not be asked to get the document witnessed. There are two reasons for this:
- a) The primary function of the witness in this situation is being a witness of the truth of the contents, that is, the client read and understood the document and received the advice as set out in the document — no lay person at the prison will be in a position to do this.
 - b) Given the lack of utility in having a witness, it is unadvisable to require the client show a privilege document to a third party and waive their privilege.

Duty Lawyer representation

1. Where the client is physically present, the duty lawyer must obtain the client's signed and witnessed instructions on the *Criminal law duty lawyer form* (duty lawyer form) unless circumstances exist which prevent the exchange of documents between the duty lawyer and the client. Where such circumstances exist, the duty lawyer should follow the procedure set out below as if the client were attending court via video link.
2. Where a client is attending court via a video link, the duty lawyer must adopt the following procedure:
 - 2.1. The duty lawyer must make contemporaneous notes recording the advice provided to the client and the instructions obtained from the client on the duty lawyer form and must complete all other relevant or necessary parts of the duty lawyer form.
 - 2.2. Where the client gives instructions that he/she wishes to enter a plea on a charge/s **and the duty lawyer is satisfied it is appropriate to deal with the matter in the absence of written instructions signed by the client**, the duty lawyer must:
 - a) explain to the client it is preferable the client have the opportunity to peruse the duty lawyer form and confirm his/her instructions by signature and that an adjournment of the matter will be required for that process to occur
 - b) explain to the client that if the client wishes to waive the opportunity to peruse and sign the duty lawyer form so as to have his/her matter dealt with as soon as possible, the client's instructions may, where practical, need to be confirmed by other means, such as an appropriate third party witness
 - c) record on the duty lawyer form and have the client verbally confirm:
 - i. if the instructions between the client and the duty lawyer are to be witnessed by a third party, that the client consents to the instructions being witnessed
 - ii. the client wishes to have their matter dealt with as soon as possible and therefore waives the opportunity to read and sign the written record of the client's instructions
 - iii. the client's instructions as to their plea

- d) sign the duty lawyer form and ensure the witness also signs the duty lawyer form(if the conversation is being witnessed)
- e) request the presiding magistrate ask the client how they plead to each charge, as required by s 145(1) of the *Justices Act 1886*, rather than having the lawyer enter pleas on the client's behalf.