

# Independent Children's Lawyer and Separate Representative Agreement

The parties to the agreement:

**LEGAL AID QUEENSLAND** a body corporate established by Section 41 of the *Legal Aid Queensland Act 1997* of 44 Herschel Street, Brisbane, in the State of Queensland

(“Legal Aid Queensland”)

**AND**

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(Name of practitioner)

whose office is at:

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(Practice address)

(“the Practitioner”)

**Signed on behalf of Legal Aid Queensland by**

**Signed by the Practitioner**

Name \_\_\_\_\_

Name \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Status \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

This agreement is valid only if it is signed by a person with the specific written authority of Legal Aid Queensland’s Chief Executive Officer.

## WHEREAS

- A Legal Aid Queensland may enter into an agreement with legal practitioners to meet its obligations under a legal assistance arrangement pursuant to Section 46 of the Act.
- B Legal Aid Queensland's Independent Children's Lawyer & Separate Representative Panel commenced operation on 1 July 2004 and a legal practitioner must be on the relevant sub panel in order to perform legal services as an Independent Children's Lawyer or Separate Representative.
- C The panel is reviewed to ensure practitioners who have expressed an interest in being included on the panel or sub panel have an opportunity to be considered for inclusion and to enable Legal Aid Queensland to add practitioners to a panel or sub panel where additional service coverage is needed. Where additional coverage is not immediately required in a region, a practitioner who meets the inclusion criteria may be placed on a waiting list until further coverage is required or a panel or a sub panel is reviewed, whichever occurs first.
- D An agreement is between Legal Aid Queensland and a practitioner personally irrespective of whether that practitioner is a sole practitioner, a partner of a firm, a director of an incorporated legal practice, an employee of a legal practice or is otherwise engaged in legal practice.
- E Practitioners included on a panel or sub panel have agreed to comply with any undertakings contained in the application to be included on the panel or sub panel and have agreed to comply with the Practice and Case Management Standards.
- F Legal Aid Queensland and the Practitioner have agreed to formalise their agreement so as to:
- i. ensure Legal Aid Queensland has certainty about the performance of Independent Children's Lawyer and Separate Representative work throughout Queensland.
  - ii. ensure that Legal Aid Queensland Independent Children's Lawyer and Separate Representative referrals go to practitioners on the panel.
  - iii. maximise the quality and cost effectiveness of Independent Children's Lawyer and Separate Representative legal services purchased by Legal Aid Queensland and delivered by the Practitioner.
  - iv. ensure the Practitioner adopts service delivery practices in accordance with the Practice and Case Management Standards.
  - v. ensure proper accountability on the part of the Practitioner for the expenditure of funds provided by Legal Aid Queensland.
  - vi. allow the Practitioner free access to a range of electronic databases and resources to better enable the Practitioner to deliver a quality legal service.
- G The Practitioner has agreed to accept referrals and perform legal aid work on the terms and conditions set out in this agreement.

## NOW THE PARTIES AGREE AS FOLLOWS:

### 1. Definitions and interpretation

1.1 In this agreement, unless the contrary intention appears:

**Act** means the *Legal Aid Queensland Act 1997*, as amended from time to time.

**Agreement** means this agreement, including the schedule, as amended from time to time.

**Audit team** means the officers holding, occupying, or performing the duties of auditors within Legal Aid Queensland.

**Board** means the Legal Aid Queensland Board established by Section 48 of the Act.

**Business Day** means a day, other than a Saturday, Sunday or public holiday, in the place in which any relevant act is to be or may be done.

**Chief Executive Officer** means the Chief Executive Officer of Legal Aid Queensland appointed under Section 64 of the Act.

**Commencement date** means either 1 August 2016 or the date the agreement is signed on behalf of Legal Aid Queensland, whichever is the later.

**Confidential information** means information of, or supplied by Legal Aid Queensland, that:

- (a) is by its nature confidential
- (b) is designated as confidential, or
- (c) the Practitioner knows, or ought reasonably to know, is confidential, and includes the terms of this agreement, but does not include information that:
  - i. is already in the possession of the Practitioner and is not subject to an obligation of confidentiality
  - ii. is lawfully received by the Practitioner from a third party or independently developed by the Practitioner, or
  - iii. is already in the public domain, other than through a breach of an obligation of confidentiality.

**Eligibility criteria** means the criteria for eligibility for inclusion as an Independent Children's Lawyer or a Separate Representative on a panel and sub panel, as set out in the application form, accompanying terms and conditions or other documents from time to time used by Legal Aid Queensland for receiving applications for appointment as an Independent Children's Lawyer or Separate Representative on a panel or sub panel, or as otherwise notified from time to time by Legal Aid Queensland.

**Independent Children's Lawyer** means a legal practitioner who has been included on Legal Aid Queensland's Independent Children's Lawyer sub panel of the Independent Children's Lawyer and Separate Representative Panel.

**ILP** means an incorporated legal practice under the *Legal Profession Act 2007*.

**Legal Aid Queensland** means the body corporate established by Section 41 of the Act and where the context so admits includes employees of Legal Aid Queensland.

**Legal aid work** means the provision of legal services as an Independent Children's Lawyer or as a Separate Representative by a practitioner at the request of or referral from, Legal Aid Queensland.

**Legal Practice** means an entity that is a legal practice or recognised as a legal practice under the *Legal Profession Act 2007*.

**Panel** means the 'Independent Children's Lawyer & Separate Representative Panel' maintained by Legal Aid Queensland, consisting of persons who may provide legal aid work for Legal Aid Queensland and which may be divided into geographical areas on any of the following sub panels:

- (a) Independent Children's Lawyer
- (b) Separate Representative

**Logo** means Legal Aid Queensland's logo for use by the Practitioner.

**LSC** means the Legal Service Commission, as continued in existence under section 591 of the *Legal Profession Act 2007*.

**Notification matter** means a matter specified in Schedule 1.

**Personal information** means 'personal information' as defined in section 12 of the *Information Privacy Act 2009* (Qld).

**Practice and Case Management Standards** means the standards and checklists setting out the minimum standards required by Legal Aid Queensland from time to time in respect of the performance of legal aid work.

**Professional rules** means:

- (a) all rules made, or applying, under the *Legal Profession Act 2007*, and
- (b) all other rules or guides to professional or ethical conduct published from time to time by the QLS and the LSC.

**QLS** means the Queensland Law Society Incorporated, as continued in existence under section 679 of the *Legal Profession Act 2007*.

**Referral** means a referral from Legal Aid Queensland to provide legal services as an Independent Children's Lawyer or as a Separate Representative.

**Relevant sub panel** means the panel and sub panels that:

- (a) the Practitioner applied for inclusion on, and
- (b) Legal Aid Queensland notified the Practitioner, in writing, that they have been approved for inclusion on.

**Relevant person** means, in relation to a practitioner, a person referred to in subclause 4.6.

**Scale of Fees** means the scale of fees and rules for payment of accounts and claiming guidelines, as published or amended from time to time by Legal Aid Queensland.

**Separate Representative** means a legal practitioner who has been included on Legal Aid Queensland's Separate Representative sub panel of the Independent Children's Lawyer and Separate Representative Panel.

**Specified matter** means a matter specified in Schedule 2.

1.2 In this agreement, unless the contrary intention appears:

- (a) a reference to a clause or a schedule is a reference to a clause in, or schedule to, this agreement
- (b) the parties acknowledge and agree that business may be undertaken by electronic exchange of information and the provisions of the agreement will be read and construed to give effect thereto
- (c) words importing any gender include every gender
- (d) words importing the singular number include the plural number and vice versa

- (e) the headings contained herein are for reference purposes only and do not form part of this agreement and are to be disregarded in the interpretation hereof, and
- (f) reference to a 'current' rate or guidelines means a payment rate or guideline in its current rate or form from time to time and not merely as at the date this agreement comes into force.

## **2. Operation of agreement**

- 2.1 This agreement comes into operation and takes effect as from the commencement date.
- 2.2 This agreement will expire on the 31 July 2019 unless:
  - (a) extended in accordance with clause 19, or
  - (b) terminated earlier in accordance with this agreement.

## **3. Inclusion on the relevant panel and sub panel(s)**

- 3.1 Subject to the terms of this agreement, Legal Aid Queensland will, as from the commencement date, include the Practitioner on the relevant panel and sub panels.
- 3.2 The Practitioner acknowledges and agrees that neither the entry into of this agreement by Legal Aid Queensland, nor the inclusion of the Practitioner on any relevant panel and sub panel, will entitle the Practitioner to perform any minimum level of legal aid work.

## **4. Service provision**

- 4.1 The Practitioner agrees that subject to any conflicts, the Practitioner will accept referrals from Legal Aid Queensland to perform legal aid work in accordance with the terms of this agreement.
- 4.2 The Practitioner must, in performing legal aid work and in performing the Practitioner's obligations under this agreement, comply with:
  - (a) all applicable provisions of:
    - i. the Act
    - ii. the Professional Rules
    - iii. Legal Aid Queensland Practice and Case Management Standards
    - iv. any other current Legal Aid Queensland policies and guidelines, and
  - (b) any conditions of a relevant grant of legal assistance that Legal Aid Queensland may from time to time impose.
- 4.3 The Practitioner and Legal Aid Queensland agree that information or documents provided by the Practitioner to Legal Aid Queensland regarding a legally aided matter:
  - (a) will be used by Legal Aid Queensland for the purposes of the Act and for the purposes set out in this agreement, including audits under clause 5, but otherwise kept confidential, and
  - (b) do not constitute a waiver of legal professional privilege which the Practitioner holds.
- 4.4 The Practitioner agrees that the rate of payment for:
  - (a) legal aid work performed by the Practitioner and any relevant person
  - (b) legal work performed by counsel or other legal practitioners/service providers briefed by the Practitioner in accordance with this agreement, and

- (c) other disbursements and out-of-pocket expenses incurred by the Practitioner or counsel or other legal practitioners/service providers briefed by the Practitioner in accordance with this agreement

will be in accordance with the grant of legal assistance and the Scale of Fees or, if no applicable rate exists, a rate to be negotiated with Legal Aid Queensland prior to the work being performed or the disbursement and expense being incurred.

4.5 Legal Aid Queensland reserves the right to:

- (a) re-allocate any particular matter to another practitioner or to Legal Aid Queensland's in-house legal practice, where Legal Aid Queensland (at its discretion) considers there are reasonable grounds for doing so, and
- (b) request the Practitioner to provide or return a particular file or documents to Legal Aid Queensland, and

the Practitioner must comply with any re-allocation or request by Legal Aid Queensland under this clause 4.5

4.6 Subject to clauses 4.7 and 4.8 the Practitioner must perform all legal aid work personally except in the following circumstances:

- (a) for work which requires the exercise of their professional judgement only where:
  - i. an unavoidable professional or personal engagement arises which prevents the Practitioner from performing the work personally,
  - ii. the Practitioner delegates the work to another legal practitioner on the relevant sub panel or to a suitably experienced counsel in the jurisdiction applicable to the type of legal aid work,
  - iii. the Practitioner obtains an undertaking from the other legal practitioner or counsel that they will perform the work personally unless an unavoidable personal engagement arises, and
  - iv. the total work performed by the other legal practitioner or counsel does not constitute the majority of the work required for a particular matter or referral;
- (b) for work which does not require the exercise of their professional judgement only where the Practitioner delegates the work to another legal practitioner who holds a practicing certificate and is subject to the supervision of the Practitioner.

4.7 Where any legal aid work to be performed by the Practitioner requires attendance at a place other than the city or town where the Practitioner's office is located, the Practitioner may engage a legal practitioner in that city or town to assist the Practitioner in performing the legal aid work, subject to the following requirements:

- (a) The practitioner must use their best endeavours to engage a legal practitioner who is included on the relevant sub panel applicable to the type of legal aid work, and
- (b) The Practitioner must ensure that any legal practitioner engaged:
  - i. has appropriate and relevant experience and competence in relation to the type of work to be performed, and
  - ii. agrees to payment for their services in accordance with clause 4.4.

4.8 Where a grant of legal aid exists for briefing counsel in a matter the Practitioner may brief external counsel in accordance with that grant of legal assistance subject to the following requirements:

- (a) The Practitioner must ensure that any counsel briefed:
    - i. has appropriate and relevant experience and competence in relation to the type of work to be performed,
    - ii. agrees to payment for their services in accordance with clause 4.4 and
    - iii. is a member of the Bar Association of Queensland, unless prior written approval is obtained from Legal Aid Queensland,
  - (b) All briefs to counsel must be marked 'Legal Aid',
  - (c) The Practitioner must ensure that the appropriate pro forma invoice is forwarded to counsel with the brief,
  - (d) If Legal Aid Queensland directs the briefing of particular counsel, the Practitioner will use their best endeavours to brief that particular counsel, and,
  - (e) If Legal Aid Queensland implements an approved list of counsel, the Practitioner must only brief counsel who is included on that list, unless Legal Aid Queensland otherwise approves.
- 4.9 The Practitioner acknowledges that, where another legal practitioner or counsel is engaged by the Practitioner to perform legal aid work under clauses 4.9 or 4.8 the Practitioner remains responsible to Legal Aid Queensland for the legal aid work performed by that other practitioner or counsel.
- 4.10 The Practitioner acknowledges that they have read and agrees to comply with, and ensure that each of:
- (a) any relevant person
  - (b) any legal practitioner engaged under clause 4.7, and
  - (c) any external counsel briefed under clause 4.8
- comply with, Legal Aid Queensland's Practice and Case Management Standards.
- 4.11 The Practitioner acknowledges and agrees that they do not obtain any lien over any legal aid work matter, file or other rights in the work or documents relating to the matter.
- 4.12 Legal Aid Queensland and the Practitioner acknowledge that a file created by the Practitioner in regard to a referral of legal aid work by Legal Aid Queensland is the property of the Practitioner.
- 4.13 The Practitioner agrees to:
- (a) provide copies of any documents on a legal aid file to Legal Aid Queensland at the request of Legal Aid Queensland and at no cost, and
  - (b) retain each legal aid file for a minimum period of 7 years from the date of completion of the file or termination of the Practitioner's appointment as independent children's lawyer or separate representative in the matter, at the Practitioner's own cost, and
  - (c) acknowledge that this clause sets out the contractual obligation required by Legal Aid Queensland but does not purport to define any professional or ethical obligation which applies to the Practitioner.
- 4.14 The Practitioner agrees that:
- (a) they or any relevant person undertaking legal aid work will be accessible and contactable between the hours of 9am to 5pm on any business day (leave excepted),

- (b) for the purposes of clause 4.14(a) accessible and contactable means that if a person attempts to contact the Practitioner or relevant person and the Practitioner or relevant person is unavailable, there is a facility for the person to leave a message and the Practitioner or relevant person will contact the person within a reasonable time having regard to the identity of the person, the nature of the call and the urgency of the issues raised, and
  - (c) they will have suitable storage to ensure privacy and security of files in relation to legal aid work being performed.
- 4.15 Without limiting any other provision of this agreement, if, during the currency of this agreement, the Practitioner:
- (a) fails to hold or renew an unrestricted practising certificate, or
  - (b) has their unrestricted practising certificate suspended or revoked for any reason whatsoever
- they must not perform any legal aid work and must take all necessary steps to inform Legal Aid Queensland.

## 5. Audit

- 5.1 The Practitioner agrees to provide to Legal Aid Queensland any of its legal aid files for audit by the Audit Team in relation to any of the following matters:
- (a) claims made by the practitioner for payment in relation to legal aid work performed
  - (b) compliance by the Practitioner with Legal Aid Queensland's Practice and Case Management Standards
  - (c) compliance with the terms and conditions of this agreement
  - (d) compliance with the eligibility criteria
  - (e) compliance with Legal Aid Queensland's merit guidelines
  - (f) quality of legal aid work performed
  - (g) claims made for legal assistance, submitted by the Practitioner via Legal Aid Queensland's simplified merit checklists/information requests, and
  - (h) complaints made regarding the Practitioner or legal aid work performed by the Practitioner or a relevant person.
- 5.2 The Practitioner will provide all files requested by Legal Aid Queensland for audit purposes within 10 business days of the date of request or within such other time period as may be agreed between Legal Aid Queensland and the Practitioner.
- 5.3 The reasonable cost of delivering files to and returning files by Legal Aid Queensland for audit purposes will be borne by Legal Aid Queensland.
- 5.4 Without limiting any other right of Legal Aid Queensland:
- (a) any non-compliance with this agreement by the Practitioner, identified by the Audit Team during an audit, will be raised and discussed with the Practitioner and remedial action will be taken by the Practitioner within the time agreed between the Audit Team and the Practitioner and failing agreement, within a reasonable time as specified by the Audit Team
  - (b) any refund of moneys owing to Legal Aid Queensland by the Practitioner, identified by the Audit Team during an audit, will be discussed with the Practitioner with a view to agreeing the sum of money owing and, failing agreement, such moneys will be confirmed by Legal Aid Queensland as owing

- (c) all moneys owing to Legal Aid Queensland, as agreed or confirmed under subclause 5.4(b) must be refunded to Legal Aid Queensland by the Practitioner from the next available and subsequent electronic funds transfer, unless Legal Aid Queensland and the Practitioner agree to alternative arrangements, and
- (d) any refund of moneys owing to a Practitioner by Legal Aid Queensland, identified by the Audit Team during an audit, will be refunded by Legal Aid Queensland in the next available electronic funds transfer.

## 6. Practitioner obligations

- 6.1 In performing legal aid work, the Practitioner must:
- (a) ensure that all legal aid work is performed to a high professional and ethical standard
  - (b) comply with any relevant practice rules, guidelines and directions made by Courts, to the fullest extent possible
  - (c) where applicable, comply with any protocols relevant to the jurisdiction established from time to time
  - (d) comply with Professional Rules, and
  - (e) comply with the Legal Aid Queensland Practice and Case Management Standards.
- 6.2 The Practitioner must:
- (a) keep up-to-date with changes in the law in their nominated areas of practice of family law and/or child protection law
  - (b) undertake such hours of compulsory professional development in their nominated areas of practice as may be nominated by Legal Aid Queensland from time to time, and
  - (c) attend compulsory professional development programs designed to achieve this, at their own expense.
- 6.3 The Practitioner must undertake any advanced training that Legal Aid Queensland may nominate at the Practitioner's own expense.
- 6.4 The Practitioner must participate in any trial conducted by Legal Aid Queensland attempting to modify its policies, guidelines and/or scale of fees, including exercising delegated decision making powers in accordance with Legal Aid Queensland's policies and guidelines.
- 6.5 The Practitioner agrees to claim payments for legal aid work only in accordance with the Scale of Fees. The Practitioner must, unless Legal Aid Queensland agrees otherwise, lodge a claim for legal aid work performed within three months from the end of relevant proceedings and/or finalisation of the relevant matter.
- 6.6 The Practitioner must nominate to Legal Aid Queensland which legal practice payments owing to the Practitioner by Legal Aid Queensland under this agreement are to be paid.
- 6.7 The Practitioner must accept payment for legal aid work performed by way of electronic funds transfer.
- 6.8 The Practitioner must establish at their own expense, such facilities as are reasonably required by Legal Aid Queensland to enable the electronic lodgement of applications for extensions of legal aid and accounts relating to legal aid work performed and, as far as practicable, to electronically communicate with Legal Aid Queensland in relation to

all referrals, requests and information. The Practitioner must ensure that any staff employed to assist the practitioner are adequately trained to use such facilities.

- 6.9 The Practitioner must notify Legal Aid Queensland in writing, within 10 business days, of the occurrence of any notification matter described in Schedule 1. If the notification matter is of a type described in paragraph (a) of Schedule 1, the Practitioner must also:
- (a) notify Legal Aid Queensland of the outcome of the relevant matter, and
  - (b) if required by Legal Aid Queensland, provide, or procure any relevant person to provide, an authority for Legal Aid Queensland to be informed of the outcome of the relevant matter.
- 6.10 The Practitioner must ensure that they and each relevant person performing legal aid work are covered by all necessary professional indemnity insurance as may be required by the QLS or otherwise under the *Legal Profession Act 2007* or any Professional Rule and provide evidence thereof as requested by the Chief Executive Officer or their nominee.
- 6.11 The Practitioner must comply with, and must ensure that each relevant person complies with, the confidentiality provisions of the Act in respect of legal aid work performed by the practitioner.
- 6.12 The Practitioner must do and must ensure that each relevant person performing legal aid work does everything necessary to protect the copyright and intellectual property of Legal Aid Queensland in the electronic databases and information, materials and documents accessed by the Practitioner or any relevant person pursuant to clause 7.2 herein.
- 6.13 The Practitioner must comply with and must ensure that each relevant person performing legal aid work complies with all directions made by Legal Aid Queensland to ensure the protection of copyright and other intellectual property in continuing professional development materials and documents accessed by the Practitioner or any relevant person pursuant to clause 7.2 herein.
- 6.14 The Practitioner must provide:
- (a) prompt and efficient replies to inquiries made by other parties in legally aided matters, inquiries made by Legal Aid Queensland or inquiries made by officers of courts or registries, and
  - (b) prompt, efficient and adequate replies by no later than 20 business days to any investigation being made or undertaken by Legal Aid Queensland.
- 6.15 The Practitioner must comply with the provisions of all applicable state and federal antidiscrimination legislation. The practitioner must indemnify Legal Aid Queensland against any cost, loss, damage, expense, action or claim which may be suffered or incurred by, or brought against, Legal Aid Queensland as a consequence of a breach of this clause.
- 6.16 The Practitioner must act in a reasonable, polite and courteous manner when dealing with Legal Aid Queensland, other parties and other practitioners in legally aided matters.
- 6.17 The Practitioner acknowledges that, in providing services under this agreement, they are an independent provider of such legal services.

## **7. Legal Aid Queensland's obligations**

- 7.1 Legal Aid Queensland will pay the Practitioner for legal aid work performed by the Practitioner, in accordance with the terms of the grant of legal assistance and the Scale of Fees.

- 7.2 Legal Aid Queensland will, without charge, provide the Practitioner and any relevant person performing legal aid work for the Practitioner, with reasonable access to such of its resources, to assist in the performance of legal aid work, including access to video-link facilities, a range of electronic databases and continuing professional development materials and documents.
- 7.3 Legal Aid Queensland will permit the Practitioner to promote themselves as a member of Legal Aid Queensland's Independent Children's Lawyer & Separate Representative Panel, including use of Legal Aid Queensland's logo, provided the nature and extent of such promotional material and the intended use of the logo have the prior approval of Legal Aid Queensland.
- 7.4 Legal Aid Queensland will give the Practitioner notice of any change in any of Legal Aid Queensland's policies or guidelines, any Practice and Case Management Standards or the Scale of Fees.
- 7.5 Legal Aid Queensland will provide prompt and efficient replies to inquiries by the practitioner.

## **8. Termination**

- 8.1 Subject to clause 8.3, if the Practitioner commits a breach of any part of this agreement, Legal Aid Queensland may give the Practitioner written notice specifying:
  - (a) the breach, and
  - (b) the period (which will not be less than 10 business days) within which:
    - i. the breach must be rectified to Legal Aid Queensland's satisfaction; and/or
    - ii. reasonable cause must be shown by the practitioner as to why the breach should not result in termination of this agreement.
- 8.2 If the Practitioner, having received notice under clause 8.1 fails to remedy the breach referred to in that notice or to show reasonable cause why the failure should not result in the termination of this agreement, by the date specified in that notice, Legal Aid Queensland may:
  - (a) terminate this agreement by written notice at any time after the specified date, and/or
  - (b) if the Practitioner is included on two sub panels, remove the Practitioner from one or both sub panel/s.
- 8.3 Legal Aid Queensland may, by written notice to the Practitioner, immediately terminate this agreement or remove the Practitioner from a sub panel if any specified matter described in Schedule 2 occurs and Legal Aid Queensland, at its discretion, determines that the occurrence of the specified matter means that it is appropriate to terminate this agreement or remove the Practitioner from the sub panel.
- 8.4 This agreement may be terminated by the Practitioner upon the giving of three months' prior notice in writing to Legal Aid Queensland. Where the Practitioner gives notice under this clause, no new referrals will be provided to, or accepted by, the practitioner.
- 8.5 Notwithstanding anything in clauses 8.1 to 8.3 above, if any event occurs that would permit Legal Aid Queensland to terminate this agreement, Legal Aid Queensland may, at its election suspend this agreement, without terminating it for such period and on such conditions as it considers appropriate.

## **9. Consequences of termination**

- 9.1 Upon termination of this agreement for any reason:
  - (a) Subject to clause 9.3, the Practitioner must:

- i. immediately cease performing any legal aid work, and
    - ii. immediately return to Legal Aid Queensland, or forward to another Practitioner as directed by Legal Aid Queensland, all files in respect of which the Practitioner was performing legal aid work, and
  - (b) the Practitioner will be removed from the panel and relevant sub panels and will not be eligible to perform any further legal aid work, unless and until the Practitioner enters into a new agreement with Legal Aid Queensland.
- 9.2 Where the agreement is not terminated but a Practitioner is removed from a sub panel, upon the removal of the Practitioner from that sub panel for any reason:
- (a) Subject to clause 9.3, the Practitioner must:
    - i. immediately cease performing any legal aid work referred to the Practitioner by virtue of that Practitioner being included on that sub panel, and
    - ii. immediately return to Legal Aid Queensland, or forward to another Practitioner as directed by Legal Aid Queensland, all files in respect of which the Practitioner was performing legal aid work by virtue of that Practitioner being included on that sub panel, and
  - (b) the Practitioner will not be eligible to perform any further legal aid work in relation to that sub panel.
- 9.3 Notwithstanding clause 9.1(a) or 9.2(a), Legal Aid Queensland may notify the Practitioner to continue to perform any existing legal aid work, on the same terms and conditions as set out in this agreement, for a period not exceeding three months, to enable Legal Aid Queensland to establish satisfactory alternative arrangements for the performance of the legal aid work by another Practitioner.
- 9.4 Upon termination of this agreement, any provision that relates to or governs the acts of the Practitioner after it has ended remains in full force and effect and is enforceable even though this agreement has ended.

## 10. Confidentiality

- 10.1 In addition to clause 6.11, the Practitioner must not, and must ensure each relevant person, and the Practitioner's officers, employees, partners, principals and incorporated legal practice directors, agents and subcontractors do not, use or disclose any confidential information without Legal Aid Queensland's consent, other than:
- (a) disclosure to an officer, employee, partner, principal, and incorporated legal practice director, agent or subcontractor to the extent necessary for the Practitioner to perform their obligations under this agreement, provided that the Practitioner makes any such person aware that the information is, and must be kept, confidential, or
  - (b) to the extent required by law.
- 10.2 The Practitioner will be responsible to Legal Aid Queensland to ensure that any person referred to in subclause 10.1(a) keeps the confidential information strictly confidential.

## 11. Privacy

- 11.1 If the Practitioner collects, or has access to, personal information in order to perform legal aid work or the Practitioner's obligations under this agreement, the Practitioner must comply with Parts 1 and 3 of Chapter 2 of the *Information Privacy Act 2009* (Qld) as if the Practitioner was Legal Aid Queensland.

## **12. Variations of agreement**

12.1 The provisions of the agreement may be varied from time to time by an exchange of letters signed by the Chief Executive Officer or delegate and the Practitioner.

## **13. Law**

13.1 This agreement will be governed by the laws of Queensland.

## **14. Assignment**

14.1 Neither party may assign, in whole or in part, its benefits under the agreement without the prior written consent of the other party which consent will not be unreasonably withheld.

## **15. Notices**

15.1 A notice or other communication which may be given to or served on one party under this agreement will be deemed to have been duly given or served if:

(a) it is in paper form then:

- i. it is in writing
- ii. signed on behalf of the party, and
- iii. is delivered by hand or by facsimile or posted to the address of the other party set out at the commencement of this agreement or such other address as is notified in writing by the other party from time to time, or

(b) it is in electronic form then:

- i. it is in writing
- ii. emanating from a party's email address, and
- iii. is delivered to the email address of the other party as notified by the other party from time to time.

15.2 A notice will be deemed to have been served and received by the party to whom it is addressed:

- (a) if delivery is by hand, on the date of actual delivery
- (b) if sent by post, at a time when, in the ordinary course of post, it would have been delivered to the address to which it was sent, or
- (c) if sent by facsimile or electronic transmission, when the machine on which the notice was sent reports that the notice has been transmitted satisfactorily.

## **16. Indemnity by Practitioner**

16.1 The Practitioner must indemnify Legal Aid Queensland against any cost, loss, expense, damage, claim or action incurred or suffered by, or brought against, Legal Aid Queensland as a result of, or in connection with:

- (a) any breach of this agreement by the Practitioner
- (b) the negligence of the Practitioner or any relevant person, or
- (c) any unlawful conduct of the Practitioner or any relevant person.

## **17. Liability of Legal Aid Queensland**

17.1 Legal Aid Queensland is not liable to the Practitioner for any loss or damage, including consequential or economic loss or damage, arising from, in relation to or as a consequence of:

- (a) the subject matter of this agreement

- (b) any breach of this agreement by Legal Aid Queensland, provided that Legal Aid Queensland has acted in good faith, or
- (c) Legal Aid Queensland's exercise, or purported exercise, of any of its rights under this agreement.

## **18. Entire agreement**

18.1 The agreement represents the entire agreement and understanding between the parties in connection with its subject matter and supersedes any previous agreement between the parties relating to its subject matter. It supersedes all prior negotiations, representations and undertakings whether written or oral and does not exclude any liability for fraudulent misrepresentation.

## **19. Extension**

19.1 The agreement may be extended for such period or periods as may be agreed between the parties.

## **20. Gifts**

20.1 The Practitioner must not offer, give, or agree to give to any of Legal Aid Queensland's staff any gift or consideration of any kind as an inducement or reward for:

- (a) doing, or forbearing to do, (or for having done or forborne to do) any act in relation to the obtaining or execution of this agreement (or to the obtaining of work under this agreement), or
- (b) showing, or forbearing to show, (or for having shown or forborne to show) favour or disfavour to any person in relation to this agreement (or the obtaining of work under the agreement).

20.2 Any breach of this clause 20 by the Practitioner or by anyone employed or engaged by the Practitioner or acting on behalf of the Practitioner (whether with or without the knowledge of the Practitioner) entitles Legal Aid Queensland to immediately terminate this agreement by written notice to the Practitioner. Where this agreement is terminated under this clause 20.2 the provisions of clause 9 will apply.

## **21. Survival**

21.1 Without limiting the ability of any clause to survive expiration or termination of this agreement, the following clauses will survive expiration or termination of this agreement:

- (a) Clause 4.3 (confidentiality)
- (b) Clause 4.4 (rate of payment)
- (c) Clause 5 (audit)
- (d) Clause 6.11 (confidentiality – client information)
- (e) Clause 6.12 (protection of Legal Aid Queensland's intellectual property)
- (f) Clause 6.13 (protection of intellectual property in CPD material)
- (g) Clause 9 (consequences of termination)
- (h) Clause 10 (confidentiality – confidential information)
- (i) Clause 11 (privacy)
- (j) Clause 16 (indemnity)
- (k) Clause 17 (liability)
- (l) This clause 21.1.

# Schedule 1

## Notification Matter (Clause 6.9)

Each of the following is a 'notification matter' for the purposes of this agreement:

- A. The commencement of professional disciplinary proceedings against the Practitioner by or through the QLS or the LSC, or any other similar professional regulatory body in another jurisdiction.
- B. The commencement of any criminal proceeding against the Practitioner other than proceedings relating to minor traffic offences.
- C. The:
  - i. acceptance by the Practitioner's professional indemnity insurer of liability for any claim against the Practitioner for professional negligence of the Practitioner, or
  - ii. making of a decision by a court or tribunal against the Practitioner about any claim against the Practitioner for professional negligence of the Practitioner.
- D. In the case of a Practitioner who is employed by a legal practice:
  - i. the Practitioner ceases to be employed by the legal practice specified in the Practitioner's application or any legal practice subsequently notified by the Practitioner to Legal Aid Queensland as their employer, or
  - ii. the principal(s) of the legal practice which employs the Practitioner ceases to hold a principal practising certificate(s), or
  - iii. the Practitioner ceases to hold an unrestricted practicing certificate.
- E. In the case of a Practitioner who is a principal of a legal practice:
  - i. the Practitioner ceases to hold an unrestricted principal practicing certificate.
- F. The commencement of proceedings for the bankruptcy of the Practitioner personally or in the in the case of a Practitioner who is employed by a legal practice, the commencement of proceedings for bankruptcy of the principal of the legal practice.
- G. The commencement of proceedings for the liquidation or winding up of the legal practice conducted by the Practitioner or the legal practice which employs the Practitioner.
- H. The appointment of a receiver, administrator, controller or liquidator in relation to the legal practice conducted by the Practitioner or the legal practice which employs the Practitioner.
- I. Any change in the business address or business operations of the legal practice conducted by the Practitioner or the legal practice which employs the Practitioner.
- J. Any change in the partners or directors of the legal practice conducted by the Practitioner or the legal practice which employs the Practitioner.
- K. Any proposed:
  - i. sale of
  - ii. merger of
  - iii. acquisition by, or of, or
  - iv. transfer ofthe legal practice conducted by the Practitioner or the legal practice which employs the Practitioner.

- L. The closure or planned closure of the office of the legal practice conducted by the Practitioner or the legal practice which employs the Practitioner.
- M. The Practitioner or the employer of the Practitioner proposes to cease operations.
- N. Any inability of the Practitioner to carry out his or her duties for a period exceeding three months.

## Schedule 2

### Specified Matter (Clause 8.3)

Each of the following is a 'specified matter' for the purposes of this agreement:

- A. Any information supplied to Legal Aid Queensland by the Practitioner, whether in relation to an application by the Practitioner for inclusion on a relevant sub panel or in accordance with any part of this agreement, is false or misleading.
- B. The Practitioner ceases to satisfy the eligibility criteria for any relevant sub panel.
- C. The Practitioner lodges a false or dishonest application for an extension of legal assistance with Legal Aid Queensland
- D. The Practitioner:
  - i. engages in conduct in relation to any legal aid work that Legal Aid Queensland considers to be dishonest or unprofessional, or
  - ii. intentionally or accidentally misleads a court as to the status or outcome of any determination by Legal Aid Queensland about an application for an extension of legal assistance.
- E. The Practitioner fails to comply with, or ensure compliance with, the Practice and Case Management Standards, and Legal Aid Queensland considers that the failure adversely affected, or could have affected, the outcome of the relevant matter or the legal position of the child/children in the proceedings.
- F. The Practitioner commits a breach of this agreement that Legal Aid Queensland considers to be:
  - i. a serious breach that is incapable of being remedied, or
  - ii. a breach that has adversely affected, or could adversely affect, Legal Aid Queensland's financial position or reputation.
- G. Legal Aid Queensland determines that, because of repeated breaches of this agreement or previous agreements by the Practitioner (whether they have individually been rectified or not), the Practitioner is no longer an appropriate person to perform legal aid work.
- H. The commencement of professional disciplinary proceedings against the Practitioner by or through the QLS or the LSC, or any other similar professional regulatory body in another jurisdiction.
- I. The Practitioner is found guilty of any criminal offence, other than a minor traffic offence.
- J. If:
  - i. the Practitioner is a principal of a legal practice, the Practitioner ceases to hold an unrestricted principal practising certificate, or
  - ii. the Practitioner is an employee of a legal practice:
    - (a) the principal of the legal practice ceases to hold an unrestricted principal practising certificate, or
    - (b) the Practitioner ceases to hold an unrestricted practising certificate.
- K. The commencement of proceedings for the bankruptcy of the Practitioner personally or in the in the case of a Practitioner who is employed by a legal practice, the commencement of proceedings for bankruptcy of the principal of the legal practice.
- L. The commencement of proceedings for the liquidation or winding up of the legal practice conducted by the Practitioner or the legal practice which employs the Practitioner.

- M. The Practitioner, the legal practice conducted by the Practitioner or the legal practice which employs the Practitioner cease operations.
- N. The occurrence of any matter described in paragraphs H, I, J, K, L, M, or N of Schedule 1 that Legal Aid Queensland considers adversely impacts on the ability or appropriateness of the Practitioner to perform legal aid work in accordance with this agreement.
- O. The failure to respond within 20 business days to an investigation by Legal Aid Queensland without reasonable excuse.